

Trainor
ool

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

- - -

HONORABLE PAUL J. McCORMICK, JUDGE PRESIDING

- - -

GONZALO MENDEZ, et al.,)
)
Plaintiffs,)
)
vs.)
)
WESTMINSTER SCHOOL DISTRICT)
OF ORANGE COUNTY, et al.,)
)
Defendants.)

No. 4292-M - Civil

- - -

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

June 26, 1945

- - -

APPEARANCES:

For the Plaintiffs: DAVID MARCUS, Esq.,
129 West Second Street,
Los Angeles, California.

FOR THE DEFENDANTS: GEORGE F. HOLDEN, Esq.,
Deputy County Counsel,
Court House, Santa Ana,
California.

AMICUS CURIAE: J. B. TIETZ,
257 South Spring Street,
Los Angeles, California.

- - -

1 LOS ANGELES, CALIFORNIA, TUESDAY, JUNE 26, 1945. 10:00 A.M.

2 - - -

3 THE CLERK: No. 4292 Civil, Gonzale Mendez, and others,
4 vs. Westminster School District of Orange County, and others.

5 THE COURT: Are you ready in that, gentlemen?

6 MR. HOLDEN: The defendants are ready, and Mr. Marcus
7 was here a moment ago. Here he is now.

8 THE COURT: Your case has been called, Mr. Marcus, for
9 pre-trial.

10 MR. MARCUS: Yes, your Honor, and we are prepared.

11 THE COURT: Does the amicus curiae appear at all in the
12 matter? I haven't seen anything in the file which indicates
13 any appearance. They requested permission to appear and the
14 Court granted the request. I see nothing further indicating
15 any activity on their part except the petition in the file.
16 Of course, if they are going to appear in the case, we want
17 them at all stages and not when they feel like it.

18 THE CLERK: Mr. Tietz is here.

19 THE COURT: Mr. Tietz, an application was made by your
20 firm, I believe, for leave to appear in this case of Mendez,
21 et al., against Westminster School District of Orange County,
22 et al., 4292-M of the files of this Court, and the Court
23 granted the application for leave to appear as amicus curiae
24 in the case. The case is called for pre-trial this morning,
25 and I didn't know what the attitude of the amicus curiae was.

26 MR. TIETZ: The part we would like to play at present

oo3

1 would be that of an observer, and then later possibly file a
2 brief.

3 THE COURT: Of course, if we are going to have amicus
4 curiae, I would prefer to have the representation at all
5 stages of the case, and not have them come in just when they
6 feel like coming in.

7 MR. TIETZ: I see, your Honor.

8 THE COURT: I am very glad to have the amicus curiae
9 or any other light that can be thrown upon this very important
10 question that is involved in the case.

11 MR. TIETZ: Mr. Wirin is out of town, and my under-
12 standing was not that I should give that much time, for this
13 may take a very considerable amount of time. I can't very
14 well decide at this moment, your Honor, whether we can make
15 that commitment of time. It may be it is a situation which
16 wouldn't be acceptable to the Court.

17 THE COURT: The matter this morning is, of course, of
18 great importance in determining just what the issue is, and
19 undoubtedly the amicus curiae had some definite views on what
20 it might be, and we want all the light we can get. You are
21 here, and I think you might participate in the pre-trial.

22 MR. TIETZ: Thank you.

23 THE COURT: Gentlemen, the Court has directed in its
24 order for pre-trial certain matters. This is not an explora-
25 tion via witnesses, unless that is considered to be appro-
26 priate. It is more for the purpose of narrowing the issues

004

1 and finding what issues are necessary to explore effectively.
2 We might go over the pleadings here seriatim and see just
3 what there is here. I think probably, Mr. Marcus, you must
4 have some definitely organized views on the case, and I will
5 ask you to assume your proper role here. You have the burden
6 in the case, of course, being the plaintiff. Now, let's see.
7 Allegations 1, 2, 3, 4, 5, 6 --

8 MR. MARCUS: 7 is denied, your Honor.

9 THE COURT: Part of 11, part of 16, and all of 16, I
10 guess, seems to be admitted. Is that correct, Mr. Holden?

11 MR. HOLDEN: Yes, your Honor. If it might generally
12 simplify this matter, the only thing that we deny definitely
13 is that there is any conspiracy between the school districts,
14 and we deny the plaintiffs here represent a class, that this
15 is a proper class suit. They don't represent a class. He
16 claims to represent a class of Mexican people, and we deny
17 that, and we deny the conspiracy. We admit that the children
18 are taught in different schools practically from the first
19 grade to the sixth grade. That is generally admitted.

20 MR. MARCUS: Your Honor, there is no allegation --

21 THE COURT: Just one at a time in the court room,
22 always, Mr. Marcus.

23 MR. HOLDEN: We admit the petitioners in this case are
24 free from infection, and that they are qualified to attend
25 the public schools; that is, the named petitioners. The
26 only thing that we deny is, we deny that they are segregated

1 solely for the reason that they are of Mexican descent. We
2 claim that they are segregated for the benefit of the people,
3 that they are all in a class that speaks the Spanish language,
4 that they live in communities inhabited by the Spanish
5 descendants, and that in their own homes and among them-
6 selves they speak the Spanish language and are unfamiliar
7 with the English language to the same extent that the so-
8 called Anglo-Saxon students are. In other words, we say
9 that there is a handicap on these people, that there is a
10 large class of them, and that they are handicapped by their
11 deficiency in the English language, and that we segregate
12 them, those that are unfamiliar with the English language or
13 familiar to such an extent that they may not progress with
14 the other students. In two of the districts they are segre-
15 gated to the sixth grade and in two of the districts they
16 are segregated to the eighth grade. I think that is the
17 fact.

2
18 Now, we deny that we discriminate in any way against
19 the students. We deny that there is any discrimination. We
20 allege that we give them exactly the same education, the same
21 facilities are furnished to them, the same type of teachers
22 are employed as for the other students, and the same courses
23 of instruction are given in those schools. There is no dis-
24 crimination as between one school and the other. In fact, if
25 they are in the Santa Ana -- well, generally, I think we can
26 go that far. I don't think that these schools can properly

006

1 be joined together. We deny that there is any relationship
2 between the schools. We say that each district is a separate
3 and independent school district, and that no Board has con-
4 trol whatever over the Board of another district, and what I
5 have said applies to all of the districts except in the Santa
6 Ana School system.

7 In the Santa Ana Schools, we admit that the petitioner
8 here, although she is not of school age, the Guzman child, is
9 not of compulsory school age, she does live in a district
10 that is zoned, that is, the people residing in that zone are
11 predominantly Mexican, and that the people attending the
12 school to which she is assigned, should she go to school,
13 would be practically 100 per cent Mexican. The Santa Ana
14 School District has 14 elementary school systems, and the
15 city is zoned for each district. It happens that in those
16 particular zones where the Mexicans predominate, the people
17 living there are predominantly of the Mexican descent, and the
18 schools would be the same.

19 THE COURT: Are there any resolutions or ordinances or
20 official authoritative actions that are memorialized by writ-
21 ing concerning the matters to which you have adverted?

22 MR. HOLDEN: I have, pursuant to your order, a statement
23 from the Superintendent of the Santa Ana Schools in which he
24 gives the enrollment here. This also will certify that the
25 Board of Education has never at any time passed a minute order
26 or resolution on the subject of separation or segregation of

007

1 pupils by race. District lines as set up by the Board determine
2 the school attendance, and that is what I am trying to ex-
3 plain here, that the City of Santa Ana is divided into 14
4 districts. That is, there is just one school district, but
5 they have 14 elementary schools in the city, and they divide
6 the city into eight territories and one school serves each
7 territory. It happens that there are three school that serve
8 Mexican descendants almost 100 per cent. There are three
9 schools that serve white or -- well, white isn't, of course,
10 the proper term to use here, but it has been used in the
11 pleadings.

12 MR. MARCUS: No, it hasn't, counsel.

13 THE COURT: Don't do that, Mr. Marcus. Don't repeat
14 that again. Do not interrupt counsel.

15 MR. MARCUS: I am sorry.

16 MR. HOLDEN: Let's divide them into English speaking
17 and Spanish speaking just for the purpose of talking here.
18 There are three schools that serve English speaking pupils
19 exclusively. In the other eight schools English speaking and
20 Spanish speaking people are mixed, although the larger per-
21 centage of them are English speaking pupils. I have the
22 statistics on that that your Honor requested. Would you like
23 to have me --

24 THE COURT: I want to ask you a question or two first.
25 What is the official method of school control in the City of
26 Santa Ana? Is there a Board of Education elected, or are

008

1 these governing bodies appointed Boards?

2 MR. HOLDEN: They are elected by the electors of each
3 district. The Santa Ana system is under what we call a City
4 Board of Education. In other words, in a city of the fifth
5 class, the Board of Education is the governing Board for the
6 elementary schools and the high schools and junior college.

7 THE COURT: Santa Ana, California is a city of the
8 fifth class under the Political Code of the State of California?

9 MR. HOLDEN: That's right.

10 THE COURT: And as such the electors of that city have
11 chosen the Board of Education?

12 MR. HOLDEN: Yes, your Honor.

13 THE COURT: Are those facts agreed to, Mr. Marcus?

14 MR. MARCUS: They are, your Honor.

15 THE COURT: Has the Board of Education of the City of
16 ~~Santa Ana, California~~ enacted any memorial in writing with
17 respect to the classification of schools as to the student
18 personnel relative to the linguistic qualities of the students
19 who would attend those schools?

20 MR. HOLDEN: They have not.

21 THE COURT: Is that agreed?

22 MR. MARCUS: Your Honor, counsel here came up to ask me
23 a question at the time you were interrogating counsel and I
24 did not hear that. I am sorry.

25 THE COURT: I want you to follow this closely, because
26 that is the only method of arriving at a stipulation here.

009

1 Will the reporter read that, please?

2 (Record read.)

3 THE COURT: Do you agree that is correct?

4 MR. MARCUS: I will have to accept counsel's statement
5 if he so states, because I have no knowledge of the fact that
6 there is any memorial in respect to that, your Honor.

7 THE COURT: Haven't you examined the records of these
8 various school bodies to ascertain what they have done
9 officially?

10 MR. MARCUS: I have questioned them, and I requested
11 permission to examine the records. They advised me that
12 there are no records of such acts, but it is a custom of the
13 school district --

14 THE COURT: Just answer the Court's question. Then you
15 have made some inquiries and examination to ascertain whether
16 or not there are any official memorials or acts of the Board
17 of Education of the City of Santa Ana?

18 MR. MARCUS: Of the City of Santa Ana alone?

19 THE COURT: I am only asking about the City of Santa
20 Ana.

21 MR. MARCUS: Yes, your Honor.

22 THE COURT: Did you ascertain anything contrary to what
23 Mr. Holden states to be the fact?

24 MR. MARCUS: No, I have not, your Honor.

25 THE COURT: Then you have no evidence to offer to show
26 that what he states to be the fact is not the fact?

0010

1 MR. MARCUS: That's right, your Honor.

2 THE COURT: It will be considered factually determined
3 that there are no such memorials. Now, with respect to these
4 other districts --

5 MR. MARCUS: May I interrupt the Court on that subject
6 alone? There are letters in existence written by the
7 Superintendent of the Schools of Santa Ana to the various
8 students of Mexican descent who have attended these schools,
9 advising them in writing that they cannot further attend
10 these schools where Anglo Saxon students attend and would
11 have to attend other schools.

12 THE COURT: Do you have those letters, Mr. Holden?

13 MR. HOLDEN: I never heard of them before. ✓

14 THE COURT: Did you get them?

15 MR. MARCUS: I have some with me.

16 MR. HOLDEN: Well, I didn't know that there were any
17 such letters.

18 THE COURT: There is a Superintendent of Schools or a
19 Superintendent of Instruction, having advisory and executive
20 authority of the elementary and grammar school facilities in
21 the City of Santa Ana, California, is there, Mr. Holden?

22 MR. HOLDEN: Yes, there is, your Honor.

23 THE COURT: And that official is and has been appointed
24 by the Board of Education?

25 MR. HOLDEN: Yes, your Honor.

26 MR. MARCUS: May I show these to your Honor?

ooll

1 THE COURT: Yes. What do you represent those docu-
2 ments to be, Mr. Marcus?

3 MR. MARCUS: Well, these are letters to the parents
4 of the students that have attended the schools where Anglo
5 Saxon children have attended, requesting them to remove the
6 children from that particular school to the other school.

7 THE COURT: And do you represent that those communica-
8 tions, which Mr. Holden now has and which will be marked
9 later for identification, were received through the mails by
10 the person addressed in the letter?

11 MR. MARCUS: Yes, we do, your Honor.

12 MR. HOLDEN: I don't doubt the authenticity of these
13 letters, your Honor. They are not signed by the Superintendent,
14 however. They are signed by Mr. Harold Yost, who is the
15 business manager. I didn't intend to interrupt there.

16 THE COURT: Have you read the letter, Mr. Holden?

17 MR. HOLDEN: Yes, your Honor. I think that the authen-
18 ticity of the letters would be stipulated, and we would stipu-
19 late that Harold Yost, who signed these letters, is a
20 defendant in this action, and he is the business manager for
21 the Santa Ana Elementary School District. However, I would
22 like to know this. Did not these students reside in the
23 Fremont District? In other words, they were permitted to
24 go from the zone in which they lived to another school, and
25 then required to go back to the school in which they lived.
26 Is not that the substance of these letters?

ool2

1 THE COURT: The letters will speak for themselves.

2 MR. HOLDEN: I think not, unless you introduce the
3 fact that the children --

4 THE COURT: You have asked him for the fact, and I
5 am going to ask him now whether your statement of the fact is
6 conceded by the plaintiffs.

7 MR. MARCUS: To this extent, your Honor, and the allega-
8 tions in the complaint, I believe, will support this position
9 that I have taken. They have established certain arbitrary
10 lines which curve and bend and twist to include only those
11 children of Mexican descent. There are children that are
12 attending the school where Mexican children attend that have
13 to go through the various lines where only the American
14 children attend.

15 THE COURT: Wait just a moment. "Only American
16 children attend." What do you mean by "American children?"

17 MR. MARCUS: Well, we will say of Anglo Saxon descent.

18 THE COURT: You mean children other than of Mexican
19 lineage, do you not?

20 MR. MARCUS: That is correct, your Honor, but I was
21 using the language adopted by counsel in his answer.

22 THE COURT: On what page?

23 MR. MARCUS: Page 3. "That for the efficient instruc-
24 tion of pupils from said families, the Garden Grove
25 Elementary School District has found it desirable to instruct
26 said pupils at different locations than are provided for the

0013

1 instruction of pupils who are familiar with the English
2 language and who are more advanced according to the American
3 standards in personal hygiene."

4 THE COURT: On that point there is an admission, is
5 there not, Mr. Holden, in the answer that as far as the
6 health and the sanitation and hygienic qualities of the
7 students are concerned, it is admitted by the defendants
8 that the children who are the plaintiffs in the case, repre-
9 sented by their respective parental authority, meet all re-
10 quirements of health and sanitation?

11 MR. HOLDEN: As to these petitioners, that is admitted.
12 I think, if I might suggest this, we were talking about the
13 Santa Ana School District.

14 THE COURT: That's right.

15 MR. HOLDEN: And counsel has read from the Garden
16 Grove answer. I might at this time point out that in the
17 Garden Grove School District, you are not in court, because
18 those children do not live in the Garden Grove School
19 District. There are no petitioners here that live in the
20 Garden Grove District.

21 THE COURT: Is that fact admitted?

22 MR. MARCUS: No, your Honor, it is not admitted.

23 THE COURT: You claim there are children here who are
24 living within the Garden Grove School District?

25 MR. MARCUS: That is correct, your Honor.

26 THE COURT: You mean that they are here as named

ool4

1 plaintiffs or because they are in a class which you claim is
2 the subject of this litigation?

3 MR. MARCUS: I think, your Honor, and the complaint
4 will so show, that there are children in the Garden Grove
5 School District who are plaintiffs.

6 MR. HOLDEN: We deny it in the answer, and for your
7 information --

8 MR. MARCUS: In Paragraph I, your Honor.

9 THE COURT: Paragraph I reads: "The Garden Grove
10 Elementary School District, is a legally constituted school
11 district in the County of Orange, State of California, and
12 William C. Noble, Robert B. Smith and Paul C. Applebury, are
13 the duly elected, qualified and acting Board of Trustees and
14 James L. Kent is the District Superintendent of said School
15 District."

16 Where is the allegation there that any of the plain-
17 tiffs are residents within that district?

18 MR. HOLDEN: There is another paragraph where they al-
19 lege that some of the petitioners reside in Garden Grove, but,
20 as a matter of fact, those petitioners reside in Westminster
21 School District.

22 THE COURT: Do you know that that is or is not a fact,
23 Mr. Marcus?

24 MR. MARCUS: I have been advised and the information
25 given me, your Honor, is that it is in the Garden Grove
26 District. I think there are some here that reside there.

0015

1 THE COURT: I don't want you to discuss it with the
2 witnesses. If you have prepared the case, you know what you
3 can prove and you can state what you expect to prove. That
4 is the purpose of a pre-trial hearing. It is not to explore,
5 not to take up time here. That should be taken up outside of
6 the courtroom. You are not able to answer the Court's ques-
7 tion, Mr. Marcus?

8 MR. MARCUS: I am.

9 THE COURT: What is it?

10 MR. MARCUS: Your Honor appreciates that I haven't
11 personally gone out and inspected the places where they
12 reside, but I have been advised that they do reside in the
13 Garden Grove District.

14 THE COURT: By whom have you been so advised?

15 MR. MARCUS: By Mr. Mendez.

16 THE COURT: I don't want you to ask him that in the
17 court room. You do that when you are preparing the case.
18 What have you been advised by Mr. Mendez with respect to that
19 matter?

20 MR. MARCUS: That they resided in the Garden Grove
21 District.

22 THE COURT: That who resided there?

23 MR. MARCUS: That Mendez resided there.

24 MR. HOLDEN: Mendez resides in Westminster.

25 MR. MARCUS: He is required to go to the school there
26 in Westminster.

0016

1 THE COURT: Your position is, Mr. Marcus, is it not,
2 that the plaintiff Mendez resides in a district in the County
3 of Orange, a school district in the County of Orange, State
4 of California, different from the district in which his chil-
5 dren are required to attend school?

6 MR. MARCUS: That's right, your Honor.

7 THE COURT: What are those districts?

8 MR. MARCUS: There is Westminster District and Garden
9 Grove District.

10 THE COURT: And do Mendez, his family and his children,
11 reside in Westminster or in Garden Grove?

12 MR. MARCUS: I have been so advised, that they reside
13 in the Garden Grove District. *Handwritten: 10-27-47*

14 THE COURT: And that the children so residing are re-
15 quired to attend the district school of Westminster?

16 MR. MARCUS: Westminster, yes, sir.

17 THE COURT: Are you prepared to take issue on that?

18 MR. HOLDEN: That is not a fact, definitely is not a
19 fact.

20 THE COURT: That is a matter we will have to take evi-
21 dence on, undoubtedly. We will try to get what you can
22 agree on here.

23 MR. MARCUS: And there is Paragraph XII, too, your Honor,
24 of the complaint, which states, "That Frank Palomino, is the
25 father and next of friend of Arthur and Sally Palomino who
26 live and reside in the Garden Grove Elementary School

0017

1 District, as aforesaid and that said children, both minors,
2 are subject to said rules and regulations of said District
3 and segregated and required to attend separate schools within
4 said District all as specifically alleged herein."

5 MR. HOLDEN: Look at the answer; it is denied.

6 THE COURT: If it is denied and if the defendants are
7 taking issue on it and relying on it, of course, it can't be
8 determined now.

9 MR. HOLDEN: Well, it is denied, your Honor, and that
10 is the fact. Those children, I know, happen to go the
11 Westminster School District and they are enrolled there.

12 THE COURT: May I see those letters, please, and they
13 will now be marked for identification.

14 MR. HOLDEN: I don't understand whether counsel had
15 agreed that these children lived within the district to which
16 they had been assigned by that letter.

17 THE COURT: You mean the children referred to in these
18 three letters?

19 MR. HOLDEN: Yes.

20 THE COURT: Which will now be marked for identification,
21 Mr. Clerk, as Plaintiffs' Exhibits 1, 2 and 3.

22 (The documents referred to were
23 marked as Plaintiffs' Exhibits 1,
24 2 and 3, for identification.)

25 THE COURT: I will read them before we go further.
26 These letters are each upon what purports to be and what has
been stipulated to be the official stationery of the Santa and

ool8

1 City Schools and are each dated October 20, 1944, and
2 apparently they are form letters, and with the exception of
3 the person addressed and the child or children referred to,
4 contain the same composition. The letter addressed to Mr.
5 Frank Garcia, 1721 West First Street, Santa Ana, California,
6 reads:

7 "Dear Sir:

8 "At the meeting of the Board of Directors on
9 Friday, October 13th, it was pointed out that certain
10 children at the present time attending Franklin School
11 live in the Fremont School District and have been given
12 special permission to attend Franklin.

13 "Dissatisfaction arises with other parents whose
14 children are not granted the same privilege. We were
15 instructed by the Board of Education to issue notice
16 that your children, Frank and Socorro, now attending
17 Franklin School, would be permitted to complete this
18 year there, but that beginning September, 1945 the
19 permit will be withdrawn and they will be required to
20 attend the school serving the district in which you live
21 at that time.

22 Harold Yost, Secretary
23 BOARD OF EDUCATION OF THE
24 CITY OF SANTA ANA."

25 Each of the other letters, one addressed to Mrs. Mabel
26 Mendez and another to Mr. Salvador Sanchez, are in the same

0019

1 composition with the exception of the children indicated and
2 the school referred to, respectively.

3 MR. MARCUS: Your Honor, with respect to that matter,
4 possibly counsel and I could stipulate that the Franklin
5 School is a school that is attended exclusively by children
6 of Anglo Saxon descent and the Fremont School is one that is
7 attended exclusively by children of Mexican descent.

8 THE COURT: The Court wouldn't concur in that. I don't
9 know anything about the antecedents or ethnic or anthro-
10 pological features of the children, but I wouldn't concur
11 in the Anglo Saxon feature. Undoubtedly, there are Celtic
12 children there.

13 MR. HOLDEN: In that connection, we couldn't stipulate
14 on that. I have some statistics here, and if the Court would
15 like to have a copy --

16 THE COURT: Yes, I would.

17 MR. HOLDEN: This is Santa Ana (handing document to
18 Court).

19 THE COURT: That is right. This designation seems to
20 be more appropriate to an accurate classification of ante-
21 cedents than Anglo Saxon. That term hasn't much significance.
22 This form, which will be marked also for identification, is
23 headed a certificate, and reads thus:

24 "I, Frank A. Henderson, Superintendent of the
25 Santa Ana School District, do hereby certify that the
26 Santa Ana School District operates and maintains

poo20

1 fourteen (14) elementary schools which furnish in-
2 struction to pupils between the first and sixth grades,
3 inclusive;

4 "THAT I have examined the records of each of said
5 schools and said records show the attendance at each
6 of said schools, as between English speaking pupils
7 and pupils of Mexican descent or Spanish speaking
8 pupils to be as follows:"

9 Then there is the name of the school, and listed under
10 that are the respective names of these fourteen schools;
11 total of pupils, and listed under that are the estimates of
12 the number of pupils; English speaking pupils, and the same
13 with respect to that item; Spanish speaking pupils, and the
14 same with respect to that.

15 "Enrollment figures are as of March 22, 1945.

16 Dated, this 11th day of June, 1945. Frank A. Henderson."

17 I observe in this certificate the following statement:

18 "That I have examined the records of each of said
19 schools and said records show the attendance at each
20 of said schools, as between English speaking pupils
21 and pupils of Mexican descent or Spanish speaking
22 pupils to be as follows:"

23 Are the defendants able to concede that pupils in those
24 schools have been allocated to the respective schools because
25 of Mexican descent and only Mexican descent?

26 MR. HOLDEN: On that, we wouldn't be able to do that.

0021

1 They have zoned the districts and it happens that they have
2 drawn lines so that the lines include mostly Mexican people,
3 and they permit only the people living within that zone to
4 attend those schools. In some of those zones, there are
5 English speaking pupils, very few, and they are permitted to
6 go to another school out of the district.

7 THE COURT: Are the children of Mexican descent, regard-
8 less of their linguistic qualifications, permitted to attend
9 the same school as the English speaking children are permitted
10 to attend?

11 MR. HOLDEN: Not unless they live in the zone where
12 they admit English speaking pupils.

13 THE COURT: In other words, then, there is a definite
14 line of demarcation officially set up by the school authori-
15 ties in the Santa Ana School District, that prescribes as one
16 of its limitations that children of Mexican descent, regard-
17 less of their linguistic qualifications, are not permitted to
18 attend the same school as the children who live within that
19 district attend?

20 MR. HOLDEN: Unless they live in a district that is com-
21 posed of English speaking pupils.

22 THE COURT: That doesn't answer the Court's question.
23 Will you read it, Mr. Reporter, please?

24 (Record read.)

25 MR. HOLDEN: No, your Honor, I wouldn't say that. The
26 situation in Santa Ana is that the town is divided into 14

0022

1 districts and the area to be served by each school is pre-
2 scribed by the Board of Education. The Mexicans who live
3 within that boundary go to the school that is serving that
4 area. It happens that the Mexican people live in a certain
5 part of the town, that is, to a large extent, and they have
6 zoned that in a certain way. For example, the Fremont School
7 is in an area where the Mexican people live, so they have
8 zoned it as a school to which the Mexican people or students
9 in that area should attend that school. So the attendance in
10 that school is practically 100 per cent Mexican because the
11 inhabitants of the area that has been zoned for that school
12 are approximately 100 per cent Mexican. Now, I will stipu-
13 late to this: That in that district there are probably
14 between 5 and 10 pupils who are not of the Mexican descent,
15 but are, we will say, English speaking pupils, and they are
16 permitted to go to another school outside of that district.
17 In other words, they don't make those between 5 and 10 pupils
18 attend the Fremont School.

19 THE COURT: Before we leave that, let's take it up
20 further. Is it conceded that with respect to what you term
21 the practically 100 per cent of the school attendance of the
22 Fremont School, regardless of the linguistic qualifications
23 of those pupils, if they are of Mexican ancestry or descent,
24 they cannot be permitted to exercise the same choice that the
25 English speaking pupils are permitted to exercise?

26 MR. HOLDEN: I think there are some exceptions. I

0023

1 wouldn't say that those all would be denied that right.

2 THE COURT: You are not able to answer that?

3 MR. HOLDEN: I am not able to say all of them.

4 THE COURT: Then that would be probably explored?

5 MR. HOLDEN: Probably, yes.

6 THE COURT: It seems to me that if we choose a school,
7 the Fremont School seems to be a typical school, to save
8 the time of the Court and economize the litigation as far as
9 it can practicably and justly be done, that that school,
10 having perhaps the largest pupil population, would be typical
11 of the legal questions that are involved, according to this
12 exhibit. What is the number of that, Mr. Cross?

13 THE CLERK: No. 4.

14 (The document referred to was
15 marked as Plaintiffs' Exhibit 4,
16 for identification.)

17 THE COURT: According to Exhibit 4 for identification,
18 the Fremont School had on the date specified, March 22, 1945,
19 325 pupils, and under the heading "English Speaking Pupils"
20 there is "0", and under the heading of "Spanish Speaking
21 Pupils", "325". Counsel for the defendants states he is not
22 able to represent to the Court that that is precisely
23 accurate.

24 MR. HOLDEN: As for attendance, your Honor, that is
25 accurate. The question that I couldn't answer the Court on
26 is this: That if some of those 325 who were advanced in
English wanted to go to the Wilson School, let us say, I am

oo24

6

1 not sure whether they would be permitted to go there or not.

2 THE COURT: Do you think, gentlemen, for the plain-
3 tiffs and amicus curiae, that the Fremont School would be a
4 typical classical school from which the question of dis-
5 crimination could be measured in this action as far as the
6 Santa Ana City Schools are concerned?

7 MR. MARCUS: Your Honor, if I might suggest that the
8 three schools in that district be taken, because there are
9 other schools and possibly it might be of assistance to the
10 Court to take, for instance, the Wilson School where the
11 total number of pupils is 259 and the English speaking pupils
12 are 259 and the Spanish speaking pupils none.

13 THE COURT: That would be exactly the converse of the
14 other school.

15 MR. MARCUS: That's right.

16 THE COURT: According to the table.

17 MR. MARCUS: That would be correct, your Honor. I
18 would like to make inquiry of counsel, and it may possibly be
19 of assistance to the Court in determining the matter, what he
20 means by Spanish speaking pupils. Does that mean that they
21 only speak Spanish or that they speak both Spanish and
22 English?

23 MR. HOLDEN: Of course, it means as alleged in the
24 answer, that they are not efficient in English; in other
25 words, there is a handicap due to language and that this
26 represents those pupils who are handicapped by a language

oo25

1 deficiency. Of course, you can't get out of the first grade
2 in any school unless you can speak some English, and as you
3 progress up to the sixth grade, you certainly couldn't get
4 through without speaking English.

5 THE COURT: Are there set up in these schools -- the
6 Court is speaking of matters of judicial knowledge now --
7 what are considered to be retarded pupils who are kept in the
8 same school but who are allocated to certain teachers and
9 certain facilities in that school house?

10 MR. HOLDEN: I think that they have abandoned that prac-
11 tice because it didn't work out satisfactorily. They used
12 to have subnormal classes, but there are very few, if any of
13 them, now.

14 THE COURT: Has the School Department of the City of
15 Santa Ana set up facilities in the way of physical structures,
16 buildings, and equipment, into which all retarded or so-called
17 backward pupils go regardless of their lineage?

18 MR. HOLDEN: No, they have not, your Honor.

19 THE COURT: I think, then, in the trial we will, if it
20 reaches that point, take those two schools in the City of
21 Santa Ana and they will be typical schools, the Fremont
22 School and the Wilson School, and they will be illustrative
23 of the general course and practice pursued by the school
24 authorities in the City of Santa Ana.

25 MR. HOLDEN: Could we include the Delhi, too? That is
26 another Spanish speaking school. I don't believe it would

oo26

1 require much time, your Honor, for each school, because I
2 believe the Fremont is typical, but I would like to also go
3 into the Delhi.

4 THE COURT: I see no objection.

5 MR. HOLDEN: It is practically the same set-up there.

6 THE COURT: Do you want to take any other school
7 representing the converse of the principle involved in the
8 exploration of these schools?

9 MR. MARCUS: I am in this situation. I don't know what
10 the defendants mean by Spanish speaking pupils. There may be
11 some pupils not of Mexican descent that have been listed
12 under Spanish speaking pupils here. There are many nationali-
13 ties that speak English.

14 THE COURT: I think the Court should at this time and
15 can at this time announce the principle of law with respect
16 to segregation, without determining ultimately what is the
17 valid classification of school facilities in a public school
18 system: That if children are segregated solely and exclusive-
19 ly because of their ancestry or lineage, that it is an un-
20 lawful discriminatory act on the part of the school authori-
21 ties. Further than that we will not go at this time. That
22 will be the principle that will govern that phase of the case
23 as far as the Court is concerned, unless at the trial some
24 reliable authority, legal authority, of more than persuasive
25 effect is presented by one or the other sides of the case.

26 Now, let's take up the rural districts. Is it conceded,

oo27

1 Mr. Holden, that the composition, management, direction and
2 control of the various schools is the same? I know the rural
3 districts in the County of Orange, State of California, are
4 analogous on the same basis, that there is no difference.

5 MR. HOLDEN: The only difference is -- yes, it is
6 governed by a Board. Each district is governed by a separate
7 Board of Trustees, and in the districts outside of Santa Ana,
8 they are known as the Board of Trustees, and there are three
9 members, and they govern only the elementary schools.

10 THE COURT: Are you able to state the position of the
11 school districts with respect to classification of pupils
12 concerning their ancestry, lineage, and lingual characteris-
13 tics and qualifications? If that isn't clear, I will clarify
14 it.

15 MR. HOLDEN: Are we taking up, we will say, the Garden
16 Grove School District? In the Garden Grove School District,
17 the Board did pass a resolution --

18 THE COURT: I will ask the Clerk to mark that first.

19 MR. HOLDEN: This minute memorandum was adopted by
20 the Garden Grove School District. At this pre-trial hearing,
21 I am not waiving any of my objections to the jurisdiction of
22 the court, you understand.

23 THE COURT: No, no, of course not.

24 MR. HOLDEN: You see, I am relying quite strongly on
25 the question of the jurisdiction of this court.

26 THE COURT: You have the jurisdictional question at all

oo28

1 stages of the case insofar as the power of the court to pro-
2 ceed in the case is concerned, but any other phase of the
3 jurisdictional question, of course --

4 MR. HOLDEN: I am not waiving the objection to the
5 Garden Grove. I contend that they don't have any petitioner
6 here plaintiff in the Garden Grove District.

7 THE COURT: That is undoubtedly a question for ultimate
8 decision, which is not dependent upon the factual questions
9 which the Court is now propounding to you. By jurisdiction,
10 I want it clearly understood what the Court means, and that
11 is the only reservation that the Court is making at this time
12 on that question of jurisdiction. That is the only open
13 question of jurisdiction, and the one that will remain open
14 until the case is closed and decided, will be the power of
15 this court to proceed in this case.

16 MR. HOLDEN: Yes, your Honor.

17 THE COURT: That is understood?

18 MR. HOLDEN: That is the point I am raising very
19 definitely.

20 THE COURT: You understand the court's limitation, do
21 you, on the question of jurisdiction, Mr. Holden?

22 MR. HOLDEN: Yes.

23 THE COURT: And do you understand that, Mr. Marcus?

24 MR. MARCUS: Yes.

25 THE COURT: And the amicus curiae?

26 MR. TIETZ: I think so.

oo29

1 THE COURT: You are all then to be bound by that rule,
2 and I want you to understand what it is now. If there is any
3 dissent from it, state it. You may proceed. Is this repre-
4 sented to be an authentic document?

5 MR. HOLDEN: That is supposed to be a certified copy,
6 but it doesn't look like it, does it? It was signed by two
7 members of the Board of Trustees and it is a correct copy, I
8 know.

9 THE COURT: Do you agree that it is a correct memorial
10 of official action of the Board of Trustees of the Garden
11 Grove Elementary School District, Mr. Marcus?

12 MR. MARCUS: The language itself is rather misleading,
13 your Honor, so far as the actual memorial or the writing is
14 concerned. We do know, as a matter of fact, that there is
15 complete and absolute segregation in that district.

16 THE COURT: Well, I was not asking you about that. But
17 do you agree that the paper which counsel has produced, which
18 will be marked for identification in this record, is an ac-
19 curate memorial of the Garden Grove Elementary School
20 District as it appears to be recorded upon this document?

21 MR. MARCUS: If counsel so represents to the Court, I
22 am willing to accept his representation that it is a correct
23 memorial.

24 MR. HOLDEN: I have seen a correct certified copy. I
25 haven't looked at the minutes, but I would say that there
26 isn't any question but what this is a correct representation

oo30

1 of the minutes.

2 THE COURT: The exhibit will be marked for identifica-
3 tion.

4 THE CLERK: That should be defendants, your Honor?

5 THE COURT: Yes.

6 THE CLERK: That will be Defendants' Exhibit A for
7 identification.

8 MR. HOLDEN: Your Honor, these are the documents that
9 you requested.

10 THE COURT: Yes, but you produced them.

11 MR. HOLDEN: At your request.

12 THE COURT: You produced them.

13 MR. HOLDEN: But I am not putting them in.

14 THE COURT: They are produced at the direction of the
15 Court.

16 MR. HOLDEN: I am not putting them in as part of the
17 defendants' case.

18 THE COURT: Mark them for identification generally then.

19 (The documents referred to were
20 marked as Defendants' Exhibit A,
for identification.)

21 MR. HOLDEN: The Court requested that we bring in any
22 memorials that might be there. Personally, I wouldn't intro-
23 duce this in evidence, because I don't think it helps the
24 defendants' case in any way, but that is the only one in
25 response to your direction as to the memorials, that is the
26 only one the Garden Grove District has.

0031

1 THE COURT: I will read it generally into the record
2 at the pre-trial hearing. It is on the special letter-head
3 of the Garden Grove Elementary School District, James L.
4 Kent, District Superintendent, Garden Grove, California.

5 "Excerpt of minutes of Board of Trustees meeting
6 held Sept. 13, '44.

7 "Some problems were presented regarding the at-
8 tendance of Mexican pupils in the school. After some
9 discussion a motion was made by Mr. Appleberry and
10 seconded by Mr. Smith that a policy be adopted whereby
11 there be no segregation of pupils on a racial basis,
12 but that non-English speaking pupils, so far as prac-
13 tical, should attend schools where they can be given
14 special instruction, that is not necessary for English
15 speaking pupils, and that due regard be given to the
16 proximity of the pupils' residence to the nearest
17 school. Motion carried."

18 Then at the bottom there is "Members, Board of Trustees:

19 "William Noble and
20 "Paul Appleberry."

21 May I inquire, Mr. Holden, whether the Garden Grove
22 Elementary School District has three members of the Board of
23 Trustees or only two?

24 MR. HOLDEN: Yes, they have, your Honor, and in this
25 particular case the one member is back in Montana, so he
26 wasn't there.

THE COURT: Did you want to say something, Mr. Marcus?

oo32

1 MR. MARCUS: I thought counsel and I could stipulate
2 in the matter of the school in that district that has been
3 established for, as he calls them, non-English speaking
4 pupils. I am reading from this resolution. That school is
5 called the Hoover School, is it?

6 MR. HOLDEN: Yes.

7 MR. MARCUS: Do you have any records of that?

8 MR. HOLDEN: We have the same information.

9 MR. MARCUS: And that in the Hoover School that only
10 persons of Mexican or Spanish descent are in attendance, that
11 they are not permitted, regardless of where they reside, to
12 go to any other school except that school in that district?

13 MR. HOLDEN: That is stipulated, that the Hoover School
14 is exclusively Mexican.

15 THE COURT: Is there any agreement as to whether within
16 the limits of that school district there are other pupils of
17 the same school age as the so-called Mexican children who are
18 not required to attend the same school as the Mexican chil-
19 dren?

20 MR. HOLDEN: It is so stipulated.

21 MR. MARCUS: And that they go to a different school, a
22 school maintained for Anglo Saxons?

23 THE COURT: No, not that.

24 MR. HOLDEN: They go to a school that --

25 THE COURT: I certainly object to that Anglo Saxon term.

26 MR. HOLDEN: They go to a school where people other

oo33

1 than of Mexican descent go. In other words, there are two
2 other schools to the fifth grade. May I let the Court have
3 this, and we would proceed like we did with Santa Ana, and
4 maybe that would be better.

8

5 THE COURT: These certificates probably are very illus-
6 trative of the numerical situation, Mr. Marcus, and counsel
7 for the defendants doesn't desire to offer them as part of
8 his case. Do you have any reason to suspect or believe that
9 they are not accurate? You should prepare proper memorials
10 yourself; otherwise, offer these in evidence.

11 MR. MARCUS: They are not accurate to this extent,
12 your Honor, when they recite the fact that there are Spanish
13 speaking pupils, it would leave the inference with the Court,
14 insofar as the stipulation is concerned, that these pupils
15 only speak Spanish. As a matter of fact, we are prepared to
16 show that they speak English and spoke English prior to at-
17 tending school, and that the only discrimination practiced
18 is for the fact that, not because of any linguistic qualifica-
19 tions, but because they are of Spanish descent.

20 THE COURT: The Court has already indicated its views
21 on that, if you can establish that.

22 MR. MARCUS: Because of the peculiar wording of this
23 certificate, we are not willing to accept it on the basis
24 that they have offered.

25 MR. HOLDEN: I think what we are trying to do, as the
26 Court has pointed out and I agree, is to simplify a difficult

0034

1 situation here. Don't we mean that it is people of Mexican
2 descent who speak Spanish at home and in the communities
3 where they reside? That is what the answer sets forth, and
4 that they are not efficient in English speaking?

5 MR. MARCUS: I can't agree with the fact that --

6 MR. HOLDEN: Well, that is what --

7 THE COURT: One at a time, please.

8 MR. MARCUS: -- that a child three or four years of age
9 is not proficient in the English language. I am willing to
10 say this, however, that they have the same proficiency with
11 respect to speaking the English language as, we will say --
12 what was the word your Honor suggested? I don't want to use
13 the word Anglo Saxon.

14 THE COURT: English speaking people.

15 MR. MARCUS: You see, I run into that difficulty again,
16 your Honor, because these children do speak English.

17 THE COURT: That would be a question of degree, that's
18 all, not of kind. We are trying to classify them so as to
19 accurately designate the various classifications, and not for
20 any other purpose. A person may be of Spanish descent or
21 origin, ancestry, and yet speak English perfectly as far as
22 grammatical expression is concerned and as far as knowledge
23 of the language is concerned, but yet they do have an accent.
24 That is true in the United States. Native Americans reveal
25 that. Those who are natives of one section of the country
26 have certain peculiarities of speech and accent and inflection

0035

1 and pronunciation and idioms, that are not true of those
2 born in another section of the United States. Yet they are
3 born of English speaking parents and that has been their
4 lineage for generations. So that that, I think, would not
5 be a proper method of classifying the children that are
6 involved in the question at issue before the Court.

7 MR. HOLDEN: Might we stipulate that what this means
8 is the people we are talking about in the answer to the com-
9 plaint? He designates them as Mexicans and of Mexican
10 descent. We are all talking about the same people.

11 THE COURT: That's right; trying to, anyway.

12 MR. HOLDEN: That's right. I can stipulate to this,
13 that there are no people there except people that do talk
14 Spanish in the Hoover School.

15 THE COURT: The plaintiffs refer to the matter in
16 Paragraph VIII of the complaint on line 21: "That all
17 children or persons of Mexican or Latin descent or extraction,
18 though citizens of the United States of America, shall be,
19 have been and are now excluded from attending, using, enjoy-
20 ing and receiving the benefits of the education, health and
21 recreation facilities of certain schools within their respec-
22 tive districts and systems but that said children are now
23 and have been segregated and required to and must attend and
24 use certain schools in said districts and systems, reserved
25 for and attended solely and exclusively by children and
26 persons of Mexican and Latin descent, while such other

oo36

1 schools are maintained, attended and used exclusively by and
2 for persons and children purportedly known as White or Anglo
3 Saxon children."

4 That is not a very accurate designation of any type of
5 children.

6 MR. MARCUS: Might I suggest this to your Honor? The
7 Superintendent of this particular school district -- I think
8 counsel is acquainted with this document, this is a photo-
9 static copy of it, has compiled and prepared what he has
10 denominated a theory of dealing with this very subject. His
11 name is Kent and he is a defendant in this action, being the
12 superintendent of the school district of the Garden Grove
13 Elementary Schools. He has propounded a theory which we will
14 show from his own writings, and we are going to offer this
15 as an exhibit, contending that the segregation should be
16 absolute and complete, and that he has so practiced and has
17 so continued to practice the absolute segregation of Mexicans,
18 and he has prepared this thesis, which I am going to offer
19 the Court, giving the views and the opinions and the practice
20 which is now in existence in this particular school district.

21 THE COURT: What is the name of the purported author?

22 MR. MARCUS: James L. Kent, the Superintendent, I
23 believe.

24 MR. HOLDEN: Yes, he is the Superintendent of the Garden
25 Grove District, but if you will point out in there where he
26 says anything about the Garden Grove School, I will submit it.

0037

1 MR. MARCUS: He doesn't say the Garden Grove District.
2 I say his views and his opinions and his purported practice
3 as set up in this matter of segregation have been propounded
4 by him in writing as a memorial and that he has followed and
5 practiced that matter of segregation in this particular dis-
6 trict.

7 THE COURT: That is the same James L. Kent that is on
8 this letter-head which is marked for identification as the
9 District Superintendent of the Garden Grove Elementary School
10 District?

11 MR. HOLDEN: That is correct.

12 THE COURT: Mark this for identification.

13 MR. HOLDEN: But on that point, let's don't get ahead
14 of ourselves. I object to the introduction of this. We
15 might even introduce it, as far as that goes, at the trial,
16 but this is a thesis that this young man wrote to get his
17 master's degree prior to the time he was associated with the
18 Garden Grove School District at all, and it doesn't purport
19 to give his opinions. It is just a study that he made of the
20 segregation question.

21 THE COURT: Of course, the Court has no means of know-
22 ing what he has written because it hasn't read the writing.
23 Is it contended that at the time this exhibit for identifica-
24 tion -- what is the number, please, Mr. Clerk?

25 THE CLERK: That will be 5 for identification, your
26 Honor.

(The document referred to was marked as Plaintiffs' Exhibit 5, for identification.)

THE COURT: Is it contended that at the time Plaintiffs' Exhibit 5 for identification was prepared, James L. Kent was a school official of the Garden Grove School District of Orange County?

MR. MARCUS: I don't believe he was at that particular time, your Honor, but we propose to show that he has practiced since what he has written and is now practicing what this book purports to show. I might state, too, that these are not his compilations or statistics. These are statistics that are taken from other sources. But his opinions are set forth in this book, suggesting, and we will say evaluating the advantages of segregation.

THE COURT: The exhibit will be marked for identification. The Court will read it between now and the time of trial and at the time of trial, if it is offered in evidence, the Court will rule on it definitely at that time.

MR. HOLDEN: We will probably have plenty of evidence on the same line at the time of trial, if we get that far.

THE COURT: Have we finished exploring the features of the school district just mentioned, the Garden Grove?

MR. MARCUS: I don't think we have, your Honor, Will counsel be willing to stipulate with me that the pupils in this particular Garden Grove District are segregated, and that the Spanish speaking pupils are required to attend

0039

1 certain schools in that district at which no other students
2 attend?

3 MR. HOLDEN: I will stipulate that 292 Spanish speaking
4 pupils are required to attend the Hoover School and that no
5 other students are required to attend that school.

6 MR. MARCUS: And the Bolsa School and the Lincoln
7 School?

8 MR. HOLDEN: They are English speaking.

9 THE COURT: What was that you are speaking of?

10 MR. HOLDEN: At the Bolsa School there are 173 pupils
11 and there are not any Mexican speaking pupils in that school,
12 and at the Lincoln School, in that district there are 349,
13 and they are all non-Spanish speaking pupils. That those
14 three schools instruct pupils from the first to the fifth
15 grade, inclusive. That they have another school in that dis-
16 trict, the Fitz School, which instructs pupils from the sixth
17 to the eighth grade, inclusive, and that the enrollment in
18 that school is 380 pupils, 280 of them are English speaking
19 pupils, and 100 of them are Spanish speaking pupils.

20 THE COURT: Is that agreed?

21 MR. MARCUS: That is agreed, your Honor. I was going
22 into the situation.

23 MR. HOLDEN: I was going to call that to the Court's
24 attention, that this certificate didn't show that the three
25 schools went to the fifth grade and that the other school
26 included the sixth to the eighth grade, inclusive.

0040

1 THE COURT: In other words, with respect to the four
2 schools in the Garden Grove District, one of the schools, to-
3 wit, the ~~fifth~~ ^{Fitz} school, does not segregate the pupils attending
4 to the same degree, if at all, that is accomplished in the
5 Lincoln, Bolsa, and Hoover Schools?

6 MR. HOLDEN: That is so stipulated.

7 MR. MARCUS: Well, your Honor, you see in the ~~fifth~~ ^{Fitz}
8 school it doesn't embrace the same grade as the Lincoln,
9 Bolsa and Hoover Schools.

10 THE COURT: I understand.

11 MR. MARCUS: I understand the Fitz School embraces the
12 sixth, seventh and eighth grade, and there is no segregation
13 in those grades, but between the kindergarten and the sixth
14 grade there is absolute and complete discrimination because
15 of linguistic qualifications.

16 MR. HOLDEN: There is no discrimination. There is
17 segregation.

18 MR. MARCUS: Or segregation.

19 THE COURT: Is it conceded by both of you that the
20 issues here will pertain solely to children in the kinder-
21 garten, elementary and grammar grades up to and including
22 the sixth grade of the public school system of the State of
23 California?

24 MR. HOLDEN: I think not, your Honor. The next two
25 defendants in this action have it to the eighth grade, that
26 is, it goes clear from the first to the eighth grade.

oo41

1 THE COURT: But the situation existing in the Garden
2 Grove School District, is it agreed between you that that is
3 a typical district that will illustrate the various issues of
4 segregation that are involved in this case?

5 MR. HOLDEN: No, your Honor.

6 MR. MARCUS: As between the first and the sixth grade?

7 THE COURT: That's right.

8 MR. HOLDEN: No, your Honor, I don't think we can stipu-
9 late that there is any typical school. There are different
10 influences. I think that Garden Grove and Westminster would
11 be typical.

12 THE COURT: What I am trying to get at is if we can
13 simplify this matter instead of taking up seriatim each of
14 these school districts, if we can, as we did in the Santa Ana
15 School District, take one or two or three, if necessary, but
16 restrict it to a reasonable limitation instead of having
17 cumulative evidence here for days.

18 MR. HOLDEN: I think, your Honor, what I would suggest
19 would be that in my opinion the El Modena School is typical.

20 THE COURT: What is your conception as to the El Modena
21 School being typical and classical and characteristic of the
22 segregation which you object to in the management and conduct
23 of the public school system of California?

24 MR. MARCUS: It is typical, your Honor, but we are all
25 typical today, if we may give them that designation.

26 THE COURT: If we are all typical, then the exploration

0042

1 has reached at once the legal question involved.

2 MR. MARCUS: That is true, your Honor. Possibly, by
3 counsel's stipulation here, if he is willing to go to that
4 extent as on the other schools, I don't think we are going to
5 need a trial.

6 MR. HOLDEN: I don't see why there should be much
7 necessity for a trial. I think it is the law. But I do want
8 the record to show that there is a difference between, for
9 example, this Garden Grove School, which segregates to the
10 fifth grade, and the El Modena School, which, when we come
11 to that, I can show that there is an entirely different situa-
12 tion there than at Garden Grove.

10 13 THE COURT: Can't we take three of the rural districts
14 then? Counsel suggests the El Modena as being one which he
15 thinks illustrates the segregation which is adopted by the
16 school authorities, and whether you agree to that or not, you
17 can choose one which you think illustrates what you contend
18 to be the discriminatory segregation, an unlawful, discrimina-
19 tory segregation of these rural districts.

20 MR. MARCUS: Counsel, what are you willing to stipulate
21 with respect to the El Modena School?

22 MR. HOLDEN: Wouldn't it be more orderly if we were to
23 get through with the Garden Grove first?

24 THE COURT: Yes, it would.

25 MR. HOLDEN: I think, your Honor, so far as the Garden
26 Grove is concerned, it isn't going to take us much time,

0043

1 because it is very definite there that the Mexican pupils up
2 to the fifth grade are required to attend the Hoover School.

3 MR. MARCUS: Your Honor inquired of counsel on the
4 Santa Ana Schools with respect to the linguistic qualifica-
5 tions. Would that be proper at this time with respect to
6 this district here?

7 THE COURT: Yes, it would be proper, because it is an
8 important feature, I think, in the case. In other words, if
9 a child because of his linguistic qualifications, and I don't
10 mean physical impediments, stuttering, or anything like that.

11 MR. MARCUS: I understand, your Honor.

12 THE COURT: I mean his ability to speak the language,
13 the English language, the so-called American language -- I am
14 using that in a very improper sense, because I am not using
15 it as the vernacular, although that probably should be con-
16 sidered also. What I mean by the linguistic qualifications
17 is if there is a general segregation that is adhered to
18 regardless of ancestry or ethnic or anthropological features
19 of the child, racial features of the child, that applies to
20 all children of a certain attitude or aspect, that is one
21 thing, if it is based on the inability of the child to grasp
22 instruction the same as children who are so-called English
23 speaking children. If there is some other factor than the
24 ones which have been indicated in the statement of the Court,
25 that is quite another thing. Now, you contend that there are
26 other factors than this question of lingual qualifications,

0044

1 do you not, Mr. Marcus?

2 MR. MARCUS: We do.

3 THE COURT: And you contend, I believe, that those are
4 based upon race or ancestry or heredity or ethnic or anthro-
5 pological features?

6 MR. MARCUS: That is correct.

7 THE COURT: And you contend that they are not, Mr.
8 Holden?

9 MR. HOLDEN: That's right.

10 MR. MARCUS: We may make this statement to the Court,
11 that we do not contend that there is such a thing as the
12 Mexican race. That will eliminate the question of race.
13 We do, however, contend that this adopted procedure of com-
14 pulsory school attendance at these particular districts is
15 based upon the fact that they are of Mexican or Latin
16 descent.

17 THE COURT: That does bring up another inquiry, Mr.
18 Holden. Is it the position of the school authorities that
19 all children within the districts involved in this case are
20 subject to the compulsory education law of the State of
21 California?

22 MR. HOLDEN: They are, your Honor, they are all subject
23 to the compulsory education law.

24 THE COURT: And I suppose you agree with him on that?

25 MR. MARCUS: We do, your Honor. Counsel, is it pos-
26 sible to agree to this extent in this district and with respect

oo45

1 to the other districts that we may adopt, that the segrega-
2 tion is with respect to Spanish speaking students regardless
3 of their ability to speak the Spanish language?

4 MR. HOLDEN: No, it isn't. It isn't based upon that.

5 THE COURT: Are you going to contend that it is, Mr.
6 Marcus?

7 MR. MARCUS: I was reading from their certificate, and
8 their certificate recites Spanish speaking pupils and English
9 speaking pupils.

10 THE COURT: There is a disjunctive there that I called
11 attention to when I read it.

12 MR. MARCUS: But you haven't set out Mexican descent.

13 MR. HOLDEN: Well, would the Court like to have me
14 state our theory of the case?

15 THE COURT: Yes.

16 MR. HOLDEN: Why we segregate these pupils?

17 THE COURT: Yes.

18 MR. HOLDEN: The purpose of the segregation is simply
19 this. They live in communities that talk Spanish. When they
20 come to school, they do not understand one word of English,
21 that is, most of them don't. There are exceptions, and the
22 petitioners in this case, I will admit the petitioners in this
23 case, the named petitioners, probably are able to speak
24 fairly good English, but they go into these schools, and they
25 are not, in the lower grades, able to compete or to carry the
26 work that the students who are familiar with the English

0046

1 language are able to do. We have a five-year old -- this is
2 confusing me, too, because I don't want to say white people,
3 because the Mexicans are white, but say the non-Mexican.

4 In the first grade the Mexican, if he enters at five years
5 old, he won't make the first grade the first year. The
6 white pupil will easily advance to the first grade when he
7 is six years old, and in age they are at least one to two
8 years ahead of the Mexicans. It isn't particularly due to
9 mental ability. It is due to a handicap that they come to
10 school with in the first place. In other words, these
11 schools are not schools that just have a handful of Mexicans.
12 They are all schools where up to one-half or one-third, in
13 El Modena two-thirds, of the pupils are of the Mexican
14 descent. Now, it would be an absolute necessity, if these
15 children were all brought into the same school house, to
16 put this group of Mexicans into one room or one class and
17 the other pupils into another, because they cannot do the
18 work together. They cannot advance together in the same
19 grades.

20 THE COURT: Because of their linguistic difference?

21 MR. HOLDEN: Yes. Sure, they can speak some English,
22 you know. They have to be able to understand a certain
23 amount of English before they can go from one grade to
24 another, but they cannot grasp it. Where they have lived
25 in the Spanish language, with Spanish customs, and they talk
26 it at home, and as soon as they are out of school they go

oo47

1 back to their homes and commence talking Spanish again,
2 thinking in Spanish, they cannot compete with the other
3 students and advance in the same grade at the same age, and
4 they would have to segregate them in the same school if they
5 went to the same school together. There are so many of them
6 in these particular districts that it is more advantageous,
7 not only for the Mexicans, but for the teachers, for the ad-
8 ministration of the school, to have them separated entirely.

9 THE COURT: What difference is there in the instructors,
10 the teachers in the two schools?

11 MR. HOLDEN: The qualifications are identical, but
12 there is a difference in that the -- take the Santa Ana system,
13 the teachers who teach the Mexican schools are not only
14 teachers, but they are crusaders for the Mexican people. If
15 somebody tries to discriminate against a Mexican down there
16 in Santa Ana, the first people you have to fight are the
17 school teachers who teach these Mexican children.

18 THE COURT: Are those teachers what we call English
19 speaking teachers?

20 MR. HOLDEN: Yes. They don't permit any Spanish
21 speaking in school.

22 THE COURT: I am not asking about that. Wait until
23 you get the purport of the Court's question. Are the teachers
24 in the schools you have just mentioned, the Santa Ana Schools,
25 Spanish speaking as well as English speaking?

26 MR. HOLDEN: No, they are not. It is not required that

0048

1 they be able to speak Spanish.

2 MR. MARCUS: Would the Court permit me to answer
3 counsel at this time? He has made some definite statements
4 to the Court as their reasons for adopting and continuing
5 this practice of segregation.

6 THE COURT: I think I will give you both a chance to
7 argue at the proper time. What I want to get at now is
8 whether we can economize on your time and our time in getting
9 the factual situation before the Court. If we cannot, we
10 will have to take the time of the Court in exploring it. But
11 it seems to me that we can arrive at an agreed statement of
12 facts regarding typical schools which will illustrate all of
13 the schools, whether they be rural schools in the County of
14 Orange or whether they be schools in the City of Santa Ana,
15 County of Orange.

16 MR. MARCUS: Counsel has made the statement to your
17 Honor that these children come from homes where they prac-
18 tice and speak the Spanish language. That isn't the fact.
19 Many of the parents, practically all of the parents in those
20 particular districts, attended the schools that they are
21 trying to get their children to go to now, and the parents
22 are American citizens, most of them.

23 THE COURT: I don't know whether you agree on that or
24 not. I thought you did not agree.

25 MR. HOLDEN: I don't agree.

26 THE COURT: Then what is the use of arguing matters you

oo49

1 don't agree on in a pre-trial hearing?

2 MR. MARCUS: I didn't want to let his statement go un-
3 answered.

4 THE COURT: I don't care for your arguments. I want to
5 get an agreement.

6 MR. HOLDEN: I probably talk like I am arguing, but
7 what I was trying to say was our theory of segregation. I am
8 not trying to argue the case now.

9 THE COURT: At this time we have an agreement on the
10 composition of a typical school within the City of Santa Ana,
11 County of Orange, and we are now discussing the composition
12 and requirements of the Garden Grove School District with
13 respect to pupils in that district within the Garden Grove
14 District and up to the sixth grade of grammar school, is
15 that correct?

16 MR. MARCUS: That is correct, your Honor.

17 THE COURT: There is one other phase of the rural dis-
18 tricts that probably should be explored in a pre-trial hear-
19 ing concerning which representations have been made by Mr.
20 Holden that it would be typical, and that is with respect to
21 those grade schools from the seventh grade up to the twelfth
22 grade. Are we taking the high schools in here at all?

23 MR. HOLDEN: No, your Honor. These are all elementary
24 districts. There is no segregation after the elementary
25 grades.

26 THE COURT: Does the segregation include the seventh

0050

1 grade?

2 MR. HOLDEN: In El Modena, yes, but in Garden Grove
3 and Santa Ana, no.

4 THE COURT: The seventh and eighth grade are not segre-
5 gated?

6 MR. HOLDEN: No.

7 THE COURT: Is that agreed to?

8 MR. MARCUS: Yes. Counsel, could we stipulate to this
9 fact, that the segregation, wherever it is practiced in these
10 particular districts, applies only and with regard to
11 Spanish speaking students?

12 MR. HOLDEN: That's right.

13 MR. MARCUS: And there is no other segregation prac-
14 ticed with respect to any other language?

15 MR. HOLDEN: That's right. Of course, the basis of
16 that is they are the only classification of people that are
17 of numerical strength so that we can classify them.

18 MR. MARCUS: That is going into the matter of argument
19 now.

20 THE COURT: Are there any other rural school districts
21 that should be explored in pre-trial so as to get a complete
22 picture of all the districts that are involved in this
23 action?

24 MR. HOLDEN: If we would take the Westminster School
25 next --

26 THE COURT: Mark this for identification.

oo51

1 THE CLERK: That will be Defendants' Exhibit B for
2 identification.

3 (The document referred to was
4 marked as Defendants' Exhibit B,
for identification.)

5 MR. HOLDEN: I have the same statistics on the
6 Westminster.

7 THE COURT: Counsel hands to the Court another certifi-
8 cate which will also be marked for identification.

9 THE CLERK: That will be Defendants' Exhibit C for
10 identification, your Honor.

11 (The document referred to was
12 marked as Defendants' Exhibit C,
for identification.)

13 THE COURT: Which purports to show the statistical
14 data concerning the Westminster School District.

15 MR. HOLDEN: This was produced at the Court's sugges-
16 tion, too.

17 MR. MARCUS: We have the same difficulty with respect
18 to Spanish speaking pupils here.

19 MR. HOLDEN: Well, haven't we agreed on what that means?

20 THE COURT: State it again and see.

21 MR. HOLDEN: I don't know whether I can, now, your Honor.

22 THE COURT: I think I understand what you stated, but
23 whether he agrees with it or not, I don't know. You had bet-
24 ter state it again.

25 MR. HOLDEN: The people who are predominantly speaking
26 the Spanish language and are not efficient in the -- well, I

12

oo52

1 don't know how to say it. I said it once.

2 THE COURT: How is this difficulty overcome by the
3 school authorities in respect to that matter? Where is the
4 line of demarcation drawn so as to determine when a child
5 meets the requirements that are placed upon the English
6 speaking children?

7 MR. HOLDEN: The Brincipal of the school at the time
8 of enrollment determines whether he should go to the one
9 school or the other.

10 MR. MARCUS: Isn't it a fact, counsel, that he determines
11 it based upon the fact that he is of Latin or Mexican
12 descent?

13 MR. HOLDEN: No.

14 MR. MARCUS: And he is compelled to attend, for in-
15 stance, Hoover School in the Westminster District, because of
16 the fact that he is of Mexican descent and not because of his
17 ability to speak the English language or his ability to speak
18 the Spanish language?

19 MR. HOLDEN: We will not so stipulate.

20 MR. MARCUS: The record will speak for itself then.

21 THE COURT: That is a matter that is in dispute. Can
22 it be agreed that the statistical enumeration contained on
23 the certificate correctly indicates numerically the classifi-
24 cation that has been made by the school authority under the
25 method disclosed by Mr. Holden?

26 MR. MARCUS: That is agreeable, your Honor, except in

0053

1 this Westminster School where under the heading "Spanish
2 Speaking Pupils" -- may it be stipulated, counsel, that that
3 also should include Mexican descent or Spanish speaking
4 pupils?

5 MR. HOLDEN: I will stipulate that that always means
6 the same thing.

7 MR. MARCUS: With respect to the 14 under that, that
8 they have been requested to attend the Hoover School?

9 MR. HOLDEN: No, they have not. In fact, in this one
10 district there ~~will be no segregation this year, Westminster~~

11 MR. MARCUS: Well, maybe we have accomplished some-
12 thing.

13 MR. HOLDEN: No, you did not. ~~They agreed on it and~~
14 ~~your plaintiff will tell you so, they agreed on it six months~~
15 ~~before this action was filed.~~

16 MR. MARCUS: ~~They agreed to abandon that five or six~~
17 ~~years ago, but they didn't do it.~~

18 THE COURT: What they didn't do is another thing from
19 what counsel says they have agreed to do. If they have not
20 agreed to do it, then you are within your rights in so
21 stating.

22 MR. MARCUS: This litigation may have added a little
23 impetus to the desire on their part.

24 THE COURT: Let me inquire on this. There are only 14,
25 according to this enumeration. What is the number of this
26 exhibit?

0054

1 THE CLERK: That is Exhibit C.

2 THE COURT: On Exhibit C, there are only 14 designated
3 under the heading "Spanish Speaking Pupils," and there are
4 628 designated under the heading of "English Speaking Pupils."

5 MR. HOLDEN: That is in the Westminster School?

6 THE COURT: Yes.

7 MR. HOLDEN: They have two schools there, your Honor.
8 One was the Hoover and the other was Westminster, and the
9 Westminster School is the one where the English speaking
10 pupils went.

11 THE COURT: Is it agreed, or can it be agreed between
12 you that the 14 pupils listed as Spanish speaking pupils in
13 the Westminster School are or are not of different character-
14 istics than the 152 pupils who are required to attend the
15 Hoover School in that district and who are specified in
16 Exhibit C as being Spanish speaking pupils?

17 MR. HOLDEN: Well, the school authorities have determined
18 that they are capable of progressing with the other students.
19 Whether counsel would stipulate to that, I don't know.

20 MR. MARCUS: Counsel, that is not a fact and we run
21 into that same difficulty. We have supported that by the
22 letters that have been written by, I believe it is the Garden
23 Grove District. We have other communications, too. In cer-
24 tain instances children of Mexican descent have been per-
25 mitted to attend that Westminster School District, but
26 finally they were requested to go back to the Hoover School.

oo55

1 MR. HOLDEN: That is possibly true where they couldn't
2 make the grade.

3 THE COURT: Was that because of scholarship attainments
4 or restrictions?

5 MR. MARCUS: Because, as the letters indicate, the form
6 letters indicate, your Honor, because there was objection from
7 other students. Whether it be from the Anglo Saxon or the
8 white, as you call them, or from the Mexican children because
9 they were not permitted to attend the other school, although
10 residing within that district, but still --

11 THE COURT: You contend, then, that it was not because
12 of scholarship attainment?

13 MR. MARCUS: Certainly not.

14 THE COURT: Don't get angry about it. I just asked
15 you the question.

16 MR. MARCUS: It strikes home, your Honor.

17 MR. HOLDEN: Do you have one of those letters?

18 MR. MARCUS: Here is a letter that deals with Santa Ana.

19 MR. HOLDEN: Well, we have had that.

20 MR. MARCUS: This is something else. This goes to the
21 same point. They call the parents to the school and there
22 they advised them. We have one here on that.

23 MR. HOLDEN: This is the same thing.

24 THE COURT: Is that relating to Santa Ana?

25 MR. MARCUS: Yes.

26 MR. HOLDEN: This is the same thing, a duplicate of the
other.

13

oo56

1 MR. MARCUS: No, I don't think it is the same.

2 MR. HOLDEN: Sure, it is. It is an exact duplicate.

3 THE COURT: They seem to be about the same.

4 MR. MARCUS: Well, it probably is practically the same
5 thing.

6 MR. HOLDEN: And it is from the Santa Ana District.

7 THE COURT: It seems to be exactly the same except for
8 the children and the school. I don't know that you want to
9 burden the record with all of them.

10 MR. MARCUS: I guess we won't have to burden the record.
11 Counsel, then you state that with respect to those 14 pupils
12 that you are advised that because of their inability to com-
13 ply or live up to or keep up with the other students, they
14 were requested to go back to the Hoover School?

15 MR. HOLDEN: No, they never were requested to go back
16 to the Hoover School, so far as I know. That is the attend-
17 ance to date.

18 THE COURT: There is a date on that certificate, June
19 13, I think.

20 MR. MARCUS: June 12th.

21 MR. HOLDEN: They have never been requested to go back
22 to the Hoover School. As I say, in the Westminster District,
23 there will be no segregation this year because the per-
24 centage -- well, there is a very good reason for that, too.

25 MR. MARCUS: Let me ask you this, counsel, with respect
26 to this Westminster School District. Have they adopted or are

0057

1 they about to adopt certain lines or areas?

2 MR. HOLDEN: No.

3 MR. MARCUS: Will^{we}/be confronted with this difficulty,
4 as they have adopted in Sata Ana, of setting certain areas
5 and certain districts, and requiring the children in that
6 area to go to that Hoover School again?

7 MR. HOLDEN: My understanding is that they are going to
8 have but one school house and that they are moving some of
9 those buildings over there and connecting onto the other
10 school building at the present time.

11 MR. MARCUS: That will be very nice if that can be
12 accomplished. Well, let's see the next one.

13 THE COURT: There are one or two other rural districts
14 that should be explored.

15 MR. MARCUS: Counsel possibly could prevail upon the
16 other districts to move the same schools over and unite them
17 and then we would not have to go through this.

18 MR. HOLDEN: You would have segregation just the same
19 if you had them all at the same same school house.

20 MR. MARCUS: I don't think so. You mean, counsel, by
21 that because they speak Spanish, too?

22 MR. HOLDEN: Well, we will show you why they are segre-
23 gated when the trial comes.

24 THE COURT: What is this one?

25 MR. HOLDEN: This is the El Modena.

26 THE COURT: Counsel hands the Court a certificate which

oo58

1 purports to be a certificate of Harold Hammarsten,
2 Superintendent of the El Modena School District. Is it
3 agreed that this is an authentic document, Mr. Marcus, or is
4 it represented to be such?

5 MR. HOLDEN: Yes, this, your Honor, represents correctly
6 the attendance.

7 THE COURT: As of the 11th day of June, 1945?

8 MR. HOLDEN: That's right.

9 THE COURT: What will this one be marked, Mr. Cross?

10 THE CLERK: That will be Defendants' Exhibit D, for
11 identification.

12 (The document referred to was
13 marked as Defendants' Exhibit D,
14 for identification.)

15 THE COURT: The Roosevelt School here shows the total
16 number of pupils 108, English speaking pupils 83, and Spanish
17 speaking pupils 25. Is it stated that that was, on the day
18 of this certificate and as far as your knowledge is concerned,
19 as of this date, the correct classification of the pupils in
20 that school?

21 MR. HOLDEN: It is, your Honor.

22 MR. MARCUS: May I inquire of counsel what grade the
23 Roosevelt School is?

24 MR. HOLDEN: It runs from the kindergarten to the
25 eighth, and the Lincoln is the same. These two schools are
26 located right on the same school grounds. One is attended
by the Mexicans and the other by the English speaking.

0059

1 THE COURT: How about the playground facilities?

2 MR. HOLDEN: The same playgrounds, the same facilities,
3 and they have their contests between the two schools.

4 THE COURT: That would seem to be typical, gentlemen,
5 on its face of a lack of unjust discriminatory activity,
6 that is, if counsel's statement is agreed to by the plain-
7 tiffs. There doesn't seem to be any purposeful, systematized,
8 discriminatory action by the school authorities, on the
9 figures, I mean, the figures themselves.

10 MR. MARCUS: If your Honor notices the difference there,
11 for instance, in the Roosevelt School, if he intends to mean
12 that these are 25 students of Mexican descent --

13 MR. HOLDEN: Yes.

14 MR. MARCUS: We will show that those 25 students are up
15 in the higher brackets, they are in the seventh or eighth
16 grade.

17 MR. HOLDEN: I think you won't be able to show that on
18 all 25 of them. There are four or five of them in the first
19 grade.

20 MR. MARCUS: There might be one or two exceptions
21 there that might be school pets, and I have had that happen,
22 too. I am not saying that facetiously.

23 THE COURT: That brings us back to the point where I
24 want to see if there is an agreement. Are you going to con-
25 tend that as a practice, a system, a methodical arrangement,
26 discrimination is exercised by the school authorities in

oo60

1 other than the grades up to and including the sixth grade of
2 the public school system of California?

3 MR. MARCUS: Yes, your Honor. There are two districts
4 in Orange County of the ones that we have named, in which the
5 discrimination is practiced. This Lincoln School is only
6 attended by children of Mexican descent, although as counsel
7 stated, they have permitted some 25 students in the Roosevelt
8 School who speak Spanish to attend that school, even though
9 of Mexican descent.

14

10 THE COURT: Well, now, unless you are able to show that
11 the 249 pupils are not linguistically, in the grades in which
12 they are, comparable in the judgment of proper authority with
13 the 25 pupils, then there isn't much room to argue unjust dis-
14 crimination, because I think it would have to be conceded
15 that the Court couldn't set itself up as the standard of the
16 school management except to ascertain whether because of
17 some improper classification within the law the school authori-
18 ties have arbitrarily and in a dictatorial manner used their
19 own judgment in the segregation of people on account of
20 language. In other words this case of Meyer against
21 Nebraska in 262 U. S., beginning at page 390, has some lan-
22 guage which illustrates what the Court is endeavoring to
23 state. This was a statute that was passed by Nebraska in
24 which the teaching of any foreign language other than the
25 English language was prohibited, one of the postwar legisla-
26 tive methods provided by certain states after the last World

0061

1 War.

2 In the course of the opinion the Supreme Court used
3 this language:

4 "The problem for our determination is whether the
5 statute as construed and applied unreasonably infringes
6 the liberty guaranteed to the plaintiff in error by the
7 Fourteenth Amendment. 'No State shall deprive any
8 person of life, liberty, or property, without due pro-
9 cess of law.'

10 "While this Court has not attempted to define with
11 exactness the liberty thus guaranteed, the term has re-
12 ceived much consideration and some of the included
13 things have been definitely stated. Without doubt, it
14 denotes not merely freedom from bodily restraint but
15 also the right of the individual to contract, to engage
16 in any of the common occupations of life, to acquire
17 useful knowledge, to marry, establish a home and bring
18 up children, to worship God according to the dictates
19 of his own conscience, and generally to enjoy those
20 privileges long recognized at common law as essential
21 to the orderly pursuit of happiness by free men." And
22 they cite cases.

23 "The established doctrine is that this liberty may
24 not be interfered with, under the guise of protecting
25 the public interest, by legislative action which is
26 arbitrary or without reasonable relation to some

o62

1 purpose within the competency of the State to effect."

2 Let me state parenthetically there that in this
3 Nebraska case we had a statute which was a legislative enact-
4 ment, whereas, of course, in this case, as far as the Court
5 is apprised now, we merely have the executive authority, which
6 is quite a different thing, of course, than legislative action.
7 Continuing with the Supreme Court decision:

8 "Determination by the Legislature of what consti-
9 tutes proper exercise of police power is not final or
10 conclusive but is subject to supervision by the Court."
11 Citing cases.

12 "The American people have always regarded education
13 and acquisition of knowledge as matters of supreme im-
14 portance which should be diligently promoted. The
15 Ordinance of 1787 declares, 'Religion, Morality, and
16 knowledge being necessary to good government and the
17 happiness of mankind, schools and the means of education
18 shall forever be encouraged.' Corresponding to the
19 right of control, it is the natural duty of the parent
20 to give his children education suitable to their station
21 in life; and nearly all the States, including Nebraska,
22 enforce this obligation by compulsory laws.

23 "Practically, education of the young is only pos-
24 sible in schools conducted by especially qualified per-
25 sons who devote themselves thereto. The calling always
26 has been regarded as useful and honorable, essential,

oo63

1 indeed, to the public welfare. Mere knowledge of the
2 German language cannot reasonably be regarded as harm-
3 ful. Heretofore it has been commonly looked upon as
4 helpful and desirable. Plaintiff in error taught this
5 language in school as part of his occupation. His right
6 thus to teach and the right of parents to engage him so
7 to instruct their children, we think, are within the
8 liberty of the Amendment.

15

9 "The challenged statute forbids the teaching in
10 school of any subject except in English; also the teach-
11 ing of any other language until the pupil has attained
12 and successfully passed the eighth grade, which is not
13 usually accomplished before the age of twelve. The
14 Supreme Court of the State has held that 'The so-called
15 ancient or dead languages' are not 'within the spirit
16 or the purpose of the Act'", citing the Nebraska Supreme
17 Court case of the Nebraska District of Evangelical
18 Lutheran Synod vs. McKelvie. Then the Supreme Court of
19 the United States continues:

20 "Latin, Greek, Hebrew are not proscribed; but
21 German, French, Spanish, Italian and every other alien
22 speech are within the ban. Evidently the Legislature
23 has attempted materially to interfere with the calling
24 of modern language teachers, with the opportunities of
25 pupils to acquire knowledge, and with the power of
26 parents to control the education of their own.

0064

1 "It is said the purpose of the legislation was to
2 promote civic development by inhibiting training and
3 education of the immature in foreign tongues and ideals
4 before they could learn English and acquire American
5 ideals; and 'That the English language should be and
6 become the mother tongue of all children reared in this
7 State.'

8 "It is also affirmed that the foreign born popula-
9 tion is very large, that certain communities commonly
10 use foreign words, follow foreign leaders, move in a
11 foreign atmosphere, and that the children are thereby
12 hindered from becoming citizens of the most useful
13 type and the public safety is imperiled.

14 "That the State may do much, go very far, in deed,
15 in order to improve the quality of its citizens,
16 physically, mentally and morally, is clear; but the
17 individual has certain fundamental rights which must be
18 respected. The protection of the Constitution extends
19 to all, to those who speak other languages as well as
20 to those born with English on the tongue. Perhaps it
21 would be highly advantageous if all had ready under-
22 standing of our ordinary speech, but this cannot be co-
23 erced by methods which conflict with the Constitution -
24 a desirable end cannot be promoted by prohibited means.

25 "For the welfare of his Ideal Commonwealth, Plato
26 suggested a law which should provide: 'That the wives

oo65

1 of our guardians are to be common, and their children
2 are to be common, and no parent is to know his own
3 child, nor any child his parent. . . . The proper
4 officers will take the offspring of the good parents
5 to the pen or fold, and there they will deposit them
6 with certain nurses who dwell in a separate quarter;
7 but the offspring of the inferior, or of the better
8 when they chance to be deformed, will be put away in
9 some mysterious, unknown place, as they should be.'
10 In order to submerge the individual and develop ideal
11 citizens, Sparta assembled the males at seven into
12 barracks and intrusted their subsequent education and
13 training to official guardians. Although such measures
14 have been deliberately approved by men of great genius,
15 their ideas touching the relation between individual
16 and State were wholly different from those upon which
17 our institutions rest; and it hardly will be affirmed
18 that any Legislature could impose such restrictions upon
19 the people of a State without doing violence to both
20 letter and spirit of the Constitution.

21 "The desire of the Legislature to foster a homogeneous
22 people with American ideals prepared readily to under-
23 stand current discussions of civic matters is easy to
24 appreciate. Unfortunate experiences during the late war
25 and aversion toward every characteristic of truculent
26 adversaries were certainly enough to quicken that

0066

1 aspiration. But the means adopted, we think, exceed
2 the limitations upon the power of the State and con-
3 flict with rights assured to plaintiff in error. The
4 interference is plain enough and no adequate reason
5 therefor in time of peace and domestic tranquility has
6 been shown.

7 "The power of the State to compel attendance at some
8 school and to make reasonable regulations for all
9 schools, including a requirement that they shall give
10 instructions in English, is not questioned. Nor has
11 challenge been made of the State's power to prescribe a
12 curriculum for institutions which it supports. Those
13 matters are not within the present controversy. Our
14 concern is with the prohibition approved by the Supreme
15 Court. Adams vs. Tanner, Supra, page 594, pointed out
16 that mere abuse incident to an occupation ordinarily
17 useful is not enough to justify its abolition, although
18 regulation may be entirely proper. No emergency has
19 arisen which renders knowledge by a child of some lang-
20 uage other than English so clearly harmful as to justify
21 its inhibition with the consequent infringement of
22 rights long freely enjoyed. We are constrained to con-
23 clude that the statute as applied is arbitrary and with-
24 out reasonable relation to any end within the competency
25 of the State.

26 "As the statute undertakes to interfere only with

16

oo67

1 teaching which involves a modern language, leaving
2 complete freedom as to other matters, there seems no
3 adequate foundation for the suggestion that the purpose
4 was to protect the child's health by limiting his
5 mental activities. It is well known that proficiency
6 in a foreign language seldom comes to one not instructed
7 at an early age, and experience shows that this is not
8 injurious to the health, morals or understanding of
9 the ordinary child."

10 Those principles are, I think, rather pertinent in this
11 case. It is now 12:00 o'clock. I think we will proceed at
12 2:00 o'clock this afternoon and see if we can't get some
13 agreement on just what we will have to try factually, because
14 a great mass of these witnesses can be eliminated. They will
15 be purely cumulative and if the factual situation that exists
16 can be agreed upon, then the Court is faced with that which,
17 I hope, may be a case of a clear question of law as to
18 whether or not there is a discriminatory segregation of
19 Mexican children.

20 MR. MARCUS: Before we adjourn, I wonder if your Honor
21 would enlighten me upon this last district and your observa-
22 tion with respect to it. Did I understand the Court to say
23 that the --

24 THE COURT: Which one is that, El Modena?

25 MR. MARCUS: Because of the admission of 25 Spanish
26 speaking pupils in the Roosevelt School, would that indicate

0068

1 to you there was no discrimination?

2 THE COURT: It would have the tendency to indicate that
3 there wasn't any fixed line of demarcation between children
4 of Mexican lineage and other children.

5 MR. MARCUS: And how would we account for the Lincoln
6 School, where there is absolute discrimination in that par-
7 ticular school within the district? You see, in this dis-
8 trict there are two schools, the Roosevelt and the Lincoln
9 School. There are 249 pupils, 249 Spanish speaking pupils,
10 and no English speaking.

11 THE COURT: I might account for it in this way -- I
12 don't know what the facts are -- but if the evidence showed
13 that the 249 children were within those grades different
14 than the 25 pupils in Roosevelt School, then there would be
15 room for the inference that it isn't the race or it isn't
16 the ancestry or the lineage, nor exclusively the language,
17 kind of language, that is the measure of the school
18 authorities' directive, but it consists of other factors,
19 which would be considered not unreasonable, for instance, the
20 mental ability of the student, is he backward or normal,
21 gradations in school work, because I think we all recognize
22 that it wouldn't be an unjust or unreasonable discrimination
23 if the school authorities, assuming that they are properly
24 qualified and have no prejudices or leaning against races or
25 people, assuming that the evidence shows there are no such
26 leanings, for them to say certain pupils are backward, a

0069

1 certain percentage of the pupils are backward. If there are
2 100 pupils in the school, or, better, 50 pupils in a school
3 room, and let us say that 30 per cent of those pupils all
4 attained a minimum of scholastic qualifications. Should the
5 school authorities hold back those 30 per cent in order to
6 satisfy perhaps the desire of someone to have all the chil-
7 dren together, which is a desirable matter, a democratic
8 method of public school instruction? Should this 30 per
9 cent of children be held back and prevented from going for-
10 ward because 20 per cent of the pupils failed to measure up
11 scholastically to the requirements set forth by the school
12 authorities? I don't think they should.

13 Maybe the answer is that there may be practical features
14 there because of the great mass of people that have to be
15 served by the facilities in the public system. I think
16 ordinarily that there are some of those that are clearly with-
17 in the power of the school authorities, that the backward
18 child instruction method is usually adopted for children who
19 are retarded, not because they may not have mental equipment,
20 but they are lazy, indolent, or have nervous disabilities or
21 disorders which prevent them from reaching what the normal
22 child attains. I don't mean the brilliant child or the
23 prodigy, but I mean the normal child when you figure children
24 on the minimum.

17

25 MR. MARCUS: May I make inquiry of counsel if under
26 the El Mondena District he contends there is any difference

oo70

1 between the 249 pupils in the Lincoln School and the 108
2 pupils in the Roosevelt School with respect to their educa-
3 tional qualifications, or as to whether or not they are back-
4 ward or forward, or whether or not it is simply a segrega-
5 tion --

6 THE COURT: You can ask him one question and let him
7 answer that before you put the alternative, if he wants to
8 answer it.

9 MR. HOLDEN: I say that in the El Modena School the
10 249 cannot come anywhere near them in mental attainment.

11 MR. MARCUS: That is one point at issue.

12 THE COURT: How are we going to determine that? Cer-
13 tainly, I am not going to set this Court up as the determiner
14 of the scholastic qualifications of pupils in the public
15 school system.

16 MR. MARCUS: Let me ask counsel this further question.
17 Is that your position with regard to the other districts
18 where there is segregation?

19 MR. HOLDEN: Well, it is my answer in El Modena.

20 MR. MARCUS: What about the others?

21 MR. HOLDEN: And in Santa Ana, I say there is no segrega-
22 tion other than according to where they live. In Garden
23 Grove, yes, they cannot compete with the other children.

24 MR. MARCUS: So that there is with regard to each dis-
25 trict that is named as defendant here --

26 MR. HOLDEN: In the Westminster District, no. They

oo71

1 cannot find a demarcation between the students.

2 THE COURT: Do you contend that would be a lawful
3 exercise of educational authority in that district?

4 MR. HOLDEN: That is the district that is not going to
5 segregate them. The El Modena District is a very unusual one
6 in that as far as mental attainment is concerned, the line,
7 the procedure that usually develops, does not occur there.

8 THE COURT: Let me make this inquiry, Mr. Holden. In
9 these districts where the territorial lines have been drawn
10 to include within that area Mexican families, Mexican chil-
11 dren, so-called, are you able to state whether or not the
12 criterion of such classification has been to arrange the
13 districts by the school authorities in such a way as to bring
14 about that result?

15 MR. HOLDEN: I think so, your Honor, on Fremont School
16 particularly, that one school at least in Santa Ana. I be-
17 lieve that they did meander the line a little bit in order to
18 bring in the Mexican people.

19 THE COURT: Do you contend that that would be a lawful
20 exercise of school authority under the Constitution?

21 MR. HOLDEN: I think if the mental and the other quali-
22 fications are considered, I think it would be lawful for the
23 class; in other words, if they were permitted in the same
24 school to segregate them in different classes, then they
25 could segregate them in different school buildings. I think
26 that would have to be shown, and I think it can be.

0072

1 MR. MARCUS: May I make one further inquiry of counsel?
2 With respect to the Lincoln School, counsel, are there any
3 different or ^{other} standards in the El Modena District required of
4 the pupils that attend that school than those that attend
5 the Roosevelt School?

6 MR. HOLDEN: The courses of study are the same, the
7 same subjects are taught in both schools.

8 MR. MARCUS: In the same grades the same subjects are
9 taught all the way through?

10 MR. HOLDEN: That's right.

11 THE COURT: The same curriculum.

12 MR. MARCUS: Then there is no different curriculum in
13 the Roosevelt School from the Lincoln School?

14 MR. HOLDEN: Absolutely not.

15 MR. MARCUS: Are there any special qualifications
16 between the two schools?

17 MR. HOLDEN: Yes. I might be able to do arithmetic
18 and you might be able to do arithmetic, but you can do it
19 twice as fast as I can. That is a difference.

20 MR. MARCUS: But being the same curriculum, the same
21 course of study in both schools and no special requirements
22 necessary for either school or both of them, you have under
23 the Lincoln School required all persons of Mexican descent
24 to attend and there are no English speaking pupils attending
25 there.

26 MR. HOLDEN: That's right.

0073

1 THE COURT: We will hear the rest this afternoon.

2 There doesn't seem to be much left on pre-trial, gentlemen,
3 excepting to determine whether or not you want any further
4 typical, classical districts and schools before the Court to
5 illustrate the point that you have in the case factually.

6 MR. MARCUS: Your Honor, I only selected four schools.
7 There are many more in that district where the segregation is
8 practiced. I thought by selecting four schools we would set
9 an example. I think there are some 12 or 15 where this is
10 practiced, and in every district in Orange County, where
11 there are two separate schools. I know of one instance where
12 they are across the street and only Mexican children are per-
13 mitted to attend.

14 THE COURT: Is there a County Board of Education in the
15 County of Orange?

16 MR. HOLDEN: There is a County Board of Education, but
17 it doesn't have any jurisdiction of this.

18 THE COURT: All of these matters that have been explored,
19 concerning which much has been made here this morning, are
20 determinations by the respective local school authorities?

21 MR. HOLDEN: That's right.

22 MR. TIETZ: Your Honor, might I ask a question or two
23 of counsel?

24 THE COURT: Yes.

25 MR. TIETZ: Are the terms "English speaking pupils"
26 and Spanish speaking pupils", which seem to be the terms

0074

1 used by the school authorities in their segregation, used
2 uniformly throughout all these tabulations that have been
3 furnished?

4 MR. HOLDEN: Well, so far as this lawsuit is concerned,
5 yes, because if you have read the pleadings, you notice that
6 he calls his clients one thing and in the answer we refer to
7 them differently. That is the problem that we are confronted
8 with. I think it is stipulated here that those mean the
9 Mexican descent, Spanish speaking, or Americans of Mexican
10 parentage.

11 MR. TIETZ: The definition then is those students who
12 are able to comprehend the English language sufficiently to
13 maintain the rate of progress that is expected?

14 MR. HOLDEN: That's right.

15 MR. TIETZ: If that is true, and if that was the intent,
16 to use the terminology uniformly, does a child who starts
17 out under the classification, in the eyes of school authori-
18 ties, as Spanish speaking, later change over to an English
19 speaking classification?

20 MR. HOLDEN: Yes.

21 MR. TIETZ: If that is true, which it seems to me it
22 should be, how is the classification on Roosevelt School
23 accounted for where there are 25 who are still considered by
24 this definition Spanish speaking?

25 MR. HOLDEN: That is simply because they are going back
26 to our other definition of Spanish speaking, because of the

18

0075

1 Mexican descent. It says "or Mexican descent." We have
2 stipulated for the purpose of this trial that is what it
3 means.

4 MR. TIETZ: Then there are two definitions: One,
5 ability to comprehend sufficiently to maintain progress, and
6 the other the definition of lineage?

7 MR. HOLDEN: The justification for the segregation is
8 based entirely on the language difficulty of this particular
9 group of pupils, that is the definition.

10 MR. TIETZ: One more question. Why, then, in the
11 Roosevelt School are these 25 pupils still classified, at
12 least by the school authorities, as Spanish speaking pupils?

13 MR. HOLDEN: Because they are of Mexican descent.

14 THE COURT: And for no other reason than that?

15 MR. HOLDEN: No. His complaint says, "or Mexican
16 descent," and we have interchanged the words "Mexican descent"
17 and "Spanish speaking" and so this certificate says "or"
18 That means as far as parentage is concerned, that 25 is
19 exactly the same as the 249 as far as blood is concerned. In
20 other words, they are of Mexican descent.

21 MR. MARCUS: At least that definition is on the
22 Roosevelt School.

23 MR. HOLDEN: Yes. Up above I say, "or Spanish" We
24 could have put that in.

25 MR. MARCUS: Do I understand it correctly, then, that
26 the same curriculum is established for each grade in the

oo76

1 schools of Roosevelt and Lincoln?

2 MR. HOLDEN: And every other school in Orange County.

3 MR. MARCUS: And the same courses are taught in each
4 grade in every school?

5 MR. HOLDEN: That's right.

6 MR. MARCUS: And then your contention is that they can't
7 make the grade?

8 MR. HOLDEN: They can't keep up with the other students,
9 that is my contention.

10 THE COURT: That narrows it down pretty well to the
11 issue as to whether legally the school authorities have im-
12 pinged upon a constitutional right of these children involved
13 here by so segregating them.

14 MR. HOLDEN: That is the whole case.

15 THE COURT: Do you think there is anything factually to
16 explore then? You can think it over and confer together
17 during the noon hour.

18 MR. HOLDEN: I think we are going to have some testimony
19 on that point.

20 THE COURT: Maybe so.

21 MR. MARCUS: I feel that the proof of the pudding is in
22 the eating, and we can come here and espouse these principles
23 to the Court, but in the last analysis we still have the same
24 situation out there, that is, that you have got 249 pupils
25 in one school and all those 249 children are of Mexican
26 descent.

0077

1 THE COURT: That may be true and yet it may be not an
2 unjust discrimination against those people. The mere fact
3 that there are numbers wouldn't necessarily establish a fact
4 of unjust discrimination. There may be a reason for the
5 classification which would not impinge the constitutional
6 right to equality of educational facilities in the public
7 school system.

8 MR. MARCUS: On the face of it, it would indicate there
9 is something wrong in the matter of 249 pupils of Mexican
10 descent being in one school and not one American child, we
11 will say, in that particular school.

12 THE COURT: I wonder whether there are any other dis-
13 tricts that need be explored in this pre-trial hearing?

14 MR. HOLDEN: I think those are all the districts that
15 are mentioned in this case, your Honor.

16 MR. MARCUS: Those are the four.

17 THE COURT: I would think that the way to proceed, Mr.
18 Marcus, at trial would be to employ the right which the plain-
19 tiff has under the new rules, to call these school authori-
20 ties who have brought about what you contend to be an unjust
21 discrimination, and it may be from their evidence you will get
22 in the record the factual situation that you think exists.
23 I don't believe you will have to call ^{all} of them. I don't know
24 what they will say, of course, and it will depend on what they
25 testify to, but I don't see how it will be necessary to call
26 all of these witnesses, the children and the parents. You

oo78

1 have got the certificates here. You have got the stipula-
2 tions of counsel. You contend that the segregation has been
3 made not because of the scholarship attainments, but because
4 of the origin of the children. The County contends here that
5 with the exception of one or two instances where I believe it
6 has been stated there is going to be an effort made to
7 rectify the --

8 MR. HOLDEN: Westminster, that is.

9 THE COURT: With the exception of those two instances,
10 that the segregation has been made because of scholastic
11 qualifications or lack of qualifications of those students.

12 MR. MARCUS: Apparently that is a new thought of
13 counsel because he hasn't set that up in the answer.

14 THE COURT: That is an issue in the case.

15 MR. MARCUS: He says such pupils should attend said
16 schools until they acquired some efficiency in the English
17 language or until they had completed the fifth grade.

18 MR. HOLDEN: I don't see any difference in that.

19 MR. MARCUS: "Some efficiency in the English language."
20 I was only prepared to meet that issue. If he wants to go
21 into the scholastic ability of the various students, we can
22 do that. You see, that gets back to the very same principle
23 of what is called race superiority; that is on the basis that
24 the Anglo Saxon is superior mentally to the students of
25 Mexican descent, and I don't think there is any basis in law
26 to permit the segregation because of claimed superiority of

0079

1 the English speaking students because the Spanish speaking
2 students or the students of Mexican descent, as they claim,
3 are not as proficient as the English speaking students.

4 THE COURT: The matter of tongue is no criterion in and
5 of itself as to scholastic efficiency of an individual. The
6 matter of tongue may be an important element in the ability
7 to instruct and impart knowledge to a class of immature chil-
8 dren. There may be some degree of ability to comprehend
9 thoughts, thoughts imparted in the public school system
10 through the English language. It is required that the in-
11 struction be in the English language. That isn't anything
12 against the child, except by someone who doesn't want to
13 argue the facts. The mere fact that a child, because of his
14 lack of contact with or knowledge of a particular language
15 may be handicapped in another -- that is what the Supreme
16 Court tried to say in this Nebraska case -- doesn't show any-
17 thing improper or doesn't show any reflection upon that child,
18 any more than the placing of children who are of arrested
19 mentality or who are lazy or who don't want to work in
20 school in a room by themselves. That is no reflection on
21 them, and it is within the proper scope of school authority.
22 If there is something else, of course, you probably would be
23 able to show it by the method the Court has suggested, and
24 I think you should pursue that method. Though you are not
25 bound by the testimony of these school authorities, you can
26 examine them, and the amicus curiae would be here and he

0080

1 could assist in that in getting down to the mentality of the
2 individual. You could show the outward, verbal manifesta-
3 tions of the person for one thing; the deep down feelings are
4 another. Do either of you think it is necessary to go
5 further in the pre-trial?

6 MR. MARCUS: Your Honor, if we are going into the field
7 of the ability of these students, and your Honor suggested we
8 call the school officials at the time of the trial of this
9 matter, we are going to be here week on week.

10 THE COURT: We can't help that. You brought us here
11 and you will have to put up with what we say or the issues in
12 the case. You brought the case here.

13 MR. MARCUS: I am willing to do it. I understood you
14 to state that the segregation was because, not of any scholas-
15 tic ability or inability of the respective students, but
16 because of the fact that they were unable to comprehend the
17 English language sufficiently when they started into the
18 grade school.

19 THE COURT: That is just a play on words. Let me show
20 you how it is a play on words. I just stated what I thought
21 would be the explanation of that. The law requires that in-
22 struction in the public school system in California shall be
23 in the English language. That means that children who cannot
24 comprehend to the same degree instructions may be handicapped.
25 The teacher may be very capable and yet he is not, or she
26 may not be able to impart to the pupil the knowledge that it

0081

1 is necessary for that pupil to have to make a grade in school.
2 That is part of scholarship attainments. You can't divorce
3 that from other things that come within the realm of instruc-
4 tion. It just can't be done, that's all. That is what he
5 means, as I understand it, that is what he means by the
6 scholarship attainments. It pertains to the ability of the
7 pupil to comprehend the instruction and to go forward ac-
8 cording to normal school requirements for the advancement of
9 pupils in grades.

10 MR. MARCUS: I had that purpose in mind when I asked
11 counsel if the exact same curriculum was established in every
12 school in this district, to which he replied it was and that
13 the pupils received the same instructions in each of the
14 schools. That would indicate, your Honor, that if a child
15 is in the first grade of the Roosevelt School, he got the
16 same as in the first grade of the Lincoln School.

17 THE COURT: It would indicate an effort was made to
18 give him that. Whether he received it or not would depend
19 upon the child.

20 MR. MARCUS: For all those attending the same school,
21 that would indicate they actually received it. On the other
22 hand, when you have the obvious situation of so many students
23 being of the Spanish speaking class and all in one school --

24 THE COURT: The mere fact of numbers wouldn't indicate
25 a thing, Mr. Marcus. If it does, you could show it by the
26 evidence by bringing these people here and cross questioning

0082

1 them why there are so many students in one school and none
2 of them in another.

3 MR. MARCUS: Counsel here could give your Honor the
4 same reason as the school authorities did.

5 THE COURT: I don't want to hear either of you on that.
6 I want to know what evidence you have got and that would show
7 one thing or another.

8 MR. MARCUS: The school principals or instructors could
9 come here and give an example with respect to the various
10 classes. He could say, "We are passing these students as
11 they graduate from the various classes. We have segregated
12 them because we feel they are not capable of keeping up
13 with one another, that the Mexican children are backward,
14 that they are not able to grasp the learning or the teachings."

15 THE COURT: I doubt whether he would go to that extent.
16 I apprehend you would find he would say something different
17 from that.

18 MR. MARCUS: He will give the reasons, whatever they
19 may be, for the segregation. How are we going to overcome
20 that except by bringing the pupils here that are actually
21 involved in this difficulty?

22 THE COURT: You could put a concrete, factual question
23 as to pupil John Brown or Mary Brown, and you could take
24 that instance of that concrete examination and question the
25 appropriate school teacher or authority about John or Mary
26 Brown, and if they said that they couldn't measure up, I

20

oo83

1 suppose you could bring John and Mary Brown here, but I
2 don't know whether the Court is the proper arbiter in an
3 educational test of that kind. I doubt it.

4 MR. MARCUS: But the school authorities in Orange
5 County haven't adopted that basis. They have stated that all
6 Spanish speaking pupils must attend that school.

7 THE COURT: Do you want to rest on the record here?
8 If you do, we will try the case on that theory, if you think
9 it shows that, without introducing any further evidence.

10 MR. MARCUS: Well, it may be that we could dispose of
11 it on that basis.

12 MR. HOLDEN: Of course, I think the Court indicated
13 the noon hour was here about a half hour ago.

14 THE COURT: I did, and I was trying to see if I could
15 get you to sit down during the noon hour and see if you
16 could agree on something that would save us a great deal of
17 time here. Come back at 2:00 o'clock.

18 MR. MARCUS: I suppose your Honor still has the same
19 elementary principle of law your Honor enunciated at the be-
20 ginning of this case?

21 THE COURT: Yes.

22 (Whereupon, at 12:40 o'clock p. m., a recess was taken
23 until 2:00 o'clock p. m.)

24 - - -
25
26

0084

1 LOS ANGELES, CALIFORNIA, TUESDAY, JUNE 26, 1945. 2:00 P.M.

2 - - -

3 THE CLERK: 4292, Mendez and others against Westminster
4 and others.

5 THE COURT: Gentlemen, did you have a conference during
6 the noon hour?

7 MR. MARCUS: Well, we can say yes, your Honor, but
8 counsel feels that this is not a representative suit and,
9 therefore, he could not consent to a general policy of dis-
10 regarding the segregation or eradicating the segregation.
11 He says he is willing to make some concessions with respect
12 to the plaintiffs in this action, but that certainly wouldn't
13 remedy the situation we are trying to reach.

14 THE COURT: Well, it is a class suit. I suppose it is
15 a legal question, really.

16 MR. MARCUS: I certainly wouldn't be in a position to
17 name some three or four thousand children in that district.

18 THE COURT: I have been thinking a good deal about the
19 procedure in this case. The case seems to be, as far as I
20 can discover, sui generis. I don't believe there is any
21 case in the books that parallels this case. The principles
22 that I have cited from the Nebraska case, of course, are ap-
23 plicable in the case. I was hopeful that there might be
24 some appeal to the State court primarily instead of bringing
25 the case to the Federal Court ab initio. Counsel doesn't
26 seem disposed to do that. The complaint did state a case, I

0085

1 think, under the modernized method of pleading in civil
2 actions in the Federal Court. For that reason I thought that
3 the motion to dismiss was not well taken. I still think that
4 is true, but I was hopeful when I permitted the amicus curiae
5 to come into the case that they they would help us some.
6 Instead of being friends of the Court, they seem to be on-
7 lookers. We have been trying to formulate some method where-
8 by the time of everybody could be conserved in a case of this
9 kind.

10 MR. MARCUS: Your Honor, there was a like suit in this
11 court before Judge Yankwich. The case involved --

12 THE COURT: Well, that was the case that you called the
13 Court's attention to. That was a consent judgment, as I re-
14 call it, wasn't it?

15 MR. MARCUS: That was after a hearing on the motion,
16 your Honor.

17 THE COURT: Well, I have ruled on the motion. I have
18 denied the motion.

19 MR. MARCUS: But the motion went to the respective
20 capacities to sue. The same position as counsel has taken
21 here was taken in that. That suit was brought by some four
22 people on behalf of all the Mexican people of Mexican
23 descent in San Bernardino County.

24 THE COURT: That case wasn't analogous to this case.

25 MR. MARCUS: Only with respect to being a suit in a
26 representative capacity.

0086

1 THE COURT: What I am trying to do is to see whether
2 or not everyone's time can be conserved in presenting the case
3 for decision. I thought -- and I still don't see why it
4 cannot be done -- that if typical schools were selected, we
5 could proceed with those. Let's assume that every school in
6 the County of Orange or every school district, I don't know
7 whether it is true or not, but assume for the purpose of the
8 drawing out what is in the Court's mind, adopted this plan
9 of segregation. Certainly it wouldn't be necessary to go
10 into the details of every school in order to arrive at a cor-
11 rect determination of the legal issues involved. If certain
12 schools were to be selected and it was agreed that they were
13 representative of all the schools, a great deal of time would
14 be saved, a great deal of money, both public and private,
15 would be saved, and yet the issue that is in the case would
16 be presented for decision. That is the purpose of these pre-
17 trial proceedings. That is what I was hopeful that you
18 gentlemen could agree upon without sacrificing any legal
19 question that you might feel is in the case, either side, not
20 foreclosing you.

21 As I stated to counsel for the school district, the
22 question of jurisdiction which you raise, which you seriously
23 urge, is not jeopardized at all by it, because if the Court
24 has jurisdiction at the inception, it has jurisdiction at
25 any stage of the proceedings regardless of the factual matters
26 that can be properly conceded or placed in issue.

1 It is not my custom in pre-trial proceedings to force
2 matters, but I do certainly urge with all the force I can,
3 without simply stating that such and such a matter will be
4 the situation, that counsel get together and agree upon the
5 facts, and I think that can be done. I don't see why it
6 cannot, unless counsel, instead of being counsel in the case,
7 become participants and inject emotion into the case which
8 doesn't belong here as far as the presentation of it is con-
9 cerned.

10 MR. MARCUS: Judge, could I offer this suggestion?

11 THE COURT: Yes.

12 MR. MARCUS: In the hope that it might solve the situa-
13 tion. Supposing we would proceed to the trial of this
14 action on the Garden Grove School District, and if we can
15 frame all the issues on that one particular district and dis-
16 pose of all the legal problems there, I think we might be
17 able to rest the other ones upon this one school district,
18 if counsel is willing to stipulate that the Court's ruling
19 with respect to this one district would be binding upon all
20 of the school districts.

21 THE COURT: May I see the certificate in the Garden
22 Grove District?

23 MR. HOLDEN: In that connection, your Honor, the
24 Garden Grove, of all the districts, is the one that there
25 isn't any petitioner before this court on according to our
26 information. That is the one where the petitioners do not

0088

1 live in Garden Grove or attend that district. I would prefer
2 that we take El Modena.

3 THE COURT: Why wouldn't it be well to take a district,
4 Mr. Marcus, in which there isn't any question but what the
5 child and the home is within the school district where the
6 school is located?

7 MR. MARCUS: I will tell the Court the reason why. My
8 main investigation in this case and my main search concerning
9 this particular Garden Grove School District, concerned the
10 principles enunciated by the Superintendent of that school in
11 his brief, in his thesis on this subject, which are being
12 followed in practice there. There is complete segregation in
13 the various schools ⁱⁿ that particular district, both with
14 respect to English speaking pupils and those of Mexican
15 descent.

16 THE COURT: Well, if that is the case, you think that
17 is a district that represents the plaintiffs' viewpoint?

18 MR. MARCUS: Yes, your Honor. Now, if for some reason
19 or other there may be some difficulty with respect to the
20 plaintiff named in this case because counsel feels that they
21 are not residents of that district or have not attended that
22 school, if he is willing to stipulate, we will put some other
23 student in there, name him as a party plaintiff and deem the
24 answer as being applicable to that petitioner if that will
25 eradicate any difficulty with respect to that. I am not
26 interested with reference to one particular petitioner in

0089

1 this case. We are interested in particular with reference to
2 the class, the entire Mexican population of that district.

3 THE COURT: Why couldn't we take two districts? Why
4 couldn't you reach an agreement on two districts so as not
5 to prejudice either side of the case? We could take the
6 El Modena -- is that the name?

7 MR. HOLDEN: Yes, that's right, your Honor.

8 THE COURT: Take the El Modena District and take the
9 Garden Grove District, and confine your evidence to those
10 two districts, and you could argue from either side of the
11 question that there is a class case or there is not a class
12 case. What I mean is to obviate the necessity of taking
13 up seriatim and extensively each of these districts that are
14 mentioned here in the complaint, which it seems to me is
15 going to prolong the case unnecessarily and to no avail,
16 because the number of witnesses will not be persuasive on
17 this Court at all. The issue is not a matter which turns
18 on the number of persons who testify in the case. If it is
19 shown in one case, factually, that the segregation is un-
20 justly discriminatory, I don't care how many there are who
21 come here, it will be discriminatory. The only phase of it
22 that the numerical element could provide would be on another
23 angle. If this were just an isolated situation, spasmodic
24 situation, it wouldn't show a concerted plan which you have
25 alleged in the complaint. You have alleged here that there
26 has been a concerted plan to exclude these people because of

oo90

1 their origin. That is the same plan statement of the issues.
2 If you get a class suit and you have got two districts that
3 illustrate all phases of that issue, why would it be neces-
4 sary to take up any other?

5 MR. MARCUS: Well, counsel wanted me to proceed on this
6 Garden Grove School and then suggested that we have no peti-
7 tioner in court because from his investigation he has de-
8 termined this party is not a proper party petitioner. Maybe
9 we can obviate that by getting some other petitioner in that
10 district, and I know that I am, and I presume counsel is
11 interested in determining the question of law involved, not
12 so much who the petitioner is in this case. We can agree
13 upon the point as to who is a proper petitioner.

14 THE COURT: Do you know whether there are any persons
15 in the Garden Grove District who are of that mind? They may
16 be all satisfied in that district. Do you know whether they
17 are or not?

18 MR. MARCUS: Oh, yes, your Honor.

19 MR. HOLDEN: I don't think you will find any that ob-
20 jected to going -- well, that is your problem. If you can
21 get one that actually complained, that is all right.

22 THE COURT: I don't think a person is in a position to
23 raise a question of constitutional law unless he is affected
24 by the matter, not coaxed into the situation, but does it of
25 his own volition. I don't mean to say that they must be
26 lawyers so as to know what their constitutional rights are,

0091

1 but they must at least feel the injustice of the discrimina-
2 tion and complain about it. Otherwise, you are just stirring
3 up a situation which isn't from any point of view the hap-
4 piest solution in a community.

5 MR. MARCUS: Your Honor, you can rest assured that
6 this is not litigation that has been promoted out of my own
7 mind nor out of the mind of the Mexican Government that I
8 represent. If your Honor had occasion to know of the meet-
9 ings that have been held in the various districts of schools
10 in that area, and counsel knows about them, it would dissi-
11 pate your mind that there was any such thought in my mind of
12 promoting such litigation as this. Now, your Honor, and
13 this is just a passing thought in this matter, you may have
14 read recently in the newspapers concerning the actions of
15 the Mexican University adjoining the State of Texas, but we
16 are trying, your Honor, throughout this litigation and through
17 our courts here, to obviate the situation that has arisen in
18 the Republic of Mexico where the students--

19 THE COURT: That is down there in Brownsville?

20 MR. MARCUS: The knowledge of the discrimination
21 against people of Mexican ancestry --

22 THE COURT: You needn't argue that to this Court at all.
23 I think the Court has clearly indicated its view by over-
24 ruling the motion to dismiss. What's the use of arguing
25 matters that the Court is with you on?

26 MR. MARCUS: Well, it is my humble suggestion to your

22

0092

1 Honor that we, with counsel's stipulation, secure -- and I
2 don't mean by coercion or by argument -- a plaintiff with
3 whom there is no question or doubt about his being a resident
4 of that district and attending that school, the Garden Grove
5 School District. Your Honor, so far as the Santa Ana School
6 District is concerned, are we in the main pretty well agreed
7 upon the facts in that case?

8 THE COURT: I think so, the Santa Ana City School
9 District, I think you are.

10 MR. HOLDEN: They are divided into districts and form
11 the districts in some places to conform to the population, to
12 the Mexican population.

13 THE COURT: In other words, they have designedly set
14 forth within the City of Santa Ana, California, certain terri-
15 torial limits for the purpose of bringing within those limits
16 the Mexican people who have children that are required under
17 the compulsory laws of the States of California to attend
18 State schools?

19 MR. HOLDEN: That is substantially correct, yes.

20 THE COURT: The design has been --

21 MR. HOLDEN: In one of these schools they have, you
22 know, circled the line to embrace the Mexican people.

23 THE COURT: Where it was necessary to do so to bring in
24 Mexican people who have children that must attend school, the
25 public educational authorities have so delineated those lines
26 as to bring them all within that area?

oo93

1 MR. HOLDEN: That's right.

2 THE COURT: Does that go further with respect to the
3 City of Santa Ana and concede that that has been done regard-
4 less of the ability or inability of the children to speak the
5 English language?

6 MR. HOLDEN: No, I wouldn't say that that would be the
7 fact.

8 THE COURT: Speak and understand the English language?

9 MR. HOLDEN: The motive would be in the delineation of
10 the districts just the same as the segregation in the other
11 districts, I would think.

12 THE COURT: I would think the situation with respect to
13 the City of Santa Ana is very well explored and pretty well
14 in the record here by agreement.

15 MR. MARCUS: Very well, your Honor. I thought that, too,
16 and that it would not be necessary to go into that particular
17 school district.

18 THE COURT: This case is set for trial next week and I
19 want to proceed with it. You have got to get some new plain-
20 tiff. It may be that you won't be ready for trial on that
21 date.

22 MR. MARCUS: May I offer this suggestion, your Honor?
23 If we are willing at this time to submit on the Santa Ana
24 School District, that is the Santa Ana City School District,
25 and await the Court's ruling on that, possibly the ruling of
26 the Court may be such in that matter that it may not be

94 00

1 necessary to try the other matters.

2 THE COURT: I am willing to do anything that I can to
3 get the case before the Court as expeditiously as is proper.

4 MR. HOLDEN: Well, I would prefer, if we go on one,
5 that we take the El Modena School District. The question is
6 more clearly presented there than in any other district.

7 MR. MARCUS: And not the Santa Ana City School District?

8 MR. HOLDEN: Yes.

9 MR. MARCUS: If we are willing at this time to submit
10 it upon the record that we have stipulated to at the pre-
11 trial hearing, would you be willing so to do, sir?

12 MR. HOLDEN: You mean the Santa Ana?

13 MR. MARCUS: The Santa Ana City School District.

14 MR. HOLDEN: I wouldn't want to stipulate that that
15 would be the same rule as applied in the El Modena case.

16 MR. MARCUS: I didn't go so far as to say that.

17 THE COURT: Do you mean this, Mr. Marcus, that you are
18 asking him whether he will agree with you to submit this case
19 upon the agreed statement of facts in the record now as to
20 the Santa Ana City School District; is that what you are ask-
21 ing?

22 MR. MARCUS: On that City School District, it may be
23 that your Honor's ruling with reference to that particular
24 district would obviate the necessity of any further hearing.

25 THE COURT: It might be.

26 MR. HOLDEN: It might be that everything is in there

0095

1 now. I wonder if we could hear this record that we are stipu-
2 lating to.

3 THE COURT: Well, we could ask the reporter to read it,
4 but it would take a long time. You can have him write it up
5 and see if that is the case.

6 MR. HOLDEN: It seems to me that that would be perfectly
7 all right, but I am not sure just what is in that stipulation.
8 Is it in there that the Board acted for the purpose of -- well,
9 that they had in mind the mental attainment of the children?
10 I think it is.

11 MR. MARCUS: Exactly to the contrary.

12 THE COURT: Do you have those letters here, Mr. Cross?

13 THE CLERK: Yes, your Honor.

14 THE COURT: I don't believe there is anything in the
15 record of the Santa Ana School District with respect to that
16 particular matter.

17 MR. HOLDEN: I would want that in there, that the lines
18 were drawn and there is only one of them, as I understand it,
19 the Fremont School District is the only one where there has
20 been a little meandering of the line to embrace the Mexican
21 pupils, additional Mexican pupils. In other words, that
22 school house sits on the edge of the zone.

23 THE COURT: Let me ask you this question with respect
24 to the Santa Ana City School Districts, particularly the one
25 just mentioned, Fremont School. How many school houses ser-
26 vice the children who are attending public schools in the

oo96

1 grades which are serviced by the Fremont School

2 MR. HOLDEN: There is just one school building.

3 THE COURT: Just one school building?

4 MR. HOLDEN: One building in each zone. The city is
5 divided into 14 zones.

6 THE COURT: How many of those zones have school houses
7 where no children are attending other than the children of
8 Mexican lineage?

9 MR. HOLDEN: Three.

10 THE COURT: The other six school houses are attended by
11 what type of children?

23 12 MR. HOLDEN: There are three exclusively Mexican, there
13 are three that are exclusively non-Mexican --

14 THE COURT: Non-Mexican?

15 MR. HOLDEN: Yes, and there are eight that are mixed.

16 THE COURT: Eight of them are mixed?

17 MR. HOLDEN: Yes, but the percentage of the mixture is
18 such that it runs from 1 to 89 -- to be exact on that, let's
19 look at this. Shall I read it for the record here?

20 THE COURT: Yes.

21 MR. HOLDEN: In one, Spurgeon, there are 330 total and
22 1 Mexican; in the Jefferson School, there are 205 not Mexican
23 and 4 Mexican; in the Edison School, there are 323 not
24 Mexican and 9 Mexican; in the Franklin School, there are 161
25 non-Mexican and 76 Mexicans; in the Lowell School, there are
26 292 not Mexican and 5 Mexicans; in the McKinley School, there

0097

1 are 237 non-Mexican and 20 Mexicans; in the Roosevelt School,
2 there are 180 not Mexicans and 90 Mexicans; in the Muir,
3 there are 80 non-Mexicans and 63 Mexicans; in the Lincoln
4 School, there are 69 other than Mexicans and 12 Mexicans.
5 Then there are three schools that are exclusively Mexican and
6 three that are exclusively non-Mexican.

7 MR. MARCUS: Your Honor, these pupils, these Spanish
8 speaking pupils, there are many Spanish speaking pupils in
9 these schools, and I have some of these pupils in the court
10 room at the present time, that are not Mexicans, and when
11 they denominate those Spanish speaking pupils, there are many
12 of those that speak Spanish that are not of Mexican descent.

13 MR. HOLDEN: Well, let's say Spanish speaking then.

14 MR. MARCUS: These schools, Fremont, Delhi and Logan,
15 are schools that are attended exclusively by persons of
16 Mexican descent and in those schools there is exclusive and
17 complete segregation. I thought that if you were required to
18 try the matter, that we would take the Fremont School or
19 Delhi, Logan and Wilson Schools as being examples of that.

20 THE COURT: Well, there are two others where the op-
21 posite is true, aren't there?

22 MR. MARCUS: That's right. The Wilson School is the
23 opposite.

24 THE COURT: And the Hoover School?

25 MR. MARCUS: Yes.

26 THE COURT: And the Spurgeon School has one so-called

0098

1 Spanish speaking pupil. Why wouldn't those two categories
2 furnish a basis for such additional factual matter that may
3 be properly introduced in evidence to either show or remove
4 any question of unjust discrimination.

5 MR. HOLDEN: Of course, it comes down then to the
6 legal point of unjust discrimination.

7 THE COURT: Well, of course, that may not be a factual
8 matter.

9 MR. HOLDEN: No, it isn't. It may be a purely legal
10 matter.

11 THE COURT: And it may be a mixed question of law and
12 fact.

13 MR. MARCUS: As I remember, this morning on the ques-
14 tion of this particular district, counsel stipulated for the
15 purpose of the record, and I am willing to rely upon that,
16 that it was not a question of linguistic qualifications or
17 the ability of the student, the mental qualifications in the
18 City of Santa Ana. As I remember the record --

19 THE COURT: You may be correct. I didn't remember he
20 had stipulated on it.

21 MR. MARCUS: But in the El Modena District, he con-
22 tended it was a question of their mental ability to keep up
23 with the various classes.

24 MR. HOLDEN: The only thing that I would stipulate to,
25 and I think we were talking about it, is that the City of
26 Santa Ana happens to be so situated that the Mexican people

0099

1 by a large percentage of them, live in certain localities
2 there that have been zoned for particular schools. The same
3 thing applies there as to attainment as does any place else.

4 MR. MARCUS: My clients have advised me, and I have in-
5 spected the schools out there, that there are many, many
6 times when the buses have to go a long distance to get to the
7 Fremont School and cross over two or three other districts
8 before getting there, districts that are attended exclusively
9 by English speaking pupils.

10 THE COURT: Let's take the Fremont School, for instance.
11 In the Fremont School, according to this exhibit, there were
12 on March 22, 1945, and presumably the same ratio today, 325
13 so-called Spanish speaking pupils and no so-called English
14 speaking pupils, making a total of 325 pupils in the school
15 at that time. Are you able to stipulate that within the area
16 or the zone, as you call it, there were on those dates and are
17 now, presumably, many more pupils attending public schools
18 in the City of Santa Ana?

19 MR. HOLDEN: No, there are not. In my answer the facts
20 are set forth. I want to refresh my memory here.

21 MR. MARCUS: As you remember, counsel stated this morn-
22 ing, your Honor, that there were other students residing in
23 that district --

24 MR. HOLDEN: If you will wait just a minute, I will
25 tell you what my answer is,

26 MR. MARCUS: I am referring to your stipulation this

00100

1 morning.

2 MR. HOLDEN: Here are the facts in the Fremont School,
3 that in the zone served by the Fremont School the population
4 is 99 per cent of Mexican descent and the pupils attending
5 the said school are in the same proportion, or approximately
6 100 per cent. That is the district in which I said there are
7 5 to 10 pupils, and my recollection is that they are of the
8 negro race -- in the two schools there there are 12 negroes
9 and they live in the Mexican area, but they are English
10 speaking, so the school district permits them to go to
11 another school where the English speaking pupils attend. So
12 there are those pupils living in that zone which are per-
13 mitted to leave that zone to go to another school, and they
14 go to the English speaking school. That is what I would
15 stipulate to.

24

16 THE COURT: The effect of that would be, then, that
17 within that particular district there are no school children
18 within the ages and grades serviced by that school that do
19 not attend the schools where the so-called Spanish speaking
20 pupils attend, other than the persons of the negro race?

21 MR. HOLDEN: That's right. I have forgotten whether it
22 is between 5 and 10 that are permitted to leave that zone to
23 go to another school.

24 THE COURT: And those 5 or 10 are all of the negro
25 race?

26 MR. HOLDEN: There might be a couple of them that are

00101

1 not of negro race. In one of those districts there are two
2 pupils that are neither negroes nor Spanish that are permitted
3 to go to another school. Whether that is Fremont or Logan, I
4 can't say right now for sure.

5 THE COURT: Would they be Spanish speaking pupils?

6 MR. HOLDEN: They would not be Spanish speaking, and
7 then those that you have the letters of there who were per-
8 mitted to go as the letters indicate. We don't deny that.

9 MR. MARCUS: Judge, you take that into consideration,
10 together with the fact that these lines or these areas for
11 the particular school districts were set forth as counsel has
12 stated to your Honor in such a meandering fashion --

13 MR. HOLDEN: There is one line on the Fremont School
14 that they tell me was meandered.

15 MR. MARCUS: Well, I have been advised that those three
16 districts were so meandered around.

17 THE COURT: Well, you can introduce evidence on that.
18 That is the only way you could establish that, isn't it?

19 MR. HOLDEN: We could have a map of the district, your
20 Honor, and bring it here in court.

21 THE COURT: He not only questions the physical appear-
22 ance of it now on the map, but the reason for delineating it
23 especially in the manner that you describe.

24 MR. MARCUS: That's correct.

25 THE COURT: Well, that case, so far as the City of
26 Santa Ana is concerned, it seems to me is pretty well before

00102

1 the Court excepting as to the last phase or aspect of it. If
2 you want to go into bringing these officials here and show
3 why--if you can show -- there was anything other than counsel
4 for the district has stated as their motive or reason, what
5 actuated them in making those lines, Of course, that would
6 be permissible for you to do.

7 MR. MARCUS: That was one of the reasons or purposes
8 that I wanted to call witnesses to the stand, because they
9 have interrogated the officials of the respective districts.

10 THE COURT: I know, but you should bring the first
11 hand evidence to the Court.

12 MR. MARCUS: The parties who are involved in this ac-
13 tion.

14 THE COURT: Bring the others in, and then you can im-
15 peach them by showing the other statements. The burden is on
16 the plaintiff to show unjust discrimination, not by hearsay,
17 but by actual presentation of evidence which would show that.
18 Now, it seems to me that if counsel is correct, I don't say
19 he is, but I will tell you I want the case presented just as
20 fully as possible, and yet expeditiously, if these school
21 authorities, who have delineated and settled these zones, as
22 you call them, can be questioned as to why they did it, and
23 so forth, it may be that they will present the evidence which
24 you contend is the case. If they do not, then you can pre-
25 sent the other side of it.

26 Now, the only remaining matter is as to the so-called

1 rural districts. You don't seem to be able to agree that you
2 can get a typical rural district. You think that the Garden
3 Grove District, Mr. Marcus, is one that is typical to bring
4 out all of the features that are involved in the issues in
5 the case, and counsel thinks that the El Modena District is
6 one that typically indicates the situation. I wonder if you
7 could agree or stipulate on what both districts are?

8 MR. MARCUS: Officially, the entire matter at this time,
9 your Honor, I think, is that we are down to the vital issue
10 as to the reason for the discrimination. There is no ques-
11 tion in my mind at this time that counsel's position is that
12 the segregation has been caused because of the inability as
13 students of the Spanish speaking students to absorb the curri-
14 culum of the various schools.

15 THE COURT: As well as the other pupils in the schools
16 of equal age do?

17 MR. MARCUS: That's right. Having made it a cause of
18 absolute segregation without respect to English speaking or
19 Spanish speaking, but having made it absolute with respect to
20 Spanish speaking pupils only, and not with respect to
21 English speaking students, and now I am using that term
22 Spanish speaking advisedly, because your Honor appreciates
23 what that means --

24 THE COURT: Yes.

25 MR. MARCUS: I think we have established the fact of
26 the complete segregation. Would it not then be incumbent

1 upon the defendants here to show the reasons for that segre-
2 gation? They have now admitted that,

3 THE COURT: They have admitted segregation, that is
4 true.

5 MR. MARCUS: That's right.

6 THE COURT: They have denied that that segregation is
7 an unjust discriminatory activity on the part of the school
8 authorities. Therefore, the question is: Is or is not the
9 segregation an unjust discriminatory activity on the part of
10 the school authorities? That is the thing to prove or dis-
11 prove. You have got the burden of proof then.

12 MR. MARCUS: We have established the discrimination.

13 THE COURT: No, you have established segregation.

14 MR. MARCUS: Segregation, I should say. We have
15 established segregation. They have admitted that segregation
16 in these various schools.

17 THE COURT: That's right.

18 MR. MARCUS: But they say that segregation -- as yet
19 they haven't produced the proof of their position. We have so
20 far produced the segregation.

21 THE COURT: That's right.

22 MR. MARCUS: Now, they come in and say that that segre-
23 gation is because of their inability to absorb the language,
24 but they are going to have to prove that. We have proved
25 the segregation. That is an affirmative defense. The segre-
26 gation for the Spanish speaking students has been established

10500

1 before this Court for the districts that we have mentioned
2 by their stipulation. Now, counsel in his statement to the
3 Court and by way of affirmative defense in his answer, says
4 that the segregation has come out by reason of their in-
5 ability to understand or comprehend or absorb the education
6 offered them. Then we have to have the proof on that. The
7 burden is now upon them to establish that that segregation is
8 legal and not in violation of the Constitution.

26

9 THE COURT: What do you say as to that, Mr. Holden?

10 MR. HOLDEN: As far as we are concerned, we say that it
11 is perfectly constitutional, that we are not violating any
12 law, and that is the presumption of law. The presumption of
13 law is that the official duty has been properly performed,
14 and we are a school district here, that School Boards do have
15 the authority to segregate pupils, there can be no question
16 of that. That they do it properly, that is a presumption of
17 law. There isn't any law that requires a School Board to
18 put all pupils in the same room or in the same school house.
19 A School District, by reason of the fact that they educate
20 the people, have a right to classify the pupils. When a per-
21 son raises a question of constitutionality, the burden rests
22 upon the person raising that question to prove it.

23 Now, our point in this case, which I certainly think is
24 the gist of the whole thing, is what part of the Constitution
25 of the United States or of the laws of the United States did
26 we violate in segregating Mexicans in one school and white

00106

1 people in another, that is what I would like to know. What
2 laws of the United States or what part of the Constitution
3 have we violated? The courts have all held on segregation
4 cases that if any provision of the Fourteenth Amendment
5 applied on these cases, it would be that provision that says
6 that no State shall deny to any person within its jurisdic-
7 tion equal protection of the law, and they likewise have
8 held right from the first, and there is no case to the con-
9 trary, that where equal facilities are furnished to the peo-
10 ple in the different schools, that that is not a denial of
11 equal protection of the law, and that pupils, where they are
12 getting the same education at public expense, are not being
13 denied equal protection of the law, and that the education
14 of the people, education of pupils, and who they shall edu-
15 cate, as long as they get equal protection, is in the hands
16 of the State, that the federal government has no jurisdic-
17 tion of the educational facilities of the State, ~~and it is up~~
18 to the state to determine whether they educate their people,
19 and they can educate the girls and leave the boys out, and
20 they can educate the people up to the age of 21, or they can
21 start them to school at 10. That is not a question of
22 federal concern. What they are trying to do in this case --
23 I am being frank in the matter -- is this. The merits in
24 this case are not going to be determined under the federal
25 law. I am satisfied of that. But once that this court gets
26 jurisdiction, if they bring in some fact to give this court

1 jurisdiction under a federal question, then they will say it
2 is up to this court to determine what the law of California
3 is.

4 THE COURT: Of course, we are clear on that, so you
5 needn't argue that. We are clear on what the duty of this
6 court is with respect to police powers, and that was the rea-
7 son why I suggested it would have been desirable, I should
8 think, from the standpoint of arriving at a conclusion as
9 satisfactory as it could be, to have proceeded in the State
10 courts and then, if the remedy which the plaintiffs feel they
11 are entitled to is not available, to come into the federal
12 jurisdiction. You can't compel them to do that if they are
13 invoking properly the civil rights statute. They have a
14 right to come here, and that is the basis of their suit, of
15 course, as stated in the complaint, that it is a civil right.

16 MR. HOLDEN: I was wondering, your Honor, taking it as
17 a question of law, assume this is a question of law, and I
18 am not stipulating to this, but assume that as a question of
19 law it was developed that every person of Mexican descent was
20 required to attend one school and everybody else to attend
21 another school. Now, under that state of facts, what federal
22 law have we violated?

23 THE COURT: I don't know as I can answer that question,
24 but I will make this observation. It may or may not be an
25 answer to that. That might be setting up class or group
26 government which, of course, would not be a constitutional

1 government as we understand it. That might be an answer to
2 it. I have in mind a decision which you mentioned, the
3 question of color and race and so forth, but that is not in
4 this case as I gather it. There is no question of race.

5 MR. HOLDEN: No.

6 THE COURT: You don't contend that there is any ques-
7 tion of race in the case, do you?

8 MR. MARCUS: No, there isn't, your Honor.

9 THE COURT: Of course not. So that those decisions,
10 I think, are not applicable at all. If we had a question of
11 race, then it would present a different problem than we have.
12 We have here a problem and the ultimate question would be
13 what is meant by the same or equal facilities. That doesn't
14 simply mean the curriculum. It means social, in the sense
15 that children are in a democratic environment, commingling
16 with one another on an equal basis as far as nature has con-
17 stituted individuals to be equal. Of course, we must always
18 have that in mind, that we are talking about practical ques-
19 tions from a practical point of view, and that we must take
20 nature as we find it.

21 A child that is retarded mentally couldn't absorb the
22 same facilities or grasp the same implements that a child
23 that is normal could. Therefore, the school authorities not
24 only have the right, but I presume it would be their duty,
25 to segregate children in that way.

26 That is not the claim here, as I understand it. The

109

1 claim here is that they have just taken the Mexican people,
2 their children, en masse and drawn a line around where they
3 live and said to them, "Now, you have to go to a school in
4 this place here. You can't go to a school here where the
5 others who aren't of this origin go." That, as I understand
6 it, is the basis of their complaint.

7 Well, can we get any agreement on the rural districts?

8 MR. HOLDEN: The point was -- I got off the point --
9 the point was on the question of whether the burden of proof
10 was on us or on them to bring the Santa Ana officials up.
11 My position is that they have undertaken this lawsuit. Now,
12 it is up to them to prove discrimination.

26 13 MR. MARCUS: We have established discrimination. We
14 have established, your Honor, that there has been in these
15 various districts, the El Modena, the Garden Grove, the Santa
16 Ana, and the Westminster Districts --

17 THE COURT: Are you going to rest on that in the record?

18 MR. MARCUS: Well, your Honor --

19 THE COURT: I am not going to tell you whether you have
20 established a discrimination or not until you have rested
21 your case. You have established segregation. There is no
22 doubt about that. You have established that in the City of
23 Santa Ana.

24 MR. MARCUS: I am not attempting to get the Court to
25 commit himself on the question of law.

26 THE COURT: I am not going to commit the Court on that

1 question until you have presented your case. When you have,
2 then I am going to decide it.

3 MR. MARCUS: It was my opinion, your Honor, that having
4 established the segregation in the various districts which
5 counsel has stipulated to, that it would cast the burden upon
6 the defendants to show that that segregation was legal.

7 THE COURT: If you are going to submit your case on
8 that theory, you can do so without any indication from the
9 Court as to what its ruling will be.

10 MR. MARCUS: Well, I was just offering that suggestion
11 at this time. I would rather have the officials of the
12 various districts up here.

13 THE COURT: If that is the way you feel, you better
14 bring them up.

15 MR. MARCUS: It was only in the interest of saving time
16 that I offered that suggestion.

17 THE COURT: We can't economize time by in advance pre-
18 judging a case. Now, we have disposed of that, so let's get
19 back to the question of the rural districts. Are we able to
20 get an agreement here between the parties as to a district
21 or as to two districts that will illustrate every issue that
22 the plaintiffs contend is an issue in this case?

23 MR. HOLDEN: I think, your Honor, that my suggestion
24 would be it isn't going to require much time if we take both
25 Garden Grove and El Modena. I believe we can get through
26 just as fast that way. I don't know how many witnesses

00111

1 counsel wants on that point, but there is only one man in
2 each district that really knows the facts, the Superintendent
3 of Schools, he would be the man that knows.

4 THE COURT: Is it the Superintendent of Schools with
5 whom you claim the folks contacted and had some statement
6 from him?

7 MR. MARCUS: In these various districts, your Honor?

8 THE COURT: Yes.

9 MR. MARCUS: Yes.

10 THE COURT: Well, you could have an examination of the
11 Superintendent and then if his testimony isn't as you think
12 the facts are, you could lay the foundation to show the facts
13 from the other side, and then present such witnesses, limit-
14 ing them to a reasonable number, instead of calling them all
15 on a cumulative matter, and present your side of the case.

16 MR. HOLDEN: In Garden Grove, they don't have any
17 petitioner that lives in Garden Grove, but we have admitted
18 that the other petitioners demanded admission to the school
19 at El Modena.

20 THE COURT: I am inclined to think you will have to
21 have someone in the particular district concerned which you
22 claim you are entitled to relief in. I don't believe you
23 would be entitled, even under the theory of its being a class
24 suit, to say that a child going to school in the Westminster
25 District, let us say, or the El Modena District, is the same,
26 or that the showing that is made there would be necessarily

ool12

1 the same in some other district than Garden Grove.

2 MR. MARCUS: Counsel would be willing to stipulate with
3 me that another plaintiff in that particular district may be
4 added to this suit.

5 MR. HOLDEN: Well, I think if you can find one that
6 demanded --

7 MR. MARCUS: I am sure that we can.

8 MR. HOLDEN: -- that demanded admission, I think would
9 be proper for the Court to order, wouldn't it?

10 THE COURT: The Court couldn't order a plaintiff to the
11 suit in this type of case. This is a civil rights case and
12 that is personal to the individual, and the individual must
13 be the one to come forward and assert his right.

14 MR. HOLDEN: I would have no objection if counsel will
15 furnish me as soon as possible who he is.

16 THE COURT: It should be done so that the case can pro-
17 ceed on the date set.

18 MR. MARCUS: This case is set for the 6th of July,
19 isn't it?

20 MR. HOLDEN: The 5th, isn't it?

21 THE COURT: The 5th of July.

22 MR. MARCUS: Supposing we notify you, today being the
23 27th --

24 MR. HOLDEN: Today is the 26th.

25 MR. MARCUS: Suppose we notify you prior to the 1st.

26 MR. HOLDEN: That would be satisfactory, just so I

ooll3

1 would know that you had one and who he was.

2 MR. MARCUS: I am accepting counsel's word, your Honor,
3 that this petitioner doesn't reside in the district. That is
4 to obviate any difficulty with respect to any technicalities
5 on the particular petitioner. I will submit the name to you
6 and you can check it with the school district so there won't
7 be any difficulty with respect to that, and we can proceed
8 directly to the crux of this whole proposition.

9 MR. HOLDEN: I have no objection to your proceeding
10 with these petitioners, as far as that is concerned, and I
11 will stipulate if you can find another plaintiff, that is all
12 right.

13 THE COURT: He is speaking now with respect to this par-
14 ticular district.

15 MR. HOLDEN: That's right, your Honor. It is stipulated
16 that if he obtains a plaintiff living in the Garden Grove
17 District, that that plaintiff may be substituted in the place
18 of the petitioner here, unless counsel wants to proceed with
19 this petitioner.

20 THE COURT: Is that satisfactory to you?

21 MR. MARCUS: That is satisfactory.

22 THE COURT: It will be so ordered and counsel for the
23 plaintiff will notify counsel for the defendant of the situa-
24 tion on or prior to Saturday, June 30, 1945, at 5:00 o'clock.

25 Now, there is one other district in the rural area that
26 has been chosen, I believe, or are you going to rest on this

ooll4

1 one district as far as the rural areas are concerned?

2 MR. HOLDEN: I think, your Honor, that these two rural
3 districts ought to settle this question forever because on
4 the Westminster case they are not going to segregate this
5 year.

6 THE COURT: Do you think that is correct, Mr. Marcus?

7 MR. MARCUS: If counsel assures me in that particular
8 district there is no segregation, I am willing to accept his
9 statement.

10 MR. HOLDEN: In this Westminster District, I think the
11 segregation was not proper, as far as that is concerned.

12 MR. MARCUS: When was that determined upon, counsel,
13 that there wasn't going to be any segregation?

14 MR. HOLDEN: It was determined upon last year, but they
15 couldn't raise the money to build the school house, so this
16 year they are moving the school house already built.

17 MR. MARCUS: One of the petitioners here assures me
18 that that petitioner is residing in the district.

19 MR. HOLDEN: Well, you better get some more assurance.

20 MR. MARCUS: You are the one that is casting the doubt.

21 MR. HOLDEN: I am telling you for your information the
22 Superintendent down there says he does not live in the Garden
23 Grove School District and has never attended the Garden Grove
24 School.

25 MR. MARCUS: Well, we have got a stipulation on that, so
26 we won't have to go into it.

27

00115

1 MR. HOLDEN: Yes.

2 THE COURT: What about the Westminster situation?

3 MR. MARCUS: We probably don't have to go into that
4 district if, as counsel has suggested, the segregation has
5 been obviated and that next year in the Westminster School
6 District, both schools will be united.

7 MR. HOLDEN: That's right.

8 MR. MARCUS: All right. That disposes of that.

9 THE COURT: Is there anything else now? We have now,
10 then, to sum up the effect of the pre-trial proceeding, the
11 case will proceed upon the factual situation with respect to
12 the Fremont, Delhi, Logan, Wilson and Hoover Schools of the
13 Santa Ana City School District; upon the Garden Grove School
14 District; and upon the El Modena School District of the
15 County of Orange, State of California; and the proof will be
16 restricted as to the factual showing with respect to those
17 districts.

18 There is no determination made at this time by the
19 Court as to whether or not proof of segregation, ex post facto
20 and ex proprio vigore, establishes discrimination. The bur-
21 den is on the plaintiff to establish unjust discrimination.

22 It is further ordered that in the exploration of the
23 issue of segregation and discrimination, that the Court will
24 limit the number of witnesses called by such rule as it will
25 establish during the hearing. It will not permit introduc-
26 tion of cumulative evidence for the mere purpose of numerically

ooll6

1 strengthening the case.

2 I think other than that, there can be no further order
3 made at this time.

4 MR. MARCUS: Your Honor, may I inquire of counsel if
5 he will produce at the hearing or bring with him Mr. James
6 L. Kent, the defendant, and the Superintendent of the El
7 Modena School District -- I believe Mr. Kent is the
8 Superintendent of the Garden Grove District -- and --

9 MR. HOLDEN: Henderson is Santa Ana.

10 MR. MARCUS: All right. Will you bring those three?

11 MR. HOLDEN: I will tell you what I will do. I will
12 ask those fellows to come if I can get hold of them. Well,
13 I will let you know if they are not available, if they happen
14 to be away or something. I will call you on that.

15 MR. MARCUS: I didn't want them to --

16 THE COURT: You are entitled to process of court, you
17 know, Mr. Marcus.

18 MR. HOLDEN: Being here at the present time, I don't
19 know whether maybe Mr. Kent may be on a vacation for all I
20 know, but I will be glad to call them when I get back to the
21 office and let you know whether I can get hold of them or
22 not.

23 THE COURT: The Court has no power to direct a witness
24 to come without a process of court being issued for his at-
25 tendance, and is not going to use any such unauthorized ef-
26 fort in this case or any other case of similar type.

coll7

1 MR. MARCUS: I just thought counsel might be in a posi-
2 tion to talk to them.

3 MR. HOLDEN: I would be very happy to tell them, but I
4 don't want to take on the problem of bringing them here. That
5 is my position.

6 THE COURT: Mr. Holden, have you presented all of the
7 writings that you have or have any knowledge of?

8 MR. HOLDEN: Yes, your Honor. They tell me that there
9 are no other minute orders. It occurred to me that maybe you
10 would like to have for your own information the map of Santa
11 Ana with the zones delineated on it. Would you like to have
12 that?

13 THE COURT: I think so.

14 MR. HOLDEN: I will bring that for you.

15 THE COURT: That is drawn by public authority, I suppose,
16 isn't it, by the City Engineer?

17 MR. HOLDEN: By the Board of Education.

18 THE COURT: If you will have this transcript written up,
19 gentlemen, it would be helpful. Of course, there is no way
20 the government can order it at this time, this being private
21 litigation entirely, but I think it should be written up so
22 we will all have in mind what it is.

23 MR. HOLDEN: Yes, I would like to have a copy of it.

24 THE COURT: And the Court would like to have a copy,
25 but the expense of that will have to be borne by the liti-
26 gants. We have no facility here for that. We will have

ooll8

1 next week when we appoint the official reporters. But now
2 it is a matter of expense on the litigants.

3 MR. HOLDEN: Well, we will order it.

4 THE COURT: Thank you very much, gentlemen. Next
5 Thursday morning, we will try this case.

6 (Whereupon, at 3:30 o'clock p. m. June 26, 1945, an
7 adjournment was taken until July 5, 1945, at 10:00 o'clock
8 a.m.)

9 - - -
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26