

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

HONORABLE PAUL J. McCORMICK, JUDGE PRESIDING

GONZALO MENDEZ, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 4292-M-Civil.
	)	
WESTMINSTER SCHOOL DISTRICT	)	
OF ORANGE COUNTY, et al.,	)	
	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS.

Los Angeles, California

Tuesday, July 10, 1945.

APPEARANCES:

For the Plaintiffs: DAVID C. MARCUS, Esq.

Amici Curiae: A. L. WIRIN, Esq., and  
J. B. TIETZ, Esq.;  
and  
CHARLES F. CHRISTOPHER, Esq.

For the Defendants: JOEL E. OGLE, Esq., County Counsel;  
and  
GEORGE F. HOLDEN, Esq., Deputy  
County Counsel.

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I N D E X

WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

For the Plaintiffs:

Gonzalo Mendez (resumed)

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Felicitias Mendez

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John Marval

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For the Defendants:

James L. Kent

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Edith M. Gilbert

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Robert H. Reinhard

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Richard F. Harris

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EXHIBITS:

FOR  
IDENTIFICATION

IN  
EVIDENCE

Defendants' A

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Plaintiffs' No. 4

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Plaintiffs' No. 5

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Plaintiffs; No. 6

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Plaintiffs' No. 7

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Zv459  
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1 LOS ANGELES, CALIFORNIA, TUESDAY, JULY 10, 1945. 10:00 A. M.

2 - - -

3 THE COURT: Proceed, gentlemen, with the case on trial.

4 MR. MARCUS: Mr. Mendez, will you take the stand?

5 GONZALO MENDEZ,

6 one of the plaintiffs herein, called as a witness on behalf  
7 of the plaintiffs, having been previously duly sworn, resumed  
8 the stand and testified further as follows:

9 MR. HOLDEN: No further cross examination.

10 MR. MARCUS: We have no further questions of this witness,  
11 unless the court would like to question him.

12 THE COURT: Just one or two questions. I think perhaps  
13 they were covered inferentially, but I want to make sure.

14 BY THE COURT:

15 Q Where were you born, Mr. Mendez?

16 A I was born in Mexico, the State of Chihuahua.

17 Q And are you a citizen of the United States?

18 A I was naturalized.

19 Q When were you naturalized?

20 A Two years ago.

21 Q Is Mrs. Mendez a native American? Was she born in  
22 the United States?

23 A She was born in Porto Rico, and that makes her an  
24 American citizen.

25 Q What language do you usually speak at home with the

Zv3

1 children?

2 A We speak more English than Spanish, on account that  
3 I am a farmer and I have under me approximately 20 men work-  
4 ing, and mostly every day, why, in other words, the ones that  
5 I make business with are of the Caucasian races, and they all  
6 speak English, and, naturally, most of the time I am not  
7 there at the house, I am out in the field or somewhere else,  
8 and my children are the ones who tell them where I am, or what  
9 time I will be back. And that is why we speak mostly  
10 English there, and a little Spanish, because the ones that  
11 work for me are mostly of Mexican descent.

12 Q The ranch hands, as we call them, are mostly of  
13 Mexican descent?

14 A Yes, your Honor.

15 Q You used the term "of the Caucasian race." Whom do  
16 you include in that designation?

17 A Including Mexican, too. Some of them mostly speak  
18 English to me instead of Spanish.

19 Q What percentage of the ranch hands that are employed  
20 by you on your ranch are not of Mexican lineage or Mexican  
21 ancestry?

22 A Well, the ones that are under my care are all Mexican,  
23 and the ones that are higher than me are of English-speaking  
24 people.

25 Q You speak very good English, I think, Mr. Mendez.

Zv4

1 Where did you go to school?

2 A I went to Westminster, the Main School.

3 Q That is the Westminster School, --

4 A The Westminster Main School.

5 Q -- as distinguished from the Hoover School?

6 A Yes. To distinguish the schools there among us, I  
7 lived there for the past 26 years, and we have, in other words,  
8 adopted a name for the schools there. They are always calling  
9 it the American School and the Mexican School. I only went  
10 to the fifth grade there at the Westminster School. I was  
11 promoted from the third grade, and from the fourth grade to  
12 the fifth grade in the Westminster School, and before that  
13 we were all united there in the Westminster School, but I  
14 found out that when I went to the fifth grade they had segre-  
15 gated the third, fourth and fifth grades only of Mexican  
16 descent.

17 Q Where did they segregate them? Did they have that  
18 other schoolhouse there?

19 A There on the same ground. There on the same ground  
20 they built a different building to the capacity of the third,  
21 fourth and fifth grades.

22 Q Were all of the children that were in that building,  
23 this new building that you speak of, were they all of Mexican  
24 lineage?

25 A Only the third and fourth on this separate building,

Zv5

1 yes. I only remained there about three months, and among --  
2 in those three months they transferred me, and including about  
3 10 other boys, from the fourth and fifth grades with the rest  
4 of the English-speaking boys to the Main School.

5 Q What is your age now?

6 A 32 years.

7 Q What year was it that you left the Westminster  
8 School?

9 A It was in 1928 or, '27, I think it was.

10 Q Did you go to some other school afterwards?

11 A No. I am an orphan. I had no father, and I had to  
12 go out and work.

13 Q How large a ranch have you, Mr. Mendez?

14 A You mean, how large?

15 Q Yes.

16 A The ranch that I lease from a Japanese there is 40  
17 acres, all in asparagus, and I am a foreman for another farmer  
18 that has 22 acres of asparagus, too, and he has approximately  
19 100 acres of chili peppers, and he has a nursery of avocados  
20 and oranges, too.

21 Q You do all of the marketing yourself? I mean in  
22 dealing with the produce men who buy produce from ranches?

23 A No, your Honor. It is this way. I am only in charge  
24 of doing all the labor.

25 Q I see.

1           A     For instance, I have 15 men in my ranch in the  
2 asparagus only, and I have 10 in his asparagus, and there is  
3 approximately sometimes between 25 and 40 men on the peppers.  
4 That is the men that I can take, and some more that he perhaps  
5 sometimes gets, when he gets nationals that come from Mexico  
6 to help, that he takes care of separate. But among the local  
7 there from Westminster and other vicinities, I take charge  
8 of those.

9           Q     You are what we would call a dirt farmer, then, in  
10 charge of the other dirt farmers there?

11          A     Yes, your Honor.

12          Q     You do nothing so far as the sale of the produce  
13 is concerned to the merchant, to the commission merchant or  
14 the distributor of the produce?

15          A     Well, in one way, yes, your Honor, because his  
16 asparagus, I do all the dealing with his asparagus. I have to  
17 go to the market here in Los Angeles, and send it to the market  
18 where I think he gets the best price for his asparagus.

19          Q     Do you keep books there?

20          A     Yes, your Honor.

21          Q     Do you keep the books yourself?

22          A     I keep time of the men that work for him and the  
23 men that work for me on my ranch. I have to keep separate  
24 hours for both. And for his asparagus I have to keep a dif-  
25 ferent chart, and also in labor, and of the produce that we

Zv7

1 send to the produce markets in Los Angeles.

2 Q Why didn't you apply for citizenship before you were  
3 28 years of age?

4 A I did apply for American citizenship here about  
5 8 years ago, or before I was married, your Honor, but at that  
6 time I had to wait, I think it was either 2 or 3 years. So  
7 I had intentions to be married, and if I married an American  
8 citizen, that would only require, I am not sure, whether it  
9 is 9 months or 6 months, and I would get my final papers then.  
10 And I made application for American citizenship right after I  
11 was married, but by some reason or other they sent them back  
12 because my photographs were not, in other words, they were  
13 too large and they require a certain size and a certain color  
14 to the picture, and they wanted me to give a more specified  
15 reason to show, in other words, more plainly the way I came  
16 from Mexico. And in my next blank or questionnaire that I  
17 sent, I give the explanation more clear, as I was doing it all  
18 for myself and I had never interviewed any other persons to  
19 fill out my blanks.

20 Q Now, about the children, how old are the children  
21 now?

22 A Sylvia is 9 years of age.

23 Q What grade did Sylvia make in the school last year?

24 A She was promoted to the third grade, your Honor.

25 Q And the other children?



v8 1 A Gonzalo was promoted to the second.

2 Q How old is he?

3 A He is 8 years old.

4 Q Very well.

5 A And Geronimo, he was in the kindergarten, and he  
6 was promoted to the first grade.

7 Your Honor, may I do a little explanation why my children  
8 are not a little more advanced in school?

9 Q Well, I don't know. They are pretty well advanced,  
10 aren't they, for their ages?

11 A No, your Honor. I did not send them to school  
12 until they were at the age of 7 years.

13 Q Yes. Well, that would account for it. They have  
14 made their grades each year, haven't they?

15 A They have so far.

16 Q They haven't been kept back, as the expression goes,  
17 in school?

18 A No, your Honor.

19 Q Does Mrs. Mendez speak English?

20 A She speaks English a little like me, with a little  
21 broken accent or dialect, you might call it.

22 Q Well, of course, that would be natural. That would  
23 apply not only to the Mexican people. Any person of Latin  
24 or Slavic or Teutonic origin, or perhaps of other origin,  
25 would naturally have some. It might be an accent or a brogue.

1 It might be even in our own country where some one would have  
2 an accent because he comes from the south or from New England.  
3 It is readily ascertainabb. I don't mean the accent. I  
4 mean the ability to express one's thoughts in words in the  
5 English language.

6 A She can carry on a good conversation in English.  
7 She had a little schooling in her country that she came from,  
8 although in Porto Rico they teach both languages. They teach  
9 Spanish up to a certain grade, and from there on they speak  
10 the English language.

11 Q Well, did you and she have any difficulty in under-  
12 standing each other in what you call your Mexican language and  
13 what she would call her Spanish?

14 A No, your Honor. We have no difficulty, although  
15 she claims that they talk a better Spanish in her country than  
16 my country, but it is all the same Spanish.

17 Q You mean it is fundamentally and basically a deriva-  
18 tion of the Spanish language?

19 A Yes.

20 Q But there are idioms, -- do you know what an idiom  
21 is?

22 Well, I guess I will not discuss that. That is all,  
23 Mr. Mendez.

24 MR. MARCUS: Will you take the stand, Mrs. Mendez?

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FELICITAS MENDEZ,

called as a witness by and on behalf of the plaintiffs, having  
been first duly sworn, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Felicitas Mendez.

THE CLERK: Be seated, Mrs. Mendez.

DIRECT EXAMINATION

BY MR. MARCUS:

Q You are the wife of Mr. Mendez, who just testified?

A I am.

Q You have three children who reside in the Westminster  
District of Orange County; is that correct?

A I have.

Q Now, did you and your husband, together with other  
persons whose names have been mentioned here, see Mr. Atkinson,  
the County Superintendent of Schools of Orange County?

A We did.

Q Do you remember when that was? Was that in January,  
approximately?

A I think it was in January. I am not sure, because  
I didn't pay much attention to the date we went there.

Q Now, do you remember the conversation between  
yourself, your husband, the other persons present, and Mr.  
Atkinson, the County Superintendent of Schools?

A I remember a little; not very much.

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1 Q Well, as much as you can remember, will you kindly  
2 relate the conversation to the court?

3 A We went over there to -- we first wanted to know  
4 how we could get our childrens to the Main School in West-  
5 minster, and we were advised to go and see Mr. Ray Atkinson.  
6 And so we went over there and tried to ask him what about, if  
7 we could get our childrens in the Main School in Westminster,  
8 and he told us that he couldn't do anything because it was up  
9 to the Board, that they had created those laws or formed  
10 those laws -- I don't know how to explain it -- and he couldn't  
11 do anything about it.

12 Q What laws do you have reference to that were created  
13 by the Board?

14 A Those laws of segregating the childrens of Mexican  
15 descent.

16 Q Did any one reply to that?

17 A How do you mean?

18 Q Did anybody say anything about that? Did your  
19 husband say anything about that?

20 A Well, I think we talk a lot over there, because we  
21 got kind of sore, especially me, you know. We always tell  
22 our childrens they are Americans, and I feel I am American  
23 myself, and so is my husband, and we thought that they shouldn't  
24 be segregated like that, they shouldn't be treated the way they  
25 are. So we thought we were doing the right thing and just

vl2 1 asking for the right thing, to put our childrens together  
2 with the rest of the childrens there.

3 MR. HOLDEN: If the court please, if it would help things  
4 along, I will stipulate she would testify to the same things,  
5 if that is the fact, as Mr. Mendez.

6 MR. MARCUS: We will accept that stipulation. However,  
7 I thought the court and counsel would like to hear her con-  
8 verse in the English language.

9 THE COURT: Well, I have heard her sufficiently to form  
10 my own estimate of her qualifications. She seems to have a  
11 pretty good knowledge of the vernacular, beyond the common-  
12 place vernacular, and as it should be spoken.

13 MR. MARCUS: Just one more question if the court please.

14 Q BY MR. MARCUS: Do your children speak English?

15 A They do.

16 Q Did they before they entered the school?

17 A They did a little; not very much. They can't  
18 carry on a very good conversation, because when they are  
19 little, I don't think they could even carry on a good conver-  
20 sation in Spanish, so they couldn't carry on a good conversa-  
21 tion in English.

22 Q But you could understand them in the English  
23 language?

24 A I could.

25 Q Do they speak and understand the English language at

1 the present time?

2 A They do.

3 MR. MARCUS: That is all.

4 MR. HOLDEN: No cross examination.

5 MR. MARCUS: Mr. Marval.

6 JOHN MARVAL,

7 called as a witness by and on behalf of the plaintiffs, having  
8 been first duly sworn, was examined and testified as follows:

9 THE CLERK: State your name, please.

10 THE WITNESS: John Marval, M-a-r-v-a-l.

11 DIRECT EXAMINATION

12 BY MR. MARCUS:

13 Q Where do you live or reside, Mr. Marval?

14 A What is that?

15 Q Where do you live?

16 A I live on 1502 West Third Street, Santa Ana.

17 Q How long have you lived there?

18 A I have lived there approximately two years.

19 Q How long have you lived in Orange County?

20 A I lived in Orange County since 1927, and then we  
21 departed and went to New Mexico for three years, and came back  
22 in '30, and lived there since.

23 Q You are married?

24 A Yes, sir.

25 Q How many children do you have?

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1 A I have three.

2 Q Give their names, and ages.

3 A I have Johnny. He is 9 years old, will be 10 in  
4 August. And I have Robert Lee, who is 4; and Edith Ruth,  
5 who is 2.

6 Q Which one is attending school now?

7 A Johnny, the oldest one. ✓

8 Q What school did you attend when you were residing  
9 in Orange County?

10 A The Franklin School.

11 Q The Franklin School?

12 A Yes, sir.

13 Q You were not segregated when you went to school?

14 A No, sir.

15 Q Are you of Mexican descent?

16 A No, I am not. My mother is Porto Rican, from Porto  
17 Rico, and my father is half Spaniard and half French, born  
18 in Venezuela, South America.

19 Q Then you are of Latin descent?

20 A Yes.

21 Q You speak the Spanish language?

22 A I do.

23 Q Did you have a conversation with a Mr. Winton C.  
24 Smith, Director of Child Welfare and Attendance, of the Santa  
25 Ana City Schools?

v15

1 A Yes, I did.

2 Q When did you have that conversation?

3 A I had it around September the 15th, of 1943.

4 Q Now, where did that conversation take place?

5 A At the Board of Education Building at Santa Ana.

6 Q What was the occasion for you being there?

7 A Well, I moved from Fairlawn Street, where I used to  
8 live, which was close to the Fremont School, where I had  
9 Johnny enrolled, and I moved over two blocks from the Franklin  
10 School on Third Street, so I went over there to have my boy  
11 enroll when the school semester start.

12 Q At the Franklin School?

13 A At the Franklin School.

14 Q And this was two blocks from your house?

15 A That's right. And I took him in there and I waited  
16 in the offices, because there was two ladies waiting with me  
17 with their children to do the same thing, to enroll them in  
18 the same school. So when my turn came up, I told the principal  
19 why couldn't I enroll my child there. And she said, "Well,  
20 why don't you take him over to the Fremont School?"

21 I said, "Well, I live two blocks from the Franklin School,  
22 and I went to the Franklin School, and I want my child to go  
23 there."

24 So we talked a bit, and I got kind of hot. And she  
25 said, "I can't receive your boy in here just because he has



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1 got a fast-talking father. You go and see Mr. Smith, and  
2 whatever he says, you do."

3 Q Was there any discussion at that time about the  
4 Mexican children attending the Fremont School?

5 A Was there any discussion?

6 Q That is right.

7 A Well, --

8 MR. HOLDEN: I object to that on the ground that there  
9 is no foundation as to the discussion, where, when, and with  
10 whom.

11 MR. MARCUS: With this same principal of the Franklin  
12 School.

13 MR. HOLDEN: Well, he started out testifying about Mr.  
14 Smith, as I understand it.

15 THE COURT: Yes. We have gotten a little off the subject  
16 matter. He has consolidated two incidents. I don't know  
17 whether they both relate to the same time or not. They are  
18 entitled to have specification.

19 MR. MARCUS: That is right. I thought we had laid the  
20 foundation.

21 Q BY MR. MARCUS: Mr. Marval, this conversation that  
22 you gave just now was with whom?

23 A With the principal of the Franklin School. I  
24 believe her name is Miss Dudley, something like that. I am  
25 not sure.

v17

1 Q That is the conversation you have now related?

2 A That is right.

3 Q All right. Now, was there any conversation then  
4 about Mexican children or children of Mexican descent attend-  
5 ing the Fremont School?

6 A Well, it wasn't with me, but just the lady that was  
7 before I was.

8 Q Who was that lady?

9 A I believe her name was Mrs. Sanchez, if I remember  
10 right, and she had two children to enroll, and they were very  
11 nice children.

12 MR. HOLDEN: I object to this as not responsive.

13 THE COURT: Yes. I take it all children are pretty nice,  
14 and that isn't any way to describe children. That will go out.

15 Q BY MR. MARCUS: Were you present when the principal  
16 of that school had a conversation with Mrs. Sanchez?

17 A That is right.

18 Q Relative to this?

19 MR. HOLDEN: I object on the ground it is hearsay.

20 MR. MARCUS: It goes to the question of policy.

21 MR. HOLDEN: And this witness would have to decide whether  
22 the woman was a Mexican and whether the children were of  
23 Mexican descent.

24 THE COURT: Yes. That is hearsay.

25 MR. MARCUS: I am only going to the question of policy,

1 not whether the children were Mexican.

2 THE COURT: Objection sustained. You are getting too  
3 far afield.

4 Q BY MR. MARCUS: After your conversation with the  
5 principal of that school, what did you do?

6 A Then I went to the Board of Education Building  
7 there in Santa Ana to see Mr. Smith.

8 MR. MARCUS: Will you stipulate with me, Mr. Holden that  
9 Mr. Smith is the Director of Child Welfare of the Santa Ana  
10 City Schools?

11 MR. HOLDEN: Yes, we stipulate to that.

12 MR. MARCUS: Under Mr. Frank A. Henderson, the super-  
13 intendent?

14 MR. HOLDEN: That is right.

15 Q BY MR. MARCUS: What conversation did you have with  
16 Mr. Smith?

17 A Well, I went over there and he asked me into his  
18 office after I had waited for quite a little while to see him,  
19 and he told me that -- I told him I had taken my child to the  
20 Franklin School to enroll him there and that the superintendent  
21 of the school or the principal of the school had turned him  
22 down.

23 So he says, "Well," he says, "your child attended the  
24 Fremont School, didn't he?"

25 I says, "While I was living right across the street from

v19

1 the Fremont School." I says, "He started there while he was  
2 young, he started when he was four years old and he didn't  
3 know anything about crossing streets, so we thought we would  
4 send him there, to get him started. Since I have moved on  
5 Third Street and two blocks from my house is the Franklin  
6 School, and I want him to go there."

7 "Well," he says, "I don't see that there is anything  
8 that we can do about it." He says, "You just have to send  
9 him to the Fremont School." He said, "We can't take him  
10 into the Franklin."

11 I wanted to know why, and he took out a map and showed  
12 me the dividing lines of districts, as he called them, and he  
13 says, "You are in the Mexican District, and you have to send  
14 your child to the Fremont School."

15 I says, "I will send him to the Fremont School with this  
16 condition, that you send all your white children from the  
17 white families to the Fremont School. Then I will send mine,  
18 too."

19 And he says, "No," he says, "that can't be done, because,"  
20 he says, "there are fewer white children in that district,  
21 and we naturally have to bring them across to the Franklin  
22 School."

23 I says, "How about your bus that you have coming clear  
24 from Chestnut Street, and which is passing my place and taking  
25 them to Fremont School?" I says, "That is jumping a lot of

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33  
1 districts."

2 So he couldn't answer me that. He says, "Well, there is  
3 just nothing we can do about it, and you just have to send  
4 your child there."

5 I says, "I am not going to do it."

6 He says, "You are going to jail unless you send him to  
7 school."

8 I said, "I want to send him to school, but you won't  
9 take him." I said, "I will rot in jail before I see my child  
10 go back to that school." I says, "I own property here in  
11 Santa Ana, and I have got a business here, and I don't see  
12 why my child can't have the same opportunity the rest of them  
13 have."

14 And he says, "The trouble with you Mexican folks, or the  
15 Mexicanpeople," he says, "you are dirty." He says, "You  
16 know that a lot of Mexicans have their -- they got bugs in  
17 their hair, and are not too clean behind their ears."

18 And I got kind of mad, I said, "Well, Mr. Smith, I have  
19 got my boy right here, and you see how dirty his ears are and  
20 how many bugs he has in his hair."

21 So he says, "Mr. Marval, that is a little different.  
22 I wasn't saying that just for you, I am saying that for a  
23 group."

24 I said, "I am fighting for my child. I don't care how  
25 other people dress, or are, but I want him to learn so that he

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1     won't be ashamed to be here either."

2             With that he says, "There is nothing that can be done  
3     about it."     He got kind of mad, and he says, "Nothing can  
4     be done about it. You just got to take your child back  
5     there. Besides," he says, "there is a law that the Board of  
6     Education of Orange County has got, to send him there, and  
7     that is all I can do."

8             I says, "All right. I am going to see my lawyer and  
9     see if I could get my child in there or not."

10            He said, "You can do whatever you do, but he won't go  
11     to the Franklin School."

12            I says, "He is going to go to Franklin School."

13            So then I walked out and I went over to my lawyer's  
14     office, and I had him phone Mr. Henderson, and Mr. Henderson  
15     also told him that my child could not go to the Franklin  
16     School, that he had to go --

17            MR. HOLDEN: I object to this conversation.

18            MR. MARCUS: Yes, that is hearsay, I guess.

19            THE COURT: Who was the attorney?

20            THE WITNESS: Mr. Charles Martin.

21            THE COURT: Is Mr. Martin still living in Santa Ana?

22            THE WITNESS: Yes, he does.

23            THE COURT: He still practices law there?

24            THE WITNESS: Yes, sir.

25            THE COURT: Is still located there?

1 THE WITNESS: Yes, sir, he handles all my cases.

2 Q BY MR. MARCUS: Did you have any further conversa-  
3 tion or conference with any officials of the school district  
4 there?

5 A What is that?

6 Q Did you have any further conferences or any other  
7 conversations?

8 A No, that was all I had, with exception that after  
9 we phoned or the lawyer phoned Mr. Henderson, finally he  
10 said that the Board was going to have a meeting and that they  
11 was going to let me know whether I could send my child there  
12 or not.

13 Q What school is your child attending?

14 A The Franklin School.

15 Q You finally got him in there?

16 MR. HOLDEN: I move, your Honor, that all of the testimony  
17 be stricken from the record.

18 THE COURT: Yes. I don't see the relevancy of that now,  
19 if he finally got the boy in school. There could not be any  
20 discrimination to exclude him.

21 MR. MARCUS: The purpose of the conversation was to show  
22 the policy of the School Board, to which he has testified.

23 THE COURT: If they had been adopting that policy in all  
24 the cases, you would not be here.

25 MR. MARCUS: Well, it took a long time.

23

1 THE COURT: I don't care how long it took. Even under  
2 your own theory of the case, the school authorities did what  
3 you thought they should have done, and I don't think it is  
4 relevant at all.

5 MR. MARCUS: But the purpose of his testimony was to show  
6 the attitude, the theory, the policy of the School Board of  
7 that district and of Orange County in the matter of segrega-  
8 tion.

9 THE COURT: That is purely cumulative on a matter on  
10 which there has been a multitude of witnesses who have testi-  
11 fied, and in his case there was no discrimination because  
12 his boy finally got into the school where he wanted him to be.

13 MR. HOLDEN: If your Honor please, I would like to with-  
14 draw that motion, because I think I would like to have that  
15 testimony in the record.

16 THE COURT: You ought to think before you make your  
17 motions.

18 MR. HOLDEN: I realize that, your Honor, but these  
19 technicalities get through our minds --

20 THE COURT: You want to withdraw the motion to strike  
21 and the court to withdraw its ruling?

22 MR. HOLDEN: Yes. I will withdraw it.

23 Q BY MR. MARCUS: Did your child speak the English  
24 language before?

25 A Yes, he did.



v24  
1 MR. HOLDEN: I object to that as incompetent, irrelevant  
2 and immaterial.

3 THE COURT: Did you hear his answer?

4 MR. HOLDEN: No. I withdraw that.

5 THE COURT: Proceed.

34 6 MR. MARCUS: You may cross-examine.

7 CROSS EXAMINATION

8 BY MR. HOLDEN:

9 Q You did attend the Franklin School, when you were a  
10 boy there?

11 A Yes, I did, all the time while I lived in Santa  
12 Ana.

13 Q And that was one of the reasons you told the Board  
14 you would like to have your child attend the Franklin School,  
15 was it not?

16 A That's right.

17 Q And they did finally let your child attend the  
18 Franklin School?

19 A Yes, they did, as a special privilege.

20 Q You say that Mr. Smith showed you a map of Santa  
21 Ana in which were delineated the districts?

22 A Yes, sir.

23 Q -- into which the city had been divided, for the  
24 purpose of allocating the children to the different schools?

25 A That's right.

v25

DefA  
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1 MR. HOLDEN: I would like to have this marked, for  
2 identification.

3 THE CLERK: Defendants' Exhibit A.

4 Q BY MR. HOLDEN: I hand you an exhibit which has been  
5 designated as Defendants' Exhibit A, for identification, and  
6 will ask you to look at that and see if that appears to be a  
7 correct copy of the map that Mr. Smith showed you.

8 A Well, it -- of course, the map he showed me was on  
9 a wall, was a big map.

10 Q Does that delineate the districts as you recall  
11 them on that map?

12 A May I ask, these red lines up here, they are the  
13 way they are supposed to be?

14 Q I am asking you if the map he showed you showed the  
15 lines of the Fremont and Franklin Districts substantially as  
16 they are shown on this exhibit?

17 A Yes, I believe this is the way it was, more or less.

18 MR. HOLDEN: I offer Defendants' Exhibit A, for identi-  
19 fication, in evidence.

20 THE COURT: So ordered.

21 MR. HOLDEN: No further cross examination.

22 REDIRECT EXAMINATION

23 BY MR. MARCUS:

24 Q Mr. Marval, did you on or about October 20, 1944,  
25 receive the following communication from Mr. Harold Yost,

v26

1 Secretary of the Board of Education of Santa Ana, California,  
2 with regard to your child attending the Franklin School?

3 A That's right.

4 THE COURT: That is the same as the other one?

5 MR. MARCUS: That is the same.

6 THE WITNESS: It was handed to my wife by Mr. Smith.

7 MR. MARCUS: Your Honor, that would have some bearing  
8 on the future attendance there and the threatened action.

9 Q BY MR. MARCUS: You say your home is two blocks  
10 from the Franklin School at the present time?

11 A That's right.

12 Q How far are you from the Fremont School?

13 A I am five blocks.

14 MR. MARCUS: May this letter be admitted in evidence?

15 MR. HOLDEN: No objection.

16 THE COURT: So ordered.

17 THE CLERK: It will be No. 4, Plaintiffs' 4.

18 Q BY MR. MARCUS: Now, your child intends to attend  
19 school in September?

20 A Yes, sir.

21 MR. HOLDEN: I object to that as improper redirect exam-  
22 ination. Oh, I withdraw the objection.

23 THE COURT: Proceed.

24 Q BY MR. MARCUS: Have you talked with Mr. Henderson  
25 or any member --

1 THE COURT: Did he answer that previous question, or  
2 are you just asking it for the record?

3 Read it, please.

4 (Question and answer read by the reporter.)

5 Q BY MR. MARCUS: Have you discussed with any member  
6 of the Board of Education the continued attendance of your  
7 child at the Franklin School?

8 A Well, no, since that time I have not seen anybody.  
9 I went to see Mr. Smith after I got this letter, but he wasn't  
10 there, so then I haven't been back.

11 Q You have received nothing, or any further communica-  
12 tions other than this communication directing that your child  
13 go back to the other school in September of this year?

14 A That's right.

15 MR. MARCUS: That is all.

16 MR. HOLDEN: No cross examination.

17 THE COURT: That is all.

18 MR. MARCUS: The plaintiff rests at this time, your  
19 Honor.

20 PLAINTIFFS REST.

21 MR. HOLDEN: At this time, if the court please, I move  
22 the court that this action be dismissed upon the ground that  
23 the evidence is entirely insufficient to show any claim upon  
24 which relief may be granted; that it appears from the evidence  
25 that the court in this action has no jurisdiction of the subject

v28 1 matter, as set forth in the petition; that it does not appear  
2 from the evidence that the plaintiffs, or any or either of  
3 them, have been deprived of any civil right pursuant to any  
4 statute, ordinance, rule, regulation or custom of the State  
5 of California, or any agency thereof; that the proof offered  
6 by the plaintiff fails entirely to show any conspiracy, any  
7 design, or otherwise, among the defendants for the purpose of  
8 enforcing any common rule for the exclusion of plaintiffs,  
9 or any of them, on account of race or on account of their  
10 descent, being descendants of Mexican descent, or nationality.

11 I take it, those are the technical grounds.

12 Now, at this time, if your Honor please, your Honor is  
13 fully familiar with my views on the law as pertaining to  
14 whether or not anything alleged in the complaint would grant  
15 this court jurisdiction in so far as the Fourteenth Amendment  
16 to the Constitution is concerned, and in so far as the civil  
17 rights are concerned, and I will not burden the court at this  
18 time by reiterating my position, which I have taken at all  
19 stages of this trial, and which I argued quite thoroughly at  
20 the hearing on the motion for dismissal, and I don't think  
21 that the decision of this case will require the research on  
22 law or the submission of briefs.

35 23 I think that the principle which will decide this case  
24 is the principle that was announced by your Honor at the pre-  
25 trial hearing, where your Honor ruled or stated that this case,

v29

1 or, in any event, that this is a court of equity and that the  
2 thing that this court was interested in was whether the  
3 plaintiffs could show by the evidence that the schools or  
4 the school authorities in Orange County had acted in an  
5 arbitrary or dictatorial manner, and that was the issue that  
6 this court informed the plaintiffs and the defendants they  
7 should meet at this trial.

8 Now, the evidence in this case shows, in my opinion,  
9 and demonstrates, in my opinion, the operation of democracy,  
10 American democracy, as it is practiced in that level of the  
11 government which is closest to the people. I think that is  
12 the principle, and I think that the evidence here shows that  
13 in this particular case, that that democracy was in operation  
14 fully, completely, unadulterated, and in its fullest form.

15 Take the Westminster case. Their Mr. Mendez felt that  
16 he was aggrieved by segregation, and the court will recall  
17 that that is not a new thing, that it has been going on for  
18 some years, and so far as the evidence is concerned, the  
19 first word that ever got to the Board of Trustees of Westminster  
20 was when Mr. Mendez decided to make a complaint. He went to  
21 the County Superintendent of Schools in Santa Ana and, as he  
22 testified, he was treated very courteously and the County  
23 Superintendent sympathized with his position and told him  
24 that he had no jurisdiction in the matter, that it was a  
25 matter for the Board of Trustees of Westminster, for him to

v30

1 call on the Board of Trustees. That he then called on Mr.  
2 Harris, and Mr. Harris said, "That is a rule of the Board.  
3 Come up and see the Board." That he went up to the Board  
4 with his little group, which he had a perfect right to do.  
5 That is the American way of doing it. He went to the Board,  
6 and the Board listened to him, and a couple of the members  
7 sympathized with him and one of them suggested that they  
8 immediately enroll all the children in the kindergarten in  
9 the Westminster School and finish up the other children that  
10 they have at the Hoover School. And one of the other members  
11 of the Board commented and said it looked like something  
12 should be done about it. And then in that meeting one of  
13 Mr. Mendez' co-petitioners sympathized with the Board, and he  
14 said, "I realize that you are up against a tough proposition  
15 here, so far as finances are concerned."

16 It was a very friendly conversation between the Board  
17 and the people who were claiming to be aggrieved.

18 A few days after that meeting the Board of Trustees  
19 passed and adopted a resolution, which has been introduced  
20 in evidence by the plaintiffs, in which they decided definitely,  
21 unequivocally, and with only one condition, the financial  
22 condition, that they would unite those two plants, just what  
23 these petitioners wanted. There is the plain democratic  
24 way in which democracy operates, and the Board of Trustees  
25 adopted that resolution.

v31

1           If your Honor please, in looking that over, the thought  
2 occurred to me: How could a court of equity draw a decree  
3 that was any more unequivocal, any less ambiguous, than was  
4 that resolution which this Board of Trustees passed and mailed  
5 out to Mr. Mendez.

6           That was on January 16, 1945, and this law suit was  
7 not filed until March 2, 1945, a month and a half after the  
8 Board of Trustees at Westminster had adopted this policy,  
9 and where everybody knew that they had no money, that they  
10 had tried in the old democratic way to obtain money. They had  
11 held a bond election a few months previously and had tried  
12 to obtain money to build a school. But Mr. Mendez -- that  
13 was one of the American principles and one of the civil  
14 rights that Mr. Mendez has, to vote, and he didn't even vote,  
15 and he says that this American Legion, or, not Legion, but  
16 American League of Voters, or whatever organization it is,  
17 -- well, apparently the whole group failed to vote that bond  
18 election.

19           Now, this court, in my opinion, could not draw a decree  
20 in the Westminster case that would be more satisfactory than  
21 the resolution. Now, certainly this court can't issue a  
22 writ of mandate compelling these people to vote bonds, and  
23 certainly this court can't finance a school property, and the  
24 evidence introduced by the plaintiffs shows that these schools,  
25 and particularly the Westminster School is now overcrowded.

36



v32 1 That is American democracy. I can't see, or, anyway,  
2 these people may have been a little impatient with democracy,  
3 and it might be slow, but it does operate, and it did operate,  
4 in a democractic way in Westminster.

5 Now, at this time I don't want to go into the technicalities.  
6 Well, I might. Going right straight to a legal, and a fine  
7 legal point, Mr. Mendez, at the time that he asked that his  
8 children be enrolled in the Westminster School, had already  
9 enrolled them in the Hoover School, and the school had already  
10 commenced, and according to the evidence produced by the  
11 plaintiffs, the Westminster School was overcrowded.

12 Now, as to these pure technicalities, the proof would  
13 have to be, before this court could issue a writ of mandate,  
14 and they would have to show that it was possible to carry out  
15 the order of the court, and which I don't think the evidence  
16 proves. So there is nothing arbitrary, dictatorial or preju-  
17 dicial in the conduct of the school officials so far as  
18 Westminster is concerned.

19 Next, we take the case of Garden Grove. Now, in Garden  
20 Grove, like all these other districts, and I am not taking  
21 any view on whether this is a good practice or a bad practice,  
22 I am talking about the democracy in Garden Grove. This prac-  
23 tice had been carried on, according to the evidence and accord-  
24 ing to the allegations of the complaint and the stipulations  
25 for some 15 to 20 years.

v33

1           While we are on the Garden Grove case, the main peti-  
2           tioner had never, or the evidence shows that in 1941 he  
3           went to somebody by the name of Emley, who is not now associ-  
4           ated with the Garden Grove school, and asked that his children  
5           be admitted there, and that the principal, Emley, told him  
6           they would have to go to the Hoover School. That was in  
7           1941. He says that he took his children and placed them in  
8           the Catholic School in 1941. That is Arthur Palomino, and  
9           he said that he had another little girl, Sally. Arthur he  
10          said he placed in the Catholic School, and later, when Sally  
11          became of school age, he placed her in the Catholic School,  
12          but that due to the fact that Arthur had an ear defect, or  
13          something, he withdrew Arthur from the Catholic School. Now,  
14          mind you, he is living in the Garden Grove District, in the  
15          Hoover District, nearest to the Hoover School, and he re-  
16          enters his child in school, but he didn't go to the Garden  
17          Grove District, or to Mr. Kent or anybody, but he goes to the  
18          Santa Ana School District and registers his child as living  
19          at an address within the Fremont School District of Santa  
20          Ana and enrolled him in that school. That is Arthur, the  
21          boy. The girl is still enrolled in the Catholic School, as  
22          I understand.

23               Now, since 1941 he had never communicated with any  
24               official of the Garden Grove School District, and the evidence  
25               is that not one person in 20 years -- not one person in 20

v34  
1 years has ever made a complaint to the Garden Grove School  
2 District or the Board of Trustees.

3 Now, we will take Mrs. Ochoa. I don't think she is in  
4 this case at all, if my theory of the case is correct. But  
5 let me say, for the purpose of this discussion, that Mrs.  
6 Ochoa testified she had requested permission to send her  
7 children to the Lincoln School in 1943 and '44 from Mr. Emley,  
8 and that he declined to permit her to enter her children there.

9 Mr. Emley was not a member of the Board of Trustees of  
10 the Garden Grove School District.

11 In 1944 she approached Mr. Kent, and asked that her  
12 children be enrolled in the Lincoln School. Mr. Kent said,  
13 according to Mrs. Ochoa, "There has been a segregation here.  
14 I don't know what attitude the Board of Trustees have on the  
15 matter. I will go and talk to them and let you know." Mr.  
16 Kent talked the matter over very promptly with the Board of  
17 Trustees, and a minute order was entered.

18 May I have that?

19 (The document referred to was handed to counsel.)

20 MR. HOLDEN: This is Defendants' Exhibit A, -- is that it?

21 THE CLERK: That is at the pre-trial.

22 MR. HOLDEN: At the pre-trial. Mr. Kent talked it over  
23 with the Board of Trustees, and the Board of Trustees passed  
24 a resolution stating that:

25 "Some problems were presented regarding the

v35 1 attendance of Mexican pupils in the school. After  
2 some discussion a motion was made by Mr. Applebury  
3 and seconded by Mr. Smith that a policy be adopted  
4 whereby there be no segregation of pupils on a racial  
5 basis, but that non-English-speaking pupils, so far  
6 as practical should attend where they can be given  
7 special instruction, that is not necessary for English-  
8 speaking pupils, and that due regard be given to the  
9 proximity of the pupils residence to the nearest  
37 10 school. Motion carried."

11 Now, that is the first time the matter of segregation had  
12 ever been presented in 20 years to the School Board of Garden  
13 Grove, and according to the complaint and the evidence here,  
14 up until that time there was a complete separation and if you  
15 were of Mexican descent, you went to one school, and if you  
16 were not, you went to another. Now, if that was the policy of  
17 the Board, that certainly was the first time that a person  
18 appeared with a complaint before the Board of Trustees, and  
19 the first time there is any evidence that there was any com-  
20 plaint made to the Board of Trustees of Garden Grove, and if  
21 they did have that former policy, they changed it right then,  
22 and they changed that policy by a resolution.

23 Mr. Smith, or not Mr. Smith, Mr. Kent then went back  
24 and called on Mrs. Ochoa, and he, according to her testimony,  
25 said, "You must take your children to the Hoover School, the

v36

1 Board of Trustees have so determined." According to his  
2 story, he went back to Mrs. Ochoa and he talked the thing  
3 over with her, and he said I thought we agreed -- or, he said,  
4 "What I would suggest would be that you take the children back  
5 to the Hoover School, try them out for a little while, and if  
6 later on we think it advisable, we will transfer them back to  
7 the Lincoln School." That is the way Mr. Kent tells the  
8 story. The next time he hears from Mrs. Ochoa -- well, she  
9 did go down, he said, and she agreed to do that for a trial,  
10 to see how they might get along at the Hoover School, and she  
11 did, she took the children voluntarily to the Hoover School  
12 and enrolled them. And the next time Mr. Kent hears from  
13 Mrs. Ochoa, he is a witness in a court of equity. And she  
14 never did say, "I will take this back to the Board of Trustees;  
15 I will take it back and talk the thing over." That would  
16 have been the democractic thing to do, to appear before the  
17 governing board, and they have indicated their willingness  
18 here to listen to reason.

19 Now, Mr. Marcus told the court that he investigated this  
20 Garden Grove case, and I expected Mr. Marcus to say, when  
21 Mr. Kent was on the witness stand, I expected him to say,  
22 "Mr. Kent, didn't I tell you that I represented Mrs. Ochoa,  
23 and if that rule you have is unlawful and you don't have those  
24 children in the Lincoln School, I will bring suit." He didn't  
25 say anything like that. He didn't tell Mr. Kent he represented

v37

1 anybody so far as the evidence is concerned. If he had said  
2 to Mr. Kent, "I represent Mrs. Ochoa, I represent Mr. Palomino,  
3 or I represent any individual," that could have been produced  
4 here in evidence. But Mr. Kent was never informed by any one.

5 Then we come to that little rule of going to the juris-  
6 diction of this court. The evidence shows that the policy  
7 of the Board was to educate Spanish-speaking pupils in a  
8 school where they could be given special instruction, if that  
9 was necessary, and if they lived close, in what we would con-  
10 sider to be close proximity to the school.

11 Now, the evidence shows that Mrs. Ochoa lives a very  
12 short distance from the Lincoln School, a very short distance,  
13 four or five blocks, as I recall, and the evidence, according  
14 to her, shows that they speak the English language. Under the  
15 policy of the Board, they should have been admitted to the  
16 Lincoln School. That is what the Board said here.

17 Now, Mr. Kent is not the Board of Trustees of the Garden  
18 Grove School District. If Mr. Kent had these children go to  
19 the Hoover School, it was in direct violation of the policy  
20 of the Board of Trustees, and not a rule, or statute, or  
21 ordinance, or custom of any agency of the State of California.  
22 It was in direct violation of the rule and regulation of the  
23 Board of Trustees of the Garden Grove School District.

24 As I say, in any event, there is no showing by Mrs. Ochoa  
25 that she has any standing in a court of equity. Certainly,

v38  
1 the processes of democracy have not been exercised by the  
2 petitioners, or any of them, so far as the Garden Grove  
3 School District is concerned.

4 Certainly, I think it would be an elementary principle  
5 of equity jurisprudence that if a person comes into a court  
6 of equity to enforce one's civil rights, and if they are in a  
7 court of equity to enforce their civil rights, they ought to  
8 show that court of equity that they have exercised their  
9 other civil rights, or some of them, to accomplish the thing  
10 they are trying to have the court of equity grant them. The  
11 other rights are just as important, the right to assemble,  
12 the right to petition for redress of grievances, and the  
13 right to ask your people, the governing board of the district,  
14 to do something.

38

15 Now, these people are not, as the evidence shows and as  
16 the case demonstrates, these people are not poor and down-  
17 trodden ignorant people that don't know how to go about things.  
18 Certainly, they have had plenty of legal advice, according  
19 to the evidence, and the simplest thing they could have done  
20 would have been to have applied to the governing board of  
21 the District of Garden Grove. That would be democracy. I  
22 can see no oppression, depression, or dictatorial conduct on  
23 the part of the Garden Grove School District, from the evi-  
24 dence.

25 Now, in the Santa Ana District, the petitioner, the

v39

1 main petitioner, is in one class, there isn't any question  
2 about that, and these other witnesses are in another class.  
3 Mr. Guzman is complaining to this court that the Board of  
4 Trustees, the School Board of Education in Santa Ana, are  
5 requiring his child to attend a school located in the dis-  
6 trict where that Board has assigned the pupils residing with-  
7 in that area. The territorial division of the City of Santa  
8 Ana is shown on this map which I have introduced in evidence,  
9 and which the court requested me to produce heretofore. There  
10 has not been one iota of evidence introduced in this court  
11 that in Santa Ana the Board of Trustees had acted in any  
12 arbitrary or dictatorial manner in drawing the lines to form  
13 those districts. There is no segregation in Santa Ana at all.  
14 In the Fremont District the evidence is here, I think, that  
15 not to exceed 35 people other than of Mexican descent reside  
16 in that area. I don't know, but I think there is a little  
17 conflict probably on the evidence as to just how many. Now,  
18 the complaint there is that the Board of Trustees permit some  
19 of those people to leave the district.

20 Well, I can see no discrimination, so far as the persons  
21 who are permitted to attend school outside of that district.  
22 The evidence is that they permit some Negroes and some others  
23 than Negroes and some of the Mexican race to go to other  
24 schools outside that district upon special permit. That rule  
25 cannot be attacked as unreasonable, dictatorial or arbitrary,



v40

1 because the School Board must take into consideration the  
2 size and capacity of the schools and allocate the children  
3 where they can handle them with the facilities which they  
4 have. And if they do that reasonably, they cannot <sup>be</sup> dictatorial  
5 or arbitrary. They have treated the Mexicans exactly the  
6 same as they have any other people, in so far as permitting  
7 them to go out of that district.

8 Now, this letter that counsel relies upon, this letter  
9 which Harold Yost wrote to these people that have been attend-  
10 ing the Franklin School, and in which he told them that after  
11 the 1st of September of this year they would be required to  
12 attend in the district in which they reside, I submit that  
13 all of those people reside in the Fremont School District and  
14 by special permission of the Board were permitted to attend  
15 the Franklin School, and so far as the evidence is concerned,  
16 Mr. Henderson says that there is no definite decision by the  
17 Board of Trustees that these people will not be permitted to  
18 go to the Franklin School. And Mrs. Mendez, who was a witness,  
19 she testified that she was residing in the Fremont District,  
20 and her children were permitted to go to the Franklin School,  
21 but that she had received this letter from the Board of  
22 Trustees and that thereupon -- and this is democracy in  
23 operation -- that thereupon she got together with these  
24 13 or 14 other people who were living in the Fremont District  
25 and sending their children to the Franklin School, and she and

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1 those other people associated themselves together, and they  
2 called on the Board of Education.

3 Now, this meeting is after the letter was sent out. That  
4 is what caused the meeting to be called. A lawyer, Mr.  
5 Charles Martin, appeared before the Board and did most of the  
6 talking, according to the testimony. And Mrs. Mendez says:  
7 What did the Board decide? She said that the Board took  
8 the matter under consideration, said they were going to take  
9 it under advisement and study the problem, and would let her  
10 know of any decision in the matter. She hasn't been informed  
11 whether or not the Board is going to grant that request or  
12 not. She has not been affected. Her children have been per-  
13 mitted, and traditionally the people living there for a long  
14 and who have attended school there, have been permitted to  
15 send their children to the Franklin School, and she has not  
16 been deprived of sending her children to the Franklin School.  
17 So far as the evidence is concerned, the Board of Education  
18 has that matter under advisement.

19 This suit, you will remember, was filed in March. This  
20 meeting, of course, was in October, as I believe the letter  
21 shows, but the Board of Trustees told her, "We will consider  
22 your complaint and we will let you know." The Board, so far  
23 as she knows, hasn't done anything about it. They haven't  
24 denied the application. It is still pending, so far as Mrs.  
25 Mendez' testimony is concerned. The Board haven't informed her

1 that they denied her request.

2 Now, as to Guzman, I say that Mrs. Mendez and those other  
3 people are in one class, and Mr. Guzman is in another class.  
4 He lives in the Fremont District. Well, no, I am wrong on  
5 that. That is erroneous. I am thinking about another case.  
6 He does want to send his children to the Franklin School. But  
7 I say that they have never been denied the right to send their  
8 children to the Franklin School, they have never been excluded,  
9 and although he has, it has not been on the ground of his  
10 descent, but on the ground that he lives within the Fremont  
11 School District, and according to his testimony, or, rather,  
12 his wife's testimony, the little boy, Billy, didn't pass,  
13 didn't make the grade at the Fremont School.

14 Now, I submit that this letter which was produced  
15 here shows how democracy operates in Santa Ana. If they have  
16 any grievance, it hasn't been because of any arbitrary or  
17 dictatorial conduct on the part of the Board, but who say that  
18 certain children living in certain areas must attend certain  
19 schools, and every time that any application has been made to  
20 the Board of Education of the City of Santa Ana, they have  
21 granted the relief. In every instance where an application  
22 has been made to the Board of Education in the City of Santa  
23 Ana, that relief has been granted, in that form of democracy.

24 Now, in the El Modeno District, they have exactly the  
25 same proposition, that segregation or alleged segregation has

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1 been carried on, according to the testimony produced by the  
2 plaintiffs, for at least 15 years, and during that entire  
3 period of those 15 years there never has been -- or, neither  
4 Mr. Marcus nor any one of his 5,000 clients, not one of them,  
5 have ever approached the Board of Trustees of the El Modeno  
6 School District. Not once. We do not have evidence of one  
7 complaint ever having been made to the Board of Trustees of  
8 the El Modeno School District, and the first they hear about  
9 it, they are called into a court of equity.

10 What is the evidence out there? They have this very  
11 fine young lady, Miss Torres, I think, is her name, who  
12 stated that in her class exercises, or I mean while there was  
13 discussion in the eighth grade, she and some of her class-  
14 mates approached the principal of that school, and they  
15 argued, or I mean presented the proposition that they didn't  
16 think that the segregation was a good policy, and the principal  
17 didn't say whether he thought it was or wasn't, but he said  
18 that he couldn't do anything about it, that the Board of  
19 Trustees run that school district, and that he just worked  
20 there.

21 Now, Miss Torres didn't make her complaint to the prin-  
22 cipal even, or to the school district, or to the school board --  
23 she didn't complain until after this law suit was filed. On  
24 March 2nd this law suit was filed, and her protest to the  
25 principal of that school was in the latter part of May, or

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1     sometime in May, 1945, and she is now out of school.

2             The other complaint, the other rumor of dissatisfaction  
3     that may have seeped out to somebody was this evidence by  
4     this young man, and I can't recall his name, the young man  
5     who said that in 1941 he and his classmates had said to the  
6     principal that they thought that was unfair. No other com-  
7     plaints in 15 years. And out in that district, here is  
8     democracy. There is democracy.

9             In El Modeno the evidence is that the majority of the  
10    American citizens resident in that area, in that school  
11    district, are of Mexican descent, and here is the way they  
12    testified. They did bring this one lady who testified that  
13    her children were attending that school, and she didn't like  
14    it, but she had made no complaint to the School Board, be-  
15    cause it wouldn't do any good. And as to Miss Torres, I  
16    think the court asked her why her parents didn't say something  
17    about it, and she said her father won't do anything about it  
18    because he knows nothing will happen.

19            It was done in every other district. When something was  
20    done, something happened. When they protested in Westminster,  
21    the Westminster Board acted, and in every case. When they  
22    come to the Board of Trustees in Garden Grove, they pass a  
23    resolution determining a policy opposed to segregation on the  
24    basis of descent, and every time that anybody has appeared in  
25    Santa Ana before the Board of Education they have been granted

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1 the relief asked for. And still in El Modeno they say  
2 they do not protest because it doesn't do any good. They  
3 don't claim that anybody has interfered, forcefully or other-  
4 wise, with their right of free speech or assembly, or denied  
5 them the right of petition to the Board of Trustees in that  
40 6 district. I submit in that district, if they were dissatis-  
7 fied, they could have put up a membe r as a candidate for  
8 election and have elected him for 3 years. Now, I don't know  
9 if the court is familiar with how these boards of trustees  
10 are constituted.

11 THE COURT: Generally so.

12 MR. HOLDEN: In El Modeno and Garden Grove they are  
13 governed by three members of the Board, and in Santa Ana by  
14 the Board of Education, and one member is elected every three  
15 years.

16 THE COURT: I am familiar with that.

17 MR. HOLDEN: And still, as I say, in 15 years not one  
18 complaint to the Board of Trustees, to these fellow citizens  
19 elected right there in their community by the people, not one  
20 word is brought to their attention by any petitioner in this  
21 action, or by any lawyer who represented any of these peti-  
22 tioners. They have been represented legally right from the  
23 start to the finish, and the lawyer has not even written a  
24 letter to any Board or member of the Board. They have never  
25 complained to any of these boards. Now, this Mr. Martin

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1 appeared in Santa Ana, in the Santa Ana case, and they were  
2 granted relief within reason, and the people that Mr. Martin  
3 was representing have not been denied -- have never been  
4 denied their petition.

5 In so far as a democratic principle is involved, this  
6 case certainly represents democracy, operating as democracy  
7 should.

8 Now, I think on the technical question, I have, as I  
9 say, pointed out my views on the Fourteenth Amendment and its  
10 application, as I consider it, to this case.

11 Now, on the technical angle on this El Modeno situation,  
12 the petition, when he requested permission to enter his chil-  
13 dren in the Roosevelt School, his testimony is that Mr.  
14 Hammarsten informed him that he had no room in that school.  
15 There isn't any evidence before this court that they did have  
16 room in that school. They haven't produced any evidence to  
17 show there was any room in that school at that particular time,  
18 and if the court will recall, that was after the school term  
19 had started. It was in November, and the school started in  
20 September, and when Mr. Ramirez offered his children for en-  
21 rollment, there is no evidence to overcome that statement  
22 that that school was full.

23 Now, on the question of segregation, El Modeno is a  
24 pretty clear case of where there has been no showing that there  
25 was any discrimination or segregation. There is no evidence

1 of discrimination -- no evidence in any district of discrimina-  
2 tion. There is evidence of segregation. But with the capac-  
3 ity of the schools at El Modeno, one schoolhouse an eight-  
4 room school and the other a four-room plant, and the people  
5 out there haven't objected about it. Of the pupils in the  
6 Roosevelt School, there are 83 other than Mexican descent,  
7 and 25 of Mexican descent, quite a percentage of mixture,  
8 while over in the other school they have 249 of Mexican  
9 descent. They have never denied anybody upon request other  
10 than this petitioner, so far as the evidence is concerned,  
11 to go to Roosevelt School.

12 I think, if the court please, that the evidence is  
13 wholly insufficient by the plaintiffs to prove a case upon  
14 which relief may be granted, and that the evidence clearly  
15 shows that this is not a case of which this court has juris-  
16 diction.

17 THE COURT: I don't think I care to hear any argument  
18 on the other side. The question of jurisdiction, of course,  
19 is a very crucial question in the case, and the case being  
20 what may be called sui generis, there are very few authorities  
21 that are helpful. There are some decisions of the Federal  
22 Appellate Courts and the Supreme Court that are partially  
23 analogous, as illustrating the principle that is involved in  
24 the case. The latest one I have been able to find is the case  
25 of Kerr, et al. v. Enoch Pratt Free Library of Baltimore City,



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...  
1 which is from the Fourth Circuit, reported in 129 Fed.(2d)  
2 at page 212.

3 Of course, we haven't here any question of race discrim-  
4 ination. Admittedly and concededly on both sides there is  
5 no question of race discrimination in the case, so that  
6 many of the Federal Appellate authorities are not particularly  
7 helpful, except in so far as they properly enunciate prin-  
8 ciples of law which pertain to all cases. I believe this case  
9 does enunciate a principle that may be applicable in this case.  
10 The court isn't ruling decisively at this time that it is or  
11 is not. This was an action where a colored person, a member  
12 of the Negro race, sought to take an examination from the  
13 Board of Library Trustees of the City of Baltimore to qualify  
14 for service in the public library of Baltimore City, and in  
15 the course of the opinion the court made some observations  
16 with respect to the Fourteenth Amendment to the Constitution  
17 of the United States and the Civil Rights Act, which are the  
18 principles that are sought to be invoked by the plaintiffs in  
19 this case, and which I thought perhaps are worthy of some  
20 reflection and a more mature consideration than can be given  
21 at this time. The court there said, in part -- I am not  
22 going to read all of it, but just a part of it:

23 "This suit is brought by Louise Kerr, a young  
24 Negress, who complains that she has been refused ad-  
25 mission to a library training class conducted by The

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1 Enoch Pratt Free Library of Baltimore City to prepare  
2 persons for staff positions in the Central Library  
3 and its branches. It is charged that the Library is  
4 performing a governmental function and that she was  
5 rejected in conformity with the uniform policy of the  
6 library corporation to exclude all persons of the  
7 colored race from the training school, and that by this  
8 action the State of Maryland deprives her of the equal  
9 protection of the laws in violation of Sec. 1 of the  
10 Fourteenth Amendment of the Constitution of the United  
11 States and of the Civil Rights Act codified in 8 U.S.C.A.  
12 Sec. 41. She sues for damages, as provided in that act,  
13 . . . for a permanent injunction prohibiting the refusal  
14 of her application, and for a declaratory judgment to  
15 establish her right to have her application considered  
16 without discrimination because of her race and color.  
17 Her father joins in the suit as a taxpayer, and asks  
18 that, if it be held that the library corporation is  
19 a private body not bound by the constitutional restraint  
20 upon state action, the Mayor and City Council of  
21 Baltimore be enjoined from making contributions to the  
22 support of the Library from the municipal funds on the  
23 ground that such contributions are ultra vires and in  
24 violation of the Fourteenth Amendment since they con-  
25 stitute a taking of his property without due process of

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1 law.

2 "The defendants in the suit are the library cor-  
3 poration, nine citizens of Baltimore who constitute  
4 its board of trustees, the librarian and the Mayor and  
5 City Council of Baltimore. The defendants first named  
6 defend on two grounds: (1) That the plaintiff was  
7 not excluded from the Training School solely because  
8 of her race and color; and (2) that the Library is a  
9 private corporation, controlled and managed by the  
10 board of trustees, and does not perform any public  
11 function as a representative of the state. The munici-  
12 pality joins in the second defense and also denies  
13 that its appropriations to the Library are ultra vires  
14 or constitute a taking of property without due process  
15 of law. The District Judge sustained all of the de-  
16 fenses and dismissed the suit."

17 The Court of Appeals reversed the decision, and in the  
18 course of its decision, stated:

19 "The District Court found that the Board of  
20 Trustees controls and manages the affairs of the  
21 Library as a private corporation and does not act in  
22 a public capacity as a representative of the state.  
23 Hence he held that the Board is not subject to the  
24 restraints of the Fourteenth Amendment which are  
25 imposed only upon state action that abridges the

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1           privileges or immunities of citizens of the United  
2           States or denies to any person the equal protection  
3           of the laws."

4           Then the court proceeds to discuss the private aspect  
5           of that library, and concludes with the following statement  
6           on that point, after examining the statutory make-up and back-  
7           ground of the Library, as it is found in the instruments of  
8           legal efficacy in the City of Baltimore, and so far as this  
9           case is concerned those principles are analogous, because  
10          here, while these are local political subdivisions for school  
11          purposes within the State of California, they are nevertheless  
12          instrumentalities of the State, and merely for the purpose of  
13          a more democratic distribution of educational facilities with-  
14          in areas of the State these local political subdivisions of  
15          school districts are set up, and there are steps even in that  
16          order of political subdivisions of the State. One of them  
17          was adverted to yesterday, when the office of County Super-  
18          intendent of Schools was described, and his functions and  
19          powers delineated by the School Code of the State of California,  
20          which was in part read into the record. In this Kerr case  
21          the Court of Appeals, then, after discussing the concrete  
22          situation that was before the court in that case, used some  
23          pertinent observations which I think illustrate principles  
24          which are in this case. Again, I am stating that that is not  
25          the final, ultimate decisive conclusion of the court, because

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1 it will require more consideration than can be given now to  
2 securely determine that matter.

3 "In any event, it is our duty in this case in  
4 passing upon the nature of the library corporation and  
5 its relationship to the state not to be guided by the  
6 technical rules of the law of principal and agent, but  
7 to apply the test laid down in Nixon v. Condon, 286  
8 U.S. 73, \* \* \* to which we have already referred.  
9 There the Supreme Court held that an executive committee  
10 of a political party, which has been authorized by a  
11 Texas statute to determine the qualification of the  
12 members of the party, was not acting merely for the  
13 political organization for which it spoke but was  
14 acting as a representative of the state when it ex-  
15 cluded Negroes from participation in a primary elec-  
16 tion. In declaring that this action was subject to  
17 the condemnation of the Fourteenth Amendment the court  
18 said . . . :

19 " \* \* \* The pith of the matter is simply this,  
20 that, when those agencies are invested with an author-  
21 ity independent of the will of the association in  
22 whose name they undertake to speak, they become to  
23 that extent the organs of the state itself, the  
24 repositories of official power. They are then the  
25 governmental instruments whereby parties are organized

1 and regulated to the end that government itself may  
2 be established or continued. What they do in that  
3 relation, they must do in submission to the mandates  
4 of equality and liberty that bind officials everywhere.  
5 They are not acting in matters of merely private con-  
6 cern like the directors or agents of business corpora-  
7 tions. They are acting in matters of high public  
8 interest, matters intimately connected with the capacity  
9 of government to exercise its functions unbrokenly  
10 and smoothly. Whether in given circumstances parties  
11 or their committees are agencies of government within  
12 the Fourteenth or the Fifteenth Amendment is a  
13 question which this court will determine for itself.  
14 It is not concluded upon such an inquiry by decisions  
15 rendered elsewhere. The test is not whether the  
16 members of the executive committee are the representa-  
17 tives of the state in the strict sense in which an  
18 agent is the representative of his principal. The  
19 test is whether they are to be classified as representa-  
20 tives of the state to such an extent and in such a  
21 sense that the great restraints of the Constitution  
22 set limits to their action.'"

23 And then this Fourth Circuit Court of Appeals concludes:

24 "We have no difficulty in concluding that in the  
25 same sense the Library is an instrumentality of the

1 State of Maryland. Even if we should lay aside the  
2 approval and authority given by the state to the Library  
3 at its very beginning we should find in the present  
4 relationship between them so great a degree of control  
5 over the activities and existence of the Library on  
6 the part of the state that it would be unrealistic  
7 to speak of it as a corporation entirely devoid of  
8 governmental character. It would be conceded that if  
9 the state legislature should not set up and maintain  
10 a public library and should entrust its operation to  
11 a self-perpetuating board of trustees and authorize  
12 it to exclude Negroes from its benefits, the act would  
13 be unconstitutional. How then can the well-known  
14 policy of the Library, so long continued and now  
15 formally expressed in the resolution of the Board,  
16 be justified as solely the act of a private organiza-  
17 tion when the state, through the municipality, con-  
18 tinues to supply it with the means of existence.

19 "The plaintiff has been denied the right to which  
20 he was entitled and the judgment must be reversed and  
21 the case remanded for further proceedings."

22 That is the latest judicial expression in the Federal  
23 Courts that I have found on situations, while not paralleling  
24 this because of the race feature, does enunciate well-settled  
25 principles and extends them in a way that may or may not

1 determine the jurisdictional aspect of this case.

2 On the other questions, the factual questions, there are  
3 inferences which are deducible from the evidence, which would  
4 be sufficient at this time to prevent the court from deciding  
5 the issue as the record is made up at this time. I shall  
6 not indicate any views on the weight of the evidence. This  
7 is not the time, nor the situation in the record to do so.  
8 I shall merely say that there are in several instances two  
9 lines of argument that may be reasonable, one looking to a  
10 segregation that will justify a finding of unjust discrimina-  
11 tion against Mexican-speaking persons who have children with-  
12 in school ages of the public schools of the State of California,  
13 and who are subject to the compulsory educational laws of the  
14 state. That being the case, the motion should be denied at  
15 this time, and it is so ordered.

16 Now, gentlemen, it is about twenty minutes of twelve,  
17 and perhaps --

18 MR. HOLDEN: Just for the record, I would like to make  
19 another little motion, if the court please.

20 THE COURT: Very well.

21 MR. HOLDEN: At this time I move that the action be  
22 dismissed against the Westminster School District upon the  
23 same grounds that I have indicated for the dismissal of the  
24 entire action, and, particularly, upon the ground that the  
25 evidence is insufficient to support a claim for which relief



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1 may be granted.

2 Shall I take them all, or does your Honor want to rule  
3 as I go along?

4 THE COURT: You can make a statement as to each of them  
5 separately.

6 MR. HOLDEN: As to the Garden Grove School District, I  
7 move to dismiss that action upon the ground and for the reason  
8 that the evidence fails to indicate or show any claim, in so  
9 far as said district is concerned, upon which relief may be  
10 granted in this action.

11 On the Santa Ana School District, I move that the action  
12 be dismissed as to the Santa Ana School District upon the  
13 ground that the evidence is insufficient to show a claim upon  
14 which relief may be granted in this action.

15 And I move to dismiss the action as against the El Modeno  
16 School District for the reason that the evidence wholly fails  
17 to show any claim for which relief may be granted in this ac-  
18 tion.

19 And in each of the said actions I move that they be  
20 dismissed upon the ground that there has been no evidence  
21 showing a conspiracy or an agreement or joinder or control of  
22 either of said districts as against any one of the others.

23 THE COURT: The motions are and each is severally denied,  
24 and an exception may be allowed.

25 I don't believe that you do need to take an exception.

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1 MR. HOLDEN: I don't believe so.

2 THE COURT: But you may have it. We will meet at  
3 2:00 o'clock, gentlemen.

4 (Whereupon, at 11:45 o'clock a. m. a recess was taken  
5 until 2:00 o'clock p. m. of the same day.)

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1 LOS ANGELES, CALIFORNIA, TUESDAY, JULY 10, 1945. 2:00 P. M.

2 - - -

3 THE COURT: Proceed, gentlemen.

4 MR. MARCUS: Your Honor, counsel and I have stipulated  
5 that this photostat copy is a true and correct copy of the  
6 original, which has been introduced heretofore, and we ask  
7 that we be permitted to offer the original of this thesis,  
8 and that the photostatic copy be admitted in evidence in lieu  
9 of the original.

10 THE COURT: Is that agreeable?

11 MR. HOLDEN: Except that we object, of course, to the  
12 materiality.

13 THE COURT: The objection is overruled.

14 THE CLERK: That will be Plaintiffs' No. 5 in evidence.

15 MR. HOLDEN: Mr. Kent.

16 JAMES L. KENT,

17 called as a witness by and on behalf of the defendants, having  
18 been previously duly sworn, testified further as follows:

19 DIRECT EXAMINATION

20 BY MR. HOLDEN:

21 Q Mr. Kent, you are the superintendent of the Garden Grove  
22 School, or School District?

23 A Yes, sir.

24 Q You are district superintendent?

25 A Yes, sir.

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1 Q Have you determined the number of pupils of Mexican  
2 descent who are transported from the Lincoln School area to  
3 the Hoover School?

4 A Yes, sir.

5 Q And how many pupils are there?

6 A Seven.

7 Q How are they transported to the Hoover School?

8 A By bus.

9 Q Where does the bus receive them?

10 A Right in front of their homes.

11 Q And leaves them directly at the Hoover School?

12 A At the entrance to the school.

13 Q How many pupils are there at the Hoover School?

14 A 292.

15 Q Of the pupils attending the Hoover School, how many  
16 of them live closer to the Hoover School than they do to  
17 either the Bolsa or the Lincoln School?

18 A All but 13.

19 Q How many children of Mexican descent, who live  
20 closer to the Bolsa School, are transported to the Hoover School?

21 A Six.

22 Q Have you checked where Jackson Street and Fifth  
23 Street is, -- that point?

24 A Have I checked?

25 Q Yes, as to distance of that point from the Hoover

1 School?

2 A I haven't checked it exactly, no.

3 Q Could you do that?

4 A I could.

5 Q With your map?

6 A In miles, I can give you an approximation.

7 Q And I want to ask you if it is closer to the Hoover  
8 School or to the Bolsa School?

9 A It is closer to the Hoover School.

10 Q It is closer?

11 A Yes.

12 Q That is the address Mr. Palomino testified about.

13 Now, how many pupils, who reside nearer the Hoover School,  
14 attend the Bolsa and the Lincoln School?

15 A Approximately 30.

16 Q How do they get to school?

17 A Transported by bus.

18 Q And they are all other than of Mexican descent?

19 A Yes, sir.

20 Q Now, you had a conversation with Mrs. Ochoa rela-  
21 tive to the enrollment of her children in the Lincoln School?

22 A Yes, sir.

23 Q And I think you have testified that the first con-  
24 versation was at your office?

25 A That's right.

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1 Q At that time did she have one of her children with  
2 her?

3 A Yes.

4 Q And at that time did you have any conversation with  
5 the child?

6 A No.

7 Q Did you say anything to the child?

8 A Yes.

9 Q And what did you say?

10 A I tried to say, "Hello."

11 Q Tried to say, "Hello"?

12 A And to get the child in conversation.

13 Q And what did the child say?

14 A I didn't have any response.

15 Q Now, after that you went to Mrs. Ochoa's home?

16 A Yes.

17 Q And will you tell us what conversation you had at  
18 her home?

19 A I went to Mrs. Ochoa's home to answer her question  
20 as to whether her children should go to the Lincoln School  
21 or the Hoover School, and advised her at that time that I  
22 would appreciate it if she would try her children in the  
23 Hoover School, and that, of course, she always had the privi-  
24 lege of coming to me, if she was not satisfied. But I asked  
25 her to try them in the Hoover School.

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1 Q And what did she say?

2 A She shrugged her shoulders, and she said, "I guess  
3 that's about what we will have to do."

4 Q How do you pronounce her name?

5 A Ochoa, I believe.

6 Q Ochoa. That is the lady that testified to here,  
7 and I have been calling her Ochoa?

8 A I believe that's right.

9 Q At the time that you were at her home, did you hear  
10 her conversing with any other children?

11 A Yes, sir.

12 Q In what language did she speak?

13 A Spanish.

14 Q Now, you have testified as an expert that there is  
15 some handicap in these children who speak the Spanish language  
16 in their home and are unfamiliar with the English language.  
17 What, in your opinion, would be the number of years of handi-  
18 cap?

19 A Well, I think it is a handicap -- you are merely  
20 speaking of English? You are merely asking about speaking  
21 English?

22 Q I am speaking of the number of years that you con-  
23 sider a Spanish-speaking pupil to be handicapped.

24 A Well, I don't know, --

25 THE COURT: Maybe Mr. Kent understands it, but that is an

v63 1 unintelligible question to me. It doesn't mean anything.

2 It is unintelligible.

3 MR. HOLDEN: What is that, your Honor?

4 THE COURT: I say that question is unintelligible to me,  
5 in the way it is framed. There could be some other meaning  
6 to it.

7 MR. HOLDEN: I thought we could simplify it.

45 8 THE COURT: Maybe he understands it now.

9 THE WITNESS: I am not quite sure, your Honor.

10 Q BY MR. HOLDEN: Well, speaking of a Spanish-speaking  
11 pupil, who speaks Spanish in his home and the parents do not  
12 speak English, do you have an opinion as to the general number  
13 of years such a pupil would be handicapped?

14 A I think he would definitely be handicapped through-  
15 out his school life.

16 THE COURT: Let us take two children when they attain  
17 what we call the age of reason, about the sixth year, when  
18 they are about ready for entry into school under normal condi-  
19 tions. Can you estimate the difference between the two  
20 children?

21 THE WITNESS: Of course, if you are taking two equal  
22 children, the fact that one has had this bilingual handicap  
23 in coming to school, he would have to overcome it, and it  
24 would retard him at least a year, I would say, in his beginning  
25 work.



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1 THE COURT: That would diminish, progressively, would it  
2 not, as time went along?

3 THE WITNESS: Depending on what he did outside of school.

4 THE COURT: Raise your voice a little so that counsel can  
5 hear you.

6 THE WITNESS: It would depend on what activities he  
7 entered into outside of school hours. We have the children in  
8 school only four hours out of the day, and out of those four  
9 hours they are not under the supervision of English-speaking  
10 teachers over three hours, and if in the other 19 or 20 hours  
11 he is continually speaking in Spanish and he is not making  
12 use of the English language, it will take a much longer time.

13 THE COURT: Wouldn't his assimilation efficiency be  
14 improved by putting him with children who speak English rather  
15 than with those who had the bilingual disqualification which  
16 you mention?

17 THE WITNESS: Well, your Honor, we don't have any that  
18 don't have a bilingual handicap.

19 THE COURT: There are some that attend the other school,  
20 the Lincoln School, who are not as deficient lingually as all  
21 of those who attend the Hoover School, who are Mexican children,  
22 aren't there?

23 THE WITNESS: Yes, but the inefficiency is different  
24 than a language handicap.

25 THE COURT: There are other features?

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1 THE WITNESS: There are many other features that enter  
2 into the picture.

3 THE COURT: Very well.

4 Q BY MR. HOLDEN: Assuming you should take all the  
5 children in the Garden Grove School District and place them  
6 in one building, and mix them all, and looking at it from an  
7 educational point of view, what would be the result of that?

8 A You would naturally get a screening, where they would  
9 find their own level, and you would get the same result as  
10 you would in any class. You would get a segregation on an  
11 adaptability or ability basis, and according to our tested  
12 records, there would be that segregation of the Mexican  
13 children even though we were to mix them.

14 Q In your opinion, the segregation according to abil-  
15 ity would place the Spanish-speaking pupils in a class by  
16 themselves?

17 A Yes. It would be a disadvantage to them to do that.

18 Q Assuming that you would take, for example, we will  
19 say take the fifth grade in a school where all the pupils  
20 were mixed, what, in your opinion, would be the result of  
21 this segregating according to ability?

22 A The result would be about 90 per cent of our low  
23 group, out of that mixing, would be the Mexican group.

24 Q And what would be the effect in a situation such as  
25 you have mentioned? What effect would that have on the

1 students in the higher levels?

2 A Well, some one is going to be neglected in such a  
3 system, and the natural inclination would be to give special  
4 instruction to those in the lower group, to try to bring them  
5 up to the level of the higher group, and that would retard  
6 those that would naturally be able to advance faster.

7 Q In a class segregated on the levels such as you have  
8 mentioned, and applying the teaching facilities that are re-  
9 quired for --

10 MR. HOLDEN: I withdraw that question.

11 MR. OGLE: If the court please, may I address the court?  
12 We are trying to arrive at a method of examination, and I  
13 realize the court's desire to have only one counsel interrogate  
14 a witness, but I wonder if I might ask the privilege of the  
15 court to interrogate this witness regarding this phase of it.

16 THE COURT: I think so. I think I should permit counsel  
17 to do so.

18 MR. OGLE: Otherwise it is taking the court's time for  
19 me to try to transmit my thoughts to Mr. Holden.

20 THE COURT: Yes, counsel seems to have been having some  
21 difficulty in just getting his thoughts in phrases that would  
22 make the situation, and maybe you can do it.

23 MR. OGLE: I think the trouble was that I was having some  
24 difficulty in trying to impart my thoughts to my associate.

25 THE COURT: We all have that difficulty at times, in

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1 phrasing our thoughts to bring out the facts we desire to  
2 elicit. What we want to get here is the facts and the easiest  
3 way to get them is the best way, of course.

4 MR. OGLE: Yes. I would appreciate the court's indul-  
5 gence.

6 THE COURT: Very well.

7 BY MR. OGLE:

8 Q Mr. Kent, I believe I understood your testimony to  
9 be, in effect, that if you were to commingle all students of  
10 the fifth grade in all of the schools, it would necessitate  
11 your method of teaching to be gauged so as to give to the  
12 lower group, shall we say, more time and effort, and thereby  
13 neglecting those of the higher I.Q. Is that the sum and  
14 substance of your thought?

15 A That is correct, yes, sir.

16 Q Now, let's take that same situation and the same  
17 set of facts, and say that you would raise your method of  
18 teaching so as to point, shall we say, at the middle of that  
19 group, what would be the rapidity of the grasping of the  
20 subjects taught of those in the lowest group?

21 A Well, they would naturally fall behind.

22 Q And taking that same consideration, if you were  
23 pointing your method of teaching at the middle group, so to  
24 speak, what would be the effect as to the highest I.Q. group  
25 in that same classroom?

1           A     Well, they would be neglected, then.

2           Q     Then taking the same parallel situation, where all  
3     in the fifth grade were commingled, and supposing that you  
4     should raise your method of teaching even to a higher level  
5     or more rapid rate, so as to give to those of the higher  
6     I.Q. an opportunity to grasp more than they would otherwise  
7     grasp by such more rapid teaching, shall we say, what then  
8     would be the effect, advantage or disadvantage, of those in  
9     the lower I.Q. group in that grade?

10          A     They would become entirely neglected in their  
11     studies.

12          Q     Then you feel, Mr. Kent, that your present method  
13     of segregation, coupled with the method of teaching, as  
14     segregated, would be a greater advantage to the Mexican  
15     children than would be if you were to commingle them?

16          A     Yes, sir.

17          Q     Mr. Kent, in taking a classroom of pupils graduat-  
18     ing from the grade school, from the eighth grade, do you feel  
19     that all pupils so graduating leave that class with the same  
20     amount of knowledge acquired, or do some leave that class with  
21     a greater amount of knowledge acquired?

22          A     There is naturally a spread. They don't all acquire  
23     the same.

24          Q     That is, you mean some would leave with a greater  
25     amount of knowledge than would others?

1 A Yes.

2 Q Mr. Kent, have you had opportunity to observe the  
3 homes or visit any of the homes of the Mexican students in  
4 your district?

5 A Yes, sir.

6 Q Approximately how many?

7 A You mean inside, or to the door?

8 Q To the door, to visit them.

9 A Oh, I have visited in the district, I would say,  
10 90 per cent of all the homes. There are some scattered that  
11 I haven't reached.

12 Q What was your purpose in making such visitations?

13 A Oh, mostly it has come under my attendance supervi-  
14 sion, in having to go out and get the children and get them  
15 in school.

16 Q Mr. Kent, do you feel that the majority of the  
17 Mexican students attending Hoover School are satisfied or  
18 dissatisfied?

19 MR. MARCUS: I move that be stricken as calling for the  
20 witness' conclusion.

21 THE COURT: I think there should be some foundation laid  
22 for it, if he has made any analysis.

23 MR. OGLE: I think the court is correct in that.

24 Q BY MR. OGLE: Have you had opportunity, Mr. Kent,  
25 to talk with the pupils of the Hoover School regarding their

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1 satisfaction or dissatisfaction of attendance at the Hoover  
2 School?

3 A I have talked to them, not as an entire group, but  
4 I have talked to them every week as I go down visiting in the  
5 classes, and talking to the boys in the halls and in their  
6 washrooms, and I have never had any dissatisfaction shown.

7 Q Have you had --

8 MR. MARCUS: Just a minute. I move the last portion be  
9 stricken as calling for the witness' conclusion.

10 MR. OGLE: That he has never had any dissatisfaction  
11 shown, that may go out.

12 MR. MARCUS: That question calls for a yes or no  
13 answer.

14 THE COURT: That may go out.

15 Q BY MR. OGLE: Have you ever had any of the students  
16 express a dissatisfaction --

17 A No, sir.

18 Q -- at attendance at Hoover School?

19 A No, sir.

20 Q Have you had any of the parents express dissatisfac-  
21 tion to you, other than Mrs. Ochoa, for attendance at Hoover  
22 School?

23 A No, sir.

24 MR. MARCUS: Just a minute. I move the answer be  
25 stricken for the purpose of an objection.

v71

1 THE COURT: Yes, it may go out.

2 MR. MARCUS: I object to it on the ground there is no  
3 proper foundation.

4 THE COURT: I think he is trying to negative it rather  
5 than be affirmative.

6 MR. OGLE: That is correct.

7 THE COURT: So it would not be a question of foundation.  
8 Foundation is only to be laid when there is a thought to be  
9 elicited from some conversation that is adverse to the inquiry  
10 that is being made by the questioner. That is not the case  
11 here. He is seeking to show, at least I assume so, the  
12 negative. Overruled.

47

13 MR. MARCUS: The only purpose I had in making the objec-  
14 tion was that he used the word "satisfaction."

15 MR. OGLE: I said, "dissatisfaction."

16 MR. MARCUS: He used the word "dissatisfaction."

17 THE COURT: If they said anything, that would be correct.  
18 I don't know. Maybe we had better consider that you lay a  
19 foundation, if he talked to any of them.

20 MR. OGLE: I shall lay a foundation, if that is what  
21 counsel desires.

22 MR. MARCUS: I will withdraw the objection in the inter-  
23 ests of time.

24 THE COURT: I would expect that counsel would expect a  
25 statement from the witness, from the question, that there had



v72

1 never been any dissatisfaction expressed by any of the student  
2 body, -- I would expect that is what you would expect to  
3 elicit.

4 MR. OGLE: That is correct.

5 THE COURT: In that case there could not be any more  
6 foundation, specifically, than to ask him that question.  
7 Overruled.

8 MR. OGLE: Will you read the last question and answer?

9 (Question and answer read by the reporter.)

10 Q BY MR. OGLE: Mr. Kent, you have already testified  
11 that there are some students of Mexican descent attending  
12 Lincoln School, -- is that correct?

13 THE COURT: No.

14 MR. OGLE: The Fitz School.

15 Q BY MR. OGLE: At the Fitz School are there some?

16 A Yes, sir.

17 Q How large a school is the Hoover School, Mr. Kent?

18 A 292 pupils.

19 Q How large is the building? How many rooms, approx-  
20 imately?

21 A Eight classrooms.

22 Q Eight classrooms?

23 A Yes, sir.

24 Q And the pupils are divided approximately according  
25 to that ratio, according to grades, are they?

v73

1 A Yes.

2 Q What facilities do they have at the Hoover School,  
3 that is, in the way of or for the convenience of students?

4 A We have the same facilities as at any other school,  
5 with the additional facilities of showers, and we furnish  
6 them with towels, soap, and the rest of the equipment is the  
7 same as any school.

8 Q What is the purpose of that?

9 A We have felt that the children of the Mexican homes  
10 do not have the facilities in their homes, so we have made  
11 it available to them. They are not forced to take their  
12 showers, but we recommend it, and we have tried to carry on  
13 a program of health hygiene, and have made these facilities  
14 available for the children, and they are using them.

15 MR. OGLE: That is all.

16 THE COURT: Cross-examine.

17 CROSS EXAMINATION

18 BY MR. MARCUS:

19 Q Mr. Kent, did you say that in August of 1944 Mrs.  
20 Ochoa came to your office?

21 A Mr. Marcus, I didn't state the month; I believe it  
22 was September.

23 Q In September, 1944?

24 A Yes.

25 Q She came to your office?

v74

1 A Yes.

2 Q Who came with her at the time?

3 A I believe there was one child with her.

4 Q Are you sure that there was one child?

5 A I remember there was one. I don't know whether  
6 there was any more or not.

7 Q Isn't it a fact that she and her husband came to your  
8 office, and that the child did not come?

9 A I don't remember her husband.

10 Q You don't remember her husband?

11 A No, sir.

12 Q How old was the child?

13 A About six or seven, I would judge.

14 Q You said you had a conversation with the child?

15 A No, I tried to have a conversation with the child,  
16 but she was either shy, or didn't understand me. I don't know  
17 which.

18 Q You don't know which, whether she was shy or didn't  
19 understand?

20 A That's right.

21 Q You said, "Hello" to her?

22 A Yes.

23 Q And she didn't reply?

24 A That's right.

25 Q You didn't give her any test, or any examination,

1       except to say "Hello," did you?

2           A       No, sir.

3           Q       And did you, upon the basis of that examination,  
4       of saying "Hello" and the child didn't reply, determine the  
5       child should go to the Hoover School?

6           A       No, I didn't.

7           Q       Isn't it a fact that at that time you told her she  
8       would have to take the child to the Hoover School?

9           A       No, I didn't.

10          Q       You did not admit her?

11          A       I wasn't admitting any children at that time. This  
12       was before school opened.

13          Q       Before school, then, she had asked your permission  
14       to send her child to that school?

15          A       She asked me if it was possible to enter the child  
16       in the Lincoln School.

17          Q       And what did you say?

18          A       I told her I would have to find out, that I had only  
19       been on the job two days, when Mrs. Ochoa came, and I didn't  
20       know the policy of the district.

21          Q       You didn't know the policy of the district at that  
22       time?

23          A       No, sir.

24          Q       You subsequently did determine the policy of the  
25       district?

v76

1 A I talked with the Board, and they told me.

2 Q And the Board advised you that the children of  
3 Mexican descent should go to the other school?

4 A No, sir.

5 Q They didn't?

6 A No, sir.

7 Q What did you determine as the policy?

8 A I think it was read here. I can't quote it exactly,  
9 except that children of non-English-speaking parents should be  
10 enrolled in the Hoover School, taking into consideration their  
11 knowledge of the English language, and their adaptability to  
12 the subject matter, and the proximity of their home to the  
13 school.

14 Q You say children of non-English-speaking parents.  
15 Did you talk to Mrs. Ochoa?

16 A I don't want to quibble. What I mean is Mexican-  
17 speaking parents.

48 18 Q You mean if they spoke Spanish, that meant they  
19 went to the other school?

20 A No, sir.

21 Q Then what do you mean, sir?

22 A Well, I meant what I said.

23 Q You said of non-English-speaking parents the children  
24 should go to the Hoover School. Do you mean by that that the  
25 parents did not speak the English language?

v77

1 A No.

2 Q What do you mean by "non-English-speaking parents"?

3 A I have just explained to you, Mr. Marcus, that was  
4 probably a slip of the tongue. I am speaking of parents who  
5 spoke both Spanish and English. We refer to them as Mexican-  
6 speaking, rather.

7 Q Then, Mr. Kent, tell me what you remember of the  
8 policy of the Board, if that was an inadvertence on your part.  
9 What was the policy of the Board?

10 A I have just related it. Do you want me to do it  
11 again?

12 Q Yes. Will you, please, sir?

13 A We were to take into consideration the ability of  
14 the child to speak English, and the proximity of the home,  
15 the adaptability of the child to the assimilation of the  
16 school subjects taught, and that if we felt it advisable, we  
17 should send the children to the Hoover School where we have  
18 special teachers, and if we felt they could do the subject-  
19 matters, or they were sufficiently adapted, they were to be  
20 given an opportunity in the other schools upon request.

21 Q However, if there was no request made, the children  
22 of Spanish descent were to go to the Hoover School?

23 A No, no. Would you like me to explain that further?

24 Q Yes, sir.

25 A What you asked was, if no requests were made they

1 would automatically go to the Hoover. That is not true.  
2 When they start school, if they were able to come up to the  
3 English-speaking students, or Lincoln School students, I had  
4 the right to place them in the Lincoln School. But in this  
5 particular case, I believe, that it was merely a trial, and  
6 I placed Mrs. Ochoa's children there, and during the year  
7 I had 1300 children to think about, and I forgot completely  
8 about Mrs. Ochoa, but if she had made a request, if Mrs.  
9 Ochoa had, we certainly would have granted it. I have never  
10 had a request from Mrs. Ochoa during the entire year.

11 Q Do you remember going to the home of Mrs. Ochoa?

12 A Before school?

13 Q Before school.

14 A Yes.

15 Q That was after the time she made the visit to your  
16 office?

17 A The next day, I believe.

18 Q And you told her she had to take the children to the  
19 Hoover School?

20 A No, I asked her if she would.

21 Q You asked her if she would?

22 A Yes.

23 Q Didn't you tell her at that time that the Hoover  
24 School was for Mexican children, and that was where she would  
25 have to take her children?

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1           A     I told her that there were Mexican children in  
2 attendance at the Hoover School, and we had special facilities  
3 at the Hoover School, and I asked her if she would enroll her  
4 children there.

5           Q     And didn't you tell her at that time she couldn't  
6 take her children to the other school?

7           A     No. I asked her if she would take her children to  
8 the Hoover School.

9           Q     What did she say to that, when you asked her if she  
10 would do that?

11          A     She shrugged her shoulders and said, "I guess that's  
12 about what we will have to do."

13          Q     You had knowledge, when you made that statement to  
14 her, that she wanted her child in the Lincoln School, or in  
15 the other school?

16          A     I did want to try them in the Hoover School, yes.

17          Q     You spoke to her in the English language, did you  
18 not?

19          A     Yes, sir.

20          Q     And you had no difficulty in understanding her?

21          A     No.

22          Q     Do you speak the Spanish language?

23          A     No, I don't.

24          Q     You took no courses in the Spanish language at all?

25          A     I took one year of Spanish.



v80

1 Q And you were unable to speak it?

2 A I was unable to speak it.

3 Q Now, you stated in reply to questions of Mr. Ogle  
4 that a child was handicapped during his entire school life  
5 by the fact that he spoke the Spanish language.

6 MR. OGLE: I object to that as assuming something not in  
7 evidence.

8 THE COURT: I don't know that he stated that way. He  
9 thought that the child, as compared with one who was not bi-  
10 lingual, but who was nurtured and housed in a home where  
11 English was spoken, would be retarded. That was what the  
12 court understood here.

13 MR. MARCUS: He used the word "handicapped," and that is  
14 the reason I used that term.

15 THE COURT: I don't know as it makes much difference as  
16 to the word. The meaning is the same. If he would be handi-  
17 capped, he would be retarded, under an educational system  
18 where the English language is the basis of the training.

19 Q BY MR. MARCUS: Mr. Kent, in your opinion, is a  
20 child retarded because of the fact that he speaks or is a  
21 bilingual, in other words, speaks Spanish and English?

22 A That is one of the factors, yes, sir.

23 Q Now, isn't it a fact, Mr. Kent, that a child has a  
24 more comprehensive knowledge, at least linguistically speaking,  
25 because of the fact that he is able to speak both Spanish and

v81

1 English?

2 A I would say not.

3 Q You would say not. Do you say a person who speaks  
4 three or four or five different languages was not as advanced  
5 as a person who spoke only one language?

6 A Well, it depends on what you are trying to do.  
7 In the schools we are <sup>not</sup> teaching languages. In the schools we  
8 are trying to arrive at an educational cultivation of our  
9 American ideals, and the social advancement of these pupils.  
10 We are not teaching them three or four languages. And when  
11 they come with a bilingual or a trilingual handicap, it makes  
12 it much harder for them, in comparison with the other children.

13 Q You mean to say because the child speaks the English  
14 and the Spanish language the child cannot understand the  
15 American ideals?

16 MR. OGLE: We object to that as having been gone over  
17 and over, on the first examination, and it calls for a conclu-  
18 sion of the witness.

19 THE COURT: Overruled. I think I will let him answer  
20 that.

21 THE WITNESS: The question, again?

22 (Question read by the reporter.)

23 THE WITNESS: It doesn't mean that he cannot, but it  
24 does mean in the teaching of these ideals it makes a great  
25 handicap for him, because he has to start with that handicap

1 of forgetting what he has learned the first six years of his  
2 life or seven years, or wherever he starts, and he has to  
3 start out on our culture.

4 Q BY MR. MARCUS: Well, is not our culture a  
5 California culture?

6 A No, no. We are not teaching California education  
7 in our schools. We are teaching world education.

8 Q World education?

9 A Education that has come down to us from all races.

10 Q Don't you teach the history of California in our  
11 schools?

12 A In the fourth grade?

13 Q The fourth grade.

14 A Yes.

15 Q Well, a child that understands the Spanish language  
16 in the fourth grade and understands the English language,  
17 wouldn't he be better able to understand the cultural back-  
18 ground and history of our State of California than one who  
19 only had the English language viewpoint?

20 A I don't think he would be any better able to under-  
21 stand it, no.

22 Q You, I presume, have read the cultural background  
23 of our State of California, have you not?

24 A I have studied the background of California, yes.

25 Q And you have studied the history of the State of

1 California, have you not?

2 A Yes.

3 Q And you appreciate and have studied the Mexican and  
4 the Spanish history of the State of California?

5 A Yes.

6 Q And don't you think it is an advantage to a student  
7 or a child to understand and appreciate the Spanish cultural  
8 background of the State of California?

9 A It would be an advantage, but these Mexican children  
10 do not come with that type of understanding, with that back-  
11 ground of culture.

12 Q In what particular don't they come with that back-  
13 ground or that understanding?

14 A I think probably our American children of the Anglo-  
15 Saxon race come with a very much better understanding of  
16 California history than do our Mexican children.

17 Q In what particular, sir?

18 A Because our Anglo-Saxon children come having heard  
19 stories, having read stories or had them read to them, of  
20 little things that have taken place in our American history  
21 and our California history, and we find, when we interrogate  
22 our Spanish-speaking children, that they do not have that  
23 background that has been gotten from the parents. They don't  
24 have it.

25 Q You have interrogated children about the background

1 of the stories that they have heard --

2 A Mr. Marcus --

3 Q -- concerning the State of California?

4 A I am an educator. When I talk to a child, I can  
5 find out many things without saying, "What do you know about  
6 the background of California?" I can find out through a con-  
7 versation what he does know and what he doesn't know.

8 Q Well, here, he knows the stories of California.  
9 You would have to interrogate him about that, wouldn't you?

10 A Not necessarily in a direct conversation, no.

11 Q Well, indirectly you would have to ask him about it,  
12 if you were interested.

13 A I can indirectly find out, yes.

14 Q As to whether he knew anything of the cultural back-  
15 ground of our state?

16 A Yes, I would find out indirectly.

17 Q And you feel that the children who come to school  
18 of Anglo-Saxon descent are better able to understand and  
19 appreciate the history and background of cultural development  
20 of our state than a child of Mexican descent?

21 A I definitely do.

22 Q That is because of the Mexican child's bilingual  
23 handicap; is that it?

24 A Not entirely, no, sir.

25 Q Or, partly?

v85  
Z50

1 A Partly, yes, sir.

2 Q What are the other difficulties, or, what are the  
3 other handicaps besides the linguistic?

4 A The very things we have been talking about, the  
5 American heritage that the Anglo-Saxon child comes to school  
6 with, his knowledge of past events that have been handed down  
7 in the family, the American heritage.

8 Q You mean the nursery rhymes that have been derived  
9 from the English system?

10 A That is part of it.

11 Q You mean that partly?

12 A Partly, yes, sir.

13 Q And you think that the Anglo-Saxon child, by reason  
14 of that heritage, is superior and that the Mexican child is  
15 inferior?

16 A No, I don't.

17 Q You don't?

18 A I don't believe they are inferior, no, sir. I  
19 believe they need special attention.

20 Q You don't believe that the Mexican child is inferior  
21 intellectually to the Anglo-Saxon child?

22 A It depends on what you mean by "inferior."

23 Q You have used the expression "inferior."

24 A I am asking what you mean by "inferior."

25 Q Well, do you mean inferior intellectually?

1           A     Well, your Honor, I will have to explain that. Whom  
2 are you comparing?

3           Q     The child of Mexican descent with the child of  
4 Anglo-Saxon descent, in the details you have used as to a  
5 child, an Anglo-Saxon child.

6           A     You are trying to compare them intellectually. You  
7 can't do it.

8           Q     Now, what is the distinction?

9           A     The distinction comes in many other factors, and  
10 when you are comparing the factors --

11          Q     Well, sir, I am not interested in the factors. Will  
12 you tell me what is the distinction, whether the one is  
13 inferior or the other is superior? That is all I want to  
14 know, sir.

15          THE COURT: That would mean those distinctive qualities  
16 would be the factors.

17          MR. MARCUS: That is right, and having figured those  
18 up in his own mind, --

19          THE COURT: I think you are talking too fast. You said  
20 you didn't care about the factors. It is the factors you do  
21 care about.

22          MR. MARCUS: I do care about the factors, but I want him  
23 to determine those in his own mind.

24          THE COURT: Then you spoke before you thought?

25          MR. MARCUS: That is right.

v87 1 THE COURT: Now, let us have the question so that it  
2 will be the way you want it and be intelligible.

3 Q BY MR. MARCUS: Mr. Kent, in your opinion, having  
4 considered all the factors with respect to the children of  
5 Mexican descent and the children of Anglo-Saxon descent, in  
6 your opinion, is the child of Anglo-Saxon descent superior  
7 intellectually to the child of Mexican descent?

8 A Well, let me say I can't answer that yes or no. If  
9 you are speaking of the I.Q., that is one thing. If you are  
10 speaking of a mental age, that is another thing. Now, which  
11 do you refer to?

12 Q Could you answer my question, sir?

13 A I can't, to answer it yes or no.

14 Q You can't give us a direct answer to that question?

15 A That is a psychological question, and I can't answer  
16 it.

17 Q Well, let's take it up in the manner in which you  
18 suggest. From an I.Q. standpoint, what would be your answer?

19 A I would say they would be the same.

20 Q They would be the same. There is no intellectual  
21 difference?

22 A There would be the higher and lower end, but there  
23 would be the same curve.

24 Q On the average they would be the same?

25 A No, not on the average.



v88

1 Q You said they would be the same.

2 A I say your curve would be the same, but your average  
3 would not be the same.

4 Q What do you mean, the average would not be the same?

5 A Well, your average would be lower in the Mexicans,  
6 for instance, than they are in the Anglo-Saxons.

7 Q Then your opinion is that the Anglo-Saxon child, on  
8 the average is lower intellectually from an I.Q. standpoint  
9 than a child of Anglo-Saxon descent?

10 MR. OGLE: I object to that as assuming something not in  
11 evidence and not testified to. He got the Anglo-Saxon child  
12 in place of the Mexican child.

13 THE COURT: Read that question, Miss Reporter.

14 (Question read by the reporter.)

15 THE COURT: You haven't got that the way you want it,  
16 have you?

17 MR. MARCUS: No.

18 Q BY MR. MARCUS: -- that the Mexican child is lower  
19 intellectually than the child of Anglo-Saxon descent?

20 A Are we speaking of averages?

21 Q Yes, sir, we are.

22 A Yes, I would say they are.

23 Q You have made these I.Q. tests, sir?

24 A No, sir.

25 Q Where did you get that information?

v89

1 A From the County, who gives us the tests.

2 Q Do you have the tests with you?

3 A Not all of them, no, sir.

4 Q Do you have any of them with you?

5 A Yes, I have some.

6 Q Do you know how these tests were taken?

7 A No, I have nothing to do with the giving of those  
8 tests.

9 Q This is information you gathered from some other  
10 source and not information you have obtained yourself?

11 A We have a statistician that is working for the County  
12 of Orange, and this is the result of the tests that were given  
13 and they are tabulated by machine.

14 Q This was no test or examination that you personally  
15 made?

16 A Not that we are talking of here, no.

17 Q Let me see those tests that you have.

18 A They are in my brief case right there.

19 THE COURT: You may step down and get them, if you want  
20 to.

21 MR. OGLE: If the court please, this appears to be not  
22 the test itself, but a tabulation as to various individuals  
23 on the test.

24 Am I correct on that?

25 THE WITNESS: That's right.

v90

1 MR. OGLE: And he has already testified that he has made  
2 no test, no examination.

3 MR. MARCUS: I submit, your Honor, the record speaks  
4 for itself.

5 THE COURT: Yes, it does.

6 Q BY MR. MARCUS: Is this the test that you spoke of,  
7 the test that you have just testified to?

8 A That is one test.

9 Q Well, is this the one you spoke of, sir, a moment  
10 ago?

11 A I had reference to several tests.

12 Q You said you had the I.Q. tests with you, as I  
13 understand it?

14 A No, sir, I do not.

15 Q Then you do not have any I.Q. tests with you?

16 A No, sir.

17 Q -- as stated in response to the question I asked  
18 before?

19 A I do not have any I.Q. tests with me.

20 Q Do you have any I.Q. tests any place?

21 A Yes, sir.

22 Q Where are they?

23 A In the County office.

24 Q What do they refer to, these that you have here?

25 A This is the second and third grade of the Hoover

v91

1 School, and gives the chronological age, and the mental age,  
2 and the approximate I.Q. age.

3 Q Does that assist you any in determining whether the  
4 Mexican child is inferior, on an average, to the Anglo-Saxon  
5 child, under the I.Q. tests?

6 A Yes, it does.

7 Q How does that determine it, these tests here? Is  
8 there any comparison here between any other grade?

9 A I haven't the others with me. I merely grabbed  
10 these as I was coming out this morning, and I didn't bring the  
11 others. But here is the difference. Here is the chronological  
12 age of 10, with a mental age of 7. There is a 3-year retarda-  
13 tion, and yet they are in the second grade. Now, a 10-year-  
14 old should not have that.

15 Here is 10.8, chronological age, a child with a 7.7  
16 mental age.

17 Now, as you go down here you will find there is one child  
18 over 100. Now, 100 is a good average intelligence quotient  
19 but the intelligence quotient cannot be changed. In other  
20 words, if we had one here with an intelligence quotient of  
21 120, of the genius class, he could still have a mental age of  
22 3 years old.

23 Q When was this test prepared, sir?

24 A 10-6.

25 Q 10-6?

1 A October 6th.

2 Q 1944?

3 A Yes, sir.

4 Q This was approximately one month after you entered  
5 the service of the County District?

6 A Yes, sir.

7 Q Do you have any other tests besides those?

8 A Yes.

9 Q Made since that time?

10 A Yes, sir.

11 Q Of Mexican children?

12 A All children.

13 Q As compared to the other children of Anglo-Saxon  
14 descent?

15 A We don't compare them, as you indicate. We have  
16 them separate for our own comparison. We don't draw the two  
17 sheets, comparing them.

18 Q Is this an I.Q. test, or what is the name of it?

19 A It is the Kuhlmann-Anderson test. It arrives at  
20 an I.Q., yes.

21 Q What is the I.Q. there? Can you determine that from  
22 this grading sheet?

23 A Of what?

24 Q Of the students?

25 A The average?

v93

1 Q That is right, the average.

2 A Looking at these sheets, I would say the average  
3 would be around 80.

4 Q And what grade is that in?

5 A That is the third grade.

6 Q In the Garden Grove --

7 A Hoover School.

8 Q -- Hoover School?

9 A Yes, sir.

10 Q Have you determined the I.Q. tests of the children  
11 attending the Franklin School in the same grade?

12 A We don't have a Franklin School.

13 Q Or, the --

14 A Lincoln School?

15 Q -- Lincoln School?

16 A Yes.

17 Q Do you have those tests?

18 A I don't have them with me.

19 Q Do you have any independent knowledge at this time  
20 of the I.Q. tests, what the I.Q. tests were of the children in  
21 the same grade at the Lincoln School?

22 A Yes.

23 Q What was the grade?

24 A It was about a year higher than this.

25 Q What was the test, though?

v94

1 A The same test.

2 Q Well, what was the grade, the approximate grade?

3 A What do you mean, grade?

4 THE COURT: What do you mean, Mr. Marcus?

5 Q BY MR. MARCUS: Well, the test. You said it was  
6 80 in this test for these children.

7 A That is an average of this particular class you  
8 spoke of.

9 Q What is the average in the other school?

10 A It would run around 90, 95 to a hundred.

11 Q You don't remember it now, or you say it was 90,  
12 95 or 100?

13 A No, I wouldn't want to say definitely what it was.

14 Q That is the best information you can give us, upon  
15 what you have based your opinion respecting the I.Q. test of  
16 children of Mexican descent as compared with that of children  
17 of Anglo-Saxon descent, intellectually speaking?

18 A I would say they were at least a year advanced,  
19 yes.

20 Q And the basis of your conclusion is the testimony  
21 that you have given here today?

22 A That is one phase of it.

23 THE COURT: I think we had better have those sheets  
24 marked for identification, Mr. Marcus. I don't know whether  
25 you want to offer them or not.

v95

1 MR. OGLE: No objection.

2 THE COURT: What number will they be, Mr. Frankenberger?

3 THE CLERK: How many are there?

4 MR. MARCUS: Two of them.

5 THE COURT: Two of them.

6 THE CLERK: Plaintiffs' 6 and 7.

7 Q BY MR. MARCUS: Based upon that I.Q. test, Mr. Kent,  
8 in your opinion, you feel that the children of Mexican descent  
9 therefore should be segregated?

10 A No, sir. I wouldn't base any segregation on purely  
11 an I.Q. test.

12 Q Why wouldn't you do that on the basis of an I.Q.  
13 test?

14 A It doesn't tell the whole story.

15 Q An I.Q. does not tell the whole story, does it?

16 A No, sir.

17 Q What other factors do you consider, then, besides  
18 the I.Q. test?

19 THE COURT: You have been over that two or three times.

20 MR. MARCUS: I am sorry to have disturbed you, Mr. Kent.

21 THE WITNESS: That's all right.

22 THE COURT: I don't think you disturbed him at all, but  
23 you have been over it a couple of times.

24 MR. MARCUS: Well, he sighed, your Honor, and I thought  
25 that was provoked by my question.



v96

1 Q BY MR. MARCUS: You say you have spoken to a great  
2 majority of the Mexican children that have attended the Hoover  
3 School?

4 A Yes, sir.

5 Q Did you talk to them about their desire of going to  
6 the other school?

7 A No, sir.

8 Q Did you speak to the children in the first grade?

9 A I talked to practically every child in the Hoover  
10 School at one time or another.

11 Q And at no time did you have a conversation with  
12 them with respect to sending them to the other school?

13 A There would be no reason for it.

14 Q No reason for it?

15 A No, sir.

16 Q But even though, in the course of this conversation,  
17 they expressed no dissatisfaction about attending the Hoover  
18 School, --

19 A None have.

20 Q -- as a matter of fact, there was no discussion  
21 about attending the other school brought up --

22 A No.

23 Q -- in any conversation whatsoever?

24 A No, sir.

25 Q So there was no occasion for any child to have

v97

1 requested to be transferred, was there?

2 A There was no occasion to be.

3 Q You were asked certain questions by Mr. Ogle on  
4 direct examination about grouping of children, and the retarda-  
5 tion of children in certain classes, if you were required to  
6 have the teachers spend more time with the lower groupings of  
7 children in the same class that it would lessen the prospects  
8 or lessen the advantages to the older children, and would  
9 thereby -- I should not say older children, but the children  
10 more advanced in the group, and you would thereby lessen their  
11 ability to proceed at a faster pace. Is that correct?

12 A Yes, that would be true.

13 Q Now, Mr. Kent, is it not true that in every school  
14 room there are some children that are more advanced than others?

15 A Oh, yes.

16 Q And, of necessity, you are required to spend more  
17 time with children in every school room who are less advanced  
18 than with others?

19 A No, that comes in the general line of our teaching.  
20 There isn't a group where we would have to spend a special  
21 amount of time.

22 Q You don't spend a special amount of time in any  
23 classroom, do you, sir?

24 A Yes, sir.

25 Q In what classroom?

v98

1 A In the Hoover School, especially.

2 Q Well, that is as a classroom, itself?

3 A Yes, sir.

4 Q You have no particular students you pick out and  
5 spend more time with?

6 A We do in the Hoover School.

7 Q You do?

8 A Yes, sir.

9 Q Now, couldn't you spend that same time with the  
10 same pupils at the Hoover School if they were mixed together  
11 with the other children in the other school?

12 A Can't we spend the time?

13 Q Yes, sir.

14 A We could spend the time, but we can't because we  
15 don't have them there.

16 Q And that is because the children of Mexican descent  
17 attend the Hoover School?

18 A That is why they are there, yes.

19 MR. MARCUS: I think that is all.

20 MR. OGLE: Just one question.

21 REDIRECT EXAMINATION

22 BY MR. OGLE:

23 Q Counsel has asked, as I recall, if it were not a  
24 fact that there are in all classrooms a higher and lower level  
25 of intelligence in that same classroom. I will ask you this

v99

1 question: Supposing that in the fifth grade, for example, in  
2 the Hoover School, as it now exists, that you were to take  
3 the fifth grade from the Lincoln School and put <sup>it</sup> therewith and  
4 commingle, would the latitude between the higher mentality  
5 and the lower mentality, would that latitude increase or  
6 decrease?

7 A The latitude. You mean the entire spread of the  
8 intelligence of that class?

9 MR. OGLE: May I reframe that question, if your Honor  
10 please?

11 THE COURT: Yes.

12 Q BY MR. OGLE: Taking the fifth grade in the Hoover  
13 School at the present time, as it now exists, there is a  
14 range or latitude between the lowest mentality --

15 A Yes.

16 Q -- and the highest mentality. Then if you were to  
17 take the fifth grade from the Lincoln School and place there-  
18 with, commingle it, would the range or latitude increase or  
19 decrease?

20 A Oh, I see what you mean. There would an increase.  
21 There would be that overlapping, of course.

22 MR. OGLE: That is all.

23 THE COURT: May I have those two exhibits for a moment?  
24 (The documents referred to were handed to the court.)

25 Q BY THE COURT: What does the caption "M.A." or "M.U."

v100

1 here mean?

2 A That is the mental age or mental usage, you see.

3 Q I think I understand it now. Let's take Exhibit 7  
4 for identification, which we will designate as the third  
53 5 grade, room 3 of the Garden Grove Hoover School. I note among  
6 those 15 pupils who have an I.Q. of 90 per cent and four have  
7 an I.Q. of 95 per cent or more, and one has an I.Q. of 109.  
8 Would there be anything detrimental to sound educational  
9 policy in the public school system in California to transfer  
10 those pupils to the Lincoln School?

11 A Yes, your Honor. There is very little correlation  
12 between a mental age and an I.Q. An I.Q. is an evasive thing,  
13 that shows a potentiality of holding knowledge. It doesn't  
14 mean they have acquired that knowledge. A child with an I.Q.  
15 of 125, which would show that he had a potentiality of being  
16 a genius, might not have had the opportunity of exploiting  
17 that natural ability which he has, and he may only have a  
18 mental age of three. You see what I mean? It doesn't depend  
19 upon the I.Q.

20 Q If that is true, why wouldn't it be advantageous to  
21 him at least, to develop that pupil, leaving out of considera-  
22 tion every other thing except the pupil himself, why would it  
23 not be advantageous to him to change the policy, and instead  
24 of keeping him at the Hoover School, give him an opportunity  
25 to either go forward or to remain stationary or to retard in a

v101

1 school where the others had a comparable I.Q.?

2 A What would be the objection to it?

3 Q No. I think I framed the question just as I want  
4 it.

5 Will you read it, please?

6 (Question read by the reporter.)

7 A Well, that would bring in some other factors. It  
8 would not be an advantage. We will take a high I.Q. Mexican  
9 child, a child who stands above his class. It would not be  
10 an advantage to him to put him in a class of comparable I.Q.  
11 Anglo-Saxon children, because you would have to bring in the  
12 other factors which would naturally be an embarrassment, which  
13 would naturally be a feeling of inferiority, to put him with  
14 children of a higher economic standpoint and to be in competi-  
15 tion with children who have had this training in the American  
16 way of living.

17 Q Is the court to understand that the intelligence  
18 quotient relates to the origin of individuals?

19 A It relates to native endowment of intelligence, yes,  
20 sir.

21 Q Native endowment of intelligence?

22 A Yes, sir.

23 Q Well, is that a relative term that is determinable  
24 by the origin of the individual?

25 A I don't quite understand what you mean by that.

v102

1           Q     I mean to say, concretely, is that any different  
2 basically as between what you call a child of Anglo-Saxon  
3 ancestry or parentage and a child of Mexican ancestry or  
4 parentage?

5           A     Their I.Q., it has nothing to do with their origin,  
6 no.

7           Q     Then I will come back again to the question: Why  
8 wouldn't it be beneficial to the Mexican child, so-called,  
9 to place him with the Anglo-Saxon children, so-called, if his  
10 I.Q. were of the type that I have described, for instance,  
11 98 or 109, or 94, or 97?

12          A     There are these other things to be taken into con-  
13 sideration. There would be the fact that we would move him  
14 up into those classes where he would be in such a minority,  
15 that we feel that these social factors that enter into the  
16 educational pattern would be more of a detriment than the  
17 benefit of going into academic competition, because there are  
18 many things we are trying to get into the children besides  
19 the knowledge of facts.

20          Q     Now, what would be the average or media line of the  
21 M.A. or M.U., as indicated on Exhibit 6 or 7?

22          A     Well, the average --

23          Q     You said 100 on the I.Q. What would be the similar  
24 figure on the M.U.?

25          A     You mean that in relation --

v103

1 Q You have a number of figures here. For instance,  
2 let's take the first name, without mentioning it, on Exhibit  
3 6, or, on Exhibit 7, for identification. You have an age of  
4 11-4. That is 11 years 4 months?

5 A And 4 months, yes, sir.

6 Q And you have an M.A. or M.U. of 8.1?

7 A That is a grade.

8 Q That is the grade of what?

9 A That is the grade they should be in, I mean the  
10 amount of intelligence on that list.

11 Q Now, you haven't the tabulation of the Lincoln School  
12 here?

13 A No, I don't have it.

14 Q Is it possible from a sound educational standpoint  
15 in the public school system in the State of California to  
16 indicate what variant in the actual age, or, what was the  
17 term you used?

18 A The mental age.

19 Q -- or, the mental age. Is there any variant beyond  
20 which it is excessive, or is there a media line, or is there  
21 a low estimate?

22 A There should be a very close correlation between  
23 the two.

24 Q A very close correlation?

25 A Yes, sir.

54



v104

1 Q Now, I find one here on Exhibit 7, for identifica-  
2 tion, where the age is 9-6, and the M.A. or M.U. is 9-4.

3 A In other words, his actual age is greater than his  
4 mental age.

5 Q Yes, a few points.

6 A That's right.

7 Q A fraction?

8 A That is very good, a good correlation there.

9 Q Wouldn't it be sound educationally to have that  
10 pupil, who, according to Exhibit 7, has an I.Q. of 98, and  
11 couldn't that pupil be advantageously placed in the higher  
12 level of pupils, as indicated, in the Lincoln School?

13 A Well, he could if you disregard all other factors,  
14 yes.

15 Q What other factors would there be?

16 A I am speaking of the social thing. We are thinking  
17 of one child, and to put him in with 40 others of Anglo-  
18 Saxon descent would not be a fair situation for that child  
19 to enter. Besides we have got to consider this matter that  
20 we do not have on the exhibit here, of the proximity of the  
21 school. That child may live right across the street from the  
22 Hoover School.

23 Q I am not speaking of the residence of the child.  
24 I am speaking of the factors of intellectual ability, applica-  
25 tion to work, aptitude for study, and general social advance-

v105

1 ment. Wouldn't that be included in those two items?

2 A There would have to be a study, your Honor. Now,  
3 we are taking merely an outcome of a score, which is given  
4 under one situation, and it is a time score. Now, you are  
5 speaking of the willingness to work, the adaptability to a  
6 certain situation. We don't have that picture here. That  
7 child may have that mental age and mental I.Q., but may not  
8 have that ability to work, nor that desire to work, and, you  
9 see, it changes the whole picture for that child.

10 Q How would you ascertain that without putting him in  
11 a group that is comparably of an I.Q. and a mental age with  
12 himself?

13 A Well, you don't have any class, your Honor, that has  
14 an I.Q. the same. There isn't any class that way even in the  
15 Lincoln School. There will be this range, and, I believe, as  
16 Mr. Ogle brought out, if we put the two together, there would  
17 be the larger curve.

18 Q I am not speaking of consolidating the two classes.  
19 I am speaking about the individuals, to bring out whether or  
20 not there is a distinction because of origin, regardless of  
21 other factors. That is what I am seeking to arrive at.

22 A I see.

23 Q And it seems to me that if there be some test, the  
24 Kuhlmann-Anderson test is apparently adopted by the educational  
25 authorities as being a reliable test to determine what?

1 A Yes.

2 Q What is it?

3 A The I.Q. and the mental age.

4 Q The I.Q. and the mental age. Then the only other  
5 factors that would be essential in determining the status of  
6 the pupil would be the social aptitudes and the industrial  
7 inclination. Would there be anything else?

8 A There would moral factors, hygienic --

9 Q That would be included in the social, wouldn't it?

10 A Yes, that's right.

11 Q What else would there be?

12 A There would be the economic status of the child to  
13 be considered, his social place in the community.

14 Q What do you mean by economic and social status in  
15 the community?

16 A Any class in a school, naturally, has many functions  
17 which they go on during the class year and in which the  
18 children are expected to take part, and a child of a low  
19 economic home, well, they don't have as much as the other  
20 children and are not fully able to partake in those activities,  
21 and it sets out an unfair situation for that particular child.

22 Q Would that be true in the public school system?  
23 I didn't think so.

24 A There is another thing that comes about which I can  
25 explain further. In one school which I had, we had Mexican

v107

1 children in it, and I noticed when I went there that they  
2 ate at one end of the playground, and the other children ate  
3 at the other end. I moved the two tables together, and they  
4 didn't like it at all, because the Mexican children didn't  
5 want the Anglo-Saxon children to know that they ate tortillas,  
6 and I had eventually to move the children apart, to do away  
7 with their embarrassment, and I have had them feel inferior  
8 because of the clothing they wear, too, sir.

9 MR. OGLE: If the court please, may I ask one question?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. OGLE:

13 Q Mr. Kent, you say if you were to take one child out  
14 of a Mexican group and put him in with 40 other children, you  
15 say it would not be good for the Mexican child?

16 A No, it would not be good. That would be a shame,  
17 to do that.

18 Q Are you basing that upon what you fear that the  
19 children might do by reason of their undiplomatic handling of  
20 any situation that might arise, or how?

21 A Yes, it is that, and it is just that natural thing  
22 that that child would develop in himself, if he were not able  
23 to compete with that class. It is very hard for one child  
24 to compete with 40 children of another race in a class.

25 Q You feel, then, that such a situation being bad would

1 come not out of any act of the school authorities, but out of  
2 the act of the children themselves; is that correct?

3 A That's correct.

4 Q BY THE COURT: Wouldn't it be the duty of the  
5 school authorities to endeavor to inculcate into the disre-  
6 spectful Anglo-Saxon child some respect for the other child?

7 A I don't think it would be disrespect. I think it  
8 would be just a natural thing that develops. I have had  
9 those one or two in a class, and we have it in the Fitz  
10 School at present, and we have some children that cannot  
11 dress well, that do not have the things to come to school  
12 with, and they don't have the facilities that the Anglo-Saxon  
13 children have. For instance, I have a cooking class where  
14 there are 24 white or Anglo-Saxon children and there are two  
15 Mexican children, and they can't bring the equipment, their  
16 hands are not clean when they come, and the teacher always  
17 has to ask them, "Did you wash your hands?" She tries to do  
18 it diplomatically, but the other children see them. Then they  
19 don't have the facilities they need to work with. For  
20 instance, if they are going to make biscuits, they can't  
21 bring the equipment, their parents won't let them have it,  
22 and it is an embarrassing thing for them, and where we have  
23 them in a situation where we can give them their own program,  
24 and own cooking, we feel it is much to their advantage.

25 Q That would be a parental deficiency in the home,

v109

1 wouldn't it?

2 A Much of this is, yes.

3 Q But wouldn't it be a better policy, a more sound  
4 policy to try to elevate the children out of their home  
5 environment and put them in an environment which would be  
6 closer to the Anglo-Saxon children?

7 A That would be true, your Honor, if you had them  
8 over a longer period of time. You don't have them over a  
9 day long enough to inculcate what we are trying to do.

10 Q Now, what was your purpose -- I intended to ask this  
11 before -- what was the purpose of visiting these homes in the  
12 district?

13 A As I say, during the course of my work I have  
14 attendance problems and I have truancy problems, and in going  
15 to visit one home to interrogate a child, I sometimes have  
16 to visit several, interrogate several before I can get all  
17 the information I want. In the course of this past year it  
18 has been necessary for me to go into the main Mexican Dis-  
19 trict that we have around the Hoover School and down around  
20 Fifth and Jackson, and in that way I have usually seen all  
21 the homes we have there.

22 Q Is there any coordinating agent or social service  
23 that visits these homes?

24 A The County Health Service do.

25 THE COURT: That is all.

v110

1 MR. OGLE: That is all.

2 THE COURT: We will take a recess for a few minutes, about  
3 five minutes.

4 (A short recess was taken.)

5 MR. HOLDEN: Mrs. Gilbert.

6 EDITH M. GILBERT,

7 called as a witness by and on behalf of the defendants, having  
8 been first duly sworn, was examined and testified as follows:

9 THE CLERK: State your name, please.

10 THE WITNESS: Edith M. Gilbert.

11 DIRECT EXAMINATION

12 BY MR. HOLDEN:

13 Q Mrs. Gilbert, you are the principal of the Fremont  
14 School in Santa Ana?

15 A I am.

16 Q How long have you been principal of that school?

17 A For 22 years, 23 years.

18 Q Now, do you know Mr. Guzman?

19 A Oh, yes, I do.

20 Q Did he have one of his children enrolled in that  
21 school?

22 A His boy, Billy, was there.

23 Q What year was that child at the school there?

24 A It was in 1943-44.

25 Q Will you tell the court whether or not Billy, -- did

vlll

1 you call him Billy?

2 A Yes, we did.

3 Q How did Billy get along?

4 A He did get along in the time that he was there, but  
5 he missed very much and was not able to be promoted in school.  
6 However, had he been there in September and shown the neces-  
7 sary interest, he might have continued with his class. But  
8 we couldn't do that because he didn't re-enroll in September.

9 Q How many days did he miss during the last year?

10 A He missed 21 days in the first grade.

11 Q Now, have you visited the homes of the students who  
12 attend your school?

13 A Oh, yes, very much.

14 Q Now, referring to Defendants' Exhibit A, and  
15 directing your attention to the area shown for the Fremont  
16 School, --

17 A Yes.

18 Q -- what would you say as to the people who reside  
19 within that area, as to whether they are Spanish-Mexican  
20 descendants, or others?

21 A Well, I would say the majority of them are of  
22 Mexican ancestry. However, the district is changing, in that  
23 some of the acreage is being developed, and many of the people  
24 who have formerly rented homes have had to buy their homes  
25 in order to have a place to live. But the territory that has



1     been developed is mainly of Mexican ancestry.

2           Q     And you don't know how many families there are?

3           A     No, I don't know how many there are.

4           Q     Or children that were transferred?

5           A     Or transferred out of that area, because that is  
6     through the main office.

7           Q     In your visitations with the parents of the pupils  
8     who attend your school, have they, or any of them, at any  
9     time expressed any objection to attending the Fremont School?

10          A     Oh, no, none of them have, and I have never had any  
11     complaints come to me whatsoever. All the complaints I have  
12     heard are those who have gone to the office a couple of times,  
13     of course, being these two witnesses who have already been on  
14     the stand, but the rest of them, they are very happy, and the  
15     children I know always regret when school closes because they  
16     hate to have vacation.

17          Q     How does the Fremont School compare with the other  
18     schools in Santa Ana?

19          A     In what way? In size?

20          Q     Well, say, in attendance.

21          A     Well, we have always been first in attendance, I  
22     think, except in one month this year, when there was one of the  
23     other schools which was a small decimal of a per cent above  
24     us. But for many years we have ranked first in attendance,  
25     because we have no attendance problems at all.

z113

1 Q Now, you are also the director of the playgrounds?

2 A Yes, I am, during the summer.

3 Q And they have what facilities? What facilities  
4 do they have there?

5 A What we have is the playground, and we have just  
6 a regular recreational playground for children whose parents  
7 are employed or whose parents are busy and wish to have their  
8 children taken care of, and it is operated by the City of  
9 Santa Ana.

10 Q Does this school have facilities for the community  
11 there?

12 A Oh, yes, the school -- I think our school is more  
13 or less used as a community center, because we have a very  
14 large auditorium, which is used by the different groups for  
15 meetings, night meetings, according to the law, and any one  
16 who wishes to, any groups have used it.

17 We have special facilities for giving our children every-  
18 thing that we need to carry on a good educational program.

19 Q And do you have bathing facilities?

20 A Oh, we have showers both for girls and boys, because  
21 there is -- well, they are very popular.

22 Q They have used them considerably?

23 A Yes. Many of the homes, you see, the older con-  
24 structed homes, are without facilities, and the children are  
25 glad to have them.

1 Q Now, do you have any activities among those people,  
2 other than as a teacher there?

3 A Well, we have a Friday Night Club, which is a  
4 civic community service project, which is, well, you wouldn't  
5 say it is a visual educational program, but which is carried  
6 on for every one, and that is very well attended.

7 And then, of course, being the principal, and after being  
8 there as long as I have, there are many, many calls for any-  
9 thing and everything. There is hardly a day goes by but  
10 what some one wants some advice or help, something of that  
11 kind, which I have always given very gladly. There are never  
12 two days alike, because you always have different demands,  
13 in every way. Many of the parents have to have advice, and  
14 want help, and I have always been glad to give it to them.

15 Q How does the Fremont School rate this year, in  
16 comparison with the other schools of Santa Ana, on reading?

17 A Well, according to our standardized tests, which  
18 were given in April, our classes were in most cases above the  
19 average norm, which was showing that they had a very good  
20 basic foundation laid for reading, or they could not have  
21 passed the tests.

22 Q Do you know how it compares with the other schools  
23 in Santa Ana?

24 A I know we were above the city average in nearly  
25 every grade, and in every class this year.

v115

1 MR. HOLDEN: That is all.

2 CROSS EXAMINATION

3 BY MR. MARCUS:

4 Q Just a couple of questions. You are rather proud  
5 of your Fremont School, --

6 A Yes, sir.

7 Q -- and the attainments of the Mexican children in  
8 that school, aren't you?

9 A Yes, sir.

10 Q You don't have any language difficulty in your  
11 school, do you?

12 A Of course we have when -- it depends on the home,  
13 if they come from a Spanish-speaking home or an English-  
14 speaking home.

15 Q If they come from a Spanish-speaking home, you mean  
16 until they acquire some proficiency in the English language?

17 A Of course, we never acquire it perfectly. None of  
18 us.

19 Q None of us?

20 A No, not even you or I.

21 Q And these children from Spanish-speaking homes --

22 A (Continuing) Of course, Mr. Marcus, you have to  
23 consider the child, and he may come to you in the kindergarten,  
24 but he speaks Spanish all the time at home, and his playmates  
25 speak Spanish to him all the time. When I go down the street,

v116

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1 I hear Spanish spoken far more than I do English, and then  
2 we say to them, "Why don't you speak English?" But they  
3 don't, and that is a language handicap which is very hard to  
4 overcome.

5 Q But it doesn't retard the child mentally at all,  
6 does it?

7 A Of course, a language handicap won't retard you  
8 mentally. It may retard him when it comes to his work. It  
9 depends on the child.

10 Q You say that the children in the Fremont School, of  
11 which you are the principal, --

12 A Yes, sir.

13 Q -- were more advanced in their reading courses?

14 A Yes, sir.

15 Q And I assume that was conducted in the English  
16 language?

17 A Yes, it was. But that shows they had a very good  
18 foundation laid for the language, or they could never have  
19 passed the test.

20 Q And is that test given in the other schools?

21 A Oh, it is given all through the system.

22 Q And they were superior, you say, to the other  
23 children?

24 A Yes, sir.

25 Q -- in the other schools?

vll7

1 A Yes, sir.

2 MR. MARCUS: That is all.

3 MR. HOLDEN: Mr. Reinhard, I think we will probably call  
4 you next.

5 ROBERT H. REINHARD,  
6 called as a witness by and on behalf of the defendants, having  
7 been first duly sworn, was examined and testified as follows:

8 THE CLERK: State your name, please.

9 THE WITNESS: Robert H. Reinhard, R-e-i-n-h-a-r-d.

10 DIRECT EXAMINATION

11 BY MR. HOLDEN:

12 Q What is your occupation?

13 A I am assistant superintendent of schools in Santa  
14 Ana.

15 Q Do you know Mrs. Fuentes who testified yesterday or  
16 the day before?

17 A I have never met her personally.

18 Q Have you ever had any conversation with her?

19 A I have never had any more conversation than to say,  
20 "Hello" in the hall outside of this court room.

21 Q You have heard her identify you as Mr. Smith and  
22 state that you told her, in effect, that the Mexican children  
23 were dirty and should be compelled to attend school in their  
24 own district, or words to that effect?

25 A What was the --

v118

1 Q You heard her so testify?

2 A I heard her say that, yes.

3 Q Did any conversation like that ever occur between  
4 you and Mrs. Fuentes?

5 A I have never had any conversation with Mrs. Fuentes.

6 Q Now, as superintendent, have you investigated the  
7 facilities of the various schools in Santa Ana with relation  
8 to the number of pupils that attend each school?

9 A Yes.

10 Q And have you investigated the Franklin School?

11 A Yes.

12 Q How many students are attending the Franklin School  
13 at the present time?

14 A I cannot remember exactly, but it is on the list  
15 that was turned in to the court here. I will use the figure  
16 that is there, if that is permissible.

17 In the Franklin School, 237 pupils. I would say that is  
18 correct.

19 Q And what is the size of that school?

20 A What do you mean by "size"?

21 Q Well, how would you determine the capacity?

22 A The capacity, the number of classrooms?

23 Q Yes, sir.

24 A There are no vacant classrooms in that school. At  
25 that time there was one room which was being used as a library,

v119

1 but a library is a part of a good school, and, therefore, I  
2 don't feel that that could be considered a vacant room.  
3 Another room is also being used as a teachers' workroom and  
4 material supply room, which is also necessary, and not a  
5 vacant room. The other rooms are all filled with classes of  
6 children.

7 Q What is the teacher load per room?

8 A The teacher load would be 237 divided by 7, which  
9 would give you about 34 pupils per teacher.

10 Q And what about the Fremont School?

11 A In the Fremont School there are 325 pupils, and I  
12 believe 10 teachers, which would give you 32-1/2 pupils per  
13 teacher.

14 Q If more pupils were permitted to attend the Franklin  
15 School, it would mean that you would have to make another room  
16 there; is that right?

17 A Yes. The Franklin School now has more pupils per  
18 teacher than the city average, and it would not be right to  
19 increase it even more beyond the city average, without provid-  
20 ing another teacher, and to provide another teacher would mean  
21 to reduce the other facilities, by taking away the library  
22 room and making a classroom out of it.

23 Q Now, taking the Wilson School.

24 A The same figures?

25 Q Give the number of pupils and the teacher load at that



1 time.

2 A The Wilson School has 259 pupils. I will have to  
3 determine the number of teachers. There are eight teachers  
4 and 259 pupils. That would be about 32 or 32-1/2 pupils per  
5 teacher, the same as at Fremont.

6 Q And what are the facilities there?

7 A They also have one spare classroom, if my memory is  
8 correct, and that is also being used as a library room. If  
9 it is taken away, it is their only library, and auditorium,  
10 you might say, because they have no auditorium in the Wilson  
11 School, nor do they at the Franklin. The library room there  
12 is also used as the auditorium. The Fremont School has the  
13 largest elementary school auditorium in the system and seats  
14 approximately 500 pupils.

15 Q Do you have any bathing facilities in any of the other  
16 schools of the district?

17 A Only in the three schools which are attended mainly  
18 by Mexican pupils.

19 MR. HOLDEN: That will be all for the present.

20 THE COURT: Do you want to defer your cross examination,  
21 Mr. Marcus?

22 MR. MARCUS: Yes.

23 THE COURT: If you are going to call him again, I think  
24 it would be well to have all of the cross examination at one  
25 time, when he is recalled.

v121

1 MR. HOLDEN: I am not positive that we will recall him.

2 MR. MARCUS: If you ask him no further questions, I  
3 have no cross examination at this time.

4 MR. HOLDEN: Then if I don't use him some more, we will  
5 not have to bring him in again?

6 MR. MARCUS: Not unless the court wants you to.

7 THE COURT: You think you have finished with him?

8 MR. HOLDEN: I think I have.

9 THE COURT: In other words, I want you, gentlemen, to  
10 open and close. I am not going to open up a field for you  
11 to explore, and if you, gentlemen, have anything more I want  
12 you to finish up.

13 MR. HOLDEN: I don't have anything more.

14 MR. MARCUS: I don't have anything, your Honor.

15 Q BY THE COURT: Are the same qualifications for  
16 teachers required in the Fremont School that are required at  
17 the other schools of the City of Santa Ana?

18 A The same qualifications, plus one or two additional.  
19 We try never to put a new or a completely inexperienced teacher  
20 in one of our Mexican Schools because we feel that we want to  
21 give them a teacher who has had experience and is, therefore,  
22 a slightly better teacher. The other one would be that when  
23 we are able to get a teacher of Mexican descent or Spanish  
24 descent to use in those schools, we like to do that, also.  
25 Other than that, the qualifications are the same.

v122

1 Q Are there any teachers employed now in any of these  
2 schools in the City of Santa Ana, which are largely attended  
3 by the children of Mexican descent, in which there are  
4 Spanish-speaking or Mexican-speaking teachers?

5 A Well, many of our teachers and principals speak  
6 Spanish, but they are not teachers of Spanish or Mexican  
7 descent. We do have two teachers this past year, or we had  
8 two teachers at Fremont who were of Mexican descent. One of  
9 them left us during the year to get married and to have a  
10 baby, and the other one is still with us.

11 Q Now, in which schools was it where you had the room  
12 that you used as a library?

13 A At the Franklin School we have this one room which  
14 is used as a library and auditorium, there being no regular  
15 auditorium or no regular library in that building. At the  
16 Wilson School, the same.

17 Q What are the similar facilities in the Fremont  
18 School?

19 A In the Fremont School we have a very fine auditorium,  
20 the largest and best-equipped elementary school auditorium in  
21 the city of Santa Ana. I am not completely familiar with the  
22 library facilities in the Fremont School. Mrs. Gilbert could  
23 tell you better about that.

24 Q Do you know whether there are library facilities  
25 in that school?

v123

1           A     There are two common practices. One is to have  
2 one library, a central library for all of the rooms in the  
3 building. The other is to have a classroom library in each  
4 room, and I am not sure which policy Fremont follows. I  
5 would be sure that they would follow either one or the other.

6           Q     These bathing facilities, shower baths that have  
7 been described, are they in any of the schools other than  
8 the schools which are principally attended by the children  
9 of Mexican ancestry or origin?

10          A     I believe the Franklin School does have a very small  
11 single shower, but it is not used as such. The room has  
12 been converted into a nurse's closet. Otherwise, the three  
13 Mexican schools are the only schools that offer shower  
14 facilities to the children.

15          Q     Now, this Exhibit 4 states that the Franklin  
16 School has a total pupil population, as of March 22, 1945,  
17 of 237, of which 161 are English-speaking pupils, so-called and  
18 76 are Spanish-speaking pupils, so-called. Is that correct?

19          A     To the best of my knowledge, yes. I would have to  
20 go into the records to determine absolutely, but I would be-  
21 lieve that statement, yes.

22          Q     Is that the only one of these schools in the city  
23 of Santa Ana that are enumerated on Exhibit 4, other than the  
24 Fremont, Delhi and Logan Schools, which has showers?

25          A     That is a rather hard question to answer, your Honor.

1 I have been in Santa Ana just two years. It sticks in my  
2 mind that I saw a shower room at the Spurgeon School, but I  
3 know it is not used as such for the pupils. If there is one  
4 there, it is just a single shower put in the administrative  
5 unit of the building, and is not being used for the children's  
6 purposes.

7 Q There are four other schools, are there not, in the  
8 City of Santa Ana, to-wit, McKinley, Roosevelt, Muir and  
9 Lincoln Schools, wherein the pupil population is divided  
10 between so-called English-speaking pupils, and so-called  
11 Spanish-speaking pupils?

12 A Those four which you mentioned do have Spanish-  
13 speaking or Mexican pupils, and I believe also the Lowell  
14 and Edison Schools have some, too. There are only two  
15 schools, to my knowledge, that do not have any Mexican-speak-  
16 ing pupils in them, and if there were any Mexican pupils or  
17 Spanish-speaking that moved into those districts, they would  
18 be allowed to go there also.

19 Q Those would be the Hoover, Spurgeon and Wilson?

20 A Yes.

21 Q In the Spurgeon School there is one Spanish-speaking  
22 pupil, so-called?

23 A Yes. They do come and go, and it is rather hard  
24 to keep up to date on the exact enrollment.

25 Q How does it happen, if you know, that there are no

v125

1 English-speaking pupils, according to your exhibit, enrolled  
2 in either the Fremont, Delhi or Logan Schools, as of March  
3 22, 1945?

4 A How does it happen, your Honor?

5 Q If it does. How does it happen that that was the  
6 case, if you know?

7 A Because those schools are located in school dis-  
8 tricts -- our city of Santa Ana is divided into school  
9 districts, and they are in a district that is inhabited almost  
10 entirely with Mexican people.

11 Q How long have you been familiar with that district  
12 down there?

13 A I have worked there two years.

14 THE COURT: That is all.

15 MR. HOLDEN: Nothing further.

16 THE COURT: We have time for one more short witness.

17 Well, you, gentlemen, have to go to Santa Ana, or many  
18 of you do, and I suppose most of these folks have to go down  
19 into that country.

20 MR. HOLDEN: I have one other short witness, your Honor,  
21 and if we could put him on, we would like to.

22 THE COURT: Very well.

23 MR. HOLDEN: I want to call him on the Westminster  
24 School District. That is Mr. Harris. I think we can get  
25 through with him in just a minute.

v126

1 THE COURT: If we can, I will take the time.

2 MR. HOLDEN: I don't like to have him coming back and  
3 forth.

4 THE COURT: Are you going back to the Santa Ana District  
5 again, before you close the case?

6 MR. HOLDEN: Yes, your Honor.

7 THE COURT: Very well.

8 MR. HOLDEN: This is rebuttal entirely, but I wanted  
9 to keep it as sequential as possible.

10 THE COURT: I understand.

11 MR. HOLDEN: And this will be on the Westminster District.

12 THE COURT: Yes.

13 RICHARD F. HARRIS,  
14 called as a witness by and on behalf of the defendants, having  
15 been previously duly sworn, testified further as follows:

16 DIRECT EXAMINATION

17 BY MR. HOLDEN:

18 Q Mr. Harris, you had a conversation with Mr. Mendez,  
19 and you heard him testified heretoday that in that conversation  
20 you told him that the Mexican people were dirty people, and  
21 were not clean, and had bugs in their hair, or something like  
22 that. You heard that testimony?

23 A I heard that testimony.

24 Q Did you make any such statements?

25 A I did not.

v127

1 Q Did you say those words, or any words to that ef-  
2 fect to Mr. Mendez?

3 A I did not.

4 MR. HOLDEN: That is all.

5 MR. MARCUS: That is all.

6 THE COURT: We will recess until 10:00 o'clock tomorrow  
7 morning, gentlemen.

8 (Whereupon, at 4:20 o'clock p. m., Tuesday, July 10,  
9 1945, an adjournment was taken until 10:00 o'clock a. m.,  
10 Wednesday, July 11, 1945.)

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