

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.

WESTMINSTER SCHOOL DISTRICT  
OF ORANGE COUNTY, et al.,

Defendants.

No. 4292-M-Civil.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, July 11, 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 Defendants:

Frank A. Henderson                      586              606              631

For the Plaintiffs:

Isabel Ayala                      637              645  
Gonzalo Mendez                      652  
Manuela Ochoa                      658  
Ralph L. Beals                      660              677              679  
Marie H. Hughes                      687

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1 LOS ANGELES, CALIFORNIA, Wednesday, July 11, 1945. 10:00 A.M.

2 - - -

3 THE COURT: Call the case on trial.

4 THE CLERK: Gonzalo Mendez v. Westminster School District.

5 MR. HOLDEN: Ready.

6 MR. MARCUS: Ready.

7 THE COURT: Proceed, gentlemen.

8 MR. HOLDEN: Mr. Henderson.

9 FRANK A. HENDERSON,

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

12 DIRECT EXAMINATION

13 BY MR. HOLDEN:

14 Q You are the superintendent of the Santa Ana School  
15 District?

16 A Yes, sir.

17 Q And you are the superintendent of the high school,  
18 junior college, and elementary schools?

19 A Yes.

20 Q Do you know Mr. Guzman?

21 A Yes, I have recognized him here. I had not met  
22 him before this trial.

23 Q You didn't see him at a meeting of the Board of  
24 Trustees?

25 A Yes. I don't remember the date of the meeting, but

1 it is a meeting that has been referred to here several times.

2 Q At that meeting did Mr. Guzman state anything to  
3 the Board of Education?

4 A No. As I recall it, he was represented by an  
5 attorney, Mr. Martin, who did all of the talking, so far as  
6 I recall.

7 Q That conversation has been stated by you, I think,  
8 on examination by the plaintiffs. Can you think of anything  
9 that you could say now that was said there that wasn't stated  
10 by you when you were being examined by Mr. Marcus?

11 A Mr. Martin's object, as I recall it, there was in  
12 representing Mr. Guzman and one other party on the matter of  
13 this transfer of children from the Fremont District to the  
14 Franklin District.

15 Q Was there anything said at that meeting specifically  
16 regarding the transfer of Mr. Guzman's child?

17 A I don't recall, Mr. Holden.

18 Q In other words, did Mr. Guzman at any time appear  
19 before the Board of Education, so far as you know, and re-  
20 quest that his child be transferred to the Franklin District?

21 A No. As I have said, through his attorney perhaps.

22 Q Well, did his attorney -- was the attorney repre-  
23 senting Mr. Guzman, or was he representing this group?

24 MR. MARCUS: Just a moment, counsel. If the court  
25 please, certainly these questions are leading and suggestive,

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1 and no foundation has been laid. He has already answered  
2 the question in several particulars, and stated so far as he  
3 recalls he does not remember a conversation, the first time  
4 that he remembers seeing Mr. Guzman is here in the court room.  
5 If counsel attempts to elicit --

6 THE COURT: Yes, I think those questions were leading.

7 THE WITNESS: Well, I corrected that. Pardon me, Judge,  
8 your Honor. I did see Mr. Guzman at this other meeting, as I  
9 stated here, rather than seeing him here for the first time.

10 MR. HOLDEN: My purpose is simply to limit it. I don't  
11 want to go into all of that conversation if I can limit it.

12 Q BY MR. HOLDEN: Did the attorney, Mr. Martin, and  
13 just limiting your answer to what the attorney said in re-  
14 gard to Mr. Guzman, -- I will ask you if there was anything  
15 said at that meeting by Mr. Martin pertaining to Mr. Guzman  
16 individually?

17 A I don't recall anything. I think not.

18 MR. HOLDEN: Now, may we have Defendants' Exhibit A?

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

20 Q BY MR. HOLDEN: I hand you Defendants' Exhibit A.  
21 What does that represent?

22 A That represents the districts set up by the Board  
23 of Education for attendance in the respective schools.

24 Q Why is the district divided into 14 zones?

25 A For the purpose, of course, of making use of the

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1 schools to their capacity, where necessary, and not to over-  
2 load a school and not leave one empty and another one over-  
3 loaded.

4 Q How are the students enrolled in the various schools?

5 THE COURT: How do you mean, Mr. Holden?

6 Q BY MR. HOLDEN: Well, a pupil in entering school,  
7 how does he find out which school he goes to?

8 A Well, most of them know their school districts and  
9 they enroll with the principal and teacher, and if they are  
10 not a resident of the school district in which they attempt  
11 to enroll, they are referred to an attendance officer to  
12 straighten the matter out and attend the school of their dis-  
13 trict.

14 Q Does that policy hold as to all of the zones in the  
15 Santa Ana District?

16 A Yes, all of them.

17 Q Whether it be Fremont, Delhi, or Jefferson, or Hoover,  
18 or any other school?

19 A It does, and it is pretty rigidly adhered to.

20 Q Now, referring to the Fremont line --

21 MR. HOLDEN: I think, your Honor, you may remain seated  
22 because we are going to go over this, and this is an exact  
23 copy of that (indicating) just for the purpose of convenience.

24 Q BY MR. HOLDEN: Referring to the Fremont School  
25 District, what is that symbol up at the northeast corner of

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1 that area, or, not the northeast corner, but the northern --

2 A That represents the location of the schoolhouse  
3 itself.

4 THE COURT: That is the black spot on here?

5 THE WITNESS: Yes, with the flag on it.

6 Q BY MR. HOLDEN: And what street is that to the  
7 east of Fremont School?

8 A Western Avenue.

9 Q And to the north?

10 A The north is Eighth Street.

11 Q And does that line run east of Artesia Street?

12 A Yes, east one block.

13 Q And then south?

14 A Then south.

15 Q And then west?

16 A Then west again. That is to get the Fremont School  
17 in its own district.

18 Q Now, what street is it where the line jogs, follows  
19 to the west?

20 A First Street.

21 Q That is the line south of the school building?

22 A That is right, west on First.

23 Q And to what street?

24 A South to the city limits at this time. It was  
25 formerly south to Maple Avenue, which I believe is right

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1 there. (Indicating)

2 Q Now that would be what street?

3 A Myrtle Street.

4 Q As to the people who live along the line, the  
5 easterly line of Fremont, are there people there of Mexican  
6 descent?

7 A Yes.

8 Q East of it?

9 A East of Western Avenue.

10 Q Just indicate where they live there. I mean, tell  
11 the judge, so that he can follow you on the map, the location  
12 of the people of Mexican descent.

13 A There are Mexican children, children of Mexican  
14 descent and parents of Mexican descent, who live east of  
15 Western Avenue along Sixth Street and south to the Franklin  
16 District, if you please. That runs again to the city limits  
17 on the south.

18 Q Referring to the inhabitants of the Fremont District,  
19 how is that as to people of Mexican descent?

20 A The percentage, I would say, was about 95 per cent  
21 of Mexican descent in that area.

22 Q In the Fremont area?

23 A Yes.

24 THE COURT: How is it in the Franklin area, if you know?

25 THE WITNESS: About 70-30; 70 Anglo and 30 Mexican.

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1 Q BY MR. HOLDEN: And by Anglo-Saxon, you mean others?

2 A Others. The Mexican descent, I can give you the  
3 exact figures, your Honor.

4 THE COURT: If that is approximately correct, --

5 THE WITNESS: That is approximately so.

6 THE COURT: -- counsel can interrogate you more closely  
7 if he desires.

8 Before you leave that subject-matter, you say that there  
9 is quite a proportion of Mexican-speaking persons having  
10 families of children of school age located easterly of Western  
11 Avenue in the vicinity of Sixth Street. How does that com-  
12 plexion of the residents compare with the district westerly  
13 of Western Avenue on Sixth Street, and as it runs into --  
14 I notice there is a cul de sac, a blind street, running into  
15 -- I can't make that out. Is it Fairlawn?

16 THE WITNESS: Fairlawn, I believe, and then Daisy, and  
17 English.

18 THE COURT: How does the settlement in those two areas  
19 compare, as to the complexion of the residents? By "complex-  
20 ion", I don't mean color.

21 THE WITNESS: No, I know what you mean. About the same  
22 as the percentages in the schools, I presume. I think on  
23 Sixth Street there are mixed Mexican people and others. East  
24 of Sixth, and to Bristol. West of Sixth it is fairly contin-  
25 uous Mexican.

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1 THE COURT: Would you say that there is a bigger  
2 settlement of Mexican people west of Western Avenue than there  
3 is east of Western Avenue, between Western and Bristol? Is  
4 that Bristol or Bristo ?

5 THE WITNESS: Bristol.

6 THE COURT: -- than west of Western Avenue down to  
7 King Street? How do those areas compare as to the presence  
8 or absence of Mexican people?

9 THE WITNESS: Very many more west of Western Avenue than  
10 east of Western; very many more.

11 THE COURT: When were these two districts allocated by  
12 the authorities?

13 THE WITNESS: I think about 1920 or '21. May I explain  
14 that?

15 THE COURT: Yes.

16 THE WITNESS: On ~~Fifth~~ Street in 1920, at about Bristol  
17 Street there was an elementary school, I am told. It was  
18 discontinued and the buildings were moved to the Fremont site,  
19 and in 1929, I believe it was, the Franklin School was built.  
20 I may be wrong about that. But when that Fifth Street School  
21 was discontinued these two districts were set up, Franklin  
22 and Fremont, by the Board of Education.

23 THE COURT: Has there been any appreciable, noticeable  
24 change in the character of it? By "character", I don't mean  
25 individual character, but I mean the type of people who live

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1 within the districts in the last 10 years?

2 THE WITNESS: Yes, your Honor. There have been a good  
3 many colored people move in on West Second Street in the  
4 Franklin District, west of, oh, the red line there, which is  
5 Baker. The colored population has settled very largely on  
6 West Second Street, and the population of Mexican ancestry  
7 has moved east of Western Avenue and Artesia, to a considerable  
8 extent, I could say, in the last 10 years, when properties  
9 have been bought by Mexican people. Yes, I should say that  
10 it has increased considerably.

11 THE COURT: Where is Artesia? I can't find it.

12 THE WITNESS: Artesia is a red line between the Franklin  
13 and Fremont Districts before you get over to Western, north  
14 and south.

15 Q BY MR. HOLDEN: Other than the increase by the addi-  
16 tion of the Negro population there, did you mean to say that  
17 it was increased in population or character, as between the per-  
18 sons of Mexican descent and others?

19 A It has increased in the number of Mexicans in that  
20 district, if that is what you mean.

21 Q Well, I was wondering if you understood the ques-  
22 tion.

23 A Yes, that is right.

24 Q And you are speaking now of the area in the Franklin  
25 District?

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1           A     The Franklin District.

2           Q     Now, you have stated that the policy of the Board  
3 was the same there in those districts as it is in any other  
4 district. Now, in the last year what has happened at the  
5 Logan School, so far as number of grades that have been there?

6           A     We had a very small number of children in the Logan  
7 School in the sixth grade. All the other grades were con-  
8 tinuous. Is that what you want?

9           Q     Yes.

10          A     There were, I think, only six children in the sixth  
11 grade, and with the number of teachers we had there, the  
12 teacher of the topmost grades would have had to handle the  
13 fourth, fifth and sixth grades, and we transferred those  
14 sixth-grade children to Roosevelt, which is a mixed school.

15          THE COURT: I would like to have that read. Read the  
16 question and the answer, please.

17          (The record was read by the reporter.)

18          THE COURT: What were those six children in reference  
19 to ancestry or lineage?

20          THE WITNESS: They were Mexican.

21          Q     BY MR. HOLDEN: Were any of the pupils in that  
22 sixth grade transferred to any other school than the Roosevelt?

23          A     Yes, there was one little girl, whose name I think  
24 is Jennie Varga.

25          Q     Where did she live?

1           A     She lived north of Washington in the Logan District,  
2 north of Washington Street in the Logan District. I think  
3 I am right about that address. And she was out of school  
4 when school began, picking fruit, or something, and came back  
5 a little late. Her older sister was going to the Willard  
6 Junior High School, which is across the street from the  
7 Jefferson School, which is almost wholly other than Mexican.  
8 We transferred Jennie to the Jefferson School rather than to  
9 Roosevelt, so that she could go to school with her older  
10 sister and attend school in Jefferson which is across the  
11 street from the location of the Willard Junior High School,  
12 where her older sister attended.

13           Q     Now, have you handled the transfer problem for other  
14 people than people of Mexican descent?

15           A     Constantly.

16           Q     Now, have you had applications for transfers to the  
17 Spurgeon School by people other than of Mexican descent?

18           A     Many.

19           Q     Can you give us the name of one?

20           A     I can give you the name of only one. It is hard  
21 to remember names. A gentleman by the name of Cooper, whose  
22 child attended the Roosevelt School by reason of residence.  
23 He was from out of town somewhere, I don't know where, and  
24 he requested that his child, who lived in the Roosevelt  
25 District, right on the line really, although on the Roosevelt

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1 side of the line, be transferred to Spurgeon. His reason was  
2 that he wouldn't let his child go to school in the Roosevelt  
3 School where there were Mexicans. We did not transfer the  
4 child and told him he lived in the Roosevelt District, and  
5 his child would have to go to the Roosevelt School, and she  
6 did go until he purchased property in the Spurgeon District,  
7 and said no longer would his child go to Roosevelt School.

8 Q He moved into the Spurgeon District?

9 A Yes, sir, he moved into the Spurgeon District.  
10 This was shortly before school closed. I have forgotten  
11 exactly, but after Decoration Day, I believe. But the child  
12 was transferred when she moved, and not until she moved, and  
13 not, of course, because of any admixture of Mexicans and  
14 others, because it was, may I say, an argument that was a  
15 bitter argument with him.

16 Q And you denied his request?

63 17 A We denied it.

18 Q On these transfers that you permit, what ground do  
19 you permit them on?

20 A We transfer children from, let me say, from the  
21 Willard Junior High School to the Lathrop Junior High School,  
22 or vice versa, and the dividing line is First Street. We  
23 transfer them only for residents -- only for the good of the  
24 child in the school if there is a crossing of the district line.  
25 That is largely true of the others. We transfer some children

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1 to some of these schools if they are in an extremely small  
2 minority in the school of their district, in order for the  
3 good of the child, as we see it.

4 Q And what do you mean by "the good of the child"?

5 A Well, I have illustrated that. The figures I do not  
6 have, but you will recall that there is something in the  
7 record of 350 or so children in the Fremont School, and two  
8 or three colored children are the only ones there, and we  
9 transferred those children to Franklin, where almost 100 per  
10 cent of the colored children are found.

11 Q You may use that to refresh your recollection (hand-  
12 ing document to witness).

13 A Thank you. That is the illustration.

14 Q All cases of transfers are handled upon the basis  
15 of what you and the Board of Education deem to be for the  
16 best interests of the child?

17 A That is the reason.

18 Q Now, you have permitted some 14 families of Mexican  
19 descent to transfer their children to the Franklin School. Is  
20 that correct?

21 A Yes, that's right.

22 Q Why did you permit them to transfer from the Fremont  
23 School to the Franklin School?

24 A Largely on the basis of the good of the child again,  
25 because there has been in those families for probably years,

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1 many years, a tradition that the Franklin School was their  
2 school, and that is the reason that we have done that in the  
3 case of these families.

4 Q Was that the reason that you permitted Mr. --

5 A Marval?

6 Q What was the name?

7 A I thought you were trying to ask about Mr. Marval.

8 Q Yes, Marval, that is the man I have in mind.

9 A We transferred the Marval child, as I recall it,  
10 because the claim was that he was not Mexican, as I recall it.  
11 I am not sure.

12 Q Did he previously attend the Franklin School, or do  
13 you know?

14 A I don't know. I think not. I am not sure. I am not  
15 sure.

16 Q Now, as to the facilities of the Franklin School,  
17 Mr. Reinhard has testified to some of them, but you are  
18 familiar with the facilities that are furnished there, I  
19 presume?

20 A I am very familiar.

21 Q In addition to the facilities that Mr. Reinhard  
22 testified to yesterday, are there others?

23 A There is at the Fremont School a bungalow which is  
24 used for Scout purposes, and that character of activity.  
25 There is also at the Fremont School a cottage, a very nice

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1 little cottage, which is used for cooking and sewing training,  
2 and home-making in that school. Other than that, of course,  
3 there is the large auditorium at Fremont. Other than that  
4 there is little difference in the facilities of the schools,  
5 in relation to their student load.

6 Q Is this cottage that you speak of for sewing, or did  
7 I understand that that is for sewing and domestics?

8 A Yes, that is used that way.

9 Q You mean the pupils are instructed in sewing and  
10 domestic duties?

11 A Yes. The convenience of it is that they have this  
12 home or house to take care of. They also have adequate sewing  
13 facilities in the school building itself.

14 Q And are they permitted to use those facilities?

15 A Yes, they are.

16 Q Are they supervised?

17 A They are.

18 Q And do you have any special facilities for the boys?

19 A We have a rather good manual training shop for boys  
20 in the Fremont School, and no such facilities in the Franklin  
21 School, except a little set of tools which is on a little  
22 rack, and is furnished to every grade from the first through  
23 the sixth for their activity program, as we call it.

24 Q And are those facilities furnished in the other  
25 schools other than that?

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1           A     Those little tool racks are furnished in all schools.  
2     There is a bungalow at the Delhi School, which is used for  
3     shop. That is a Mexican School, so-called. That is the  
4     extent of the shop facilities in the elementary schools.

5           Q     Now, you are familiar with the letter that is in  
6     evidence here signed by Mr. Harold Yost?

7           A     Yes, I am.

8           Q     Now, in the second paragraph of that letter, it  
9     says, "Dissatisfaction arises with other parents whose  
10    children are not granted the same privilege." What other  
11    parents were objecting at that time?

12          A     I don't remember their names, Mr. Attorney. I don't  
13    remember their names.

14          Q     Were they people who were sending their children  
15    to Fremont School, or people who were sending their children  
16    to Franklin School?

17          A     Sending their children to Fremont School and re-  
18    questing to be transferred to Franklin, as I recall.

19          Q     Was there any other than Mr. Guzman?

20          A     These names are hard for me to remember. There were,  
21    but I can't remember the names.

22          Q     Do you remember how many?

23          A     I think I recall at least two families who made the  
24    same request, it seems to me. I don't remember their names,  
25    and I won't risk saying what their names were.

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1 Q Would you say that there were more than two, or  
2 would two be your estimate?

3 A There were at least two. I think there were perhaps  
4 more.

5 Q Now, after that letter was delivered to the person  
6 addressed, the Board of Education held this meeting which  
7 has been testified to, where the several petitioners appeared  
8 before the Board; is that right?

9 A That's right. That was two weeks later.

10 Q As to the minute order, of course, the action of the  
11 Board was taken before that letter was sent out, -- the  
12 minute order of October 13th?

13 A Yes, that's right.

14 Q And that letter was sent out on the date that it  
15 bears?

16 A That's right.

17 Q After hearing the persons at that meeting, did the  
18 Board of Education take any action? I am referring to the  
19 meeting held subsequent -- I am referring to the meeting at  
20 which Mr. Martin and that group of people appeared before the  
21 Board.

22 A I don't remember whether that was subsequent to  
23 this notice or not. I don't remember. I am sorry, I don't.

24 Q Well, didn't the people have the letters with them  
25 when they appeared before the meeting?

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1 A I think so, as I recall the meeting.

2 Q Then the letter must have gone out, if they did  
3 have it with them at the meeting?

4 A Yes.

5 Q Now, do you recall whether or not they did refer  
6 to that letter?

7 A Yes, they did. That was the purpose of the meeting,  
8 I presume.

9 Q Do you recall any statement made to them by any  
10 member of the Board of Education at that meeting?

11 A No, I do not.

12 Q Did the Board take any action on their request?

13 A They had approved the sending out of these letters,--

14 Q But I mean --

15 A -- and as I recall it, they said they would take the  
16 matter under consideration, but they took no action.

17 Q Other than taking it under consideration?

18 A That's right.

19 Q During the school year just ended, all of those  
20 people were permitted to send their children to the Franklin  
21 School?

22 A They were.

23 Q And the Board of Education has not, so far as you  
24 know, denied their request for a continuance?

25 A They have not.

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1 Q As you view the situation, do you feel that the  
2 Board of Education will change their policy, so far as those  
3 particular pupils are concerned?

4 MR. MARCUS: Objected to as leading and suggestive, and  
5 calling for the witness' conclusion.

6 THE COURT: I think it does. I don't think we should  
7 ask the superintendent to determine the policy of the Board.

8 MR. HOLDEN: I think that that objection is well taken.  
9 However, I thought that, being the superintendent of schools  
10 and that we were trying to limit this thing so far as possible,  
11 it would be within his knowledge, as to the policy of the  
12 Board.

13 THE COURT: You can call the members of the Board and  
14 not ask the superintendent to be a mouthpiece of the Board,  
15 because I don't believe he is.

16 Q BY MR. HOLDEN: As superintendent of the schools  
17 of Santa Ana, would you recommend to the Board that these  
18 pupils be permitted to attend the Franklin School, -- the  
19 ones that have made application?

20 MR. MARCUS: Objected to upon the same grounds.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, I would do so, for the same reasons  
23 that have been outlined, and, in addition, the reason of  
24 long attendance through the families at the Franklin School,  
25 and a sort of family tradition. I think it would be better

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1 for those children, and I would recommend that.

2 Q BY MR. HOLDEN: Do you know the purpose for which  
3 that letter, signed by Mr. Yost, was sent to the various  
4 people?

5 MR. MARCUS: Objected to on the ground that the letter  
6 speaks for itself.

7 THE COURT: I believe it does.

8 MR. HOLDEN: The purpose, -- for what purpose, is the  
9 question, and not what the letter contains.

10 THE COURT: Isn't the purpose of the letter indicated  
11 by the wording of the letter itself?

12 MR. HOLDEN: It seems quite definite in the letter that  
13 they were to be assigned to the Franklin School.

14 THE COURT: Well, it seems whatever it says. I don't  
15 believe it is proper to ask a person who did not write the  
16 letter to interpret the purpose of the letter, because the  
17 letter itself will speak for itself if it contains words that  
18 have meaning. If there was any discussion at the meeting of  
19 the Board of Education, or any discussion with the superin-  
20 tendent of schools of Santa Ana by Mr. Yost or with Mr. Yost  
21 before the letter was transmitted, you may elicit those facts,  
22 but the purpose of the letter, I think, is indicated clearly  
23 by its words.

24 Q BY MR. HOLDEN: At the meeting of the Board of  
25 Education, prior to the time that this letter was sent out,

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1 did the Board of Education have a discussion as to what  
2 information should be sent to the people who would be sending  
3 their children to the Franklin School?

4 A Yes, they did.

5 Q What was that discussion, as you recall it?

6 A It was incident to the fact that other Mexican  
7 parents had protested their children being compelled to attend  
8 the Fremont School while these others were permitted to trans-  
9 fer to the Franklin School, for reasons which they could not  
10 understand, and it was discussed with regard to the other  
11 applicants, and the decision was made to permit these folks  
12 to finish the year, these transfers to finish the year in the  
13 Franklin School, and then to receive this notice that ending  
14 with the year they would have to be obliged to attend the  
15 school of their district, whatever the district might be.

16 Q Was there anything said in that discussion as to  
17 receiving applications for readmission into the Franklin  
18 School?

19 A No.

20 MR. HOLDEN: I believe, your Honor, that is all at this  
21 time.

22 THE COURT: Cross-examine.

23 CROSS EXAMINATION

24 BY MR. MARCUS:

25 Q Mr. Henderson, do you have a distinct recollection

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1 at this time of having a conversation with Mr. Marval, the  
2 gentleman who testified in this court room?

3 A No, I don't. Mr. Marval?

4 Q You have no recollection of having any conversation  
5 with him at any time?

6 A I believe not. It was probably an attendance super-  
7 visor. I do not recall it.

8 Q Well, then, as I understood you to state on direct  
9 examination, the transfer of the Marval child was permitted  
10 for the reason that it was claimed that the child was not of  
11 Mexican descent?

12 A That's right. That is what I said.

13 Q Do you have any definite knowledge of this at this  
14 time, that there was such a claim made by Mr. Marval to you?

15 A I think not to me, Mr. Attorney.

16 Q Then the testimony that you gave on direct examina-  
17 tion is information that you have received from some other  
18 source, other than from Mr. Marval?

19 A I think so.

20 MR. MARCUS: I move that the testimony on direct examina-  
21 tion be stricken as calling for hearsay.

22 THE COURT: I don't think that would be hearsay of a type  
23 that should exclude it. He is the superintendent of schools  
24 of the city, and his, I presume under the law, would be the  
25 final, ultimate decision as to transfers, and necessarily he

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1 would have to depend upon his subordinates. He couldn't  
2 himself contact all of these parents of the children. The  
3 motion is overruled.

4 Q BY MR. MARCUS: The claim was never made to you,  
5 then, Mr. Henderson, that the child was not of Mexican  
6 descent?

7 A I think not.

8 Q And that information came to you through some other  
9 source?

10 A Through the attendance supervisor.

11 Q Do you have a distinct recollection at this time  
12 that the attendance supervisor did so advise you, that the  
13 child claimed or the parents of the child claimed him not  
14 to be of Mexican or Latin descent?

15 A I think so.

16 THE COURT: Well, now, there is a difference between  
17 Mexican and Latin descent. I believe there was some question  
18 of some of the Spanish-American provinces involved. I thought  
19 we were speaking of Mexican ancestry as the same, and not of  
20 Spanish ancestry as the same. If your question is clear,  
21 very well, but it isn't clear to me because of the record  
22 that preceded it.

23 MR. MARCUS: I was asking that direct question, your  
24 Honor, whether it was claimed that the child was not of  
25 Mexican or Latin descent.

152 1 THE COURT: Very well.

2 THE WITNESS: I think Mexican. I wouldn't add the Latin.  
66 3 I don't know about that.

4 Q BY MR. MARCUS: But the information came to you,  
5 as superintendent of schools?

6 A Through the attendance supervisor.

7 Q You have such independent recollection at this  
8 time, of that information coming to you?

9 A That is my recollection.

10 Q Do you have any record of it at this time?

11 A No, I have not.

12 Q How is your memory refreshed, or how do you remember  
13 it at this particular time, that that information did come  
14 to you?

15 A I remember it at this time because you asked me  
16 about it, and I didn't refresh my memory. You can't remember  
17 all of these things.

18 THE COURT: Did you refresh your memory, Mr. Henderson?

19 THE WITNESS: In what way? From records?

20 THE COURT: Did you refresh your memory, or do you  
21 remember that was the situation?

22 THE WITNESS: I remember that that was the situation.  
23 There is no way I could refresh my memory unless I talked to  
24 the attendance supervisor, which I have not done, with regard  
25 to Marval.

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1 Q BY MR. MARCUS: When the claim was made, and the  
2 information came to you that the child was not of Mexican  
3 descent, you permitted the transfer, did you?

4 A Yes.

5 Q I didn't get the answer, sir.

6 A Yes.

7 Q Do you have many such requests, that children were  
8 not of Mexican descent and, therefore, desired to be transferred  
9 out of the Fremont District?

10 A I don't recall any other.

11 Q You have stated before that it is the policy of the  
12 Board that if a child is in a minority group, that you permit  
13 that child to transfer to a school where his grouping would  
14 be in the majority; is that correct?

15 A No, I didn't say that. No, I didn't say that.

16 Q Well, did you state that if a child is in the  
17 minority group, that he is permitted to transfer?

18 A I did that, but he wouldn't transfer to a place  
19 where he was in a majority group. It wouldn't be true in any  
20 case.

21 Q Well, let's proceed with this Fremont School. As  
22 I understood you to state, there were some 14 families who  
23 reside within that district, who are not of Mexican or Spanish  
24 descent?

25 A When did I say that? This morning?

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1 Q Yes, sir.

2 A I will have to refresh my memory that that is about  
3 right.

4 MR. HOLDEN: That is not the fact in evidence, your  
5 Honor. The evidence is that there were 14 families of  
6 Mexican descent who were permitted to transfer.

7 THE COURT: That is the recollection of the court.

8 Q BY MR. MARCUS: Well, did you make a statement this  
9 morning, or on a previous occasion while you were on the  
10 witness stand, that there were some 14 families of Anglo-  
11 Saxon descent residing within the Fremont District?

12 A I think not. I don't know that to be a fact, so  
13 I don't believe that I said that.

14 Q Do you know, or do you have any recollection at this  
15 time of how many children other than of Mexican descent reside  
16 in the Fremont District?

17 A I can check it. Other than Mexican?

18 Q That is right.

19 A About 26; about 26 children.

20 Q And that is children?

21 A Yes.

22 THE COURT: Let me have that read, please, the question  
23 and answer.

24 (Record read by the reporter.)

25 Q BY MR. MARCUS: You have a record in your possession

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1 showing such designation?

2 A Yes. This is, I presume, from the addresses, that  
3 these are all in the Fremont District. There are Negro  
4 children attending Franklin School who live in the Fremont  
5 District. There are children of Anglo ancestry, of other  
6 than Mexican, attending Wilson.

7 MR. HOLDEN: I don't think the witness is speaking loud  
8 enough.

9 THE COURT: I heard it, but not very distinctly.

10 THE WITNESS: I am saying to the attorney that here is  
11 the list of Anglo, or other than Mexican descent, attending  
12 the Franklin District from the Fremont District. Here they  
13 are.

14 Q BY MR. MARCUS: May I see it?

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

16 Q BY MR. MARCUS: Was this record, Mr. Henderson,  
17 prepared at your request?

18 A Yes, on March 9th.

19 Q On March 9th, 1945?

20 A It is information which we should have for all of  
21 the schools.

22 Q You have no knowledge at this time upon what basis  
23 the children were selected as being of Anglo-Saxon or of Mexican  
24 descent, do you, sir?

25 A The basis of distinction between the Mexican, and the

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1 other?

2 Q That is right.

3 A Well, it is easy to determine, fairly easy to  
4 determine in the matter of the Negro, and simple observation  
5 is the only thing that we can use.

6 Q I beg your pardon?

7 A Simple observation is the only thing we can use.

8 Q Was it selected on the basis of the names?

9 A To some extent, certainly.

10 Q Well, do you know, of your own knowledge, that the  
11 children were interviewed, or that they were talked to, in  
12 order to ascertain whether or not they were of Mexican  
13 descent?

14 A Well, I didn't interview them. The attendance  
15 supervisor may have. We know these parents, many of them,  
16 somewhat.

17 Q These children are all permitted to attend a school  
18 other than the Fremont School; is that correct?

19 A That is right, that is, whose names you have looked  
20 at.

21 Q Now, is that for the reason that they are of Anglo-  
22 Saxon descent?

23 A I have testified a number of times that that is not  
24 the reason. There are Negroes, you will remember. They are  
25 not Anglo-Saxons. But for the reason we permitted them to

1 transfer where they would not be in a very small minority  
2 in a school of their district, although not a majority in the  
3 district to which transferred.

4 Q That would have the practical effect of making the  
5 Fremont School 100 per cent Mexican?

6 A Is that a statement or a question?

7 Q Is that true, sir?

8 A Yes, that is true.

9 Q That would likewise be true in the Delhi District?

10 A Although they are not required to do that, to transfer.

11 Q I understand they are not required to --

12 A No.

13 Q -- but they are permitted to?

14 A They are permitted to.

15 Q And in the Delhi District that is likewise true?

16 A With, I think, at this time only one exception, a  
17 little colored boy that goes to that school, and the line is  
18 clearly drawn between the Edison and the Delhi District, and  
19 the Mexican children that live north of the line and in the  
20 Edison District attend the Edison School.

21 Q In the Delhi District there are 232 children of  
22 Mexican descent and no others, except the one colored child  
23 you have referred to?

24 A That's right, if you have the figures there. I  
25 don't recall.

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1 Q And in the Logan School 158 children of Mexican  
2 descent?

3 A That's right.

4 Q The children who have attended the Franklin School  
5 from the Fremont District of Mexican descent were requested  
6 to return to that district by those letters; is that correct?

7 A They were requested --

8 MR. HOLDEN: I object to that on the ground that the  
9 letter speaks for itself.

10 THE COURT: Yes. That is the objection you urged, that  
11 the terms of the letter are clear.

12 Q BY MR. MARCUS: These children are all of Mexican  
13 descent, to whom the letters were sent? I believe you  
14 testified to that on direct examination. Is that correct,  
15 sir?

16 A So far as I know, yes.

17 Q You sent no letters to other children in that dis-  
18 trict except those of Mexican descent?

19 A To these that were transferred as a matter of  
20 tradition to the Franklin School.

21 Q And they were of Mexican descent?

22 A Yes.

23 Q You sent no letters to other children, other than of  
24 Mexican descent?

25 A No, we have not.

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1 Q Now, do I understand you to say, Mr. Henderson,  
2 on direct examination that if the request was made to you,  
3 as the superintendent of schools, that you would recommend  
4 to the Board that these Mexican children be permitted to con-  
5 tinue in the Franklin School, who reside in the Fremont  
6 District?

7 A I would think that the same reasons that have been --  
8 that have obtained in the years would still obtain, and that  
9 they probably should be permitted to attend the school of  
10 their traditional interests.

11 Q Well, did I understand you correctly to state that  
12 you would recommend that to the Board?

13 A Yes, you did.

14 Q But you have no knowledge as to what the action of  
15 the Board would be?

16 A No, I haven't.

17 Q That is your own personal opinion at this time?

18 A No, I don't know what they will do.

19 Q You will have to be governed by the action of the  
20 Board in the attendance and transfer of the children from  
21 one district to another, will you not?

22 A That's right.

23 Q Now, just one further question, sir, on the placing  
24 of the teachers in the different districts. Is that done by  
25 the Board?

1           A     That is done by the superintendent largely.     The  
2     Board always approves the assignment.     It is a standard  
3     practice that when it is recommended that Miss Brown, Miss  
4     Jones, Miss Green, and so forth, are assigned to the Fremont  
5     School, they do not begin work there until the Board approves  
6     all of those assignments.     The Board approves the assignments  
7     and they normally take the advice and counsel of the super-  
8     intendent.

9           Q     Then you would have the authority to place a teacher  
10    from one district to another, if you desire, or if the load  
11    became too heavy in one district over another?

12          A     Yes, if it is required, we do that.

13          Q     There would be no difficulty encountered in case  
14    some of the children of Anglo-Saxon descent, or other descent, who  
15    were attending from the Fremont District in another district  
16    were required to return to the Fremont District, in trans-  
17    ferring some of the teachers over there, would there?

18          A     Why should we transfer a teacher?     There would be  
19    no difficulty.     We could do that.     There would be no diffi-  
20    culty.     I don't know what your question means, but there would  
21    be no difficulty.

22          THE COURT:     There has not been any complaint urged against  
23    the teachers, as I recall.     I don't know that there has been  
24    any question raised here as to the teachers in these respective  
25    schools.

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1 MR. MARCUS: My question, your Honor, was to clarify  
2 counsel's examination with respect to the student load in the  
3 various schools. The question was inquired into of Mr.  
4 Henderson respecting the student load in the different dis-  
5 tricts.

6 MR. HOLDEN: I have no objection to his going into it,  
7 but it was Mr. Reinhard who testified to it. I think Mr.  
8 Henderson knows about it.

9 THE COURT: Is the court correct about your position:  
10 There is no claim made here so far as the teachers, per se,  
11 are concerned that there has been any act of discrimination?

12 MR. MARCUS: There is none whatsoever, your Honor.

13 Q BY MR. MARCUS: Now, do you have the certificate  
14 with you, Mr. Henderson?

15 A This?

16 Q Yes, sir. May I see that?

17 A That is the same figures you have, probably.

18 Q Now, in the preparation of this certificate that has  
19 been introduced in evidence from the Santa Ana School District,  
20 in the designation of the Spanish-speaking pupils do you have  
21 any personal knowledge at this time as to how or in what  
22 manner the designation of Spanish-speaking pupils was placed  
23 on this certificate?

24 A No other than the normal recognition of people as  
25 Spanish, I mean as Mexican, or otherwise. I don't know

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1 of any test, unless we would go into ancestry and birth  
2 certificates, and origin of the parents and the grandparents.  
3 I know of no way except by observation.

4 Q BY THE COURT: Well, how could you by observation  
5 determine whether a person was or was not a Spanish-speaking  
6 person?

7 A Oh, you could not tell that except by finding out  
8 whether they were able to speak Spanish, which I cannot do.

9 Q You would have to apply a test, Mr. Henderson?

10 A Yes, sir.

11 Q Now, the question was whether you know as to  
12 whether or not the policy of the school authorities there set  
13 up any test for the determination of that element.

14 A No, they have not.

15 Q To whom was that left to decide, that question, if  
16 any one?

17 A Principals and teachers, I should say, who are in  
18 direct contact with the children.

19 Q Well, does the principal of the school in the City  
20 of Santa Ana, and, particularly, we will take two of the  
21 schools that seem to be the ones that are principally involved  
22 in this litigation, the Franklin School and the Fremont School, --

23 A Yes, the Fremont School.

24 Q -- is it within the authority of the principal of  
25 either of those schools, or of both of them, to determine

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1 which children shall enter the school for instruction?

2 A No, it is not. The children who live in the dis-  
3 trict enter the school regardless of origin. Transfers only  
4 are in the power of the Board of Education.

5 Q I am not speaking of the Board in my question. I  
6 am speaking of the principal and the teacher. I understood  
7 you to say that the teacher and principal would have some  
8 authority with respect to the child entering the school, --

9 A That is right.

10 Q -- because of being classified either as a Spanish-  
11 speaking child or as a non-Spanish-speaking child. Is that  
12 correct?

13 A No, we do not do that. The children who live in  
14 the Fremont District, as set forth here in the map, enter  
15 the Fremont School. These 12 or 14 children have normally  
16 gone immediately to the Franklin School, because it has been  
17 a long standing tradition, and the principal of the Franklin  
18 School has been accepting them. Otherwise, the children who  
19 live in the district enter the school, and there is no ques-  
20 tion about Mexican, or non-Mexican, as they enter school,  
21 and no transfer unless it is by permission of the Board of  
22 Education.

23 Now, let me say that those transfers up to this time have  
24 not been in written form. They have been largely again, as  
25 I say by observation.

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1 Q Are there not children within the district of the  
2 Fremont School, or were there not on March 22, 1945, who were  
3 not Spanish-speaking children, so-called?

4 A Yes, your Honor.

5 Q Were they attending the Fremont School?

6 A They were not.

7 Q How did it happen, having been residents within the  
8 district, the Fremont School District at that time, that they  
9 were not attending the Fremont School?

10 A They were permitted to transfer out of that district  
11 by an understood policy of the Board. There was no form set  
12 up. There was nothing but a conference with the superintendent  
13 and his subordinates in that matter, but they were permitted  
14 to transfer out.

15 Q Were there any such persons who were not permitted  
16 to so transfer out?

17 A Oh, I think not. Out of Fremont now, you are talking?

18 Q Yes.

19 A I think not. There were in some other districts.

20 Q Were there any applications made for transfer of  
21 any non-Spanish-speaking children from the Delhi School?

22 A Formal applications, you mean?

23 Q Well, formal or otherwise.

24 A No. There were not more than five or six probably  
25 in that entire district, because it is a country of farm

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....  
1 district, almost solidly Mexican population, and they were  
2 transferred just as they were in the Fremont District,  
3 by understanding. There was no action, however.

4 Q Now, with respect to the Logan School, what was  
5 the situation with respect to the transfer or lack of transfer  
6 of non-Spanish-speaking children who lived within the district  
7 of the Logan School, on or before March 22, 1945?

8 A I don't know, your Honor. I don't know. That is  
9 almost a continuous and solid little Mexican center, and I  
10 don't know if there are others transferred out.

11 THE COURT: Just one or two further questions, and then  
12 you can take it up, Mr. Marcus. I wanted to ask these some-  
13 time, and I might just as well do so now.

14 Q BY THE COURT: How many rooms, classrooms or rooms  
15 in which instruction was given to the children attending the  
16 Fremont School were there in that school on the 22nd of March,  
17 1945?

18 A How many rooms were used for instruction?

19 Q Well, how many were available for instruction?

20 A There are 16 rooms in that building, part of which  
21 are used for sewing, for a lunch room, for a library, and a  
22 teachers' lunch room, for this shop room which I mentioned.  
23 And the Fremont School had 10 or 11 teachers, I have forgotten  
24 which, with a student load of about 33, as has been testified  
25 here.

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1 Q What was the student load in the Hoover School?

2 A The Hoover?

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3 Q Yes, sir, on March 22nd, 1945.

4 A It was quite light. That school is way over on the  
5 other side of town, and in a district that is not very well  
6 developed as yet, and the student load there is comparatively  
7 light. It is not, however, so light that we could spare  
8 teachers from it.

9 I could tell you, your Honor, if you would like to know,  
10 what we estimate will be the situation there in September.

11 Q Yes.

12 A We will have a kindergarten teacher who teaches  
13 only a half session, and five other teachers, of which the  
14 principal is a teaching principal. The room loads run like  
15 this: First grade, 24; second grade, 23; third and fourth  
16 grades, 32; fourth and fifth grades, 32; and fifth and  
17 sixth grades, 32.

18 Q Let's take the Wilson District. How many rooms,  
19 classrooms, were there available and used in the instruction  
20 of children who attended the Wilson School on March 22,  
21 1945?

22 A Eight classrooms.

23 Q What was the pupil load, so-called, at that school  
24 at this time, per teacher?

25 A I don't know exactly, your Honor. Our average student

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1 load in the city schools was about 33 per teacher, and I  
2 think Wilson was perhaps a little in excess of the average.

3 Q How many rooms were there there?

4 A Eight.

5 Q And how many teachers?

6 A Eight teachers, plus a principal who does not  
7 teach. She is a supervising principal.

8 Q From the standpoint of instructors there, there  
9 were eight?

10 A Yes, that's right, and on the figures which have  
11 been submitted here as of March 22nd, there would be 32 and a  
12 fraction per teacher.

13 Q Are there no Spanish-speaking persons, so-called in  
14 that district?

15 A No. If there were, they would be attending school  
16 there. They would be assigned there. In the Wilson  
17 District, you mean?

18 Q Yes. That would not necessarily depend upon the  
19 fact that there have been transfers from other districts into  
20 Wilson?

21 A I mean to say if they wished to attend the Wilson  
22 School, they would be there.

23 THE COURT: Proceed.

24 Q BY MR. MARCUS: In permitting the transfer of non-  
25 Mexican children residing within the Fremont, Delhi and Logan

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1 Districts to another district, you stated on direct examina-  
2 tion that consideration was given to other matters besides  
3 the fact that they were non-Mexican. Is that correct, sir?

4 A Yes, that's right.

5 Q Now, what were the other matters that you considered  
6 in permitting these transfers?

7 A Well, let us take again the case of the colored  
8 children.

9 Q Well, let's leave the colored children out for the  
10 moment on those matters just with respect to Anglo-Saxon.

11 A All other than --

12 THE COURT: Or what you call non-Spanish-speaking  
13 children, so as to preserve the same nomenclature.

14 MR. MARCUS: Yes.

15 THE COURT: Anglo-Saxon is a very nebulous term, and  
16 it doesn't characterize any type of people definitely, whereas  
17 they have used here two terms for classification, and whether  
18 they are correct or not is not the point, but I suggest you  
19 use the same nomenclature which they have used in the forms  
20 which they have submitted, English-speaking pupils and  
21 Spanish-speaking pupils.

22 THE WITNESS: Will you repeat the question, please?

23 Q BY MR. MARCUS: What other consideration did you  
24 give to the children in permitting the children to transfer,  
25 who were non-Spanish-speaking?

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1 A Other than this item I have mentioned of minority  
2 or majority group? Is that what you mean?

3 Q Well, we haven't mentioned that yet.

4 MR. HOLDEN: I think the witness did not understand  
5 the question.

6 Q BY MR. MARCUS: Well, you understand, don't you --

7 A Other than what?

8 Q Other than the fact that they were of the minority  
9 group, were there any further considerations given?

10 A Yes, being in the Spanish-speaking school, that is  
11 the school in which the majority of the children are from  
12 Spanish-speaking homes, they would be thrown with the Spanish  
13 language, not a word of which they understood, and with that  
14 all about them, I think it would be bad for the child.

15 Q Why would it be bad for the child?

16 A Because he could not express himself to his play-  
17 mates in the language which the playmates were accustomed to  
18 using.

19 Q In other words, in your opinion then it would be bad  
20 for the child other than of Spanish-speaking ancestry?

21 A To do what?

22 Q To permit him to remain in the school district in  
23 which he resides?

24 A I think I would leave that to the child. I would  
25 permit him to transfer if he asked for it.

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1 Q But your personal opinion, and that of the Board,  
2 was that it would be bad for the child?

3 A I believe so.

4 MR. HOLDEN: I object to that as stating facts not in  
5 evidence.

6 THE COURT: I don't believe he should be asked to ex-  
7 press the views of the Board. The Board is available and  
8 could be called.

9 Q BY MR. MARCUS: Now, with respect to this matter of  
10 the minority that you have mentioned, why would it not be  
11 beneficial for the child to be permitted to remain in the  
12 district in which he resides, even though he was in the  
13 minority with respect to being Spanish-speaking or non-Spanish-  
14 speaking?

15 A I think I have answered that to some extent, that he  
16 would be handicapped in his program, to some extent perhaps.  
17 It has been testified here again and again that the Spanish-  
18 speaking child from a Spanish-speaking home does not acquire  
19 facility in the English language, which the non-Spanish-  
20 speaking child already has to a large extent, and he would be  
21 handicapped.

22 Q Now, is that true, Mr. Henderson, with respect to the  
23 children, as you say, of the non-English-speaking or Spanish-  
24 speaking ancestry during the entire school year?

25 A During the --

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1 Q During the entire school curriculum?

2 A You mean handicapped in the use of English?

3 Q That is right.

4 MR. HOLDEN: I object to that on the ground it is not  
5 proper cross examination. I have no objection to counsel  
6 making this witness an expert witness, if he desires to do so  
7 for his own case.

8 THE COURT: Overruled. I think he is an expert, that he  
9 is an expert school man.

10 THE WITNESS: Well, it has been testified here from this  
11 stand by numbers of these witnesses, and you have tried to  
12 say to them that after they have had one year of familiarity  
13 with the English language that that is O. K., that from then  
14 on they are all right. They never acquire the facility with  
15 the English language that they would have if they were from  
16 an English-speaking home, where English is used all the time.  
17 No one ever learns the language perfectly, and it applies to  
18 all of us. But that pursues them through the grades and  
19 through the junior high school and into the senior high school.

20 Q BY MR. MARCUS: Then the opinions expressed from the  
21 witness stand by Mr. Kent and by Mr. Harris are your opinions,  
22 too?

23 A I don't remember what they said, and I don't want  
24 to testify that way.

25 Q You have stated that it has been testified to from

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1 the witness stand by other witnesses.

2 A That it is a large handicap.

3 Q Throughout the entire school life?

4 A I did not state that that had been testified to.

5 That is my testimony.

6 Q That is your opinion?

7 A Yes, it is my opinion. I think it is easy to prove.

8 Q Is that one of the reasons why you permit these  
9 transfers from one district to another?

10 A That is one of the reasons.

11 Q Now, is there any other reason, sir?

12 A I think I would say no to that, no other reasons.

13 MR. HOLDEN: That is repetition.

14 THE WITNESS: W e wouldn't get anywhere.

15 Q BY MR. MARCUS: Just one further question along that  
16 line. In referring to Spanish-speaking pupils on this certi-  
17 ficate, was it your purpose and intention to denominate those  
18 Spanish-speaking pupils as of Mexican descent?

19 A I think the certificate speaks for itself. It says,  
20 "Spanish-speaking pupils." It doesn't say anything about  
21 Mexican. The pupils of Mexican descent are Spanish-speaking  
22 pupils. It includes those, Mr. Attorney, on the certificate  
23 itself.

24 Q Well, it was your intention at the time that the  
25 certificate was prepared, for the Spanish-speaking pupils to

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1 be of Mexican descent? Is that correct, sir?

2 MR. MARCUS: I think it has already been testified to,  
3 Mr. Ogle.

4 MR. OGLE: I was talking to Mr. Holden.

5 MR. MARCUS: I am sorry. You spoke loud enough for me  
6 to hear you, sir.

7 THE WITNESS: Please repeat that question.

8 Q BY MR. MARCUS: You have referred to Spanish-  
9 speaking pupils --

10 THE COURT: In Exhibit 4.

11 Q BY MR. MARCUS: -- in Exhibit 4, it was your inten-  
12 tion at the time that the certificate was prepared that those  
13 Spanish-speaking pupils were to refer to those of Mexican  
14 ancestry?

15 A Not necessarily. The certificate says, "as between  
16 English-speaking pupils and pupils of Mexican descent or  
17 Spanish-speaking pupils." That is what it says.

18 Q That is what it says in this body, but when you  
19 designate it here (indicating), it is Spanish-speaking pupils?

20 A Oh, yes.

21 Q That was to include those of Mexican descent?

22 A Oh, yes, it was to include those of Mexican descent,  
23 yes.

24 Q Now, in the meeting of the Santa Ana Board of Educa-  
25 tion on October 13, 1944, the discussion with respect to the

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1 transfer of children from the Franklin School back to the  
2 Fremont District was solely with respect to those of Mexican  
3 descent, was it not?

4 A That was the whole discussion at that time, that's  
5 right.

6 Q There was no discussion at that time held, as you  
7 remember, with respect to the transfer back to the Fremont  
8 District of children other than of Mexican descent?

9 A No; no.

10 MR. MARCUS: That is all.

11 MR. HOLDEN: Just one minute.

12 REDIRECT EXAMINATION

13 BY MR. HOLDEN:

14 Q Mr. Henderson, in any of these districts of Santa  
15 Ana, any of the zones, if a pupil residing in any one zone  
16 wanted to transfer to another zone and he had any reason,  
17 whether it has been mentioned here or not, that you deemed  
18 a good reason, wouldn't you transfer him?

19 A I would.

20 MR. HOLDEN: That is all.

21 MR. OGLE: If the court please, neither counsel nor I  
22 have had an opportunity to discuss the matter with one of  
23 our witnesses who has just come into the court room.

24 THE COURT: We will take a recess for a few minutes.

25 (A short recess was taken.)

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1 THE COURT: Proceed.

2 MR. HOLDEN: At this time, your Honor please, the defen-  
3 dants rest.

4 DEFENDANTS REST.

5 THE COURT: Is there any rebuttal?

6 MR. MARCUS: I don't believe so at this time, your Honor.  
7 Would it preclude us --

8 THE COURT: If you want to think it over during the  
9 noon hour, you may do so, and we will recess until 2:00  
10 o'clock.

11 MR. MARCUS: Very well. Thank you, your Honor.

12 MR. HOLDEN: Now, may I inquire of the court if the court  
13 feels there should be any oral argument in the matter, or  
14 whether it should be submitted on briefs?

15 THE COURT: Of course, it is always better to have ques-  
16 tions of law briefed. It can be given much greater reflection  
17 and consideration, if they are written. Arguments on facts  
18 are best submitted by oral argument.

19 I don't think I should indicate until you determine  
20 whether you want to rest your case or as to whether you have  
21 any rebuttal you wish to offer.

22 MR. MARCUS: Very well.

23 THE COURT: At that time, when the case is before the  
24 court on the factual situation, then the court will indicate  
25 what its desires are.

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1 MR. OGLE: If the court please, would it be of any  
2 assistance to the court to express our desires, that it should  
3 be submitted on briefs?

4 THE COURT: Yes, by either of you, or both of you.

5 MR. OGLE: We feel it would be of assistance to the  
6 court if we could submit it on briefs. There has been so  
7 much evidence here, and it gives counsel an opportunity to  
8 review it for consideration, so I feel that it would be  
9 better if we submitted briefs.

10 THE COURT: What do you think?

11 MR. MARCUS: The matters of law I think should be sub-  
12 mitted on briefs. Now, I await the pleasure of the court on  
13 the question of argument on the facts of the case. I have  
14 no particular preference on it. I can argue the question of  
15 facts orally, or submit it in writing.

16 MR. OGLE: We would like to prepare briefs on the law and  
17 on the facts. We might leave that to Mr. Marcus.

18 THE COURT: The only difficulty in briefing facts in a  
19 case of this extent and with the ramifications of evidence  
20 is, there being no transcript -- there should have been a  
21 daily transcript in this case -- the memory is not quite as  
22 reliable as if it is argued right at the conclusion of the  
23 case. While the court has its own notes, they are not com-  
24 prehensive, and could not be. But this is a very serious  
25 question of jurisdiction that is presented, and I think it should

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1 be briefed. As I say, that is a serious question of law in  
2 the case, the question of jurisdiction of the Federal Court,  
3 to interpose itself in a state educational matter. The  
4 court directed attention to that at the pre-trial hearing by  
5 making the observation that it would have been better to have  
6 proceeded through the regular courts of the state, and then  
7 if the desirable results would not have been obtained, then  
8 the Supreme Court of the United States could have been  
9 appealed to, because this seems to be a question of first  
10 impression.

11 I am not saying this decisively, but I think when you  
12 read the authorities, if you haven't already done so, and I  
13 cited one yesterday to show the line of demarcation, since  
14 there is no race question here involved, and I think that was  
15 conceded by both you, Mr. Marcus, and the gentlemen on the  
16 other side, it means that we have a novel situation here.  
17 Now, whether or not there are principles enunciated in some  
18 of these decisions of the Supreme Court of the United States  
19 that are helpful, I am not so sure, either one way or the  
20 other, so that that matter should be very carefully briefed  
21 by both of you.

22 On the facts, you can determine what you want to do, and  
23 at 2:00 o'clock the court can determine whether it wants to  
24 hear oral argument on the facts, or whether that should be  
25 included in the briefs.

1 MR. MARCUS: And may I make further inquiry on the  
2 question of facts? The court has expressed the thought that  
3 one's memory becomes a bit hazy, and probably not correct  
4 or precise on the question of facts, and I think, in view  
5 of the importance of this matter, and the fact that it is  
6 of first impression, and I have read practically all cases  
7 on this question, if it would be of benefit to the court  
8 and if the court would care to indicate that it would be, it  
9 may be possible to arrange, if opposing counsel would be  
10 interested, the apportioning of these costs in some way and  
11 have the transcript written up.

12 MR. OGLE: I was going to suggest, if the court please,  
13 that very line of thought, and possibly counsel and I can get  
14 together in the noon hour, in order that a transcript might  
15 be ordered, not only for the benefit of the court, but for  
16 counsel on both sides. I agree with counsel on that theory.

17 THE COURT: That certainly would be very helpful.

18 MR. MARCUS: I rather pride myself on my memory, but  
19 after four days of trial and so many witnesses in the case,  
20 we can't begin to remember all of the testimony, and, in  
21 particular, the testimony that was given in the first two or  
22 three days of the trial. This is the fifth day, I believe.

23 THE COURT: Very well, gentlemen. You can confer during  
24 the noon hour.

25 MR. OGLE: Yes, we shall get together in the noon hour.

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1 (Whereupon, at 11:50 o'clock a. m., a recess was taken  
2 until 2:00 o'clock p. m. of the same day.)

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, JULY 11, 1945. 2:00 P. M.

2 - - -

3 THE COURT: Call the case on trial.

4 THE CLERK: Mendez v. Westminster.

5 MR. MARCUS: Ready.

6 MR. HOLDEN: Ready.

7 THE COURT: Proceed.

8 ISABEL AYALA,

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

11 THE CLERK: Will you state your name, please.

12 THE WITNESS: Isabel Ayala.

13 DIRECT EXAMINATION

14 BY MR. MARCUS:

15 Q Where do you live, Isabel?

16 A I live in Garden Grove.

17 Q How long have you lived in the Garden Grove District?

18 A About three years.

19 Q What is the address of your home?

20 A 124 West Acacia Street.

21 Q Now, how far do you live from the Franklin School?

22 A From the Lincoln School?

23 Q From the Lincoln School. Pardon me.

24 A About five blocks.

25 Q And how far do you live from the Hoover School?

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1 A About a mile and a half, or two miles.

2 Q How old are you?

3 A I am 17 -- 18.

4 Q Where did you receive your education?

5 A Ocean View Elementary School and Huntington Beach  
6 High School.

7 Q Isabel, will you speak just a little louder?

8 A Yes, I will.

9 Q Do you have any brothers and sisters?

10 A I have three brothers and three sisters.

11 Q Give us the names and ages of the children who are  
12 attending school at the present time.

13 A Ines, he is 13 years old, and he is attending the  
14 sixth grade.

15 Q At what school?

16 A Fitz.

17 Q And the next one?

18 A That is Cora. She is 9 years old, and she is attend-  
19 ing the fourth grade, Hoover School.

20 And Jennie, she is seven years old, and she is attending  
21 the second grade at Hoover School.

22 Q Were you born in the United States?

23 A I was born in the State of Oklahoma.

24 Q Your brothers and sisters that you have mentioned,  
25 were they born in the United States?

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1 A Yes, they were.

2 Q And what is your father's name?

3 A Jesus.

4 Q And your mother's name?

5 A Pombosa, P-o-m-b-o-s-a.

6 Q How long did you say you lived in the Garden Grove  
7 District?

8 A About three years. I do not recall very well, but  
9 I think it is either two or three years.

10 Q Now, did you ever have a conversation with Mr.  
11 James L. Kent?

12 A I did.

13 Q How many conversations did you have with him?

14 A One.

15 Q Prior to talking to Mr. Kent, did you talk to any  
16 one else in that district?

17 A Yes, I did. I think it was a principal. I am not  
18 very sure. It was a lady in the Lincoln School.

19 Q When was that?

20 A It was when we moved to Garden Grove and I went to  
21 enroll my little sisters there.

22 Q Did you take your sisters with you?

23 A Yes, I did.

24 Q And when was that, that you went to enroll there?

25 A Right after we moved to Garden Grove.

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1 Q What year was that?

2 A Let's see. It was, I think it was in 1943.

3 Q At that time did you have a conversation with the  
4 principal or the person you believed was the principal of the  
5 Lincoln School?

6 A Yes.

7 Q Do you remember in what month it was? Was it at  
8 the beginning of the semester?

9 A It was about -- it was about April.

10 Q In about April?

11 A Yes, sir.

12 Q Had you been transferred there from some other  
13 school?

14 A Yes, from the Ocean View School.

15 Q Is that in Orange County?

16 A Yes, that is in Huntington Beach.

17 Q Now, when you went to talk to the principal of the  
18 school, and your sisters were with you, --

19 A Yes.

20 Q -- relate the conversation to the court, please.

21 A Well, I went in there --

22 MR. HOLDEN: I object to this on the ground it is not  
23 proper rebuttal.

24 THE COURT: We ought to be able to identify that person.

25 MR. HOLDEN: This conversation with the principal would

1 not be rebuttal.

2 MR. MARCUS: It is simply preliminary, and is only a  
3 matter of one question and answer, that's all.

4 THE COURT: We haven't had the principal of that school  
5 here, as I recall.

6 Q BY MR. MARCUS: Do you remember her name?

7 A No, I don't.

8 Q Well, as a result of that conversation, where did  
9 you go?

10 A Well, she sent me to Mr. Kent.

11 Q That is the Mr. Kent who testified here on the  
12 witness stand?

13 A Yes.

14 Q You recognized him, did you?

15 A Yes, I did.

16 Q Now, did you have a conversation with Mr. Kent at  
17 that time?

18 A No, I didn't.

19 Q Well, when you went to see him, did you talk to  
20 Mr. Kent?

21 A Yes, I talked to Mr. Kent.

22 Q Where did that conversation take place?

23 A In his office.

24 Q At what school?

25 A Fitz.

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1 Q Now, relate that conversation that you had with  
2 Mr. Kent.

3 A Well, I went to see Mr. Kent, and waited there in  
4 his office for a few minutes, and he came in, and I asked him  
5 if I could have my little sisters enrolled in the Lincoln  
6 School.

7 And he said, "No, I am sorry. We have a school for  
8 Mexican children." He says, "All children of Mexican ancestry  
9 have to go over to the Hoover School."

10 And I asked him why. He says, "Well," he says, "in  
11 the first place, they don't speak very good English. They  
12 don't speak English, and we want them over there to teach them  
13 English."

14 I said, "My little sisters speak English. They speak  
15 very good English, all of them."

16 He said, well, he couldn't do very much about it, and he  
17 says, "If I let your sisters come here, most of the children,  
18 most of the Mexican children would want to come in here, too,"  
19 and he says, "You are not the first one that has been here.  
20 I have had other complaints, but I can't do anything about  
21 that." He says, "All Mexican children have to go to the  
22 Hoover School."

23 Q What else did you say to him?

24 A Oh, I told him about the other school. I said, "We  
25 have attended the Ocean View School. We all go there, and we

1 are all mixed there, and the children speak very good English  
2 there."

3 And he says, "Well, sorry, I just can't do anything. You  
4 are of Mexican ancestry, aren't you?"

74 5 I says, "Yes, I am."

6 He says, "Well, there is nothing I can do. You have to  
7 send your little sisters to the Hoover School." That's all.

8 Q Did Mr. Kent at that time tell you or ask you if you  
9 would like to send your little sisters to the Hoover School?

10 A No, he didn't. He just said I had to send them over  
11 there.

12 Q Did you then take them over there?

13 A Well, there was nothing I could do, or we could do.  
14 They had to go to school, so we had to send them over there.

15 Q How far is that from your home?

16 A About two miles. Besides, they have to walk to get  
17 a bus, too, and they walk about two and a half blocks to get a  
18 bus.

19 Q They are attending Hoover School at the present  
20 time?

21 A They are, yes.

22 Q Have you discussed the matter with any one else in  
23 the Garden Grove District connected with the schools?

24 A No, I haven't.

25 Q Have they been attending <sup>school</sup> since that time?

1 A They have.

2 Q Now, tell me, do your little sisters speak the  
3 English language?

4 A They do.

5 Q You are acquainted with the children that attend  
6 that school, are you not?

7 A Yes, I am.

8 Q The other children are of Mexican descent?

9 A Yes, sir.

10 Q You have been over at that school?

11 A Yes.

12 Q Have you had occasion to observe whether or not the  
13 other children do speak the English language?

14 MR. HOLDEN: I object to that on the ground it is not  
15 rebuttal.

16 THE COURT: We will not be able to go into that. Then  
17 we would have to bring in all the other children on rebuttal.

18 MR. MARCUS: That is the reason I didn't want to bring  
19 all the children in.

20 THE COURT: Sustained.

21 MR. MARCUS: Your Honor, this was in the nature of  
22 rebuttal for the reason that Mr. Kent has testified that  
23 the children did not speak the English language.

24 MR. HOLDEN: I don't think Mr. Kent testified to that  
25 effect at all.

1 MR. MARCUS: He did state that that was 90 per cent  
2 true, and he used the words "90 per cent" of the children  
3 that did not speak the English language.

4 THE COURT: I do not think this young lady, with due  
5 respect to her and her intelligence, is a qualified witness  
6 to rebut it. It was his duty to admeasure those children.  
7 That wasn't her province. It was just casual observation  
8 on her part as a lay witness. It was Mr. Kent's duty to  
9 ascertain that.

10 Q BY MR. MARCUS: Did Mr. Kent give your sisters  
11 any sort of an examination --

12 A No, he did not.

13 Q -- at that time?

14 A He did not.

15 Q Did he talk to them at all?

16 A No, he did not.

17 MR. MARCUS: You may cross examine.

18 CROSS EXAMINATION

19 BY MR. HOLDEN:

20 Q You are sure that you know Mr. Kent when you see  
21 him?

22 A Yes, I am. I saw him on the witness stand.

23 Q When he was here?

24 A Yes, I did.

25 Q Your testimony is that you talked to him in April,

1 1943?

2 A No, I spoke to the principal.

3 Q And on what date did you speak to Mr. Kent?

4 A I spoke to him in the early days of '44. I do not  
5 recall the date very clearly, but I know it was in the early  
6 days of '44.

7 Q How long after April, 1943?

8 A Well, it was almost a year after.

9 Q You were transferred from the Ocean View School in  
10 April, 1943?

11 A Yes, that's right. We moved to Garden Grove.

12 Q You were enrolled in the school at that time?

13 A No, I had graduated from the school.

14 Q The little children were transferred?

15 A Yes.

16 Q Your little brother and sister enrolled at the  
17 Hoover School in April, 1943?

18 A Yes, they did.

19 MR. HOLDEN: That is all.

20 Q BY THE COURT: Isabel, are these children your full  
21 sisters, brothers and sisters?

22 A Yes, they are.

23 Q By the same father and mother?

24 A The same father and mother.

25 Q You are 18 now?

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1 A Yes, sir.

2 Q When did you graduate from the school?

3 A 1943. 1942, I think.

4 Q Where is this Ocean View School? Is that in Santa  
5 Ana?

6 A No, that is in Huntington Beach.

7 Q How many children were there in that school when  
8 you finished?

9 A There were quite a few. I don't know how many there  
10 were, but there was very many there.

11 Q Was there only one school in Huntington Beach at  
12 that time?

13 A Where I lived, there was just Ocean View.

14 Q Well, was that the only school in Huntington Beach?

15 A No, that wasn't.

16 Q Was that the only grammar school in Huntington Beach?

17 A No, it wasn't.

18 Q Did you go to the primary and grammar schools there,  
19 or, just the grammar grades?

20 A Just the seventh and eighth grade.

21 Q What was the age of your brothers and sisters when  
22 you took them down to school at Garden Grove?

23 A Well, let's see. One was about 7, and Ines was 11,  
24 I think.

25 Q Where did they enter? In what grade?

75

1 A The first and the fourth grade.

2 Q The one 7 years of age entered the first grade?

3 A Yes.

4 Q And the other --

5 A No, the second grade. The one that was seven  
6 entered the second grade.

7 Q I thought you said she entered the first grade?

8 A No, she was in the first grade in Ocean View, as I  
9 recall now.

10 Q You are not just figuring the age, are you?

11 A No, I am not.

12 Q You do remember definitely that she entered that?

13 A Yes, I do, because I think the teachers wanted to  
14 skip her to the third grade. I recall something about that,  
15 but I know she was in the second grade when we got there.

16 Q What grade did the little girl, or was it a boy,  
17 the other child?

18 A No, it was the boy. He was in the fourth grade.

19 Q How old was he?

20 A He was 11.

21 Q Did you say he was 11, or she was 11?

22 A He was 11.

23 Q Do you speak English at home to your father and  
24 mother?

25 A Well, we speak it, yes, we do. My mother and my

1 father, they don't speak it very well, but they do speak  
2 English and they carry on a conversation very well, my father  
3 especially.

4 Q I mean around at home in the family, what do you  
5 speak?

6 A Both English and Spanish. Most all of us, my  
7 brother who is in high school and the rest of the children,  
8 we all speak English. We don't even speak in Spanish around  
9 the house.

10 THE COURT: That is all.

11 Q BY MR. HOLDEN: Just one question. You testified  
12 that the Ocean View School, -- at least, the court I think  
13 got the impression, that the Ocean View School was in the  
14 Huntington Beach District.

15 A I don't know whether it is.

16 Q You don't know whether it is?

17 A I don't ~~know~~ whether it is.

18 THE COURT: I didn't get that impression. At first I  
19 had it, but she rather clarified it by saying there are other  
20 schools in Huntington Beach.

21 THE WITNESS: There is.

22 Q BY MR. HOLDEN: Is there any other school in the  
23 Ocean View School District?

24 A No, there isn't.

25 Q BY THE COURT: There is only one school in that

1 district?

2 A In Ocean View, yes.

3 Q And where is Ocean View, Isabel, with respect to  
4 Huntington Beach?

5 A It is about five miles, five or seven miles from  
6 Huntington Beach.

7 Q Is it interior or on the beach?

8 A No, interior.

9 Q Over towards Santa Ana and Anaheim?

10 A Yes. All the children that graduate from the Ocean  
11 View go to the Huntington Beach High School.

12 Q In order to get to Santa Ana from Huntington Beach  
13 you go through Ocean View?

14 A If you want to, I guess, you can go through there.

15 Q Well, it is inland from the beach?

16 A Yes.

17 Q Is that a farming community there?

18 A Yes, it is sort of a small community.

19 Q You didn't go to the high school there, did you?

20 A Yes, I did.

21 Q Where did you go to high school?

22 A Huntington Beach.

23 Q Did you go to the Huntington Beach High School when  
24 you started in?

25 A From Ocean View, yes, I did.

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1 Q But since you have been living in Garden Grove, you  
2 haven't gone to school?

3 A I went to the Garden Grove High School.

4 Q Oh, well, we will get it after a while. Did you  
5 finish there, Isabel?

6 A No. I am working at the Famous Department Store  
7 there.

8 Q You mean during vacation?

9 A No, I worked both summer and winter.

10 Q How long did you go to high school?

11 A Three years.

12 Q Three years?

13 A Yes, sir.

14 Q When did you leave the high school?

15 A Let me see. Last year, I think it was.

16 Q You didn't go there last term at all?

17 A No, I didn't.

18 Q You worked all through it?

19 A I worked.

20 THE COURT: That is all.

21 MR. HOLDEN: That is all.

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

23

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1 GONZALO MENDEZ,  
2 one of the plaintiffs herein, recalled as a witness, in  
3 rebuttal, having been previously duly sworn, testified further  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. MARCUS;

7 Q Mr. Mendez, you reside in the Westminster District;  
8 is that correct?

9 A Yes, sir.

10 THE COURT: He has been on the stand before?

11 MR. MARCUS: Pardon me, your Honor?

12 THE COURT: He has been on the stand before?

13 MR. MARCUS: That is right.

14 Q BY MR. MARCUS: You have heard Mr. Harris' testimony  
15 when he testified yesterday from the witness stand, did you?

16 A Yes.

17 Q Now, Mr. Mendez, in the region or area where you  
18 reside, are there other people in that district other than  
19 persons of Mexican descent?

20 A There are. All the rest are all English-speaking  
21 race.

22 MR. HOLDEN: I don't see, your Honor, where Mr. Harris  
23 said anything about the characteristics of the people who lived  
24 in the vicinity of where Mr. Mendez lived.

25 MR. MARCUS: He did say, however, that the children --

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1 MR. HOLDEN: I don't think it is proper rebuttal.

2 MR. MARCUS: He did say that the children attended the  
3 school in the district where they resided and were supposed  
4 to attend, in the district where they resided.

5 MR. HOLDEN: Your Honor, Mr. Harris did not give any  
6 testimony to that effect, so far as I can remember.

7 THE COURT: I don't remember that Mr. Harris testified  
8 on that point.

9 MR. HOLDEN: If it will clear up the record, we will  
10 stipulate that rule does not apply in Westminster.

11 MR. MARCUS: What rule, sir?

12 MR. HOLDEN: That they attend the school nearest to  
13 which they live.

14 MR. MARCUS: Would you be willing to stipulate that in  
15 the immediate area where Mr. Mendez resides there are some  
16 50 children, other than of the Mexican race, who do not  
17 attend the Hoover School, but attend the Westminster School.

18 MR. HOLDEN: The only objection is that it is not proper  
19 rebuttal.

20 THE COURT: I haven't any recollection of his stating  
21 that, but he may have. I will listen to it.

22 MR. HOLDEN: If that is the fact I will stipulate that  
23 that is the fact; I mean without the testimony of the witness.

24 THE COURT: I don't know whether Mr. Marcus wants it  
25 to go in the record that way.

1 MR. MARCUS: I want to elicit it from the witness, as  
2 to whether he knows.

3 THE COURT: Yes.

4 Q BY MR. MARCUS: Mr. Mendez, please tell us approx-  
5 imately how many families in your neighborhood who are other  
6 than of Mexican descent.

7 A Within a circumference of about a mile there is  
8 about 50 families of the English-speaking race, and I am the  
9 only one, besides my sister, that lives there of Mexican  
10 descent.

11 Q How many children are there in that area that you  
12 have described?

13 A There is approximately between 50 and 100 of the  
14 English-speaking race.

15 Q And not of Mexican descent?

16 A Not of Mexican descent.

17 Q And what school do those children attend?

18 MR. HOLDEN: I object to that, in that the record is  
19 complete on the fact that the Hoover School is attended only  
20 by persons of Mexican descent.

21 THE COURT: It would seem so. I don't know. It may be  
22 that there may be a feature that he hasn't been permitted to  
23 explore. Overruled. In other words, it isn't necessary  
24 for us to accept the tabulation that is contained on the  
25 exhibits. Under the defendants' theory that is correct, but

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1 not necessarily so in the record. Will you read the question,  
2 Miss Reporter?

3 (Question read by the reporter.)

4 THE WITNESS: The English-speaking children attend the  
5 Main School, what is called the Main School. That is where  
6 all the children of English-speaking parents attend, and the  
7 Hoover School is only for the Spanish-speaking children of  
8 Mexican ancestry.

9 Q BY MR. MARCUS: Then those children, other than your  
10 children and the children of your sister, attend what school?

11 A The Hoover School.

12 Q Well, your children attend the Hoover School?

13 A Yes.

14 Q And the other children attend where?

15 A The Main School.

16 Q The Westminster School?

17 A The Westminster School. Although they ride in the  
18 same bus among all the rest of the English-speaking children,  
19 they are not permitted to attend the Westminster School.

20 Q Now, did you talk to Mr. Harris?

21 A I talked about on between four and five different  
22 occasions, especially on the same problem.

23 MR. HOLDEN: We object to this on the ground that it is  
24 not proper rebuttal.

25 THE COURT: I don't know what it is yet. I can't tell

1     until he asks the question. He said he talked with him.

2             Proceed.

3             Q     BY MR. MARCUS: Now, did you converse with him, in  
4     particular, about the children of non-Mexican descent attend-  
5     ing the Main-Westminster School, whereas your children had  
6     to attend the Hoover School, although they resided in the  
7     same district? Did you have such a conversation with him?

8             MR. HOLDEN: I object to that on the ground it is not  
9     proper rebuttal.

10            THE COURT: I don't know whether the entire subject-  
11    matter was explored. There was testimony as to conversation  
12    between Mr. Harris and Mr. Mendez by both sides heretofore.  
13    I don't believe that we should go into these matters in  
14    extenso again. I think I will sustain the objection.

15            MR. MARCUS: Very well. The line of questioning was to  
16    that particular point, your Honor, in rebuttal.

17            THE COURT: What particular point? He testified about  
18    certain alleged opprobrious occurrences or remarks about the  
19    Mexican people, and so forth.

20            MR. MARCUS: That is correct. That is quite right, your  
21    Honor. I think I will rest with this witness, then.

22            You may cross-examine.

23            MR. HOLDEN: No cross examination.

24            MR. MARCUS: All right. That is all.

25            Your Honor, I don't want to trespass upon the court's

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1 time, and this other rebuttal would deal simply with the  
2 statements that were made by the defendants' witnesses in  
3 the matter of defense, and one thing in particular is the  
4 further testimony of Mr. Kent that he talked to Mrs. Ochoa  
5 and asked her if she would be willing to permit her children  
6 to go to the Hoover School. If your Honor recollects his  
7 testimony on that, I had in mind calling Mrs. Ochoa on that  
8 matter.

9 THE COURT: I am not going to restrict you from calling  
10 any one you desire, but I suggest that it is not necessary  
11 to rebut every incident in the case. You can keep the thing  
12 going indefinitely back and forth. I think if witnesses on  
13 the same subject have testified heretofore and you want to  
14 call your witnesses in rebuttal, I am not going to restrict  
15 you from calling your witnesses.

16 MR. MARCUS: Then, Mrs. Ochoa, will you take the stand,  
17 please?

18 THE COURT: But I don't want a reiteration, a review of  
19 matters that are already in the record.

20 MR. MARCUS: This will take only a moment. I will call  
21 Mrs. Ochoa.

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MANUELA OCHOA,

recalled as a witness on behalf of the plaintiffs in rebuttal,  
having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. MARCUS:

Q Mrs. Ochoa, you have been sworn already?

A Yes.

Q You heard Mr. Kent's testimony, --

A Yes.

Q -- with respect to the conversation that he had with  
you about requesting you to send your children to the Hoover  
School?

A Yes.

Q Now, I believe that Mr. Kent stated that he asked if  
you would be willing to send your children to the Hoover School,  
and you said it was all right.

A He did not ask me.

MR. MARCUS: I don't want to misquote Mr. Kent.

MR. HOLDEN: I think you have misquoted Mr. Kent.

MR. MARCUS: That was my recollection of his testimony on  
cross examination.

MR. HOLDEN: I think Mr. Kent said that he talked to her  
and told her he would like to have her enter her children in  
the Hoover School for experimentation, and that was the orders  
that he had, and she said, "Well, I guess that's all, I will

1 have to do it, then," or words to that effect.

2 MR. MARCUS: All of them were words to that effect.

3 THE COURT: I haven't any recollection of it, and I have  
4 no note on it.

5 What is the state of the record?

6 MR. HOLDEN: I think I will withdraw the objection, your  
7 Honor.

8 Q BY MR. MARCUS: Now, will you relate, please, the  
9 conversation that you had with Mr. Kent with respect to send-  
10 ing your children to the Hoover School?

11 MR. HOLDEN: I will object to that on the ground that she has  
12 already related the conversation.

13 THE COURT: That is too broad. It simply goes into the  
14 same matter.

15 MR. MARCUS: It does, your Honor.

16 Q BY MR. MARCUS: Did Mr. Kent, in words to this  
17 effect, state to you if you would be willing to send your  
18 children to the Hoover School, or if you would like to send  
19 your children to the Hoover School?

20 A No.

21 Q What did he say?

22 A He said I had to send them to the Hoover School, be-  
23 cause that school was for the Mexican children, and my children  
24 being Mexican, he did not even say from Mexican descent, they  
25 had to go to the Hoover School.

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1 MR. MARCUS: That is all.

2 MR. HOLDEN: No cross examination.

3 MR. MARCUS: Your Your, if I might ask the court's  
4 privilege, I have a witness whom I haven't spoken to. He is  
5 Dr. Beals from the Department of Anthropology at the Uni-  
6 versity of California, and I would appreciate it if the court  
7 would give me an opportunity to speak to him before putting  
8 him on the stand.

9 THE COURT: About five minutes?

10 MR. MARCUS: Could your Honor make it a little bit more?

11 THE COURT: We will recess for about five or ten minutes.

12 (A short recess was taken.)

13 MR. MARCUS: I will call Dr. Beals.

14 DR. RALPH L. BEALS,  
15 called as a witness on behalf of the plaintiffs, in rebuttal,  
16 having been first duly sworn, testified as follows:

17 THE CLERK: State your name, please.

18 THE WITNESS: Ralph L. Beals, B-e-a-l-s.

19 DIRECT EXAMINATION

20 BY MR. MARCUS:

21 Q Dr. Beals, what is your business or occupation?

22 A I am a professor at the University of California,  
23 and chairman of the Department of Anthropology and  
24 Sociology.

25 Q In that institution?

204  
1 A Yes.

2 Q Doctor, what has been your history or background  
3 with respect to anthropology and sociology?

4 A I have had the usual training, academic training  
5 in anthropology, which involves an eight-year course of  
6 training. I have done a great deal of research work, a very  
7 large part of it in Mexico, where I have lived for consider-  
8 able periods of time. I have done this work for such organ-  
9 izations as the National Research Council, the Smithsonian  
10 Institute, for which I am at present a consultant on their  
11 program of Mexican research, and research for the University  
12 of California.

13 I have also done research for the School of Anthropology  
14 in Mexico, in Mexico City.

15 Q Does that involve, in connection with the Anthropology  
16 Department, any research in psychology and sociology?

17 A It is necessary to have a pretty thorough knowledge  
18 of the developments in psychology and in sociology in order  
19 to be an adequate anthropologist.

20 Q What documents or books have you written, Doctor,  
21 on this subject?

22 A Can I give a short precis? There are about 30, I  
23 believe. Perhaps those that are most pertinent here are  
24 studies of the Nahua and Maya Indians of Sonora, and the  
25 Tarascans of Michoacan, which are being published by the

1 Smithsonian Institute. Then I have had published another  
2 paper on the Nahua Indians of Yucatan, and various shorter  
3 papers about various Mexican Indian groups, as well as some  
4 Indian groups in California.

5 Q Doctor, what is your particular specialty at the  
6 present time, your particular line of endeavor?

7 A Aside from teaching, of course, my present personal  
8 interest is in the problems of the cultural change, as they  
9 affect the Mexican Indian in relation to the educational  
10 and social programs of the Mexican government.

11 At the present time, also, in a departmental collabora-  
12 tion we are undertaking research on the minority groups of  
13 the Los Angeles area.

14 Q Are you teaching at the present time, Doctor?

15 A This happens to be my term off, so I am not.

16 Q During the last semester were you teaching?

17 A In the last semester, I was teaching, yes.

18 Q At what institution, sir?

19 A The University of California at Los Angeles.

20 Q And what subjects were you teaching?

21 A All anthropological subjects; a general introduc-  
22 tion to the ethnology of the world, a course on the contempo-  
23 rary peoples of Mexico; and research courses directing re-  
24 search of other people.

25 Q Now, with respect to the cultural development of

1 children of Mexican ancestry, Doctor, with respect to  
2 their educational background, and their ability to compre-  
3 hend and absorb academic instruction in schools, can you give  
4 us some idea as to your research along that line?

5 MR. HOLDEN: We object to that as incompetent, irrele-  
6 vant, and immaterial, and not proper rebuttal, and, further, that  
7 there has been no foundation laid, particularly as pebtains  
8 to the schools involved in this action.

9 MR. MARCUS: This applies to children of Mexican ancestry.

10 THE COURT: I do not think the factor of specific schools  
11 would necessarily be the determining factor. I think, however,  
12 you should qualify the doctor a little more on his research  
13 and studies amongst children of the ages that are involved  
14 in these schools.

15 Q BY MR. MARCUS: Doctor, we have under discussion  
16 here before the court the problem involving children between  
17 the ages of five, or, at least, in between the first and  
18 sixth grades in the schools of Orange County and between the  
19 first and sixth grades in the schools of California. We have  
20 under discussion here children of preschool age. Have you,  
21 in your study or research during the past several years, had  
22 occasion to go into that subject, that is, children between  
23 the first and sixth grades and preschool age children?

24 A In terms of the Mexican school system I have spent  
25 some time in visiting and studying Mexican schools and, also,

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1 I am familiar with the experimental work that has been done  
2 in the State of New Mexico. I am familiar with such institu-  
3 tions as the Institute of Child Welfare at the University at  
4 Berkeley, and with various similar programs, and with general  
5 publications in the educational field dealing particularly  
6 with the problems of children who come from somewhat dif-  
7 ferent cultural backgrounds.

8 MR. HOLDEN: I move that that be stricken as not re-  
9 sponsive to the question asked, as pertains to the last few  
10 years.

11 THE COURT: I don't understand.

12 MR. HOLDEN: I mean, the question I believe was directed  
13 to his experience within the last few years, and there was  
14 nothing in his answer that indicated anything in his experience  
15 within the last few years.

16 THE COURT: Motion denied. What period did you cover  
17 in those studies, Doctor?

18 THE WITNESS: I have been engaged in this general line  
19 of study for about 25 years. I have been actively engaged  
20 in field studies within the past five years. As a part of  
21 my job I have found it necessary to keep up with the general  
22 literature in the field constantly.

23 THE COURT: Proceed.

24 Q BY MR. MARCUS: Now, Doctor, with respect to the  
25 ability, the natural ability, of a child to absorb knowledge,

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1 such knowledge as given to him by the instruction in the  
2 public school systems of the State of California, can you  
3 tell us, Doctor, whether or not, based upon your experience  
4 in anthropology and the research that you have given us here,  
5 that there is any basic distinction whatsoever between the  
6 ability of a child of Mexican descent or any other child to  
7 absorb the basic training afforded them by the public school  
8 system of the State of California?

9 MR. HOLDEN: If the court please, I object to that as a  
10 matter not in issue. I believe the matter in issue  
11 the ability of the child to speak the English language, and  
12 counsel's question hasn't been directed to that particular  
13 point.

14 THE COURT: You do not contradict the point of ability,  
15 do you?

16 MR. HOLDEN: Shall we say, too, that is not in issue  
17 here, but it is one who is not able, by reason of his handicap  
18 in the language, of speaking the English language. That is the  
19 point.

20 MR. MARCUS: Our theory of the case is that most of the  
21 children, I think the testimony has been 95 per cent of the  
22 children did speak the English language, and the testimony  
23 of the defendants so far has been, and I believe Mr. Kent  
24 testified, that children of Mexican descent were below the  
25 I.Q. of children of other descents.

v209 1 THE COURT: I wouldn't understand that it went to quite  
2 that extent. My understanding was that there was a retarda-  
3 tion because of their linguistic insufficiencies; in other  
4 words, that two normal children, one not of Mexican ancestry  
5 and descent and the other of Mexican ancestry, when they  
6 start school one would be retarded because of the lack of  
7 facility of expression or understanding of words in the  
8 English language. That was the feature that I think the  
9 witness brought out. Not that generically, or as you say,  
10 basically, there is in and of itself any inferiority between  
11 the children so far as mental sufficiency is concerned. That  
12 is my understanding of it, at least. I don't know but what  
13 your question may include that, because you have stated "in  
14 the public schools of the State of California."

279 15 Now, of course, we all know, and I think it is conceded  
16 here, because I asked both of you that question before the  
17 trial, and I understood that the instruction of school children  
18 in the schools of the State of California must be in the  
19 English language. That is what I understood both of you to  
20 concede.

21 MR. MARCUS: That is correct.

22 THE COURT: And you conceded that also, gentlemen?

23 MR. HOLDEN: That is correct.

24 THE COURT: May we have that pending question read, Mrs.  
25 Zellner? It may incorporate the feature that counsel

1 suggests and that the court is addressing itself to.

2 (Question read by the reporter.)

3 THE COURT: With the understanding that the connotation  
4 that the court has suggested is in the question, that these  
5 children come from Mexican-speaking families, I think that  
6 the question is a proper question. Overruled.

7 THE WITNESS: I find that a rather hard one to answer in  
8 relatively simple terms. The question of basic, genetic  
9 ability, I take it, is not in question.

10 THE COURT: It doesn't seem to be, Doctor. The way I  
11 gather it, there would not be any basis for that finding here.

12 THE WITNESS: Yes. In terms of an ability to assimilate  
13 training, it would seem to me that the question of the objec-  
14 tives of the training might be involved, and the answer one  
15 might give would be different in terms of possible objectives.

16 I take it, in theory, the objective in segregation is to  
17 -- please stop me, somebody, if I am getting off base. I am  
18 just wrestling with this -- the purpose of the segregation,  
19 in theory, is to provide a better education for the Mexican  
20 groups.

21 If that is the objective -- or, simply stated, is that  
22 the objective? I shall put it that way. Or, is the objec-  
23 tive one of preparing these Mexican students to become assim-  
24 ilated into the general curricular milieu of the United States;  
25 in other words, what is sometimes called an Americanization

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1 program? Certainly, in the latter case it would seem to me  
2 that the objectives would not be best obtained by segregation.  
3 As a matter of fact, the learning of adequate English, it  
4 seems to me, would be interfered with by a program of segre-  
5 gation.

6 Q BY MR. MARCUS: Just before you go on there, Doctor,  
7 you say the learning of adequate English would not be accom-  
8 plished by segregating children who do not speak the English  
9 language or who have an English language difficulty?

10 A Yes, I think that is a very widely known fact, that  
11 if you want to learn a foreign language you immerse yourself  
12 among people that speak that language, and do not stay among  
13 speakers of your own language. In other words, keeping  
14 Mexican and Spanish-speaking children together simply means  
15 they talk Spanish together and do not learn English as rapidly  
16 as if they were associating with English-speaking people.

17 Q Now, with respect to the Americanization, and as  
18 you call it, an Americanization program, by segregating children  
19 of Mexican descent in a separate school, in your opinion,  
20 Doctor, does that tend towards assisting the child to become  
21 Americanized, or does it retard his ability to become  
22 Americanized?

23 A I think there is no question, with all the work that  
24 has been done with immigrant groups, not only Mexican and  
25 Spanish-speaking groups, but immigrant groups, generally,

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1 there is no question but what segregation slows up such a  
2 program of Americanization.

3 Q Doctor, there has been set up as a matter of defense  
4 in this action --

5 MR. HOLDEN: If the court please, I object to counsel  
6 leading the witness. I don't mind his asking any hypothetical  
7 question of this witness. He has qualified him as an expert.  
8 But to lead the witness and to suggest to the witness that  
9 which he wants to extract, I object to such line of ques-  
10 tioning.

11 MR. MARCUS: Your Honor, I haven't asked a question yet.

12 THE COURT: No. You were interrupted as you were pro-  
13 pounding the question, and you should not have been interrupted.

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

15 THE COURT: When you have finished your question, then  
16 counsel will have the opportunity to object to that.

17 MR. MARCUS: That is right.

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18 THE COURT: However, I don't think you should lead the  
19 doctor. I think he is well qualified to answer questions  
20 without being led, or without your interpolating anything  
21 concerning the issues, unless he asks for some explanation.  
22 If he does, you can clarify it. Otherwise, just propound to  
23 him a direct inquiry.

24 Q BY MR. MARCUS: Now, Doctor, children who speak  
25 the English language of Mexican descent, who are segregated

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1 in separate schools, in your opinion, Doctor, does that tend  
2 to retard their development culturally and academically, or  
3 does it tend to assist the child culturally and academically?

4 A I should not feel qualified to speak on the aca-  
5 demic matter, but in terms of assimilation, I should say it  
6 would definitely retard the assimilation of the child to  
7 American customs and ways.

8 Q Could you enlarge upon that, Doctor, and give us  
9 the reasons for your answer, please?

10 THE COURT: Particularly on the part which he says he  
11 doesn't want to express a view on, the academic aspect.

12 MR. MARCUS: Not on that. He couldn't --

13 THE COURT: I want to know why he doesn't. That may be  
14 the very gist of the other side's position.

15 MR. MARCUS: Very well.

16 THE WITNESS: Let me see if I have it straight. You  
17 wish me to speak on the academic problem and as to why I don't  
18 wish to give an opinion on that?

19 THE COURT: That is right.

20 THE WITNESS: In terms of academic rating scales, which  
21 are rather artificial devices, which vary from school to  
22 school, from school district to school district, from state  
23 to state, it is very difficult to make a generalization of  
24 this sort, whether segregation does or does not retard the  
25 child in terms of an academic rating scale. Without knowing

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1 the particular academic rating scale in the particular schools,  
2 I could not very well base an opinion on whether retardation  
3 would occur or would not occur through segregation.

4 In the cases of children who have handicaps in terms  
5 of family background, or other types of background, it some-  
6 times is true that they benefit by special attention. When  
7 I say "special attention," this does not necessarily mean  
8 special schools or even special classrooms, but it does mean  
9 some special attention, either in terms of periods of special  
10 attention, or having specially qualified teachers. Such  
11 procedures as I have mentioned in some types of rating scales  
12 do produce better results.

13 In terms of making the children familiar with the whole  
14 body of customs, and so much of which is unexpressed, in our  
15 way of behavior or learning such as the attitudes of the Anglo-  
16 speaking peoples are towards various subjects or knowing what  
17 the attitudes of even children of their own age are towards  
18 various subjects, there can be no substitute, in my opinion,  
19 for actual contact with Anglo-speaking people, and rather  
20 intimate contact.

21 Q Doctor, is it your opinion that regardless of the  
22 ability of a child to speak the English language, that it is  
23 for the best interests of that child that he be educated  
24 separate and apart from children other than of Mexican descent?

25 MR. HOLDEN: If the court please, I object to that as

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1 improper rebuttal testimony, and especially to "for the  
2 best interests." I would have no objection if counsel would  
3 confine his question of interest as to whether or not it was  
4 from an educational standpoint or from an Americanization  
5 standpoint. Then I would have no objection, but this is too  
6 general in its application as to interest.

7 THE COURT: I think so. I think the objectivity must not  
8 be confined to the Mexican child. It must take in the con-  
9 cept of the public school system, where there is supposed to  
10 be an admixture of all types of children. That is what I  
11 understand you mean by the Americanization principle. Is  
12 that it, Doctor?

13 THE WITNESS: Yes, would become a part of it.

14 THE COURT: I don't think you should limit the objective  
15 characteristic of your question to Mexican children, because  
16 that doesn't take into consideration what I conceive to be the  
17 fundamental principle of public school education in the United  
18 States, the general commingling of children of all ancestries  
19 and descents for the purpose of building up a culture of our  
20 own. That is what I conceive to be the Americanization aspect  
21 of public school instruction.

22 MR. MARCUS: Your Honor is in entire accord with my  
23 views in the matter. The only purpose I had in asking the  
24 question is for the purpose of rebutting the testimony that  
25 was given by the witnesses on behalf of the defendants, and I

1 asked that in their very language, and it was taken directly  
2 from the answer. I used the very words that were used in the  
3 answer, and are the words that we used with respect to the  
4 other witnesses who testified for the defendants.

5 Now, I direct the court's attention to page 3 of the  
6 answer, where those very words are used, your Honor.

7 THE COURT: May I have that file? Which answer do you  
8 refer to?

9 MR. MARCUS: Well, it is the Westminster answer, the  
10 common answer.

11 THE COURT: Of the Westminster District?

12 MR. MARCUS: It is the fourth defense on page 3, and I  
13 am at this particular moment looking at the Westminster answer,  
14 and it is the third paragraph from the bottom, your Honor.

15 THE COURT: Now, will you read the question, Miss  
16 Reporter, please?

17 (Question read by the reporter.)

18 THE COURT: If I have the same paragraph that you refer  
19 to, the one that I am reading commences on line 20 of page 3  
20 of the answer of the Westminster District, and reads as  
21 follows:

22 "That for the purpose and for the benefit of  
23 said pupils, and to give them instruction in the  
24 aforesaid subject separate and apart from the English-  
25 speaking pupils, the Board of Trustees of said District

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1 have determined that it is for the best interests of  
2 said pupils of Mexican descent and for the best inter-  
3 ests of the English-speaking pupils, that said groups  
4 be educated ~~separately during the period~~ they are in  
5 the lower grades."

6 Is that the one you have in mind?

7 MR. MARCUS: That is correct.

8 THE COURT: If you put that question to him, that would  
9 be all right, but I don't believe your question precisely  
10 meets those allegations.

11 MR. MARCUS: Very well.

12 Q BY MR. MARCUS: Now, Doctor, can you express your  
13 opinion, or, is it your opinion that it is for the benefit  
14 of the pupils of the public school system between the first  
15 and sixth grades or the first and eighth grades in the State  
16 of California to give them instruction in the subject of the  
17 English language separate and apart from the English-speaking  
18 pupils? That it would be to their best interests, that is,  
19 to the best interests of the pupils of Mexican descent, and  
20 for the best interests of the English-speaking pupils that the  
21 groups be educated separately during the periods that they are  
22 in the grades that I have indicated to you?

23 A In my opinion, it is not to the advantage of the  
24 pupils, and regardless of linguistic background. I think I  
25 have already dealt with that fairly adequately in terms of the

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1 whole problem of Americanization. I have only dealt with it  
2 to some extent on the problem of learning English on the part  
3 of the Spanish-speaking child. This is precisely the period  
4 when the child would get its best control in English, if it  
5 had the fullest possible exposure to it, and segregation de-  
6 feats the purpose of teaching English, certainly, to the  
7 Spanish-speaking child.

8 Q Now, with respect to children who do speak the  
9 English language, of Mexican descent, would it be to their  
10 best interests to educate them separately from other children  
11 by compelling them to attend schools solely attended by  
12 children of Mexican descent?

13 A In that case I think it would be to their definite  
14 disadvantage.

15 Q Doctor, can you enlarge upon that, please, and give  
16 us your reasons?

17 A If they have a command of English to start with,  
18 they probably would, in terms of a number of studies that have  
19 been made, and the chances are very strong that if they were  
20 put in with groups that were somewhat deficient in their  
21 English speech, that they would actually lose some of their  
22 English facility during that time.

23 Q Now, that is with respect to their ability to absorb  
24 the English language or to lose it. What would it be with  
25 respect to their cultural development or their Americanization

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1 development?

2 A Well, I think it would be very unfortunate for them.  
3 Judging by some studies that have been made under my direc-  
4 tion, this is one of the ways in which a feeling of antagonism  
5 is built up in children, when they are segregated in this  
6 fashion. They actually become hostile to the whole culture  
7 of the surrounding majority group, as a result of the segrega-  
8 tion, which appears to be, to them at least, discrimination.

9 Q Now, Doctor, what advantage or disadvantage would  
10 there be to children, other than of the Mexican race or Mexican  
11 descent, if they are kept separate and apart from mingling or  
12 being educated together with children of Mexican descent?

13 A The disadvantage of segregation, it would seem to me,  
14 would come primarily from the reinforcing of stereotypes of  
15 inferiority-superiority, which exists in the population as a  
16 whole. The advantages, properly handled, would come, then,  
17 in the breaking down of those stereotypes and in the broaden-  
18 ing of understanding of people of different cultural back-  
19 ground and the understanding of different cultures. In some  
20 of the experimental schools in New Mexico, for example, a great  
21 deal of richness has been given through the school training  
22 in emphasizing this particular thing.

23 Q I am glad to hear you mention New Mexico, Doctor,  
24 because that is my home state. In this research, Doctor, is  
25 it your opinion, then, that segregation does retard the develop-

1 ment of the child of Mexican descent?

2 A That is my opinion.

3 Q And does it tend to retard the child other than  
4 of Mexican descent if he is kept separate and apart from the  
5 general group of children in that particular area or that  
6 particular territory?

7 A It would not retard him academically, but in terms --

8 Q Of Americanization?

9 A -- but in terms of Americanization I should say  
10 definitely.

11 MR. MARCUS: You may cross-examine.

12 CROSS EXAMINATION

13 BY MR. OGLE:

14 Q Doctor, if you had, shall we say, a half a classroom  
15 of students of Mexican ancestry who at home spoke almost  
16 entirely Spanish and who were handicapped in the English  
17 language to conceive all that was imparted to them in English,  
18 and put with that classroom of students another half of a  
19 classroom of students of the same grade, who spoke no Spanish  
20 and only spoke English, and the teacher of this classroom  
21 instructed entirely in English and attempted to gauge her  
22 instruction or his instruction towards those of the average  
23 mentality of the entire class, is it your opinion that those  
24 above the average <sup>in</sup> mentality would acquire more or less knowl-  
25 edge than those below the average mentality, distinguishing as

1 between the Spanish-speaking students and the English-speaking  
2 students?

3 A I am not at all sure what you mean by "mentality."  
4 But if you mean what I mean, why, I would say yes.

5 Q You explain what you mean by "mentality."

6 A I have asked that of a good many psychologists  
7 without getting an answer. I think it would be presumptuous  
8 for me to try to explain it.

9 Q Let me, therefore, inject into that question this  
10 element, so as to gauge your answer as to mentality.  
11 "Mentality" meaning that degree <sup>at</sup> which a person quickly or  
12 slowly receives and conserves facts imparted by language, the  
13 English language.

14 A That would not be my definition of "mentality,"  
15 although it is very common.

16 Q Using that definition, then, what would your answer  
17 be?

18 A Well, let me clearly understand. This simply  
19 identifies it with an efficiency with the English language.  
20 I would say that the person who spoke English most proficiently  
21 would understand English most rapidly. There is no argument  
22 about that.

23 Q And, therefore, would gain more from the subjects  
24 taught in that classroom than those who would not understand  
25 it so proficiently?

1 A Certainly.

2 Q That is all. Oh, just a moment. Did you ever teach,  
3 Doctor, in an elementary school, around the first to the sixth  
4 grades, wherein there were both English-speaking students and  
5 those of Mexican extraction which spoke mostly the Spanish  
6 language?

7 A I have not been an elementary school teacher. I  
8 have talked to groups.

9 Q I say, have you ever taught?

10 A No, I have not taught in that sense.

11 MR. OGLE: That is all.

12 MR. MARCUS: Just a few more questions.

13 REDIRECT EXAMINATION

14 BY MR. MARCUS:

15 Q In your course at the University of California,  
16 you have in attendance there, do you, teachers who do teach  
17 in those schools?

18 A Yes, sir, great numbers of them.

19 Q You instruct, then, teachers, do you, Doctor, who  
20 do the teaching in these elementary schools?

21 A I do.

22 Q You personally do not go out and teach these  
23 elementary schools, do you?

24 A No.

25 Q Now, Doctor, as I understood the question propounded

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1 by counsel here, it was rather lengthy and your answer to it  
2 was "Yes," and I wonder if you could enlarge upon that. Did  
3 I understand your answer to be "Yes," that the child who  
4 spoke English fluently would absorb more knowledge by reason  
5 of the fact that he spoke English fluently than would the  
6 other child, who did not speak the English language so flu-  
7 ently? Am I correct in my assumption?

8 A That is correct. Of course, that depends again  
9 on what you are going to impose as the objective. If it is  
10 to improve the English of the one child, why, the relative  
11 improvement may be greater in the child with the least  
12 development. If you are discussing some abstract subject,  
13 which involves a certain considerable amount of knowledge of  
14 the English language or a considerable mastery of the English  
15 language, then the child who has the greatest mastery presumably  
16 would get the greatest good from the discussion, provided the  
17 intelligence is equal, in my definition of "intelligence."

18 Q Now, Doctor, in every school room, is it not a  
19 fact, whether it be in the classes that you teach at the  
20 University or in any other grade school or high school, the  
21 mentality of the students or the teachers that attend the  
22 schools is not of an equal basis, is it?

23 A I don't like this word "mentality," but I guess  
24 that is a professional quibble. I should say they certainly  
25 are different in ability, whether acquired or innate ability.

1 Does that cover the ground?

2 Q That covers the ground. Now, would it retard,  
3 Doctor, the person of more ability to absorb the course or  
4 the subject given to him, whether it be English, geography,  
5 or any other subject, because there were other students in  
6 that class who would not so fluently speak the English  
7 language? Would that obstruct or interfere with or retard  
8 that child who was more advanced?

9 MR. OGLE: If the court please, I object to that as  
10 improper cross examination. Such a question was not put.

11 THE COURT: This is redirect examination. Overruled.

12 THE WITNESS: That is a point on which it is pretty hard  
13 to make a general answer. It depends a good deal on the size  
14 and character of the class, the character of the subject-  
15 matter, the way, and particularly the way, in which the class  
16 is taught, perhaps more than materials, would make the dif-  
17 ference.

18 Q BY MR. MARCUS: Generally speaking, could you give  
19 us an answer in the way it is taught in the public schools  
20 of our state?

21 THE COURT: Well, there is a little difference.

22 THE WITNESS: Well, yes. Pardon me.

23 THE COURT: The evidence here shows, I think, that there  
24 are selected for these schools teachers who have had, by reason  
25 of experience largely in that type of instruction, specialized

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1 training for those children.

2 MR. MARCUS: Well, that is for children in the segregated  
3 schools, your Honor.

4 THE COURT: Yes.

5 MR. MARCUS: But we are talking about schools where they  
6 are not segregated.

7 THE COURT: What help does that give us?

8 MR. MARCUS: The question had been propounded by counsel  
9 that if half the class spoke English fluently and half the  
10 class did not speak English fluently, -- that was the ques-  
11 tion.

12 THE COURT: I don't care about purely theoretical abstract  
13 questions.

14 BY THE COURT: Q We have here a concrete situation,  
15 Doctor, wherein there are schools where 100 per cent of the  
16 children are of Mexican lineage, descent or ancestry from the  
17 first to the sixth grades in the public school system in the  
18 State of California. We also have evidence here that teachers  
19 who are assigned to that work are teachers who have had  
20 special training in that particular and specific line of  
21 educational work, and that to that extent they are differentiated  
22 from the general school teacher of grades, of those that are not  
23 made up of children of Mexican ancestry, and so forth. How  
24 would it be practical to rearrange those classes, in your  
25 opinion, so that the best educational results could be obtained,

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1 considering not only academic training, but Americanization  
2 as well.

3 A In terms, certainly in terms of Americanization  
4 training, it would seem to me a considerable degree of inter-  
5 mixture of the students of the two groups would be involved.  
6 Over long range, I doubt if any one could give you a definite  
7 answer as to the effects upon the academic training until  
8 an experimental situation had been set up, which I am not  
9 aware of, in that particular area. In other words, to deter-  
10 mine do Mexican students do better segregated than Mexican  
11 students who are not segregated, and the fair test over a  
12 considerable period of time, in which precautions were taken  
13 so as to eliminate any proposition of class troubles that might  
14 exist among the children, would also be a factor in any set-  
15 up.

16 So, as I say, about the academic program, I don't think  
17 any one could give an accurate answer at this time.

18 Obviously, if that was the only criterion, and you wanted  
19 to give them the most rapid academic training that you could,  
20 that would be one thing. But if these children were children  
21 of Spanish-speaking families, and you gave them all their  
22 training in a segregated group, they would continue to converse  
23 in Spanish.

24 Now, I think we have very good laws in this state for  
25 giving them the proper training, and which brings in the whole

1 question of Americanization. So it seems to me the American-  
2 ization question is a very important one, and certainly is  
3 one not served by segregation.

4 Q You think there could be a laboratory in a district,  
5 do you not, where they could experiment and arrive at definite  
6 conclusions as to the efficiency of either of the systems?

7 A Well, if you wanted to make guinea-pigs of the  
8 children, and it were done with proper safeguards and with  
9 good will, I think you could make an experiment. A certain  
10 amount of that is done in the public schools, but I don't  
11 know of any case like this, first-hand, in which this has been  
12 attempted, although I believe some work, with which I am not  
13 as familiar probably as some other witnesses, has been carried  
14 on in that regard.

15 Q BY MR. MARCUS: Would that apply to the children,  
16 Doctor, you spoke of, who only speak the Spanish language?

17 A I am not sure that I get the direction?

18 Q Well, this matter that you suggested about an  
19 experimental laboratory.

20 A Oh, it should apply to all of the children, of  
21 course.

22 Q All of the children?

23 A If you are to have an experiment, you have to have  
24 controls and checks, and you can't pick out one group and  
25 treat it differently, from an experimental standpoint, and hope

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1 to get an accurate answer.

2 Q BY THE COURT: That is exactly what I meant by the  
3 laboratory, Doctor. You would take a group of children,  
4 perhaps of varying degrees of familiarity with the English  
5 language, and in the early period of their school experiences,  
6 and you would take another group of English-speaking children,  
7 if it were possible, get as nearly equal an experiment as  
8 would reflect the situation fully, of what we call Anglo-  
9 Saxon, Slavic, Teutonic, and others, and mix them, and wouldn't  
10 that furnish a criterion that would be a little more re-  
11 sponsive to educational news in an Americanization program  
12 in the public school system of the United States than by  
13 segregating the children?

14 A Yes, that would be my opinion. So that with re-  
15 gard to the Americanization program, the mixed group would  
16 become much more rapidly aware of the main trends in American  
17 life.

18 Q And wouldn't you be more apt academically to arrive  
19 at a correct deduction rather than a conjecture?

20 A By setting up several groups of different composi-  
21 tions?

22 Q Yes.

23 A Yes, sir, that would be possible.

24 Q Has that ever been done in any of the school dis-  
25 tricts or political subdivisions of the country, where they

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1 have public school systems?

2 A There has been a little work, in, I think parti-  
3 cularly, in New Mexico, but I believe a later witness knows  
4 this at first hand, and it would be much better for me not  
5 to talk about it.

6 THE COURT: That is all.

7 MR. MARCUS: Just one question, if the court please.

8 Q BY MR. MARCUS: Now, with respect to having in  
9 mind our democratic principles of government, Doctor, is it  
10 your opinion that the segregation of any particular group of  
11 children with respect to their ancestry would tend to promote  
12 our principles of government?

13 THE COURT: Let me have that question read, please. That  
14 word "democratic" may not have the proper connotation.

15 (Question read by the reporter.)

16 MR. MARCUS: Just our democratic principles.

17 THE COURT: That is all right. That is Americanization.  
18 But there are other phases that might carry with them a con-  
19 clusion in that terminology.

20 THE WITNESS: Let me see. I got just a little confused  
21 there. Will you repeat the question?

22 (Question reread by the reporter.)

23 THE WITNESS: No, segregation -- I think there is no  
24 evidence that segregation promotes democratic experience.

25 Q BY MR. MARCUS: Why, Doctor? What is your reason for

1 that?

2 THE COURT: I don't think that requires any expert  
3 knowledge, does it, Doctor?

4 THE WITNESS: No.

5 THE COURT: I think we all agree that wouldn't be an  
6 Americanization program; leaving out of the question of what  
7 would be our democratic attitude, it would not be an American-  
8 ization program.

9 MR. MARCUS: That is all, Doctor.

10 MR. OGLE: No further questions.

11 THE COURT: Call your next, if you have any more.

12 MR. MARCUS: Mrs. Hughes.

13 MARIE H. HUGHES,  
14 called as a witness by and on behalf of the plaintiffs, in  
15 rebuttal, having been first duly sworn, was examined and  
16 testified as follows:

17 THE CLERK: State your name, please.

18 THE WITNESS: Marie H. Hughes.

19 MR. MARCUS: Your Honor, I haven't had the privilege of  
20 making the acquaintance of this witness, but counsel here  
21 representing the amici curiae has. I haven't talked to her,  
22 and I wonder if counsel could be permitted to interrogate the  
23 witness in this particular instance, since he has talked to  
24 her.

25 THE COURT: Yes, certainly. That is all right. The only

rule I had was that I did not want more than one person to conduct the examination of any one witness. You may take the witness, Mr. Christopher.

## DIRECT EXAMINATION

BY MR. CHRISTOPHER:

Q What is your present occupation, Mrs. Hughes?

A Specialist in education of minority groups and group coordinator.

Q Will you relate to the court your educational background?

A My academic preparation, --

Q Yes.

A -- or my experience?

THE COURT: I believe we had better have both, Mrs. Hughes.

THE WITNESS: I am a graduate of the University of Chicago, and have completed the residence work and academic work for a doctorate at Stanford. I have worked in the State of New Mexico as principal and curricular director, and so on, for a period of some 19 years, and worked in Los Angeles County the past 5 years.

Q BY MR. CHRISTOPHER: Have you made any special study or research in regard to children of Mexican descent?

A Yes. I was field worker and principal of the San Jose Experimental School of the University of New Mexico, where we

1 studied the problem of the Spanish children, with the help  
2 of a graduate from the General Educational Board. I have  
3 done research in language for some 20 years in this field.

4 Q Are you familiar with the language difficulties of  
5 children of Mexican descent?

6 A Very, yes, sir.

7 Q In the elementary schools?

8 A Yes, sir.

9 Q In the State of California?

10 A Yes, sir.

11 Q What is your opinion, if you have any, as to whether  
12 it is for the best interests of children of Mexican descent  
13 to be placed in schools separate and apart from children who  
14 are not of Mexican descent?

15 MR. OGLE: Objected to as incompetent, irrelevant and  
16 immaterial. If he will confine his question as to the inter-  
17 ests of all, whether academic or otherwise, I have no objec-  
18 tion. And, further, if the court please, I think he ought  
19 to have the handicap element injected into the question, if  
20 I might suggest to counsel.

21 THE COURT: I think that question belongs in the group  
22 feature, which, as I understand it, is the basis of these  
23 gentlemen's position, that there should be no group feature  
24 in public instruction in the public school system. It isn't  
25 a question as to the benefits to the children of Mexican

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1 ancestry. It is the benefit to all of the school children  
2 who are required to attend the public schools, and I don't  
3 believe your question incorporates anything except the benefit  
4 that may be derived by the children of Mexican ancestry.  
5 That really isn't the test.

6 MR. CHRISTOPHER: I shall add to my question, or, I will  
7 reframe or rephrase it this way:

8 Q BY MR. CHRISTOPHER: What is your opinion, if you  
9 have any, as to whether it is for the best interests of the  
10 school pupils of, say, Orange County to have the children of  
11 Mexican descent in a separate school from those not of  
12 Mexican descent?

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13 MR. OGLE: The same objection, if the court please.  
14 Counsel confines it to the academic phase of it.

15 THE COURT: Overruled.

16 THE WITNESS: It is not to the best interests of children  
17 in America, Orange County or not, to work and play together  
18 and go to school together under segregated conditions.

19 Q BY MR. CHRISTOPHER: What is the effect of placing  
20 children of Mexican descent in one school separate and apart  
21 from children not of Mexican descent, as to their achievement  
22 and ability to learn the English language?

23 A Children learn a language through hearing it and  
24 through having a motive, a reason, for using it. Therefore,  
25 children who speak another language, such as Spanish, when in

1 association with children speaking English have a reason to  
2 learn and to speak English. Moreover, they hear English  
3 spoken, and you cannot learn a language and learn to speak  
4 it well without hearing it. They hear it on the playground  
5 and in informal situations, multiple situations, in both  
6 contact with their own peers, that is, their own age-mates.

7 Q Do you have an opinion as to the effect of such  
8 segregation upon the children who are not those of Spanish-  
9 speaking people?

10 A We have no evidence, of which I am aware, that  
11 children who are English-speaking, academically through asso-  
12 ciation with children of Spanish-speaking descent, -- there  
13 is no evidence whatsoever of poor achievement academically.

14 Q Does it retard children who do not come from homes,  
15 Spanish-speaking homes, to be placed in a school with those  
16 children who speak the Spanish language?

17 A Definitely not. Not any evidence I have ever seen.

18 Q What is the effect on Spanish-speaking pupils to be  
19 segregated from those who do not speak Spanish?

20 A Segregation, by its very nature, is a reminder  
21 constantly of inferiority, of not being wanted, of not being  
22 a part of the community. Such an experience cannot possibly  
23 build the best personality or the sort of person who is most at  
24 home in the world, and able to contribute and live well.

25 Q In your opinion, is a language difficulty improved,

1 or, if I can use the word, worsened by segregation, of the  
2 Spanish-speaking pupils? That is, the ability to speak the  
3 English language?

4 A It is definitely lessened.

5 Q What would be the effect, as opposed to that  
6 segregation, to have the children of Mexican descent be taught  
7 in the same classrooms as those not of Mexican descent?

8 A Well, there is an increase in the ability to learn  
9 English, and we have considerable evidence of that in this  
10 country.

11 Then you have a classical study which was made in Wales,  
12 and one carried on through the Rousseau Institute in  
13 Switzerland, which have made an attempt to settle this point  
14 under wide conditions, youngsters coming from many home condi-  
15 tions, and the question being as to how the children could  
16 in a public school learn language best. The result was un-  
17 equivocal that children in association with other children  
18 learned the language much more rapidly and were much more  
19 facile with their language than children who were segregated.

20 I don't think we need to refer to this classical study  
21 which was made by a man by the name of Saars, and his associate,  
22 Hughes, no relation of mine. Also, I think discussion with  
23 high school teachers in the State of California, or any place,  
24 will give you informational evidence on this point.

25 Q Have you had such discussions?

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1 A Oh, many times.

2 Q And what have been the results of those discussions?

3 A The result is always --

4 MR. OGLE: Objected to, if the court please, as incom-  
5 petent, irrelevant and immaterial, and it tends to prove  
6 nothing that is in issue.

7 THE COURT: Unless those discussions were with teachers --

8 MR. CHRISTOPHER: With teachers.

9 THE COURT: -- who are similar to those in Orange County  
10 in these segregated schools, I do not think that would be  
11 helpful.

12 Q BY MR. CHRISTOPHER: Have you had any discussion  
13 with teachers of pupils in segregated schools, containing  
14 Mexican children?

15 A Oh, yes.

16 Q You have?

17 A Yes.

18 Q In regard to the segregation?

19 THE COURT: In the public school system?

20 THE WITNESS: Yes, at the high school or the elementary  
21 school level.

22 Q BY MR. CHRISTOPHER: What has been the main point  
23 of such discussions in regard to segregation?

24 MR. OGLE: Objected to as calling for a conclusion, as  
25 to the main point with regard to such discussions. I don't

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1 object to this witness giving her expert opinion regarding  
2 matters.

3 THE COURT: Of course, we are not concerned in this  
4 case with high school students. We are concerned with those  
5 pupils in the public schools of the State of California from  
6 the kindergarten and up to the sixth grade, the grammar  
7 grades. Now, if she has had any experiences with those, we  
8 will be glad to have her relate them.

9 Q BY MR. CHRISTOPHER: Have you had any experience  
10 in discussing such topics with elementary school teachers?

11 A Yes, sir, and visits in elementary schools.

12 Q Have you formed an opinion after having such  
13 discussions?

14 A There is no doubt, in my judgment, that children  
15 in the mixed schools, that is, children in association with  
16 Anglo-American children learn English much faster and much  
17 more expertly than they do in a segregated school.

18 Q To your knowledge, have there been any laboratories  
19 set up to test, aside from the Wales research, which I believe  
20 you testified to, as to the progress of children who are segre-  
21 gated in learning language?

22 A I believe there has been no study. My own study  
23 for my own Master's thesis was a study of children beginning,  
24 entering school, that is, their first year in school, and  
25 part of the children were in segregated schools, and part in

1 non-segregated. That was not the main point of the thesis.  
2 The main point of the thesis was how many words or how much  
3 English could they learn in one year, and those that were in  
4 the mixed schools with Anglo-American children learned more  
5 words than those in the segregated schools.

6 Q And you formed that opinion as a part of the thesis  
7 you wrote?

8 A That was a matter of controlled research, I may say.

9 Q Aside from the language handicap and their rate  
10 of learning it, what other effects on the children are there  
11 resulting from segregation of the Mexican pupils, as opposed  
12 to the mixed schools?

13 A I think the result of segregating Mexican pupils  
14 is that by putting in a group of people with their own kind  
15 only, that is, with their own curricular group or occupational  
16 group, or whatever classification it is, they tend to learn only  
17 the ways of that group and to feel not at home with others,  
18 not to have confidence, and not to have the know-all, that is,  
19 they do not know the conventions and the ways of living of  
20 the larger group.

21 Q In your opinion, what is the most efficient way to  
22 teach English to children who speak Spanish when they first  
23 enter school, that is, in regard to segregation and non-  
24 segregation, or any other form of arrangement of classes?

25 A The best way always to teach English is to give many

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1 opportunities to speak English, to hear it spoken correctly,  
2 and have reasons for speaking it, and to enlarge the experiences  
3 which demand English. That is, with any language you tend to  
4 learn the words of a given experience, and if your experiences  
5 are limited, your vocabulary will be limited. As the ex-  
6 periences are increased, as you meet more people from dif-  
7 ferent kinds of homes and from different classes, different  
8 occupational classes, and so forth, then your language is  
9 naturally increased.

10 Q Is that true in regard to children of Mexican  
11 descent, as well as other children?

12 A Oh, definitely.

13 Q Have you formed any opinion as to the effect on  
14 the Americanization of children of Mexican descent by segrega-  
15 tion from those not of Mexican descent in schools in California?

16 A If we mean by Americanization, the learning of the  
17 ways of the larger group, learning the Anglo-American culture,  
18 which is the dominant culture of our country, if we mean that,  
19 that is learned best by association with other peoples, that  
20 is, people of the Anglo-American group.

21 Q And what is the opposite of that, by segregating?  
22 I mean, we were first speaking about not segregating. By  
23 segregating, what would it be?

24 A Association with their own group mainly, namely,  
25 the Spanish-speaking group, would tend to cement, to crystallize,

1 to amalgamate to just the ways of that particular group, and  
2 not to add on the ways of the dominant group, or majority  
3 group.

4 Q If in a certain district in Orange County we have  
5 two schools, about 120 yards apart, --

6 MR. OGLE: I object to this line of direction and leading  
7 of the witness, if the court please.

8 THE COURT: No, I think that would be correct. That would  
9 bring it right down to the concrete situation that exists in  
10 Santa Ana, and I think at one other school.

11 MR. HOLDEN: El Modeno.

12 THE COURT: Yes. No, I think that is proper, and I don't  
13 think he should be interrupted while he is propounding an  
14 inquiry.

15 MR. OGLE: Yes, your Honor. I will withdraw the objec-  
16 tion.

17 THE COURT: After he has completed his question, you  
18 may interpose an objection, if you want to.

88 19 Q ' BY MR. CHRISTOPHER: If in a certain school district  
20 in Orange County in California we have an elementary school  
21 from the first to the eighth grades, I believe it is, and  
22 120 yards apart from it another school of the same grades,  
23 and with that situation in mind and with one school having  
24 only children who speak Spanish or are of Mexican descent  
25 attending, and in the other school those of the non-Spanish-

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1 speaking descent attending, and with classes beginning at  
2 different times, recesses at different times, closing periods  
3 at different times, what, in your opinion, is the effect  
4 upon all of the pupils attending both schools, resulting from  
5 such separation and with the situation I have related to you?

6 MR. HOLDEN: That is objected to, if the court please,  
7 as assuming something not in evidence.

8 THE COURT: Which district do you have in mind, the  
9 El Modeno, the Garden Grove, or the Santa Ana District?

10 MR. HOLDEN: If he has in mind the El Modeno District,  
11 they had 25 Spanish-speaking pupils.

12 THE COURT: Yes. Here are the tables.

13 (Handing documents to counsel.)

14 THE COURT: Perhaps you had better use those tables in-  
15 stead of general figures.

16 MR. CHRISTOPHER: I want to look at my notes to see what  
17 school I am talking about.

18 That is the El Modeno District.

19 Q BY MR. CHRISTOPHER: I will change my statement of  
20 facts in only one instance. In one school we have pupils  
21 who are considered English-speaking, as well as some who are  
22 Spanish-speaking. However, in the other school there are only  
23 those who speak Spanish, who are considered Spanish-speaking  
24 pupils. Except for that change, what, in your opinion, is  
25 the effect on all of the pupils in both schools by such

1 separation?

2 A I would say that any separation of children which  
3 prevents free communication among them, on an equal basis,  
4 that is, a peer basis, would be bad because of the very fact  
5 that segregation tends to give an aura of inferiority. In  
6 order to have the people of the United States understand one  
7 another, it is necessary for them to live together, as it  
8 were, and the public school is the one mechanism where all the  
9 children of all the people go.

10 Q Would the closeness of the two schools have any  
11 effect on these children?

12 A Well, of course, I have to speak from my experience  
13 in the County of Los Angeles largely, in terms of California,  
14 and where we have a comparable situation, we are likely to  
15 have unpleasant relationships between the pupils of the two  
16 schools; that is, frequently we have fights and other demon-  
17 strations of unfriendly feeling, because the children are not  
18 together on a normal basis. In other words, they are segre-  
19 gated and are apart abnormally and there isn't the free com-  
20 munication and give and take that there would be under other  
21 conditions.

22 Q What is the disadvantage or advantage of segregating  
23 English-speaking pupils from Spanish-speaking pupils in  
24 different school buildings?

25 THE COURT: Haven't you answered that pretty well?

1 THE WITNESS: I think so.

2 MR. CHRISTPHER: Yes, I believe she has in toto.

3 THE WITNESS: I just know of no advantage.

4 Q BY MR. CHRISTOPHER: What, in your opinion, is the  
5 effect upon, say, several children who live in a district  
6 with many other children, who go on the same bus on their  
7 way to school, and two or three of these children are of  
8 Spanish-speaking parents and they are let off at one school  
9 several blocks before the bus reaches its destination at  
10 another school, where only English-speaking pupils attend?

11 A I think I have answered that. Any manifestation of  
12 discrimination such as that obviously results in youngsters  
13 keeping to themselves, and the ultimate result must be a  
14 result of inferiority or of not being wanted, or of not being  
15 a part of the community.

16 MR. CHRISTOPHER: That is all.

17 MR. OGLE: No cross examination.

18 BY THE COURT:

19 Q Mrs. Hughes, -- is it Miss or Mrs?

20 A Mrs. Hughes.

21 Q Mrs. Hughes, has there been any experiment similar  
22 to the one you say was conducted in Switzerland, here in the  
23 United States, with children of Mexican ancestry?

24 A I think there have been no controlled experiments.  
25 By "controlled" I mean what we call classical experiments.

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1 There has been a great deal of work done in gathering, oh,  
2 a great deal of data in terms of English. For instance, I  
3 worked in a segregated school last year for five weeks with  
4 a group of youngsters, and that was last summer a year ago,  
5 to determine their measure of English, their adequacy in  
6 English, and that report is to be released this fall, and I  
7 am in the process now of completing its writing.

8 The lack of English ability is just indescribable in  
9 children living under such conditions. The holes in their  
10 language is something that is appalling. Even when it comes  
11 to the meaning of common vegetables, fifth grade children  
12 don't know even all of that, because they haven't had an  
13 opportunity in informal contacts to learn that.

14 Q That was in what district?

15 A In the Ranchito School District, Pio Pico School.

16 Q Do you recall what percentages of children attending  
17 that school were what you classify here as those of Mexican  
18 ancestry?

19 A Oh, all of them.

20 Q All of them?

21 A All of them.

22 Q 100 per cent?

23 A 100 per cent.

24 Q I suppose, or, is it true that there were variations  
25 with respect to their knowledge of the English language?

1           A     Oh, yes. You find the same variation in Spanish-  
2 speaking children as you do among any selected group. Some  
3 are very smart, and some are a little dull, and some very  
4 dull.

5           Q     Was that study made under any public authority, or  
6 was that an individual study?

7           A     No, it was made by our office, with the help of  
8 the Inter-American Coordinator's office of the Inter-American  
9 Affairs.

10          Q     You say "your office." What do you mean?

11          A     The Los Angeles County School office.

12          Q     You are connected, then, with the school department  
13 of Los Angeles County?

14          A     When I am at work. I am not at work this afternoon.

15          Q     You made that study under the auspices or under the  
16 direction or at the request of that authority, did you?

17          A     Yes. It was a project of the Los Angeles County  
18 School office, in co-operation with the office of Inter-  
19 American Affairs.

20          Q     Was that district chosen as a typical district to  
21 illustrate the situation?

22          A     It was chosen as a typical segregated school situa-  
23 tion.

24          Q     They were all normal children, were they?

25          A     Very.

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1 Q I mean they were not children who were --

2 A They were not selected.

3 Q -- arrested mentally?

4 A No.

5 THE COURT: That is all.

6 MR. OGLE: That is all.

7 MR. CHRISTOPHER: That is all.

8 MR. MARCUS: The plaintiffs rest.

9 MR. OGLE: We have nothing further.

10 THE COURT: Now, gentlemen, I think probably it would be  
11 well to brief the entire case. It may be that upon the filing  
12 of those briefs the court will then set it for additional oral  
13 argument on the facts.

14 The briefs should be directed to two or three points,  
15 without any limitation to any other points which counsel  
16 desire to discuss. The points which the court feels at this  
17 time should be discussed are: --

18 MR. MARCUS: Your Honor, may I interrupt for just a  
19 moment, and this may clarify the issues. We have agreed  
20 among ourselves to have prepared the entire transcript of the  
21 evidence in this case.

22 THE COURT: Yes.

23 MR. OGLE: Yes, and to split the cost of the transcript.

24 MR. MARCUS: We are going to split the cost, but that  
25 isn't important to the court.

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1 THE COURT: Of course, that is a highly essential matter  
2 to these people who have to get out the transcript. That  
3 will help a great deal, I know. (Continuing) :

4 First, the question of jurisdiction. I consider that to  
5 be a crucial question in the case, and I want to state it  
6 now so that there will be no misunderstanding about it.  
7 Has the Federal Court, the Federal District Court, jurisdic-  
8 tion of this case under the record as it exists at this time?  
9 That will involve, I think, a discussion as to whether or not  
10 education is not essentially a State matter.

11 Secondly, the question, which is perhaps factual, that  
12 segregation having been proven -- and undoubtedly it has been  
13 proven, there is no question about that, and there cannot be  
14 any argument but that there has been segregation -- whether  
15 or not under the evidence that segregation has gone to the  
16 extent of unjust discrimination.

17 Third, as to whether or not the plaintiffs are in a  
18 position to invoke this action as a class action, or as to  
19 whether their rights are individualistic; and if the action  
20 is an individual suit between the individuals named as  
21 plaintiffs and the respective school district against which  
22 it is directed, any relief can be afforded in the action  
23 other than personal relief to the individual plaintiff as  
24 to the children of that individual plaintiff. And, ultimately,  
25 assuming that the plaintiffs can recover -- in other words,  
that there is jurisdiction in the court and that the

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1 evidence justifies recovery by them -- what form of relief  
2 are they asking in this action, and what form of relief to  
3 the plaintiffs, if entitled to any relief, is appropriate  
4 within the issues of the action.

5 I don't recall any other questions that the court  
6 desires to suggest as being necessary for discussion in your  
7 briefs, but I am not limiting you as to any other questions  
8 you may care to discuss.

9 Now, the briefs should be brief. I do not mean to say  
10 that they should be so epitomized that they would not be  
11 informative. They should be sufficiently comprehensive to  
12 be informative and to illustrate the respective positions of  
13 the litigants in the case.

14 Of course, the burden is on the plaintiffs to establish  
15 the case, as they have alleged it in the complaint as against  
16 the various defendants, and it may be that argument as to  
17 some of these districts would be applicable where it is not  
18 applicable as against the others; and I am not making any  
19 limitation on that, so far as the plaintiffs are concerned,  
20 or so far as the defendants are concerned, for that matter.  
21 I don't believe there is any other question I would care to  
22 mention.

23 Now, as to the dates briefs are to be filed, I was going  
24 to ask you about that. What do you say, Mr. Marcus? You  
25 have the burden of opening and closing. What is your view of

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1 it?

2 MR. MARCUS: Would it be agreeable if, say, we took  
3 ten days after the delivery of the transcript?

4 THE COURT: That would be about the end of this month.  
5 How much time would you, gentlemen, want to answer?

6 MR. OGLE: We would like as long as possible, subject  
7 to the court's convenience. As I understand it, the court  
8 will not be here in August.

9 THE COURT: That is the vacation month. We haven't had  
10 much vacation during the last three or four years. We should  
11 like to take some this year, if possible.

12 MR. MARCUS: Could we do it this way, - five and five?  
13 That is, I will take five days after the delivery of the  
14 transcript, and then you take five, because the questions of  
15 law would not necessarily depend upon the questions of fact.

16 THE COURT: Yes, you can work upon that now.

17 MR. MARCUS: That is what I thought.

18 MR. OGLE: We would like to have more time than that, if  
19 it meets with the court's convenience.

20 THE COURT: How much time would you want?

21 MR. OGLE: Oh, we would like to have ten days after  
22 counsel submits his brief.

23 THE COURT: Do you want ten days or five days?

24 MR. MARCUS: Plaintiffs will file a brief within five  
25 days .

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1 THE COURT: Plaintiffs and the amici curiae. I think  
2 you gentlemen should collaborate. I don't think it is neces-  
3 sary to file a joint brief, although it would be better to  
4 do so. On this jurisdictional question, I think you could  
5 assist the court, all of you, a great deal by emphasizing  
6 that point. That is basic, for this reason: if there is no  
7 jurisdiction in this court, we are wasting the time of these  
8 people, all of them, &-

9 MR. MARCUS: That is right.

10 THE COURT: -- and of the school authorities, also, be-  
11 cause it will come to naught if there is no jurisdiction;  
12 whereas if there is jurisdiction, of course, the case may  
13 proceed to its adjudication, and to be reviewed by higher,  
14 better authority, if that is desired. But if there is no  
15 jurisdiction in the Federal Court, everybody has lost time,  
16 and it would be just a waste of time to proceed. So I take  
17 it that is the crucial question in the case, and it should be  
18 very thoroughly briefed by all of you.

19 MR. MARCUS: Your Honor, may I offer this suggestion?

20 THE COURT: Now, about closing briefs, how much time  
21 would you want?

22 MR. MARCUS: I think five days would be sufficient.

23 THE COURT: Five, ten, and five, after the transcript is  
24 delivered to you, and it will be delivered simultaneously.

25 MR. MARCUS: Now, I didn't want to anticipate, your

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1 Honor, the questions which might be presented in the briefs,  
2 nor the authorities, but I thought I might be of assistance  
3 to the court at this point. I appreciate there are no cases  
4 directly in point on the question involved here. There are  
5 many cases on the race question.

6 THE COURT: Oh, yes.

7 MR. MARCUS: However, I wondered if the court has yet  
8 had occasion to read the opinion, under the civil rights  
9 statute, in the case of Mayor Hague --

10 THE COURT: The Hague case?

11 MR. MARCUS: -- of Jersey City.

12 THE COURT: Yes.

13 MR. MARCUS: That opinion was first rendered by the  
14 District Court of Appeals and then went to the Supreme Court.  
15 In that case I think the question of jurisdiction was taken  
16 up.

17 THE COURT: That was a free speech case, however.

18 MR. MARCUS: Yes.

19 THE COURT: You have to bear in mind that in this case  
20 we have the question of education involved. Now, it is my  
21 view, without any decision in the matter, that education is  
22 not a Federal matter, that education is a State matter, and  
23 if it is, that may determine the case. That has been the  
24 court's view throughout the argument on the motion to dismiss,  
25 as it was at the pretrial, and is yet, but it isn't de-

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1    cislve. If the court had been able to formulate its own  
2    decislve view the court would not have taken up the time  
3    in hearing the evidence. But I think the evidence should have  
4    been heard. This is a case of importance, and for that  
5    reason the proceeding in which the evidence was elicited was  
6    helpful, I think, from every point of view. It is informative  
7    to the school authorities, and it is helpful to the general admin-  
8    istration of justice in cases of this kind. But there is that  
9    very serious, crucial question which will have to be overcome.  
10   Otherwise it will be a waste of time to make findings on  
11   these crucial factual questions.

12       I think also you gentlemen should adopt the rule that we  
13   have enforced in other cases, that you should present  
14   simultaneously with your closing briefs -- the defendants'  
15   brief and the plaintiffs' closing brief -- your request for  
16   findings of fact and conclusions of law, so the court will  
17   have before it at that time precisely what each of you is  
18   asking the court to do.

19       Upon the filing of the last brief the case will stand  
20   submitted for decision.

21       MR. OGLE: Without further oral argument?

22       THE COURT: Unless I should indicate further oral  
23   argument.

24       MR. OGLE: I see. Thank you.

25

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C E R T I F I C A T E

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this *6th* day of  
*August,* A.D., 1945.

*Maria P. Johnson*  
\_\_\_\_\_  
Official Reporter