

20 Years Later: Discovering Mendez v. Westminster School Dist. of Orange County

John Caher: We're all aware of *Brown v. Board of Education*, the unanimous 1954 Supreme Court decision that legally anyhow sent Jim Crow in separate but equal to the historical dust bin.

But years earlier, in 1947, the U.S. Court of Appeals for the Ninth Circuit issued an opinion that helped blaze the trail to *Brown*. In *Mendez v. Westminster*, the court shielded children of Mexican ancestry from public school segregation in California.

On April 14th, the 74th anniversary of a decision and the 20th anniversary of a documentary that lifted the *Mendez* case from the footnotes to the text of history, the Latino Judges Association is sponsoring a Continuing Legal Education program. That program is co-sponsored by Latino Justice PRLDEF, the Franklin H. Williams Judicial Commission, CUNY Law School Center for Latinx Rights and Equality, the Historical Society of the New York State Courts and the New York State Judicial Institute. The Judicial Institute is also providing technical support.

It will consist of a viewing of a documentary and a panel discussion moderated by the Hon. Jenny Rivera, Senior Associate Judge of the New York Court of Appeals. Panelists will include: Sylvia Mendez, the lead plaintiff in the case, and Sandra Robbie who wrote and produced the documentary.

We are honored to feature the Hon. Patria Frias-Colón of Kings County Civil Court. Judge Frias-Colón is chair of the Latino Judges Association Committee organizing the program. I'm John Caher, and I'm the host of the Amici Podcast series.

Judge, thank you for your time. Let's dive right in if we can. Can you give me a brief synopsis of this case and the holding?

Judge Frias-Colón: Absolutely, John. First, I want to thank you for inviting me to your podcast. This is really an incredible avenue for the Unified Court System to reach so many with some really phenomenal programming. So, thank you for what you do.

John Caher: Thank you. It's my pleasure to have you here.

Judge Frias-Colón: Fantastic. This case was the legal precedent responsible for desegregating schools and other public venues in California, back in 1947. In fact, it was the first case in the country to rule that school segregation was in fact unconstitutional and violated the 14th Amendment.

So the lawsuit, just by way of background, was brought by five Mexican-American families whose children were forced to go to segregated schools in various counties throughout California. And the only reason they were forced to go to a segregated school, John, was because of their Mexican ancestry. So, the Mendez family spearheaded this effort after their daughter was denied registration to her local school. The family had moved to that County, Westminster in fact, to harvest farmland that was owned by a Japanese family who, by coincidence, were at risk of losing their farm land because they were sent to a relocation camp. And so the Mendez's stepped in to harvest the farm while that Japanese family was in the relocation camp.

The lawsuit, which was filed based on 14th Amendment grounds, demanded equal protection under the law to stop their respective school districts from requiring separate schools for Mexican-American children.

John Caher: But at the time, *Brown* had not yet been decided, *Plessy v. Ferguson* and the "separate but equal doctrine" still applied. So how were they able to get around that, the Ninth Circuit? How were they able to get around *Plessy* and come to that?

Judge Frias-Colón: Well, that's a great question. There was a two-week trial back on February 28th of 1946. And after that two-week trial, a federal district court agreed with the Mexican-American families and ordered an injunction against the school districts named in the case.

And that district judge wrote, and I quote: "A paramount requisites in the American system of public education is social equality." As you know, that was not ensured in a school system that requires separate schools. And so the school districts did appeal on the basis that the school district segregation practices were not done under the color of State law, and therefore the 14th Amendment did not apply and the federal court did not have jurisdiction over the local school board action. But then to your question, on April 14th, 1947, John, the Ninth Circuit federal appeals court affirmed the federal trial court's decision.

Unfortunately though, they did not reverse *Plessy*, which affirmed that "separate, but equal" was constitutional. But the school districts that were sued accepted the decision and even though they could have gone up to

the Supreme Court of the United States, they chose not to. And so how did they get around *Plessy*? They did it in one line, John. The Ninth Circuit avoided answering that Herculean issue by holding, and I quote: "We are of the opinion that the segregation cases do not rule the instant case, and that is reason enough for not responding to the argument that we should consider them in light of the amicus curiae brief." And there were many submitted in support of the *Mendez* position.

John Caher: It's interesting that nobody sought leave to go to the Supreme Court. I wonder if they were afraid of the result that would happen.

Judge Frias-Colón: Or conversely, they may have had a very decent governor, who at the time was Earl Warren who ultimately made the decision for California NOT to appeal to the Supreme Court of the United States.

John Caher: Ah, there you go! I think you hit the nail on the head with that one. Now, did any other circuit court or state courts embrace that reasoning?

Judge Frias-Colón: Unfortunately not, and it was not until the *Brown v. Board of Education* case that *Plessy* was overturned and the Supreme Court of the United States, in fact, ruled that separate was inherently unequal. But it took some time.

John Caher: Now, for the Hispanic population in particular, what was the significance of the *Mendez* ruling?

Judge Frias-Colón: Well, John, certainly one would expect that for the children and the families of the implicated school districts at the time, back in 1947, it would have meant that they were no longer relegated to a segregated education. Unfortunately, as we know from the *Brown* decision it took this country many years to fully desegregate, and it took the National Guard to desegregate schools.

Unfortunately, John, the *Mendez* case is not well known, which is precisely why we are doing our program on April 14th, 2021. And we do believe that knowing about this case and teaching about this case at all levels of our education systems in this country is very important for the Latino community and for all Americans, because it is part of our American jurisprudence and we all should know it.

John Caher: Now, how did *Mendez* set the stage for overturning *Plessy* and for the decision in *Brown*?

Judge Frias-Colón: That's an excellent question. Consider who was involved in the *Mendez* case and who was involved in the *Brown* case. Thurgood Marshall at the time was the first director and counsel of the NAACP Legal Defense Fund. And he and Robert Carter co-authored one of the amicus briefs used in the *Mendez* case. As you know, Marshall went on to argue the *Brown* case.

And then another very important player is Earl Warren, who was the governor of California during the *Mendez* cases. He decided to desegregate California and other public venues rather than appealing to the Supreme Court of the United States. And as we all know, Marshall then went on to argue the *Brown* case before the Supreme Court of the United States and the Chief Judge was Earl Warren. So, all these factors and all these players connected to the *Mendez* case were critical in setting the stage for the success in the *Brown* case.

John Caher: It sounds like *Mendez* was something of, I don't mean to demean it at all, but something of a dress rehearsal really for Thurgood Marshall and Robert Carter.

Judge Frias-Colón: I would agree with that. I would absolutely agree with that.

John Caher: One of the things that gives me great satisfaction in looking at this case a little bit is the fact that this immigrant family, of modest means, with really no power, takes on a big powerful State like California and they win. What does that say about our system of justice and the rule of law?

Judge Frias-Colón: Well, certainly for me John, it confirms that the American system of justice can be tested and it can be relied upon even when one thinks that the odds are stacked against them. I'm not proposing it's fool proof, but this case, like so many other seminal cases, challenging the status quo, lends confidence to our American jurisprudence. And I will tell you that I think Bob Marley sang it best John, when he said: "So if you are the big tree, we are the small axe ready to cut you down." And I think that these families represented that small axe that cut down that big tree representing desegregation in California.

John Caher: It sounds like a fascinating program. Now, the program by the Latino Judges Association is a CLE, right?

Judge Frias-Colón: Yes, it is. We actually just got confirmation from one of our partners, the Judicial Institute, and we put in an amazing application and it is CLE accredited.

John Caher: Terrific. So if someone's interested, how do they sign up?

Judge Frias-Colón: Well, right now, many people have seen a “save the day,” which has been going out since last year because our hope is for as many organizations as possible to join us. And we're going to be sending out the link for the registration shortly.

John Caher: Judge, thank you so much for your time and thanks for your insight and thanks for educating me about this case.

Judge Frias-Colón: You're very welcome, John. I did want to certainly share with you what the Latino Judges Association is about, since we're spearheading this along with some great co-sponsors.

The Latino Judges Association, which was previously called the Association of Judges of Hispanic Heritage, was founded in 1985 and our mission and purpose, which is why we're doing this program, John, is to promote our access to judicial office, success within the judiciary and diversity among the legal profession. So we really are very supportive of things of this nature. And we really hope that this podcast will reach far and wide to help people learn about it and to come on board. But as you know, John, no program can go be successful without the amazing work of a team of dedicated people. So, I'm excited, and I want to thank you for giving us this opportunity to join your podcast-

John Caher: You're very welcome.

Judge Frias-Colón: I'm very excited about our partners in this, Latino Justice, Puerto Rican Legal Defense and Education Fund, the Judicial Institute, the Historical Society of New York Court, the Franklin H. William Commission, and also CUNY Law School's Center for Latinx Rights and Equality. So, we have an amazing group of organizations putting this together and I'm really looking forward to having everyone join us on April 14th, 2021 at 6:00 PM. And this will be the program: Para Todos los Niños *Mendez versus Westminster*, a seminal case on desegregation. Thank you, John.

John Caher: Wonderful. Thank you so much, Judge.