A Cotton Picker Finds Justice!

The Saga of the Hernandez Case

Compiled by Ruben Munguia
IN MEMORIAM

On the day preceding his admission to the hospital, where he was to pass away a few days later, Maury Maverick finished the Foreword which appears in this pamphlet. Thus we of Mexican and Hispanic heritage, for whom Maury did so much, were destined to be the recipients of the product of his last intellectual efforts.

Maury Maverick needs no monument of mortar, steel, or stone. The memory of this amazing individual is instilled in the hearts of men and women, reared during the depression, who have splendid physiques instead of bodies crippled by rickets; it is reflected in the eyes of those who gaze upon the unique beauty of the San Antonio River; it is echoed in the ears of people who listen to exotic melodies at La Vila Lillia. Maury Maverick will live forever in the minds of those who have decent housing instead of shacks and lean-to's; in the spirit of all who believe in giving a tangible meaning to such ideals as progress and equality and opportunity, and those two much misunderstood though often-quoted expressions: civil liberties and the American way of life. No, Maury Maverick's monument is not pedestrian—it is not even mundane. It can only be described as something found in the souls of men.

It is unfortunate that the span of life of this remarkable being was so short; it is sad that this international figure did not rise even higher than he did, nor help determine even more what the future of mankind shall be; it is tragic that, like other great men before him, he was so often forced to waste his brilliance jousting with pygmies.

We humbly and reverently dedicate this little publication to Maury—who carried an already famous name to immortality.

—30—

—Gustavo C. García
June, 1954.
Foreword

Society, composed of human beings of all kinds, all over the world, ceaselessly marches on. Now and then in this ceaseless march, occur events which are true mile posts.

"The Hernández Case" is such a mile post, and represents a climax of long years of struggle of Mexican-American people for first-class citizenship. It is not beautiful to say that this case is even of world importance.

Of course, the Mexican-American people are Americans: they are not "hypensated" Americans. This segregating hyphen was stuck in between them by others, in spite of the fact that in every war for liberty they have always shed more than their required proportion of blood.

Excellent doctors, lawyers, engineers, and businessmen have developed among these people—just as with English, or French or German-Americans, and it is rather patronizing to even say this because everybody knows it.

In the Hernández case, which went to the Supreme Court of the United States, the rights of people—all people—were protected. The attorneys were No. 1 in brains and courage—Carlos Cadena, Gus García and Johnny Herrera. They attacked the principle of excluding people of Mexican ancestry from grand juries, petit juries and jury commissions. They won a unanimous decision that exclusion of people of Mexican ancestry was unconstitutional. These attorneys made a substantial, dignified and creditable showing for their people before the Highest Court of our land. The unanimous decision upheld these lawyers' viewpoint, and it was a victory for dignity and equality for every breathing soul in the United States.

In writing this it is important that not only people in Texas but that people all over the world understand. In World War II I was in Washington and subscribed to the San Antonio papers: the casualty list ran far higher with Latin American names than with Anglo names like my own. The papers told the same story during the Korean War. By actual count, the Latinos from Texas in the Armed Forces—defending a democratic world whose blessings they did not always share—outnumbered the Anglos 2 to 1.

Now—returning from World War II—the Mexican-Americans found that the same prejudices existed as when they left, and in some instances their services were not at all appreciated. Some places wouldn't even bury a "Mexican" veteran killed overseas. Their children were segregated in many public schools. In some Texas counties well qualified persons of Mexican blood who didn't even know how to talk Spanish were kept off jury service. Such men could have made decent incomes, be university graduates, and live honorably, but the Spanish name was a bar.

Personalities must be injected throughout this because many bright Mexican names will appear. Gus García met Professor George Sánchez, who had written several books on problems of the Southwest. They decided to bring together a lot of people to lay the groundwork for a test case on school se-
regation. Various groups decided that they would not be held back in their contribution to the posterity of America. They marked education as Number One and Re-quired, on their future Calendar of Progress.

John D. Rockefeller III and a committee from the Rockefeller Foundation came down. They could not believe the sordid conditions that existed. They soon saw that the "Mexican" schools were a disgrace. Then came Dr. Lyle Saunders and with the help of the Rockefeller Foundation and Dr. George Sanchez's graduate students they put together convincing statistics. He prohibited the school board defendants from engaging in the practice of segregation. He enjoined the State Superintendent of Public Instruction from participating in segregation in any way.

I write for people who don't necessarily know our Texas journey. So let us step and get various organizations in our minds before we go any farther: The LULACs and the American G. I. Forum. LULAC stands for League of United Latin American Citizens. The G. I. For-um is another organization, young-er and under the vigorous leader-ship of Dr. Hector Garcia. Both these organizations sent out instructions and regulations to all school systems telling of the court decision in the Delgado case. Some school boards were recalcitrant—that is, either they ignored down, or put on the slow down. But the organizations and different indivi-
duals fought on, and segregation has practically ceased to exist throughout Texas. It can be report-ed, also that the spirit of co-opera-tion and fellowship among so-called Anglo and Latin Americans seems natural and pleasant.

The second court battle saw an humble man by the name of Puentes, represented by his attorneys, Carlos C. Calena and Alonso S. Fernald, battle against restrictive covenants in real estate which prevented per-sons of his national origin from buying property where they chose. In this case, the courts of the State of Texas, in the wake of a United States Supreme Court decision on the subject, upheld Puentes's conten-tion. The Texas state courts outlaw-ed restrictive covenants and even went farther than the Supreme Court of the United States.

Third came the Hernandez case. It is the climax case, and is principally dealt with here. Ever since the county started, Jackson County had never let anybody with a Latin name serve on any kind of jury. Hernandez was convicted of a crime. The conviction was reversed una-nimously by the Supreme Court of the United States. It was notice and public advertisement to all the world that America stood for equality and freedom. It was an order putting the Declaration of Independe-nce and the Constitution into effec-t.

Besides these court battles we can think of work by various dedi-cated leaders which they did in oth-er fields.

1. "Wetsbacka". For those who don't know, a wetsback is a man who swam the Rio Grande illegal-ly, or walked across a dry spot, but is still a wetsback.

The leaders of the LULACs and G. I. Forum went out and did battle
Russian revolutionaries. They spoke to President Truman (I know—I get an appointment for Gus Garcia with the man from Independence), and I imagine they will talk to President Eisenhower about the evils of permitting the wholesale influx of illegal immigrants, which is so good for the immigrant, who is inevitably persecuted, and no good for the U. S. A. Not much has been done by Washington, but the lawyer, who is watching and fighting and some day the problem will be solved. The Immigration Department itself admits 805,000 wetbacks came in during 1953.

2. These leaders have battled with backward state officials for improvement in conditions and to see that Mexican-Americans get representation in state appointed positions and on boards and commissions. Where there is bad treatment for their people which was entirely unmerited, these leaders have retired with dignity and decorum such as when Dr. George Sanchez and Gus Garcia resigned in 1952 from the Texas Commission on Human Relations (a stulted shirt outfit). This withdrawl had its effect and the people at least knew the Mexican-Americans were not getting a fair deal.

3. These leaders have spurred their own people to get up and improve themselves, to speak English, to become better Americans, pay their poll tax (and vote), to support public health programs. Results in all these fields have been good, I should say excellent.

4. They fought for a Civil Rights Act submitted to the Texas Legislature to stop discrimination of all kinds in public places.

5. They have spent numbers thousands of dollars of their own on traveling, writing and telephoning, and they have, in good old styled American fashion, bullied and yelled, pleaded, cajoled and demanded whenever and wherever an issue arose.

Now, I know the Latin-American groups have been accused of self-segregating themselves. Well, they came out of World War II and out of the Korean War and got rooted around like their fathers and grandfathers had been. Even in many regular Veterans' Posts they suffer ed neglect and neglect.

So I can understand and most people can understand why Americans of Mexican extraction formed their organizations. The American G. I. Forum got rolling under Dr. Hector P. Garcia of Corpus Christi and Ed Iler of Austin. This organization has spread to neighboring states.

The LULACS started over a quarter of century ago. It seems to me some of their policies are rather conservative. Never less than organization and G. I. Forum together are both necessary and both do essential work.

As I said in the beginning, bright, well-educated men have developed out of this welter of humanity. Anyhow, they are dedicated men. I will give the names of only a few:

DR. GEORGE SANCHEZ

I first met him when I was in Congress. He lived in New Mexico then. Methodist and courageous, and having a heart to think with, he's a Number One planner and peace maker. Among my Latin American brethren he abhors what we Anglos (I resent that word 'Anglo') call the claiming personality, and what I secretly call 'don't quote me' prima donnas like the volatile Garcia (of San Antonio and Corpus).
DR. HECTOR P. GARCIA

Here is a capable, smooth, able, well-educated physician of the highest order. With patients he has the bedside manner and his patients swear by him. Outside, he is an able fighter, a capable man who started rough and tough, and who is mellowing down new to a great leader. He can talk to people in their own language as well as any man I ever knew.

ED IDAR

Ed belongs to a family that believes in education. His deceased father was persecuted and his late uncle was national Vice-President of the American Federation of Labor in the darkest days. Both inspired him. Ed works to improve everybody else,—and himself. Working eight hours every day and helping other people four hours each day, he also spends part of his time at the University of Texas studying law. When he sleeps, I do not know.

CARLOS C. CADENA

Here is a subtle fellow, possessor of a profound legal mind. He is the scholarly kind of man like Cardoso, who sat on the Supreme Court of the United States. He has an obsession for anonymity and is sometimes overlooked.

GUS GARCIA

Now comes Garcia. He either carried the Message to Garcia or he got the Message or something, maybe from the Lord, though when need be it is said he consults with the Devil. A brilliant and eloquent man, he is forceful and dramatic. Chances are, he would have made just as great a flamenco dancer or bullfighter as he has a trial lawyer. Some people say (again "don't quote me") he's a sort of neuro-psychiatrist, but he's all the good things they say, too. He needs no brightening up. If we can just get him dulled down a little bit, there will be a man for you. The message that we want to send to this Garcia is to get rid of his phobias and frustrations, but maybe he is number one of all; he surely will be if we can knock off some of his edges.

R. A. CORTEZ

Raul is another highly controversial figure, who, nevertheless had what amounted to three years of policy making for the LULAC. First, he was regional governor of Texas. Then he was twice-elected National President. It was under his administration that the ground work was laid for some of the more recent accomplishments and that the historical school segregation case was carried to a successful conclusion. Except that I demand the use of English, I would say, ¡Viva Raul! Let it be said in his behalf that he was always ready to back up the judgment of his associates like Dr. Sanchez and Gus Garcia and a definite stand was taken on every important issue that arose. There is no doubt about it, Raul was instrumental in making LULAC a great national organization.

JOHN J. HERRERA

Johnny is best known for the fact that his great, great grandfather, Col. Francisco Ruiz, was one of the two native Texans who signed the Texas Declaration of Independence alongside my own ancestor, Samuel Maverick. As a matter of fact, however, it is not necessary for Johnny to have to depend on
Ancestral background for recognition because he can stand on his own two feet. Both as a National President of LULAC and as a soldier in the ranks, he has been ready any time of any day or night to render whatever service he could when his assistance was needed.

They are not rich, these men. Money is lost, not made, by people who work on civil rights cases. These men are not opportunists—not are they saints. They are not personally powerful—these men. They cannot be compared to the influential political figures of South Texas who have amassed wealth and dominion in their respective bailiwicks. But these men and others like them are the ones making history for the Spanish-speaking people, that is, for all American people—for the world. It is they who have changed the complex of the Latin American problem from a purely sectional issue to a national disgrace. Their deeds have reached the ears of responsible and great men in high places. They have fought like men, not like women, and they will be remembered long after wealthier and more powerful men have been forgotten.

Maury Maverick
May 1954
CADENA

a great legal mind came to the aid of the people.

GARCIA

a nimble brain and a sharp tongue set the pace throughout the case.
An Informal Report to the People

By Gustavo C. Garcia


At the outset, I shall apologize for my verbosity. Having reached the ripe old age of 38 years, however, I feel that any information that we submit to the people should be in writing, lest our feeble words be wafted away in the thin air and future generations not know of the battles that have been waged in behalf of what, next to the Navajos, constitutes the most unfortunate minority group in the United States.

In order to present the background of the Hernandez case, perhaps we had better follow it in its proper chronological sequence, so that all persons, be they laymen or professionals, understand the issues fully.

In September 1951, I agreed to defend one Pete Hernandez, a laborer and cotton picker, charged by indictment with murder with malice in Jackson County, Texas. Located in East Texas, Jackson adjoins Wharton County, which, in 1945, gained dubious fame when a man by the name of Macario Garcia, winner of the Congressional Medal of Honor, wearing his uniform and all his ribbons, was denied service in a restaurant, beaten about the head, and driven out of the place because he was a "Mexican."

Obviously, the migrant-labor family of the defendant Hernandez could not raise a fee commensurate with the responsibility, effort, and time required by the case. Nevertheless, I accepted employment because, first, I could not resist the tearful pleadings of the defendant's mother, who knew that the authorities in Jackson County were determined to do their utmost to send her 78-year-old boy...
to the electric chair; and, secondly, because, after a preliminary investigation, I decided that we had an excellent opportunity to make a test case on the issue of the systematic exclusion of persons of Mexican and other Latin American descent from service as jury commissioners, grand jurors and petit jurors.

As all lawyers well understood, in order to lay the proper predicate, it was necessary to file certain motions, raising the "exclusion" issue under the Fourteenth Amendment to the Constitution of the United States. This was done. Then it was necessary to present evidence to prove the allegations in these motions. This also, was done at a hearing prior to the trial of the case on its merits.

At this hearing, much to my dismay, I found no one in the courtroom on our side, or even mildly sympathetic towards us. I learned that in that county, "Mexicans" apparently did not attend court sessions, and furthermore, that there was much hostility against my client, both on the part of the Anglo Americans and the Latin Americans, because he had killed a well-liked and respected citizen. My usual aplomb somewhat jarred, I decided to contact the only man I knew who could possibly help me, namely, John J. Herrera of Houston, who, at that time, was the first National Vice-President of the Lulacs. I explained the situation to him. I told him that I was jittery and that I was in desperate need of help. He didn't ask if there were any fees involved. He didn't even ask if there was money for expenses. He cancelled a trip which he was about to take with the Houston Chamber of Commerce to Mexico City and immediately drove to Edna, the county seat of Jackson County, bringing with him his very capable young associate, Attorney James De Anda.

Not only did Messrs. Herrera and De Anda assist the writer as counsel in the hearing on the motions and in the trial of the case on its merits, but they even served as witnesses.

In the course of the hearing on our motion to quash the indictment and to quash the venue, we established the three essential elements to sustain our proposition that there was a systematic exclusion of persons of Mexican and other Latin

*Mr. De Anda checked school census rolls, court records, and other official documents for pertinent information and swore to his findings. Mr. Herrera accidentally discovered and subsequently testified as to the lettering on the doors of the public rest rooms in the court house window, to which Mr. Chief Justice Warren makes such pointed reference in his opinion.
American descent from jury service:

(1) That no persons of Mexican or other Latin American descent had served in any capacity as jurors or jury commissioners, or had been called for such jury service, in at least 25 years.

(2) That there were persons of Mexican descent qualified to serve as jurors and jury commissioners.

(3) That discrimination and segregation were a common practice in Jackson County and in the County seat, Edna, and, therefore, persons of Mexican descent were actually treated as a "race."

-- Judge Martin, a former prosecutor himself, and Mr. Hartman are such able lawyers that in our opinion, nothing even resembling reversible error on procedure or substantive law could be found in the record. As all trial lawyers desperately sweating out a capital case with one eye cocked on the appellate court are wont to do, I tried every trick in the book—not to mention a few improvised ones of doubtful ethical vintage—in a vain attempt to a good them into some ruling, word, or action that would give me a peg on which to hang my appellate case. But it was no use. The excellent shape of the case, from the state's standpoint, plus the shortage of funds required for a lengthy record, explain why the only question raised on appeal was the strictly constitutional issue of the ex post facto exclusion of persons of Mexican descent as an issue upon which Judge Martin had ruled correctly in accordance with the case-law then prevailing in Texas.

class, or group apart from all other persons.

It might be said in passing, that it was necessary for us to travel a hundred miles to and from Houston each morning and evening to attend Court because, for obvious reasons, it would have been ill advised to stay overnight in Edna, even if adequate accommodations had been available. Let it be said to the credit of some very fine people, however, namely District Judge Frank Martin, District Attorney Wayne L. Hartman, Sheriff Lewis W. Watson, District Clerk Gena L. Lawrence, and all the other officials that we were treated with kindness, respect and utmost courtesy."

Unfortunately, Johnny Herrera and I were sandwiched in between the arguments of the hand some young District Attorney, a dynamic and eloquent speaker, Mr. Wm. H. Flambien, a Special Prosecutor employed by the family of the victim, who is an ornament of the old school, and the very capable then County Attorney Mr. Cullen B. Vance. Needless to say we were buffeted about pretty badly.

The verdict: Guilty!

The punishment assessed was life imprisonment.

Before preparing a motion for new trial, I discussed the matter
at length, with the defendant and the members of his family. I pointed out to them that even if the case were reversed, it would have to be tried all over again with all attendant risks. Hernandez insisted that the homicide was justifiable and that I file my motion at once. His family, likewise, was adamantly in this regard. My ethical duty discharged, I proceeded to comply with their instructions.

The motion for new trial was filed in due time. It was urged by the indefatigable Mr. Herrera. By then, our original fee had been exhausted on expenses and we were beginning to put money out of our pockets.

Subsequently, an appeal was perfected to the Texas Court of Criminal Appeals in Austin, which is the Supreme Court in criminal matters in our state, or as the lawyers say, "the court of last resort". Incidentally, I would like to express my gratitude to Mr. William Maldonado, Sr., San Antonio labor leader and liberal thinker, who picked up the undersigned from a sick bed and drove him to Jackson County to file the Statement of Facts and the Transcript on the last day permissible.

Full credit for the work on appeal, both before the Texas Court of Criminal Appeals and the Supreme Court of the United States, should be given to Professor Carlos C. Cadena, of San Antonio, my former law partner and now on the staff of St. Mary's School of Law. Intellectually speaking, I can accurately describe Professor Cadena as the best brain of my generation.

There are no adequate words, however, which can do justice to his greatness of spirit and profound love for his less fortunate fellowmen. Sky, reserved, and retiring, he is often overlooked by newspapermen and orators who sing the praises of less worthy, though perhaps more flamboyant, individuals. Nevertheless, those of us who know "Carlitto" Cadena for his true merit will always cherish his friendship and will be ever grateful for his selflessness and devotion to the defense of human rights. The people of Mexican ancestry can feel fortunate that his genius was given to us during such a critical period in our history. What more can I say, except that when my second child turned out to be another girl, and I could not name her Carlos, she was baptized by Professor Cadena as "Carlitto."

Having drifted far afield from our original theme, we should return to the scene at the Court of Criminal Appeals in Austin, which rejected our briefs and
oral arguments and ruled, quite
in keeping with the precedents
previously established by that
same Court, that the Fourteenth
Amendment could not be ap-
plicated in the case at bar. In order
to preserve our right of appeal
to the United States Supreme
Court, it was necessary to file
a motion for a rehearing. This
was done and it, too, was over-
rulled. After that came much
soul searching and numerous
discussions with some of our
friends who had advised us in
the past with reference to our
civil rights cases.

Harboring many misgivings,
we finally filed an application
for a Writ of Certiorari with
the Supreme Court of the Unit-
ed States on January 19, 1953,
the last day allowable. This ap-
plication was typewritten be-
cause there was no money to
cover expenses of printing. We
had little hope that it would be
approved because every year
hundreds of applications are
submitted but only a few are
granted. Much to our surprise,
our petition received favorable
consideration on Oct. 12, 1954,
Columbus Day, or better known
throughout Latin America and
Spain as "El Dia de la Raza".

Our elation was dimmed some-
what by the fact that immedia-
tely after receipt of this notifi-
cation, we were served with a
telegram from the Clerk of the
Court, collect, requesting the ad-
ditional sum of $900.00 at once,
to cover court costs.

In desperation, we turned to
local sources, and let it be said
to the eternal credit of San An-

toniocounties, notably among the San Antonio Lo-

ters because we failed to go up to the
Supreme Court on a piper’s oath.
"Look at the Rosenbergs," they cry.
"They perfected a score of appeals that
were made in the first place. I would hard-
ly call the ultimate conclusion in the
Rosenberg cases successful from the
standpoint of the defense. Secondly,
surely, we felt, the 3 million persons
of Mexican descent in the United States,
or at least the noisy well-fed clowns
and poodles who are constantly seeking
notoriety by "Civic leaders", should be
able to provide for court costs and have
expenses in the first case to come be-
fore that august tribunal. Have we, be-
cause we are in a sense a conquered
people, lost all sense of pride?

G. I. Foroora, Lulacs, Texas Good
Relations Association, and private in-
dividuals as best they could, con-
tributed the apathy of the general pub-
lic, raised some $3,000 all told for
all purposes. Contrast this with the
experience of Negro Attorneys Ex-
penditures on the part of the Nation-
al Association for the Advancement
of Colored People have ranged from
$40,000.00 to over $100,000.00 for each
of their important victories in the civil
liberties field. This is not to detract
from the merits or the self-sacrifice of
the baristers who have so ably handled
this litigation; they could probably
lose millions if they specialized in such
fields as corporate law. But at least
they receive some compensation for their
efforts - and considerably less criticism
from black-cloaked contemporaries.
tonio LULAC Council No. 2 that, undoubtedly in violation of established procedure and regulations, the sum of $900.00 was promptly advanced from the scholarship fund to cover this expense. This money should be replaced by the National Office because it was borrowed from the scholarship fund and, furthermore, there is no reason why San Antonio should have to bear the brunt of the expenses for printing and court costs. After all the case is national and even international in scope.*

In connection with this $900.00 item, we should point out the fact that through the intervention of pioneer LULACker Alonso Perales, and that grand old man who feared not the Texas Rangers, Judge J. T. Canales of Brownsville, the sum of $900.00 was sent to San Antonio by the Texas Good Relations Association, some 48 hours after the lo-

* We use the term "international in scope" because we made certain that all motions included the words "Hispanic and/or Latin American descent." We also interpreted the term "Spanish-speaking." This means that anyone considered "Mexican," "Latino American," "Hispano," "Spanish-speaking," (even Portuguese-speaking Brazilian), etc., can claim his rights under the Fourteenth Amendment if he is tried in a county where persons considered as members of that "class" are denied the right to serve on jury commissions, grand juries or petit juries. The citizenship of the accused person does not matter.

cal LULAC Committee had voted that amount. The delay was occasioned by the unfortunate illness of the President, Dr. Carlos C. Castañeda, prof sor at the University of Texas.

The check was returned to Dr. Castañeda, but we will always remember their great gesture.

The following country bumpkins went to Washington:

Attorneys (1) Cadena, (2) Herrera and (3) Garcia participated in this case before the Supreme Court of the U. S. Messrs. Cadena and Garcia presented the oral arguments, and Mr. Herrera, sitting at counsel table, assisted in the organization of the arguments and the preparation of the notes, made suggestions and rendered memos as the case progressed before the Court.

(4) Mr. Abel Cianeros, courageous radio commentator of Wharton, Texas, who went along because the substantial sum contributed by his home town was conditioned upon his accompanying Mr. Herrera. He took copious notes and, after he came home, rendered a lengthy report over the radio to the people of East Texas.

(5) Mr. Manuel B. Lopez, of San Antonio, a graduate attorney, who is at present serving
nis hitch is in the Army in Virgin-
ner, was very helpful to us,
guiding us around Washington,
and faithfully carrying out all
the duties of an all-round "leg-
man."

(6) Mr. Anthony (Tony) Garcia,
Director of Municipal Markets
of San Antonio, attended as an
observer for the Llomacs, on his
vacation time and at his own
personal expense, his moral sup-
port, his encouragement, and his
timely suggestions were invaluable
to us.

(7) Mr. Chris Aldrete, Chair-
man of the American G. I. Fo-
rum. Though too recent a law
graduate to be presented to the
Court, he, too, was very
helpful.

We all stayed at the May- 
flower Hotel, which is neither
higher nor cheaper than any oth-
er first class hostipe in Wash-
ington. The average rate per
person is $10.00 a day. After
Tony Garcia, Johnny Herrera,
and Abel Casares arrived, the
writer moved into a suite with
them, which cost us $35.00 per
day. The undersigned slept on
a couch in the living room,
which, however, was far more
comfortable and luxurious than
many a bed in which he has slept
in his day. Tony Garcia stretch-
ed out his hefty frame on a roll-
away bed. By obtaining this
suite, we actually saved at least
a dollar per person per day and
at the same time had a decent
place to hold meetings among
ourselves, with members of the
press, and with some friends
from Washington, who guided
us and assisted us, and who
deserve our sincerest thanks.
Among them are a young lawyer,
formerly from Texas, by the
name of Harvey Rosenbarg; our
great and good friend the Hon-
orable Dennis Chavez, senior
Senator from New Mexico; Den-
nis, Jr., his brilliant son, their
entire staff, consisting among
others of some very beautiful
creatures, who are as pretty as
they are competent; Jake Jacob-
son, from Senator Price Daniela's
office; Senator Price Daniel, who
left a committee meeting to
introduce us to the Supreme
Court; Senator Lyndon B. John-
son, and Sam Houston, and
Tony Marthens, out of Senator
Chaves’ office and Attorney Al
Wirin of California. To all these
splendid people we say: gracias,
muchas gracias. Special com-
mandation should go to Sarah
McClendon, charming and bril-
lant newspaper woman.

Eventually, it came to pass
that we appeared before the
Supreme Court of the United
States. As far as the presenta-
tion of the case is concerned,
the news releases were as so-
curate as could be expected, except for the fact that our case was heard about one hour earlier than had been anticipated; consequently, the newspaper reporters were not present when Carlos Caroza made his historical opening argument and he did not receive the full credit due him.

By the same token, John J. Herrera, who jugged the notes, the points, and the suggestions, was hardly mentioned, in spite of the fact that it was he who kept our heads level when we were bombarded by questions from some of the justices, particularly the Honorable Tom C. Clark.*

* The remarks attributed to the writer in the newspapers to the effect that General Sam Houston was only a week back from Tennessee were not as bad as might appear at first blush. Actually this was said in a peevish voice, of course, although, in a sense, all Anglo-Americans who settled in Texas were looked upon as unorthodox foreigners, Johnny-come-lately's, and unaccounting adventurers by the rather rabidly Spanish-speaking families (like mine) who had estabished Texas between 1720 and 1800. Nothing delights me more than to speak deprecatingly about some of my snobby, society-conscious relatives as bankrupt Mexicans blooded.

The truth of the matter is that this writer has always had a soft spot in his heart for two Anglos, in particular, who participated in the Texas revolutionary movements: Sam Houston and Jim Bowie, for reasons for many reasons, but I suspect mainly because (1) those two charming swashbucklers were box-office,出众者, and dear friends. We took advantage of our stay in Washington to contact several senators and some of the more prominent congressmen to lay our problem before them. We talked about the wetback situation. We pointed out to them that there are virtually no Spanish-speaking persons in the American embassies in Latin America. We called their attention to the fact that even though we are now catering to Generalissimo Franco's Spain, there is not a single person of Spanish descent with our military mission there. I hardly think that our politically-minded friends in Washington will worry about this very insignificant pressure group, namely, the "Mexicans", but, nevertheless, the least we could do was to explain, suggest a n kilogram: you simply

...
cannot let things be lost by de-
fault.

Regrettfully, because of the lack of time and the thinness of
the pocket book, we did not participate in the gaiety that is
supposed to pervade Washin-
tong after sundown. After tem-
porarily concluding our work
there (Professor Cadena having
returned immediately after the
case to resume his teaching du-
ties at St. Mary's Law School),
Tony Garcia and I went to New
York with certain specific mis-
sions in mind. Dennis Chavez,
Jr., accompanied us. Unfortuna-
tely Mr. Herrera was unable to
go with us because he suffered
a severe fall on an icy sidewalk
while strutting around Wash-
ington in his high-heeled boots,
and had to return to Houston
for examination and treatment.

In New York, Mr. Tony Gar-
cia and I were together only
one day. According to press re-
ports, he returned to San An-
tonio because of the illness of
his one and only son. For his-
torical purposes, however, let
the record show that he read
over my shoulder that the tem-
perature would go down to a
flat zero that night—and im-
mediately contacted Eastern
Airlines. After working for
some 48 hours, I had a relapse
of the intestinal flu that I had
carried with me from San An-
tonio. For three days, I did no
good to anyone except the hotel,
ruminating over, doctor's, and
drug bills. I shall always be
grateful to my good friends
Jaime Escobar of the Mexican
delegation to the United Na-
tions and Rafael Carvajal of the
Voice of America. They moth-
ered me and held my hand dur-
ing my illness and worried ab-
out me more than I did. The
only satisfaction I got of this
whole deal was the fact that I
discovered I am not allergic to
penicillin.

Eventually I braved the seven
degree weather to visit such or-
ganizations as the American Ci-
vil Liberties Union, the National
Association for the Advancement
of Colored people, the Anti-
Defamation League of B'nai
Braith, the Japanese - American
Citizens League, the Rockefeller
Foundation, the Marshall Trust
Foundation, the National offices
of the American Federation of
Labor, the National offices of
the C. I. O., and other organi-
sations, which, in the past, have
shown an interest in our plight
and our problems.

All of these people in these
institutions were unanimous in
their opinion that what we need
is a powerful, rich national or-
ganization to fight our battles,
with a lobbyist in Washington
and each state capital where we constitute a substantial por-
tion of the population. They said that it would be a simple mat-
ter for every person of our eth-
nic group to contribute a pit-
acle to the "cause" and that, in that manner, we would amass
a great fund. I smiled and told them that they didn’t know
Mexicans.*

I regret to say that while in New York I saw more of the
darkness of the subway (taxi fares being prohibitive for peo-
ple of small means like me) than anything else. I took in no
shows, not even the free tele-
vision performances.

I finally returned to Wash-
ington on a coach and stood up all
night because there was no oth-
er means of transportation a-
available. I had to go back to see
what had happened to some of
the things that we had left
pending there. Eventually, on
one good Sunday in January, af-
ter a delay because of bad weath-
er and some three weeks after
my departure from the Alamo
City, I flew back to San Anti-

* These seemingly unimportant de-
tails are set out for two purposes: (1) to demonstrate that leaders of our or\nbin-
citizens need to cultivate contacts with
national figures and institutions; (2) to
give the reader an idea of the multitude of
details and multitude working, deciding,
and deciding-back necessary to carry out
an effective minority group program.

no, where I was greeted, under
a gloriously sunny sky, by my
loving wife and a somewhat
skeptical elder daughter — age
three—who thought I was the
milkman.

If the reader will consider the
cost of traveling, of lodging,
care in Washington (there is no
subway), tips (which are a must)
"handouts," etc., he may well
understand why civil rights
lawyers don’t get rich.

And now what of Pete Her-
nandez? He seems to have been
forgotten in the babble of head-
lines, constitutional issues, and
uninhibited celebration. He is
still languishing behind prison
bars. He has been confined eith-
er in jail or the penitentiary
for over three years. A new
charge has already been filed,
and the District Attorney has
indicated that he will press for
an early trial after a re-indict-
ment (undoubtedly with some
"Mexicans" on the jury) is re-
turned next September. So we
shall start our heartbreaking
task all over again, as far as he
is an individual is concerned.
But his welfare is, and should
properly be, our primary con-
cern. His rights are paramount
—and he is not a guinea pig to
be discarded after the experi-
ment has succeeded. All that we
can hope for is that we can get
some public support, both mora-
and financial, in his behalf. His family, unfortunately, is virtually destitute.

To conclude, I would like to make some observations as to the social significance of this case and a few suggestions as to what the pattern of our future course of action should be.

In the first place, this lawsuit marks the end of legal relief for our basic social ill. I do not mean to say that there will be no further litigation; on the contrary, many cases will undoubtedly be appealed under this and other rulings, specially where local authorities attempt to give us mere "token" representation in our jury system. But the foundation has been laid here, as it was in the Mendez and Delgado cases on the issue of school segregation and the Pueblos case on restrictive covenants in real estate. This was the last major issue left for the courts to decide.

No court decision on civil rights has any worthwhile significance, however, unless translated into positive, constructive, and practical every day action. What our people must do on a local basis is to become familiar with the state of the law, keep abreast of the times, and notify organizations like Lulae and the G. I. Forum of the violation or attempted circumvention of court rulings, laws, or constitutional provisions. After all, we—lawyers, professors, and just plain crusaders—who are rapidly approaching middle age, or have already reached it, and who find ourselves without any semblance of security, cannot spend the rest of our lives pulling Mexican chestnuts out of the fire for "the people". We have a living to make for our families, and furthermore we have been quite disillusioned to discover (though we should have known it all along) that the public, for the most part, is not only a forgetful and ungrateful, but actually a sadistic, creature.

As to our future conduct: I trust the reader will forgive me if I indulge in what our younger generation would unhesitatingly classify as corny preaching on the part of an old square. But I think I am entitled to at least this one whimsey, to which most of us Mexicans fall victim after devoting a number of years to "do-gooding". Somehow we all begin to conceive the ridiculous notion that we have become olive-skinned versions of Bernard Baruch.
At any rate, here it is: It has always been my contention that social discrimination is the least of our worries. If little Adelita is not asked to pledge that exclusive sorority—worry not. She's probably a lot better off anyway. If we are denied service in one restaurant, we can always find another where the tipping of coins meant more than the teachings of Main Kampt. In our society, regretfully enough, the most effective means of reaching the hearts of men is through their pockets.

Furthermore, I have no desire to go where I am not wanted. And personally I deem it my constitutional right to keep anyone who is to me persona non grata out of my home, my office, or my place of business. The principle of Civil Rights, you know, is not a one-way street.

These views do not apply, of course, in the case of public places or facilities constructed or maintained with tax funds to which all the people contribute.

That, to translate freely an ancient Spanish axiom, "is flour from another barrel."

I do ask the reader to take this free legal advice for whatever it is worth—with apologies to my more practical brethren in the profession who charge for such services—and that is: In Texas, at least, there is no law which requires the owner of a public establishment to serve you, even if you appear in tornning tux and are driven up to the door by a liveryed chauffeur in a plush-lined, air-conditioned limousine. So stop worrying about it. Education and social pressure—on both sides of the fence—will take care of these odious distinctions.

Unfortunately, it is often the least important incidents which result in the splashing of the gayer headlines and cause the greatest amount of harm to Anglo-Latin relations.

We are not passing through anything different from that endured at one time or another by other unsanitized populations: the Irish in Boston (damned mickeys, they were diabolically called); the Polish in the Detroit area (their designation was bohunies and polacken); the Italians in New York (ref erred to as stinking little wops, dogoes and guineas); the Germans in many sections of the country (called dumb squareheads and krauts); and our much maligned friends of the Jewish faith, who have been persecuted even here, in the land of the free, because to the bigoted they were just "loopy kikes."
The point to remember is this: all these other ethnic and religious groups have managed to overcome the same obstacles now besetting our path and, in spite of language handicaps, ignorance, and old-world superstitions, they have all contributed materially to the development of their community, state, and nation. I grant that the problem is somewhat more difficult for us because of the close proximity of the mother country — actually the cultural umbilical cord has not yet been completely severed — and because of unfortunate historical wounds which some nitwits delight in reopening year after year. (Remember the Alamo?). But eventually we can overcome all these difficulties — make no mistake about that.

Using Texas as a barometer, we discover for example, that, projecting our present fantastic birth rate into the future, by 1970 we shall actually be a majority of the population in this state. Proportionately, the same thing holds true in all other states with a heavy "Mexican" population. Thus, in spite of infant diarrhea, tuberculosis, and other diseases which would seem to decimate our ranks, we are rapidly being swept forward to a position which will call for more responsible leadership and for more effective participation in the every day affairs of our society.

That is precisely why I have been so deeply concerned about educational problems among our people, especially the children of migrant workers. Let's face it: in Texas, which is no better and no worse than other southwestern states in this respect, if you pick out at random any day of the school year, and make a check of school attendance, you will discover that ever one-half of school-aged children of Mexican descent will not be found in any grade in any school. The number of pupils who teach high school is infinitesimal. As I have often said, we are still producing generation after generation of illiterates, semi-literals, and cotton pickers. The percentage of draftees of Mexican ancestry rejected for illiteracy during World War II was disgraceful. This is a problem which can be solved only by an intelligent program on the part of our organizations as well as by a more enthusiastic application of worthwhile methods by the state educational authorities.

A final word of caution: do not place on a pedestal those whose fate it has been to fight your battles. We are not little
tin gods. A truly great statesman—an Irishman named Parnell who, but for personal scandal, might have led his people to an early freedom—whispered to his beloved Katie O'Shea on his deathbed that, alas, alas, all mortals have feet of clay. Crusaders, at best or at worst, depending on your point of view, are simply ordinary folk with little quirks and an inflated social conscience—and, perhaps, a Messiah complex.

Most of all, try to remember this last bit of advice, which I express while having to resort to that moth-eaten cliché about don't-do-as-I-do—but-do-as-I-say: the right to occupy a respected place in our social strata can never be demanded; it must, of necessity, be earned.
Legal Ramifications of the Hernandez Case
A THUMBNAIL SKETCH

By Carlos C. Cadena

The first case involving discrimination against persons of Mexican descent from jury service in Texas was decided by the State Court of Criminal Appeals in 1931.

Since that year, in a number of decisions the Texas Court of Criminal Appeals clung firmly to the theory that discrimination in the selection of juries because of national origin was not forbidden by the Constitution of the United States. In taking and maintaining this position, the State Courts evolved the novel theory that the Fourteenth Amendment recognized only two classes as coming within the guarantee of equal protection of the laws: "the White race comprising one class, and the Negro race, comprising the other." Since, according to this Court, persons of Mexican descent were members of the white race, and since white Anglos sat on all juries, "Mexicans" had no cause for complaint.

On June 18, 1952, the Texas Court of Criminal Appeals indignantly informed Pete Hernandez that his brazen attempt to seek the protection of the Fourteenth Amendment was merely an effort to have that court "recognize and classify Mexicans as a special class within the white race and to recognize that special class as entitled to special privileges." * Thus, in a hand-dusting fashion seldom seen in law books, the court rebuffed Hernandez by patronizingly reminding him that, whether he liked it or not, and whether the Anglo-Americans in Jackson County believed it or not, he was a member of the superior Caucasian race and, presumably, must endure all hardships as part of the "white man's burden."

While some may argue that exclusion from jury service because of national origin is a matter of minor importance, since most citizens (white, brown and black) go to great lengths to evade it, the basic issue involved was of great moment.*

*The Texas Court of Criminal Appeals, In re Hernandez, 156 S.W.2d 112 (1941).
Appeals, by adopting a unique “two classes” theory, was greatly restricting the reach of the protective arm of the Fourteenth Amendment. Such a theory, having no basis in the decisions of any other court in the land, could severely curtail the rights of persons of Mexican descent in Texas. Even if exclusion from jury service were a minor matter,—and it is not—a theory which placed us beyond the shelter of the Fourteenth Amendment had to be attacked and exploded as a myth resting upon a gross misinterpretation of that amendment.

Without attempting to become melodramatic, we can state that dire consequences were implicit in the acceptance of the “two classes” theory. Persons of Mexican descent could be segregated in schools, parks, and all other public places, and any objection could be met with the bland statement that there was no ground for complaint since “Mexicans” are white and by being restricted to associating with each other, they were not being discriminated against because of race. Cities could enact zoning ordinances forcing persons of Mexican origin to live in segregated ghettos, and the “two classes” theory blindfold would hide a priori our the discriminatory practices.

Naturally it stands to reason that the Honorable Court of Criminal Appeals did not foresee the potentially sinister implications of its “two classes” theory. Evidently it saw no distinction between this theory and its own decision in the Juarez case, in which it held that the systematic exclusion of Roman Catholics violated the provisions of the Fourteenth Amendment. To Judge Davidson, who wrote the opinion for the Court, the Juarez decision did not even merit an allusion to it, in spite of the pleas by counsel for the defendant Hernandez in the case at bar that some explanation be given for this obvious conflict.

Perhaps it was the dangers inherent in such an unorthodox theory that impelled the Supreme Court to grant a Writ of Certiorari against the Court of
Criminal Appeals of Texas. The objective sought by the attorneys for the defendant Hernandez was the destruction and eradication of such a dangerous and insupportable legal fallacy. That objective was achieved. The Supreme Court bluntly stated that the exclusion from jury service solely because of their ancestry and/or national origin is discrimination prohibited by the Fourteenth Amendment. Paying particular attention to the "two classes" theory, Mr. Chief Justice Warren observed simply that the Fourteenth Amendment is not directed "solely against a discrimination due to a 'two classes' theory—that is, based upon differences between 'whites' and Negroes."

Thus, the Supreme Court refused to read into the Fourteenth Amendment a limitation which is not there. It clearly and explicitly recognized that when the existence of a distinct class is shown and it appears that the laws as written or applied "single out that class for different treatment, not based on some reasonable classification, the guarantees of the Constitution have been violated."

The notion that the Constitution prohibits discrimination because of national origin is not new. As early as 1875, the Supreme Court had observed that the exclusion of naturalized Irishmen from jury service would violate the Fourteenth Amendment.

One immediate result is that in any county of the United States (including the parishes of Louisiana) or its territorial jurisdictions where the Jackson County procedure has been followed in selecting juries, all pending indictments against persons of Mexican descent are void.

The rejection of the "two classes" theory guarantees that all ethnic groups in our nation are assured of equality before the law and are protected against discrimination because of their ancestry or national origin.

So, too, a Protestant in a predominantly Catholic community would certainly be protected against "different treatment" by governmental officials due solely to his religious beliefs.

It must be remembered that this decision is based strictly on a question of national origin—not race. Those of Mexican descent who decry it as classifying "our people" as non-white should keep this in mind. For that matter Mexicanos should be proud to be identified with other minority groups, including the ultra-progressive Negro-Americans, instead of
attempting to build a cultural fence around themselves and live in a vacuum. Strangely enough, it seems to be the dark-complexioned Mexicans who are the most sensitive.

Beyond this we can only speculate. What effect does the Hernandez decision have on the Texas constitutional provision excluding women from jury service? It is deceptively easy to read into a judicial opinion much that is not there by failing to limit the general language employed by the Court to the particular facts involved in the case. It is, of course, evident that, as opposed to men, women are a “distinct class.” With reference to jury service, the Texas Constitution singles them out for “different treatment.” Is such different treatment based on some “reasonable classification?” ¡Quién sabe!
HERRERA

a pioneer Texan helped write a new chapter in Texas history.
The petitioner met the burdens of proof imposed in Davis v. Alabama, supra. To meet the severe, great facts one of the central tenets of the equal protection of the laws guaranteed by the Constitution was established, the State afford the opportunity of five jury empanellments that they had not determined against persons of Mexican or Latin American descent in selecting juries. They noted that their only objective had been to select juries whose purpose were best qualified. This testimony is not enough to overcome the petitioner’s case. As the Court said in Davis v. Alabama:

"That showing as to the long-standing exclusion of negroes from jury service, and as to the many negro qualified for that service could not but be met by more generalization. If, in the presence of such testimony as defendant offered, the more general as services by officials of their performance of duty went to be surprised as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision... would be but a vain and empty requirement." 24

The same reasoning is applicable to their facts. Circumstances or changes may well dictate that no person in a certain class will serve on a particular jury or

"204 U.S. at 830.

result in more particular period. But it leaves no authority to us to say that mere chance results in the State' being any better than the results of this case among the over six thousand persons added in the past 25 years. The usual General-Declaratory, whether or not it was a conscientious decision on the part of any individual, jury, community. The judgment of conviction must be reversed. To say that the decision reviewed the required conclusion that the Fourteenth Amendment require proportional representation of all the race whose group of the minority on every jury" as the case may be. The petitioner did not seek proportional representation, nor did he claim a right to have persons of Mexican descent or in the particular justice which he lacked. The only claim is the right of at least one jury of any race from which all members of his case are not proportionately excluded—jurors selected from among all qualified persons regardless of national origin or descent. To this, the it is required by the Constitution.

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The United States supra, supra, supra, 204 U.S. at 833.
This document is located in the University of Texas, Permian Basin, Dunagan Library, in the Archives/Special Collections in the personal library of John Ben Shepperd.

Title: A cotton picker finds justice! : the saga of the Hernandez case / compiled by Ruben Munguia.
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Note--information on John Ben Shepperd is available at [http://www.tsha.utexas.edu/handbook/online/articles/view/SS/fsh65.html]