

*A Cotton Picker
Finds*

Justice!

**THE SAGA OF THE
HERNANDEZ CASE**

Compiled by
RUBEN MUNGULA

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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 Villa. 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.

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—Gustavo C. Garcia
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 Hernandez 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 boastful to say that this case is even of world importance.

Of course, the Mexican-American people are **Americans**; they are not "hyphenated" 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 Hernandez 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 Garcia 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 up-

held 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 Latins 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 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 Garcia met Professor George Sanchez, who had written several books on problems of the Southwest. They decided to bring together a lot of people to lay the ground work for a test case on school se-

gregation. 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 Required**, 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 statistical data and all kinds of facts for the success of the test cases. Some of their matter resulted in the victory in the **Delgado Case** in which United States District Judge Ben H. Rice, Jr., held that the segregation of children of Mexican descent was a violation of the 14th Amendment of our Constitution. 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 jargon. So let us stop 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. Forum is another organization, younger and under the vigorous leadership 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 bogged 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 reported, also that the spirit of co-operation 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 Puente, represented by his attorneys, Carlos C. Cadena and Alonso S. Perales, battle against restrictive covenants in real estate which prevented persons 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 Puente's contention. The Texas state courts outlawed 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 unanimously 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 Independence and the Constitution into effect.

Besides these court battles we can think of work by various dedicated leaders which they did in other fields.

1. "Wetbacks". For those who don't know, a wetback is a man who swam the Rio Grande illegally, or walked across a dry spot, but is still a wetback.

The leaders of the LULACS and G. I. Forum went out and did battle

on the wetback menace. They spoke to President Truman (I know—I got 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 no 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 watch-dogs are watching and fighting and some day the problem will be solved. The Immigration Department itself admits 800,000 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 uncorrected, 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 stuffed shirt outfit). This withdrawal 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 numberless thousands of dollars of their own on traveling, wiring and telephoning, and they have, in good old styled

American fashion, hollered 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 booted around like their fathers and grand-fathers, had been. Even in many regular Veterans' Posts they suffered segregation 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 Idar 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. Nevertheless that organization and G. I. Forum together are both necessary and both do essential work.

As I said in the beginning, brilliant, 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. Methodical and courageous, and having a brain to think with, he's a Number One planner and peace maker. Among my Latin American brethren he soothes what we Anglos (I resent that word "Anglo") call the clashing personalities and what I secretly call ("don't quote me") prima donnas like the volatile Garcias (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 now 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 Cardozo, 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 neuropsychiatric, 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 1 of all; he surely will be if we can knock off some of his edges.

R. A. CORTEZ

Raoul is another highly controversial figure, who, nevertheless had what amounted to three years of policy making for the LULACS. 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 Raoul! Let it be said in his behalf that he was always ready to back up the judgment of his advisors like Dr. Sanchez and Gus Garcia and a definite stand was taken on every important issue that arose. There is no doubt about it, Raoul 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—nor 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 domination 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 pleas have reached the ears of responsible and great men in high places. They have fought like sensible men, not like *toreros*, 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 risk of being boresome, I am submitting this report in connection with Cause No. 406, **Hernandez vs. The State of Texas**, before the Supreme Court of the United States, submitted on January 11, 1954. (Opinion announced May 3, 1954).

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 into thin air and future generations not know of the battles that have been waged in behalf of what, next to the Navajoes, 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, 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 26-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 will understand, 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 venire, 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 rendered testimony as to his findings. Mr. Herrera accidentally discovered and subsequently testified as to the lettering on the doors of the public rest room in the court house square, 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 ace 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 goad them into some ruling, word, or action that would give me a peg on which to hang my appellate *sombrero*. 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 systematic exclusion of persons of Mexican descent—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. Hamblen, a Special Prosecutor employed by the family of the victim, who is an orator 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 adamant 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 Unit-

ed 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. Shy, 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 "Carlitos" 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 "Carlita."

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 applied 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 overruled. 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 United States on January 19, 1953, the last day allowable. This application was typewritten because 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 somewhat by the fact that immediately after receipt of this notification, we were served with a

telegram from the Clerk of the Court, collect, requesting the additional 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-

*We have been severely taken to task by some of our guard-house lawyers and Monday-morning quarterbacks—specially among the San Antonio Lulacs—because we failed to go up to the Supreme Court on a pauper's oath. "Look at the Rosenbergs," they cry. "They perfected a score of appeals that way". In the first place, I would hardly 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-heeled clowns and poseurs who are constantly seeking publicity as "civic leaders", should be able to provide for court costs and bare expenses in the first case to come before that august tribunal. Have we, because we are in a sense a conquered people, lost all sense of pride?

G. I. Forums, Lulacs, Texas Good Relations Association, and private individuals as best they could, considering the apathy of the general public, raised some \$3,000 all told for all purposes. Contrast this with the experience of Negro Attorneys. Expenditures on the part of the National Association for the Advancement of Colored People have ranged from ----- \$45,000.00 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 barristers who have so ably handled this litigation; they could probably be millionaires if they specialized in such fields as corporation law. But at least they receive *some* compensation for their efforts—and considerably less criticism from bird-brained 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 "Mexican and/or Latin American descent". We also interspersed the term "Spanish-speaking". This means that anyone considered "Mexican", "Latin American", "Hispanic", "Spanish-speaking", (even Portuguese-speaking Brazilians!), 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, professor 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 memoes as the case progressed before the Court.

(4) Mr. Abel Cisneros, 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

his hitch in the Army in Virginia, 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 Lulacs, on his vacation time and at his own personal expense. His moral support, his encouragement, and his timely suggestions were invaluable to us.

(7) Mr. Chris Aldrete, Chairman of the American G. I. Forum. Though too recent a law graduate to be presented to the Court, he, too, was very helpful.

We all stayed at the Mayflower Hotel, which is neither higher nor cheaper than any other first class hospice in Washington. The average rate per person is \$10.00 a day. After Tony Garcia, Johnny Herrera, and Abel Cisneros arrived, the writer moved into a suite with them, which cost us \$36.00 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 stretched 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 Rosenberg; our great and good friend the Honorable Dennis Chavez, senior Senator from New Mexico; Dennis, Jr., his brilliant son, their entire staff, consisting among others of some very beautiful creatures, who are as pretty as they are competent; Jake Jacobson, from Senator Price Daniels' office; Senator Price Daniels, who left a committee meeting to introduce us to the Supreme Court; Senator Lyndon B. Johnson, and Sam Houston, and Tony Martinez, out of Senator Chavez' office and Attorney Al Wirin of California. To all these splendid people we say: gracias, muchas gracias. Special commendation should go to Sarah McClendon, charming and brilliant newspaper woman.

Eventually, it came to pass that we appeared before the Supreme Court of the United States. As far as the presentation of the case is concerned, the news releases were as ac-

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 Cadena made his historical opening argument and he did not receive the full credit due him.

By the same token, John J. Herrera, who juggled 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 wet-back from Tennessee were not as bad as might appear at first blush. Actually this was said in a jocular vein, of course, although, in a sense, all Anglo Americans who settled in Texas were looked upon as uncouth foreigners, Johnny-come-lately's, and impecunious adventurers by the rather snobbish Spanish-speaking families (like mine) who had colonized Texas between 1720 and 1800. Nothing delights me more than to speak deprecatingly about some of my stuffy, society-conscious relatives as bankrupt Mexican blue bloods.

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 movement: Sam Houston and Jim Bowie. I admire them for many reasons, but I suspect mainly because (1) these two charming swashbucklers were *bon vivants*, raconteurs, and devout worship-

We took advantage of our stay in Washington to contact several senators and some of the more prominent congressmen to lay our problems before them. We wailed 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 and protest: you simply

pers at the altar of Bacchus; (2) they demonstrated in the most emphatic manner possible that they harbored no notions of racial superiority: Houston, to use the vernacular, shacked up with an Indian squaw for several years after his extremely brief and disastrous marital venture with Tennessee Anglo aristocracy, while Bowie became a Catholic and married the cultured and distinguished daughter of the Mexican vice-governor, Señorita Ursula de Veramendi. Unfortunately she and their two children perished in Mexico during an epidemic, and the inconsolable Bowie went on a protracted binge which ended only a short time before the clash at the Alamo, where he died as the brave and reckless man that he had always been.

cannot let things be lost by default.

Regretfully, 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 Washington after sundown. After temporarily concluding our work there (Professor Cadena having returned immediately after the case to resume his teaching duties at St. Mary's Law School), Tony García and I went to New York with certain specific missions in mind. Dennis Chavez, Jr., accompanied us. Unfortunately Mr. Herrera was unable to go with us because he suffered a severe fall on an icy sidewalk while strutting around Washington in his high-heeled boots, and had to return to Houston for examination and treatment.

In New York, Mr. Tony García and I were together only one day. According to press reports, he returned to San Antonio because of the illness of his one and only son. For historical purposes, however, let the record show that he read over my shoulder that the temperature would go down to a flat zero that night —and immediately 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 Antonio. For three days, I did no good to anyone except the hotel, running up room, doctor's, and drug bills. I shall always be grateful to my good friends Jaime Escobar of the Mexican delegation to the United Nations and Rafael Carvajal of the Voice of America. They mothered me and held my hand during my illness and worried about 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 organizations as the American Civil 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 organizations, 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 organization to fight our battles, with a lobbyist in Washington

and each state capital where we constitute a substantial portion of the population. They said that it would be a simple matter for every person of our ethnic group to contribute a pittance 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 people of small means like me) than anything else. I took in no shows, not even the free television performances.

I finally returned to Washington on a coach and stood up all night because there was no other means of transportation 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, after a delay because of bad weather and some three weeks after my departure from the Alamo City, I flew back to San Anto-

* These seemingly unimportant details are set out for two purposes: (1) to demonstrate that leaders of our organizations need to cultivate contacts with national figures and institutions; (2) to give the reader an idea of the multitude of details and intricate weaving, dodging and doubling-back necessary to carry out an effective minority group program.

nio, where I was greeted, under a gloriously sunny sky, by my loving wife and a somewhat skeptical elder daughter—aged three—who thought I was the milkman.

If the reader will consider the cost of traveling, of lodging, cabs 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 Hernandez? He seems to have been forgotten in the hubbub of headlines, constitutional issues, and uninhibited celebration. He is still languishing behind prison bars. He has been confined either 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-indictment (undoubtedly with some "Mexicans" on the jury) is returned next September. So we shall start our heartbreaking task all over again, as far as he as an individual is concerned. But his welfare is, and should properly be, our primary concern. His rights are paramount—and he is not a guinea pig to be discarded after the experiment has succeeded. All that we can hope for is that we can get some public support, both moral

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 ills. 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 *Puente*** 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 Lulac 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-gooing". Somehow we all begin to conceive the ridiculous notion that we have become olive-skinned versions of Bernard Baruch.

* Westminster School Dist. vs. Mendez, 161 Fed. (2d) 774 (1946).

** Clifton vs. Puente, 218 S.W. (2d) 272 (1949).

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 tinkling of coins means more than the teachings of **Mein Kampf**. In our society, regretfully enough, the most effective means of reaching the hearts of men is through their pocket-books.

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 morning frock and are driven up to the door by a liveried 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 goriest 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 unassimilated population groups: the Irish in Boston (damned micks, they were derisively called); the Polish in the Detroit area (their designation was bohunks and polackers); the Italians in New York (referred to as stinking little wops, dagoes and guineas); the Germans in many sections of the country (called dumb square-heads 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 "lousy 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, specially 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 over one-half of school-aged children of Mexican descent will not be found in any grade in any school. The number of pupils who reach high school is infinitesimal. As I have often said, we are still producing generation after generation of illiterates, semi-literates, 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 so-

cial 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, 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

* The writer is reminded of the story told by the great Judge Leibowitz, who, on a postman's holiday in Florida, saw a number of Negroes on the jury panel. He approached a young lawyer and commented that he was surprised that Negroes should be serving on juries in this state, which, in spite of a civilized Spanish colonial background, is notorious for its bigotry. The youthful barrister replied: "Well, we wouldn't have any of these niggers except that a sonofabitch by the name of Leibowitz forced them on us in the Scottsboro case." It appears that some Anglos will say the same thing in the Southwest about lesser lights like Garcia, Cadena and Herrera.

* See *Hernandez vs. State* 251 S.W. (2d) 531.

Juarez vs. State 277 S.W. 1091.

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 and protect 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 *Cerciorati* 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 1879, 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 "Mexicans" 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
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The petitioner met the burden of proof imposed in *Norris v. Alabama*, *supra*. To rebut the strong prima facie case of the denial of the equal protection of the laws guaranteed by the Constitution thus established, the State offered the testimony of five jury commissioners that they had not discriminated against persons of Mexican or Latin American descent in selecting jurors. They stated that their only objective had been to select those whom they thought were best qualified. This testimony is not enough to overcome the petitioner's case. As the Court said in *Norris v. Alabama*:

"That showing as to the long-continued exclusion of negroes from jury service, and as to the many negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision . . . would be but a vain and illusory requirement."¹³

The same reasoning is applicable to these facts.

Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or

Each item of each stipulation was amply supported by the testimony adduced at the hearing.

¹³ 294 U. S., at 598.

during some particular period. But it taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past 25 years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner. The judgment of conviction must be reversed.

To say that this decision revives the rejected contention that the Fourteenth Amendment requires proportional representation of all the component ethnic groups of the community on every jury¹⁴ ignores the facts. The petitioner did not seek proportional representation, nor did he claim a right to have persons of Mexican descent sit on the particular juries which he faced.¹⁵ His only claim is the right to be indicted and tried by juries from which all members of his class are not systematically excluded—juries selected from among all qualified persons regardless of national origin or descent. To this much, he is entitled by the Constitution.

Reversed.

¹⁴ See *Akins v. Texas*, 325 U. S. 398, 403; *Cassell v. Texas*, 339 U. S. 282, 286-287.

¹⁵ See *Akins v. Texas*, *supra*, note 16, at 403.

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