

# Implementing Immigration Policies That Work!

By James P. Gray

It's time to calm down and see these recent developments in Arizona for what they really are. They have little or nothing to do with racism, and everything to do with legitimate frustration and even desperation about the entire situation with illegal immigrants — or undocumented workers, if you prefer. I seldom get angry at illegal immigrants, and you shouldn't either. They are simply doing what our system so strongly encourages them to do, and they almost all come to our country for the same reasons our ancestors did: to seek better lives for themselves and their families. The problem is that the federal government has all of the power in the area of immigration, makes all of the rules, and does whatever enforcement that takes place — which is not very much. But the federal government mostly does not have to pay for the costs of illegal immigrants. Instead, most of these costs are paid by the state and local governments, and the school districts.



James P. Gray is a retired judge of the Orange County Superior Court and the author of "A Voter's Handbook: Effective Solutions to America's Problems" (The Forum Press, 2010). He currently is a private mediator and arbitrator with ADR Services in Irvine, and can be reached at JimPGray@sbcglobal.net or through www.JudgeJimGray.com.

The irony is that it would not be hard to install a workable system, but neither the Republicans nor the Democrats generally want this to happen. Why not? Money and power. Many powerful Republicans are anxious to retain the source of cheap labor that is furnished to them by illegal immigrants, and many powerful Democrats are anxious to have all of these people come into the country on the hope that they eventually will vote for Democrats. In the meantime, many good people on both sides of the issue are being severely punished under the status quo.

For example, it is often both dangerous and quite expensive to enter this country illegally, and many workers are exploited by unscrupulous employers once they get here. In addition, there is also the unintended consequence that many illegal immigrants would actually go home after several months if only they felt they could return later without so much danger and expense. So the present system actually keeps many of them here longer than they would otherwise stay.

What is the resolution? Actually, it is relatively straightforward, and just a three-step process. First, we must understand that this failed system will never be changed until the federal government has the incentive to change it. So the federal government must be required to pay for

all of the governmental costs of illegal immigrants, including health care, education, and incarceration.

Second, we, and no one else, should decide how many people can enter our country to work, and for what period of time they can stay. Then, we should create a program that allows foreign workers to have something like an "orange" card that will allow them to work here legally during that specified period of time. This would be much like our former Bracero Program, and it would be in addition to our present resident alien and naturalization programs. The workers probably could not bring other members of their families with them, would pay reduced taxes on their income, and would receive reduced services for things like health care while they are here. But since they would be here legally, the workers would be able to obtain such things as driver's licenses.

The third important component of this suggested program would be to use strict sanctions for all employers who in any way hire workers who do not have the proper identification. In effect, everyone in the country would either need a passport, birth certificate, green card or orange card to qualify for employment, so the laws would be applied equally to everyone. Workers who have valid proof of eligibility would be able to get jobs, live normal lives, and travel legally across our borders within the specified times. Those who do not have proper proof would increasingly have trouble finding work, so soon they would probably go elsewhere.

Holding people who hire undocumented workers responsible for their illegal acts would be the key, but it can be done without much difficulty. With today's computer chip technology, we should easily be able to create identification cards based upon people's fingerprints or even the irises of their eyes such that the cards could not be falsified. There would be no excuse for hiring people who do not have proper identification. And once we have that workable system in place, we could also exclude permanently from admission to the country those non-citizens who persist in violating our laws.

It is time to recognize the legitimate frustration of our state and local governments and school districts that are hemorrhaging money to pay for the status quo, but without having any controls whatsoever over those costs. Of course, there will still be problems, but these changes will allow



Arizona Gov. Jan Brewer, after meeting with Obama Administration officials regarding the border and immigration, walks into a news conference Monday, June 28, in Phoenix.

us in large measure to regain control of our borders, reduce dangers and injustices for non-citizens, seriously reduce the burdens upon our taxpayers to support such large numbers of people who are here illegally, reinstate and reinforce the rule of law, bring more employment income back "above the table," and begin to return everybody's lives to normal.

And then — and only after we have a system in place to control our borders — we should address the difficult and truly emotional and sometimes even wrenching issues of who receives amnesty or a "path to citizenship," and who does not. And in making these decisions we will have to take into account the large numbers of people all around the world who have applied to enter our great country through proper channels.

States like Arizona should not be criticized for wanting our laws to be enforced. In fact, they should be criticized if they do not — and so should we all. So as the November elections approach, I suggest that all of us support those candidates for federal elective office who will work to implement a law to require the federal government to pay for the governmental costs of its own failure to put into place a workable immigration system. It would not be hard to fix this terrible situation, so let's all push them to do just that!

# A Leader in the Fight Against School Segregation

By David S. Ettinger

Before there was Linda Brown of Topeka, Kan., there were Sylvia, Gonzalo, and Jerome Méndez of Westminster, Calif. In 1950, third grader Linda was turned away when her father tried to enroll her in the neighborhood "white" school instead of the more-distant school for "colored" children. Seven years earlier, however, the Méndez children were similarly told they could attend only the "Mexican" school in their district.

Both acts of segregation spawned successful legal challenges. Linda Brown's case against Topeka's Board of Education, of course, became one of the Supreme Court's most famous decisions. The earlier groundbreaking lawsuit by the Méndez children's father and others was fairly well publicized at the time, but because it never reached the high court it did not garner the same attention in the history books. The case was relegated almost to a historical footnote. In "Simple Justice," Richard Kluger's definitive account of the Brown case and its antecedents, the Méndez case merits a single paragraph.

Recently, the Méndez case has begun receiving some of the attention it deserves. A Santa Ana school has been named after the Méndez parents, a television documentary has aired, and a commemorative postage stamp has been issued. And now, there is a book: Philippa Strum's "Mendez v. Westminster: School Desegregation and Mexican-American Rights."

The book tells the story of a pioneering lawsuit. David Marcus, attorney for the Méndez children's father and others, decided to argue in federal court that the policies of several Orange County school districts

requiring segregation of Mexican-American children violated the 14th Amendment's guarantee of equal protection. It was an audacious attack. When the lawsuit was filed in 1945, separate-but-equal was still accepted constitutional doctrine. That is, after all, why the Supreme Court's Brown decision almost 10 years later was such a big deal.

Marcus' legal approach could also have rightly been called reckless. The NAACP had devised and was implementing a more cautious, incremental plan to attack segregated schools in the courts and Marcus apparently had charged into court seemingly oblivious to any coordinated national strategy. The NAACP didn't even know about the case until after the district court issued its opinion. It would, however, file an *amicus curiae* brief on appeal, as would the American Jewish Congress, the ACLU, the National Lawyers Guild, the Japanese-American Citizens League, and the California Attorney General.

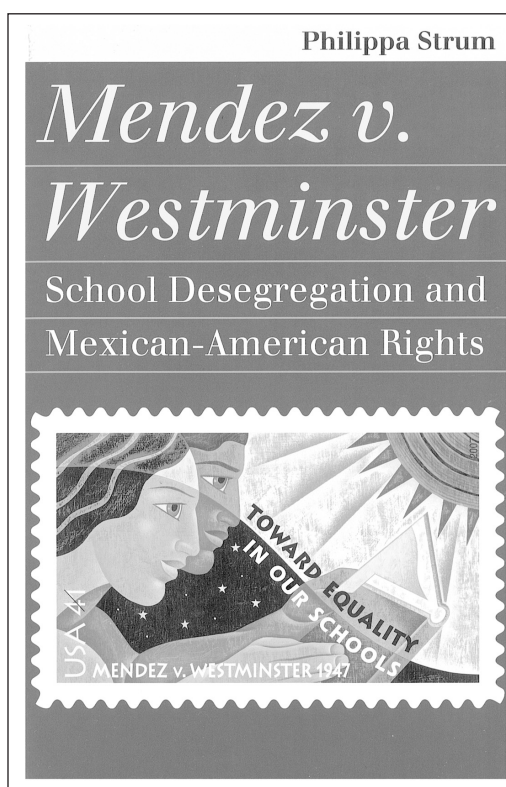
But Marcus' argument worked, up to a point. Federal District Court Judge Paul McCormick, after a lengthy trial, ruled for the parents in a stunning opinion. Not content to rest his decision on state statutory law grounds only, Judge McCormick found that segregation violated the students' federal equal protection rights. He concluded, "A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage." He also found that the school districts' segregation methods "foster antagonisms in the children and suggest inferiority among them where none exists." Eight years later, the Supreme Court in Brown would echo — without mentioning Méndez — that separating students "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

When the school districts appealed, however, the 9th Circuit was less adventurous than Judge McCormick. Although affirming the district court, the Court of Appeals found a 14th Amendment violation only because the school districts had violated state law — California statutes at the time provided segregated schools for Indians, Chinese, Japanese, and Mongolian children, and thus, the court concluded, "California law does not include the segregation of school children because of their Mexican blood."

The appellate court conspicuously resisted the urge for a landmark opinion. It expressly rejected the pleas of two *amicus curiae* briefs to "strike out independently on the whole question of segregation." Lecturing that "judges must ever be on their guard lest they rationalize outright legislation under the too free use of the power to interpret," the court said in language both ornate and defensive, "We are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society."

The concurring opinion was not as cautious. Judge William Denman railed against the "vicious principles" of the school authorities, which, he warned, if "followed elsewhere, in scores of school districts the adolescent minds of American children would become infected." He also "call[ed] to the attention of the prosecuting authorities" the defendants' conduct as possibly "warrant[ing]...an indictment."

The district court and 9th Circuit opinions are readily available in the published case law. What makes Strum's book interesting and valuable are the back stories. For example, we learn of the unwitting role in the case of another civil rights injustice — the Méndez family only moved to Westminster in the first place when, during World War II, they leased the asparagus farm of a Japanese-American family who had been removed



to an Arizona internment camp.

Strum also does a service by relating details of the Méndez trial (details dug from the transcripts in the National Archives), which evidenced a stark contrast between unabashed, eye-popping racism on one side and simple eloquence of equality-seeking parents on the other.

The superintendent of one of the defendants — the Garden Grove School District — had earned a master's degree in education based on his university thesis that advocated segregated schools because of the lesser "mental ability and moral characteristics of the average Mexican school child," views he readily reiterated on the witness stand. An expert witness for the plaintiffs, on the other hand, testified about research for her master's thesis showing that "[s]egregation, by its very nature, is a reminder constantly of inferiority." And the Méndez children's mother told the court, "We always tell our children they are Americans...and we thought that they shouldn't...be treated the way they are. So we thought we were doing the right thing [by asking] to put our children together with the

rest of the children there."

The book also explains the profound influence that World War II had on the case, as it had on the civil rights movement in general. Hundreds of thousands of Mexican-Americans had served in America's fight against the most extreme form of racism and yet faced discrimination when they returned home, including having their children segregated at school on the pretext that it helped "Americanize" the students and allowed them to better learn English.

For the parents, the war experience magnified the unfairness of the unequal treatment. One student's mother testified that she responded to a school official's remark about unsanitary Mexicans by asking "if our Mexican people were dirty...why didn't they [bring back] all of our boys that are fighting overseas," including her oldest son. In one of many similar references, the American Jewish Congress *amicus* brief stated, "If the Nazis while proclaiming the essential inferiority of the 'Jewish race,' compelled Jews to wear clothes of one given color while reserving another to the master race, it could not be said that Jews have received equal clothing facilities even if the physical qualities of the clothing were identical to those given to the members of the Aryan race."

Méndez was a case ahead of its time and is well-deserving of a book-length treatment. But as even Strum observes, the case wasn't completely unprecedented. Over a decade before, a San Diego County Superior Court judge had ruled in *Alvarez v. Lemon Grove School District* that the school district could not segregate Mexican-American students. Perhaps that case, which never reached an appellate court, could be the subject for another book.



David S. Ettinger is a partner at the appellate law firm of Horvitz & Levy in Encino. He can be reached at dettinger@horvitzlevy.com.

## Daily Journal

<p><b>Charles T. Munger</b> Chairman of the Board J.P. Guerin Vice Chairman of the Board</p>	<p><b>Gerald L. Salzman</b> Publisher / Editor-in-Chief <b>Robert E. Work</b> Publisher (1950-1986)</p>	
<p><b>David Houston</b> Editor</p>		
<p><b>Alexia Garamfalvi</b> San Francisco Editor</p>	<p><b>Sharon Liang</b> Legal Editor</p>	
<p><b>Liz Enochs</b> Associate Editor San Francisco</p>	<p><b>Pia Sarkar</b> Associate Editor San Francisco</p>	<p><b>Christian Bertheisen</b> Associate Editor Los Angeles</p>
<p><b>Michael Gottlieb</b> Associate Editor Los Angeles</p>	<p><b>Evelyn Larrubia</b> Associate Editor Los Angeles</p>	
<p><b>Aris Davoudian, Designer</b></p>		
<p><b>Los Angeles Staff Writers</b></p>		
<p>Pat Alston, Gabe Friedman, Emma Gallegos, Evan George, Kari Hamanaka, Sandra Hernandez, Catherine Ho, Ciaran McEvoy, Susan McRae, Jean-Luc Renault, Anna Scott</p>		
<p><b>San Francisco Staff Writers</b></p>		
<p>Rebecca Beyer, Laura Ernde, Sara Randazzo, Jill Redhage, John Roemer, Fiona Smith, Amy Yarbrough</p>		
<p><b>Bureau Staff Writers</b></p>		
<p>Craig Anderson, San Jose, Jason W. Armstrong, Riverside, Don J. DeBenedictis, Santa Ana, Pat Broderick, Mandy Jackson, San Diego, Lawrence Hurley, Washington D.C.</p>		
<p>Robert Levins, S. Todd Rogers, Photographers</p>		
<p>Lisa Kestenbaum, Carla Pineda Editorial Assistants</p>		
<p><b>Rulings Service</b></p>		
<p>Seena Nikravan, Rulings Editor</p>		
<p>Meryl Chambers, Verdicts and Settlements Editor</p>		
<p>Edward Chang, Genevieve Knoll Legal Writers</p>		
<p><b>Advertising</b></p>		
<p>Audrey L. Miller, Corporate Display Advertising Director</p>		
<p>Monica Smith, Los Angeles Account Manager</p>		
<p>Joel Hale, Michelle Kenyon, San Francisco Account Managers</p>		
<p>Kari Santos, Display Advertising Coordinator</p>		
<p>Nikki Delucchi, San Francisco Administrative Coordinator</p>		
<p><b>Art Department</b></p>		
<p>Kathy Cullen, Art Director</p>		
<p>The Daily Journal is a member of the Newspaper Association of America, California Newspaper Publishers Association, National Newspaper Association and Associated Press</p>		