Hernandez v. Brown

By Ian Haney López
Published: May 22, 2004

With commemorations from coast to coast to remind them, most Americans already know that this week was the 50th anniversary of Brown v. Board of Education. Unfortunately, what they don't realize is that the country missed an equally important anniversary two weeks ago, that of Hernandez v. Texas -- the perennially overshadowed antecedent to Brown that was decided on May 3, 1954.

That case merits commemoration not just because the Supreme Court used it to finally extend constitutional protection to Mexican-Americans, important though that is, especially now that Latinos are the largest minority group. It's worth celebrating because Hernandez got right something that Brown did not: the standard for when the Constitution should bar group-based discrimination.

Hernandez involved jury discrimination, which the court had long prohibited. The question in Hernandez, unlike in Brown, was not whether the state's conduct was unconstitutional; it was whether the Constitution protected Mexican-Americans. But the dynamics of the case prevented the court from answering that question by reasoning that Mexican-Americans, like blacks, constituted a racial minority.

That's because the political and social leaders of the Mexican-American community at that time argued for equality not on the ground that discrimination was wrong per se, but because they were white. Texas, in turn, harnessed this argument to its defense, pointing out that if Mexican-Americans were white, so too were the persons seated on Texas juries.

Because both sides insisted that Mexican-Americans were white, Hernandez v. Texas forced the court to confront directly a question it would sidestep in Brown: under precisely what circumstances did some groups deserve constitutional protection? Hernandez offered a concise answer: when groups suffer subordination.

"Differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws," the court wrote. But, it said, "other differences from the community norm may define other groups which need the same protection." Succor from state discrimination, the court reasoned, should apply to every group socially defined as different and, implicitly, as inferior. "Whether such a group exists within a community is a question of fact," the court said, one that may be demonstrated "by showing the attitude of the community."

How, then, did the Texas community where Hernandez arose regard Mexican-Americans? Here the court catalogued Jim Crow practices: business and community groups largely excluded Mexican-Americans; a local restaurant displayed a sign announcing "No Mexicans Served"; children of Mexican descent were shunted into a segregated school and then forced out

altogether after the fourth grade; on the county courthouse grounds there were two men's toilets, one unmarked and the other marked "Colored Men" and "Hombres Aquí" ("Men Here").

The same sort of caste system that oppressed blacks in Texas also harmed Mexican-Americans. But it was Jim Crow as group subordination, rather than as a set of "racial" distinctions, that called forth the Constitution's concern in Hernandez v. Texas.

Of course, Brown v. Board of Education also responded to group mistreatment. But the court did not state in sufficiently explicit terms that school segregation violated the Constitution because it constituted systematic oppression, rather than because it turned on race. This small lapse left open just enough space for the misreading of Brown that now dominates conservative thinking on antidiscrimination law -- including on the Supreme Court. Brown, the majority now contends, stands for the proposition that the Constitution opposes not noxious practices of oppression but instead only the state use of formal racial distinctions.

The anti-caste commitment of Brown lies today distorted, and its efficacy as constitutional law largely eroded. Treating every official use of race as akin to racism, the Supreme Court erects virtually insurmountable constitutional hurdles against all race-conscious government action. No statement better captures this misguided equation of Jim Crow and affirmative action than Justice Clarence Thomas's assertion that there is "a moral and constitutional equivalence between laws designed to subjugate a race and those that distribute benefits on the basis of race."

Meanwhile, the court protects from constitutional challenge situations in which racism operates powerfully but not explicitly. For example, even after conceding that Georgia sentenced to death blacks who killed whites 22 times more often than blacks who killed blacks, the court upheld Georgia's death penalty machinery. Under 14th Amendment law, any use of race encounters the same constitutional hostility; but systematic discrimination, if not expressly based on race, receives the Constitution's blessing.

The current court reasons as if Brown held that it is race per se, rather than racism and maltreatment, that offends the Constitution. In this, Brown itself is partly to blame. Confident that the 14th Amendment protected blacks, Chief Justice Earl Warren in Brown did not expressly explain why this was so: not because they were a race, but because they were oppressed.

Under the title "What Brown v. Board of Education Should Have Said," Jack Balkin, a Yale law school professor, recently enlisted legal scholars to rewrite that decision in a manner that might have prevented the distortions that now mar constitutional antidiscrimination law. But the exercise is largely unnecessary. Chief Justice Warren already said what Brown should have. He did so two weeks earlier, in Hernandez v. Texas. After 50 years, the time has come for courts and scholars to install Hernandez where it belongs: at the center, with Brown, of a robust 14th Amendment law committed to ending racial subordination.

Ian Haney López, a law professor at the University of California at Berkeley, is the author of "Racism on Trial: The Chicano Fight for Justice."

La Prensa

San Antonio's English and Spanish Newspaper

For Thirtieth Birthday, See Picture Page 8

...NTS SAN ANTONIO, TEXAS, JUNE 15, 1969 16 Pages In Two Sections Number ...

HERNANDEZ DUE PAROLE

THE VICTORS—Atty. Gus Garcia (L), and Atty. Carlos Cadena, look at letter from Jack Rose, of the State Board of Pardons and Paroles. They were advised their ex-client Pete Hernandez

Supreme Court Case Changed Jury System

The celebrated "Pete Hernandez case," which was carried to a ...reme victory by San Antonio attorneys Gus Garcia and Carlos Cade... before the U.S. Supreme Court in 1954, was scheduled for a final d... courts ending this week in Austin.

Hernandez, who was tried for ...murder in 1951 in Edna, Jackson county, found guilty and given a life sentence, only to see his case taken to a court of criminal appeals, and later to the U.S. Supreme court, is up for parole after serving nine years of a 99 year sentence, it [illegible].

CASE APPEALED

The Hernandez case hit the national and international headlines, when Houston Attorney John Herrera, and San Antonio Lawyer Gus Garcia, took over the case, appealing it before the Court of ...from service on jury commissio... grand juries, and petit juries."

The Court of Criminal Appe... against the original decision of ... Jackson county jury which ... assessed a life penalty. Garcia ... Herrera, then filed a writ of... [illegible] before the U.S. Supr... court in January of 1951. On ... ber 22, 1952, the high court gra... the writ, and sent the case ba... mission on January 21, 1954.

SUPREME U.S. COURT

The case was argued before ... U. S. Supreme court, by ...

LETTERS FROM READERS

The News receives many more letters from readers than it can print. It regrets that it can not print them all. The shorter the letter the better its chance of publication. The News reserves the right to print excerpts unless request to the contrary is made by the writer. Authors' names should be signed. Enclose postage if you wish your letter returned.

Civic Auditorium For All Purposes

To The Dallas News:

We people of Dallas have needed the proposed civic auditorium for a long time. We appropriated two million dollars for its construction. That's a large sum of money to spend, and I'm sure we want to see not one penny of it wasted. But all of that money is in jeopardy of being wasted on unqualified design.

Millions of dollars have already been thrown away by other city councils who left the designing of a large auditorium entirely in the hands of an architect. Architects are experts in making pretty buildings. There are many pretty auditoriums around the country which are perfectly useless for listening.

A poorly designed auditorium can have these features: Be too live or too dead; have echoes and flutters bouncing off the walls and ceiling; air-conditioning systems that rattle and roar; outside traffic noises and overhead airplane hum penetrating into the auditorium. These are serious faults that must be eliminated on the drawing board and not on the finished building.

Therefore, it should be the duty of our City Council to get an acoustical designer to draw plans of that auditorium, an expert who knows how to get the best projection and reception of sound first, beauty second.

A. PETER CAMPIONE.
1903 Park Row, Dallas.

Golfing or Cruising?

To The Dallas News:

I'm not going to mention any names, I just want to ask the people: Which is cheaper, golf balls or water?

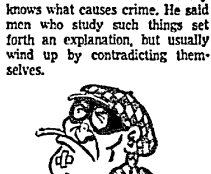
Remember, the water in the occan is free for boats.

BILLIE MEEKS.
2201 South Marsalis, Dallas.

Cause of Crime

To The Dallas News:

A Dallas News editorial writer made the statement that nobody knows what causes crime. He said men who study such things set forth an explanation, but usually wind up by contradicting themselves.



In spite of the above statement, if we were to get into a major war, the editorial writer would probably be one of the first to claim that we deserve victory on the grounds that we are a Christian nation.

Why not forget about the psychologists and accept the cause, and follow the remedy, as set forth by Christ Himself? On one occasion, when the disciples had failed to cast out a devil, Christ said, "This kind cometh not but by prayer and fasting."

Because of a lack of earnestness, our "Christian" nation seems to be about to be swamped by the enemy. If anybody doubts that Christianity would stop war and halt crime let him study the teachings of Christ and consider His command to give up everything in order to teach the world to observe all things that He has commanded.

J. WESLEY EDWARDS.
Sunset, Texas.

Socialism, Communism

To The Dallas News:

I see by the letters that very few know what socialism really is. Unfortunately, socialism is thought to be blood brother to Communism. This is an error. Communism is more than an economic idea; it is a defined way of life. The dictates of Communism are not concerned with only the economic aspects of a country, they strive to establish themselves as the supreme authority for science, religion, philosophy, music, literature, morals and thought. This is, naturally, control of every aspect of life in the Communist country.

On the other hand, socialism is a valid economic system which is operating with great success in Switzerland, Denmark and a province of Canada. Socialism may be instituted under almost any type of political system, be it a strict democracy or a dictatorship. It appears to work best when the political system is a strict democracy, thus keeping the controlling power directly in the hands of the people.

Some of the readers appear to think in logic-tight compartments; in one sentence they cry, "Down with creeping socialism." In the next they take a firm stand for 100 per cent parity supports, the Postal System and the Public Works Department.

The real danger is Fascism and we have plenty of that. Fascism is authoritarian control by a centralized government. We are taking on the face of the real enemy perhaps?

BRYAN J. OGBURN.
Box 396, Baylor University Station, Waco, Texas.

Jury Discrimination

To The Dallas News:

It's beyond me how you failed to denote discrimination in the case report of Pete Hernandez to the Supreme Court. Part of the Constitution of the United States states that all citizens are assured the rights of personal security, liberty, equality before the law, trial by jury, etc.

Would you, in the defendant's situation, place your life in the hands of a jury composed of people who did not want to share their schools with you or serve you in public places, and expect a just trial based on, or conforming with, the principles of justice? I believe not.

S. H. REYNA.
3403 Noble, Dallas.

Compassion for PW's

To The Dallas News:

Please do not judge the twenty-one young PW's in Korea too harshly. Remember the age of those boys at the time of capture—just when their young minds were most sensitive and open to grasp what was put before them.

They made mistakes—yes. But would you have the same hardened, callous feeling toward them if your son were among them? Now, stop and think, and think hard.

This isn't just a simple matter to be tossed aside lightly; it is a serious thing. Twenty-one young men's futures are at stake; twenty-one mothers' hearts are breaking, wrung with anguish and bleeding. Think again before it is too late.

No, I have no son among them, thank God, but my heart goes out to the mothers and fathers who have. And, yes, to the boys. We do not know all the circumstances, remember!

MRS. ELLA RAINES.
1009 West Illinois,
Midland, Texas.

Coldest Weather

To The Dallas News:

In The News Jan. 18, I read that Jan. 18, 1930, was the coldest weather ever recorded officially in Dallas.

Feb. 12, 1899, the temperature was 11 degrees below zero here in Alvarado and Cleburne.

WILL ANDERSON.
Alvarado, Texas.

Supporting Royalty

To The Dallas News:

Miss Eula Johnson recently wrote in regard to Dorrance: "We may as well have been supporting royalty."

Pray, what else have we been doing for the last twenty years or more?

C. FORRESTER.
Dallas.

Cow Just Exercising

To The Dallas News:

The era in which we now live is constantly referred to as an age of problems. There never was a time in the world's history when its peoples were not plagued with problems—problems just as vital to people then as at any other time.

Let's go way back to the nursery-rhyme days. Undoubtedly the cow had a problem when it jumped over the moon. Just why did the cow jump over the moon? Just to get away from it all? We do not subscribe to this school of thought. Our belief is that the reason the cow jumped over the moon was simply to exercise her calves.

R. E. COWART.
Forney, Texas.

Hits Discrimination Against Mexicans

WASHINGTON — The Supreme Court Monday found that Jackson County, Texas, has been violating the Constitution by keeping American citizens of Mexican ancestry off juries.

The court declared unanimously that constitutional guarantees against discrimination are broader than a two-class theory based on differences between whites and Negroes.

It said different treatment can be based "on some reasonable classification" but gave no definition as to what this might be.

The court reversed the conviction of a Mexican, Pete Hernandez, who complained that persons of Latin-American blood are excluded from jury service in Jackson County where he was tried.

Texas sought to have the court reject the appeal.

The state contended that Mexicans are not a separate race and that the jury that convicted Hernandez "was composed of white men."

THE COURT for weeks has been considering the legality of segregation of white and Negro pupils in public schools.

The court did not rule on this issue Monday. The next decision day is May 17.

change - p. 4

To: Mr. Justice Clark

From: The Chief Justice

Circulated:

Recirculated: APR 30 1954

SUPREME COURT OF THE UNITED STATES

No. 406.—October Term, 1953.

Pete Hernandez, Petitioner, *v.* The State of Texas.	On Writ of Certiorari to the Court of Criminal Appeals of the State of Texas.

[May —, 1954.]

Mr. Chief Justice Warren delivered the opinion of the Court.

The petitioner, Pete Hernandez, was indicted for the murder of one Joe Espinosa by a grand jury in Jackson County, Texas. He was convicted and sentenced to life imprisonment. The Texas Court of Criminal Appeals affirmed the judgment of the trial court. — Tex. Crim. Rep. —, 251 S. W. 2d 531. Prior to the trial, the petitioner, by his counsel, offered timely motions to quash the indictment and the jury panel. He alleged that persons of Mexican descent were systematically excluded from service as jury commissioners,[1] grand jurors, and petit jurors, although there were such persons fully

[1] Texas law provides that at each term of court, the judge shall appoint three to five jury commissioners. The judge instructs these commissioners as to their duties. After taking an oath that they will not knowingly select a grand juror they believe unfit or unqualified, the commissioners retire to a room in the courthouse where they select from the county assessment roll the names of 16 grand jurors from different parts of the county. These names are placed in a sealed envelope and delivered to the clerk. Thirty days before court meets, the clerk delivers a copy of the list to the sheriff who summons the jurors. Vernon's Tex. Code Crim. Proc., 1948, Arts. 333–350.

The general jury panel is also selected by the jury commission. Vernon's Tex. Civ. Stat., 1942, Art. 2107. In capital cases, a special venire may be selected from the list furnished by the commissioners. Vernon's Tex. Code Crim. Proc., 1948, Art. 592.

THE CHIEF JUSTICE

Appended to We Cu. of 4/29/54
OTSJ

Dear Chief:

#406 - Hernandez

While Shay and I think that your facts - as related - set up a "straw man" we have decided not to dissent on the factual basis.

You have covered the law in the field so well that we go along with you.

You may mark me as agreeing. I am sure that you will hear from Shay likewise.

Tom

THE HON
THE CH. JUSTICE

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The petitioner, Pete Hernandez, was indicted for the murder of one Joe Espinosa by a grand jury in Jackson County, Texas. He was convicted and sentenced to life imprisonment. The Texas Court of Criminal Appeals affirmed the judgment of the trial court. 251 S.W.2d 531. Prior to the trial, the petitioner, by his counsel, offered timely motions to quash the indictment and the jury panel. He alleged that persons of Mexican descent were systematically excluded from service as jury commissioners, [Footnote 1] grand jurors, and petit jurors, although there were such persons fully

Page 347 U. S. 477

qualified to serve residing in Jackson County. The petitioner asserted that exclusion of this class deprived him, as a member of the class, of the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution. After a hearing, the trial court denied the motions. At the trial, the motions were renewed, further evidence taken, and the motions again denied. An allegation that the trial court erred in denying the motions was the sole basis of petitioner's appeal. In affirming the judgment of the trial court, the Texas Court of Criminal Appeals considered and passed upon the substantial federal question raised by the petitioner. We granted a writ of certiorari to review that decision. 346 U.S. 811.

In numerous decisions, this Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or color have, solely because of that race or color, been excluded by the State, whether acting through its legislature, its courts, or its executive or administrative officers. [Footnote 2] Although the Court has had little occasion to rule on the question directly, it has been recognized since *Strauder v. West Virginia*, 100 U. S. 303, that the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. [Footnote 3] The State of Texas would have us hold that there are only two classes -- white and Negro -- within the contemplation of the Fourteenth Amendment. The decisions of this Court

Page 347 U. S. 478

do not support that view. [Footnote 4] And, except where the question presented involves the exclusion of persons of Mexican descent from juries, [Footnote 5] Texas courts have taken a broader view of the scope of the equal protection clause. [Footnote 6]

Throughout our history, differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and, from time to time, other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the

Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory" -- that is, based upon differences between "white" and Negro.

As the petitioner acknowledges, the Texas system of selecting grand and petit jurors by the use of jury commissions is fair on its face and capable of being utilized

Page 347 U. S. 479

without discrimination. [Footnote 7] But, as this Court has held, the system is susceptible to abuse, and can be employed in a discriminatory manner. [Footnote 8] The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment. The Texas statute makes no such discrimination, but the petitioner alleges that those administering the law do.

The petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from "whites." [Footnote 9] One method by which this may be demonstrated is by showing the attitude of the community. Here, the testimony of responsible officials and citizens contained the admission that residents of the community distinguished between "white" and "Mexican." The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. [Footnote 10] At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the

Page 347 U. S. 480

hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here"). No substantial evidence was offered to rebut the logical inference to be drawn from these facts, and it must be concluded that petitioner succeeded in his proof.

Having established the existence of a class, petitioner was then charged with the burden of proving discrimination. To do so, he relied on the pattern of proof established by *Norris v. Alabama*, 294 U. S. 587. In that case, proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some Negroes were qualified to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute *prima facie* proof of the systematic exclusion of Negroes from jury service. This holding, sometimes called the "rule of exclusion," has been applied in other cases, [Footnote 11] and it is available in supplying proof of discrimination against any delineated class.

The petitioner established that 14% of the population of Jackson County were persons with Mexican or Latin American surnames, and that 11% of the males over 21 bore such names. [Footnote 12] The County Tax Assessor testified

Page 347 U. S. 481

that 6 or 7 percent of the freeholders on the tax rolls of the County were persons of Mexican descent. The State of Texas stipulated that,

"for the last twenty-five years, there is no record of any person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County. [Footnote 13]"

The parties also stipulated that

"there are some male persons of Mexican or Latin American descent in Jackson County who, by virtue of being citizens, freeholders, and having all other legal prerequisites to jury service, are eligible to serve as members of a jury commission, grand jury and/or petit jury. [Footnote 14]"

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 no 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

Page 347 U. S. 482

the complete exclusion of negroes from jury service, the constitutional provision . . . would be but a vain and illusory requirement. [Footnote 15]"

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 during some particular period. But it taxes our credulity to say that mere chance resulted in their 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 jury [Footnote 16] 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. [Footnote 17] 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.

[Footnote 1]

Texas law provides that, at each term of court, the judge shall appoint three to five jury commissioners. The judge instructs these commissioners as to their duties. After taking an oath that they will not knowingly select a grand juror they believe unfit or unqualified, the commissioners retire to a room in the courthouse where they select from the county assessment roll the names of 16 grand jurors from different parts of the county. These names are placed in a sealed envelope and delivered to the clerk. Thirty days before court meets, the clerk delivers a copy of the list to the sheriff who summons the jurors. Vernon's Tex.Code Crim.Proc. arts. 333-350.

The general jury panel is also selected by the jury commission. Vernon's Tex.Civ.Stat. art. 2107. In capital cases, a special venire may be selected from the list furnished by the commissioners. Vernon's Tex.Code Crim.Proc. art. 592.

[Footnote 2]

See Carter v. State of Texas, 177 U. S. 442, 177 U. S. 447.

[Footnote 3]

"Nor, if a law should be passed excluding all naturalized Celtic Irishmen [from jury service], would there be any doubt of its inconsistency with the spirit of the amendment."

100 U.S. at 100 U. S. 308. *Cf. American Sugar Refining Co. v. Louisiana,* 179 U. S. 89, 179 U. S. 92.

[Footnote 4]

See Truax v. Raich, 239 U. S. 33; *Takahaski v. Fish & Game Commission,* 334 U. S. 410; *cf. Hirabayashi v. United States,* 320 U. S. 81, 320 U. S. 100:

"Distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people whose institutions are founded upon the doctrine of equality."

[Footnote 5]

Sanchez v. State, 147 Tex.Cr.R. 436, 181 S.W.2d 87; *Salazar v. State,* 149 Tex.Cr.R. 260, 193 S.W.2d 211; *Sanchez v. State,* Tex.Cr.App., 243 S.W.2d 700.

[Footnote 6]

In *Juarez v. State,* 102 Tex.Cr.R. 297, 277 S.W. 1091, the Texas court held that the systematic exclusion of Roman Catholics from juries was barred by the Fourteenth Amendment. In *Clifton v. Puente,* Tex.Civ.App., 218 S.W.2d 272, the Texas court ruled that restrictive covenants prohibiting the sale of land to persons of Mexican descent were unenforceable.

[Footnote 7]

Smith v. Texas, 311 U. S. 128, 311 U. S. 130.

[Footnote 8]

[Footnote 9]

We do not have before us the question whether or not the Court might take judicial notice that persons of Mexican descent are there considered as a separate class. *See* Marden, Minorities in American Society; McDonagh & Richards, Ethnic Relations in the United States.

[Footnote 10]

The reason given by the school superintendent for this segregation was that these children needed special help in learning English. In this special school, however, each teacher taught two grades, while, in the regular school, each taught only one in most instances. Most of the children of Mexican descent left school by the fifth or sixth grade.

[Footnote 11]

See note 8 *supra.*

[Footnote 12]

The 1950 census report shows that, of the 12,916 residents of Jackson County, 1,865, or about 14% had Mexican or Latin American surnames. U.S. Census of Population, 1950, Vol. II, pt. 43, p. 180; id., Vol. IV, pt. 3, c. C, p. 45. Of these 1,865, 1,738 were native born American citizens and 65 were naturalized citizens. *Id.,* Vol. IV, pt. 3, c. C, p. 45. Of the 3,754 males over 21 years of age in the County, 408, or about 11%, had Spanish surnames. *Id.,* Vol. II, pt. 43, p. 180; id., Vol. IV, pt. 3, c. C, p. 67. The State challenges any reliance on names as showing the descent of persons in the County. However, just as persons of a different race are distinguished by color, these Spanish names provide ready identification of the members of this class. In selecting jurors, the jury commissioners work from a list of names.

[Footnote 13]

R. 34.

[Footnote 14]

R. 55. The parties also stipulated that there were no persons of Mexican or Latin American descent on the list of talesmen. R. 83. Each item of each stipulation was amply supported by the testimony adduced at the hearing.

[Footnote 15]

294 U.S. at 294 U. S. 598.

[Footnote 16]

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

[Footnote 17]

See Akins v. Texas, supra, note 16, at 325 U. S. 403.