

WESTERN LEGAL HISTORY

THE JOURNAL OF THE
NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

VOLUME 23, NUMBER 1 2010

Western Legal History is published semiannually, in spring and fall, by the Ninth Judicial Circuit Historical Society, 125 S. Grand Avenue, Pasadena, California 91105, (626) 795-0266/fax (626) 229-7476. The journal explores, analyzes, and presents the history of law, the legal profession, and the courts—particularly the federal courts—in Alaska, Arizona, California, Hawai'i, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands.

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125 S. Grand Avenue

Pasadena, California 91105

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ISSN 0896-2189

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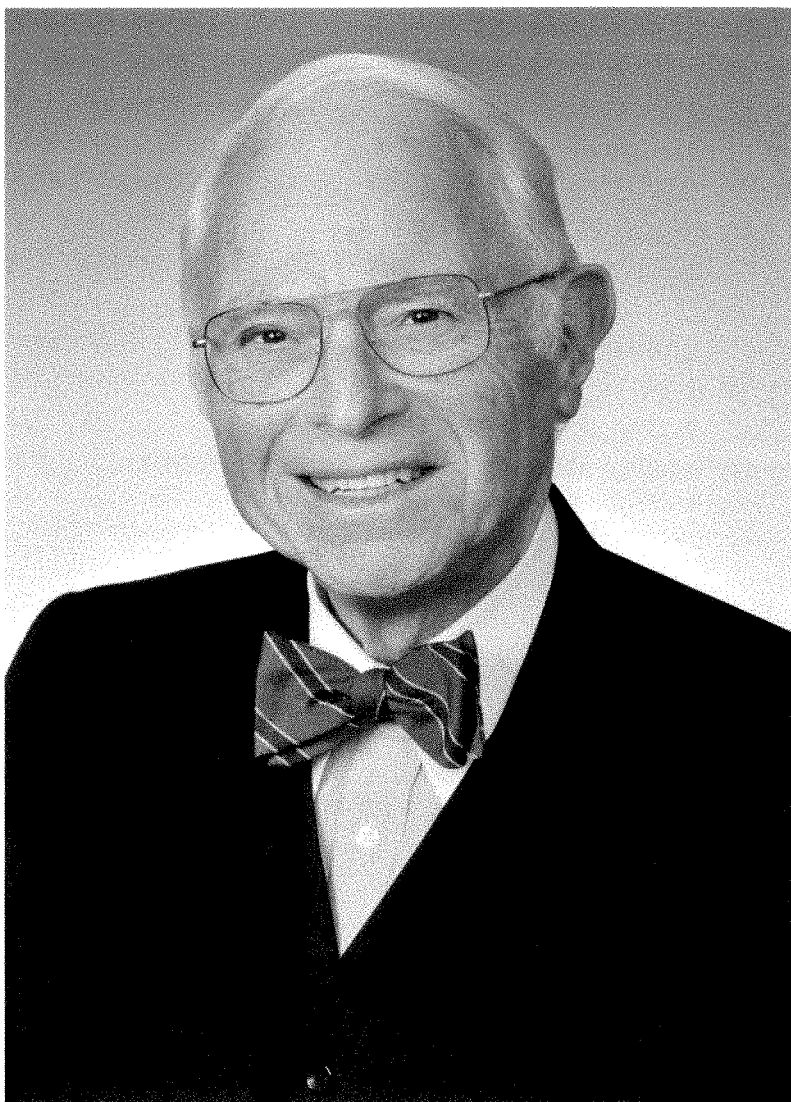
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WESTERN LEGAL HISTORY
VOLUME 23, NUMBER 1
2010

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Cover photo: Edward H. Harriman, shown here, and his role in the conservation of Oregon's timber lands is the subject of Sean Kammer's essay in this issue. (Courtesy of Union Pacific Museum)



JEROME I. BRAUN
(Courtesy of Farella Braun & Martel)

JEROME I. BRAUN: A TRIBUTE

Jeffrey M. Fisher*

About a dozen years ago, one of my colleagues at Farella Braun & Martel came into my office and asked me if I wanted to work on a project—a biography of the late Ninth Circuit Judge Cecil Poole—with one of the firm's senior partners. So began my relationship with Jerome I. (Jerry) Braun. Since that time, Jerry has been a wonderful mentor, teacher, and friend to me.

Throughout his distinguished career, Jerry has maintained a diverse trial and appellate practice in areas such as commercial litigation, complex and multidistrict litigation, securities regulation, anti-trust, and legal malpractice. He became president of the California Academy of Appellate Lawyers and was elected a fellow in the American College of Trial Lawyers. He is also a Fellow of the American Academy of Appellate Lawyers and served as the editor of its newsletter, "The Appellate Advocate," for six years. He remains one of the finest writers—with one of the deepest vocabularies—I have ever known and is the author of many articles in professional and scholarly publications. Jerry was also the proponent of California Supreme Court Rule 29.5, permitting certification of questions of state law by federal appellate courts. At age eighty-one, he is still going. He now concentrates on federal practice and on his work as an arbitrator and mediator, and has served the federal courts as a special master.

Jerry also has been very active in Ninth Circuit governance issues and on behalf of Stanford Uni-

*Jeffrey M. Fisher is chair of the Ninth Judicial Circuit Historical Society Board of Directors.

versity (he graduated from Stanford Law School in 1952) and Jewish philanthropies. He has served for more than thirteen years on the board and currently serves as chair of fundraising efforts for The Other Bar, a nonprofit network of recovering lawyers and judges throughout the state of California. He is an inspirational speaker about issues relating to alcohol and substance abuse problems and how they affect lawyers. Hearing Jerry speak about his personal experiences with overcoming alcoholism is a truly moving experience.

Jerry also twice served as a member and then chair of the Lawyer Representatives to the Ninth Circuit Judicial Conference and was chair of the Ninth Circuit Judicial Senior Advisory Board. He was one of the early members of the Ninth Judicial Circuit Historical Society, acting as president from 1990 to 1993. He continues to serve the society in a variety of ways; among his greatest accomplishments was his leadership in the society's effort to publish *Cecil Poole, A Life in the Law*, a biography of Judge Poole geared toward young readers. This important biography would never have been written without his tireless efforts.

In 1999, Jerry received the American Inns of Court Professionalism Award as "a senior lawyer practicing in the Ninth Circuit whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law." In 2005, he was awarded the Ninth Circuit's highest accolade, the John P. Frank Award, which recognizes an outstanding lawyer practicing in the federal courts of the western United States. As then Ninth Circuit Chief Judge Mary M. Schroeder aptly commented, "Jerry Braun's accomplishments as a lawyer and a mentor are legendary, as are his contributions to the

legal community, and the courts. His enthusiasm is boundless and he is very deserving of this recognition."

None of these achievements or accolades, however, adequately describes what Jerry exudes as he simply walks around the office of Farella Braun & Martel, the firm that he cofounded almost fifty years ago (always dressed to the nines in a suit, with his signature bow tie): his true love of the law, of the judges who interpret it, and of the attorneys who practice it. It is Jerry's love of the law and its history, as well as his many years of service, that led the Ninth Judicial Circuit Historical Society to establish the Jerome I. Braun Prize for Western Legal History in his honor.

Editor's note:

This issue contains essays by the recipients of the inaugural Jerome I. Braun Prize for Western Legal History. This annual award is intended to encourage research that illuminates the contributions of the law, lawyers, judges, and law-related organizations to the social, political, economic, and cultural history of the North American West. Funding for the prize has been generously provided by the law firm of Farella Braun & Martel, Marc M. Seltzer and the Honorable Christina A. Snyder, and The Morrison & Foerster Foundation.

First place was awarded to Sean M. Kammer for his essay "The Railroads Must Have Ties: A Legal History of Forest Conservation and the Oregon & California Railroad Land Grant, 1887–1916." Mr. Kammer earned a juris doctor degree from Duke University in 2004 and is now a candidate for a Ph.D. in American legal history at the University of Nebraska. His essay challenges the view of Union Pacific Railroad tycoon Edward H. Harriman as a rapacious capitalist concerned only with corporate profits, highlighting instead his attempts to preserve the Oregon forest lands received by the company for constructing its line.

The first runner-up was Sarah Riva for her essay "The Coldest Case of All? Lloyd Gaines and the African American Struggle for Higher Education in Missouri." Ms. Riva received her undergraduate degree in history at Royal Holloway, University of London, in 2010. She will begin work on a master's degree in public history at the University of Arkansas in 2011. Her essay sheds light on Lloyd Gaines' ill-fated attempt to integrate the University of Missouri Law School in the 1930s.

The second runner-up was Lindsey Passenger Wieck for her essay "Upholding Culture and Language in

Guadalupe, Arizona: Bilingual Education Activism in the 1970s." Ms. Wieck earned a bachelor's degree in history and secondary education at Grand Valley State University in Michigan and a master's degree in history at Northern Arizona University in 2010. She is currently working toward a Ph.D. in history at the University of Notre Dame. Her essay explores the successful legal challenge brought by the citizens of Guadalupe, Arizona, against their elementary school district's discriminatory treatment of non-English speaking children.

We hope our readers will enjoy these prize-winning essays. And we hope that these authors' success will encourage others to undertake their own research into the fascinating realm of western legal history.

THE RAILROADS MUST HAVE TIES: A LEGAL HISTORY OF FOREST CONSERVATION AND THE OREGON & CALIFORNIA RAILROAD LAND GRANT, 1887-1916

SEAN M. KAMMER

Naturalist and preservationist John A. Muir once scoffed at the way each of the transcontinental railroads advertised its line as the "scenic route." In his monumental portrayal of America's scenic wilderness areas, *Our National Parks*, he proposed a new and much more honest advertisement: "Come! Travel our way. Ours is the blackest. . . . The sky is black and the ground is black, and on either side there is a continuous border of black stumps and logs and blasted trees appealing to heaven for help as if still half alive, and their mute eloquence is most interestingly touching. . . . No other route on this continent so fully illustrates the abomination of desolation."¹ Observations such as this one regarding the ecological destructiveness of railroads have tended to obscure the fact that railroad companies themselves were not necessarily enemies of the environment. Indeed, in some cases they were at the forefront of the preservationist and conservationist movements that were still in their infancy at the time of Muir's writing in 1901. For example, the Southern Pacific, as historian Richard Orsi has demonstrated, "took a major role

¹John A. Muir, *Our National Parks* (Boston, 1901), 357-58.

Sean M. Kammer holds a J.D. from Duke University and is a candidate for a Ph.D. in American legal history at the University of Nebraska-Lincoln, where he is a graduate instructor in the History Department.

in the emergence of modern management of water, wilderness parks, forests, and rangelands."²

Orsi's conclusions regarding the Southern Pacific contradict the traditional view of that company as a "malevolent monopoly representing selfish, greedy, corporate interests" in opposition to the "people" and the "public interest."³ But historians have, for the most part, left unchallenged a similar negative view of Edward H. Harriman, who headed both the Union Pacific and the Southern Pacific and was perhaps the most powerful of the railroad tycoons during the first decade of the twentieth century.⁴ Prior to Harriman's takeover of the Southern Pacific in 1901, that railroad's long-standing policy had been to subdivide and sell lands to farmers, miners, and loggers, the purpose being "to encourage long-term settlement, economic growth, and rail traffic," but Harriman questioned and ultimately rejected this policy.⁵ In January 1903, he ordered the termination of sales of the remaining Southern Pacific land grant, including the heavily timbered lands of the Oregon and California Railroad, which had been a Southern Pacific subsidiary since 1887.

It remains unclear whether Harriman initially intended for this suspension to be temporary in order to allow his men to ascertain fully the nature of his extensive land holdings, or whether this move in fact represented a permanent shift in policy.⁶ What is clear is that by 1905 virtually all sales ceased. Local Oregonians, as well as prominent lumber companies and politicians in the state, accused Harriman of undermining Oregon's development, and a political movement there ultimately led the federal government in 1908 to sue Harriman's Oregon & California Railroad for the forfeiture of its unsold lands. At the culmination of a seven-year legal battle, the

²Richard J. Orsi, *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850–1930* (Berkeley, CA, 2005), xiv–xv.

³*Ibid.*, xvii.

⁴See, e.g., David Maldwyn Ellis, "The Oregon and California Railroad Land Grant, 1866–1945," *Pacific Northwest Quarterly* 39:4 (1948): 255–83. Regarding the termination of land sales in January 1903, Ellis asserts that "apparently his aim was to keep for his company any rise in stumpage values." Ellis, "Oregon and California Railroad Land Grant," 261.

⁵Orsi, *Sunset Limited*, 37.

⁶Orsi found evidence that the termination of land sales was, in fact, meant to be a permanent policy. This is contradicted, however, by the later testimony of Harriman's land commissioner, Charles W. Eberlein, that the termination—at least as applied to all of the lands of the Southern Pacific, Central Pacific, and Oregon & California—was merely to allow Harriman and his centralized land office to ascertain the nature of the lands, a process delayed by the San Francisco earthquake and fire a couple of years later. See Orsi, *Sunset Limited*, 123–25.

Supreme Court gave Congress the legal authority to seize the land and to provide for its disposition "in accordance with such policy as it may deem fitting"—and Congress quickly passed the Chamberlain-Ferris Act of 1916, which revested the remaining 2.3 million acres of the grant to the United States. Although historians have, for the most part, accepted the view that Harriman's land policies in Oregon were motivated by his apparently unrivaled speculative spirit, his policies were in fact consistent with utilitarian notions of conservation that he recognized as in keeping with his long-term profit motive.

The railroad issues that arose in the first decade of the twentieth century were rooted in the land-use regime Congress had established decades earlier. In the middle of the nineteenth century, federal land grants to railroads were a critical component of the government's effort to conquer its newly expanded public domain. Stephen Douglas orchestrated the first such grant to the Illinois Central in 1850, made possible by his compromise to grant lands in a checkerboard pattern as a way to pay for the subsidy. The granting of public lands to railroads escalated during the Civil War with Congress' passage of the Pacific Railway Act of 1862, which chartered and granted lands to the Union Pacific and the Central Pacific to aid in the construction of a railway from a point on the Missouri River in Nebraska to a point on the Pacific Ocean at or near San Francisco, and to the Leavenworth, Pawnee and Western Railroad for the construction of a southern branch through Kansas.⁷ This policy continued in subsequent years with similar grants to aid in the construction of transcontinental railways to the north and south of the Union Pacific-Central Pacific line. In all, the federal government granted roughly 130 million acres to railroads (37 million of which were granted to railroads via the states) from 1850 to 1871.

Railroad land grants shared several common features (as amended, if not originally): "rights-of-way" easements for the construction of the railways, including the right to use materials in the vicinity for construction and maintenance of the lines; the delineation of place limits within which the railroads' grants were contained (these ranged from ten miles to forty miles on each side of the railway); checkerboard provisions whereby the railroads' grants contained only alternate sections; the exclusion of mineral lands (other than coal and iron) and lands already settled, claimed, or reserved pursuant to federal laws; and the provision for indemnity

⁷*Pacific Railway Act of July 1, 1862*, 12 Stat. 489, *Statutes at Large*, 37th Cong., 2^d sess., ch. 120.

strips outside of the place limits within which the railroads could select lands in lieu of excluded place lands. In addition, some grants contained restrictions on the timing and manner of the railroads' disposition of lands to which they had received patents.⁸

As part of this general land grant policy, Congress in 1866 granted several million acres to Oregon for the construction of a railroad from Portland southward to the California border, where such road would connect with another being built from Sacramento. Oregon was directed to designate a company to construct the railroad and to receive a land grant consisting of alternating sections of public lands within ten miles of the railway as a subsidy to offset its operating expenses. Three years later, after the grant's specified time limit passed without any companies taking the required steps to avail themselves of the grant, Congress renewed the grant but added conditions to ensure that land was sold to settlers, not speculators. Based on the new conditions, the railroad receiving the grant was required to dispose of the land only to "bona fide settlers," in parcels no larger than 160 acres, and for no more than \$2.50 per acre. Together, these conditions were commonly referred to as the "homestead clause." It was under this regime that the Oregon & California acquired the rights to more than three million acres stretching in a checkerboard pattern from the Coast Range to the Cascade Mountains and from Portland to the California border.⁹

The Southern Pacific acquired control of the Oregon & California and its land grant in 1887, shortly after which the railway was completed. From that time until 1901, when Harriman acquired control of the Southern Pacific and its constituent railways, including the Oregon & California, the company pursued a policy of disposing of its lands quickly to develop the country and to build up long-term business for the road. Beginning in 1901, Harriman introduced new policies to oversee the railroad's use and disposal of the land grant. Although the various land departments of the constituent railroads had previously enjoyed much autonomy within the Southern Pacific system, Harriman sought to centralize authority and to develop a comprehensive land use plan,

⁸See Samuel Dana, *Forest and Range Policy: Its Development in the United States* (New York, 1956), 36–37, for a succinct summary of the legislative acts that created the land grants.

⁹*Oregon & California Railroad Co. v. United States*, 238 U.S. 393, 409 (1915).

whereby any of his railroads' lands would be used to benefit his entire system.¹⁰

Harriman's strategy required an extensive review of the Southern Pacific's policies of land disposal up to that point. Regarding the Oregon & California land grant, the records showed that the railroad had disposed of 813,000 acres with little regard for the homestead clause. In fact, only 127,000 acres were sold in compliance with that clause, while more than half were sold in parcels of more than two thousand acres. The average sale price was about five dollars an acre, double the maximum allowed.¹¹ A large portion of the 813,000 acres was sold after 1895, when lumber companies and investors became interested in Oregon's vast timber resources primarily for speculative purposes. From 1895 to 1901, the company disposed of 363,000 acres to only thirty-eight buyers, with prices ranging from five dollars to forty dollars an acre.¹²

Although the homestead clause had little influence on the railroad's decisions regarding disposal of grant lands, the grant's other measure meant to ensure rapid settlement—its checkerboarding provision—heavily constrained the railroad's activities. One of the principal purposes of checkerboarding was to ensure that lands along the railroad were settled and developed rather than held in monopoly by the railroad or any successor in interest. This system, though, as applied to non-agricultural lands, had the effect of making it difficult for any entity to use the land for any purpose. The timberlands of Oregon, for example, were primarily, if not exclusively, valuable for their timber, but lumber operations required a solid body of land in order to extract timber at a profit. The Southern Pacific long recognized this fact, as did Harriman's land commissioner, Charles W. Eberlein, who complained that the checkerboard pattern of the railroad's grant made it virtually impossible for the railroad to dispose of the land, since timberlands could not be sold in a "piece-meal" fashion.¹³

¹⁰Charles W. Eberlein, whom Harriman dispatched to San Francisco to oversee the land departments, later reported that Harriman's control was so tight that Eberlein was required to send all applications for purchase of timberlands to New York for Harriman to review and decide on a course of action. Transcript of Record, Supreme Court of the United States, no. 492, October term, 1916, *Oregon & California Railway Co. v. United States* (hereinafter referred to as "Transcript"), available at *The Making of Modern Law: U.S. Supreme Court Records and Briefs* 2329, 2399, 2746, <http://gdc.gale.com>.

¹¹U.S. Congress, *House Report*, 60th Cong., 1st sess., 1908, no. 1301.

¹²Ellis, "Oregon and California Railroad Land Grant," 260–61.

¹³Orsi, *Sunset Limited*, 381; Transcript, 2328.

Harriman indeed found that the railroad's long-followed, pro-development policy of selling timberlands cheaply only encouraged speculation. This was both because the annual rise in value of the timber exceeded the taxes and interest payments required to retain the land, thus making it profitable simply to hold the land, and because there was not much of a market for the grant's timber, due to its relative inaccessibility as compared to the still-plentiful forests of Washington and California. Accordingly, only "a very, very small fraction" of the timberlands that the Oregon & California sold, including those it sold either directly or indirectly to lumber companies such as the Booth-Kelly Lumber Company, had been milled even by 1912. Based on these experiences, Eberlein ultimately concluded that "anybody that comes in and wants to buy all the timber in [multiple] townships of land [had] no immediate intention of doing anything with it."¹⁴ Rather, the lands were simply "held for the rise."¹⁵

In 1903, citing the fact that the remaining lands were primarily heavily timbered and unsuitable for settlement, Harriman ordered the termination of all timberland sales in lands encompassed by the Oregon & California grant.¹⁶ At the National Irrigation Congress of 1907, held in Sacramento, California, Harriman justified his decision to withhold the lands from sale based on the need for conservation. He insisted that his companies were not "holding those lands for speculation" but instead were holding them "to protect [the people] in the future." Considering that "ties are the foundation of the transportation line," he stated his intent "to have a reserve with which we can maintain these great transportation lines for those that come after, that they may not accuse us of wast-

¹⁴Transcript, 2342-44.

¹⁵*Ibid.* As another example of this phenomenon, Eberlein discussed the example of T.B. Walker's handling of his timberlands in northeastern California: "They bought out timber concerns and mills and shut them down and they have existed all this time simply upon the increase in the growth of the timber which, as I have told you, is large enough in timber of certain age to more than equal the taxes and interest on the investment; and in this particular case it must be remembered that this timber was sold by the Railroad on conditions that never were duplicated that I know of in this country." Transcript, 2351-52.

¹⁶This policy was not limited to the Oregon & California land grant but rather applied to all lands of the Southern Pacific and Central Pacific as well. See Orsi, *Sunset Limited*, 123-25.

ing the resources which we had at our command."¹⁷ Harriman's 1907 speech was consistent with a statement he made to a newspaper reporter that same year:

The Southern Pacific will sell land to settlers, but not to speculators. We can tell a speculator from a settler as well as anyone. The agricultural land we will sell, but the timber-land we will retain, because we must have ties and bridge timbers, and we must retain our timber for future supply. The Southern Pacific has an insufficient amount of timber now, and we have had to buy large tracts, looking to the future supply of ties and material. Yes, we will sell to settlers, but speculators will get none.¹⁸

Harriman's goal, in other words, was to prevent harmful speculation and to conserve the timber for future railroad use.

At first glance, Harriman's conservationist justification seems inconsistent with the dominant brand of conservation represented by President Theodore Roosevelt and Gifford Pinchot, neither of whom ever advocated massive curtailing of development. Rather they advocated managing forests with the goal of promoting more efficient and prolonged development without sacrificing present yield. At the meeting of the American Forestry Congress in 1905, immediately after which management of forests was transferred to the Department of Agriculture under the newly renamed Forest Service, Roosevelt assured pro-development westerners that the government's policy was "consistent to give to every portion of the public domain its highest possible amount of use."¹⁹ Pinchot added that "[t]he administration of the forest reserves is based upon the general principle . . . that the reserves are for use. They

¹⁷*The Official Proceedings of the 15th National Irrigation Congress*, September 2–7, 1907, Sacramento, California; also quoted in House Committee on the Public Lands, *Oregon and California Land Grants*, 64th Cong., 1st sess., 1916 (hereinafter referred to as the *O & C Land Grants*), 143–44. See W.G. Robbins, "Lumber Production and Community Stability: A View from the Pacific Northwest," *Journal of Forest History* 31:4 (October 1987): 187–96; Wesley C. Ballaine, "The Revested Oregon and California Railroad Grant Lands: A Problem in Land Management," *Land Economics* 29:3 (August 1953): 219–32; John Messing, "Public Lands, Politics, and Progressives: The Oregon Land Fraud Trials, 1903–1910," *Pacific Historical Review* 35:1 (February 1966): 35–66.

¹⁸Transcript, 4267. According to Orsi, this statement may have been a lie, based on the fact that the initial sale order applied to all lands, and very few sales occurred on any lands during Harriman's tenure. See Orsi, *Sunset Limited*, 124–25.

¹⁹American Forestry Association, *Proceedings of the American Forest Congress*, January 2–6, 1905, Washington, D.C. (Washington, DC, 1905), 11.

must be useful first of all to the people of the neighborhood in which they lie."²⁰ On their face, Harriman's policies appeared to violate this simple rule of conservation.

Assuming that Harriman's no-sale rule thwarted development, it would indeed seem that his policies contradicted the very conservationist principles he attempted to evoke. However, it is not at all clear that his policy impacted development at all. As of the time when Harriman issued his no-sale order, there were not many settlers on the land, even after decades of efforts to attract farmers from the East. Moreover, as the railroad's land commissioner Eberlein reported, almost all of the lands in the possession of lumber companies were simply being held, likely because of their inaccessibility and distance from markets. That the lack of development was due more to physical and economic geography than to Harriman's decisions would later be confirmed by both government reports and the government's own experiences once it reacquired the lands in 1916.²¹

Given these realities, which Harriman and his men appreciated long before Congress did, Harriman's termination of land sales can be seen not as anti-development but as a recognition that the market system, in this instance, had failed—and would likely continue to fail—to promote the rational, efficient use of the land's natural resources. This rationale was thus consistent with the conservation movement, which was, above all—as Samuel P. Hays has articulated—a scientific movement advocating that scientists take the lead in determining natural resource use rather than leaving such questions to political or economic forces.²² Harriman was both a benefactor and a consumer of the emerging sciences of conservation.

Harriman had already demonstrated his personal support of the natural sciences when he arranged and funded a maritime expedition to Alaska in 1899. What began as a vacation for him and his family was radically transformed when Harriman conceived of inviting an entire community of scientists to explore and document the coastlines of Alaska. The expedition included biologists, botanists, geographers, geologists, and zoologists, as well as several artists and intellectual writers. Scientists and intellectuals who accepted Harriman's invitation to participate included John A. Muir; C. Hart Merriam, chief of the U.S.

²⁰American Forestry Association, *Proceedings of the American Forest Congress*, 392.

²¹See Wesley C. Ballaine, "The Revested Oregon and California Railroad Grant Lands: A Problem in Land Management," *Land Economics* 29 (August 1953): 224.

²²Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (Pittsburgh, PA, 1999), 3.

Biological Survey; William E. Ritter, president of the California Academy of Sciences; Henry Gannett, chief of the U.S. Coast and Geodetic Survey; George B. Grinnell, editor of *Forest and Stream*; and Bernhard E. Fernow, former chief of the Department of Agriculture's Division of Forestry.²³ In the decade following their time together on what was referred to as the "Harriman Expedition," Muir and Harriman maintained a regular correspondence and formed what environmental historian Donald Worster has labeled "an improbable bond" based on a "mutual understanding . . . [of] the value of an efficient railroad system and on the wisdom of establishing national parks."²⁴ Worster recently argued that, from the expedition until Harriman's death a decade later, Muir saw Harriman "as a well-meaning friend and potential ally of the conservation movement."²⁵

Harriman was also a consumer of conservation science. In 1902, he personally applied to the Bureau of Forestry for experts to be dispatched to Arden House, his 15,000-acre estate in Orange County, New York, to advise him on how to conserve the estate's 8,000 acres of dense forest.²⁶ On receiving Harriman's request, the bureau sent nine men instead of the normal two to develop a working plan for improving Harriman's timber. The foresters reported being excited at the opportunity to use "ingenious methods" for examining the abilities of various species of trees to bear shade, to reproduce, and to withstand damage from forest fires.²⁷ The nine forestry students completed the necessary fieldwork between April 1 and June 15, during which time they created a forest map of the entire tract and compiled, according to the Department of Agriculture's annual report, "a careful study of the forest, by which its character, condition, present stand, and future yield were ascertained."²⁸

There is also evidence that Harriman was motivated not just by a form of utilitarian conservation but also by a preservationist ethos. After visiting Harriman's New York estate, Muir, for one, concluded that Harriman indeed loved the forest and its

²³See "The Harriman Expedition," *Los Angeles Times*, August 1, 1899.

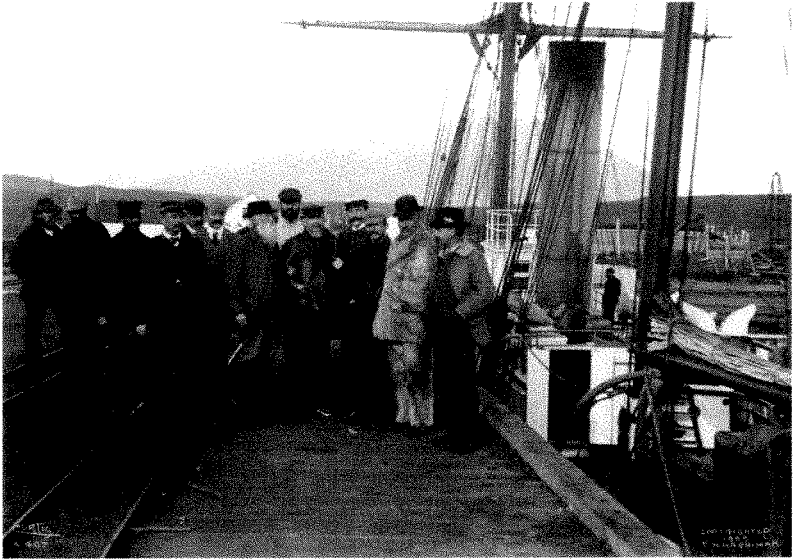
²⁴Donald Worster, *A Passion for Nature: The Life of John Muir* (New York, 2008), 408.

²⁵*Ibid.*, 362–63.

²⁶In 1898, as head of the Division of Forestry, Pinchot had issued "Circular 21." This document offered to assist private landowners to develop plans for forest management and fire protection, provided that the owners paid all expenses. Thomas R. Cox et al., *This Well-Wooded Land: Americans and Their Forests from Colonial Times to the Present* (Lincoln, NE, 1985).

²⁷"To Improve the Harriman Forest," *New York Times*, April 20, 1902.

²⁸U.S. Department of Agriculture, *Annual Reports of the Department of Agriculture for the Fiscal Year Ended June 30, 1902*. Report of the Secretary of Agriculture, Departmental Reports [Washington, DC, 1902].



Members of the Harriman Expedition and some acquaintances gather at Dutch Harbor, Alaska, July 1899. (Courtesy of University of Washington Libraries, Special Collections. Negative number Harriman 187)

wildlife and considered it something to cherish and conserve, at least when consistent with economic development. Beyond preserving his own timbered estate, Harriman's desire to leave certain places alone was also demonstrated in 1905 when he lobbied in support of the Sierra Club's efforts to incorporate the Yosemite Valley into the national park that then surrounded it. Later, in his 1907 speech before the National Irrigation Congress, he showed an aesthetic concern for the preservation of Oregon's natural beauty. He argued that "Oregon ought to be the country's playground. There's a vastness of fine scenery there."²⁹ Through his words and actions, Harriman was able to convince Muir of his concern for nature beyond its mere economic value. In spring 1909, when Muir was visiting Harriman and his family in Pasadena, California, Muir was asked how he, "a nature lover, [could] happen to be visiting a cold-blooded financier." He answered, reportedly while fighting back tears, that "Mr. Harriman has a heart. People may not know it, but he loves the flowers and the trees. He loves nature and human nature."³⁰

²⁹"Magnate Wins Applause for Funny Speech," *San Francisco Call*, September 5, 1907.

³⁰"Sidetracks All Callers," *Los Angeles Times*, March 17, 1909.

Importantly, the people of Oregon also took Harriman at his word. While historians have questioned Harriman's motives in ordering the termination of land sales, Oregonians believed his stated rationale, and this is precisely why they became so angered. Harriman's no-sale order and his subsequent explanation enraged a wide cross-section of the public, particularly in the affected localities of Oregon. Encouraged by prominent lumber companies in the state, local residents accused Harriman of undermining Oregon's development by locking up its natural resources. While the backlash against Harriman undoubtedly fed off a populist distrust of railroads as malevolent monopolies that threatened to hold local populations hostage to their economic whims, people also linked Harriman to what they saw as an equally menacing force: the eastern conservation movement. In the weeks following his 1907 speech at Sacramento, the *Oregonian* accused Harriman of desiring "to make a reserve out of the whole of Oregon." In fact, said the paper, "he counts it his reserve now."³¹

³¹Excerpted in "Mr. Harriman's Apology Not Accepted," *San Francisco Call*, September 17, 1907.



Architect William H. Holabird, E.H. Harriman, and John Muir (left to right) posed together at Harriman's lodge in Pelican Bay, Oregon. (Courtesy of John Muir Papers, Holt-Atherton Special Collections, University of the Pacific Library, MSS04.F25-1386. Copyright 1984 Muir-Hanna Trust)

The *Oregonian* questioned not just Harriman's motivations, but those of all who purported to be concerned with conservation: "[T]his state is plastered from one end to the other with timber speculators in syndicates and as individuals. All pretend to be saving for the nation a wood supply. The truth is they are keeping out settlement and maintaining a wilderness in order at some future day to gratify their lust for wealth."³² The *Oregonian* believed that the state needed, above all, "the clearing up of forest land" near the railroads so that it could "be used for agriculture and for sustaining a larger population."³³ To the people along the Oregon & California line, whether Harriman epitomized the speculator or the conservationist was immaterial, since the conservationist was merely a new form of speculator. Both were seen as equally threatening to the rapid development of the region.

Based on Harriman's apparent refusal to sell much, if not all, of the remaining land grant, Senator Benjamin R. Tillman of South Carolina introduced, and Congress quickly passed, legislation authorizing the attorney general to institute proceedings for the forfeiture of the railroad's unsold lands. Attorney General George W. Wickersham complied and filed suit in September 1908 against the railroad, one of its creditors, and many individuals and companies who had purchased lands in violation of the grant's terms.³⁴ Although the no-sale order precipitated the lawsuit, the many sales the railroad made prior to 1903 in violation of the homestead clause served as its legal justification.

³²"Mr. Harriman's Apology Not Accepted."

³³*Ibid.* Historian Roy M. Robbins argues that the West during this time was not anti-conservationist at all but instead was opposed to government intervention based on the government's past promotion of land theft, including most notably the Forest Lieu Land Act of 1897. Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1936* (Lincoln, NE, 1962), 338-40. Carlos Arnaldo Schwantes, however, insists that western resistance was based on a rational fear that the conservation ethos, despite Roosevelt's assertions to the contrary, would only serve to tie up resources and inhibit growth. Schwantes, *The Pacific Northwest: An Interpretive History*, rev. and enl. ed. (Lincoln, NE, 1996), 221.

³⁴In 1912, Congress passed the Forgiveness Act, 37 Stat. 320, which dropped the government's claims against individuals and companies that had purchased large tracts of land in good faith and without knowledge of the grant's homestead clause forbidding such sales. This legislation was passed in no small part because the lawyers at the Department of Justice had convinced members of Congress that the individuals who purchased the affected 524,000 acres were "small fry" settlers and were so numerous that litigation would be virtually unending, meaning also that the land would be tied up for decades. It was later revealed that several of the purchasers were lumber companies and other interests that had purchased tracts in excess of 10,000 acres, and many of these "innocent purchasers" had been indicted—and some convicted—in the land fraud trials of 1905-1907. See *O & C Land Grants*, 203. The Forgiveness Act allowed innocent purchasers to keep title so long as they paid the government \$2.50 per acre, even though some of the land was worth as much as \$500 per acre.

Seeming to contradict the Harriman regime's assessment of the grant lands was the fact that, beginning in 1907 and continuing for the entire seven years of litigation, thousands of individuals filed applications with the railroad company for the purchase of quarter sections. In that year, as the political movement to force the forfeiture of the land grant gained momentum, residents of Oregon began "rushing into the rich timber country and gobbling it up."³⁵ This movement apparently was based on the government's indications that, once individuals offered to purchase lands at \$2.50 an acre and were refused, they would then have standing to sue the railroad to force such sales and would "have a pretty good case."³⁶ The *Wall Street Journal* reported "a frenzy of excitement" in Oregon, where "thousands are leaving home and stampeding to the railroad land grants . . . to force Harriman to surrender" the land.³⁷ By June 1907, it was reported that "in many counties every quarter section of the land held by the railroad has a claimant."³⁸

Although the government later used these claims as evidence that the land was indeed capable of being settled under the homestead clause—contrary to the claims of Harriman and his railroad—it appears that the vast majority of the applicants in fact had no intention of homesteading on their claims. In his extensive overview of the Oregon & California land grant, David Maldwyn Ellis concluded that "these so-called settlers were speculators or dummies for speculators who hoped to make good their title to valuable timberlands at a nominal sum."³⁹ Indeed, "practically all" of the 14,000 to 15,000 applications to buy land from the railroad company during this time period, according to Ellis, "were speculative in character," a fact that was revealed over the next decade as the Department of Justice convicted nine professional locators, each representing several hundred applicants, for fraud in connection with these purported applications for purchase and actual settlement.⁴⁰

³⁵"Ignorant Oregon Farmers," *Washington Post*, June 4, 1907.

³⁶*Ibid.* As it turned out, they did not have a good case; the Supreme Court ultimately dismissed the claims of these prospective purchasers. Based on the fact that the grant did not compel the railroad to sell and did not even define "actual settler," the prospective purchasers did not have any right to enforce the grant's conditions, according to the Court. *Oregon & California Railroad Co.*, 238 U.S. at 434–35.

³⁷"After Harriman Road's Land," *Wall Street Journal*, June 5, 1907.

³⁸*Ibid.*

³⁹Ellis, "Oregon and California Railroad Land Grant," 264.

⁴⁰See Ellis, "Oregon and California Railroad Land Grant," 268.

Testimony in the divestiture trial corroborated Harriman's assessment that the vast majority of the land was unsuitable for the type of homesteading that Congress had envisioned and the grant required. In fact, in all of his work in the railroad's land department since he was first employed in 1889, F.A. Elliott could not remember a single instance in which the railroad had sold a quarter section to a person who then actually made a home and a living on that acreage.⁴¹ The same apparently was true on the even sections within the grant; Homer D. Angell, a surveyor for the railroad and the government, observed that "lands acquired by homestead from the government on the timbered areas are never occupied for any appreciable period after title has been acquired."⁴² In many cases, those who attempted to establish homesteads on these lands failed. Elliott noted that the few improvements that had existed on these lands in the 1880s had, by the first decade of the twentieth century, "grown up to brush."⁴³

Regardless of the wisdom of congressional policy, the federal government at first appeared to have the law on its side. In 1913 the district court ruled in the government's favor by decreeing the unsold grant lands forfeited and quieting the government's title to such lands. The railroad, however, appealed this decision on several legal grounds, including that the homestead clause constituted not a condition subsequent justifying forfeiture, but rather a set of restrictive and unenforceable covenants, and alternatively that the government had waived its right to enforcement of the provision through its years of acquiescence. In delivering the opinion of the Supreme Court, Justice Joseph McKenna agreed with the railroad that the homestead clause lacked the required technical language to constitute a condition subsequent touching the railroad's property interest, but he also disagreed with the railroad's contentions that the conditions were unenforceable. He held instead that the grant's conditions constituted both contractual covenants and laws, and thus were strictly enforceable.

As to the appropriate remedy, however, the Court agreed with the railroad's contention that the land invited "more to speculation than to settlement."⁴⁴ It therefore declined to order the railroad to sell the remaining lands pursuant to the terms of the grant or merely to enjoin the railroad from violating the grant any further. Instead, apparently in recognition that the

⁴¹Transcript, 2727.

⁴²Transcript, 2774.

⁴³Transcript, 2727.

⁴⁴*Oregon ex Oregon & California Railroad Co.*, 238 U.S. at 438.

homestead clause was unworkable as applied to the remaining grant lands, it enjoined the railroad from "any disposition of them whatever or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon," and it directed Congress to provide by legislation for their disposition in accordance with such policy as it may deem "fitting under the circumstances."⁴⁵ In disposing of the lands, Congress was required to secure to the railroad "all the value the granting acts conferred upon the railroads."⁴⁶

In deciding how to dispose of the lands, some in Congress insisted that the lands were still amenable to the type of settlement that Congress originally had contemplated, despite all the evidence to the contrary. Representative Willis C. Hawley from Oregon, for example, claimed to have received "a large number of letters from men . . . stating that there have been people living on these lands, with good houses and good improvements, who settled on the lands and made their improvements in good faith and are living there and have been making a home for a number of years on the land."⁴⁷ "All through the grant," he insisted, "with the exception of comparatively small areas, there are farms of agricultural lands."⁴⁸ Representative Clifton N. McArthur, also from Oregon, however, disputed Hawley's claims. He cited a joint investigation conducted by the Interior, Justice, and Post Office departments, which found that "all but a comparatively small percentage" of the thousands of applications for the purchase of land from the railroad were "secured by so-called locators," and that there were "very few, if any, actual settlers on these lands" as of 1916.⁴⁹

The interests of Oregonians weighed heavily on Congress' deliberations. Immediately after the Supreme Court delivered its opinion, the governor of Oregon called together delegates in Salem to discuss the matter. The conference attendees resolved that Congress should "enact laws defining and settling who shall be considered actual settlers . . . and what shall be considered an actual settlement, and requiring the [railroad] to perform the terms and conditions of the [grant] and to sell and dispose of said lands according to the true intent and purpose of

⁴⁵Ibid.

⁴⁶*Oregon v. California Railroad Co.*, 238 U.S. at 439.

⁴⁷*O v. C Land Grants*, 187.

⁴⁸Ibid., 188. Clay Tallman, commissioner of the General Land Office, corroborated Hawley's testimony by estimating that as much as 75 percent of the land was suitable for settlement and cultivation.

⁴⁹*O v. C Land Grants*, 203, 251.

[the grant]."⁵⁰ They also declared their "unalterable" opposition to the creation or enlargement of any forest reserves in Oregon. They proposed, instead, that Congress provide for the immediate sale of grant lands under the conditions of the homestead clause, while also protecting the process from fraud.⁵¹ Despite the appearance of unanimity, however, McArthur contended that Oregonians were in fact divided on how the lands should be handled. He cited the fact that, immediately after the conference passed its initial resolutions, it passed a new set of resolutions directing the conference chairman to form a committee to negotiate a settlement with the Southern Pacific that could then be presented to Congress, the apparent purpose being, above all, to avoid a prolonged dispute.⁵²

The politicians from Oregon largely followed suit in arguing that Congress should provide for actual settlement of the lands. For his part, Senator George Chamberlain, whose bill dominated the debate in Congress and ultimately was passed, reported that he realized, after Harriman's speech at the Irrigation Congress in 1907, "the importance to the people of the State to have these lands brought under actual settlement by sale or otherwise so as to assist the State in its development and in the purposes of government."⁵³ Although he claimed to be "nearly alone in the West . . . in defending the policies of the Forestry Service" and to have been "one of the original advocates of that for the welfare of the people, with Mr. Pinchot," he argued that no more lands in Oregon, except those that were deemed necessary to protect water supplies, should be added to the forest reserves.⁵⁴ Representative Hawley purported to relay his constituents' demands "that no part of the lands be placed in the forest reserves; that all of these lands be made available for development under proper conditions; that all lands capable of any agricultural use be disposed of for that purpose; that the just rights of the State and counties of Oregon be recognized and provided for; that provision be made for the payment of accrued taxes; and that all of these lands remain on the tax rolls."⁵⁵ Finally, Representative McArthur insisted that what Oregonians wanted most were "actual settlers, people who will go there and make homes in the wilderness . . . and build up

⁵⁰*Ibid.*, 7.

⁵¹*Ibid.*

⁵²*Ibid.*, 200.

⁵³*Ibid.*, 144.

⁵⁴*Ibid.*, 156.

⁵⁵*Ibid.*, 200.

communities that will be of material benefit to the development of the state."⁵⁶

A report submitted by the Department of Agriculture, as well as the testimony of department officials, not only confirmed the railroad's assessment of the unsuitability of the grant lands for settlement, but also implicitly vindicated both the railroad's policy of selling timberlands in large tracts prior to 1903 and its termination of land sales after that date. The department considered "some" of the lands to be agricultural, but it determined that "most of it was heavily timbered."⁵⁷ Furthermore, just as the railroad had found it untenable to sell heavily timbered lands in 160-acre legal subdivisions, the department's report criticized any attempt to limit land sales to small legal subdivisions as "not consistent with the natural requirements of the industry."⁵⁸ Assistant Forester William B. Greeley testified that limiting sales by "any legal subdivision" would "likely lead to mismanagement," and he encouraged Congress to leave it to the Interior or Agriculture department to make sales "in accordance with the topography—normally by watershed—and the natural logging factors."⁵⁹ He indicated that even sales in excess of 20,000 acres could be justified. Finally, the Department of Agriculture confirmed Harriman's contention that there was little market for the immediate consumption of timber and that any purchases of timberlands would be at very low prices and only for speculative purposes. Based on western Oregon's market position, the department reported that "it [was] obvious that vast quantities of privately owned timber must be held for many decades before it can be marketed" for consumption. Thus the department recommended holding the lands from sale, except in the few cases where local mills demanded stumpage, until such time—possibly even decades into the future—that the market conditions changed considerably.⁶⁰

⁵⁶*Ibid.*, 201.

⁵⁷*Ibid.*, 219. Regarding those timberlands deemed agricultural, Assistant Forester William B. Greeley testified that the costs of clearing timber for the purposes of cultivation—which could be as much as \$400 per acre—would be "relatively heavy," the clear insinuation being that such costs would act as an economic barrier to such development. *O & C Land Grants*, 240.

⁵⁸*Ibid.*, 224.

⁵⁹*Ibid.*, 242.

⁶⁰*Ibid.*, 220–22. Of course, representatives from the U.S. Forest Service differed from the railroad's policy in one important respect: it pushed for all of the timberlands to be held in public ownership under the jurisdiction of the Forest Service. Even this, however, was not based on a distrust of the railroad's motives, but rather on a concern that carrying the lands would be too heavy a burden for any private party. See *O & C Land Grants*, 236–37.

Unfortunately, Congress disregarded many of the observations and recommendations of the Department of Agriculture in its Chamberlain-Ferris Act of 1916. This act revested the remaining grant lands in the federal government and provided for their sale as well as the disposal of the timber upon them. Rather than providing for the efficient management of the forests pursuant to conservationist principles, as government foresters had advised, the act directed the secretary of the interior to sell off the timber to the highest bidder, at which time the timberlands could be reclassified as agricultural land and opened for settlement. Moreover, Congress disregarded Secretary David F. Houston's recommendations that any sales of timberlands be in large tracts and not according to legal subdivision when it instead provided that each legal subdivision be offered for sale separately before any larger sales were made. Finally, in designating that proceeds from land and timber sales in excess of the amount owed to the railroad would adequately compensate the Oregon counties for tax revenues lost as a result of the land's being ordered forfeited in 1913 and ultimately transferred to public ownership in 1916, Congress failed to heed the department's advice regarding the lack of an immediate market for standing timber and the extent to which the immediate sale of timber would depress its price.⁶¹ Sure enough, sales were slow, the system Congress created proved unworkable, and the counties were on the verge of economic collapse in 1926, when Congress approved a loan to the counties in the amount of lost tax revenues and passed a new formula for distributing the revenues from the lands.

With its 1916 legislation, Congress exchanged a land regime in which the railroad had demonstrated its interest in managing the lands for long-term sustainability for one that perpetuated the federal government's nineteenth-century approach to public lands. All of this occurred despite the concerns expressed by the prior generation over the exhaustibility of the

⁶¹*Chamberlain-Ferris Act of June 9, 1916, U.S. Statutes at Large*, 64th Cong., 1st sess., ch. 137, 39 Stat. 218. After the district court's decree of forfeiture on July 1, 1913, the railroad stopped paying taxes on unsold lands. Prior to the forfeiture, the railroad had paid a total of \$1,820,000 in taxes on the land, much of which was in recent years due to the increased assessed value of the lands. In his testimony before the congressional committee considering the Oregon & California land grant, government attorney Stephen W. Williams estimated that the tax burden had increased tenfold in the previous ten years and that the railroad owed about \$1.3 million in unpaid taxes for the previous three years. *O & C Land Grants*, 6. The Department of Justice's report recommended that the government pay the back taxes immediately, not only in fairness to the adversely impacted counties, but also to remove the "cloud upon the Government's title," which would "embarrass any attempt to dispose of the lands to settlers." *O & C Land Grants*, 26.

nation's natural resources and over the waste and possible irreversible damage that resulted (and would continue to result) from the government's promotion of immediate development.

The actions of Harriman and his Oregon & California railroad were consistent with conservationist principles; Harriman and other railroad officials repeatedly expressed a concern for guaranteeing a sustainable supply of timber both to guarantee a permanent supply for the railroad's operations and to facilitate the continued prosperity of the region on which the railroad depended. The myth regarding conservation portrays the battle over control of the natural environment as one pitting "the people," as represented by conservationists, against "the interests" represented by industrialists and capitalists. According to this myth, Harriman cannot be considered a conservationist because he was a capitalist who was motivated by self-interest, namely the continued economic viability of his railroad empire, in addition to any concerns he may have held for the general public welfare. This case, however, serves as a prime illustration of Samuel P. Hays' influential thesis that the Progressive conservation movement was not, in fact, a crusade of the people against the trusts, as many Progressives tried to argue.⁶² Those economic, political, and legal actors supposedly least responsive to the needs or demands of "the people"—a railroad tycoon and appointed federal bureaucrats—were the first to realize that the lands of the Oregon & California grant should be managed as forests with an appreciation of the needs of future generations, while the people and their representatives in Congress continued to push for the clearing of timberlands and the perpetuation of the homestead policy of the nineteenth century.

President Calvin Coolidge would later complain about the land-grant railroads' ability to use the law as an instrument not only to insulate themselves from prosecution for their supposed subversions of federal land-grant policies, but also to secure additional benefits contrary to the interests of the public and the government in efficiently managing the nation's natural

⁶²Hays, *Conservation and the Gospel of Efficiency*. See also James L. Penick, *Progressive Politics and Conservation: Ballinger-Pinchot Affair* (Chicago, 1968) (detailing Ballinger's criticisms of Pinchot's policies as favoring the eastern corporate interests at the expense of western individuals); Louis S. Warren, *The Hunter's Game: Poachers and Conservationists in Twentieth-Century America* (New Haven, CT, 1997) (exploring the tensions between local autonomy and national control in regard to wildlife and the impact of conservation on local interests); Karl Jacoby, *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (Berkeley, CA, 2001) (depicting the national conservation movement as a tool of colonization and state-building).

resources.⁶³ However, the experiences of the Oregon & California during the first decades of the twentieth century provide a far different narrative. While certainly corroborating Coolidge's lament that law had operated to inhibit effective management of natural resources, the Oregon & California's experiences show, at least in this important instance, that it was the government, and not the railroad, that used outdated laws as instruments to block conservationist advances, and it was the railroad, and not the democratically elected branches of government, that sought cooperation with the federal bureaucracy to implement management regimes that would ensure sustainable economic development, even if at the cost of short-term gains.

That Harriman had a profit motive in seeking to ensure a continuous supply of timber for the maintenance of his railroad empire should not undermine his conservationist credentials. Indeed, notable conservationists within the federal forest bureaucracy recognized that the movement depended on the willing participation of business interests. Writing just a year before Harriman's termination of land sales, for example, former chief of the Division of Forestry Bernhard E. Fernow predicted that wealthy capitalists like Harriman, "who can see the financial advantages of the future in forest properties," would quickly become the newest "class" of conservationists. Fernow thus concluded that, aside from being owned by the government, forest resources were most likely to be conserved when in "the hands of perpetual corporations and wealthy owners."⁶⁴ Other conservationists, including Pinchot, recognized that their movement would succeed only when private commercial entities appreciated the extent to which their continued prosperity depended on the rational management of natural resources.⁶⁵ As Roosevelt asserted at the American Forest Congress in 1905, the conservation movement—as well as America's continued economic growth—would depend not on philanthropists or the general public, but on "the men who are actively interested in the use of the forest in one way or another."⁶⁶ Harriman agreed with Roosevelt's assessment that "the railroads must have ties," and thus he was among the first to answer the conservationists' call.

⁶³U.S. House Report 512, *Northern Pacific Land Grants*, 68th Cong., 1st sess., 1–2.

⁶⁴Bernhard E. Fernow, *Economics of Forestry: A Reference Book for Students of Political Economy and Professional and Lay Students of Forestry* (New York, 1902), 345–46.

⁶⁵American Forestry Association, *Proceedings of the American Forest Congress*, 390–93.

⁶⁶*Ibid.*, 6–8.

THE COLDEST CASE OF ALL?

LLOYD GAINES AND THE AFRICAN AMERICAN STRUGGLE FOR HIGHER EDUCATION IN MISSOURI

SARAH RIVA

On a cold, rainy evening in March 1939, Lloyd Gaines stepped out of a fraternity house in Chicago's South Side on his way to buy postage stamps. He was never seen again. To this day the whereabouts of Gaines remain unknown. In 2007, the National Association for the Advancement of Colored People (NAACP) asked the FBI to reopen their files on Gaines as part of their Civil Rights Cold Case Initiative. This request was denied; in fact, it appears that the FBI actually had destroyed Gaines' files in 1996, despite the fact that his mysterious disappearance has never been solved.

The Cold Case Initiative, in the main, has been the FBI's attempt to solve the murder of African Americans during the civil rights era, but it does not appear to have looked into missing persons. It seems unlikely that the fate of Gaines, whose higher education case was one of the most significant episodes in the NAACP's early legal struggle for civil rights, will ever be known. Nevertheless, Gaines' story and the legacy of his court case and bravery in taking on the University of Missouri for an equal graduate education remain an important, yet too often marginalized, part of the history of the modern African American freedom struggle. As we approach the one-hundredth anniversary of his birth in 2011, this essay revisits Gaines' life, lawsuit, and disappearance.

Sarah Riva completed her undergraduate degree in history at Royal Holloway, University of London, in 2010. She will begin graduate studies in public history in 2011 at the University of Arkansas-Little Rock, where she hopes to continue her research in the early civil rights era. This essay was named the first runner-up for the 2010 Jerome I. Braun Prize in Western Legal History.

"HOW HISTORICAL AND SOCIALLY IMPORTANT THE CASE"¹

In 1935, Lloyd Lionel Gaines attempted to become the first African American student to enter the University of Missouri. The state was in many ways an ideal place for such an attempt since, as a border state lying north of the Mason-Dixon Line—the historical division between the free North and the slave South—it appeared to have less invested in the continuance of segregation than Lower South states with much larger African American populations.

Missouri was a slave state until 1865, but it fought on the side of the Union during the Civil War. The "peculiar institution" of slavery was even stranger in Missouri.² Small farms were more common than plantations, and slaves were often domestics. The practice of hiring out slaves was fairly common. As in the rest of the South, education for African Americans was not encouraged.³ In fact, formal education was not a priority for many white Missourians either, especially if it meant being taxed to send children to school. That changed after the Civil War, when the Missouri Constitution, formally adopted by the state in 1875 under the Democratic Party, introduced the idea of free education for its children. It also contained a requirement to separate the races in education.⁴

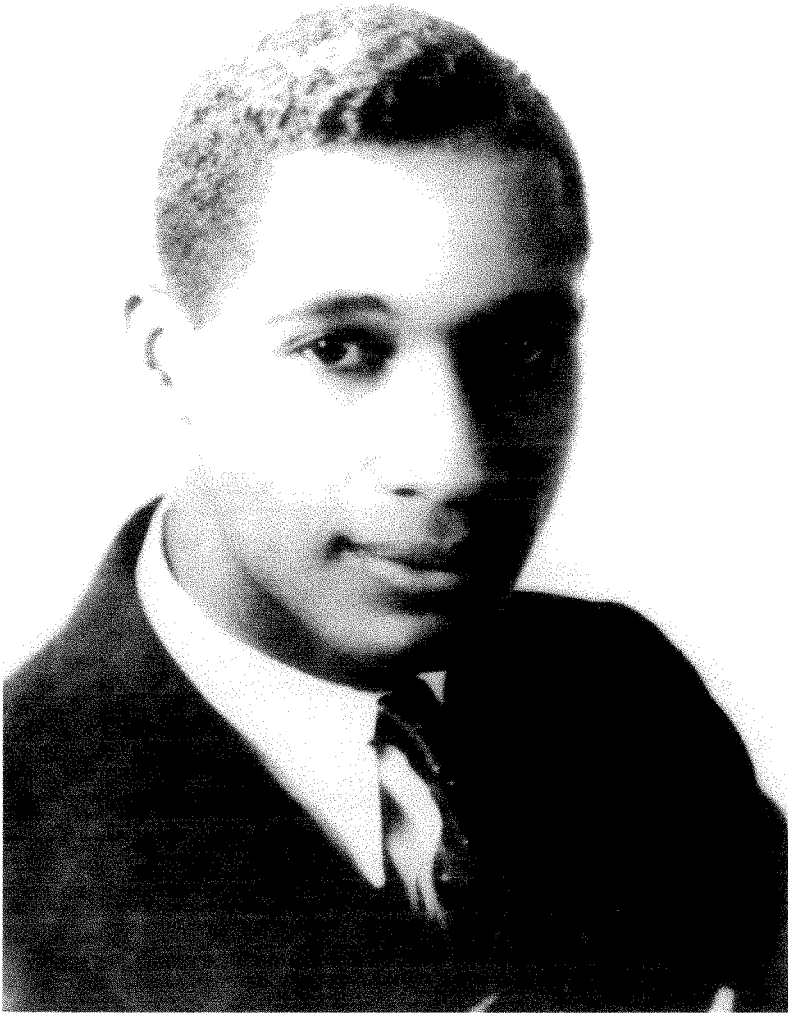
On May 18, 1896, the U.S. Supreme Court handed down a landmark ruling that would affect African Americans for the following fifty years. *Plessy v. Ferguson* tested the Supreme Court's understanding of the Fourteenth Amendment's due process and equal protection clauses, which were supposed to ensure that all U.S. citizens were treated equally regardless of race. Homer Plessy, one-eighth African American, unsuccessfully tried to fight a Louisiana law that separated the races during interstate travel. Plessy purchased a first-class ticket for a train from New Orleans and sat in the first-class carriage, intended for whites only. Plessy was arrested when he refused to move to the "colored" carriage of the train, but the lower courts dismissed his claim that he was denied his Fourteenth Amendment rights. On appeal to the U.S. Supreme

¹Lloyd Gaines to Callie Gaines, 3 March 1939, <http://digital.library.umsystem.edu/cgi/t/text/text-idx?sid=734b91f5ca3feabce7a16b7d89d37599;g=c=gnp;idno=gnp002>.

²Eric Foner, *Give Me Liberty! An American History* (New York, 2006), 345.

³Robert Irving Brigham, "The Education of the Negro in Missouri" (Ph.D. dissertation, University of Missouri, 1946), 64–66.

⁴Missouri Constitution, 1875, Article 11, section 3.



Lloyd Lionel Gaines, above, attempted to become the first African American student to enter the University of Missouri. (Courtesy of the University of Missouri Law Library)

Court, the justices voted seven to one in favor of Ferguson (the judge presiding over the case in the criminal district court in New Orleans), claiming that the Fourteenth Amendment was not clear about which rights it was supposed to protect. The Court claimed that the Fourteenth Amendment had not been "intended to abolish distinctions based upon color" and that Louisiana's law requiring the separation of races was not "a badge of inferiority" for African Americans, even if that was how African Americans interpreted the law.⁵ It was from this Supreme Court decision that the legal doctrine of "separate but equal" arose, which held that "separate" facilities for the races were constitutional under the Fourteenth Amendment provided that they were of "equal" standard. Although in many cases separate facilities provided for African Americans by the states were often far from equal, the judicial pretense continued for the next fifty-eight years.

Lloyd Lionel Gaines was the youngest of eleven children born to Henry and Callie Gaines, a respectable tenant farming family, in Lafayette County, northern Mississippi, in 1911. By the time Gaines reached four years old, only seven of his siblings survived, and Lloyd's father had also died.⁶ Gaines began his education in rural Mississippi in what he described as a "one-room framed building, too well ventilated by cracks, and poorly heated by a single stove placed in the center of a circle of wooden benches."⁷ Gaines had completed the sixth grade when, in 1926, he and his family moved to St. Louis, Missouri, where he was put back into the fifth grade "[a]s a matter of policy."⁸

Gaines excelled in school and completed grades five through eight in just two years at Waring and Lincoln elementary schools, followed by a four-year high school course in three years at Vashon High School in St. Louis.⁹ He then spent one year at Stowe Teachers College before beginning his undergraduate education in 1933. He attended Lincoln University, the African American equivalent of the University of Missouri, studying a variety of subjects, including English, mathematics,

⁵*Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁶Lloyd Lionel Gaines, Papers of the NAACP, part 3: The Campaign for Educational Equality, Legal Department and Central Office Records, 1913–1950, series A, Legal Department and Central Office Records, 1913–1940, reel 14, frames 0377–81 (microfilm, Royal Holloway, University of London).

⁷*Ibid.*

⁸*Ibid.*, frame 0378.

⁹*Ibid.*, frame 0379.

history, economics, and government studies.¹⁰ He won numerous scholarships and awards throughout his education, including an alumni award from Vashon High School, the Stowe College University Club Award, and a Curators' Scholarship Award at Lincoln.¹¹

Lincoln University had been established in 1921 when the Missouri legislature passed the Lincoln University Act to expand what was then Lincoln Institute, to bring it up to the same standards as the University of Missouri. As part of this act, Lincoln had its own board of curators, the ability to administer out-of-state scholarships, and the power to establish graduate schools when the board deemed it necessary.¹² Out-of-state scholarships enabled African American students in Missouri who wanted to study in a graduate program that was not offered at Lincoln to go to one of the neighboring states that admitted African Americans to its graduate programs. The state of Missouri paid the tuition fees. Although this was supposed to be only a temporary measure, these scholarships effectively enabled Missouri to evade the expansion of graduate programs at Lincoln University for many years. Other southern and border states likewise offered out-of-state scholarships as a means to keep their universities segregated. According to his testimony in depositions for the Circuit Court of Boone County, Gaines had decided on law as his preferred career in 1930, while still in high school.¹³ Gaines researched the standards of the law schools in Illinois and Iowa, where his tuition would be paid by Missouri, but he decided that it was the University of Missouri that had the best reputation and that would give him the best standing to practice law in Missouri.¹⁴

Gaines completed his undergraduate education at Lincoln University in 1935 as an honor student and president of his class.¹⁵ In June of that year, he applied to the University of Mis-

¹⁰Lincoln University Transcript, NAACP Papers, part 3, series A, reel 14, frames 0322–23.

¹¹Biography of Lloyd Lionel Gaines, NAACP Papers, part 3, series A, reel 14, frame 0330; Lucile H. Bluford, "The Lloyd Gaines Story," *Journal of Educational Sociology* 32:6, "Southern Higher Education Since the Gaines Decision: A Twenty Year Review" (February 1959): 242.

¹²Laws of Missouri, 1921.

¹³Circuit Court of Boone County: Deposition on Behalf of Respondents, NAACP Papers, part 3, series A, reel 14, frame 0459.

¹⁴Ibid., frames 0491–0500.

¹⁵Official Transcript of the Record of Lloyd Lionel Gaines, NAACP Papers, part 3, series A, reel 14, frames 0321–22, and Daniel T. Kelleher, "The Case of Lloyd Lionel Gaines: The Demise of Separate but Equal Doctrine," *The Journal of Negro History* 56:4 (October 1971): 263.



Lloyd Gaines graduated from Lincoln University in Jefferson City, Missouri, in 1935, as an honor student and president of his undergraduate class. Shown above is Memorial Hall, Lincoln University. (Courtesy of Lincoln University Archives)

souri Law School in Columbia. Various accounts exist of how and when the NAACP first became involved in Gaines' case. According to the NAACP papers, the first contact between Gaines and Charles Houston, special counsel to the NAACP, was August 27, 1935. This differs from Gaines' deposition testimony, in which he states that his first contact with the NAACP was in late September 1935. Both accounts conflict with a 1970 interview with African American attorney Sidney Redmond, a St. Louis NAACP lawyer who served as president of the city's NAACP branch. Redmond stated that Gaines had not yet applied to the University of Missouri when he first entered Redmond's office seeking assistance.¹⁶ Whether the NAACP was coaching Gaines to become a plaintiff may never be known, but from his excellent scholastic record, it seems

¹⁶Sidney Redmond to Charles Houston, 27 August 1935, NAACP Papers, part 3, series A, reel 14, frame 0299; Circuit Court of Boone County: Deposition on Behalf of Respondents, NAACP Papers, part 3, series A, reel 14, frame 0451, and "Interview with Sidney Redmond, July 6, 1970," *Western Historical Manuscript Collection*, <http://www.umsi.edu/~whmc/guides/t025.htm>.

likely that he was a genuinely qualified, able, and well-suited candidate to study law.

In his attempt to attend the University of Missouri's law school, Gaines wrote to the university's registrar, S.W. Canada, who dealt with admissions, on numerous occasions in June, July, and August 1935. To be admitted to law school, Gaines had to send transcripts from an accredited university to verify his grades. However, Lincoln University was not accredited.¹⁷ When Canada received Gaines' transcripts from Lincoln, he sent a letter in September 1935 telling Gaines that his request had been forwarded to the president of Lincoln University for "possible arrangements" to be made there.¹⁸ Canada was referring to the out-of-state scholarships offered to African American students who wanted to study courses not offered at Lincoln.

The NAACP initiated a mandamus proceeding against the University of Missouri in January 1936, asking the Boone County Court to order the university's registrar and board of curators to consider Gaines' application, which had lain on their desks for the past five months.¹⁹ Canada formally rejected Gaines' application on March 30, 1936, and the first writ of mandamus was dismissed on April 15.²⁰ However, Judge Walter Dinwiddie, who oversaw the case for the court, allowed an alternative writ of mandamus to be filed against the University of Missouri to require the university to either admit Gaines, since he had been rejected solely on the basis of his race, or to prove that it would be illegal under state and federal law to admit him.²¹ This was the official beginning of the *Missouri ex rel. Gaines v. Canada* case, which would end up being decided in front of the U.S. Supreme Court.²²

In May 1936, the depositions of Gaines and three other African Americans were taken. In addition to Gaines, there was Arnett G. Lindsay, a businessman in Jefferson, Missouri, who had applied to the University of Missouri to study law in 1931 and did so again in December 1935 after Gaines' attempt;

¹⁷Circuit Court of Boone County: Deposition on Behalf of Respondents, NAACP Papers, frame 0457.

¹⁸*Ibid.*, frames 0476–80.

¹⁹Circuit Court of Boone County: Petition for Mandamus, January 23, 1936, NAACP Papers, part 3, series A, reel 24, frames 0807–13.

²⁰Official Notice of Board Action, March 30, 1936, and New Suit Filed Against University of Missouri to Aid Negro Applicant, NAACP Papers, part 3, series A, reel 14, frames 0028–29.

²¹Stipulation for Dismissal of First Petition, and Order for Alternative Writ of Mandamus, NAACP Papers, part 3, series A, reel 24, frames 0814–17.

²²*Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

John A. Boyd, a graduate of Lincoln who applied to the University of Missouri in December 1935 to study mathematics; and Nathaniel A. Sweets, a business manager for the *St. Louis American* newspaper, who wished to study journalism at the University of Missouri and inquired about admission there in December 1935.²³

William Hogsett, the lead lawyer for the University of Missouri, sought to demonstrate that Lincoln University was the only facility available to African Americans in the state because the University of Missouri was prohibited by state law from accepting African American students. Hogsett also attempted to show that it was the duty of Lincoln to provide Gaines with the education that he desired under Missouri law, section 9622 of the Revised Statutes of 1929. This statute reinforced the Lincoln University Act of 1921, which stated that the board of curators at Lincoln University had the power to send its students to universities of adjacent states in order for them to study courses that Lincoln did not offer.²⁴ It was clear from the deposition of J.D. Elliff, president of the board of curators at Lincoln, that there were not enough funds to expand graduate facilities at Lincoln. In practice, the out-of-state scholarships arrangement was the only real alternative to admission to the University of Missouri law school.²⁵ NAACP lawyer Sidney Redmond's rebuttal was that it was a constitutional right of Gaines to be admitted to the law school at the University of Missouri because there was no separate alternative for him to attend in the state, and out-of-state scholarships were inadequate to meet the needs of the African American population of Missouri.²⁶

As expected, in July 1936 Judge Dinwiddie denied Gaines the writ of mandamus and a motion for a new trial within the same court. Nevertheless, Gaines was permitted to appeal his case to the Supreme Court of Missouri.²⁷ In the time between the case's being decided in the county court in July 1936 and in the Supreme Court of Missouri in December 1937, Gaines read

²³Circuit Court of Boone County: Deposition on Behalf of Respondents, NAACP Papers, frames 0538–63.

²⁴Lincoln University Act, Missouri Laws of 1921, 86–87, and Revised Statutes of Missouri, 1929.

²⁵Bill of Exceptions, NAACP Papers, part 3, series A, reel 14, frames 0662–72.

²⁶Circuit Court of Boone County: Depositions on Behalf of Respondents, NAACP Papers, part 3, series A, reel 14, frames 0466–67, 0471, 0478–80, 0483–84, 486.

²⁷Circuit Court of Boone County, June Term, 1936: Conclusions of Law, & Motion for a New Trial, NAACP Papers, part 3, series A, reel 14, frames 0718–22.

economics at the master's level at the University of Michigan to "broaden [his] pre legal training."²⁸ Unbeknownst to Gaines, the NAACP paid his tuition fees at Michigan for his master's degree, but Walter White, secretary of the NAACP, told Gaines that it was "a friend" who gave him the loan, claiming that it was not the "purpose" of the NAACP to provide scholarships.²⁹ This was because the NAACP could not appear to be paying Gaines in any way, as this might have been used in court to discredit him and the association by inferring that Gaines as a plaintiff was on the payroll.

The Missouri Supreme Court heard the *Gaines* case in September 1937. In December 1937, it affirmed the judgment of Judge Dinwiddie by again denying Gaines admission to Missouri's law school.³⁰ The court based its decision on a number of factors. First, state law prohibited integrated education. Second, the Lincoln University Act of 1921 established Lincoln as the higher education facility for African Americans in Missouri. Third, the provision of out-of-state scholarships complied with the established *Plessy v. Ferguson* (1896) legal doctrine of "separate but equal." Finally, the court said, since Gaines had not applied to Lincoln University, that university did not know of a demand for, and therefore had not been given the opportunity to provide, a "separate but equal" law school.³¹ The court declined to rule on whether Lincoln University and the University of Missouri were in fact equal, in part because Lincoln was still establishing itself as a university, and the out-of-state scholarships were purportedly only a temporary measure, pending the full development of graduate facilities.

"AN EPOCH-MAKING DECISION"³²

On December 18, 1937, nine days after the Missouri Supreme Court denied a writ of mandamus, NAACP lawyers appealed the decision and requested a rehearing, which eventually was

²⁸Lloyd Gaines to Charles Houston, 5 August 1936, NAACP Papers, part 3, series A, reel 14, frame 0747.

²⁹Walter White to Lloyd Gaines, 8 September 1936, NAACP Papers, part 3, series A, reel 14, frame 0780; and Walter White to Lloyd Gaines, 10 September 1936, NAACP Papers, part 3, series A, reel 14, frames 0749 and 0753.

³⁰Supreme Court of Missouri, opinion, December 9, 1937, NAACP Papers, part 3, series A, reel 3, frames 0042–57.

³¹*Ibid.*

³²Oswald Garrison Villard, "Issues and Men," *Nation*, December 24, 1938.

denied by the court.³³ Houston and Redmond spent the following months preparing the petition to appeal *Gaines* to the U.S. Supreme Court. The lawyers focused their arguments on the federal issue involved. They argued that the University of Missouri had denied Gaines his constitutional right of equal protection of the law as guaranteed by the Fourteenth Amendment when it had denied him admission and claimed that it was the duty of Lincoln to provide his out-of-state tuition.³⁴ The NAACP submitted the petition on May 24, 1938. Nevertheless, it was uncertain that the Supreme Court would hear a case in which a favorable decision could have such a wide-reaching impact, not only on education but also on the federal government in relation to states' rights.³⁵ Almost five months elapsed before the petition for appeal was granted by the U.S. Supreme Court on October 10; oral arguments were heard on November 9.³⁶

The justices handed down their decision on December 12, 1938. In a six-to-two split, the Court ruled in favor of Gaines. Chief Justice Charles Evans Hughes wrote the majority opinion for the Court, in which he declared that the lack of a law school for African Americans in Missouri was a denial of the equal protection clause of the Fourteenth Amendment. Hughes based this argument on the premise that "a privilege has been created for white law students which is denied to Negroes by reason of their race." The Court outlawed the use of out-of-state scholarships as a remedy for this. Hughes concluded by stating that the Supreme Court of Missouri's decision was reversed, noting that Gaines was "entitled" to attend the University of Missouri due to the absence of any other equivalent institution for African Americans within the state.³⁷

Justice James C. McReynolds and Justice Pierce Butler wrote dissenting opinions. Justice McReynolds contended that education was a state matter and that the federal government should not involve itself in such issues except in extreme circumstances. McReynolds stated his fear that the Supreme Court decision could result in Missouri's "abandon[ing]" the law school at the

³³Appellant's Motion for a Re-Hearing and Suggestions in Support Thereof, NAACP Papers, part 3, series A, reel 24, frames 1018-22, and Motion to Stay Mandate, Papers of the NAACP, part 3, series A, reel 24, frame 0029.

³⁴Petition for Certiorari, NAACP Papers, part 3, series A, reel 24, frames 1130-52.

³⁵Osmond K. Fraenkel to Charles Houston, July 13, 1938, NAACP Papers, part 3, series A, reel 14, frame 0994.

³⁶John R. Howard, *The Shifting Wind: The Supreme Court and Civil Rights from Reconstruction to Brown* (New York, 1999), 261.

³⁷*Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

University of Missouri or, even worse, integrating its schools, which might "damnify both races."³⁸

The divided nature of the Supreme Court reflected national sentiment regarding African American equal opportunities within education. In an article written shortly after the *Gaines* decision, Leon A. Ransom, a lawyer and a professor at Howard University, noted that "few of the comments [from southern states] indicate a spirit of hostility" toward the ruling but that most legislatures were looking for ways to avoid the actual integration of their universities.³⁹ Moreover, Ransom pointed out that the case tested the justices' interpretation of the Fourteenth Amendment and specifically the *Plessy* doctrine of "separate but equal." The Court had to decide what equal protection actually meant and, more specifically, whether *Plessy* said that it was the duty of the individual state to provide equal facilities or if that duty could be passed over to another state. Ultimately, the Court decided that it was the duty of each individual state to ensure that equal graduate facilities were provided for both races.

The Supreme Court decision held potentially far-reaching implications for the entire South. Not one southern state provided graduate education facilities for African Americans. Technically, now all state universities could be in breach of the *Gaines* decision. The day after the ruling, NAACP executive secretary Walter White issued a statement in which he said the NAACP was "delighted" with the decision, and he discussed the organization's aims in their continuing battle for equal educational opportunities for African Americans.⁴⁰ The same day, the *New York Times* reported the Supreme Court decision on its front page, including a statement by Charles Houston, who said the decision "completely knocked out" the use of out-of-state scholarships in the border and southern states.⁴¹

On December 30, 1938, the University of Missouri asked the U.S. Supreme Court to reconsider its decision on economic grounds. The university's lawyers claimed that the ruling left Missouri with only the options of either closing its universities to prevent integration or paying vast sums to create African American graduate schools that were substantially equal to the

³⁸*Ibid.*

³⁹Leon A. Ransom, "Education and the Law: Aftermath of the *Gaines* Decision," *The Journal of Negro Education* 8:2 (April 1939): 244-46.

⁴⁰Statement By Walter White, December 13, 1938, NAACP Papers, part 3, series A, reel 24, frames 1055-56.

⁴¹"Court Backs Negro on Full Education," *New York Times*, December 13, 1938.



Charles H. Houston, above, served as special counsel to the NAACP in the *Gaines* case. (Courtesy of the Library of Congress)

white professional schools.⁴² On January 3, 1939, the Supreme Court refused to rehear the case. The state legislature then began to formulate plans to evade the decision.⁴³ In early February, John Taylor, a member of the Missouri General Assembly and chairman of the House Appropriations Committee, introduced a bill to amend the Lincoln University Act of 1921. The bill proposed to give power to the board of curators at Lincoln to "reorganize" the university to provide equal educational opportunities to those at the University of Missouri.⁴⁴ House Bill 195 (known as the Taylor Bill) passed the state senate on April 19 and was signed into law by Governor Stark on May 4.⁴⁵ The bill not only gave power to the board of curators to enlarge Lincoln, but it also appropriated \$200,000 toward the expansion of necessary buildings, which in turn was intended to facilitate the development of available courses. The maneuver was the legislature's attempt to evade the *Gaines* ruling while still remaining within the boundaries of the law. The bill was passed before *Gaines* returned to the state supreme court. This meant that the University of Missouri could use the Taylor Bill to demonstrate that Lincoln would indeed have a separate but equal law school before the beginning of the following academic year, and that therefore Gaines would not need to be admitted to the University of Missouri law school.⁴⁶

The Supreme Court of Missouri heard the *Gaines* case on May 22, 1939, and Judge J. A. Leedy remanded it back to the county court of Boone in August. Judge Leedy noted that since the U.S. Supreme Court's decision, the Missouri legislature had enacted the Taylor Bill. A resolution had subsequently been passed by Lincoln's board of curators to establish a law school by September 1, 1939. The case was sent back to Boone County Court to assess the actual degree of equality between the law schools at Missouri and Lincoln. If the lower court found that the two schools were not substantially equal, the Univer-

⁴²"University of Missouri Asks United States Supreme Court to Reconsider *Gaines* Case," *Columbia Evening Missourian*, December 30, 1938.

⁴³"Court Refuses to Reconsider *Gaines* Case," *Columbia Evening Missourian*, January 3, 1939.

⁴⁴"Bill Proposed Reorganization of Lincoln University to Meet Supreme Court Ruling," *The Kansas City Star*, February 3, 1939.

⁴⁵"Lincoln U. Expansion Bill Sent to Stark," *St. Louis Post-Dispatch*, April 19, 1939, and "Lincoln U. Equality Bill Signed By Stark," *St. Louis Globe Democrat*, May 4, 1939.

⁴⁶Larry Grothaus, "'The Inevitable Mr. Gaines': The Long Struggle to Desegregate the University of Missouri, 1936-1950," *Arizona and the West* 26:1 (Spring 1984): 26.

sity of Missouri would be forced to accept Gaines' application for admission.⁴⁷

Missouri's African American population disapproved of the state's actions in trying to defy the Supreme Court decision. Many believed that it was not financially viable to spend limited resources on keeping just a few African American students from attending the University of Missouri.⁴⁸ Nathan Young, editor of the African American newspaper the *St. Louis American*, wrote a letter to Walter White in which he called the provisional Lincoln Law School a "paper school." Young claimed that the money appropriated by the Missouri legislature was simply being used to quiet protest in the African American community rather than going directly to expanding Lincoln as it was supposed to.⁴⁹ An editorial in New York's *Amsterdam News* attacked the creation of a "mushroom" law school at Lincoln as violating the U.S. Constitution because it could not possibly match the University of Missouri Law School. Moreover, the editorial pointed out that if the "separate but equal" law school were approved by the local courts, it would undermine *Gaines*, because presumably other southern states would quickly follow suit and create only a façade of equal higher education facilities.⁵⁰ The final decision in the *Gaines* case was thus highly anticipated, since it would set the pattern for what would happen across the South in higher education.

Depositions were taken on October 10, 1939, to assess whether the new law school at Lincoln was equal to that of the University of Missouri. As William Taylor, the newly appointed dean of the law school, testified, the school was not at the Jefferson City campus of Lincoln University but in St. Louis. This meant that its students did not have the advantage of ready access to the state supreme court's library in Jefferson City. Nor did they, being separated from the main campus, feel as if they were integrated into the wider university. William Taylor (who had previously been dean of the law school at Howard University) gave the most in-depth deposition, in which his education and experience were discussed, as were the size and adequacy of the law school building. Nineteen students were attending the law school, all in their first year, with four members of academic staff, only one of whom had any significant teaching

⁴⁷Missouri Supreme Court: Opinion at Rehearing, NAACP Papers, part 3, series A, reel 15, frames 0097-0102.

⁴⁸Sawyer, "The Gaines Case," 287-88.

⁴⁹N.B. Young, Jr. to Walter White, 31 August 1939, NAACP Papers, part 3, series A, reel 15, frames 0217-19.

⁵⁰"Evading the Law," *The Amsterdam News*, September 9, 1939.

experience.⁵¹ Charles Houston sought to use the deposition to prove that the new law school was in no way equal to that of the University of Missouri, pressing Judge Dinwiddie to order the university to admit Gaines to its law school. However, on the second day of depositions, in a dramatic and wholly unexpected development, Houston informed the judge that the plaintiff, Lloyd Gaines, was missing.⁵²

"I WISH I WERE JUST A PLAIN, ORDINARY MAN
WHOSE NAME NO ONE RECOGNIZED"⁵³

After the Supreme Court decision in December 1938, it had been of little necessity for the NAACP to be in regular contact with Lloyd Gaines. There was a lapse of seven months between his last known movements and the NAACP's realization that he had disappeared. Once the NAACP discovered that Gaines was missing, it advertised in local and national newspapers in a vain attempt to find him. The circumstances of Gaines' disappearance have been contested ever since, and a variety of conflicting accounts and interpretations have emerged.

Professor John R. Howard, in his monograph on the role of the Supreme Court in civil rights, claims that Gaines went missing in July 1938.⁵⁴ Howard bases this evidence on the NAACP papers, which contain a letter from Sidney Redmond, the local NAACP lawyer, to Charles Houston, stating that Gaines' family had not heard from him in a month and that his brother believed he had been kidnapped.⁵⁵ While Howard's assessment of *Gaines* is the most detailed overview of the case in a survey of the early civil rights era, there is evidence to prove that Gaines actually went missing about a year later than Howard suggests.

The last known moments before Gaines' disappearance were documented by Lucile Bluford, an African American journalist who was an editor of the *Kansas City Call* and who knew Gaines personally. According to an article she wrote twenty years after Gaines' disappearance, Gaines had spoken at a local

⁵¹Depositions of Witnesses, NAACP Papers, part 3, series A, reel 24, frames 1047-1116.

⁵²Kelleher, "The Case of Lloyd Lionel Gaines," 268.

⁵³Lloyd Gaines to Callie Gaines, 3 March 1939.

⁵⁴Howard, *The Shifting Wind*, 262.

⁵⁵Redmond to Houston, 13 July 1938, NAACP Papers, part 3, series A, reel 14, frame 0987.

NAACP meeting on April 27, 1939, in Kansas City and had left for Chicago the next day, with the intention of staying just a few days. Bluford claims to have accompanied him to the train station and watched him board the train to Chicago.⁵⁶ However, the dates do not match up with dates presented by others who claim that Gaines actually disappeared in March, one month earlier. It is possible that Bluford simply remembered the chronology of events incorrectly and that she actually meant February 1939, but even this does not match with Gaines' own account of when he left Kansas City.

The Lloyd L. Gaines Digital Collection on the University of Missouri's website contains a number of letters between Gaines and his family throughout his involvement with the NAACP case.⁵⁷ It contains the last known letter written to his mother, Callie Gaines, on March 3, 1939, from Chicago. In the letter, Gaines explains that he left his job in St. Louis because there were "illegal tricks of the trade being practiced" (he worked at a gas station that was selling poor quality gas at inflated rates), and the job was too demanding, so he moved to Chicago in search of work. Gaines also mentions his time in Kansas City, where he talked at meetings and a school assembly, but, since he could not find any paid work, he traveled to Chicago late Monday, February 27. In the letter, Gaines writes that he had paid for a room at the Y.M.C.A until March 7 and that if he still had not found a job he would "make other arrangements." He told his mother not to worry if he did not contact her for a while. The letter is very melancholic in tone. Gaines mentions the ongoing litigation and that he was still receiving recognition for the case from African Americans who believed it was a "great and noble . . . idea." But those people, Gaines writes, did not understand that the case was still being processed and that he had yet to be admitted to the University of Missouri. He told his mother that he wished he were not still fighting the case and that he yearned to be "just a plain, ordinary man" again.⁵⁸ The letter lends much to the theory that Gaines simply chose to disappear to avoid the case and the surrounding publicity that came with it.

In a recent essay, Douglas O. Linder, professor of law at the University of Missouri-Kansas City, elaborates on the details of Gaines' time in Chicago. Once he had run out of money and could no longer stay at the Y.M.C.A., Gaines moved in with

⁵⁶Lucile H. Bluford, "The Lloyd Gaines Story," 246.

⁵⁷Lloyd L. Gaines Digital Collection, <http://digital.library.umsystem.edu/cgi/t/text/text-idx?page=home;c=gnp>.

⁵⁸Lloyd Gaines to Callie Gaines, 3 March 1939.

fraternity brothers of Alpha Phi Alpha. A friend of Gaines claims that he said he "might not go to law school at the University of Missouri." Gaines' mother, Callie Gaines, apparently backs up this idea, stating that she did not believe her son ever "intended to go there." According to Linder, sometime after the last known letter from Gaines, he in fact sent a postcard to his mother that said, "Goodbye, if you don't hear from me anymore, you'll know I'll be alright." Shortly after, he left the fraternity house to buy stamps and was never seen again.⁵⁹ This appears to be the most concise analysis of Gaines' last moments but sheds precious little light on why he actually disappeared.

Another theory has been put forward by Sidney Redmond who, in a 1970 interview, stated that he had "heard reports" of "a certain editor in Missouri" who had paid Gaines to move to Mexico in order to end the litigation.⁶⁰ In January 1940, Redmond wrote to Walter White with information that Lucile Bluford had given him regarding the possible whereabouts of Gaines. According to Bluford, a student at Lincoln's law school had received a postcard from Mexico, purportedly written and sent by Lloyd Gaines, who, the student claimed, had said he was "having a jolly time on the [t]wo thousand dollars he had been given to leave the country."⁶¹ Although the student never managed to produce the postcard for inspection, White (according to Douglas O. Linder) seemed fairly convinced that Gaines could have gone to Mexico. Indeed, the NAACP looked into the Mexico theory and, "through friends" there, heard that Gaines had "been seen . . . and had an ample supply of money."⁶² But Gaines was never actually tracked down. Other theories regarding his disappearance have included stories that he was murdered by extreme segregationists or the Ku Klux Klan, that he was lynched (by any number of possible suspects), and that he was teaching in New York.⁶³

According to journalist Chad Garrison of the *River Front Times*, the FBI never opened a case on Gaines' disappearance,

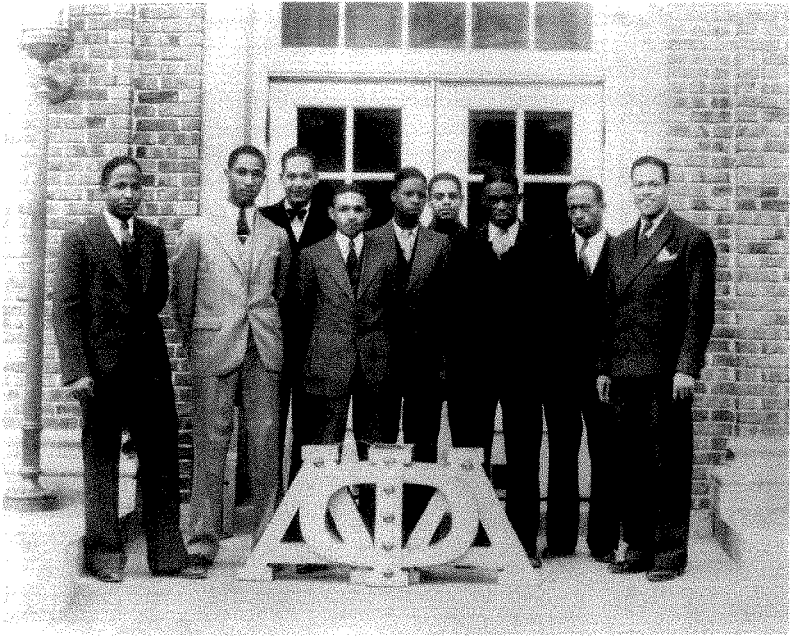
⁵⁹Douglas O. Linder, *Before Brown: Charles H. Houston and the Gaines Case*, <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/houstonessay.html>.

⁶⁰"Interview with Sidney Redmond, July 6, 1970," *Western Historical Manuscript Collection*, <http://www.umsi.edu/~whmc/guides/t025.htm>.

⁶¹White to Redmond, 23 January 1940, NAACP Papers, part 3, series A, reel 15, frame 0236.

⁶²Linder, *Before Brown*, 15.

⁶³*Ibid.*, 15–16; With All Deliberate Speed: The Legacy of *Brown v. Board*, "Strategy," <http://www.brownvboard.info/strategy.htm>; Chad Garrison, "The Mystery of Lloyd Gaines," *The River Front Times*, April 4, 2007; M. Zapp, "Who Was Lloyd Gaines?" *Vox Magazine*, December 21, 2006, and "Interview with Sidney Redmond, July 6, 1970."



In March 1939, Lloyd Gaines, second from the left, stepped out of the Alpha Phi Alpha fraternity house in Chicago to buy postage stamps and was never seen again. (Courtesy of the University of Missouri Law Library)

and the NAACP's request in 2007 was the first investigation they had made into his disappearance.⁶⁴ Douglas O. Linder notes how his family never reported Gaines as a missing person in part because, as one of his brothers claims, Gaines "always kinda' kept himself to himself," and the family did not think it particularly suspicious that he had not been in contact.⁶⁵ However, George Gaines, Lloyd's nephew, confirmed in a recent interview with the author of this article that there was indeed an FBI file open on his uncle, and the family has never declared him dead.⁶⁶ It is difficult to believe that the NAACP did not contact the police and the FBI regarding Gaines since, had he been found murdered, the case would have taken more prominence and would have given the NAACP more ammunition to fight racism in America.

⁶⁴Garrison, "The Mystery of Lloyd Gaines."

⁶⁵Linder, *Before Brown*, 15.

⁶⁶George Gaines, email message to author, 27 April 2010.

In 2007, when the NAACP called on the FBI to reopen the case in an attempt to verify or dispel such rumors,⁶⁷ this request was denied. My own contact with the Kansas City FBI reveals that the case has never been reopened. After subsequently filing a Freedom of Information Act (FOIA) request to view the files on the Lloyd Gaines case, I learned that the FBI had destroyed them on March 1, 1996. Because the files were destroyed (as part of the U.S. Department of Justice's "routine records retention schedules and departmental regulation"), the FBI and the U.S. Department of Justice have been unable to clarify if the files did in fact relate to Gaines and, if so, what information they held.⁶⁸ Furthermore, it appears, from the length of time it took to process the FOIA request, that Gaines' FBI file has never before been requested, so the details will never be known.

NAACP lawyers only realized that their client was missing when he failed to appear for the deposition in the Boone County Court regarding the equality of the newly opened law school at Lincoln. Despite extensive attempts, including advertisements in national and local papers, the NAACP failed to locate Gaines. Without a plaintiff, the case could not continue. On December 27, 1939, Charles Houston wrote to Sidney Redmond telling him that they would have to drop the case. On January 15, 1940, *Gaines* was dismissed by Boone County Court.⁶⁹

At the same time, Houston wanted it to be widely known that the NAACP intended to follow up *Gaines* with another admissions case that had arisen in Missouri.⁷⁰ Even before the news of Gaines' disappearance, the NAACP was pursuing another higher education case in Missouri, with Lucile Bluford as plaintiff. Weeks after the U.S. Supreme Court handed down its decision in *Gaines*, Bluford applied to the School of Journalism at the University of Missouri, but she was denied admission on January 30, 1939, when the registrar realized that she was African American.⁷¹ Bluford had been in touch with the NAACP throughout the *Gaines* case in her capacity as a journalist, but

⁶⁷Ali Gabel, "Group Calls to Reopen *Gaines* Case," *Columbian Missourian*, March 4, 2007.

⁶⁸David. M. Hardy to author, 26 May 2010; Janice Galli McLeod to author, 27 September 2010.

⁶⁹Redmond to Roy Wilkins, 15 January 1940, NAACP Papers, part 3, series A, reel 15, frame 0235.

⁷⁰Houston to Redmond, 27 December 1939, NAACP Papers, part 3, series A, reel 15, frames 0228–32.

⁷¹Robert McLaran Sawyer, "The *Gaines* Case: Its Background and Influence on the University of Missouri and Lincoln University 1936–1950" (Ph.D. dissertation, University of Missouri, 1966), 202–205.

she had not contacted Houston about her own case until January 25, 1939, for advice about how to proceed.⁷² S.W. Canada, the registrar at the University of Missouri, told Bluford that since *Gaines* was before the courts, the university would not alter its established policy of exclusion unless directed to by the state legislature or the courts.⁷³ Like Gaines, Bluford was sent to Lincoln University to pursue her education.

Bluford's case did not formally begin until October 1939, after it was discovered that Gaines was missing. Houston filed for a writ of mandamus on October 13 to compel the University of Missouri to admit Bluford to the School of Journalism.⁷⁴ The case proceeded in much the same way that *Gaines* had. The University of Missouri's lawyers claimed that the plaintiff should have applied to Lincoln University, since it was that institution's responsibility to provide an education for Missouri's African American citizens. Judge Dinwiddie once again found in favor of the University of Missouri, citing the fact that Bluford had not applied to Lincoln for her course.⁷⁵

The *Bluford* case was appealed in the Missouri Supreme Court in July 1941. The central issue for the University of Missouri was that Bluford had not applied to Lincoln University, where the board of curators, under the Taylor Bill of 1939, was required to establish parallel, equivalent courses at Lincoln to those at the University of Missouri. The Missouri Supreme Court decided that Bluford should be admitted to the University of Missouri only if Lincoln failed to establish a school of journalism in a "reasonable time."⁷⁶ This marked the end of the case and the NAACP's immediate attempts to integrate Missouri's higher education facilities.

In 1941, a journalism course was offered at Lincoln, but Bluford did not enroll because she only wanted to attend the University of Missouri.⁷⁷ The Second World War affected enrollment rates at both the University of Missouri and Lincoln University to the extent that the journalism school at the Uni-

⁷²Linder, *Before Brown*, 16.

⁷³Statement by Registrar Canada, NAACP Papers, part 3, series A, reel 24, frame 0535.

⁷⁴Petition for Writ of Mandamus, NAACP Papers, part 3, series A, reel 24, frames 0709-17.

⁷⁵Opinion of the Court, NAACP Papers, part 3, series B: Legal Department and Central Office Records, 1940-1950, reel 13, frames 0170-79.

⁷⁶Supreme Court of Missouri Decision, NAACP Papers, part 3, series B, reel 12, frames 1135-45.

⁷⁷Kelleher, "The Case of Lloyd Lionel Gaines," 270.

versity of Missouri was suspended in 1941.⁷⁸ The war also had a negative impact on the finances of Missouri, reducing state income and limiting available funds for higher education at both white and African American institutions.⁷⁹ This hurt Lincoln University most, since it was already struggling to provide courses, both undergraduate and graduate, equal to those of the University of Missouri. One proposal was to close both the law and journalism schools at Lincoln in the summer of 1944 if adequate funds were not available to provide students with a decent education.⁸⁰ The journalism school at Lincoln was the first to close in February 1944. With the aid of the state attorney general, Democrat Roy McKittrick, and Governor Forrest Donnell, the University of Missouri accepted a plan to extend its journalism school to its Jefferson City campus to teach African American students.⁸¹ This meant that the journalism teachers at Lincoln lost their jobs.⁸²

The system of segregation in Missouri began to crumble in the second half of the 1940s due to a combination of pressures created by the *Gaines* and *Bluford* litigation and also the decline in available state funding for higher education. In 1945, a new state constitution presaged the changes to come by allowing schools to integrate if they so desired.⁸³ Four higher education facilities—Eden Theological Seminary, the University of Kansas City, St. Louis University, and Washington University—as well as all Catholic elementary and high schools in Missouri began the process of integration in 1947.⁸⁴

None of these institutions faced major disruption or opposition to desegregation, and the developments placed further pressure on the legislature to completely outlaw segregation. In 1948, the Missouri Equal Rights Committee, a group of congressmen from the Missouri House of Representatives, was established with the initial aim of making higher education fairer for African American students. The committee requested that a representative of the University of Missouri attend a meeting to discuss the situation, and the university sent Allen McReynolds, the president of the board of curators. Together

⁷⁸Brigham, "The Education of the Negro in Missouri," 233, and Grothaus, "The Inevitable Mr. Gaines," 30.

⁷⁹Sawyer, "The *Gaines* Case," 306.

⁸⁰*Ibid.*, 309–10.

⁸¹*Ibid.*, 315–22.

⁸²Grothaus, "The Inevitable Mr. Gaines," 31–32.

⁸³Missouri Constitution, Article 9, section 2, 1945.

⁸⁴Grothaus, "The Inevitable Mr. Gaines," 34.

McReynolds and the committee proposed a policy to the general assembly that would effectively mean full compliance with the *Gaines* decision. They wanted to amend legislation that prohibited state and public universities from admitting African American students. However, this was not a request for sweeping legislation that would outlaw segregation completely. Rather, it would allow universities to admit African Americans when Lincoln University could not provide the desired education.⁸⁵

House Bill 182 proposed the policy change to the state constitution that would remove race from the requirements to enter a university. It passed the Missouri House of Representatives but was defeated in the state senate, in part because of an apparent race riot that arose in St. Louis when a swimming pool there was integrated. The riot caused the senators to halt the passage of the higher education bill.⁸⁶

It ultimately required the efforts of the NAACP and new plaintiffs to break the color barrier in higher education in Missouri. In early 1950, three African Americans, Gus T. Ridgel, George Horne, and Elmer Bell, Jr., applied to the University of Missouri. They were represented by Sidney Redmond and local NAACP lawyers Henry Epsy and Robert Witherspoon. The case came before Cole County Court in June 1950. Aware that it was now required by state law to admit African American students, the university asked the court to hand down a ruling that would go beyond the case in question to establish the general principle that African American students whose courses were not offered at Lincoln could attend the University of Missouri.⁸⁷ Under the circumstances, Judge Samuel Blair took little time handing down a ruling that permitted the University of Missouri to admit African American students.⁸⁸ Although the state did not change its policy of segregation in higher education, desegregation did effectively begin to occur on a limited basis at the University of Missouri because of the ruling.⁸⁹

Blair's decision was influenced by the lack of funds at Lincoln, combined with the earlier court decisions in *Gaines* and in *Sipuel*, a Supreme Court ruling in 1948. In a case paralleling *Gaines*, Ada Louis Sipuel, a graduate of the State College for Negroes in Langston, Oklahoma, applied for admission to the law school at the University of Oklahoma in 1945 on the basis that there was no separate but equal school in the state

⁸⁵Sawyer, "The *Gaines* Case," 323–24.

⁸⁶Grothaus, "The Inevitable Mr. Gaines," 37.

⁸⁷Sawyer, "The *Gaines* Case," 328.

⁸⁸*Ibid.*

⁸⁹Grothaus, "The Inevitable Mr. Gaines," 39–42.

for her to attend. In early 1948, the Supreme Court heard her case and decided in her favor. Much of the ruling was based on *Gaines*, echoing the earlier findings in that case that the state was obliged to provide equal educational opportunities for African American students when it did the same for "any other group."⁹⁰ The regents of the University of Oklahoma followed the same path as Missouri by establishing an African American law school to avoid admitting Sipuel. However, this law school was open for only eighteen months, in part because of other litigation going through the courts at that time and the realization that it was not feasible to create "separate but equal" facilities for all courses available at the University of Oklahoma. Sipuel was admitted to the University of Oklahoma's law school in 1949.⁹¹ The developments in Missouri and Oklahoma pointed the way to other imminent court rulings that would end segregation in higher education in the South.

CONCLUSION

Although the Supreme Court ruled in favor of Sipuel in 1948, it did not specifically require the integration of the University of Oklahoma. It took another student, George McLaurin, to force the university to admit an African American student. McLaurin was an African American teacher who wanted to complete a Ph.D. in education, but there was no such course for him at an African American higher education institution in the state. McLaurin sued the University of Oklahoma and was admitted to the course with little fanfare, mainly due to the acknowledged lack of alternatives within the state. Nevertheless, on entering the university he discovered that segregation still operated there. He had to sit separately from the other students in the classroom, he was forced to eat at a separate time and a separate table in the university cafeteria, and he had his own separate desk in the university library. The NAACP objected to these arrangements, and the Supreme Court ruled in 1950 that the actions of the University of Oklahoma were unconstitutional, since they denied George McLaurin equal protection of the laws as guaranteed by the Fourteenth Amendment.⁹²

On the very same day that the Supreme Court ruled in the *McLaurin* case, it also ruled in the Texas case of *Sweatt v.*

⁹⁰*Sipuel v. Board of Regents of Univ. of Okla.*, 332 U.S. 631 (1948).

⁹¹Mark V. Tushnet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950* (Chapel Hill, NC, 1987), 120-23.

⁹²*McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

Painter. In 1946, postal worker Herman Sweatt had applied to the University of Texas to study law, but he was denied admission. In the lower courts, the judge ruled that Texas must create a law school that Sweatt could attend within six months. In response, Texas established a temporary school for Sweatt that was equal to the law school at the University of Texas in terms of its physical condition and facilities. But the NAACP, in an attempt to push the Supreme Court further to overturn the *Plessy* doctrine of separate but equal, argued that the separate law school provided by the University of Texas was not in fact equal because of a variety of "intangible factors," such as the equivalent reputations of the schools and their alumni. All of these factors, the NAACP contended, contributed to the educational experience at the university and the ultimate success of its students.⁹³ The Supreme Court ruled in favor of Sweatt, stating that such intangible factors were indeed a substantial part of the inequality of the separate schools provided by Texas and other states. The Court ordered Sweatt to be admitted to the University of Texas.⁹⁴

Sweatt narrowed the Supreme Court's interpretation of *Plessy*'s separate but equal doctrine to such an extent that it appeared that the only viable alternative left for universities was to desegregate. This led the NAACP to abandon its previous legal strategy that insisted on "separate but equal" facilities and to instead directly challenge *Plessy* by demanding complete desegregation. To do this, the NAACP took on five elementary education cases, which all came before the Supreme Court in 1952 under the title of *Brown v. Board of Education*. In 1954, the case led to a landmark ruling by the Supreme Court that declared that segregated education was unconstitutional and a violation of the equal protection clause of the Fourteenth Amendment. As in the higher education cases, the Court cited factors beyond the physical equality of schools, pointing to the impact of segregation on African American children's "hearts and minds" and stressing the psychological damage of segregated education.⁹⁵

However, *Brown* only outlawed segregation in elementary and high school education. It was not until 1956 that the Supreme Court, finally, extended the ruling to universities in *Florida ex rel. Hawkins v. Board of Control*.⁹⁶ Virgil Hawkins, an African American veteran of World War II, applied to law

⁹³Tushnet, *The NAACP's Legal Strategy*, 126-27.

⁹⁴*Sweatt v. Painter*, 339 U.S. 629 (1950).

⁹⁵*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

⁹⁶*Florida ex rel. Hawkins v. Board of Control*, 350 U. S. 413 (1956).

school at the University of Florida in 1949 but was denied admission. His case went before the Florida State Supreme Court seven times and was appealed to the U.S. Supreme Court four times. After the U.S. Supreme Court handed down its implementation order for the *Brown* decision in 1955, the case was remanded back to the state supreme court, which refused to admit Hawkins immediately but instead investigated the possible outcomes of his admittance. When the case again reached the U.S. Supreme Court, the justices decided that their decree of "all deliberate speed" in the *Brown II* ruling was not applicable to higher education and that Hawkins should be admitted to the university based purely on the *Brown I* ruling.⁹⁷ Nevertheless, the Florida Supreme Court simply ignored this ruling, in line with the development of "massive resistance" to the implementation of *Brown* in schools across the South. Florida continued to deny Hawkins immediate admittance, and, just like Gaines, he was never admitted to the University of Florida. After nine years of litigation, Hawkins gave up and completed his education at Boston University instead.⁹⁸

Hawkins' attempt to be admitted to the University of Florida finally brought the question of desegregation in higher education to a resolution. Of course, the process had been set in motion by Lloyd Gaines in 1935. *Gaines* was the first U.S. Supreme Court ruling giving African Americans the right to study at a previously all-white university, and, although Missouri continued to evade the decision, it was a milestone in the NAACP's struggle to desegregate education. Whether Gaines was able to witness and appreciate the legacy of his actions remains an unsolved mystery and arguably still the FBI's coldest case of all.

⁹⁷*Ibid.*

⁹⁸Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford, UK, 2004), 256–58.

UPHOLDING CULTURE AND LANGUAGE IN GUADALUPE, ARIZONA: BILINGUAL EDUCATION ACTIVISM IN THE 1970S

LINDSEY PASSENGER WIECK

U ntil the mid 1970s, the Veda B. Frank Elementary School in Guadalupe, Arizona, whose students were predominantly Mexican American and Yaqui, remained racially and ethnically segregated. Beginning in 1970, the citizens of Guadalupe, which was part of the Tempe Elementary School District, challenged the school district to improve their children's schools. Guadalupanos targeted the district's discriminatory special education programs and its monolingual policies and practices. Using grassroots organization and litigation, they challenged the hegemonic national ideal that citizenship requires being "American" and speaking English. Guadalupanos asserted the need for public schools in Arizona to respect the cultural and linguistic diversity of their students. Guadalupano activism not only challenged national policies of monolingualism and the assimilative goals of public education, but it also improved Guadalupano students' access to an equitable education.

This case study examines how Guadalupanos organized for reform in the Tempe Elementary School District. Starting in 1970, Guadalupanos advocated for changes in the school district, demanding that the schools consider a student's home

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language in the special education assessment and placement processes. While this grassroots activism was an important starting point for Guadalupanos' activism, it was not enough on its own to change district practices. Guadalupanos furthered their demands with a lawsuit, *Guadalupe Organization v. Tempe Elementary School District* (1972),¹ which they settled successfully in 1972. This process of litigation, along with grassroots activism, enabled Guadalupanos to make meaningful changes to the Frank School. The settlement altered local district practices and Arizona laws regarding special education assessment and placement, marking increased institutional acknowledgment of the educational rights of non-native English-speaking students.² *Guadalupe*, along with *Diana v. State Board of Education* (1970)³ and *Covarrubias v. San Diego Unified* (1971),⁴ established and defined the language rights of non-English-speaking students in regard to special education placement. Attesting to the national significance of *Guadalupe*'s activism, special education textbooks and guides still define placement and assessment policies and practices in reference to *Diana*, *Covarrubias*, and *Guadalupe*.⁵ The Guadalupanos' educational activism and their momentous settlement changed how Americans thought of non-English speakers and education in Tempe Elementary School District, Arizona, and the nation.

While *Guadalupe* changed policies and practices at the state and national levels, Guadalupanos felt its greatest effects locally. In *Guadalupe*, litigation and community organization worked in tandem. Guadalupanos grounded their lawsuit on grassroots activ-

¹*Guadalupe Organization, Inc. v. Tempe Elementary School District*, No. 3, CIV 71-435 (Dist. of AZ 1972), box 30, folder 10, Cecilia Teyechea Denogean de Esquer Papers (CTDEP), Chicano Research Collection (CRC), Special Collections, Arizona State University (SCASU) [hereinafter cited as *Guadalupe Organization*, CIV 71-435]; Jerry Levine, *Arizona Settlement of Special Education Lawsuit*, January 24, 1972, par. 4, 5i, box 30, folder 10, CTDEP, CRC, SCASU.

²Tempe Elementary School District Board of Trustees Minutes, box 30, folder 7, CTDEP, CRC, Special Collections, Luhr's Reading Room, Hayden Library, SCASU; Socorro Hernández Bernasconi, "The 'Why' of the *Guadalupe Organization Special Education Lawsuit*," 1973-77, CRC, SCASU, 16.

³*Diana v. State Board of Education*, Civil Action No. C-70-37 (N.D. Calif. 1970).

⁴*Covarrubias v. San Diego Unified School District*, Civil Action No. 70-394-T (S.D. Calif. 1971) [hereinafter cited as *Covarrubias*, Civil Action No. 70-394-T].

⁵Elaine Fletcher-Janzen and Cecil R. Reynolds, *Concise Encyclopedia of Special Education: A Reference for the Education of the Handicapped and Other Exceptional Children and Adults*, 2^d ed. (New York, 2004), 316-17; Susan Jacob and Timothy S. Hartshorne, *Ethics and Law for School Psychologists*, 4th ed. (New York, 2003), 134. Similarities in language suggest that *Guadalupe* also influenced the Education for All Handicapped Children Act (1975) and the Individuals with Disabilities Education Act (1990).

ism, and their success with the settlement encouraged the continuation of community organization and political engagement. *Guadalupe* mobilized Guadalupanos, educated them, refined their definitions of citizenship and equal educational opportunity, and taught them to stand up for these new conceptualizations and their rights. This litigation also provided Guadalupanos an opportunity to de-stigmatize their languages and cultures, while they taught their children and grandchildren traditional customs and pride in their cultural and linguistic identity.

Guadalupanos' activism, both through litigation and grassroots endeavors, led to an understanding of their efforts as a form of cultural citizenship, because they demanded the inclusion of their culture and language in schools as a guaranteed right of citizenship. Citizenship is membership in a political community, and this membership involves rights and responsibilities.⁶ Cultural citizenship incorporates the attempt to attain full membership in the American nation-state, while also asserting that one need not revoke his/her language or culture to become an American citizen. William Flores and Rina Benmayor, humanities and cultural studies scholars, explain cultural citizenship as a perspective that allows for the interpretation of "cultural processes that result in community building and political claims raised by marginalized groups on the broader society."⁷ In referring to cultural citizenship, historian Eric Meeks explores particularly how the demands of Chicano activists went beyond a fight for legal rights to "a cultural and political struggle for dignity, identity, 'belonging, entitlement, and influence.'"⁸ In relation to cultural citizenship, one can examine how ethnic activists demanded "new" rights and redefined citizenship through these demands. This concept connects the realization of legal inclusion with cultural rights and processes. The idea of cultural citizenship serves as a useful tool in examining how the Guadalupanos' fight for cultural and linguistic rights was not only an assertion of legal citizenship, but also a reconceptualization of citizenship.

Historians study citizenship and culture and language rights together, because, often in the nation-state, the dominant group has utilized language to mark its unique

⁶Stuart Hall and David Held, "Citizens and Citizenship," in *New Times: The Changing Face of Politics in the 1990s*, ed. Stuart Hall and Martin Jacques (London, UK, 1989), 175.

⁷William V. Flores and Rina Benmayor, eds., *Latino Cultural Citizenship: Claiming Identity, Space, and Rights* (Boston, 1997), 15.

⁸Eric V. Meeks, *Border Citizens: The Making of Indians, Mexicans, and Anglos in Arizona* (Austin, TX, 2007), 181.

cultural identity and to maintain hegemony within the nation.⁹ The school is an ideal location in which to examine processes of citizenship, acculturation, and bilingualism, because assimilation has been a common function of schools for more than a century. Because of this assimilative function, schools can reveal much about the dominant national conception of citizenship, especially as it pertains to language and culture.

The Tempe Elementary School District used testing procedures that made two assumptions about students' linguistic capacities: (1) Tempe School District assumed that all children entering public schools spoke English, and (2) if these students did not speak English, the school district assumed that mental retardation caused the language deficit. These beliefs reflect an understanding of citizenship that idealized a monolingual, homogenous nation. Arguing that the assumed links between citizenship, intelligence, and the English language did not actually exist, Guadalupanos fought for reconceptualization of citizenship that recognized the diverse multilingual, multicultural American citizenry. When they successfully settled *Guadalupe*, Guadalupanos gained educational rights for their children by creating a binding legal document that required Tempe Elementary School District and the state of Arizona to change their policies and practices. Using this lens of cultural citizenship, historians can see not only the ways in which the law acted historically against those with variant cultures and languages, but also how these communities attempted to gain full citizenship rights without discarding their cultural identities.

Throughout the 1970s, Guadalupanos asserted that the ability to be bilingual was a civil right and thus a right that schools needed to respect. They worked tirelessly to improve Frank School, hoping to ensure their children's success and sustain the community's identity. The mutually dependent processes of grassroots activism and litigation enabled Guadalupanos to preserve their cultures and languages and to implement educational reforms in Tempe Elementary School District.

⁹Clare Mar-Molinero, *The Politics of Language in the Spanish-Speaking World: From Colonisation to Globalisation* (London, UK, 2000), 3–15. Mar-Molinero's citations include Peter Alter, *Nationalism* (London, UK, 1991); Michael Billig, *Banal Nationalism* (London, UK, 1995); and Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London, UK, 1991).

HISTORICAL CONTEXT

Bilingualism and language rights have a long, contested history in the United States. Prior to and during European colonization, many peoples with diverse languages inhabited what would later become the United States, and people needed to cross language barriers to communicate. Bilingual education was common in the United States until the early twentieth century. As the United States grew increasingly diverse, many Americans began to believe that bilingual education was unnecessary and harmful to the creation of a unified nation. Throughout the twentieth century, bilingual education programs cycled between popularity and stigmatization, due to the rise and fall of factors such as xenophobia and immigration. Language rights and bilingual education are still hotly debated after a long history of shifting public opinions.¹⁰

In bilingual education programs, the teacher instructs a non-native-English speaking student, or English language learner, using both the student's vernacular language and English as the means of communication and/or for teaching content in the classroom. Although bilingual education varies in method and form, the two main types of bilingual education are assimilative bilingual education and additive bilingual education. Assimilative bilingual education is a temporary supplemental curriculum that teaches English language learners basic English and orients them to American cultural norms. In theory, these programs enable learners to enter mainstream classrooms quickly. In contrast, additive bilingual education programs are more intensive than those of assimilative bilingual education. These programs aim to teach English, by instructing students in listening, speaking, reading, and writing skills, while also teaching content in students' native languages to ensure that they do not fall behind in their regular studies. Programs that are more intensive include a permanent course of study that enables students to be proficient in two languages (frequently the student's vernacular and English) by teaching content in both languages.¹¹ Often additive bilingual education includes

¹⁰For more on the history of bilingual education, see Carlos Kevin Blanton, *The Strange Career of Bilingual Education in Texas, 1836–1981* (College Station, TX, 2004); Guadalupe San Miguel, Jr., *Contested Policy: The Rise and Fall of Federal Bilingual Education in the United States, 1960–2001* (Denton, TX, 2004); James Crawford, *Bilingual Education: History, Politics, Theory, and Practice*, 4th ed. (Los Angeles, 1999).

¹¹Jonathan D. Haft, "Assuring Equal Educational Opportunity for Language-Minority Students: Bilingual Education and the Equal Educational Opportunity Act of 1974," *Columbia Journal of Law and Social Problems* 18:2 (1983): 251.

bicultural elements, which blend American culture and students' home cultures into the curriculum.¹² Moreover, additive bilingual education programs frequently integrate best teaching practices that boost students' self-esteem by acknowledging students' unique cultural identities.¹³

To understand the Guadalupanos' educational activism, we first need to review Guadalupe's history and the development of grassroots organizing within the community. Guadalupe is a small town in the Phoenix, Arizona, metropolitan area. The Yaquis and ethnic Mexicans in Guadalupe are primarily the descendants of late nineteenth- and early twentieth-century immigrants.¹⁴ In the late nineteenth century, Yaqui Indians fled debt peonage and violent persecution by the Porfirio Díaz regime in Mexico.¹⁵ They settled as refugees near Tempe and Tucson, and the United States granted them political asylum. Shortly thereafter, in the early twentieth century, Mexican immigration drastically increased in southern Arizona, particularly in the Salt River Valley. Southern Arizona and the Salt River Valley attracted many Mexicans not only because it allowed them to escape the economic and political turmoil caused by the Mexican Revolution, but also because of the availability of jobs picking cotton and other agricultural- and irrigation-related work. In the 1920s and 1930s, ethnic Mexicans settled in and around the original Yaqui settlements, some as landowners

¹²While *multicultural education* refers to the incorporation of three or more cultures, most academic sources use the term *bicultural education* when discussing 1970s educational activism and programs. Because of this tendency, I use this terminology, even though Guadalupanos advocated for the inclusion of both Mexican American and Yaqui culture in schools.

¹³Lesley Wright, "Tribal Schools See Future in Native American Teachers," *The Arizona Republic*, March 14, 2010, <http://www.azcentral.com/news/articles/2010/03/14/20100314native-american-teachers.html>; Jon Allan Reyhner, *Teaching American Indian Students* (Norman, OK, 1992); Haft, "Assuring Equal Educational Opportunity for Language-Minority Students," 250–58; Frank N. Houston, *Culture—A Way to Reading: An Instructional Guide for Use with Yaqui Students* (Tempe, AZ, 1980).

¹⁴Another prominent group of Yaquis today lives on the Pascua Reservation near Tucson. For more on these Yaquis, see Octaviana Trujillo, "A Tribal Approach to Language and Literacy Development in a Trilingual Setting," in *Teaching Indigenous Languages*, ed. Jon Reyhner (Flagstaff, AZ, 1997), 10–21; Octaviana Valenzuela Trujillo, "Yaqui Views on Language and Literacy" (Ph.D. dissertation, Arizona State University, 1991); Sam Aaron Brewer, Jr., "The Yaqui Indians of Arizona: Trilingualism and Cultural Change" (Ph.D. dissertation, The University of Texas at Austin, 1976).

¹⁵The Yaquis refer to themselves as the Yoemem ("the people"), and to their language as "Yoeme." Trujillo, "Yaqui Views on Language and Literacy," 95.

and others as squatters. By the mid 1960s, Mexican Americans made up two-thirds of the community's occupants.¹⁶

Near Tempe, Yaquis purchased land, set up a village, and created cultural institutions, and many worked on irrigation projects in the Salt River Valley. In the 1920s and 1930s, Yaquis and ethnic Mexicans, who often worked and lived near each other, maintained separate identities. Some Yaquis wished to separate themselves from the more recent Mexican immigrants so as not to be stigmatized as Mexicans. Yaquis working in the Salt River Valley lived temporarily in work camps nearby, but as these jobs evaporated in the 1950s and 1960s largely due to technological and transportation developments, most returned to Guadalupe and were surprised to find ethnic Mexicans inhabiting the village they had left.¹⁷

In the 1960s, the town lacked infrastructure, including modern water and utility services, and its houses and buildings were in disrepair. To improve the town's grim conditions, Guadalupeños formed the Guadalupe Health Council in 1960. The Guadalupe Health Council addressed issues of health, safety,

¹⁶Meeks, *Border Citizens*, 77–78, 148, 182.

¹⁷Leah S. Glaser, "The Story of Guadalupe, Arizona: The Survival and Preservation of a Yaqui Community" (M.A. thesis, Arizona State University, 1996), 17–58.



Reflecting the town's Mexican and Indian cultural history, the Yaqui Temple and Our Lady of Guadalupe Church stand side-by-side in Guadalupe, Arizona. (Courtesy of Rose Mary Arriano, town clerk)

and infrastructure in the town and registered Guadalupanos to vote. Guadalupanos modeled the health council on 1950s Mexican American activist organizations like the Community Service Organization, which emphasized voter registration and citizenship training as well as strategies that enabled local communities to decide autonomously which issues to pursue.¹⁸ This style of organizing, which included gatherings in local homes, encouraged full community participation and enabled residents to discuss local issues.¹⁹

The Guadalupe Health Council incorporated as the Guadalupe Organization in 1964. Historian Leah Glaser notes that the Guadalupe Organization was the Guadalupanos' first means of gaining political power and enacting change and improvement in Guadalupe.²⁰ The power of this activism is clear in the Guadalupe Organization's actions: it built a post office, registered voters, set up a voting precinct within the community, provided job counseling, and hired a deputy sheriff for Guadalupe. The organization also created a Neighborhood Youth Program and a Head Start program, instituted a dental clinic, started an adult education and rehabilitation program, established resident ownership of land, and founded the Guadalupe Organization Federal Credit Union.²¹ By 1971, the Guadalupe Organization had 440 dues-paying members who represented many of Guadalupe's households.²²

In the late 1970s, one government source estimated Guadalupe's population to be approximately 2,100—60 percent Mexican American and 40 percent Yaqui.²³ Unfortunately, this statistic did not account for the many Guadalupanos who were of both Mexican and Yaqui lineage. In general, Guadalupanos tended to obtain less education, earn a smaller income, and work more frequently in menial jobs than the average American citizen. In 1970, at least 53 percent of households

¹⁸Ella Varbel, "An Interview with Lauro Garcia," transcript, November 19, 1973, CRC, SCASU, 14; Meeks, *Border Citizens*, 182.

¹⁹Meeks, "Cross-Ethnic Political Mobilization and Yaqui Identity Formation in Guadalupe, Arizona," in *Reflexiones: New Directions in Mexican American Studies*, ed. Neil Foley (Austin, TX, 1998), 87.

²⁰Glaser, "The Story of Guadalupe, Arizona," 73.

²¹Meeks, "Cross-Ethnic Political Mobilization and Yaqui Identity Formation in Guadalupe, Arizona," 87–88.

²²Richard R. Valencia, *Chicano Students and the Courts: The Mexican American Legal Struggle for Educational Equality* (New York, 2008), 143.

²³United States Commission on Civil Rights, *School Desegregation in Tempe, Arizona: A Staff Report of the United States Commission on Civil Rights*, September 1977, <http://www.law.umaryland.edu/marshall/usccr/documents/cr12d4526.pdf>.

in Guadalupe were below the poverty level, and the majority of the labor force worked in farming and industrial jobs.²⁴ In 1971, more than 80 percent of the population that was age twenty-five and over had completed eight or fewer years of school. Generally, Yaquis in Guadalupe had lower incomes and had attended fewer years of school than their Mexican American counterparts.²⁵

The Guadalupe Organization was successful not only in improving the community and increasing its political power, but also in protecting Guadalupe from the growing post-war sprawl of Tempe and Phoenix. Overcoming religious, ethnic, class, and cultural tensions between Mexican Americans and Yaquis, the Guadalupe Organization led Guadalupe to incorporate as a town in 1975. Incorporation prevented Guadalupe from being annexed by Tempe, thus maintaining community autonomy. Ultimately, incorporation enabled Guadalupeños not only to improve their health, safety, standard of living, and educational opportunities further, but also to maintain and protect their languages and cultural identities.²⁶

Tempe, which is adjacent to Phoenix, to the southeast, surrounds Guadalupe, and the juxtaposition of these two areas is stark. Today the modern city of Tempe lies in direct contrast to the neighboring buildings of Guadalupe, many of which are dilapidated. Tempe is a university community, housing the rapidly growing Arizona State University, which contributes to the city's size and diversity. In 1970, racial and ethnic minorities (mostly Mexican Americans) made up 14 percent of Tempe's population of 62,907.²⁷

Guadalupe is in the Tempe Elementary School District No. 3.²⁸ Tempe Elementary School District annexed Guadalupe in 1953. The district had twenty elementary schools, three intermediate schools, and no junior or senior high

²⁴This does not include households consisting of unrelated individuals. Meeks, "The Yaqui of Guadalupe: Strategies of Ethnicity in an Urbanizing Village, 1960-1980" (M.A. thesis, The University of Texas at Austin, 1996), 105-106.

²⁵*Ibid.*, 24.

²⁶For more on Guadalupe and the Guadalupe Organization, see Meeks, "The Yaqui of Guadalupe"; Meeks, *Border Citizens*, 144-54, 183-244; Meeks, "Cross-Ethnic Political Mobilization and Yaqui Identity Formation in Guadalupe, Arizona"; Glaser, "The Story of Guadalupe, Arizona."

²⁷This government source considered Yaquis as Native Americans although they had yet to be officially designated as such at this point. United States Commission on Civil Rights, *School Desegregation in Tempe, Arizona*, 1.

²⁸*Information @ History—Tempe Elementary School District*, n.d., <http://www.tempeschools.org/District.cfm?subpage=165>.

schools.²⁹ In the 1975–76 school year, Tempe Elementary School District had 13,406 students enrolled, 20.2 percent of whom were minority students. Of these minority students, 15.4 percent were Mexican American.³⁰ The faculty was not representative of the student population: out of 671 faculty in Tempe Elementary School District, less than 12 percent were minority teachers.³¹

Veda B. Frank School was the only school located within Guadalupe. In the 1972–73 school year, 92 percent of the Frank School's student population were minority students, and 90 percent of these were Mexican American. Frank School is an example of how Tempe Elementary School District concentrated minority students at only a few of its schools. In December 1972, the Office of Civil Rights found Tempe Elementary School District to be in noncompliance with Title VI of the Civil Rights Act.³² This began the process of desegregation, which continues in Tempe Elementary School District today.

This overconcentration seemed to be partly *de facto* segregation, caused by the school district's attempts to maintain neighborhood schools that kept students close to their homes and community.³³ Many Guadalupanos chose to remain in Guadalupe for a variety of reasons, including kinship ties and cultural and linguistic maintenance. At the same time, however, Mexican Americans and African Americans were historically prevented from moving into white neighborhoods due to discriminatory housing clauses and availability, as well as factors caused by discrimination, such as lack of education and job availability. Federal, state, and municipal policies had long supported residential segregation.³⁴

The Tempe Elementary School District administration took an active role in segregating Guadalupanos by modifying atten-

²⁹United States Commission on Civil Rights, *School Desegregation in Tempe, Arizona*, 4.

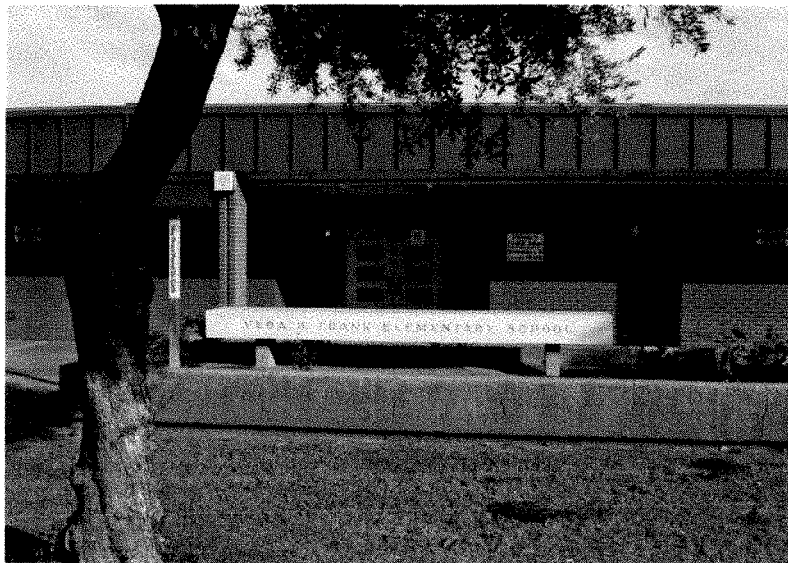
³⁰Although not specified, this presumably counted Yaquis as Native Americans. *Ibid.*, 1.

³¹*Ibid.*

³²Floyd L. Pierce, regional civil rights director, to O.S. Fees, 14 December 1972, box 30, folder 4, CTDEP, CRC, SCASU.

³³*De jure* segregation is segregation that is sanctioned by law, whereas *de facto* segregation is segregation that happens in practice, but is not necessarily based on law.

³⁴Meeks, *Border Citizens*, 159–61; Matthew C. Whitaker, *Race Work: The Rise of Civil Rights in the Urban West* (Lincoln, NE, 2005); Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, NJ, 2005).



With a population of 92 percent minority students, the Veda B. Frank School is one example of how the Tempe Elementary School District concentrated minority students in just a few of its schools. (Courtesy of Tempe Elementary School District)

dance boundaries to isolate minority students further. Socorro Bernasconi, a counselor at Frank School, charged that Tempe Elementary School District bussed Anglo students out of the Frank School area to schools with a greater Anglo population.³⁵ Additionally, school board minutes provide evidence of parents successfully petitioning the district to remove their children from Frank School and send them to neighboring schools with mostly Anglo students.³⁶ Nor was the school itself an equitable environment: its padlocked restrooms and cesspool proved this.³⁷ Lauro Garcia, a community activist leader, noted that the school padlocked the restrooms because the water pressure was low, and waste from the toilets settled in the cesspool below the school, creating an unbearable odor. Presumably, no

³⁵Bernasconi, "The 'Why' of the Guadalupe Organization Special Education Lawsuit," 1.

³⁶Tempe Elementary School District School Board Minutes, Tempe Elementary School District, 1970-80, October 18, 1972 (p. 1) March 21, 1973 (p. 2), and April 18, 1973 (p. 2).

³⁷Cecelia de Esquer, rough draft of paper on Guadalupe [n.d.], box 31, folder 20, CTDEP, CRC, SCASU.

other schools in the district had such structural flaws. Adding to the injustice, the teachers' restrooms remained open, while the "children were there suffering irreparable . . . psychological and physical damage."³⁸

Starting in October 1964, Guadalupanos successfully fought to remedy inequalities in Frank School, starting with the problems of the locked restrooms and the cesspool. These successes encouraged Guadalupanos to continue fighting for their rights, especially those related to the physical inequalities of the school building and property. They beseeched the district to add streetlights in front of the school, improve the playground, and construct a new cafeteria.³⁹ These efforts sought to protect Frank School as a physical space in which Guadalupanos could safely learn, play, and socialize. Other practical changes resulting from Guadalupe Organization's activism, including improved health care, town infrastructure, incorporation, and increased voter registration and accessibility, bolstered these pragmatic educational reforms.

In the 1970s, the Guadalupe Organization's education activism shifted from concern about the safety of the physical spaces of Frank School to the quality of the school's education and curriculum. The purposes of this activism were twofold. The Guadalupe Organization not only strove to end discrimination based on students' home languages, but it also increasingly sought to create a culture of respect for diverse cultures and languages. In the early 1970s, it began to seek reforms that advocated students' rights to receive an equal education and to maintain their culture and their native language. The community increasingly fought for language- and rights-based reforms through the mutually dependent processes of grassroots activism and litigation. This activism and the reforms that Guadalupanos encouraged, particularly through *Guadalupe Organization v. Tempe Elementary School District* (1972), were a manifestation of cultural citizenship, because the Guadalupanos demanded the inclusion of their culture and language in schools as a guaranteed right of citizenship, based on the Fourteenth Amendment to the Constitution.

³⁸The sense of outrage expressed by Garcia in this interview suggests that this problem was unique or at least uncommon in the district. Varbel, "An Interview with Lauro Garcia," transcript, November 19, 1973, CRC, SCASU, 23–24.

³⁹The construction of a new cafeteria, however, dragged on for years. Tempe Elementary School District School Board Minutes, Tempe Elementary School District, April 7, 1969 (p. 2), November 3, 1969 (p. 2), February 2, 1972 (p. 3).

THE PLIGHT OF FRANK SCHOOL AND ITS STUDENTS

Socorro Hernández Bernasconi led the quest for educational reforms in Guadalupe. She was born in 1941 on the outskirts of Guadalupe, and her family moved into Guadalupe after a fire destroyed their house.⁴⁰ Although her mother, a Mexican immigrant, allowed her and her siblings to speak English at school and at work, they could speak only Spanish at home. This, along with a devout Catholic faith, promoted and strengthened cultural and linguistic pride in the Hernández family. Bernasconi earned a degree in education from the University of Dayton in 1967, which made her the first Guadalupeño to receive a bachelor's degree in elementary education.⁴¹

After receiving her degree, Bernasconi led summer and after-school educational programs and church and community groups in Guadalupe. Soon thereafter, Tempe Elementary School District sponsored Bernasconi for a M.Ed. program in Texas that trained Hispanics with teaching experience to be counselors for Hispanic youth. After completing this program, she returned to work as a counselor at Frank School in 1970, where she quickly noticed that many things were amiss. For example, the district often rerouted Anglo students who were supposed to attend Frank School to different schools.⁴² But she saw the school's special education placement practices as the most urgent problem.

Special education provides self-contained classrooms and/or extra support for students with physical or mental handicaps whose needs cannot be fully met in ordinary classrooms. As of the 1970–71 school year, the Arizona Revised Statutes (ARS) already included mandates regarding the placement and evaluation of children in special education. The statutes required a school administrator or special education coordinator to contact a child's parents before referring the child to special education and ordered biannual reviews of students' placement in special education.⁴³ Bernasconi found that Tempe Elementary School District and Frank School had ignored and violated these statutes. She found no records of the district's ever con-

⁴⁰Jean Reynolds, "Bernasconi, Socorro Hernández," in *Latinas in the United States: A Historical Encyclopedia*, ed. Vicki Ruiz and Virginia Sánchez Korrol (Bloomington, IN, 2006), 86.

⁴¹Leticia Hernández, "Hernández Family," 1987, CRC, SCASU, 6–7.

⁴²*Ibid.*, 13–15.

⁴³Note that these ARS standards no longer exist. Arizona Revised Statutes 15-1013 and 15-1014, cited in Bernasconi, "The 'Why' of the Guadalupe Organization Special Education Lawsuit," 6–7.

tacting parents about a child's placement in special education. In fact, it appeared that the school psychologist alone made decisions about referrals and placements. Finally, Bernasconi discovered that the psychologist sometimes did not retest students until several years after their placement into special education.⁴⁴ Each of these findings violated the mandates of the ARS.

The district not only ignored state mandates, but it also placed an abnormally large proportion of Mexican American and Yaqui students in special education. In 1971, Spanish-surnamed students comprised only 18 percent of the total enrollment of Tempe Elementary School District, but they made up 68 percent of enrollment in classes for the educable mentally handicapped (those with mild impairments) and 46 percent in classes for the trainable mentally handicapped (those with moderate to severe impairments).⁴⁵ One school that did not have a significant minority population had only one special education student out of 800 enrolled students. In contrast, of 740 students registered at Frank School in 1970, there were 45 students enrolled in the special education program, 75 percent of whom were Yaquis. Frank School also had numerous students on a waiting list for special education.⁴⁶ Often, if there was not space in Frank School's special education program, students would be placed temporarily in regular classrooms, and they would be transferred to special education one to two years later without being retested.⁴⁷ Additionally, Bernasconi noted that teachers and the psychologist voiced expectations that mental retardation was higher among Mexican American students, so the psychologist tested for mental retardation primarily at schools with large minority populations.⁴⁸

Although these practices were discriminatory, they were merely sub-points in the case later filed by the Guadalupe Organization against Tempe Elementary School District. Guadalupe argued fervently against the school district's improper methods of testing students. Tempe Elementary School District used the Wechsler Intelligence Scale for Children (WISC) test to determine which students the psychologist would refer to special education, and the Guadalupe Organization claimed that this was an unfair means of determining placement.⁴⁹

⁴⁴*Ibid.*, 9–10.

⁴⁵*Guadalupe Organization*, CIV 71-435.

⁴⁶Hernández, "Hernández Family," 16; Bernasconi, "The 'Why' of the Guadalupe Organization," 10–11.

⁴⁷*Ibid.*, 9.

⁴⁸*Ibid.*, 8.

⁴⁹*Guadalupe Organization*, CIV 71-435 at par. 23–26.

Nationally, the emergence of intelligence tests coincided with World-War-I nativism, and schools used these tests throughout much of the twentieth century. This 1949 excerpt from *New York Times Magazine* demonstrates how strongly intelligence tests influenced a child's future:

Between [fall 1949] and June [1950], 20,000,000 children will be subjected to tests to measure their intelligence. This figure indicates the position of influence to which IQ tests have risen in little more than a generation. . . . They are used in greater or lesser degree to determine when a child should begin to read, whether another should go to college, and if a third is likely to grow up to be a dolt or an Einstein—that is, whether he is “worth worrying about” or “simply beyond help.”⁵⁰

Educators utilized these tests to direct students into different tracks of education, and they often used the tests to rationalize and support minority stereotypes. For example, educators drew on intelligence tests to prove that Mexican Americans had an inferior genetic makeup, which made them less academically capable than Anglos. Educators exploited these tests to “track” Mexican Americans and other minorities disproportionately into vocational classes, instead of into a traditional academic track. They often used this vocational track to “Americanize” non-Anglo students by teaching them English and other life skills.⁵¹ The American school system superimposed this Americanization process on its students, because the nation valued the homogeneity of American identity. In Guadalupe, educators used these tests to track students into special education.⁵²

The WISC test used by Tempe Elementary School District was inherently unfair to Guadalupano students for two reasons. First, most students entered Frank School speaking Spanish or Yaqui, or both, but few of these students had even a limited

⁵⁰Benjamin Fine, “More and More, the IQ Idea Is Questioned,” in *New York Times Magazine* (September 18, 1949), 7, quoted in Valencia, *Chicano Students and the Courts*, 120–21.

⁵¹For a more detailed exploration of intelligence testing and tracking, see Gilbert G. Gonzalez, *Chicano Education in the Era of Segregation* (Philadelphia, 1990). For IQ testing, tracking, and Americanization of Mexican Americans in Arizona, see Laura K. Muñoz, “Desert Dreams: Mexican American Education in Arizona, 1870–1930” (Ph.D. dissertation, Arizona State University, 2006). For the connection between vocational education, testing, and tracking, see Valencia, *Chicano Students and the Courts*, 117–52.

⁵²*Guadalupe Organization*, CIV 71-435.

grasp of English.⁵³ The school district psychologist, who knew neither Spanish nor Yaqui, administered the WISC test entirely in English.⁵⁴ Most minority students at Frank School were exposed to English only at school, but Tempe Elementary School District most frequently tested students in kindergarten and first grade before they gained even this limited exposure.⁵⁵ The WISC test was problematic for non-English speakers because it required understanding of English directions and verbalization in English.⁵⁶

Additionally, Mexican American and Yaqui students were at a profound disadvantage because the subject matter of the IQ tests coincided with the dominant Anglo middle-class culture. The Guadalupe Organization claimed,

The most important source of knowledge for the child, particularly the pre-schooler, is his parents. Parents obviously cannot teach more than they know. . . . The middle class parent spends more time with his children teaching what psychologists have termed the "hidden curriculum." Thus the middle class Anglo-American child is intensively tutored by his parents including correction of speech, grammar, syntax, and style while his Mexican American counterpart has not yet been exposed to the English language. Thus any test relating to verbal skills is totally invalid as any indication of the learning ability of such Mexican American children.⁵⁷

Not only were Mexican American and Yaqui children inherently underprepared to take these tests, but Tempe Elementary School District punished them for their scores on these unfair tests by placing them in special education classes. The Guadalupe Organization argued that, if tested in their primary language, most of these children would not have been determined to be mentally handicapped.⁵⁸

⁵³Bernasconi to regional director of the Office of Civil Rights, 14 May 1971, box 30, folder 4, CTDEP, CRC, SCASU.

⁵⁴Bernasconi, "The 'Why' of the Guadalupe Organization," 9; *Guadalupe Organization*, CIV 71-435; and Bernasconi to regional director of the Office of Civil Rights, 14 May 1971, box 30, folder 4, CTDEP, CRC, SCASU.

⁵⁵Albert Sitter, "Guadalupe Teacher Charges Retaliation," *The Arizona Republic*, August 18, 1971, 17-18, box 30, folder 9, CTDEP, CRC, SCASU.

⁵⁶Bernasconi, "The 'Why' of the Guadalupe Organization," 5.

⁵⁷*Guadalupe Organization*, CIV 71-435 at par. 24.

⁵⁸Bernasconi, "The 'Why' of the Guadalupe Organization," 15.

Through their activism, Guadalupanos came to recognize that a homogenous American culture and language was in fact nonexistent and that Tempe Elementary School District needed to acknowledge and accommodate these differences. They understood that American citizens were diverse peoples with diverse cultures and languages, and they wanted the public school system to recognize this diversity as valid and important. This comprehension led Guadalupanos to develop an understanding of cultural citizenship, through which they advocated a new definition of citizenship that included language and cultural rights in their challenge to the education system.

As Bernasconi became increasingly aware of these discriminatory acts, she notified school and district administrators of the problems, but she did not receive satisfactory responses. The district informed her that the placement and removal of students from special education was not her responsibility.⁵⁹ Simultaneously, she alerted parents to these practices. Bernasconi and the Guadalupe Organization mobilized to increase parents' awareness of the school's mistreatment of their children. The Guadalupe Organization's bilingual newsletter instructed parents not to feel afraid or ashamed: "Parents should not sign papers unless they are positive they understand everything. It is not shameful to say—leave me the paper, I'd like to show it to someone else before I sign." Additionally, the newsletter encouraged parents to go to the school to determine if the school had placed their child in special education classes; if their child was so placed, then parents should demand that the child be retested bilingually once each year.⁶⁰ Some parents then requested that their children be withdrawn from special education. Despite the Guadalupe Organization's attempts to increase parental awareness, Tempe Elementary School District dismissed these parental demands.⁶¹

Tempe Elementary School District and many of its teachers believed that a student's poor performance on the WISC test (and thus their supposed mental retardation) was the child's problem and not the education system's or their own. They did not see their own failure to speak Spanish or Yaqui as problematic.⁶² These assumptions by the school district and the teachers reflected the nation's dominant notion of citizen-

⁵⁹Bernasconi to regional director of the Office of Civil Rights, 14 May 1971, box 30, folder 4, CTDEP, CRC, SCASU.

⁶⁰Guadalupe Organization newsletter, in the possession of Eric V. Meeks.

⁶¹Bernasconi to regional director of the Office of Civil Rights, 14 May 1971, box 30, folder 4, CTDEP, CRC, SCASU.

⁶²Bernasconi, "The 'Why' of the Guadalupe Organization," 4.

ship; the educators saw the nation and thus the schools as a monolingual environment in which all students were expected to know and use English. An expression of blame is clear in a 1971 meeting attended by Bernasconi; Robert Curry, assistant superintendent of Tempe Elementary School District; and Kay Murphy, director of special services, including special education in Tempe Elementary School District. During this meeting, Murphy suggested that Guadalupano children scored low on the WISC intelligence test because they were born to women over the age of forty who did not seek adequate prenatal care, were fieldworkers, and ate mainly beans and tortillas. Bernasconi informed Murphy and Curry that this image was a portrait of her own mother, and that, despite her mother's fulfillment of this stereotype, Bernasconi herself had turned out fine, even earning bachelor's and master's degrees.⁶³

In addition to intelligence testing, a related trend was that of deficit thinking, the idea that students, particularly non-Anglos from low-income backgrounds, tend to fail in school because of the internal deficits or failures of these students and their families.⁶⁴ Deficit thinking blames the victim instead of exploring the effects of institutional structures and inequities in education.⁶⁵ Extending the idea of deficit thinking—an idea based on a monolingual and monocultural definition of citizenship—to language and culture, educators assumed minority students were both linguistically and culturally deficient.⁶⁶ Furthermore, deficit thinking served as a rationale for the Americanizing, homogenous curriculum of public schools.⁶⁷ Justifications for the overrepresentation of minority students in special education classrooms and related assessment procedures were often rooted in deficit thinking.⁶⁸

⁶³Hernández, "Hernández Family," 16; and Christine Marin, "From the Cesspool to Equality: The Tempe Elementary School District No. 3 and Guadalupe," CRC, SCASU, 11.

⁶⁴Guadalupe San Miguel, Jr., and Richard R. Valencia, "From the Treaty of Guadalupe Hidalgo to Hopwood: The Educational Plight and Struggle of Mexican Americans in the Southwest," *Harvard Educational Review* 68:3 (Fall 1998): 368; Richard R. Valencia, *The Evolution of Deficit Thinking: Educational Thought and Practice* (New York, 1997), xi.

⁶⁵San Miguel, Jr., and Valencia, "From the Treaty of Guadalupe Hidalgo to Hopwood," 368.

⁶⁶Octaviana V. Trujillo, "The Yaqui of Guadalupe, Arizona: A Century of Cultural Survival Through Trilingualism," *American Indian Culture and Research Journal* 22:4 (December 1998): 55.

⁶⁷Valencia, *The Evolution of Deficit Thinking*, 80.

⁶⁸Valencia, *Chicano Students and the Courts*, 149–50.

Typical of institutions that rationalized their actions with notions of deficit thinking, Tempe Elementary School District discriminated against minority students, refused to acknowledge the district's responsibility for fair assessment and equitable education, and ignored parental, faculty, and staff concerns. This left Guadalupanos at a crossroads, needing to decide how to proceed.⁶⁹ Guadalupanos chose to litigate, which enabled them to create a binding legal document with Tempe Elementary School District and the state of Arizona. The Guadalupanos' litigation was firmly rooted in their grassroots activism and the conception of cultural citizenship that this activism helped them to develop. Through their lawsuit, Guadalupanos asserted the idea that American citizenship should not require a person to be monocultural or monolingual. They contended that full membership and belonging in the United States nation-state should be available to all citizens, regardless of one's identity. Although Guadalupanos were challenging the traditional conception of American rights, their activism was still an act of citizenship, because they were demanding acceptance as citizens with a different, but legitimate, culture and language.

THE LAWSUIT

On August 10, 1971, Jerry Levine of the Maricopa Legal Aid Society filed a class action lawsuit in the United States District Court for the District of Arizona on behalf of the Guadalupe Organization, nine parents, and twenty-seven children against Tempe Elementary School District, the Arizona superintendent, the Arizona State Board of Education, the Tempe Elementary School District superintendent, the Tempe Elementary School District Board of Education, Kay Murphy (director for special services at Tempe Elementary School District), Margaret Fauci (the district psychologist), Andres Avila (the Frank School principal), and three other district figures.⁷⁰ The plaintiffs included two groups of students. The first group consisted of twelve Mexican American and Yaqui students who were from homes that mainly (or entirely) spoke Spanish and/or Yaqui and who

⁶⁹Cecilia Teyechea Denogean de Esquer, rough draft of paper on Guadalupe, CTDEP, CRC, SCASU, 38.

⁷⁰The lawyers did not specify statistics of plaintiffs, including ethnicity (Yaqui v. Mexican American), socioeconomic status, ages, grades, or IQs. Valencia, *Chicano Students and the Courts*, 358.

were currently in special education classes.⁷¹ The second group included seventeen preschool-age students who were of similar racial, ethnic, and linguistic backgrounds to the first group and who would be taking IQ tests in the near future. Additionally, the plaintiff class consisted of all similarly situated children in Arizona, including Mexican American and Yaqui children who were currently in special education classes, and preschool-age and other young Mexican Americans and Yaquis who would soon be given IQ tests and would "thus be in substantial danger of placement in a class for the mentally retarded, regardless of their ability to learn."⁷² Therefore, this case was poised to affect the educational experience of all Mexican American and Yaqui students in Arizona.

Guadalupe Organization v. Tempe Elementary School District charged Tempe Elementary School District et al. with racial and ethnic discrimination and denial of the Guadalupanos' right to receive an education, as dictated by the due process and equal protection clauses of the Fourteenth Amendment.⁷³ It also claimed that the children suffered from "the immediate and irreparable injury of a grossly inadequate education and the stigma attached to the label of mental retardation."⁷⁴ The Guadalupe Organization argued, "Placement in a class for the mentally handicapped is tantamount to a life sentence of illiteracy and public dependence. . . . Placement in classes for the mentally handicapped sharply limits plaintiffs' opportunities for future education and employment."⁷⁵ The organization asserted, "It is therefore of paramount importance that no child be placed in such a class unless it is clear beyond reasonable doubt that he cannot be educated effectively through regular classroom instruction."⁷⁶ The organization proceeded with nine demands, including that Tempe Elementary School District halt placement of Spanish-speaking or bilingual children in special education, test plaintiffs bilingually, and provide

⁷¹Valencia notes that the complaint was later amended to add two more students to this group. Many of the children listed as plaintiffs were siblings. *Ibid.*, 143.

⁷²*Ibid.*, 143–44.

⁷³*Brown v. Board of Education* asserted that the equal protection and due process clauses of the Fourteenth Amendment guaranteed all students the right to receive an education. Because *Brown* endowed the Fourteenth Amendment with this connection to educational rights, it commonly has been used in educational litigation. *Guadalupe Organization*, CIV 71-435; *Brown v. Board of Education*, 347 U.S. 483 (1954); Valencia, *Chicano Students and the Courts*, 167.

⁷⁴*Guadalupe Organization*, CIV 71-435 at par. 31.

⁷⁵*Ibid.*, par. 21.

⁷⁶*Ibid.*, par. 21.

these students with "intensive supplemental bilingual and bicultural training in language and math" to help them achieve parity with their peers.⁷⁷

Filing this case was an act of cultural citizenship, because the Guadalupanos were fighting for official recognition of Mexican American and Yaqui cultures and languages by the school district and the state. The Guadalupe Organization contended that not all American citizens shared the same language and culture, and that an essential part of citizenship was the right to linguistic and cultural difference. This position was in direct opposition to the majority Anglo concept of a monolithic nation of people sharing the same American language and culture.

Public opinion of this case, which mirrored national opinions of bilingual education, assimilation, and desegregation, was largely divided. Some articles expressed a combative—sometimes even nativist—opinion. One article in the *Tempe Daily News* criticized Guadalupano activism using harsh language that clearly expressed an "us versus them" mentality:

The attorney who handles [the Guadalupe Organization] case works with Legal Aid, an organization supported by **public funds**—yours and ours. Guadalupe Organization is funded by **federal funds**—yours and ours. The defendant School District and officials (except board members) are on the **public payroll**—supplied by local folks. And all court costs . . . likely will come from **public coffers**. If you'll note further, **apparently Guadalupe Organization doesn't have to pony-up a penny** in all this fuss (See why we're so sick and tired of this activity?).⁷⁸

This discourse denied the Guadalupanos' legitimate claim to this money and also took a deficit thinking approach by patronizing and blaming Guadalupanos:

In the past, Guadalupe **has complained** about kids going to Tempe High School; about bringing Junior HS kids into town. They've yakked about facilities, and they have a nearly new plant that they've already set afire and continually vandalize. Sheriff's deputies are often unsafe

⁷⁷Ibid., par. 33.

⁷⁸"Fount for Ulcers," *Tempe Daily News*, September 9, 1971, box 30, folder 4, CTDEP, CRC, SCASU. Emphasis in original.

patrolling the area. . . . Isn't it about time to call a halt—to stop the foolishness and public expense?⁷⁹

This strong language leaves little doubt as to how some citizens felt and demonstrates that many citizens saw *Guadalupe* as a serious threat to the status quo of assimilating, monolingual education.

However, other Phoenix- and Tempe-area citizens advocated for the Guadalupanos. In *The Arizona Republic*, Leo Muñoz, the director for special services for minority groups at Mesa Community College, claimed that schools had misplaced at least one-third of non-English-speaking students in special education programs in Arizona. He explained, "The tests do not really tap the intellectual potential of an individual who comes from an ethnically different background."⁸⁰ Also supporting the Guadalupe Organization, Dr. Wayne Maes, a bilingual psychologist and professor of counseling and educational psychology at Arizona State University, retested thirteen Spanish-speaking children in Guadalupe and found five of them unjustly assigned to special education classes. Additionally, he discovered three of them to be borderline students (they may have been placed incorrectly) and five to have been psychologically damaged by their wrongful placement in special education.⁸¹ These examples suggest that there were at least pockets of outside support for the Guadalupano cause and educational issues.

Although some Arizonans supported bilingual education, many occupied a reluctant middle ground.⁸² In a 1974 interview, W.P. Shofstall, the Arizona state superintendent of education (1969–75), claimed that he was "much more interested in bicultural education than [in] bilingual education," offering examples of why bilingual education was unnecessary.⁸³ However, he seemed to approve of assimilative bilingual education: "I think that if to the extent that bilingualism means respecting the culture of a child and respecting the fact that the child

⁷⁹Note that the Tempe High School was not part of Tempe Elementary School District. Ibid. Emphasis in original.

⁸⁰"Retarded Tag Is Unjustified," *The Arizona Republic*, September 10, 1971, box 30, folder 4, CTDEP, CRC, SCASU.

⁸¹Ibid; and Marin, "From the Cesspool to Equality," CRC, SCASU, 14–15.

⁸²For examples of neutral articles, see "The *Guadalupe* Suit," *The Phoenix Gazette*, April 13, 1971, box 30, folder 4, CTDEP, CRC, SCASU; and Albert J. Sitter, "Guadalupe Teacher Charges Retaliation," *The Arizona Republic*, August 18, 1971, 17–18, box 31, folder 9, CTDEP, CRC, SCASU.

⁸³W.P. Shofstall, interview by John Bury, October 1974, John Bury Collection, Cline Library Digital Archives, Northern Arizona University, Flagstaff, Arizona.

doesn't understand and treating them as an individual, then we've got to have more of it."⁸⁴ Despite his limited support for assimilative bilingual education, there is no evidence of Shofstall advocating for Guadalupanos.

This reluctance to support and adopt programs of bilingual education was a national trend in the 1970s. Educators and policymakers continually debated whether the appropriate role of bilingual education was one of preparing students for academic achievement in a mainstream English-speaking classroom or one of language learning, cultural development, and pluralism. Because of the controversy, many schools throughout the 1970s were unsure of the appropriate stance to take on the issue.⁸⁵

Surely, there must have been dissent within Guadalupe regarding these reforms. Bernasconi was a Mexican American, and other historical works reference tensions between Mexican Americans and Yaquis in Guadalupe.⁸⁶ However, I have found no differences of opinion recorded in the Guadalupe community. This lack of recorded dissent may be because outside newspapers (for example, *The Tempe Daily News*, *The Phoenix Gazette*, *The Arizona Republic*) quoted only Socorro Bernasconi, her husband Santino, and the legal staff. Unfortunately, no reporter surveyed public opinion in Guadalupe. In addition, the archived correspondence regarding this case is between the Bernasconis, the legal staff, and Tempe Elementary School District.

Dissent can be inferred from the number of students listed as plaintiffs in the case. Of the twenty-seven students represented, seventeen were of preschool age or had not yet been tested by Tempe Elementary School District, and were plaintiffs in a preventive sense—their families wanted to avoid their misplacement into special education classes.⁸⁷ Therefore, more than thirty special education students at Frank School and their families did not participate in this class action lawsuit. Their non-involvement could be for several reasons: perhaps the parents felt that the students were fairly placed, did not clearly understand the issues, feared retaliation from Frank School and Tempe Elementary School District, or were too busy or preoccupied to care or get involved, among other poten-

⁸⁴Ibid.

⁸⁵San Miguel, Jr., *Contested Policy*, 30–46.

⁸⁶See, for example, Meeks, "The Yaqui of Guadalupe" and Meeks, "Cross-Ethnic Political Mobilization and Yaqui Identity Formation in Guadalupe, Arizona."

⁸⁷Although the case has only twenty-seven plaintiffs, two more students were later added with an amendment to the case. Valencia, *Chicano Students and the Courts*, 143.

tial issues. The low educational attainment of parents, family, and community members in Guadalupe may also have contributed to the decision of some families not to participate in this case. However, regardless of their motivations, their lack of involvement suggests that education equality issues were not a priority for all Guadalupanos. It is also clear that because the suit represented both Mexican American and Yaqui students, the case's supporters were not split by a simple ethnic/racial divide. This suggests that, on this issue at least, Guadalupano parents had a shared interest and anticipated the Guadalupe Organization's success in this case.

On January 24, 1972, lawyers for both parties filed stipulations for settlement. The settlement commanded Tempe Elementary School District to reevaluate students with non-English native languages who were in special education programs and to restore students to regular classes on or before October 1, 1973.⁸⁸ It also changed the placement process, requiring the district to ascertain if a student's primary language was not English. If so, it obliged them to follow at least one of the following procedures when evaluating students: (1) use a psychologist who is fluent in English and the child's dominant language; (2) use an interpreter to assist the psychologist in testing students; or (3) "use test instruments which do not stress spoken language and which are considered valid and reliable measures of intelligence functioning."⁸⁹

Additionally, the settlement mandated a variety of criteria for the assessment and placement of special education students. First, it established requirements for placement in special education programs, including that intelligence tests could not be the exclusive or primary screening device for special education. It also required an examination of adaptive behavior in a student's development history, cultural background, and school achievement, all of which must substantiate other findings of educational handicaps. In addition, it stipulated that to the degree possible, the school should include the child within the regular classroom. The settlement required the involvement of parents in the evaluation process, and it necessitated written parental consent before placing children in special education classrooms. It stipulated that all communication with parents must occur in their primary language.⁹⁰ Finally, it mandated that when school districts or individual schools had drastically

⁸⁸Jerry Levine, *Arizona Settlement of Special Education Lawsuit*, January 24, 1972, par. 4, 5i, box 30, folder 10, CTDEP, CRC, SCASU.

⁸⁹*Ibid.*, par. 4.

⁹⁰*Ibid.*, par. 5a,b,d,e,f,g.

disproportionate racial, linguistic, or ethnic groups represented in their special education classes, they "should be prepared to offer a compelling educational justification for such disproportionate enrollment."⁹¹

Although the plaintiffs largely achieved their goals, they failed to make sure the settlement included damages and attorney's fees, intensive supplementary bilingual and bicultural education, and a new IQ test standardized to non-Anglo cultures. Despite these failures, the case was mostly a success. It provided Guadalupanos with an opportunity to exercise their rights of citizenship by advocating for equality and their educational rights. Most importantly, it improved the educational experiences of Guadalupano children and children throughout Arizona and even the nation.

Guadalupe Organization v. Tempe Elementary School District built on *Diana v. State Board of Education* (1970) and *Covarrubias v. San Diego Unified* (1971). Both *Diana* and *Covarrubias* had also been filed in federal district courts and resulted in settlements. These cases first established students' rights to be tested in their own language or nonverbally, and created a requirement for parental consent before students are placed in special education classes.⁹² Richard Valencia, an educational psychologist, suggests a link between a 1970 memo from the Office of Civil Rights and the *Diana* settlement. This mandate stipulated, "School districts must not assign national origin minority-group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills."⁹³ This unprecedented mandate was the first national document that specified that this type of placement denied students an equal education opportunity.

Because *Guadalupe* was settled instead of litigated, it is impossible to know if or how the *Diana* or *Covarrubias* settlements or the Office of Civil Rights memo contributed to the *Guadalupe* settlement. However, it is likely that the lawyers of *Guadalupe* were aware of the *Diana* and *Covarrubias* settlements, because continuity exists between these cases. All three cases were filed as class action lawsuits representing not only a concrete group of students but also all bilingual children who were currently placed in special education classrooms and all bilingual preschool students who were in danger of misplacement into special education classrooms. Additionally, the Fourteenth Amendment, the Elementary and Secondary Education

⁹¹Ibid., par. 5c.

⁹²Valencia, *Chicano Students and the Courts*, 79–116 passim.

⁹³Memo from Office of Civil Rights, May 25, 1970. Quoted in *ibid.*, 138.

Act, and state laws were the fundamental justifications for both *Diana* and *Guadalupe*.⁹⁴ While all three cases represented Mexican Americans, *Covarrubias* and *Guadalupe* also included African Americans and Yaquis, respectively.⁹⁵

Covarrubias and *Guadalupe* furthered *Diana*'s legal strategies and claims for injunctive and declaratory relief. Valencia notes three ways in which *Covarrubias* advanced beyond the *Diana* case and settlement. First, *Covarrubias* claimed that the misplacement of students led to their stigmatization as slow learners and lesser individuals. *Covarrubias* noted,

The stigma attached to the EMR [Educable Mentally Retarded] notations on plaintiffs' records and the widening gap in actual learning combine to effectively deny plaintiffs any practical chance to realize their potential in college, in armed forces' officer programs, in executive or management programs, or in various other areas of society through which members of minority racial groups have sought and been able to lift their standards socially and economically and to share part of the American dream of self realization and self help for a better life. . . .⁹⁶

The lawyers explained that other children in and out of school had taunted the plaintiffs because the plaintiffs were in special education classes. Thus the plaintiffs' wrongful placement in special education led to their feeling "a profound sense of guilt and shame over being considered second rate and inferior in their achievements and learning."⁹⁷ The lawyers concluded by arguing that this taunting "makes their adjustment to life and to school and to their role as so-called slow learners more difficult and introduces psychological problems into their already problem laden experience."⁹⁸

⁹⁴In contrast, *Covarrubias* cited the Civil Rights Acts of 1870, 1871, and 1964, basing their argument more on equal opportunity and racial discrimination. Perhaps these avenues of argument were more open to the lawyers in *Covarrubias* because of the clear racial difference acknowledged with African American students.

⁹⁵African Americans were similarly seen as discriminated against because of their low socioeconomic status and their "Black-English" dialect.

⁹⁶Complaint for Damages, for Injunction and for Declaratory Relief (Civil Rights), *Covarrubias*, Civil Action No. 70-394-T, 13-14, quoted in Valencia, *Chicano Students and the Courts*, 140-41.

⁹⁷*Ibid.*

⁹⁸*Ibid.*

Guadalupe advanced this claim of stigmatization, which was reinforced outside of the schools by the ethnic, economic, linguistic, and racial bias already faced by most Guadalupanos. Even within Frank School, some Guadalupano children stigmatized others, as is evident in oral histories of Guadalupanos. For example, Alberto Tavena remembers being called a "dirty Yaqui" by other Guadalupano children when he started school. Juan Tavena connects his lack of education to his continued impoverishment throughout his life.⁹⁹ The stigmatization caused by misplacing students in special education likely compounded the negative effects of racial, ethnic, linguistic, and economic stereotypes.

These claims of stigmatization directly related to the second significant advance in the *Covarrubias* settlement, in which lawyers argued for the payment of monetary damages to plaintiffs: "The wrongful placement and retention of plaintiffs in EMR classes will inevitably result in their being cut off from economic gains available to children in regular school classes and will cut them off from any chance to be gainfully employed. . . . [E]ach plaintiff has been damaged far in excess of \$10,000."¹⁰⁰ *Guadalupe*, which later adopted this argument, and *Covarrubias* both resulted in awards of one dollar in monetary damages, symbolically marking their victories but not compensating students for the real damage caused by their misplacement. As the third significant advance, *Covarrubias*—and later *Guadalupe*—furthered *Diana's* legal strategy by arguing that when the school districts did not inform parents of their children's special education placement, the district impeded both child and parental due process.¹⁰¹

Guadalupe built on *Diana* and *Covarrubias* in several ways. First, *Guadalupe* listed Margaret Fauci, the district psychologist who tested and placed these students in special education classrooms, as a defendant in the case. Educational psychologist Richard Valencia notes that this was a "potent tactic." He explained, "[G]iven that the school psychologist does the clinical assessment and recommends placement in a class for the mentally retarded, it appears that plaintiffs strengthened their case by placing some of the culpability for inappropriate diagnosis at the level of the individual school psychologist."¹⁰²

⁹⁹Catheryn Retzlaff Shaffer, "Preservation of Yaqui Language and Culture in Guadalupe, AZ" (M.A. thesis substitute, Arizona State University, 1986), 30–31.

¹⁰⁰*Covarrubias*, Civil Action No. 70-394-T, quoted in Valencia, *Chicano Students and the Courts*, 141.

¹⁰¹*Ibid.*, 140–43.

¹⁰²*Ibid.*, 358.

It seems fair that Fauci received blame, since she was largely in control of the discriminatory assessment and placement practices. In addition, *Guadalupe* went beyond *Diana* and *Covarrubias* by demanding "intensive supplemental bilingual and bicultural training in language and mathematics to allow [plaintiffs] to achieve parity with their peers as soon as possible," a demand that the settlement did not account for.¹⁰³

The *Guadalupe* settlement also established a cut score for intelligence tests, which defined which test scores merited placement in special education. In addition, the settlement stated, "[I]ntelligence tests shall not be either the exclusive or the primary screening device in considering a child for placement in classes for the handicapped."¹⁰⁴ Finally, the *Guadalupe* settlement required the assessment of adaptive behavior prior to special education placement, which necessitated the evaluation of a child in outside environments such as the home.¹⁰⁵ All of these changes made it considerably less likely for non-native-English speakers to be misplaced into special education. Despite these advances in the *Guadalupe* argument, the case clearly built on both *Diana* and *Covarrubias*.

THE LONG-TERM RESULTS AND IMPLICATIONS OF *GUADALUPE*

Because none of these cases was litigated, they could not be used as legal precedent, but all three influenced state and federal regulations governing the assessment and placement of special education students. In particular, these cases led to the 1975 creation of Public Law 94-142, the "Education for All Handicapped Children Act" (EHA), which functioned as the equivalent of civil rights legislation for handicapped children. This legislation required non-biased assessment practices, stating that "testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered *so as not to be racially or culturally discriminatory*."¹⁰⁶ The EHA contained

¹⁰³*Guadalupe Organization*, CIV 71-435 at par. 33; Valencia, *Chicano Students and the Courts*, 143-45.

¹⁰⁴Stipulation and Order, *Guadalupe Organization*, CIV 71-435 at 3-4, cited in Valencia, *Chicano Students and the Courts*, 145.

¹⁰⁵Valencia, *Chicano Students and the Courts*, 146.

¹⁰⁶P.L. 94-142 (1975), (42 F.R. 42496, §121a.530,b), cited in *ibid.*, 148. Emphasis added.

many of the concessions won in these three cases, including informed consent and due process, testing in a student's native language, annual review of students, and placement decisions based on multiple sources of information, including adaptive behavior, by a multidisciplinary team and the student's parents.¹⁰⁷ In 1990 the EHA was revised and renamed the Individuals with Disabilities Act (IDEA). Since then, IDEA has been revised and amended several times, and remains the primary federal legislation granting rights to special education students and to those who might be misplaced in special education because of language and cultural differences.

Guadalupe also instigated similar changes in Arizona's state legislation, guaranteeing the rights of minority-language students and fair placement into special education classrooms.¹⁰⁸ Albeit somewhat indirectly, the Guadalupanos changed how the state defined education rights and, through this, redefined citizenship rights. By expanding the rights of non-English speakers, the government was, in a sense, respecting diversity in a way that it had not previously.

Additionally, the *Diana*, *Covarrubias*, and *Guadalupe* cases and settlements led to a revision of special education standards, definitions, and assessment practices. The *Guadalupe* settlement also may have influenced the American Association of Mental Deficiency's 1973 revision of its *Manual on Terminology and Classification in Mental Retardation*. Richard Valencia, an educational psychologist, remarks that the manual adopts the same cut score standard as is found in the *Guadalupe* settlement. In addition, the 1973 edition of the manual placed greater emphasis on measuring adaptive behavior in addition to measuring intelligence, which was a new development in *Guadalupe*. Although Valencia notes that there is no direct evidence to suggest that the manual was influenced by the *Guadalupe* decision, he suggests that the similarities were too great to be a coincidence.¹⁰⁹ Finally, he proposes the following quote from the manual to evidence the possible influence of *Guadalupe* and other right-to-education litigation of the 1960s and 1970s:

All psychological tests measure samples of behavior, and behavior *is influenced by the culture in which an individual resides*. Deficits that emerge in test performance are often reflected in school work, job

¹⁰⁷Ibid., 148–49.

¹⁰⁸Bernasconi, "The 'Why' of the Guadalupe Organization," 16.

¹⁰⁹Valencia, *Chicano Students and the Courts*, 146–47.

performance and other major life functions. To impugn tests because of their presumed cultural bias is to *conceal the effects of cultural disadvantage*, impede remedial action and solution of social problems. This alleged limitation of intelligence tests could in fact be its major value in assessing a child's performance in his *own* culture. This application of tests *across* cultures, however, unless properly standardized, is likely to lead to serious errors in individual diagnosis and the rates of mental retardation.¹¹⁰

These references to the consideration of a student's culture during creation and administration of assessments once again serves as a reminder of the cultural and linguistic discrimination challenged by these cases.

Today, special education textbooks and school psychologist guidebooks still cite the *Diana* and *Guadalupe* settlements as important cases related to the misclassification of ethnic minority students.¹¹¹ These texts and guides offer a brief summary of *Diana* and *Guadalupe* and often mention the significance of these cases. Additionally, several of these texts link *Guadalupe* to entries about adaptive behavior assessment, bilingual and bicultural education, and consent decrees (the type of settlement reached in *Guadalupe*).¹¹² Each text's treatment of these cases is remarkably similar, varying only in points of emphasis and in length (one paragraph to two pages). The continued citation of these cases indicates their significance in recent battles for minority education rights, particularly in their attempts to rectify the persistent overrepresentation of minority students in special education classrooms.

In addition to affecting state and national policies and definitions, the local results and implications of *Guadalupe* (1972) were numerous. Before the settlement, *Guadalupe* citizens accused Tempe Elementary School District of retali-

¹¹⁰Herbert Grossman, *Manual on Terminology and Classification in Mental Retardation* (Washington, DC, 1973): x, cited in *ibid.*, 147. Emphasis added.

¹¹¹Curiously, the *Covarrubias* settlement is rarely included in these texts. Fletcher-Janzen and Reynolds, *Concise Encyclopedia of Special Education*, 316–17; Jacob and Hartshorne, *Ethics and Law for School Psychologists*, 134; Robert L. Rhodes, Salvador Héctor Ochoa, and Samuel O. Ortiz, *Assessing Culturally and Linguistically Diverse Students* (New York, 2005), 44; Cecil R. Reynolds and Randy W. Kamphaus, *Handbook of Psychological and Educational Assessment of Children* (New York, 2003), 60; T. Steuart Watson and Christopher H. Skinner, eds., *Encyclopedia of School Psychology* (Basel, Switzerland, 2004), 152–53.

¹¹²For example, see Fletcher-Janzen and Reynolds, *Concise Encyclopedia of Special Education*, and Watson and Skinner, *Encyclopedia of School Psychology*.



Socorro Hernández Bernasconi, the first Guadalupeño to receive a bachelor's degree in elementary education, led the quest for educational reforms in Guadalupe. (Photo by Dorothea von Haefen, courtesy of the Petra Foundation)

ating against them for filing this suit. First, school counselor Socorro Bernasconi claimed that soon after the case against Tempe Elementary School District was filed, the district no longer allowed her to counsel the special education children (including those whom she had been counseling all year), or to access the special education files or retest results, and she was not informed of any new special education placements. She believed that "all these punitive measures are a result of my discovery of the discriminatory practices and poor administrative policies of the District."¹¹³

Tempe Elementary School District transferred Bernasconi to a school with a predominantly Anglo population for the next school year. The school district justified this transfer by claiming it was related to funding issues. Accusing the district of discrimination and retaliatory measures, Bernasconi argued that the district disregarded her preferences and specific training as a counselor for Mexican American students. After pursuing this matter for approximately twenty months through other means, Bernasconi filed a lawsuit against Tempe Elementary School District. After the suit was dismissed by the district of Arizona, the United States Court of Appeals ruled that Bernasconi's free speech was protected and that funding problems were not the sole reason for her transfer.¹¹⁴ Despite this favorable finding, she received no reparations until 1979, when Tempe Elementary School District finally offered her a job and \$10,000 in court costs, which she claimed did not nearly cover the costs incurred during the six-year battle.¹¹⁵

Additionally, Tempe Elementary School District retaliated on September 18, 1971, when its board of trustees denied the use of school facilities throughout the district for all non-school-district uses and then required reapplication to the board for new facility-use proposals.¹¹⁶ Prior to this decision, the Guadalupe Organization had used the Frank School facilities during non-school hours for adult education programs, and other Tempe organizations utilized different Tempe Elementary School District schools for fundraising and other educational purposes. The school district used the reapplication process to deny the Guadalupe Organization the use of Frank School's

¹¹³Bernasconi to regional director of the Office of Civil Rights, 14 May 1971, box 30, folder 4, CRC, SCASU.

¹¹⁴*Bernasconi v. Tempe Elementary School District*, No. 3, 548 F.2d 857 (1977).

¹¹⁵Ann Johnson, "Battle Brings Partial Victory," *The Phoenix Gazette*, July 4, 1979, box 31, folder 9, CTDEP, CRC, SCASU.

¹¹⁶Tempe Elementary School District No. 3, Board of Trustees Minutes, September 18, 1971, box 30, folder 7, CTDEP, CRC, SCASU.

facilities, while simultaneously permitting all other previous outside uses of the district's schools. This was particularly harsh because the Guadalupe Organization's adult education program in Frank School sought to remedy the low education attainment among Guadalupanos.¹¹⁷ The Guadalupe Organization asserted that this denial of facility use was retaliatory and filed a suit against Tempe Elementary School District claiming declaratory and injunctive relief. The organization claimed that it had been permitted to use the school facilities free of charge for five years before it filed the first case against the district in 1971.¹¹⁸ The district eventually rented the space to the Guadalupe Organization for one dollar to settle the situation.¹¹⁹ The one dollar settlement represented an affirmation of the district's power, while still providing a compromise to the Guadalupe Organization.

Guadalupe not only changed district procedures but also led to reforms in the state's legislation that granted further educational rights to bilingual and minority students in Arizona. The legislation required schools to test students in their home language, notify parents in their home language, and create special education placement permission slips with the student's estimated date of removal from special education.¹²⁰ Additionally, Tempe Elementary School District removed all but one of the plaintiffs from special education classes at Frank School, returning these students to regular, mainstream classrooms.¹²¹

Although no direct link between the settlement and the creation of the Mexican American Educational Advisory Committee (MAEAC) is evident, the Tempe Elementary School District board of trustees created this advisory committee in the same month as the school district's lawyers settled the 1972 case. The board of trustees formed the advisory committee to use the "talents of the Mexican-American community as allies in the struggle towards quality education."¹²² Until

¹¹⁷Meeks, "The Yaqui of Guadalupe," 102.

¹¹⁸*Guadalupe Organization v. Tempe Elementary School District, No. 3, Retaliatory Suit* [n.d.], box 30, folder 7, CTDEP, CRC, SCASU.

¹¹⁹Tempe Elementary School District Board of Trustees Minutes, box 30, folder 7, CTDEP, CRC, SCASU.

¹²⁰Bernasconi, "The 'Why' of the Guadalupe Organization," 16.

¹²¹Tempe Elementary School District, No. 3, Settlement of Special Education Lawsuit, April 24, 1972, CTDEP, CRC, SCASU. Note that the one student who was not removed from special education stayed at the request of her parents.

¹²²"Organization of a Mexican-American School-Community Committee," a paper submitted to O.S. Fees by his administrative assistant, January 10, 1972, 6. Quoted in Cecilia de Esquer, "The MAEAC," handwritten notes, box 30, folder 4, CTDEP, CRC, SCASU.

its demise seventeen months later, the advisory committee fought vigorously for students' rights, fair desegregation policies, and bilingual and bicultural education. Finally, *Guadalupe* empowered Guadalupanos, proving they could successfully fight for their rights. Even though the litigation ultimately led Socorro Bernasconi to file her 1973 lawsuit for wrongful termination, the victory likely encouraged her to realize that she could achieve similar success through litigation. While *Guadalupe* achieved several tangible successes at the local, state, and national levels, it also paved the way for future activism in Guadalupe, such as the second class-action lawsuit that the Guadalupe Organization filed against Tempe Elementary School District in 1973, demanding an additional program of bilingual and bicultural education.¹²³

CONCLUSION

The Guadalupe Organization and Guadalupano citizens used both litigation and grassroots methods of reform. They attempted to employ grassroots methods first, sometimes only with limited success, such as Bernasconi's attempts to make changes at the school and district levels. Other grassroots actions were more successful. For example, Guadalupanos resisted Tempe Elementary School District's desegregation by creating a school that would protect not only their students but also their culture and language.¹²⁴ Guadalupanos created *I'tom Escuela* ("Our School" in Yaqui and Spanish), a private, trilingual school for their children. *I'tom Escuela* taught students community involvement and pride in their languages and cultures along with more traditional school subjects. Although the school was successful in resisting unfair desegregation policies and instilling linguistic and cultural pride in students, *I'tom Escuela* closed after ten years because of funding problems. MAEAC had some limited successes. It continually pushed the Tempe Elementary School District board of trustees to fulfill its promises to create a supplemental program of bilingual and bicultural education, and it also advocated for minority students and promoted the Guadalupanos' languages and cultures.

¹²³*Guadalupe Organization, Inc. v. Tempe Elementary School District*, No. 3, 587 F.2d 1022 (1978) [hereinafter cited as *Guadalupe v. Tempe School District*, No. 3 (1978)].

¹²⁴Octaviana Trujillo, "A Tribal Approach to Language and Literacy Development in a Trilingual Setting," in *Teaching Indigenous Languages*, ed., Jon Reyhner (Flagstaff, AZ, 1997); and Trujillo, "The Yaqui of Guadalupe, Arizona."

Thus, Guadalupanos' grassroots reform and activism met with mixed results overall.

Elsewhere in Arizona and throughout the Southwest, Mexican Americans and American Indians used forms of grassroots activism that were similar to that of the Guadalupanos to effect educational change. For example, the American Indian community organized to improve education in Phoenix, seeking reform through the school board in the Phoenix Union High School system. After a near-riot during a community school board meeting in 1973, the administration began to support American Indian initiatives, including hiring American Indian counselors and learning how to obtain federal monies to support American Indian programs.¹²⁵ Within Tempe Elementary School District, Guadalupanos also worked to incorporate curriculum and programs for students, institute culturally relevant professional development for teachers, and even adopt programs that taught Guadalupanos about Yaqui history and culture.¹²⁶ In addition, Guadalupanos created a Head Start program for preschoolers, which emphasized trilingualism and Guadalupano history and culture in its curriculum.¹²⁷

Throughout the Southwest, Chicanos and other groups frequently sought reform at the grassroots level through protests and school boycotts. For example, Mexican Americans in Phoenix boycotted for increased hiring of Chicanos and a more culturally sensitive curriculum.¹²⁸ Mexican Americans and other groups on strike sometimes created *huelga* schools, or temporary schools for boycotting students.¹²⁹ However, despite the similarities between Guadalupano and other groups' activism, Guadalupanos never led a strike against Tempe Elementary School District. Tom Escuela differed from most boycott schools in that it lasted for more than ten years, in contrast to the average two to three years that other boycott schools

¹²⁵Stephen Kent Amerman, "Making an Indian Place in Urban Schools: Native Americans and Education in Phoenix, 1941-1984" (Ph.D. dissertation, Arizona State University, 2002), 197-231.

¹²⁶Summary: Title IV Indian Education Program, Tempe Elementary School District O; Tempe Elementary School District School Board Minutes, October 4, 1978 (4); "Yaqui Heritage," *Tempe Daily News*, May 14, 1977.

¹²⁷Dianne Rowland, "Via Head Start Program: Yaqui Culture Revitalized," *Mesa Tribune*, August 12, 1976, Arizona Collection, Arizona State University; Meeks, *Border Citizens*, 234-35.

¹²⁸Meeks, *Border Citizens*, 195-99; Whitaker, *Race Work*, 210-11.

¹²⁹Guadalupe San Miguel, Jr., *Brown, Not White: School Integration and the Chicano Movement in Houston* (College Station, TX, 2001), 93-103; Blanton, *The Strange Career of Bilingual Education in Texas*, 145.

remained active.¹³⁰ Although it is uncertain why the Guadalupeños did not strike, we can surmise that their power was not in their numbers, given that Guadalupe was only a small segment of the school district. Additionally, if Guadalupeños had boycotted the Frank School and/or protested against the Tempe Elementary School District, their actions likely would have been unsuccessful, because Guadalupe was isolated, the school was still segregated, and many Tempe citizens probably would not have noticed or cared.

Although Guadalupe's litigation ultimately led to significant educational reforms, some of the litigation met with only mixed success. Both the 1972 case and the adult education case resulted in successful settlements, but Bernasconi fought for six years in the courts and never received significant restitution after winning her case. Another suit filed by the Guadalupe Organization in 1973, which demanded a permanent program of additive bilingual and bicultural education, did not succeed, because the Guadalupe Organization failed to prove that Tempe Elementary School District was not providing an adequate compensatory bilingual program for minority students. The Guadalupe Organization wanted more than just compensatory bilingual education; they wanted continuing bilingual instruction even after language-minority students learned English, which went beyond precedent.¹³¹ The court used the case to clarify the role of public schooling in promoting national unity, stating, "Linguistic and cultural diversity within the nation-state, whatever may be its advantages from time to time, can restrict the scope of the fundamental compact."¹³² It continued, "The decision of the appellees to provide a predominantly monocultural and monolingual educational system was a rational response to a quintessentially "legitimate state interest."¹³³

This decision represented the nation's concept of citizenship, because it showed that the court believed the national language was English and the culture was "American," and it defined Mexican American and Yaqui culture and language as permanently foreign and un-American. Both courts and school districts

¹³⁰Lynn Pyne, "I/Tom Escuela's 30 Pupils Learn Two Languages," *The Phoenix Gazette*, April 23, 1980, SE-2.

¹³¹Jonathan D. Haft, "Assuring Equal Education Opportunity for Language-Minority Students: Bilingual Education and the Equal Education Opportunity Act of 1974," *Columbia Journal of Law and Social Problems* 18:2 (Spring 1983): 273, 275-76.

¹³²*Guadalupe v. Tempe School District*, No. 3 (1978), section C at par. 3.

¹³³*Ibid.*, par. 5.

often supported compensatory bilingual and bicultural education because it was a temporary means of preparing students to enter the regular classroom, where they would speak English and participate in American culture. Most courts and districts did not advocate additive bilingual and bicultural education, because doing so would acknowledge the legitimacy of non-English languages and non-Anglo cultures as equally American.

This case exemplifies the shift in Mexican American activism and reform in the 1960s and 1970s. The early- to mid-1970s marked a larger movement toward bilingual and bicultural education in the United States, coinciding with the Chicano movement, a Mexican American civil rights movement in the 1960s and 1970s that stressed cultural pride, political activism, and empowerment.¹³⁴ Mexican Americans made a distinct shift away from claiming rights through assimilation and "becoming white" to asserting cultural pride and a new definition of citizenship that allowed for cultural and linguistic heterogeneity.¹³⁵ *Guadalupe* (1972) represents a transition between these claims: although the Guadalupe Organization argued for cultural and linguistic recognition to eliminate structural inequalities, it requested a pragmatic reform rather than the more radical demands of *Guadalupe* (1978) for an additive bilingual education program.

In the 1960s and 1970s, the combination of litigation and grassroots activism was the most popular way of achieving civil rights reform. For example, Chicanos in Houston effected change by boycotting schools, petitioning the school board, and using the court system.¹³⁶ The African American civil rights movement used the same tactics—activists simultaneously pushed for precedent cases while organizing the community

¹³⁴For more on the Chicano movement and education, see, for example, Meeks, *Border Citizens*, 180–210; Ernesto Chávez, "Mi Raza Primero!" (*My People First!*): Nationalism, Identity, and Insurgency in the Chicano Movement in Los Angeles, 1966–1978 (Berkeley, CA, 2002); San Miguel, Jr., *Brown, Not White*; Carlos Muñoz, *Youth, Identity, Power: The Chicano Movement* (New York, 2007); Darius V. Echeverria, "Aztlán Arizona: Abuses, Awareness, Animosity, and Activism amid Mexican Americans, 1968–1978" (Ph.D. dissertation, Temple University, 2006); Maria Eva Valle, "MEChA and the Transformation of Chicano Student Activism: Generational Change, Conflict, and Continuity" (Ph.D. dissertation, University of California, San Diego, 1996); Maritza De La Trinidad, "Collective Outrage: Mexican American Activism and the Quest for Educational Equality and Reform, 1950–1990" (Ph.D. dissertation, University of Arizona, 2008).

¹³⁵Meeks, *Border Citizens*, 181; San Miguel, Jr., *Brown, Not White*.

¹³⁶*Ibid.*, 97–194.

at the local level.¹³⁷ As in Guadalupe, civil rights activists throughout the nation sought educational reforms through interrelated processes of grassroots activism and litigation. Commonly, legislation was created only after precedent cases, which civil rights activists learned from each other's successes and failures. Because of this, the Guadalupe Organization and other Arizona activist groups tended not to appeal to the state legislature but gained legislative changes through litigation and local activism instead.¹³⁸

This reluctance to utilize legislative reform has led to an inconsistency of language rights in the United States. James Crawford, president of the Institute for Language and Education Policy, asserts that language rights are "vulnerable to changing political winds," largely because they are only vaguely prescribed in both legislation and court decisions and thus are open to interpretation.¹³⁹ Despite the ambiguity, education specialist Michael Donal Sacken suggests that the best type of education legislation is that which prescribes little and allows for local variance, because "the 'best' method of bilingual education will vary according to local conditions and available personnel. . . . Why should Nogales's public schools provide the same minimal program imposed on Scottsdale?"¹⁴⁰ Arguing that bilingual and bicultural education often is attacked for its "explicitly pluralistic orientation," which "threatens the process of citizenship creation," he shows that even when states passed legislation that explicitly allowed or mandated bilingual education, public opinion often forced the legislature to amend or repeal this legislation.¹⁴¹ Perhaps the best solution to bilingual education and language rights disputes is to allow for local decision-making, with some level of federal oversight, like the results of *Guadalupe* (1972).

In spite of the inconsistencies in language rights, it is still important that minority groups pursued change through democratic means by working to redefine citizenship and the rights

¹³⁷Peter Lau, ed., *From the Grassroots to the Supreme Court: Brown v. Board of Education and American Democracy* (Durham, NC, 2004), and Charles M. Payne, *I've Got the Light of Freedom: The Organizing Tradition and the Mississippi Freedom Struggle* (Berkeley, CA, 2007).

¹³⁸Michael Donal Sacken, *Reformation of Arizona's Bilingual Education Policy: Litigation or Legislation?* Mexican American Studies and Research Center Working Paper 4 (Tucson, AZ, 1983). See also Muñoz, "Desert Dreams."

¹³⁹James Crawford, "Loose Ends in a Tattered Fabric: The Inconsistency of Language Rights in the United States," in *Language Rights in Comparative Perspective*, ed. Joseph Eliot Magnet (Markham, Ontario, 2008), 2.

¹⁴⁰Sacken, *Reformation of Arizona's Bilingual Education Policy*, 69, 72.

¹⁴¹*Ibid.*, 66, 83.

it entailed. In her exploration of cultural citizenship, historian Blanca Silvestrini demonstrates how "vernacular conceptions of rights precede legal concepts of rights," meaning that minority groups often recognized rights that had not yet been recognized by the dominant population or won through litigation or legislation. Silvestrini shows that often, by fighting for these rights, activists alter the law and its interpretation.¹⁴² Even though the Guadalupanos met mixed results in their attempts to reform the national and legal concept of citizenship, it was still worth the fight, because these cases helped mobilize the community. The Guadalupanos' successes through the mutually dependent processes of grassroots activism and litigation built political momentum in the community, while also teaching and modeling skills of citizenship, such as voting, litigating, and other activist techniques. This ultimately aided Guadalupanos in solidifying their cultural identity and in demanding their right to participate as citizens who are different but equal. By redefining citizenship to include cultural rights, minority ethnic groups, including the Guadalupanos, have preserved and promoted pride in their language and culture.

¹⁴²Flores and Benmayor, *Latino Cultural Citizenship*, 18.

BOOK REVIEWS

Voices Raised in Protest: Defending North American Citizens of Japanese Ancestry, 1942–49, by Stephanie Bangarth. Vancouver, B.C.: UBC Press, 2008; 296 pp.; illustrations, notes, bibliography, index; \$85.00 cloth; \$32.95 paper.

In *Voices Raise in Protest*, author Stephanie Bangarth explains in impressive detail how organizations and individuals struggled to defend the rights of Americans and Canadians of Japanese ancestry (Nikkei) during and immediately following the Second World War. Bangarth concludes that the wartime battle to defend Nikkei rights was ineffective at first but later had a lasting, positive effect on mainstream thinking about citizenship, human rights, and racism in both countries.

Bangarth draws several important conclusions that help us understand why organized resistance to Nikkei "internment" failed to prevent a large-scale violation of civil rights. She points out that liberals and intellectuals believed minorities should assimilate, and they thought that relocation would accelerate Nikkei assimilation by dispersing this minority population throughout both countries. In a total war against fascism, groups that supported Nikkei rights also supported the U.S. and Canadian war efforts. These factors made it very difficult for organizations to contest the governments' claims that they were acting out of military necessity. As a result, instead of objecting to evacuation and relocation, most groups opposed other wartime policies. In Canada, Nikkei and non-Nikkei organized jointly to fight involuntary deportation and disenfranchisement. In the United States, Nikkei and non-Nikkei organized separately to oppose prolonged incarceration and attacks on Nisei citizenship and voting rights.

Advocates for Nikkei rights were divided by internal dissent. The American Civil Liberties Union (ACLU), for example, fought against regional chapters and individual lawyers who were adamantly in favor of opposing President Roosevelt on the constitutionality of Executive Order 9066. The Japanese American Citizens League (JACL) drew the ire of Japanese Americans for cooperating with the overall program of internment. Bangarth found that all groups in both countries shared a remarkable consensus, however, that they could not fight openly for the rights of alien Japanese. Even though groups

were splintered by internal dissent and bound by wartime loyalty to the state, they shared a growing commitment to fight racism in ways that reflected new ideas about universal human rights. The post-war language of universal human rights became particularly innovative in Canada.

Interestingly, Bangarth is silent about Japanese dual citizenship, and she is not alone. Few books published since the 1970s discuss the topic at all. The important role that citizenship plays in this book and in the historical record begs the question why this silence persists in the literature. It is a topic that is in serious need of updated research and discussion.

Although the scope and thorough research of this book are impressive, the organization of the book is confusing and often repetitive. Readers would benefit from having previous knowledge of the basic constitutional and legal histories of both countries. A previous knowledge of Nikkei history would also be helpful but is not necessary. The author uses some legal jargon without defining the terms for readers unfamiliar with the law.

These relatively minor problems do not diminish the fact that the book is an important contribution to the field and offers cutting-edge attention to the transnational nature of what scholars typically treat as national topics. Bangarth provides thorough coverage of groups that worked to defend Nikkei rights, including many who are normally ignored. For example, few scholars include the efforts of Chinese, Jewish, African American, and non-West Coast Nisei together in their research on Japanese Americans during the war. Some have examined intellectual responses, or the conflicted activities of the ACLU and a handful of religious groups, particularly the American Friends Service Committee, but Bangarth brings the discussion to a transnational level when, for example, she examines the international stake that Christian organizations had in demonstrating their commitment to the rights of all persons of Japanese ancestry.

Voices Raised in Protest also provides a timely reflection on the difficulty with which organizations opposed the state during wartime. Yet Bangarth reminds us in her final chapter of the lasting contributions made by the legal defense of minorities' rights after the war had ended. Despite the fact that the Japanese American Citizens League, for example, defended the government's right to intern the entire West Coast population of Nikkei and collaborated to an embarrassing degree in the process, the JACL fought racism vigorously after the war. It established a legal defense fund and supported some of the most important court cases that ended segregation and racist laws after the war. Groups that organized to defend Nikkei in

Canada joined forces to prevent the involuntary deportation of Japanese Canadian citizens after the war had ended. Despite the limits of wartime dissent, continued efforts to end legally sanctioned racism succeeded over time.

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Federal Judges Revealed, by William Domnarski. New York: Oxford University Press, 2009; 231 pp.; bibliography, index; \$65.00 cloth.

There was a time when judges believed that whatever they did away from public view deserved to stay secret. Prominent jurists destroyed their papers when they retired and left their rulings as the only record of their service. But this resistance to preserving a thorough historical record began to melt away when judges came to realize that other colleagues were saving their papers, depositing them in libraries, and opening them for research, and that some of their clerks were giving interviews about the personal interactions within the inner sanctum. Additionally, in this era of transparency, federal judges have participated in oral history programs, in which they have recounted their entire lives from attending law school to practicing law to being appointed to the court. Thousands of such interviews have taken place at every judicial level across the country.

Aided by the biographical database maintained by the Federal Judicial Center, William Domnarski located and read more than a hundred interviews, amounting to 20,000 pages of transcripts. Domnarski, who holds both a J.D. and a Ph.D. in English, focused on judges appointed between the 1960s and the 1980s, who mirror a general statistical profile of the contemporary federal judiciary.

The long reluctance of judges to lift the veil on their private proceedings may have reflected concerns that focusing on the human qualities of judges would somehow reduce the aura of the bench. But by bringing out those human qualities, the oral histories in this volume enhance rather than diminish the bench. The jurists in *Federal Judges Revealed* admit to tripping on their robes, tipping over their chairs, fretting about their slow reading skills, and anguishing over having their rulings reversed. They also assess their colleagues on the bench and the lawyers who appeared before them, and talk about the pressures of the job and the seriousness with which they take their responsibilities.

Domnarski's captivating sample of the information that oral history can provide justifies the efforts that have gone into collecting these reminiscences. He identifies all of the judges by name, the courts on which they served, and the dates of their service. Their stories cover their lives before admission to the bar, including college, military service, and law school; their legal careers before going on the bench, including clerkships, law practice, and the process of judicial nomination; and their service on the bench, including their initial transitions, the nature of their work, their clerks and fellow judges, and their rendering of judicial opinions. The book does not deal with particular cases but with how their life experiences and work habits influenced the ways in which they decided cases. "It is not a natural thing for federal judges to talk about themselves to outsiders," Domnarski concedes. "After all, they answer to no one" (p. 5).

Because the oral histories were conducted by numerous interviewers, Domnarski found that their quality varied significantly. The best occurred when the interviewers had established a good rapport with the judges, putting them at ease and encouraging them to speak candidly. Some of these interviews have yielded stunning admissions, particularly about the patronage demands sometimes placed on judicial nominees (one judge related how the senator who got him appointed made it clear that he in turn had to appoint a certain clerk of the court and fill other jobs with people whom the senator favored). The judges also discussed the high-stakes presidential deal-making behind their appointments, which left them sometimes little more than bystanders. The judges reflected on the difficult behavior and "petty tyrannies" of some their colleagues on the bench (p. 7), and the often stressful nature of the job, but they also talked about their personal role models and the pleasure they gained from observing the "good lawyering" (p. 209) that took place in their courtrooms.

Federal Judges Revealed succeeds in its aim to tell as much about the judges as about the process of judging. It is at once about individual lives and collective experiences, thanks to Domnarski's deft weaving of his selections. Beyond the information and analysis offered, the book may help convince some of the remaining skeptics on the bench of the importance of leaving a more complete record of their tenure, including oral history interviews, to provide the needed historical context for their judicial legacies.

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What Blood Won't Tell: A History of Race on Trial in America, by Ariela J. Gross. Cambridge: Harvard University Press, 2008; 368 pp.; notes, acknowledgements, index; \$29.95 cloth.

Ariela Gross's *What Blood Won't Tell* is a significant contribution to our understanding of the role law played in the social historical construction of "whiteness" as a pseudo-paradigm of race. Gross is the John B. and Alice R. Sharp Professor of Law and History at the University of Southern California and has published lengthy law journal articles that parallel the topic of her book. To explain "whiteness" as a social historical construction via law, Gross examines case law and how court decisions created categories that defined "whiteness," depending on time and place. This dependency is key to her thesis, which is that the falsity of race can be verified in case law because the cases themselves reveal how subjective race is. This illogical subjectivity is seen as race became a moving target with contingencies based on individual litigant, plaintiff's claim, local understanding of race, oppositional class conflicts, and federal legislative imprint. The trials themselves turned on such ambivalences as "appearance, ancestry, performance, reputation, association, science, national citizenship, [and] cultural practice."

Gross' book examines the period in which *partus sequitur ventrem*, or the colonial statutory idea that status of children should follow status of mother, prevailed. The colonial slaveholding class assumed that this legal idea, enforced by colonial courts, would address the obvious contradiction of a race-based slave society in which individuals of mixed ancestry existed. This existence was driven by the coercive intimacy of white men and black women. English common law was changed so that sexual coercion would not produce offspring who would follow the status of their free white fathers. Gross does an excellent job in citing James Hugo Johnson's old study of intimacy between white women and black men, which created numerous plaintiff claims that since their mothers were free white women, *partus sequitur ventrem* should be the holding principle in their freedom lawsuits.

Strangely, Gross refers to, but does not give a citation for, the 1816 case of *Negro John Davis v. Wood*, which she claims ended the use of hearsay evidence to prove ancestry. The case that actually closed off this avenue of freedom for many mixed-ancestry plaintiffs was *Mima Queen and Child v. Hepburn* (1813). However, Gross is definitive in her analysis and understanding of the dialectics of racial boundaries in her examination of the 1857 *Alexina v. Morrison* case. Her expertise is clear in the way she critically analyzes this case and how "whiteness" contradictory categories of appearance, behavior, local custom, and knowledge of ancestry created a

racial contingency dilemma that freed Ms. Morrison from the condition of slavery.

Gross should be given high marks for recognizing and understanding two signal events in the legal/social construction of race. In recognizing these two events—Nathaniel Bacon's Rebellion of 1767 and the Naturalization Act of 1790—Gross shares with the reader the importance of the symmetry between race, class, and national citizenship. To explicate this symmetry, she examines miscegenation cases: Melungeons as a mixed-race ancestral group and cases of national origin (Armenians became white by law, but Bhagart Singh Thind, an East Indian, became non-white by law). The land of opportunity was predicated on racial identity of "whiteness" as connected to national citizenship. What is also impressive about this work is that it is so well researched (e.g., included is late nineteenth-century African American fiction on the dilemma of mixed-race individuals). Gross has mined the complete extant scholarship on the topic of "whiteness," which enhances the scholarly quality of this book and makes Gross a doyenne in this field of knowledge.

However, in spite of such impeccable scholarship, a lacuna exists when Gross analyzes "Mexican Americans and the 'Caucasian Cloak.'" This chapter follows earlier chapters in which she clearly understands the problematic of imperialism and the acquisition of land. Her excellent examination of Indian land allotment and white land aggrandizement, which involves Oklahoma's "Black Cherokees" and other such contested terms of race, continues in her analysis of land allotment in Hawai'i between ruling classes—Hawai'i royalty and the *haoles* (whites/imperialists). Gross' case law analysis of the Hawaiian Homes Commission Act of 1920; the Dawes Act and the racial problematic of enrollment; and the eugenics parameters of immigration policy are on mark. That is why the omission of the 1931 *Alvarez v. Lemon Grove* case is of interest. With her dense scholarly citations, I assume she knows of this case but preferred to emphasize the *Hernandez v. Texas* and *Mendez v. Westminster* cases, which were handed down later. How Mexicans became white was initially based on the little-known 1931 *Alvarez* case of school segregation by the Lemon Grove School Board in San Diego County. This singular absence detracts only slightly from the quality and merit of the research. *What Blood Won't Tell* is a significant contribution to our understanding of law and race as contingency expressions of imperial domination revealing "race" as a false category of human existence.

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Dividing Western Waters: Mark Wilmer and Arizona v. California, by Jack L. August, Jr. Ft. Worth: TCU Press, 2007; 172 pp.; illustrations, appendices, notes, bibliography, index; \$32.95 cloth.

Dividing Western Waters celebrates the achievement of Arizona attorney Mark Wilmer's litigation of *Arizona v. California*. Tried in the U.S. Supreme Court over a ten-year period (1952–63), *Arizona v. California* involved the legal efforts of both states to secure enough Colorado River water to satisfy agricultural and urban demands stimulated by post-war growth.

The conflict had its genesis in several areas. In contrast to the Colorado River's upper basin states (Colorado, Wyoming, Utah, and New Mexico), the three states of the lower basin (Arizona, California, and Nevada) were unable to agree independently to an apportionment of the 7.5 million acre-feet to each basin designated by the 1922 Colorado River Compact. Because Arizona failed to ratify the compact until 1944, California planned and developed water projects on the basis of prior appropriation and prescriptive rights to which Arizona, as a non-signer, could not object. Additionally, California concluded that Arizona's exclusive claim to the Gila River, a Colorado River tributary, was unfounded and that any rights Arizona might have to the main-stem Colorado River would require consideration of the one million acre-feet annually flowing in the Gila.

Arizona saw things differently. Concerned by alarming growth data, declining water resources in underground aquifers, and significant surface subsidence, state officials saw the need for certainty regarding the 2.8 million acre-feet of Colorado River authorized to Arizona in the 1928 Boulder Canyon Project Act. While California continued to plan projects that could utilize as much as 8.8 million acre-feet from the Colorado River (the Boulder Canyon Project Act awarded California 4.4 million acre-feet), Arizona lived with the fear that Congress would never approve construction of dams and a canal—eventually called the Central Arizona Project—because of California's fast-moving projects. During the 1922 debates in Santa Fe, Arizona's Colorado compact commissioner, W.S. Norviel, had fought for a delivery system from the Colorado River—the High Line Canal—to be included in the compact, but he failed, resulting in his state's refusal to ratify that compact until 1944. Because of the attacks on Arizona's rights to the Gila River, California's development of projects at warp speed, and no works in place for Arizona's share of Colorado River water, Arizona resorted to litigation.

California had the population and financial resources to fight back both in the Supreme Court and in Congress. In con-

trast, Arizona stumbled all over itself during the first five years of litigation. Finally, in 1957, state officials asked Mark Wilmer to take over the case. He began by filing a new petition in the Court in which he argued that Arizona's rights to the Gila River had been acquired prior to the Colorado River Compact and were not in any way involved with the 2.8 million acre-feet awarded to Arizona under the Boulder Canyon Project Act. Those rights, he argued, were perfected by Article 8 of the Colorado River Compact. "In one gesture," August notes, "Wilmer swept aside four decades of ill-advised argument. . ." (p. 81). In its 1963 decision, the Court agreed with Wilmer, granting Arizona its 2.8 million acre-feet and limiting California to 4.4 million acre-feet. Although this ruling has been difficult to enforce over the years, Wilmer's leadership saved Arizona by making possible the Central Arizona Project, approved in 1973 and substantially completed in 1993.

Jack August's biggest accomplishment in *Dividing the Waters* is his ability to cut through the thousands of pages of testimony and documentation to show how Wilmer out-strategized his California opponents with legal skill, charm, and persistence. Although the author's depiction of Wilmer's triumph might have been enhanced by a better connection to Norviel's representation of Arizona's needs during Colorado River Compact negotiations in 1922, his skill in telling a very complex story in 130 pages is most commendable. Equally meaningful is August's depiction of Wilmer as a gentleman, a community builder, and a family man who was highly respected by his adversaries. In fact, one cannot read *Dividing the Waters* without being moved by Wilmer's humanity during a full and productive life.

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ARTICLES OF RELATED INTEREST

Below we list articles recently published in journals of history, law, political science, and other fields that we believe may be of interest to readers. Although comprehensive, the list is not definitive, and the editor would appreciate being informed of articles not included here.

Acosta, Jesús Ángel Enríquez. "Migration and Urbanization in Northwest Mexico's Border Cities," *Journal of the Southwest* 51:4 (Winter 2009).

Anderson, José Felipé. "Freedom of Association, the Communist Party, and the Hollywood Ten: The Forgotten First Amendment Legacy of Charles Hamilton Houston," *McGeorge Law Review* 40:1 (2009).

Arendt, Emily J. "The Wyoming Experiment and the Case for Practical Propaganda," *Annals of Wyoming* 81 (Winter 2009).

Baade, Hans W. "Chapters in the History of the Supreme Court of Texas: Reconstruction and 'Redemption' (1866-1882)," *St. Mary's Law Journal* 40:1 (2008).

Baldrice, Michael, and Carrie Smith. "Research, Management, and Interpretation of Historic Sheep Camps and the East Side of the Tahoe National Forest," *Nevada Historical Society Quarterly* 52 (Winter 2009).

Banks, Taunya Lovell. "Outsider Citizens: Film Narratives about the Internment of Japanese Americans," *Suffolk University Law Review* 42:4 (2009).

Belknap, Michal. "Why *Dennis v. United States* Is a Landmark Case," *Supreme Court History* 34:3 (2009).

Bennett, Adam. "'The Up-Growth of New Industries': Transformation of Nevada's Economy, 1918-1929," *Nevada Historical Society Quarterly* 52 (Fall 2009).

Bishop, Ronald. "'Little More Than Minutes': How Two Wyoming Community Newspapers Covered the Construction of the Heart Mountain Internment Camp," *American Journalism* 26 (Summer 2009).

Bloomberg, Kristin Mapel. "'Striving for Equal Rights for All': Woman Suffrage in Nebraska, 1855–1882," *Nebraska History* 90 (Summer 2009).

Blumm, Michael C., and Jane G. Steadman. "Indian Treaty Fishing Rights and Habitat Protection: The *Martinez Decision* Supplies a Resounding Judicial Reaffirmation," *Natural Resources Journal* 49:3 & 4 (Summer-Fall 2009).

Bonds, Anne. "Discipline and Devolution: Constructions of Poverty, Race, and Criminality in Politics of Rural Prison Development," *Antipode* 41 (May 2009).

Bubb, Daniel. "Transforming the Desert: Commercial Aviation as Agent of Change, Las Vegas, 1926–1945," *Nevada Historical Society Quarterly* 52 (Fall 2009).

Buckingham, Susan, and Rakibe Kulcur. "Gendered Geographies of Environmental Injustice," *Antipode* 41 (September 2009).

Camden, Jen, and Kathryn E. Fort. "'Channeling Thought': The Legacy of Legal Fictions from 1823," *American Indian Law Review* 33:1 (2008–2009).

Correia, David. "Making Destiny Manifest: United States Territorial Expansion and the Dispossession of Two Mexican Property Claims in New Mexico, 1824–1899," *Journal of Historical Geography* 35 (January 2009).

———. "Taking Timber, Earth, and Water: The Denver and Rio Grande Railroad and the Struggle for New Mexico's Land Grants," *Natural Resources Journal* 48:4 (Fall 2008).

Damico, Denise Holladay. "The Cebolleta Land Grant: Multicultural Cooperation and Contention," *Natural Resources Journal* 48:4 (Fall 2008).

Davis, Ethan. "An Administrative Trail of Tears: Indian Removal," *American Journal of Legal History* 50 (January 2008).

DiMento, Joseph, and Kazuto Oshio. "Forgotten Paths to NEPA: A Historical Analysis of the Early Environmental Law in the 1960s United States," *Journal of American and Canadian Studies* 27 (2009).

DiStefano, Diana L. "Disasters, Railway Workers, and the Law in Avalanche Country, 1888–1910," *Environmental History* 14 (July 2009).

Duchemin, Michael. "Water, Power, and Tourism: Hoover Dam and the Making of the New West," *California History* 86:4 (2009).

Fisher, Kristina G. et al. "Symposium on Land Grants and the Law: The Disputed Legal Histories of New Mexico's Land Grants," *Natural Resources Journal* 48:4 (Fall 2008).

Fletcher, Mathew L.M. "Factbound and Splitless: The Certiorari Process as Barrier to Justice for Indian Tribes," *Arizona Law Review* 51:4 (2009).

Floyd, Larry C. "Jake Hamon: 'The Man Who Made Harding President,'" *Chronicles of Oklahoma* 87:3 (Fall 2009).

Foley, William E. "Murder on the Santa Fe Trail: *The United States v. See See Sah Mah and Escotah*," *Kansas History* 32:2 (Summer 2009).

Furnish, Dale Beck. "Sorting Out Civil Jurisdiction in Indian Country after Plains Commerce Bank: State Courts and the Judicial Sovereignty of the Navajo Nation," *American Indian Law Review* 33:2 (2008-2009).

Gallegos, Brisa Violeta Carrasco. "Tijuana: Border, Migration, and Gated Communities," *Journal of the Southwest* 51:4 (Winter 2009).

Ginsburg, Ruth Bader. "*Muller v. Oregon*: One Hundred Years Later," *Willamette Law Review* 45 (Spring 2009).

Green, Michael. "Abraham Lincoln, Nevada, and the Law of Unintended Consequences," *Nevada Historical Society Quarterly* 52 (Summer 2009).

Greenberg, Jonathan D. "The Arctic in World Environmental History," *Vanderbilt Journal of Transnational Law* 42 (October 2009).

Gregg, Mathew T. "Shortchanged: Uncovering the Value of Pre-removal Cherokee Property," *Chronicles of Oklahoma* 87 (Fall 2009).

Grow, Matthew J. "The Suffering Saints: Thomas L. Kane, Democratic Reform, and the Mormon Question in Antebellum America," *Journal of the Early Republic* 29:4 (Winter 2009).

Guenther, Todd. "'The List of Good Negroes': African American Lynchings in the Equality State," *Annals of Wyoming* 81 (Spring 2009).

Gugin, Linda C. "Sherman Minton: Restraint Against a Tide of Activism," *Vanderbilt Law Review* 62:2 (2009).

Harris, Douglas C. "A Court Between: Aboriginal and Treaty Rights in the British Columbia Court of Appeal," *British Columbia Studies* 162 (Summer 2009).

Holley, Val. "Showdown at Geddes Gulch: How Prior Appropriation Ambushed Weber County," *Utah Historical Quarterly* 77 (Fall 2009).

Houghton, Kristopher N. "The Blighted History of the Alameda Land Grant: *Montoya v. Unknown Heirs of Vigil*," *Natural Resources Journal* 48:4 (Fall 2008).

Hudson, Blake. "The Public and Wildlife Trust Doctrines and the Untold Story of the Lucas Remand," *Columbia Journal of Environmental Law* 34:1 (2009).

Janssen, Volker. "When the 'Jungle' Met the Forest: Public Work, Civil Defense, and Prison Camps in Postwar California," *Journal of American History* 96 (December 2009).

Jarvis, Robert M. "John B. West: Founder of the West Publishing Company," *American Journal of Legal History* 50 (January 2008).

Jensen, Kimberly. "Revolutions in the Machinery: Oregon Women and Citizenship in Sesquicentennial Perspective," *Oregon Historical Quarterly* 110:3 (Fall 2009).

Justl, Jonathan M. "Disastrously Misunderstood: Judicial Defiance in the Japanese-American Cases," *Yale Law Journal* 119 (November 2009).

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Threedy, Debora L. "*United States v. Hatahley*: A Legal Archaeology Case Study in Law and Racial Conflict," *American Indian Law Review* 34:1 (2009-2010).

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Twibell, T.S. "Rethinking *Johnson v. M'Intosh* (1823): The Root of the Continued Forced Displacement of American Indians Despite *Cobell v. Norton* (2001)," *Georgetown Immigration Law Journal* 23:1 (Fall 2008).

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