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# The “Trial of the Century” that Never Was: Staff Sgt. Macario Garcia, the Congressional Medal of Honor, and the Oasis Café

MICHAEL A. OLIVAS\*

## INTRODUCTION

There can be no doubt that life in the early twentieth century in rural Texas was difficult for Mexican Americans and Mexican-origin people. Texas was the only southern state with a substantial Mexican population, so Jim Crow morphed into a form not found elsewhere in the agricultural South. The racial segregation practiced against African Americans took on its usual caste, metastasizing in its traditional ways of racial violence, social isolation, segregation, and, in the cotton culture, virtual slavery. But the racial separation practiced against Mexicans also took on additional, unique forms, including linguistic, national origin, political, and immigration-related oppression. These forms of oppression rendered Mexican American communities equally subservient, but in a different manner, to the larger Anglo population, even in those areas of Texas such as the Rio Grande Valley and other geographic regions where the Mexican population was the plurality or majority population.<sup>1</sup>

In the second half of the twentieth century, beginning with the 1952 *Hernandez v. Texas* litigation, the tide began to turn slowly but inexorably. That litigation led to the first case argued in the United States Supreme Court by Mexican American attorneys, an important Warren Court opinion that overturned a murder conviction in 1954. The opinion also ordered that Pete Hernandez be re-tried, without the systematic exclusion of Mexican American jury members.<sup>2</sup> This case, decided less than two weeks before the momentous *Brown v. Board of Education*<sup>3</sup> school desegregation case (and entered into the Supreme Court reporter as the case before *Brown*), is largely forgotten and lost in the glare emanating from *Brown*. However, an even more obscure dispute had arisen several years earlier and not far from the *Hernandez* venue of Edna, Texas. This September 10, 1945, matter involved another unlikely Mexican American, Staff Sgt.

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\* Michael A. Olivas is William B. Bates Distinguished Chair in Law, University of Houston Law Center. I acknowledge the debt owed to James deAnda, who suggested the title of this paper, and others who assisted me in this project: Professors Maggie Rivas-Rodriguez, Emilio Zamora, Kevin R. Johnson, Gary Keller, Marie-Theresa Hernandez, and Chon Noriega. I appreciated the assistance of Henry A. J. Ramos, as well as that of Deterrean S. Gamble, Alex D. Perez, and Deborah Jones.

1. See generally ARNOLDO DE LEÓN, THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS, 1821–1900 at 103–106 (1983) (providing many illustrative historical examples); DAVID MONTEJANO, ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836–1986 (1987); Neil Foley, *Straddling the Color Line: The Legal Construction of Hispanic Identity in Texas*, in NOT JUST BLACK AND WHITE: HISTORICAL AND CONTEMPORARY PERSPECTIVES ON IMMIGRATION, RACE, AND ETHNICITY IN THE UNITED STATES 341, 341–54 (Nancy Foner & George M. Fredrickson eds., Russell Sage Foundation 2004); Ariela J. Gross, “*The Caucasian Cloak*”: *Mexican Americans and the Politics of Whiteness in the Twentieth-Century Southwest*, 95 GEO. L.J. 337 (2007).

2. *Hernandez v. Texas*, 347 U.S. 475, 482 (1954).

3. 347 U.S. 483 (1954).

Macario Garcia. Garcia, a decorated veteran who had recently been honored by President Truman in the White House for his heroism and injuries in World War II (WWII), was refused service in a hometown restaurant, the Oasis Café. When he protested his treatment, he was charged with aggravated assault.<sup>4</sup>

The Macario Garcia case is instructive for its various behind the scenes strands, its unusual cast of characters (one of whom would resurface in *Hernandez* a decade later), and its stark reminder that even patriotic and decorated members of this group would not be accorded full participation in the civic affairs and quotidian life of WWII Texas. In addition, John Herrera served as Garcia's lawyer (one of several). Herrera and the League of United Latin American Citizens (LULAC), the organization for which he would serve as national president, were involved in this trial. Richmond was also the site of the Aniceto Sanchez case, an immediate predecessor to *Hernandez*, in which jury composition was also at issue.<sup>5</sup>

### I. STAFF SGT. MACARIO GARCIA

Macario Garcia, a native of Mexico, grew up in the United States in the Sugar Land, Fort Bend County, Texas area. This area, adjacent to the Harris County, Houston area, was largely rural and agricultural and was dominated by big sugar, cotton, rice, pecans, and the Texas Department of Corrections, which had arranged to have several facilities built and for convict labor to be utilized in the harvesting of the sugar crop.<sup>6</sup> Young Macario Garcia was drafted into the military in November, 1942, and he served along with so many young men and women in the European theater. He was injured in Normandy in June, 1944, and after recovering from those wounds was reinjured in Germany in November, 1944. VE Day ended hostilities in Europe on May 8, 1945, after which he returned to the United States and his home town. VJ Day, celebrating the surrender of Japan and an end to WWII, was August 15, 1945. Within two weeks after VJ Day, Garcia was awarded the Congressional Medal of Honor by President Harry Truman at a White House ceremony, on August 23, 1945.

Garcia was the toast of the town upon his return to Sugar Land. The September 7, 1945, *Houston Post* featured a story of the uniformed "Sugar Land War Hero" receiving a citation from Robert E. Smith, Chairman of the Good Neighbor Commission. The local paper characterized him as "Fort Bend's lone wearer of the

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4. I have taken the complicated fact pattern from the various newspaper accounts, which clearly reveal an establishment bias. These articles get some facts wrong, such as the spelling of Macario Garcia's name. I also discussed this case with Judge James deAnda, who figured prominently in Texas civil rights cases after 1950, who was John Herrera's law partner in the early 1950's, and who stayed in regular touch with Herrera over the years. A number of documents about the case are also available in the Houston Public Library's Metropolitan Research Center archives, especially in the John Herrera Collection. See Houston Metropolitan Research Center, John J. Herrera Papers, <http://www.lib.utexas.edu/taro/houpub/00009/hpub-00009.html>.

5. *Sanchez v. State*, 243 S.W. 2d 700, 701 (Tex. Crim. App. 1951). See generally Michael A. Olivas, *Hernandez v. Texas: A Litigation History*, in "COLORED MEN" AND "HOMBRES AQUI": *HERNANDEZ V. TEXAS* AND THE EMERGENCE OF MEXICAN-AMERICAN LAWYERING 209 (Michael A. Olivas ed., 2006) (providing many of the documents and background of the *Hernandez* case).

6. See generally HAROLD M. HYMAN, *OLEANDER ODYSSEY: THE KEMPERS OF GALVESTON, TEXAS, 1854-1980s* (1990).

Congressional Medal of Honor," and the article went on to note his heroics and that he had returned to the country "without fanfare."<sup>7</sup> On the evening of September 9, 1945, he was given a party and dance at the Richmond City Hall. It was arranged by civic leaders and was spearheaded by the local LULAC chapter. LULAC saw the return of the local hometown war hero as a way to demonstrate to the larger community that Mexican Americans deserved better than their hardscrabble fate, and that as fully-participating members of the polity they were ready to claim their share of postwar benefits and opportunities. Moreover, they were poised to assert their rights in legal forums as well, as the *Westminster School District v. Mendez* and *Delgado v. Bastrop* desegregation cases would show in California and Texas: the states with the largest Mexican-origin populations.<sup>8</sup>

The day after his public welcoming, Staff Sgt. Garcia was refused service in Richmond's Oasis Café. This September 10, 1945, refusal of service is what triggered the "Macario Garcia incident." While Garcia always denied that he had committed any violence, he was refused service by the owner of the Oasis Café, Mrs. Donna Lower Andrews, and beaten with a baseball bat. Because no independent witnesses actually surfaced, the best telling of the tale is that of the weekly local paper, the *Texas Coaster*. It is the "best" version not because it is the most complete or accurate, but because the September 27, 1945, version unwittingly reveals a number of issues that depict the developing public version of the incident:

#### Charges Filed Here in Café Incident Case

Charges of aggravated assault were filed here Monday against Sgt. Marcario [sic] Garcia as a result of a disturbance in a local café on September 10. The charges were brought by Mrs. Donna Andrews, one of the owners of the Oasis Café in Richmond, and were filed in county court through County Attorney Sidney Brown. Garcia, whose home is in Sugar Land, is the holder of the Congressional Medal of Honor.

The charges were filed after statements had been taken from several witnesses to the incident. The statements said that Garcia, after being refused service in the Oasis, broke dishes and other equipment in the café, and attacked Mrs. Andrews in the mouth with his fist.

Although the incident occurred on September 10, the charges were not filed until Monday, after Walter Winchell had reported the affair in his Sunday broadcast. Winchell erroneously stated that the incident occurred in Sugar Land, that two sailors who attempted to aid Garcia in the café fracas were beaten up, and that Garcia was taken to a hospital after being beaten with a baseball bat.

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7. Martha Gregory, *L.U.L.A.C. Pays Homage to Sugarland War Hero*, HOUSTON POST, September 7, 1945, at II-1.

8. *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774 (9th Cir. 1947); *Delgado v. Bastrop I.S.D.*, No. 388 (W.D. Tex. June 15, 1948) (unpublished, school desegregation). See generally Gross, *supra* note 1, at 373–384 (providing a summary of school and jury cases taking place in the 1940s, including *Delgado* and *Mendez*, that led up to *Hernandez*). Carlos Cadena and Gus Garcia tried *Delgado*, and when the school district lost, there was pressure by Texas officials not to appeal because losing in the Fifth Circuit would have had implications for school districts throughout the segregated South; the Fifth Circuit then encompassed virtually the entire South. Interview with James deAnda (Aug. 11, 2006).

Winchell's misstatements regarding the incident prompted the airing of the affair locally. The *Coaster* had the story of the incident the day after it happened, but "killed" it in a charitable attitude toward the soldier, who had just come back to his home town after gaining fame on European battlefields. For his action in Europe, he was presented the Medal of Honor by President Truman.

Likewise, local officers did not attempt to prosecute the man until nationwide attention was drawn to the incident, and Fort Bend county began to be criticized through newspaper editorials in various parts of the nation.

A *capias* [sic] for Garcia's arrest was issued from the county clerk's office Tuesday afternoon, and officers plan to arrest him as soon as he returns to Fort Bend county. He could not be found Tuesday, and the officers reported that he was out of the country. Garcia has not yet been discharged from the army, but expects to receive his discharge soon.

The incident, which has caused widespread interest, occurred after Mrs. Andrews refused service in the café to Garcia and his party on the night of September 10. Mrs. Andrews and her brother, Pete Lower, who is a partner in the café business, said in statements made to County Attorney Brown that they refused service to Garcia "because he had been drinking." The affidavits stated that after being refused service, Garcia broke sugar bowls, salt and pepper shakers, catsup bottles, several bottles of wine, water glasses and three window panes, and struck Mrs. Andrews in the mouth with his fist before he was quieted.

After he struck Mrs. Andrews, the statements continued, a struggle ensued between Garcia and Lower and Mrs. Andrews' son, Louie Payton. Garcia was quieted after he was hit across the back with a baseball bat, the statements said.

Garcia is then reported to have gone outside the café, where he was met by Deputy Sheriff Rue Lincecum, who had been called in the meantime. Deputy Lincecum made a statement to County Attorney Brown to the effect that although at that time he did not know of the damage done in the café, he noticed that the soldier was drunk and warned him to go home before he got into trouble. Lincecum said that Garcia argued with him and demanded that an investigation be made as to why he was refused service in the café, so he put him in his car and took him to the county jail. Outside the jail, another scuffle ensued, between Garcia and Lincecum and Jailer Charles Smith. Before he was taken into the jail Sheriff Fred Zwahr arrived, Lincecum said, and after talking to the soldier decided to let him go home.

Before the soldier left the jail another argument came up when Garcia said, according to Lincecum's statement, "I demand that you go and get my cap," which had fallen in the jail yard during the scuffle. All of the officers refused to do this, and finally the soldier left with the remark that he was going to call someone to find out why he couldn't be served at the Oasis Café.

These happenings, on September 10, ended the incident until the *Houston Chronicle* carried a story last Thursday reporting that a Richmond café had refused service to a Latin-American service man. Winchell's broadcast followed on Sunday editorials criticizing Richmond's treatment toward Latin - Americans over the week end.<sup>9</sup>

The September 20, 1945, *Houston Chronicle* article referred to in the *Texas Coaster* piece had been initiated by Johnny Herrera, who as LULAC Vice President had been active in the local ceremonies and had appeared in the *Houston Post* story and picture

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9. TEXAS COASTER, Sept. 27, 1945, at 1.

depicting Garcia's receipt of the Good Neighbor citation from Robert E. Smith. Herrera was one of only a handful of Mexican American lawyers in the Houston area, perhaps one of fewer than a half dozen, and Herrera was the only one who regularly took on criminal cases ranging from Galveston all the way to San Antonio. He had passed the Texas bar in 1943 and was active in Latino social and civic circles. He immediately saw the value of taking this case to a larger circle, incorporating a "Latin American" prejudice dimension and embarrassing the legal authorities. He also brought the case to the attention of Walter Winchell, referred to in the Richmond article, and found the tinder that fanned this case into flames.<sup>10</sup>

On September 23, 1945, drawing nationwide attention in his column and radio broadcast, Walter Winchell referred derogatorily to Richmond in what would be characterized as Winchell's "misstatements" in the case.<sup>11</sup> The next day, and more than two weeks after the original incident, Garcia was first charged with aggravated assault by Fort Bend County Attorney Sidney Brown. As noted in the *Texas Coaster* retelling of the events, no charges had been brought at first, and the paper had "killed [the story] in a charitable attitude" towards the veteran. Apparently, the Herrera story in the larger Houston paper and the national media story sympathetic to Garcia had

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10. Walter Winchell's role in this case was pivotal, and I believe that John Herrera arranged to send a copy of the *Coaster* article and the *Post* story to Winchell in New York City. Judge deAnda suggested "Johnny got word to Winchell," in a conversation with me. Interview with James deAnda (Aug. 11, 2006). Tellingly, Winchell misspelled "Macario" in the same way as the *Coaster* had misspelled it. Walter Winchell, Walter Winchell Papers, \*T-Mss 1991-019, (unpublished manuscript, on file with the Billy Rose Theatre Collection, The New York Public Library for the Performing Arts). Walter Winchell—"The Jergens Journal". Series II—Scripts and Writing. Sub-Series—Radio Scripts. September 23, 1945 (Sunday) Broadcast Pages 4–5. Winchell mistakenly writes Garcia's given name "Marcio" instead of the correct "Macario." I am grateful to my UH colleague Professor Marie-Theresa Hernandez, who is completing a book on the cultural history of Fort Bend County, for relaying the Winchell information to me. MARIE THERESA HERNANDEZ, *CEMETERIES OF AMBIVALENT DESIRE: UNEARTHING DEEP SOUTH NARRATIVES FROM A TEXAS GRAVEYARD* (2008) (study of San Isidro Cemetery, burial place for Latino workers near Imperial Sugar Company, Sugar Land, Texas).

11. It is interesting that Winchell played a positive role in this racial incident, as he played the key role in politicizing another WWII racial matter: that of urging punishment for Iva Toguri D'Aquino. See Adam Bernstein, 'Tokyo Rose' Dies at 90, WASH. POST, Sept. 27, 2006; see also Richard Goldstein, *Iva Toguri D'Aquino, Known as Tokyo Rose and Later Convicted of Treason, Dies at 90*, N.Y. TIMES, Sept. 28, 2006, at B7. Toguri was labeled "Tokyo Rose" after being caught in Japan on family business after the US-Japanese War broke out, when she was "forced by circumstance" to read anti-U.S. propaganda over the airwaves. Bernstein, *supra*. When she died in 2006, the whole issue was replayed in her obituaries, including Winchell's role in leading the media charge against her when she was allowed to return to the United States. See *id.*; Goldstein, *supra*.

Winchell had a long and complicated career as a newspaper and radio journalist, and his record on civil rights and racial issues was mixed. In some respects, he held progressive views towards African Americans. See NEAL GABLER, *WINCHELL: GOSSIP, POWER AND THE CULTURE OF CELEBRITY* 405–420 (Knopf 1994) (discussing Winchell's relationship with NAACP and Josephine Baker). In one of the few such matters involving Mexican Americans, he championed Garcia, although his criticism of Richmond, Texas was as likely a patriotic impulse in support of the disrespected and decorated serviceman. His baiting of Iva Toguri D'Aquino as "Tokyo Rose" was a combination of jingoism and racism. See *id.* at 352.

moved the local authorities to bring charges in an attempt to justify the original predisposition.<sup>12</sup>

Timing makes clear that had the story not gone public and embarrassed Fort Bend County officials by making it seem as if a Mexican American war hero could not receive service in a local establishment, charges would likely not have been brought against Garcia. However, neither Garcia nor Herrera, who had taken his case, could rely upon the charges not being brought, so they expanded the provenance of the story as a prophylactic, precautionary matter. Given the widespread nature of such incidents elsewhere in Texas, this was a reasonable concern. In the 1948 Alonso Perales book, *Are We Good Neighbors?*, over a dozen such incidents of Mexican American veterans not receiving services, veterans benefits, or other programs to which they were entitled were notarized and detailed as having occurred in Texas towns, although interestingly, the Macario Garcia matter was not included in this volume.<sup>13</sup>

In November, 1945, the Fort Bend County court session began, and Garcia was bound over for a December trial before County Judge Charles Schultz. John Herrera was the attorney of record, and Robert E. Smith, the Chairman of the Good Neighbor Commission who had been photographed awarding Garcia a citation of merit upon his original return to Texas, posted the bond. News stories indicated that a "Garcia Committee" had been formed to raise funds and provide support. Judge Schultz was quoted as having said, "[N]early all the newspapers in the state have asked for courtroom space to hear the case when it comes to trial." It was clear that the stakes were increasing and that this small incident in a small town had taken on a life of its own in the public sphere, where few Mexican Americans ever appeared, or appeared in sympathetic terms.<sup>14</sup>

When the preliminary procedural filings became due on November 29, 1945, the trial was postponed by the county request until the February 1946 session. By this time, the legal team also included Philip Montalbo, a successful San Antonio attorney who was well-connected politically. Just before the date that the postponed trial was to

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12. One of the ironic features of my research was that I was drawn to the Macario Garcia incident due to a small and cryptic reference in an online historical resource that indicated, "After a trial in which he was defended by Gustavo (Gus) Garcia and John J. Herrera, [Macario] Garcia was acquitted." Maria-Cristina Garcia, Macario Garcia, *The Handbook of Texas Online*, <http://www.tsha.utexas.edu/handbook/online/articles/GG/fga76.html>. Intrigued by this reference to Gus Garcia and Herrera's collaboration, which would have foreshadowed their *Hernandez v. Texas* litigation years later, I tried to find the evidence. It turns out that there is no reference of Gus Garcia having ever been Macario Garcia's lawyer, and there was no trial, hence no acquittal. The other material provided by Maria-Cristina Garcia (now a well-respected Cornell historian) in this online resource (written in the mid-1980's) is accurate and useful, but these two references appear to be inaccurate.

13. See ALONSO S. PERALES, *ARE WE GOOD NEIGHBORS?* 139–227 (Arno Press 1974) (1948). Other excellent historical work has uncovered many such examples of the era's substantive and petty harassments of Mexican Americans, especially in Texas. See Gross, *supra* note 1, at 360–70; Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory*, 85 CAL. L. REV. 1143, 1174–76 (1997).

14. Marie Theresa Hernandez, *Reconditioning History: Adapting Knowledge from the Past into Realities of the Present: A Mexican-American Graveyard*, in *RETHINKING HISTORY* 289, 293 (1999) (providing a history of San Isidro Cemetery, Richmond, Texas, by the daughter of the man [Jose F. Hernandez] who served as the translator in the Aniceto Sanchez trial).

occur, February 17, 1946, another Mexican American veteran from the area, Bruno A. Garcia (no relation), was also refused service at the Oasis Café and was charged with disturbing the peace. Bruno Garcia and another Garcia, Magdaleno Garcia, apparently tried on their own to duplicate the original Macario Garcia incident. They fueled up on liquor and marched into the same restaurant, whereupon the sheriff came and arrested them for disturbing the peace. The next day, Bruno Garcia was found guilty and charged \$132 for the disturbing the peace conviction, drunk and disorderly charges, and court costs. Bruno conceded he had heard of the earlier Macario Garcia incident, and it appears that he wanted his own satisfaction. Of course, the news stories on the second Oasis incident dredged up the original Oasis Café matter—including the newspaper's reference to Walter Winchell's involvement—and conceded that the charges had been brought due to the original notoriety: "The [Bruno Garcia] case paralleled Marcario [sic] Garcia's case at the Oasis last September. Marcario was not charged nor fined by local authorities, however, until he demanded satisfaction for being refused service in the café. Walter Winchell championed Marcario in a garbled version of the case, charging Fort Bend county people with 'race discrimination.'"<sup>15</sup>

This second incident of the assaulting Garcias proved to be too much. On February 28, 1946, the Macario Garcia case was rescheduled until June, 1946. This time the attorney of record was much more visible and was an icon of the Anglo Texas legal and political establishment: the former Texas attorney general and former governor James V. Allred. The significance of Allred's serving as Garcia's attorney could not have been lost on the Fort Bend County officials. Moreover, Allred was a once and future federal judge. Allred stepped down from the bench at FDR's request to run against Pappy O'Daniel for governor, and he was soon to be re-appointed to the federal bench in the Southern District of Texas by FDR's successor, President Truman—the same man who had pinned the medals on Garcia's chest months before the original incident.<sup>16</sup> An historian of this period, Steven H. Wilson, has characterized Allred as an example of that "rare specimen in Texas politics in the 1950s—a truly liberal Democrat."<sup>17</sup>

At this point, the county simply receded and never again brought the charges, which were dropped without publicity. Herrera and the LULAC officials also must have conceded that discretion was the better part of valor, and they stopped their largely successful efforts to publicize the incident and to embarrass the Fort Bend officials. Thus, the case was never tried, and Staff Sgt. Garcia simply faded into the community.<sup>18</sup> He was sworn in as a U.S. citizen on June 25, 1947, earned his GED in 1951, and married Alicia Reyes on May 18, 1952, according to public records. He then

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15. TEXAS COASTER, Feb. 17, 1946, at xx.

16. See CHARLES L. ZELDEN, *JUSTICE LIES IN THE DISTRICT: THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, 1902–1960*, at 177 (1993).

17. Steven H. Wilson, *Brown over "Other White": Mexican Americans' Legal Arguments and Litigation Strategy in School Desegregation Lawsuits*, 21 *LAW & HIST. REV.* 145, 166 n.65 (2003). See generally ZELDEN, *supra* note 16.

18. In my possession, I have an affidavit from Fort Bend County law officers that no case involving Garcia was ever reported in Fort Bend County—the jurisdiction where Macario Garcia was a party—from 1945 until his death in 1972. Letter from Gloria Hopkins, Fort Bend County District Court, to whom it may concern, (Feb. 21, 2006) (on file with author), available at <http://www.law.uh.edu/hernandez50/homepage.html>.



lived in the Fort Bend area until his death from a car accident on Christmas Eve 1972. In 1981, the Houston City Council renamed 69th Street as Macario Garcia Drive.

## II. *HERNANDEZ V. TEXAS*

Although Macario Garcia simply disappeared into nondescript daily life in Texas, the same could not be said for his original attorney, John Herrera. Herrera came to prominence at least in part due to his activities on behalf of Garcia, and he developed a successful practice in the greater Houston area.<sup>19</sup> In 1950, he took on James deAnda as an associate,<sup>20</sup> and the two tried the *Sanchez v. State*<sup>21</sup> murder case in Fort Bend County, where they were determined to strike down the all-Anglo jury system that prevailed in Texas at the time.<sup>22</sup> In the course of their trying the *Sanchez* case, for example, they discovered that, out of a chosen jury pool of over 6000 jurors seated, no Mexican American juror had ever been called to jury duty in Fort Bend County.<sup>23</sup> While they did not prevail in the *Sanchez* case, they struck gold in *Hernandez v. Texas*, an Edna, Jackson County, Texas case the following year. After losing their trial and appeals in Texas, they petitioned to the U.S. Supreme Court and took the case to the highest court in the land. At the U.S. Supreme Court, they and their collaborators Gustavo Garcia and Carlos Cadena successfully argued that their client Pedro (Pete) Hernandez had not been tried by a jury of his peers. In the first case ever argued in front of the U.S. Supreme Court by Mexican American lawyers, the Supreme Court overturned the lower court's decision.<sup>24</sup> The case appeared in *United States Reports*, Volume 347, as the case just before the *Brown v. Board of Education* desegregation case.<sup>25</sup>

## III. PRIVATE FELIX LONGORIA

The next notorious matter of discrimination against a Mexican American veteran in Texas would be 1948–49, when the remains of Private Felix Longoria, a soldier from Sugar Land who had been killed in action in the Philippines, were returned to Three Rivers, Texas, for burial. The Three Rivers cemetery had a “Mexican-only” section, separated from the Anglo cemetery by strung barbed wire. The funeral director refused to allow the Longoria family to use the cemetery chapel because a previous Latino funeral had been said to be disruptive and because the “whites would not like it.” Dr. Hector P. Garcia, a Corpus Christi physician and one of the few Mexican American M.D.s in the state, organized the American G.I. Forum (AGIF) as a protest to this action and other examples of disrespect accorded veterans, including the high-profile Macario Garcia incident. These LULAC and AGIF members had seen the efficacy of

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19. See Olivas, *supra* note 5, at 221.

20. See *id.*

21. 243 S.W. 2d 700 (Tex. Crim. App. 1951).

22. See Olivas, *supra* note 5, at 212–213

23. See *id.* at 213.

24. See *Hernandez v. Texas*, 347 U.S. 475, 482 (1954).

25. *Id.* at 475. See ROBERT J. COTTRILL, RAYMOND T. DIAMOND & LELAND B. WARE, *BROWN V. BOARD OF EDUCATION: CASTE, CULTURE, AND THE CONSTITUTION* (University Press of Kansas 2003) (providing a very useful summary of the cases leading to *Brown*).

raising incidents of disrespect to the larger public, and the Felix Longoria incident became another example of successful exploitation of the media and behind-the-scenes political maneuvering. In this incident, Texas Senator Lyndon B. Johnson saw the larger political value in championing Longoria's cause and in 1949, arranged for him to be buried in Arlington National Cemetery with the full support of President Truman and other politicians. After the incident, the Texas House of Representatives undertook a study of the matter, which ended inconclusively but revealed evidence of the prejudice and embarrassment caused by the Felix Longoria incident.<sup>26</sup>

#### IV. DESEGREGATION AND JIM CROW MEXICAN TEXAS

By 1948, additional cases were taken up in which these Texas attorneys began to strike down the segregation of Texas schools, beginning with the *Delgado v. Bastrop* case in 1948, argued by Gus Garcia and Carlos Cadena.<sup>27</sup> In 1954, Cadena became the first Mexican American law professor, joining the St. Mary's Law faculty. Garcia, deAnda, and Herrera went on to their practices, and both deAnda and Garcia at one time in the 1950s practiced in Houston with Herrera. In 1955, deAnda moved his practice to Corpus Christi where he undertook desegregation litigation, leading to *Cisneros v. Corpus Christi Independent School District* and *Hernandez v. Driscoll Consolidated Independent School District*.<sup>28</sup> In 1979, he was named to the federal bench for the Southern District of Texas, becoming only the second Mexican American federal judge in U.S. history.<sup>29</sup>

When one looks at these incidents leading to Mexican American organizing efforts and political solidarity, undertaken in the face of extraordinary prejudice and challenge, one cannot help but be struck by the courage shown by these lawyers and community members. While it is true that the Macario Garcia and Felix Longoria matters were satisfactorily resolved in favor of the aggrieved veterans, enormous forces were arrayed against them. All the media outlets, governmental entities, and political establishment were directed and dominated by Anglos. In Fort Bend, the Jaybird Party had successfully cleaved racial divisions onto the electoral process, notwithstanding the substantial African American and Mexican American voting age

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26. See generally CARL ALLSUP, *THE AMERICAN G.I. FORUM, ORIGINS AND EVOLUTION* (1982); HENRY A.J. RAMOS, *THE AMERICAN GI FORUM, IN PURSUIT OF THE DREAM, 1948-1983* (1998).

27. A growing literature details the extensive litigation efforts by Mexican Americans in the twentieth century. See generally ARIELA J. GROSS, *WHAT BLOOD WON'T TELL: RACIAL IDENTITY ON TRIAL IN AMERICA* (2008); GUADALUPE SAN MIGUEL, JR., "LET THEM ALL TAKE HEED": MEXICAN AMERICANS AND THE CAMPAIGN FOR EDUCATIONAL EQUALITY IN TEXAS, 1910-1981 (1987); Gross, *supra* note 1; George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994); Lupe S. Salinas, *Gus Garcia and Thurgood Marshall: Two Legal Giants Fighting for Justice*, 28 T. MARSHALL L. REV. 145 (2003). For an exceptional work that analyzes these issues for the period of time even before the Treaty of Guadalupe Hidalgo in 1848, see LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007).

28. *Hernandez v. Driscoll Consol. Indep. Sch. Dist.*, 2 Race Rel. L. Rep. 34 (S.D. Tex. 1957); *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 324 F. Supp. 599, 608-15 (S.D. Tex. 1970) (finding that Mexican children constitute an "identifiable, ethnic minority").

29. Wilson, *supra* note 17, at 194; Olivas, *supra* note 5, at 219 n.60.

populations.<sup>30</sup> There were very few Mexican American licensed professionals to deliver medical care or legal services and few successful businessmen to finance the efforts. LULAC and the AGIF were nascent, decentralized, and underfunded organizations, without larger philanthropic or religious underwriting. The Mexican American Legal Defense and Educational Fund (MALDEF), would not be founded by deAnda and other southwestern lawyers until 1968.<sup>31</sup> The exclusion of Mexicanos from public discourse, political life, and community leadership was nearly total, even in those areas of South Texas and the Gulf Coast with large populations of urbanizing agricultural workers and laborers.

Jim Crow Texas was a caste system almost organic in its near-total control of Mexican American life and opportunity in post-WWII times. Edna, the town where *Hernandez v. Texas* was contested in 1951 and 1952, was so dangerous that the lawyers could not safely spend the night there. As a result, Cadena and Garcia would drive in each day from San Antonio, while deAnda and Herrera would drive the hour and a half from Houston. In the very courthouse where the state of Texas was arguing that an all-Anglo jury was a jury of Pete Hernandez's peers—in essence arguing that Mexicans were legally white—the men's bathrooms were reserved for Anglo men, and a separate one marked "Colored Men" and "Hombres Aqui."<sup>32</sup> Justice Warren was so struck by the signage that he mentioned it in the *Hernandez* opinion as evidence that Edna sociology separated the Anglo and Mexican races as clearly as it did the White and Black races.<sup>33</sup>

Even so, by post-WWII, it was clear that Mexicanos would not acquiesce in this fate. They had enlisted and had died in disproportionate numbers, and those who returned expected to be able to claim an earned place in Texas and the larger society they had defended. Only a small number were educated well enough to take advantage of the GI Bill, but inevitably, some did so.<sup>34</sup> They created the social and political organizations needed to effect solidarity and to press their claims. They began to employ the levers of power needed, as in the Committee on Fair Employment Practice, where Dr. Carlos Castaneda, Dr. Ernesto Galarza, and Dr. George Sanchez began to practice their advocacy, and the Good Neighbor Commission, whose chair Robert E. Smith had played a prominent and signaling role in the Macario Garcia incident.<sup>35</sup> It is

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30. On May 4, 1953, the U.S. Supreme Court would strike down the Fort Bend County practice of using a segregated surrogate party, the Jaybird Party, to thwart African American voting in the Democratic Party. *Terry v. Adams*, 345 U.S. 461, 470 (1953).

31. This is not to say that Mexican American lawyers who brought these various cases were not members of Latino organizations, for a number of them were members. And in some instances, particularly those having to do with school desegregation, lawyers worked closely with LULAC; as one example, Manuel C. Gonzales was actively involving LULAC members, Mexican American academics (such as George I. Sanchez at the University of Texas), and other Latino organizations. SAN MIGUEL, JR., *supra* note 27, at 74–86; Gross, *supra* note 1, at 356–370.

32. *Hernandez v. Texas*, 347 U.S. 475, 479–480 (1953).

33. *Id.* (noting bathroom signage).

34. See generally Lisa Lizette Barrera, *Minorities and The University of Texas Law School (1950–1980)*, 4 TEX. HISP. J.L. & POL'Y 99 (1998).

35. See generally CLETE DANIEL, *CHICANO WORKERS AND THE POLITICS OF FAIRNESS: THE FEPC IN THE SOUTHWEST, 1941–1945* (1991); ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964); MARK REISLER, *BY THE SWEAT OF THEIR BROW: MEXICAN IMMIGRANT LABOR IN THE UNITED STATES, 1900–1940* (1976).

no accident that LBJ and Harry Truman played bit parts in these cases, as a counter to the more local Jaybird Party politics. Mexican Americans began to run their own candidates, especially in the Rio Grande Valley, where the sheer numbers in the electorate guaranteed some successes, as the voter numbers in New Mexico had for years. As has been outlined here, the small number of lawyers began to undertake litigation that would change the landscape. Parallel gains by African American lawyers eventually led to landmark social legislation in voting rights, education, fair housing, and in social programs generally.

The Macario Garcia case has cultural significance as well, as it likely influenced Edna Ferber, the author of the bestselling 1952 novel, *Giant*, which was later made into a successful 1956 movie of the same name.<sup>36</sup> The novel (and movie), set in a fictional Texas border county where cattle and oil were king, is one of the few of its time that sympathetically portrayed Mexican Americans. One of the ranch's Mexican origin boys (Angel Obregon, II) goes off to war, where he is killed. The influential Anglo family intermarries, leaving the Anglo patron to fight on behalf of his Mexican American daughter in law and half-Mexican grandchild when the family is disrespected by a redneck in an area restaurant. While a number of books about Ferber, the novel, and the movie note Ferber's unexpectedly positive treatment of the Texas Mexicans, no scholar has noted that the Macario Garcia incident was in all likelihood an inspiration for this concluding scene of racial solidarity.<sup>37</sup> Living in New York at the time, she could have read the Walter Winchell columns about the Oasis Café matter, or read the March 27, 1951, story in the nationally popular *Look* magazine, which featured searing pictures of impoverished Mexican American families, noting, "The truth is simply this: Nowhere else in America is a group of people so downtrodden and defenseless, and nowhere are human dignity and life held in such low regard."<sup>38</sup> In the novel, the young veterano Obregon is refused service by the local

36. EDNA FERBER, *GIANT* (1952).

37. See, e.g., DON GRAHAM, *COWBOYS AND CADILLACS: HOW HOLLYWOOD LOOKS AT TEXAS* 59–64 (1983); Karen Lynn Vincent Weber, *Twentieth-Century Texas Culture in Literature and Film* at Ch. II (Dec. 1998) (unpublished master's thesis, University of Houston-Clear Lake) (available at library Houston Library clearlake); Jonathan Yardley, *Ferber's 'Giant,' Cut Down to Size*, WASH. POST, May 8, 2006, at C1 (providing a more recent reappraisal of the book and movie). While conducting research for this project, I discovered a link between Dr. Garcia and another, similar incident, in an online Garcia oral history:

In the hands of Pulitzer-prize winning author Edna Ferber, Dr. Garcia and the American GI Forum served as raw material for both the 1952 book *GIANT* and the 1956 movie "GIANT" starring Rock Hudson, Elizabeth Taylor, James Dean, and Dennis Hopper. Two Dr. Garcia inspired-incidents appeared in the book *GIANT*: the Felix Longoria case and an incident when Dr. Garcia's wife and daughter were refused service in a small Texas cafe because they were accompanied by Mexican American friends.

Biography, Justice for My People: Dr. Hector P. Garcia, <http://www.justiceformypeople.org/drhector.html>. Dr. Garcia's wife was Italian, and he met her in his own WWII military service in Europe. See *id.* After writing this piece, I was told of the movie's effect upon Tino Villanueva, who wrote *Scene from the Movie GIANT*, a 1993 Curbstone Press book of poems about the movie and his first seeing it when he was a child in Texas.

38. Lewis W. Gillenson, *Texas' Forgotten People, A Million and a Half Mexican-Americans Live on Little More Than Hope*, *LOOK*, March 27, 1951, at 29.

mortician, and the patron arranges his burial in Arlington National Cemetery, mimicking the Felix Longoria incident at Three Rivers, Texas, and Lyndon B. Johnson's intervention.

In her autobiographical journal, Ferber mentions taking a research train trip through Texas. After commenting upon the high-end stores in Dallas, she records that she "moved on to the less effete regions. Houston. Galveston. San Antonio. Even Brownsville on the Mexican border. It was rather hard going, especially in various smaller towns in between."<sup>39</sup> One of the smaller towns was Corpus Christi, where she met for an extended period with Dr. Hector P. Garcia, "following him on his rounds, listening to and being impressed by his description of conditions under which Texas Mexicans had to live in south Texas."<sup>40</sup> It is difficult to envision Ferber's imagination conjuring these specific historical references, even in guised and fictional form, had she not spent those three weeks with Dr. Garcia, who founded the American GI Forum and spent his life advocating for Mexican American civil rights, particularly those for veterans. Along with attorney James deAnda, "Dr. Hector" proved to be a thorn in the side of local politicians.<sup>41</sup>

The Macario Garcia incident and the Felix Longoria matter were two small milestones in Mexican American post-WWII life that loomed symbolically larger as successes born out of sheer prejudice and racial exclusion. They provided small victories that encouraged the emerging community leaders and that paved the way for more permanent change, a process that is still unfolding half a century later.<sup>42</sup> Looking back on this history, it is clearer now than it must have been then that the incidents

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39. JULIE GILBERT FERBER, EDNA FERBER AND HER CIRCLE, A BIOGRAPHY 176 (1999).

40. GRAHAM, *supra* note 29, at 59–60. Graham also notes that the major threads of the novel and movie are the "serious Texas deficiencies": "Everything coalesces around the status of Mexicans in south Texas, which can be summed up in a word: medieval. [The wife of the chief figure in the novel] treats the Mexicans as people, and the Texans treat them as serfs." *Id.* at 86. *See also* RAMOS, *supra* note 19, at 24–25 (describing Ferber's trip to South Texas with Dr. Garcia).

41. James deAnda recalled his interactions with Garcia, for an oral history project. *See* Selected Interview Segments: Judge James deAnda, The Dr. Hector P. Garcia Story, [http://www.justiceformypeople.org/interview\\_deAnda.html](http://www.justiceformypeople.org/interview_deAnda.html).

42. While it is hard to gauge how influential these incidents were, I have been surprised at how many older Mexican Americans have known of the Felix Longoria and Macario Garcia matters. As a small example, the wonderful interview data from the U.S. Latino & Latina WWII Oral History Project at the University of Texas, Austin, have provided some insight. *See generally* UNIVERSITY OF TEXAS LIBRARIES, U.S. LATINO AND LATINA WORLD WAR II ORAL HISTORY PROJECT, <http://www.lib.utexas.edu/ww2latinos/index.html>. When queried about why he went into LULAC and AGIF politics in Houston, veteran Leon Aguiá responded in a 2002 interview that he had experienced discrimination after WWII in Lockhart, Texas (where a drugstore refused him service, even while he was in uniform) [Tape 1, at 1:15:23] and he had heard of the Richmond incident [Tape 1, at 22:35]. This Article draws from the WWII Oral History Project, and a revised version will appear in *WWII LATINO/A CULTURAL CITIZENSHIP* (Maggie Rivas-Rodriguez & Emilio Zamora eds., forthcoming, 2008). A recent study shows how far back the challenges to the existing political and social order by veterans went, especially in New Mexico. *See, e.g.,* Phillip Gonzales & Ann Massman, *Loyalty Questioned: Nuevomexicanos in the Great War*, 75 *PACIFIC HIST. REV.* 629 (2006) (construction of Hispanic identity by NM Mexican origin veterans from WW I).

were significant beyond their small scope and that Mexican Americans would not merely endure, but that they would prevail.

In his recent work, political scientist Samuel Huntington has ascribed a variety of ills to the substantial immigration of Mexican Americans, both documented and undocumented. Among his many charges is the conclusion that Mexican origin persons are fatalistic, unambitious, and docile. For example, he opines:

[Author Jorge] Castañeda cited differences in social and economic equality, the unpredictability of events, concepts of time epitomized in the *mañana* syndrome, the ability to achieve results quickly, and attitudes toward history, expressed in the "cliché that Mexicans are obsessed with history, Americans with the future." Sosa identifies several Hispanic traits (very different from Anglo-Protestant ones) that "hold us Latinos back": mistrust of people outside the family; lack of initiative, self-reliance, and ambition; little use for education; and acceptance of poverty as a virtue necessary for entrance into heaven. Author Robert Kaplan quotes Alex Villa, a third-generation Mexican American in Tucson, Arizona, as saying that he knows almost no one in the Mexican community of South Tucson who believes in "education and hard work" as the way to material prosperity and is thus willing to "buy into America." Profound cultural differences clearly separate Mexicans and Americans, and the high level of immigration from Mexico sustains and reinforces the prevalence of Mexican values among Mexican Americans.<sup>43</sup>

Huntington is crudely reductionist and misinformed about virtually all the negative traits with which he paints Mexicans, but he is particularly uninformed about the litigiousness of Mexican Americans. Had he read further and deeper into Mexican and Mexican American history, he would surely have eventually discovered the long history of resistance and struggle against their lot in life, especially in employing unyielding courts to press their case against racist oppression. Even when the courts were hostile and when the state went to great lengths to disenfranchise them, Mexican American plaintiffs and their lawyers have a substantial record of aggressively-and successfully-pressing claims and looking to the legal system for redress. Indeed, even if Huntington's canard had been true, it would constitute an odd and cruel turn to blame them for being so substantially marginalized by the advantaged in U.S. society. Whatever "Mexican values" are, the Macario Garcia, Felix Longoria, and *Hernandez v. Texas* histories are surely not evidence of Mexican perfidy or apathy. If there is a Mexican obsession with history, it likely exists because those who continue to ignore the history of Mexicans in the United States or paint them as inferior are willfully ignorant of these stories.

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43. Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POL'Y, Mar.-Apr. 2004, at 30, 44, available at [http://www.foreignpolicy.com/story/cms.php?story\\_id=2495&page=7](http://www.foreignpolicy.com/story/cms.php?story_id=2495&page=7).

