



MALDEF and the Evolution of Latino Civil Rights

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In recognition of the transnational nature of a significant portion of the US Latino population, Border and Interamerican Affairs (BIA) explores points of intersection between the interests of US Latinos and the inhabitants of their countries of origin. Areas of research include immigration, human rights, religion, and issues of governance and economic development.

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The three wavy lines shown here are a symbol from ancient times representing the human intellect in action. From *The Book of Signs*, collected, drawn, and explained by Rudolf Koch (London: The First Edition Club, 1930, page 8).

About the Researcher

David A. Badillo, a historian of the Latino experience, was a visiting associate professor in the Department of History at the University of Notre Dame and a Visiting Fellow at the Institute for Latino Studies in 2003–2004. He has published in several academic venues including the *Journal of Urban History*, *US Catholic Historian*, and the *Journal of American Ethnic History*. A native New Yorker, he received a BA from the University of California, Berkeley, and a PhD from the City University of New York (CUNY). He has taught at the University of California at Santa Cruz, Wayne State University, the University of Illinois at Chicago, and Brooklyn College. He recently completed a book on Latinos and urban Catholicism that will be published by the Johns Hopkins University Press. He is currently associate director for research at the Bronx Institute, Lehman College, CUNY.



Introduction

Civil rights activism within the Latino community ranges from locally based, grassroots organizing to national organizations that rely on highly trained legal professionals and make appeals up to the US Supreme Court. The Mexican American Legal Defense and Educational Fund (MALDEF) is an organization that fits more handily into the latter category. Its stated mission is to protect and promote the civil rights of the 40 million Latinos living in the United States by fostering “sound public policies, laws, and programs [and] making sure that there are no obstacles preventing this diverse community from realizing its dreams.”¹ MALDEF works to secure and safeguard the rights of Latinos by focusing on employment, education, immigrants’ rights, political access, and public resource equity.

This paper traces MALDEF’s leadership and evolving legal agenda, emphasizing its historical role and the development of the Latino civil rights agenda within a range of contemporary issues, highlighting constitutional debates and crises at the local and national level in diverse cities and regions.



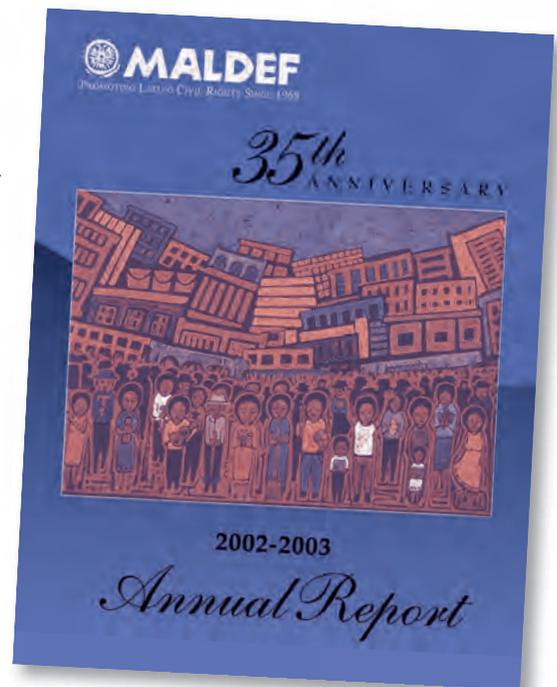
¹ See the MALDEF web site, MALDEF.org.

Overview of MALDEF

MALDEF emerged from two distinct, yet roughly parallel, civil rights traditions. The first is the Legal Defense Fund (LDF) of the National Association for the Advancement of Colored People (NAACP), pioneered in 1940 by its first director-counsel, Thurgood Marshall, and other lawyers aligned in a multiracial civil rights coalition. Among other accomplishments, the work of LDF lawyers resulted in the end of the official sanctioning by law (*de jure*) of racial segregation in matters relating to public education in the groundbreaking *Brown v. Board of Education* decision of 1954. This paved the way for other historic decisions such as *Baker v. Carr* (1962), which secured greater oversight in the reapportionment of legislative districts in affirming the principle of one person–one vote.

The second predecessor is the nonprofit civil rights advocacy group, the League of United Latin American Citizens (LULAC), a membership organization, which, unlike LDF, received its funding largely from a foundation, namely the Ford Foundation. LULAC, founded in 1929 in Corpus Christi, Texas, by Texas-born Mexican Americans, mounted successful legal challenges to educational inequities in California and Texas public schools in the late 1940s and remained on the cutting edge of legal change for decades thereafter. Supported by another organization, the Texas-based veterans group the American GI Forum, LULAC campaigned diligently through the court system to help secure the right of Mexican Americans to serve on juries, with a victory before the US Supreme Court in *Hernandez v. Texas* (1954).²

Landmark legislation of the mid-1960s—the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965—afforded Latinos considerable opportunities to clarify, redefine, and expand their constitutional prerogatives in the areas of voting rights, equal access to employment, and related issues. Barriers remained, however, in the lack of enforcement of existing civil rights legislation, especially pertaining to the civil rights of undocumented immigrants. An organization whose focus was specifically legal, akin to that of the LDF, was called for, and in 1968, MALDEF was founded. Since that date, MALDEF has emerged as the leader among the numerous organizations that have argued for a panoply of Latino civil rights issues at all levels.



35th anniversary issue of MALDEF's annual report: original cover art by José Ramirez, reproduced here in three colors.

MALDEF is headquartered in Los Angeles, with regional offices in San Antonio, Washington DC, Chicago, and Atlanta, a satellite office in Sacramento, and a program office in Houston. MALDEF's regional offices are anchored in key cities and exert an impact on national as well as local issues. Each has distinctive functions, depending on the regional landscape with regard to Latino issues. The offices in Washington DC and Sacramento serve largely to monitor the legislative process.

MALDEF's staff of 75 employees includes 22 attorneys. The 35 members of its ethnically diverse board of directors are drawn from all over the nation and are leaders in the public and private sectors, government, and law firms.³

To achieve its objectives the organization utilizes not only the legal system—the 'last resort'—but also engages in "advocacy, community education, collaboration with other groups and individuals."⁴ To carry forth its organizational objectives MALDEF continually lobbies local, state, and federal legislative bodies and promotes positions through negotiation and means other than court challenges. As part of the educational mission referenced in its name, MALDEF also awards scholarships to promising law students.

The work of MALDEF lawyers has established legal precedents through 'impact litigation' in voting rights and educational funding cases in two broad eras. The first, the late 1960s and 1970s, saw activism and militancy shaping the agenda, with a focus on political access for Mexican

² On *Brown*, see Janet Stevenson, *The School Segregation Cases (Brown v. Board of Education of Topeka and others): The United States Supreme Court Rules on Racially Separate Public Education* (New York: Franklin Watts, Inc., 1973), and Earl Maltz, "Brown v. Board of Education and 'Originalism,'" in Robert P. George, ed., *Great Cases in Constitutional Law* (Princeton: Princeton University Press, 2000). For a cogent legal-historical perspective written by a MALDEF legislative staff attorney, see James A. Ferg-Cadima, "Black, White, and Brown: Latino School Desegregation Efforts in the Pre- and Post-*Brown v. Board of Education* Era" (Los Angeles: MALDEF, May 2004), posted on MALDEF.org. On LULAC see, for example, Craig A. Kaplowitz, "Mexican Americans, Ethnicity, and Federal Policy: The League of United Latin American Citizens and the Politics of Cultural Disadvantage, 1942–1975" (PhD dissertation, Vanderbilt University, 1999).

³ See the MALDEF web site, MALDEF.org.

⁴ *Ibid.*

Americans in Texas, California, and the Southwest. The second broad era, after 1980, saw national and transnational issues figure more prominently. These include national immigration reform, state and local issues that may recast citizenship, the participation and rights of undocumented immigrants, and other concerns, many of which have been driven by increasingly diverse regional patterns of Latino demographic growth.

MALDEF's work in advocacy and litigation, particularly regarding the undocumented, invokes humanitarian as well as legal issues. Longtime board member Frank Quevedo encapsulates this dimension by noting, "Many of the issues MALDEF gets into are about nameless, faceless people. What MALDEF is really about [is helping] the most at-risk, the poorest, the defenseless, those who need the volume lowered just a tiny bit to survive the day, or the week, or the month."⁵

Roots of Latino Leadership

MALDEF owes the timing of its founding largely to LDF and particularly to Jack Greenberg, one of that organization's presidents, who advised long-time LULAC leader Pete Tijerina on early funding strategies. In early 1967 Tijerina and other San Antonians, frustrated by the lack of Mexican American jurors in Texas courtrooms, submitted a proposal to the Ford Foundation for a five-state Mexican American Legal Defense Fund to be headquartered in Texas. That summer Tijerina, utilizing LULAC contacts, met with community groups in southwestern states and formed state committees composed of lawyers committed to Mexican American causes. Finally, in May 1968 the Ford Foundation approved a five-year grant of \$2.2 million to be spent on civil rights legal work for Mexican Americans. Some of the early cases involving MALDEF lawyers dealt with school segregation, police brutality, and the denial of due process to individuals active in the Chicano movement surging through southwestern barrios.⁶

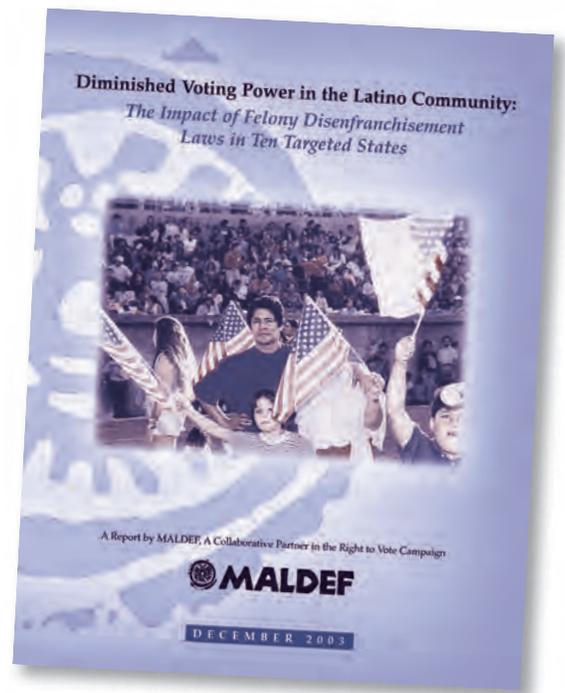
Early in its history MALDEF was directly linked with those southwestern barrios and was energized by the activism and militancy bubbling throughout the greater Southwest as the Chicano movement hit its peak in the late 1960s. MALDEF embraced radical causes and sympathized and supported outspoken leaders such as Denver's Rodolfo "Corky" Gonzales and César Chávez. The organization encouraged community residents to attend trials and otherwise support local efforts. MALDEF defended Mexican American protesters who, seeking to bring educational inequalities to the attention of the public, had organized school walkouts ('blowouts' as they were known at the time). A host of primarily Anglo San Antonio politicians opposed the militancy of MALDEF and resented challenges to their position as the entrenched establishment in South Central Texas.

Tijerina served as the first MALDEF president, but his tenure ended abruptly in 1970 when the organization moved its headquarters to San Francisco (retaining the San Antonio office).

⁵ Interview with Frank Quevedo, MALDEF board member, Los Angeles, November 2003.

⁶ Jack Greenberg, *Crusaders in the Courts: How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: BasicBooks, 1994): 487, 488.

This sudden uprooting came after establishment Anglo politicians complained of excessive radicalism; their complaints reached the New York offices of the Ford Foundation, which by all accounts exerted pressure for a move to a more neutral locale. Mario Obledo, a native Texan, thereupon succeeded to the MALDEF presidency and under his tenure (1970–73) the organization widened its geographical scope to Albuquerque and Denver and set up a permanent office in Washington DC. MALDEF slowly evolved, according to Obledo, from “a legal organization of militants” into a “law firm for the Latino community” as it entered into new areas of litigation, such as its successful challenge of ‘language rights’ violations in eastern New Mexico in *Serna v. Portales* (1972).⁷



“Diminished Voting Power in the Latino Community”: cover photo by George Rodriguez, reproduced here in three colors.

Vilma Martinez, MALDEF’s third president, served from 1973 to 1982. Martinez, a Columbia Law School graduate with prior experience at LDF, accomplished several goals, including expanding MALDEF’s funding sources beyond the Ford Foundation, primarily through increasing revenues from corporate donors as well as hosting fund-raising dinners in various regions and engaging in other community outreach events. Martinez also initiated leadership training for school boards, policy-making bodies, and commissions at all levels. Significant gains occurred in voting rights access under her tenure, as during the mid-1970s a young MALDEF attorney, Joaquín Avila, led voting rights efforts in Texas. Avila teamed with civil rights activist Willie Velasquez, the founder of the Southwest Voter Registration and Education Project, in a multifaceted approach to Mexican American empowerment. After Avila litigated—and won—numerous cases in which he argued that at-large election structures diluted minority voting strength, Velasquez, a fiery orator, followed up with community voter registration drives. A reconfiguration of San Antonio politics sprang from an Avila-led lawsuit filed in 1974 challenging San Antonio’s at-large election system. That, and the passage of the 1975 Voting Rights Act, which broadened the original 1965 act, dovetailed into successful reform efforts pushing San Antonio to a district system, which facilitated the election of Henry G. Cisneros to the City Council. Cisneros was reelected twice to the Council before serving as mayor for four terms (1981–89).⁸

⁷ Interview with Mario Obledo, former MALDEF president, August 2003. See also “La Raza Unida Party,” in Matt S. Meier and Margo Gutierrez, eds., *The Mexican American Experience: An Encyclopedia* (Westport, Conn.: Greenwood Press, 2003); Jose Angel Gutierrez, *The Making of a Chicano Militant: Lessons from Cristal* (Madison: University of Wisconsin Press, 1998); Armando Navarro, *La Raza Unida Party: A Chicano Challenge to the US Two-Party Dictatorship* (Philadelphia: Temple University Press, 2000); and Ernesto B. Vigil, *The Crusade for Justice: Chicano Militancy and the Government’s War on Dissent* (Madison: University of Wisconsin Press, 1999).

⁸ Interview with Joaquín Avila, former MALDEF president and General Counsel, Los Angeles, August 2003. See also Joaquín G. Avila, “Access to the Political Process and the Development of Leadership: A Key to Future Social Cohesiveness,” *La Raza Law Journal* 11 (1999–2000) and “Mexican American Legal Defense and Educational Fund,” in Matt S. Meier and Margo Gutierrez, eds., *The Mexican American Experience: An Encyclopedia* (Westport, Conn.: Greenwood Press, 2003).

After the relatively brief presidency of Joaquín Avila (1983–85), Antonia Hernandez, a native of the town of Torreón, in Coahuila, Mexico, assumed the helm of MALDEF in 1985. Hernandez had worked as a migrant worker as a child, picking fruits and vegetables in California with her parents and siblings. After graduating from UCLA law school and working in a Los Angeles area community organization, in 1978 Hernandez moved to Washington DC to serve as a counsel to the Senate Judiciary Committee, where she developed expertise in immigration and human rights law. In 1980 she began her distinguished career at MALDEF, which lasted until her resignation as president in early 2004.

The early years of Hernandez’s presidency coincided with debate over the passage of the Simpson-Mazzoli Bill. Simpson-Mazzoli was a hard-fought attempt at wide-ranging immigration reform encompassing new restrictions on immigrants and possible amnesty. It sought to update immigration provisions, with immigration from Mexico and Latin America in the previous two decades a major impetus.

Hernandez staunchly opposed a provision of the bill shifting the burden of detection to those who hired the undocumented. She feared that it would jeopardize the civil rights of Latinos by causing prospective employers to unduly suspect, and hence possibly reject outright, Latinos of all backgrounds, including the US born. Noted Hernandez, “Our board...took a very firm line [not to] support employer sanctions under any conditions.”

Though employer sanctions became a part of the final legislation signed into law in 1986 by President Ronald Reagan as part of the Immigration Reform and Control Act (IRCA), Hernandez, throughout the debates and thereafter, helped forge a vital immigrants’ rights coalition within the Latino community.⁹ She clearly believes, however, that supporting immigrants’ rights does not imply advocacy of open borders, as some critics might suggest, stressing that “MALDEF neither promotes nor advocates for open borders,” acknowledging that, “as a sovereign nation, the United States has the right to control and regulate its borders.” Consistent with its human rights policies, however, “the United States also has the obligation of ensuring that border control is guided by the values of efficiency, safety, dignity, and humanity,” a standard that should apply to all immigrants, as well as to native-born Latinos.¹⁰

⁹ Antonia Hernandez, “Latinos in the Decade of the 90s: A Political Coming of Age” [Ernesto Galarza Commemorative Lecture] (Stanford, Ca.: Stanford Center for Chicano Research, 1993), 8. See also “Antonia Hernandez,” in Dawn B. Berry, ed., *The 50 Most Influential Women in American Law* (Los Angeles: Lowell House, 1996).

¹⁰ Antonia Hernandez to Allen E. Murray, chairman and CEO, Mobil Oil Corp., February 5, 1993, MALDEF file, Gilberto Cárdenas Papers, Institute for Latino Studies Library and Archives, University of Notre Dame.

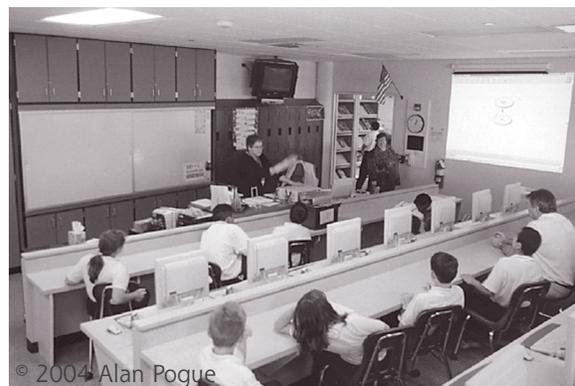
MALDEF at the Forefront of Educational Issues

To help overcome persistent and systemic inequities in the financing of public education, civil rights advocacy groups, with MALDEF at the forefront, have waged continuing legal and constitutional battles.

Changes have not always come quickly; Hernandez pointed out that legal changes advocated by MALDEF have been “slow and incremental.”¹¹ Indeed, some constitutional issues, such as educational funding reform in Texas, have taken

decades to address effectively. After an early setback in the *San Antonio Independent School District v. Rodriguez* (1973) decision, MALDEF finally succeeding in overturning in state court the constitutionality of the existing public school funding formula in *Edgewood v. Kirby* (1989). Then, in a furtherance of the issue, in 1995 (*Edgewood v. Meno*) the Texas Supreme Court held that the legislature had the authority to require wealthier school districts to share their property wealth with poorer school districts, ruling unconstitutional the state’s school finance system and ordering the legislature to design a more equitable system. Texas (as well as dozens of other states) subsequently passed school finance laws based on that precedent; however they often were not fully enforced, and ongoing discrepancies in educational finance resulted in persistent and systemic inequalities, with children having to attend “aged, leaky and moldy schools” that lacked adequate libraries, fully functioning science labs, and proper air conditioning and heating.¹²

Some wealthy school districts actively resisted redistributive change. *West Orange Cove v. Neely* was brought in 2001 by property-rich school districts alleging that due to a state-imposed ad valorem tax they lacked funds to provide their own students an adequate education. Here MALDEF along with another organization, Multicultural Education, Training and Advocacy (META), represented a group of 22 property-poor districts. Plaintiffs’ lawyers argued that: 1) The state failed to close the gap between the revenues of property-poor and property-rich districts. 2) It failed to provide sufficient funding for economically disadvantaged and limited English-proficient (LEP) students—further burdening property-poor districts enrolling high percentages of students needing additional resources. And 3) the state failed to fund school facilities equally and sufficiently, which, according to MALDEF, relegated the poor districts to “unhealthy, unsafe, and educationally inadequate schools.”¹³



¹¹ Hernandez, “Latinos in the Decade of the 90s,” 4.

¹² Press release, September 15, 2004: “MALDEF Celebrates Victory for Equity in Texas School Finance Litigation” (MALDEF.org).

¹³ Ibid.

In a decision in September of 2004 the chief justice of the district court in Travis County held that the demonstrated inequities rendered the school finance system inefficient and, in a familiar pattern, declared the Texas school finance system unconstitutional.¹⁴ Less than two months later, in late November, the presiding judge, John K. Dietz, concluded that the state needed to “equalize school funding” according to existing statutes. MALDEF interpreted this as a victory for “fair school funding” and President and General Counsel Ann Marie Tallman stated that the ruling “supports the basic notion that every schoolchild in Texas deserves a fair chance and that educational opportunity depends on the fair funding of schools.”¹⁵

The full range of implications stemming from this latest ruling are yet to be seen. While school finance reform advocates proffer no prospects for a definitive resolution, MALDEF’s efforts in this area constitute a pillar of contemporary Latino civil rights efforts in the realm of education.

¹⁴ Ibid.

¹⁵ Press release, November 30, 2004: “MALDEF Wins Court Ruling for Fair School Funding” (MALDEF.org).

Transnational Civil Rights, US Federalism

Clearly, Latino demographic growth—with its attendant social and political changes—will continue to boom, promising unforeseen civil rights developments at the federal, state, and local level. Recent immigrants face legal insecurity, which encourages them to maintain transnational networks. Meanwhile, more traditional issues involving inequities in public policy, voter registration and ballot access issues, as well as methods for electing governing bodies and the accuracy of population counting for decennial reapportionment of districts, persist. Discrimination still occurs in California, Texas, Arizona, and Illinois, states with long histories of large Latino populations, and many constitutional questions remain unresolved.

MALDEF’s most significant accomplishment, as measured by scope and impact, was the precedent-setting *Plyler v. Doe* decision (1982), a case dating back to a move by the Texas legislature in 1975 to exclude the children of undocumented immigrants from public schools by amending the education code to restrict public schools to “citizens of the United States or legally admitted aliens.” In 1977 MALDEF filed a class action lawsuit on behalf of all undocumented children in the city of Tyler, seeking a preliminary injunction challenging the statute and its implementation as a violation of the Equal Protection Clause of the Fourteenth Amendment of the US Constitution, which assures that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹⁶ Further litigation ensued, until the US Supreme Court in 1982 upheld a lower court decision and ruled that the Equal Protection Clause clearly applied to “all persons,” including undocumented immigrants.¹⁷

¹⁶ Stuart Biegel, “The Wisdom of *Plyler v. Doe*,” *Chicano-Latino Law Review* 17 (fall 1995): 47, 52, 63.

¹⁷ Ibid.

In 1994, twelve years after *Plyler*, a MALDEF-led challenge stymied the implementation of California's Proposition 187, which had gained national attention. The proposition, which passed, was designed to deny public education to undocumented immigrants from elementary to postsecondary levels, along with public social services and health services, with the exception of emergencies.

In MALDEF's immediate post-election lawsuit *Thomas Saenz*, the Los Angeles-born and Yale-educated MALDEF lead counsel, attacked legislation that Proposition 187 required, legislation that he viewed as discriminatory, not by trying to expand the *Plyler* precedent to health, social services, law enforcement, and higher education, since that decision "was so grounded in its context of K-12 education, [concerning] minors who were brought here against their will by their parents." Instead he craftily used the supremacy clause of the US Constitution to successfully argue that the "federal government has plenary immigration power [to regulate eligibility to programs], therefore California [could not] regulate immigration." He argued that Proposition 187 usurped the federal government's exclusive power to regulate immigration and violated the equal protection and due process guarantees of the US Constitution.

Additionally, proponents of Proposition 187 had staunchly maintained that the issue was immigration, not race, and most carefully dodged suggestions of any racial or ethnic bias during the campaign. According to Saenz, these proponents targeting the undocumented were "smart enough not to directly...discriminate against Mexicans. Instead they utilized immigration status and, in more recent developments, language, as proxies for race."¹⁸ But, in the case of Proposition 187, Saenz used this against them.

This successful use of the legal claim of 'preemption', whereby the federal government, having passed legislation on a matter, has supremacy on that matter over state governments, provided the main grounds for the overturning of the law. In the *Gregorio T. v. Wilson* decision (1995) it was ultimately decided that primary and secondary education cannot be denied because of immigration status; that schools may not require proof of immigration status as part of the enrollment process; and that it is unconstitutional to require government workers and educators to report names of suspected undocumented immigrants.

Saenz has remained with MALDEF and has also worked on behalf of the right of day laborers (*esquineros*) to assemble on street corners, in opposition to local ordinances "[emerging] from an animus based on race or immigration status," with immigration status, in his view, a "proxy" for race. Here, 'sophisticated legal activism' was required to establish that the real 'intent' behind the legal ordinances was discrimination against Latinos. MALDEF developed a strategy of using the First Amendment's guarantee of free speech rights as a tool to strike those laws down and had a Los Angeles County ordinance barring day laborers from soliciting work while standing on

¹⁸ Interview with Thomas Saenz, MALDEF vice-president for litigation, Los Angeles, August 2003.



sidewalks overturned in *CHIRLA v. Burke* (2000). MALDEF subsequently petitioned numerous cities with such ordinances in southern California to appeal or amend their laws—or otherwise face litigation—with varying degrees of success.

Chicago, meanwhile, has become a regional capital of transnational migration, resulting in the emergence of numerous civil rights issues in recent decades. New influxes of

Mexican Americans, as well as a growing population of Puerto Ricans, prompted MALDEF to open a Midwestern office in Chicago in 1980. There, as elsewhere, MALDEF has sought to translate population growth into equitable political representation, joining with other civil rights groups to aggressively challenge established redistricting practices, an endeavor that helped spur the growth of Latino representation in the Chicago City Council and, more recently, in suburban municipalities. In 1986 the US District Court ruled that the 1982 Chicago reapportionment gerrymandered the Latino community, and the court mandated the creation of four new ‘Latino’ aldermanic districts. MALDEF has also pioneered for Latino housing access in the western suburbs, winning a consent decree whose mandate facilitated immigrants’ moving westward from Chicago into the town of Cicero during the 1990s by permanently enjoining the town and its agents from engaging in any form of discrimination based on family size or national origin. More recently the organization has challenged at-large city council elections in Aurora, a ‘satellite city’ west of Chicago along the Fox River Valley with a large Mexican American and Puerto Rican population (almost a third Latino, in all). This facilitated the election of a Latino council representative from a more concentrated Mexican American and Puerto Rican district, or ward, in East Aurora.¹⁹

MALDEF opened an office in Atlanta in 2002, a city whose Latino population rose from 57,000 to 269,000 during the past census decade, with a particularly heavy and visible concentration in the northeast portion of the city. The increase is part of a demographic trend, as many Latino

¹⁹ See Maurilio E. Vigil, “MALDEF: Chicano Advocate for Educational, Economic, and Political Reform,” in Mary Romero and Cordelia Candelaria, eds., *Community Empowerment and Chicano Scholarship* (Berkeley, Ca.: National Association for Chicano Studies, 1992); Teresa Cordova, “Harold Washington and the Rise of Latino Electoral Politics in Chicago, 1982–1987,” in David Montejano, ed., *Chicano Politics and Society in the Late Twentieth Century* (Austin: University of Texas Press, 1999); and “Illinois City Erects Barriers to Latino Voting,” MALDEF Newsletter 33 (winter 2003) [web version]. Another Ford Foundation–funded agency, the Puerto Rican Legal Defense and Education Fund (PRLDF), founded in 1972, worked briefly, along with MALDEF, on emerging areas of concern among Chicago Latinos in the early 1980s. Thereafter, however, the two organizations reverted for the most part to their separate regional constituencies. PRLDF now focuses primarily on civil rights issues in the Northeast, especially in New York City, where Puerto Ricans and, more recently, immigrants from the Dominican Republic, have clustered.

immigrants come to the Southeast—the ‘Nuevo New South’ as it has been dubbed—to settle in small towns and rural areas, as well as in urban destinations. In Georgia new patterns of ethnic conflict have emerged as the state’s Latino population rose in the 1990s from 109,000 to 435,000 (an increase of about 300 percent), to comprise about 5 percent of the state’s total population in 2000—with 63 percent of the Latinos of Mexican origin, 8 percent Puerto Rican, 3 percent Cuban, and 26 percent ‘other’ (from Central and South America).²⁰

Georgia’s first Latino state senator is now a MALDEF board member. Sam Zamarripa, a successful entrepreneur and financier who describes himself as a “business Democrat,” emphasizes that today “there’s no way for us to escape our reliance on the importation of [immigrant] labor, illegal or legal.” He notes that though there is clearly discrimination, in the Southeast there are few conventional barrios—merely “little Ellis Islands,” spots where Latinos may gather for practical reasons, such as bus terminals. Zamarripa wants MALDEF to foster educational advancement and perhaps instill a bit of fear in the establishment, in order to be “seen in the South as a group that you’ll have to contend with if you plan on exploiting this class of people.”²¹ In another area of Latino civil rights concerns, Zamarripa cites workplace prohibitions of the use of Spanish by employees as one of the legally contentious issues currently facing MALDEF. Indeed, some of the first cases planned by the Atlanta office were challenges to the constitutionality of such English-only rules.

²⁰ Raymond A. Mohl, “Globalization, Latinization, and the Nuevo New South,” *Journal of American Ethnic History* 22 (summer 2003): 35–37.

²¹ Interview with Samuel Zamarripa, MALDEF board member, Los Angeles, November 2003.

MALDEF’s Involvement in Current Issues

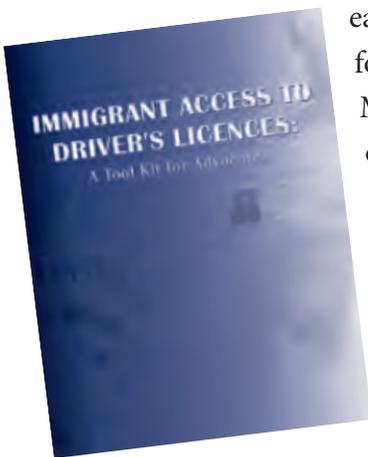
MALDEF, in its civil rights advocacy work, faces some of the more challenging issues of our time. The post–September 11, 2001, world requires, among other things, an awareness balancing vital concerns for homeland security with fundamental issues of civil rights and civil liberties with impact across the ideological spectrum. It would be easy for both supporters and critics of MALDEF to oversimplify the organization’s methods, policies, and constituencies, but the organization does not fit neatly into a political mold. Proponents of greater enforcement of existing immigration law along the borders may be tempted to lump MALDEF with so-called open borders organizations, but this would not accurately reflect the organization’s recognition of the need for balancing homeland security and other domestic concerns with immigrants’ rights. Interim Regional Counsel Luis Figueroa notes, for instance, that “the Patriot Act on its face seems pretty reasonable. But the problem is that the Department of Homeland Security (DHS) has been going beyond it using abstract INS laws in order to enforce things like memoranda of understanding” between DHS and local law enforcement. This would circumvent existing

guidelines to allow police officers to enforce immigration policies not contained in the Patriot Act, or in any act for that matter. Rather than challenging the act itself, MALDEF, in what Figueroa calls a “tough balancing act,” seeks to curb its unwarranted extension into areas that might result in racial profiling of Latinos or civil liberties abuses by local law enforcement.

Figueroa noted, “We were very concerned about some of [Attorney General John] Ashcroft’s provisions, the way he was enforcing immigration law. It remains to be seen about Alberto Gonzales [attorney general nominee]. We’re still exploring that issue. We’ll work with whoever is president and whatever the administration is, but it’s a challenge. We just keep plugging away.”²²

In the midst of debates on comprehensive immigration reform and the Bush administration’s push for a temporary or ‘guest’ worker program, MALDEF has released several statements, including a January, 2004, press release with a reaction to President Bush’s proposals on the issue. In early January President Bush had proposed “a new temporary worker program to match willing foreign workers with willing US employers when no Americans can be found to fill the jobs.”²³ The MALDEF release stated, “In the past, MALDEF has opposed guest worker proposals because they have failed to provide workers with equal rights and wages. However, in his [January] speech, President Bush stated that guest workers would be afforded the same rights as American citizens: ‘Decent, hard-working people will now be protected by labor laws with the right to change jobs, earn fair wages and enjoy the same working conditions that the law requires for American workers,’ [President Bush] said.” The release went on to quote MALDEF attorney Katherine Culliton: “Any package we would support would, of course, have equal labor protections and a path to permanent status.”²⁴

Latino civil rights advocacy groups, among which MALDEF remains the most prominent, have also been monitoring issues such as the debate over the awarding of drivers’ licenses to the undocumented, an issue that came up in the battle over the intelligence overhaul bill President Bush signed in December, 2004. The bill set federal standards for information contained on new licenses, but it is not considered a final answer on the matter and debate will likely continue at the federal and state level. MALDEF’s



MALDEF's
"Immigrant Access
to Driver's Licenses"
Tool Kit

²² Interview with Luis Figueroa, MALDEF Interim Regional Counsel, San Antonio, Texas, November 2004. For additional background on the post-9/11 environment, see the National Hispanic Leadership Agenda, “How the Latino Community’s Agenda on Immigration Enforcement and Reform Has Suffered since 9/11” (Washington DC: National Hispanic Leadership Agenda, June 2004).

²³ See the White House web site, whitehouse.gov.

²⁴ Press release, January 8, 2004: “MALDEF Pleased That President Bush Is Taking ‘A Step in the Right Direction’” (MALDEF.org).



Washington DC office has worked extensively with state and local legislative bodies on gaining acceptance for the Mexican *matrícula consular* (the Mexican consular identification card) as an official form of identification.²⁵

Another front that has generated debate, following the November 2, 2004, elections, MALDEF quickly mobilized to challenge Arizona's Proposition 200, a measure that would prevent undocumented immigrants from receiving government services. MALDEF won a temporary restraining order in federal court against the state. It remains to be seen if the law can be 'preempted', as occurred in the case of the 1994 California Proposition 187, or otherwise eviscerated before being implemented.²⁶

²⁵ "Fighting for Georgia Drivers' License Rights" MALDEF Newsletter 33 (winter 2003); "Local Officers Join Search for Illegal Immigrants," *New York Times* (April 12, 2004) [web version]; *MALDEF 2002–2003 Annual Report*. See also Joseph Nevins, *Operation Gatekeeper: The Rise of the "Illegal Alien" and the Making of the US-Mexico Boundary* (New York: Routledge, 2002), and Lucius J. Barker and Twiley W. Barker, Jr., eds., *Civil Liberties and the Constitution: Cases and Commentaries* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1970).

²⁶ Press releases: November 3, 2004, "MALDEF Urges Latino Community to Remain Calm Following Passage of Prop. 200 in Arizona" (MALDEF.org), and November 30, 2004, "MALDEF Files Suit against Proposition 200 'PAN' Initiative: Wins Temporary Restraining Order against Measure" (MALDEF.org).

Into the Future

There is evidence, perhaps only brewing in the background at this point, of the potential for a dramatic change in both legal and popular perceptions of citizenship. Considering that emerging context, there is clearly a need to reconceptualize federal/state/local relationships in the sphere of citizenship and to reexamine and perhaps adapt the constitutional privileges of national citizenship to an increasingly transnational era. This might well involve reinterpreting federalism to address both old problems and new challenges. One critical issue on the horizon is noncitizen suffrage, especially in local elections, to balance a lack of representation evident in areas of California with large numbers of noncitizens.

Immigration reform, homeland security legislation, and other federal measures may alter the status of many Latino immigrants, and the effects are likely to have an impact at all levels. Yet any possible forthcoming radical legal change involving Latinos is unlikely to be based on landmark federal cases, such as *Brown v. Board of Education*; rather it may emerge from cumulative crises, particularly at the state level—in legislatures as well as in courts—that require redefining the scope of US civil rights.

The war on terrorism, as well, activates growing tension between federal control of immigration, the constitutional supremacy clause, and the need for states to provide social services.

The urban—and suburban, considering the uncertain fate of the growing Latino suburban population with respect to housing, voting rights, and other issues—dimension of these events will also clearly remain an important part in defining any gathering crises and in fleshing out the emerging agenda of MALDEF and Latino civil rights organizations in greater detail. Civil rights, largely construed, have increasingly depended on the trajectory of cities and their most recent arrivals. Mexican- and other Latin American–origin immigrants, many of them undocumented or amnestied (e.g., among those granted citizenship through the 1986 IRCA), have become ubiquitous throughout regional metropolises and have settled in small towns and isolated agricultural settings as well. New legal themes and changing definitions promise to continue challenging contemporary observers and commentators in interpreting transnational developments in the US metropolis, the various regions in which Latino immigrants anchor, as well as in the sending countries of Latin America. Issues pertaining to their civil rights are inextricably linked to the jurisdictions in which they work and reside, as well as to the overall welfare of the nation.²⁷

²⁷ On some of the transnational dimensions of current issues see, for example, recent MALDEF press releases: “MALDEF ‘Profoundly Disappointed’ with Governor Schwarzenegger’s Veto of Driver’s License Bill” (September 22, 2004) and “Veto of ‘Repatriation’ Act Inconsistent with Past State Legislation” (September 24, 2004).

The problems and possibilities of the modern era fall heavily on the shoulders of incoming MALDEF President and General Counsel Ann Marie Tallman, a graduate of UC Berkeley's Boalt Hall School of Law. Tallman, granddaughter of an Iowa Mexican American migrant farm worker and the first in her family to attend college, presides over the beginning of the next phase of MALDEF's history. She brings with her a strong background in the corporate world, quite distinct from the grassroots activism of Tijerina and Obledo, and has a different generational perspective from that of veterans Martinez and Hernandez. Tallman draws on her executive experience of ten years with the mortgage-lending giant Fannie Mae where, just prior to joining MALDEF, as senior vice president she presided over a tenfold increase in business volume in the 28 states under her jurisdiction.

MALDEF has kept its status as a nonmembership organization, largely because of its emphasis on litigation. Consequently, some critics have complained of its 'elitism', as compared, say, to LULAC, which has greater grassroots participation. Though this accusation has some merit, MALDEF has maintained ties with local community groups and, especially, on the national level with the National Council of La Raza (NCLR) and the National Hispanic Leadership Agenda, of which MALDEF is an organizational member. On the state level MALDEF frequently represents plaintiffs from LULAC, the American GI Forum and other Latino advocacy groups. Meanwhile MALDEF has produced lawyers who have become leaders of considerable stature, such as Joaquín Avila and Antonia Hernandez. They in turn have helped mentor a new generation of very talented and capable civil rights litigators.

Summary

As seen in this overview, MALDEF’s work has broadened the field of Latino civil rights. Ongoing research by the author will reveal great strengths and weaknesses in the organization; it will also describe internal cleavages, successful and unsuccessful projects, endeavors, and tactics—in short, the history of the organization and its times.

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