

Resisting Attempts to Control the “Hyper-Fertile”

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Maya Manian, *The Story of Madrigal v. Quilligan: Coerced Sterilization of Mexican-American Women*, in **Reproductive Rights and Justice Stories** (forthcoming 2019), available at [SSRN](#).

The meaning of “success” in litigation challenging inequalities is at the core of Professor [Maya Manian](#)’s essay about the extensive effort to end sterilization of Mexican-American women at the [Los Angeles County + USC Medical Center](#) in the 1970s.

In one sense, the case of [Madrigal v. Quilligan](#) is a great victory. The federal judge who first heard the case issued a preliminary injunction directed at making the Spanish language consent forms understandable to patients. This judge then signed off on a settlement agreement between the Madrigal plaintiffs and the California Department of Health, approving California’s enhanced sterilization consent requirements, which themselves had been the product of lobbying and media efforts by Chicana activists. The United States Department of Health issued new guidelines requiring bilingual consent forms and instituting a federal monitoring program. The case “galvanized Chicana feminist activism” in ways that made it clear that a broader notion of “reproductive justice” was necessary: it should not be limited to the emphasis by white feminists on abortion and contraception but must also include abusive practices intended to limit reproduction by women of color and impoverished women.

Yet in another way, the case ended in defeat. As Manian reports, after the initial judge died, the new judge refused to grant compensation to the women, stating that there was no “racialized targeting of Mexican-American women’s reproduction,” but simply “ten distinct random occurrences” in which the named plaintiffs were subject to tubal ligations. The trial had seemingly made clear that the “consent” of the “Madrigal ten,” as well as many other similar women, was procured in an atmosphere in which there was a language barrier and lack of medical understanding; many women did not know they had been sterilized and those who did believed that the procedure was reversible (if the “tubes” could be tied, they could be “untied”). And then there is this practice, which a medical student testified to as occurring on an almost daily basis in an effort to procure “consent” to tubal ligation: “The doctor would hold a syringe in front of the mother who was in labor pain and ask her if she wanted a pain killer; while the woman was in the throes of a contraction the doctor would say, ‘Do you want the pain killer? Then sign the papers. Do you want the pain to stop? Do you want to have to go through this again? Sign the papers.’” Yet the judge found that the doctors were “certain in their own mind[s]” that the women had consented, although the women were entitled to sympathy for “their inability to communicate clearly.” Further, the judge rejected the specific evidence relating to these plaintiffs about their harm—that “reproductive capacity was particularly important to women from small rural communities in Mexico”—because the doctors could not be expected to know that.

Professor Maya Manian’s vital essay is in the forthcoming anthology *Reproductive Rights and Justice Stories*. It’s part of the [Law Stories](#) series from West Publishing which has proven to be a necessary teaching resource, usually providing great background material to famous cases and especially useful epilogues. In the *Story of Madrigal v. Quilligan*, Maya Manian has done an even greater service, illuminating a case that is not generally in casebooks (the penultimate opinion of the district judge was unpublished, the Ninth Circuit affirmed without opinion), but which serves as a cultural touchstone, resulting in some legal scholarship and the 2015 [PBS production](#) of a documentary about the Madrigal women, *No Más Bebés* by Renee Tajima-Peña. It is a case and story that deserves wide recognition.

In her essay, Professor Manian rightly centers the Madrigal women. Their bravery in becoming plaintiffs is immense. After the revelations and litigation, some of the women managed to rebuild their lives. For others, the “involuntary

sterilizations were devastating.” So too was the judicial defeat, as a woman’s son describes it, “then they go to court with many of them thinking they might make this right, and then all of a sudden the doctors get away with what they did....”

But in addition to the women plaintiffs, Manian provides inspiring glimpses into the people who worked to address the inequalities wrought by physicians who believed that sterilizing “hyper-fertile” immigrant women, whose children were assumed to be a likely drain on public resources, was not only justifiable, but good. Opposing these doctors were other medical professionals: not only the resident who testified about the practices she saw, but also the whistleblower resident who “surreptitiously copied medical records for hundreds of sterilizations at the Medical Center and spent hours after his shifts typing letters to journalists, civil rights groups, and government officials, in the hopes of spurring legal action.” In the legal arena, there was new attorney [Antonia Hernández](#), who later became the president of the [Mexican American Legal Defense and Education Fund](#) (MADEF) working with other attorneys, as well as with activist [Gloria Molina](#), who led the organization Comisión Femenil and later became the first Chicana elected to the Los Angeles City Council.

The story Manian ultimately tells is one of courage and resistance. As we confront renewed efforts to control the reproductive and sexual rights of immigrants, people of color, and all women, it is a story that is worth reading—and retelling.

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