

by Sau-Lim Tsang

Executive Director, ARC Associates

Introduction

In November, 1994, ARC Associates, in collaboration with twelve other agencies, sponsored a symposium, *Revisiting the Lau Decision: 20 Years After*. This event was the result of the combined efforts of those agencies and would not have been possible without the commitment and dedication of our colleagues. ARC Associates would like to express our gratitude to those agencies and individuals whose time and commitment made this symposium possible.

The Lau lawsuit was rooted in community activism brought about during the 1960's when our country was going through a period of self examination. The civil rights movement, followed by the anti-establishment movement, the anti-war movement, and the minority empowerment movement all converged at this historical moment. During this era, we saw fundamental changes in the country's attitudes and policies toward social issues. Changes in educational policy .

The Lau decision of 1974 (Lau et al v. Nichols et al, 414 U.S. No. 72-6520, pp.563-572) ushered in an abundance of new programs, teaching approaches, frameworks, legislation and government agencies—all designed to redress fundamental inequities in the educational opportunities available to language minority students. Despite these significant institutional and programmatic changes, however, the goal of high quality equitable education for all students is still far from reality.

When Justice Douglas, writing the majority opinion of the Court, commented that the students in question were being “effectively foreclosed from any meaningful education,” he could not have foreseen that two decades later, inequity for language minority students would persist in our nation’s schools. Today, the challenge of meeting the educational needs of all students remains problematic and is often complicated by the nexus of legal and legislative programs and mandates at federal, state and local levels.

For two days, participants gathered together to assess the current state of language minority education. This symposium served as a forum in which colleagues from across the disciplines – researchers, attorneys, educational practitioners, administrators and community advocates – shared their insights and helped to

formulate a new policy agenda for the next century. This event was particularly opportune as this country is going through another attitude and policy shift towards intolerance of immigrants and away from. These proceedings summarize the presentations and discussions of the event. In some cases, edited transcriptions are included. These proceedings not only provide a record of the event but will serve as background material for a similar event in ten years.

Revisiting the Lau Decision: 20 Years After

A National Commemorative Symposium

November 3-4, 1994 San Francisco

Historical Overview

Panelists: Ling-Chi Wang, Chair, Ethnic Studies, University of California, Berkeley
Edward Steinman, Santa Clara University School of Law
Edward A. De Avila, Educational Consultant and Community Advocate

Three speakers who were instrumental in pursuing the original lawsuit and implementing the Lau decision were invited to place this symposium in historical context.¹

Ling-Chi Wang, Community Leader for the *Lau* Lawsuit

The four year litigation and appeals process, coupled with the post decision struggle to fashion what the Supreme Court asked for--an appropriate remedy acceptable to both a school administration and school board united in opposition to bilingual education--demonstrates how important it is for parents and communities not to burn out and give up hope. The final Lau decision is the result of an unyielding and sustained push by a broad coalition of formerly powerless community groups and parent organizations. We were able to mobilize the Chinese American community, take control over fashioning the remedy following Lau, and persuade the entire school board to approve a master plan that mandated a maintenance program for bilingual/bicultural education.²

The Chinese-American community did not jump into this litigation lightly; the Lau lawsuit was not developed in a vacuum. On the contrary, it was the avenue of last resort after all others had been tried and exhausted. For three years the Chinese-American community held meetings with school administrators at all levels, conducted numerous studies that demonstrated the needs of non-English speaking children, proposed different approaches to solve the problem, staged demonstrations to protest school indifference and inaction, packed school board meetings to demand bilingual education programs, and developed community alternative programs to rectify the rapidly deteriorating situation. Yet, they found themselves to be totally powerless and fighting an uphill battle. At this same time, the number of new immigrant students

¹ Waldemar Rojas, the Superintendent of San Francisco Unified School district, also addressed the audience briefly.

² For a thorough review of the history of *Lau*, see: Wang, Ling-Chi. (1976). *Lau v. Nichols: History of a struggle for equal and quality education*. In Emma Gee (Ed.), Counterpoint: Perspectives on Asian America (pp. 240-263). Los Angeles, CA: Asian American Studies Center at UCLA.

entering the school system escalated each year. More and more Chinese American children were dropping out of school and forming street gangs that engaged in the violent activities for which Chinatown became very well known. This was a time of mounting anger and frustration with a bureaucracy mired in inertia and indifference. Community members picketed the school district and attended community meetings, one of which was terminated when frustrated students and parents began throwing eggs and cherry bombs at the superintendent who provided no answers to the problem. They also set a car on fire and one principal was injured.

The school district responded with token gestures and band-aid solutions. One hour per day in an English as a Second Language (ESL) class was like one-a-day vitamins dispensed by the school administration. When we started, we had only one vote on a board that was so divided and preoccupied with the whole integration and bussing program that they could care less about this issue. We were just another pain in the neck while they were trying to deal with another court mandate. The school bussing program started in 1971, so there was concurrent discussion and debate around that controversial issue. They had neither the interest, competence, nor the will to tackle head on the problem of children from limited English speaking backgrounds.

By then, a lawsuit was inevitable. On May 28, 1970, the following facts were stipulated by plaintiffs and defendants:

- 1) 2,856 Chinese speaking students in San Francisco Unified School District (SFUSD) needed special instruction in English.
- 2) 1,790 received no help or special instruction at all, not even the 40-minute ESL a day.
- 3) Of the remaining 1,066 Chinese speaking students who did receive some help, 623 received such help on a part-time basis and 433 on a full-time basis.
- 4) Only 260 of 1,066 Chinese speaking students receiving special instruction in English were taught by bilingual Chinese speaking teachers.³

Outside of these special English classes, most Chinese students needing help in English were placed in regular classes and taught solely in English where they could not adequately compete with their peers. This resulted in tremendous frustration, discouragement, resentment, truancy, delinquency, and dropping out, none of which was commonly heard of in those days because Chinese American children were considered to be model minority students. Teachers and counselors were equally frustrated and helpless. Their preparation and training did not include techniques for teaching and counseling Chinese speaking students.

Eventually, the U.S. Supreme Court handed down a very favorable decision. After this decision, the minority language community formed a multi-lingual coalition of

³ These data, collected by the school district in 1969, had no objective standards guiding the data collection. The subjective judgment of individual classroom teachers was the basis of the survey. Placement of these students into a few special English classes was arbitrary and was not based on specially designed testing procedures or ascertainable standards.

community leaders and parents and asked the school board to appoint a multi-lingual citizens' task force to develop a master plan for bilingual education. Although the superintendent tried everything possible to prevent that from happening, the coalition was eventually able to prevail upon the school district.

We knew that we did not have the votes on the school board and the only way to influence the plan was to form a citizens' task force to do a study in response to the Lau decision. After intensive lobbying, the school board reluctantly agreed that we should form a task force to respond, and find the best way, to meet the Supreme Court's requirement. For the first time in the history of San Francisco, Latino, Asian, Black and White parents united.

Also for the first time, the school board actually appointed a committee made up of community members (other than the multi-lingual, multi-racial integration advisory committee) to deal with the issue of how to respond to the Lau decision. It took quite a while to get to that stage. We knew if we were to allow the board to formulate its own response to the Lau decision, we would probably end up with another type of one-a-day ESL class. We also knew that the District Court judge, to whom the case was remanded by the Supreme Court, was not about to support any kind of bilingual education as a remedy to the decision.

The school board also agreed to retain the Center for Applied Linguistics to help us formulate this plan. After a lengthy period of study, we submitted a 700 page report, The Master Plan for Bilingual Education, to the board. That plan was immediately rejected by the superintendent, who felt it was too extreme. He did everything possible to prevent the board from adopting the master plan. Once again we mobilized the community. As a result of the multi-lingual, multi-racial task force work, we were able to involve a broad segment of the San Francisco community who had previously been disenfranchised and powerless. Using the Supreme Court decision as rallying point, they formed a broad coalition for the first time and focused on this issue.

We attended school board meetings with 400 to 500 people, and worked to advance this plan requiring bilingual/bicultural education as the only legitimate way to fulfill the mandate of the U.S. Supreme Court. After several months of intensive lobbying, the board finally and reluctantly approved the master plan. Although we had to make some modifications to the original plan, the master plan, as adopted, required bilingual/bicultural education of the maintenance⁴ type.

This illustrates how important it is for linguistic minorities to coalesce and work together for change in the school board. We did not want band-aids -- discretionary funds to support bilingual education. We wanted hard money -- school district funds to

⁴ Maintenance bilingual programs foster the continuing development of the primary language throughout a student's schooling while also ensuring acquisition of English. The goal is for students to be fully bilingual and biliterate. Transitional programs, in contrast, use the primary language as the medium of instruction for only the first two to three years (typically K-2) and then transition students as rapidly as possible to an all-English environment. This process often results in the eventual loss of the primary language.

be fully integrated into the school budget. Ultimately we were able to get this plan unanimously approved by the board, even though we started with only one vote. Through political mobilization, we were able to convince the board that this was the only responsible response to the Supreme Court's mandate. It was then possible to integrate bilingual education, step-by-step, into the school system. We still had a hard time implementing the plan due to the shortage of teachers, materials, and other problems. Subsequently, we were able to use this issue to mobilize the community to elect a school board that was much more sympathetic to bilingual education.

Edward Steinman, Attorney Representing Kinney Timmon Lau

In revisiting Lau v. Nichols, essentially we revisit frustration. Lau, like any lawsuit, is the product of frustration. The case was based on a different notion of equality. At that time, the country was focused on problems of racial segregation. A focus on segregation and the treatment of blacks, in essence, provides one notion of inequality: taking people who are the same and treating them differently. That is only half the coin. The other side of inequality is more subtle, less visible, and equally invidious. It is taking kids who are different and treating them the same. San Francisco was providing "education" to Lau children who were getting zero benefits. If everybody gets the same menu but some people can't digest it, those people will come out starved. This also applies to children with disabilities and those who are hungry and homeless. If we don't do something different for these children, we can guarantee what will happen--a denial of educational opportunities. So, Lau is about looking at a different kind of equality.

Why is this case called Lau v. Nichols and not "Gonzalez" v. Nichols? (Nichols was the president of the San Francisco School Board at the time.) There are two good reasons why the case was called Lau:

- 1) It was pure strategy. We thought, "If we win the case, everybody can join us. If we lose, those from non-Chinese communities can blame Steinman and Ling-Chi Wang, and distinguish them from the rest;" and,
- 2) It was tactical in terms of the facts. In the late "60s", San Francisco was actually doing a much worse job, percentage wise, for Chinese speaking children than for Spanish speaking children. There were far fewer Chinese speaking children getting anything from the school district, even the one-a-day dosage of ESL. In bringing litigation, attorneys like to present the court with the worst facts because courts may then become most sympathetic.

There was a third private reason, reflected in Ling-Chi's statement about Chinese children being the models--perfect little children. I thought the courts might have an easier time dealing with children from that background than children from Spanish speaking backgrounds.

Lau was one of 144 cases the Supreme Court chose to hear in 1973-1974. They rejected almost 5,000 other cases. Lau was one of the lucky 3% they heard. The U.S. Supreme Court decision stated, "We know that children who don't understand English when they come to school are certain to find their classroom experiences wholly incomprehensible and in no way meaningful." You can read that quote in the conference program. But the program does not include the decisions of the lower courts. We lost the case in each of those courts. The Ninth Circuit decision in 1973 ruled against Lau and all the other children because:

The discrimination suffered by these children is not the result of laws passed by the state of California, presently or historically, but is the result of deficiencies created by the children themselves in failing to know and learn the English language.

That decision was overturned. That language is no longer the law, but that attitude cannot be changed by a court decision, nor by the people who come to this conference. That statement is very cruel, inaccurate, and callous. As children, we were taught that we are not supposed to visit the sins of the parents upon the child. This statement says that the child is inherently sinful for having the audacity not to know English when he or she enters the classroom.

This conference is more about political and legal issues than educational issues. We know that bilingual education works. I submit that we are not revisiting Lau v. Nichols. We are spending this twenty-first year since the Lau decision talking about politics. This issue is about politics and money. If the state requires that students be taught English and math, we don't say, "We can't find the money." But if you require bilingual education, suddenly we say, "Oh, we can't find the money. We can't find the right materials. We can't find the teachers." Admittedly, many districts have difficulties finding a sufficient number of Lau teachers. But today universities are turning out hundreds and thousands of bilingual teachers. Yet, most schools don't want to make the effort to find these teachers because they don't want to upset and bother those who are currently employed. In essence, they don't want to change.

I teach civil rights law and criminal law. If tomorrow my students want to know computer law, I have three choices--learn computer law, find another position in my law school, or find another job. The administrators' and teachers' problem with Lau is that people don't want to change. Teachers now have to learn new things to teach. After twenty-one years we are finally recognizing that we run schools to educate kids, not to pay teachers' salaries. It's getting too late to say we'd like to do it, but we don't have the teachers. Twenty or thirty years ago, most children may have been English speaking; millions of our children today are not. The answer is not to require the child to change by learning English before he or she comes to school. The answer is to change the

educational production--the schools.

Edward A. De Avila, Task Force Member, Helped Develop the *Lau* Guidelines for the Office for Civil Rights (OCR)

In 1963, when I entered the University of California, Berkeley, to study psychology, I looked around and wondered why there were no people who looked like me. At that time, Hispanics and other language minority people were still pretty much invisible. I was interested in the study of intelligence and intellectual development. Somehow, I couldn't let go of what I heard as a child about educationally retarded and dumb Mexicans.

Later, I studied the concept of intelligence and its measurement, along with the relationship between test performance, language and culture. It soon became apparent that tests provided the bulwark behind the placement of students from non-English speaking backgrounds into classes for the educationally mentally retarded. Children who were limited English proficient (LEP) had no chance in school because they showed up on tests as dumb. As a graduate student at the University of Colorado, I wrote about the futility of using the available IQ tests with children from Hispanic backgrounds. Moreover, translations into Spanish caused as many problems as they solved. These tests were inappropriate and meaningless from the point of view of children from non-standard or non-mainstream backgrounds. At York University in Toronto, I worked with Juan Pascal León who taught me to better understand the nature of intellectual development--how new or more complex theories, tied to burgeoning fields of information processing and cognitive psychology, were applicable to what was happening to language minority students. Distinctions between experience and capacity were critical to understanding intelligence.

In 1971, I got a call from Alfredo Castañeda, who said, "I'm a Chicano psychologist." Up until that time, I thought I was the only one. We went to Washington D.C. to meet with other Chicanos in the field and talk about the general problem of testing language minority students. There, for the first time in my life, I came in contact with educated and accomplished men and women who were from the same background. There were groups of dedicated educators drawn together from all over the country to address some of the inequities in the treatment of Mexican American school children. Later, consideration of Asian and Native American students became particularly significant.

One of the first issues addressed by the task force was assessment. As a result of their effort, and the efforts of many others, a simple two page memo was issued by Stanley Pottinger, Director of the U.S. Office for Civil Rights at that time. This memo stated, unequivocally:

Districts must take affirmative action to rectify the language deficiency of

national origin students in order to open its instructional program to these students. ... School districts must not assign national origin minority students to classes for the mentally retarded on criteria which essentially measure English language skills.

Although I was not an educator, I had worked as a psychologist for several Headstart and Follow Through programs and was trained in psychometric theory and test construction. I was intimately familiar with all of the theories of intelligence as well as how tests were developed, used, and misused. I quickly became a technical expert on the testing of language minority students and found myself part of a traveling band spreading the word to local educators, federal bureaucrats, politicians and anybody who would listen. We were constantly on the road. There were many to be enlightened about the problems of language minority students. It was clear that many of the people we met with had never had direct contact with anybody other than people just like themselves. In fact, the Office for Civil Rights identified 333 school districts that were out of compliance.

Around 1974, I was invited to a meeting focused on the formulation of a set of federal guidelines to respond to a recent Supreme Court decision stemming from the fact that some Asian kids were not getting a meaningful opportunity to participate in the educational program. Thus, the U.S. Department of Health, Education and Welfare (HEW) was attempting to assist school districts in complying with the requirements and implications of both the May 25, 1970 Memo and the recent Lau v. Nichols decision by providing guidelines. This meant a merging of two forces-- the Office for Civil Rights and the Supreme Court. That meeting was attended mostly by U.S. Civil Rights officials and attorneys from Nixon's office of general counsel. There were only two outsiders -- myself and Jose Cardenas from Texas. I remember, as clearly as I remember the birth of my children, a diminutive man in a dark, rumpled suit who came in about ten o'clock. Ling-Chi Wang flew all night to attend the meeting to tell us about the development of the consent decree in San Francisco and how outcomes in San Francisco might relate to these meetings and to the formulation of the Lau guidelines. Ling-Chi-Wang is a hero for me. I saw his impressive dedication and commitment to the children, a commitment that has remained constant over the years.

The development of the Lau Remedies⁵ constituted the first unified attempt to address the education of immigrant and other children from non-English speaking backgrounds. Bolstered by the May 25 Memo, there followed a raft of state laws and a

⁵ The Lau Remedies "told districts how to identify and evaluate children with limited English skills, what instructional treatments would be appropriate when children were ready for mainstream classrooms, and what professional standards teachers should meet." They also went beyond the Lau decision, stating that districts must provide bilingual education for elementary school students who spoke little or no English (Crawford, T. 1989. Bilingual education: History, politics, theory, and practice. Newton, NJ: Crane, p. 37.) Although they lacked the legal status of federal regulations, they were used by the Office for Civil Rights to negotiate agreements with school districts.

number of court cases, including Cintron, Keyes, and Serna, as well as others aimed at addressing the needs of LEP students. The Lau decision became the Brown v. Board of Education decision for national origin minority students.

When the Remedies were finally completed in 1975, I remember taking them to Lou Butler, one of Nixon's attorneys in the White House. After reviewing the document, Mr. Butler said, "Sounds sexy, let's go with it." That's all there was to it. The issues broached by Lau were viewed by many as political problems. One federal bureaucrat said, "This language minority or bilingual business is something that will go away." It didn't go away, but the Remedies were in trouble almost from the day they were distributed. Originally, they were to be published in the Federal Register, which would have given them the force of law, or so I thought. John Lum stated, in his characteristically excited fashion, that the Remedies were going to "needlessly rankle some hard nosed people." And surely they did. As soon as they were out, several districts, including Seattle, and the State of Alaska, threatened to sue HEW. Ultimately the Office of Education had to back off. Luckily, things were on their way, the Lau centers had begun, and court cases were abounding.

In 1976, Clarence Thomas was brought in by the Nixon administration to dismantle the National Institute for Education (NIE). The NIE ultimately produced the document, *A Nation at Risk*. The Southwest Education Development Labs (SEDL) prepared a set of proceedings. In preparing for this symposium, I went back and looked at those proceedings in light of the kinds of issues that were raised as possible threats to the successful implementation and spirit of the decision. It is both stunning and surprising that we are facing almost the same issues today.

From my point of view, the single strongest threat to the spirit of Lau is in the recent anti-immigrant sentiments expressed by California Governor and Republican presidential candidate, Pete Wilson and, Proposition 187. It is a terrible law. While there are numerous arguments to oppose Proposition 187, such as health, safety and humanitarian issues, there is one point that has not been raised which bears directly on the current discussion. There are about one million LEP students in California. They probably represent approximately 300,000 families. Sure, some of those are illegal. Should Proposition 187 pass, school district administrators will be required to identify possible illegal immigrants⁶. What better way than to use language proficiency as an indicator of possible illegal status? Districts are already required to fill out the R-30 census report which documents the numbers of students from homes where languages other than English are spoken. It would be a simple matter to turn a list of possible illegal immigrants over to the Immigration and Naturalization Service (INS). Clearly, something needs to be done about the borders and employment, but I am concerned about the possible abridgment of civil rights. Proposition 187 represents a terrible abridgment of civil rights of language minority people. I hope we all move towards

⁶ Three days after this conference, California voters approved Proposition 187.

stopping that kind of thing.

Strand A: Social Impact

Report by: Kenji Ima, San Diego State University

First Day

Moderator: Harriet Doss-Willis, Southwest Center for Educational Equity

Presenters: Sofía Aburto, Evaluation Assistance Center-West
M. Beatriz Arias, Arizona State University
Alberto Ochoa, California State University, San Diego
Jeannie Oakes, University of California, Los Angeles
Josué Gonzáles, Teachers College, Columbia University
Justo Robles, California Teachers Association

Second Day

Moderator: Alicia Salinas Sosa, Desegregation Assistance Center, Texas,
Intercultural Development Research Association

Presenters: Henry Der, Chinese for Affirmative Action
Marta Jiménez, Mexican-American Legal Defense and Education Fund
Sara Gómez-Montejano, California State University, Long Beach
Hugh "Bud" Mehan, University of California, San Diego
David Ramírez, California State University, Long Beach

Strand Coordinators: Leticia Pérez and Alan Hopewell, Southwest Center for
Educational Equity

The irony of addressing the social impact of the Lau v. Nichols ruling was the realization, by the panelists, that the initial troubling conditions of inequality for language minority students still exist. Therefore, to discuss its impact meant to address the persistence of unequal access to educational opportunity, if not outcomes, for language diverse students. Kinney Lau, the individual for whom the ruling is named, represents the incompleteness of the ruling since he has yet to reach his American Dream; he was unsuccessful in school and continues to be so in the job world. This incompleteness raises questions over progress during the past 20 years and whether or not we will ever fulfill the dream kindled by the Lau ruling.

Presenters not only questioned whether or not progress has been made in 20 years since the original court decision, but Josué Gonzáles even suggested that the ruling was regressive since it defused the energies of linguistically diverse communities by assigning the task of change to professionals who seem to be caught in bureaucratic and political webs. On the other hand, some presenters assumed the path established by the Lau ruling was the only option and they searched for ways to implement the ruling, including improving bilingual curriculum and staffing. Thus the speakers seemed to be of two minds -- questioning the wisdom of the ruling or searching for ways to make the ruling work.

The Lau ruling occurred because San Francisco schools failed to adequately teach Chinese speaking students and the general persistence of that failure continues to limit educational opportunities and outcomes for language minority students. Panelists asked what steps need to be taken to make equal educational opportunities a reality for language diverse populations. This search for equity is, in essence, political. The ruling raises an old question of democracy -- what rights do people have in influencing community decisions affecting themselves and their families? Citizens believe they have a right to influence decisions affecting them, and this long standing democratic principle has often been overlooked regarding language minority people. The Lau ruling, along with the companion 1954 Brown v. Board of Education ruling, represents the legitimacy of people seeking remedies from central governmental bodies, such as the courts, when it is felt that local governmental bodies, such as school boards, are incapable or unwilling to redress grievances. The Chinese parents who raised the original Lau question had been ignored by the San Francisco School Board and were, in effect, disenfranchised. It was clear that some higher political body had to intervene or no change would occur. While the 1954 Brown decision addressed equity in terms of physical segregation and the 1974 Lau decision addressed equity in terms of comprehensibility of instruction, currently a third objective has emerged regarding equal educational outcomes reflected in the 1981 Castañeda v. Pickard decision which addressed equity in terms of pedagogy, resources and results.

Summary of presentations: The five questions that organized the discussion were:

- (1) Are the Lau ruling and desegregation policies in conflict with each other?
- (2) Are language minority students tracked?
- (3) How well or poorly have language minority students performed?
- (4) Have we filled the needs for a bilingual teaching force?
- (5) Have communities been part of the process?

Desegregation. Is there a conflict between desegregation and Lau? The desegregation policy addressed physical separation while Lau redefined equal to mean comprehensible instruction which often involves physical segregation of bilingual from mainstream students. Beatriz Arias suggested that desegregation can interfere with bilingual efforts though conflict is not inherent. David Ramírez foresaw conflict between language minority groups and African Americans over resources and suggests the need for a more comprehensive model to avoid the divide and conquer circumstance which is now in effect.

Tracking. Are language minority students tracked? If so, how has it affected them? Aside from segregating or integrating students, tracking involves giving students

different levels of academic content. Jeannie Oakes noted that bilingual students and programs are part of tracking, which she related to persistent racial and ethnic segregation alongside of the language issue. Among students with the same achievement scores, whites are more likely to be placed in a higher track than Latino students. Asian language minority students are more likely to be placed in upper tracks along with whites. This split raises questions about ethnicity and social class, parameters which are critical background conditions to the Lau ruling. Placement matters because it affects subsequent scores -- lowly placed student scores remain low over time while the better placed have improved scores -- or the rich get richer and the poor get poorer. How does one provide support for language minority students while at the same time not segregating them?

Hugh Mehan agreed with Oakes about the existence of tracking and attributed this practice to an uneasy accommodation with competing ideals (all citizens get basic knowledge for workplace and citizenship; each person should reach their maximum potential; and, equal opportunity for all students). He suggested that it is impossible to reach all ideals at the same time; thus the persistence of re-segregation and re-tracking. It is an accommodation to addressing competing demands. What does one do with students who have varying levels of competence in the English language, speak different home languages and have varying levels of content competence in the same classroom? Tracking is a practical response to this classroom condition; however, the conventional wisdom is that those in the lower track will receive remedial instruction and compensatory education -- a simplified curriculum, taught in simpler form, at a slower pace with reduced content. Unfortunately, these practices serve to further place students at risk for educational failure.

Educational attainment. How well or poorly have language minority students performed? David Ramírez argued that, given a lack of policy, and while the courts have been helpful in defining what is to be done, they persists in looking only at body counts. In reality, the courts have yet to deal with outcomes such as student achievement. He has not seen marked improvement of academic performance among language minority students. He observed that tracking bilingual students into English language classes, such as ESL, results in reduced access to academic content.

Sofía Aburto addressed the educational and economic attainment of language minorities in reporting on Samuel Peng's (U.S. Department of Education) preliminary analysis of national census and National Center for Education Statistics data. They found: (1) increasing numbers of persons 5 years and over speaking a language other than English at home (i.e., a 41% increase from 1979 to 1989, with a faster increase of Spanish-speaking persons than speakers of other non-English backgrounds), (2) increasing proportions of children from language minority backgrounds receiving special school assistance (e.g., in English language development and school adjustment) as

measured by school readiness data, (3) the percentage of English-speaking children who are behind modal grade for their age has increased from 24% in 1979 to 34% in 1989, while the percentage of non-English-speaking children stayed about the same (35% vs. 36%), (4) language minority Asian American and Hispanic secondary students who have acquired English language proficiency (i.e., language minority non-LEP) generally performed quite well in school (e.g., in reading, math, science, and social science), and in some aspects they were performing as well or even better than non-minority students, (5) language minority limited English speaking secondary students (i.e., language minority LEP) consistently attained lower scores than other groups, and (6) Spanish speaking students having difficulty with English had lower high school completion and college enrollment rates than any other language minority group. Peng and Aburto praised recent research efforts to measure English language proficiency in addition to race/ethnic descriptors, noting this study used student self-assessments and teacher judgment, rather than English language proficiency examinations, to determine "language proficiency" status. It was also noted the type and quality of prior instruction (e.g., mainstream English, bilingual) received by high achieving language minority non-LEP students was unknown.

Both Aburto and Peng agreed on the need for better data to monitor the progress of bilingual students.

Bilingual teacher pool. Have we filled the needs for a bilingual teaching force? Justo Robles felt that the California Teachers' Association (CTA) has been supportive of bilingual students, such as filing an amicus brief on behalf of Lau in 1972. He saw three roles for CTA: giving technical assistance, informing policy makers, and creating links between enforcement agencies and school districts. Nevertheless, the CTA is a teacher union which must defend the rights of its members, many of whom may not favorably view attempts to increase bilingual requirements for teachers as demonstrated in the struggle over Senate Bill 1969. This bill concerned **teacher qualifications** and focused on whether or not currently employed teachers, especially those over fifty years of age, would be required to fulfill further requirements for more stringent training or follow a more watered down training program. The teachers' union won for the lessor quality option.

Sara Gomez-Montejano observed that not enough bilingual teachers have been trained or hired, especially in the face of increasing numbers of bilingual students. In 1987, 31% of limited English proficient students were taught by bilingual teachers; but currently the percentage has fallen to 28%, reflecting both increases in the number of bilingual students and insufficient numbers of new teachers. Most bilingual teachers are minimally qualified as reflected in the number of teachers with emergency credentials -- 27,000 of the 35,000 teachers with emergency credentials are in bilingual classes. Only 5-10% of bilingual students receive instruction by fully certificated teachers.

The struggle to develop a bilingual teaching force faces resistance from the general public and the aging sector of the teaching force, as illustrated by the resistance of CTA to the credential issue, especially notable over the fight on California Senate Bill 1969 mentioned above.

Community involvement. What has been the link between communities and schools regarding equity for language minority students? Presenters agreed about the low levels of community involvement. David Ramírez observed that the communities of greatest need are the least likely to have access to the political process.

Josué Gonzáles suggested that the Lau and other protectionist measures may actually weaken the ability of the Latino community to look after itself and to enhance the use of the Spanish language. "We used to talk about community empowerment - but the Lau Remedies depend on the beliefs that government will establish rules and enforce them. Who gets punished for not delivering on Lau? What is the threat of Lau? We create illusions that someone is going to look after you, hence it replaces empowerment by brokerages who will be the main agents of implementation."

Alberto Ochoa documented the 20 year history of resistance to change, concluding that equity will not occur without a more fundamental linking of schools and communities, including greater access to school resources rather than the current minimal response to Lau, and a policy of home culture maintenance rather than its destruction through schools. Henry Der's remarks resonated with a similar theme that the linkage between school and home is part of a larger linkage of newcomer communities to the rest of society. Not only language and color surface as the great dividers, but also the often hidden social class factor. He argued that there is a need to develop a broader vision linking across minority communities, social class-minority connections and focusing on outcomes.

Concluding remarks. The Lau ruling has been the central force shaping the education of language minority students during the past 20 years. Yet the attempt to assess its impact after 20 years resulted in skepticism, given both the growth in the numbers of language minority students and the continuing inadequate response to their needs. First, the Lau ruling and desegregation policies were seen in conflict with each other. Second, language minority students, for the most part, remained tracked in the lower ranks. Third, the poor performance of language minority students are linked to their ethnic minority status. Fourth, the supply of bilingual teachers remains low, covering the needs of only 5-10% of bilingual students. And last, community involvement of language minority parents has been weak, and this remains a fundamental flaw in the politics of school change. If improvements are to be seen in the next 20 years, then stronger measures will have to be enacted and language minority communities must be more actively a part of the solution.

Strand B: Legal/Legislative Policy

Report by: John T. Affeldt, Esq., Public Advocates, Inc.

First Day

Moderator: Eléna León, California Department of Education

Presenters: James Crawford, Independent Writer
John Palomino, Director Region IX, Office for Civil Rights, U.S.
Department of Education

Discussants: Carolyn Getridge, Superintendent, Oakland Unified School District
Michael de la Torre, Nevada Department of Education
Diana Cortez, Utah State Office of Education
L. Ling-Chi Wang, University of California at Berkeley

Second Day

Moderator: Alan Hopewell, Southwest Center for Educational Equity

Presenters: Oscar Cárdenas, Texas Education Agency
Diana Cortez, Utah State Office of Education
Norman Gold, California Department of Education
Stefan Rosenzweig, Public Advocates, Inc.

Discussants: Gerald Brown, Metropolitan State College of Denver
Ed Lee, Director, Multilingual Education Office, Modesto City Schools

Strand Coordinator: Sau-Lim Tsang, ARC Associates

Race Discrimination & The Roots of *Lau*

Lau, at its heart, addresses not merely language discrimination, but racial discrimination. This fundamental truth informs all that came before Lau and must not be forgotten in examining all that has come after.

That Lau has its roots in Brown v. Board of Education was explicitly illustrated by John Palomino during the first day of the Legal/Legislative strand. John was one of the drafters of the now famous "May 25th Memorandum" of 1970 from the U.S. Department of Education, Office for Civil Rights (OCR). John explained how the May 25th Memorandum was based on Brown's concept of the unlawfulness of "separate but equal" education. Placing a non-English speaker in an English classroom may be "equal" treatment, but it results in a very "separate" educational experience for the student. The first draft of the May 25th Memorandum paralleled the Supreme Court's approach in Brown by focusing on the exclusion and alienation of being a limited English proficient (LEP) student in America. Subsequent drafts evolved into the notion that failure to provide language instruction to LEP students constituted national origin discrimination, and ultimately into the conviction adopted by the Supreme Court in Lau:

that ignoring the language needs of LEP students "foreclose[s] [them] from any meaningful education."

Federal Law After Lau

Much of the rest of the first day, presenters Palomino and James Crawford focused on developments in federal law since Lau. Notably:

- the advancement of the Lau Remedies from 1975-1981 by OCR, preferring native language instruction where twenty or more LEP students in a single school have the same primary language;
- the withdrawal of the Lau Remedies by the Reagan Administration in 1981 and the concurrent political backlash against bilingual education;
- the issuance in 1981 of non-prescriptive guidelines by OCR;
- the Fifth Circuit's ruling in Castañeda v. Pickard which (1) permits a district to adopt "[any] program informed by an educational theory recognized as sound by some experts in the field," and then requires (2) that districts effectively implement the adopted theory, and (3) that the district's program actually succeed in overcoming language barriers;
- the substantial fall-off in enforcement of Lau under Presidents Reagan and Bush (a district was 9 times less likely to be visited by OCR during 1980-85 than it was between 1975-80; enforcement was apparently even worse between 1985 and 1990); and
- the recent substantial improvement in enforcement activity under the Clinton Administration and the guidance of Assistant Secretary for Civil Rights, Norma Cantú (an average of 35 compliance reviews presently takes place annually as compared to twelve per year during the Bush Administration).

James Crawford emphasized a political irony that may well only increase in magnitude as the results of the November, 1994 elections sink in. (passage of Proposition 187. OCR's most proactive effort to enforce native language instruction as a component of Lau's mandate originated under a Republican administration. It was Martin Gerry, heading OCR under President Ford, who approved the Lau Remedies in the face of substantial opposition to their emphasis on primary language instruction. Gerry told *Education Week* a decade later that his decision was an easy one: If he had left the decision up to school districts they would have opted for the English as a Second Language (ESL) route given its lower costs and greater political acceptability.

Ironically, the Clinton Administration has thus far elected to pursue the case-by-case, "agnostic" approach to bilingual education developed under Reagan's OCR. This cannot continue, Crawford emphasized, and any advocate of Lau's strictures must concur. By Crawford's estimate, there is now a "near consensus" among hundreds, if not thousands, of studies that native language instruction improves both the acquisition rate of English and overall academic achievement. Most notable among these is David

Ramirez's 1991 report and last year's endorsement of this finding by the National Academy of Sciences. Armed with such a substantial body of evidence, OCR must begin to prescribe and clarify what are acceptable bilingual education approaches. It is not politically feasible to expect that the Lau Remedies be reissued. However, OCR must clarify the variety of acceptable methodologies, supported by research. Districts must not be allowed to pursue just any program for which an "expert" can be found to offer support. Rather, districts must be required to choose from a variety of programs supported by the research -- primary language programs, appropriate sheltered English programs, and even the occasional ESL pull-out. With substantial detail and guidance from OCR, however, districts will be clear as to what is an appropriate ESL pull-out.

If all else fails, as an absolute bare minimum, OCR policy must require that district programs ensure children will learn English and learn in the content areas and that, in order to achieve these results, instruction must be comprehensible to the student.

State Laws After Lau

Presenters on the second day of the Legal/Legislative strand focused on developments in state bilingual education laws. Speakers presented on Texas, Utah, California, and Florida. The picture that emerged reveals an intricate tapestry of bilingual education laws, varying in strength, complexity, and approach across the country. It is clear that through litigation or legislation -- or both -- a number of states have developed extensive bilingual education policies since Lau. Oscar Cárdenas, for example, detailed the progress that has occurred in Texas. As late as 1969 it was still a criminal offense to teach in a language other than English. Through legislation and a federal lawsuit, Texas has now implemented a bilingual education law that substantially tracks the original Lau Remedies. This legacy of Lau should be recognized and celebrated.

However, as illustrated by Diana Cortez in the case of Utah presently and Stefan Rosenzweig in the case of Florida prior to the 1990 LULAC⁷ lawsuit, some states have very spare and shallow laws for protecting the rights of LEP students. Of those laws which have been adopted, many of them still spring from the ESL approach, with no or limited possibilities for delivery of content courses in the primary language. Equally lamentable, even among those states that have adopted primary language instruction as a substantial component of their bilingual education mandates, the implementation of Lau remains unquestionably unacceptable. In California, for instance, Norm Gold revealed that 27% of LEP students -- over 300,000 children -- are receiving no special language services whatsoever. Moreover, only 28% of the State's LEP students are

⁷ LULAC v. Florida Board of Education created Florida's first standards for the education of that state's diverse and enormous (200,000 and growing) limited English proficient student population.

receiving true bilingual services -- primary content instruction mixed with English language development.

Future Policy Directions

Several policy suggestions come to mind when revisiting the present challenge of Lau. First among them -- unfortunately -- is enforcing Lau itself. A recent Government Accounting Office report concluded that most local school administrators are not taking adequate steps to implement Lau's mandate. Various reports illustrate that California's experience reflects a national reality: most LEP students receive nothing more than one-hour per day of ESL instruction, and many receive only ESL-content classes. In those states and districts with the most egregious lack of Lau provisions, lawsuits still need to be brought to prod officials into compliance. Stefan Rosenzweig, Multicultural Education Training Advocacy (META), and others, for example, were able to form a broad multicultural coalition of organizations in Florida which obtained a significant statewide Lau settlement in 1990. Such action needs to be repeated elsewhere.

Beyond implementing established law a la Lau and Castañeda, the courts do not offer great promise for further expansion of LEP students' rights. Castañeda's agnosticism among bilingual education methodologies is unlikely to be modified by the present Supreme Court. This leaves advocates with only the ability to battle over the other two prongs of Castañeda: implementation of the chosen methodology and demonstrated student improvement. Suits premised on a district's failure to implement adequately its adopted bilingual program have been brought with varied success. No serious attempt has yet been made, however, to challenge a school district's bilingual program based on the third prong of Castañeda: the lack of student achievement after a reasonable period of program implementation.

Potentially such an action, if successful, could add significant teeth to Castañeda. Holding districts accountable for student outcomes could be the leverage needed to force adoption of proven, primary-language-based instructional strategies. However, the risks of bringing such a suit and creating a bad law must be recognized. Any endeavor in this area should only be initiated when an egregious picture of poor student outcomes presents itself. Additionally, Goals 2000, the federal initiative intended to promote systemic educational reform and set standards for students in the areas of content, opportunity to learn, and student performance, with its emphasis on student outcomes might itself present opportunities to secure such results without litigation.

As Gerald Brown and Eléna León noted, there must be greater cooperation between OCR and state departments of education, coordinating state and federal bilingual education strategies in reviewing districts' compliance with Lau. California's Department of Education and OCR, together with Public Advocates, have negotiated a comprehensive bilingual education plan with Oakland Unified School District that

includes systemic accountability plans as one such example.

As speakers Carolyn Gettridge and Diana Cortez emphasized, the vision of Lau cannot be realized until there is an adequate number of qualified bilingual teachers in our schools. Several identifiable barriers exist. Forty-eight states now employ some form of a standardized teacher test as part of their teacher certification process. These tests, as currently employed, have had a severe adverse impact against all teachers of color and have particularly limited the number of non-native English speaking teachers. With the California Basic Educational Skills Test (CBEST) in California, for example, White test-takers pass at a rate of 80%. Non-whites pass at a rate of approximately 50%. The language-minority pass rate is probably closer to 40% and may well be lower. Meanwhile, the research with respect to these tests reveals that they cannot deliver on their promise of measuring teacher competence and have done nothing to improve the quality of education -- either for LEP students in particular or for all students more generally.⁸ Public Advocates is pursuing a class action lawsuit against the State of California over the CBEST in which we hope to end the inappropriate use of one such test and perhaps establish new precedent for challenges to others.⁹

Another major barrier to the creation of an adequate supply of qualified bilingual teachers exists in our institutes of higher education. As Norm Gold indicated, publicly-funded IHEs continue to produce graduates who are largely not competent to teach LEP students. Poor oversight and coordination from OCR, state departments of education, and school districts themselves are responsible for this state of affairs, Ed Lee noted. Advocacy, and perhaps ultimately litigation, must be pursued to reverse the substandard numbers and quality of bilingual teacher graduates.

In the final light, we must recognize that Lau presents us not with a legal struggle wrought with political ramifications, but instead with a political struggle played out in legal arenas. Given this fundamental reality and the undercurrents of racial division flowing beneath the political debate, it would prove unwise to relinquish the legacy of Lau solely or even largely into the hands of attorney-advocates. The future of Lau rests with the success of public education efforts around bilingual education and with the quality of leadership and the success of broad coalition efforts in the political arena.

All presenters recognized the need for improving the empowerment of parents of LEP students as one key starting point. For a variety of historical, cultural, and political reasons, parents of LEP students, unlike those of, say, special education students, have traditionally not organized and found the voice to advance their children's rights. As

⁸ See, e.g., George F. Madaus & Diana Pullin, "Teacher Certification Tests: Do They Really Measure What We Need to Know?", Phi Delta Kappan, Sept. 1987, p. 31.; Walter Haney, George Madaus, and Amelia Kreitzer, "Charms Talismanic: Testing Teachers for the Improvement of American Education", printed in Review of Research in Education, XIV, 1987; Donald M. Medley, "A Valid Teacher Competency Test: Is Such a Thing Possible?," Journal of Human Behavior and Learning, vol. 1, 1984, p. 1.

⁹ See, AMAE v. State of California, 836 F. Supp. 1534 (N.D. Cal. 1993).

Michael de la Torre aptly pointed out, this must change, and it must begin at the grass roots level.

We must all do a better job of educating the public that "bilingual education" does not mean rejecting the acquisition of English. Instead of continuing to respond defensively to attacks by U.S. English and others, perhaps advocates should consider undertaking a national education campaign of our own.

Finally, we must emphasize the urgent and undeniable benefits of a multilingual work force in a multilingual global economy -- and we must do so with our own broad-based multicultural coalitions. California, for example, will be a majority non-white state by the end of this decade. Already, one-sixth of the counties in 47 states have significant concentrations of LEP students. It is but a matter of time before a more diverse power structure takes hold and more sensitive policies can be pursued. The question remains though, can we save our children, our economy, and our future in time?

Strand C: Teacher Education

Report by: Jack Levy, George Mason University¹⁰

First Day

Presenters: Antonio Simoes, Fairfield University
Lillian Malave, State University of New York, Buffalo
Victoria Jew, Sacramento State University
Carmen Mercado, Hunter College
Esteban Diaz, Barbara Flores, and Jose Hernandez, California State University, San Bernadino

Second Day

Presenters: Jim Bransford and Lorenzo Aragon, University of Colorado, Boulder
Liliana Minaya-Rowe, University of Connecticut
Sylvia Cavazos Peña, University of Houston
Mary Jew, San Francisco Unified School District
Rosita Galang, University of San Francisco
Gay Yuen Wong, California State University, Los Angeles
Jack Levy, George Mason University

Strand Coordinators: Jack Levy and Harold Chu, George Mason University

Summary

While the Lau decision was directed toward K-12 education, its ripple effect led to a geometric increase in bilingual teacher education (BTE) programs. Like their elementary and secondary colleagues, university bilingual teacher educators faced many of the same developmental and political issues.

We might think of the development of BTE in metaphorical terms and compare it to the building of a school. The Lau decision provides the foundation for the structure, enabling the builders to construct the walls and roof through political activity to align support and locate resources. Through the door come the students, of all different sizes, shapes and ages. And they grow, immersed in a curriculum which helps them to become knowledgeable and skilled.

The teacher education strand of the Lau symposium concentrated on these three areas - the political activity which gave birth to BTE and allowed it to flourish, the nature of the students for whom it was created, and the type of education, or curriculum which emerged at the varying institutions. From the strand's reports (and like their K-12 counterparts) bilingual teacher educators were revealed to be resilient, creative and reflective.

¹⁰ Many thanks to the following contributors: Antonio Simoes, Lillian Malave, Victoria Jew, Carmen Mercado, Esteban Diaz, Barbara Flores, Jose Hernandez, Harold Chu, Jim Bransford, Lorenzo Aragon, Liliana Minaya-Rowe, Sylvia Cavazos Peña, Mary Jew, Rosita Galang, and Gay Yuen Wong.

Politics and the Development of Bilingual Teacher Education

Bilingual teacher educators have taken to heart the admonition of a weary high school principal: "I come in here every Monday thinking I'm an educator, but I leave on Friday knowing I'm nothing but a damn politician!" Three case studies describing developmental efforts at state, city and institutional levels left strand participants with a sense of respect and camaraderie for their colleagues.

The process to reform California's teacher credentialing policies must have seemed at times like a war. Over a twenty year period which began with the Lau decision, bilingual and multicultural educators managed to move the California Commission on Teacher Credentialing (CCTC) from an attitude of denial to a realization that every teacher needs a repertoire of culturally responsive instructional skills. Astute bilingual educators were politically able to take advantage of the geometric rise in the numbers of culturally and linguistically diverse (CLD) students to encourage this metamorphosis. The Bilingual Cross-cultural Advisory Panel (BCAP) was the major vehicle for the development of the new certification standards. The BCAP continually sought commentary from the field, skillfully negotiated with commission members and kept its eye on the prize - developing a system that would serve the needs of all of California's CLD students.

A similar story occurred in Buffalo, New York. The Lau decision stimulated a district court hearing a desegregation case, primarily directed toward African-Americans, to also recognize the rights of Hispanics. Once again, the efforts of an advisory board - in this case the Bilingual Community Advisory Board - were crucial to success. In typical fashion, Buffalo's bilingual educators not only faced opposition from the public, but from the district and its teachers' union. The value of legal assistance was repeatedly demonstrated, and bilingual advocates soon realized that entering a meeting with a lawyer at your side was unnerving to opponents. The Lau decision and its subsequent community activity enabled bilingual educators at D'Youville College [**Is this in Buffalo?**] to begin the first training program in 1977.

At the university level, faculty faced similar challenges and employed similar tactics. At George Mason University bilingual educators used Title VII funds to gain the active support of administrators and faculty. They were able to extract agreements which called for institutionalization of personnel and programs once federal support ended. Their efforts were diversified across three departments and two colleges, and they recruited a sufficient number of students to make the program viable.

Representatives from Cal State San Bernardino described a series of issues which all bilingual teacher educators must address. These are:

- a) Horizontal and vertical understanding of the concept; [**What does this mean; which concept**]
- b) Alignment of the bilingual program with other curricula;
- c) Allocation of strategic resources;

- d) Understanding the curricular approval and promotion/tenure process; and
- e) Recruiting a diverse group of supportive students.

Overall, bilingual educators must "fight the good fight." That is, they must combine political acumen with the same cross-cultural communication skills which they seek to develop in children. This means interacting with colleagues with respect, patience and a desire for mutual gain.

Who Are The Students?

At the same time that political activity is building an organizational framework, program advocates are deciding upon the nature of those to be educated. While the Lau decision focused on K-12 education, it raised a fundamental question as to the role of IHEs in addressing needs of language minority students. Specifically, does the concept of equal access to education end at 12th grade? Are IHEs exempt from the Lau ruling?

There is a feeling among some bilingual teacher educators that English-only admission policies and coursework at universities have denied equal access to capable language minority secondary students. As a result, they have limited both public and private institutions in their ability to train competent bilingual educators.

Nonetheless, BTE in general is seeking to be as inclusive as possible in terms of its students. In addition to admitting those with dual language capability, the programs are increasingly working with monolingual pre- and in-service teachers. Bilingual teacher educators are also developing joint curricula to prepare skilled counselors, administrators and teachers of the disabled. Finally, university personnel have even joined their Local Education Association (LEA) counterparts in offering training **[Clarify training; because it comes after preparing folks to work with the disabled, it could appear to refer to disabled]** to parents and community members.

Curricular Variety

Just as Lau spawned a variety of K-12 bilingual programs, it also provided for diversity in personnel preparation. While "inclusion" is the byword for who is educated, "partnership" describes the nature of these curricula. **["Partnership" seems to describe something other than the nature of curricula. Needs a bit of explanation about the partnership.]** During the symposium a number of program practices were described, including those at the Universities of Connecticut, Colorado, San Francisco and Houston, Cal State Universities at Sacramento, San Bernardino and Los Angeles, Fairfield and George Mason Universities, and Hunter College. All were noteworthy in their attempts to join with school districts to cooperatively meet the needs of CLD students.

Each also offered a unique approach to the field. Among other activities, professors at CSU-Sacramento, CSU-Los Angeles and the University of San Francisco are grappling with the challenges presented in preparing educators for Asian-language

students. These programs are basically limited to recruiting native language speakers, since unlike other languages, the alphabet and other linguistic differences present nearly insurmountable obstacles to training monolingual English speakers.

Some of the programs, such as those at Cal State San Bernardino and Hunter College, are impressive for their intellectual framework and capacity for reflection. Others, such as the curriculum at the University of Houston, have been successful in spite of state statutes which are openly contemptuous of teacher education. **[All teacher education, or only bilingual teacher ed?]** Still others, such as those at the University of Connecticut and George Mason University, feature field-based training as a major component of the program. George Mason is especially enthusiastic about two programs it believes will further advance the field. The first, known as Universal Teacher, will graduate teachers with licenses in Teaching English as a Second Language (TESL), early childhood and special education. The second will utilize **secondary language minority professional development schools [What are these? Where are they? Explain?]** as field sites in the preparation of future high school teachers in mainstream subject areas.

Challenges

Naturally, BTE has not achieved all of its goals. It continues to be criticized, as does its mainstream parent, for producing some teachers who are insufficiently skilled. While it is difficult to evaluate (this is another challenge), some bilingual teacher education graduates struggle with building an instructional repertoire that enables them to manage **[Not teach, or instruct?]** classes productively.

Language proficiency continues to be a problem area, since there is a dearth of **balanced bilinguals [Who/what are these? What does this mean?]** and second language instruction is problematic (especially in the Asian languages). This is reflected in the variety of admissions requirements to university programs. A related issue is the language - or languages - of instruction in which BTE is delivered. For various reasons many programs do not model bilingual methodology, preferring instead to train teachers entirely in English.

As mentioned, though most BTE programs have realized that partnership with LEAs is crucial, full collaboration is a difficult goal to achieve. In their need to be aligned with mainstream teacher education, BTE programs must include some traditional on-campus education courses. **These remain suspect among practitioners, contributing to a lingering tension. [What is the referent for “these”? Who are the practitioners - all educators, only bilingual teachers?]**

Like its K-12 counterpart, BTE is continually buffeted by **negative publicity. [Examples of “negative publicity”, even general statements.]** It is in need of research which clearly establishes its value, as well as a persuasive public relations vehicle. The **constant controversy [Which is? Explain?]** drains faculty energy from

more productive pursuits.

Given these challenges, it is not surprising that alternative BTE programs have appeared. Some, such as the one in San Francisco, respond to an emergency need for teachers of a particular language. They can be quite innovative and are not antagonistic toward university teacher educators. Others, such as Houston's, **[city or university?]** seek to bypass universities entirely. By far the most preferred design for alternative BTE is one which features collaboration between the IHE and LEA. There are numerous examples of cooperative alternative programs initiated to address shortage areas other than bilingual education, such as in special education and the sciences.

The Future

In terms of bilingual teacher education, the Lau legacy has been one of energy, creativity and diversity. **[Evidently not, according to almost all other commentators up to this point.]** The metaphorical school referred to above has been built on a solid philosophical and political foundation. There is no reason to believe that future challenges will not be met successfully.

Strand D: Lau and the National Standards Movement

Report by: Rosemary Henze, Southwest Center for Educational Equity

First Day *A National Picture of The Standards Movement*
Moderator: Richard Durán, University of California, Santa Barbara

Presenters: Delia Pompa, Educational Consultant
 Goals 2000 and Improving America's Schools Act (IASA)
Denise Murray, San Jose State University
 Australia's National Standards
Jean Ramirez, San Francisco Unified School District
 TESOL's Role in Establishing ESL Standards
Linda Carstens, San Diego City Schools
 The New Standards Project

Second Day *Implementing Standards in Schools and Districts*
Moderator: Anne Katz, Evaluation Assistance Center-West

Presenters: Walter Masuda
 The K-3 Portfolio Project
Fam Feng, Horace Mann Middle School, San Francisco
 Using New Standards Guidelines for Portfolio Assessment with
 Spanish and Chinese Speakers
Linda Carstens, San Diego City Schools
 Implementing Standards in San Diego City Schools
Rebecca Kopriva, California State University, Fresno & CLAS
 Current Status of CLAS Assessment in California

Strand Coordinators: Anne Katz and Sofía Aburto, Evaluation Assistance
Center-West

Introduction

Of all the strands featured during this conference, this one represents the least visible component of education for limited English proficient (LEP) students. Most practitioners veer away from discussions of standards, assessment, and evaluation, preferring instead to focus on program design, curriculum, and instruction. This session highlighted the important role standards can play in all phases of education for LEP students, including program design, curriculum, instruction, assessment and evaluation. The message, if we can distill a single message from this strand, is that advocates for LEP students need to participate in discussions of standards in order to assure that these students and their particular needs are not left out of the discussion as well as to make sure that LEP students are ultimately held to the same content standards as other students.

This strand provided participants with the opportunity to gain an understanding of the various movements to establish national standards and, in particular, how these movements do or do not include LEP and language minority students. Day I focused on

a national picture of the standards movement, while Day II focused on how standards are being implemented in schools and districts.

The participation of advocates for LEP students in the dialogue on standards is especially critical given the history of standards with regard to English language learners. Until very recently, language minority issues have essentially been left out of discussions about national standards. The assumption has been that, due to the "language problem," LEP students cannot be held to the same content standards as native English speakers and therefore, the LEP content standards must be derived independent of the larger discussion. This assumption, along with many other negative attitudes, led to a high degree of fragmentation among LEP programs. Many local programs for LEP students have operated for years in a kind of vacuum, connected perhaps to each other but not to wider educational concerns. As Delia Pompa noted, "If LEP students are not assessed, no one can really be held accountable for what these students know and can do in important content areas."

Day I: A National Picture of the Standards Movement

Goals 2000 and Improving America's Schools Act (IASA)

Delia Pompa, co-author of the discussion paper, "For All Students: Limited-English-Proficient Students and Goals 2000," outlined the key issues surrounding the national standards movement. The educational focus on standards comprises a major component of the systemic reform movement taking place across the country. At the federal level, Goals 2000 and Improving America's Schools Act (IASA) drive this reform movement.

Goals 2000 is an effort to set national standards for all students in three areas: content, opportunity to learn, and student performance. The new Goals 2000 legislation, signed in March 1994, calls for and provides funding to states to develop state plans that address how individual states will work towards achieving the national standards set by Goals 2000. In the new legislation, there is language that specifically requires states to include LEP students in their plans. It also requires that students be appropriately assessed in their native language, whenever possible, and that broad input to the plan be elicited from persons who are knowledgeable about education of linguistically diverse students.

Within the framework of Goals 2000, the Improving America's Schools Act (IASA) of September 1994, which re-authorizes the Elementary and Secondary Education Act of 1965, marks a significant change in federal support for education. IASA provides for a major overhaul of education programs, encouraging educators to create comprehensive solutions for schools and districts to meet the needs of all students and to ensure that all students meet the challenge of standards set under Goals 2000.

Recently, a number of professional teachers' groups have begun working toward

the development of content standards, in a variety of subject areas, which would apply to all students. Several groups, including the Stanford Working Group on Federal Education Programs for Limited-English-Proficient Students, have held regional meetings to discuss the implications of systemic reform on the education of LEP students to ensure that LEP students are meaningfully included in the "sweeping proposals embodied in Goals 2000." The Stanford group has produced a set of recommendations entitled "For All Students." Included in these recommendations are the following key points:

- It is essential that persons knowledgeable and concerned about the education of LEP students be included in national, state, and local panels.
- The content standards should reflect the best available knowledge about how LEP students learn and about how the content can be most effectively taught to them. Supplemental performance and assessment standards should be developed, as well as teaching standards for English as a second language teachers. In addition, content standards in English must be certified that are calibrated to aspects of the language that need to be learned by ESL students, but are otherwise not addressed by content standards for English language arts. We recommend the certification of additional performance standards in the content areas to measure the progress of LEP students until they can be classified as fully English proficient and thus held to the same performance standards as native English speakers.
- LEP students who are instructed in their native language should be assessed in that language. LEP students who are better able to demonstrate content knowledge in their native language, even though they have not received native language instruction, should also be assessed in their native language.
- In all instances, it is important to ensure that assessments are equivalent in content and rigor to those used to measure the progress of fluent English speakers.
- Until psychometric issues underlying these new assessments have been addressed, and until mechanisms to ensure opportunities to learn have been fully implemented, these assessments should not be used in high stakes testing for students.
- In schools or districts with substantial populations of Native American students, parents of these children should be involved in formulating educational plans, standards, and assessments.

A Glimpse of Australia's Standards

Denise Murray spent a recent sabbatical year studying Australia's approach to assessment. In Australia, the equivalent word for standards is "profiles." Though both the US and Australia are engaged in discussion about what students ought to know and

be able to do, the sociocultural context is very different in the two cases. In 1989 Australia adopted a national policy on languages, thus becoming the only English speaking country in the world with an explicit, written language policy. Essentially, the policy says that every white citizen should learn English. Community languages (i.e., languages of immigrants) and indigenous languages should also be promoted and taught in schools. Community and indigenous languages are listed separately to ensure that indigenous languages do not get lost in the category of immigrant languages. Denise noted that, "Out of this policy comes a feeling that language matters." As a result there are "committees with every acronym under the sun dealing with all sorts of aspects of language."

The Australian view of ESL and its role in the curriculum differs from the U.S. view. Australian educators seek national agreement on key learning areas (e.g., arts, health, science, technology, etc.), but ESL is not one of these. Instead, it is considered as a support for other work taking place in school, and is therefore more a part of the mainstream curriculum.

Nonetheless, an ESL framework was recently developed by two groups -- one focused on language and literacy, and the other on curriculum. The philosophy behind this framework states that it should be useful and help teachers incorporate appropriate assessments into their instruction. Alternative forms of assessment, such as portfolios and self assessment, are recommended, and the framework maps language acquisition in relation to academic content areas. It acknowledges that students start as speakers of another language and that bilingualism is one of the goals of education. For example, students may use their community language to satisfy part of their high school graduation requirements. Community languages are accepted under the entrance requirements for universities. All federal documents are printed in community languages.

It is interesting to note that, while Australia receives a larger percentage of immigrants than the U.S., there is no preponderance of a particular group; ESL, rather than bilingual education, is the main vehicle for providing access to content. Yet Australia promotes a national policy of bilingualism despite the fact that bilingual education is not widely practiced.

The new ESL framework incorporates an approach to second language acquisition that focuses a great deal on pragmatic knowledge and the need for students to acquire communicative competence in particular genres. Teachers in Australia receive a strong emphasis on genre and communicative competence in their pre- and in-service training. However, the ESL framework is still in the planning and development stage and has not actually been implemented.

TESOL's Role in Establishing ESL Standards

A member of the TESOL Task Force on ESL standards, Jean Ramirez described

the Task Force's efforts to establish separate ESL standards that will address how LEP students can be placed on an equal footing with English speakers in language arts. These standards will complement and not supplant the standards for English speakers. Standards for LEP students will identify specific language learning that needs to take place in order for students to move towards proficiency. Students' developmental paths need to be recognized through these standards so that they can be given credit for progress as they move along.

TESOL's involvement began through participation in a discussion at NABE in 1992, and later continued at TESOL in Atlanta. They looked first at standards addressing access or opportunity to learn in order to make sure that LEP students will be "in the mix" before discussing content standards. A brochure on these access standards is available from TESOL. Included are sections on (1) a positive learning environment, (2) access to appropriate curriculum, (3) full delivery of services, and (4) equitable assessment. A resource packet with articles pertaining to goals and standards is also available.

Now in its second phase, the group is working closely with NABE, NCTE, and the Stanford Working Group to develop content standards for ESL -- what a student should know as a result of ESL instruction. They are currently looking at goals in three ESL content areas: (1) communicating effectively in English, (2) using English to achieve academically, and (3) effectively participating in multiple sociocultural environments. Each area includes a description of the goal, statements of student learning objectives, and vignettes that provide examples. The group hopes this will enable teachers to see a clear connection between these indicators and academic content.

An audience member asked how ESL standards relate to students in bilingual education programs. Jean noted that, in both bilingual and English language development models, there is an ESL component and the standards will fit in there. For those students in bilingual programs, there is a need for additional standards regarding first language development.

Another question concerned whether native speaking students would "top out" on the indicators TESOL has been developing. Jean noted the need for TESOL to take into account not only students who speak another language but also those who speak non-standard dialects of English. The standards TESOL is developing will be appropriate for any student who is not yet ready for the English Language Arts standards.

The New Standards Project

Linda Carstens, an administrator with San Diego City Schools, described the New Standards Project as a "teacher-based effort" consisting of a partnership among 19 states and 7 districts. The goals are (1) to develop and synthesize content standards, and (2) to develop assessment systems based on these standards. This

project sees an intimate connection between curriculum, instruction, and assessment and seeks to bring the standards embodied in Goals 2000 and IASA to the local practitioner level where they can be implemented.

Though the New Standards are not aimed specifically at LEP students, the first standard deals with equity and therefore LEP students are, of necessity, included from the very beginning. The group is currently working on reference exams in math. Rather than developing a separate exam for LEP students, the existing exam was translated into Spanish. (Apparently it was reviewed for cultural bias and deemed appropriate for translation.) Portfolio systems for math and literacy are undergoing field trials this year, and the work of LEP students will be assessed by individuals who are strong in language minority education. The project is bringing bilingual teachers together to form a critical mass when it comes to decision-making about assessments.

Several policies were examined last Spring with regard to second language issues. The group recommended that (1) assessments in mathematics and science should be available in Spanish, (2) in reasoning and problem solving, a certificate of initial mastery should replace the notion of awarding credit for hours spent in class, (3) assessment tasks should be developed in Spanish for students who are acquiring initial literacy in Spanish. (Some state superintendents didn't see a need for this, but the group argued, "We don't put kids in bilingual education as a holding tank; we put them there to learn something, so we should assess what they learn.")

One audience member questioned how much this project has collaborated with content organizations such as National Council of Teachers of Mathematics, etc. There was a concern that perhaps New Standards is "taking over the work of those organizations" and there might be a difficult transition in transferring ownership of the standards to content organizations once New Standards has completed its work.

Another member of the audience commented, "Promoting native language assessment creates the sense of a head-on collision. As this information becomes more public, we are likely to get a very contentious reaction from the public at large." In response, Linda noted that New Standards makes its exam prompts open to the public. By making the tools available to parents (unlike CLAS) they were able to reduce the "opt out" rate to 1%. She also noted that there is considerable agreement between CLAS standards and New Standards, and the work that was done for CLAS can, in many cases, be folded into the New Standards work.

Day 2: Implementing Standards in Schools and Districts

The K-3 Portfolio Project

The K-3 Portfolio Project involves several school districts in California and has the following goals:

1. To determine whether portfolio assessment can be used beyond the

- classroom level,
2. To establish credibility and technical adequacy of portfolio assessment,
 3. To assure the quality of portfolios, and
 4. To determine how portfolios might be used to equitably evaluate student progress.

The K-3 Portfolio Project started with the CLAS standards, but also looks at what teachers think about standards and continually adds necessary pieces for LEP students. The project views bilingualism as a goal in itself, not simply as a transitional state on the way to English proficiency. Therefore, the project is working on standards for assessing student development in both first and second languages. The project staff also recognize that setting standards in the abstract doesn't help unless supports are put into place for students to help them achieve those standards.

The teachers in the project have developed guidelines for what may be contained in a portfolio to give a well-rounded picture of a child's development. All entries should be dated for documentation. The minimum components of a portfolio, as specified by the project, include:

1. Student, teacher, and parent conversations about the student.
2. Student work in reading, writing, and mathematics. This work should include evidence from a variety of genres, and should include periodic sampling to show growth. Samples of student work may be in English or in the student's native language.
3. Student reflections.
4. Teacher observations.

Student work in writing should be selected by the students themselves, and should include an expressive piece, a revision, a favorite piece, and a fourth piece that could be persuasive, narrative, or informative.

In mathematics, student work should include a sample of problem solving, a piece chosen by the student, and a description by the student of his or thinking process in solving a math problem.

Using New Standards Guidelines for Portfolio Assessment with Spanish and Chinese Speakers

Fam Feng is a teacher in a two-way Cantonese immersion program at Horace Mann Middle School. In the U.S. for six years, he was previously a high school and elementary teacher in China, where he also worked on portfolio assessment. He is particularly interested in addressing problems in terms of implementation.

There is a difference between implementing portfolio assessment at elementary versus middle school. In the elementary classroom, the teacher is responsible for all subject matter, whereas in middle school, students go from classroom to classroom.

This makes portfolio assessment more difficult to implement because the whole picture of the student's capabilities is held by many teachers instead of one. Some, but by no means all, schools have developed collaborative planning teams, which helps solve this problem. In other cases there is no communication among teachers about the students they share, and therefore no foundation from which to develop standards.

At Horace Mann, students and teachers are divided into families, with two families at each grade level. Each family has a set of core teachers who work together. There is also a Spanish family and a Chinese family. The school has a strong Spanish bilingual program. The Chinese program is much smaller with Fam Feng as the only Chinese speaking teacher at the school.

Initially teachers did not like the idea of portfolio assessment. They thought it was a meaningless collection of student work. At first they filled portfolios with worksheets and dittos, and students put only their A and B papers inside. Student explanations for their selections were very simplistic, e.g., "I selected this because it looks good," or "because I got an A."

Last year, some teachers participated in New Standards training and started to adopt a new view of assessment. This injected fresh enthusiasm into the process of developing student portfolios at Horace Mann. Students may have portfolios containing work from all different subjects, or a "working portfolio" for each subject. Teachers now think about what they want students to achieve, and are developing reliable ways to grade portfolios. Using new standards, teachers have a way to look at how students are accomplishing what is expected of them.

For example, the handbook for math standards gives a taste of what the new assessment looks like. In problem solving and math reasoning, we want to know how students use math to make sense of situations. The portfolio should show student work that reflects their learning in problem solving. If the teacher has been teaching problem solving for four weeks, students are expected to show progress and be able to demonstrate skill in a variety of problem solving techniques.

Fam Feng compared his experience with portfolio assessment in the U.S. to China. In the U.S., although state frameworks guide curriculum, students are not required by the state to accomplish set tasks. In China, on the other hand, there is a national framework and national standards. If a second grader moves from Beijing to another city, that student is expected to have the same competencies. In the U.S., the standards are more open-ended and less specific in terms of competencies.

Teachers' beliefs about student competencies did change as a result of using portfolios. When they first started implementing portfolio assessment, everyone was reluctant to place this requirement on LEP students, thinking that LEP students would not be able to demonstrate competence through student work. However, attitudes changed when students were allowed to use their primary language and language arts teachers began teaching students to use the portfolio to explain progress. While

beginning LEP students were able to write only one to two sentences, intermediate and advanced students wrote paragraphs and essays.

Implementing New Standards in San Diego City Schools

Linda Carstens asked the provocative question: "We know all students can learn, but how do we know when they do?"

San Diego City Schools (SDCS) have been involved with standards from a number of different angles. The district has large populations of Asian, Latino, White, and African American students, with the Latino population slightly larger now than the White population. One quarter of the students are English language learners, and of that group, one fifth are Spanish speakers. The district has been under court order to desegregate, and one of the goals of their work in student assessment is to develop ways to show the contribution of integration programs toward achieving greater equity across ethnic groups.

SDCS is involved in both the New Standards and The K-3 Portfolio Project discussed above. They are also a member of PACE, a project run by Harvard University.

In earlier efforts to assess students in their primary language, the district tried standardized, norm-referenced tests such as CTBS Español and *La Prueba*. Although these instruments used Spanish, they still assessed only discrete pieces of learning. They are currently using *Aprenda*, but this instrument is also inadequate.

Having had the same superintendent for eleven years, SDSCS has been able to maintain commitment and continuity in achieving their goals. The district believes students should be able to:

- think and reason,
- solve problems,
- construct meaning,
- understand concepts,
- make connections,
- be productive,
- be creative, and
- communicate effectively.

Since *Aprenda* falls short of providing evidence that students reach these competency levels, teachers and district administrators are working together to use national and district standards to improve assessment along with student achievement. Standards must address the opportunity to learn as well as content and student performance.

Standards focusing on the opportunity to learn might ask, for example, whether students are having the opportunity to think and reason, problem solve, etc. To determine this, the district is developing ways of looking at the inside processes of

classrooms. One way to do this is to ask students, for example, "Which of the following describe what you do in math class?" Thus far, they have found little disparity between opportunities offered to native English speaking and Spanish speaking students. However, there is a slight disparity between ESL and regular classes in the way problems are solved. They use this information to help target areas for teacher training.

The district has also developed an accountability policy. Each school is required to emphasize student achievement as measured by equitable district standards for all students. Staff from ten schools were trained in this area last year. The training focused on indicators of student achievement, and indicators must be "in sync" with the district's vision. All schools must keep a portfolio on how they are moving toward these standards. The Second Language Office has been tailoring and personalizing standards for second language learners.

Current Status of CLAS Assessment

CLAS was California's state assessment system, piloted in 1993, but now, in Rebecca Kopriva's words, "snoozing." Rebecca was a technical consultant to CLAS on equity and access issues. She used the term "snoozing" to refer to the fact that, when the bill to re-authorize CLAS for 5 years went to Governor Wilson's desk to be signed, the Governor vetoed it. However, Rebecca was able to report out some findings from the CLAS data and outline suggestions for future action.

The CLAS studies reveal a different pattern of classroom practice from that reported by Linda Carstens for San Diego. These studies find that regular education teachers have done performance assessment in their classrooms with half to two-thirds of their students. Only a very small proportion of ESL and bilingual teachers have had that experience.

Rebecca pointed out that, "We need to make sure that LEP students are adequately assessed in the mainstream." Because California often leads the way in terms of trends in education, it is critical for California to integrate LEP students into mainstream assessment. Otherwise, California will be viewed as an example that encourages other states to waive LEP students out of assessment, causing continued isolation of LEP students and failure to meet students' needs.

The CLAS team wrapped up its last month of funding in December 1994 by looking at ways to influence commercial publishers and test developers. One issue to be monitored is the careful analysis of tests. When a student does poorly on a test, the assumption is that the student doesn't know the material. However, in many cases that is not what the test is measuring -- instead it may only measure the student's ability to read the sentence. In many of the new performance tests that are cropping up, review panels do check for stereotyping, but they fail to look for other things like language complexity. The following guidelines are important for those involved in reviewing tests:

1. Consider translation as only a partial solution. Many people think translation

- makes the material "all better," but they ignore format issues such as whether multiple choice will be comprehensible to students, not to mention cultural bias which translation will only mask.
2. Take language complexity into consideration when reviewing instruments. This holds true in both first and second language assessments.
 3. Make sure that student differences in thinking and responding time are included. Time requirements need to be modified even in large scale assessments.
 4. Allow for more circular responses such as mapping and equating.

Rebecca Kopriva recommended that we "hold publishers' feet to the fire" and "team up with our favorite measurement specialist" so that, if we are asked to validate tests, we can consult with a measurement specialist familiar with issues in the education of LEP students.

Themes

Several themes emerged across the presentations of different speakers in this strand. One message that came through consistently is that developing national, state, and local standards that are aligned with one another is really about achieving equity for all students. As the paper¹¹ which Delia Pompa distributed notes, "Setting high expectations for all children will further the cause of educational equity, provided that appropriate, high quality instruction and other essential resources are available."

Related to this is the idea that standards drive practice; therefore, if standards are clearly articulated, advocates for LEP students have a place to point when students receive inferior or watered down instruction, or when districts fail to place students in appropriate courses. Having clearly articulated standards can encourage, if not force, districts and schools to pay attention and reshape programs, course offerings, curriculum, and instruction so that students will be able to meet the standards.

Finally, these sessions emphasized the importance of planning for several different contingencies. Advocates for language minority students cannot afford to assume political goodwill in favor of these students. Time and time again, we have seen the political tides turn. It is critical for those committed to student opportunity and equity to develop our capacity to plan for various scenarios, and to be prepared to take action regardless of where the pendulum swings.

¹¹ "For All Students" Limited-English-Proficient Students and Goals 2000. A discussion paper by Diane August, Kenji Hakuta, & Delia Pompa, Stanford University, School of Education. Available from the National Clearinghouse for Bilingual Education through its *Occasional Papers* series, No. 10 (Fall, 1994)

Strand E: State Frameworks and Program Design

Report by: Genevieve Lau, Skyline college

First Day

Panelists: David Dolson, Bilingual Education Consultant, California State Department of Education
Elisa Gutiérrez, Texas Education Agency
Siri Vongthieres, Colorado Department of Education
Gloria Casar, New York State Education Department
Ligaya Avenida, San Francisco Unified School District

Second Day

Panel 1: The EXCELL Program of Kerman Unified

Presenters: Rose Lee Patrón, California State University, Fresno
Nancy Newsome, Kerman-Floyd Elementary School
Laura Correa-Juarez, EXCELL teacher

Panel 2: The Design and Implementation of Chinese Bilingual Education Models in the San Francisco Unified School District

Presenters: Mary Jew, San Francisco Unified School District
May Huie, Garfield Elementary School, SFUSD
Victor Tam, Sutro Elementary School, SFUSD

Moderator: Laureen Chew, San Francisco State University

Strand Coordinators: Jaime Jacinto and Janet Lu, Multifunctional Resource Center, Northern California; Pierina Wong, Multifunctional Resource Center, Southern California

The Thursday session on "State Frameworks and Program Design" gave an overview of the bilingual program models or frameworks implemented in California (presented by David Dolson), New York (Gloria Casar), Texas (Elisa Gutiérrez), and Colorado (Siri Vongthieres); whereas the Friday session focused on the bilingual programs of two California school districts: the Spanish Bilingual Program of the Kerman Unified School District in Fresno (Rose Lee Patrón, Nancy Newsome, and Laura Correa-Juarez) and the Chinese bilingual program of the San Francisco Unified School District (Mary Jew, May Huie, Victor Tam).

At the state level, the Lau decision in 1974 activated different pieces of legislation in the four states. In response to each legislative change, state education agencies instituted different mandates and program models. In spite of the program model variations, the intent of serving students from language backgrounds other than English remains the binding concern.

- In California, the Bilingual Education Act (1976 to 1987) mandated a bilingual classroom for ten or more students of the same language group at the same grade level, staffed by a teacher of the same language. After the sunset of the Act, school districts are required to provide each LEP pupil with English language development,

access to the core curriculum through the primary language when necessary, and cross-cultural and self-concept instruction. This requires that instruction be provided by a qualified teacher. Following the guidelines, bilingual instructional programs in the public schools in 1994 fall into five categories according to the services they provide:

- (1) English language development (ELD);
- (2) ELD and specially designed academic instruction in English (SDAIE);
- (3) ELD, SDAIE, and primary language support;
- (4) ELD and academic subjects through the primary language with or without SDAIE;
- (5) Programs not described above.

- In New York, students whose primary language was not English did not receive much help prior to 1969. The amendment of Education Law 3204 (1969), the Aspira suit (1972), and the Lau ruling (1974) opened the way for special programs for limited English proficient (LEP) students. Presently, the Bilingual Education Program is required when there are twenty or more students of the same language at the same grade level in the same building. It provides instruction in English as a second language (ESL), native language (NL) arts, content area instruction in English and NL, and maximum time with other children. Otherwise, nineteen or fewer students will entail the ESL program, which provides ESL, content area through ESL, and maximum time with other children. Bilingual education and ESL instruction in vocational education classes and the Bilingual Special Education program respond to students' special needs.
- In Texas, support for bilingual education went through ebbs and flows. The Lau decision definitely helped. The Bilingual Program presently offers language arts in the primary language and in English; and math, science, and social science in both the primary language and ESL. It emphasizes offering all classes in culturally relevant contexts. ESL is also provided for grades 1 through 12. The Bilingual Education Office assists in identifying students and serving them with cognitively, linguistically and affectively appropriate instruction.
- In Colorado, the Department of Education implemented the Bilingual Bicultural Act in 1974 by mandating and funding Kindergarten through third grade Spanish and English bilingual bicultural programs which were to be taught by certificated staff. However, in 1981, the Act was repealed and replaced by the English Language Proficiency Act, which provides funding for districts serving students whose dominant language is not English. Program implementation and design are left up to school districts.

Undeniably, the Lau decision has made a significant impact on the implementation of bilingual programs in the four states. Even though all state programs show the common concern of providing service to students whose primary language is not

English, the degree of implementation and type of program model vary from state to state. Also, there are variations in implementation within each state since state frameworks have to allow for flexibility in implementation at the district level to accommodate local needs and constraints. David Dolson identified factors such as staffing needs, material resources, community advocacy and support, and the philosophy of the district itself which would affect the specific type of school program implemented. Programs from two districts in California are examples of such variations.

The EXCELL (Excellence in Curriculum for English Language Learning) program is a model program in the Kerman Unified School District in Fresno. It is for students with Spanish as a dominant language entering kindergarten through sixth grade. The curriculum design follows California State Department guidelines and seeks to teach academic concepts in Spanish while helping students develop English language proficiency. Students in these classes interact with those in English-only classes, for a minimum of three times a week, both in non-language-dependent activities (such as physical education, art, and music), and for math and science in the FO/D (Finding Out/Descubrimiento) Title VII project.

On the other hand, the much larger San Francisco Unified School District presented different bilingual education programs. The two-way immersion program, in its fourth year of implementation, is one of the original seventeen grant receivers and includes two programs in Spanish and one in Chinese (the only one nationwide). The sample schedule moves from 70% target language and 30% English in Kindergarten, to 60% target language and 40% English in third grade, and to 50% target language and 50% English in fourth and fifth grades. Also, graduates from the district's one-way immersion program are now in middle school. They receive Spanish or Chinese instruction in social studies, language arts, and math science classes.

Other models were practiced in the past or are currently in place. In the seventies, the teaming of an English-speaking with a Chinese-speaking teacher in various arrangements worked quite efficiently until Title VII money was not available to the schools. Currently, in some classrooms, English is the main medium of instruction with primary language support from paraprofessionals. However, both May Huie and Victor Tam pointed to the lack of an effective model for Chinese bilingual programs. Tam reflected the perception of his colleagues, "Right now, 20 years after a Chinese American brought a lawsuit against the SFUSD for access to the CORE, there is still NO standardized Chinese bilingual program in place."

Against the background of diversity due to different pieces of legislation, various state frameworks, and varying accommodations to local needs and constraints, several critical elements surface as necessary policy considerations for the design and support of effective programs.

Recognition of contextual differences

The measure of an effective program should be on how much it facilitates the learning of students who need support in content knowledge and language (primary and English) development. State frameworks have the flexibility needed to provide guidelines that encourage implementation at the district and, in turn, the school level. However, state mandates can become a cause of concern when districts do not have adequate resources.

Local implementors need to be allowed the necessary flexibility. Rose Lee Patrón, a project coordinator, recounted how she needed to take into consideration the special needs of her geographical area even as she consulted other successful models when she designed what was to become the EXCELL program. In her words, "I don't believe in one size fits all." Victor Tam, a classroom teacher, pointed out the specific linguistic features which need to be addressed in teaching Chinese, such as teaching the four tones in Mandarin and teaching up to nine tones in Cantonese, as well as the great difference between Cantonese speech and Chinese writing.

State mandates, however, seek after compliance. Even though the intention is good -- to ensure implementation of legislation supportive of the learning of nonnative speakers of English, strict enforcement when local resources are lacking can cause opposite results. A recent case is in the San Francisco Unified School District. In trying to comply with State mandates, the district, using credential waivers, hired new teachers trained in foreign countries. Ten of them struggled in their assigned classes and quit within a month of their hiring.

Program design driven by research and tailored to local needs and supports

The common thread going through the frameworks of the four states is their grounding on current research theories. As programs are implemented at the local school level, however, not only knowledge of research, but also ability to apply theories become paramount. Patrón, Tam, Janet Lu (strand coordinator) and Annie Ching (from the audience) vouched for the importance of a knowledge base in research at the local level. Patrón emphasized the importance of research in informing the local program design. She also stressed the necessity of having evaluation inform program development after its initial implementation. Tam reiterated the importance of research and evaluation, which are particularly lacking, to inform the successful implementation of Chinese bilingual programs. There is a dearth of research on Chinese (especially Cantonese) instruction, inadequate support in teacher preparation and professional development to help teachers apply general research theories in language acquisition to Chinese bilingual classes, and a lack of formative evaluation to give feedback to improve the effectiveness of programs. Lu cited a successful collaborative effort between researchers and practitioners in Seattle, while Ching recounted her decision to become involved in documenting valuable experiences and insight as a teacher while trying out innovative instructional strategies.

Research should inform practice. However, someone other than the classroom teacher (who teaches approximately six hours a day, corrects papers, and has no release time to attend conferences) needs to assist him or her in keeping up with and translating research into practice. Where does the finger point? Situations differ. Possible resources include both traditional and innovative channels. Traditional channels of support include teacher-training programs and in-service projects with resource teachers or researcher/curriculum writers acting as workshop trainers. More innovative channels in recent years include collaboration between university researchers and classroom teachers, and various forms of teacher research. Successful programs explore all channels and identify one or two that tap into available local resources.

Training and professional development of teachers.

No well grounded and formulated program design can be carried out without competent teachers. They are not only implementors, but also advocates for the programs, according to Dolson. However, there is a pervasive need for competent bilingual teachers. They are a rare breed because, not only do they have to be qualified teachers, they also need to be proficient in English and another language. Moreover, they generally need to be willing to work under difficult circumstances with few resources and not much monetary return. Of the teachers in training for the bilingual credential in California, 90% are monolingual teachers of European-American descent. Minorities are not entering into training programs. In New York, only twenty-one higher education institutions are approved for training bilingual teachers, far too few to provide for the high demand.

Different states recognize the problem and have instituted innovative responses. Dolson presented the feasibility, supported by research, of taking bilingual people and training them to be teachers. Twenty-seven percent of bilingual aides in California have college degrees. They can be supported to get further training to become teachers. Texas provides alternative routes to credentialing and recruits from other countries. New York started Intensive Teacher Institutes, which give credits for the add-on bilingual education certificates. Also, the Career Ladder Program brings courses to the district level and provides counseling and support to paraprofessionals.

Innovative routes to credentialing are a step in the right direction to address the teacher shortage problem. The teacher training and credentialing process, as well as funding sources to support alternative ways, need to be explored. Moreover, on-going professional development activities as part of the teacher's schedule will increase incentive and support for growth.

Quality primary language materials.

One important support identified by teachers is the availability of primary language textbooks and resource materials. Progress has been made in the production of Spanish materials, but Chinese materials are lacking. For example, there is no Chinese equivalent to the California state-adopted Houghton-Mifflin Social Studies textbooks in Spanish and English. The two-way immersion program in San Francisco, after failing to negotiate with publishers to provide Chinese texts for social studies, spearheaded its own translation project. Moreover, Chinese bilingual teachers feel that unfair expectations are placed upon them to produce more than is available in terms of resources.

Success stories come from Spanish bilingual programs. Texas was able to establish content standards for publishers. EXCELL staff put together an impressive array of Spanish bilingual materials. Identifying resources is a time consuming process. Different districts may have produced their own materials. It would be helpful to all to have a national forum for the exchange of ideas on materials production and a database of available materials.

Appropriate assessment instruments.

Assessing students' language proficiency plays an important role in placement, and assessing their progress affirms the effectiveness of specific programs. Language appropriate instruments need to be made available. In New York, the Grade 4 Science and Grades 6 & 8 Social Studies components of the Program Evaluation Tests are available in four languages. For the New York State Regents Competency Tests, the Native Language Writing and Mathematics components are available in twenty-nine languages, and the Science, U.S. History and Government, and Global Studies components are available in six languages. Moreover, students are assisted in their test taking by the provision of word lists and translators.

Indeed, any assessment instruments used should reflect learning objectives. Assistance should be given to students to minimize non-objective-related interference. In other words, assessment needs to reflect student learning in authentic ways.

Recognition of the importance of parent involvement and cultural specific ways of learning.

The Lau decision represented the outcry of parents concerned about the education of their children who needed special assistance in their language and related academic learning. Not only are parents advocates and supporters for students' learning, but home socialization also affects students' ways of learning. EXCELL is one program that recognizes the importance of parent inclusion. Its staff translated the handbook and all notices to the language of the parents, not only to facilitate communication, but also to show respect for that language. In addition, the program

holds parent breakfasts once a month, during which announcements and strategies to help students study at home are shared to empower parents.

The Bilingual Office in Texas views cultural relevance as key in helping students learn. Teachers need to recognize cultural specific ways of teaching and learning and try to build bridges between home and school.

Conclusion

The spirit of the Lau decision is still alive after twenty years. While bilingual education program design and implementation differ from state to state, from district to district, and even from school to school, a sizable knowledge base about what has worked and what has not worked has been built during these last two decades. I did not attempt to report all aspects of the presentations, but rather tried to identify critical elements which will address future policy decisions. Where do we go from here?

It seems to be key to address the issue of diversity -- diversity in terms of student needs and available resources in different communities. State frameworks should guide but should also allow flexibility for local decision making. It is important for local educators to be able to decide on specific education outcomes for their particular students. These objectives should then dictate the curriculum, which in turn should mandate change in structural support (Newman, 1990)¹². Restructuring can be an effective undertaking at the school level to accommodate this bottom-up process of making change.

While current state mandates ensure compliance with the spirit of the Lau decision, they sometimes have opposite effects when resources are not sufficient in certain communities. Also, state frameworks provide sound guidelines, but local expertise is sometimes lacking. Would a bottom-up process, as described by Newman, be too far from reality? When faced with the rapid increase in demands for bilingual programs (as California registers a 41% increase of LEP students in public schools from 1990 to 1994), will the following be feasible?

Can each school community -- administrators, teachers, parents and community members -- get together and decide on the desired learning outcomes for the students?

Can they be assisted by personnel familiar with research on language acquisition and cultural implications for learning?

Can the group apply for and receive funding for their proposed program?

Can formative evaluation be brought in at the initiation of the program and used to inform midcourse changes?

Can teachers and researchers collaborate in this process?

Is there a process to support the development of teachers and

¹² F. M. Newman (1990). Linking restructuring to authentic student achievement. Paper presented at the Indiana University Annual Education Conference (Bloomington, IN).

paraprofessionals?

Can students be assessed with appropriate instruments to facilitate rather than jeopardize their learning?

Can publishers be persuaded to produce quality bilingual materials?

Some answers can already be found in the programs presented during the symposium. Our knowledge base includes not only what worked, but also what did not. By building a stronger network to exchange ideas and to support our students, the third decade of the Lau decision can become an exciting time of building on that knowledge base.

Strand F: Instructional Practices

Report by: Stephanie Dalton, National Center for Research on Cultural Diversity and Second Language Learning, University of California, Santa Cruz and Donna Christian, Center for Applied Linguistic

First Day

Moderator: Lily Wong-Fillmore, University of California, Berkeley
Presenters: Kathryn Au, Kamehameha Schools, Honolulu
Albert Cortez, Intercultural Development Research Association
William G. Demmert, Western Washington University
Hayes Lewis, Pueblo of Zuni, New Mexico
Reynaldo Macías, University of California, Santa Barbara
Gay Yuen Wong, California State University, Los Angeles
Maria Gutierrez-Ott, Little Lake School District
Robert Rueda, University of Southern California

Second Day

Moderator: Reynaldo Macías, University of California, Santa Barbara
Presenters: Richard Durán, University of California, Santa Barbara
Robert Rueda, University of Southern California
Victoria Jew, Sacramento State University
Donna Christian, Center for Applied Linguistics
Edna Maclean, Stanford University
Rosa Castro-Feinberg, Dade County Schools
Amelia McKenna, Los Angeles Unified School District
Maria Gutierrez-Ott, Little Lake School District

Strand Coordinators: Reynaldo Macías and Richard Durán, University of California Linguistic Minority Research Institute; Stephanie Dalton, National Center for Research on Cultural Diversity and Second Language Learning, University of California, Santa Cruz;

The Lau v. Nichols Supreme Court ruling, interpreting the mandate of Title VII of the Elementary and Secondary Education Act (ESEA), prodded unprecedented collaboration between federal, state, local schooling agencies and the research community for developing bilingual education programs and language services for language minority students. The Lau ruling itself prescribed no particular method for providing educational opportunity to language minority students; the ruling called for access to school curricula and English. Although tension remains between what satisfies the letter of the law and how broadly to interpret the "spirit" of the law, today's practitioners are more informed about second language acquisition, cultural considerations, and ways to assist language minority students to school success because of the Lau ruling. This advance continues to be hard-won, as it was achieved, without adequate funding or support from educational policy makers and legislators. The enduring challenges as well as advances in knowledge and effective practice for

linguistic minority students were presented from the multiple perspectives of this strand's participants.

This paper is organized around thematic topics occurring in the presentations of the Instructional Practices Strand at the Lau Commemorative Conference. The themes include Language Learning Opportunity, Instructional Practice, School Restructuring, Curriculum, Teacher Education and Certification, Accountability, and Research. The presenters' thematic emphases are combined in the discussion of each theme based on audio tapes and notes of the presentations. Discussion of the themes reflects the presenters' views to encourage more inquiry about the experience base and funds of knowledge of bilingual education in the twenty years since the Lau ruling.

Language Learning Opportunity

Since 1974, there has been remarkable progress in understanding the complex needs of language minority students' who must function bilingually and biculturally in and out of school. It is now understood that bilingualism has potential to benefit students academically as well as socially with no negative effects observed (Cummins, 1995). Study of first and second language acquisition indicates interdependence of academic skills between languages so that thinking abilities in one language are likely to develop to the same or higher levels in the other language. Sadly, misconceptions about language learning still impede the extension of effective pedagogy to all students. Cummins (1995) refers to practices and structures based on these misconceptions as, in fact, disabling students. This theme, concerning limited language learning opportunity for minorities, recurred in the presentations of this Lau conference strand. In examining reasons for such limited opportunity, presenters cited exclusionary practices at national and local education levels, past and present funding inequities, and lack of advocacy for bilingualism at state and national levels.

The education reform movement has spurred the development of national standards. Sadly, learning languages other than English is, by and large, excluded from the standards. When language minority students populations are considered, bilingual program decision making happens at distances far from schools and the communities supporting them. The local conditions, values, funds of knowledge are ignored. Presenters recommended revising measures of accountability and program evaluation to recognize mismatch and illuminate successful implementations that overcome long-distance and bureaucratic obstacles.

Presenters pointed to funding inequities across language groups to account for many differences in language learning opportunities including consequences of the original allocation decisions. Those language groups excluded from the original Lau allocation process, such as indigenous peoples, continue to receive little support even

as their languages face extinction. Today, increased immigrant populations, particularly Asians, comprise a more diversified language minority population many of whom were not present in the U.S. at the time of the Lau ruling. As the nation increases in diversity, presenters urged equitable funding allocations that include all language groups affected. In that regard, presenters asked for definitions of affected/eligible language groups to clarify language group status. National and state policy that views proficiency in two or more languages as a desirable outcome for all students was strongly advised. Such a position increases instructional opportunity for language minority students not only in legitimating and funding bilingual programs but also in providing university programs for teachers to improve their language and pedagogy. These are means of securing equitable language learning opportunity for all U.S. students.

Instructional Practice

We now know there is more than one kind of school literacy, that is, there are many ways for students and teachers to communicate and learn. From research on culturally compatible approaches to teaching and learning, we find that students are more comfortable, and potentially more successful learners, when learning conditions such as interaction and organization patterns and curriculum topics are familiar. Practitioners effect learning by making school experiences correspond more closely with those of students' home, community, and culture. In describing features of effective bilingual, bicultural programs, presenters highlighted curriculum incorporating local language and culture and the participation of parents' and elders in the school. Programs that facilitate the development of bilingualism included language revitalization programs for Native American students and two-way bilingual education programs for integrated classes of native Spanish and native English speakers. Such practices emphasize close attention to the values, practices, and language of students' local settings for transforming classrooms into familiar venues encouraging students' interaction and learning. Conditions such as these support classrooms as communities for learning language and content.

Bilingual education is challenged to shift from traditional modes of practice to new approaches based on expanded theories of language and learning such as those of Vygotsky . Vygotsky (1978) and his followers, describe learning and language appropriation as social processes based in language and activity. The implication of this theory for teaching and learning is that within activity and social interaction, teachers, as competent others, have the potential to assist students' language and understanding to increased competence. The theory suggests that students' frequent co-participation with teachers and other experts in activities such as academic dialogue and complex problem solving will increase their use of social and academic language and gain understanding. In constructivist views of learning, individuals, as active

processors of new information, construct and reorganize their knowledge; they are not passive recipients of information. These views contrast with traditional approaches such as recitation or lecture style teaching in which students are expected to receive information imparted from a teacher. For practitioners, new theories may present a challenge. Presenters cited studies of bilingual teachers' beliefs that reveal a lack of correspondence with their instructional practices. In other words, their beliefs show they are aware of new theories and approaches and their effect but they have not shifted their practice to reflect their beliefs. Such shifts in practice require support and encouragement. Impediments to shifting teachers' practices are often organizational, and presenters urged reform to remove obstacles to teachers' professional development in light of new views of teaching and learning.

School Restructuring

School organizational structures need to support the view of teaching and learning as it occurs in social contexts through language and activity. Rather than inhibit change, as is often the scenario, administrators and schools can participate in assisting teachers to shift from traditional methods based on outdated theoretical models to more collaborative, student centered approaches. In these approaches, students' participation is activated and teachers assist students' learning in activity settings. Principals and administrators must also increase their understanding of language acquisition processes in order to facilitate program implementation and accountability during restructuring. Administrative support is particularly crucial for retaining bilingual faculty and staff. Schools' schedules, organization, and culture are integral supports affecting the potential of innovative pedagogy and classroom organization to influence learning among language minority students. It is also essential that school restructuring efforts include policies and practices that reflect the full range of diversity of students in the schools.

Curriculum

Presenters described curricula designed and constructed together with teachers, students, and community members around themes central to culture and family. A key to successful curriculum development was explained as involving local levels of decision making and community members such as parents and elders on a regular basis. It is essential that curricula intending to provide culturally responsive education make strong connections to students' experience and background. Language minority students need more opportunities to explore topics from different cultural perspectives. Such development efforts enable cultural bridging by inviting communities to participate in constructing connections that work for them. In this way, curriculum development builds partnerships and taps into funds of knowledge in the community as well as home language models. Such partnerships involving community members who model home

language for the students can also advocate for students and bilingual programs.

Other curricular themes addressed technology and bilingual proficiency development. Programs that integrate instructional technology were described to illustrate how such curricula can be effective bridging native/heritage language development and technological awareness. Curricula that provide substantial content instruction in two languages, such as two-way programs, were also discussed as effective means of facilitating dual language proficiency. In effective programs, links between bilingual and mainstream programs and across age-related educational levels encourage activity and interaction about joint activity. For secondary students, newcomers who arrive during the high school years, social linkages among programs can be critical to student retention.

Teacher Education and Certification

Clearly, all teachers, bilingual and monolingual, who have responsibility for teaching language minority students must have expertise in language development and an understanding of the needs of these students. Teachers must be able to recognize language minority students' differences and respond in diverse ways to meet their needs. University teacher education programs need to prepare practicing teachers to use community knowledge to build relevant curriculum and understand expectations of community. Teachers and administrators need to be knowledgeable in the application of theories of teaching and teaming that hold promise for affecting students' language acquisition and academic success.

Certification policies vary widely from state to state, as do the professional development programs available for educators. Not only is there little bilingual education certification but opportunities are rare for teachers to receive training in their second languages. In many states, adequate teacher education and bilingual certification credentials for teachers and administrators are not available. When certification is offered, many practitioners do not have and are not encouraged to meet certification criteria. Local school policies often limit teachers' professional development coursework to mainstream English language curricula.

Bilingual teachers' growth as proficient language models for students must be supported and connected to accreditation procedures. All teachers and administrators need access to certification that increases their expertise in the area of second language acquisition and the influence of culture on education. Problems persist with a shortage of adequately prepared bilingual personnel at professional and paraprofessional levels. Removing irrelevant and outdated certification requirements will begin to improve this situation. The transition from paraprofessional or aide to teacher needs strong facilitation including more cooperation between universities and state departments of education

Accountability

Issues of accountability were identified as critical for effective bilingual program implementation. Accountability must be based on relevant criteria addressing issues of language acquisition, culture, process, and academic content going beyond irrelevant measures such as numbers of students exiting from Transitional Bilingual Programs. Program evaluation designs using methods that are relevant and including all program members, particularly high level decision makers such as superintendents and principals, will most inform effective program development.

Research

Reports of research need to influence legislation away from a deficit view of bilingual education to one in which bilingualism is a cognitive asset advantaging language minority students and from reductionistic teaching models that assume learning to be organized hierarchically from simple to complex towards views of learning as an interactive, activity-based endeavor in which participants collaboratively generate new understanding. Ramirez's (1991) findings suggest that bilingual programs promoting students' literacy skills in their home language support English language development. The students in Ramirez' study who had received at least 40 percent of their instruction in their home language, Spanish, throughout elementary school had the best prospects for achieving at the same academic levels as their English speaking peers. It was also reported that these later exit programs had the advantage of providing students with cultural identity and engaging parents' participation. What are the issues of identity and group affiliation that are implied in this finding? More research on culturally responsive education that has a positive impact on the learning of diverse groups of students would be informative. The notion of learning as collaborative knowledge generation, a social process, and ways the individual acquires language and knowledge within it is a new framework for studying language acquisition and effective bilingual practice.

The presenters indicated several avenues of inquiry as represented in the following questions. Do theories and findings related to bilingualism apply across languages? Do models that work for one language group work for another? How can schools be organized to become communities of learning and practice for students from diverse backgrounds? What should programs look like for Asian language minorities? How do findings related to one Asian/Pacific American minority group or one Native American group apply to others in those groups? How can heritage languages (such as those in Native American communities) be revitalized, and what role can schools play in that process? These sample the plethora of research questions offered during the discussions.

Conclusion

The participants in the Instructional Practices strand called for "moving Lau to the next level". Our educational system needs more and better prepared bilingual personnel to implement promising instructional programs. The programs and curricula need to be collaboratively developed by schools, students, and communities and should incorporate local participation at all levels. Culturally responsive education should become the foundation on which programs and practices are built, and efforts should be strengthened to make bilingualism a goal for all children. And, finally, the principles imbued in the Lau ruling, as it is taken "to the next level," must be applied to ALL of our country's culturally diverse groups of students. Instructionally and otherwise, we must move to embrace the spirit of the Lau decision and provide excellence and equity in education for all students who come to our schools.

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20 Years After Lau: In Pursuit of Equity Not Just a Language Response Program

Alicia Salinas Sosa, Ph.D.
Intercultural Development Research Association

Education is not a power conferred on the federal government in the U.S. Constitution. Because of this, policy analysts see the responsibility for education and authority over it as being delegated to the states by the Tenth Amendment to the Constitution. Thus, up until 45 years ago, the role of the federal government in education was limited.

In *Clarifying the Federal Role in Education*, Beebe and Evans point out that the federal government has a unique responsibility for assessing the condition and progress of educational achievement in the United States (1981). The government has a responsibility to improve education through initiatives in research, development and evaluation. The government must also preserve individuals' rights to equitable participation in the educational system. When this is non-existent, it must intervene to address critical educational problems which affect the entire country. According to Beebe and Evans, such problems having national impact are clearly beyond the scope and ability of states to address.

The education of limited-English-proficient (LEP) students enrolled in the nation's public schools constitutes an unmet educational need that has national impact. Several factors catapult this need to national proportions: (1) the number of LEP students is significant and growing, (2) LEP students have educational rights that are protected by federal laws and statutes, and (3) this group has traditionally not been well served by the educational system.

First Generation of National Origin Desegregation

Initially, the term desegregation focused on the physical movement of students which followed the 1954 Brown v. Board of Education Supreme Court decision and on the prohibition of continuing stereotypes in the curriculum. Prior to the Brown decision, Mexican American parents in California and Texas worked to secure the desegregation of public education. In the 1930s, '40s and early 50s, it was not uncommon for Mexican American children enrolled in public schools in the southwest to be assigned to segregated schools. In Texas, the League of United Latin Americans (LULAC) and the G.I. Forum raised funds in 1948 in support of the Delgado v. Bastrop ISD court case. The parents of school-age Mexican American children alleged that school officials in four communities in central Texas were segregating Spanish-speaking children contrary to the constitution.

The district court ruled in the Delgado case that placing students of Mexican Ancestry in different buildings was arbitrary, discriminatory, and illegal. Further, it ruled

not to allow these discriminatory practices after September 1949. While segregation continued for many years after the various court rulings, civic leaders persisted in seeking avenues to discontinue this unacceptable practice (San Miguel, 1987).

Second Generation of National Origin Desegregation

The goal of desegregation during the second generation was to achieve equal access and treatment within schools and programs. Concerns centered on access to courses and programs as well as on the elimination of discriminatory practices. Soon, educators concerned with equity recognized that access was part of the solution. Desegregating schools would also have to target the elimination of physical resegregation, the provision of equitable opportunities to learn, and the achievement of comparable outcomes (Network of Regional Desegregation Assistance Centers, 1989).

These same concepts apply to national origin desegregation. That is, in designing appropriate responses for LEP students, we should also be concerned with their having access to courses and programs (e.g., gifted and talented, mathematics and science) and their having equal opportunities to learn (high expectations, active participation), having access to the core content and reaching graduation requirements. National origin desegregation has tended to occur in stages. Initial efforts targeted the most salient and gross inequalities. Prior to the Lau v. Nichols decision in 1974, a memorandum to school districts from the federal government had clarified the applicability of Title VI of the Civil Rights Act of 1964 to language minority students (DHEW, 1970). It identified three main areas of concern: (1) unequal access to participation in school programs because of language, (2) segregation by tracking, ability grouping and assignment to special education programs, and 3) exclusion of parents from school information. Furthermore, the May 25 Memorandum instructed the Office for Civil Rights to implement the review and enforcement of compliance procedures.

The Lau decision placed responsibility on school districts to ensure that limited-English-proficient students were identified and provided with a language response program. The judge noted, "Under these state-imposed standards there is no equality of treatment merely by providing the same facilities, textbooks, teachers and curriculum for students who do not understand English effectively" (Lau v. Nichols, 1974). The court found a denial of equal educational opportunity under the Civil Rights Act of 1964. Unfortunately, the 1974 Lau decision did not mandate bilingual education or use of the native language. However, the Lau decision did affirm the authority of the then Department of Health, Education and Welfare (DHEW) to "require affirmative remedial efforts to give special attention to linguistically deprived children."

Soon after, DHEW issued a memorandum known as the Lau Remedies and identified school districts having at least 5 percent limited-English-proficient students for investigation and review (1975). The Lau Remedies focused on instituting a language

response program at the school district level. It provided direction regarding basic needs (program elements, entry/exit criteria, resources, staffing). School districts having higher concentrations of LEP students were targeted by the Office for Civil Rights (OCR) for review and plan development subsequent to a finding of non-compliance. Usually, the task for meeting the compliance review fell on the bilingual director. Despite this effort, it was estimated that only one-fourth of LEP students eligible for assistance were being served (CCSSO, 1990). The result was a programmatic response that targeted only one issue: the removal of language as a barrier to accessing the content.

Yet, other second generation problems existed which were not addressed at all. These included access and assignment of LEP students to “other” programs because of limited-English-proficiency (e.g., being denied entry into gifted and talented programs because of sole reliance on a standardized score), placement into special education classes where a 300 percent over-representation existed in classes for language and learning disabled students (Ortiz, 1986), and under-representation in advanced level math and science courses. Tracking and ability grouping had been prohibited by the May 25 Memorandum. Later, Lau affirmed the validity of the May 25 Memorandum extending the Civil Rights Act of 1964 to language minority students. Despite the strong legal prohibitions of these actions, school districts in the nation continued to track, ability group and mis-place limited-English-proficient students in educational programs (Oakes, 1985).

Other second generation problems which were not addressed in Lau or in practice involved the elimination of practices which lead to isolation or differential treatment based on race, sex and national origin. This included not seeking solutions to end school segregation of LEP students. LEP students were often placed in one class together. In many cases, this resulted in virtually the same group of students spending their entire elementary school life together (García and Donato, 1990).

School district personnel, particularly school principals, did not act to diminish the disproportionate application of disciplinary procedures, including corporal punishment, suspensions and expulsions. While largely unacknowledged, the root to many discipline problems stemmed from lack of communication skills and cultural understanding on the part of school personnel interacting with culturally and linguistically different students (Sosa, 1993). Not much was said or written about the need for notices sent to parents regarding discipline to be in a language they understood. The issues of grading and grade retention because of language skills were, similarly, ignored.

As we entered into the third generation of desegregation, the problems encountered in the second generation of desegregation continued. In the 1990s, school districts began implementing zero tolerance and assigning students not upholding this policy to alternative high schools. Neither school district policy nor staff development addressed the need for not disproportionately applying these disciplinary procedures to limited-English- proficient students.

Third Generation of National Origin Desegregation

In the third generation of desegregation, the focus was on physical resegregation, equal opportunities to learn and equal outcomes – achievements, attitudes and behaviors (Network of Regional Desegregation Assistance Centers, 1989). Desegregation concerns included having high teacher expectations, having challenging curriculum, having instruction that enhances opportunity to learn, validating students' culture and self-concept, and closing the achievement gap. The literature on effective schools and effective classrooms provided insights for practice describing effective schools as those where active leadership creates a climate in which "success is expected, academics are emphasized and the environment is orderly" (Squires, et al., 1984).

Teacher training followed the two major types of studies on effective teaching, one to identify the teaching processes used by effective teachers (correlational) and the second to train teachers on the effective behaviors in order to affect and improve student achievement (experimental). One very important finding from the correlational studies was the presage variables, those teacher beliefs that propelled them to act in the ways they did. The effective teachers studied believed that students could learn and that they could teach students (Squires, et al., 1984). Because teachers believed students could learn, they tried different approaches until they successfully taught the content. The training that followed and the teacher evaluation instruments later developed left out these very important beliefs and other important actions like choosing the right level of difficulty of the objective and doing a task analysis since only low inference behaviors (those that could be measured) were included in the training and the evaluation instruments.

A second set of important findings from this research pointed out that students in the effective teachers' classrooms were on-task a large portion of the school day, covered the content, and experienced success at a very high level (95%) (Squires, et al., 1984). For LEP students, it is not enough to ensure that they are receiving native language instruction or comprehensible instruction through ESL. A step further is to see that they remain on-task, cover the content and experience high rates of success in mastering the objective. By specifying these outcomes as aims, school personnel can better assess innovations and their promise for academic achievement of LEP students. Thus, higher order thinking skills (H.O.T.S.), cooperative learning, whole language and interactive teaching can be embraced not because they are the latest fads in education, but because they further open the curriculum to LEP students by increasing higher order thinking (focus), active participation in the small groups (think-share pairs, triads), access to meaning (whole language) and connectedness/repetition (thematic units). These strategies hold particular promise for increasing LEP students' access to quality learning experiences by providing access to the content area material, developing concepts and increasing vocabulary.

These teaching strategies should be used, evaluated and adapted according to the characteristics of LEP students (including poverty, cultural traditions, ESL level and age). However, in their eagerness to be up-to-date, school personnel have not analyzed the assumptions behind these innovations.

After the Lau v. Nichols Decision

The changes introduced through Lau v. Nichols and subsequent federal statutes resulted in minimal compliance with the law. Following a letter of finding of non-compliance with federal laws, school districts requested and were provided with guidelines to remedy their failure to act in accordance with the law. Unfortunately, the Supreme Court in Lau v. Nichols did not prescribe a remedy. The justice's decision left it up to school districts to decide the educational response.

The Lau decision was unwavering and clear that "school districts must take affirmative action to rectify the students' language deficiency as soon as possible" (Lau v. Nichols, 1974). However, neither the court decision nor the Lau Remedies, which followed, prescribed bilingual education. School districts were free to choose bilingual education or English as a second language (ESL). This diminished the commonly held idea that bilingual education was the most appropriate response. Thus, school districts, whether they applied bilingual education or ESL took a deficit posture: there is something wrong with or missing from the child identified as LEP. The charge to them became "do something as soon as possible and only as long as necessary." In schools across the nation, this became translated into minimal compliance with the law and the guidelines (a few exceptions existed in states having state-mandated bilingual education laws). School districts looked to acting on the guidelines without realizing that these, as well as those of bilingual education prescribed by state law, specify the *minimum* action to be undertaken in order to not be out of compliance.

Thus, the Lau response became a programmatic response, not a restructuring or an equity response. Consequently, emphasis was placed on implementation concerns: how to identify students, what program to choose, which books to select, where to find certified teachers, how to provide training to teachers. Because neither the Lau decision nor the guidelines addressed the issue of grading, grade retention, learning and communication styles, or access to special programs (e.g., gifted and talented, calculus, meeting graduation requirements in an academic track) when addressing the instructional needs of LEP students, educators similarly ignored these issues.

For these reasons, it is imperative that in the next generation of desegregation educators finally address the equity issues needed to meet the educational needs of LEP students. Bilingual education is a necessary, but by itself, an insufficient response. While it is the best approach to meet the *instructional* needs (a program), educators need to keep the ultimate goals we want for students, which is equity in educational outcomes.

Policy Recommendation for the Next Generation

In addition to the usual programmatic mandates for serving LEP students (identify, place in programs, teach ESL, teach content in home language, provide ESL in the content areas, assess, exit), the following are some additional mandates that my analysis of recent research indicates should be added to new policy regulations for serving LEP students.

- Re-examine findings from the effective teaching research. Extract principles that are applicable to education of LEP students.
- Extract factors in the research on effective schools and classrooms and apply to education of LEP students, e.g., campus policy prohibiting racial and ethnic slurs (orderly environment, high expectations).
- Require keeping data on indicators that affect outcomes, such as grade retention (leads to over-agedness), disciplinary measures, e.g., suspensions (miss out on content coverage), public rewards (high level of students rewarded).
- Monitor and uphold prohibitions against tracking, ability grouping, assignment to special education and exclusion from gifted and talented programs.
- Make special efforts to enroll LEP students (and exited LEP students) in advanced math and science courses and gifted and talented programs. Document procedures for school districts to follow.
- Use native language or ESL techniques to teach LEP students enrolled in advanced courses.
- Emphasize the need for sending information home in a language that parents can understand.
- Involve parents of LEP students in Site Based Decision Making (SBDM) committees.
- Monitor innovative teaching techniques to determine if they accomplish the desired aim: participate actively, cover and learn the content, experience high rates of success.
- Ensure successful transition into English. Train the receiving teachers. Follow up for two years. Make provisions for re-enrollment of exited students in special services if needed.
- Assign a central office administrator to implement appropriate accountability procedures to assure student progress and success.

The school-age language-minority population grew from 8.1 million to 9.9 million during the 1980s (Waggoner, 1995). Moreover, projections for growth in the Hispanic population predict that this group will double in 30 years and triple in 60 years. The time for improving public education for an increasing segment of the school-age population is

now. At stake are a basic education and a life-chance for self-sufficiency for several million children and youths who can and should learn English and achieve in school.

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