# Legal Basis of Bilingual Education – An Excerpt

by Dr. José A. Cárdenas, 1976

For me, *Lau* became a test of the Theory of Incompatibilities which Dr. Blandina "Bambi" Cardenas and I had conceptualized in 1968. One principle in this theory was that of adaptability. We had argued that when the characteristics of students were incompatible with the characteristics of the instructional program, it was incumbent upon the school to modify materials and methodology to be compatible with student characteristics, rather than to expect students to modify their characteristics in keeping with a standard instructional program.

Both Bambi and I served as consultants to the Civil Rights Division of the Department of Justice in preparing a brief, which J. Stanley Pottinger presented to the Supreme Court on behalf of the plaintiffs.

Although proponents of bilingual education saw this [*Lau*] ruling as a clear cut victory for bilingual education, the Supreme Court did not prescribe a specific methodology but required that some kind of a special language program be provided limited English-proficient children by the schools. For me, the Supreme Court decision was a victory in upholding the principle of adaptability in our Theory of Incompatibilities.

The *Lau* decision was followed by the establishment of a Lau Task Force by the Office for Civil Rights in the Department of Health, Education and Welfare to develop guidelines for schools to follow in complying with the *Lau* decision. I was appointed a member of this task force as one of the leading advocates of bilingual education in the country. Dr. Edward deAvila, a pioneer in bilingual language testing, was also a member of the group.

The resulting guidelines, the Lau Remedies..., were distributed by the Office for Civil Rights to all state education agencies and were considered national policy. The various regional offices of the federal agencies were assigned responsibility for school compliance with the provisions of the Lau Remedies. Desegregation assistance centers for national origin minority students were given the responsibility for providing technical assistance to school districts in the implementation of the guidelines.

The Lau Remedies immediately became controversial and politicized. School districts opposed the guidelines along some, or all, of three arguments.

- First, there was an immediate outcry that the federal government was imposing a prescribed curriculum for schools, in spite of education having been consistently upheld by the courts as a function of the individual states.

- Second, the schools objected to the erosion of local control. School systems have consistently argued that they know best what's good for the child, regardless of the level of performance of the students.
- Third, the schools argued that the prescribed Lau Remedies required too much effort on the part of the school system. Implied in this argument was the assumption that the target population – language minority children – was not worth the resources required for meeting the Lau guidelines.

Many school systems simply went through the motions and made only token efforts to meet the federal requirements. I was the main witness in an administrative hearing held in Bakersfield, California, where the school system was charged with *Lau* non-compliance. Officials of the school district testified that the low number of language minority children in bilingual classes was due to most of the students being able to pass an English language proficiency test.

A copy of the test developed by the school system was presented as evidence. If the language minority student could respond to at least three of the items, the student was deemed having sufficient mastery of the English language for placement in an all-English instructional program.

The test included three items which I felt were not indicative of a high level of English language proficiency. One item was telling the student to "sit down." Another item consisted of the command, "Come here." A third item was, "Bring me the pencil." Student compliance with these three requests indicated successful performance on the test and excluded them from participation in a bilingual or any other special language development program.

When asked by the plaintiff attorneys to give my professional opinion on the appropriateness of the test, I testified under oath that I had a dog that could perform all three tasks and therefore in keeping with the Bakersfield language policy required no further language development for placement in the regular instructional program. Under cross examination I was asked in which language could I get the dog to perform the tasks, to which I replied, "In either English or Spanish. My dog is bilingual!"

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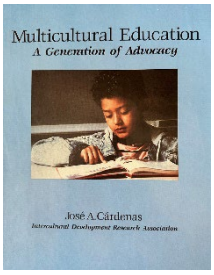


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