

U.S. v. Texas: Overview of the Findings and Remedy

by Albert Cortez

On January 9, 1981 Judge William Wayne Justice issued his long awaited ruling on **U.S. vs. Texas**, Motion to Enforce. The case, filed by Mexican American plaintiffs, challenged the adequacy of the state of Texas' efforts to respond to the needs of children of limited English proficiency, and asked the court to call for the enforcement of provisions set out in Section G of the court order in Civil Action 5281. This article provides an overview of the court's major findings and details the remedial action prescribed in the decision.

The court order issued by Federal Judge William Wayne Justice is the product of a suit filed in June 1975 at the request of the G.I. Forum and the League of United Latin American Citizens (LULAC). In this suit, the plaintiffs asked the court to mandate the enforcement of Section G of the court's prior order in Civil Action 5281 (C.A. 5281) and requested supplemental relief, claiming that "Mexican American students were being denied equal educational opportunities as required by law."

Section G of the order in **U.S. vs. Texas** (entitled "Curriculum and Compensatory Education") required the Texas Education Agency (TEA) to carry out a study of the educational needs of minority children throughout the state, and to report its findings to the court by August 1971.

However, the court's response to the plaintiffs' petition to enforce Section G, points out:

The study and report by TEA called for in Section G was intended to begin the process of eliminating the vestiges of discrimination against these children in the field of education by dealing directly with the language barrier. But the suggestion by plaintiffs that the comprehensive bilingual program they now seek was somehow inherent in Section G and must now be implemented is erroneous.

Section G of the Court's 1971 order required only the filing of a report to propose remedial programs. That requirement was satisfied in a timely manner by TEA. Section G contained no specific guidelines concerning the scope or characteristics of any compensatory program . . . If the extensive relief now sought by the plaintiffs is appropriate, it must be predicated on the mass of evidence presented at (this) trial. Accordingly, the plaintiffs' claim for relief as a means of enforcing Section G of the 1971 order will be denied.

Although the plaintiffs' claim for relief was to some degree founded on the language embodied in Section G of C.A. 5281, plaintiffs' claims also included charges of violations of: 1) the equal protection clause of the 14th Amendment to the U.S. Constitution, 2) Section 601 of the Civil Rights Act of 1964, and 3) Sections 1703 (f) and 1703 (b) of the Equal Educational Opportunities Act of 1974. In his ruling, Judge Justice cited his findings regarding each of these distinctive claims.

De Jure Discrimination Under the Fourteenth Amendment

After reviewing the evidence and testimony presented in the case by all parties, the judge concluded that:

it is found that Mexican-Americans in Texas have been subjected to de jure discrimination by the defendants, the State of Texas and the Texas Education Agency, in violation of the Equal Protection Clause of the Fourteenth Amendment . . . (emphasis added)

*The record in this case demonstrates pervasive, systemwide discrimination against Mexican-American children in the field of education. The systemic nature of the violation constitutes proof, in itself, that current language-based learning problems suffered by these children was caused, at least in part, by prior unlawful actions by defendants . . . Defendants bear the burden of demonstrating that current conditions would be unchanged in the absence of their discriminatory conduct . . . No such showing was made at trial. Accordingly, the learning difficulties of Mexican-American students attributable to defendants' actions **must be redressed**, and the **remaining vestiges of past discrimination must be eradicated**. (emphasis added)*

Violations of Provisions of the Civil Rights Act of 1964

Responding to the plaintiffs' request for relief on the basis of proposed violation of Title VI of the Civil Rights Act, Judge Justice noted:

It is unquestionable that the defendants' refusal to provide bilingual instruction at all grade levels for all children of limited English proficiency has effected a disproportionate impact upon the state's

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Mexican-American ethnic minority. But there is no evidence that the state's recent policies, isolated from the long history of purposeful discrimination, were themselves designed with the intent of perpetuating that discrimination. . . . The state's existing program of remedial instruction for these disadvantaged children may be inadequate, but it is not, in itself, discriminatory.

Violations of Section 1703 (f) of the Equal Educational Opportunities Act of 1974

Turning his attention to plaintiffs' claim of violations of selected provisions of the Equal Educational Opportunities Act of 1974 (EEOA-1974), Judge Justice stated:

Congress has determined that a school system which fails to overcome language barriers that handicap its students denies them equal educational opportunity. . . .

But it would make little sense to conclude that Congress, after identifying a serious problem in the nations' schools and requiring affirmative measures to overcome it, would permit any course of conduct, however ineffectual or counter-productive, to satisfy its mandate. Congress was obviously concerned with the implementation of effective solutions to learning barriers caused by language differences, not with forcing school officials to go through the motions of responding to the statutory mandate without achieving meaningful results. The term "appropriate action" must necessarily include only those measures which will actually overcome the problem. Substantive results, not form, are necessarily dispositive in assessing a school district's compliance with the law. . . . (emphasis added)

Having established parameters for the determination of what constitutes "appropriate action," the court assessed the adequacy of the state's current program, and found it lacking.

It is true that bilingual instruction per se is not required by §1703 (f) or any other provision of law. If the defendants here had implemented another type of program which effectively overcame the language barriers of Mexican-American students and enabled them to participate equally in the school curriculum, without using bilingual instruction of any kind, such a course would constitute "appropriate action" and preclude statutory relief. But the evidence in this case, discussed above, showed that the defendants have failed to remedy this serious educational problem as it exists throughout the State of Texas. A violation of §1703 (f) has thus occurred. The evidence also demonstrated that bilingual instruction is uniquely suited to meet the needs of the state's Spanish-speaking students. Therefore, the defendants will be required to take further steps, including additional bilingual instruction, if needed, to satisfy their affirmative obligation under the statute and enforce the right of these linguistically deprived children to equal educational opportunity.

Violations of Section 1703 (b) of the Equal Education Opportunities Act

Addressing the question of violation of the provisions of 1703 (b) the judge concluded:

A separate violation of the EEOA by the defendants stem directly from their failure to remove the disabling vestiges of past de jure discrimination against Mexican-Americans. . . . Under §1703 (b) of the EEOA, equal educational opportunity is denied where an educational agency which has formerly practiced deliberate segregation of students on the basis of race, color, or national origin fails to take "affirmative steps" to remove the vestiges of that discrimination. As in the case of "appropriate action" under §1703 (f), the affirmative steps required by §1703 (b) are necessarily those measures which accomplish the objective of completely extirpating discrimination. The myriad deficiencies of the defendants' existing educational program for Mexican-American students make out a statutory offense under §1703 (b), as well as a violation of the Equal Protection clause. (emphasis added)

Review of Current State Responses

Before formulating the required remedy for the constitutional and statutory violations found in this case, the judge had taken care to review the existing state programs and policies designed to respond to the unique needs of Mexican American pupils in order to assess the adequacy of past efforts to remedy the cited violations. After reviewing expert testimony and court documents regarding the program, the court delivered a scathing refutation of the adequacy of the current state requirements, finding:

- (1) Procedures for identifying children needing assistance are unreliable.
- (2) Criteria employed to transfer students out of bilingual programs serve to push many Mexican American children into all-English classrooms long before they are able to participate effectively in such an environment.
- (3) English language development programs neglect meaningful instruction in cognitive subject areas while they are seeking to improve English proficiency.
- (4) State monitoring of remedial programs at the local level is lax.

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- (5) Enforcement of state regulations governing bilingual education remains virtually nonexistent.
- (6) Any temporary shortage of available bilingual teachers is partially of the defendants' own making.
Lack of qualified bilingual teachers can be changed by strong recruitment programs and by the state's open acknowledgement of need and strong statement of the demand.
- (7) A K-3 program is analogous to partial desegregation plans (disapproved in this and other cases).

The Remedy

Having established that the state had engaged in constitutional and statutory violations, and that the current state program failed to effectively respond to the violations cited, the judge outlined the elements which are to be incorporated in the plan which he is requiring to remedy the conditions found. The court's opinion **requires** the following:

PROGRAM COVERAGE AND CONTENT

- a. Bilingual instruction must be provided to **all** Mexican American children of limited English proficiency (LEP) in the Texas public schools.
- b. A **suitable** plan to train and recruit sufficient bilingual teachers to meet the requirement and suggested timetable for implementation should be devised by TEA.
- c. Bilingual instruction must be provided in all subject areas, with the exception of art, music, P.E., and other subjects where language proficiency is not essential for participation.
- d. To the extent possible, Mexican American students receiving bilingual instruction must participate with students of other ethnic backgrounds in art, music, P.E., shop, home economics, and all other subjects where bilingual instruction is not provided, as well as at lunch, at recess and in extra-curricular activities.
- e. In accordance with the state's existing bilingual plan, school districts may join to provide bilingual programs on a more efficient and economical basis.
- f. Bilingual instruction shall not be provided in schools set aside solely for that purpose.

IDENTIFICATION OF LIMITED ENGLISH PROFICIENCY STUDENTS

- a. It is essential that **all** students be surveyed upon initially entering Texas public schools to determine whether they have a predominant language other than English.
- b. Students whose predominant language is Spanish shall be administered tests appropriate to their age level, and meeting recognized standards of reliability

to ascertain whether they are sufficiently proficient in English to participate effectively in an all-English curriculum.

- c. Teacher observation, in addition to test results, should be taken into account in classifying students with respect to proficiency in English.
- d. Local identification procedures must be monitored by TEA through on-site verification visits.

EXIT CRITERIA

- a. Students classified as LEP should remain enrolled in bilingual programs until their placement in all-English classes will not produce any significant impairment of their learning abilities or achievements.
- b. Students enrolled in bilingual programs should be tested at the end of each year to resolve the extent to which their skills have progressed.
- c. In addition to English language testing, the following factors should be taken into account:
 - (1) a student's oral proficiency in English,
 - (2) a student's mastery of specific language skills,
 - (3) subjective teacher evaluation, and
 - (4) parental viewpoint.
- d. A student's ability in Spanish must be compared to his ability in English, to find whether his transfer into an all-English classroom will handicap him educationally.
- e. Requires that specific statistical standards be prepared to implement these comprehensive exit criteria; such standards must ensure that children of LEP receive bilingual instruction as long as necessary to fulfill their educational potential.
- f. Students in grades 6-12 who cannot meet exit criteria should nevertheless be transferred out of bilingual programs at the unsolicited request of their parents.
- g. Application of exit standards must be monitored by TEA through on-site inspections.

MONITORING AND ENFORCEMENT

- a. TEA will be required to monitor local compliance with state regulations and also with respect to the court order by inspecting each school district in the state once every three years.
- b. Among the areas to be examined during these periodic visits are:
 - (1) program content,
 - (2) program coverage (years),

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- (3) identification and assessment procedures,
- (4) reclassification procedures, and
- (5) staffing.
- c. Results of monitoring visits should be reported to the:
 - (1) local district, and
 - (2) division of accreditation of TEA.
- d. Districts found to be in serious noncompliance with state regulations or with the order to be entered in this case shall be warned and required to take immediate corrective action.
- e. If the violations persist, severe sanctions including loss of accreditation and funding in appropriate instances **must** be imposed.

In order to insure that adequate staffing and learning materials will be available, Judge Justice included in the order a requirement that the provision of bilingual instruction for **all** Mexican American children of limited English proficiency in the Texas, public schools should be effected in phases over a six-year period.

Conclusion

In his order, Judge Justice required the attorneys of

the plaintiffs' and defendants to meet to explore the possibility of the submission of a joint plan. Deadline for submission of this plan is March 2, 1981. If the parties cannot agree on a mutual plan, separate plans are to be submitted to the court no later than March 9, 1981. In this instance, the court will review these proposals to ascertain the extent to which they meet specified requirements, and then order modifications if necessary. If neither plan is acceptable to the court, it will most likely combine elements of both plans and formulate its own version.

School districts with enrollments of children of limited English proficiency will no doubt be affected by these developments. Although the decision may be appealed, only the issuance of a stay order can prevent the court from proceeding with the implementation of the mandated plan. In the interim, the wise administrator might begin to assess the adequacy of current operations in light of the court requirements.

Although the decision may seem broad and far reaching, critics must keep in mind that the court action and resulting court order were prompted by the state's own inability and unwillingness to effectively address the needs of the state's Mexican American students. Those interested in finding fault and laying blame must examine the facts cited in the decision and recognize that the remedy prescribed is carefully tailored to respond to the constitutional and statutory violations found.

CMHC

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services in the community and have a means to access the service. This is particularly difficult for children, who are dependent upon adults to take the initiative throughout the process, and particularly for Mexican American children whose parents are all too often also ignored by the mental health service system.

In order to reduce the number of unidentified clinically maladjusted children in need of services, a closer collaboration between the CMHC and the social systems that deal primarily with children such as schools, child care providers, and public recreational programs (YMCA, YWCA, etc.) is recommended.

The Joint Commission on Mental Illness and Health (1961) emphasized the role schools play in the development of children and the need for primary prevention programs to be offered to school children (Berkowitz, 1968). The implementation of service programs at school facilities, such as structured activity groups for children with learning, behavioral or emotional problems, co-conducted by teachers and mental health care providers, would enable children whose parents do not recognize their problems or children who do not have access to transportation resources to participate more readily in preventive service programs. Because children's problems often reflect disturbances

being experienced in the home, primary prevention efforts in the school could also identify families experiencing problems who might benefit from services but otherwise would remain unknown to the community mental health system. Strengthening a child's social skills and emotional and psychological resources could also positively affect his/her academic performance and development, which is generally believed to be influenced by a child's level of self-esteem. Other equally applicable primary prevention programs could be designed to incorporate the health care and recreational services utilized by children and their families.

A collaborative inter-agency effort to address the needs of children in their routine social environments would appear to be one means to reduce the underutilization of community mental health services by Mexican American children and other children in need of services. Perhaps this more comprehensive service effort involving the combined participation of many service providers not previously considered a part of the mental health field will enable the avowed commitment to the mental health care of children to be more fully realized for Mexican American children and all children currently being underserved by the community mental health service system.

*A detailed list of references cited in this article is available upon request.