

THE LATINO JUDGES ASSOCIATION, THE GAP IN BILINGUAL EDUCATION AND UPCOMING PROGRAMS

John Caher: Welcome to a special audio and visual edition of *Amici*, the podcast program of New York State Unified Court System. I'm John Caher.

Today, we have a program sponsored by the Latino Judges Association and the Historical Society of the New York Courts. And we'll start by revisiting a little-known but very important case that we actually helped bring to light a couple of years ago, *Mendez v. Westminster School District of Orange County*. That case ended school segregation in California and set a precedent for future civil rights struggles.

I want to point out that that case was decided in 1947, seven years before the United States Supreme Court's landmark decision in *Brown V. Board*, which of course sent "separate but equal" to the constitutional dustbin.

Today we're going to revisit *Mendez*, discuss the growth of the Latino Judges Association, and learn a lot firsthand about how bilingual education, can contrary to its intention, actually set people back.

Daniel Sierra of the Historical Society will tackle that and we'll hear from three judges: Supreme Court Justices Patria Frias-Colón and Wilma Guzman; and Court of Claims Judge Linda Mejias-Glover. I'll start by introducing our panelists in alphabetical order.

Supreme Court Justice Patria Frias-Colón is a former supervising judge for Queens County Civil Court, Civil Court Judge in Kings County, Acting Family Court Judge, assistant district attorney, adjunct professor and attorney for the New York City Department of Education. She's the former chair of Latino Judges Association.

Justice Wilma Guzman has been a judge for 26 years and is currently a Supreme Court justice assigned to the Bronx County Civil. She is a past president of Latino Judges Association, the Puerto Rican Bar Association, and the Supreme Court Justices Association of the City of New York. And Judge Linda Mejias-Glover is a Court of Claims judge and current vice president of the Latino Judges Association. She's a Court of Claims judge sitting in Suffolk County. Prior to the Court of Claims, Judge Mejias-Glover

was an elected Family Court judge in Nassau County. She's a first-generation bilingual Latina of Ecuadorian and Cuban descent.

And finally, Daniel Sierra. Dan is currently the Technology and Outreach Director for the Historical Society of the New York Courts. At the age of 10, Daniel came with his family from Mexico, settling in the Bronx in 1991. He attended public schools in the Bronx and was placed in bilingual education classes for a number of years. Dan graduated with a degree in media communications and arts from the City College of New York in Harlem while working part-time at Lehman Center for the Performing Arts at Lehman College, CUNY, in the Bronx.

We have an awful lot to cover in a short period of time, so let's dive right in. Judge Mejias-Glover, let's start with you. The Latino Judges Association has been around for a number of years, but it seems more visible, more vibrant than in recent times. What is the LJA?

Judge Mejias-Glover: Thank you for that introduction, John, and thank you for welcoming us onto this podcast.

The Latino Judges Association was founded in 1985, and it was at that time called the Association of Judges of Hispanic Heritage. It was started by a group of 13 Latino judges, which included the Honorable Luis A. Gonzalez, former Presiding Justice of the Appellate Division for the First Department; the Honorable Carmen Beauchamp Ciparick, Judge of the Court of Appeals, the first person of Latino descent to be appointed to that position; John Carro, Justice of the Appellate Division, First Department; the Honorable Frank Torres, who's the father of the Honorable Analisa Torres, who is a U.S District Court judge for the Southern District. The goal of this association was to increase and promote diversity on the bench and it still remains that.

And our goal also includes serving as a forum to discuss areas of concern for Latino judges to encourage judicial service among Latinos, to publicize and recognize achievements of Latino judges and others and to educate the public about the judicial system and the role of the Latino Judges Association. Central to our mission is promoting and expanding access to judicial office and advancement within the judiciary, as well as supporting the work to ensure a strong and independent judiciary.

John Caher: Thank you, Judge. You mentioned Judge Ciparick. Until 1994, when she was appointed in the Court of Appeals by Governor Mario Cuomo there had never been a Latino judge on New York's highest court. Never! Today there are two: Judges Jenny Rivera and Michael Garcia, but the Appellate

Divisions, of course, are often the stepping stone to the Court of Appeals. So what are we seeing on the Appellate Divisions? What are we seeing in the trial courts? Are the number of Latino judges on the increase?

Judge Mejias-Glover: Well, in the First and Second Department, there have been a steady increase in the number of appointments, but we have yet to see any appointments in the Third or the Fourth Departments. In the lower courts, same. There's been a significant increase in the number of elected and appointed judges of Latino descent, especially most recently through the Court of Claims. There's been a tremendous number of people of color, especially Latinos, appointed by the governor.

John Caher: Now, wait a second. So the Third Department includes, I think 28 counties, almost half the state, and there's not a single Latino?

Judge Mejias-Glover: No. And the number of elected Latino judges up in that department itself is dismal. There are very few.

John Caher: And the Fourth Department, which includes the second largest city in the state, Buffalo as well as Rochester. Nobody?

Judge Mejias-Glover: Correct. And so we have again, I think, one or two, possibly three, judges that have been elected or appointed in that department to even lower courts. So there definitely is some work to be done upstate in the Third and the Fourth Departments.

John Caher: What does that mean to the Latino community when the Honorable Joseph Zayas was appointed Chief Administrative Judge, first ever to hold that position?

Judge Mejias-Glover: Well, I think it was certainly a proud moment for the Latino community, and especially for the Latino judges. It's an inspiration and it showed us that we are being considered, that we are of importance. And of course, we were very proud of that. I don't know if perhaps Judge Frias-Colón or Judge Guzman would like to weigh in on what it meant to them, but I know that for me, it really impacted my view of the bench and it made me hopeful that we will hopefully achieve soon in the future, a bench that is reflective of our population here in New York.

Justice Frias-Colón: I would just add that I think that appointment really is a recognition of, regardless of what your background is, you have much to contribute. And so I'm very proud of our Chief Judge, who appointed Justice Zayas to that position. So I'm very, very proud of that., it's a recognition that the

contributions that we make are a benefit to the entire New York State Court System.

John Caher: Judge Guzman, why does it matter that Judge Zayas is the first Latino Chief Administrative Judge?

Justice Guzman: Well, if I may add, he was already on the bench, having been appointed to the Court of Claims, then being an Administrative Judge of the Supreme Criminal Court Division, then being elected to Supreme Court in Queens. But now this was an administrative appointment. So now he went from the judiciary to the administrative side, and that was a big accomplishment to have someone in that status of a Latino descent to ascend to that position. That really was a big accomplishment for the Latino community, the Latino bench and the bench of color in general, where now we are present, we can be heard. And not only the Latino community, the community of color. All judges are now being heard across the State of New York. That was an accomplishment and we could thank our Chief Judge, Rowan Wilson, for that, too.

John Caher: Thank you. Judge Frias-Colón, let's turn back to you if I could. The LJA's growing prominence seemed to start with the annual focus on the *Mendez* case, as we'll discuss more in a moment. Can you give us a quick overview of what that case was, why it was significant, and why the LJA actually has a Mendez Committee, which I believe you chair?

Justice Frias-Colón: Yes. Thank you so much for that question. First, let me just correct slightly, I don't think that the Latino Judges Association gained prominence as a *result* of the *Mendez v. Westminster* project. I think that the Latino Judges Association really has been a force to be contended with to ensure diversity on the bench and proper representation. And so they've been doing that for quite some years. So that's just one thing I want to put out there.

Getting back to my involvement with the *Mendez v. Westminster* case, which is how I got to meet you, John. Thank you for hosting us and really being such an ardent supporter of the work that we're trying to do by showcasing and highlighting this very important seminal case. So, very simply, this case, as you indicated in your introduction, was the precursor to *Brown v. Board of Education*, which ultimately desegregated public schools.

But this case, coming out of California, had some things that really made the *Brown v. Board of Ed* case successful. Why? One, because the then-governor of California, Earl Warren, became the Chief Justice of the

Supreme Court when the *Brown v. Board of Ed* case was heard. And, two, the person who argued the *Brown v. Board of Ed* case ultimately also became a justice of the Supreme Court, having worked with and provided an amicus brief on the *Mendez* case. And so that is the significance of this case and why it is so important that people know about it.

Certainly for me, my personal experience, John, is I never heard of this case until I started teaching as an adjunct professor at St. John's Law School. I came across this case during some law research, and I presented it to my students, who were PhD candidates working already in Departments of Education all around the state.

And so, how the Latino Judges Association got involved with this is that I found an opportunity a few years ago to highlight this case. And, thankfully, I had the platform and the support of the Latino Judges Association to really give it the platform that it needed, which was a statewide, and because we did it virtually, John, really an international and national platform to discuss the case. And that is really the significance. At the time, I did chair the initial inaugural event, which was a panel discussion with the surviving member of the plaintiff class. It was a class action case, Sylvia Mendez. And the moderator at the time was our very own Jenny Rivera, the justice at the Court of Appeals, who also was an ardent supporter of these types of projects. So that year we did that. It was wonderful. I reached out to you, you gave us amazing support, and with your outreach and your networks, we were able to have more people involved.

We worked with The Judicial Institute. We worked with the New York State Historical Society of the Courts. And so with all of that, we were able to do that. The following year to the credit of Jenny Rivera who said, "You know what? It would be nice to do a re-enactment." And so that second year that we did another program to continue highlighting the importance of this case. We did a re-enactment between students from St. John's Law School, thanks to Justice Wilma Guzman's connection there, and with Columbia Law School. And so we did an amazing reenactment. Again, you were able to speak to the members of both of these schools and you were able to interview them, and they were really excited about that. And so for those two years that I was the chair, that was my goal. And in each instance, we had over 350 participants in person and virtual together to make that happen.

I then passed the baton along to my colleague, Justice Mejias-Glover, and this year she's the chairperson of the now standing committee within the Latino Justice Association to make sure that we never forget the

significance of what this family did for our legal jurisprudence and for the country.

What we want to do now is be able to highlight the case through continued work where we are going to highlight additional civil rights cases where Latinos really did incredible work to change the landscape of the civil rights movement.

And so this year, thankfully, we have Justice Wilma Guzman. She came up with an amazing idea to consider doing a moot court competition in the honor of this family. Sylvia Mendez is still alive. She's in her 80s, going strong, wonderful human being! And so we really want to honor her, her family and all the plaintiffs in that case by way of showcasing the inaugural moot court competition that will be done in 2025. And so that sort of is a short rendition of what the significance is between the Latino Judges Association, the *Mendez* case, and the goal that we have to showcase this amazing case.

John Caher: Thank you. Judge Guzman, Judge Frias-Colón mentioned your brainstorm and coming up with the idea of the moot court. Can you tell me why you thought that would be a great idea? And give me the—I am a recovering journalist—give me a who, what, when, where, why on that please.

Justice Guzman: Sound like a detective rather than a journalist, but I'll try to-

John Caher: Same thing in my mind.

Justice Guzman: Exactly. I'll try to answer the questions. Having seen and worked with the committee, because I've worked under Judge Frias-Colón when she chaired the committee, and now working with Judge Linda Mejias-Glover as the chair of the committee, I've been with the committee from its infancy. Having worked with the committee when it did the first program, which was an awesome success, which was Para Todos Los Niños, *Mendez v. Westminster*, a case towards desegregation. And then the following follow-up, which was the re-enactment, there were so many students that attended and were in awe of both programs. And as Judge Frias-Colón mentioned, the outreach, in-state, out-state, and all over—high school students, college students, law school students—and working with the committee and in our discussions, it just dawned on me that it should be something that we should reach out to all students starting out that they should know about the struggles that this family had, and learn about *Mendez v. Westminster*, how they opened up the field for those that were following them.

And it just occurred to me, why not have the Latino Judges Association sponsor the *Mendez v. Westminster* mock trial or moot court competition? And it could start with high school students or college students. And by doing so, we also inspire them maybe to enter law school, and thereafter possibly the bench. And we open up the door to future lawyers and judges of color, whether Latino or coming from all nations. And also to bring the cases that have impacted the Latino communities and our society, provide exposure to those cases, to the students, and also to highlight the Latinos in the law. So it was just something that it was overwhelming the emotions when the idea occurred, and I just brought it to the committee and the committee had open arms and then they presented it to the board, and the board had open arms too, and it just took a life of its own.

John Caher: What a wonderful idea. Until Judge Frias-Colón brought *Mendez* to my attention, I had never heard of it. And my guess is a very, very high percentage of high school and college students never heard of it. And I also suspect a very high percentage of law students and law professors never heard of it. So I think what you're doing is very, very helpful and I'm glad to be a part of that a little bit.

Justice Guzman: I want to thank you for that because you have been a very big part of it and its introduction to getting the word out there with the podcast on both occasions and now on this occasion when we are introducing the inaugural of our moot court competition. So, I want to thank you for that.

John Caher: It is truly an honor and a joy, so I thank you for allowing me to be part of this.

Judge Guzman, I'd like to stick with you for a moment as we kind of segue into the main focus of our discussion today, something I also view as kind of a cutting-edge issue. And that is the difference, and many of us did not realize there was a difference or distinction, between bilingual education and English as a Second Language. On the surface, they seem like exactly the same thing. Tell me how I'm wrong.

Justice Guzman: They do seem the same, they do sound the same, but they are not the same.

In the New York Public schools, bilingual education and English as a Second Language are both programs designed to support students who are learning English as an additional language to their native language. But the goals are distinct in each the bilingual and English as a Second Language. The key differences are, bilingual education incorporates both

the student's native language and takes English for an academic content instruction. So they have their native language and then they have English. And they have them separate and apart, but they're learning both to become proficient in both their native language and in English.

With English as a Second Language, the main goal is to exclusively focus on English and become proficient in the English language. So they're mainly teaching English. And the goal there is to get them focused on developing their writing skills, their reading skills, their speaking skills, and even their listening skills in English. So it's different. They may sound alike, but they take two different roads in how they're being taught. The teachers in bilingual need to know both the native language and be proficient in English. The teacher in the English as a Second Language only needs to know the English because that's their goal, to make sure that they're proficient in English.

John Caher: Thank you. In a moment we'll get to Dan who can explain to us how those two roads occasionally collide.

Justice Guzman: Correct.

John Caher: Now, this is an issue which I now understand is not something that arose yesterday. Judge Mejias-Glover, wasn't there a case almost decades ago in New York City that delved into these issues to some extent?

Judge Mejias-Glover: Yes. The case was *Aspira v. the New York City Board of Education*. This case is in 1972, when Puerto Ricans in New York filed a class action lawsuit alleging that the New York City school system provided discriminatory and inadequate education to Spanish-speaking public school children because the instruction that was offered to them was mainly or only in English. So this is the distinction that we see with bilingual education versus ESL, or English as a Second Language. The plaintiff sought to obtain equal educational opportunity for children with limited English proficiency, and they sued the New York City Board of Education. So at that time, the educational policies that they were complaining of were said to violate the Equal Protection Clause and other provisions of the federal constitution, as well as the right to equal education as promised in Title VI of the Civil Rights Act of 1964.

So, ultimately the suit resulted in a consent decree that was signed in August of 1974, and it established the right of New York City public school students with limited English proficiency to receive bilingual education. So there's a difference there—ESL versus the bilingual education. So the consent decree—just a quick overview—was a legal

agreement between the New York City Board of Education and the Aspira Association, and this was in 1971. Aspira is a nonprofit organization that focuses on supporting Latino students. It was supposed to increase resources, so the New York City Board of Education was supposed to increase resources to support this bilingual program.

It was supposed to improve staffing by hiring and making sure that there were teachers and support staff that were bilingual, not just English speaking, and there was supposed to be ongoing monitoring of the success of the program and of the students. This decree was significant because it set a precedent for bilingual education and improved educational opportunities for Latino students in New York City.

Ultimately, there was a contempt proceeding that was filed because the department had failed to comply with the terms of the consent decree. I don't want to ruin the surprise or get too far into it, but we are going to talk about this case at a panel discussion that we're hosting on October 1st, kind of as an introduction to our moot court program and to bring this case to light. And that's going to be moderated by Chief Administrative Judge Joe Zayas, and we'll give you more information about that at the conclusion of the podcast.

John Caher: I look forward to that. Now, this consent decree was signed, oh, a good 20 years before Dan got to high school. And Dan, I'd like to shift the focus to you and shift this conversation from somewhat of an abstract discussion to a very, very concrete one. Can you share with us your own story and your own experience with bilingual education in the 1990s, 20 some years after the consent decree?

Daniel Sierra: Yes. Thank you, John. Thank you to the Latino Judges Association for giving me the opportunity to share my story and my experience with bilingual education in New York. Unfortunately, that experience wasn't very positive. I would go as far to say that it hindered my progress in school and with learning English.

I came to the United States in 1991 from Mexico and settled in the Bronx with my family. I was due to start sixth grade, and because I didn't speak a word of English, I was placed in bilingual education classes. I have to admit, at the time I was relieved. I thought I was going to be struggling, having trouble following along to a teacher speaking in English, not knowing what was going on. And so when I was presented with a teacher that was mostly speaking in Spanish and classmates that all spoke Spanish, I thought I had it made. I'm like, this is great! And with all those

perks I was enjoying, I was also given history books in Spanish and science books in Spanish.

But looking back, I now realize this education that was mostly in Spanish didn't really help me with learning the language I needed to speak to be successful in this country. The ESL classes were very helpful, but I feel like I needed many more hours of that kind of intensive vocabulary and grammar classes to getting better at speaking English. I particularly struggled with pronunciation. Learning how to read what's on paper in Spanish is a lot easier than in English. Spanish is a lot more consistent with clear rules. For example, in Spanish, the "H" is silent all the time, not sometimes. You never ever pronounce the "H" in Spanish. So that kind of consistency is just not there when speaking English with a need to learn a lot of exceptions to the rules. Now, not all of my critique about bilingual education is negative, because for seventh grade, at I.S. 143 in the Bronx, they tried something different.

The district took the best performing students from all the sixth-grade bilingual classes and formed something they called the "enrichment program." Things were a lot different here. History textbooks were in English, science texts were in English, all classes were in English. However, most of the teachers also spoke Spanish. And so the lesson was given bilingually in both English and Spanish to help clarify confusing concepts, answer questions, et cetera.

And at the time, I didn't like it because it was very challenging and I struggled at first. But I kind of got the hang of it, and got better as the school year carried on. But this was truly bilingual education, or at least how it should have been implemented in the first place. In those first few months of seventh grade, I learned more English than during the entire sixth grade year.

In my humble opinion, this was a successful program, a model on how to reform bilingual education in New York. But they stopped the program and we all went back to regular bilingual education classes for eighth grade. And with that came the history textbooks in Spanish, science textbooks in Spanish, et cetera.

There is a test called the LAB—Language Assessment Battery—and I'll read you the definition: "An English language proficiency test for students in grades K through 12 developed to correspond to the curriculum of the New York City school system." At the end of the eighth grade my English skills weren't that much better than at the beginning, and so I didn't perform well enough in that test to be taken out of bilingual education

programs. So the bilingual education journey continued well into high school. At the end of my freshman year in high school, my history teacher, I remember his name still, Mr. Mena, took me aside and recommended I start taking classes in English.

I didn't even know I could do that. This didn't mean I could get out of taking ESL classes; those would be removed once I passed the LAB test. All bilingual education students were required to take two English classes, one regular class and one ESL class. This took away from students being able to take other elective courses such as music, art, et cetera. I finally ended up passing the test at the end of my sophomore year in high school. Once I was out of bilingual education, other opportunities started to open up. I ended up taking AP Spanish, AP Calculus. I did very well in my physics class. Similar to Mr. Mena, my regular biology teacher took me aside and said, "You don't belong here. I'm going to recommend you to honors class because you're wasting your time here." And so I also took honors biology class, so that was really taking off for me.

In theory, bilingual education sounds like a great idea: "Let's help this group of students get them up to speed with the language because we can't take class time to cover basic vocabulary and grammar to students speak fluently in English. That will be a waste of time for them. So let's just focus on this group who share the same need." I'm sure these ideas were implemented with the best of intentions, but in practice, bilingual education ended up hindering my academic development, not helping.

What helped me tremendously was that accelerated program in seventh grade, and it's how bilingual education should be taught in New York City. And this is not just a Spanish-speaking student's issue, it's an issue for all immigrant students who don't know English. We are a nation of immigrants and we all deserve an enriching experience in public education.

John Caher: Where would you be today if you could not, really, stumbled into that accelerated program? It was almost accidental, right?

Daniel Sierra: Yeah. And I felt very lucky that I was selected for that program. We're talking about the '90s here, early '90s, there's no internet, there are no cell phones, there's nothing. If you had to do any kind of research, you had to go to a library. And even then we didn't even know what to do at the library. So, I was very lucky to have stumbled onto that, and it really helped me develop my skills. I don't know where I would be. I think I would have been in bilingual education all throughout high school and not have the advantage of all of those courses I took later on.

John Caher: Now, judges are used to getting the last word. So as we wrap up the program, I will give them the last word, of course. To wrap it up, tell me what we missed and give us your final impressions on this topic. Justice Frias-Colón, why don't we start with you?

Justice Frias-Colón: Well, thank you so much. I wanted to just piggyback very briefly on Daniel's story, because I had a very similar experience.

I was an immigrant from Dominican Republic, and I was put into a bilingual program throughout elementary school and through my entire junior high school experience. And, very similar to Daniel, it really was not the best resourced classes, and very similar to how they treated the students with special needs back then. The resources were very limited. So I'm so thrilled that we're going to share Daniel's story more prominently.

And for us, as Latino judges, the *Aspira* case, which Judge Mejias-Glover suggested. and Daniel's experience was a perfect case for the Latino Judges Association to highlight in this inaugural *Mendez v. Westminster* moot court competition. This is an example of a case where the civil rights that initially were being charged and challenged by *Aspira* were impacting students that spoke Spanish as their main first language.

The result of that was to overhaul the system, which today helps all types of people from all nationalities and all languages. And so we really wanted to highlight this.

So I'm so excited that under the chairmanship of Justice Mejias-Glover, the Latino Judges Association is going to do this inaugural moot court competition in 2025. And to sort of kick us off this year, we were able to secure as moderator our very own Judge Zayas, who's going to talk about the bilingual program. And we have an incredible panel that we're really, really so excited about, and I think the rest of our listeners are going to be very excited about as well. But thank you for that.

John Caher: Judge Mejias-Glover, why don't we go to you?

Judge Mejias-Glover: Again, thank you for having us here. Thank you to my colleagues and to Dan for sharing his experience.

I think that this case really does hit home for a lot of us. Even though I'm born in this country, I spoke only Spanish until I started school. And I had the benefit of going to a Head Start program where I did have a bilingual education experience. And so that really made a tremendous difference

for me, having a teacher there who was bilingual with English and Spanish at that early age for preschool going into kindergarten. I was able to learn enough English to then begin my classes with everybody in kindergarten.

I'm very proud of this program that we're putting together. I'm so grateful that we have this opportunity to share these landmark cases with not just our own community, but with the other judges in the state and students, hopefully internationally, if we can do this virtually as well.

And I'm looking forward to this panel discussion. It's going to be October 1st from 5:30 to 8:30 at the St. John's Law School. There's going to be more details to come that'll be shared through the OCA broadcasts. And then our moot court competition is scheduled to take place on April 8th, and that's in 2025, again at the St. John's Law School. I want to thank them for their generosity and their willingness to work with us and to give us the space. I just want to make a plug for some volunteers.

We need volunteers to help our coaches, attorneys, and judges to help them prepare for that. And of course, I'd like to invite everybody to come and attend the panel discussion in person with us. And if you're interested in volunteering, you can reach out to me, Linda Mejias-Glover at LMejias@nycourts.gov.

John Caher: Justice Guzman, since you are the senior ranking judge here, you get the real last word.

Justice Guzman: Thank you for that. And I want to thank you, John, for the wonderful work in spreading the word of *Mendez v. Westminster*, and not only that, also the moot competition that we are now moving forward. I want to thank Daniel for being so vulnerable with his story, and also opening up to everyone who watches this podcast and indicating what he went through, and my colleagues and also giving their information.

But I've got to thank enormously the various presidents of the LJA that have also worked very hard on *Mendez v. Westminster* and moving this program forward and moving this moot court competition forward, especially our present president, who is the Honorable Lourdes Ventura, who has given us her total support for this program that's coming up in October and then the inauguration in April.

I am so proud of this organization. I've been a member for a long, long time. I've seen what they have done, I've seen what they have accomplished. I've been a president. I think I've held every single position

there's been in this organization. And I think you could see my heart just opens up with love for this organization and what it's doing, especially with this competition. It's just a broad vision of what it's going to inform far and wide to all, young and old, to know what *Mendez v. Westminster* did and all the cases that are following. So, thank you for this opportunity.

John Caher:

Thank you, judge, and thank you Your Honors and thank you Daniel. I think is a particularly insightful and inspiring edition of *Amici*.