

THE MAKING OF AN INITIATIVE

THE PROPOSITION TO
ELIMINATE BILINGUAL
EDUCATION SEEMS LIKE IT
CAME OUT OF NOWHERE
IT DIDN'T

BY MICHAEL J. FITZGERALD

ILLUSTRATION BY JONATHON ROSEN

The early morning chatter in the intermediate algebra class at Hiram Johnson High School in Sacramento dies down quickly when teacher Jaime Escalante chalks a set of neat numbers on the board—the first of many mathematical tricks he will use during his two-hour session to keep the class alert and focused.

That chatter, a polyglot of English, Spanish, Chinese, and Vietnamese, is missing only the stilted phrases of an immigrant teenager Escalante fondly refers to as “that Romanian kid.” That Romanian kid is absent this rain-soaked winter day, but he normally joins the preclass banter as much as he can, given his very limited English.

As Escalante's numbers and formulas fill the board, hands go into the air signaling anxious questions about a bewildering mix of Xs and Ys, sines, cosines, and square roots. But the only two languages Escalante allows once the class has begun are English and, of course, mathematics.

“English will be the language of their workplace. It's the language in their textbooks,” he says in forceful, but deliberate, English phrases—all heavily accented by his native Bolivian Spanish. “That's why I eliminated bilingual teaching in my classes a long time ago—even though I worked for ten years to do it.”

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The 65-year-old Escalante—the subject of *Stand and Deliver*, a 1987 film about his remarkably successful math program at Garfield High School in Los Angeles—is now part of the movement to radically change (some would argue end) bilingual education in California. Escalante is “honorary chairman” of Proposition 227, the “English for the Children” initiative facing state voters in June. This passionately argued measure is in some ways a California classic, an emotional hot potato that the Legislature carefully avoided for the past ten years, until its proponents picked up the initiative cudgel last spring. Now voters are the object of a funding duel, polls and politics, and heated campaign rhetoric. But those concerns, Escalante is quick to point out, are not part of his role as honorary chairman. “I give this thing just my name. I am not a politician,” he says.

Modesty aside, Escalante's name is a major part of the politics. The Escalante name was as carefully selected as the initiative's title, the progressive Santa Monica political consulting firm that gathered the required 433,269 signatures to qualify the measure, and other well-known campaigners helping Silicon Valley millionaire Ron Unz, who is the driving force—and continuing source of dollars—behind the English for the Children proposition.

Like every initiative since petition-driven initiatives first faced California voters in 1912, Prop. 227 has quirks and idiosyncrasies. But its journey to the June ballot began quite normally with the disgruntlement of a politically significant, critical mass of people. In this case, it was parents of children in

bilingual programs, and some teachers, who felt powerless to change the educational bureaucracy's commitment to a strategy they argue has proven ineffective, and even damaging, in its 20-plus years of life. But though disgruntled people rarely turn to the ballot to effect change, an odd melding of political allies, a private software fortune, legislative inaction, and the public's ongoing desire to overhaul public education collided to create a ballot measure process anyone studying the history of California initiatives would recognize.

Historians are likely to note that if Prop. 227 is successful, it will be the first time state voters have used the initiative process to reach directly into public schools to tell teachers how to teach. Many past initiatives have been aimed at school financing—but never at pedagogy.

IT IS PERHAPS NO SMALL irony that Jaime Escalante teaches at Hiram Johnson High School, which is named for the California governor (and later U.S. senator) whose powerful personality and role in the Progressive

Movement at the turn of the century created the California initiative process. A lawyer, sometime prosecutor, and rising star in the GOP, Johnson won the governorship in 1910. By 1911 he and a cooperative Legislature asked voters to approve the right of the public to recall elected officials, to repeal legislation through referendum, and for the right to propose and enact state laws through a direct vote—the initiative. Johnson sought to end the immense and corrupt political power of the Southern Pacific Railroad. And he wanted the people to reclaim power over government to make it more responsive. The recall, referendum, and initiative were approved, part of 22 state legislative constitutional amendments, including suffrage for women—nine years before the 19th Amendment went into effect.

In the early decades of initiatives, voters were active, dealing with governance, social issues, and sometimes less earth-shattering issues such as the 1949 vote to approve daylight savings time. During the 1950s and 1960s the initiative fell from use as a serious tool for changes in public policy, with voters facing only 13 measures, approving just 3. But in 1972 and 1974, upset with a lack of legislative action, voters approved three major measures in two successive elections: reinstatement of capital punishment, creation of the California Coastal Commission to protect the coastline, and the Political Reform Act of 1974. These three sweeping initiatives proved to be slow-pitch warm-ups for 1978's Proposition 13, which radically changed the state's public financing and sent a ripple of tax-cutting political action across the nation. Twenty years later most California public officials still choke on its name.

In the 1980s, initiatives began to eclipse the Legislature in addressing public issues, with 44 measures on the ballot during the decade, 21 of which voters approved. The 1990s brought term limits (Prop. 140), an end to affirmative action (Prop. 209), a court-thwarted attempt to deny public services to illegal immigrants (Prop. 187), and the three strikes law (Prop. 184). Backers of Prop. 227 are convinced that before the new millennium the initiative process will put an end to most bilingual education. And like Prop. 13, Prop. 209, and



Prop. 227 honorary chairman Jaime Escalante, right

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others, Prop. 227 may have implications in other parts of the nation where bilingual education is also being challenged.

BILINGUAL EDUCATION IS AN incredibly broad term frequently used in public discourse to describe any instruction that is done in two or more languages with students designated as LEP (limited English proficient). Its roots go back to a case originating in San Francisco in 1970. A class action lawsuit was filed on behalf of student Kinney Lau and nearly 2,000 other San Francisco Chinese students with poor—or nonexistent—English skills, who were unable to complete schoolwork. In 1974 the U.S. Supreme Court ruled that the Chinese-speaking children were entitled to special assistance. *Lau v Nichols* (1974) 414 US 563.

The ruling did not specifically mandate bilingual education, but in the wake of *Lau* and sudden attention by the federal Office of Civil Rights on just how states should deal with non-English-speaking children, California passed the Chacon-Moscone Bilingual-Bicultural Education Act of 1976, which made it clear to California school officials that they had a responsibility to students designated as LEP. The law also authorized funding and, most important, contained a clause to allow continued state support even if the act expired, provided the monies were spent for the same general purposes.

The California Department of Education now lists more than 1.3 million students as LEP, with slightly more than 1.1 million of those Spanish-speaking. The remaining 275,000 LEP students are listed as having primary language skills in Vietnamese, Hmong, Cantonese, Tagalog, and Cambodian—or dozens of other tongues.

Prop. 227's primary target is to end the widely used methodology requiring non-English-speaking children to be taught academic subjects such as geography or history solely in their native language while learning English gradually. The prevailing concept has been that students need to get grounded in academic subjects first and can learn English at a later time. But Prop. 227 proponents say this 20-year-old strategy (sometimes referred to as TBE, transitional bilingual education) hasn't

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Episcopal priest and activist Alice Callaghan

worked and, in fact, has let many thousands of students pass through the schools without learning to read and write in English at even a minimal level. They also complain that given the vast number of languages California students now bring into the classroom, it's impossible to find enough certified bilingual teachers who are proficient in the languages the students speak.

Prop. 227 requires that students designated as LEP be given a year of “sheltered” English language immersion to get them up to speed in English. Other academic subjects will be part of the student's day, but the instruction will be in English. Parents who want to stay with traditional bilingual style instruction (or an alternate style of instruction) may petition the school, and if a sufficient number of students apply and are granted a waiver by the school district, Prop. 227 requires that it be provided.

Although Prop. 227's critiques of bilingual education have been treated as hot news this political season, loud grumblings about bilingual education were evident even in 1987 when

then-Governor George Deukmejian vetoed two attempts to extend the Chacon-Moscone Act. In Los Angeles that year nearly 80 percent of 7,000 union teachers, voting in an advisory referendum, asked that bilingual education be curtailed. But the Los Angeles School Board instead perversely dumped an additional \$21 million into teacher training and recruitment to provide for more bilingual education, including a yearly \$5,000 salary bonus per teacher who holds a bilingual certificate. It was an action that greatly increased the growth and clout of bilingual education programs in Los Angeles schools, planting at least some of the seeds of political unrest in Southern California resulting in Prop. 227.

NINTH STREET ELEMENTARY is the neighborhood school in downtown Los Angeles for most of the youngsters who come to the Las Familias del Pueblo Children's Center weekday after-school programs. Episcopal priest Alice Callaghan has run the combination school, social agency, and free legal clinic since 1982 for the children and their Latino parents. Many of the parents work in the garment industry and speak little or no English.

When these parents complained about the inadequacy of bilingual programs at Ninth Street—and that their children were not learning much-needed English—Callaghan helped them talk, then argue publicly, with school officials. She became a figurehead in a school boycott that drew national television news coverage and the attention of the *Los Angeles Times*. “They know their children must learn English to get beyond where they are,” Callaghan says. “The school administrators

BOOSTED BY STRONG INITIAL PUBLIC SUPPORT FOR PROPOSITION 227, UNZ HAS SAID IF THE INITIATIVE PASSES, HE MAY HEAD TO WASHINGTON TO SEEK NATIONAL LEGISLATION.

didn't want to hear about it, until they were embarrassed on television."

Callaghan, who describes herself as "left of left," says she has tried for years to get legislators, educators, and people involved in the "bilingual bureaucracy" to listen to her experiences. "The system doesn't work, but nobody would even consider making any modification," she says.

Across several zip codes from Callaghan's center, in Santa Ana, Gloria Matta Tuchman was also steaming about obstinate bureaucracies. A first-grade teacher, perennially in hot water over her refusal to operate a bilingual classroom, Matta Tuchman says she became politically active in 1985, after she and her principal got into an academic spitting contest over her successful English immersion program. A Republican Latina, she has since served on the Tustin School Board and ran unsuccessfully for state superintendent of schools in 1994. "I've been at this for 13 years," she says. "And this is it. I can't go through the legislative process again to try to get this fixed."

The "this," of course, is bilingual education, which is why she agreed to cochair and coauthor Prop. 227, a political option Matta Tuchman never previously considered. Early in 1997 wealthy maverick Republican Ron Unz, whose interest had been piqued by the *Los Angeles Times's* reporting on Callaghan's boycott, contacted both Callaghan and Matta Tuchman. He met with the Ninth Street Elementary parents and later talked with Matta Tuchman about the concept of going directly to the voters with an initiative. No stranger to politics or initiatives, Unz ran unsuccessfully in the GOP gubernatorial primary against Pete Wilson in 1994, campaigning



Prop. 227's driving force, Ron Unz

against Prop. 187, then endorsing Prop. 209, actions that confound critics who want to label him anti-immigrant but have trouble making it stick.

"If Ron hadn't called me, met with the parents, the school ... there would be no chance of any change in California," Callaghan says. "The initiative process is not really open to everyone. Not everyone can afford to pay for signatures." (Signature gatherers normally get paid between 40 cents and one dollar per signature. Some get even more. In 1994 Philip Morris reportedly paid up to \$2 per signature to qualify a smoking initiative.) After talking with the parents and looking at Department of Education data, Unz says he went to bilingual education's biggest supporters, such as MALDEF (the Mexican American Legal Defense and Educational Fund) in Los Angeles and the National Council of La Raza in Washington, D.C. "None of them

would defend the current system," he says, barely able to contain his amazement. "We're talking about a program that's unpopular with nearly everyone, except the people putting it on."

His critics cried foul immediately, saying he was using public anger about bilingual education—based on confusion, bad data, and anecdotes—as a wedge to keep him in state politics, perhaps for another run for governor.

But motive aside, from January through March 1997 Unz began writing drafts of the initiative, informally asking several attorney acquaintances to review his work. After sending out drafts to 40 or so opinion leaders on the topic, including well-known proponents of bilingual education such as Charles Kamasaki of La Raza and Prof. Stephen Krashen at USC, and also educational researcher Harry Pachon of the Tomas Rivera Policy Institute, Unz took a near final draft to the Legislative Analyst's office to ensure it contained standard legislative language.

In March, near the end of the process, Unz says he paid for a thorough legal review by Manuel S. Klausner, an attorney who has extensive experience with initiative law. Initiative in hand, Unz then headed for Sacramento to begin the bureaucratic process and also to plan how to spend the approximately \$500,000 needed to obtain the necessary registered voter signatures to qualify for the June election.

"Basically this issue is on the ballot because one guy had a fat checkbook," says Jim Shultz, executive director of The Democracy Center, a nonprofit advocacy training group, and author of *The Initiative Cookbook*, a how-to volume that sits on the bookshelves of many politicians, political writers, and consultants in the state. "That part is not really typical at all. Initiatives usually come from interest groups or corporations with something they want done—or stopped."

Checkbook aside, Shultz says this campaign follows the basic recipe. "Politically, this is a classic initiative. And public rhetoric—not facts—has been driving the debate. That's my real quarrel with the initiative process today. These are serious matters of public policy. But voters make decisions in a minute or two in a voting booth based on sound bites."

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The Prop. 227 campaign gathered steam last fall, when Unz began publishing articles on the op-ed pages of newspapers and setting up a well-stocked Web site with background and articles on English for the Children. Boosted by strong initial public support, Unz has already said if the initiative passes, he may head to Washington to seek national legislation. But in February of this year Matta Tuchman announced her candidacy for state superintendent of schools, adding a political spin that Prop. 227 opponents hope voters might interpret as Unz and Matta Tuchman practicing politics as usual. Jaime Escalante signed on as Matta Tuchman's honorary chairman, too, further blurring the lines between Prop. 227 and Matta Tuchman's political aspirations.

The sound bites (and thousands of column inches of newsprint) assaulting voters this spring are the campaign phase of a process that began last year with Unz formally filing his draft petition with the attorney general's office, along with a basic \$200 filing fee. The proposed initiative was then sent from the AG's office to the Department of Finance, the Joint Legislative Budget Committee, and the Legislative Analyst's office to consider any financial ramifications that needed to be included in the attorney general's explanation given to potential petition signers. The attorney general's office then wrote the title and summary of the proposed initiative. The initiative went back to the secretary of state's office, which last July 3 sent out to county registrars and clerks the official dates and deadlines for the collection of signatures needed to qualify the measure for the June 1998 ballot.

While the initiative was wending its way through the state capitol process, Unz paid a visit to Progressive Campaigns, Inc. of Santa Monica. Progressive Campaigns had successfully qualified single-payer healthcare (Prop. 186), the minimum wage increase (Prop. 210), and medical marijuana (Prop. 215) in recent years, causes liberal enough, Unz believed, that using the firm would help negate anti-immigrant criticism.

Progressive Campaigns contacted signature-gathering firms (brokers in

some cases) to hire the people who lined the shopping malls and fast-food outlets to get the signatures during the 150-day statute-dictated period. Elec C §336.

Once the measure qualified, it fell to the nonpartisan Legislative Analyst's office to prepare a summary of the initiative for the ballot pamphlet and determine what Prop. 227 will cost or not cost. The Legislative Analyst's office went through a tortuous process to do an impartial analysis. "We're not the world's experts on this, or anything," says Buzz Breedlove, the staff analyst who examined the initiative. "We do the best impartial analysis we can."



*Prop. 227 cochair and coauthor
Gloria Matta Tuchman*

AS A FIRST GRADE TEACHER, GLORIA MATTA TUCHMAN BECAME POLITICALLY ACTIVE WHEN SHE AND HER PRINCIPAL GOT INTO AN ACADEMIC SPITTING CONTEST OVER MATTA TUCHMAN'S ENGLISH IMMERSION PROGRAM.

All through late January and February Breedlove and other staff members studied volumes of data provided by the Department of Education and asked both sides for their "best citations" about bilingual education's effectiveness. "Sometimes we bring in both

sides and have a debate here in the office," Breedlove says. But in this case he and the staff invited initiative opponents, including the California Teachers Association (CTA), MALDEF, the California Association for Bilingual Education, and the California School Boards Association, for a meeting—and then had a separate session with Unz. "Each meeting took about the same time, 2 hours and 15 minutes," he says. "And I have to say that at least on the analytical side, they both seemed to take the high road.

"On the face of it, with the state spending \$340 million on LEP programs, and LEP time reduced because the initiative says it must be, it would be fair to say that the cost of LEP would be reduced across the state," Breedlove says. "But if you are a teacher and your behavior changes, to the extent that these former LEP students now need remedial education, well, you need to consider how much of that \$340 million might go to that. It's very difficult to deduce those dollars and cents."

One conundrum routinely facing the Legislative Analyst's office is that its fiscal analysis is legally limited to how an initiative might affect state or local revenues or spending. "We can't begin to look at the fiscal impact on society, for example," says Legislative Analyst Elizabeth Hill. If an initiative means more or less public spending, that's easy, she notes. But more worrisome are indirect or unintended consequences.

In the initiative battle this spring, campaign dollars have been a major worry of Prop. 227's opponents, who are painfully aware of Unz's deep pockets. The CTA pledged \$650,000, and the California Association for Bilingual Education hoped to raise

\$3 million from its members. But another measure facing voters in June, Prop. 226, has been a much higher priority for CTA's funds. Prop. 226 would amend the Political Reform Act by requiring employers to obtain permission from employees before withholding pay or using union dues for political purposes.

"Our issue is strong enough that I don't think we have to spend tons to get the word out," says Sheri Annis, press secretary for the Unz campaign. But by mid-February Unz had spent nearly \$600,000 of his own money, with another \$300,000 contributed from other sources.

Polling organizations helped spread the word by using bilingual education as a regular question in polls done for news organizations. "We try to help the news media make its headlines," says Mark DiCamillo of the Field Institute. "We put our finger in the wind. The media report it."

An early poll by the *Los Angeles Times* showed the Unz initiative with an 80 percent approval at the outset, followed nearly two months later by a Field poll showing 69 percent approval. Opponents have been hammering at those lofty ratings since January.

Sacramento political consultant Richard Ross, hired by the anti-Prop. 227 organization, says he has been pitching his anti-227 message to Democrats over age 50—swing voters likely to be swayed by argument. "They're like a jury. They don't have kids in the system so they can make a more dispassionate judgment."

While Ross hammers, the Unz campaign is following conventional wisdom: Start with a big lead and hang on. "You have to have 55 to 60 percent of the voters at the very beginning of the campaign saying they will stick with your initiative no matter what the other side says or does," says *Initiative Cookbook* author Shultz. "You only seem to lose support once it hits the full public debate."

How the Unz initiative will fare with voters will be decided June 2, but the last word will quite likely be—surprisingly—in court. "It's way too important an issue not to draw a heavy legal response," says Charles Price, a political science professor at California

State University at Chico, who has published extensively on challenges to initiatives. "I'm sure opponents will try to sever pieces of it if it's approved."

Price says in the past decade three out of four initiatives have ended up in court—some modified, some struck down—which is why all well-crafted measures contain a severability clause. If one portion is declared unconstitutional, the rest can remain in place.

Even by late February, opponents were already openly theorizing that Prop. 227 conflicts with federal civil rights statutes and were suggesting *Lau v Nichols* as the basis for a federal court challenge. At the state level first-term Assemblyman Mike Honda (D-San Jose) was redrafting a constitutional amendment (ACA 7) he hopes to present to voters in November that would overturn Prop. 227 by creating a "School Board Bill of Rights" to ensure local school control over methods of classroom teaching. Honda originally tried to get his measure on the June ballot, to offer voters an alternative to Prop. 227, but he ran into wording problems that derailed his efforts to make the deadline.

"We know there are problems with bilingual education," says Keith Honda, the assemblyman's chief of staff. "But we want individual school districts to solve them."

In March the state Board of Education helped muddy the waters by giving local school districts the option to teach students exclusively in English, effectively eliminating the statewide bilingual education mandate. It's unclear how this new policy, and the voter confusion it creates, will affect the outcome of Prop. 227.

But even as rhetoric heated up all spring and opponents of Prop. 227 worked on contingency plans to block implementation of the initiative if it's approved, Ron Unz is already looking well past English for the Children to other horizons. "That bilingual education needed addressing, there's no question," Unz says. "There's a lot of good government out there, and I actually have a bias against using the initiative process. It's a blunt instrument. But bilingual education needed to be fixed. And I think I'm going to go out and fix a lot of other things." □