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San Antonio V. Rodriguez & the Next Twenty Years of State Court Cases

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LOYOLA UNIVERSITY CHICAGO

SAN ANTONIO V. RODRIGUEZ
& THE NEXT TWENTY YEARS OF STATE COURT CASES

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE GRADUATE SCHOOL
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATIONAL LEADERSHIP AND POLICY STUDIES

BY
MARY J. LONG

CHICAGO, ILLINOIS
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DEDICATION

To my grandmothers, Margaret A. Long and Mary J. Darley, learners and teachers, both; and to my parents, Philip J. Long D.D.S. and Patricia D. Long, without whom this would not have been possible

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CHAPTER I
BEFORE CONSIDERING RODRIGUEZ

Historical Synopsis of the Relationship - Education, Finance and the Courts 1973-93

In the early spring of 1973, educators looked hopefully towards the United States Supreme Court for guidance in resolving school finance issues.¹ After all, nearly twenty years earlier, the Court had taken leadership roles, in both education and equal rights, when it declared in Brown v. Board of Education² that "separate, but equal"³ education was unconstitutional.⁴ On March 23, 1973 the Supreme Court's leadership, for all effective purposes, came to a screeching halt with the Rodriguez decision. In Rodriguez, the Court held that education was not a fundamental right under the federal Constitution. Furthermore, the Court ruled that states could continue to determine their own methods for raising funds for schools, even if it meant using local property taxes as a major source of revenue.

At first, the decision was interpreted as "a crushing blow to a movement that was trying to achieve education reform through judicial action."⁵ Advocates of school finance reform feared this setback might stop the entire movement and they did so with good

¹ Linda Mathews, "Rodriguez and Friends," Race Relations Reporter (July 1973): 15.

² Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.

³ Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

⁴ Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

⁵ Linda Mathews, "Rodriguez and Friends," Race Relations Reporter (July 1973): 15.

federal equal protection.⁶ With the Rodriguez decision, legal experts predicted that all of those cases would be dismissed.⁷ Within a few months, however, Rodriguez was no longer seen as the end of school finance litigation.⁸ And rightly so, for it was just the beginning.

Reformers soon saw a new route to their goal. If the federal Constitution would neither recognize education as a fundamental right nor ensure more equalized funding for education, then perhaps the state courts would. The Supreme Court's holding in Rodriguez had left these options open to the states. Two avenues soon emerged as potential routes of education reform. The first focused on bringing challenges under the equal-protection-like guarantees of the various state constitutions. The second emphasized state constitutional language. With this second type of challenge, plaintiffs scrutinized a particular state's commitment to education, as it was outlined in the state constitution. Plaintiffs then argued that the state was not fulfilling its constitutionally outlined commitment to provide educational services to all the residents of the state.⁹

After Rodriguez, in response to either actual or anticipated suits, states began to pass laws aimed at reducing funding discrepancies among districts.¹⁰ Nonetheless, in most states, the differences between rich and poor districts continued to grow. Districts became increasingly segregated by race and economic class. When state courts declared financing systems unconstitutional and ordered remedies, state legislatures, more often than not, failed to act appropriately. Essentially, the post-Rodriguez years were years of chaos,

6 Ibid.

7 Ibid.

8 Ibid.

9 Jonathan Banks, "State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?" 45 Vanderbilt Law Review 159 (1991).

10 Arthur E. Wise and Tamar Gendler, "Rich Schools, Poor Schools: The Persistence of Unequal Education," The College Board Review, 151 (Spring 1989): 15.

mismanagement, ineffective communication (between legislatures, courts, educators and the public), growing disparities, and increasing inequalities. States struggled to find the ways and means to finance education, but more often than not their struggles produced ineffectual results.¹¹

As the 1980s progressed into the 1990s, education policy makers became increasingly frustrated with the lack of tangible results produced in courts; however, they did not entirely abandon the legal system as the arena in which to resolve school finance issues. Rather, reformers turned away from traditional legal goals, such as equality, to more education/finance-centered ideas, such as equity. When equity proved difficult to define, reformers began to focus on adequacy. Put another way, the post-Rodriguez years witnessed a transition from an initial focus on inputs, which were largely financial and based in notions of equality, to outputs which were largely goal oriented and based in notions of adequacy.

The Importance of Effective Communication

As evidenced by the changing language in reformers' arguments, part of the problem with attempting to solve educational problems in a legal setting stems from the use of two different terminologies. For example, most education professionals believe that education is both important and necessary. To these educators, something that is important and necessary is fundamental.¹² In legal terms, "fundamental" is an entirely different matter. The concept of a "fundamental right" or "fundamental interest" under the United States Constitution has a very specific legal meaning, and according to the majority of the Supreme Court, education does not fall under that very specific legal meaning. Education also uses "terms of art," such as "local control" or "equal educational

11 Ibid.

12 See Harley Rabbinowitz, "Due Process Rights for Private School Students: Philosophical, Legal and Educational Bases, (Ph.D. diss., Loyola University Chicago, 1994): 162.

opportunity," which have a particular meaning to those in the education community. Attorneys and judges may have some idea about these terms, but case law demonstrates that although they might define these terms similarly, they think about them differently.

Early on in the education finance cases, it was almost as though educators spoke one "language" and courts spoke another. Educators would present their arguments in "eduspeak" and courts would hand down their decisions in "legalese." As time passed, and more and more cases were filed, each group became increasingly familiar with the other's "language," but it still was not their "native tongue." The communication problem was even more compounded because the issues to be resolved dealt with finance, which had its own "language," as well. Thus, in order to understand the history of the period, one may need not only a road map, but also a translator, for understanding the aspects of legal, educational, and financial language that were commonly used is essential to understanding this period in history.

Thus, although this is a financial history work, much of this dissertation focuses on language and communication. This first chapter paves the way for later chapters by defining terms (from law, education and finance) that are used throughout the dissertation. It then discusses how school finance matters came to be addressed in court, in the first place. The second chapter discusses the facts and ruling in the Rodriguez case. The third chapter highlights some outside aspects that may have influenced the decision, even though they were not directly mentioned in the case. outlines in brief the major state-court school finance cases that followed Rodriguez. The fourth chapter analyzes the post-Rodriguez state court decisions, through description, comparison and contrast, emphasizing what the cases meant for the country as a whole. Finally, the fifth chapter draws conclusions about this period in history and offers suggestions to reformers who would like to see changes in school finance.

Legal Preliminaries

The Constitution of the United States

Fundamental Rights and the Bill of Rights.

Education is not mentioned in the United States Constitution.¹³ It is not now, nor was it from 1973 to 1993, in legal terms, a "fundamental right" under the federal Constitution.¹⁴ Fundamental rights are those rights that are granted implicitly or explicitly in the United States Constitution and its amendments.¹⁵ This means that a fundamental right is either written about in the text of the Constitution, like the right to vote, or it is implied from other language, such as the right to privacy. As a practical matter, fundamental rights include most of the guarantees of the Bill of Rights, which are the first ten amendments to the Constitution.¹⁶

The Fourteenth Amendment and Equal Protection.

The United States Constitution was crafted to ensure the preservation of individual rights. Together with the Bill of Rights, the Constitution limits the powers of government and guarantees fundamental liberties for Americans.¹⁷ Initially, the Bill of Rights was applicable only to the federal government, not to individual state governments. Thus, in the early years of United States history, the powers of a state government were limited by respective bills of rights within the context of its own state constitution, rather than by the federal Bill of Rights. This process made states the final authority when interpreting their

¹³ Although there is evidence that education was important to the framers of the Constitution, nonetheless they apparently chose not to include it.

¹⁴ It is not a fundamental right under most state constitutions (even though states had the option of making it so, after Rodriguez.)

¹⁵ *San Antonio v. Rodriguez*, 411 US. 1, 36 L.Ed 2d 16, 93 S.Ct 1278 (1973).

¹⁶ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 390.

¹⁷ For example, among other rights, the Bill of Rights recognizes the rights to free speech, a speedy trial, and freedom of religion, while it prohibits such governmental actions as unreasonable searches and seizures and excessive bail.

own constitutions, as long as no federal law was involved. With the adoption of the fourteenth amendment in 1868, however, federal constitutional controls were extended to state governments as well.¹⁸

For the purposes of this dissertation, the fourteenth amendment is important not only because it extends the Bill of Rights to actions against state governments, but also because it contains a phrase that has come to be known as the equal protection clause. The fourteenth amendment provides, in part, that "No state shall ... deny to any person within its jurisdiction the equal protection of the laws."¹⁹ The equal protection clause has come to be an important guarantor of rights in many areas. In fact, "[i]n recent years the equal protection guarantee has become the single most important concept in the United States Constitution for the protection of individual rights."²⁰

The equal protection clause provides two guarantees. First, it promises that all individuals will be treated fairly when they are exercising their fundamental rights.²¹ (Again, education is not a fundamental right.) Secondly, it assures that the government²² will treat similarly situated individuals in a similar matter.²³

Even with the equal protection clause, however, the government is not required to treat everyone equally. As shocking and un-American as it may sound, local, state, and

¹⁸ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 595.

¹⁹ Constitution of the United States of America, Amendment XIV, Section 1.

²⁰ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 595.

²¹ Ibid.

²² The concept of "equal protection" under the fourteenth amendment applies to state and local governments only. Federal laws are tested under the same "equal protection" standards but through the implied guarantee of the fifth amendment. See John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed., (St. Paul, Minnesota: West Publishing Co., 1995), 596.

²³ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 597.

federal government bodies are entitled to discriminate among people; i.e., while it may seem odd to the non-lawyer, discrimination in and of itself is not illegal. For example, a state may decide that only people with certain qualifications can drive a truck, practice medicine, or teach elementary school.²⁴ The equal protection clause ensures, however, that this ability to discriminate may not be used arbitrarily.²⁵

Tests for constitutionality under the equal protection clause. With the passage of time, as challenges to the equal protection clause were filed, the Supreme Court evolved a series of tests to determine whether the equal protection clause had been violated.²⁶ From 1973 to 1993, the Supreme Court used three tests to determine whether or not a law was in violation of the equal protection clause.²⁷ Although the law changes constantly, currently all of these three tests are still in use.

- The Rational Relationship Test

The first test used during this period is known as the rational relationship test. The rational relationship test requires only that the government's reason for classifying or discriminating against an individual bears a rational relationship to a legitimate government interest.²⁸ As long as it is arguable that there is a rational relationship to such an interest, a

²⁴ Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 22.

²⁵ John E Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed., (St. Paul, Minnesota: West Publishing Co., 1995), 597.

²⁶ Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 22.

²⁷ Many sources, including several of the articles and notes cited here, list only two tests for equal protection, the rational relationship test and the strict scrutiny test. Although all school finance cases brought under equal protection clauses have been resolved with one of these two tests, there are, in fact, three tests for determining whether a law violates equal protection.

²⁸ See Pennell v. City of San Jose, 485 U.S. 1, 108 S. Ct. 849, 99 L.Ed.2d 1 (1988).

court should not interfere with the classification;²⁹ i.e., the court should not declare the law unconstitutional.

- The Strict Scrutiny Test

The second test is known as the strict scrutiny test. This test is far more rigorous than the rational relationship test. With the strict scrutiny test, the government must show that it is discriminating (or classifying) because it has a compelling interest or that it is pursuing an overriding end. In addition, the relationship between the government's classification and its interest must be close.

When a claim is brought under the auspices of the equal protection clause, the court will review the claim if it falls into one of two categories. The first category consists of people who are attempting to exercise their fundamental rights.³⁰ The second category consists of people who are members of a "suspect class." A member of a suspect class is one who (1) is "saddled with such disabilities"; or 2) has been subject to "a history of purposeful unequal treatment"; or who 3) has been "relegated to a position of political powerlessness as to command extraordinary protection from the majoritarian political process."³¹

- The Intermediate Scrutiny Test

Just as its name suggests, the constitutional standards for the intermediate scrutiny test, fall in between those of the rational relationship test and the strict scrutiny test. The intermediate scrutiny test was not used to determine the outcome of school finance challenges under the federal equal protection clause during the 1973-93 period. Consequently, it will not be emphasized in this dissertation. Nonetheless, it is important to note that the option of the intermediate scrutiny test became available to courts during this

²⁹ John E. Nowak and Ronald D. Rotunda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 597.

³⁰ Ibid.

³¹ San Antonio v. Rodriguez, 411 US 1, 36 L Ed 2d 16, 40.

period.³² Furthermore, the courts' failure to use the intermediate scrutiny test during this period does not necessarily prohibit the use of this test in future education finance cases.

³² Intermediate scrutiny developed after the 1973 Rodriguez decision. See Craig v. Boren 429 U.S. 190 (1976).

Purpose of U.S. Courts

United States courts perform two functions. First, they settle disputes between parties. This is their most common function and involves selecting and applying the proper law to a particular set of facts. Such disputes may be criminal or civil. For example, a dispute may occur between two individuals, two companies, or, as in the case of a criminal violation, the people of a governmental body (such as a state) and the alleged offender. The second function of courts is to hear arguments for or against the very constitutionality of a law or its application. For example, the plaintiff (the person or entity bringing the charges) may argue either (1) that a particular law should never have been passed in the first place because it conflicts with the rights guaranteed under the Constitution or (2) that the law itself may be constitutional, but the way in which the law has been applied to a particular set of facts is not. In both types of cases, a court may decide whether a law is in violation of the state or federal constitution.³³

Judicial Considerations

Judicial Review

Judicial review is the supervisory power of United States Courts to declare national and state legislation unconstitutional. It is perhaps the United States' greatest contribution to the science and art of government.³⁴ In his book The Constitution and American Education, Arvel A. Morris discusses at least three functions of judicial review, each of which he claims is vital to the success of the American government. First, he asserts that although the Supreme Court has only the power to say that a law is unconstitutional, and not to change the law directly, the mere declaration of unconstitutionality carries a great deal of weight with the public. Likewise, with a declaration of constitutionality, citizens often view the Court's opinion as a "stamp of legitimacy" upon a law or practice. Secondly,

³³ Arvel A. Morris, The Constitution and American Education (St. Paul, Minnesota: West Publishing Co., 1980), 29.

³⁴ Ibid.

Morris notes that judicial review is an essential component in the triangular system of checks and balances. With the power of judicial review, courts limit the power of the executive and legislative branches by ensuring that these branches do not act with authority beyond that which is granted to them in the Constitution. Finally, Morris claims that "by fearlessly upholding a humane interpretation of our Constitution, the Supreme Court preserves, and requires the other branches of government to observe our great constitutional ideal of human dignity which otherwise might be forgotten."³⁵

Judicial Activism

Indeed, it is the duty of the judicial branch of the government to uphold the Constitution and the laws of the United States; however, it is not the duty of this branch to rewrite the law. At times, courts have been known to push their powers to the limit by engaging in judicial activism. Judicial activism is "marked by decisions calling for social engineering and occasionally these decisions represent intrusions into legislative and executive matters."³⁶

Judicial Restraint

When a court believes that it may be on the verge of encroaching upon the duty of another branch of government, it should choose to exercise judicial restraint. Judicial restraint simply means that the court will not perform the duties of the legislative and executive branches of government. It will not create the law and it will not enforce the law; it will only interpret the law.³⁷ Some would argue that just as with judicial activism, judicial restraint can be abused. This could happen when courts refuse to become involved in matters where its guidance could be helpful, such as in education finance matters.

³⁵ Ibid. at 80.

³⁶ Black's Law Dictionary, 5th ed., 1979, (St. Paul, Minnesota: West Publishing Co.,) 11th reprint 1987, 760.

³⁷ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 597.

Education Terminology

Introduction

Educators like the judiciary, also seek to preserve the idea of human dignity, but most frequently, they do so in the classroom rather than the courtroom. Not surprisingly, educators use different terminology as well. Many of the terms used by educators have crossed over into the language of legal briefs and judicial opinions. In fact, some of the educational terminology was created in anticipation of litigation. Nonetheless, in order to fully understand the background of the legal arguments that employ these terms, it is important to remember that these words and phrases have meaning to professionals outside the courtroom.

Local Control

Local control is one such phrase. The term is, in some sense, self-explanatory, meaning that issues are to be resolved within the borders of an immediate geographic area, rather than at any larger level. For example, a particular issue may be decided at a county level, rather than at a state level, or to go even further, the issue may then be further localized as to how it affects a particular city, a community, or even a neighborhood within that community. The concept of local control is not exclusive to education; however, historically, education and local control have had a very long relationship in the United States. Perhaps as a consequence, local control issues are especially sensitive in education.³⁸

Schools were first established in the United States on a local basis;³⁹ thus, it was somewhat natural for them to be controlled at the local level. For schools, the idea of local control involves more than just financial matters; it involves the entire concept of

³⁸ Rochelle Sharpe, "Federal Education Law Becomes Hot Target of Wary Conservatives," Wall Street Journal, 30 August 1995, p. 1(A).

³⁹ Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1988), 162.

formal education. Curriculum, library book selection, teacher retention, and school policies (from student dress to student drinking) are all subject to the influence of local control. Historically, these elements of education, along with many others, have been controlled by local school boards,⁴⁰ which are comprised of community members.

In a note in the 1991 Vanderbilt Law Review, entitled "State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?" the author argues against the "rhetoric of local control,"⁴¹ but in doing so, points out some of the legitimate arguments for the preservation of local control. For example, parents who pour time, energy, and money into their local community school have a strong interest in that school. "[P]arents have an intimate and powerful interest in what and in how their children are taught, and even a possibility of reduced control raises concerns."⁴² Likewise, the community also has a strong interest in maintaining local control. "Preserving local fiscal autonomy against state domination is akin to protection of individual control over one's person and over the use of one's private property against government constraint."⁴³ Furthermore, different communities have different concerns, standards of living, and behavioral codes. Community-based concepts such as these naturally overlap into the microcosm of the local school.

Equal Educational Opportunity

Equal educational opportunity is "the basic principle that wealth should not determine the quality of public education."⁴⁴ Much of the credit for developing the

⁴⁰ Rochelle Sharpe, "Federal Education Law Becomes Hot Target of Wary Conservatives," Wall Street Journal, 30 August 1995, p. 1(A).

⁴¹ Jonathan Banks, "State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?" 45 Vanderbilt Law Review 159 (1991)

⁴² Ibid. at 160.

⁴³ Ibid. at 129.

⁴⁴ John Coons, Stephan D. Sugarman and William H. Clune III. Private Wealth and Public Education, (Cambridge, Massachusetts: Harvard University Press, 1970) 33.

concept of equal educational opportunity has been given to a former Northwestern University Law Professor, John Coons, and two former law students, William Clune and Stephen Sugarman. In their book, Private Wealth and Public Education,⁴⁵ the authors cite a 1966 government report, "Equality of Educational Opportunity," as the source of the concept,⁴⁶ but the history of education finance indicates that reformers worked toward equalizing educational opportunity at least as far back as the early twentieth century.⁴⁷

Education Finance

History

In effect, the United States does not have a history of school finance. Rather, it has at least fifty individual histories.⁴⁸ "[I]t is fifty separate stories of controversy, fumbling, false starts, long periods of inaction, and application of various forms of informal local and state action."⁴⁹ Although schools were organized in the United States in the early colonial period, free public education was "an idea created in the United States during the nineteenth century."⁵⁰ There were early education laws in the colonies--

45 Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 25.

46 J. Coleman, et. al. U.S. Department of Health, Education and Welfare, 1966. (This report is also known as the Coleman Report.)

47 Andrew Reschovsky, "Fiscal Equalization and School Finance," National Tax Journal Vol. 47 No. 1: 185.

48 This work does not examine school finance cases in the District of Columbia because the District of Columbia is not a state. Like the fifty states, however, the District of Columbia has problems with its own educational finance system. For a more detailed description of some of these problems, see Jonathan Kozol's Savage Inequalities.

49 Burrup, Percy E., Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, 1988), 159.

50 Percy E., Burrup Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, 1988), 8.

for example, the General Court of Massachusetts passed the Old Deluder Satan Act in 1647 (which required every town with fifty or more families to appoint a teacher and towns with more than one hundred families to establish a secondary school), but education was overwhelmingly considered a private matter, best left to parents, private teachers, and the religious.⁵¹

Education in the United States was not always funded by a combination of local, state, and federal taxes, as it is now and was from 1973 to 1993.

The typical citizen tends to think of the state school systems as having existed as they are now, from the beginning of the nation, but our patterns of education, including our financial formulas and schemes, are the products of more than two centuries of development under a grassroots process of building--a process that was often erratic.⁵²

Furthermore, local property taxes did not become the primary source of revenue for public schools until the late nineteenth century.⁵³

Today local, state and federal lawmaking bodies are responsible, albeit to varying degrees, for funding education.⁵⁴ The level of financial commitment for each of these bodies has varied. For example, expenditures for elementary and secondary education comprise the single largest item in local government budgets.⁵⁵ In contrast, while federal aid for education is older than the Constitution itself,⁵⁶ within the past one hundred years,

51 Ibid. at 159.

52 Ibid.

53 Andrew Reschovsky, "Fiscal Equalization and School Finance," National Tax Journal Vol. 47 No. 1: 185.

54 Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1988), 13.

55 Bernal L. Green and Mary Jo Schneider. "Threats to Funding for Rural Schools." Journal of Education Finance 15 (Winter 1990): 303.

56 Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change (Boston: Allyn and Bacon, Inc., 1988), 191.

the federal commitment to education has never exceeded 10 percent,⁵⁷ i.e. state and local governments have combined for 90 percent of education's funding.

Despite the importance of this weighty obligation, governmental bodies often use unscientific and ambiguous procedures to determine the amount of money to be budgeted for education.⁵⁸ In part, they do so because in public sector institutions, such as education, there are no widely accepted methods for determining economic needs. In such a situation, when objectives may be vague or indeterminate governmental bodies are likely to look at several factors as substitute guidelines. Influential factors may include: (1) the organizations objectives and needs; (2) the potential contribution and influence of the institution; and (3) the political advantage of supporting the organization.⁵⁹ Education suffers in such evaluations because it is often unable to demonstrate effectively that increased financial input produces effective results.

Terminology

Inputs and Outputs

Economically speaking, a greater input should yield a greater output, but with education, inputs and outputs are somewhat difficult to define and extremely difficult to measure. Which inputs matter more, dollars or parental influence? What are the outputs that schools hope to produce? Better workers? Happier individuals? Model citizens? These questions are based, on the surface, on economic theories, but they cut to the quick of ideas centered in educational philosophy. Part of the problem here lies with education

⁵⁷ Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 6.

⁵⁸ Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1988), 13. citing Robert J. Garvue, Modern Public School Finance (London: Macmillan, 1969), 67.

⁵⁹ Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change (Boston: Allyn and Bacon, Inc., 1988), 13.

itself. As the cases cited in this work demonstrate over the past twenty years education scholars have continued to debate the definitions (of both educational input and output.)

Equality and Equity

Equality means treating everyone the same. In education this might translate as handing everyone the same \$25.00 geography textbook. While such an action may seem just, it does not consider all of the students in the classroom. For example, a blind student's textbook may cost \$50.00. A version translated into Spanish may cost \$30.00. Some students may require supplemental materials to learn the same lessons that are presented in the geography textbook. "Public education systems are designed to produce equity (fairness) in the treatment of their students, but they do not, cannot, and should not aspire to produce complete equality."⁶⁰

Types of Equity. Equity itself has several considerations. First, there are at least two types of equity--horizontal equity and vertical equity. Horizontal equity "provides that students who are alike should be treated equally."⁶¹ Vertical equity "specifically recognizes differences among children and addresses the education imperative that some students deserve or need more services than others."⁶² Equity and equality are sometimes used interchangeably,⁶³ but they are, in fact, distinct terms and are not used interchangeably in this dissertation.

Equity Considerations. Equity is also subject to the who? what? where? and when? questions. Who is to receive equitable treatment? Students? Parents? Taxpayers? Educators? What is the equity object? When should equitable treatment be employed? Always? Sometimes? Can criteria be established to set standards for use of

⁶⁰ Ibid.

⁶¹ Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 60.

⁶² Ibid. at 61.

⁶³ Percy E. Burrup, Vern Brimley, Jr., and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, Inc., 1988), 13.

the equity principle? All of these are important considerations when applying the concept of equity to any problem involving school finance.

Fiscal Neutrality

The concept of fiscal neutrality means that local school district wealth cannot be related to per student expenditures. It was developed by Coons, Clune, and Sugarman in an attempt to provide the court system with some judicially definable standard with which to compare school finance systems.⁶⁴ Formally defined, it "is a negative standard, stating that current operating expenditures per pupil, or some resource, cannot be related to a school district's adjusted assessed valuation per pupil or some fiscal capacity measure."⁶⁵ From 1973 to 1993 states adopted education policies that were "fiscally neutral," at least in terms of surface language. Today, every state acknowledges fiscal neutrality as the goal of its financing system.⁶⁶ As the post-Rodriguez cases will demonstrate, however, few, if any, states have truly reached fiscal neutrality.

How Rodriguez Came Before the Court

Or Why Is School Finance Being Resolved in a Legal Setting Anyway?

As the previous examination of terminology has already noted, education is not mentioned in the United States Constitution; it is not a fundamental right. Historically, local control has dominated community education. How, then, did the issues of school finance litigation come before any court, much less the United States Supreme Court?

⁶⁴ Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 25.

⁶⁵ Ibid. at 332.

⁶⁶ Andrew Reschovsky, "Fiscal Equalization and School Finance," National Tax Journal Vol. 47 No. 1: 187.

The Brown Case & Subsequent Years of Judicial Activism

In Brown v. Board of Education,⁶⁷ the United States Supreme Court fully reviewed the validity of the "separate, but equal" doctrine that it had established in the 1896 Plessy v. Ferguson⁶⁸ decision. The Plessy decision had held that states could pass laws that would segregate people according to their race, as long as the laws were "reasonable, good faith attempts to promote the public good and [were] not designed to oppress a particular class."⁶⁹ On May 6, 1954, in a unanimous decision, the Supreme Court held that "separate" was "inherently unequal" and thus the process of desegregation began.

The road from Plessy to Brown was not an easy one. More than fifty years were spent inching toward the elimination of the "separate, but equal" doctrine. NAACP attorneys planned a course to wipe out segregation and they followed it step by step. They reasoned that a direct and immediate challenge to the entire doctrine would probably be swept aside. Thus, their moves were gradual. They began with challenges to the "equal" half of "separate, but equal." NAACP attorneys did not argue that "separate, but equal" was unconstitutional: rather, they urged that segregated facilities were not living up to the standards set in Plessy, e.g., the facilities were in fact separate, but they were certainly not equal.⁷⁰

Familiarity with the Brown case is especially important for understanding the Rodriguez decision, for several reasons. First, the Brown case demonstrates that the path toward changing the law is usually slow and arduous. Laws are not changed through

⁶⁷ Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

⁶⁸ Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

⁶⁹ John E. Nowak and Ronald D. Rotonda, Constitutional Law, Hornbook Series, 5th ed. (St. Paul, Minnesota: West Publishing Co., 1995), 649.

⁷⁰ For an in-depth history of the challenge to the "separate, but equal" doctrine, see Equal Justice, by Richard Kluger.

spontaneous generation. Instead, lawyers generally develop well-thought-out and well-planned strategies for meeting their goals. Secondly, Brown is important because it is part of a period of judicial activism and expansion of human rights under equal protection that school finance reformers hoped to capitalize upon in Rodriguez. School finance reformers believed that if the Supreme Court were willing to end segregation of the races, perhaps it would be willing to bridge the gap between the wealthy and the poor. Reformers reasoned that if race could qualify as a suspect class, subject to strict judicial scrutiny, perhaps wealth could qualify as well. Finally, Brown is important to Rodriguez because the facts of the Brown case developed in schools.

The strategists who dismantled segregation chose education as the field in which to wage their battle. In the Plessy case, the plaintiff, who alleged that he was seven-eighths white, attempted to sit in a train section that had been reserved for whites. NAACP attorneys could have challenged segregation under other forms of transportation in the United States. Perhaps it would have been more logical to do so, but the path to desegregation was laid in the field of education.

Thus, American schools, in all their non-constitutional glory were brought before the Supreme Court of the United States, and while some legal cynics might say that schools were merely the vehicle to bring the issues of segregation and equal protection before the Court, the Supreme Court itself recognized the importance of education in its decision. Most educators are familiar with Chief Justice Warren's words:

Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁷¹

With language such as this, expounded by the Chief Justice, school finance reformers had reason to think optimistically. When the man who had argued for the plaintiffs in the Brown case, Thurgood Marshall, became a member of the Supreme Court, the plaintiffs in the Rodriguez case had reason to think they could win.

CHAPTER II
THE RODRIGUEZ CASE

Introduction

In 1968, Demetrio Rodriguez, a thirty-two-year-old sheet metal worker, father of four, and veteran of two wars, joined seven other parents and fifteen students in a lawsuit¹ that would eventually come before the United States Supreme Court as San Antonio v. Rodriguez.² At the time of the initial suit, Rodriguez's children were enrolled in school in the poor, mostly Hispanic Edgewood Independent School District in San Antonio, Texas.³ His children attended classes at Edgewood Elementary, a building condemned by the city of San Antonio.⁴ Rodriguez, who "vowed that his seven-year old son Alex would never again go to a school that was unsafe,"⁵ was the first to sign the complaint; thus, his name appeared first on the lawsuit.⁶

Rodriguez and the other plaintiffs filed their suit hoping to restructure the school finance system in Texas, not so that more money would be spent, but so that money would

¹ Renee Haines, "Now His Grandchildren Will Suffer Too." UPI, 26 September 1990, Wednesday, BC cycle.

² San Antonio Sch. Dist. v. Rodriguez, 411 US. 1, 36 L.Ed 2d 16, 93 S.Ct 1278

³ Renee Haines, "Now His Grandchildren Will Suffer Too." UPI, 26 September 1990, Wednesday, BC cycle.

⁴ LEXIS transcript, "Texas Struggles to Find Equitable School Finance Plan," All Things Considered, 27 May 1993, on National Public Radio.

⁵ Ibid.

⁶ Renee Haines, "Now His Grandchildren Will Suffer Too." UPI, 26 September 1990, Wednesday, BC cycle.

be spent more equitably.⁷ At the time of the suit, education in Texas, like almost every other state, was funded through a combination of federal, state, and local taxes.⁸ The resulting system of school financing was called "chaotic and unjust,"⁹ even by those who eventually upheld its constitutionality.

The History of School Financing in Texas

The Early History

Historically, education in Texas was funded through local taxes that were supplemented through state assistance and, to a small degree, by federal moneys. The state of Texas provided for a system of free schools in its first constitution when it was admitted to the Union in 1845. In 1883, the Texas constitution was amended to create local school districts and to recognize the use of ad valorem¹⁰ property taxes for the building and maintenance of a free school system. From that time, in the late nineteenth century, until the late 1940s, local funds were supplemented by two state sources: the State's Permanent School Fund and the State's Available School Fund.

The State's Permanent School Fund

The State's Permanent School Fund was established in 1854 with money generated from the sale of lands in Texas. It was established so that there might always be money for education in Texas. Although the Permanent School Fund still existed at the time the original Rodriguez suit was filed, it did not play as important a role in the analysis of the funding situation as did the State's Available School Fund.

7 Ibid.

8 411 US 1, 36 LEd 2d 16, 59.

9 Ibid.

10 An ad valorem tax is a tax on the property made according to its value. See Black's Law Dictionary.

The State's Available School Fund

The State's Available School Fund received income from the State Permanent School Fund as well as ad valorem property taxes and other assessments.¹¹ Consequently, the amount of money in the State's Available School Fund would vary from year to year. By the time the Rodriguez case was brought before the Supreme Court, the Available School Fund was a technical source of support for public schools, but it had been virtually replaced by the Minimum Foundation Program.¹²

Increasing Disparities

In spite of these state-supported funds, this system of funding education (through local taxes with supplementary money provided by the state) produced ever increasing spending disparities among school districts. In the twentieth century, as the state became more industrialized, wealth became more localized. The population of Texas was no longer spread evenly across the land and property wealth began to cluster in certain areas. The increased property value of some areas naturally meant that the residents of those areas were able to make greater provisions for their schools because the schools were funded locally.

Reform Attempts in the 1940s

By the 1940s, local funding disparities had grown to such proportions and had such a noticeable effect on the quality of district schools that the state legislature "undertook a thorough evaluation of public education with an eye toward major reform."¹³ In 1947, the state of Texas appointed an eighteen-member committee of legislators and educators to investigate school finance systems in other states and to devise a plan that would ease

11 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 27-28.

12 See Marshall's dissent in San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16.

13 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 29.

disparities in local spending in Texas' school districts. By 1949, the eventual result of their work went into effect as the Texas Minimum Foundation School Program.¹⁴

The Minimum Foundation School Program

Money generated by the Minimum Foundation School Program was designated for three specific costs--namely, teachers' salaries, operating expenses and transportation costs. Any expenses falling outside of these three categories would have to be funded from other sources. Revenues for the Program were derived from both the state and local level. The state provided approximately 80 percent of the Program's funding, while the local districts, working as a single unit, provided the other 20 percent.¹⁵ The 20 percent provided by the local districts was known as the Local Fund Assignment.¹⁶ Each district contributed local property taxes to the Local Fund Assignment via a complicated formula that was designed so that a larger share of the costs would be assumed by districts with high property value. Although all the earlier funding devices remained in effect, by the time the Rodriguez case reached the Supreme Court in 1973, the Program accounted for close to half the total educational expenditures in the state.¹⁷

School Financing at the Time of Rodriguez

Over the course of the 1970-71 school year, the twelve school districts of Bexar County, Texas, including Edgewood and Alamo Heights, received funds from the federal, state, and local levels¹⁸ (see Table 1). The federal government contributed approximately 10 percent of the overall public school expenditures, with the rest of the money coming from state and local sources. As previously noted, state funding came from two programs:

14 Ibid. at 30.

15 Ibid. at 29.

16 Ibid. at 50.

17 Ibid. at 29.

18 Rodriguez v. San Antonio Indep. Sch. Dist., 377 F. Supp. 280.

(1) The Available School Fund and (2) The Minimum Foundation Program. For the 1970-71 school year, the Available School Fund totaled \$296 million. This money was distributed to districts on a per capita basis based upon the average daily attendance¹⁹ during the previous school year. The Minimum Foundation Program, with 80 percent of its revenue drawn from general state revenues and 20 percent taken from the Local Fund Assignment, also remained in effect.

¹⁹ The term "average daily attendance" appears frequently in school finance formulas and is not as simple as its name would suggest. Most often, students are "weighted" on criteria such as grade level or hours in school.

Table 1-Texas School Financing System at the Time of the Rodriguez Decision

SOURCE	PERCENT OF TOTAL FUNDS	DESCRIPTION OF RESOURCES
FEDERAL	10%	Funds were provided for, but not distributed on a per pupil basis
STATE	50%	Technically,* funds were distributed under two programs: <u>Available School Fund</u> Composed of many sources including the state ad valorem property tax, 1/4 total occupation tax, annual contributions by the legislature from general revenues, & revenues from the permanent school fund <u>Minimum Foundation School Program</u> 80% paid by state 20% paid by local school districts under the Local Fund Assignment
LOCAL	40%	The amount of money raised depends on the tax rate and the amount of taxable property

*Although the Texas Constitution, Article 7, § 5, established the Available school fund, by 1973 the Available School Fund was characterized as "simply one facet" of the Minimum Foundation School Program because a school district's share of the Available School Fund is deducted from the amount to which the district is entitled under the Minimum Foundation Program.

Information used in this table was obtained from the Supreme Court's Rodriguez decision.

Local fund-raising capabilities remained very important. Money raised locally, through ad valorem property taxes, went to several sources. It provided for a district's share of the Minimum Foundation Program; it reduced bonded indebtedness for capital expenditures; and it financed all expenditures above the state minimum.²⁰ Although the ability to tax locally may have been initially seen as a means of "empowering"²¹ local school districts, two factors restricted a local school district's ability to raise funds. The first factor was the local tax rate, and the second factor was the amount of taxable property within the district.²²

The District Court Case

Synopsis

When the Rodriguez plaintiffs brought their suit to federal court in the Western District of Texas, they alleged that the ad valorem property tax played a significant role in determining how much money would be spent on each child's education. The plaintiffs claimed that under the Texas financing system, students who resided in property poor districts had far fewer dollars spent on their education than students in wealthier districts, even though the property-poor districts were taxed at a higher rate. The plaintiffs urged the court to find that the method of financing education in the state of Texas violated the equal protection clause of the Fourteenth Amendment of the United States Constitution on the grounds that the state unfairly distinguished the type of education its citizens would receive, based on the wealth of the district in which they resided.

The defendants did not dispute the distinction between the treatment of various groups. Instead, they responded that there was a rational relationship between the financing system and the legitimate state purpose of maintaining local control over schools.

²⁰ Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 281.

²¹ Ibid at 281.

²² San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 66.

According to the defendants, this rational relationship was enough to validate the difference in treatment.

The court first determined the issue in the case: Did the system of financing education in Texas violate the Equal Protection Clause of the Fourteenth Amendment? After considering the facts, the court held that the system of financing education in Texas violated the equal protection clause of the Fourteenth Amendment. The court mandated the defendants to "reallocate funds...so as not to violate the equal protection provisions of both the United States and Texas constitutions"²³ within two years.²⁴

The District Court's Analysis

In its analysis of the facts, the court first acknowledged the three sources of education funding: federal, state and local. The court noted that federal funds accounted for "only about ten percent of the overall public school expenditures."²⁵ Two programs, the Available School Fund and the Minimum Foundation Program comprised the state sources. Part of the resources (20 percent) comprising the Minimum Foundation Program came from the "Local Fund Assignment." In order "to pay their share of the Minimum Foundation Program, to satisfy bonded indebtedness for capital expenditures, and to finance all expenditures above the state minimum,"²⁶ local school districts collected ad valorem taxes. Districts with lower property value were unable to produce funds at the same level as districts with a higher property value, even though the poorer districts would typically tax at a much higher rate. (For example, Edgewood's production from ad

²³ Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 285.

²⁴ Before two years had passed, however, the Supreme Court reversed the lower court's decision.

²⁵ Rodriguez v. San Antonio, 337 F. Supp. 280, 281.

²⁶ Ibid.

valorem taxes was \$21 while Alamo Heights' was \$307, even though Alamo Heights taxed at a lower rate than Edgewood.)²⁷

The court disagreed with defendants' contentions that the rational relationship standard to equal protection should be applied and that a rational relationship existed between funding distinctions and the legitimate state purpose of maintaining local control. Instead, the court found that a classification was made on wealth and that education was a fundamental interest. Consequently, "more than mere rationality was required."²⁸ The court held that, "Because of the grave significance of education to both the individual and to our society, the defendants must demonstrate a compelling state interest that is promoted by the current classifications created under the financing scheme."²⁹ Furthermore, even if rationality had been an acceptable test, the state was unable to meet the requirements of that test anyway.³⁰

The court then distinguished this case from an earlier case, McInnis v. Shapiro,³¹ "in which the plaintiffs had sought to require educational expenses [based] on 'pupils educational needs'",³² and from other similar cases which had called for excessive federal involvement in the intricacies of school financing. Whereas the McInnis plaintiffs had failed to establish adequate definitions for "educational needs," the Rodriguez plaintiffs called for the implementation of a previously defined term--fiscal neutrality. Furthermore, while the role of the judiciary was unclear in the establishment of "educational needs,"

²⁷ Ibid. at 282.

²⁸ Ibid.

²⁹ Ibid. at 283.

³⁰ Ibid. at 284.

³¹ 293. F. Supp. 327 (N.D. Ill. 1968).

³² Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 283.

fiscal neutrality simply mandated that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole.³³

The court then brushed aside the defendants' last few arguments. First, to the state's contention that the current system was necessary because it granted local decision making power to individual districts (for the preservation of local control), the court responded that "the state has in truth and in fact, limited the choice of financing by guaranteeing that some districts will spend low (with high taxes) while others will spend high (with low taxes.) Hence, the ...system [did] not serve to promote one of the very interests which the defendants assert[ed.]"³⁴ The court also challenged the defendants claim that the plaintiffs wanted to create socialized education. The court noted that education "has been socialized [in the United States]...almost from its origin."³⁵ Finally, the court stated that "[w]hile defendants are correct in their suggestion that this Court cannot act as a 'super-legislature,' the judiciary can always determine that an act of the legislature is violative of the Constitution."³⁶ In this instance, the court found that the act of the legislature that established the school financing system in Texas violated the equal protection clause of the Fourteenth Amendment of the United States Constitution.

33 Ibid. at 284.

34 Ibid.

35 Ibid.

36 Ibid. at 285.

The Supreme Court Decision

Synopsis

The case was overturned on appeal to the United States Supreme Court. In a 5-4 decision, the Supreme Court found that the Rodriguez case was not appropriate for strict judicial scrutiny and that the Texas school system did not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. Education was not a fundamental right under the federal Constitution and states could continue to fund their school systems through the use of ad valorem property taxes.

The Structure of Opinion

The Rodriguez opinion was written by Justice Lewis F. Powell Jr. Justices Warren E. Burger, Potter Stewart, Harry A. Blackmun, and William H. Rehnquist joined in the opinion, i.e. they agreed with both the verdict and the reasoning behind the verdict. Justice Stewart also wrote a concurring opinion, not to diverge from Justice Powell's writing, but to emphasize his belief that any other result would have marked "an extraordinary departure from the principled adjudication under the Equal Protection Clause of the Fourteenth Amendment."³⁷ Justice Byron R. White wrote a dissenting opinion in which he was joined by Justices William O. Douglas and William H. Brennan. Justice Brennan also voiced his disagreement with the court in an additional dissent on the subject of fundamentality. Finally, Justice Thurgood Marshall wrote a detailed dissent with which Justice Brennan also concurred.

³⁷ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 58.

Table 2 - Composition of the Court at the Time of the Rodriguez Decision

Justice	Born	Appointed by	Term Served	Vote
Lewis F. Powell, Jr.	1907	Nixon	1972-87	Majority
Warren E. Burger	1907	Nixon	1969-86	Joined
Potter Stewart	1915	Eisenhower	1958-91	Joined & wrote separate concurring opinion
Harry A. Blackmun	1908	Nixon	1970-94	Joined
William H. Rehnquist*	1924	Nixon	1972-Present	Joined
Byron R. White	1917	Kennedy	1962-93	Dissented
William O. Douglas	1898	F. D. Roosevelt	1939-79	Joined in White's dissent
Thurgood Marshall	1908	Johnson	1967-91	Dissented
William H. Brennan, Jr.	1906	Eisenhower	1956-90	Joined in White's dissent; concurred with Marshall's dissent & wrote own dissent

*Rehnquist became the Chief Justice in 1986.

Sources: The New York Public Library Desk Reference, the Worldbook Encyclopedia and the Rodriguez decision.

The Majority Opinion

Justice Powell began the majority opinion with an introductory history of the record. He then divided his opinion into four sections. In the first section, Justice Powell established the framework for the majority's analysis.³⁸ In the second section, itself divided into three parts, the majority concluded that "Texas' system of public school finance [was] an inappropriate candidate for strict judicial scrutiny."³⁹ In the third section,

38 Ibid. at 33.

the majority examined the facts of the case as they were related to the equal protection clause and found that any disparities were not the "product of a system so irrational as to be invidiously discriminatory."⁴⁰ Finally, in the fourth section, on behalf of the majority, Powell acknowledged that the system of school finance in Texas needed revision, but that it was not within the Court's legitimate powers to undertake that task.

In the introductory section of the majority opinion, Justice Powell recognized the parties and the conditions under which they brought suit. He identified the case as a class action suit initiated by "Mexican-American parents whose children attended the elementary and secondary schools in the Edgewood Independent School District"⁴¹ brought on behalf of "children throughout the State who were members of minority groups or who were poor and lived in school districts with a low property tax base."⁴² He then noted that not all of the children in the complaint attended public school; some attended private school,⁴³ even though this fact did not affect the certification of the class. Next, Powell named the defendants: the State Board of Education, the Commissioner of Education, the State Attorney General, and the Bexar County (San Antonio) Board of Trustees. Then, the Justice traced the filing of the complaint, the impaneling of the three-judge district court, the district court's ruling, and the state's proper appeal. Finally, Justice Powell indicated the majority's reversal of the lower court's decision.

I. The first section of the majority opinion began with a brief history of school financing in Texas. It then moved into a discussion of the "complex" and "complicated" system under examination,⁴⁴ highlighting the Minimum Foundation Program. The Court

39 Ibid. at 49.

40 Ibid. at 55.

41 Ibid. at 27.

42 Ibid.

43 Ibid. at 26-27.

44 Ibid. at 29.

reasoned that the Minimum Foundation Program was designed to serve two purposes. First, it "would have an equalizing influence on expenditure levels between districts by placing the heaviest burden on the school districts most capable of paying."⁴⁵ At the same time, through the Local Fund Assignment, every school district would be "force[d]...to contribute to the education of its children but that would not itself exhaust any district's resources."⁴⁶

Powell then went on to compare the Edgewood and Alamo Heights communities, including their racial compositions, student enrollments, tax rates and assessed property values⁴⁷ (see Table 3). He also noted that from 1949 to 1967 state and local expenditures toward education rose 500 percent and that during the previous ten years, the total school budget rose from \$750 million to \$2.1 billion.⁴⁸ Powell acknowledged that local taxes contributed greatly to the amount of money spent by a school district and that reliance on such taxes produced "substantial interdistrict disparities."⁴⁹

45 Ibid.

46 Ibid.

47 Ibid. at 30-32.

48 Ibid. at 30.

49 Ibid. at 32.

Table 3 - Comparison Edgewood and Alamo Heights at the Time of the Rodriguez Decision

	Edgewood	Alamo Heights
Total enrollment for elementary & secondary	22,862 students	5,432
Number of schools	25	6
Amount of commercial or industrial property	Residential community Little commerce or industry	Residential Community
Racial background of residents	90% Mexican-American 6% African-American 4% unidentified/other	82% "Anglo" 18% Mexican-American Less than 1% African-American
Median family income	\$4,686 Lowest in metropolitan area	\$8,001
Averaged assessed property value	\$5,960 per pupil Lowest in metropolitan area	\$49,078 per pupil
Equalized tax rate per \$100 of assessed property	\$1.05 Highest in metropolitan area	\$.85
Local contribution above and beyond the local fund assignment requirement	\$26 per pupil	\$333 per pupil
State contribution through the minimum foundation program	\$222 per pupil	\$225 per pupil
Total local & state funds	\$248 per pupil	\$558 per pupil
Federal funds	\$108 per pupil	\$36 per pupil
Total funds	\$356 per pupil	\$594 per pupil

Source: The Supreme Court's decision in Rodriguez.

Justice Powell then summarized the District Court's findings that: (1) "wealth" was a suspect class; (2) education was a fundamental interest; and (3) that because the state of Texas could not demonstrate a compelling state interest for maintaining its school financing system, the system had to be abolished. Finally, he added: "Texas virtually conceded that its historically rooted dual system of financing education could not withstand strict judicial scrutiny."⁵⁰ With this factual framework in place, Powell began the majority's analysis.

II. According to the majority, the District Court's opinion did not "reflect the novelty and complexity of the constitutional questions posed by the appellees' challenge to Texas' system of school financing."⁵¹ The Supreme Court alleged that District Court in Rodriguez, as well as courts in other school finance cases,⁵² had "virtually assumed their findings of a suspect class through a simplistic process of analysis."⁵³ In the majority's view, the Supreme Court itself had never examined a case of wealth discrimination similar to the one presented by the facts of the Rodriguez case. Preliminary questions as to the nature of the class needed to be addressed before resolving the complex constitutional questions.

A. The first preliminary question that the Court sought to address was whether the class of plaintiffs in Rodriguez indeed constituted a suspect class. If it did constitute a suspect class, then the court would be compelled to examine the Texas education financing plan with strict judicial scrutiny. (See Chapter 1 for more on suspect classes and strict judicial scrutiny.) For several reasons, however, the Court found that the Rodriguez class was not suspect.

⁵⁰ Ibid. at 33.

⁵¹ Ibid. at 34.

⁵² Such as the California Supreme Court case Serrano v. Priest, 5 Cal 3d 584, 487 P.2d 1241 (1971).

⁵³ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 34.

First, the Court failed to find a definable class of poor people. The Court suggested that the class alleging discrimination might be comprised of: (1) people whose income was below a certain determined level; or (2) people who were relatively poorer than certain others; or (3) people in a certain district who were poorer than others in that district.⁵⁴ The plaintiffs in this case were "a large, diverse and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts."⁵⁵

The Court then compared the alleged deprivation suffered by the Rodriguez plaintiffs to that which was endured by plaintiffs in other cases where the Court had found discrimination against a class based on wealth.⁵⁶ In Rodriguez, the court reasoned that the plaintiffs were not completely deprived of a state service as they were in other cases. The court found that the plaintiffs did have the opportunity to an education. The majority wrote that the State of Texas provided 12 years of free public school, in addition to teachers, books, transportation funds, and operating expenses. In addition, the majority pointed out that the plaintiffs never claimed that they were deprived of an education in their argument. The plaintiffs asserted only that they received "a poorer quality education than that available to children in districts having more assessable wealth."⁵⁷

Finally, the Court asserted that even if the class in this case could have been defined, it possessed none of the usual traits of suspectness that had been defined in earlier cases. In the past, only certain characteristics would render a class "suspect." For example, in previous cases, classes were considered suspect if it was

⁵⁴ Ibid. at 35.

⁵⁵ Ibid. at 40.

⁵⁶ See Griffin v. Illinois, 351 U.S. 12,100 L.Ed. 891, 76 S.Ct. 585, 55 ALR 2d 1055 (1956) where the Court invalidate laws that prevented an indigent defendant from obtaining a trial transcript necessary to the appeal process.

⁵⁷ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 37.

subject to a history of purposeful discrimination, such as racial discrimination. Classes could also be considered suspect if they were either burdened with extreme disabilities or so politically powerless that they required the protection of the government's strict scrutiny analysis under the equal protection clause.⁵⁸ According to Powell, the Rodriguez plaintiffs did not demonstrate any of these characteristics. Thus, in the majority's view, there was no suspect class.

B. The majority was careful not to downplay the importance of education, however. It cited the Brown case for the proposition that "education is perhaps the most important function of state and local governments." Furthermore, the majority claimed that the Court had been dedicated to public education throughout the course of United States history.⁵⁹ "But, [the Court argued] the importance of a service performed by the State does not determine whether it must be regarded as fundamental for the purposes of examination under the Equal Protection Clause."⁶⁰ This was the next subject addressed by the majority.

In Rodriguez, the plaintiffs had asserted that even if the Court would not recognize a discernible class of poor people whose rights were to be evaluated with strict scrutiny the right to education was, nonetheless, fundamental. In the Court's view, the key to determining whether the plaintiffs were correct and whether education was fundamental could not be found by comparing education with other rights. Rather, the Court looked to the United States Constitution. The Court examined the Constitution to see whether a right to education was either explicitly or implicitly guaranteed.⁶¹ In this case, the majority held that there was no such constitutional guarantee to education.

58 Ibid. at 40.

59 Ibid. at 41.

60 Ibid. at 41.

61 Ibid. at 43.

The Court pointed out that education, because it is not mentioned in the federal Constitution, could not be considered among the rights explicitly afforded by the document. The plaintiffs had argued, however, that the right to education was implicitly guaranteed by the Constitution.

Specifically, they insist[ed] that education is a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote. In asserting a nexus between speech and education, appellees urge that the right to speak is meaningless unless the speaker is capable of articulating his thoughts intelligently and persuasively. The 'marketplace of ideas' is an empty forum for those lacking basic communicative tools. Likewise they argue[d] that the corollary right to receive information becomes little more than a hollow privilege when the recipient had not been taught to read, assimilate and utilize available knowledge.⁶²

The Court did "not dispute any of these propositions,"⁶³ but it did not find education to be a fundamental right either.

Powell wrote that the Supreme Court had "never presumed either the ability or authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice,"⁶⁴ (emphasis in the original text). Consequently, even if education was a fundamental right (because of its necessity relative to other rights), Powell questioned how much and what type of education was necessary. The court also pointed out that adequate food and shelter might also be necessary to the successful exercise of other rights, but these rights were not constitutionally fundamental. The Court reasoned that if education was a fundamental right under the type of argument offered by the plaintiffs that fundamental right status might have to be extended to other important personal interests.⁶⁵

62 Ibid. at 44.

63 Ibid. at 44.

64 Ibid.

65 Ibid. at 45.

C. In the final part of the second section of the majority opinion, Justice Powell suggested that the Supreme Court would not become a so-called "super-legislature."⁶⁶ Powell wrote, "We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues." The majority had several reasons for failing to enter into the resolution of Texas's school financing problems.

First, the majority reported that to do so "would have the Court intrude in an area in which it has traditionally deferred to state legislatures."⁶⁷ Furthermore, the Court believed that it was impossible to implement a tax system that was completely free of discrimination.⁶⁸ In addition, the Court suggested that there were still too many unanswered questions as to the relationship between funding and educational quality for it to make an informed decision about such matters. According to the majority, even education policy experts disagreed on whether there was a correlation between educational expenditures and educational quality.⁶⁹ Somewhat fatalistically, the majority opined, "The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues."⁷⁰ Lastly, the Court suggested that an active role in this case had the potential to interfere with the traditional state/federal government relationship. "[I]t would be difficult to imagine a case having greater potential impact on our federal system than the one now before us."⁷¹

⁶⁶ The Court actually discussed the 'super legislature phenomenon earlier in the case in Section II, Part B. The Court borrowed the phrase from an earlier Supreme Court decision, Shapiro v. Thompson, 394 Us at 665, 661, 22 L Ed 2d 600.

⁶⁷ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16 at 47.

⁶⁸ Ibid. at 48.

⁶⁹ Ibid. at 48-49.

⁷⁰ Ibid. at 49.

⁷¹ Ibid.

In sum then, the Court asserted in Section II that in the Rodriguez case, there was no suspect class, education was not shown to be a fundamental right, and the Supreme Court would not act as a "super-legislature." Thus, for all these reasons (cited in Parts A, B, and C) the Supreme Court concluded that "Texas' system of public school finance [was] an inappropriate candidate for strict judicial scrutiny."⁷² The system could still be declared unconstitutional, however, if the state failed to meet the rational relationship test. The Court went on to address that possibility in the next section.

III. In the third section of the majority opinion, Powell addressed whether the Texas school financing system, "with its conceded imperfections, nevertheless bore some rational relationship to a legitimate state purpose."⁷³ Powell again reviewed the structure of the financing system and admitted:

In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value. The greatest interdistrict disparities, however, are attributable to the differences in the amount of assessable property available within any district. Those districts that have more valuable property, have a greater capacity for supplementing state funds.⁷⁴

Powell went on to acknowledge that wealthy districts could pay for better teachers and lower the student -teacher ratio, which would suggest that wealthier districts could provide a better education.

In spite of these admissions and their implications, the majority nonetheless found that the state's school financing system bore a rational relationship to a legitimate state purpose. Powell listed at least eight reasons for the majority's position:

72 Ibid.

73 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 49.

74 Ibid. at 50, 51.

1. The use of this type of funding system was widespread throughout the United States. Almost every other state used a similar formula for funding state schools.
2. Texas had a long history of using the local property tax to finance education.
3. The Texas system of school financing was responsive to both state and local interests, in accordance with the renowned educational finance theories of George D. Strayer and Robert M. Haig.
4. Parents and taxpayers could exercise local control in that they could devote more of their own money to their own children and that they could also determine how their own tax dollars would be spent.
5. The existence of "some inequality" was not enough to strike down the whole system. Neither was the fact that, hypothetically, a better system of school financing might be possible.
6. Even poor districts were not completely devoid of educational choices. For example, they could determine how available funds would be allocated and could also make "numerous decisions" as to the operation of their school.
7. Giving the state a greater financial responsibility would be likely to diminish local power.
8. Any system of local taxation was likely to establish boundaries and property value fluctuation and/or disparities may result, but that did not make such methods of local taxation unconstitutional.

Thus, the majority concluded that the District Court had erred when it found that "the State had failed even 'to establish a reasonable basis' for a system that results in different spending levels of pupil expenditures."⁷⁵

⁷⁵ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 51 quoting 337 F.Supp at 284.

Section IV. In the final section of the majority opinion, Powell reiterated the importance of education, but again pointed out the complexity of educational finance issues and the disagreement among educational researchers as to the best way to improve conditions in the poorest districts. The majority called for "innovative thinking as to public education, its methods, and its funding," but saw fit to exercise judicial restraint. It did not want to violate "the values of federalism and separation of powers"⁷⁶ by becoming involved in matters it considered better left to the legislature. Educational finance issues did indeed require the continued attention of scholars, but, according to the Court, the "ultimate solutions" to these problems had to come from the legislature.

⁷⁶ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 57.

Justice Stewart's Concurring Opinion

In his concurring opinion, Justice Stewart wrote that just because a system (such as the education financing system in Texas or any other state) is "chaotic and unjust," it does not mean that system is unconstitutional. Furthermore, according to Stewart, the equal protection clause does not exist in order to grant "substantive rights" or "substantive liberties"⁷⁷; it exists simply to measure government classifications. Stewart wrote that "it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory--only by classifications that are wholly arbitrary or capricious."⁷⁸ Despite the inequities in the system, Stewart did not believe that the school finance laws were invidiously discriminatory or that they formed arbitrary or capricious classifications.

Stewart then voiced his further agreement with the majority's conclusion. He found that there was no violation of the equal protection clause of the fourteenth amendment because (1) there was no identifiable class that had been discriminated against under equal protection; (2) even if such a class had existed, they would have had none of the traditionally accepted criteria to make that class suspect; (3) the Texas school financing system did not "rest on grounds wholly irrelevant to the state's objectives";⁷⁹ and the Texas system did not impinge upon any substantive constitutional rights or liberties. Thus, Stewart agreed with the majority's holding.

Brennan's Dissent

Justice Brennan made a special point of disagreeing with the majority's analysis as to just what constitutes a fundamental right.⁸⁰ Unlike the majority, which wrote that a

⁷⁷ Black's Law Dictionary defines a substantive right as "{a] right to the equal enjoyment of fundamental rights, privileges and immunities; distinguished from procedural rights." (p.1281).

⁷⁸ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 58.

⁷⁹ Ibid. at 59, 60.

⁸⁰ Brennan also joined in White's dissent, the analysis of which follows.

right was fundamental for purposes of equal protection analysis only if it was "explicitly or implicitly guaranteed by the Constitution,"⁸¹ Brennan asserted that fundamentality was "in large measure, a function of the right's importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed."⁸² In Brennan's view, the closer the relationship between the government activity (here the provision of schools) and the constitutional interest, the stricter the scrutiny. In this case, according to Brennan, there was "no doubt that education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment."⁸³ By following this reasoning, the only correct conclusion according to Brennan, was that the Texas school financing system was invalid.

81 *San Antonio v. Rodriguez*, 411 US 1, 36 L.Ed. 2d 16, 43.

82 *Ibid.* at 60.

83 *Ibid.*

Justice White's Dissent (Joined by Justices Douglas and Brennan)

In his dissent, Justice White disagreed with the majority's conclusion that the Texas school financing system provided "a rational and sensible method of achieving the state aim of preserving an area for local initiative and decision [through the use of local property taxes.]"⁸⁴ In White's view, there was no meaningful local option for poor districts.

The difficulty with the Texas system is that it provides a meaningful option to Alamo Heights and like school districts but that almost none to Edgewood and those other districts with a low per-pupil real estate tax base. In these latter districts no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the real estate property tax. In these districts, the Texas system utterly fails to extend a realistic choice to parents because the property tax, which is the only revenue raising mechanism extended to school districts, is practically and legally unavailable.⁸⁵

Poorer districts were trapped by their low property values and high tax rates.

Like the majority, White also looked to the factual statistics surrounding the Rodriguez case.⁸⁶ He used a few additional statistics, however, to emphasize his view that the financial disparities among Texas school districts were "undeniably serious."⁸⁷ He pointed out that in order for both Alamo Heights and Edgewood to reach the highest local property tax yield in Bexar County, Alamo Heights could tax at 68¢ per \$100 of assessed valuation, but Edgewood would have to tax at \$5.76 per \$100 of assessed value, just to reach the same goal. "But state law place[d] a \$1.50 per \$100 ceiling on the maintenance tax rate, a limit that would surely [have been] reached long before Edgewood

84 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 61.

85 Ibid.

86 The majority opinion, and White's dissent use slightly different numbers. As White noted in his own Note 2 however, some differences existed because various exhibits were relied upon, but "[t]he disparity between districts, rather than the actual figures, is the important factor."

87 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 62.

attained an equal yield."⁸⁸ Edgewood was, therefore, "precluded in law as well as in fact, from achieving a yield even close to that of some other districts."⁸⁹

White then examined the facts in light of the rational relationship test under the equal protection clause. He agreed with the majority's contention that the State of Texas had a legitimate interest in preserving the concept of local control, but he found that the present system classified individuals in such a way as to make local control impossible for people living in certain districts.⁹⁰

If the State aim[ed] at maximizing local initiative and local choice by permitting school districts to resort to the real property tax if they choose to do so, it utterly fail[ed] in achieving its purpose in districts with property tax bases so low that there is little if any opportunity for interested parents, rich or poor, to augment school district revenues.⁹¹

In White's view, the parents and children in property-poor districts such as Edgewood suffered from invidious discrimination.⁹²

White was careful to mention that the elimination of Texas's discriminatory system did not have to bring the type of dramatic changes that some might fear. It would not have to mean the end of local control. Furthermore, it would not have to mean that the State of Texas would have to dole out the exact same dollar sum to every individual student in the state. Nor would it have to mean that states would be hampered by inflexible constitutional restraints because of their obligation to educate. "On the contrary it would merely mean that the State must fashion a financing scheme which provides a rational basis for the maximization of local control, if local control is to remain a goal of the system."⁹³

88 Ibid.

89 Ibid.

90 Ibid. at 63.

91 Ibid.

92 Ibid.

93 Ibid. at 64.

Before concluding his dissent, White made a few additional points. First, he re-emphasized his belief that the differences between wealthy and poor districts were not inconsequential. According to White, even the State of Texas recognized the importance of providing educational opportunities above and beyond a bare minimum. Finally, unlike the majority, Justice White had no difficulty identifying a class that was treated differently under a state-sponsored system. He indicated that he needed to look "no farther than the parents and children in the Edgewood district."⁹⁴

94 Ibid.

Marshall's Dissent (with Which Douglas Concurred)

Marshall constructed his dissent carefully, just as Powell had constructed the majority. Obviously, however, Marshall reached the opposite conclusion. In his lengthy dissent, Marshall attempted to take apart the majority's reasoning, but Marshall's dissent was by no means purely academic. His logical arguments apparently reflected his own beliefs.

Marshall introduced the first section of his dissent by redefining the issue in the case. According to Marshall, the issue was not whether Texas was "doing its best to ameliorate the worst features of a discriminatory scheme, but, rather, whether the scheme itself [was] in fact constitutionally discriminatory in the face of the Fourteenth Amendment's guarantee of equal protection of the laws."⁹⁵

I. A. Marshall then restated the basic structure of the Texas school financing system, with its federal, state and local contributions. He emphasized the fact that the poorest districts had the highest tax rates, but the lowest property values.⁹⁶ Therefore, he concluded, even with proportionately higher taxes, it would be virtually impossible for poorer districts ever to achieve the funding potential of wealthier districts.

According to Marshall, the state programs, supposedly designed to ease the financial disparities, had no such effect. Marshall pointed to flaws in the Local Fund Assignment portion of the Minimum Foundation School Program. In Texas, an "Economic Index" had established the contribution of individual districts to the Local Fund Assignment. Poorer districts were supposed to pay according to ability, but Marshall claimed that in reality, that was not always the case. He quoted one of the original consultants working on the Minimum Foundation School Program, Dr. Edgar Morphet, as

⁹⁵ Ibid. at 66.

⁹⁶ Marshall indicated that "this correlation between the amount of taxable property per pupil and the amount of local revenues per pupil [also] holds true for the 96 districts in between the richest and poorest districts." See 411 U.S. 1, 36 L.Ed. 2d 16, 67.

stating that "The Economic Index approach to evaluating local ability offers a little better measure than sheer chance, but not much."⁹⁷

Furthermore, Marshall declared that even the majority's much touted increased state spending did not alleviate the disparities.

The majority continually emphasizes how much state aid has, in recent years been given to property poor Texas school districts. What the Court fails to emphasize is the cruel irony of how much more state aid is being given to property-rich districts on top of their already substantial local property tax revenues.⁹⁸

In fact, the gap between the rich districts and the poor districts was not shrinking, but growing. For example, from the 1967-68 school year to the 1970-71 school year the gap between rich and poor districts had grown by 38 percent. In terms of dollars, whereas in 1967-68 the Minimum Foundation Program supplied \$222 for each Edgewood student, and \$225 for each Alamo Heights student, by the 1970-71 school year, Edgewood received \$356 per student and Alamo Heights \$491 per student. The difference had escalated from a mere \$3 to \$135. Thus, Marshall agreed with the District Court's observation that "the system tend[ed] to subsidize the rich at the expense of the poor, rather than the other way around."⁹⁹

B. In the second part of his first section of analysis, Marshall began by voicing his disbelief with the state's contention that the quality of education in any particular district was not determined by money. "In my view...even an unadorned restatement of this contention is sufficient to reveal its absurdity."¹⁰⁰ Marshall stressed that significant educational inputs were provided by money.¹⁰¹ (See Chapter 1 for a discussion of

⁹⁷ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 69. See also Marshall's Note No. 29.

⁹⁸ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 71.

⁹⁹ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 71 citing 337 F.Supp 280, 282.

¹⁰⁰ San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 72.

educational inputs.) Marshall believed that, in the Rodriguez case, the facts demonstrated that the lack of funds reduced the educational inputs for children in poorer districts.¹⁰² Reduced inputs meant less qualified teachers, more crowded classrooms, and poorer facilities,¹⁰³ not to mention outdated materials, unsanitary conditions, and less hope for the future.

Furthermore, Marshall pointed out that if money was not important to the quality of a child's education, surely wealthy districts from outside Texas would not spend their time and money hiring attorneys to write *amicus curiæ*¹⁰⁴ briefs in support of the state's position, as they had done in the Rodriguez case.¹⁰⁵ Marshall thus implied that wealthy parents, as well as poor parents, knew the importance of money to a school district.

Within the course of this discussion on the relationship between money and educational quality, Marshall took the opportunity to address the Court's role in the case. Like the majority, Marshall acknowledged that it was not the role of the court to resolve educational finance disparities. The role of the court was simply to enforce the United States Constitution.¹⁰⁶ Unlike the majority, however, Marshall believed that the facts of the case did raise the "grave" constitutional question as to whether the state's school

101 Educational inputs need not be related only to money and what it can buy. Non-monetary factors such as individual student motivation or parental interest may also be considered educational inputs. These non-monetary educational inputs have caused problems for courts and education finance specialists alike because they do not know how to evaluate such inputs in relation to dollars provided.

102 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 72.

103 *Ibid.*

104 *Amicus curiæ* "means literally, friend of the court." (Black's Law Dictionary, p.75) An *amicus curiæ* brief is written by a party other than the parties directly involved in the suit. A person or entity "may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rational consistent with its own views.

105 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 73.

106 *Ibid.*

financing scheme constituted a form of state-created discrimination in the public provision of education.¹⁰⁷

Marshall admitted that the Constitution did not require precisely equal treatment of all people at all times, but neither did the Constitution allow discrimination under the guise of adequacy. The state could not establish a system where everyone received a bare minimum described as "adequate," but where some were virtually guaranteed to receive far more than "adequate." Marshall wrote, "this Court has never suggested that because some 'adequate' level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable."¹⁰⁸

Marshall also questioned how, after the majority had so strongly expressed its reluctance to become involved in the determination of educational standards, the Court could accept the appellants' judgment as to the "adequacy" of education in Texas.

One would think that the majority would heed its own fervent affirmation of judicial self-restraint before undertaking the complex task of determining at large what level of education is constitutionally sufficient. Indeed, the majority's apparent reliance upon the adequacy of the educational opportunity assured by the Texas Minimum Foundation School Program seems fundamentally inconsistent with its own recognition that educational authorities are unable to agree upon what makes for educational quality.¹⁰⁹

Thus, Marshall implied that the majority was certain that even though educators did not know the elements of a good education, they did, nonetheless know the components of an adequate education.

Even if adequacy had been an acceptable standard, the Minimum Foundation Program failed to provide for adequate education anyway. In fact, the school finance system in Texas was far beyond inadequate. The Texas system provided unequal educational opportunity and it was this unequal educational opportunity that raised the

107 Ibid.

108 Ibid. at 75.

109 Ibid.

question of the denial of equal protection of the laws.¹¹⁰ Consequently, Marshall had no trouble finding "a sufficient showing to raise a substantial question of discriminatory action in violation of the equal protection clause."¹¹¹

C. Marshall then examined whether there was a legitimate class experiencing discrimination. Not surprisingly, Marshall found such a class. In Marshall's view, the facts alone, as they were determined by the District Court, were enough to prove the existence of a class. The facts of the Rodriguez case provided a legitimate class of individual interests experiencing discrimination, not just a scheme where some districts received more than others.

Texas has chosen to provide free public education for all its citizens, and it has embodied that decision in its constitution. Yet, having established public education for its citizens, the State, as a direct consequence of the variations in local property wealth endemic to Texas' financing scheme, has provided some Texas schoolchildren with substantially less resources for their education than others. Thus, while on its face the Texas scheme may merely discriminate between local districts, the impact of that discrimination falls directly upon the children whose educational opportunity is dependent upon where they happen to live.¹¹²

The class was comprised of children whose educational opportunity was dependent upon where they happened to live.¹¹³

Justice Marshall also disagreed with Justice Stewart's contention that an objectively identifiable class was necessary before the court could evaluate a claim under the equal protection clause. In Marshall's view, it was not the class that determined whether to invoke equal protection analysis; it was the nature of the discrimination. In the Rodriguez case, there was an "overarching form of discrimination"¹¹⁴ because the state of Texas

110 Ibid. at 76.

111 Ibid.

112 Ibid. at 77.

113 Ibid.

114 Ibid. at 79.

discriminated between schoolchildren on "the basis of taxable property within their district."¹¹⁵

II. A. In his second section, Marshall moved into his equal protection analysis. He prefaced his analysis by summarizing the ways in which the District Court and the majority had used the clause in their respective opinions. According to Marshall, the District Court had held that under the facts of the Rodriguez case, the state had to show, not merely a rational relationship, but a compelling state interest for their school financing scheme. The District Court had found that the state's system was subject to the stricter scrutiny because the District Court had viewed the classification of citizens, based on wealth, as highly suspect and because the classification itself affected a fundamental interest--education. On the other hand, Marshall noted, the majority had concluded that under the Rodriguez facts, it was necessary only to employ a standard of rationality. Marshall disagreed with the majority's contention. Justice Marshall believed that the majority had reached its decision to implement the rational relationship test through a "rigidified" and "labored" equal protection analysis.

Marshall did not believe, as did the majority, that "the 'answer' to whether an interest [was] fundamental for purposes of equal protection [was] always determined by whether that interest 'is a right...explicitly or implicitly guaranteed by the Constitution.'"¹¹⁶ Marshall wrote:

I would like to know where the Constitution guarantees the right to procreate¹¹⁷...or the right to vote in state elections¹¹⁸...or the right to an appeal to a criminal conviction¹¹⁹...These are instances in which, due to the

115 Ibid. at 77.

116 Ibid. at 81-82.

117 See Skinner v. Oklahoma, 316 US 535,541, 86 L.Ed. 1655, 62 S. Ct. 1110 (1942).

118 See Reynolds v Sims, 377 U.S. 533, 12 L.Ed. 2d 506, 84 S.Ct. 1362 (1964).

importance of the interests at stake, the Court has displayed a strong concern with the existence of discriminatory state treatment. But the Court never said or indicated that these are interests which independently enjoy full blown constitutional protection.¹²⁰

The interests of procreation, voting and appealing criminal convictions were not explicitly or implicitly part of the Constitution, but the Court had nonetheless evaluated them with strict scrutiny when they were closely related to a constitutionally guaranteed right.¹²¹

In order to ensure the integrity of the constitutional guarantee, Marshall argued that related interests also had to be protected.

The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on the interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the non constitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.¹²²

While the interests themselves might not be fundamental, they might require strict judicial scrutiny.

Marshall then highlighted other Supreme Court cases where unprotected interests so seriously affected constitutional rights that any state laws, established to restrict the unprotected interests, had been struck down. Lastly, Marshall differentiated between the facts of the Rodriguez case and other cases where a state's economically based interests were challenged. Marshall admitted that "in the context of economic interests...discriminatory state action is almost always sustained."¹²³ When the discrimination affects the important individual interests of a disadvantaged class and the

119 See Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585, 55 ALR 2d 1055 (1956).

120 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16, 82.

121 Ibid. at 83.

122 Ibid.

123 Ibid.

interests are simultaneously related to constitutional guarantees, however, the Court should employ a strict scrutiny standard.

B. In Part B of Section II, Marshall recognized the fundamentality of education.¹²⁴ He gave three reasons for this recognition: (1) the United States Supreme Court had an historic commitment to education; (2) public education was accorded a "unique status"¹²⁵ in American society; and (3) education was very closely related to "some of our most basic constitutional values."¹²⁶

As for the Court's strong interest in education, Marshall called it "a matter of common knowledge."¹²⁷ He cited the Court's opinion in the Brown case to emphasize the Court's historic commitment. In fact, he used the some of the exact same quotations that the majority had used to emphasize how important education was in the eyes of the Supreme Court.¹²⁸

Then Marshall proceeded to examine the importance of education in American society. He pointed out that almost every state acknowledged education in its state constitution and likewise almost every state had compulsory attendance laws.¹²⁹ In Marshall's view, "No other state function is so uniformly recognized as an essential element of our society's well-being."¹³⁰

124 Ibid. at 91.

125 Ibid. at 88.

126 Ibid.

127 Ibid.

128 Interestingly, but not surprisingly, in the Rodriguez opinion, Marshall never discussed his own role as plaintiffs' attorney in the Brown case.

129 Marshall noted that at the time of the Rodriguez decision, 48 of 50 states had both education clauses and compulsory attendance laws.

130 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16 at 89.

Finally, Marshall addressed the importance of education to the rights of free speech and political participation. "Education directly affects the ability of a child to exercise his First Amendment interests, both as a source and a receiver of information and ideas, whatever interests he may pursue in life...[the United States Supreme Court has] not casually described the classroom as the 'marketplace of ideas.'"¹³¹ Furthermore, Marshall added, without adequate education, participation in the political process would be severely hampered. To emphasize this point, Marshall cited statistics drawn from the 1968 presidential election that demonstrated the correlation between individual education and the likelihood of voting.

Then Marshall again challenged the majority's interpretation of the key issue in the case. Marshall believed that "the issue was one of discrimination that affect[ed] the quality of education which Texas had chosen to provide its children."¹³² The Rodriguez plaintiffs had not asked for the best education, as the majority appeared to imply. They sought only to end the state discrimination that was based upon the unequal distribution of taxable district property wealth and that resulted in unequal educational opportunity.¹³³

Marshall summarized his views on the fundamentality of education in the following manner:

The factors just considered, including the relationship between education and the social and political interests enshrined within the Constitution, compel us to recognize the fundamentality of education and to scrutinize with appropriate care the bases for state discrimination affecting equality of educational opportunity in Texas ' school districts--a conclusion which is only strengthened when we consider the character of the classification in this case.¹³⁴

Marshall then went on to consider the plaintiffs' classification.

131 The notion that the classroom was the 'marketplace of ideas' appeared in Keyishian v. Board of Regents, 385 U.S. 589, 603, 17 L.Ed. 2d. 629, 87 S.Ct. 675

132 San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16 at 91.

133 Ibid.

134 Ibid. at 91-92.

C. In Part C of Section II of Justice Marshall's dissent, Marshall disagreed with the majority's portrayal of a disadvantaged class. The majority had asserted that, in previous cases, the disadvantaged class has "shared two distinguishing characteristics: (1) "because of their impecunity they were completely unable to pay for some desired benefit." and 2) "as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit."¹³⁵ Marshall found otherwise.

He cited three cases to illustrate his point, Harper v. Virginia Board of Education¹³⁶ and Griffin v. Illinois¹³⁷ and Douglas v. California.¹³⁸ In Harper, the Court struck down an entire poll tax, rather than simply exempting those too poor to pay. In the Court's view the tax had been unfair both to those who could not pay and to those who would choose not to pay. In Marshall's view, this ruling demonstrated that a total inability to pay was not a necessary characteristic of a disadvantaged class. Likewise, according to Marshall, Griffin and Douglas confirmed that the class need not be comprised of those who are absolutely deprived of an opportunity to enjoy a benefit. In the Griffin and Douglas cases, the plaintiffs were, respectively too poor to pay for a transcript and counsel to use in the appeal process. Marshall wrote: "The right of appeal was not absolutely denied to those too poor to pay; but because of the cost of a transcript and of counsel, the appeal was substantially less meaningful for the poor than for the rich."¹³⁹

Marshall recognized that the Rodriguez case was not identical to the earlier cases of Harper, Griffin, and Douglas. Those cases dealt with individual wealth rather than the wealth of a group, such as a school district. Marshall indicated that the Court had not

135 Ibid. at 35.

136 383 U.S. 663, 16 L.Ed 2d 169, 86b S.Ct. 1079 (1966).

137 351 U.S. 12,100 L.Ed. 891, 76 S.Ct. 585, 55 ALR 2d 1055 (1956).

138 372 US 353, 9 L.Ed. 2d 739, 89 S.Ct. 1404 (1969).

139 San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 36 L.Ed. 2d 16 at 93.

traditionally viewed the poor, as a group, in the same way it viewed individual poverty. Whereas cases of individual impecunity might cause government classifications to be examined with strict scrutiny, group poverty classifications were traditionally examined under a rational relationship standard.

Furthermore, in Marshall's view, the poor were not "as politically powerless"¹⁴⁰ as certain racial and ethnic groups. In the past, discrimination against racial and ethnic groups had rendered them virtually politically powerless; thus, restrictions against these groups were subject to strict judicial scrutiny. The situation with the poor was somewhat different, in Marshall's view. Marshall wrote: "While the 'poor' have been frequently been a legally disadvantaged group, it cannot be ignored that social legislation must frequently take cognizance of the economic status of our citizens."¹⁴¹ Thus, while the poor might have been historically subject to a stigma similar to those attached to racial and ethnic groups, the poor were not rendered politically powerless by that stigma because social legislation had long recognized the special needs of the poor.¹⁴²

Marshall believed that the level of scrutiny at which to evaluate wealth classifications should be determined by the importance of the interests being affected and the relevance of personal wealth to those interests.¹⁴³ In the *Rodriguez* case, he found that the discrimination, even though it was technically group discrimination should be subject to strict scrutiny. In this case, individual children had no control over the formation of districts or their possible inclusion in a property-poor district. In the *Rodriguez* case, the "discrimination is no reflection of the individual's characteristics or his abilities. And thus

140 Ibid. at 94.

141 Ibid. at 95.

142 Ibid.

143 Ibid.

--particularly in the context of a disadvantaged class composed of children--we have previously treated discrimination on a basis which the individual cannot control as disfavored."¹⁴⁴

Justice Marshall then added two more points in favor of his disadvantaged class theory. He found that the Rodriguez plaintiffs were politically disadvantaged because in order to change the school financing system, they would have to challenge wealthy districts that had "a strong vested interest in the preservation of the status quo."¹⁴⁵ Marshall also indicated that the state of Texas has created this class of plaintiffs when it formed the financing system and drew the district boundaries. In Marshall's opinion, the Rodriguez case was unusual because not only did the state permit the discrimination; it also created it.

Marshall wrote:

In the final analysis, then, the invidious characteristics of the group wealth classification present in this case merely serve to emphasize the need for careful judicial scrutiny of the State's justifications for the resulting inter-district discrimination in the educational opportunity afforded the schoolchildren of Texas.¹⁴⁶

Then Marshall moved into the last part of his analysis in Section II.

D. In Part D, Marshall completed his equal protection analysis. He had already found education to be a fundamental interest, the class to be suspect, and the use of the strict scrutiny test to be appropriate. All that remained for him to do was to examine the rationale behind the state's discrimination. According to Marshall, the only justification for the preservation of the school financing system offered by the appellants was that of local control. Although Marshall supported local control, he found that "the State's purported concern with local control [was] offered primarily as an excuse rather

144 Ibid.

145 Ibid.

146 Ibid. at 96.

than as a justification for interdistrict inequality,"¹⁴⁷ (emphasis added). In Marshall's view, local control was "a myth for many of the local school districts in Texas."¹⁴⁸

Not surprisingly, the State of Texas failed to meet the strict scrutiny standard.¹⁴⁹ In fact, Marshall believed, as did the District Court, that the Texas school financing system was not even rationally related to the legitimate state interest of local control.¹⁵⁰ Furthermore, Justice Marshall refused to evaluate any of the alternative financing plans that were offered by the appellants. Finally, Marshall scolded that if the State of Texas were ever to appear before the Court with an alternative school financing plan, the State had better "present something more than the mere sham"¹⁵¹ that was before the Court in the Rodriguez case.

III. Marshall's third and final section was brief. In this section, Marshall attempted to quash some of the fears that would have been associated with an affirmation of the District Court's decision. An affirmation of the District Court's decision would not have been a "death knell"¹⁵² for local control. According to Marshall, "Clearly this suit ha[d] nothing to do with local decision making with respect to educational policy or even educational spending."¹⁵³ Districts would "not necessarily"¹⁵⁴ have to eliminate local control of educational funding or the local property tax.¹⁵⁵ An affirmation of the District

147 Ibid. at 97.

148 Ibid. at 99.

149 Ibid.

150 Ibid. at 97.

151 Ibid. at 99.

152 Ibid.

153 Ibid.

154 Ibid. at 100.

155 Ibid. at 101.

Court's decision would only "restrict the power of the State to make educational funding dependent exclusively upon local property taxation as long as there exist[ed] interdistrict disparities in taxable property wealth."¹⁵⁶

In his final few sentences, Justice Marshall took the opportunity to admonish the Court for shirking its responsibility in the Rodriguez case. The possibility that the legislature might be able to resolve these school finance problems did not constitute an adequate reason for the judicial restraint.

The possibility of legislative action is, in all events, no answer to the Court's duty under the Constitution to eliminate unjustified state discrimination. In this case, we have been presented with an instance of such discrimination, in a particularly invidious form, against an individual interest of large constitutional and practical importance.¹⁵⁷

Thus, in Marshall's view, the District Court's opinion should have been affirmed.¹⁵⁸

Conclusion

Rodriguez was a lengthy decision. The majority, concurring, and dissenting opinions totaled 136 pages. In spite of the length of the opinion, there was much the opinion did not say and much that was implied. In addition, many unanswered questions remained. Education finance reformers were unsure what their next steps would be. Some feared that the movement to bring equal educational opportunity to all students had ended, at least as far as the courts were concerned. Others hoped reform might be available in state courts. If reform was to take place in the state courts, however, the unresolved issues and problems of Rodriguez would have to be examined. Why did the Justices vote as they did? Had the plaintiffs made mistakes? Would fears about the

156 Ibid.

157 Ibid.

158 Ibid.

expansion of fundamental rights forever prohibit equal educational opportunity? The next chapter addresses some of those unanswered questions and considerations.

CHAPTER III
WHAT THE DECISION DID NOT SAY

The Justices

Their Duty and Their Life Experiences

At the Supreme Court level, the Justices are rarely called upon to be finders of fact.¹ The Supreme Court's duty, in most cases, is simply to review the decision of the lower court.² A trial court determines what constitutes "the facts" of the case and then applies the appropriate law to those facts. If the case is appealed, the appellate court simply reviews the application of the law to the facts of the case; it does not create or find "new" facts. In the Rodriguez case, the District Court took the role as the finder of fact. The case was then appealed directly to the Supreme Court.³ There the Court reviewed the application of the law to the facts.

Just as the Supreme Court should not bring new facts to the evaluation of the case, neither should it let other forces influence its decision. For example, the Court should not

¹ They are called upon to be fact finders in a few types of cases (which are not relevant to the discussion of this case) specifically named in the United States Constitution.

² The Supreme Court does not have to hear all of the cases. Most cases come before the Court on a Petition of Certiorari, which the Supreme Court uses as a discretionary device to choose the cases it wishes to hear. Black's Law Dictionary, p. 207.

³ In some sense, the case was not typical procedurally because the case was first heard by a three-judge panel of district court judges, which made direct appeal to the United States Supreme Court possible. Most often, the appeal process involves more steps. The point here is not to explain in detail the procedural steps to the Supreme Court, but merely to indicate that the Supreme Court does not typically "find facts" and did not do so in the Rodriguez case.

bow to political pressures, nor should it be influenced by the President's thinking.⁴ The Court's integrity is essential to its important role in the system of checks and balances.

Yet, the Justices cannot make their decision in a vacuum. Like any person, even a person of great rectitude is subject to outside influence. Furthermore, unlike other cases, the Rodriguez case dealt with an issue that all of the Justices had experienced personally--- American education. Although all of the Justices on the Court during the Rodriguez case were well educated, their educational experiences varied, and while their personal experiences should not have affected the outcome of the case, the "evidence" suggests that it might have.

Justice Powell, the author of the majority, came "from an aristocratic family prominent in Virginia affairs for two centuries."⁵ At the time of the decision, he was a millionaire, living in a mansion on the banks of the James River.⁶ When he retired from the Supreme Court, some fourteen years later, in 1987, he retired as the Court's richest member.⁷ Justice Potter Stewart was the son of a "powerful"⁸ Ohio politician and state court judge. Stewart attended prep school and Yale University. William H. Rehnquist has been described as "solidly middle-class,"⁹ and while Warren E. Burger and Harry A. Blackmun worked their way through college and law school, neither, was ever

4 This might not be as easy as it seems, especially if the current president had a strong opinion on a case and had also nominated some of the current Justices.

5 Linda Mathews, "Rodriguez and Friends," Race Relations Reporter (July 1973): 19.

6 Ibid.

7 Glen Elsasser and Janet Cawley, "Powell Quits Supreme Court: Jurist, 79, Cast Pivotal Vote in Key Decisions," Chicago Tribune 1987, p.1, Zone C, LEXIS.

8 Linda Mathews, "Rodriguez and Friends," Race Relations Reporter (July 1973): 20.

9 Ibid.

penniless.¹⁰ Thus, the backgrounds of members of the majority suggest that they had limited personal experience with poverty or with the kind of educational experience poverty might bring.

The dissenting members of the court came from somewhat different backgrounds. Thurgood Marshall was "the grandson of a slave and the son of a Baltimore country club steward."¹¹ He attended segregated schools during the time when schools for blacks and whites were certainly "separate," but not always "equal." William O. Douglas, "orphaned as a boy, was so poor that he spent the summer before he entered Columbia Law School working his way across the country from Washington state to New York, doing odd jobs [because] there was no money at home for train fare."¹² Byron R. White grew up as the son of a small-town lumber dealer, near a rural Colorado area that was no stranger to poverty. Finally, although William J. Brennan's father eventually became a city commissioner, "he started out as a labor organizer and was at least once beaten by police."¹³

Certainly, Justices are not supposed to permit their own personal experiences to sway their case analysis. For example, a Justice should not think, "I walked ten miles in the snow without shoes to get to school and if it was good enough for me, it's good enough for anyone." To permit such a bias to influence the facts of a case would be unacceptable. The Supreme Court's duty is simply to review the decision of the lower court, without bringing in outside considerations.

In the Rodriguez case, whether the Justices' life experiences affected their perception of the severity of the educational issues is impossible to say. Possible correlations between life experience and the Justices' vote may be coincidental; according

10 Ibid.

11 Ibid.

12 Ibid. at 19-20.

13 Ibid. at 19.

to the highest judicial standards, they should be. Regardless of the nature of such possible correlations in the Rodriguez case, these differences in judicial backgrounds are interesting to note.

Their Thoughts on the Opposing Views in Rodriguez

Also interesting to note are the Justices' individual perceptions of their colleagues' opinions in the Rodriguez case. Clearly, strong beliefs were held on both sides. On the one hand, in his opinion concurring with the majority, Justice Stewart labeled Marshall's dissent as "imaginative."¹⁴ While this adjective might have positive connotations in some fields (possibly including the education profession), in the Rodriguez case, Stewart's use of the term was certainly dismissive. Likewise, in his dissent, Marshall expressed his strong opposition to the majority's ruling. For example, in his closing remarks, Marshall wrote: "The Court's suggestions of legislative redress and experimentation will doubtlessly be of great comfort to the schoolchildren of Texas' disadvantaged districts..."¹⁵ Even a cursory reading of Marshall's opinion suggests a sarcastic tone in the Justice's voice.

The Difficult Nature of the Case

The Close Vote

In the end, the vote in the Rodriguez case was very close, 5 to 4. Yet, even the numerical translation of the Justices' positions on the case does not demonstrate how close the case came to being decided in the plaintiffs' favor. John Coons, "widely considered to have been the principal intellectual force behind the legal theories that the Court tested in Rodriguez," learned from a law clerk,¹⁶ who worked at the Supreme Court during the Rodriguez case, that "the plaintiffs had a majority on their side right until the end."¹⁷ The school finance reformers involved in the case eventually learned which Justice changed his

¹⁴ San Antonio v. Rodriguez, 411 US. 1, 36 L.Ed. 2d 16 at 58.

¹⁵ Ibid. at 101.

¹⁶ Coons did not identify the law clerk by name.

¹⁷ "A Decade After Rodriguez: An Interview with John Coons," Phi Delta Kappan, (March 1983): 479.

mind, although they were quiet about the identity of the Justice. Coons stated, "There is no point in my identifying the swing man, but the decision was a close shave."¹⁸

The Potential Concerns of the Majority

The fact that one of the Justices may have changed his mind suggests the difficult nature of the case. The disparities in funding and educational opportunities were obvious both to the dissenters and to the majority. The difficulty with the Rodriguez case, however, lay not so much with the facts but with the application of the facts to the United States Constitution. Coons expressed his belief that "in general, it must have been hard for the Justices to be certain that they were not lighting the fuse to a powder keg instead of straightening out an incoherent system."¹⁹ These powder keg issues included the expansion of fundamental rights, the role of excessive judicial activism, and an unknown future of constitutional dilemmas.

For example, the expansion of fundamental rights was probably a legitimate concern for the majority. As Powell noted, if education was pronounced a fundamental right, what about the "rights" to food and shelter? Are not the needs for food and shelter more elementary than that of formal education? The addition of one fundamental right could have led to others. For example, what about the potential "right" to be free from violence? Would it also be the state's responsibility to keep children in state supported housing projects reasonably safe and protected from violence? If so, are the children's rights being denied if there is a higher crime rate in their housing project than in a wealthy subdivision with a gatehouse and a twenty-four-hour guard? While this example may seem extreme, the point is that the elevation of education to fundamental-right status could have caused the demand for other fundamental rights.

18 Ibid.

19 Ibid.

Even if the Court were somehow able to draft an opinion that made education a fundamental right, while limiting the expansion of other alleged fundamental rights, how would the role of the federal government change, with respect to education? Would the federal government be required to contribute more than 10 percent to any state's education budget? Would a whole new federal educational bureaucracy have to be created? What would be the federal government's role? The majority may have felt questions such as these were unanswerable.

Secondly, the majority may have been genuinely apprehensive about intruding into legislative territory in the Rodriguez case. The Supreme Court is not a legislature. Consequently, it certainly should not act as a super-legislature. To do so would be to act beyond the scope of the Court's legitimate powers as they were outlined in the Constitution. Not surprisingly, John Coons questioned the Court's alleged fear of acting as a super legislature. In Coons's view, the Court did not hesitate to act in a legislative capacity when it deemed such action necessary.

'It's true that in Rodriguez they acted like restrained and very proper judges,' he said. 'But that certainly wasn't the situation in the abortion cases, where you had these same justices reaching out and grabbing for power, sweeping aside the judgment of 50 state legislatures, striking down every abortion law in the country. They acted like legislators by going so far as to set down what was constitutionally permissible in each month of pregnancy. It was truly amazing, for they made it impossible for the state legislatures to deal with the abortion issue again.'²⁰

Regardless of whether Coons was correct in his evaluation of the Court's activities in the abortion cases, the Supreme Court does not have the authority to create laws; it has only the power to interpret them. Thus, if the majority believed it would be acting as a super-legislature by ruling for the plaintiffs, their hesitation was within the bounds of the Constitution.

20 Linda Mathews, "Rodriguez and Friends," Race Relations Reporter (July 1973):
20.

Finally, the majority may have felt restricted by the text of the Constitution itself. A provision for any type of education, let alone an education financing scheme, is noticeably absent from the United States Constitution. Surely the founding fathers were articulate enough to have included some provision for education, if they had been so inclined. The strong inference to be drawn from the absence of education in the federal constitution, might very well have been that it was not a fundamental right and the federal government should leave public education matters to the states. After all, education clauses were present in almost every state constitution at the time of Rodriguez.²¹ Perhaps it was only logical for the Supreme Court to believe that remedies for these educational finance problems would be found within the individual state constitutions, rather than in the federal Constitution.

²¹ According to Marshall's dissent in Rodriguez, at the time of the case, 48 out of 50 states had such clauses.

The State Courts' Role

After the Rodriguez decision, however, some feared that state courts would be unwilling to take on constitutional issues of such magnitude.²² Very few states outside of California and New Jersey²³ had examined complex constitutional questions.²⁴

During the two decades prior to Rodriguez, plaintiffs challenging discrimination as unconstitutional had generally ignored state courts in favor of the federal court system, which they perceived to be more receptive. Therefore, most state courts lacked a tradition of creative constitutional adjudication. At the time of the Rodriguez decision, state courts were long shots for plaintiffs challenging discrimination in school finance systems.²⁵

Thus, not only were the issues untested; so were the state courts themselves.

Potential plaintiffs' attorneys had to determine which types of cases were not "doomed by the majority's declaration that education [was] not a fundamental interest."²⁶ Although the Rodriguez case did not specifically prohibit challenges under the federal Constitution, the chances for success were severely diminished.²⁷ Cases which alleged that education was a fundamental right under the United States Constitution could not anticipate a high degree of success, and neither could cases based on federal equal protection arguments would also be unsuccessful, but other potentially successful arguments did exist.

22 David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 481.

23 Ibid. at 482.

24 Ibid.

25 Ibid.

26 Linda Mathews, "Rodriguez and Friends," Race Relations Reporter, July 1973, 20.

27 Rodriguez did not automatically foreclose an examination of another state's school financing system under the federal Constitution. A state with a financing system that differed from the one in Texas could still be found to violate the United States Constitution. See, Fair School Finance Council v. State, 746 P.2d 1135 (Okla. 1987).

The first was through the individual state constitution's clauses that were similar to the federal equal protection clause. While, the Supreme Court had established guidelines for reviewing the federal equal protection clause, it made no attempt to tell the states how to interpret their own individual constitutions. To take such an action would have been beyond the Court's power. Thus, when evaluating its own equal protection clause, a state court could look to either the rational relationship test (which had been employed by the majority) or the strict scrutiny test (which was preferred by Marshall and the District Court) for guidance.

The second likely route to success was through the clauses in the state constitution that established the state's education. (For purposes of brevity, throughout this dissertation, these clauses will be referred to as state education clauses.)

As a matter of law, education in nearly every state [was] a function of state not local government. In this regard, education is unlike sewer, police, or fire departments. In virtually every state, school districts [were] considered legal agencies of the state in carrying out its constitutional obligation to provide a free public education to all children. Yet in carrying out this obligation, the state compel[led] children to attend school districts having vastly different resources.²⁸

The plaintiffs' attorneys reasoned that if they could persuade the state courts to acknowledge the irrationality of these constitutionally state-supported systems then their arguments might be successful.

Why the Plaintiffs' Arguments Failed in the Supreme Court

Yet, it was also important to consider why the plaintiffs' arguments failed in the Supreme Court. Hopefully, new plaintiffs could learn from errors made in Rodriguez and by doing so, they could then form more effective arguments in the state courts. Some of the possible plaintiffs' errors in Rodriguez are examined below.

Timing Considerations

²⁸ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 481.

According to Coons, the Rodriguez decision reached the Supreme Court both too late and too early. The decision reached the Court too late because it missed the period of judicial activism that characterized the Court under the leadership of Chief Justice Earl Warren.²⁹ Coons was confident that had the Warren Court heard the exact same facts, it would have ruled the other way. He believed that "[t]here was not much doubt as to how [Supreme Court Justices] Earl Warren, Arthur Goldberg, and Abe Fortas would have voted."³⁰ In Coons's opinion, the decision reached the Court too early because the court relied on an "ill-informed"³¹ article in the Yale Law Journal, because the friends of the plaintiffs were divided in their goals and because "the court had so little time to digest the idea."³²

In retrospect, some questioned whether the Rodriguez case reached the Supreme Court, at a time when the school finance reform movement lacked focus and was "really an amalgamation of groups and individuals with various--and often competing--views on the general subject of money and the schools."³³ Indeed, those who argued for change did so from several perspectives. "Egalitarians,"³⁴ who believed that education's value would vary from district to district, wanted money to be divided equally at the state level; they were opposed to the idea that local citizens could or should make different decisions about spending. Another group believed that the Constitution should "guarantee spending

29 It was during the years of the Warren Court that the Brown decision was handed down.

30 "A Decade After Rodriguez: An Interview with John Coons," Phi Delta Kappan, (March 1983): 479.

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

according to the child's needs."³⁵ Yet, this group's definition of educational needs was unclear, even to others in the education finance reform movement.³⁶

Was Rodriguez the Best Case to Appear Before the Court?

There was also some thought among leaders of the school finance reform movement that the Rodriguez case was not the best case to come before the Supreme Court. Rodriguez was one of more than thirty cases that materialized after Serrano v. Priest³⁷ (Serrano I) "first questioned the constitutionality of inequalities in school spending which were caused by disparate taxable wealth."³⁸ Some other correlations between district income and individual family income in Texas were weak.³⁹ These weaknesses did not escape the review of the Supreme Court and "[t]he introduction of demographic data backfired on [the plaintiffs.]"⁴⁰ A better case for the plaintiffs might "have come from New Jersey, where personal poverty was very strongly associated with the poverty of the tax base."⁴¹

Conclusion

Typically, a decision like Rodriguez would not spur a great deal of action. It could almost be considered a nondecision. Despite all the words, the close vote, and the strong views both for and against the Texas school financing system, after the Rodriguez decision

35 Ibid.

36 John Coons was among those education finance reformers who were not certain of the definition.

37 Serrano v. Priest, 5 Cal. 3d 584, 487 P. 2d 1241 (1971).

38 David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 481.

39 Linda Mathews, "Rodriguez and Friends," Race Relations Reporter, July 1973, 20.

40 "A Decade After Rodriguez: An Interview with John Coons," Phi Delta Kappan, (March 1983): 480.

41 Ibid.

was handed down, the state of Texas was under no federal constitutional obligation to make any changes in its school financing system. It could still finance its schools through a combination of federal, state, and local funds. It could still use the local property tax as a major source of income. Neither Texas nor any other state with a similar financing system (and that included just about every state) had to take any action whatsoever. As the next chapter demonstrates, however, the next twenty years were full of activity in the world of school finance reform, and much of that activity took place in the courtroom.

CHAPTER IV
SIGNIFICANT STATE COURT HISTORY AND DATA
AFTER THE RODRIGUEZ DECISION

Introduction

As noted in the previous chapters, the Rodriguez case initiated a flurry of activity in state courts. People came to realize that education finance needed to be reformed, and if those reforms would not take place in the Supreme Court, then they would have to occur elsewhere. This chapter begins with a brief overview of the activity that took place, on the state court level during this period. It then highlights individual state court decisions from the time of the Rodriguez decision through 1993. A series of tables follows. The tables present a national picture of comparison and contrast. Table 4, highlights the plaintiffs' strategies in these cases by examining which state constitutional clauses were attacked in the plaintiffs' arguments. Next, Table 6 details the states' education clauses as they existed in 1993 and notes whether education was recognized as a fundamental right in the state. Finally, Table 5, examines the outcomes of the cases in relation to the purported strength of the state's education clause.

Overview 1973 to 1993

The Early History

As noted in the previous chapter, few state courts had experience with complicated constitutional matters at the time of the Rodriguez decision. Federal courts had been the favored arena for resolving social issues such as the ones surrounding school finance. After Rodriguez, plaintiffs wondered how this major shift from federal court to state

courts would affect the outcome of their cases. Plaintiffs did not have to wait long for an answer.¹

Only one month after the Rodriguez decision, the New Jersey Supreme Court handed down its own ruling in a school finance case. In Robinson v. Cahill,² the court struck down the New Jersey system of school financing because it failed to provide the "thorough and efficient" system of free public schools that was required by the education clause of the New Jersey Constitution.

Robinson was no harbinger of easy plaintiff victories, however. Many long years of litigation followed in other states.

Although the first response by a state court to the retreat of the federal courts from school finance issues came quickly, school finance litigation unfolded slowly during the three years following Rodriguez. During this period plaintiffs did well in state trial courts. Between 1973 and 1976, trial courts in Idaho, California, and Connecticut found school finance systems unconstitutional. However, supreme courts in four western states followed the lead of the U.S. Supreme Court in Rodriguez and found that inequalities in state school finance systems resulting from the disparate fiscal capacities of school districts did not violate state constitutions.³ [These states were Arizona, Idaho, Oregon and Washington].

Thus, the years immediately following Rodriguez brought mixed results, but school finance reformers pushed ahead with additional litigation aimed at achieving equal educational opportunity for all students.

As time passed, plaintiffs became more court-savvy. They were able to produce more extensive court records because they had more witnesses and documents.⁴

Plaintiffs meticulously documented how the school financing systems discriminate[d] against children as a result of the fiscal capacity of the school district--a factor that [had] nothing to do with education. They also

¹ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 482.

² Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

³ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 482.

⁴ Ibid.

documented the ways in which inequalities in financing resulted in unequal educational facilities, staff, course offerings, equipment and instruction materials.⁵

Plaintiffs gathered evidence carefully and because there was more of it for the courts to examine, trials took longer.⁶

"Beginning in late 1976, plaintiffs' fortunes in state courts changed dramatically for the better. In general, the cases that reached state supreme courts during this period were tried after Rodriguez and profited from lessons learned from earlier losses."⁷ In late 1976, the California Supreme Court reaffirmed its 1971 Serrano v. Priest,⁸ (Serrano I) holding. In Serrano II,⁹ the California Supreme Court held that education was a fundamental right under the California Constitution regardless of its status under the federal Constitution. Soon afterward, state supreme courts in Connecticut, Washington and Wyoming also found that their school finance systems were unconstitutional.¹⁰

After 1976, however, plaintiffs began to suffer defeats in major state court cases. Plaintiffs lost in state supreme court in Ohio, Colorado, Georgia and New York. School finance reformers may have lost some of the momentum that they had gained from earlier court victories.

The Early to Middle 1980s

As the 1970s moved into the 1980s, new concerns developed outside of education finance and equal educational opportunity. For many Americans, higher taxes, inflation,

5 Ibid.

6 Ibid.

7 Ibid.

8 Serrano v. Priest, 5 Cal 3d 584, 487 P.2d 1241 (1971).

9 Serrano v. Priest, 18 Cal. 3d 729, 557 P.2d 929 (1976).

10 David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 482.

and then recession, appeared to be far more immediate concerns.¹¹ Furthermore, attentions shifted in the education world as well. With the publication of A Nation at Risk in 1983,¹² education reform became the "consuming passion"¹³ of the 1980s. Americans became concerned with how they compared to other nations academically. Consequently, by 1983 the education reform movement "eclipsed the school finance reform movement of the 1970s."¹⁴

School finance litigation by no means disappeared during the 1980s. Courts continued to address many of the same factual scenarios that they had adjudicated in the 1970s, but new trends began to develop in the some of the case arguments. For example, during the 1980s, several courts addressed the issue of municipal overburden. Municipal overburden was an alleged disadvantage suffered by urban areas which had "enormous demands for non-education-related services, such as welfare, health and immigration."¹⁵ Plaintiffs argued that municipal overburden should be acknowledged in school funding formulas. Municipal overburden was a controversial issue, not only in the courts where it was alleged, but also in the school finance community. Some even doubted its existence. Near the end of the 1980s, municipal overburden arguments in school finance cases were, for the most part over.¹⁶

The Late 1980s and Early 1990s

11 Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 35, 118.

12 Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 263.

13 Allan Odden and Lori Kim, "Changing School Finance: Imperative for the 90s." Education Digest 57 (April 1992): 3.

14 Deborah A. Verstegen, "The New Wave of School Finance Litigation," Phi Delta Kappan 7 (November 1994) 243-250, LEXIS par. 7 of 104.

15 Allan R. Odden and Lawrence O. Picus, School Finance: A Policy Perspective. (St. Louis, Missouri: McGraw-Hill, 1992), 33.

16 Ibid.

The late 1980s and early 1990s saw a resurgence in interest in school finance cases. The exact cause behind this regeneration remains unknown. Some experts alleged that it was a result of the growing disparity between rich and poor districts. Others alleged that earlier lawsuits failed to reach acceptable results. Still others believed that the courts had become more liberal and more protectionist, at least as far as education finance was concerned. Finally, according to some, educators began bringing the suits out of frustration with their state legislators inability to reform school finance.¹⁷

The Failure of Equality and Equity

Furthermore, in the 1990s, after more than twenty years of frustration with trying to bring about equal educational opportunity, some school finance reformers suggested abandoning the equality and equity arguments. To these reformers, attempts to bring about equality or equity no longer seemed viable. Equality of spending, dollar for dollar, would probably never occur; most school finance reformers came to this conclusion long before Rodriguez ever reached the Supreme Court. Essentially, as mentioned in Chapter 1, different children often required different materials or equipment, which typically translated into different amounts of money. Seemingly, this would make equity a good solution to school finance problems. Consequently, for many years, school finance reformers struggled to obtain equal educational opportunity for children through calls for equity, but equity too had its problems. Even when state courts struck down the school financing system as unconstitutional and inequitable, the actual changes in dollar amounts for districts and educational opportunities for children were seldom seen. From 1983 to 1993, "states all over the country...endured the same cycle of litigation, court decision, attempted remedy and further litigation."¹⁸

¹⁷ Jo Anna Natale, "Just Deserts," The American School Board Journal (March 1990): 20.

¹⁸ Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 44.

Leveling

One of the only possible roads to equity appeared to have come through something wealthy districts had feared since before Rodriguez: leveling.¹⁹ Some residents of wealthier districts apprehensively equated the concept of equity with leveling.

The fear that comes across in many...letters [to the editor] and editorials... is that democratizing opportunity will undermine diversity and even elegance in our society and that the best schools will be dragged down to a sullen norm, a mediocre middle ground of uniformity. References to Eastern European socialism keep appearing in these letters. Visions of Prague and Moscow come to mind: Equity means shortages of toilet tissue for all students, not just for black kids in New Jersey or in Mississippi. An impoverished vision of America seems to prevail in these scenarios.²⁰

Thus, to many residents of property-wealthy districts, the process of leveling meant distributing their money in other people's districts. In their eyes, equity would take their money away from their own children.

Adequacy - A New Solution or a New Problem?

In the 1990s, a solution to educational finance problems appeared to develop. School finance reformers began to speak in terms of adequacy rather than equity.

Adequacy mov[ed] away from an emphasis on dollar inputs--or how much it [would] cost to bring poorer districts to fiscal parity with their wealthier counterparts---towards a closer scrutiny of the things education dollars [were] supposed to buy---teachers, curricula, test scores.²¹

Most of the education finance cases after 1989 spoke of adequacy as well as equity in their arguments.²² Indeed, some argued that adequacy will virtually replace equity in school finance cases, if it has not done so already. According to Michael Kirst, an educator

19 Ibid.

20 Jonathan Kozol, Savage Inequalities: Children in America's Schools (New York: Crown, 1991): 173.

21 Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 44-45.

22 Allan Odden and Lori Kim. "Changing School Finance: Imperative for the 90s." Education Digest 57 (April 1992): 3-6.

professor at Stanford and the former president of the California Board of education, "There is a general view in the school finance field that adequacy suits are not as sophisticated or up-to-date as adequacy."²³

Thus, the post Rodriguez years were years of ever developing strategies for school finance reformers and of active litigation for the state courts. For the most part, both the reformers and the courts attempted, in their own ways, to improve the school finance situation in the United States, although at times, because of their respective duties and obligations, they appeared to work at cross purposes. Unfortunately, in spite of such efforts, as the next sections demonstrate, by 1993 conditions in property poor districts were much the same as they were in 1973.

Case Highlights from State Courts 1973-1993

The Purpose of this Synopsis

By examining individual state court cases, this dissertation explores how the United States, as a nation, responded to the decision of its highest court. The Rodriguez case impacted education and education financing not only in Texas, but throughout the country. Many states had factual scenarios as compelling as those found in Texas. Not surprisingly then, the history of education finance in many individual states, is worth additional study. (See Chapter V's Recommendations.) This dissertation does not attempt to examine the particular histories of every state's response to Rodriguez. Rather, it presents an overview of the significant state court cases that followed Rodriguez.

1973

Miliken v. Green, 390 Mich. 389, 212 N.W. 2d 711 (1973)

The governor of the state brought a suit for declaratory judgment, hoping to determine the constitutionality of the state's school financing system. In December of

²³ Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 45.

1972, the Supreme Court of Michigan had found the school financing system to be "constitutionally infirm"²⁴ based on the equal protection clause of the Michigan Constitution. On January 30, 1973, the court granted a rehearing. After the rehearing and the results of the Rodriguez case, the court vacated its earlier pronouncements and gave new answers to the certified questions. Based upon the Rodriguez authority, it found no violation of the federal equal protection clause. Furthermore, it found no violation against Michigan's equal protection clause. Finally, the Michigan Supreme Court indicated that the Michigan Constitution did not prohibit districts from using local property taxes as a source of revenue, nor did it require the state to supplement other districts or take any other measure to even out the distribution of school funds.

Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973)

This case, handed down only one month after the Rodriguez Supreme Court decision,²⁵ "was the first case in which a state supreme court relied on the education provisions of a state constitution, rather than on equal protection requirements, to find the funding of schools unconstitutional."²⁶ The case, which came to be known as Robinson I,²⁷ was important for several other reasons as well. For example, in Robinson "[t]he New Jersey court condemned not only the inequalities resulting from inadequate tax bases, but also those resulting from inadequate tax efforts. In addition, the court held that the state had never spelled out the content of the educational opportunity mandated by the state constitution."²⁸

²⁴ Miliken v. Green, 390 Mich. 389, 212 N.W. 2d 711

²⁵ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 482.

²⁶ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan (March 1983): 482.

²⁷ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

²⁸ Ibid.

Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973)

The plaintiffs alleged that the disparities in Arizona's school finance system violated the equal protection clauses of the United States and of the State of Arizona. After the appeal to the Arizona Supreme Court was filed in this case, the United States Supreme Court handed down its decision in Rodriguez and the Arizona court found that the federal equal protection question had been answered. The court also found that there was no state equal protection violation because the school financing system was rationally related to a legitimate state goal. Interestingly, though, the court also declared that under the language of the Arizona Constitution's education clause, education was a fundamental right in Arizona.²⁹

1974

Northshore School District No. 417 v. Kinear, 84 Wash.2d 685, 530 P.2d 178 (1974)

In this case the plaintiffs alleged that the Washington school financing system violated both the federal and state equal protection clauses, as well as the state constitution's education clause.³⁰ The Washington Supreme Court found that "the record [did] not bear out these claims of unconstitutional inequality of educational opportunity."³¹ Consequently, the court deferred to the legislative determination of the scope of education to be provided in the state.³²

²⁹ In a 1994 case, Roosevelt Elementary School Dist. v. Bishop, 877 P.2d 806, 811 (Ariz. 1994), the Arizona Supreme Court questioned the court's reasoning in Shofstall when it declared: [w]e do not understand how the rational basis test can be used when a fundamental right has been implicated."

³⁰ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 193.

³¹ Northshore School District No. 417 v. Kinear, 84 Wash.2d 685, 530 P.2d 178, 185 (1974)

³² Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 193.

1975

Thompson v. Engelking, 96 Idaho 793, 537 P.2d 635 (1975)

In this case, the Idaho Supreme Court reviewed the decision of the District Court. The District Court had found that Idaho's school financing system, which relied heavily on ad valorem taxes, violated the Idaho Constitution because it failed to provide a uniform system of public schools. The District Court had found no violation of the state's equal protection clause. On appeal the Idaho Supreme Court found that neither the education clause nor the equal protection clause was violated.

1976

Olsen v. State, 276 Or.9, 554 P.2d 139 (1976)

In this case that came before the Oregon Supreme Court, the plaintiffs contended that the Oregon system of public school financing violated both the equal protection and education clauses of the Oregon Constitution.³³ The essence of the plaintiffs' argument [was] that under the Oregon system the amount of money available for education depend[ed] upon the value of the property in the individual school districts and this varie[d] greatly. They further contend[ed] that this variation in wealth result[ed] in unequal educational opportunities for the children of the state.³⁴

In its analysis, the court noted that there were three types of districts in Oregon: unified, elementary ,and secondary and that substantial spending disparities existed between like districts.³⁵ The court then referred to the recent Rodriguez case, but acknowledged that it could decide that the equal protection clause of the Oregon Constitution was broader than that of the federal Constitution.³⁶ The court used the

33 Olsen v. State, 276 Or.9, 554 P.2d 139 (1976)

34 Ibid. at 140.

35 Ibid.

36 Ibid. at 143.

balancing test employed by the New Jersey Supreme Court in Robinson v. Cahill³⁷ to evaluate the plaintiffs' equal protection arguments. The Oregon Supreme Court found no violation of state equal protection.³⁸ Furthermore, the court found that the education clause of the Oregon Constitution (which called for a "uniform" system of public schools) did not require spending equality among like districts. Thus, the education clause argument was likewise rejected.³⁹ As in the Rodriguez case, however, the court stated that its rulings in this case were not an endorsement of the status quo in school financing. The court declared: "Our decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality."⁴⁰

People ex. rel. Jones v. Adams, 40 Ill. App.3d 189, 350 N.E.2d 767 (1976)

Citizens of a rural district in Illinois paid their 1971 and 1972 property taxes under protest, and alleged, in part, that the Illinois method of financing public education violated the equal protection clauses of the United States Constitution, and the Illinois Constitution. The citizens, who were the defendants in this case, were taxed locally at an above-average rate, but per student spending still fell \$165 below the state average.⁴¹ The court found that "Illinois' method of financing public schools before 1973 was expressly held to be constitutional in McInnis v. Shapiro."⁴² Even under the standards adopted in Rodriguez,

37 Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

38 Olsen v. State, 276 Or.9, 554 P.2d 139, 148 (1976).

39 Ibid.

40 Ibid. at 149.

41 People ex. rel. Jones v. Adams, 40 Ill. App.3d 189, 350 N.E.2d 767, 774-775 (1976).

42 McInnis v. Shapiro (N.. Ill. 1968) 293 F. Supp. 327, aff'd sub nom. McInnis v. Ogilvie, 394 U.S., 322, 22 L.Ed. 2d 308, 89 S. Ct. 1197.

Rodriguez, which "displaced"⁴³ those in McInnis, the taxpayer defendants failed to prove discrimination.

At trial the defendants did not elicit any testimony concerning the discriminatory aspects of Illinois' method of financing public schools during 1971 and 1972. Although the defendants introduced in evidence several exhibits which contained information relevant to this subject, they made little effort to separate the information from the large volume of other material in the exhibits. The defendants have not offered an analysis of what the statistics included in their exhibits prove. They have not introduced evidence concerning the adequacy of education provided by school districts in Franklin County, and they have not introduced evidence concerning the size of the disparity in expenditures per pupil between school districts in Franklin County and wealthy school districts in the state.⁴⁴

The defendants arguments were thus rejected by the court.

Robinson v. Cahill, 69 N.J. 449, 355 A. 2d 129 (1976)

In this case, which came to be known as Robinson V, the New Jersey Supreme Court upheld the constitutionality of the legislative reforms that had been instigated in response to Robinson I.⁴⁵ The primary focus of the case was on the statutory provisions used to implement "the state's responsibility to define and monitor the adequacy of education delivered by the school districts. Secondary attention [was] given to sufficiency of provisions for financial support and to steps toward elimination of gross disparities in funding."⁴⁶

Serrano v. Priest, 18 Cal. 3d 729, 557 P.2d 929 (1976)

This case became known as Serrano II because it followed the original 1971 Serrano v. Priest case, 5 Cal 3d 584, 96 Cal Rptr. 601, 487 P.2d 1241 (which afterwards became known as Serrano I.) Prior to the Rodriguez decision, in Serrano I, the California Supreme Court had found that the California school financing system violated both the state

43 People ex. rel. Jones v. Adams, 40 Ill. App.3d 189, 350 N.E.2d 767, 775 (1976)

44 Ibid. at 776.

45 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

46 Ibid.

and federal equal protection clauses. In *Serrano II*, the court acknowledged that the *Rodriguez* decision "undercut"⁴⁷ its federal equal protection ruling in *Serrano I*, but nonetheless, the court found that a state equal protection violation still existed.⁴⁸ Although the state legislature had attempted to change the system (which relied on local property taxes for much of its funding) the California Supreme Court found that the changes were inadequate because the basic structure of the system was unchanged; i.e. it was still a "foundation level" system.⁴⁹

1977

Horton v. Meskill, 376 A. 2d 359 (1977)

The Connecticut Supreme Court in this case (Horton I) found that the state's system of school financing, which relied heavily on local property taxes, violated the state equal protection clause.⁵⁰ At the time of the initial trial,

Connecticut ranked fiftieth among states in its efforts to distribute aid in such a way as to equalize the abilities of various towns to finance education, ranked forty-seventh in the percent of educational funding coming from the state and second in the percent of education funding coming from local governments.⁵¹

The court used Rodriguez in its equal protection analysis,⁵² but found that education was a fundamental right under the Connecticut Constitution and that the "[b]asic and fundamental nature of [the] right to education necessitat[ed] strict scrutiny of wealth-based variations, with [the] result that substantial equality of educational opportunity [was] required."⁵³

47 *Serrano v. Priest*, 18 Cal. 3d 729, 557 P.2d 929, 948 (1976)

48 *Ibid.* at 951.

49 *Serrano v. Priest*, 18 Cal. 3d 729, 557 P.2d 929, 935 (1976)

50 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 186.

51 *Horton v. Meskill*, 376 A. 2d 359, 368 (1976)

52 *Ibid.* at 371-372.

1978

Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978)

"Faced with a deteriorating plant, a reduction in budget for books, supplies, staff and programs and a double levy failure petitioners (respondents and cross-appellants brought this action"⁵⁴ on appeal to the Supreme Court of Washington. The petitioners alleged that "the State had failed to discharge its 'paramount duty' to make 'ample provision' for the education of its resident children pursuant to Const., art 9, § 1 and 'to provide for a general and uniform system of public schools' pursuant to Const., art 9., § 2."⁵⁵

Based upon these claims, the Washington Supreme Court upheld the decision of the lower court⁵⁶ which had invalidated the school financing system's reliance on local property taxes.⁵⁷ The court rejected the appellants call for judicial restraint and asserted that it was not acting beyond the scope of its constitutionally granted powers.⁵⁸ Finally, the court determined that the state legislature had the responsibility to define the scope of a basic education and to make the adequate provision for funding education statewide.⁵⁹

1979

Board of Education v. Walter, 58 Oh.St. 2d 368, 390 N.E.2d 813 (1979)

⁵³ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 186.

⁵⁴ Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978).

⁵⁵ Ibid.

⁵⁶ Ibid. at 75.

⁵⁷ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 193.

⁵⁸ Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71, 87-90 (1978).

⁵⁹ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 193.

In this case, the Supreme Court of Ohio addressed two common issues in state school finance litigation. First, did the state's school financing system violate the equal protection clause of the Ohio Constitution? Secondly, did the system violate the state's education clause?⁶⁰

The court looked to the Rodriguez decision for guidance, but noted that it was "not helpful in determining whether a right was fundamental under the Ohio Constitution."⁶¹ Thus, even though education was mentioned explicitly in the Ohio Constitution, the court did not find education to be a fundamental right in Ohio. The court also found this case inappropriate for evaluation under the strict scrutiny test. Consequently, using the rational relationship test, the court found no violation of the state's equal protection clause.⁶²

The court also failed to find a violation of the state's education clause. The court acknowledged its responsibility to review legislation, and "that the wide General Assembly discretion granted to the General Assembly [--here with respect to school finance litigation--was] not without limits."⁶³ In this case, however, the Ohio Supreme Court found that the General Assembly acted within its constitutionally granted powers when it established the school financing system.⁶⁴

Danson v. Casey, 484 Pa. 415, 399 A 2d 360 (1979)

In this case the plaintiffs/appellants alleged that, due to inadequate revenues, students in the Philadelphia School District received "only a 'truncated and uniquely limited program of educational services.'"⁶⁵ The appellants did

60 Board of Education v. Walter, 58 Oh.St. 2d 368, 390 N.E.2d 813 (1979).

61 Ibid. at 818.

62 Ibid. at 821.

63 Ibid. at 825.

64 Ibid.

65 Danson v. Casey, 484 Pa. 415, 399 A 2d 360 (1979).

not purport to challenge any particular portion of either the state subsidy or local taxation aspects of the scheme. Instead, appellants basic constitutional claim [was] that, viewed as a whole, the Pennsylvania system of school financing fail[ed] to provide Philadelphia's public school children with a thorough and efficient education and deni[ed] them equal educational opportunity solely because of their residence in the School District of Philadelphia.⁶⁶

The Supreme Court of Pennsylvania found that the plaintiffs' "broad and general"⁶⁷ challenge (brought in part under the state's education clause) to the state's school financing system "failed to state a justicable cause of action."⁶⁸

Pauly v. Kelly, 162 W.Va. 672, 255 S.E.2d 859 (1979)

In 1975, the plaintiffs filed a class action lawsuit alleging violations of the state's equal protection and education clauses. The circuit court granted the defendants motion to dismiss the case, but the plaintiffs appealed. The West Virginia Supreme Court found that "[t]he mandatory requirements of a 'thorough and efficient system of free schools found in Article XII, Section 1 of the West Virginia Constitution, made education a fundamental right in this State."⁶⁹ The court also found that the state's equal protection clause was violated because there was no compelling state interest which justified the unequal classifications brought about by the system.⁷⁰ The court then called upon the legislature to develop a new "high quality" system and subsequently remanded the case to the circuit court.⁷¹

1980

Washakie County School Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980)

⁶⁶ Ibid. at 363.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Pauley v. Kelly, 162 W.Va. 672, 255 S.E.2d 859 (1979).

⁷⁰ Pauley v. Bailey, 174 W.Va. 167, 324 S.E. 2d 128, 131 (1984).

⁷¹ Ibid.

Three school districts, together with their school board members and several students had alleged, in District Court, that the Wyoming school financing system violated the equal protection clause of the state constitution. When the District Court granted the state's motion to dismiss the plaintiffs' challenge, the plaintiffs appealed. Unlike the Rodriguez court, the Wyoming Supreme Court found that education was a fundamental right under the Wyoming Constitution. Furthermore, the Wyoming court accepted the argument that wealth was a suspect class and ruled that the compelling state interest test should be applied to evaluate the state's equal protection clause. Finally, the court concluded that "until equality of financing is achieved, there is no practicable method of achieving equality of quality." The court then reversed the decision and remanded the case to the trial court.

1981

McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156 (1981)

Georgia parents, children, and school officials who resided in school districts with low property tax bases alleged that the school financing system violated the Georgia equal protection clause and also failed to provide the "adequate education" that was required by the Georgia Constitution. The trial court found that the school financing system did violate the state's equal protection clause, but it rejected the plaintiffs' claims that the state failed to provide an adequate education. On appeal, the Georgia Supreme Court found that "adequate education" did not "require the state to equalize educational opportunities between districts"⁷² and that the more than 1 billion dollars the state allocated to education was proof of its adequacy.⁷³ Beyond this evaluation of "adequacy," the court did not want to act as a "super-legislature" The court applied the rational relationship test to its evaluation of the state's equal protection clause and found that the educational finance

⁷² McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156, 164 (1981).

⁷³ Ibid. at 165.

system did not violate the Georgia Constitution. The court declared, however, that its holding "should not be construed as this court's endorsement of the status quo...[but that] solutions must come from our lawmakers."⁷⁴

1982

Levittown Union Free School Dist. v. Nyquist, 57 N.Y.S. 2d 27, 453 N.Y.S.2d 643, 439 N.E. 2d 359

The New York Court of Appeals (the highest court in the state) overturned the decisions of two lower courts that had previously found in favor of plaintiffs who challenged the school financing system. The court used the rational basis test from Rodriguez to find that there was no violation of either federal or state equal protection. Furthermore, the court held that the state abided by the state constitutional mandate to provide for the maintenance and support of free common elementary and secondary schools. In addition, the court rejected the plaintiff's claim that "metropolitan overburden" (which alleged that inequalities were a result of "demographic, economic and political factors intrinsic to cities"⁷⁵ was a result of legislative action or inaction.⁷⁶

Lujan v. Colorado State Board of Educ., 649 P.2d 1005 (Colo. 1982)

The trial court had determined that the Colorado school financing system, which relied heavily on local taxes, was unconstitutional on both state and federal equal protection grounds, as well as the "thorough and uniform" requirement of the education clause of the state's constitution. The Colorado Supreme Court reversed. It found no equal protection violations because the financing system was "rationally related to a legitimate state purpose."⁷⁷

⁷⁴ Ibid. at 167.

⁷⁵ Mary Jane Connelly and Jack McGee, "School Finance Litigation of the 1980s." Journal of Education Finance 12 (Spring 1987): 580.

⁷⁶ Ibid.

⁷⁷ Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 at 1011 (Colo. 1992)

Yet, the court did not specifically endorse the status quo, as far as the school financing system was concerned.

Whether a better financing system could be devised is not material to this decision, as our sole function is to rule on the constitutionality of our state's system. This decision should not be read to indicate that we find Colorado's school financing system to be without fault or not requiring further legislative improvements. Our decision today declares only that it is constitutionally permissible.⁷⁸

Thus, the Colorado Supreme Court exercised judicial restraint in its evaluation of the issues in Lujan.

1983

Dupree v. Alama School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983)

In Dupree, the plaintiffs contended that

[T]he great disparity in funds available for education to school districts throughout the state [was] due primarily to the fact that the major determinative of revenue throughout the state [was] the local tax base, a basis unrelated to the educational needs of any given district and that the ...state financing system [was] inadequate to rectify the inequalities inherent in a system based on widely varying local tax bases, and actually widens the gap between the property-poor and property-wealthy districts in providing educational opportunities.⁷⁹

The trial court found that the Arkansas school financing system violated the education and equal protection clauses of the Arkansas Constitution, and the Supreme Court upheld the trial courts' ruling. The Supreme Court of Arkansas upheld the trial court's finding that the Arkansas school financing system violated the education and equal protection clauses of the Arkansas Constitution.

Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 S.2d 758 (1983)

In this case, the Supreme Court of Maryland overturned an earlier circuit court decision which had found that the state's school financing system violated both the state and federal equal protection clauses and the state constitutional clause requiring a "thorough

⁷⁸ Ibid.

⁷⁹ Dupree v. Alama School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983).

and efficient" system of free public schools. The Maryland Supreme Court applied the rational relationship test to its evaluation of the equal protection clauses and found no equal protection violations. Even though students from property-poor districts could not produce funds to the same extent as students in property-rich districts, nonetheless, the court deemed their education was still adequate. Furthermore, the court held that a "thorough and efficient" system of free public schools "did not mandate exact equality of per pupil funding and expenditures among districts."⁸⁰

1984

East Jackson Public Schools v. State, 133 Mich. App. 132, 348 N.W. 2D 303 (1984)

In this case, the plaintiffs appealed a circuit court's ruling which had found the state school system to be valid under the Michigan Constitution.

The plaintiffs' thesis, as interpreted by the [appellate] court, was that a state school financing system which did not produce equal funding per pupil in each school district throughout the state was not permissible under the Michigan state constitution. The [appellate] court's determination was that the legislative mandate to establish a system of free public education was not synonymous with providing equal per pupil funding between all school districts.⁸¹

Thus, the appellate court upheld the circuit court's decision.

Pauley v. Bailey, 174 W.Va. 167, 324 S.E. 2d 128 (1984)

This case followed the implementation of the Master Plan for Education that was devised by the legislature after Pauly v. Kelly.⁸² Plaintiffs alleged that the "circuit court erred, perhaps inadvertently, when it failed to specifically order the implementation and enforcement of the Master Plan."⁸³ The plaintiffs were particularly interested in imposing

⁸⁰ Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 S.2d 758, 776, (1983).

⁸¹ Mary Jane Connelly and Jack McGee, "School Finance Litigation of the 1980s." Journal of Education Finance 12 (Spring 1987): 580

⁸² Pauly v. Kelly, 162 W.Va. 672, 255 S.E.2d 859 (1979).

⁸³ Pauley v. Bailey, 174 W.Va. 167, 324 S.E. 2d 128, 133 (1984).

"a specific timetable for full implementation of the Master Plan."⁸⁴ The court did not consider it appropriate to recommend a timetable and thus, remanded the case to the circuit court for further monitoring.⁸⁵

1985

Abbott v. Burke, 100 N.J. 269 (1985)

The school finance system that had been enacted by the legislature after the Robinson v. Cahill decision was challenged in court, but the court referred the case to an administrative hearing.⁸⁶ The case would reappear before the New Jersey Supreme Court in 1990.⁸⁷

Horton v. Meskill, 187 Conn. 187, 486 A.2d 1099 (1985)

This case, part of a long line of school finance litigation in Connecticut, became known as Horton II. At the trial level in Horton II, the court examined the 1979 legislative response to the Horton I's call for a new school finance scheme and found that it was inadequate. On appeal, the court found that the Horton II trial court had erred in reaching its decision. First, the trial court used the compelling state interest standard to evaluate the funding formulas when the appropriate test called for only a rational relationship between the formula and a legitimate state purpose. Secondly, the trial court "had failed to afford all interested parties an opportunity to be heard regarding remediation of constitutional infirmities."⁸⁸ Consequently, the Connecticut Supreme Court upheld the constitutionality of the power-equalization financing system that had been adopted after Horton I, on the

84 Ibid. at 137.

85 Ibid.

86 Stephen I. Brown, "Educational Finance Equity: Recent Developments in State Courts," NASSP Bulletin, (January 1991): 83.

87 As well as in 1994.

88 Mary Jane Connelly and Jack McGee, "School Finance Litigation of the 1980s." Journal of Education Finance 12 (Spring 1987): 582.

grounds that it significantly narrowed the disparities between rich and poor districts.⁸⁹ The court then remanded the claims that amendments passed subsequently to the new system unconstitutionally delayed the implementation of the system.⁹⁰

1986

Serrano v. Priest, 226 Cal. Rptr. 584 (Cal. App. 1986)

This case, part of the ongoing struggle for school finance reform in California, became known as Serrano III. The plaintiffs claimed that in spite of the attempts at reform that followed Serrano I and Serrano II, unacceptable funding disparities still existed.⁹¹ By the time the Serrano III decision was handed down, the school finance system in California had again changed due to a taxpayers' revolt⁹² and the implementation of Proposition 13.⁹³ In this case, however, the court ruled "as did the trial court that remaining differences in spending [were] not significant, either mathematically or educationally."⁹⁴ Furthermore, even had the differences been significant, they would have been justified by many state interests relating to the necessity of a uniform and adaptable budget.⁹⁵

1987

Fair School Finance Council v. State, 746 P.2d 1135 (Okla. 1987)

On appeal in this class action suit, the plaintiffs argued that the school financing system in Oklahoma violated the equal protection laws of both the United States and

⁸⁹ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

⁹⁰ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

⁹¹ Serrano v. Priest, 226 Cal. Rptr. 584, 589 (Cal. App. 1986).

⁹² Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 114.

⁹³ Serrano v. Priest, 226 Cal. Rptr. 584, 591 (Cal. App. 1986).

⁹⁴ Ibid. at 619.

⁹⁵ Ibid.

Oklahoma constitutions.⁹⁶ In addition, to these fairly standard arguments, the plaintiffs made two unique arguments. First, they "contend[ed] that it [was] a violation of both due process and equal protection to require children to attend schools under penalty for them and their parents without requiring some standard of equality in the public support of those schools."⁹⁷ Secondly, they argued that the school financing system violated Article 5 §§ 59 and 46 of the Oklahoma Constitution. "Section 59 requir[ed] that general laws have a uniform operation throughout the state and that no special law be enacted where a general law [could] be made and Section 46 prohibit[ed] any special or local law 'regulating the affairs' of school districts."⁹⁸

The court rejected all of these arguments. As to the federal Constitutional claims, the court found Rodriguez to be controlling. There was "no requirement under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution that a state's school financing system guarantee equal expenditures per child."⁹⁹ In addition, because the court did not accept the plaintiffs argument for the application of strict judicial scrutiny to the state equal protection clause, the plaintiffs arguments under the state equal protection clause also failed. Finally, the court rebuffed the plaintiffs two unusual arguments. The Oklahoma Supreme Court declared that "[w]hatever merit [the compulsory attendance argument had] it [was] of no avail where a charge [could] not be fairly made that a child[was] not receiving at least a basic adequate education,"¹⁰⁰ (emphasis in the original). Lastly, the court rejected the arguments brought under Article 5 §§ 59 and 46 of the Oklahoma Constitution. The state had a rational basis for its school

⁹⁶ Fair School Finance Council v. State, 746 P.2d 1135, 1144,1148 (Okla. 1987)

⁹⁷ Ibid. at 1150.

⁹⁸ Ibid.

⁹⁹ Ibid. at 1147.

¹⁰⁰ Ibid. at 1150.

financing system and the laws that regulated the affairs of the school district were not impermissible simply because some districts could act with greater freedom under those laws, due to a superior financial situation within the district.¹⁰¹

Britt v. North Carolina State Board of Education. 86 N.C. App. 282, 357 S.E.2d 432, app. dismissed 361 S.E.2d 71 (1987)

After the Superior Court of North Carolina dismissed their complaint alleging a violation of the state's education clause, the plaintiffs (the present and future students of public schools in Robeson County, North Carolina) brought their case to the Court of Appeals of North Carolina.¹⁰² On appeal, the plaintiffs alleged that the state's school financing system was unconstitutional because it depended in large part on local tax bases and it resulted in the denial of the plaintiffs' fundamental right to equal educational opportunity.¹⁰³

According to the court, "the outcome of this appeal depended entirely on the interpretation to be given the constitutional provisions relied upon by the plaintiffs."¹⁰⁴ If the court interpreted the constitution in the same manner as the plaintiffs (who believed that equal educational opportunity was a fundamental right) then the court would be able to redress the plaintiffs claim. If the court did not agree with the plaintiffs' interpretation of the North Carolina Constitution, however, it would be therefore compelled to affirm the lower court's dismissal. The court looked to the legislative history surrounding the development of the education clause and to the text of the education clause itself in order to reach its conclusion. It found that neither the constitutional history nor the text of the

101 Ibid.

102 Britt v. North Carolina State Board of Education. 86 N.C. App. 282, 357 S.E.2d 432, 433 app. dismissed 361 S.E.2d 71 (1987).

103 Ibid. at 434.

104 Ibid.

document supported the plaintiffs' claims. Therefore, the appellate court upheld the lower court's dismissal.¹⁰⁵

1988

Richland County v. Campbell, 294 S.C. 346, 364 S.E. 2d 470 (1988)

In this brief opinion, the Supreme Court rejected the plaintiffs' claims that the school financing system in South Carolina violated both the education and equal protection clauses of the South Carolina Constitution.¹⁰⁶ The appellants asserted that the South Carolina public school financing system produced "disparate revenue and unequal educational opportunities because it [was] based upon formulas that [took] into account the individual wealth of the various school districts."¹⁰⁷ The court found that "[a]pparently plaintiffs interpreted [the education] provision as requiring the legislature to 'pay' for the cost of the public school system rather than to 'provide' for its maintenance and support."¹⁰⁸ The court found the legislative acts that devised the state's school finance plan to be a valid means of providing for education.

The court also refuted the appellants equal protection claim. According to the court, the school financing plan in South Carolina differed from plans which relied heavily upon property local taxes. Though the court did not describe in detail the differences between South Carolina's method and the method which relied on property local taxes, it nonetheless declared that South Carolina "school districts which lack a sufficient tax base receive proportionally more state funds and are required to pay proportionally less local revenue for public school operation,"¹⁰⁹ (emphasis in the original). Based on these conclusions, the supreme court affirmed the decision of the trial court.

105 Ibid. at 434-435.

106 Richland County v. Campbell, 294 S.C. 346, 364 S.E. 2d 470 (1988).

107 Ibid. at 471.

108 Ibid.

1989

Edgewood Independent School District v. Kirby, 777 S.W. 2d 391 (Tex. 1989)

Sixteen years after the Supreme Court's Rodriguez decision, the undisputed facts of another Texas case, Edgewood v. Kirby,

showed that the disparity between the richest and poorest districts in Texas was more than 700 to 1. The 300,000 students in the poorest districts had less than 3 percent of the state's wealth to support their education, while the 300,000 students in the richest districts had more than 25 percent of the state's wealth.¹¹⁰

The Court wrote, "More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A Band-aid will not suffice; the system itself must be changed."¹¹¹

Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 P.2d 684 (1989)

In this action for declaratory judgment, the Montana Supreme Court affirmed the District Court's holding that the system of educational financing in Montana violated the Montana Constitution, but the Supreme Court drew its conclusions based upon narrower grounds than those used by the District Court. At the District Court level, the plaintiffs had "presented voluminous evidence to support their theory that the system of funding public education in Montana [was] unconstitutional."¹¹² For example, the plaintiffs had provided data which demonstrated that per pupil spending disparities were as high as 8 to 1.¹¹³ The District Court had concluded that education was a fundamental right under the

109 Ibid. at 472.

110 Stephen I. Brown, "Educational Finance Equity: Recent Developments in State Courts," NASSP Bulletin (January 1991): 82.

111 Edgewood Independent School District v. Kirby, 777 S.W. 2d 391, 397 (Tex. 1989).

112 Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 P.2d 684, 686 (1989).

113 Ibid.

Montana Constitution and that the state's equal protection clause, as well as the state's education clause had been violated. On appeal, the Montana Supreme Court found that the state "failed to provide a system of quality education granting to each student the equality of educational opportunity guaranteed under Art. X, Sec. 1, Mont. Const."¹¹⁴ Because the court found the financing system to be invalid under the education clause of the Montana Constitution, it found no reason to consider the equal protection issue.¹¹⁵ Furthermore, the court refused to consider whether education was a fundamental right under the Montana Constitution.¹¹⁶

Kukor v. Grover, 148 Wis. 2d 469, 436 N.W.2d 568 (1989)

The plaintiffs in this case alleged that the state aid formula violated the education and equal protection clauses of the Wisconsin Constitution. After the circuit court dismissed the plaintiffs claim, the case came before the Wisconsin Supreme Court on certification from the court of appeals. The Wisconsin Supreme Court affirmed the judgment of the circuit court. First, the court found that "while greater uniformity in educational opportunities is...desirable and necessary, it is not something which is constitutionally mandated under the uniformity provision [of the education clause.]"¹¹⁷ Secondly, citing Rodriguez and advocating local control as a legitimate state interest, the court found no violation of state equal protection.¹¹⁸ Finally, the court suggested while education finance matters were extremely important and changes in the system might be beneficial, the duty to make such changes fell upon the legislature and the community.¹¹⁹

114 Ibid. at 690.

115 Ibid. at 691.

116 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

117 Kukor v. Grover, 148 Wis. 2d 469, 436 N.W.2d 568, 577 (1989).

118 Ibid. at 581, 582.

Rose v. Council for Better Education, 790 S.W. 2d 186 (Ky. 1989)

Called "the mother of all adequacy suits,"¹²⁰ the court in this Kentucky case ruled that the school financing system was both inadequate and inequitable. The Kentucky Supreme Court "threw out virtually everything--the mechanism for funding education and all the laws creating districts, school boards and the state education department. All regulations regarding teacher certification and school construction were declared unconstitutional as well."¹²¹

1990

Abbott v. Burke, 119 N.J. 449, 355 A.2d 359 (1990).

Although New Jersey led the nation in funding its schools,¹²² disparities had increased since the New Jersey Supreme Court's ruling in Robinson v. Cahill. In this case the New Jersey Supreme Court wrote: "[T]he extent of failure is so deep, its causes so embedded in the present system, as to persuade us that there is no likelihood of achieving a decent education tomorrow, in the recent future or ever."¹²³ In spite of its pessimistic view for hope of reform, the court nonetheless invalidated the school finance system that had been approved after Robinson V, "on the grounds of stark failures of poor urban school districts to enable students to compete with those from wealthier suburban districts."¹²⁴ The court ordered the elimination of differences between rich and poor

119 Ibid. at 585.

120 Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 45, quoting Michael Kirst, professor of education at Stanford University and former president of the California Board of Education.

121 Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 45.

122 Stephen I. Brown, "Educational Finance Equity: Recent Developments in State Courts," NASSP Bulletin (January 1991): 83.

123 Ibid. at 84.

124 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 190.

districts and also increased funding of poor urban school districts¹²⁵ (essentially acknowledging the fact that they had special needs due to municipal overburden.)

1991

Coalition for Equitable School Funding v. State. 311 Or. 300, 811 P.2d 116 (1991)

The plaintiffs sought a declaratory judgment holding that the Oregon system of public school finance violated the state constitution, but the Oregon Supreme Court found that the plaintiffs failed to plead a valid claim for relief.¹²⁶ The plaintiffs had hoped the court would overturn the earlier Olsen¹²⁷ case which upheld the system of school financing in the state, but according to the court, the Oregon Constitution had changed in a relevant way since 1976 when Olsen was decided.¹²⁸ The people [had] added a new provision that address[ed] specifically how public schools were to be funded..."¹²⁹ According to the court, "When a party argues that a general constitutional provision forbids the state from doing something, the argument may be answered by a later adopted constitutional provision that allows the state to do that very thing."¹³⁰

The court found that in this case the voters had added a provision to their constitution known as the "Safety Net."¹³¹ The Safety Net specifically addressed the funding of public schools and permitted both the use of local tax dollars to support education and district-to-district disparities.¹³² In essence, the plaintiffs claim had already

125 Ibid.

126 Coalition for Equitable School Funding v. State. 311 Or. 300, 811 P.2d 116 (1991).

127 Olsen v. State, 276 Or.9, 554 P.2d 139 (1976).

128 Coalition for Equitable School Funding v. State. 311 Or. 300, 811 P.2d 116, 119 (1991).

129 Ibid.

130 Ibid. at 120.

131 Ibid. at 119.

been addressed (and denied) by the very text of the state constitution. As in the Olsen case, however, the Supreme Court of Oregon was again careful to point out that just because it found that the plaintiffs did not have a valid claim in this case, the court did not endorse the funding disparities that still existed in the system.¹³³

Edgewood Independent School District v. Kirby, 804 S.W. 2d 491 (Tex. 1991)

This case, which came to be known as Edgewood II, evaluated the legislature's response to Edgewood I. The court found that the legislative response did not meet the requirements of the state's education clause because it sheltered the state's wealthiest districts from the effects of equalization.¹³⁴

1992

Butt v. State, 4 Cal. 4th 668, 842 P.2d 1240 (1992)

"After a period of mounting deficits, the Richmond Unified School District... announced it lacked funds to complete the final six months of its 1990-91 school term."¹³⁵ Plaintiff parents filed a class action lawsuit, seeking temporary and permanent injunctive relief. On appeal, the court addressed an issue of first impression: "Whether the State [had] a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of 'basic' educational equality."¹³⁶ The court found that the state had such a duty.

Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W. 2d 489 (Tex.1992)

132 Ibid. at 120.

133 Ibid.. at 121.

134 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 192.

135 Butt v. State, 4 Cal. 4th 668, 842 P.2d 1240, 1243 (1992).

136 Ibid.

In this case, which came to be known as Edgewood III, the court examined the legislative response to Edgewood II. After Edgewood II, the Texas State Legislature pooled property tax wealth and equalized taxing capacity through the creation of consolidated county-wide taxing districts. In Edgewood III, the court found that this system violated the Texas Constitution because it was a form of state-level property taxation, which was prohibited by the constitution.¹³⁷

Tennessee Small School Systems v. McWherter, Appeal No.01-A-01-9111-CH-00433, 1992 Tenn. App. LEXIS 486

See Tennessee Small School Systems v. McWherter, 851 S.W. 2d 139 (Ten. 1993) in the 1993 Section for more on this case.

1993

Alabama Coalition for Equity v. Hunt, 624 So. 2d 107 (Ala. 1993)

Circuit Court Judge Eugene Reese declared the Alabama school finance system unconstitutional under Alabama's equal protection clause and its education clause. In considering whether or not education should be a fundamental right in Alabama, the court found that Rodriguez did not control.¹³⁸ The court wrote that "[p]ublic education is the state's chief instrument for stimulating economic growth, fostering civic responsibility, exposing the citizenry to social values, preparing students for professional training, and protection our democratic form of government."¹³⁹ Based on these assertions, the court also found that education was a fundamental right in Alabama.¹⁴⁰

¹³⁷ Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 192.

¹³⁸ Alabama Coalition for Equity v. Hunt, 624 So. 2d 107, 159 (Ala. 1993).

¹³⁹ *Ibid.* at 158.

¹⁴⁰ *Ibid.* at 159.

The court found that it was the state's responsibility to "establish, organize, and maintain"¹⁴¹ a system of free public schools where students would have the opportunity to obtain: (1) "sufficient oral and written communications skills"; (2) "sufficient mathematics and scientific skills"; (3) "sufficient knowledge of economic, social, and political systems generally, and of the history, politics and social structure of Alabama and the United States, specifically to enable the student to make informed choices"; (4) sufficient understanding of government and civics; (5) sufficient "self-knowledge," including health and mental hygiene; (6) "sufficient understanding of the arts to enable each student to appreciate his or her cultural heritage and the cultural heritages of others"; (7) sufficient academic, vocational and guidance training "to choose and pursue life work intelligently"; (8) sufficient skills to enable student to compete with others in the state, country and world, in the job market and academics; and (9) "sufficient support and guidance so that every student feels a sense of self-worth and ability to achieve, and so that every student is encouraged to live up to his or her full human potential."¹⁴² The court did not define "sufficient" in this context.

Gould v. Orr, 244 Neb. 163, 506 N.W.2d 349 (1993)

The court dismissed claims that the wide spending disparities violated Nebraska's education and equal protection clauses (and uniform taxation.) The court found that the plaintiffs failed to state facts sufficient to support a cause of action because they did not allege that the disparities caused the educational inadequacies.¹⁴³

Claremont School District v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993)

141 Ibid. at 166.

142 Ibid.

143 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 189.

In this case,¹⁴⁴ the court found that the education clause of the New Hampshire Constitution required the state to provide adequate funding for broad educational opportunities for all children. The court remanded the case to the lower court for a determination as to whether or not the existing system fulfilled the state's obligation.

Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993)

The plaintiffs in a group of consolidated cases alleged, on appeal, that the method of funding public schools in Idaho (1) provide neither a uniform nor an efficient system and also (2) violated the state equal protection clause. The court found Thompson v. Engelking, 96 Idaho 793, 537 P.Ed. 635 (1975) to be controlling. The court's language in Thompson was not dicta,¹⁴⁵ and the court in that case reached the correct result. In this case, like the Thompson case, the rational basis test was the appropriate standard of review.

McDuffy v. Secretary of Executive Office of Education, 415 Mass. 545, 615 N.E.2d 516 (1993)

In this Massachusetts case the plaintiffs claimed that the state's school financing system denied them an adequate education in violation of the state's education clause. The plaintiffs alleged crowded classes, inadequate teaching, lack of curriculum development, inadequate guidance counseling and unpredictable funding made the school financing system unconstitutional.¹⁴⁶ The court extensively examined the history of the Massachusetts education clause¹⁴⁷ and upon doing so, agreed with the plaintiffs. The case

144 Ibid.

145 Dicta constitute "expressions in a court opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and therefore, not binding in subsequent cases." (See Black's Law Dictionary, p.408.)

146 McDuffy v. Secretary of Executive Office of Education, 415 Mass. 545, 615 N.E.2d 516, 520-21 (1993).

147 Ibid. at 523-47.

was then remanded to a lower court to determine whether, within a reasonable time, appropriate legislative action [had] been taken."¹⁴⁸

Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo, 199 A.D.2d. 488, 606 n.Y. S. 2d 44 (1993)

In this case, the property-poor plaintiffs asserted that they did not have the funds to compete with their wealthier neighbors who were able to provide better educational services as a result of their higher tax base. The plaintiffs insisted that the school finance situation had grown worse since the New York public school financing system was upheld almost ten years earlier in Board of Educ. Levittown Union Free School Dist. v. Nyquist. The plaintiffs cited the following as evidence of the worsening situation: (1) a widening tax-base gap between the rich and poor; (2) growing disparities in per pupil expenditures in spite of poor districts' attempts to increase their own taxes; (3) unnamed severe real life consequences resulted from these increasing disparities; (4) a disproportionate increase in high risk students; (5) the "burdensome imposition" of state mandates upon local districts which were unable to raise the finances necessary to meet these mandates; (6) the failure of the legislature to act upon the appellate court's "invitation" to reform the school financing system; and (7) the fact that the state budget crisis had a disproportionate effect on poor districts because of reductions in state aid.¹⁴⁹

The court found that in spite of all these claims, the plaintiffs never alleged that "their students were not being provided with a sound, basic education."¹⁵⁰ The plaintiffs allegations--that disparities existed between districts--had already been addressed in Levittown. The New York Court of Appeals¹⁵¹ had already found that disparities were constitutionally permissible.

148 Ibid. at 556.

149 Ibid. at 46.

150 Ibid.

Skeen v. State, 505 N.W. 2d 299 (Minn. 1993)

The plaintiffs in this case were rapidly growing suburban school districts with relatively low property values.¹⁵² They did not challenge the adequacy of education in Minnesota. "In fact, the parties conceded that all plaintiff districts met or exceeded the educational requirements of the state."¹⁵³ Rather, they alleged that the current system violated the state's education¹⁵⁴ and equal protection clauses¹⁵⁵ clause because it failed to provide all students with equal educational opportunity.¹⁵⁶

On appeal, the Minnesota Supreme Court found that neither clause was violated. First, after examining the wording in the education clause and comparing Minnesota's clause to those of other states, the court found that the plaintiffs had failed to show that the system was inadequate. Furthermore, according to the court the language of the education clause (which called for a "general and uniform" system of schools) did not require total funding equalization.¹⁵⁷ Secondly, the court found no violation of state equal protection. although the court agreed with the lower court's holding that education was a fundamental right in Minnesota, the supreme court found the fundamental right to education did not mean that there was a fundamental right to a particular funding scheme.¹⁵⁸ In this case, the court found that the rational relationship test, not the strict scrutiny test should be used

151 The highest state court in New York.

152 Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 Vanderbilt Law Review (1995): 101.

153 Skeen v. State, 505 N.W. 2d 299, 302 (Minn. 1993).

154 Ibid. at 302.

155 Ibid. at 312.

156 Ibid. at 302.

157 Ibid. at 312.

158 Ibid. at 315.

to evaluate the funding scheme. Using this less stringent test, the court found that the school finance scheme was rationally related to a legitimate state purpose.¹⁵⁹ Like many other courts that have upheld school financing systems, the Skeen court was nonetheless careful not to endorse the status quo and encouraged attempts to improve the system.¹⁶⁰

Tennessee Small School Systems v. McWherter, 851 S.W. 2d 139 (Ten. 1993)

This case reached the Tennessee Supreme Court after years of court battles. The original complaint in this case was filed on July 7, 1988.¹⁶¹ The complaint alleged that education was a fundamental right in the State of Tennessee, but that the state had deprived children of that fundamental right because its school financing system was unjust. The complaint also alleged violations of the state equal protection and education clauses.¹⁶² The trial court had ruled in favor of the plaintiffs, but the appellate court reversed.¹⁶³

The Tennessee Supreme Court determined that the essential issue in the case was "quality and equality of education," not "equality of funding."¹⁶⁴ The court found that the Tennessee system for funding public schools was invalid according to all three types of equal protection analysis equal protection test, including the rational relationship test.¹⁶⁵ The plaintiffs in this case had argued that school financing was related to the legitimate interest of local control. The court found that argument unacceptable and concluded that "the better reasoned opinions are those which have rejected the argument that local control

159 Ibid.

160 Ibid. at 318.

161 Tennessee Small School Systems v. McWherter. 851 S.W. 2d 139 (Ten. 1993).

162 Ibid.

163 Ibid. at 142.

164 Ibid. at 156.

165 Ibid. at 153.

is justification for disparity in opportunity."¹⁶⁶ Because the court found that the state school financing system was unconstitutional under the equal protection clause, the court felt that it did not need to determine "the precise level of education mandated" under the education clause.¹⁶⁷ Based on these conclusions, the Tennessee Supreme Court reversed the holding of the court of appeals and remanded the case for trial.¹⁶⁸

166 Ibid. at 154.

167 Ibid. at 152.

168 Ibid. at 156.

Comparison and Contrast Through the Use of Tables

Evaluating school finance cases through comparison and contrast is especially useful because in school finance cases there are many points of similarity as well as numerous individual nuances that make each case unique. Because of the length of the some decisions, the complexity of the issues involved and the great number of cases, a side by side evaluation of cases is a difficult challenge. The following tables (Table 4, Table 5 and Table 6) attempt to meet that challenge by focusing on brief, but specific points of comparison.

Table 4 attempts to get to the heart of the plaintiffs' arguments by examining the particular clauses that were challenged by the plaintiffs. The table indicates whether the plaintiffs challenged a state's equal protection clause, a state's education clause, or both clauses. It follows the continuation of challenges to both types of clauses from 1973 to 1993.

Table 5 highlights the "education clause" language from each state's constitution, as it read in 1993. Not only is direct comparison of constitutional language made possible by this table, the table also evaluates the strength of the individual state education clauses and indicates whether education has been declared a fundamental right in the particular state. (While courts have been major source for declaring education a fundamental state right, some states have addressed this issue by voting or through other means. Such instances are noted in the table.)

Table 6, like Table 5, also touches upon the purported strength of the state's education clause, but Table 6 also evaluates the cases' outcomes. It demonstrates which state system were upheld and which were invalidated during the 1973 to 1993 period. It also serves as proof of the continuation of efforts to resolve school finance problems in the state court system, more than twenty years after the Rodriguez decision.

Table 4 - State Constitutional Clauses Challenged After the Rodriguez Decision

	EQUAL PROTECTION CLAUSE CHALLENGED	EDUCATION CLAUSE CHALLENGED
1973		
Miliken v. Green, 390 Mich. 389, 212 N.W. 2d 711 (1973)	✓	
Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973)	✓	✓
Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973)	✓	
1974		
Northshore School District No, 417 v. Kinear, 84 Wash.2d 685, 530 p.2d 178 (1974)	✓	✓
1975		
Thompson v. Engelking, 96 Idaho 793, 537 P.2d 635 (1975)		✓
1976		
Olsen v. State, 276 Or.9, 554 P.2d 139 (1976)	✓	✓
People ex. rel. Jones v. Adams, 40 Ill. App.3d 189, 350 N.E.2d 767 (1976)	✓	
Robinson v. Cahill, 69 N.J. 449, 355 A.2d 129 (1976)	✓	✓
Serrano v. Priest, 18 Cal. 3d 729, 557 P.2d 929 (1976)	✓	
1977		
Horton v. Meskill, 376 A. 2d 359 (1977)	✓	
1978		
Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978)		✓

Table 4 - State Constitutional Clauses Challenged After the Rodriguez Decision (Cont.)

	EQUAL PROTECTION CLAUSE CHALLENGED	EDUCATION CLAUSE CHALLENGED
1979		
Board of Education v. Walter, 58 Oh.St. 2d 368, 390 N.E.2d 813 (1979)	✓	✓
Danson v. Casey, 484 Pa. 415, 399 A 2d 360 (1979)		✓
Pauly v. Kelly 162 W.Va. 672, 255S.E. 2d 859 (1979)	✓	✓
1980		
Washakie County School Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980)	✓	✓
1981		
Levittown Union Free School Dist. v. Nyquist, 57 N.Y.S. 2d 27, 453 N.Y.S.2d 643, 439 N.E. 2d 359	✓	✓
McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156 (1981)	✓	✓
1982		
Board of Education v. Nyquist, 57 N.Y.2d 27, 439 N.E. 2d 369 (1982)	✓	✓
Lujan v. Colorado State Board of Educ., 649 P.2d 1005 (Colo. 1992)	✓	✓
1983		
Dupree v. Alama School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983)	✓	✓
Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 S.2d 758 (1983)	✓	✓
1984		
East Jackson Public Schools v. State, 133 Mich. APP. 132, 348 N.W. 2D 303 (1984)		✓
Pauley v. Bailey, 174 W.Va. 167, 324 S.E. 2d 128 (1984)	N/A	N/A

Table 4 - State Constitutional Clauses Challenged After the Rodriguez Decision (Cont.)

	EQUAL PROTECTION CLAUSE CHALLENGED	EDUCATION CLAUSE CHALLENGED
1985		
Horton v. Meskill, 187 Conn. 187, 486 A.2d 1099 (1985)		✓
1986		
Serrano v. Priest, 226 Cal. Rptr. 584 (Cal. App. 1986)	N/A	N/A
1987		
Britt v. North Carolina State Board of Education. 86 N.C. App. 282, 357 S.E.2d 432, app. dismissed 361 S.E.2d 71 (1987)		✓
Fair School Finance Council v. State, 746 P.2d 1135 (Okla. 1987)		✓
1988		
Richland County v. Campbell, 294 S.C. 346, 364 S.E. 2d 470 (1988)	✓	✓
1989		
Edgewood Independent School District v. Kirby, 777 S.W. 2d 391 (Tex. 1989)		✓
Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 bP.2d 684 (1989)	✓	✓
Kukor v. Grover, 148 Wis.2d 469, 436 N.W.2d 568 (1989)	✓	✓
Rose v. Council for Better Education, 790 S.W. 2d 186 (Ky. 1989)	✓	✓
1990		
Abbott v. Burke, 119 N.J. 287, 575 A.2d 359 (1990)		✓

Table 4 - State Constitutional Clauses Challenged After the Rodriguez Decision (Cont.)

	EQUAL PROTECTION CLAUSE CHALLENGED	EDUCATION CLAUSE CHALLENGED
1991		
Coalition for Equitable School Funding v. State, 311 Or. 300, 811 P.2d 116 (1991)	✓	✓
Edgewood Independent School District v. Kirby, 804 S.W. 2d 491 (Tex. 1991)	N/A	N/A
1992		
Butt v. State, 4 Cal. 4th 668, 842 P.2d 1240 (1992)	N/A	N/A
Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W. 2d 489 (Tex.1992)	N/A	N/A
1993		
Alabama Coalition for Equity v. Hunt, 624 So. 2d 107 (Ala. 1993)	✓	✓
Gould v. Orrr, 244 Neb. 163, 506 N.W.2d 349 (1993)	✓	✓
Claremont School District v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993)	✓	✓
Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993)	✓	✓
McDuffy v. Secretary of Executive Office of Education, 415 Mass. 545, 615 N.E.2d 516 (1993)		✓
Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo, 199 A.D.2d. 488, 606 n.Y. S. 2d 44 (1993)	✓	✓
Skeen v. State, 505 N.W. 2d 299 (Minn. 1993)	✓	✓
Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, (1993)	✓	✓

Table 5 - State Constitutional Clauses That
Established Public Schools (As They Looked In 1993)

Category I	exacts the minimum educational obligation upon a state; generally the mere creation or establishment of schools
Category II	is a higher standard than Category I; it requires that states meet some minimum standard of quality
Category III	contains a preamble which may set forth the purpose of education in the state and also employs a "stronger and more specific education mandate"
Category IV	exacts the highest form of educational obligation upon a state; often describes education as "fundamental," "paramount," or "primary"

{These categories were established in the following article: William E. Thro, "To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation," 75 Va. L. Rev. 1639, 1661-1670 (1989).}

F	Fundamental - Education is a fundamental right in the state.
NF	Not Fundamental - Education is not a fundamental right in the state.
NR	No Ruling - There is no state ruling as to the fundamentality of education. Courts have either (1) not had the opportunity to examine the issue; or (2) refused to rule on the fundamentality of education.

AL	Art. XIV, § 256;	"The Legislature shall establish, organize and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-ones years."	*	F
AK	Art. VII, § 1	"The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions..."	I	NR
AZ	Art. XI, § 1	"The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system..."	I	F
AR	Art. XIV, § 1	"The state shall maintain a general, suitable and efficient system of free schools whereby all persons in the State between the ages of six and twenty-one years may receive gratuitous instruction."	II	NR
CA	Art. IX, § 1	"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement"	III	F
CO	Art. IX, § 2	"The genral assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools, throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously."	II	NF
CT	Art. VII, § 1	"There shall be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."	I	F
DE	Art. X, § 1	"The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means."	III	NR
FL	Art. IX, § 1	"Adequate provision shall be made by law for a uniform system of free public schools."	II	NR

GA	Art. VII, § 1	"The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia."	IV	NF
HI	Art. X, § 1	"The State shall provide for the establishment, support and control of a statewide system of public schools..."	I	NR
ID	Art. IX, § 1	"[I]t shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free common schools."	II	NF
IL	Art. X, § 1	"A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public education institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law."	IV	NF **
IN	Art. VIII, § 1	"Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."	III	NR
IA	Art. IX, 2d, § 3	"The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement."	III	NR
KS	Art. IV, § 1	"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools."	I	NR
KY	§ 183	"The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State."	II	F
LA	Art. VII, § 1	"The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system."	I	NR
ME	Art. VII, pt. 1, § 1	"A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools..."	IV	NR
MD	Art. VIII, § 1	"The General Assembly...shall by law, establish throughout the state a thorough and efficient system of free public schools."	II	NF
MA	Pt. 2, Ch. 5, § 2	"[I]t shall be the duty of the legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all the seminaries of them...public schools and grammar schools in the towns."	III	NR
MI	Art. VII, §§ 1, 2	"the means of education shall forever be encouraged" and "[e]very school district shall provide for the education of its pupils without discrimination."	IV	NR
MN	Art. XIII, § 1	"The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state."	II	F
MS	Art. 8, § 201	"The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe." (Inserted into the Constitution on December 4, 1987.)	II	NR ***

MO	Art. IX, § 1(a)	"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law."	IV	NR
MT	Art. X, § 1	"(1)It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals ti the preservation of their cultural heritage. (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system."	II	F
NB	Art. VII, § 1	"The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years."	I	NR
NV	Art. XI, § 2	"The legislature shall provide for a uniform system of common schools..."	III	NR
NH	Pt. 2, 83	"Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions..."	IV	NR
NJ	Art. VIII, § 4	" The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools"	II	F
NM	Art. XII, § 1	"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."	I	NR
NY	Art. XI, § 1	"The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."	I	NR
NC	Art. IX, § 2	"The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."	I	NF
ND	Art.VII, § 1	"A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."	II	NR
OH	Art. VI, § 3	"Provisions shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts."	II	NR

OK	Art. XII, § 1	"The legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated"	I	NR
OR	Art. 8, § 3	"The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools."	II	NF
PA	Art. III, § 14	"The General Assembly shall provide for the maintenance of a thorough and efficient system of education to serve the needs of the Commonwealth"	II	NR
RI	Art. XII, § 1	"The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services."	III	NR
SC	Art. 11, § 3	"The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable."	I	NR
SD	Art. VII, § 1	"The stability of republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education."	III	NR
TN	Art. XI, § 12	"The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support, and eligibility standards of a system of free schools."	II	NR
TX	Art. VII, § 1	"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."	II	NR
UT	Art. X, § 1	"The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all the children of the state and (b) a higher education system. Both systems shall be free from sectarian control."	I	NR
VT	Ch.2, § 68	"Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth."	I	NR
VA	Art. XII, §1	"The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."	II	F
WA	Art. IX, § 1	"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."	IV	NR
WV	Art. XII, § 1	"The legislature shall provide, by general law, for a thorough and efficient system of free schools."	II	F
WI	Art. X, § 3	"The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years."	II	NR

WY	Art.7, § 1	"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade..."	II	F
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*Thro evaluated Alabama's education clause as a "I," but the language of the clause was subsequently changed and in 1993 education was declared a fundamental right in Alabama.

**Illinois rejected the fundamentality of education in a 1993 vote to ammend the state constitution, not in a court decision.

***At the time the evaluations of these clauses was set, Mississppi's relativley new clause had not yet been considered by the authors who established this system of evaluation. Based upon their qualifications,however, Mississppi's education clause appears to have been approximatley a II.

Source: Lexis Computer Services, 1995.

Table 6 - Results Of School Finance Challenges

Year and Case	Citation	Strength of Education Clause	Finance System Upheld	Finance System Invalid
1973				
Miliken v. Green	390 Mich. 389 212 N.W. 2d 711	Very Strong	✓	
Robinson v. Cahill	62 N.J. 473 303 A.2d 273	Moderate		✓
Shofstall v. Hollins	110 Ariz. 88 515 P.2d 590	Moderate	✓	
1974				
Northshore Sch. Dist. No. 417 v. Kinear	84 Wash.2d 685 530 P.2d 178	Very Strong	✓	
1975				
Thompson v. Engelking	96 Idaho 793 537 P.2d 635	Moderate	✓	
1976				
Olsen v. State	276 Or.9 554 P.2d 139	Moderate	✓	
People ex. rel. Jones v. Adams	40 Ill. App.3d 189 350 N.E.2d 767	Very Strong	✓	
Robinson v. Cahill	69 N.J. 449 355 A. 2d 129	Moderate		✓
Serrano v. Priest	18 Cal. 3d 729 557 P.2d 929	Strong		✓
1977				
1978				
Seattle School Dist. No. 1 v. State	90 Wash. 2d 476 585 P.2d 71	Very Strong		✓
1979				
Board of Education v. Walter	58 Oh.St. 2d 368 390 N.E.2d 813	Moderate	✓	
Danson v. Casey	484 Pa. 415 399 A. 2d 360	Moderate	✓	

Year and Case	Citation	Strength of Education Clause	Finance System Upheld	Finance System Invalid
1980				
Washakie County School Dist. No. 1 v. Herschler	606 P.2d 310 (Wyo. 1980)	Moderate		✓
1981				
McDaniel v. Thomas	248 Ga. 632 285 S.E. 2d 156	Very Strong	✓	
1982				
Bd. of Educ. v. Nyquist	57 N.Y. 2d 27 439 N.E. 2d 369	Minimal	✓	
Lujan v. Colorado State Board of Educ.	649 P.2d 1005 (Colo. 1992)	Moderate	✓	
1983				
Dupree v. Alama School Dist. No. 30	279 Ark. 340 651 S.W. 2d 90	Minimal		✓
Hornbeck v. Somerset County Bd. of Educ.	295 Md. 597 458 S.2d 758	Moderate	✓	
1984				
East Jackson Public Schools v. State	133 Mich. Ap. 132 348 N.W. 2d 303	Very Strong	✓	
Pauley v. Bailey	174 W.Va. 167 324 S.E. 2d 128	Moderate		✓
1985				
Horton v. Meskill	187 Conn. 187 486 A.2d 1099	Minimal	✓	
1986				
Serrano v. Priest	226 Cal. Rptr. 584 (Cal. App. 1986)	Strong	✓	
1987				
Britt v. North Carolina State Bd. of Educ. 86 N.C. App. 282	357 S.E.2d 432 app. dismissed 361 S.E.2d 71 (1987)	Minimal	✓	
Fair School Finance Council v. State	746 P.2d 1135 (Okla. 1987)	Minimal	✓	

Year and Case	Citation	Strength of Education Clause	Finance System Upheld	Finance System Invalid
1988				
Richland County v. Campbell	294 S.C. 346 364 S.E. 2d 470	Minimal	√	
1989				
Edgewood Independent School District v. Kirby	777 S.W. 2d 391 (Tex. 1989)	Moderate		√
Helena Elementary School District No. 1 v. State	236 Mont. 44 769 P.2d 684	Moderate		√
Kukor v. Grover	148 Wis.2d 469 436 N.W.2d 568	Moderate	√	
Rose v. Council for Better Education	790 S.W. 2d 186 (Ky. 1989)	Moderate		√
1990				
1991				
Coalition for Equitable Sch. Funding v. State. 311 Or. 300	811 P.2d 116 (1991)	Moderate	√	
Edgewood Indep. Sch. Dist. v. Kirby	804 S.W. 2d 491 (Tex. 1991)	Moderate		√
1992				
Butt v. State	4 Cal. 4th 668 842 P.2d 1240 (1992)	Strong	Not Determined	
Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.	826 S.W. 2d 489 (Tex. 1992)	Moderate		√

Year and Case	Citation	Strength of Education Clause	Finance System Upheld	Finance System Invalid
1993				
Alabama Coalition for Equity v. Hunt	624 So. 2d 107 (Ala. 1993)	Minimal		√
Claremont School District v. Governor	138 N.H. 183 635 A.2d 1375 (1993)	Very Strong	Not Determined	
Gould v. Orr	244 Neb. 163 506 N.W.2d 349 (1993)	Minimal	√	
Idaho Schools for Equal Educational Opportunity v. Evans	123 Idaho 573 850 P.2d 724 (1993)	Moderate	√	
McDuffy v. Secretary of Executive Office of Education	415 Mass. 545 615 N.E.2d 516 (1993)	Strong		√
Reform Educ. Financing Inequities Today (R.E.F.I.T.) v. Cuomo	199 A.D.2d. 488 606 N.Y. S. 2d 44 (1993)	Minimal	√	
Skeen v. State	505 N.W. 2d 299 (Minn. 1993)	Moderate	√	

The strength of education clauses used in this table (Table 6) correspond to the William E. Thro rankings in the previous table (Table 5.) The clauses have been determined as follows: Minimal = 1; Moderate = 2; Strong = 3, Very Strong = 4.

CHAPTER V CONCLUSIONS

Introduction

This last chapter begins by offering evidence of continuing inequities in urban, suburban and rural communities. It then notes that in 1993 courts continued to be aware of these inequities. Next, the chapter examines the roles of both the courts and the education community in working toward a solution to education finance problems. It also suggests possible routes to successful change in school finance litigation. Finally, the "Summary" outlines the basic structure of the entire work is briefly summarized and "Recommendations for Future Research" are offered.

Inequities Continue to Exist

Inequities in Urban and Suburban School Financing Systems

Jonathan Kozol's *Savage Inequalities: Children in America's Schools*

In 1992, Jonathan Kozol captured the attention of the nation with his book Savage Inequalities: Children in America's Schools. Perhaps surprisingly, the subject of this National Book Critics Circle Nominee and best seller was the same topic the United States Supreme Court found so difficult to digest--school finance. Kozol's work ambitiously attempted to take a very difficult topic and present it in a manner that would be accessible to a large audience. Kozol succeeded in doing so by emphasizing the effects of inequitable school finance policies, rather than the complicated formulas that comprised those policies.

The events in Kozol's book took place from 1988 to 1991 and were sadly reminiscent of the facts in 1968 in San Antonio that spurred the Rodriguez case. Kozol visited both property-wealthy and property-poor districts across the country in cities and

towns such as East St. Louis, Chicago, New York, and Camden. He sat in classrooms, examined buildings, observed neighborhood conditions, and spoke to children, parents, and teachers.

In Savage Inequalities, Kozol made no attempt to deny his strong perspective or to make his own position subtle.

Flags in these poor and segregated schools hang motionless and gather dust, often in airless rooms and they are frequently no cleaner than the schools themselves. Children in a dirty school are asked to pledge allegiance to a dirtier flag. What they learn of patriotism is not clear.¹

The crowding of children into insufficient, often squalid spaces [schools] seems an inexplicable anomaly in the United States. Images of spaciousness and majesty, of endless plains and soaring mountains, fill our folklore and our music and the anthems that our children sing. "This land is your land," they are told; and in one of the patriotic songs that children truly love because it summons up so well the goodness and the optimism of the nation at its best, they sing of "good" and "brotherhood" from "sea to shining sea." It is a betrayal of the best things that we value when poor children are obliged to sing these songs in storerooms and coat closets.²

Consequently, at times, Kozol's story of oppression as dramatic as the one found in Cecil

B. DeMille's The Ten Commandments.

Nevertheless, behind the drama was indeed a serious picture. Kozol wrote of Clark Junior High School in East Saint Louis, Illinois:

[It] is regarded as the top school in the city...Even here there is a disturbing sense that one has entered a backwater of America...In a mathematics class of 30, children are packed into a space that might be adequate for 15...Four of the 14 ceiling lights are broken...In a seventh grade social studies class, the only book that bears some relevance to black concerns--its title is "The American Negro"--bears a publication date of 1967...[Referring to Dr. Martin Luther King's "I Have A Dream Speech," a student says:] "Don't tell students in this school about 'the dream.' Go and look into a toilet here if you would like to know what life is like for students in this city." Before I leave, I do as [the boy] asked and enter a boy's bathroom. Four of the six toilets do not work. The toilet stalls, which are eaten away by red and brown corrosion, have no doors. The toilets have no seats. One has a rotted wooden stump. There are no paper towels and no soap. Near the door there is a loop of wire with an empty toilet -paper roll.

¹ Jonathan Kozol, Savage Inequalities: Children in America's Schools (New York: Harper Perennial, 1992): 173.

² Jonathan Kozol, Savage Inequalities: Children in America's Schools (New York: Harper Perennial, 1992): 159.

In Savage Inequalities, Kozol insisted that even he was shocked by such conditions and at first thought that the situation in East St. Louis had to be atypical, but as the book progressed, Kozol went on to point out similar deplorable conditions in other parts of the United States.

Kozol was not alone in documenting these inequities. A 1995 Chicago Tribune Magazine article compared conditions at two Chicago area high schools in the early 1990s.³ Less than twenty-five miles apart, the inner city DuSable High School was a world away from the suburban New Trier High School in terms of educational opportunity. (See Table 7.)

³ The article is not specific as to the exact period in which it visited the schools, however, it appears to have been during the 1993-94 school year. As a consequence of the timing of the visits, some of subjects interviewed in the article apparently discussed events and situations prior to the 1993-94 school year.

Table 7 - New Trier & DuSable High Schools: A Comparison

	<u>New Trier High School</u>	<u>DuSable High School</u>
Location	Winnetka, IL*	Chicago, IL
Act mean score 1992-93	25.2 (Top 1%)	14.1
Spending per pupil	\$12,000	\$6,000
Graduation percentage	Most years, 100%	50%
Four-year college enrollment	98%	"only a handful"
Average per capita income	\$62,000 +	More than 80% of the student body classified as low income
Local property value		Public housing
Average teacher's salary	\$21,000 more than DuSable teacher's salary	\$21,000 less than New Trier teacher's salary
Extra-curricular opportunities	Numerous	Few
Counseling services	Abundant	Limited
Parental involvement	Parents extremely involved and interested	Parents skeptical of school's value; involvement lacking
Campus environment	"beautifully landscaped;" like "an Ivy League college"	In "the shadow of the Robert Taylor homes...The worst urban misery in America"

Source: The Chicago Tribune Magazine, February 12, 1995, pp. 14-24. (Interestingly, Kozol also visited schools in Chicago and Winnetka.)

Inequities in Rural School Financing Systems

Rural communities also continued to be affected by unequal educational opportunities. Perhaps this was because property-poor districts were even more likely to be funded in rural regions than urban ones.⁴

Rural areas face a greater challenge than urban places in adequately financing education. Equivalent educations are more expensive to provide in rural areas, but on the average, metro counties outpace non-metro counties in per-pupil expenditures. Rural areas have higher ratios of professionals to pupils. Sparsely populated nonmetro counties must spend a disproportionate percentage of their revenues transporting students...[even] where non-metro counties have higher per-pupil expenditures than their metro counterparts, much of the difference goes to provide transportation rather than to expand school curricula or student services.⁵

In addition to these uniquely rural problems, students in non-urban property poor communities suffered from some of the same problems that afflict their city and suburban counterparts--outdated materials, underpaid teachers and inadequate buildings.

Local property taxes were used to fund education in rural areas, just as in urban or suburban area, but the value of the land and the ability of rural residents to tax themselves was subject to even greater fluctuation than other non-rural residents. For example, "Annual incomes of farmers averaged over \$62,000 in 1978, but fell to an average of only \$2,271 in 1981, \$9,871 in 1984 and \$5,487 in 1985...when figures are adjusted for inflation, [1990] farm values [were] 47 percent below those of 1980"⁶ By the early 1990s, deflated land values made it increasingly difficult to maintain an adequate level of

⁴ Lewis B. Kaden, "Courts and Legislatures in a Federal System: The Case of School Finance," 11 Hofstra L.Rev. 1205 (1983)

⁵ Bernal L.Green and Mary Jo Schneider. "Threats to Funding for Rural Schools." Journal of Education Finance 15 (Winter 1990): 302-18.

⁶Ibid.

educational spending. Without some sort of assistance, poverty was in danger of "becoming endemic in formerly prosperous areas of rural America."⁷

The Courts' Continued Recognition of School Finance Problems

In Decisions

Courts continued to recognize and to be affected by school finance problems. In 1993, more school finance cases were heard than in any previous year.⁸ Furthermore, though similar factual scenarios had been repeated again and again even prior to Rodriguez, the despicable conditions in property poor districts continued to outrage and frustrate many judges.

For example, in the 1993 case Tennessee Small School System, v. McWherter,⁹ Judge Lyle Reid, writing for the majority reported:

Trial testimony indicates that many schools in the poorer school districts have decaying physical plants, and that some school buildings are not adequately heated and have non-functioning showers, buckling floors, and leaking roofs. School superintendents and students also testified that the poorer school districts do not provide adequate science laboratories for the students, even though regulations require such facilities. In fact, evidence was adduced that some districts' laboratories are so inadequate that only teachers use the equipment in order to 'demonstrate' lab techniques. At other schools, the teachers buy supplies with their own money in order to stock the labs. Still other schools engage in almost constant fundraising by students to provide needed materials.

Similarly, the textbooks and libraries of many of the poorer school districts are inadequate, outdated, and in disrepair. One compelling photograph in the record depicts a library in a Hancock county school. The library consists of only one bookcase nestled in a room containing empty boxes, surplus furniture, a desktop copier, kitchen supplies, a bottle of mouthwash, a popcorn machine. When asked why newer textbooks and more functional libraries were not provided in the schools, the responsible official stated that additional money needed for such improvements was not available. The lack of funds in some of the plaintiffs' districts also prevents schools in those areas from offering advanced placement courses, state-mandated art and music classes, drama instruction, extracurricular athletic teams, or more than one foreign language in high school.¹⁰

7 Ibid.

8 Chris Pipho, "Fiscal Gridlock," Phi Delta Kappan 74 (February 1993): 430.

9 Tennessee Small School System, v. McWherter, 851 S.W. 2d 139 (Tenn.1993).

10 Ibid. at 145.

This description of conditions in property poor Tennessee school districts was remarkably similar to the descriptions of conditions in the plaintiffs briefs in the Rodriguez case.¹¹ Twenty years later, students in property poor districts still suffered the same affects--unequal educational opportunity.

And Beyond Decisions

By 1993, judges familiar with education finance cases recognized that identifying the problems associated with unequal educational opportunity and declaring a financing system invalid were only a tiny step towards reforming school finance. For example, in the 1979 case Pauly v. Kelly,¹² the West Virginia Supreme Court found the plaintiffs' schools to be "woefully inadequate." A lower court then directed the state legislature to devise a new system. By 1983 the legislature had devised the "Master Plan for Education." It called for greater funding equity, more teachers, higher salaries, new buildings and equipment. "A decade later, though the unfortunate truth [was] that the court case and the Master Plan accomplished very little."¹³

Even the judges in school finance cases recognized that, despite the good intentions, the situation did not improve. Charles Mahtesian, in the September 1993 issue of Governing quoted West Virginia Supreme Court Justice Richard Neely on the Bailey case, "Our case had all sorts of wonderful language in it, but it didn't amount to a bowl of whiz."¹⁴ Unfortunately, Justice Neely's assessment was fairly accurate. Mahtesian reported that 18 of the 19 schools in the original Bailey suit had been recommended for

11 See plaintiffs briefs in San Antonio v. Rodriguez.

12 Pauly v. Kelly, 162 W.Va. 672, 255 S.E.2d 859 (1979).

13 Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 43.

14 Ibid.

probation status. The 19th school was labeled "seriously impaired."¹⁵ Not only had conditions remained unimproved since Bailey, they remained unimproved since Rodriguez.

Is a Solution Impossible?

The Courts' Role in Determining the Outcome of School Finance Cases

In an interview conducted ten years after the Rodriguez decision, John Coons asserted that had the Rodriguez case been examined by the Warren Court, the result would have been different. He suggested that the Warren Court, with its more liberal philosophies and potential willingness to expand fundamental rights, would have had a different approach to the case than did the Burger Court, in 1973.¹⁶ By 1993, the Supreme Court was generally thought to be even more conservative than it was in 1973. Several members of the court were appointed by Ronald Reagan and George Bush, neither of whom advocated increased federal government involvement in education.¹⁷ Again, while members of the Supreme Court are not bound to follow the political philosophies of the presidents who nominate them, Supreme Court candidates are generally nominated because their political philosophies coincide (or at the very least do not clash) with the president's. This idea would suggest that the Supreme Court is unlikely to reverse Rodriguez at any time in the near future.

However, the school finance situation did not improve after the Rodriguez decision. In fact, most signs indicate that it has gotten worse.¹⁸ It is possible that, should the right case come along, the Court would once again examine school finance

¹⁵ Ibid. at 43, 44.

¹⁶ "A Decade After Rodriguez: An Interview with John Coons," Phi Delta Kappan, March 1983, 482.

¹⁷ Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, 1988), 211, 212.

¹⁸ See Jonathan Kozol's Savage Inequalities.

matters. If the Court did so, however, one could be fairly certain that it would not do so because it was eager to once again address the complicated constitutional issues involved with school finance, but because the situation in American schools had indeed so drastically deteriorated. The Rodriguez case demonstrated the Supreme Court's hesitation to become involved in resolving school finance matters. Whether this hesitation was based in fear or genuine concern for upholding the concept of the separation of powers remains unclear. Perhaps the decision was influenced by both of these factors. One thing is fairly certain. The twenty years following Rodriguez demonstrate that the more removed a court became from the facts of the case, the more likely it was to uphold the constitutionality of the state's financing system--even in the face of great funding disparities.

Unlike the appellate courts, or the state supreme courts, which dealt with the more abstract issues of constitutionality and school financing, the trial courts assessed the facts of the case.¹⁹

What distinguish[ed] these trial judges [was] simply that they took the time to understand how school finance systems operate. Two conclusions were inescapable: that these systems allocated educational resources among districts on factors that [had] nothing to do with education and that educational opportunities [were] the result of the happenstance of where a child live[d].²⁰

Thus, confronted with these harsh inequalities, the trial courts often found for the plaintiffs who had challenged the financing systems.

The Education Community's Role in Determining the Outcome of School Finance Cases

Not all of the blame for the lack of improvement in the school financing situation should be placed on the courts. The courts can only judge the facts and determine the issues that are placed before it. The education finance community, indeed the entire education community, needs to put forth a united front, if it is to be successful in court. In

¹⁹ David C. Long, "Rodriguez: The State Courts Respond," Phi Delta Kappan, March 1983, 482.

²⁰ Ibid.

Rodriguez, although all of the plaintiffs wanted to abolish the school financing system, many also had their own agendas that alienated them from their fellow plaintiffs.²¹ The lawyers for the state of Texas were perceptive enough to point out this division to the Supreme Court. Surely, this lack of unity did not help the plaintiffs' case. Education finance reformers need to formulate a plan that focuses on factors about which there is agreement, if they ever hope to succeed in court.

Scholars must come to some form of consensus before they demand that the courts do the same. Even those holding opposing views in Rodriguez were able to reach a consensus about some aspects of education:

1. Education is important.
2. Local control is important.
3. Not all children receive equal educational opportunity.

Education finance leaders need to examine these and other potential points of agreement in order to achieve their goals of equal educational opportunity for all.

Finding an Answer

The United States' Historic Interest in Education

Enemies and Goals

As this dissertation has pointed out repeatedly, there is no federal constitutional commitment to education. Education is a state matter and each state may determine its own education system; however, this does not mean that there is no national interest in education. The Justices in the Rodriguez majority, as well as in the dissent, noted, perhaps even with pride, the Supreme Court's historic interest in education. Likewise, at certain times in United States history, the federal government, as a whole, has shown an interest in national education policy.

²¹ "A Decade After Rodriguez: An Interview with John Coons," Phi Delta Kappan, March 1983, 482.

In the United States, a national interest in education has typically coincided with periods of crisis or change. During the 1973-93 period, the classic example of the federal government's interest in education was the federal government's call for increased science and math courses after the Soviet Union launched Sputnik in 1957.²² At that time, the Soviets' capabilities and the United States' relative inadequacies in math and science were seen as a threat to United States security.²³ Other examples exist as well. For example, the development of the American high school coincided with the changes that took place in the workforce due to the industrial revolution.²⁴ In the 1940s, the national government took steps to guard against massive unemployment after World War II by financially assisting veterans through the 1944 G.I. Bill of Rights.²⁵

At these times in United States history, the country had, if not an enemy, a at least a goal. If education finance reform is ever to take place in the United States (either through state-by-state reforms or in one centralized national movement) reformers need to uncover an enemy or to focus on a goal. An enemy need not be external. In fact, from 1973 to 1993, the United States struggled with several internal enemies. These enemies included crime, violence, poverty and homelessness. Although many educators have been trained to see the relationship between these internal enemies and equal educational opportunity, other citizens, including judges, may not have been so trained and may need convincing.

Finding a goal has been a source of greater difficulty. In the period from 1973 to 1993, as multicultural awareness increased and political correctness expanded, more and more groups sought to influence education. Other more traditionally conservative groups

²² Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, 1988), 177.

²³ Ibid.

²⁴ Larry E. Decker, Foundations of Community Education, (1972).

²⁵ Percy E. Burrup, Vern Brimley Jr. and Rulon R. Garfield, Financing Education in a Climate of Change, (Boston: Allyn and Bacon, 1988), 177.

resented these changes.²⁶ Unlike other countries that have a national identity based upon qualities or traits that are similar for all or most of the people of the country, the national identity of the United States is founded upon independence and diversity.

This is not to say that Americans have no national consensus or identifiable characteristics. Certainly, capitalist, sports-enthusiastic Americans are competitive, if not by nature, then by tradition. Yet, the very quality in the American nature that makes people shout "We're number one!" at sporting events and contests should also compel Americans to see that there is no legitimate competition in United States schools. After all, where's the competition when one side has a distinct disadvantage?

The Rodriguez case and the subsequent state court cases demonstrate that parents are interested in their own children's education. Rich parents, poor parents, and middle-class parents want their children to have educational opportunities that will bring out their child's own individual talents and maximize their potential for growth and learning. Although, many parents would state, with the utmost conviction, that they want the best education for their children, would any parent stand on record and say that his children deserve a better education than those who live five miles away in public housing? The difference in the two statements may be subtle, but it is nonetheless important.

Potential Strategies for the Future

Perhaps, with the combination of the lack of improvement in school finance since Rodriguez and the potential national crisis in education, the Supreme Court would once again address issues surrounding school finance. Even if the current Court will not address these issues, perhaps a later Court would. School finance reformers need to be ready with successful arguments should the opportunity to appear before the Court occur once again. One argument that might be successful relates to the exercise of political

²⁶In a recent New York Times article, one woman expressed her dismay with the potential attachments to federal government moneys by indicating that if her state accepted federal money, her children might become critical thinkers.

rights. Perhaps a more recently educated Supreme Court would accept Justice Marshall's position that education is so inextricably connected to political rights, that it should be considered fundamental.

To say that the federal government has an interest in promoting at least some of the desirable things education creates is a fairly mild claim. Certainly the federal government has an interest in having a literate and numerate population that can participate effectively in democratic decision making.²⁷

Politics and rights are increasingly becoming available only to those who are educated enough to participate in them.

Gathering Evidence

School finance reformers need to gather more evidence--not only of unequal educational opportunity, but of the consequences of unequal educational opportunity. For example, where do students from low-spending districts end up? In college? In the armed services? What kind of jobs do they hold? Do a majority spend their lives on public assistance? What is the percentage of students from property poor districts who vote? How many become government officials or take an active part in government affairs, i.e. how many are governors and how many are governed?

Education finance reformers might be able to argue successfully that educational opportunities, or the lack thereof, have created a nation comprised of governors and the governed. In the past one hundred years, the overwhelming majority of political leaders have been well educated. For example, with the exception of Harry S. Truman, every twentieth century president attended college. (Truman had hoped to go to West Point, but was denied admission because of poor eyesight.) Fifty percent of the twentieth century presidents had the opportunity to attend graduate school (See Table 8.)

²⁷ Unavailable source, likely authored by Monk or Smith and Kaestle.

Table 8 - Presidential Education

President*	College	Graduate School
William McKinley	Allegheny College	Entered law school in Albany
Theodore Roosevelt	Harvard	
William H. Taft	Yale	Cincinnati Law School
Woodrow Wilson	Princeton University	Johns Hopkins (Ph.D.)
Warren G. Harding	Ohio Central College in Iberia	
Calvin Coolidge	Amherst College	
Herbert C. Hoover	Stanford University	
Franklin D. Roosevelt	Harvard	Columbia Law School
Harry S. Truman		
Dwight E. Eisenhower	West Point	
John F. Kennedy	Harvard	6 months of graduate school Stanford University
Lyndon B. Johnson	Southwest Texas State	Teachers College
Richard M. Nixon	Whittier College	Duke University Law School
Gerald R. Ford	University of Michigan	Yale Law School
James Carter	United States Naval Academy	
Ronald Reagan	Eureka College	
George Bush	Yale	
William Clinton	Georgetown Oxford, Rhodes Scholar	Yale Law School

Source: Worldbook Encyclopedia.

Such an argument need not result in the conclusion that every child who enters public school is guaranteed a chance to become the President of the United States. In a College Board Review article entitled "Rich Schools, Poor Schools: The Persistence of Unequal Education," Arthur E. Wise and Tamar Gendler noted that as a result of continuing school finance inequities

it is not only potential luminaries that are lost; it is part of an entire generation of citizens whose potential contributions are stunted by the inadequacy of the education they are provided. School finance reform cannot solve all of the problems of education, but it can equalize the opportunities that the state provides.²⁸

Thus, an argument for school finance reform it need not imply that every child who enters public school will attend college, let alone a prestigious college. The argument would simply center on the fact that educational opportunity is necessary to participate in the total political process, not only as an active member of the governed masses, but also for the realistic possibility to serve as an elected or appointed government official. Because educational opportunity is necessary, for participation in the complete political process, where the government has accepted the responsibility to provide it, the government should provide it to all on equal terms.

Moving Beyond Adequacy

This means forming school finance policies that go beyond adequacy. While children should strive to reach goals and educators might hope to produce outcomes, working towards adequacy is a somewhat disheartening concept. Furthermore, the concept of adequacy as a solution to school finance questions is not without its very practical problems.

Even Justice Thurgood Marshall, who voiced the strongest agreement with the plaintiffs in Rodriguez, expressly denounced adequacy as a solution to educational finance

²⁸ Arthur E. Wise and Tamar Gendler, "Rich Schools, Poor Schools: The Persistence of Unequal Education," The College Board Review, 151 (Spring 1989): 37.

problems.²⁹ In Rodriguez, Marshall questioned the Court's ability to define educational adequacy. More than twenty years later, not only had courts failed to arrive at a workable definition of the term, even proponents of adequacy struggled with the term.

Mary Fulton, a policy analyst at the Education Commission of the States, join[ed] a chorus of other education experts when she [said] there is no consensus over how to define it. "You can produce a lot of data to show inequities exist. You can show that pretty easily. Adequacy is a little messier."³⁰

Finally, adequacy has negative connotations. Parents, regardless of their socio-economic class, who are concerned for their children's educational well-being want the same thing for their children: a good education. A parent with a low socio-economic status does not want wealthy schools to spend less or "level down" so that their own schools no longer look so poor in comparison. They want their schools to be as good as those other schools.

Just as Wise and Gendler wrote, a "future physician is as easily born in Jersey City as in Princeton, a future pianist in Edgewood as Alamo Heights," (emphasis added). The accidents of birth and geography should not determine whether a child learns to play the violin or whether class is held in a basement, but despite years of litigation and attempted efforts at finance reform, this continues to be the case. "America continues to provide unequal education to those who most need what school has to offer."³¹

²⁹ See Marshall's dissent in San Antonio v. Rodriguez, 411 US 1, 36 L.Ed. 2d 16.

³⁰ Charles Mahtesian, "The Quagmire of Education Finance," Governing (September 1993): 45.

³¹ Arthur E. Wise and Tamar Gendler, "Rich Schools, Poor Schools: The Persistence of Unequal Education," The College Board Review, 151 (Spring 1989): 12.

Closing Remarks

From 1973 to 1993 many state courts addressed school finance issues. Most often, the courts addressed challenges to school financing that had been brought under two state constitutional clauses--the equal protection clause and the state education clause. Although Rodriguez virtually eliminated the chance for the success of a federal equal protection claim, after Rodriguez plaintiffs continued to challenge the clause in their state constitution that resembled the federal equal protection clause. In addition, plaintiffs began to challenge the clause in the state constitution that established education in the state. The language of this clause differed from state to state and so did judicial interpretation of that language.

The success of these challenges varied. Nonetheless, plaintiffs continued to look to the courts for guidance, if not solutions, to the problems associated with unequal educational opportunity. The state courts attempted to address the complex issues of school finance as best they could, given their limited background and experience in such matters. At the trial level, where the facts associated with the financial disparities played a more prominent role in the adjudication of cases, courts typically advocated a more active judicial role, but frequently, by the time the case reached the higher courts, the facts were secondary to issues of the law and its interpretation.

In sum, because the Supreme Court in Rodriguez declined the opportunity to take a more active leadership role, the post-Rodriguez years were busy, but not highly productive years for state courts. In states like Texas, California and New Jersey, essentially the same factual scenarios were repeatedly adjudicated. As time passed, the names of the plaintiffs might have changed--after all, in twenty plus years many student/plaintiffs had graduated--but with slight variations the procedures for financing schools in the United States remained the same.

During this period school finance litigation was the Jarndyce v. Jarndyce of American education. In the Charles Dicken's classic Bleak House, an inheritance case,

known as Jarndyce v. Jarndyce, continues on for years in the English courts. By the time the suit is resolved, at the end of the novel, all the inheritance money has been spent on attorneys fees. In the United States, surely billions of dollars have been spent arguing, somewhat ironically, over inadequate school funding systems. This is not to imply that the attorneys in these cases did not earn their fees, but simply to point out that, in spite of all the costly litigation, the school finance problems that existed in 1973 still existed in 1993. The Rodriguez majority, through their inaction, at best delayed the reforms that will be necessary to the survival of American education, and at worst exacerbated these problems. (See Table 10.)

Table 9 - Timeline

1968	<u>Rodriguez</u> plaintiffs file claim alleging school district funding disparities violate the Equal Protection Clause of the Fourteenth Amendment.	1985	"Princeton, New Jersey spends \$4,954 to educate a child in its public schools. Down the road--and down the social ladder--Patterson spends \$2,674 per child."
1969	A three-judge District Court is impanelled to hear the <u>Rodriguez</u> suit.	1986	
1970		1987	The man who wrote the <u>Rodriguez</u> majority, Supreme Court Justice Lewis F. Powell, Jr., retires from the Court as its wealthiest member.
1971	The District Court finds in favor of the <u>Rodriguez</u> plaintiffs. The case is appealed to the United States Supreme Court.	1988	The city of Detroit spends \$3,600 yearly on each child's education. Nearby suburbs spend the following: Grosse Pointe \$5,700; Bloomfield Hills \$6,250; Birmingham \$6,400.
1972		1989	United States governors have a summit meeting to discuss national educational standards. The wealthiest Texas school districts outspend the poorest by a ratio of 700 to 1.
1973	The United States Supreme Court reverses the decision of the District Court.	1990	Demetrio Rodriguez's grandchildren---a girl in third grade and a boy in pre-kindergarten attend public schools in Edgewood. Rodrigue predicts, "My grandson and granddaughter will graduate from high school and [school finance reform] still won't be implemented."
1974		1991	
1975		1992	Jonothan Kozol's <u>Savage Inequalities</u> , which describes and humanizes the continuing effects of inequitable school funding is published and becomes a best seller.
1976		1993	More states than ever have pending school finance litigation.
1977			
1978			
1979			
1980			
1981			
1982			
1983	In response to Pauly v. Kelly, West Virginia produced the Master Plan for Education which called improving educational quality through more teachers, higher salaries, new buildings, etc. (Ten years later, West Virginia Supreme Court Justice Richard Neely said, "our case had lots of wonderful language in it, but it didn't amount to a bowl of whiz.")		
1984			

Summary

This study has analyzed the San Antonio v. Rodriguez in detail and examined subsequent state court decisions. By doing so, it has pointed to the effects that the Rodriguez decision had, not merely on the education finance policy of a single state or a handful of states, but on the education finance scene in the nation as a whole. The dissertation began by noting the importance of effective communication in legal educational finance matters. Matters of school finance affect a huge range of people--from children to teachers to taxpayers to the society at large. The effective resolution of these matters depends on the ability to communicate effectively using terminology from law, education and school finance.

Chapters II and III focused on the Rodriguez case. Chapter II began by presenting the facts that gave rise to the need for change in Texas school finance policy. It then followed the legal trail from the District Court to the United States Supreme Court. The Supreme Court decision was examined in its entirety, from the majority opinion through the concurring opinions and dissents. Chapter III touched upon questions and considerations that were not part of the formal case record, but might nonetheless have impacted its outcome. It looked to the Justices' formal constitutional duties as well as their life experiences. Finally, it pointed out some of the legitimate concerns with making education a fundamental right.

Chapter IV traced the state court case history that followed the Rodriguez decision. It presented a chronological listing on state court cases and pointed out interesting or unique aspects of certain decisions. It highlighted certain aspects of the plaintiffs' strategies in the cases. For example, it noted how many cases stressed violations of state equal protection and how many emphasized the state's obligation on its own clause establishing schools. In addition the chapter presented other data relevant to school finance, such as the wording of state education clauses or whether education was a fundamental right in the state.

The final chapter examined where the years since the Rodriguez case have brought the school finance movement. It referred to Jonathan Kozol's Savage Inequalities: Children in America's Schools and noted some of the unequal educational opportunities that still existed in the 1990s. Finally, it offered some suggestions as to the possible future of the school finance reform movement.

Recommendations for Future Research

1. Explore individual state finance histories in detail.
2. Gather evidence as to the adult lives (careers, family situations, extent of education) of former residents of school districts with low property value and compare them with those of former residents of school districts with high property value.
3. Rank states as to federal, state, and local sources of education funding. How have the federal, state and local contributions changed over the years?
4. Can national goals be achieved in a multicultural environment? If so, how? What can the United States learn from other countries with stronger national education policies?
5. What are the positions of the current Justices on educational opportunity? Do these opinions reflect their own educational backgrounds or are they more closely related to the political philosophies they have adopted as adults?
6. Explore the expanding role of the school business manager as it relates to equal educational opportunity. Can the nation as a whole learn from the school business manager? Can an individual school with an effective school business manager serve as an example for the entire nation?
7. Does municipal overburden really exist or was it just a failed theory aimed at bringing more money into urban schools?
8. Explore equal educational opportunity as it affects rural communities.
9. Who are the attorneys who argue these school law cases? Do the same attorneys travel from state to state wherever school finance cases are filed. Is school finance litigation a lucrative business for attorneys?
10. Is formal education related to political leadership? What percentage of Congress (the Supreme Court, Senate, state governors) attended college? Is any correlation merely coincidental?
11. Examine the dissenting opinions in detail. Do dissenters usually advocate change?

BIBLIOGRAPHY

BOOKS

- Burrup, Percy E., Vern Brimley, Jr., and Rulon R. Garfield. Financing Education in a Climate of Change. Boston: Allyn and Bacon, Inc., 1988.
- Coons, John, Stephan D. Sugarman, and William H. Clune III. Public Wealth and Private Education, Cambridge, Mass.: Harvard University Press, 1970.
- DeYoung, Alan J. Economics and American Education. New York: Longman, 1989.
- Freidel, Frank. The Limits of Reform: Politics and Federal Aid to Education. New York: Garland Publishing Inc., 1982.
- Hogan, John C. The Schools, the Courts, and the Public Interest. Lexington, Massachusetts: Lexington Books, 1974.
- Kluger, Richard. Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality. New York: Vintage Books, 1977.
- Kozol, Jonathan. Savage Inequalities: Children in America's Schools. New York: Crown, 1991.
- New York Public Library Desk Reference, New York: Stone Song Press Book, Webster's New World 1989.
- Morris, Arval A. The Constitution and American Education. St. Paul, Minnesota: West Publishing Co., 1980.
- Odden, Allan R. Rethinking School Financing: An Agenda for the 1990s. San Francisco: Jossey-Bass Publishers, 1992.
- Odden, Allan R. and Lawrence O. Picus. School Finance: A Policy Perspective. U.S.A.: McGraw-Hill, 1992.
- Teidt, Sidney . Role of the Federal Government in Education. New York: Oxford University Press, 1966.
- Thomas, Norman C. Education in National Politics. New York: David McKay Company, Inc., 1975.
- World Book Encyclopedia, Field Enterprises Educational Corp., Chicago, 1973, Various Volumes (B, M, D, R, W, S and P)

CASES

- Abbott v. Burke, 100 N.J. 269 (1985)
- Alabama Coalition for Equity v. Hunt, 624 So. 2d 107 (Ala. 1993)
- Board of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979)
- Board of Education v. Nyquist, 57 N.Y.2d 27, 439 N.E. 2d 369 (1982)
- Board of Education v. Walter, 58 Oh.St. 2d 368, 390 N.E.2d 813 (1979)
- Bould v. Orr, 244 Neb. 163, 506 N.W.2d 349 (1993)
- Britt v. North Carolina State Board of Education. 86 N.C. App. 282, 357 S.E.2d 432, app. dismissed 361 S.E.2d 71 (1987)
- Butt v. State, 4 Cal. 4th 668, 842 P.2d 1240 (1992)
- Carrollton-Farmers Branch Independent School District v. Edgewood Independent School, 826 S.W. 2d 489 (Tex.1992)
- Claremont School District v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993)
- Coalition for Equitable School Funding v. State. 311 Or. 300, 811 P.2d 116 (1991)
- Danson v. Casey, 484 Pa. 415, 399 A 2d 360 (1979)
- Danson v. Casey, 484 Pa. 415, 399 A.2d 360 (1979)
- Dupree v. Alama School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983)
- East Jackson Public Schools v. Michigan, 133 Mich. App. 132, 348 N. W. 2d 303 (1984)
- East Jackson Public Schools v. State, 133 Mich. APP. 132, 348 N.W. 2D 303 (1984)
- Edgewood Indep. School Dist. v. Kirby, 777 S.W. 2d 391 (Tex. 1989)
- Edgewood Independent School District v. Kirby, 777 S.W. 2d 391 (Tex. 1989)
- Edgewood Independent School District v. Kirby, 804 S.W. 2d 491 (Tex. 1991)
- Fair School Finance Council v. State, 746 P.2d 1135 (Okla. 1987)
- Governor v. State Treasurer, 390 Mich. 398, 212 N.W. 2d 711, (1973)
- Granger v. Cascade City School Dist. No. 1, 159 Mont. 516, 499 P. 2d 780 (1972)
- Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 bP.2d 684 (1989)
- Horton v. Meskill, 31 Conn. Supp. 377, 332 A.2d 113 (1974)

- Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977)
- Horton v. Meskill, 187 Conn. 187, 486 A.2d 1099 (1985)
- Horton v. Meskill, 376 A. 2d 359 (1976)
- Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993)
- Kirby v. Edgewood Indep. School Dist., 761 S.W. 2d 859 (Tex. Ct. App. 1988)
- Kukor v. Grover, 148 Wis.2d 469, 436 N.W.2d 568 (1989)
- Levittown Union Free School Dist. v. Nyquist, 57 N.Y.S. 2d 27, 453 N.Y.S.2d 643, 439 N.E. 2d 359
- Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005
- Lujan v. Colorado State Board of Educ., 649 P.2d 1005 (Colo. 1992)
- McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156 (1981)
- McDaniel v. Thomas, 248 Ga. 632, 285 S.E. 2d 156 (1981)
- McDuffy v. Secretary of Executive Office of Education, 415 Mass. 545, 615 N.E.2d 516 (1993)
- Miliken v. Green, 390 Mich. 389, 212 N.W. 2d 711 (1973)
- Northshore School District No, 417 v. Kinear, 84 Wash.2d 685, 530 P.2d 178 (1974)
- Olsen v. State, 276 Or.9, 554 P.2d 139 (1976)
- Pauley v. Bailey, 174 W.Va. 167, 324 S.E. 2d 128 (1984)
- People ex. rel. Jones v. Adams, 40 Ill. App.3d 189, 350 N.E.2d 767 (1976)
- Plyer v. Doe, 457 U.S. 202 (1982).
- R.E.F.I.T. v. Coumo, 199 A.2d. 488, 606 N.Y.2d. 44 (1993)
- Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo, 199 A.D.2d. 488, 606 n.Y. S. 2d 44 (1993)
- Richland County v. Campbell, 294 S.C. 346, 364 S.E. 2d 470 (1988)
- Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973)
- Robinson v. Cahill, 69 N.J. 449, 355 A. 2d 129 (1976)
- Rodriguez v. San Antonio Indep. School Dist., 377 F.Supp.280 (1971)
- Rose v. Council for Better Education, 790 S.W. 2d 186 (Ky. 1989)

- San Antonio Indep. School Bd. v. Rodriguez, 93 S. Ct. 1278 (1973)
- Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978)
- Serrano v. Priest, 18 Cal. 3d 729, 557 P.2d 929 (1976)
- Serrano v. Priest, 226 Cal. Rptr. 584 (Cal. App. 1986)
- Shofstall v. Hollins, 110 Ariz. 88, 515 P. 2d 590 (1973)
- Skeen v. Minnesota, 505 N.W. 2d 299 (Minnesota 1993)
- Skeen v. State, 505 N.W. 2d 299 (Minn. 1993)
- Tennessee Small School Systems v. McWherter, 851 S.W. 2d 139 (Tennessee, 1993)
- Tennessee Small School Sys. v. McWherter, No. 01-A-01-9111-CH-00433 (1992 Tenn. App. LEXIS 486)
- Thompson v. Engelking, 96 Idaho 793, 537 P.2d 635 (1975)
- Washakie County School Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980)

JOURNAL AND LAW REVIEW ARTICLES

- Baldwin, Grover H. The Issues of Equity, Efficiency and Adequacy in Midwest Education Finance." Planning and Changing 21 (Fall 1990): 172-80.
- Banks, "State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?" 45 Vanderbilt Law Review 129 (1991)
- Borg, Mary O. and Paul M. Mason. "Earmarked Lottery Revenues: Positive Windfalls or Concealed Redistribution Mechanisms?" Journal of Education Finance 15 (Winter 1990): 289-301.
- Brannan, Patricia A. and Paul Minorini. "Adverse Impact on Educational Opportunity in Cases Challenging State School Finance Schemes." Education Law Reporter 65 (March 1991) 279-87.
- Brazer, Harvey E. and Therese A. McCarty. "Municipal Overburden: A Fact in School Finance Litigation?" Journal of Law and Education 18 (Fall 1989): 547-66.
- Connelly, Mary Jane and Jack McGee. "School Finance Litigation of the 1980s." Journal of Education Finance 12 (Spring 1987): 578-91.
- Dayton, John. "The Judicial-Political Dialogue: A Comment on Jaffe and Kersch's 'Guaranteeing a State Right to a Quality Education'." Journal of Law and Education 22 (Summer 1993): 323-33.
- Enrich, Peter. "Leaving Equality Behind: New Directions in School Finance Reform." 48 Vanderbilt Law Review 101 (1995).

- Flygare, Thomas J. "School Finance A Decade After Rodriguez." Phi Delta Kappan (March 1983): 477-78.
- Green, Bernal L. and Mary Jo Schneider. "Threats to Funding for Rural Schools." Journal of Education Finance 15 (Winter 1990): 302-18.
- Harper, Lori Anne. "Classroom v. Courtroom: Is the Right to Education Fundamental?" Montana Law Review 51 (1990) 509-27.
- Holtzman, "Children in Poverty." 34 Howard L. J. 27 (1991).
- Hull, Elizabeth. "Undocumented Alien Children and Free Public Education: An Analysis of Plyer v. Doe." 44 U. Pitt. L. Rev. 409 (1983)
- Jaffe, Mark and Kenneth Kersche. "Guaranteeing a State Right to a Quality Education: The Judicial-Political Dialogue in New Jersey." Journal of Law and Education. 20 (Summer 1991) 271-300.
- Kaden, Lewis. "Courts and Legislatures in a Federal System: The Case of School Finance." 11 Hofstra L.Rev. 1205 (1983)
- Komesar, Neil K. "Taking Institutions Seriously: Introduction to a Strategy for Constitutional Analysis." 51 U. Chi. L. Rev. 367 (1984).
- Koski, William S. Note: Equity in Public Education: School Finance Reform in Michigan, 26 U. Mich. J. L. Ref. 195, (1992)
- Kozol, Jonathan. "Romance of the Ghetto School: Giant Steps Backward." The Nation 23 May 1994, Vol. 258 No. 20 P. 703 ISSN:0027-9378*
- Lichtenstein, Joshua Seth. Abbott v. Burke: "Reaffirming New Jersey's Constitutional Commitment to Equal Educational Opportunity," 20 Hofstra L. Rev. 429, (1991).
- Long, David C. "Rodriguez: The State Courts Respond." Phi Delta Kappan (March 1983): 481-484.
- Mathews, Linda. "Rodriguez and Friends." Race Relations Reporter (July, 1973): 15-20.
- Mathesian, Charles. "The Quagmire of Education Finance." Governing 6 (September 1993): 43-6.
- Menacker, Julius. "Poverty as a Suspect Class in Education." West's Education Law Reporter 54 (September 28, 1989) 1085-98.
- Natale, Jo Ann. "Just Desserts." The American School Board Journal (March 1990): 20-24, 42.
- Odden, Alan and Lori Kim. "Changing School Finance: Imperative for the 90s." Education Digest 57 (April 1992): 3-6.
- Pipho, Chris. "Fiscal Gridlock." Phi Delta Kappan 74 (February 1993): 430. LEXIS.

- Reschovsky, Andrew "Fiscal Equalization and School Finance." National Tax Journal Vol. 47 No. 1: 185-97.
- Reynolds, Troy. "Education Finance Reform Litigation and Separation of Powers: Kentucky Makes Its Contribution," 80 Ky. L.J. 309, (1990-91)
- Schauer, Frederick "Does Doctrine Matter?" Michigan Law Review 82 (February 1984): 655-64 (V. Blasi ed.)
- Schmitz, Amy J. "Note: Providing an Escape for Inner City Children: Creating a Remedy for Educational Ills of Poor Urban Schools," 78 Minn L. Rev. 1639, 1994)
- Stephan, Walter G. "School Desegregation: An Evaluation of Predictions Made in Brown v. Board of Education." Psychological Bulletin 85 (March 1978): 217-36.
- Tatel, David S. and Elliot M. Minberg. "The 1988-89 Term of the U.S. Supreme Court and its Impact on the Public Schools." West's Education Law Reporter 55 November 1989): 827-45.
- Thro, William. "To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation," 75 Va. L. Rev. 1639, (1989).
- Thro, William. "The Implications of Coalition for Equitable School Funding v. State for the Future of Public School Finance Reform Litigation." West's Education Law Reporter 69 (November 21, 1991): 1009-21.
- "Unfulfilled Promises: School Finance Remedies and State Courts," 104 Harv. L. Rev. 1072, (1991)
- Verstegen, Deborah A. "The New Wave of School Finance Litigation." Phi Delta Kappan 7 (November 1994): 243-50.
- Walker, Billy D. and John D. Thompson. "Special Report: The Texas Supreme Court and Edgewood I.S.D. v. Kirby." Journal of Education Finance 15 (Winter 1990): 414-28.
- Wirt, F. M. "Historical Givens, Alternative Futures, and Federal School Policy." Teachers College Record 84(3) 730-52.
- Wise, Arthur E. and Tamar Gendler. "Rich Schools, Poor Schools: The Persistence of Unequal Education." College Board Review 151 (Spring 1989): 12-17, 36-37.
- Wood, R. Craig. "Kadrmas v. Dickinson Public Schools: A Further Retreat from Equality of Educational Opportunity." Journal of Education Finance 15 (Winter 1990): 429-36.

DISSERTATIONS

- Jackson, James G. "The Impact of Selected Federal Funding in the Office of the Superintendent of Public Instruction." Ph.D. diss., Southern Illinois University, 1988.
- Keating, Pamela Jane. "An Investigation of a Constitutionally Protected Right of Education." Ph.D. diss., University of Washington, 1981.
- Miller, Ronald Harris. "Three Perspectives on School Finance Reform in American States During the 1970s." Ph.D. diss., New York University, 1990.
- Murphy, Brian Michael. "The American Ideology and the Supreme Court: The Quality of Equality." Ph.D. diss., Miami University, 1980.
- Takeyuki, Ueyama. "Effects of Federal Education Policy Upon Federal-State relationships Involving the Operations of a State Education Agency (Title V)." Ph.D. diss., University of Utah, 1992.

NEWSPAPERS & MAGAZINES

- Elsasser, Glen and Janet Cawley. "Powell Quits Supreme Court." Chicago Tribune, 27 June 1987, 1(C). LEXIS.
- Haines, Rennee. "Now His Grandchildren Will Suffer Too." UPI, 26 September 1990, Wednesday, BC cycle, LEXIS.
- Kreig, Richard and Charles Wheelan. "A Tale of Two Schools." Chicago Tribune, 12 February 1995, Chicago Tribune Magazine, 14-24.
- Sharpe, Rochelle. "Federal Education Law Becomes Hot Target of Weary Conservatives." Wall Street Journal, 30 August 1995, 1(A) and 6(A).
- Haines, Renee. "Poor Hispanic School District Celebrates Long-Sought Win." U.P.I., 2 October 1989, LEXIS.
- Toobin, Jeffrey. "After Integration: A New Approach to Equality at School." The New Republic, 30 December 1985, Vol.193, LEXIS.

STATE CONSTITUTIONS

(All references to state constitutions were obtained through LEXIS computer services in 1995.)

Ala. Const. art. XIV, § 256

Alaska Const. art. VII, § 1

Ariz. Const. art. XI, § 1
Ark. Const. art. XIV, § 1
Cal. Const. art. IX, § 1
Colo. Const. art. IX, § 2
Conn. Const. art. VII, § 1
Del. Const. art. X, § 1
Fla. Const. art. IX, § 1
Ga. Const. art. VII, § 1
Haw. Const. art. X, § 1
Idaho Const. art. IX, § 1
Ill. Const. art. X, § 1
Ind. Const. art. VII, § 1
Iowa Const. art. IX, 2d, § 3
Kan. Const. art. IV, § 1
Ky. § 183
La. Const. art. VII, § 1
Me. Const. art. VII, pt. 1, § 1
Md. Const. art. VII, § 1
Mass. Const. Pt. 2, ch. 5, § 2
Mich. Const. art. Art. VII, §§ 1,2
Minn. Const. art. XII, § 1
Miss. Const. art. 8, § 201
Mo. Const. art. IX, § 1(a)
Mont. Const. art X, § 1
Neb. Const. art. VII, § 1
Nev. Const. art. XI, § 2
N.H. Const. pt. 2, 83

N.J. Const. art. VII, § 4
N.M. Const. art. XII, § 1
N.Y. Const. art. XI, § 1
N.C. Const. art. IX, § 2
N.D. Const. art. VII, § 1
Ohio Const. art. VI, § 3
Okla. Const. art. XII, § 1
Or. Const. art. 8, § 3
Pa. Const. art. III, § 14
R.I. Const. art. XII, § 1
S.C. Const. art. 11, § 3
S.D. Const. art. VII, § 1
Tenn. Const. art. XI, § 12
Tex. Const. art. VII, § 1
Utah Const. art. X, § 1
Vt. Const. ch. 2, § 68
Va. Const. art. XII, § 1
Wash. Const. art. IX, § 1
W.Va. Const. art. XII, § 1
Wis. Const. art. X, § 3
Wyo. Const. art. 7, § 1

RADIO PROGRAMS

LEXIS transcript, "Texas Struggles to Find Equitable School Finance Plan," All Things Considered, 27 May 1993, on National Public Radio.

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