

time of delivery of the bonds of the said approving opinion, and any separate letter as above described, and of a certificate, in form and tenor satisfactory to said law firm and dated as of the date of such delivery, to the effect that there is no litigation pending or (to the knowledge of the signor or signors thereof) threatened relating to the bonds, which certificate will make reference to the litigation referred to above and will state the Issuer is not a party to such litigation.

PART III

Larry G. Simon*

BEFORE I begin my discussion of the implications of *Serrano*¹ and *Rodriguez*² in relation to collective bargaining by teacher organizations, I should distinguish my position from Professor Coons' in a very general way. We probably do not differ substantially in our views of particular issues, but in at least two respects we have quite different predispositions or implicit assumptions, and these differences influence our respective perceptions of *Serrano* and *Rodriguez*, and of school finance equalization generally. First, Professor Coons thinks of the future of school finance largely in terms of power equalization, while I think of it largely in terms of full state funding, that is, state assumption of total educational costs through state taxation and distribution formulas.

Secondly, Professor Coons considers the *Serrano* and *Rodriguez* decisions important. I do not, or at least I do not regard them as nearly as important as he seems to. Perhaps this difference results from a difference in the criteria of importance applied by each of us. I keep asking myself, what difference is this going to make in the classroom? On the basis of recent social science studies and my own experiences teaching high school students, I am quite skeptical that manipulating district per pupil expenditures (within the range of reasonably probable expenditure levels) will significantly improve the education of the poor and minority group children who so desperately need better educations. My skepticism is increased, of course, by the fact that many cities today are relatively

*Associate Professor of Law, Yale Law School; B.A. Hobart College; L.L.B. Yale Law School; Law Clerk, Chief Justice Earl Warren, United States Supreme Court 1967-1968.

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²*San Antonio Independent School District v. Rodriguez*, 41 U.S.L.W. 3041 (W.D. Tex. 1972).

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high spenders and "rich" and could in fact be hurt by the decisions.

The relationship between *Serrano* and *Rodriguez* and teacher collective bargaining is so important that it is strange that more discussion has not concerned it. Roughly 65 percent of the typical school district current budget is for teachers' salaries and benefits, and teachers are clearly the most important school resource variable in the educational process. Further, in terms of the kinds of legislation that will emerge in the future, the political and institutional importance of teacher organizations and collective bargaining cannot be overlooked.

On the local level, bargaining is rapidly becoming one of the most important processes through which educational decisions are made. Collective bargaining between the local school board and teacher organization is either required or permitted in all but twelve or thirteen states, including most of the large industrial states. In the short tradition of bargaining, the subjects have been limited mainly to matters which effect teachers quite directly, but often these matters—class size, for example—involve significant educational policy choices. Recently, in addition, the trend seems to be toward expanding the subjects of bargaining to include some curricular, disciplinary and other educational policy issues which arguably ought to be resolved through a more open political process.

Teacher organizations, moreover, are surely political forces to be counted as important at the state level. In most states, teacher organizations are the single most powerful lobby in educational matters. The National Educational Association (NEA), which is by far the largest teacher organization, has a national membership of over 1,100,000 and a total affiliated membership of almost 1,800,000 of which the vast majority are public elementary and secondary teachers. With very effective lobbies in most state capitals, the NEA had considerable success well before the advent of collective bargaining. The growing American Federation of Teachers (AFT), with approximately 275,000 members, is not as effectively organized at the state level as the NEA, and often represents large city teachers while NEA represents the remaining teachers in the state. While the AFT has not traditionally lobbied as extensively or effectively as NEA, it has recently begun to move to remedy this weakness.

Assessing the impact of *Serrano* and *Rodriguez* on teacher organizations and collective bargaining obviously involves a good deal of speculation and it is in this spirit that my comments should

be understood. For this speculation, it is helpful to separate the short and long terms.

With regard to teacher organizations and collective bargaining, the most important fiscal effect of the decisions (for both the short and long terms) is the shift to the state of revenue raising responsibility. Under both full state funding and power equalization, state legislatures rather than local authorities will largely determine the amount of tax revenue for public education. Under full state funding the state would determine educational expenditures, set tax rates accordingly and distribute the money.

Under power equalization, local tax rates would continue to be important, but key decisions would be made at the legislative level. Imagine power equalization translated into a statutory rate-expenditure schedule with rates reading down one side, either mills or percentages, and expenditures down the other. The state guarantees that every district taxing at each rate gets the expenditure that reads across from it. Who makes the decisions on what those numbers are? The state legislature. Who makes the decisions on the minimum and maximum? The state legislature. Who makes the decisions on the increments in expenditure for each rate increase? The state legislature. To give an example, if you imagine that a 1 percent tax rate guarantees a district a \$500 per pupil expenditure, when the richest district in the state at 1 percent only raises \$300, and the average district only raises \$150, where is all that money going to come from? It is going to come through state taxation. The more discrepancy here, the more that the system cannot self-finance itself through redistributing wealth from one district to another, and the more the system begins to resemble full-state funding. Thus under either approach, there is an increase in the revenue responsibility of the state.

The second important fiscal factor, in my view, is that there is no persuasive reason to believe that there will be either a dramatic increase or a dramatic decrease in total intra-state revenue as a result of the decisions. Political constraints will strongly tend to make tax and revenue levels approximately what they are now, and certainly will not permit great increases or decreases in taxation. People who predict decreases generally have in mind districts which are now "rich." The main argument is that once expenditures are leveled downwards and districts can no longer spend the kind of money they do now, the rich and powerful districts will withdraw support for the public schools. On the other hand, people

who predict dramatic increases take the same phenomena and argue that it indicates that it will not be politically feasible to reduce the expenditures of the rich districts, and this will result in upward equalization—that is, increased revenue in order to support a much higher state average per pupil expenditure. I agree that the underlying phenomena—the practical unlikelihood of downward equalization—is very important, but I believe it will be resolved through tax compromises and, more importantly, through distribution formula compromises. To repeat, it seems to me that the best guess is that political forces will not permit significant increases or decreases in the total intra-state revenue now devoted to public education.

Without significant revenue increases, though, some way will have to be found to placate currently high-spending districts and, perhaps most importantly, teacher organizations in these districts. Most of the per pupil expenditure variations among typical school districts results from differences in teacher salary per pupil. These differences are caused by: (1) differences in pupil-teacher ratios; (2) differences in salary schedules, and (3) differences in the concentration of teachers at the upper end of the schedule.

Any downward equalization, whether through full state funding with an equal per pupil distribution formula or power equalization will be very unpopular with districts that will lose revenue and even more unpopular with teachers and their organizations in these districts, because it is bound to affect them adversely. Up to a point these districts can save the money without affecting teachers directly by cutting back on other expenditures. But these other expenditures are, by all accounts, relatively difficult to manipulate and, in any event, represent a relatively small part of school district expenditures. A power-equalized system might ease the pressure somewhat in currently high-spending and rich districts, but the local teacher organization in such a district will face the task of persuading local authorities to tax more heavily than they now do in order to support the same level of expenditures.

The reaction by teacher organizations and local political leaders, as well as parents and taxpayers, in currently high spending and rich districts will, I believe, be resistance to either financing system. Teacher organizations will, of course, pressure for higher taxes in order to maintain the same level of expenditures. Some tax increase may be inevitable, but, again, other political forces will keep these minimal. Adversely affected teacher organizations can-

not, for example, count on rich districts as allies in the fight for higher taxes, since these districts are the ones that will subsidize the rest of the state. Even if substantial tax increases seemed probable, moreover, there would still be pressure against equalization. Districts that are accustomed to bidding for better or more teachers will not relish the loss of this competitive advantage, for example, and inter-district jealousy among teachers would also cause pressure for continued disparities.

Given these political forces and constraints, the most likely accommodation in the short run, it seems to me, will be through a variety of distribution formula compromises—compromises that are, in general, permissible under *Serrano* and *Rodriguez*. City teacher organizations and other city interests, for example, will press in the state capital for compensatory education to bring additional dollars to the city. Meanwhile, suburban interests will lobby for special funds for “exceptional scholarship” students and programs—foreign languages or advanced science, for example. Similarly, and perhaps most important, all or almost all currently high spending and rich districts will press for distributional formula adjustments to take account of differences in the “costs” of school resources (most importantly, teachers) among districts. Defining and measuring these cost differences—without going into the details here—will be sufficiently difficult that judicial review is likely to be minimal. The short-term consequence of distributional formula compromises, of course, will be a continuation of significant inter-district expenditure disparities.

Looking further into the future, the major long range effect of *Serrano* and *Rodriguez* will be a shift in teacher collective bargaining from the local to the state level. With major revenue decisions shifted to the state, local bargaining on revenue-related matters will prove relatively ineffectual. As the focus of negotiation on these matters—teacher salaries and benefits, for example—moves to the state level, there will be continual pressure for an elevation of more issues from the local bargaining table to the state. Some of these pressures will be present from the outset since so many school matters are tied to revenue—for example, class size, school calendar, teaching loads, and, often, curricular and program priorities.

As the “natural” growth over time in state educational revenue makes somewhat less pressing the problem of currently high spending districts, teacher organizations will increasingly press for state negotiation of a statewide salary schedule. The increased coopera-

tion and coordination among local organizations, born mainly of the need for unity in dealing with state legislatures, will lead eventually to a statewide organization representing all the state's teachers. Wide inter-district salary differentials will not be consistent with internal stability in such an organization. Whatever disparity in teacher salaries has been provisionally maintained by reason of special program aid, cost differentials or power equalization will become increasingly unpopular with teachers in disfavored districts. All disparities will probably not disappear, but those that remain will come under closer scrutiny and will have to be justifiable as "fair" to the statewide union membership.

In the early stages, the increased union activity as the state level will look more like "lobbying" than "bargaining," although there is no bright line between these two forms of behavior insofar as public employee unions are concerned. Gradually it will come more and more to resemble bargaining, as it assimilates more and more subjects and its procedures become more formal and regularized. Tier bargaining, which will probably be the dominant mode in the short term, will be replaced gradually by complete state negotiation, as local unions press for the elevation of all revenue-related matters and other issues which they think will receive more favorable treatment at the state level.

I do not have time this morning to do more than assert that the two chief dangers of centralized bargaining are first, that it may bring some centralization of educational policy and, second, that it may enhance the power of teacher unions relative to other groups. Neither do I have time to qualify these assertions, although I would like to mention one potential check which, while somewhat remote, may in the long run prove extremely important.

I have in mind here the likely increasing concern in legislatures and to some extent in the public generally for "educational efficiency." In assessing *Serrano* and *Rodriguez*, the issue of overriding importance is the relationship between educational expenditures and educational quality. We know that district per pupil expenditures correlate very imperfectly at best with variations in student performance, and social science studies suggest that one of the reasons for this may be that we do not pay teachers very wisely. Teachers salaries are determined on the basis of their experience and educational attainment, and recent studies indicate that these teacher characteristics have small effect on student performance. For a variety of reasons—some of which seem quite