

Unequal Funding: Teaching Cadillac Kids with Chevy Dollars

By John Waldron



ABA/Roberta Barnes

Panelists discuss school funding during the ABA's 1997 Midyear Meeting in San Antonio.

Students at a rural elementary school in southern Ohio attend classes in a building with faulty wiring, leaky ceilings, and broken toilets. The school library offers students a set of encyclopedias that predate the first moon landing. Teachers are often forced to buy basic items like crayons and paper with their own money.

Ohio high school students from a Cleveland suburb face a remarkably different learning environment. Their high school offers all the modern amenities: computer labs, well-stocked libraries, a large auditorium and cutting edge technology. Courses rival those offered by local community colleges.

Many blame the stark contrast between these two schools (taken from the PBS documentary, "Children in American Schools") on the property-tax-based school funding system in place across the nation.

Nearly 24 years ago, the U.S. Supreme Court, in a 5-4 decision, ruled that education is not a fundamental right under the federal Constitution and that students living in a poor section of San Antonio did not have the right to attend schools funded at the same level as the nearby wealthy school district.

Since that decision in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), lawyers have taken the case for equitable funding for public schools to nearly 30 state courts with claims based on the right to education under state constitutions.

These issues were the focus of a panel discussion sponsored by the Section of Individual Rights & Responsibilities during the ABA's Midyear Meeting in San Antonio, Texas.

The panel discussion, "Legal Victories and Legislative Obstruction in State

Court Equity Funding Cases since *Rodriguez* (1973)," brought together attorneys, government officials, and activists familiar with the issue. They evaluated the approaches taken in the nation's courts and state legislatures to remedy the inequalities.

Panelists included former Texas State Senator Carl Parker; Judith Winston, Acting Under Secretary and General Counsel for the U.S. Department of Education; Patrick Baker and Christopher Pilaro, co-producer and associate producer of "Children in America's Schools"; Albert Kauffman, Mexican-American Legal Defense and Education Fund; and Paul Tractenberg, Rutgers University School of Law. William Taylor, Stanford University School of Law, served as moderator.

The panel focused on the successes and failures experienced across the U. S. during the 25 years of litigation that followed the California State Supreme Court's ruling in *Serrano v. Priest*, 1971. The court ruled the state's school funding system was unconstitutional.

Since that time, courts in 18 other states have ruled their funding systems to be unconstitutional, with 13 others currently considering cases. The legislation and policy changes that have followed in states such as Kentucky, New Jersey, California, and Texas have caused many states to search for alternatives to their current systems.

In his opening remarks William Taylor said the changes that followed a 1989 Kentucky decision that the state's funding system was unconstitutional provide a blueprint for reform in public school funding.

"The Legislature and State Supreme Court were able to come together and



realize that something had to be done," Taylor noted. "What Kentucky did was not just fiscal reform but an entire restructuring of education from top to bottom."

According to Taylor, the results indicate the beginning of a turnaround in the state's education system.

In 1989, Kentucky ranked 50th in adult literacy and high school completion, 49th in the number of four-year college graduates, and 48th in spending on elementary education.

"They were on the bottom in most categories," he said.

"In the past six years, Kentucky state spending on education has increased 46 percent," Taylor said. Funding for teacher training has jumped from one dollar to 23 dollars per student and participation in preschool has shown a 20 to 80 percent increase.

He said it is evidence of what can happen when there is great cooperation between branches of government regarding school funding. "Now Kentucky is beginning to move ahead of several other states."

Taylor added that the growth rate of inequalities between school districts is prompting states like Kentucky to take action.

"The gaps in property taxes that existed when *Rodriguez* was decided in 1973 have since doubled and tripled," Taylor added. "What were once gaps have now become chasms."

Taylor said he hopes attorneys try to help underfunded schools by making parents and educators aware of their rights. "We need to help them become their own advocates in this debate."

Other panelists commented that lasting success in reducing inequality is achieved when state governments are

made responsive to the problems that exist within their schools.

Albert Kauffman said the success of *Edgewood Independent School District v. Kirby* in 1989 was due in part to the temperament of the Texas Supreme Court when it heard the case.

"The court at the time was sensitive to the issues," he said. "This sensitivity combined with a popular movement to improve education helped to create a climate that was responsive to the questions being raised in the case."

"Most of the kids in the poorer schools at the time were getting a lousy education," Kauffman added.

He said the Texas ruling motivated representatives from better funded school districts to lobby the government for increased spending for education. "Once they realized they were going to be on the same level as poor people, they started to think that maybe it is not going to be so bad to have the poor move up a bit," he said.

"What it resulted in was increased funding for education to the entire state," Kauffman concluded.

Sen. Parker agreed with Kauffman's observation. "For the first time I saw wealthy people showing up at the capitol concerned about the level of educational funding in the state," he said.

Referring to the arguments against education funding reform, Parker said the belief that funding does not make a difference in the quality of education is unfounded. "It is like a sailboat race," he said. "If you truly believe that your kids are smarter and your teachers work harder, put everybody in the same sized boat and see who wins the race."

"Right now some kids are racing in an America's Cup class sailboat and oth-

ers are in a Hobie Cat," Parker added.

While some members of the panel said they have seen progress in resolving inequalities in public schools, most agreed opposition from state government often hinders court decisions in favor of reform.

Paul Tractenberg said the current New Jersey state government has hindered improving the conditions of schools in lower income districts despite court rulings that support such an effort.

"The New Jersey court ruled that the state had to spend more money on disadvantaged children than on those with more advantages," he said. "That is in direct contradiction to what is currently being done."

"There have been 11 decisions in New Jersey which support efforts to increase public school funding to disadvantaged schools," he said. "The problem is they haven't always resulted in legislative remedies that do what the Constitution requires."

Tractenberg said the state has cut funding increases despite improvements created under previous administrations. "Now we are back in the courts again," he adds.

As Tractenberg and other attorneys take the fight for equal funding in our nation's schools into litigation, many panelists called for a serious focus on determining what should be fought for.

Judith Winston said any attempt to restructure the funding of public schools should begin with a look at the level to which we are trying to hold schools accountable.

"We need to develop standards that state what we are demanding in a language parents can understand. Then we should make sure these standards are applied and schools are held accountable," she said.

"So many of these problems can be traced to our inability to create and enforce standards," Winston added.

She said participants in future litigation and reform cannot have a "one burner philosophy. There are multiple strategies as we approach this issue; we need to consider how education will look in the future based on what we do or do not do today."

Panelists expressed a sense of urgency in regard to resolution of the unequal funding in the nation's public schools.

"We are going to have to step on an education bandwagon like never before and get this done," Patrick Baker stressed. "I don't want to be here 20 years from now and find we still have not resolved this issue," he added. "I don't know what I would do at that point."

John Waldron is a writer in San Antonio.