Muslim country worldwide. Filth from the mouth, the press and the airwaves is meant to dehumanize a nation and make its extinction desirable. The world says nothing, does nothing." *(New York Times* 22 Oct.) When the Foreign Minister of Israel spoke before the United Nations, the Saudi president of the General Assembly would not stand and listen as a representative of the world's nations. Instead, he walked out of the Assembly hall, insulting Israel as well embarrassing his country and the entire UN. Nothing was said. If Israel had made such a stupid move, there would surely have been a call to arms and a vote to censure immediately. With no one to answer to, the White House is able to get away with treating a friend and ally harshly. Mr. Bush must be weaned away from the illusion that by not treating Israel with the respect she deserves as a sovereign country, the peace process will run smoothly and the Arab states will conform—a sorry miscalculation at the least. Bush and the American people must not forget that Israel is a democracy and not a military or royal dictatorship. American ideas will be better recieved in Jerusalem than in other states in the region where censorship and suppression is the rule of thumb. In the end, peace or no peace, President Bush will have succeeded only in wounding himself and his Mid-East ally, by leaning hard on Israel. Israel is not the root of the problem.

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Can Poor Schools Look to the Court?

By Mark Leonard

The educational system in the United States deprives poor and minority children of an equal opportunty to succeed. In many states, districts with low property values cannot adequately provide for their students; they cannot afford textbooks, maintain school buildings, or recruit capable teachers. The classrooms are overcrowded; the libraries are empty; the faculty is either uninterested or overworked, and often unable to keep track of all its students. America's drop-out and illiteracy rates have reached staggering heights in districts such as the North Bronx, Selma, Camden, East St. Louis, and South Chicago. Inadequacies in the educational system reinforce the already strong link between race and poverty, deprive some children of opportunities, and predetermine class by residency. Despite the many pleas to elevate educational standards, both the state and federal governments continue to buy America's prosperity from the future and to neglect large segments of the youth.

Encouraging both levels of government to uphold minimum standards in education has become more difficult than ever in light of today's economic hardships; as the proportion of voters with children in public schools decreases, the public eye looks further away from education. The federal government absolves itself of almost all responsibility and holds education to be strictly a state issue. The states pass much of the fiscal burden onto local districts to provide for their own educational systems, resulting in huge disparities in funding and expenditures among the school districts. Areas with low property values often cannot bear the burden. They devote a much higher percentage of their local tax to the educational

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system, yet have schools unacceptably inferior to those in their property-rich counterparts.

Because of their slight political and economic leverage, parents in property-poor districts are virtually

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without recourse in either the executive and administrative branches. The judicial branch, however, has the power, and possibly the incentive to promulgate educational fairness. In this piece, I intend to explore the judiciary's response to constitutional challenges of local finance schemes and the strategies involved in the battle for equity in public education.

In 1968, Demetrio Rodriguez filed a class-action lawsuit challenging the constitutionality of Texas's educational funding scheme under the "equal protection" clause of the Fourteenth Amendment. The ten wealthiest districts in Texas averaged nearly three times the total state and local revenue per pupil than the four poorest districts. Rodriguez's district, Edgewood, a 96 percent non-white, property-poor district, could only raise $231 per student with state and federal aid. Alamo Heights, a predominantly white, property-rich district, raised $543 per student with state and federal aid. Strangely, parents in Edgewood district paid a much higher tax rate than parents in Alamo Heights, in fact, a rate higher than most other districts in Texas.

The federal district court held that Texas was in violation of the equal protection clause of the Constitution and ordered the Texas Legislature to redistribute educational funding in a more equitable manner. The US Supreme Court, however, reversed the lower court's ruling in what is probably the most significant case challenging a state's educational finance law, *San Antonio Independent School District v. Rodriguez.* In a five-to-four vote, the Court ruled that the equal protection clause does not extend to students in property-poor districts,and that education is not a constitutional right.

Justice Lewis Powell, writing the majority opinion, argued that the Texas financing schemes did not create a "suspect class" based on wealth:

> *[The plaintiffs] made no effort to demonstrate that [the financing scheme] operates to the peculiar disadvantage of any class fairly definable as indigent" (Rodriguez* 478)

To strike down a law as unconstitutional under the equal protection clause, the courts have designed a three-tier classification systemwhich establishes distinctive degrees of scrutiny that an allegedly discriminatory law requires:

- Laws that discriminate against a "suspect class" like racial or ethnic minorities. These require the strictest scrutiny; the state must show that such a law has a pressing public necessity to prevent court action. *(Karematsu)*
- Laws discriminating against an "intermediate suspect class," such as women. Here, states must show that the law is substantially related to public good. For example, laws exempting women in the armed forces from front-line combat have been upheld under this standard.
- Laws that do not discriminate against a suspect or indigent class. The courts do not permit scrunity of these laws. They fall under the "rationality test" in which the state must only prove that there is some rational basis for upholding the law.

Justice Powell applied the rationality standard to Texas's finance law, for he felt that children in property-poor districts did not constitute either a suspect or an indigent class. By this standard, Powell accepted the state's desire to preserve local autonomy over education to ensure that "...each locality is free to tailor local programs to local needs." *(Rodriguez)* He went a step further and claimed that in order to apply strict scrutiny, the children must be faced with "absolute deprivation of education." Finally, Powell argued that "[education] is not among the rights afforded explicit protection under the Federal Constitution."

The Effects *of Rodriguez*

Needless to say, *Rodriguez* firmly established that property-poor districts with inadequate educational facilities can find no expedient in Federal Court. There is little doubt that with today's the current Court, the ruling would not be much different. Only one month after *Rodriguez,* however, the New Jersey Supreme Court struck down the state's educational finance law as unconstitutional under a provision in the State Constitution that requires the legislature to "provide for the maintenance and support of a thorough and efficient system of free public schools." *(Robinson* 482) Most state constitutions, fortunately, offer similar educational provisions. Consequently, the entire debate shifted focus to state constitutions, and challenges to education finance laws are now brought to state courts.

The days of the Warren Court are long gone; lawsuits aimed at protecting civil liberties are filed under state jurisdictions more than under federal jurisdiction,

> *...state courts have increasingly interpreted their own constitutions to guarantee greater protections than the federal constitution in a wide range of areas —from free expression, to reproductive rights, to housing for the poor. Justice Brennan hailed this blossoming of state constitutional law as 'the most important development in constitutional jurisprudence of our times.'* (Hershkoff)

Not all state courts, however, are as receptive as New Jersey's. Pennsylvania, for example, interpreted the "thorough and efficient" clause in the Pennsylvania Constitution:

> *[EJverything directly related to maintenance of a thorough and efficient system of public schools' must at all times be subject to future legislative control. (Danson* 139)

The Court reasoned that the "thorough and efficient" clause was intended to be used as a positive model, not grounds for court action. The contradictory views of New Jersey and Pennsylvania are permitted and in fact welcomed in the new judicial system centered on state constitutional law.

When Ohio's educational financing scheme was challenged, the Ohio Supreme Court followed Justice Powell's lead in *Rodriguez* and applied the "rationality test:"

> *[BJecause [the] case deals with difficult questions of local and statewide taxation, fiscal planning, and education policy, we feel this is an inappropriate case in which to invoke 'strict scrutiny' {Board* 140)

Coleman came to the conclusion that these students fared poorly in school, not because of underfunded school systems, but because of problems outside of school.

The Wyoming Court, on the other hand, accepted the argument that the wealth of an individual school district is a suspect classification, and consequently applied the scrutiny standard.

One consistency in the state constitutional challenges is that in almost every case, the trial courts have ruled that the states' financing schemes are unconstitutional.

> *More than any other factor, the irrationality of school finance systems allocating funds fortuitously appears to explain the nearly unanimous conclusions of those trial judges closest to the facts that these systems are discriminatory and constitutionally untenable.* (Long 482)

On appeal, the issues become more abstract. Higher courts explore whether or not education is a "fundamental interest," whether the unequal distribution of funding deserves strict scrutiny, and how important it is to preserve local control.

The most prominent recurring issues in challenges to educational finance laws are the "magnitude of disparities in revenues and expenditures among school districts... and the inequalities in educational opportunities that result from them. "(Long 483) Challenges appealing to the equal protection clauses of various states' constitutions can seldom stand solely on evidence of a large discrepancy in funding between school districts. Plaintiffs are often required to show a direct correlation between the unequal funding and the unequal education. While the point may seem painfully obvious in light of the clearly disparate quality and quantity of educational facilities, staff, course offerings, equipment and instructional materials, plaintiffs are often asked to go to great lengths to illustrate the relationship.

The notion that "slapping money at the issue will not solve any problems" dates back to the Coleman Report commissioned in 1966 by the Department of Education. James A. Coleman surveyed the conditions of public schools, paying special attention to the adverse effects they had on minority and poor students. Coleman came to the conclusion that these students fared poorly in school not because of underfunded school systems, but because of problems at home or outside of school:

> *variations in the facilities and the curricula of the schools account for relatively little variation in pupil achievement. {Coleman* 22)

Coleman's theories remain to this day a part of political discourse. In a 31 March 1989 issue of the *Wall Street Journal,* a columnist wrote: "Big budgets don't boost achievement. It's parental influence that counts." *{Savage* 134) As a result, studies revealing large discrepancies between the academic achievement of students in inad-

equately funded schools and those in wealthier schools tend not to convince courts that inadequate revenues have an adverse impact on students.

Many critics of the report believe that Coleman's findings are based on racist stereotypes and imply that some children can never succeed regardless of how much is spent on their education. One hopes that Coleman's critics will be able to rely on some future survey quantifying a significant change in pupils' academic achievement in school districts that have benefitted from court action. If the dramatic change in academic achievement occurs in the same student body, Coleman's findings would become invalid, and a direct relationship between funding and achievement would be established.

Minimum Competency Tests are imposed on students, not schools, and in effect deny diplomas to those who fail to exhibit basic reading and mathematic skills through standardized tests.

To combat Coleman in the mean time, plaintiffs have used surveys like the one recently published in the *Journal of Education Finance.* It explores the effect that large disparities in entry-level teacher salaries have on the school districts' abilities to recruit choice teachers. The report found a direct relationship between entry-level wage and the degree level of teachers recruited. While this does not necessarily indicate the relative abilities of the teachers, it does describe the relative abilities of the schools to attract desirable teachers:

> *Thefindingspresentedsuggestihatwhen districts improved their entry-level salary ranking, they subsequently improved their ability to recruit the most highly educated candidates available in their regional pool. {Change* 413)

One can infer from this report that insufficient funding plays a significant role in the quality of the teachers, and quality teaching most certainly affects students' ability to succeed.

New Problems in Inadequately Funded Districts

A recent backlash has occurred in response to the courts which have struck down unequitable finance schemes, a response which criticizes such actions as having a "levelling" effect and sacrificing quality in education. The backlash has spawned efforts to raise "standards" in education through "Minimum Competency Tests" (MCTs). These must not be confused with minimum standards that require a minimum number of books in the library, a maximum teacher-student ratio, or a maximum number of students in a classroom. MCTs are imposed on students, not schools, and in effect deny diplomas to those who fail to exhibit basic reading and mathematic skills through standardized tests. Efforts to raise these standards, purportedly to improve the quality of education, can only hinder disadvantaged students:

> *[A] majority of the 'reform' states, in essence, have moved up the high-jump bar from four to six feet without giving any additional coaching to the youth who were not clearing the bar when it was set at four feet. (Putting 2)*

Increasing standards on the MCTs punishes students who have been deprived of adequate educations; the tests are socially and economically debilitating:

> *MCTs compound the tragic consequences of denying disadvantaged children the diagnoses and remedial services they need by stigmatizing them as functionally illiterate and by denying them the credentials that largely define socio-economic and political status in this country. (Putting* 60)

In spite of the many setbacks facing the struggle for equality in public education, there is still movement in the right direction. At the moment, state courts are proving to be the best promulgators of change, as some are providing constitutional protection. Once the benefits from an equitable system become more evident, a chain reaction could occur, and sweeping protections could be granted to children across the United States.

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It's Time to Reinvigorate American Democracy

By New York Attorney General Robert Abrams

The following is an edited version of Mr. Abrams's commencement address to the graduating class of Pace Law School on 9 June 1991.

This year marks the 200th anniversary of our Bill of Rights, a landmark document in the history of human freedom. Defending and protecting the Bill of Rights is the responsibility of every citizen of this democracy.

The founders of our nation understood from the beginning that democracy means much more than just voting for one candidate over another. The real substance of a democratic society lies in the basic protection of individual and political rights that are so eloquently expressed in our Bill of Rights; the right of every American to speak his or her mind without fear of political reprisals; the right of every individual to practice openly the religion of his or her choice; the freedom to publish and to read newspapers, magazines, and books that are not subjected to government-imposed censorship; the right of

The real substance of a democratic society lies **in the** basic **protection of individual and political rights.**

people to hold rallies and marches to lobby the government on behalf of political causes they believe in; and the right to a fair, public trial when a person is accused of a crime. It is these guarantees of freedom of thought, expression, and political participation which have made this nation a beacon of hope and opportunity to people around the world.

In visits to Eastern Europe and the Soviet Union over the past year, I was able to witness first hand the role of our Bill of Rights and our constitutional system of government as models for newly emerging democracies and democratic forces in that part of the world.

In meetings with lawyers, government officials, and ordinary citizens in Hungary, Poland, and Czechoslovakia, our delegation of State Attorney Generals were met at every turn with intense interest in all aspects of our legal system, from its overarching principles and structure to its most mundane practical details. The power of our Constitution as a symbol of freedom can never be more powerfully expressed than through the hope it inspires in the hearts and minds of people who are emerging from years of tyranny and oppression.

In every country we visited, people were deeply and urgently concerned with precisely the kinds of questions that motivated the founders of our nation to establish a constitutional government 200 years ago. In Poland, our delegation had dinner with a group of young professionals who were engaged in a lively debate and discussion on the appropriate relationship between church and state. While they had high praise for the role of the Catholic Church in helping them to break the shackles of communism, they were also concerned about the extent to which the beliefs of the Church should be allowed to determine the new government's social policy in sensitive areas such as a woman's right to choice. In Czechoslovakia, the issue was federalism—how to achieve appropriate checks and balances between the central, local, and regional governments. This is a critical issue due to Czechoslovakia's ethnic diversity and strong desires for regional autonomy. The Czech lawyers and officials we spoke with were extremely interested in our