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ABSTRACT

This report concerns inequity in public school finance and its impact on students who, because of economic disadvantage or other factors, are at risk of educational failure. The study examines how resources are distributed under state systems for financing public education. Findings indicate that the prevalent system of financing public schools through heavy reliance on locally raised property taxes leads to widespread disparities in expenditures among public school districts within states. Recent state court decisions have revived the movement, begun in the 1970s and early 1980s, to reform school finance systems through litigation. The study finds that inequitable systems of school finance inflict disproportionate harm on minority and economically disadvantaged students. Educators have reached substantial agreement that several types of educational services are important, and in some cases vital, to the success of at-risk students. Because of a lack of resources, many of these services are inadequate or are not provided at all to children in property-poor districts. A more equitable distribution of resources by states to local school districts could reduce the costs of assuring effective educational services to at-risk children. An appendix discussing school finance litigation prior to 1989 and three statistical tables are included. (AF)

[COMMITTEE PRINT]

A REPORT
ON
SHORTCHANGING CHILDREN: THE IMPACT OF FISCAL INEQUITY ON THE EDUCATION OF STUDENTS AT RISK

PREPARED BY

WILLIAM L. TAYLOR and DIANNE M. PICHÉ

FOR THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS
SECOND SESSION

DECEMBER 1990

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PREFACE

I wish to express my personal appreciation to the authors of this report, attorneys William L. Taylor and Dianne M. Piché.

I wish also to express my gratitude to Reginald Govan, Counsel to the Committee on Education and Labor and Gale Black, Associate Counsel to the Committee, for their overall guidance and assistance with the project. Jack Jennings, Counsel to the Subcommittee on Elementary, Secondary, and Vocational Education of the Committee on Education and Labor, and Diane Stark of his staff also provided invaluable insight and assistance.

Additionally, the following individuals and organizations gave generously of their time and expertise, and I extend to them as well my appreciation:

David Hornbeck, Esq., former Maryland State Superintendent and former President of the Council of Chief State School Officers; Marilyn Morheuser, Esq., Director of the Education Law Center in Newark, New Jersey, and lead counsel for plaintiffs in the New Jersey school finance litigation; and Professor Robert Slavin of the Johns Hopkins University, all shared their expertise on successful programs for at-risk children with the Committee staff at the consultation on September 14, 1990. Ms. Morheuser, and Steve Block of the Education Law Center, also provided information on educational and fiscal disparities in the state of New Jersey.

The following attorneys for plaintiffs in school finance litigation provided legal and other information to the authors: Albert Kaufman of the Mexican-American Legal Defense and Educational Fund in San Antonio, Texas; Bert Combs of Lexington, Kentucky; James Goetz of Bozeman, Montana; and Elliott Lichtman and Mary Levy of Washington, DC. The authors also consulted education law and school finance expert Betsy Levin, Director of the Association of American Law Schools.

Education experts Arthur Wise, Kati Haycock, Delia Pompa, and Linda Darling-Hammond also shared their views and expertise regarding successful educational programs and services for at-risk children. Larry Leverett, formerly Superintendent of the Englewood, New Jersey school system and currently Assistant Commissioner, Division of Urban Education, State of New Jersey, along with school officials in numerous New Jersey school districts generously provided information on their programs for disadvantaged students, in response to the authors' survey in connection with Chapter V. Phil Campbell of the Montana Education Association provided information on educational disparities in Montana, and Maribeth Oakes of the National PTA provided information on early childhood programs.

Educational data experts from the Council of Chief State School Officers (Ramsay Seldin and Rebecca Yount) and the National

Center for Education Statistics (Emerson Elliott, Acting Administrator, and colleagues Paul Planchon, Marty Orland and Bill Fowler) provided information and other assistance on Chapter VIII.

Finally, the staff of the Law Office of William L. Taylor worked diligently and tirelessly to complete background legal and data research for the report and to type and proofread the document. My sincere thanks go to: Donna Cole, Administrative Assistant to Mr. Taylor and Ms. Piché; Joan Birnbaum, paralegal; and law students Kelly Andrews, David Futterman, Alicia Glekas, Jennifer Renne, and Mark Wagner.

AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor

FORWARD

This Committee commissioned this report by William L. Taylor and Dianne M. Piché.

I believe this report takes an innovative approach to the problems of disparities in public school expenditures created by inequitable state finance systems. The study identifies services (e.g. preschool education and reading programs in the early grades) that most educators regard as essential to the success of at-risk children. It then examines the extent to which children in property-poor districts are deprived of services in these key areas because of inequitable finance systems.

William L. Taylor is a lawyer, teacher and writer in the fields of education and civil rights. He practices law in Washington, DC and teaches education law at the Georgetown University Law Center.

Mr. Taylor's recent work includes a model statute providing education entitlements for at-risk students drafted for the Council of Chief State School Officers and an affirmative action plan adopted by the New York City Board of Education. His litigation work includes victories on behalf of black children in school desegregation cases in Wilmington, Del., Indianapolis, St. Louis, Cincinnati, and, most recently, Fort Wayne, Indiana. He does legislative work for the Leadership Conference on Civil Rights. A former Staff Director for the U.S. Commission on Civil Rights, Mr. Taylor has written widely about education subjects including school finance.

Dianne M. Piché practices law with Mr. Taylor, specializing in educational equity and employment cases. She has had primary responsibility for trial preparation in a major school desegregation case. Ms. Piché has advised public and private clients on issues in education, employment and government contracting and has written and edited reports and publications on subjects including affirmative action, voting rights and Title IX of the Education Amendments of 1972.

I believe that the recommendations in the study that grow from this analysis provide a very promising approach for the next Congress.

AUGUSTUS F. HAWKINS
Chairman, Committee on Education and Labor

CONTENTS

FINDINGS AND RECOMMENDATIONS

This report prepared for the House Committee on Education and Labor concerns inequity in public school finance and its impact on students who, because of economic disadvantage or other factors, are at risk of educational failure. The study examines how resources are distributed under state systems for financing public education. While the dollar gap between wealthy school districts and poor ones is a matter of concern, the major focus of the study is the effect of these financing systems on the availability of vital education services to disadvantaged children.

A. *Findings*

Several findings emerge from the study:

The prevalent system of financing public schools through heavy reliance on locally raised property taxes leads to widespread disparities in expenditures among public school districts within states. Property-poor districts, which have lower assessed valuation per child, often tax at much higher rates than property-wealthy districts yet yield far fewer dollars for their effort. [Chapter II.]

During the 1970s and early 1980s, several state courts addressed the issue of whether inequitable state finance systems violated guarantees of a "thorough and efficient" education and "equal protection of the laws" contained in state constitutions. Courts reached different results and even in those cases where violations were found, the remedies devised by state legislatures often permitted disparities to continue. [Chapter II and Appendix A.]

Over the past two years, decisions by the highest courts in Kentucky, New Jersey, Texas and Montana have breathed new life into the movement to reform school finance systems through litigation. It is too early, however, to assess the practical results of these decisions, e.g., whether they will result in account being taken of the special needs of at-risk students, and whether spending will be "levelled up" to eliminate disparities. It is also too early to determine whether they are likely to be replicated in other states. [Chapter II.]

Inequitable systems of school finance inflict disproportionate harm on minority and economically disadvantaged students. On an *inter*-state basis, such students are concentrated in states, primarily in the South, that have the lowest capacities to finance public education. On an *intra*-state basis, many of the states with the widest disparities in educational expenditures are large industrial states. In these states, many minorities and economically disadvantaged students are located in property-poor urban districts which fare the worst in educational expenditures. In addition, in several states economically disadvantaged students, white and black, are

concentrated in rural districts which suffer from fiscal inequity. [Chapter III.]

While debate continues over the abstract importance of money in educational performance, educators have reached substantial agreement that several types of educational services are important and in some cases vital to the success of at-risk students. These include preschool child development programs, reading programs in the early grades, reduced class size, counseling and parental involvement programs, teachers with experience and expertise, and a broad ranging curriculum. [Chapter IV.]

Because of a lack of resources, many of these services are inadequate, or are not provided at all, to children in property-poor districts. It is not unusual for economically disadvantaged students in these districts to enter school without preschool experience, to be retained in the early grades without any special help in reading, to attend classes with 30 or more students, to lack counseling and needed social services, to be taught by teachers who are inexperienced and uncertified, and to be exposed to a curriculum in which important courses are not taught and materials are inadequate and outdated. [Chapter V.]

A more equitable distribution of resources by states to local school districts could reduce the costs of assuring effective educational services to at-risk children. While the costs of providing such services are high, the evidence is that the investment called for would be more than repaid in the taxes paid by productive citizens and in avoidance of the costs of crime and welfare dependency. [Chapter VI.]

Fiscal inequity in the states thwarts the Federal Government in carrying out its role of assisting in meeting the special needs of disadvantaged students and in assuring equality of opportunity. Although Federal policy is premised on the belief that educational programs and services provided to students with state and local funds are "comparable," and that Federal funds are a supplement to meet special needs, this is not the case in many states. Federal funds are used in property-poor districts to meet needs that are routinely met through state and local expenditures in other districts. The value of Chapter 1 funds is often severely impaired in property-poor districts because the assistance can be used only to fund one important service while funds are not available to provide other vital services that are interdependent. [Chapter VII.]

The Federal Government does not have a system for collecting data that enables it to gauge the scope of problems of fiscal inequity, the effect of these problems on important education services and the impact of fiscal inequity on children who are at risk of educational failure. [Chapter VIII.]

B. *Recommendations*

1. Congress should consider legislation to expand the comparability requirements of the Elementary and Secondary Education Act to the 50 states.

States should be required to provide assurances that as to essential educational services all students in the state who are eligible for Chapter 1 aid are receiving services comparable to those provided to non-Chapter 1 eligible students.

As identified in Recommendation 2, the essential education services for which comparability should be required are: preschool programs, reading programs in the early grades, class-size, counseling and social services, experience and certification of teachers, and range and breadth of curriculum.

The Secretary of Education should be charged with developing standards to determine whether services are comparable within a reasonable range. Failure of states to comply with comparability requirements should trigger a direct distribution of Federal assistance to school districts along the lines contemplated in the Fair Chance Act of 1990.

Comments: The approach outlined above is narrower than efforts to require across-the-board equalization of tax bases or expenditures. The focus would be on the more limited Federal role of helping districts to meet the special needs of at-risk children and assuring equality of opportunity.

Equity or comparability would be required in those services identified as key to the success of at-risk children. Since the measure would be the level of service, differences of cost from district-to-district in providing the service could be taken into account. Clearly, however, achieving comparability of key services would result in a significant closing of the gap in expenditures among districts.

States should be required to begin steps to reduce disparities immediately after enactment of the legislation. Full enforcement, however, would have to await the completion of the data collection effort contained in Recommendation 2 and the development of specific comparability standards.

2. Congress should consider legislation calling upon the Secretary of Education by a date certain to collect and report to the Congress and the public, information that will permit an assessment of the impact of state public school finance systems on the availability of services to disadvantaged students.

The information should include data for each school district (a) on the demographic characteristics of the district, including the numbers of minority students, and the numbers of economically disadvantaged and other students who have special needs, (b) on the fiscal capacity of the district and its expenditures for public education, and (c) on the levels of service provided for preschool programs and for reading programs in the early grades, on class-size, on counseling and social services, on the experience and certification of teachers, and on the range and breadth of the curriculum.

Comments: As described in Chapter VIII, some of this information is being compiled now by the Bureau of the Census and the NCES. Other data, particularly with respect to educational services, is not now being collected and hearings will be necessary to determine how the information can be assessed in a cost effective manner.

Although some data will still be lacking, Congress should consider a target date of January, 1993 for the Secretary's first report, and should require that the reports be updated no less frequently than every five years so that the data will be current enough to permit implementation of Federal policy.

CHAPTER I

INTRODUCTION

The aims of this study are several fold: (1) to assess the current state of knowledge about inequities in the ways public schools are financed; (2) to determine the practical impact of fiscal inequity on the important educational services available to children in districts that have wealth and those that do not; (3) to determine whether inequitable finance systems are interfering with the achievement of national education goals; (4) to ascertain whether Congress needs to have more information available to it to gauge the practical impact of fiscal inequity; and (5) to identify approaches that Congress and the Executive branch may consider to redress inequity and to achieve national goals in education.

The Committee commissioned the study because of the long-standing interest of its members in equal educational opportunity and because of a continuing concern about the barriers to equal opportunity posed by school finance systems that are inequitable. Over the years that concern has been evidenced in several ways that are noted in the study. In the current Congress, the interest of the Committee was manifested by the introduction by Chairman Hawkins and several of his colleagues of the Fair Chance Act (H.R. 3850) and by hearings held on the bill. The legislation was designed to impel states to reduce or eliminate the gross disparities in educational expenditures that often result under systems where the revenues available for public education depend on the property wealth of each district. The bill also proposed some first steps to deal with the wide disparities in expenditures *between* states.

At the hearings, strong support was voiced for legislative reform, but several objections were heard. Among these were the concern that money does not necessarily buy better education, that the task of determining fiscal equity is a very complex one especially since the needs of students differ, and that the Federal Government's limited role in public education strongly suggests that it not become involved in an effort to secure wholesale reform of state finance systems. In part, this report is designed to explore these objections and concerns and to provide information which will permit a better evaluation of their validity.

The study was also spurred by a spate of new decisions in the area of school finance reform, rendered over the past two years by the highest appellate courts in four states—Kentucky, Montana, New Jersey, and Texas. These decisions have cut new ground in several respects and the remedies adopted to comply with them have in several instances provoked spirited public reactions and debate. The cases are analyzed in some detail in Chapter II, both as to the theories of liability and the scope of remedy, and they are

compared to earlier state and Federal decisions on the same subject.

The cases, along with earlier ones, also yielded a wealth of information on differing levels of educational services in property-poor and property-rich districts. This data, along with information gleaned from a survey of New Jersey districts conducted for this study, is set out by discrete categories of service in Chapter V.

The categories—preschool education, reading programs in the early grades, class size, counseling and social services, teaching experience and expertise, and curriculum—were selected to reflect areas where most educators believe that better services make a difference in the success of students, particularly economically disadvantaged students. The discussion of effective education services is contained in Chapter IV and is based on a review of the literature, interviews with experts, and a consultation with education specialists, in which several members of the Committee participated, held on September 14, 1990.

Later, in Chapter VII, the report reviews the Federal role in education, particularly the longstanding congressional concern with assuring opportunity to economically disadvantaged children. The chapter suggests that the expressed policy of the Congress in assuring that Federal funds under Chapter 1 are used to meet the special needs of children is being defeated by state systems so inequitable as to deny basic services to at-risk children in poor districts.

Chapter VIII examines the current state and projected plans for data collection by the Bureau of Census and Department of Education to ascertain whether adequate information is forthcoming to determine on a nationwide basis the impact of fiscal inequity on the provision of basic services of at-risk children. In this endeavor, the authors of the study received technical assistance from education research specialists at the Council of Chief State School Officers and the National Center for Education Statistics.

Other chapters of the report deal with the extent of fiscal inequity in monetary terms, including differences in educational resource expenditure patterns *among* the states as well as within states (Chapter III) and with estimates of the potential costs of providing effective services to at-risk children. (Chapter VI).

The report sets forth proposals for consideration by the Committee. One recommendation is designed to assure that Congress will have adequate information about the impact of fiscal inequity as it impinges on the Federal role of providing equal educational opportunity for disadvantaged students. A second suggests corrective action that may be considered to redress the effects of such inequity without seeking to preempt the role of courts and the states themselves.

The hope of the authors is that the material contained in this study will spur discussion and action on measures that will promote progress in meeting national goals in education and in fulfilling the National mandate for equal educational opportunity.

CHAPTER II

THE DEVELOPING LAW ON SCHOOL FISCAL INEQUITY

A. *Origins of Public School-Finance Systems in the United States*

Public education has been considered largely a local prerogative since its earliest origins in the United States.

Traditionally, state governments have espoused a "minimalist" role in funding public education, leaving the bulk of revenue-raising and virtually all decisions about programming to local jurisdictions.[1] There is a tension however, between this minimalist approach—and the perceived need for states to secure some uniformity and to assure that basic standards are met by local districts. This has led to extensive state regulation of elementary and secondary education, which now includes state education departments that have grown up over the years to promulgate and enforce such regulations. Currently, and despite the pervasive ideology of "local control," state entities regulate virtually every aspect of public education, including, for example: textbooks, teacher qualification, curriculum, attendance policies, length of school day, and school construction.[2]

In 1954, the *Brown* decision identified a broad state responsibility to assure that when states undertake to establish public education systems, opportunities are offered on equal terms. And in the 1970s and 1980s, pressures to upgrade public education led to more state intervention. Today, while there is a call for deregulation, most states are moving toward the setting of state standards both in terms of inputs (e.g., pre-kindergarten programs and initiatives to reduce class size in early grades) and in terms of outputs (e.g., minimum competency testing and standards for graduation).

Yet, despite the pervasive role of the state in regulating the schools, the ideology of local control persists. Nowhere has the notion of local control been so deeply embedded as in the area of public school finance.[3]

Although the trend over the last several decades has been for states to increase the proportion and dollar amounts they contribute to public education budgets,[4] local governments, on average, still contribute 44 percent of total dollars spent on public elementary and secondary schools. States supply about half and the remaining 6.4 percent comes from Federal sources.[5]

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[1] *See*, D. Kirp, "Judicial Policy-making, Inequitable Public School Financing and the *Serrano* Case," *reprinted in* Kirp and Yudof, *Educational Policy and the Law* (2d Ed. 1982), at 566-567.

[2] *See San Antonio* v. *Rodriguez*, 411 U.S. at 126-127 (1973) (Marshall, J., dissenting).

[3] *E.g.*, *San Antonio* v. *Rodriguez*, 411 U.S. at 48-52 (majority opinion).

[4] *See* section F, *infra*.

[5] Property-poor districts, typically raise a much smaller fraction of total revenues from local sources. For example, Baltimore City raises only 31 percent locally, according to the Maryland

Continued

B. *Current School Finance Systems*

The typical state school finance system [6]—which predominates in virtually all states in the country [7]—combines revenues from three sources: local, state, and Federal Government.

1. *Local revenues.* The lion's share of educational costs is borne by local governments which tax real property to support schools and other services. Generally speaking, the higher the assessed valuation of the property in a district, the greater the ability of the jurisdiction to raise funds for schools and other purposes.[8]

2. *State Revenues.* State aid is based on a number of approaches,[9] the most popular of which are one or a combination of the following grants:

a. *Flat Grants* provide the same fixed sum of money per pupil to all school districts without regard to the districts' disparate taxing capacities. Although flat grants guarantee a minimum amount per pupil to each district, the state grant almost never covers the full educational cost per child, leaving local districts to supplement with locally-raised funds. Naturally, wealthier districts supplement the flat grant with more money and inequity persists.

b. *Foundation Grants* attempt to ensure a minimum level of revenue per pupil by targeting state aid to poor districts. The state prescribes a foundation level per pupil and a minimum tax effort to be made by districts. If a district is willing to make the prescribed tax effort but fails to raise the foundation amount per child because of low property valuation, the state makes up the difference with the "foundation grant."

c. *Power Equalizing* is a reform adopted by a few states. It seeks to guarantee the same revenue yield to districts—whether rich or poor—that tax themselves at the same rate. Through formulas requiring rich districts to turn over to the state "surplus" revenues above the state-established guaranteed yield money is redistributed to poor districts to make up for the difference between the guaranteed yield and their actual, lower yield.

3. *Federal Assistance.* Finally, most districts receive some form of Federal assistance through the variety of grant programs authorized by Congress, the largest of which is the Chapter 1 program to assist educationally disadvantaged students.[10]

Department of Education. In New Jersey, property-poor districts are heavily subsidized by the state. For example, Pleasantville receives 73 percent of its budget from the state, according to Superintendent Dr. Henry Johnson.

[6] For descriptions of each state's school finance system, see D. Verstegen, *School Finance at a Glance* (The School Finance Collaborative, March 1988).

[7] Exceptions are Hawaii and District of Columbia which each operate one unified school system for the entire state.

[8] It should be noted, however, that this assumes a nexus between income and property values (that is, that people who live in property-rich districts have higher incomes, and thus greater ability to pay higher taxes). There may be cases where this rule of thumb does not apply. *See, e.g.*, "Inequities in School Funding Could Cost Virginia Millions," The Washington Post, June 11, 1990, at pp. A1, A11 (low-income farmers in property-wealthy Virginia school district have difficulty paying more taxes for education).

[9] Other sources of state aid include: transportation allotments, categorical aid (e.g., for special education, compensatory education), capital improvements/construction, and teacher benefits, (e.g., pensions).

[10] Title I of the Elementary and Secondary Education Act, 20 U.S.C. §2701, *et seq* See discussion of the Chapter 1 program in Chapter VII, *infra*.

C. *Why The Typical State School Finance System Is Inequitable.*

Current state systems for financing public education are inequitable. The typical system denies equal educational opportunity—at least as opportunity is measured by educational inputs—to children living in property-poor districts,[11] disproportionate percentages of whom tend to be of lower socioeconomic status (SES), racial minority, or of limited English proficiency (LEP).[12] The systems are inequitable in at least two significant regards:

1) *Reliance on Property Taxes Creates Vast Inequities.* Because of vast differences in taxable property wealth among districts in a state, the ability of school districts to raise local revenues varies a great deal. Typically, property-rich districts are able to tax at a relatively low or moderate rate yet yield more money than property-poor districts which tax at much higher rates. Recently, for example, the Texas Supreme Court noted severe disparities in both property-wealth and tax efforts among districts. As to disparate wealth:

> The 300,000 students in the lowest-wealth schools have less than 3 percent of the state's property-wealth to support their education while the 300,000 students in the highest-wealth schools have over 25 percent of the state's property-wealth. . . . The average property-wealth in the 100 wealthiest districts is more than twenty times the average property-wealth in the 100 poorest districts. Edgewood I.S.D. has $38,854 in property-wealth per student; Alamo Heights I.S.D., in the same county, has $570,109 in property-wealth per student. . . .[13]

As to tax rate, the court found that poor districts needed to tax themselves at higher rates just to meet the state's minimum standards. The court found these districts were "trapped in a cycle of poverty" because their high tax rates meant they were unable to attract new industry to improve their tax base. For example:

> In 1985–86, local tax rates ranged from $.09 to $1.55 per $100 valuation. The 100 poorest districts had an average tax rate of 74.5 cents and spent an average of $2,978 per student. The 100 wealthiest districts had an average of $7,233 per student. In Dallas County, Highland Park I.S.D. taxed at 35.16 cents and spent $4,836 per student while Wilmer-Hutchins I.S.D. taxed at $1.05 and spent $3,513 per student.[14]

Texas is not unique in either the nature of its property-wealth disparities or in the tremendous tax effort poor districts must exert just to support a primitive educational program. California, Maryland, and Illinois, among others, provide similarly glaring examples of the inequities inherent in systems relying heavily on property taxes.

In California, before the state supreme court mandated reform, the record showed that:

> . . . the Emery Unified School District enjoyed $100,187 of assessed property value per student while the Newark district in the same county had only $6,048 of as-

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[11] *See, e.g., Abbott* v. *Burke*, No. A-63 (N.J., June 5, 1990); *Edgewood* v. *Kirby*, 777 S.W.2d 391 (Tex. 1989); *Helena Elementary School Dist. No. 1* v. *state of Montana*, 769 P.2d 684 (Mont. 1989); *Serrano* v. *Priest*, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) ("*Serrano I*"). Courts invalidating school finance systems largely have rejected output standards and have focused instead on disparities in revenues per pupil, on educational offerings, and on local tax burden. *But cf. Rose* v. *Council for Better Education, Inc.*, No. 88-SC-804-TG (Ky., LEXIS, June 8, 1989), discussed *infra*.

[12] At least one study has shown that disproportionate numbers of such children are handicapped as well. *See, e.g.*, The Potomac Institute, *Central City Schooling: Money Can Make a Difference*, at p. 21 (Washington, DC, 1977).

[13] *Edgewood* v. *Kirby*, 777 S.W.2d at 392.

[14] *Id.* at 393.

sessed value per student. Newark property owners were taxed at almost twice the rate as those in the Emery District, but were able to spend only $616 per student while the Emery district with its lower tax rate spent $2223 per student.[15]

In Illinois, one author commented:

For unit [unified] school districts in the state, revenue per weighted pupil for 1989-90, ranged from $2356 to $8286, with a mean of $3189. The unit districts with the highest revenue per pupil available, those with more than $3823 per weighted pupil have an operating property tax rate of 16 percent *below* that of the unit districts with revenue available of below $2554 per weighted pupil. Our current system allows wealthier school districts to spend more with less effort hardly anyone's definition of equal treatment.[16]

Another Illinois commentator focused on specific districts:

. . . if one looks at the Seneca high school district, one finds an operating tax rate of 0.6581 which is one of the lowest in the state. However, Seneca is so wealthy in terms of property valuations that students in that district receive educational goods and services valued at $9,403 in terms of operating expenditures per pupil. By contrast, in the neighboring high school district of LaSalle-Peru, the tax rate is 1.4389 which only allows $3,891 in per pupil spending.[17]

2) *State foundation and other programs do not equalize, and in some instances have contributed to greater inequity.* Although state allotments have generally increased over time, the state share of education dollars is still far less than parents and educators generally believe is necessary to properly educate our children. Although foundation and other state assistance programs may contribute toward a reduction in per pupil expenditure (PPE) disparities among districts, major changes would have to be made in the foundation formula—as well as increased overall state contributions—to compensate for the tremendous disparities in district wealth. Some experts have gone so far as to insist that all state aid to wealthy districts be eliminated and redirected to property-poor districts in order to sufficiently overcome local wealth differences. But, even backed by a court order, it is difficult for elected officials to muster the political will to restructure education funding in such a drastic way.[18]

Not only have state foundation programs failed to produce equity, in some instances spending disparities have worsened due to a number of factors, including increased disparities in property values, municipal and other "overburdens" in urban school systems, and the failure of states to keep up with inflation and other increased educational costs. The state of Illinois provides a case study of some of these problems.

There are significant educational spending disparities among the school districts in the state. The ten wealthiest unified and secondary school districts spend at least twice as much per pupil as the poorest districts. At the elementary level, the disparities are even

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[15] Henke, *Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13*, 21 U.S.F.L. Rev. 1, n. 13, *citing Serrano I*, 487 P.2d 1241, 1252 n.15.

[16] J. Ward, "Ending School Finance Inequalities: Confronting a Moral Imperative," in *Witnesses for the Prosecution: Policy Papers on Educational Finance, Governance and Constitutional Rights in Illinois* (Illinois State Univ. 1989).

[17] Heckrod and Frank, "The Forgotten Illinois," in *Witnesses for the Prosecution*, *supra* note 16, at 23-28.

[18] Even when public officials promote equity, as when New Jersey's Governor Florio secured passage of the Quality Education Act earlier this year, there may be severe fallout from more affluent constituencies whose tax burdens are likely to increase as a result. *See e.g.*, "Florio's School Plan Angers Bergen," The New York Times, June 21, 1990, at p. 36.

worse: the ten highest-spending LEAs spend over three times as much as the ten lowest-spending ones.[19]

Like many other states in the 1970s, Illinois took some steps to reduce fiscal inequities among districts. Essentially through a foundation program, the state sought to provide assistance to school districts to enable their funding to "level up." That is, the state would provide some assistance to wealthy districts and a great deal more to poorer districts. But, a number of the state's school finance experts agree that over the years the disparities have not diminished; indeed, they reportedly have worsened.[20]

Disparities have worsened primarily because school districts continue to be highly dependent on the local property tax for their revenues, and disparities in district wealth have gotten larger not smaller over the years. For example, while the state provided 48 percent of PPE in 1970, its share of per pupil expenses declined to 38 cents on the dollar in 1988.[21] As one article observed:

> Since Illinois is a state with larger disparities than most, it therefore follows that very large amounts of general state aid are needed to offset the inequalities in local property valuations per pupil within the state. . . . [I]f the state is so unfortunate as to have a growing disparity with the passage of time, then more and more state funds are needed just to stay even. It is somewhat like a runner on a treadmill. The faster the treadmill speeds up, the faster the runner has to go just to stay in the same place.[22]

As in many other states that undertook reform efforts in the 1970s, budget difficulties, politics and other factors arrested, and, in many cases, reversed, during the last decade any modest gains that may have been made.[23]

D. *Early School Finance Litigation: Serrano and Rodriguez*

In its landmark decision in 1971 in *Serrano* v. *Priest*,[24] the California Supreme Court became the first court to strike down a state school finance system. In finding that the system denied equal protection of the laws to children living in property-poor school districts, the *Serrano I* decision became a catalyst for school finance reform efforts in dozens of states.

Subsequent efforts in the early 1970s to challenge fiscal inequity on Federal constitutional grounds, however, were decisively curtailed with the Supreme Court's 1973 decision in *San Antonio Independent School District* v. *Rodriguez*.[25] The Court's 5–4 decision in *Rodriguez*—a case which arose from a challenge to the Texas school finance system—foreclosed future Federal challenges on two significant grounds. First, the Court ruled that wealth was not a suspect classification, and second, that education was not a fundamental right. As a result, the Court applied a lenient standard of

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[19] Riddle, *Expenditures in Public School Districts: Why Do They Differ?* (Congressional Research Service, 1990), at 10.

[20] Hickrod and Frank, *supra*, at 25.

[21] Franklin, "Testimony to the Voice of the Prairie Conference," in *Witnesses for the Prosecution*, at 37.

[22] Hickrod and Frank, *supra*, at 29.

[23] A. Wise, Testimony before House Education and Labor Committee, Subcommittee on Elementary, Secondary, and Vocational Education, Hearing on H.R. 3850, The Fair Chance Act (January 24, 1990).

[24] Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (hereinafter cited as "*Serrano I*"). For extensive discussion of *Serrano* and other early school finance litigation, see Appendix to this report.

[25] 411 U.S. 1 (1973).

review—rather than the "strict scrutiny" usually applied in civil rights matters—and found the system constitutional.

E. *School Finance Litigation in the State Courts: The First Wave*

Following *Rodriguez*, plaintiffs turned to state courts to challenge inequitable systems of school financing. Important early victories in New Jersey and California provided the impetus for school finance lawsuits in virtually every state in the 1970s and early 1980s. In the *Robinson* v. *Cahill* case in New Jersey, in the *Serrano II* case in California, and in the cases that followed, plaintiffs relied primarily on equal protection provisions or on education articles in state constitutions, or both.[26]

Despite the *Robinson* and *Serrano II* victories, however, this first wave of reform litigation had mixed results at best. As discussed in the Appendix to this report, although there were several significant legal victories,[27] most state high courts that considered these cases found that their state school finance systems could pass constitutional muster. Plaintiffs even lost cases in states like New York and Maryland, with gross spending and wealth disparities. In both states, which are also discussed in the Appendix, the trial courts made extensive findings, and the high courts agreed, that the systems denied real educational opportunities to children in property-poor districts. Yet the courts found no violation of state constitutional law.[28]

F. *The Aftermath of the First Wave of Litigation*

Victory for plaintiffs in school finance cases has meant different things in different places. In California, following *Serrano*, a fair measure of equalization was achieved. In New Jersey disparities have not been reduced, and have even widened, since the *Robinson I* decision. Several problems have been identified as impediments to meaningful school finance reform:

1. *Practical Political Problems.* The New Jersey and California cases provide examples of the difficulty in securing effective relief when the remedy is delegated largely to the political branches of state government.

In California, the Legislature's response to *Serrano II* was a complicated measure that included a power equalizing provision. A year later, however, California voters approved Proposition 13, a tax limitation measure which severely limited districts' ability to support education through the property tax.[29] Interestingly, an impact of Proposition 13 was to shift almost full responsibility for education funding to the state, and over the years a fair measure of spending equality among the districts has been attained.[30] Regrettably, however, this "equality" has not had the hoped-for effect of "leveling up" education spending in the state. To the contrary, as a

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[26] *See* discussion of *Robinson* v. *Cahill*, 63 N.J. 196, 305 A.2d 65 (1973) and *Serrano II*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977) in Appendix, *infra*.

[27] *See, e.g.*, discussion of the Connecticut and West Virginia cases in Appendix, *infra*.

[28] *See* discussion of New York and Maryland cases in Appendix, *infra*.

[29] *See*, Kirp and Yudof at 680-81.

[30] *See, e.g.*, Hearing on H.R. 3850, The Fair Chance Act, Before the Subcommittee on Elementary, Secondary, and Vocational Education, House Committee on Education and Labor, 101st Cong., 2d Sess. at p. 12 (Jan. 24, 1990) (Testimony of A. Wise).

result of *Serrano*, Proposition 13, and the failure of the political process to commit more resources to education, California's "equalized" system now ranks thirtieth in per pupil spending among the states.[31] This is despite California's relatively high wealth standing, as measured by per capita income (8th)[32] and gross state product per school-aged child (7th).[33]

In New Jersey, the Court following its holding of state liability for many years deferred to the Legislature on remedy. The result was that seventeen years elapsed between that initial decision and the passage in 1990 of the Quality Education Act, designed finally to equalize educational opportunities for poor and minority children in the state. The Act, which may be threatened by increasing political unrest over tax increases in the state, was passed to cure constitutional defects in a 1975 Act designed to reduce inequity.

2. *Problems with Traditional Remedies.* Traditional remedies often do not cure the problem of gross inequity. For example, unless the foundation level is high, poor districts will not be able to purchase needed services, because they lack the ability to supplement the foundation in any meaningful way.

Further, while a remedy which equalizes property-wealth and assures that equal taxes will produce equal revenues in each district is a significant advance, it does not assure equality of expenditures for education. Wealthy districts may decide to tax at higher rates to maintain this edge and courts and legislatures are reluctant to cap spending in these districts to give poor districts a chance to catch up.

Moreover, two additional problems have emerged, particularly in urban districts with large concentrations of disadvantaged children. These problems may be characterized as "municipal overburden" and "education overburden," and strain the resources of the school system.

a) *Municipal overburden* has been defined by one school finance expert to mean the disproportionately high need for noneducational public services which central cities must support out of the property tax, such as police and fire protection or health and welfare services.[34]

b) *Educational Overburdens* encompass a number of difficulties urban systems face in serving disproportionately large numbers of children from poor families. These problems, which all require additional resources to cope with, include, for example, meeting the needs of children who have limited English proficiency, learning disabilities or physical handicaps or whose educational opportunities are marred by a poor home environment, homelessness or other social problems.[35]

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[31] U.S. Department of Education, State Education Performance Chart (May 1990)

[32] *Id.*

[33] Council of Chief State School Officers, *State Education Indicators 1989*

[34] B. Levin, *Current Trends in School Finance Reform Litigation*, 1977 Duke Law Journal 1099, 1118 (1977). Other commentators have explained that in New York "while city school districts could spend only 28 percent of their taxes on education, the jurisdictions outside of the cities spent about 45 percent of their local taxes for schools." Gifford and Macchiarola, *Legal, Technical, Financial and Political Implications of School Finance Reform in New York State*, 55 Tulane L. Rev. 716, 722 (1981)

[35] *See, e.g., Central City Schooling, supra*, at 3-30

Despite these problems, the first wave of litigation was a catalyst for some modest reform in the states. One positive result has been that states have assumed a greater share of education costs, a development that generally results in greater educational opportunity in property-poor systems. For example, between 1970 and 1986, the states share of education costs increased from 38.3 percent to 49.8 percent while local revenues declined from 52.8 percent to 43.9 percent.[36]

G. *The Second Wave of Litigation: 1989-1990*

In the most recent wave of school finance litigation, plaintiffs have scored significant victories in the highest state courts of Kentucky, Montana, New Jersey, and Texas. Cases currently are pending in over a dozen other states.[37] As in prior litigation, the suits were filed by property-poor school districts alleging that the state system of public school finance violated the education article of the state constitution. In a major reversal of the trend of the late 1970s and early 1980s, state courts in all four states ruled that the school finance systems failed to provide the constitutionally-mandated level and quality of education in plaintiff districts.

As a group, the four cases represent a significant departure from even the successful cases of the 1970s. In ascertaining liability, for example, the courts were unwilling to treat meager offerings in poorer districts as meeting a standard of an adequate minimum education. In the Kentucky case, the court looked not only to inputs, but to outcomes—student performance on tests—as a determinant of inequity.

At the remedy stage, too, the courts were innovative, calling for a thorough restructuring of the education system in Kentucky and moving toward equality of expenditures in New Jersey.

What follows is an analysis of the distinctive features of the liability and remedy phases of these recent cases.

1. *Liability Phase: Failure to Meet "Thorough and Efficient" Requirements.*

a. *Kentucky.* The Kentucky lawsuit was initiated by a group of property-poor school districts, alleging that the state school finance system violated the state constitution's requirement that the General Assembly provide for "an efficient system of common schools throughout the state."[38] On June 8, 1989, the Kentucky Supreme Court ruled that the state legislature had violated that constitutional requirement and that Kentucky's "entire system of common schools" was infirm. In this respect, the Kentucky decision may be a major landmark in school finance reform, because the court invalidated not only the school finance system, but all state education statutes and regulations as well.

As in other school finance cases, the record demonstrated that despite state foundation and equalization programs, there were significant disparities in terms of local spending and effort which re-

[36] National Center for Education Statistics, Digest of Education Statistics (1989 and 1974).

[37] *See*, "Courts Ordering Financing Changes in Public Schools," The New York Times, March 11, 1990, at 1, 28.

[38] *Rose v. Council for Better Education, Inc.*, No. 88-SC-804-TG (Supreme Court of Ky., LEXIS, June 8, 1989).

sulted in "unequal educational opportunities throughout Kentucky." These disparities were detailed by numerous witnesses at trial who testified regarding disparities in:

> Classroom teachers' pay; provision of basic materials; student-teacher ratio; curriculum; quality of basic management; size, adequacy and condition of school physical plants; and per year expenditure per student.[39]

One striking aspect of the opinion is that the court went beyond this traditional analysis of disparities in inputs to consider findings regarding educational *outcomes*. This component, which included a comparison of educational performance in Kentucky to other states, clearly was critical to the court's decision to invalidate the state's entire system. The court noted, for example, that achievement test scores were lower in poorer districts and that experts had "clearly established" a correlation between test scores and district wealth.[40] As to interstate comparisons, the court emphasized that the state ranked "in the lower 20 to 25 percent in virtually every category that is used to evaluate educational performance," [41] including, for example:

Kentucky ranked 6th (out of eight states) regionally and 40th nationally in per-pupil expenditures.[42]

Kentucky ranked 6th regionally and 37th nationally in average annual salary of instructional staff.

Kentucky ranked 7th regionally in the percentage of ninth-graders (68 percent) who graduate from high school.

Kentucky's pupil-teacher (19.2) ratio ranked the state 7th in the region.

In analyzing the history of the education provision the court was persuaded that its framers attached great importance to education and that education should be regarded as a fundamental right in the state.[43] In seeking to define an "efficient" system the Court said that it should, among other things, provide each child with at least these "capacities:"

> (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient selfknowledge and knowledge of his or her mental and physical wellness; (v) sufficient cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public schools students to compete favorably with their counterparts in surrounding states, in academics or in the job market." [44]

Applying this standard to the challenged system, the Court had no doubt that the system was inadequate.

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[39] *Id* at 30

[40] *Id* at 26-27.

[41] *Id* at 26

[42] Regional comparisons were introduced by plaintiff-appellees comparing Kentucky to the neighboring states of Ohio, Indiana, Illinois, Missouri, Tennessee, Virginia, and West Virginia. *See id* at 27-29

[43] For example, the Court quoted one delegate to the constitutional convention "Common schools make patriots and men who are willing to stand upon a common land. The boys of the humble mountain home stand equally high with those from the mansions of the city. There are no distinctions in the common schools, but all stand upon one level." *Id* at 56

[44] *Id* at 75-76

b. *Montana*. The suit in Montana was brought by 65 low-wealth school districts, including those in Helena and Billings,[45] which challenged the state school finance system on both equal protection and education article grounds.[46] The state teachers' union, the Montana Education Association, intervened on the side of the plaintiffs. The trial court found for the plaintiffs, and on February 1, 1989, the state Supreme Court affirmed the unconstitutionality of the system.

Key elements of the Montana court's decision included: a finding that the state Foundation Program was inadequate, and reliance on two studies by education experts detailing disparities in educational offerings between rich and poor districts.

Both the trial court and the Supreme Court considered the extensive evidence of disparity detailed in the two studies.[47] The studies, whose findings are detailed in Chapter V, documented that wealthier districts had better books, equipment and supplies and were able to offer a wider and more enriched curriculum in many subject areas than poorer districts. The trial court found that, in sum, the evidence established that the spending disparities resulted in "unequal educational opportunities for students."[48] The Supreme Court agreed.[49]

As to the state Foundation Program, the court noted that the state contribution to local budgets had declined from 80 percent of the general fund in 1950 to only 35 percent in 1985. The court found that the state had failed adequately to fund the system and that this failure forced "excessive reliance on [locally raised] levies" to supplement the state contribution. This amounted, in the court's view, to state abdication of its constitutionally-mandated duty to provide a system of quality public education and equality of educational opportunity.[50]

A final feature of the Montana decision is its treatment of the debate over whether fiscal inequity should be judged by input or output standards. It was the state that argued that an output standard should be used to measure equality of educational oppor-

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[45] *Helena Elementary School District No. 1 et al* v. *State of Montana*, 769 P.2d 684 (Mont. 1989)

[46] Montana's education article provides in relevant part:

"(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. . . .

"(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." Art. X, Sec. 1, Mont. Const (1972).

[47] These studies, cited at 769 P.2d at 687-688, are for plaintiffs: R. Mattson, M. Pace, and J. Picton, *Does Money Make a Difference in the Quality of Education in the Montana Schools*", and for plaintiff-intervenors, a study by Dr. Gary Gray of the Eastern Montana School of Education.

[48] 769 P.2d at 688.

[49] *Id.* at 690. The district court had found the system unconstitutional on both education article and equal protection grounds, determining that education is a fundamental right in Montana. The high court rested its legal conclusions solely on the state education article, finding it unnecessary to consider the equal protection question. *Id.* at 691.

[50] *Id.* at 686 and 690. The court also referenced the trial court's Finding that the Foundation grants did not cover even the minimal accreditation standards established by the state. *See Helena Elementary School Dist* v. *State*, at 107-110 (Mont. First Judicial District Court, Lewis and Clark County, No. ADV-85-370) (Findings of Fact and Conclusions of Law).

tunity, but the trial court rejected the claim [51] and the state Supreme Court affirmed.[52]

c. *New Jersey*. On June 5, 1990, in one of the most sweeping victories to date for school finance reform advocates, the New Jersey Supreme Court unanimously ruled that the state's school finance system violated the "thorough and efficient" education provision of the state constitution.[53] The decision, coming seventeen years after Robinson I, held that school finance legislation enacted pursuant to the Robinson decisions failed to meet constitutional standards as applied to the state's twenty-nine poor urban districts.

The high court's decision affirmed extensive administrative findings of disparities in virtually every aspect of education,[54] and, significantly, established remedial requirements that are among the toughest set by any court in a school finance case.[55] Key elements of the court's findings and legal analysis include the following:

First, the court emphasized disparities in substantive educational opportunities, as well as in wealth and expenditures. The court affirmed the right of children in New Jersey to a "thorough and efficient" education as defined in the *Robinson* cases. The court noted, however, that while *Robinson I* focused on dollar disparities, the court's more recent decisions defined the state's duty in terms of substantive educational requirements.[56] The *Abbott* court then assessed educational opportunities in New Jersey both in fiscal terms and in terms of services and programs available to the children in the poor, urban districts.

As to per pupil expenditures, the court found that disparities had actually increased rather than decreased following passage of the challenged Act in 1975.

As to educational opportunities, the court found that poor urban districts were deficient with respect to the core curriculum (*e.g.*, math, science, languages, etc.), equipment, and facilities. But the court went further and recognized that children in these districts have additional "special educational needs" that also were not being met. These needs include, for example, early childhood education and dropout prevention programs that poor districts were unable to afford under the challenged school finance system.[57]

Additional findings in *Abbott* v. *Burke* included a rejection of an outcome measure to judge school financing in the state. The court held that as a matter of law children in the poor urban districts were entitled to "substantially equal" per pupil expenditures as children in more affluent districts. Although money alone has not worked, the court said, "data does not show that money makes no

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[51] Dist Court Opinion, at 103-106

[52] *Id* at 690. The Court also affirmed the lower court's rejection of the "local control" defense The trial court wrote:

"Meaningful local control involves making and implementing personnel, curricula, and program decisions, rather than raising local revenue These meaningful aspects of local control can be maintained, and even enhanced, through more equitable funding of schools" Dist Ct Op at 102-103

[53] *Abbott* v. *Burke*, No A-63 (N.J., June 5, 1990) For text of New Jersey "thorough and efficient" clause, see Appendix, *infra*

[54] *See, Abbott* v *Burke*, OAL DKT NO EDU 5581-85 (Aug 24, 1988)

[55] See Chapter V for discussion of the disparities and Section G 2, *infra*, for discussion of the court's remedial requirements

[56] *Id* at 24.

[57] *Id* at 123-124.

difference." Indeed, the court observed, the state's funding formulae were premised on the assumption that money does make a difference.[58]

Finally, the court declared "counterequalizing," and therefore unconstitutional, the state minimum aid program which, as a flat grant program, gave money to rich and poor districts alike.[59]

b. *Texas.* Plaintiffs, including 68 property-poor districts and individual children and their parents, alleged that the state school financing system violated the state constitution. The district court in 1987 agreed, ruling that the system violated both the state constitution's equal protection provision and its "efficiency" mandate. The state court of appeals reversed,[60] but in a strong opinion, the Texas Supreme Court reversed the court of appeals, and in most respects affirmed the trial court.[61]

The key elements of the Edgewood decision included: The court found that the state foundation program did not cover "even the cost of meeting the state-mandated minimum requirements." For example, the foundation program did not include school facilities and debt service costs. The court also found that the basic and transportation allotments and certain state contributions for teacher salaries did not meet actual needs, thus requiring districts to supplement with local funds.

The Texas court also found wide disparities in per pupil expenditures and in tax effort. In the year used for data, 1985-86, PPE ranged from just over $2,000 to just over $19,000. The disparity in taxable property-wealth was 700 to one and tax efforts ranged from $.09 to $1.55 per $100 valuation.

Finally, the court found the amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student. The court cited specific ways in which rich districts were superior to poor ones. It noted disparities in foreign language, pre-kindergarten, math and science, and extra-curricular activities.[62]

Based on these facts, the trial court held that the system violated equal protection guarantees and was not "efficient."

2. *Bolder Steps on Remedy*

Although these four cases are not the first to require some measure of school finance reform, they differ significantly from prior cases in the requirement that legislatures adopt remedies that will make a greater difference. For example, the Texas Supreme Court ordered the legislature to devise a new school finance scheme that will not merely reduce existing disparities but that would reform the entire system. The court said: "A bandaid will not suffice; the system itself must be changed."[63] And the Kentucky Supreme Court ordered a complete overhaul of the state education system, demanding improved outcomes.

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[58] *Id.* at 130.
[59] *Id.* at 137-139.
[60] 761 S.W.2d 859 (1988).
[61] *Edgewood v. Kirby*, 777 S.W.2d 391 (Tex. 1989).
[62] *Id.* at 393.
[63] *Id.* at 397.

Legislatures in all four states' have now approved a package of fiscal and other reforms designed to meet the courts' mandates. Although plaintiffs in the underlying cases in Montana, Texas and New Jersey contend that these measures may not go far enough in meeting the courts' requirements, the new plans in general go further—in terms of increased expenditures for education and in educational reform—than any prior fiscal reform efforts have done.

Important elements in the new remedies include the following:

1. *Wealth Equalization.* The classic problem in school finance is that wealthy districts may tax at a relatively low or moderate rate, yet yield more money than poorer districts that tax at a much higher rate. Under the new requirements for "wealth equalization," every district should be assured by the state that the same tax effort will result in the same or similar dollar yield. The state can accomplish this goal in various ways, usually by providing more state aid to property-poor districts.

2. *More Money for Special Needs Children.* Several of the decisions recognized that it costs more to educate children with special needs. For example, ir .he Abbott case, the court recognized that children in poor urban districts have "special educational needs" that children in wealthier districts do not have and held that adequate funding must be ensured to meet these needs. The poorest districts must provide educational offerings "over and above" those in wealthy suburban districts.[64]

Consequently, under the New Jersey decision, districts with large numbers of low-income, limited English proficiency, and minority children may be able to obtain increased resources to provide early childhood programs and other services.

3. *Focus on Specific Educational Needs.* While none of the decisions mandated the adoption and funding of particular program, several identified specific initiatives, such as pre-kindergarten classes for disadvantaged three- and four-year-olds, as important elements of a thorough and efficient education. In doing this, the courts may have laid a basis for later action seeking state participation in funding such initiatives.

4. *Caps on Wealthy District Spending.* There is considerable debate on the efficacy of limiting the ability of the more fortunate districts to vote to spend more than their poorer counterparts. Both the courts' pronouncements and the plans adopted by the legislatures have differed on this matter. In Texas, for example, the court explicitly rejected the notion that "efficiency" required an even per capita distribution of education dollars, allowing for the possibility that any district, rich or poor, could choose to make a greater tax effort and thus have more money available to it. In New Jersey, however, the court was quite explicit; it requires both funding and program parity. In poorer urban districts, the court wrote, "educational expenditures per pupil [must be] substantially equivalent to those of the more affluent suburban districts." The New Jersey legislation has placed a temporary cap on expenditures in wealthier districts to afford poorer districts an opportunity to catch up.

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[64] *Abbott* v. *Burke*, at 125.

5. *Other Educational Reforms.* In addition to early childhood initiatives, both the courts and the legislatures in several states have focused on the need for other educational reforms to accompany fiscal reform, in order to ensure quality education. In Kentucky and Texas a variety of reform measures were part of the legislative package and in Kentucky, pursuant to the court's mandate, the entire educational system has been restructured toward the goals of greater accountability and improved outcomes, as well as fiscal equity. Key features of the remedial plans in these two states include the following:

In Texas, as a result of the *Edgewood* decision, and after considerable political wrangling, the Legislature approved and the Governor signed Senate Bill 1, a comprehensive measure intended to reduce fiscal inequity and to initiate educational reforms. Included in the fiscal components of the package was an additional $2.4 billion to the state's $13.5 billion education budget, to be raised from additional state taxes, including taxes on tobacco and alcohol.[65] Because the plan in essence expanded a preexisting foundation program and did not go far enough in achieving fiscal equity, however, plaintiffs in *Edgewood* succeeded in striking down the fiscal components of the bill.[66]

The educational components of S.B. 1, however, remain in force and include the following: school-based management training programs for teachers; expansion of state-funded pre-kindergarten programs for disadvantaged 3- and 4-year-olds; and a study of the costs of programs for at-risk students.

In Kentucky, the key provisions of a comprehensive plan to reform education in the state include the following: plans for an innovative, statewide performance-based assessment program; a system of rewards for successful schools and sanctions for schools that fail to improve over time; right of children at failing schools to transfer to successful schools; school-based management; preschool for all handicapped 3- and 4-year-olds, for all at-risk 4-year-olds, and for as many others as possible; family and youth resource centers in areas with high concentrations of low-income children; plans to raise the age of compulsory school attendance from 16 to 18; increased staff development; additional school time for children in need; and a program to increase use of technology, including personal computers, in the schools.[67]

While securing a constitutionally adequate remedy through legislation has been difficult in Texas and New Jersey, lawmakers and other officials in Kentucky rose to the challenge and coalesced around this comprehensive package to improve education in the state.

Conclusion

The latest group of school finance decisions, Kentucky and New Jersey in particular, are of great interest because in focusing on

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[65] M. Newman, "Ending the Deadlock: Gov. Clements Signs School-Finance Plan," Education Week, June 13, 1990, at p 1.

[66] Telephone interview with A. Kaufman, Counsel for Plaintiffs in *Edgewood*, 11-14-90.

[67] For a summary of the Kentucky plan, see *A Guide to the Kentucky Education Reform Act of 1990* Legislative Research Commission, Frankfort, Ky.

educational services, on special needs, and on the means by which services are delivered, they come closer to the heart of what many educators regard as most important.

Since the decisions are so recent, their impact both in their own states and in others cannot be determined.

Whether litigation is a promising way to achieve education reforms depends on many factors, including the extent of current inequalities, the history of past litigation in the state, and the receptivity and influence of the state Supreme Court. In some states where litigation is not promising, the goal of achieving fiscal equity may be pursued through the legislative process. However, the remedies most likely to gain acceptance are those that "level up" spending by pumping a great deal more money into poor districts without appearing to penalize wealthier districts. Even in the best of times, it is difficult to achieve legislative consensus in support of meaningful fiscal equity. But with the economy worsening and states experiencing budget shortfalls, even modest improvements may be difficult to achieve in the foreseeable future. Finally, even in states where courts have ruled state financing systems unlawful, organized legislative campaigns and additional trips to the courthouse may be necessary to assure that the students most in need secure the benefits of fiscal reform.

CHAPTER III

The Extent of Fiscal Inequity

The preceding chapter outlined some of the fiscal disparities in states which have been the subject of litigation. As will be seen in this chapter, fiscal inequity is not limited to these litigation states and in many places the monetary contrasts are stark indeed. It also appears that in many states the principal victims of fiscal inequity are members of racial and ethnic minorities and the poor. Before detailing some of these contrasts, it is useful to place the problem in the context of inequity *between* the states. This is an issue less widely noted because it cannot be addressed through litigation. But there are serious disparities in educational expenditures that would persist even if every state equalized spending within its own borders.

A. *Inequity on an Interstate Basis*

Wide variations exist in the wealth and taxing capacity of states and in their educational expenditures. Table 1 [see page 72] ranks states according to three measures: gross state product per child, relative tax capacity, and average per pupil expenditure (PPE). As the table indicates, the average per pupil expenditure in one of the highest-spending states, New Jersey ($6,564 per child), is more than two and one-half times that in one of the lowest-spending states, Mississippi ($2,548 per child). Although there certainly are heftier fiscal burdens associated with the higher salaries and other costs and the urban nature of the state of New Jersey, this difference, more than $4,000 per pupil, amounts to more than $100,000 for each class of 25 students.

And, as Table 1 [see page 72] clearly indicates, the disparities in pupil expenditures are not so much a function of varying state commitments to public education as the fact that available wealth to support education varies widely from state to state.

Not surprisingly, states with the lowest wealth and the lowest per pupil expenditures are generally also the states with the greatest concentrations of economically disadvantaged students. Table 2 [see page 73] ranks states by per pupil expenditure and by poverty level.

While interstate inequalities are not specifically the subject of this report, they provide a context for understanding the problem of securing equal opportunity in education. For example, in the lowest-spending district in Mississippi, the Pontotoc County School system, per pupil spending in 1986–87 was only $1,324. This paltry sum should be viewed not just against the expenditure of $4,018 per child in Claiborne County, the highest-spending district in Mississippi, but against the $11,752 and $10,544 per student expended by Shoreham-Wading River and Great Neck, respectively, two of

the wealthiest districts in the state of New York. It cannot seriously be argued that the nine to ten thousand dollar-per-child difference between the poorest Mississippi schools and the wealthy Long Island schools is accounted for in cost-of-living differences alone. And it seems highly unlikely that this disparity, amounting to well over $200,000 for each class of 25 children, has no impact on the quality of education provided by these school systems.

Similarly, a single metropolitan area in a multi-state setting may have wide disparities in educational expenditures and, consequently, in educational programs and facilities. A recent study compared expenditures in the District of Columbia Public School system, which has a high concentration of low-income and minority children, with those in suburban Maryland and northern Virginia and found that the District spent significantly less than the average suburban system.[1] Another study compared typical District of Columbia elementary, middle, and high schools with their counterparts in the Montgomery County, Maryland and Fairfax County, Virginia systems.[2] Schools that were selected for comparison were a large and small elementary school, a middle school and a high school and were chosen because they ranked near the median for their district on three criteria: free lunch eligibility, test scores, and age of building.[3] The suburban schools were also comparable in enrollment to the District schools selected. The findings of the study showed the District lagging behind its suburban counterparts in virtually all areas examined, including: class size (particularly for low-income children), teacher aides, special education, libraries and media centers, physical education, art and music instruction, gifted and talented programs, elementary enrichment programs, health and social work services, textbooks, materials and supplies, science education in the high schools, athletics and extracurricular activities, parental participation, and condition of facilities.[4] Furthermore, although the District had more at-risk students, the study found that suburban districts provided more intensive remediation and a better educational environment to their smaller numbers of at-risk pupils.[5]

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[1] *Our Future, Our Children: Revitalizing the District of Columbia Public Schools* (The DC Committee on Public Education, June 1989) It should be explained that although the District of Columbia (which is one unified school system) spends more per child than any state, many experts consider the appropriate comparison in the case of the District to be against other urban and suburban school systems where due to urban cost-of-living, special needs students, etc costs tend to be higher than the state average. In this regard, the District is actually a lower-spending system. For this study, the DC Committee on Public Schools retained the accounting firm Peat-Marwick, which reported that the District's per pupil expenditure was 13 percent less than the average expenditure in the nearby school systems in suburban Maryland and northern Virginia. *Id.* at p. 148.

[2] *Business and Civic Leader Study of the Fiscal Needs of the District of Columbia Public Schools* (Report of Parents United for the District of Columbia Public Schools, December 1985)

[3] Because the District high school closest to the median, McKinley High School, was in such bad condition, the authors of the study decided not to use it and instead chose Coolidge which had a better facility. Among the conditions found at McKinley were: "numerous leaks, . . . holes in the floor, holes in the ceiling, including one where birds used to fly in. . . . falling plaster, flaking paint, . . . broken seats in the auditorium, windows that have to be nailed in place or boarded up . . . " *Id.* at 17.

[4] *Id.* at 9-18.

[5] For example, in 1985, 58 percent of District school children's family incomes were low enough to qualify them for a free lunch, while in Montgomery County, Maryland, only 12 percent of the children were free-lunch eligible. *Id.* at 4-5.

B. *Inequity Within States*

In many states, the highest-expenditure groups of local education agencies (LEAs) spend two and one-half to three times as much per child as the lowest-expenditure groups. In Illinois, the ratio in 1986–87 was 3.1 to one for the highest 10 elementary districts, to the lowest 10 elementary districts. In Ohio and Texas, it is 2.8 to one In New York, it is 2.6 to one.[6]

In dollar terms, the ten highest elementary districts in Illinois spent an average of $6,260 per pupil compared to $2,004 in the ten lowest-spending districts. In Ohio (where all LEAs are unified districts), the figure is $6,622 for the ten highest districts as against $2,407 for the lowest districts. In Texas,' the ten highest unified districts spent $5,243 per pupil, while the lowest ten spent an average of $1,848 per pupil. In New York, the figure is $10,349 for the ten highest unified districts and $3,936 for the ten lowest.[7]

The major explanation for these disparities is that high spending districts are able to rely upon a much broader base of property-wealth than low-spending districts, which enables them to obtain adequate revenues sometimes with less tax effort than poor districts. Table 3 [see page 74] shows that in Maryland, where this data is published by the state Department of Education, district wealth correlates with higher per pupil expenditures. For example, the property-wealthy districts of Montgomery County and Baltimore County spent $5,644 and $4,943 per pupil respectively in 1986–87, while the poorer districts of Baltimore City and Caroline County spent $3,640 and $3,397 each per pupil.[8]

Even where low-wealth districts are able to rely on a larger share of state aid than their high-wealth counterparts, in most instances it does not meaningfully close the gap in spending.[9] Efforts at more sweeping reform, as in the recently enacted Quality Education Act in New Jersey, generate strong resistance from taxpayers in wealthy districts who feel that in being forced to rely on their own resources, they are being treated unfairly.

Significantly, fiscal inequities appear to be greatest in industrialized, high-population states with substantial minority populations. For example, the following states exhibited high expenditure variations in the CRS study: [10]

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[6] *See* W. Riddle, *Expenditures in Public School Districts: Why Do They Differ?* (Congressional Research Service, 1990), at pp. 3-8 and Table 1, pp. 9-13. It should be noted that in order to control for aberrations, *e.g.*, high expenditures for pupils in LEAs with very few pupils, unified LEAs with less than 500 enrollment and elementary or secondary LEAs with less than 250 enrollment were excluded from the analysis. Similarly, special purpose LEAs were not counted. Finally, to control for spending aberrations at either extreme, the study compared the average PPE of states' ten highest-spending LEAs with the states' ten lowest spending LEAs.

[7] *Id.* at 10-11. The report also assigns a coefficient of variation figure to each state, which operates to temper the results in states where most districts are close to the average and only a handful are responsible for the wide variation. *Id.* at 6-7. But even these figures are very striking for the states in question.

[8] State of Maryland, Department of Education, 121st Annual Report (for year ending June, 1987), at Table 100.

[9] *See, e.g., Id.* at Tables 76-78 and 100.

[10] Data on expenditure disparities is taken from CRS study referenced in notes 6-7 and accompanying text. Race data is taken from Council of Chief State School Officers, State Education Indicators 1989.

State	Percent minority children	Expenditure disparity ratio by district type
Illinois	25 7	3 1 to 1—elementary.
Michigan	18 1	2 3 to 1—unified
New Jersey	24 4	2 4 to 1—elementary
New York	27 9	2 6 to 1—unified
Ohio	13 2	2 8 to 1—unified
Pennsylvania	12 8	2 4 to 1—unified
Texas	36 2	2 8 to 1—unified

Moreover, within these states, the districts with the lowest expenditures are often the districts with the highest proportions of low-income and minority children. For example, in the recent school finance case in New Jersey, the administrative law judge found that the state's poorest urban districts had the highest concentrations of low-income and minority children.[11] Among the judge's findings were the following, all with respect to districts that had low property-wealth and low expenditures:

The poverty level in **Camden** was three times the state average in 1980 when 23 percent of its families had less than $5,000 income per year.

Thirty-four percent of its population as of October 1985 received AFDC; more than 90 percent of these welfare recipients were black or Hispanic. In Camden, 13.5 percent of its labor force was unemployed in 1984 (state average 6.2 percent). According to the 1980 census, 31.5 percent of New Jersey residents live in rental housing, but in Camden the number is 43 percent.

According to the 1980 census, about 50 percent of the population is black, 30 percent white and 20 percent Hispanic. In Camden, 42 percent of the population is under 18 years old and 10 percent is over 65 years of age.

In 1980 about 14 percent of **East Orange's** families had income levels less than $5,000. At this time, the state average was 5.9 percent.

In East Orange, 16.3 percent of its population received AFDC in 1985 with almost 95 percent of these welfare aid recipients being black. In 1984, East Orange had 8.35 percent of its work force unemployed. Two thirds of East orange citizens live in rental homes, as opposed to one-third statewide. Almost 85 percent of East Orange citizens are black or Hispanic with a median income of $16,296, according to the 1980 census.

As of 1980, **Jersey City** had 223,523 residents . . with two-thirds of its citizens living in rental houses. Jersey City ranked 17th in the Nation in 1980 for cities in excess of 100,000 with persons living below the poverty level In 1969, Jersey City had ranked 82 on this list. As of 1980, about 21 percent of its residents lived in poverty. Over 14 percent of Jersey City families had income levels less than $5,000 (state average 5.9 percent).

As of 1985, almost 14 percent of Jersey City's population received AFDC with 85.2 percent of this population being black or Hispanic Jersey City in 1984 had almost 12 percent of its work force unemployed (state average, 6.2 percent).

Even though New Jersey is the most densely populated state in the Nation . population density is most extreme in the urban areas. The 61,000 residents of **Irvington**, for example, in 1980 lived within an area of slightly more than three miles. With approximately 22,000 persons per square mile, one witness claimed that Irvington was more densely populated than New Delhi, India

In the late 1960s, after the Newark riots, Irvington's population shifted Large numbers of black families moved into Irvington and the white families moved out. Its schools went from all white to 96 percent minority

In 1980, 46 percent of Irvington's population was black or Hispanic

In 1980, Irvington had slightly more than 11 percent of its families with income less than $5,000 (state average 5.9 percent). Another 17 percent of Irvington's population earns between $10,000 and $15,000 as compared with the statewide average of 11.9 percent As of 1985, 12 percent of Irvington's population was receiving AFDC, 85.5 of them were black or Hispanic. The town has a population of 20-30 percent

[11] See *Abbott v. Burke*, OAL DKT NO EDU 5581 85 Aug 24, 1988 at 15-23

senior citizens and an unemployment rate of over 7 percent. In 1980, 14.7 percent of Irvington residents lived in poverty.

The judge also found severe municipal overburden problems stemming from declining tax bases, deteriorating infrastructure, and lack of decent, affordable housing in these cities.

Similarly, in the *Edgewood* case in Texas, evidence in the record indicated that the plaintiffs, property-poor districts, had high concentrations of black and Hispanic and low-income children. For example:

> Unequal opportunity to raise funds is exacerbated by the fact that the children with the greatest educational needs are heavily concentrated in the state's poorest districts, because there is a significantly higher percentage of families below the poverty level in low-wealth districts than in high-wealth districts.
>
> According to the 1980 census, 21 percent of the total Texas population was Mexican-American; 84 percent of the population in the poorest districts were Mexican-American.
>
> In 1985–86, 36 percent of the students in Texas schools were low-income; 85 percent of the students in the lowest-wealth districts (with 5 percent of students) were low-income; and 60 percent of the students in the low-wealth districts were low income.
>
> According to the 1980 census, the median family income in Texas was $19,760 and 14 percent of the families were below poverty levels; in the poorest districts (5 percent of total students) the median family income was $11,590 and 35 percent of the families were below poverty levels.[12]

The record in Edgewood further indicated that Mexican-Americans comprised 95 percent of students in the poorest Texas districts, although they were only 30 percent of the total enrollment statewide.

Finally, in this regard, comparisons between per pupil expenditures, minority population and families living below the poverty line in two states where such data is available for comparison purposes reveal that low-spending districts tend to have high concentrations of poor people, and particularly poor black people.[13] In Maryland, for example, the Baltimore City school system, which ranks 23rd out of 24 districts in assessed valuation per child and 17th in PPE, serves a student population which is 80.2 percent black and Hispanic. In the city of Baltimore, 17.4 percent of white people and 38.0 percent of black people lived below the poverty line in 1980. In Somerset, a poor rural county, 11.5 percent of whites and 24 percent of blacks lived in poverty in 1980. The school system's enrollment was 45.4 percent black and Hispanic in 1986, and it ranked 23 out of 24 in per pupil expenditures and 22nd in wealth per child. On the other hand, in Montgomery County, which ranked first in PPE and second in wealth per child, only 3.3 percent of whites and 11.8 percent of blacks lived in poverty in 1980. Montgomery's black and Hispanic enrollment in 1986 was 21.4 percent. Similarly, Baltimore County had relatively low minority enrollment (15.7 percent), low rates of poverty (4.7 percent white, 11.2

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[12] *Edgewood* v. *Kirby*, No. 362, 516 (20th Judicial Dist., Travis County, Tex., Aug. 27, 1987) (Findings of Fact and Conclusions of Law) at TR. 562–63.

[13] It should be noted here that many of the lowest-spending school districts in states have high concentrations of poor and low-income *whites*. For example, in the school finance litigation in Montana, Kentucky, New York, Maryland, and other states, discussed in Chapter II . . . and in the Appendix, many of the property-poor plaintiff districts were in majority-white, nonurban areas.

percent black) and high wealth per child (5th in state) and high PPE (2nd in state).[14]

In Mississippi, many districts with majority-black populations and high poverty rates showed lower per pupil expenditures. On the other hand, and although there are exceptions at both ends, a number of the wealthier, majority white districts had significantly higher PPEs. For example, in Quitman County, where 55 percent of the population was black and where 17.5 percent of whites and 60.2 percent of blacks had incomes below the poverty line in 1980, spending per pupil was only $2,060 in 1986. In the wealthier Harrison County, the population was approximately 78 percent white, with 12.2 percent of whites and 35.7 percent of blacks living in poverty in 1980. There, the Biloxi school system and two smaller districts spent an average of $2,[illegible]9 per pupil in 1986.[15]

[14] See State of Maryland, Department of Education, 1987 Annual Report (1987); Bureau of the Census, General Social and Economic Characteristics, Maryland, Table 187.

[15] See Congressional Research Service, 1986-87 Total Current Expenditures per Enrolled Pupil for Selected local Educational Agencies; Bureau of the Census, General Social and Economic Characteristics, Mississippi, Table 187.

CHAPTER IV

What Educational Services Are Vital To Disadvantaged Children?

The disparities in expenditures described in Chapter III are striking indeed. They demonstrate that in monetary terms there are serious consequences to state fiscal systems that rely principally on local property-wealth as the basis for distributing resources to public education.

But the existence of large-scale fiscal inequity does not end the inquiry. While state courts continue to grapple with school finance litigation, those concerned with Federal policy must consider what impact such inequity has on the achievement of national policy objectives. In this regard, much of the policy debate on fiscal inequity in public education has been over whether money really makes a difference in the quality of public education or in educational outcomes. While on its face that would seem an obvious proposition, critics argue that much of an education budget is dedicated to expenditures that may not have a major impact on the quality of education, *e.g.*, that teachers' salaries, at least within certain parameters, do not necessarily correlate with the quality of teaching and that expenditures for the construction and maintenance of school facilities may have little to do with the educational offering. On this basis, some critics have reached the broad conclusion that "school resources do not appear to influence student's educational attainments at all." Jencks, *et al.*, *Inequality: A Reassessment of the Effect of Family and Schooling in America*, p. 159 (Basic Books, New York 1972). *See also* Hanushek, "The Economics of Schooling: Production and Efficiency in Public School," XXIV *Journal of Economic Literature*, p. 1141 (1986).

Such views have had their influence in the courts and elsewhere. Justice Lewis Powell, in writing the opinion for the five member majority in the *San Antonio* v. *Rodriguez* case, argued that the controversy over whether expenditures were demonstrably related to the quality of education was a reason for judicial caution, citing Jencks along with others as his sources. 411 U.S. 1, 43 n.86 (1973).

Proponents of fiscal reform dispute these conclusions. They argue, for example, that teachers' salaries relate to experience and to advanced training and that these factors make a difference in the quality of education. They also note that the fierce reaction to school finance litigation in property-wealthy districts shows that most people believe that money does make a difference. In New Jersey, for example, Governor Florio's plan for complying with the *Abbott* court order by redistributing state aid to property-poor districts has touched off an angry response from citizens and school officials in the wealthier suburban districts that face a decline in state aid. *See* New York Times, October 6, 1990, p. 1.

But in this focus on whether there is a gross relationship between current spending and outcomes, and on the types of expenditures whose link to educational outcomes is tenuous or debatable, scant attention has been given to important related issues. The most crucial question is whether it is possible to identify educational services and programs that do make a difference and to understand the barriers that fiscal inequity poses to making these programs and services available to children who need them. In other words, what services does money purchase that are educationally valuable to at-risk children and to what extent are these services inadequate or unavailable to some children because of fiscal inequity?

A focus on at-risk children is appropriate because it is not disputed that these are the children most in need of improved services. It is also particularly appropriate in any analysis of fiscal inequity in terms of Federal policy, because the Federal role in education, particularly over the past 25 years, has been directed to assisting states and local school districts in meeting the needs of disadvantaged students and to assuring equal opportunity.[1]

A. *Initiatives That Work*

Over the course of the past decade an extraordinary volume of research has been conducted on the operation of the Nation's public schools. As longitudinal data and information on student performance has become available at least on a national sample basis, case studies have been supplemented by research that is regional or national in scope. The quest of much of the research has been to identify the ingredients of effective schooling.[2] In addition, as concern about the state of public education mounted during the 1980s, major institutional participants in education—educators, governors, citizens groups and others—launched their own investigations and calls for reform.[3] While few of these studies conducted original research, most sought to synthesize the most reliable academic work for the purpose of making recommendations.

Much, although by no means all, of the research has focused on identifying educational initiatives that improve the school performance of children identified as disadvantaged or at-risk of educational failure. The Congress, in the early 1980s, assisted the process by calling upon the National Institute of Education to conduct a comprehensive study of the effectiveness of compensatory education programs funded under Chapter 1.[4]

As a result of these intensive efforts, a growing consensus has emerged among educators, policy makers, and informed citizens on

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[1] The question of how appropriately to define at-risk children is addressed in Chapter VIII. At an early age the principal measure generally used is the economic status of the child's family.

[2] A good deal of the research prior to 1984 is summarized in Hawley *et al.*, "Good Schools: What Research Says About Improving Student Achievement," 61 *Peabody Journal of Education* (1984). Some of the more significant post-1984 studies are summarized in the pages that follow.

[3] *See, e.g.*, National Governors' Association, *Time for Results* (Washington, DC, 1986); Committee for Economic Development, *Children in Need*, (NY 1987); National Coalition of Advocates for Students, *Barriers to Excellence: Our Children At Risk* (Boston, Mass. 1985); Quality Education for Minorities Project, *Education that Works* (MIT, Cambridge, Mass. 1990).

[4] The resultant four-volume report was published in 1986 and 1987. See Office of Research and Improvement, Department of Education, *National Assessment of Chapter 1*, particularly V.1, "The Effectiveness of Chapter 1 Services" and V.2, "The Current Operation of the Chapter 1 Program."

the components of effective educational strategies to improve student performance. By no means is the agreement complete; many areas are the subjects of continuing debate and study. But enough is known for educators and policy makers to assert with some confidence that if particular types of programs are replicated, if particular investments are made, improvements are likely to occur.

What follows is an effort to identify and describe areas where there is broad agreement on educational need and strategies. The effort is not intended to be comprehensive or to adduce all the evidence that may be needed to reach an informed judgment. Nor is it being suggested that all of the elements of effective schooling are quantifiable or related to monetary costs; the leadership qualities of principals, viewed as by most people as essential to successful schools, are one element that cannot easily be translated into monetary terms. The main purpose is to suggest that there are now reasonably reliable measures of effective educational services to at-risk children. If Congress were to adopt such measures, it might then be possible to determine the availability of the services in school districts throughout the Nation and to ascertain whether inequitable finance systems are impeding the delivery of the services.

1. *Preschool child development programs*

Since the 1960s there has been a growing recognition that many children from poor families enter public school with serious deficits in cognitive and social skills. These deficits, stemming from a lack of stimuli and from negative forces in the environment of poor children, can impede or even destroy the ability to succeed in school.

Now, more than two decades after the initiation of the Head Start program and other efforts to prepare three- and four-year-old children for school, there is a body of data on the effects of such initiatives. Almost all of the research has yielded positive results.

The most widely noted study tracked the lives of disadvantaged children who had participated in the Perry program for three- and four-year-olds in Ypsilanti, Michigan in the 1960s. The children were matched with a demographically similar group of disadvantaged children who did not participate. By age 19, the report found striking differences, not simply in achievement on standardized tests, but in the avoidance of various forms of pathology. Berrueta-Clement, *et al., Changed Lives: The Effects of the Perry Pre-School Program on Youths Through Age 19* (High/Scope Foundation, Ypsilanti, Michigan, 1984).

The study found that those who participated in the program were far more likely than the non-participants to graduate from high school and to be enrolled in college or post-secondary vocational training. They were also far more likely to be employed. Non-participants were more likely than participants to have been arrested for delinquent or criminal activity, and to have been involved with drugs. *Id.*

Similar conclusions emerged from longitudinal evaluations of a New York state experimental kindergarten program and other initiatives such as those reported by the Consortium for Longitudinal Studies. *See* Summary in Marx and Seligson, *Public School Early Childhood Study: The State Survey*, pp. 2-3 (Bank Street College of Education, 1988). *See also* Hechinger, ed., *A Better Start: New*

Choices for Early Learning (Walker and Company, New York 1986); Kagan and Zigler, eds., *Early Schooling: The National Debate* (Yale Univ. Press, New Haven, Conn. 1987).

Certainly there are caveats about preschool education and continuing areas of debate. Experts such as Zigler caution that there are dangers in cramming children with information before they are ready to learn and that preschool programs must be developmentally appropriate for each age group. Others warn against the tendency to regard preschool programs as a panacea and note that many of the early gains for children can be dissipated through inattention to their needs as they move through public schools.

But on the central point—that where investments are made in preschool programs for at-risk children, many more children are likely to succeed in school—there is little if any disagreement.

2. *Reading Programs in Early Grades*

A similar consensus has been developing about the importance of focusing intensively on developing the reading skills of children in the primary grades. Examinations of reading programs that have proved successful have identified a number of common elements: instruction of children in small groups, tutoring by teachers, aides, parent volunteers or older children ideally on a one-to-one basis, a systematic plan of instruction, frequent assessments of student progress and modifications of groupings or instructional content to meet the needs identified. *See* Slavin and Madden, "What Works for Students at Risk: A Research Synthesis," 46 *Education Leadership* pp. 4 ff. (1989).

One program, "Success for All," that is being operated in Baltimore, Maryland, Charleston, South Carolina and elsewhere, emphasizes these elements of one-to-one tutoring, research-based reading methods and frequent assessments, along with enhanced preschool programs and family support services: The early outcomes have been very positive. *See* Slavin, *et al.*, "Success for All: First Year Outcomes of a Comprehensive Plan for Reforming Urban Education," 27 *American Educational Research Journal*, pp. 255-278 (1990).

Another program, "Reading Recovery," was developed in New Zealand and involves a full year of training for teachers who then work one-to-one with no more then five students each day. The goal is to enable children to read independently after 16 to 20 weeks of daily, half-hour lessons. Studies conducted since 1984 show positive results that have been sustained over time for the great majority of students. The program is now used in districts in Ohio, Kentucky and Iowa. *See* Education Week, Nov. 7, 1990, pp. 1, 11.

Other strategies for effective teaching that have received wide notice, such as Mastery Learning and the Adaptive Learning Environments Model, have many of the same features. See discussion in Hawley, *supra* note 2, at pp. 42-52.

While some elements of these reading programs in the early grades may be accomplished without major investment, others, such as small group tutoring and teacher training, involve significant costs.

3. *Class Size*

As noted above, researchers believe that one key to successful reading programs is the ability to individualize instruction. This has clear implications for pupil-teacher ratios in the classroom.

The subject of class size has given rise to a fairly extensive body of research and there is no clear consensus on the overall question of the relationship of class size to student achievement. Nevertheless, researchers do appear to be in substantial agreement on several matters:

(a) that reduced class size does make a difference where the reductions are significant, i.e., where they result in fewer than 25 students to a class, or more ideally, a pupil-teacher ratio of 15 to 1 or better;

(b) that smaller class sizes have a particularly beneficial effect on students who are economically disadvantaged. *See generally* Glass, *et al.*, *School Class Size: Research and Policy* (SAGE Publications, Beverly Hills 1982) (a synthesis of 59 studies on the impact of class size). See also, Walberg, "What Makes Schooling Effective?" 1 *Contemporary Education: A Journal of Review*, pp. 22–34 (1982). On the positive impact of small class sizes on economically disadvantaged students, see Centra and Porter, "School and Teacher Effects: An Interrelational Model," 50 *Review of Educational Research*, pp. 273–291 (1980). *See also* Office of Educational Research and Improvement, DOE, National Assessment of Chapter 1, *The Current Operation of the Chapter 1 Program*, pp. 66–70 (1987) and sources cited therein.

A very recent study based on a large scale experiment in Tennessee public schools found that minority students in particular benefit from smaller classes, in this case classes in the early grades ranging from 13 to 17 pupils. Finn and Achilles, "Answers and Questions About Class Size: A Statewide Experiment" 27 *Amer. Educ. Research Journal*, pp. 557–577 (1990). Even studies that are skeptical of overall benefits of reduced class size acknowledge benefits to lower income students. *See* Education Research Service, *Class Size: A Summary of Research* (ERS Va. 1980). For an overall review of the research on this issue, *see* Hawley, *et al.*, *supra* note 2, at pp. 72–74.[5]

Here too, there are clear cost implications to effecting the reductions in class size that have been found to benefit at-risk students.

4. *Counseling and Social Services*

It is now widely recognized that the barriers to learning encountered by economically disadvantaged children include a variety of health, nutrition and psychological problems. It is also recognized that when parents or other caregivers are disconnected or alienated from the public schools their children attend, another set of hurdles to effective education arises. While school officials may say with some justification that they ought not to have major responsi-

[5] A recent study by Princeton researchers seeks to correlate educational inputs with later economic success of students as indicated by income. The study, based on an examination of the education and income of one million men born between 1920 and 1949, concludes that lower pupil teacher ratios are associated with higher income. *See*, Card and Krueger, *Does School Quality Matter?* (National Bureau of Economic Research, Cambridge, Mass. 1990).

bility for solving these "noneducation" problems, they are faced with the reality that the problems may then remain unattended and the schools impeded in fulfilling their mission.

These realizations have spurred another set of school initiatives. Some school systems have taken steps to assist parents in becoming more involved in their childrens' education, by reinforcing school efforts, promoting self-discipline, and by encouraging parents to play a participatory role at the schools.

In addition, many schools have identified needs for support professionals, including social service coordinators to assure that students receive timely referrals to agencies able to deal with health and social service problems and counselors whose services begin in the elementary grades. Where systematic steps have been taken by school systems to increase parental involvement and to address health and social needs through the employment of counselors, coordinators, social workers, school psychologists, researchers have reported a positive impact on student achievement. *See, e.g.*, Hawley, *supra note* 2, at pp. 117-124; Comer, "Effective Schools: Why They Rarely Exist for At-Risk Elementary and Adolescent Students," Council of Chief State School Officers, *School Success for Students At-Risk*, pp. 72-88 (Harcourt Brace, Orlando, Fla. 1988).

5. *Teaching Experience and Expertise*

As noted earlier in this Chapter there are substantial doubts in the education community about how strong a correlation can be established between the salaries of teachers and their effectiveness.[6] Nevertheless, research suggests that the experience and expertise of teachers (both factors that are associated with higher salaries) bear a strong relationship to teacher effectiveness. *See, e.g.*, Darling-Hammond, "Teacher Quality and Education," *Access to Knowledge: An Agenda for Our Nations Schools* (Goodlad and Keating eds.) (College Board, New York 1990); Murnane and Phillips, "Learning by Doing, Vintage and Selection," 1 *Economics of Education Review* p. 453 (1981).

At the upper grade levels, for example, there is evidence that a school system's teaching effectiveness may be gauged in part by the proportion of teachers who are working in their areas of training and specialization. A recent report notes substantial differences at secondary schools of different types in the certification status, background and experience of teachers. Teachers with greater qualifications tended to be located at economically advantaged, white and suburban schools. Oakes, *Multiplying Inequalities* (RAND, Santa Monica, Calif. 1990). *See also*, Shavelson, McDonnell and Oakes, *Indicators for Monitoring Math and Science Education* (RAND, Santa Monica, Calif. 1989).

At the elementary school level, the excessive use of teacher substitutes, particularly longterm substitutes, may be an indicator of a system's lack of teaching effectiveness. Interview with Kati Haycock, Vice President, Children's Defense Fund, October 4, 1990. A common pattern in urban areas is for beginning teachers to gain

[6] One recent study argues that teacher salaries do make a difference in the future income of students. See Card and Krueger, *supra* note 5.

experience in central city districts with large numbers of at-risk children and then, after becoming more effective teachers, to move to suburban districts with much higher proportions of advantaged students. Haycock interview; interview with Arthur Wise, President, National Council for Accreditation of Teacher Education, October 5, 1990.

Another important indicator of teaching effectiveness may be the extent to which school districts provide strong programs of in-service staff development to teachers in their areas of specialty. David Hornbeck, former Superintendent for the state of Maryland, Consultation, September 14, 1990; interview with Kati Haycock. *See also* McPhail-Wilcox and King, "Resource Allocation Studies: Implications for School Improvement and School Finance Research," 11 *Journal of Education Finance* p. 416 (1986).

In sum, teaching effectiveness appears to be related to the ability of school districts to attract and reward teachers with advanced training and specialization, and the ability to retain experienced teachers and to provide staff development which enables teachers to update and sharpen their skills. All of these are investments that cost money.

6. Curriculum

Current research also indicates that the content of the curriculum is an important variable for low- and high-achieving public schools. One recent study finds that low-income minority students who attend schools that are predominantly low-income and minority have less extensive and less demanding science and mathematics programs available to them than students at more efficient schools. Oakes, *Multiplying Inequalities. supra*, at 44-45. These students also have fewer opportunities to take "critical gatekeeping" courses such as algebra and geometry at the junior high school level and calculus in high school. They also have less access to science and science-related facilities and equipment.

According to Arthur Wise, a key factor in the effectiveness of an education program is the range and depth of its curriculum, whether it offers a multi-year curriculum in science, mathematics and language. This breadth typically is not available in school districts that lack resources. Interview with Arthur Wise, October 5, 1990. Effective participation in a broad curriculum also requires access to computers and adequate instruction in how to use them. Marilyn Morheuser, attorney for *Abbott* plaintiffs, at Consultation, September 14, 1990.

In the view of many, an adequate curriculum also means the availability of programs in music and art and a range of extra curricular activities. Whether or not such programs are demonstrably related to achievement outcomes, they constitute an important element of a well-rounded education. Morheuser statement at Consultation.

Summary

In sum, extensive research and experience now makes it possible to identify elements of the education process that make a difference in the performance of students, particularly those who are at risk. These include the availability of preschool development pro-

grams and of reading programs in the early grades, the size of classes, the presence of counselors and other support personnel who provide a link to parents and social services, the experience and expertise of teachers, the range and depth of curriculum.

Assuming the availability of data, it should be possible to examine the consequences of inequitable finance systems not just in monetary terms but in their impact on access to vital education services. In Chapter V, we set forth some of the disparities in these services that stem from fiscal inequity.

CHAPTER V

Disparities In Vital Services Due To Fiscal Inequity

Data obtained for this study and from the trial records in several state school finance cases reveal that in several critical areas property-poor school districts are not able to provide adequate services for students at risk of educational failure.

As described in Chapter IV there is a growing agreement on the education services that make a difference for the at-risk child. A key issue in determining the impact of fiscal inequity is whether disadvantaged children receive the same range of these services when they attend public schools in property-poor districts as when they attend schools in property-wealthy districts. To answer this question we reviewed the trial record in several school finance cases and undertook additional research by surveying school superintendents in the state of New Jersey. The investigation revealed that wealthier districts do in fact offer a greater range of services and programs for at-risk students than do poorer districts. Although state and Federal aid is earmarked for some of these programs, rich districts are able to offer from their own resources a greater range of programs and to serve a higher percentage of eligible pupils than poor districts.

To illustrate this phenomenon, we compared services to at-risk children offered by a property-wealthy, middle-class district in New Jersey with services offered by a number of poor and urban districts. The property-rich district selected, Englewood, provides a useful basis for comparison because, although it is one of the wealthiest districts in the state as measured by per-pupil spending and assessed valuation per child,[1] it has a high concentration of low-income and minority (92 percent) children. Yet, because of the district's wealth, Englewood is able to fund a broad range of programs for disadvantaged children: pre-kindergarten, all-day kindergarten, an afterschool program, summer school, elementary counselors, compensatory and remedial instruction, a social worker, a middle school program, and high school programs in dropout prevention and substance abuse.[2] Significantly, with the exception of the remedial/compensatory education component which is funded with Chapter 1 and state Compensatory Education funds, all of these programs are funded with locally-raised dollars.

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[1] Englewood's 1989-90 per pupil expenditure was $6,824 and its equalized valuation wealth per child was $866,000. By contrast, for example, Bridgeton's PPE was $3,825 and its wealth per child was $174,236. Irvington's PPE was $5,712 and its wealth per child was $154,503. (Data supplied by Marilyn Morheuser, Director, Education Law Center, Newark, New Jersey, and chief counsel for plaintiffs in *Abbott* v. *Burke*).

[2] Survey conducted by Law Offices of William L. Taylor, November 12-16, 1990, survey response of Larry Leverett, Assistant Commissioner, Division of Urban Education, state of New Jersey and former Superintendent of the Englewood Public Schools

In contrast to Englewood, poorer districts do not have such a range of services. These districts, with high concentrations of poor and minority children, have had to decide which few of the programs they could afford and to limit availability to a fraction of the students in need. When one or two services are provided, they are funded almost exclusively with chapter I dollars, and in the case of compensatory education, with earmarked state aid available to any district on a per-pupil basis for all children failing to meet certain state standards. Because these districts have such a hard time meeting their basic educational costs, they have few if any local dollars to invest in these services. The result is that in many of these districts, at-risk students' interdependent needs for early childhood education, counseling and other services go unmet. For example:

In East Orange, a property-poor district, with nearly 100 percent minority student population, there is no regular pre-kindergarten program or all-day kindergarten.[3]

Bridgeton, another property-poor district, which serves 3,900 students, has no after-school program and a single guidance counselor who is shared among all middle and high school students. Due to budget constraints, the district recently eliminated an alternative dropout prevention program for high school students.[4]

Camden, another poor district with a 96 percent minority enrollment, has no all-day kindergarten, no after-school program, no drop-out prevention program, and preschool with a very limited enrollment.[5]

Pleasantville, a property-poor district, has no pre-kindergarten, no after-school program, no social workers, and no drop-out prevention program.[6]

In Irvington, with 96 percent minority enrollment, there are no preschool programs and no family contact programs.[7]

In Trenton, where there is a 90 percent minority population, there are no social workers in the elementary schools, no dropout prevention program, no substance abuse counselors, no afterschool programs, and no pre-kindergarten program.[8]

Another poor district, Gloucester City, has no regular preschool program, no all-day kindergarten, and only one elementary school counselor for 1,099 children.[9]

In the balance of this chapter, additional comparisons are made between the services available to at-risk children in property-poor and property-wealthy districts in several states. Also, comparisons are made to services available to children who are not at-risk. It should be noted, however, that comparisons between services available to children who are at-risk and those who are not are often difficult because the needs are often so different. Children in low-income families, for example, are forced to rely on public institu-

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[3] *Id* at survey response by T Josiha Haig, Superintendent of Schools, Chief School Administrator

[4] *Id* at survey response by Ruth Schumacher, Supervisor of Funded Programs

[5] *Id* at survey response by Dr Arnold Webster, Superintendent of Schools

[6] *Id* at survey response by Dr. H Johnson, Superintendent of Schools

[7] *Id* at survey response by Dr Odete B. Silva, Superintendent of Schools

[8] *Id* at survey response by Mark J. Raivetz, Executive Director of Office of Planning, Research and Evaluation

[9] *Id* at survey response by James H Hetherington, Superintendent of Schools

tions for preschool child development programs, while more affluent children may obtain such services privately. Moreover, low-income children have greater needs for preschool preparation and for later remediation because they lack supports available to more affluent children in the home. Even with these qualifications, it is noteworthy that middle-class families have far greater access to some services, such as preschool education. In 1986 in families with incomes of $35,000 or more, 53 percent of children aged three- to four-years were enrolled in such programs. In families with incomes less than $5,000, only 20 percent of three- and four-year-olds were enrolled in preschool programs.[10] There were also racial disparities. Thirty-four percent of white three- and four-year-olds were enrolled compared to 28 percent of black children and 20 percent of Hispanic children.

The information cited above on disparities in New Jersey cannot easily be replicated for other states because there is no regular source of data on services provided by local school districts. See Chapter VIII. Nevertheless, data gleaned from cases and other sources provides evidence that the New Jersey situation is not atypical and that in each of the vital areas of educational services identified in Chapter IV major disparities exist.

A. *Preschool child development programs*

As set forth in Chapter IV, there is broad agreement that early childhood programs can make a critical difference in the school and later life success of at-risk children.

Texas:

Texas has one of the most extensive state-funded preschool programs in the country. According to a study by the Bank Street College of Education, more 50,000 children in the state participate in publicly funded preschool.[11] But, these programs are unevenly distributed. *A number of the poorest school districts in Texas—where the need is the greatest—cannot afford to participate.* According to one expert, even though the state contributes a portion of the funding it is not enough to help all poor districts operate a preschool program. State funds only provide for a half-day of schooling. Poor districts are hardpressed to provide an adequate education to school-aged children and they do not have the extra dollars to make up the difference. Moreover, many of these districts lack any adequate facilities to house pre-kindergarten programs and do not have the resources to expand or improve their facilities.[12]

New Jersey:

The Adminstrative Law Judge (ALJ) in *Abbott* v. *Burke* [13] described in some detail the benefits of early intervention programs

[10] Riddle, *Early Childhood Education and Development*, (Congressional Research Service, July 27, 1990) at p. 3.

[11] F. Marx and M. Seligson, *The Public School Early Childhood Study* (The Bank Street College of Education, New York, N.Y. 1988).

[12] Telephone interviews with Albert Kaufman, Senior Attorney, Mexican American Legal Defense Fund, San Antonio, Texas, November 14, 1990 and Dr. Albert Cortez, Intercultural Development and Research Associates, San Antonio, Texas, November 20, 1990.

[13] OAL Dkt. No. EDU 5581-85 (1988).

for disadvantaged children. The ALJ found, however, that the state did not permit its compensatory education funds to be used for preschool and that Federal Chapter 1 funds can supply only enough for half-day programs that do not serve the entire population of disadvantaged children. The addition of preschool and full-day kindergarten requires fiscal resources that are not available to the poor districts. For example, more classrooms, teachers, and supplies are needed. As a result some property-poor districts like Jersey City offer pre-kindergarten programs only for disabled children.

In contrast, children in property-wealthy districts generally enjoy the benefits of preschool experience. In Princeton, 85–90 percent of the incoming kindergarteners have attended a preschool, many of them through private schools. When the district became aware that only 10 to 20 percent of minority children in Princeton public schools had preschool experience it instituted a summer pre-kindergarten program. The number of these students being held back in kindergarten dropped from ten to two as a result. In property-rich urban districts such as Montclair and Red Bank that serve disadvantaged children four- and five-year-olds are screened to determine their preschool needs. Some of the students are assigned to an all-day kindergarten program. The results in Red Bank have shown that those students who participated in the pre-kindergarten program are now in the upper ranks of their classes.[14]

Thus, the availability of preschool to at-risk children in New Jersey is highly dependent on the property-wealth of the district.

Maryland:

Statistics compiled by the state of Maryland show major disparities in the availability of preschool education based on the wealth of the district. In Montgomery County, a property-wealth district with relatively few minority and at-risk children, the enrollment in public and private pre-kindergarten for 1986 was 9,428 while the enrollment in kindergarten was 9,395 and in the first grade 9,315. In Baltimore City, a property-poor district with a very large enrollment of at-risk children, pre-kindergarten enrollment was 5,858 in the same year while kindergarten was 10,778 and first grade 12,640.[15] It is true that much of the preschool education in Montgomery County was provided at private schools while in Baltimore City preschool education took place mainly in public schools.[16] Nevertheless, the figures indicate that almost all Montgomery County children arrived in kindergarten armed with preschool experience to prepare them to learn, while in Baltimore, half the children had no such preparation.

B. *Reading programs in early grades*

While reading programs in the early grades appear critical to a child's school success, the availability of such programs appears dependent on the wealth of school districts. In Maryland in 1979, 70

[14] *Id.* at A215–A217.
[15] State of Maryland, 121st Annual Report, Department of Education, Table 9 (June 30, 1987).
[16] *Id.* at Table 10.

percent of the third-grade children in the property-poor district of Baltimore City had below-level reading scores while only 7 percent of the children in the wealthy district of Montgomery County fell below level in reading.[17] Yet the wealthy district of Baltimore County was able to provide a special reading teacher for those few students having reading difficulties, while the property-poor districts could not afford an additional teacher.[18] There were few, if any, remedial or compensatory services available in the poor districts.[19]

C. *Class Size*

As noted in Chapter IV, most researchers agree that class size makes a difference to at-risk students; where pupil-teacher ratios are reduced to 15-1 or below, all students may benefit.

Maryland:

At the end of the 1970s, there was a wide gap in class sizes in property-poor and property-wealthy districts and there is evidence that the gap has persisted in the 1980s.

In the late 1970s, property-wealthy Montgomery County took steps to contain class size by establishing maximum class sizes for all grade levels and by hiring additional teachers and aides when classes exceeded these maximums.[20] The record in *Hornbeck* v. *Somerset* shows that as a result only 450 Montgomery County classes exceeded the maximum, while in property-poor Baltimore City, a district with roughly the same school population, 2,700 classes would have exceeded Montgomery's maximums. At the elementary level, more than 800 classes in Baltimore City were oversized under the Montgomery County guidelines, while only 92 in Montgomery exceeded the maximum.

More recent statistics indicate that the disparities are still wide. For example, for the 1986-87 academic year there were 18.3 elementary students for every teacher and principal in Baltimore City, 19.6 students for every teacher in Carroll, and 19.9 in Somerset while there were 14.4 elementary students for each teacher and principal in Montgomery County.[21]

Montana:

A study, relied on by the Montana district court in striking down the state's school financing system as unconstitutional, found class size to be a "critical factor" for effective individualized instruction.[22] Wealthy districts in Montana maintain a 13 to 1 student-teacher ratio, while the poor districts have student-teacher ratios in the high twenties or low thirties.[23] As a result, the wealthier

[17] *See* Appellees' Brief at 24-26, *Hornbeck* v. *Somerset County Bd of Educ.*, No. 93 (Court of Appeals of Maryland, September Term 1981).

[18] *See id.* at 15-16.

[19] *Id.* at 15.

[20] Appellees' Brief, *Hornbeck* v. *Somerset*, *supra* note 17, at 19-20. The County's class size maximums ranged from 26 in kindergarten (or 30 with an aide) to 32 in high school.

[21] State of Maryland, 121st Annual Report, Dept. of Education, Table 26 (1987).

[22] Gray, "A Report on Educational Opportunities in Selected Montana School Districts," Univ. of Montana at Billings.

[23] *Id.* at 5.

districts can afford more independent study and more one-on-one educational programs than the poorer school districts. In addition, the kindergarten classes in the wealthy districts are much smaller than in their wealthier counterparts.[24]

New York:

In *Board of Education* v. *Nyquist* [25] the Appellate Division found that property-poor districts find it extremely expensive to reduce class size because of the higher teacher salary costs entailed, and that property-rich districts do use their resources to reduce class sizes. For example, in 1975-76, Great Neck had a median class size of 20.79 for grades K-3, 22.39 for grades 4-6 and 23.79 for grades 7-9. Yet, Brentwood, a poor district, scheduled all classes at the class maximums of 26 for kindergarten, 28 for first and second grade, 30 for third grade, and 32 for all remaining grades. Roosevelt, a poor district, in 1976-77 did not expect to have many classes with fewer than 33 students in each class. The court concluded there were important reasons, such as individual attention, classroom experience, and remedial attention, for having smaller classes.[26]

New Jersey:

The ALJ in *Abbott* v. *Burke* found that students from the poorer districts attended larger elementary schools with larger classes, including kindergarten, than the wealthier district's children. At the time of trial, in property-poor Irvington more than 28 percent of the elementary schools had classes of more than thirty children in grades one through three. In Camden there were 26 percent of elementary classes with enrollments over thirty. In contrast, in South Brunswick there were no classes with over thirty students. In Moorestown, another wealthy district, the Board of Education requires an aide to be hired whenever a kindergarten class reaches twenty-one children, twenty-two in second grade, and twenty-three in third and fourth grades. The average class size in South Brunswick is twenty students.[27]

D. *Counseling, social services and parental involvement*

The poor districts, despite greater needs are lacking sorely in the availability of social services, counseling and parental involvement programs compared with the high-wealth districts.

Texas:

The district court found that low-wealth schools had lower quality or nonexistent counseling or programs for parental involvement and dropout prevention.[28]

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[24] *Id*

[25] *See* Appendix to Jurisdictional Statement of City Defendants, No. 82-639 (Supreme Court, Oct. Term 1982), at A98

[26] *Id.* at A130-36

[27] *Abbott* v. *Burke*, ALJ opinion, *supra*, at pages 188-90

[28] *Edgewood Independent School District* v. *Kirby*, at 24, No. 362,516 (20th Judicial Dist., Travis County, Tex., Aug. 27, 1987) (Findings of Fact and Conclusions of Law)

Maryland:

Data available from the late 1970s show great disparities between wealthy and poor districts. For example, full-time counselors were available in every elementary school in the wealthy districts, while there were very few counselors in Baltimore City. The wealthier Baltimore County school system could provide one counselor for every 369 students, while the Baltimore City school system could only provide one counselor for every 820 pupils.[29]

Similarly, in Montgomery County there was a school psychologist available for 2,380 students, yet there was only one psychologist for nearly double the number of students in the poor districts.

Baltimore County had a nurse in almost every school; one mile away in Baltimore City, however, there were only 50 nurses for 200 schools. Two other property-poor districts in Maryland, Somerset County and St. Mary's County, had no nurses generally available to the student body. (Somerset County did have three nurses for 14 schools, but services were restricted to Title I children.) The result was that in the poorer districts emergencies were often dealt with by the principal or other employees lacking in training.[30]

Montana:

The Supreme Court of Montana found that the high-wealth districts offered a more extensive guidance counseling program, affecting even the elementary level. In some poorer high schools, however, there were only part-time guidance counselors.[31]

New York:

Property-rich districts could afford to hire more guidance counselors than poor districts—a difference of as much as 3 to 1 at the time of the trial of that state's school finance case. For example, in Brentwood there were 17 counselors for 20,000 students while in Great Neck 22 guidance counselors were available to serve only 8,000 students. There was also a major gap in the number of school psychologists hired by poor and rich districts. The state Education Department recommended a ratio of one psychologist for every 800–1,000 students unless there is community access to a psychologist. Yet the poorest districts, where needs were presumably greater, averaged only .08 psychologists for 1,000 students while the rich districts had 1.03 psychologists available for every 1,000 students.[32]

New Jersey:

Children from the poorer districts are generally in need of greater guidance, especially preventive guidance, than students from the wealthier districts, according to the ALJ in *Abbott* v. *Burke*. The record showed that elementary school districts such as Paterson, Camden, Jersey City, and New Brunswick had no certified guidance personnel or, if they are available there were so few counselors that effective service was virtually impossible. For example, in

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[29] Appellees' Brief, *Hornbeck* v. *Somerset*, *supra* note 17, at 22.

[30] *Id.*

[31] *Helena* v. *Montana*, 769 P.2d 684 (Mont. 1989) (citing Gray, *A Report on Educational Opportunities in Selected Montana School Districts*, Univ. of Montana at Billings, page 17)

[32] *See* Appendix, *Board of Education* v. *Nyquist*, *supra* note 25, at A147–49.

Paterson there were only five counselors for thirty elementary schools. In Camden there were seven counselors for more than 11,000 children. The need at the secondary level was even greater because of high dropout rates and other complex problems experienced more acutely in the poor districts. Yet the wealthier districts, with a more homogeneous and less troubled student body, could afford more counselors. For example, in Princeton's middle school there were three counselors available for 600 pupils.[33]

E. *Teaching*

As described in Chapter IV most experts agree that teachers with experience and advanced training contribute the most to student performance. Yet those are the attributes in shortest supply in property-poor districts.

New Jersey:

The New Jersey Supreme Court in *Abbott* v. *Burke* (1990) noted that as the socioeconomic status (SES) of a school district rises the percentage of teachers with advanced degrees also rises. The figure starts at 29 percent in the lower socioeconomic status districts and increases to 52 percent in the higher SES districts. As a corollary, a teacher's average experience rises, from twelve years in the low-SES areas to fifteen years in the high-SES areas.[34]

New York:

Property-rich districts use their wealth to employ teachers with more experience and better training, according to New York's Appellate Division. As a result those teachers are also paid better. The poor districts also have a high percentage of teachers without teaching certificates. The court, relying on testimony of witnesses in the case, found that these qualities of the teachers in the wealthy districts often led to better student achievement.[35]

Pennsylvania:

A study of differences in resources and services in high- and low-spending districts in Pennsylvania shows that wealthier districts obtained teachers with higher levels of educational attainment and greater experience than lower spending districts (2 years more in high spending districts than those in the middle and 3 years more than in low spending districts).[36] In Pennsylvania, spending levels correlate strongly with property-wealth.[37]

Maryland:

Several experts testifying in *Hornbeck* v. *Somerset* agreed that teachers come to the poorer districts less experienced, having less training, and are less likely to be certified by the state than teachers in wealthier districts. The experts in that case also described teachers in poor districts who used those positions as training

[33] *See* Appellants' Brief on Appeal at 73-75, *Abbott* v. *Burke*, No. 30433 (N.J. 1989).
[34] *Abbott* v. *Burke*, at 114-15, No. A-63, (N.J. 1989).
[35] *See* Appendix, *Board of Education* v. *Nyquist*, *supra* note 25, at A144-47.
[36] Hartman, "District spending Disparities: What Do the Dollars Buy?," 13 *Journal of Education Finance* 436, 449-50 (1988).
[37] *Id.* at 445.

grounds and then left for higher salaries and better working conditions in wealthier districts. Salary disparities in the late 1970s also were significant. Baltimore City paid each teacher $2,500-$3,500 less each year than the wealthier districts. The result was the wealthier districts pay many thousands of dollars more in a teacher's lifetime earnings.[38]

Montana:

The Supreme Court of Montana, in *Helena* v. *Montana*,[39] found that teachers in high-expenditure districts are better paid and there is less of a turnover rate.[40] The wealthier districts reported that they have enough funds to secure the best qualified teachers, while the poor districts reported that they "must consider other factors, such as the possibility of hiring a beginning teacher with a bachelor's degree as a means of saving perhaps several thousand dollars." [41]

Kentucky:

The Kentucky Supreme Court, in *Rose* v. *Council for Better Education*, noted significant differences in teacher salaries between affluent and poor districts.[42]

F. *Curriculum*

Despite the widely acknowledged importance of having a curriculum with breadth and depth, property-poor districts lack the fiscal resources needed to provide an array of courses in any way comparable to those available in wealthy districts.

New Jersey:

According to the New Jersey Supreme Court's findings, the wealthy district of South Orange/Maplewood has computers available to the students beginning in kindergarten and continuing throughout a student's schooling, with computer labs at every school and advanced instruction at the high school level. In Princeton there is one computer for eight children, while in Camden there is one computer for 58 children. Camden offers formal computer instruction to only 3.4 percent of its pupils. The science education in poor urban school districts is also deficient, according to the court. For example, Princeton has seven laboratories with built-in equipment in its high schools. In contrast, the poor districts offer science classes in labs built in the 1920s and 1930s where the equipment often does not work and the supplies are insufficient. In East Orange, for example, the middle-school teachers use a science cart without water or electrical power. In addition, hands-on experience often cannot be taught or is taught without supervision.[43]

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[38] *See* Appellees' Brief, *Hornbeck* v. *Somerset*, *supra* note 17, at 18-19. More recent data shows that salary disparities have persisted. In 1986-87, for example, the average teacher salary in property-wealthy Montgomery and Baltimore counties was $34,626 and $32,923, respectively, while in the property-poor districts of Somerset and Baltimore City, salaries averaged $22,114 and $27,202. Maryland Annual Report, *supra* note 21, at Table 106.

[39] 769 P.2d 684 (Mont. 1989).

[40] Gray, *A Report on Educational Opportunities in Selected Montana School Districts*, *supra* note 31, at 27 and 21.

[41] *Id.* at 20.

[42] *See Rose* v. *Council for Better Education*, at 29, No. 88SC-804-TG (Ky. 1990).

[43] *Abbott* v. *Burke*, *supra*, at 103-04 (N.J. 1990).

The foreign language programs offered in the poor districts are also dramatically unequal to the wealthy districts. For example, in Montclair, a wealthy district, there are French and Spanish classes at the preschool level. A Princeton middleschool requirement is that all fifth graders take a half-year of French and a half-year of Spanish. In the high schools, German, Italian, Russian, and Latin are offered. Yet in the poor districts advanced foreign language courses are not offered and instruction in the basic courses generally begins only in high school.[44]

The music and art programs of rich and poor districts are also vastly unequal. South Brunswick, for example, offers music classes in kindergarten and in Montclair music class is given to preschoolers. Princeton offers an extensive music program including bands, orchestras, choruses, and small ensembles. In contrast, Camden and Paterson, poor districts, cannot offer a music course until the fourth grade. Only introductory courses are offered in high school. Camden budget constraints forced a lay-off of all elementary school music teachers in the early eighties. In addition, the poor districts have inadequate space for instrumental music lessons or bands and choruses. In one poor district elementary school, the music lessons are taught in the back of the lunchroom. Art programs in the wealthy districts begin early, even in the preschool years. Art programs in poorer districts are sparse, according to the New Jersey Supreme Court. For example, in East orange elementary schools there are no art classes and art teachers are few and limited in the forms of art they are able to teach. In Jersey City only a third of the students have any type of art class available to them.[45]

New York:

The Appellate Division in New York found major differences in the capacity of school districts to provide variety and richness in the curriculum. In property-wealthy Great Neck, advanced placement classes where offered in English, American and European History, calculus, biology, chemistry, physics, French, Latin, and Spanish. In property-poor Levittown, the advanced courses were eliminated because the district could not afford the intensive staffing required.

Property-rich districts were also able to provide their students with a variety of languages offerings for an extended period of time. Although the court noted that language should be taught as early as possible and continued as long as possible, the poor districts did not usually provide languages until ninth grade. For example, Brentwood offered only Spanish and French, each beginning in the ninth grade. In contrast, in Great Neck, French, Latin, and Spanish were available in junior high school and Hebrew, German, and Russian were added in high school.

Music and art programs were lacking in the poor districts. For example, in Brentwood, there were no instrumental programs in the elementary school. Roosevelt also had to eliminate music and art programs at the elementary level. The New York Supreme Court noted that adequate programs in the arts are important

[44] *Id.* at 104-05.
[45] *Id.* at pages 105-06.

since many students go on to college with the help of art scholarships.[46]

Texas:

The Texas court found that typical poor district schools had no foreign language, chemistry, physics, calculus, college preparatory, or honor programs. Higher expenditure schools offered an expanded curriculum. Poor school districts also did not have basic extracurricular programs, up-to-date technological equipment, teachers' aides, and parental involvement programs.[47]

Maryland:

The elementary schools in Baltimore City, a poor district, were able to provide little, if any, instruction in art, music, or physical education. Only half of the Baltimore City high schools could provide three foreign languages, while in the wealthy district of Montgomery County all high schools offered three or more foreign languages. Nineteen of the 20 Montgomery high schools offered calculus, which is available in only five schools in Baltimore City. Most of the advanced courses in foreign languages, science, and math were unavailable in Baltimore City.[48]

In addition to the lack of breadth in the curriculum, the poor districts had fewer resources available for textbooks. For example, in 1979–80 in Baltimore City the school system spent $11.95 for each pupil's textbooks. Montgomery County expended $15 for each elementary student and $20 for each secondary student. With these resources Montgomery County was able to provide every student with English, math, science, social studies, and reading books to take home. Baltimore City was relegated to the use of outdated books and was unable to replace the lost or damaged books.[49]

Montana:

The science programs in the poor districts, the court found, have substandard facilities, outdated equipment, and insufficient supplies. There are no computers or even automatic typewriters for the business education majors, and there is a lack of equipment for the industrial arts programs. There are fewer and lower quality computers available in the poor districts, and the computers are often located at the back of the regular classrooms.

The poor districts are also generally unable to afford a gifted and talented program unless their regular teachers volunteer their time. The wealthier districts often employ a coordinator who helps to identify and support gifted students as well as a specialist who works with students in small groups. The poorer districts also offer far less in the area of language arts. For example, one wealthy district offered twenty-two separate English courses, while a poor district had only four survey courses. Poor districts were unable to purchase instruments or band music or provide adequate instruction. Additionally, wealthier districts were able to afford at least

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[46] *See* Appendix, *Board of Education* v. *Nyquist*, *supra* note 25, at A137–42.
[47] *Edgewood Indep. School Dist.* v. *Kirby*, 777 S.W.2d 391, 393 (Tx. 1989).
[48] *See* Appellees' Brief, *Hornbeck* v. *Somerset*, *supra* note 17, at 20–21.
[49] *Id.* at 22.

one language specialist while the poor districts simply assigned a regular teacher this additional duty. Textbooks in the poor districts, the court found, are outdated and those districts also lack supplementary materials.[50]

Kentucky:

The poor districts, according to the State Supreme Court, offer programs of dramatically lesser quality then wealthier districts, particularly in the areas of mathematics, science, foreign languages, music, and art. The poor districts also are lacking in specialty programs and often do not effectively teach even basic skills.[51]

Summary

The illustrations cited above of disparities in important education services could be multiplied and extended to other types of services. Several of the cases, for example, set out striking contrasts between substandard and deteriorating school buildings in property-poor districts and modern, well-appointed and maintained facilities in property-wealthy districts.

There is no reason to believe that the experience in the states cited in this chapter is atypical. If information were to be made available for other states with local districts that have similar disparities in expenditures, it would undoubtedly yield similar contrasts in the availability of services.

Accordingly, it is fair to conclude that fiscal inequity ordinarily is translated into major differences in the education services provided by wealthy and poor school districts. Some of these services are in areas that are regarded by educators as vital, and their unavailability has devastating effects on educational opportunity for students who enter school already disadvantaged.

[50] *Helena v. Montana*, Dist. Ct. opinion, pages 83-86 (1989).
[51] *Rose v. Council for Better Education*, at 26 (Ky. 1990).

CHAPTER VI

Costs of Effective Services To At-Risk Children

The cases which have invalidated school finance systems have been virtually silent on the costs of remedy. For example, a recent decision detailing the elements of a "thorough and efficient" system in West Virginia spelled out every component in each subject area, including early childhood education, but failed to specify cost estimates.[1] Similarly, the more recent decision by the Administrative Law Judge (ALJ) appointed by the New Jersey Supreme Court to review the adequacy of the state's school finance scheme, noted the difficulty in assessing the costs of an adequate remedy.[2]

The reasons for this judicial reticence may be varied. For one thing, there are variables which make costs difficult to calculate. For example, early expenditures for at-risk children could influence later spending patterns. The judge in New Jersey noted that although there may be little current demand in poor districts for advanced level courses, if early education were improved, there later "may be new demands for more advanced courses, and that would probably involve increased costs." [3]

On the other hand, he commented that the costs of early intervention programs might be recouped in later grades when the need for remediation and other services would diminish.[4]

A further complication is the determination of the standard of measurement to be used. If services in property-poor districts are to be upgraded to the levels provided in the wealthier districts, the costs are likely to be very high. If, instead, states were to decide in response to litigation to determine levels of effective educational service in key categories and to assure that each district had the capability of meeting these standards, costs would not be so high.

In the cases and elsewhere in the literature, there are some indications of what these costs might be.

A. *Pre-kindergarten*

Costs of preschool can vary widely depending on the quality of the program. But effective, comprehensive programs, like those in Ypsilanti, Michigan and other places, however, will cost more because they require such things as high-quality staff, small class size, and noneducational components. The Council of Chief State School Officers and the National Association for the Education of Young Children, among others, have delineated the elements of a high-quality preschool program for at-risk children. The elements

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[1] *Pauley v. Bailey*, Civ. No. 75-1268 (Circuit Ct., Kanawha County, W.Va., May 11, 1982) (Opinion, Findings of Fact and Conclusions of Law and Order)

[2] *Abbott v. Burke*, OAL DKT. No. EDU 5581-85 (Aug. 24, 1988)

[3] *Id.* at 583

[4] *Id.* at 584

include: maximum class size of 20 and at least one staff member for every 10 children; trained, professional staff, including degree or certification in early childhood education; parental involvement services; and additional services, including health, nutrition, psychological, and transportation services.[5]

In addition, effective preschool programs require adequate facilities (including well-lit, heated, comfortable space), proper equipment and supplies, age-appropriate toys, and other materials.

As to actual costs, the authors of the Perry preschool study estimated the costs of the program at roughly $4,800 per year per child in 1981 dollars.[6] A 1990 report by the Congressional Research Service [7] reviewed more recent studies and reported that current cost estimates of a Perry-type program, which provides comprehensive services, could range from $4,660 per child [8] to $6,200 per child.[9]

Significantly, however, the authors of the Perry study's cost-benefit analysis concluded that the investment in preschool for disadvantaged children is more than repaid in later years. For example, they found that the participants in the project contributed positively to the economy and benefited themselves through increased earnings and reduced welfare dependency. Social benefits were also seen in reduced teen pregnancies and lower rates of crime and delinquency.[10]

B. *Reading Programs in Early Grades*

An approach taken by one education expert in Maryland was to determine what could be accomplished for at-risk children in the property-poor Baltimore district if the district's per pupil expenditures were raised to equal the average per pupil expenditures of all Maryland districts. The expert, Robert Slavin, concluded that the difference ($865 in additional per pupil dollars) would finance programs like "Success for All", which has enabled children at-risk in Baltimore and elsewhere to learn to read in the early grades without being retained in grade. See Chapter IV, Section A. 2; Slavin, *et al.*, "Success for All" 27 *American Educational Research Journal*, at pp. 274-275 (1990).

Other programs may involve heavier costs at least in the initial stages. One estimate of the costs of the Reading Recovery program [See Chapter IV] is $2,000 per child over regular costs. But an important component of that estimate is the cost of intensive teacher training which presumably would not be replicated in later years.

Slavin's bottom line, which received some support from other experts who participated in the consultation held in connection with this study on September 14, 1990, was that an additional expenditure of approximately $800 per child supplemented by Chapter 1

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[5] Council of Chief State School Officers, *A Guide for State Action. Early Childhood and Family Education* (November 1988).

[6] Berrueta-Clement, *et al.*, *Changed Lives: The Effects of the Perry preschool Program on Youths Through Age 19*, at 84-85. (High Scope Foundation Ypsilanti, Mich., 1984)

[7] Riddle, *Early Childhood Education and Development: Federal Policy Issues* (Congressional Research Service, IB88048, July 27, 1990)

[8] *See*, General Accounting Office, *Early Childhood Education Information on Costs and Services at High-Quality Centers* (HRD89-130FS, July 1989)

[9] *See*, Grubb, *Young Children Face the States. Issues and Options for Early Childhood Programs* (Center for Policy Research in Education, May 1987 47)

[10] *Changed Lives*, at 86-92.

funds would produce effective results for at-risk children. Interestingly, an expert who testified for the *defendants* in the New Jersey litigation, came up with a similar estimate, suggesting that focusing additional resources of $700 to $800 per child on low achieving students could have a positive impact.[11]

C. *Reduction in Class Size*

The one area concerning at-risk students where the ALJ's decision in New Jersey did advert to costs concerned reducing class size. While noting inconclusive research on the connection between smaller classes and achievement, the judge also found that as to disadvantaged children, small classes may be essential for effective teaching. As to cost, the judge found:

> Reducing class size is one of the most expensive reforms suggested by plaintiffs. Evidence shows that to reduce the class size in East Orange, for example, by one student in grades 1 to 12 (using an average teacher salary of $24,000) would require 16 new teachers and cost approximately $380,000. When Montclair reduced class size by one student, it cost the district about $100,000. If Irvington were to reduce its class size to under 25, a conservative estimate required approximately 40 new teachers at a $1.25 million cost.[12]

D. *Overall Costs*

One expert on the economics of education, Henry Levin, estimates an overall need of $2,000 per year for each at-risk student to make the educational progress necessary to avert the economic consequences that now flow from educational failure.[13] Levin calculates that an additional $26 billion would be needed for 13 million at-risk students. Chapter 1 now yields $5 billion, leaving $21 billion to be raised from new sources, which amounts to a 10 percent increase in current local and state funding.

Levin suggests that the Federal Government pay 60 percent of the additional costs since the Federal Government collects that percentage of all public revenues. Of course, if state governments were to undertake, voluntarily or pursuant to a Federal mandate, to remove inequities from their finance systems, a significant proportion of the need might be filled not through new expenditures but through a more equitable distribution of current revenues.

Levin, like the authors of *Changed Lives* and others, makes the point that the investment called for would be repaid several fold in the taxes paid by productive citizens and in avoidance of the costs of crime and welfare dependency.

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[11] *See Abbott* v. *Burke*, Plaintiff-Appellants' Brief on Appeal at 106 (Supreme Court of New Jersey, No. 30433, June 16, 1989).

[12] *Abbott* v *Burke*, *supra* note 2, at 583. Enrollment in East Orange was 11,500 in 1987, and Irvington's enrollment was 8,909. *Id* at 33.

[13] *See* Levin, "Economics of Investing in the Educationally Disadvantaged," 79 *American Economic Review*, pp. 52-56 (May 1989); "Financing the Education of At-Risk Students," 11 *Educational Evaluation and Policy Analysis*, No. 1, at pp. 47-60 (Spring 1990).

CHAPTER VII

THE FEDERAL INTEREST IN FISCAL EQUITY

The scope of the Federal role and interest in public education has long been a matter of discussion and will likely continue so for many years.

Nevertheless, over the course of the past quarter century, Congress, while conceding the primacy of the states and local school districts in public education, has carved out an important role of assistance and regulation in specific areas.

With the enactment of the Elementary and Secondary Education Act of 1964, Congress established as a matter of national policy a role in providing Federal financial assistance to meet the needs of economically disadvantaged students.[1] Over the years, this policy has been strengthened and expanded to provide assistance to children who are at risk of failure in the public schools for a variety of reasons. Federal aid has been targeted to low-income preschool children,[2] to handicapped children,[3] to children with limited proficiency in English,[4] to Native American children,[5] to migrant children,[6] to homeless children,[7] and to others with special needs. This expanded Federal role in contributing to the education of disadvantaged children was part of what has been described as a "sea change . . . in the Federal Government's interest in stimulating change and improving quality in public education." Bailey and Mosher: *ESEA: The Office of Education Administers A Law* (1968).

Over approximately the same period that the Federal Government has developed the role of assisting school districts in meeting special needs, the government has asserted a strong regulatory and enforcement role in redressing discrimination and assuring equality of educational opportunity. The roots of contemporary Federal action in this field lie in the Supreme Court's decision in *Brown* v. *Board of Education* and in the authority of Congress under Section 5 of the Fourteenth Amendment to legislate in order to implement the guarantee of equal protection of the laws. Beginning with the Civil Rights Act of 1964, Congress took steps to exercise that authority by establishing legal remedies, including lawsuits and the withholding of Federal funds, to prevent discrimination in education on the basis of race or national origin.[8] Since then, protections

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[1] Pub L. No. 89-10, 20 U.S.C. §§2701, *et seq*
[2] Head Start, Pub L. No. 88-452
[3] Chapter 1, sec. 121, Education for All Handicapped Children Act, Pub L. No. 94-142, 20 U.S.C. §1401-1461
[4] Bilingual Education Act (Title III of ESEA), 20 U.S.C. §880b
[5] *E.g.*, Indian Elementary and Secondary School Assistance Act, Pub L. No. 92-318
[6] Chapter 1, Sec. 122
[7] Stewart B. McKinney Homeless Assistance Act, Pub L. No. 100-77, 101 Stat. 482-538
[8] Sec. Title VI of the Civil Rights Act of 1964, Pub L. No. 88-352, 42 U.S.C. §2000d, *et seq*

against discrimination in education have been extended to other groups including women and girls (with Title IX of the Education Amendments of 1972)[9] and handicapped students (with Section 504 of Vocational Rehabilitation Act of 1973,[10] the Education of All Handicapped Children Act, and the Americans with Disabilities Act of 1990).[11]

Both of these Federal roles—the function of assisting students in need and the regulatory function of preventing discrimination against students—are implicated when issues of inequity arise.

In various ways, dating back to the enactment of Chapter 1 in 1965, Congress has manifested a concern about equity in the provision of education services at the state and local level.

A. *The Illusion of Comparability*

In enacting Chapter 1 (then Title I) Congress expressed an overriding objective to assure that Federal funds would be used to "expand and improve" education programs and to meet the "special needs" of economically disadvantaged children. This goal was manifested in a series of statutory provisions that later received elaboration through regulations. One such provision calls upon recipients of Federal funds to maintain their fiscal efforts; a second requires local education agencies to use Federal funds as a "supplement," rather than to "supplant" regular state and local funds.[12]

The provision most relevant to the purposes of this study requires that education services provided with state and local funds in Chapter 1 schools or areas be "at least comparable" to those provided in schools or areas that do not receive Chapter 1 funds. The clear aim of the comparability requirement is to assure that services provided with state and local funds to educationally deprived children attending Chapter 1 schools are approximately equal to services to children in non-Chapter 1 schools, before the addition of the Chapter I funds.

While the comparability requirement would appear to be highly relevant to the fiscal inequity issues that are the subject of this study, the fact is that the mandate has been applied only to deal with intradistrict inequity.

So, for example, current regulations require that a school district receiving Chapter 1 funds assure that it maintains comparable staff-pupil ratios in all schools. A district which had a 1 to 21 ratio in some of its non-Chapter 1 schools and a 1 to 25 ratio in some of its Chapter 1 schools would presumably be out of compliance and its eligibility would be in jeopardy. But the fact that in Camden, New Jersey many Chapter 1 schools have enrollments of 1 to 30 or more while in the South Brunswick district, average class-size is 1 to 20, would not suggest a violation.[13] The "comparability" requirement only extends to the distribution of resources by a school district within its borders and although the state is a participant in

[9] Pub L. No. 92-318, 20 U.S.C. §§1681-1683

[10] Section 504, Pub L. No. 93-112, 29 U.S.C. §794

[11] Pub.L. No. 101-336

[12] *See*, Silverstein, "A Policy Maker's Guide to Title I of ESEA" (Education Commission of the States, Denver, Colo. 1979)

[13] *See*, Chapter V, pp. 12-13, *supra*

Chapter 1 and other Federal programs, it is not held responsible for the distribution of resources.[14]

This limitation in the reach of the comparability requirement has serious consequences.[15] In practice, where state systems are fiscally inequitable, Chapter 1 funds may be used in property-poor districts to furnish services that are routinely available to all students in property-wealthy districts. Alternatively, the result may be that the efficacy of services made possible by Chapter 1 funds, such as a special reading program, may be undermined by the unavailability of other services (such as preschool programs, smaller class sizes, broad curriculum materials) that are needed to make Chapter 1 programs effective, and that are routinely available in other districts.

B. *Other Congressional Initiatives*

Beyond the questions that may be raised by provisions in the ESEA, Congress has at various times expressed an interest in taking steps to redress fiscal inequity in public education.

In 1974, as part of the Education Amendments of that year, Congress added a new section to the Impact Aid Statute,[16] the law under which the Federal Government compensates school districts for revenues lost or services needed because of the presence of military bases or other Federal activity in the area. The issue raised was whether states that were engaged in efforts to equalize their school finance systems would be permitted to treat Federal impact funds paid to a district as part of local tax receipts in calculating state equalization payments. States claimed that if the payments could not be so regarded, equalization efforts would be hampered.

In response, Congress set up a two-part test to determine whether states that applied were in fact equalizing their systems. States were required to establish either (1) that their systems did not result in large revenue disparities or (2) that they were wealth neutral.[17]

Under the revenue disparity standard, the variance among school districts in per pupil expenditures from state and local sources is permitted to be no more than 1.25 to 1. Under the second test, it is required that no less than 85 percent of state, intermediate, and local revenues for current expenditures be neutral of local wealth.

In application, the law does not appear to have been a significant spur to state equalization efforts. In 1988–89, Alaska, Arizona, Kansas, Maine, Michigan, New Mexico, and Wisconsin applied for

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[14] Other provisions of Chapter 1 are not useful in dealing with the issue here. While a state is prohibited from reducing state aid to districts receiving Chapter 1 funds, that is of no help in dealing with state systems that are inequitable to begin with. Similarly the "supplement" not "supplant" provision has been deemed to apply to the states only when states actually conduct the program, as is the case in some states with migrant education.

[15] Concerns have been expressed that the comparability requirement is not well enforced even on an intradistrict basis. Time did not permit an assessment of current enforcement for this study, which deals with the *reach* of the comparability policy not its *implementation*. Clearly, however, if the policy is extended to the state it would have to be well-enforced at both levels.

[16] Pub. L. No. 81-874.

[17] 34 C.F.R. Part 222, Subpart G. See, Testimony of F. Forbis Jordan at *Hearing on H.R. 2450, the Fair Chance Act Before the Subcom. on Elementary and Secondary Education, Committee on Education and Labor*, 101st Cong., 2d Sess., pp. 44–50, Jan. 24, 1990.

and were certified as meeting one of the two standards. Several of these states have high disparities in per pupil expenditures (PPE), notably Michigan, which as shown in Chapter III, has a disparity ratio of 2.3 to 1.[18] While no separate analysis of wealth neutrality is possible here, it appears quite likely that some significant part of the explanation for large revenue disparities in Michigan and elsewhere is the mismatch among districts in the distribution of property-wealth, suggesting that the Federal test of "wealth neutrality" may not provide adequate measures.

In 1978, Congress focused on fiscal equity questions again, calling for the conduct of a study of trends and problems in the financing of public education. Education Amendments of 1978, Section 1203. The reports, issued in 1982 and 1983 by the Department of Education noted wide variances in the fiscal capacity of states to support education and suggested that the current level of Federal aid was inadequate to deal with those interstate disparities. But neither study addressed in a significant way the problem of intrastate inequity in the financing of public school systems.[19]

In 1990, the House Committee on Education and Labor held hearings on the Fair Chance Act (H.R. 3850) sponsored by Chairman Hawkins and Representatives Martinez, Owens, and Perkins. The legislation would have required the Secretary of Education to review each state system to determine whether it is fiscally equitable. The standard was to be a tightened version of the two-prong test employed under the Impact Aid law; the permissible ratio for revenue disparity would have been 1.05 to 1 rather then 1.25 to 1, and the wealth neutrality standard would be set at 95 percent rather than 85 percent.

Districts not in compliance would have been charged with submitting a five-year plan to achieve equalization. In the event of non-compliance, the Department of Education would have been directed to distribute funds directly to school districts in a manner calculated to achieve greater equalization.

The bill also contained provisions to reward states which made greater tax efforts in education with grants to meet special needs.

After the hearings, no further action was taken on the bill.

Summary

While respecting the primacy of states and local agencies in public education, the Congress has established a role of helping to meet the needs of disadvantaged students and of assuring equal educational opportunity—roles that are not challenged even by staunch advocates of local control.

Federal policies and goals in both these areas are impaired by inequitable state systems of public school finance. Such systems translate into vastly disparate educational offerings in different districts and the losers are frequently minority children, who reside in disproportionate numbers in property-poor districts.

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[18] A different calculation in Mr. Jordan's testimony shows larger disparity ratios for Michigan and for other states. Hearing on Fair Chance Act, p. 51.

[19] See Department of Education, "The Prospects for Financing Elementary Secondary Education in the States" (December, 1982).

Inequitable finance systems also result in some situations in the use of Chapter 1 funds to provide services in one district that are routinely provided with state or local funds in other districts. The effectiveness of Chapter 1 funds is also impaired in property-poor districts by the fact that the funds may provide only one service, while other services that also are critical to school success are not provided.

Although Federal policy calls for comparability of services and for the use of Chapter 1 funds to address the needs of disadvantaged students, the policy is not framed in a way that deals with *inter*-district inequity. As long as the policy remains so limited, the goal will not be achieved.

CHAPTER VIII

The Need For Data

As described in Chapter VII, the Federal Government has a long-standing interest in public education and a major investment in the education of disadvantaged children. It has a variety of laws and policies aimed at equitable treatment, ranging from civil rights statutes protecting against discrimination to provisions of the education statutes designed to assure that Federal funds are actually used to address the special needs of children who require assistance. More recently, Federal, state and local leaders have recognized a need to establish national goals in public education and to find means for monitoring progress toward the achievement of these goals.

Whether these laws and policies are meaningful guarantees or merely hortatory rhetoric necessarily depends on the existence of a means for gathering and organizing information in a manner that permits those charged with implementation to enforce the laws properly.

The Federal Government has come a long way from the days in which its limited role in public education was thought by many to preclude the collection of even rudimentary data on public education systems. It has established in the Department of Education a capacity for commissioning and conducting research to evaluate the effectiveness of Federal programs and identifying promising initiatives and techniques in education. It has created a National Center for Education Statistics to collect and publish basic data and educational statistics. It has recently recognized a need for cooperative efforts among Federal, state and local officials and private education associates in the collection and reporting of data. A National Cooperative Educational Statistical system was authorized by the Hawkins-Stafford Act.[1]

Nevertheless, questions continually arise about the adequacy of existing systems of data collection to permit the monitoring of basic national laws and policies. As to the issue examined in this report—whether state systems for financing education result in the denial of effective educational services to children at-risk who live in property-poor school districts—several types of data are necessary for a comprehensive assessment.

First, demographic data is needed for each school district to identify the pupil population at-risk, i.e., children from low-income families and others who may have special educational needs, including disabled children and children with limited proficiency in English. Second, information is needed on the fiscal capacities and expendi-

[1] Pub L. No. 100-297

ture patterns of individual school districts and on how state resources are distributed to school districts.

Third, data is needed on what services the resources available purchase in each school district. Only if such information is available can it be determined whether state education finance systems operate to deny or impair access to important education services such as early childhood education programs, experienced teachers, or an adequate curriculum.

A. *Demographic Information*

A recent report of the National Forum on Educational Statistics identifies the critical need for demographic data for every public school system in determining issues of equity:

"Almost any policy question involving the distribution of resources (e.g., differential tax bases) or instructional practices (availability of computer or algebra courses) may raise equity concerns if the resources or practices are not available to all groups." [2]

Such demographic data, however, is not generally available. The main source of state and national data about student characteristics is the "Common Core of Data" maintained by NCES. This information, however, is maintained at the state level and is not generally disaggregated by local education agency, although a few items may be obtainable on an LEA basis.[3] In the past, the Office for Civil Rights (OCR) of the Department of Education collected data on the race, handicap, and English language proficiency of pupils from local education agencies for purposes of civil rights enforcement. OCR, however, abandoned the practice of surveying *all* school districts in 1976 and since then has obtained information only on a sample basis. The Department of Agriculture compiles information on free lunch participants, but only on a statewide basis. The Administration of Children, Youth and Families (ACYF) of the Department of Health and Human Services collects data on Head Start.[4]

There is, however, the real prospect that within a few years useful demographic data will become available on a district-by-district basis through a project jointly being conducted by the Bureau of the Census and the NCES. Census, of course, has long collected a wide range of population, income and housing data and made it available on a statewide and county-by-county basis. However, except in those few states or portions of states where county and school district boundaries are coterminous, the county data is not helpful in determining the demographic characteristics of school systems.[5] Pursuant to the 1988 Education Amendments [6] the two agencies are now at work on a project that will make a great deal of demographic information available by school district.

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[2] National Forum on Educational Statistics, A Guide to Improving the National Education Data System, p. 25 (October 1990)

[3] *Id.* at 30-31.

[4] *Id.* at 33

[5] After the 1980 census, the Department of Education and the Bureau of Census did compile population and housing data by local education agency. But the data file had inconsistencies and other problems that were not adequately resolved. (Interview with Wayne Riddle)

[6] Pub.L. No. 100-297, 20 U.S.C. §2711

With the aid of the states, census maps of school districts will be produced that will enable Census to break out the same types of information that are now available on a county basis by school district. This will include data on race and ethnicity, on household income and poverty status, on linguistic status and disability, and on indicia of at-riskness other than income (e.g., children born to teenage mothers). The information is scheduled to be published by NCES in 1993.[7]

There are still problems to be overcome. As noted, the mapping process depends on the cooperation of each state and at present one state—California—has declined to participate on grounds of the expense involved.[8]

In addition, once the process is complete, the task of fashioning a reliable uniform national standard for identifying economically and educationally disadvantaged students will remain. Allocations on a state by state basis of Chapter 1 aid are based on poverty data collected and reported once each decade by the Census Bureau. Once allocated, the indicator used to target Chapter 1 schools within districts is primarily eligibility for free or reduced price lunches. According to data experts, the eligibility standard for the lunch program may differ from state to state.[9] Some experts believe that actual participation in the school lunch program would be the most practical surrogate for economic disadvantage since eligibility data is difficult to obtain.[10]

One of the prime standards for assessing educational disadvantage is the lack of proficiency in the English language. Here, too, there are wide variations in how states and local agencies define limited English proficiency. The use of subjective standards may allow extraneous political considerations to play a part in determining the numbers of eligible students.[11]

A further problem, both in this and in other categories of needed information is the frequency with which data is collected. If information is not updated between decennial censuses, its value as a measure of whether states are equalizing services to at-risk students will decline after a few years.

Despite these remaining difficulties and challenges, the joint project of Census and the NCES offers great promise in identifying and locating children who have special needs for education services. That part of the task of determining how state fiscal systems affect the availability of important education services to at-risk children will be substantially met.

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[7] Interview with Ramsay Selden, Director of the state Education Assessment Center of the Council of Chief State School Officers, and with Rebecca Yount, Director of CCSSO's census mapping project, November 9, 1990 (*See also*, NFES *Guide* at p. 29.)

[8] Selden interview, Nov. 9, 1990

[9] Selden interview, Nov. 9, 1990

[10] Interviews with Emerson Elliott, Acting Administrator of NCES, and Paul Planchon, Marty Orland and Bill Fowler of NCES staff, November 26, 1990 (hereafter Elliott interview)

[11] A model statute prepared under the auspices of the Council of Chief State School Officers, suggests that at the preschool level and in the early grades the determination that a child is "at-risk" (which triggers certain educational entitlements) be made on the basis of poverty status and an inability to speak or comprehend the English language. As the child grows older, other factors such as grades, performance on standardized tests and teacher evaluations would be added. See CCSSO, *Elements of a Model Statute to Provide Educational Entitlements for At Risk Students* (1987).

B. *Education Finance Data*

Information currently available on school finance falls far short of providing a reliable measure for gauging equity in the distribution of resources, and more specifically, for determining whether disadvantaged children are being short changed in material ways by state fiscal systems.

Statewide data is collected which permits an assessment for each state of its available wealth for each school aged child, of its relative tax capacity compared to other states, of actual expenditures per child and of tax effort.[12]

At the level of local education agencies, however, information is much more sparse. The Census Bureau compiles data from local education agencies and has recently published its 1986-87 survey of school finance. While information is collected from all LEAS, and is available on tape, Census publishes data only for those with an enrollment of 15,000 or more students. The information is available in a form which permits comparisons only of expenditure levels per child among school districts. It does not reveal property-wealth per child in each district or local tax rates.[13]

A new national public education financial survey (the Common Core of Data fiscal survey), has been initiated to provide detailed state aggregate information on revenues and expenditures.[14] Information may be available in 1993 that will show revenues and expenditures on a district by district basis. This data can then be combined with population data discussed in the previous section. It is expected that the fiscal data will be updated completely every five years.[15]

But care will have to be taken to assure that the data generated by the survey permits an accurate analysis of the extent of fiscal inequity that occurs under current state financing formulas.

C. *Data On Education Services*

As described in Chapter IV, there is a growing accord among educators and researchers about education programs, services and practices that lead to positive outcomes and that are particularly useful to children at risk of failure in the schools.

Yet the information that is available about what school districts actually do in offering such programs and services is sketchy at best. Even at the state-wide level, the information collected is rudimentary. It may describe state policy in important areas, such as whether the state mandates half-day or full day kindergarten, but little is reported about actual practice.[16] Information is available

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[12] See, CCSSO, State Education Indicators p. 18 (1988).

[13] There are limitations even in the data that is available. For example, there may be no uniformity in the means employed by LEAs in counting pupils, ordinarily the statistics make no adjustments for differences in LEA costs that are attributable to differing pupil needs, such as the higher costs associated with meeting the needs of handicapped, limited English-proficient and economically disadvantaged students, there is no adjustment for differences in cost of living among districts; there is a lack of uniformity in the treatment of certain types of expenditures such as teacher pensions, no account is ordinarily taken of differences in services some districts provide, such as vocational and technical education. Riddle, *Expenditures in Public School Districts: Why Do they Differ?* pp. 3-5 (CRS 90-322 EPW, July 5, 1990).

[14] See NFES *Guide* at p. 46.

[15] Elliott interview, Nov. 26, 1990.

[16] *See, e.g.*, CCSSO, *State Education Indicators* (1989).

on a statewide basis on preschool enrollments in public schools, on pupil-teacher ratios and on the overall numbers of counselors. Data on teachers who are teaching out of their fields is reflected only in a sample survey that is used to make national level estimates.[17] In the area of curriculum, NCES is collecting on a sample basis for elementary schools state level estimates of the time allocated to particular subjects and the Chief State School Officers are collecting state level data on offerings in mathematics and science.[18] In several other areas, no data collection is even contemplated.

If such information is sparse at the state level, at the local level it is almost non-existent. There is no central place which can provide information on whether a given school district offers preschool education, whether it provides preventive or compensatory reading programs for children in need of such services, whether counselors are present in the elementary schools, whether class sizes are large or small, what proportion of teachers are certified in the fields in which they are teaching, and what specific courses or fields of study are part of the curriculum.

Lacking such basic information, it impossible to tell in most cases what impact fiscally inequitable state finance system have upon the ability of school districts to offer effective education. Lacking information about how each school district serves its entire student population, it is impossible to ascertain how it serves particular subgroups, specifically economically and educationally disadvantaged children.[19] Thus, even when the new initiative taken by Census and NCES is completed and permits an identification for each district of children at-risk, it will not be possible to determine what services are being offered to this population and how the offering compares with that of other districts.

In these circumstances, it is difficult to know how the Congress and the Executive branch can meaningfully evaluate the effectiveness of Federal programs in meeting the National policy of securing educational opportunity for economically and educationally disadvantaged children. It may be that a property-poor school district in Mississippi that spends $1,807 per child (the average for the 10 lowest LEAs in the state in 1986–87) has an educationally sound compensatory reading program financed with Chapter 1 funds. But it seems highly doubtful that the district is providing other programs and services (such as counseling or small class sizes or a challenging curriculum) that may be available in Mississippi districts whose spending rates are more than $3,000 per child or in districts in other states where expenditure rates are far higher.

At the moment, it is difficult to obtain information about programs and services even from local sources. Many school districts publish budgets which report expenditures only by "object," categories, such as expenditures for instructional personnel or for transportation. But, according to one expert, the published budgets often

[17] Elliott Interview, Nov. 26, 1990.

[18] See also NFES *Guide* at pp. 80–81. There is some concern about whether this will be data that will permit valid comparisons. Elliott Interview, Nov. 26, 1990.

[19] The information reported in Chapter V showing stark contrasts in the programs and services available in property poor and property rich districts was gathered almost entirely from the records of school finance litigation, or from special studies or inquiries made by the authors of this study at the local level.

are built upon data bases that include information in subject or program categories.[20] In this view, if Congress were to determine that access to information about basic program and services is an important or essential tool of national policy, the cost to school districts of providing this information may not be excessive.

Other experts are less sanguine, noting that while some districts have the capacity, others do not and that difficult problems of securing standardized data would have to be solved.[21] All agree, however, on the importance of securing such information. The NFES report calls upon NCES to make "a long-term commitment to establishing a program and functionally based accounting system." [22]

D. *Other Data Needs*

If information were to become available in each of the areas described above, Congress would have an adequate basis for evaluating the impact of inequitable state financing systems on disadvantaged children. Congress would know in which districts at-risk children were located and would have information about the character of their special needs. It would know in dollar and cents terms the impact of state systems of finance on particular districts and the degree to which the effects of inequity in state systems are borne by disadvantaged students. And, perhaps most important, Congress would know in fairly concrete terms the impact of fiscal inequity on the ability of school districts to offer programs and services that have proven to be educationally effective for at-risk children.

From this information, Congress would have a basis for determining the extent to which its own objectives in enacting the Elementary and Secondary Education Act and other important laws were being impaired or defeated by the operation of inequitable state fiscal systems.

All of this would constitute a great advance. Yet this review of data needs would not be complete without mention of one other area of need—data on student performance.

Since 1969, the National Assessment of Educational Progress (NAEP) has conducted evaluations of student achievement throughout the Nation. NAEP now reports on a periodic basis the achievement of students at the fourth, eighth and 12th grade levels in the areas of reading, mathematics, writing, social studies, geography and science.

Despite the widely discussed problems and limitations of many forms of standardized tests, NAEP and other assessments based on testing yield useful information both on initiatives that bring about progress and on the dimensions of current education needs. For example, the significant gains in reading over a ten year period that the 1980 NAEP study reported for black elementary school students in the Southeast was a heartening indicator that Head Start, Title I and the widespread desegregation of public schools that occurred in that region between 1970 and 1980 were producing concrete educational benefits.[23] Case studies provided more specific

[20] Selden interview, Nov. 9, 1990
[21] Elliott interview, Nov. 26, 1990
[22] NFES *Guide* at p. 65
[23] *See*, Education Commission of the States, *National Assessments of Reading: Changes in Performance, 1970-1980*, at p. iii

evidence of the impact of particular initiatives such as desegregation on student performance.[24]

The National Assessment bases its analyses on a nationwide sample of students. It is not possible under NAEP's current techniques to provide information on a state-by-state basis. A study has been undertaken, however, to determine the feasibility of collecting information in a way that would permit state-by-state reporting. The National Forum for Educational Statistics suggests that if the pilot project proves successful, state samples should be made large enough to permit the analysis of subgroups, including school districts with high and low concentrations of poverty.[25]

Clearly the availability of uniform state-by-state reports on achievement would promote accountability in the realization of the goals of improved student achievement announced as part of the National Goals set by President Bush and the Nation's governors in February 1990. As to the subject of this study, even absent detailed information about LEAs, state reports on achievement would enable Congress to gauge whether fiscal reform is an important initiative in raising the performance of at-risk children.

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[24] *See, e.g.*, Crain and Mahard, *Desegregation Plans that Raise Black Achievement. A Review of the Research* (RAND Corporation, Santa Monica, Calif. 1982)

[25] NFES *Guide* at p. 103

APPENDIX

SCHOOL FINANCE LITIGATION PRIOR TO 1989

The first movement to reform state school finance systems developed in the late 1960s and early 1970s against a backdrop of educational research questioning the impact of disparate educational expenditures and other "inputs" on educational achievement and other "outcomes." [1] The nascent movement is perhaps best known for several seminal works on the subject of interdistrict fiscal inequity [2] and for the enduring landmark California Supreme Court decision in *Serrano* v. *Priest*,[3] in which the court invalidated the state school finance system on both state and Federal constitutional grounds.

Following *Serrano I*, litigants representing property-poor districts and families commenced reform efforts, including litigation, in more than three dozen states.[4]

Meaningful reform, however, proved elusive. Litigation was long, costly, and not always successful, and legislative reform in the states was also uneven and fraught with political difficulties. Perhaps the most crushing blow to the early effort, though, came from the United States Supreme Court in 1973.

E. *School Finance Litigation in the Federal Courts.*

The Supreme Court's landmark ruling in *San Antonio* v. *Rodriguez* [5] effectively slammed the Federal courthouse door on plaintiffs seeking to challenge inequitable school finance systems on Federal constitutional grounds, *i.e.*, that they denied to some citizens the equal protection of the laws guaranteed by the Fourteenth Amendment. The Court in its 5–4 decision, dealt a double blow to litigants representing property-poor districts by ruling both that education was not a fundamental right and that wealth was not a suspect classification. The result of these decisions was that the Court did not apply the tough "strict scrutiny" standard of review, but instead applied a less stringent standard of review to the Texas school finance system and found it constitutional.

As to the question of whether the Texas school finance scheme infringed upon the rights of a suspect class, the Court examined the nature of the wealth discrimination at issue. The Court initially was impressed with the fact that while there were significant

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[1] *E.g.*, J. Coleman, *Equality of Educational Opportunity* (1966) ("The Coleman Report"); C. Jencks, "The Coleman Report and the Conventional Wisdom," in Mosteller and Moynihan, eds., *On Equality of Educational Opportunity*.

[2] *E.g.*, A. Wise, *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity* (1968); J. Coons, W. Clune, and S. Sugarman, *Private Wealth and Public Education* (1970).

[3] 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (Hereinafter cited as "*Serrano I*"). See discussion of *Serrano* in Chapter II Sections D and F, *infra*.

[4] *See*, Kirp and Yudof, *Educational Policy and the Law*, at 582.

[5] 411 U.S. 1 (1973).

differences in expenditures for the education provided to children living in property-poor and property-wealthy districts, the children had not been *absolutely deprived* of an education. To the contrary, the Court noted that the state's foundation program ensured a level of funding per pupil in each district that the state considered "adequate." [6] Furthermore, the Court did not find a nexus between family income, district wealth and educational spending for the majority of school districts in Texas.[7]

As to whether education constituted a fundamental right, the Court acknowledged its declaration in *Brown* v. *Board of Education* [8] that "education is perhaps the most important function of state and local governments." Yet the Court declined to find the right to education implicitly protected under the Constitution. The Court noted that even if there were some constitutionally guaranteed "identifiable quantum of education," the Texas system would satisfy that standard. Again relying on the absence of an *absolute* denial of education, the Court declared that "no charge could fairly be made that the system fails to provide each child with the basic minimal skills necessary for the enjoyment of the rights of speech and [political participation]." [9]

In the absence of a suspect classification or a fundamental right, the Court applied the traditional equal protection standard of review to determine whether the system had a "rational relationship to legitimate state purposes." [10] Significantly, the Court adjudged itself both an inappropriate and an incompetent body to resolve the fiscal and educational policy issues underlying the case. As to the fiscal policy, the Court reaffirmed the ideology of local control of education in this country.[11] As to educational policy questions, the Court took note of the so-called "cost-quality" debate among educational experts regarding the extent to which money makes a difference to educational quality.[12]

F. *The First Wave of State Court Litigation.*

In the aftermath of *Rodriguez*, plaintiffs turned to state constitutional grounds to attack inequities in school finance. Plaintiffs relied on either the equal protection provisions of state constitutions, on education clauses in state constitutions, or both.[13]

Plaintiffs were hopeful that state courts, for a variety of reasons, would be more sympathetic to their claims. For one thing, although

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[6] *Id* at 25 n 60

[7] The districts with the highest property values spent the most on education per pupil and had the highest family incomes Similarly, the most property poor districts spent the least per pupil and had the lowest family incomes *Id* at 15 n 38 The Court found, however, that in the 90 percent of districts in the middle, those with the lowest family incomes spent the most on education while those with higher family incomes spent less *Id* at 26-27

[8] 347 U.S 483 (1954).

[9] *Id* at 37

[10] *Id* at 40-55.

[11] *Id* at 40-53 The majority acknowledged that reliance on the local property tax afforded poorer districts "less freedom of choice" over educational spending than others, but insisted nevertheless that "some inequality" and imperfection in the manner the state effectuates its goals are permissible

[12] *Id* at 43 n 86, citing, *e g* , Jencks and Coleman (for proposition money makes little difference) *See* note 1, *supra*, and accompanying text

[13] For extensive discussion of state court litigation in the 1970s and 1980s, See Note, *To Render Them Safe An Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 Va. L. Rev 1639 (1989) *See also*, Franklin, "Testimony to the Voice of the Prairie Conference, Oct 28, 1989," in *Witnesses for the Prosecution*, at 31

the Federal constitution is one of enumerated or limited powers, the power of state governments to act is generally unlimited, except, of course, by Federal law. Consequently, state courts are not restrained by Federalist principles and may enjoy greater latitude to act, including greater power to determine whether unenumerated rights are protected in their state constitutions.[14] In addition, state courts are not constrained to follow Federal equal protection precedent and are free to develop their own body of constitutional jurisprudence.[15] Finally, most state constitutions contain substantive educational mandates, providing, for example, for a "thorough and efficient" system of public education. The educational mandates would provide a basis other than equal protection on which to mount a legal challenge.[16]

Victories in New Jersey and California provided the impetus for school finance lawsuits and legislative reform efforts in virtually every state.

1. *New Jersey: Robinson* v. *Cahill*

Less than two weeks after *Rodriguez*, the New Jersey Supreme Court invalidated the state's school finance system on *state constitutional grounds*.[17] Despite *Rodriguez*, the New Jersey Court applied its own equal protection analysis to determine whether the school finance system violated the state constitutional rights of children in property-poor districts.

Significantly, the state court affirmed that it would not be bound by Federal equal protection strictures and the *Rodriguez* analysis. Chief Justice Weintraub wrote:

"Conceivably a state constitution could be more demanding. For one thing, there is absent the principle of federalism which cautions against too expansive a view of a Federal constitutional limitation upon the power . . . of the states to cope with their own problems in light of their own circumstances." [18]

Nevertheless, the court acknowledged a reluctance to decide the case on equal protection grounds, noting political and other difficulties that would ensue if it were to deem wealth a suspect classification or education a fundamental right.

The court then determined, however, that the New Jersey scheme violated the state constitution's "thorough and efficient" education clause. "Thorough and efficient," the court said, meant "equal educational opportunity" for all children and that the term "must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his (or her) role as a citizen and as a competitor in the labor market." [19]

The court noted a connection between the amount of money spent and the "quality of educational opportunity" but acknowl-

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[14] *See, e.g.*, Note, 75 Va. L. Rev. at 1656-57; *Hornbeck* v. *Somerset County Board of Educ.*, 458 A.2d 758, 785 (1983).

[15] *E.g.*, *Robinson* v. *Cahill*, 303 A.2d 273, 282 (N.J. 1973) ("*Robinson I*").

[16] *See, e.g.* N.J. Const. (1947) Art. VIII, § 4, para. 1: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of eighteen years." N.J. Const. (1947) Art. VIII, § 4, para. 1. *See Robinson I*, 303 A.2d at 288.

[17] *Robinson* v. *Cahill*, 62 N.J. 473, 303 A.2d 273 (1973) ("*Robinson I*").

[18] 303 A.2d at 282.

[19] *Id.* at 295.

edged the difficulty in assessing whether the state school finance statute should be invalidated, because there were no standards to define the education required by the Constitution. Although the state had delegated authority to local governments, it had failed to set standards specifying the minimal educational opportunities required. Even in the absence of standards, the court reasoned that the constitutional obligation could not possibly have been met:

"unless we were to suppose the unlikely proposition that the lowest level of dollar performance happens to coincide with the constitutional mandate and that all efforts beyond the lowest level are attributable to local decisions to do more than the state was obliged to do." [20]

As to remedy, the New Jersey Supreme Court remanded the matter to the legislature, and in *Robinson II* set a December 31, 1974 deadline for approval of a remedy to comply with its ruling.[21]

2. *California: Serrano* v. *Priest*

In its landmark decision two years prior to *Rodriguez*, the California Supreme Court ruled that the state's school finance system violated both Federal and state constitutional provisions,[22] and in response, the state legislature enacted legislation to attempt to remedy the violation.

In 1974, the trial court, on remand of *Serrano I*, determined that, *Rodriguez* notwithstanding, the case would survive on state constitutional grounds. The court rejected an outcome test and adopted an input standard, finding that wealthy districts had greater ability to purchase educational services than poorer districts.[23] The California Supreme Court ratified the trial court opinion in *Serrano II*.[24]

3. *State Cases: 1973–1983*

Following *Robinson* v. *Cahill*, cases were filed in several dozen state courts. As in *Robinson* and *Serrano*, plaintiffs' legal challenges were based both on state equal protection provisions and on the education clauses. In the decade following *Robinson*, however, only a handful of state high courts acted to invalidate school finance systems. The greater number of state courts declined to rule against the schemes, despite, in some cases, compelling trial records of wealth and spending disparities and of acute differences in educational inputs between rich and poor districts.

An examination here of the courts' decisions in four states—West Virginia, Connecticut, Maryland, and New York—illustrates

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[20] *Id*

[21] *Robinson II*, 63 N.J. 196, 303 A.2d 65 (1973). For subsequent history of remedial efforts in New Jersey, see Chapter II, Sections F and G, *infra*

[22] The *Serrano I* opinion stands in direct contrast to *Rodriguez* in a number of respects. As to the standard of review, the California Supreme Court found discrimination based on district wealth impermissible. It also held education to be a "fundamental interest," emphasizing the "indispensable role" of education in terms both of individual success and of citizen "participation in political and community life." The court in *Serrano* also rejected the defense of "local control." Under a system where the assessed valuation of a district's property determines its ability to support its schools, the court said, only rich districts are able to truly decide how much education to fund. Poor districts cannot choose an educational level their "tax roles cannot provide." The court observed that in the case of two districts, one property-rich and one property-poor, the poor one actually made *more* of a tax effort but with a lower dollar yield.

[23] *See* discussion of *Serrano* v. *Priest*, No. 938,254 (Super. Ct., County of Los Angeles, Calif. April 10, 1974) in Kirp and Yudof, at p. 680.

[24] *Serrano* v. *Priest*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977) (*Serrano II*).

the unevenness with which state courts have approached the same or similar problems. In each case, the state court was confronted with significant fiscal disparities, but the opinions reflect that they each engaged in their own unique legal reasoning, applying different standards, and ultimately drawing different conclusions. The indisputable impact then of the "Federalist" approach, forged by the Supreme Court in *Rodriguez*, is that children in the poor districts of states like Connecticut and West Virginia are guaranteed some measure of equity, while those who live in the property-poor and urban districts of states like New York and Maryland are condemned to inferior educations.

1) *State Court Victories: West Virginia and Connecticut.*

In the West Virginia case the plaintiffs, the parents of five children attending public schools in Lincoln County, brought a class action for a declaratory judgment that the school systems violated the state constitution. The West Virginia constitution mandates a "thorough and efficient" system of free schools, and in *Pauley* v. *Kelly* the state Supreme Court of Appeals concluded that the state system did not meet that requirement. The court gave content to the "thorough and efficient" clause and defined the requirement as encompassing eight factors, among them the development of literacy and basic math skills, the ability to make informed political choices and knowledge of the creative arts such as music, literature, and theater. A thorough and efficient public school system, according to the court, is one that "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically." The court concluded that education is a fundamental right in West Virginia and, as a result, the state must demonstrate a compelling state interest to justify an unequal, discriminatory classification.[25]

Pursuant to the court's decision in *Pauley* the suit was amended to include the Speaker of the House of Delegates and the President of the Senate of West Virginia, and the state legislature was asked to develop a remedy. The court noted that expert studies of the various legislative committees should assist in the development of statewide standards.[26]

Despite the victory for plaintiffs, no sweeping changes have yet been produced in reducing educational disparities in West Virginia. A 1982 decision mandated the appointment of a ninety-nine member committee to develop a master plan for education and called for more than one billion dollars to be put toward this goal. But no deadline was set and the state has yet to enact taxes to pay for the program. Moreover, the state is behind by at least 140 million dollars in state aid to the schools as of June 3, 1988, according to the Deputy Superintendent of Schools of West Virginia. Keith Smith, Bureau Chief at the Department of Education in West Virginia, noted that the only new money given to the poor districts as a result of the decision was 30 million dollars to increase the teacher salaries. There were also a few regulatory changes such as in-

[25] *Pauley* v. *Kelly*, 255 S.E.2d 859 (W.Va. 1979).
[26] *Id.*

creased graduation requirements, more rigorous courses, and an in-depth accreditation process.[27]

In *Horton* v. *Meskill*,[28] the Connecticut Supreme Court also concluded in 1977 that education was a fundamental right in that state. The Connecticut court relied on the state constitution and the legislature's history of finding education to be an important right. The court held that any infringement on the right to an education will be strictly scrutinized.

As a result of the *Horton* decision, the state legislature two years later enacted a system of educational financing to achieve statewide equity. Despite this legislation the same plaintiffs were back in court shortly thereafter to challenge the legislative system put in place. The plaintiffs argued the system was unconstitutional and that significant spending disparities persisted. The Supreme Court of Connecticut upheld the system, refusing to apply strict scrutiny to the plan. The court conceded that significant disparities remained but concluded that the legislation had had the effect of narrowing the disparities and increasing the state's share of overall educational expenditures in public schools. Under these circumstances, and applying an intermediate standard of review, the court declined to invalidate the scheme.

2) *State Court Defeats: New York and Maryland.*

In the late 1970s (and continuing to the present), the states of New York and Maryland exhibited wide wealth and spending disparities among districts.[29] Additionally, urban school systems in New York and, to a lesser extent, Maryland, suffered from severe "overburdens," which strained their ability to meet education needs. In both cases, plaintiffs engaged in extensive (and costly) discovery, presented extensive documentation and testimony, and obtained favorable findings of fact from the trial courts.[30] The trial courts also determined that the facts in the record proved that the school finance systems violated plaintiffs' constitutional rights.

On appeal, however, the state high courts appeared to take little issue with the underlying factual proofs,[31] but instead reversed the trial courts on their legal conclusions. Both high courts demonstrated a clear aversion to affirming decisions which would have required radical restructuring of the state school finance system and a perceived undermining of "local control."

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[27] M. Rose, "Other States' School Suits Meant Higher Taxes, Funding," Herald-Leader June 3, 1988, A1-A8.

[28] *Horton* v. *Meskill*, 376 A.2d 359 (Conn. 1977); 486 A.2d 1099 (1985).

[29] For a description of these disparities, see Chapter V, *infra*.

[30] For example, in the New York case, the trial produced "23,000 pages of transcript and 400 exhibits." 453 N.Y.S.2d at 647. In Maryland, the trial "consumed over four months and produced a voluminous record, numbering many thousands of pages." 458 A.2d at 766.

[31] For example, the majority opinion of the Maryland Court of Appeals conceded: "Nor is the issue whether there are great disparities in educational opportunities among the state's school districts, for the existence of this state of affairs is widely recognized." *Hornbeck* v. *Somerset*, 458 A.2d at 790.

Similarly, the New York Court of Appeals acknowledged: "... significant inequalities in the availability of financial support for local school districts, ranging from minor discrepancies to major differences, resulting in significant unevenness in the educational opportunities offered. ... Similarly ... [the four intervening cities] by reason of the factors encompassed in metropolitan overburden, are forced to provide instructional services and facilities of a lesser quantity, variety, and quality than those provided in some other school districts." *Board of Education, Levittown Union Free School Dist.* v. *Nyquist*, 439 N.E.2d 359, 57 N.Y.2d 27, 38, 453 N.Y.S.2d 643, 647 (N.Y. 1982).

In New York, suit was brought by property-poor non-urban school districts and by plaintiff-intervenors representing students and taxpayers in the cities of New York, Buffalo, Rochester, and Syracuse. The original plaintiffs advanced the traditional argument that the system permitted property-rich districts to provide better educational programs. The large city intervenors argued that despite property wealth in their districts, they were "overburdened" economically and educationally and thus unable to meet the special needs of their children and to provide an education comparable to non-urban wealthy districts.[32] The trial court ruled that the state school finance system violated both the state constitution's equal protection clause and its education article, as well as the Federal Constitution. The intermediate appellate court, the Appellate Division, following *Rodriguez*, reversed the Federal constitutional ruling but affirmed the trial court's determination that the state constitution had been violated.[33]

New York's highest court, the Court of Appeals, rejected plaintiff's claim in its entirety, declaring the state school finance system valid under the Federal Constitution as well as under the equal protection and education provisions of the state constitution. The court began its analysis by establishing that the rational basis test was the proper standard of review in New York in cases concerning the right to "free, public education." [34] While noting that education was "high on the list" of governmental priorities, the court declined to afford education the status of a fundamental right.[35] Applying the rational basis test, then, the court upheld the system, deferring to the governmental objective of local control.[36]

As to the education clause, the court construed the intent behind the provision to be not the assurance of equal facilities and services throughout the state but of "minimal acceptable facilities and services" and a "system of free schools in order that an education might be available to all the state's children." The court apparently found that this minimal standard had been met by virtue of the fact that New York's per pupil expenditures were, on average, higher than those of all but two states and because New York had been "regarded as a leader in free public education." [37]

In a similar vein, Maryland's intermediate appellate court and its high court, the Court of Appeals, reversed a trial court determination that the state system violated the Federal and state constitutions.[38] As in New York, plaintiffs included property-poor, non-urban districts, as well as the City of Baltimore's school system with its high concentration of low-income and minority families.

The Court of Appeals' analysis of Maryland's "thorough and efficient" clause is largely significant for what it said the term did *not* mean.[39] For example, the court determined that "thorough and ef-

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[32] *Board of Education* v. *Nyquist*, 453 N.Y.S.2d, at 646. For discussion of municipal overburden issues, see Chapter II Section F, *infra*.
[33] *See*, 453 N.Y.S.2d at 647.
[34] *Id.* at 650.
[35] *Id.*
[36] *Id.* at 651-652.
[37] *Id.* at 653.
[38] *Hornbeck* v. *Somerset County Board of Education*, 458 A.2d 758 (1983).
[39] *Id.* at 770-776.

ficient" did not mandate "uniformity in per pupil expenditures," and that it did not "require a system which provides more than a basic or adequate education to the state's children." [40] The court deemed it the legislature's, and not the court's, role to establish a statewide system that provided a basic education to all children, distinguishing Maryland from New Jersey and West Virginia, on grounds that Maryland had state laws and regulations governing "all facets of the educational process." The court observed that there was no evidence in the case that state-prescribed standards had not been met in plaintiff districts. The Court said:

"The trial court did not find that the schools in any district failed to provide an adequate education measured by contemporary educational standards. Simply to show that the educational resources available in the poorer school districts are inferior to those in the rich districts does not mean that there is insufficient funding provided by the states' financing system for all students to obtain an adequate education." [41]

On the issue of whether education is a fundamental right, the court largely followed the Supreme Court's reasoning in *Rodriguez*, and explicitly articulated the fear that a declaration that education is a fundamental right would elevate other government services, including "police, fire, welfare, health care and other social services" to a fundamental status as well.[42] Such a determination, the court reasoned, would: "render automatically suspect every statutory classification made by state legislatures in dealing with matters which today occupy a substantial portion of their time and attention . . . [and would] wreak havoc with the ability of state legislatures to deal effectively with such critical governmental services." [43]

The court also echoed the Supreme Court's view in *Rodriguez* that absent an "absolute deprivation of a right," wealth alone is not a suspect classification.[44]

Applying the rational basis test to Maryland's school finance scheme, the Court of Appeals, as in *Rodriguez*, and *Board of Education* v. *Nyquist*, stressed the theme of "local control" over public education, suggesting that any petitions for relief from the demonstrated inequities in the system should be brought to the legislature.

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[40] *Id* at 776
[41] *Id* at 780
[42] *Id* at 786
[43] *Id* at 785
[44] *Id* at 787, citing, *e.g.*, *Harris* v. *McRae*, 448 U.S. 297 (1980), *Maher* v. *Roe*, 432 U.S. 464 (1977), and *Rodriguez*, *supra*

Conclusion

Litigation in the 1970s and early 1980s to reform state school finance systems has had mixed results. The *Rodriguez* decision in 1973 eliminated the prospect of challenges on Federal constitutional grounds, forcing plaintiffs to litigate cases in states courts. There, most cases were lost, including cases in states like New York and Maryland where fiscal inequity translated into inferior educational offerings for students in property-poor districts. Although there were several significant victories, litigation in state courts was largely inefficient and unsuccessful.

TABLE 1

	STATE	1986 GROSS STATE PRODUCT PER CHILD/RANK		1986 RELATIVE TAX CAPACITY (U.S.=100)/RANK		1988 CURRENT EXPENDITURE PER PUPIL/RANK	
	Alaska	$176,351	(1)	177	(1)	$7,971	(1)
	Connecticut	128,668	(2)	135	(4)	6,230	(4)
	Massachusetts	120,340	(3)	124	(5)	5,471	(6)
	Nevada	116,323	(4)	147	(3)	3,623	(35)
HIGH	New Jersey	116,190	(5)	121	(6)	6,564	(3)
RELATIVE	New York	115,337	(6)	107	(13)	7,151	(2)
WEALTH	California	109,523	(7)	118	(9)	3,840	(30)
	Wyoming	109,093	(8)	151	(2)	5,051	(9)
	Delaware	101,791	(9)	121	(6)	5,017	(10)
	Virginia	101,121	(10)	101	(17)	4,149	(22)
	Montana	$ 74,620	(41)	88	(36)	$4,246	(20)
	Kentucky	71,322	(42)	76	(47)	3,011	(45)
	South Dakota	71,029	(43)	82	(42)	3,249	(41)
	Alabama	67,082	(44)	74	(49)	2,718	(47)
	Arkansas	67,019	(45)	78	(45)	2,989	(46)
LOW	South Carolina	65,582	(46)	79	(44)	3,408	(39)
RELATIVE	West Virginia	63,079	(47)	76	(47)	3,858	(29)
WEALTH	Idaho	59,058	(48)	77	(46)	2,667	(48)
	Utah	55,703	(49)	80	(43)	2,454	(50)
	Mississippi	54,597	(50)	65	(50)	2,548	(49)

Sources: Council of Chief State School Officers, State Education Indicators 1989; U.S. Department of Eduation, State Education Performance Chart Supplement (May 1990).

TABLE 2

	STATE	1988 CURRENT EXPENDITURES PER PUPIL/RANK		1985 PERCENT CHILDREN UNDER 18 IN POVERTY/RANK	
	Alaska	$ 7,971	(1)	12.7	(3)
	New York	7,151	(2)	23.6	(41)
	New Jersey	6,564	(3)	15.5	(11)
	Connecticut	6,230	(4)	11.8	(2)
	Massachusetts	5,471	(5)	14.1	(6)
HIGHEST	Rhode Island	5,329	(6)	16.7	(19)
SPENDING	Vermont	5,207	(7)	16.1	(15)
STATES	Maryland	5,201	(8)	13.0	(4)
	Wyoming	5,051	(9)	15.5	(11)
	Delaware	5,017	(10)	15.3	(10)
	South Dakota	$ 3,249	(41)	21.3	(33)
	Louisiana	3,138	(42)	30.6	(48)
	Oklahoma	3,093	(43)	21.0	(30)
	Tennessee	3,068	(44)	25.2	(44)
	Kentucky	3,011	(45)	23.6	(41)
LOWEST	Arkansas	2,989	(46)	29.0	(46)
SPENDING	Alabama	2,718	(47)	31.7	(49)
STATES	Idaho	2,667	(48)	21.7	(36)
	Misissippi	2,548	(49)	34.3	(50)
	Utah	2,454	(50)	13.2	(5)

Sources: U.S. Department of Eduation, State Education Performance Chart Supplement (May 1990); Children's Defense Fund, Children 1990: A Report Card, Briefing Book, and Action Primer, p. 90.

TABLE 3

Assessed Valuation Per Pupil and Percent Revenue from Local Sources for Maryland School Districts, 1986-87

SCHOOL SYSTEM	ASSESSED VALUATION PER PUPIL	PER PUPIL EXPENDITURE/RANK	
Worcester	$286,218	$4,730	(3)
Montgomery	173,969	5,644	(1)
Talbot	170,804	3,859	(13)
Calvert	161,999	3,985	(9)
Baltimore	123,102	4,943	(2)
Howard	121,071	4,727	(4)
Kent	103,598	4,316	(6)
Anne Arundel	100,788	4,126	(8)
Queen Anne's	99,814	4,262	(7)
Prince George's	91,759	4,325	(5)
Charles	84,110	3,710	(14)
Dorchester	77,388	3,863	(12)
Wicomico	76,722	3,623	(18)
Allegany	76,208	3,592	(20)
Carroll	74,589	3,568	(21)
Frederick	73,929	3,655	(15)
Garrett	73,505	3,558	(22)
Washington	72,375	3,935	(10)
St. Mary's	70,481	3,898	(11)
Harford	67,963	3,645	(16)
Cecil	60,912	3,593	(19)
Somerset	57,503	3,557	(23)
Baltimore City	56,511	3,640	(17)
Caroline	51,461	3,397	(24)

Source: Maryland State Department of Education, 121st Annual Report (for year ending June 30, 1987), Tables 100 and 107.