

p. 1

# Planning & Changing

-a JOURNAL for SCHOOL ADMINISTRATORS

JANUARY 1972 / volume two / number four

CONTENTS:

ARTICLES FROM THE STATES

Hickrod

THE

Riles

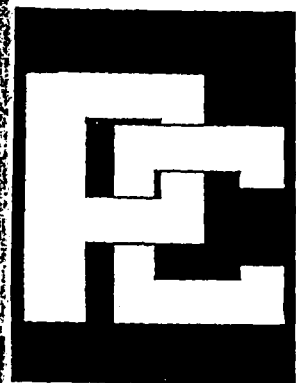
SERRANO

EDUCATION-PSYCHOLOGY  
LIBRARY

MAR 2 1972

UNIVERSITY OF CALIFORNIA  
BERKELEY

BOOK REVIEWS



*Stephen D. Sugarman*

## A Judicial Prod To Legislative Reform of Educational Finance

In simple terms the California Supreme Court in the case of *Serrano v. Priest* has said that California's school finance system, which essentially is a locally financed, property tax based system, violates the Fourteenth Amendment of the Federal Constitution. Hence, *Serrano* strikes a blow for rationality in school finance as much as it does for treating fairly certain classes of children. If the *Serrano* decision sticks, then no longer will it be permissible for states to let the arbitrary grouping of property values determine the quality of education that a child gets; in short, a new approach to the funding of elementary and high schools in this country is required. The property tax itself, however, was in no way struck down, which is one of the most important of the misunderstandings that has arisen in connection with this case.

### *The Case Itself*

Indeed, since many have interpreted this case as a victory for beleaguered property tax paying homeowners, it might help to set out some details as to the parties and to the history of the case. The *Serrano* suit was filed in August 1968 by the Western Center on Law and Poverty, which is an O.E.O. funded legal services test group located in Los Angeles. *Serrano* was decided in August 1971; hence, three years elapsed between filing and the California Supreme Court decision, and that decision in narrow legal sense is only a preliminary one. *Serrano* is a class action brought on behalf of Los Angeles public school children and on behalf of their parents as taxpayers. The wrong about which they are complaining is caused by the Legislature which has fashioned and annually renews the existing school finance system. However, neither the Legislature nor individual legislators are named as defendants; rather the defendants are the State and Los Angeles County officials (in this latter case also as representatives of all such California county officials) who in the eyes of plaintiffs play important roles in the California ele-

Mr. Sugarman is a member of the California Bar and served as an Amicus Curiae for the California Supreme Court in the *Serrano* Case. Adapted from an address delivered at the Legislative Seminar of the Education Commission of the State in Houston, Texas on December 1, 1971.

mentary and secondary school educational process including, importantly, roles with respect to the financial support of the schools. This choice of defendants has led to some interesting results, not the least of which is that some of the defendants have publicly endorsed the decision in favor of the plaintiffs. The defendants being so divided will likely cause complications as the litigation continues.

The plaintiffs' complaint describes the California school finance system, alleges that it is wealth discriminatory (among other things) and asserts that such discrimination is unconstitutional. Defendants answered the complaint by saying that even if the system were discriminatory as alleged, there is no constitutional violation. What the California Supreme Court decided then was limited to this: if the system is discriminatory as described, there is indeed a constitutional violation. While the Court did take judicial notice of public records which in nearly all respects seem to prove the discrimination alleged, the question of proof technically remains outstanding. Once the case goes back to the trial court the defendants might put the plaintiffs to the test of proving their allegations.

The only area in which this might be a problem involves the relationship between the quality of education in low spending districts in as much as the plaintiffs' complaint asserts that spending differences constitute quality differences. There are those who allege that dollar discrimination alone is enough to cause the constitutional violation. The California Supreme Court did not have to face that question since it was not before the court. Even if cost/quality is important to plaintiffs' case, I believe that the State is in a very embarrassing and untenable position if it argues that its system designed to allow increased spending at local option, means that money is being wastefully thrown away. Nonetheless, it is imaginable that the plaintiffs could still lose *Serrano* in the trial court and in any event it surely will be some time before a trial court judgment ordering the defendants to do something is actually issued. In the interim, the case may be taken in its present posture to the United States Supreme Court which may or may not reach to take it.

Assuming a judgment is finally issued favorable to plaintiffs, it will not be against the Legislature even though what is clearly needed is legislative reform. Hopefully, the court has powers available like those it has in reapportionment so that it can effectively cajole recalcitrant legislatures to start on school finance reform although individual legislators are not subject to the contempt power of the court in the present state of the *Serrano* litigation.

### *The Implications for State Education Financing*

The California school finance system is much like the systems used in

all the rest of the states except Hawaii and perhaps one or two others. All such systems permit, indeed rely upon, local taxation by school districts which do not have equal financial capacity to perform the education function assigned to them. In crude terms, whatever kind of local government unit is used as the tax source for schools, we invariably find that some such units in a state are rich while others are poor. From these unequal starting points, naturally the richer of those units are able to and do raise more money with lower tax rates. It should be emphasized that it is not absolute wealth that counts, but rather the amount of wealth measured by the job to be done. The litigation has so far advanced in terms of how much wealth is there behind each public school child in the district. The children are usually counted in units of average daily attendance, which number of units are divided for each district into its gross wealth. The result is that some are richer than others. The wealth measure so far used is assessed valuation of property, which property hopefully has been assessed through uniform methods throughout the state. This does not always happen, however, and assessment practices themselves have been the basis of a number of recent school finance suits. While some other measure of wealth might be used, indeed be said to be a measure of wealth, property value has been employed both because there is available reasonably reliable data and because it is such wealth that local districts in fact tax (by and large) for school purposes. In short, *Serrano* thus far equates wealth with assessed value per pupil and declares that systems of school finance which are wealth discriminatory in this sense are bad.

The wealth disparities are different from state to state and on this basis alone the invidiousness of systems varies; it often has to do with how industrialized the state is or whether it has substantial natural resources concentrated in a few districts. Also relevant is the number of school districts given the total state population; the fewer the number the more likely the wealth will be more evenly distributed. Nevertheless, the essential constitutional evil of the American school finance picture according to *Serrano* is simply that local districts are allowed to tax on an unequal wealth basis. Put another way, it is not what the state is or isn't doing with its state aid *foundation plan* or *percentage equalizing plan* or *flat grant plan* or whatever. Under today's arrangements no matter what the state aid package, at some point the state aid stops and the districts rely on unequal wealth bases for remaining needs.

In California we have a foundation plan through which the state guarantees that there will be spent per high school student at least \$488. Yet the *average* spending level per high school pupil in California today is over \$900 with a range of between say \$725 per pupil and \$2,000 per pupil. The reason for that range again is that after the state guaranty

runs out, every district must tax on top; and as the opinion of the Court makes clear Beverly Hills Unified School District can and does raise a lot of money on top without much of a tax rate while Baldwin Park Unified School District does not raise very much at all per pupil even with a very high tax rate.

While the court pointed out the unfairness of present schemes of local school district taxation of property it did not necessarily strike down the property tax. The selection of real (and personal) property as the subject of taxation is not unconstitutional, at least under *Serrano*. The state certainly could decide to take over all of school financing and itself tax property uniformly throughout the state. In fact, this is a response to *Serrano*—a statewide property tax—that is likely to occur. Of course, the state could take over all or much of school finance and raise all the needed funds with other kinds of taxes.

In addition to full state funding there are certain systems which have been proposed which probably would be permitted by *Serrano* which allow local districts to continue to tax local property. There are essentially two such systems. The first involves redrawing school district boundaries so as to make all districts nearly equally wealthy; that is, all will have the same assessed valuation per pupil—this is the *reapportionment* remedy. The second is to make all districts *constructively* equally wealthy through a state aid plan that is truly equalizing. This is the so-called "power equalizing" remedy. Both systems are designed to eliminate the essential wrong upon which *Serrano* rests—fiscal inequality.

Many of us who have boosted the idea of the *Serrano* case in the last few years have talked about how it is going to help poor people. It should be pointed out, however, that in the primary sense the children who are complaining are those who live in poor districts, and such districts are not necessarily districts that are populated with poor people. In fact, a lot of the poor districts are bedroom suburbs which, in general, are populated by middle income rather than low income people. On the contrary, some of the rich districts are cities, such as San Francisco, where a lot of poor people live. In general, many cities, such as Los Angeles, seem to be about average in wealth.

This raises the question of where one draws the line as to who is hurt and who is helped by *Serrano*. Some see *Serrano* as only mattering to the extremes of the scale, consider it a matter of indifference to those in the middle in wealth, and hence say it will do little for the poor in the cities. They say that being treated the same as others is no advantage if it means being treated the same as always while others are treated worse. What they have in mind specifically is that if all the money now spent on schools in California were divided up on a per pupil basis, the districts of average wealth, such as Los Angeles, would come out with just about

the same amount of money as they now have while districts like Beverly Hills would find their funds cut in half. There are those who disagree with this concept believing that relative spending is what counts. The highest spending districts can better attract the best teachers and generate for themselves a lighthouse reputation which, in turn, reverberates in terms of the kinds of students and personnel that can be attracted. When Beverly Hills loses this advantage, Los Angeles gains. Additionally it is not at all clear that a leveling of today's average spending is what will come of *Serrano*. It could well mean that more money will be put into education than goes in at present. Even so, a commitment to spending according to need cannot occur without *Serrano* as a starting point. As a practical matter then, the question left by *Serrano* for the legislature is where is our commitment to public education going to be. If nothing else, *Serrano* leaves room, perhaps I should say, demands, legislative creativity.

Thus far in California, there has been substantial response to the opinion although it is yet too soon to say whether or not it is creative. A bill has been introduced in the Assembly which attempts to comply with *Serrano's* demands. There are some substantial questions raised as to how in fact it would operate; it employs a statewide property tax and allows power equalized local district add-ons. It is surely to be one starting point for debate in the 1972 legislative session. A committee has been appointed by the State Superintendent of Public Instruction and the State Board of Education for the purpose of reviewing *Serrano* and making recommendations. The Senate has appointed a Select Committee on the *Serrano* problem and has begun a research project designed to evaluate the impact of a myriad of new systems on all the districts in the state. Not surprisingly, the rich districts, Beverly Hills and its wealthy colleagues, have formed a league hoping to preserve their advantages as long as possible, or at least to protect their high cost schools in some way.

#### *Some Wider Implications*

So far we have dealt with the financing of current operating expenditures of elementary and high schools. *Serrano* has some wider implications that also deserve attention. The most immediate question is that of capital costs. School districts typically finance their school buildings by issuing school bonds and then taxing local property to pay the principal and interest on the bonds. Although it varies widely from district to district, on an annual basis capital expenditures tend to be 10% or 15% of operating expenditures. By and large state aid plans deal mainly with current operating expenditures although there are supplementary plans dealing with the capital costs. The *Serrano* opinion did not focus on

capital costs. However, it seems clear that if local financing of capital costs is essentially relied upon, then this part of the finance plan is equally bad. An intriguing side question regarding capital expenditures is whether or not there will be any retroactive implications. More particularly, what is to be done with outstanding bonds and what is to be done about existing inequalities in physical plants? Surely, outstanding bonds are validly issued, but does the state have an obligation to take over their payment or at least the payment of those in poor districts? Similarly, what about existing disparities in physical plants? Does the state have the obligation to bring all buildings up to par?

The next most immediate question that comes up is the financing system for community colleges. In California we finance community colleges or junior colleges as they are sometimes called, at the local level with a state foundation plan just like that which is employed for elementary and high schools. This is to be contrasted with California's full state funding of our state college and state university system. While the community college finance systems certainly contains the same unfairness as the elementary and secondary system, is it to be considered different somehow because attendance is not compulsory?

What about other municipal services? Many people have been saying that social welfare costs should be taken off the backs of cities and other local communities and be put onto the shoulders of the state or the federal government. Does *Serrano* provide a base for such a lawsuit? Using the analysis employed in *Serrano*, the central question would seem to be whether or not welfare is a *fundamental interest* in the way that education was held to be. In a recent United States Supreme Court decision, as I read it, that question was answered in the negative. Hence, despite substantial other pressures I do not expect to see courts pushing in the direction of state or federal financing of welfare. Similar questions can be raised regarding police and fire protection and the whole range of local services. As already indicated, if the *Serrano* line of analysis is to be followed, the question becomes whether or not the interest at stake like education, voting, criminal process, and political association is fundamental or, in the words of Mr. Justice Stewart, "merely economic and social."

There are a number of interesting points dealing with schools themselves that are tied in with the *Serrano* opinion. *Serrano* itself says nothing about the distribution of resources by a school board or a school administration *within* a district. It only goes to interdistrict disparities. Nevertheless, it may have implications for intra-district discrimination. In a recent District of Columbia case, it was held that intra-district spending disparities which matched the racial makeup of the neighborhoods *i.e.*, high spending in the white areas, was unconstitutional at least in the light

of an historic racial discrimination pattern in the District. That case put together with *Serrano* may provide a basis for new suits challenging unbalanced intra-district resource distributions which are unrelated to racial patterns.

Integration efforts may also be affected by *Serrano*. In a recent Detroit suit a Federal District Judge found that Detroit schools were segregated and indicated that the most useful way of ending the racial imbalance would be to have integration of public school students throughout the Detroit metropolitan area. In the past there has been a logical and substantial objection to busing across school district borders for as you do so you cross a new tax raising entity. If under *Serrano* the state takes over all school finance, then the borders will be administrative ones and metropolitan integration would be more feasible.

Interesting questions about the future of teacher salary schedules and collective bargaining are raised by *Serrano*. If the state takes over all school finance, then it may well also decide to enact actual statewide salary schedules rather than merely minimum salary schedules as is typically the case today. If this is the case, it might well be expected that as teachers are more organized, their representatives will be negotiating at the state level preferably with the legislature and the governor over teacher pay. They surely will be interested in bargaining with those who have the power to put more money into the school pot.

#### *Additional Egalitarian Questions*

Despite the egalitarian notions advanced by the *Serrano* decision, there will surely be substantial inequalities that remain. First of all, parents continue to have the right to put children in private schools where, if they are wealthy, they can lavish more expense on the children than would be available through public schools. Also, of course, in all those ways outside the school in which a child's learning is affected and where money can count, rich parents will continue to have a wealth advantage. Finally, we might find that in places like Beverly Hills, the recreation department may take over the sponsorship of the local football activities and the fine arts department may take over the sponsorship of the school orchestra, and so on. That is, school activities might contract and things which are not clearly at the core of the educational process may be taken over by municipal government which will continue to enjoy wealth advantages. The opposite effect might occur in Baldwin Park. There we might see schools providing free breakfasts or health care benefits to students.

There are also implications of *Serrano* for the role of the federal government in school finance. Although the legal principles of *Serrano*

do not mandate a national equalizing policy in which the wealth differences between California and Mississippi, for example, are eliminated, the moral imperative of the case certainly strikes out in that direction. Moreover, the federal government could force all the states to adopt *Serrano*-type policies either through mandatory legislation enacted under its powers under the 14th Amendment to the Constitution or through a carrot approach under which federal aid will be more favorably dispensed to those states which have fairer school finance systems. While there is hope, in general, for an increased federal financial participation in school finance, as there probably should be, if *Serrano* holds up, then state legislatures will not simply be bailed out by Washington. It is time for them to act; indeed the message of *Serrano* is that their action is long overdue.

**LAST ISSUE OF VOLUME TWO!**

**SEE PAGE 209 to RENEW YOUR SUBSCRIPTION**