Boalt 221.6: Education and the Law

Teacher Turnover in Tight Times

Reed v. State of California

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"I can get the job done if I can just keep my teachers. I'm not even asking for more resources, just my teachers. Just let me keep my staff. . . The message that these [layoffs] send is that education is not important. With every pink slip, this is the message. That's why I return every day – to try and defeat this message."[1]

Tim Sullivan is the principal of Markham Middle school, located in Watts, a Los Angeles neighborhood plagued by high crime rates, drugs, and incredibly low student test scores and graduation rates. He took over in 2008, and had more than twenty years of experience in the education field. This was his third principal gig, and it is easy to see that he loved it. When he started at Markham, the students, accustomed to a revolving door of adults in their school, asked him how long he was going to stay.[2] He responded by building a teaching force of new, young teachers – many from Teach For America – that shared his vision of reform and agreed to stay for the long haul in exchange for a promise of permanency and intensive training. He spent more than $250,000 in one year (2009) on teacher training. "Needless to say, Markham's budget did not have a quarter of a million dollars to throw around. However, we felt this expense was absolutely necessary . . . we were investing in our people."[3]

Not even one year after this massive investment in professional development, Markham was rocked by the equivalent of a California earthquake. During spring break of 2009, close to thirty of the school's teachers and *its entire* administrative staff, including Principal Sullivan, received pink slips – otherwise known as "RIFs" for "Reduction in Force" notices. Receiving a RIF means that you may or may not be laid off in the coming months – it is the 'notice' that law requires to be given by March 15th of any calendar year in which school employees may lose their jobs. This caused widespread panic across the school a few days before the students sat for their high stakes state testing.

Teachers, students, and parents turned to Sullivan, who had promised stability and job security, and who had raised expectations for his students in a few short years, for assurances. "I spent my time on the phone with teachers and parents who did not understand what was happening. . . . For the first time in my career, I did not have an answer to my teachers and their families. . . The whole point of my being at Markham was to reform it. I had a Dream Team of teachers, but because of the RIFs we couldn't dream."[4]

Reed v. California is the lawsuit filed by students in three middle schools, including Markham, to challenge the district-wide layoffs that disproportionately impacted their schools. This timely case is still being litigated in the California state courts. As described by the plaintiffs, it pits the interests of students and new teachers in very poor neighborhoods of Los Angeles against those of more senior teachers in the rest of the city. As described by the teachers' union defendants, the plaintiffs' actions threaten to undermine seniority rights *and* hurt children in Markham middle by "fencing in" the least senior, least effective teachers at their schools. Regardless of how it is described, *Reed* is the primary reason – if not the only reason – that students in three struggling middle schools did not see most of their teachers laid off *again*

[1] Declaration of Tim Sullivan, p 10-11.
[2] Since this lawsuit, Sullivan has left the school. The kids, as it turns out, were right.
[3] *Id* at 7.
[4] *Id* at 6.

in 2010, nor will they in 2011. But its importance should not be overstated – according to some intimately involved with the work, it is a fairly unimportant piece of the larger education policy story of reforming the way that teachers are hired, promoted, paid, and dismissed in Los Angeles.

The short version of the story goes something like this: California slashed the school district's budget multiple years in a row due to the economic recession. In order to balance its budget, the district laid off several thousand teachers. Though the *positions* eliminated were spread across the district's schools, the individuals who actually lost their jobs were those "newest hired," because according to the union contract and state education code, the district cannot layoff any teacher if there is a less senior teacher still on the payroll. In several struggling schools, more than half of the teachers were "RIFed." Some of those spots were given back to the teachers who were demoted to long term substitutes, others spots were filled by more senior teachers who moved when their prior position was cut. Still others were not filled at all, as it is difficult to get experienced teachers to work in these challenging schools.

The ACLU, Public Counsel, and Morrison & Foerster, LLP brought suit on behalf of student plaintiffs against the LA Unified School District claiming that the seniority based RIF policy created an unconstitutional violation of the students' rights to equal and adequate public education. At the court's insistence, the teachers union was officially added as a defendant and vigorously defended the status quo. The trial court agreed with the students and encouraged the parties to negotiate a settlement. The result: a consent decree that enjoins the district from RIFing any teachers working in 45 targeted schools, including the three attended by the plaintiff students. Today, the union has appealed the agreement, but the courts have refused to stay its implementation, so it is guiding the latest round of budget based layoffs.

Context

National

As with any lawsuit, particularly those with far ranging, policy focused remedies, *Reed* can only be understood in its larger context. At a national level, the education "reform" movement that gained prominence most recently in the 2000s and picked up speed with the Obama Administration forms a vivid backdrop. California's budget crisis and strong history of education rights litigation was the catalyst for the suit. And locally, Los Angeles was home to the most controversial use of teacher "effectiveness" data in recent times – a publication of individual teacher's scores in the Los Angeles Times.

The history of American public education is one of constant reform and trial and error. This history is beyond the scope of this story. What is most relevant is the recent reform movement given a national character in the oft publicized fight between DC Schools Chancellor Michelle Rhee and the DC teachers union. Rhee and those reformists on her "team" generally believe that teachers can and should be evaluated on their effectiveness in the classroom, and that those performance evaluations should be used in making hiring, firing, promotion, salary, and tenure decisions. After all, they argue, research is clear that having a high quality teacher is the most important factor in determining what a child learns. Why not reward quality and success and weed out incompetence?

The unions have adamantly championed the continued use of seniority as the sole criterion for these employment decisions. They argue that this system is best for both teachers and students, as it protects the skills and talent gained by spending time in front of a classroom, and point to evidence that the first few years of a teacher's career are marked by a steep learning curve. Once that learning has been completed, there is real value in maintaining that person as a teacher, the union argues.

Further, there is legitimate controversy about the current tools for teacher evaluation. Most all of the proposed systems involved a mixture of factors including change in student test scores from the beginning of their time with a teacher to the end; principal evaluation based on classroom observation; and peer evaluation. Principal (and peer, to a lesser extent) evaluations are criticized for their subjectivity and the ease with which bias and personal dislike could be used to justify negative employment decisions. Conversely, student standardized test scores are lambasted for being incomplete, culturally biased, and testing only a student's ability to regurgitate information, instead of her ability to think critically. Further, the majority of our nation's teachers teach in subjects for which standardized testing is not widespread – art, foreign languages, music, social science, and even most sciences are not subject to the intense testing regimen of math and reading courses. Finally, there is an underlying unease with the concept than an individual teacher can or should be held responsible for a student's growth – after all, schools work as teams, and a child with an amazing reading specialist or social studies teacher is likely to do better in English, regardless of the quality of her English teacher. It is intuitively unfair to penalize or reward the English teacher in this case.

Finally, as some of my more labor-minded classmates pointed out, seniority, tenure, and advanced notice of possible layoff via pink slip are all innovations developed to protect workers against unfair termination without procedural due process. The concerns that drove the creation of these policies are not relics of the past. Teachers still rightfully worry about principals that play favorites and school politics that could cost them their jobs. These concerns should always be considered in light of the fact that teaching has been a predominantly female profession, while principals have historically been men. The power dynamics have shifted as myriad professional doors have opened for women, giving them options outside the public school system. However, the education reformers' rush to eliminate these protections is understandably met with trepidation from teachers who grew up in a recent but slightly older generation.

This fight is one component of a larger question about what the United States can do to improve student learning, as it is consistently outperformed by other countries across the world on international tests of student achievement and knowledge. The unions claim that this focus on performance pay and performance evaluation is distracting from the underlying problems plaguing schools – i.e. the lack of sufficient resources and support for educators. The Michelle Rhees of the world claim that research is mixed on the efficacy of almost every type of education intervention *except* having a high quality teacher, and that for this reason we should focus first and foremost on ensuring that every classroom is led by an effective teacher. This debate, again, is much more complicated than I have the space to describe – both in terms of politics and policy. But it is the important backdrop in which *Reed* is being litigated.

State

"By almost any measure, California ranks at or near the bottom with respect to funding for public schools relative to other states."[5] It is 44th in per pupil K-12 spending; 46th in terms of percentage of personal income spent on education; and 50th in number of students per teacher and per librarian.[6] The State also has one of the most difficult student populations because of the very high percentage of English learners. More than one third of students come from families in which the parents do not speak English fluently.[7] And more than half of students come from families living below twice the federal poverty line.[8]

Much of California's spending problems can be traced to Proposition 13, which reduced property tax revenues by 53 percent in 1978 by capping local property taxes at 1 percent. Immediately prior to Prop 13's passage, local revenue (primarily made up of property taxes) was providing the majority of school funding in California. In 1996, Proposition 218 dealt another serious blow to local governments' ability to raise revenue for schools by insisting that all tax increases be approved by a two thirds public vote. Not surprisingly, given the severely diminished ability of local school boards and governments to raise revenue, school districts have become heavily reliant upon state funding.

It should be noted that the shift to state funding is not simply a function of decreased local revenue. It is also an intentional policy shift designed to decrease inequality in educational opportunity between property rich and property poor neighborhoods. Just prior to Proposition 13, in 1976, the California Supreme Court was the first in the country to declare education a fundamental constitutional right in *Serrano v. Priest*.[9] In response, the State began to use state funds to smooth out discrepancies in local school funding so as to ensure that students in poorer neighborhoods were not denied their constitutional rights.

California has been at the forefront of education litigation since *Serrano I* and *II.* In those cases, the court invalidated school finance schemes that led to vastly different expenditures per pupil in wealthy neighborhoods and poor neighborhoods. The court held that wealth was a suspect class, education was a fundamental right, and a state interest in promoting local control of education was not compelling enough to justify the local property tax basis for school funding. Education, the court reasoned, is a "fundamental interest which lies at the core of our free and representative form of government."[10]

Article IX, Sections 1 and 5 are frequently cited as the "education clauses" in the constitution. Section 1 says: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."[11]

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[5] "Race to the Bottom? California's Support for Schools Lags the Nation," Center for Budget Priorities report, June 2010, pg 1 http://www.cbp.org/pdfs/2010/1006_SFF_how_does_ca_compare.pdf.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Serrano v. Priest*, 5 Cal. 3d 584, 1976.
[10] *Serrano v. Priest*, 5 Cal. 3d 584, 608-09 (1971).
[11] CAL. CONST. art. IX, § 1.

Section 5 reads "[t]he legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."[12]

Sixteen years after *Serrano II*, the California Supreme Court announced that, in addition to its duty to provide equal educational opportunity via equal funding, the State has a responsibility to ensure that no school district denies its students "basic" educational equality.[13] In that case, a school district had decided to end school six weeks early due to budgetary concerns. The court held that so doing denied students their fundamental right to a "Constitutionally equal education."[14] Note that the holding is couched in terms of equality – the plaintiffs advocated for a determination that the State owed students an "effective" education, but the court did not go down that road.

In 2000, the ACLU, Public Advocates, the Mexican American Legal Defense Fund (MALDEF), and Morrison & Foerster, LLP filed a class action lawsuit, *Williams v State of California*, claiming that the state was denying students a basic right to education by providing inadequate facilities, textbooks, and teachers. After four years of litigation, the parties reached a settlement that "established new standards and accountability measures" for the state.[15] The settlement states that every student has a right to "sufficient textbooks," a school in "good repair," and a qualified teacher.[16] This case, as Lhamon describes it, was about coming to a common understand of what a school is – that it must have textbooks for every child, and bathrooms that work, and qualified teachers. But, for better or for worse, it was ultimately decided out of court, and so did not lead to any sort of judicially-established minimum educational adequacy standards in California.

\Whatever the reasons – judicial, political, or economic – heavy use of state dollars makes California school districts particularly vulnerable to state budget fluctuations. The recent economic recession hit California especially hard, which translated to dramatic decreases in public education funding. In the 2006-07 school year, schools received $8,801 per student; in the most recent 2011-12 proposal, the schools will receive $7,729 per student. This proposal is essentially the same as the 2010-11 expenditures. This decrease in funding led schools around the state to make dramatic cuts including shortening the school year, closing libraries and computer labs, increasing class sizes, eliminating summer school, cutting electives, and laying off teachers. These budget-based layoffs were the catalyst for the *Reed* lawsuit.

Local

The fight in D.C. about how to assess and reward teachers in an attempt to improve teacher quality and student learning was not limited to the east coast. In April, 2009, right in the midst of the California budget crisis, the Los Angeles School Board passed a resolution directing the Superintendent to put together a task force of stakeholders to make recommendations about new

[12] CAL. CONST. art. IX, § 5.
[13] *Butt v. State of California*, 4 Cal. 4th 668, 685 (1992).
[14] *Id.*
[15] *Williams* Report 2007: Two Years of Implementation, 14. http://www.publicadvocates.org/sites/default/files/library/williamsreport2007_final_spread_reduced.pdf
[16] *Id.*

policies on teacher effectiveness and quality.[17] "The Board passes resolutions all the time, and frequently they aren't acted upon, but this time it was different," explains Noah Bookman, an LAUSD employee working solely on teacher quality initiatives.[18] "The Superintendent took a little while to get going, because he wanted to get Ted Mitchell, a pretty prominent guy in the California education world, to lead it." By the time the work really started happening in fall of 2009, the task force was relatively large – "we called it the Noah's Ark Task Force – two of everything – two teachers, two union reps, two administrators, two people from the district, etc. Plus, it's funny, because that's my name, and I was one of two people brought on to do the staff work."[19]

The group initially focused very narrowly on how to "get rid of bad teachers," partially because of a series of highly publicized LA Times investigative reports that described a few extremely bad (in some cases, criminal) teachers that either could not be fired because of union and tenure rules, or cost the district hundreds of thousands of dollars to remove from the classroom (in attorneys fees and settlement fees).[20] But then Board Member Yoli Flores stepped in and urged the task force to broaden its scope. In the end, the task force's goal was to move toward a place where "we can truly say that there is an effective teacher in front of every classroom, and an effective leader in every school."[21,22] About half way through the task force's tenure, the district hired two new employees, Bookman and his coworker, Drew Furedi, using private foundation money that was donated for this work. While the task force was meeting, they facilitated subgroup meetings, did research for the group, drafted documents, and generally did the background leg work that needed to get done.

The group worked for almost a full year in developing recommendations, and presented them to the board in April, 2010. They included, among other things, proposals to (1) develop a new, comprehensive, multiple measure evaluation system for teachers, principals, and non-instructional staff, and (2) to provide more and better professional development in response to the evaluation results. The Superintendent issued a statement expressing strong support for the work the task force did and the recommendations it made, and articulated actionable steps he and the district would take to implement those recommendations.[23] The difficult questions, of course, are about how to tie these evaluations to important decisions such as tenure-granting, promotion, placement, layoffs, and for-cause dismissal. Bookman and Furdeti have transitioned to working on designing these policies and preparing for rubber-meets-road challenges. While admitting that there is no perfect system, Bookman explains that the district believes that it *should* use evaluations of an individual's effectiveness as part of these important decisions, and that even

[17] "Quality Leadership and Teaching to Ensure A World Class Education for All," Resolution Approved by LAUSD School Board April 28, 2009.
[18] Personal Interview with Noah Bookman.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Ms. Flores has become passionate about this issue. She recently started a nonprofit dedicated to working with parent groups around the country to organize and advocate for change in teacher effectiveness.
[23] "Immediate Action Steps Addressing the Recommendations of Teacher Effectiveness Task Force," Statement issued by Office of the Superintendent, April 27, 2010. http://etf.lausd.net/sites/default/files/Teacher%20Effectiveness%20Task%20Force_Immediate%20Actions%20%28Final%204%2027%2010%29.pdf.

very rudimentary assessments of quality such as the basic principal-observation checklist used to evaluate teachers today would be better than nothing in providing guidelines about how a teacher is performing.

Today, the work has moved forward dramatically, and LAUSD plans to implement a pilot version of the evaluation and professional development program in 100 schools in the 2011-12 school year. If all goes as planned, "we will go to scale in 2012 or 2013 – it's a pretty aggressive plan."[24] LAUSD is the only district in California implementing a comprehensive evaluation program, Bookman says, and is one of the few in the country.

Given the nationwide attention on the issue of "effective" teachers, why has LAUSD emerged as a leader in the field? At least five factors coalesced: (1) the arrival of a superintendent who has worked on these issues before and is passionate about them, (2) the presence of a School Board member to champion the issue, as well as a Board that is generally supportive, (3) a Mayor who pays attention to education and worked hard to elect a school board that would work with him on reform, (4) the Los Angeles Times' work publicizing the problem, and (5) least important, the state budget crisis combined with the *Reed* lawsuit.[25]

John Deasy arrived in the summer of 2010 as the Deputy Superintendent, and eventually became Superintendent of LAUSD in April, 2011. He came from the Gates foundation, where he worked on teacher effectiveness, and had had leadership positions in other school districts where they had done some work in this realm. He frequently talks about it as the "most important thing" in improving public schools. "This issue is his bailiwick, and his arrival really super-charged our work," Bookman explains.[26] Superintendent Deasy conceptualizes the district's approach to increasing effective teaching as a "four sided box" – they come at the issue in four distinct but related ways: regulation, legislation, litigation, and negotiation.[27] Some prongs are more important than others. While the district is actively pursuing a legislative agenda (increasing the amount of time a teacher is employed before she is up for tenure, for instance) and will push for changes at the bargaining table this summer when their contract is up for renegotiation, they do not put legislative victories at a "particularly high likelihood of success, given the power of the California Teachers' Association in California, and their core belief in seniority."[28] Instead, the district is working primarily through the regulatory process, looking for policies they can implement within the confines of current statute and union contracts.

Just a few weeks after Deasy arrived at Deputy Superintendent, the Los Angeles Times published a second high-impact investigative report on teacher effectiveness in LAUSD. This time it was incredibly controversial: they hired a researcher from RAND to compute effectiveness ratings based on student test scores for every teacher in the district for whom data

[24] Personal interview with Noah Bookman.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*

was available.[29] Among its more interesting findings: the most effective teachers were *not* clumped in the "best" schools, and the least effective teachers were also not all located in the poorest neighborhood schools. In fact, within school variation was larger than between school variation in teacher effectiveness. The most effective teachers routinely raised students' achievement from "below grade level" to "advanced" over the course of the year, while the least effective ones watch as their students lose ground.[30] By publically naming some individual teachers as ineffective, the "two Jasons" (both lead reporters are named Jason) added fuel to a nationwide conversation about the appropriate use of standardized tests in assessing teachers. The story quotes the president of the UTLA adamantly opposing the use of standardized test scores in teacher evaluations, explaining that it encourages teaching to the test. But the impact on teachers themselves was also a big part of the debate. For instance, there was a highly publicized teacher suicide just following the publication of this data.[31]

It also quotes outgoing superintendent Cortines explaining that LAUSD has "better data than anyone else in the nation – we just don't use it well." He added, "I think it is the next step."[32] Mr. Deasy and his new task force heard the message from Cortines and the LA Times loud and clear, and were already hard at work on this reform when the Mayor decided to help out by focusing on the fourth side of the Superintendent's box – litigation – by approaching the ACLU of Los Angeles about the possibility of bringing a lawsuit.

Mayor Villaraigosa[33] has a fascinating and relevant personal history with the city's public schools and labor community. He grew up in Los Angeles and volunteered for his first labor movement at the age of 15 (a grape boycott let by Cesar Chavez). Around the same age, he dropped out of school. He only returned to get his high school diploma via night school at his mother's insistence and pleading. At night school he met a teacher that encouraged him to go on to college. After two years in community college he transferred to UCLA. He eventually enrolled at the People's College of Law, an unaccredited law school that describes itself as a "non-profit, community-run law school to bring legal resources to under-represented communities and train legal advocates to secure progressive social change and justice in society."[34]Villaraigosa never passed the California Bar.

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[29] "Grading the Teachers: Who's Teaching LA's Kids?" LA Times Investigative Report, Jason Felch, Jason Song, and Doug Smith, Aug. 14, 2010. http://www.latimes.com/news/local/la-me-teachers-value-20100815,0,2695044.story?page=1.

[30] *Id*.

[31] In arguing against a similar release of teacher specific data in New York, the union attorney said "The city of L.A. did this, and a teacher jumped off a bridge. Do we want that?" The article goes on to explain that the attorney "was referring to the suicide of an elementary teacher weeks after the ratings were released by The Times. . . Although Los Angeles teachers union officials and family members have speculated that the scores were a factor in the teacher's suicide, no evidence to support that speculation has been made public." Geraldine Baum*, NY Union Seeks to Block Disclosure of Teacher Evaluations*, 12/09/10 Los Angeles Times. http://articles.latimes.com/2010/dec/09/nation/la-na-teachers-ny-20101209.

[32] "Grading the Teachers: Who's Teaching LA's Kids?" LA Times Investigative Report, Jason Felch, Jason Song, and Doug Smith, Aug. 14, 2010. http://www.latimes.com/news/local/la-me-teachers-value-20100815,0,2695044.story?page=1.

[33] Note that he was born Antonio Villar, but created the last name when he married his wife, school teacher Corina Raigosa. Their marriage ended 20 years later after he had a publicly disclosed affair with a news anchor.

[34] About PCL: http://www.peoplescollegeoflaw.edu/about.htm

He did, however, work his way up the labor union political ladder. He worked as a union organizer for the Service Employees International Union (SEIU), the American Federation of Government Employees, and the UTLA (!).[35] He also served as a president of the Southern California branch of the ACLU in the 1990s.[36] He, clearly, was intimately familiar with many of the players that would be involved in the *Reed* lawsuit.

He was elected Mayor in 2005 (at the age of 52) and "dedicated most of his first term to reforming Los Angeles' public schools."[37] He was elected on a school reform platform, and early in his tenure managed to get a state law passed that gave him and the city substantial control over the city's schools.[38] After that grab of power from the School Board was deemed unconstitutional by a three judge state appeals court, Villaraigosa "rebounded with an orchestrated political coup: He tapped an array of companies that do business with City Hall to raise a record $3.5 million and get three favored candidates elected to the board so he would control the majority."[39] Working with his newly elected school board allies, he created the Partnership for L.A. Schools, which describes itself as the "first of its kind collaboration between the City of Los Angeles and the Los Angeles Unified School District." The Partnership is best understood as one of the many charter school operators that LAUSD has granted charters to. It currently serves nearly 20,000 in 21 schools. To put this in context, the entire district serves 678,441 students in grades K-12 in 1,065 schools.[40]

Recently Mayor Villaraigosa gave a speech that made extraordinarily clear where he stands on issues of education reform. The language is striking and worth repeating:

> "Why, for so long, have we allowed denial and indifference to defeat action? I do not raise this question lightly, and I do not come to my conclusion from a lack of experience. I was a legislative advocate for the California Teachers Association, and I was a union organizer for United Teachers of Los Angeles. . .
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> Over the past five years, while partnering with students, parents and non-profits, business groups, higher education, charter organizations, school district leadership, elected board members and teachers, there has been one, unwavering roadblock to reform: UTLA union leadership.
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> While not the biggest problem facing our schools, they have consistently been the most powerful defenders of the status quo. I do not say this because of any animus towards unions.

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[35] Mayor's Biography: http://mayor.lacity.org/MeettheMayor/Biography/index.htm.
[36] Villaraigosa Offers Mutued Response to Death of LAPD Ex-Chief, 4/16/2010 Phil Willon, http://latimesblogs.latimes.com/lanow/2010/04/villaraigosa-offers-muted-response-to-death-of-lapd-exchief-gates.html
[37] Mayor's Biography: http://mayor.lacity.org/MeettheMayor/Biography/index.htm.
[38] Assembly Bill 1381, signed into law by Governor Schwarzenegger in September 2010.
[39] Phil Willon, *A Confident Villaraigosa Still Thinking Big for L.A.*, Los Angeles Times, 2/22/2009 http://www.latimes.com/news/local/la-me-villaraigosa22-2009feb22,0,292130.story.
[40] Partnership for LA Schools: About http://www.partnershipla.org/About; LAUSD Fast Factshttp://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/LAUSDNET/OFFICES/COMMUNICATIONS/COMMUNICATIONS_FACTS/10-11FINGERTIPFACTS_FINAL.PDF.

I deeply believe that teachers' unions can and must be part of our efforts to transform our schools. Regrettably, they have yet to join us as we have forged ahead with a reform agenda (emphasis added)."[41]

Ramp Up to Litigation

"This was really a case that came to me. Not the other way around," Mark Rosenbaum, lead attorney for ACLU Los Angeles, says.[42] He was referring to the way that nonprofit legal organizations often operate: choose an issue, decide to litigate, look for the appropriate set of facts and the appropriate plaintiffs. This was "not one of those cases," Rosenbaum says, despite the assumption from some at Los Angeles Unified School District (the district, or LAUSD) to the contrary. [43] Instead, Rosenbaum was at a meeting with "the Mayor and some other individuals who were involved with inner city schools," when he heard for the first time about the disproportionate way teacher layoffs had affected the public schools in Watts neighborhood.[44] "They asked me if I would be willing to go meet with the teachers and principals in those schools, and I said 'sure,'" Rosenbaum said.[45]

As he talked to people, Rosenbaum uncovered a dire situation: as a result of budget-driven layoffs, 72 percent of teachers received reduction in force (RIF) notices at Liechty Middle School, 50 percent at Gompers Middle, and 57 percent at Markham. His initial conversations were at Liechty and Gompers, located in Pico-Union and Watts neighborhoods, respectively. Liechty was created in 2007-08 to alleviate overcrowding at two other middle schools. Its enrollment, just under 2,000 students, is 96 percent Latino, 46 percent English language learners, and 90 percent from economically disadvantages families.[46] Gompers is slight smaller, with 1,600 students, and slightly more diverse: 71 percent Latino and 29 percent black. Over one third are English language learners, and 76 percent are from economically disadvantages households.[47] Unlike Liechty, it has been around for many years, and has a record of failing accountability measures for more than a decade.[48]For instance, on average, fewer than 15 percent of students performed at or above proficient on state achievement testing over the last five years.[49]

In 2009, as if to add insult to injury, the school district implemented a budget-driven Reduction in Force that "decimated the teacher corps" at these schools.[50] The middle school students came to school in August to find that over half of their teachers were gone, and many of

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[41] Remarks as Prepared for Mayor VIllaraigosa Speech to Public Policy Institute of California's "Future of California" Conference, Education Keynote, 12/7/2010. http://foxandhoundsdaily.com/blog/joe-mathews/8332-villaraigosas-game-changing-speech.
[42] Personal Interview with Mark Rosenbaum.
[43] Personal Interview with unnamed source (for confidentiality reasons he was unwilling to be named. Current employee at LAUSD who was not directly involved with the litigation but works on overlapping policy issues).
[44] Personal Interview with Mark Rosenbaum
[45] *Id.*
[46] Complaint, 9-10.
[47] *Id*. at 9.
[48] *Id*. 9.
[49] *Id.*
[50] *Id,* at 1.

their classes would be taught by substitutes. While some long term substitutes were hired (several in the form of prior full time teachers who were willing to be re-hired as long term subs, despite losing their benefits), some classes had as many as 10 short term substitutes between August and February.[51] Some of the positions were filled with relatively more senior teachers who had been cut from "better" schools and had agreed to take this less desirable placement in order to maintain employment at all. These teachers often "had not taught at a middle school and were therefore unfamiliar with the state-mandated content standards for the middle school subjects they were assigned to teach."[52]

Anyone who spends time in inner city public schools would not be surprised to know that some of the teachers shipped in from wealthier public schools were not prepared for their new positions. Much like those that Principal Sullivan recruited at Markham, the teachers who lost their jobs at Gompers and Liechty *wanted* to be there. They had been recruited as part of a school turnaround plan that focused on finding teachers excited about the potential of building this kind of school. As the complaint explains eloquently,

> "[T]he teachers forced to leave were precisely the teachers most needed in the schools: teacher who wanted to stay and provide long-term stability and educational opportunity specifically for the student populations at [these schools]; teachers who had trained themselves in and subscribed to the methods of educational reform being implemented at the schools; teacher who, I short, believed in their students and wanted to and were prepared to teach them. [The RIFs] made teachers who wanted to be at these schools and had built positive relationships with the students and community leave, only to be replaced by teachers who often had little to no experience working with the student populations serviced by the schools, and all too often lacked the commitment necessary to build trust with the students and to help them succeed.[53]

As it became clear that he would represent these students in court, Rosenbaum and his team made a strategic decision to add a third school – one that was not run by the Mayor's Partnership, because he did not want this case to have the appearance of being only about the "Mayor's schools." To decide which non-Partnership school to add, he and his staff simply turned to the numbers. They chose Principal Sullivan's Markham because it was one of the worst hit by RIF imposed teacher turnover. At Markham, also about 1500 students, 72 percent are Latino and 27 percent are black. Just under 33 percent are English language learners, and 82 percent come from economically disadvantaged families. Similarly to Gompers, it has been in "program improvement" for more than a decade, which indicates that it has failed to meet student achievement goals set by the state.[54]

Early in this process Rosenbaum reached out to his former colleague, Catherine Lhamon, in her new position as Director of Impact Litigation at Public Counsel. Lhamon had worked at the ACLU for 10 years under Rosenbaum, and the two had worked together on *Williams* and other education cases, so "she was a natural partner," Rosenbaum explained. Lhamon's "life as a

[51] *Id,* at 3.
[52] *Id* at 4.
[53] *Id.*
[54] *Id.* at 10.

lawyer has been dedicated to race-based civil rights work," and she views education as a huge part of that work.[55] "The majesty of *Brown v. Board* is what made me want to be a lawyer."

Between them, Rosenbaum and Lhamon have been involved in many of the seminal education law cases in California. *Williams* was particularly important as it established a "common understanding of what it means to be a school," explained Lhamon. That suit was about establishing a baseline – textbooks and facilities – for every public school, at a time when some people told her it was "unreasonable" to expect that every student would have her own textbook. *Reed* was easy for her to get on board with, because it is the natural next step, she says, because it argues that *teachers* are a vital ingredient of what it means to deliver education, and thus must be distributed in a way that allows for equal access to an adequate education. Further, it fit with her focus on race based civil rights advocacy since the vast majority of the students harmed by these layoffs are Latino and African American.

As every public interest attorney knows, you can't file a big case like this without funding. For this Rosenbaum initially called another attorney he had worked with before: Jack London at Morrison Foerster. But, "Jack was in Japan at the time, and he recommended I contact Sean Gates in the firm's Los Angeles office. In the end, both London and Gates would be included on the team of named attorneys filing this suit with Lhamon and Rosenbaum.

At this point, the team faced a difficult decision. "We knew that there were many other schools suffering similarly around the district," Rosenbaum said. But they were up against two limitations: time and people power. The first was critical – the schools had already been decimated by RIFs, but the state budget crisis only was only worsening, and there was talk of another large set of RIFs in 2010. A second RIF would cause two problems: first, it would again create major instability in the school, send a message to the students that their education was not important, and eliminate any hope of rebuilding institutional memory about particular students and families; second, some of the hand-picked teachers who wanted to work at these school and had been laid off in 2009 (round 1 of RIFs) managed to make it back into the school as long term substitutes, and they would be the first to go in a second round of RIFs. Thus, for all the same reasons that the first round of RIFs were damaging, the second round would substantially increase the trauma at these schools.

Everyone involved wanted to get into court early enough that the judge could issue an injunction forbidding the District from implementing further RIFs at these three schools before the 2010-11 school year began. An attempt to file a class action for the entire district or any other sort of larger plaintiff group would have slowed the process dramatically, especially since "we had limited people power, and we knew that our theory was novel." In the end, Rosenbaum said, "we decided we wanted to establish the principle with these three schools, and we really wanted to keep these kids from having this RIF problem repeat itself next year. And we hoped that the district would be "sensitive, and expand the remedy to other schools."[56]

[55] Personal Interview with Catherine Lhamon, April 4.

[56] It is worth noting that the team did not avoid all delays that would come from class certification. Their complaint posits that the named plaintiffs represent s a "class of children consisting of all present or future students attending Gompers Middle School, Liechty Middle School, and Markham Middle School." (Complaint at 8).

Once the team of lawyers was in place and the three middle schools had been chosen, the final and most important members of the team had to be assembled: the student plaintiffs and their families. "The teachers brought us kids," remembered Rosenbaum. "We sat and talked to kids – and their families – for days on end. They were *all* so impressive. But in the end, you would have chosen the same kids I did."

Parties and Judge

So who were the kids? The complaint listed eight student plaintiffs: three from Gompers, one from Liechty, and four from Markham.[57] The two students ACLU chose to focus on were Sharail Reed and Concepciona Manuel-Flores, both students at Markham Middle school. Sharail was in 8th grade at the time the lawsuit was filed, and when she grows up she wants to be either a psychologist or a lawyer. Concepciona was in 7th grade, and was one of the top students in her school – a straight A student who participated in the schools gifted program called AVID. After school she takes care of her younger brother and sister – age 4 and 11 months old – until her mom gets home from work at 10pm. *Then* she does her homework, even though she says, "I don't like having homework. But I know it's good for me."[58] She wants to be a teacher or a lawyer, because "being a lawyer would be cool because lawyers hear the lives of people and why they're so hard. A good lawyer hears people's stories and helps them out when they need help."[59]

It is easy to see why the judge was taken by these children. Concepciona displays the charm that only an articulate yet still innocent 7th grader can display: "I think it's probably different in other schools because they don't have the same experience I had. I'm happy for kids in other schools who don't lose their teachers because they're not going through what I am."[60] And Sharail eloquently explained that "it makes the whole classroom situation kind of awkward, where the teacher doesn't know your name and you don't know the teacher's name."[61]

They are also the best able to explain the impact of the RIFs. Sharail says that she is "so ashamed of how little she knows about history that she falls quiet when friends from other schools start talking about history." But she shouldn't be ashamed – she had nine different substitutes in her history class by the time the lawsuit was filed in March.[62] And Concepciona, who had 6 or 7 substitutes in the first semester of her English class, is devastated about the loss of her 4.0 GPA at the hands of a thoughtless sub who assigned every student a C grade despite having collected no written work from the students.

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[57] Each of these students were officially represented by a guardian ad litem since they were minors.
[58] Concepciona Manuel-Flores statement from Mayor Villaraigosa Huntington Post comment: http://www.huffingtonpost.com/antonio-villaraigosa/concepcionas-story_b_574230.html
[59] *Id.*
[60] Concepciona Manuel-Flores Statement at time of filing, as posted on ACLU's website.
[61] Ted Rowlands and Chuck Condor, *LA Middle School, Students, Struggle Under Budget Cuts*. CNN, March 4, 2010. http://articles.cnn.com/2010-03-04/living/layoffs.education_1_substitute-teachers-teacher-layoffs-inner-city-school?_s=PM:LIVING
[62] Sharail Reed Wants to be the First in Her Family to Attend College, But First She Needs a Teacher, Lawyersinlongbeach.com, http://lawyersinlongbeach.com/sharail-reed-wants-to-be-the-first-in-her-family-to-attend-college-but-first-she-needs-a-teacher.html.

> "I have A's in all my classes and I'm a really good student. I had never gotten a C on my report card before this year. In my English class, one of the subs that had been teaching us for only a few days gave me a C, and I don't know why I got that grade. It made me really sad and I think it's unfair that I received that low grade when I did everything I was asked to do in my English class. I don't know how that sub could grade us on anything, because he had not assigned any graded work or given us tests or quizzes before he gave us our grades. And the subs that were there before him never gave us graded work either. If we did any work in class, we gave it to the subs, and then we never saw it all again. The grades he gave us are kind of messed up. Because almost every student in the class got the same grade, a C, although a few students received Fs because of their behavior. I do not think it is right that we were given low grades when the subs had not given us work or taught us the things they were supposed to cover in our 7th grade English class.
>
> "I've cried about it a lot of times because good grades are important to me and I'm afraid that the C might keep me from participating in AVID next year. I didn't do anything to get a C, and it's really unfair. I have A's in all my other classes. I have never even been assigned homework in my English class, but I got a C in it because the teacher had to make up a grade and picked that one. Three or Four other students cried when they found out they had received a C in English. My friend Xitlani was also crying because she also got a C and she didn't do anything wrong."[63]

Initially the complaint only named the State of California and the Los Angeles School Board as defendants, but "early in the case, the court ordered Plaintiffs to join as parties United Teachers Los Angeles (UTLA) and the Mayor's Partnership for Schools (Partnership), which, pursuant to an agreement with LAUSD, operates various LAUSD schools, including Markham and Gompers."[64]

The UTLA has been the most active defendant in the case to date, vigorously fighting to protect the seniority based layoff system as a statutory and contractual right of teachers and as good policy. UTLA's President is AJ Duffy, who was born and raised in Brooklyn, New York. He has been called "huffy Duffy" in the at least one editorial in the LA Times, which also described him as "staunchly anti-reform."[65] Julie Washington is one of the union's Vice Presidents and was oft-quoted in the news about this suit. Interestingly, Rosenbaum says that before filing the complaint he and Lhamon met with the union leaders and their attorneys and laid the whole case out on the table for them, and that the union was quite supportive. "We even hugged about it," he says, and everyone seemed to agree that these layoffs were hurting kids. Rosenbaum and Lhamon were "surprised" by the degree of opposition when they filed the case. However, judging from the early news stories, the union started off biting its tongue: a Daily News story quotes Duffy as saying that he did not oppose the lawsuit in general, but thought that singling out these three schools was not the right tactic given the larger problem of widespread layoffs.[66]

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[63] Concepciona Manuel-Flores statement from Mayor Villaraigosa Huntington Post comment: http://www.huffingtonpost.com/antonio-villaraigosa/concepcionas-story_b_574230.html

[64] Findings and Order Granting Final Approval of Settlement, p 1.

[65] http://blogs.laweekly.com/informer/2011/01/aclu_wins_lawsuit_utla_seniori.php

[66] http://www.dailynews.com/breakingnews/ci_14466455

The Partnership was, from the beginning, a defendant in name only. After all, the Mayor and his staff were the ones who approached Rosenbaum about bringing this suit in the first place.

Judge William Highberger is a relatively new member of the complex civil litigation division of the Los Angeles Superior Court. He was added in March, 2008, and his wife, Carolyn Kuhl-Highberger is the Presiding Judge in the division. Before this job, Judge Highberger worked for 7 years as a civil judge in the same Superior Court. He graduated from Princeton University and then Columbia Law School (where he was an Editor on the Columbia Law Review). He is an advisor to the American Law Institute's ongoing project to draft a Restatement of Employment Law.[67] Bill and Carolyn (and their dog Bootsie) live in a 4,000 square foot house in the Palisades that is shaped in a half circle and has "100 windows, a spiral stairway down to a hot tub, a game room, library, and study, plus a panoramic view of the coast."[68] This is apparently quite average for their neighborhood. But it does help paint a picture of what Rosenbaum and Lhamon were anticipating when they were assigned to Judge Highberger. It is not surprising that he is a "staunch Republican," as I was told off the record by one of the many people I interviewed.

Theory of the Case

There are two "theories" of this case: the legal theory and the underlying motivation, or the public relations theory. The complaint lays out the legal theory beginning with the strong California education-related case law described in detail above. It claims that the district's RIF policy violated the plaintiffs' constitutional right to an equal and adequate educational opportunity. Many education law scholars talk about two classes of school funding litigation: those focused on equal opportunity and those focused on education adequacy. Those scholars argue that California has been at the fore of the equality strand of cases, but that there has been no adequacy decision in California.

This is not how Mark Rosenbaum thinks, however. "I'm not comfortable with a strong distinction between adequacy and equality," he explained. The *Reed* complaint illustrates Rosenbaum's belief that the two concepts are impossible to discuss separately. It begins the legal argument section with a heavy focus on equality of opportunity – it discusses California's recognition of education as a fundamental right (stemming from *Butt* and *Serrano*), and the accompanying requirement that any action impeding upon this right be subject to strict scrutiny. But in the same paragraph it says that "the State bears the ultimate responsibility for ensuring public school students receive equal educational opportunity *and* adequate educational services." (emphasis added).[69,70] At a technical level, the complaints are separated: the first two causes of

[67] Consumer Attorneys Association of Los Angeles: 5 Programs With Hon. William Highberger, https://www.caala.org/index.cfm?pg=semwebCatalog&panel=browse&ft=SWOD&bb=aut&aut=2998.

[68] David Ferrell, *Only a Manse Will Do for Luxury Seekers: The Trend in Homes: Built to the Max*, Los Angeles Times, 9/18/1988. http://articles.latimes.com/1988-09-18/news/mn-3401_1_luxury-homes/2; Palisades Americanism Parade Association News: An All American Parade, 7/9/09 http://palisadesparade.org/newsidCSS.php?id=7

[69] Complaint, 6

[70] State courts across the country have taken disparate paths in defining what a Constitutionally adequate education looks like. The *Reed* complaint takes a position that the State education standards establish the Constitutional bar that the schools must meet. It says that the State has "set forth the content of the education

action listed are (1) a violation of the plaintiffs' right to receive equal protection of the laws under Article I, Section 7(a) and Article IV, Section 16(a); and (2) a violation of plaintiff's rights under Article IX, Sections 1 and 5 to "learn in a 'system of common schools' that are 'kept up and supported' such that students may learn and receive the diffusion of knowledge and intelligence essential to the preservation of their rights and liberties" (this is the adequacy claim).[71]

Despite this technical distinction, Rosenbaum and Lhamon do not treat the two arguments separately in building their case. Twenty one of the complaint's twenty nine pages are devoted to describing the impact of the RIF on the students at the three middle schools. This sounds like an adequacy suit – it is all about the failure to deliver a sufficient education to these children. But Lhamon is quick to remind me that we all know who goes to these schools – black and Latino children. And so it is also an equal opportunity case. The subheadings in the factual allegations section give a good summary of the way the case builds:

1. Plaintiffs' Schools Had Implemented Reforms Focused on Building Stable, Effective Teaching Corps to Deliver High Quality Education
2. Defendants' Actions Gutted the Teaching Corps at Plaintiffs' Schools
3. Defendants' Policies Divorce Hiring Decisions from Educational Needs
4. Defendants' Actions Forced Plaintiffs' Schools to Fill Vacancies With Rotating Short-Term Substitutes
5. Defendants' Actions Resulted in Vacancies Filled by Underqualified and Ineffective Teachers
6. Defendants' Actions Decimated Instructional Quality at Plaintiffs' Schools
7. Defendants' Irrational Actions have Sabotaged Reform Efforts
8. The Level of Teacher Turnover That Defendants Have Created at Plaintiffs' Schools Denies Plaintiffs Educational Equality
9. Another RIF This Year Will Irreparably Cripple These Schools
10. Other Factors within Defendants' Control Deprive Plaintiffs of Educational Opportunity

Each section is replete with fact patterns in all three schools as alleged by the student representatives. They tell a vivid story of reform minded principals like Tim Sullivan entering middle schools with high minded goals. The principals, in turn, focused on building a staff of teachers who wanted to be in these schools working with these children. And they created long term plans that involved heavy professional development, much teacher collaboration, and lots of principal involvement in the classroom. But when over half the teachers at each school were

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guaranteed to each student by its Constitution in specific terms: uniform content standards describe what the State promises to teach and what students must learn at each grade level." There is no precedent for this definition in California. This is of interest because the issue is currently being litigated in two California cases: *Campaign for Quality Education v. California* and *Robles-Wong v. California*.

[71] In addition, the complaint includes two other causes of action: (3) a violation of plaintiffs' rights under Article I, Section 7(b) – the privileges or immunities section of the State constitution; and (4) a statutory claim that the Defendants had violated CA Government Code 11135, which protects against discrimination on the basis of race, economic status, and nationality.

given notice of their lay-offs, these plans fell apart and the resources that the school already invested in the teachers' development went down the drain.

The story continues as the principals struggled to fill these spots – sometimes they hired permanent teachers off a list of those who had been pushed from other LAUSD schools. Those teachers were more senior than the ones who had chosen to work at Gompers, Liechty, and Markham, and so were given the opportunity to take these jobs. According to the complaint, the next year was almost as bad for the students who had these new permanent teachers as for those students who were subjected to a merry-go-round of short term substitutes. The permanent teachers, after all, were usually not individuals who had training or interest in working with the schools' high needs students. The complaint skillfully weaves the students' voices in to add sharpness to the picture: "When asked about what they have learned in the classes led by rotating substitute teachers, many students can only reply: 'nothing,'" it asserts.[72] And one plaintiff tells that she cannot remember a single instance when substitutes returned corrected class work to the students.[73]

High minded ideals do not always translate to better schools. It is hard to know whether these new "Dream Teams" of teachers, principals, and staff were really bringing positive change to the schools. Further, it is hard to know precisely what affect the RIFs had on student achievement. Education experts spent a fair amount of time, energy, and ink arguing about this. Michelle Fine, Professor of Psychology at City University of New York, and oft cited education research, gave expert testimony and filed a long declaration on behalf of the plaintiffs. She said that "[t]he relationship between academic achievement and RIF, both immediately and over time, is powerful and can be demonstrated in API[74] deciles as well as percent proficient or above on California Standards Tests, among many other indicators."[75] Her data, however, consists entirely on correlations of high teacher turnover and low achievement – which clearly should not be used to make causal statements. To make the causal statement, she cites quotes from Superintendent Deasy and from principals about their sense that teacher turnover makes a huge difference in student achievement. This information, while valuable, is not the same as regression analysis that could be more useful in making causal assertions.

Interestingly, several months after the case was filed, the LA Times published a story that focused on Markham Middle in which it claimed that the first round of RIFs actually *improved* teacher quality and therefore improved student achievement at Markham:

> "[Principal] Sullivan's first year [in which he had his handpicked teachers] was focused on restoring order, and test scores actually fell. That summer the school suffered what appeared

[72] Complaint, 15.
[73] Complaint, 16.
[74] API standards for Academic Performance Index, and is assigned to each public school as a measure of its achievement. The California Department of Education explains: "The API is a numeric index (or scale) that ranges from a low of 200 to a high of 1,000. A school's score or placement on the API is an indicator of the school's performance level. The statewide API performance target for all schools is 800. A school's growth is measured by how well the school is moving toward or past that goal." http://www.cde.ca.gov/ta/ac/pa/cefpsaa.asp
[75] Declaration of Michelle Fine, 21.

to be another grievous blow: More than half of the teachers were laid off, based on their low seniority, and many were replaced by more experienced instructors from around the district.

"Undaunted, Sullivan and his largely new team of teachers tried many of the reforms that had been attempted before at Markham: reopening the parents' center, breaking the school into smaller learning groups and continuing intensive teacher training.

"This time, the results were different: Markham had the fastest rate of student progress among district middle schools last year, The Times' analysis found.

"Apparently, the layoffs had an upside. Many of the replacement teachers Sullivan picked from the district's hiring pool proved more effective than their predecessors.

"Twenty-one teachers who were laid off in 2009 ranked, on average, in the bottom fifth among district teachers in raising students' English scores and in the bottom third in boosting math scores. They were replaced by teachers whose effectiveness was close to average in both subjects."[76]

This analysis is extremely important because it highlights the difference in two strands of arguments being made by the players in this story. The first argument is that of Noah Bookman, Superintendent Deasy, and Michelle Rhee, that seniority based teacher hiring and firing decisions that are blind to any measure of teacher effectiveness are bad for students. The second is that of the *Reed* plaintiffs – that instability in the teaching staff at a school is, itself, bad for students. The LA Times stories provide evidence in favor of the former. Indeed, Jason Felch, one of the two reporters, argues that the plaintiffs have missed the point – that teacher turnover is only bad for students if it involves replacing good teachers with bad teachers.[77] Though you would never design a system this way, he muses, RIF-based teacher turnover can actually do a school like Markham a favor by providing a creative principal with a chance to shake things up by getting rid of the least effective teachers.[78]

In the same month, the same reporters published an article featuring Liechty Middle school (another of the plaintiff schools) that illustrates the harm that comes from replacing good teachers with less effective ones:

"[W]hen budget cuts came in the summer of 2009 — at the end of the school's second year — more than half of the teachers were laid off. Among those dismissed were [17] who ranked in the top fifth of district middle school instructors in boosting test scores, The Times' analysis found. Many were replaced by a parade of less effective teachers, including many short-term substitutes.

[76] "In Reforming Schools, Quality of Teaching Often Overlooked," LA Times, 12/20/2010, pg 4. http://www.latimes.com/news/local/la-me-teachers-turnaround-20101222,0,4340403.story?page=4
[77] Personal Interview with Jason Felch
[78] *Id.*

> "By the end of the last school year, Liechty had plummeted from first to 61st — near the bottom among middle schools — in raising English scores and fallen out of the top 10 in boosting math scores."[79]

That article argues that quality-blind layoffs (based only on seniority) do a disservice to students by eliminating hundreds of the district's "most promising math and English teachers." Felch has an educated guess as to why the two schools were so differently impacted by the budget-based layoffs. He says that though the teachers laid off at both schools were relatively new, the ones at Liechty had been recruited in a very particular way. The principal had gone to the UCLA School of education and said, essentially, "give me your best graduates." And she hired a whole cohort of new teachers who had just emerged from a high quality teacher training program, already knew each other, shared a common philosophical training and belief system, and generally had a commitment to the area. At Markham, Felch argues, Principal Sullivan did not have this luxury. Despite Sullivan's assertions that he had a Dream Team of teachers, Felch thinks that Sullivan faced serious constraints in filling the spots at a school that had a long history of failure.

Interestingly, then, Markham and Liechty could illustrate the defendant and plaintiff arguments respectively. UTLA can point to Markham to "show" that seniority is worth protecting *for* kids in poor neighborhood schools (not despite them), because by keeping the most experienced teachers in the system, we help kids by giving them more effective teachers. It should be noted that research is mixed on the relationship between experience and effectiveness: a recent Harvard Kennedy School report finds that experiences *is* correlated with effectiveness, up to a point (but that after the first ten years of teaching, effectiveness levels off and in some cases declines).[80] Rosenbaum and Lhamon, on the other hand, could have pointed to Liechty test scores to "show" that turnover is bad for kids. They did not go down this path, however, because they do not believe that test scores should be the criterion used to assess school progress.[81] "I'm not a believer in that way of analyzing school improvement; and we convinced the judge that wasn't the way to think about it. You have to do it over five or more years, and there are other things than test scores – increased student attendance, teacher attendance, engagement, etc. more participation in school activities, etc." [82]

Paragraph 86 of the complaint sums up the legal strategy used by Rosenbaum and Lhamon: "Given the academic challenges facing the students at Gompers, Liechty, and Markham, teacher stability is more critical at these schools than in higher performing schools. Even so, the policies and decisions made by Defendants have led to *higher* turnover rates at these schools. Without stability and continuity in the faculty, these schools are unable to provide their students equal educational opportunity or adequate educational services."[83]

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[79] "When Layoffs Come to LA Schools, Performance Doesn't Count" Jason Felch, Jason Song, and Doug Smith, 12/4/2010, pg 1.

[80] "It's Easier to Pick a Good Teacher than to Train One: Familiar and New Results in the Correlates of Teacher Effectiveness," Matthew Chingos and Paul Peterson, 6/28/2010, http://www.hks.harvard.edu/pepg/MeritPayPapers/Chingos_Peterson_10-08.pdf.

[81] Lhamon interview.

[82] *Id.*

[83] Complaint, 24.

As sympathetic as I am to the claims that dramatic, widespread budget-based teacher turnover are intuitively bad for schools, and therefore should not be visited on those schools that need the most help, I am not entirely convinced by the evidence plaintiffs provided of disproportionate harm to students in low income schools. Yes, they suffer increased teacher turnover. But the plaintiffs did not make a compelling argument that teacher turnover is bad for students. They provided a series of assertions that turnover is bad for students, supported only by correlational data that does not prove any sort of cause and effect relationship between teacher layoffs and student learning.

The plaintiffs could have, but did not, distinguish between types of teacher turnover – those spots that were filled with new permanent teachers and those that were not. Showing up to school in August to find a teacher you have never seen before is not as intuitively harmful as showing up to school in August to find that you have no teacher, and that you will be having a rotating series of short and long term substitutes who do not provide the continuity of education that a permanent teacher provides. Under *Butt*, the *Reed* plaintiffs would have a very strong case if they focused only on the lack of permanent teachers resulting from the layoffs. The RIFs create a system imposing a clearly disparate and negative impact on low income, minority kids. The impact of simply moving more senior teachers into the schools to replace less senior teachers, however, is far from clearly negative.

Clearly neither party stopped to ask this law student her take on the merits of the case! The action went on vigorously both inside and outside the courtroom. When not in front of the judge, the entire plaintiff "team" made a concerted effort to talk about the case in non-legal terms. The press releases issued at the time, the statements made by the student plaintiffs, and even some of the declarations filed in court talk about this as a civil rights issue and a simple matter of fairness. Perhaps the most compelling articulation was from Lhamon's mother. She was 10 years old when *Brown v. Board* was decided, and was a student through all the slow integration that followed. She said to Lhamon that the situation in LAUSD at the time of the lawsuit was "worse than what we had in segregated schools. At least we had teachers. Your [*Reed*] kids don't even have teachers."[84]

Preliminary Injunction: A Temporary Fix

In March 2010, less than a month after the lawsuit was filed, LAUSD issued a new round of Reduction in Force (RIF) notices to teachers across the district. The district estimated that this round of cuts would be smaller than the prior round, but still dramatic: Liechty would lose 41 percent of its teachers, Markham 27 percent, and Gompers 12 percent (compared to less than five percent lost in 30 of the other 69 middle schools in the district).[85] As mentioned above, the teachers most likely to be laid off are those who were laid off in the first round of cuts and came back as long term substitutes, and the other low seniority teachers. On April 1, the Plaintiffs filed a motion requesting a preliminary injunction enjoining the Defendants from laying off any teachers at their schools in this round of RIFs. On May 13, 2010, two weeks after the LA Times published individual teacher effectiveness data (but long before the newspaper published the

[84] Personal Interview with Catherine Lhamon.

[85] Aivla Declaration as quoted in the preliminary Injunction, footnote 1 (as reported in a news story)

detailed analyses of the schools featured in this lawsuit referenced above), and two months after the new RIF notices were issued to teachers across LAUSD, Judge Highberger issued a preliminary injunction barring any budget-based layoffs at the three schools involved in the suit.

The injunction orders that "The classroom teachers (permanent, probationary, and long-term substitutes) currently assigned at the three schools, and only the classroom teachers at these schools, must be skipped in the current layoff proceedings as permitted by California Education Code Section 44955(d)(2), which the Court specifically finds is applicable to these skips."[86] Judge Highberger's order opens with a reminder that the California Constitution guarantees a fundamental right to "basic equality of educational opportunity," and that in prior cases, disparate impact (on delivery of education in the classroom) has been enough to establish a violation of this right.[87] Then the judge provides factual evidence that (1) the three middle schools were "already struggling [academically], prior to the RIFs," and (2) that despite this "demonstrated need for greater assistance and support," the districts actions in following seniority based RIF policy will actually have a "disparate negative impact on Plaintiff's schools."[88] For instance, it explains that Markham had 6 unfilled vacancies because even though technically they had the money to replace their RIF'ed teachers, they could not find anyone willing to work in their school. And of the 12 replacements they did hire, nine teachers quit within three days. Further, the RIFs caused the level of "teacher misassignments" – teachers leading classes for which they are not trained or certified to teach – to "skyrocket at Plaintiff's schools while dropping at other LAUSD middle schools."[89]

This discussion included evidence of the high percentage of teachers RIF'ed in these schools compared to other middle schools, but also on the actual negative impact this has had on the students in these schools. "Evidence shows there is a distinct relationship between high teacher turnover and the quality of educational opportunities afforded," the order explains.[90] Defendants did not dispute the evidence presented to this effect by two plaintiff experts and admitted to by the State Superintendent of Schools.

Rosenbaum explained that during the first two day hearing he asked the judge directly to think about what he would say if this were his daughter. "What would you say to her? If she did not even know who her teacher would be day to day? If you went to school on the first day of the year and there were no teachers? And then, if it's March and you *still* don't have Algebra teachers? One student got to December and was only at the Articles of Confederation in her American History class. What if that were your daughter?"[91] Clearly this tactic worked. The judge includes many anecdotes: subs that repeated the same material day after day; subs that provided no lesson at all – telling students to read the materials themselves; some students taking tests that were never graded; other students never taking a single test; teachers filling time with movies that had no relevance to the materials students were supposed to be learning; and, not

[86] Preliminary Injunction
[87] Preliminary Injunction, citing *Butt,* 2
[88] Order granting preliminary injunction, Section 2
[89] *Id.*
[90] *Id.*
[91] Mark Rosenbaum interview.

surprisingly, the American History class that had to skip roughly sixty year of U.S. history in order to catch up after the Articles of Confederation were taught in December.[92]

The court concludes by saying that, despite the union and district arguments to the contrary, there is no compelling state interest justifying this encroachment on students' fundamental right to education. In court, the district attorneys argued that the layoffs were justified by a compelling state interest because they "followed the seniority system put in place by state law and LAUSD's collective bargaining agreement with United Teachers Los Angeles (UTLA)," and because the "permanent teachers have a 'property interest' in their jobs and a vested interest in the seniority system."[93]

The court rejects this argument because the Legislature explicitly qualified these rights when it added to the Education Code a provision that "allows a school district to 'deviate from terminating a certificated employee in order of seniority for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.'"[94] This provision, the court says, is implicitly also contained in the collective bargaining agreement, since the union has "no power to negotiate away the students' constitutional rights."[95]

In determining the appropriate remedy (skipping teachers at the three schools for the impending round of RIFs) the court acknowledged that it was a difficult issue. The court cannot simply demand that the district find more funds and avoid laying off teachers in general, or to find more funds and make up for the loss of teachers with some other mechanism. Apparently the judge became actively involved in proposing remedies, and also in requesting that the parties submit proposals.[96] In the end, Judge Highberger decided that skipping these teachers, specifically, would most directly (and narrowly) remedy the identified harm to a fundamental right. He found it notable that the Governor and State Board of Education supported this injunction.

When the order was issued, Rosenbaum was quoted in media stories saying that "today's landmark decision carries on the ideals of *Brown v. Board of Education* that no child may be deprived of the right to learn."[97] He complimented Judge Highberger directly, saying that "The injunction granted by a conscientious and courageous judge establishes the principle that government may not deny children their right to equal educational opportunity by disproportionately laying off teachers in communities such as Watts and Pico-Union."[98]

Twelve days after the injunction was granted, LAUSD board members Yolie Flores and Tamara Galatzan introduced a resolution clearly prompted by the lawsuit. It was passed on June

[92] Order granting preliminary injunction, Section 2.
[93] *Id*, section 3.
[94] *Id*, quoting Cal. Ed. Code. § 44955(d)(2).
[95] *Id*.
[96] Rosenbaum interview and order granting preliminary injunction.
[97] "California Court strikes down LA middle school cuts," John Kugler, May 15, 2010, www.substancenews.net/articles/php?page=1397.
[98] *Id*.

15, 2010, with explicit support from Mayor Villaraigosa.[99] It directed the Superintendent to (1) "immediately develop a plan and negotiations strategy, and call upon UTLA to negotiate, in order to reform and improve all aspects of the CBA that may impede the ability to protect the stability of effective teaching staffs at all District Schools"; (2) "engage the ACLU, Public Counsel, the State Board of Education, UTLA, and other advocates . . . in urging California lawmakers to immediately support legislative changes resulting in giving districts flexibility to protect equal access for educational opportunities for all students by allowing RIFs based on criteria other than seniority"; and (3) "immediately work and engage in a dialogue with reform partners to revise and improve procedures affecting staffing at school sites."[100] This text shows the influence of the Superintendant's four sided box framework – litigation prompted it, and it specifically calls for involvement of the organizations bringing the lawsuit. And it calls for legislative advocacy as well as action via regulation and negotiation.

Interestingly, the resolution explicitly downplays the importance of the preliminary injunction in order to justify its call for further District action: "The recent preliminary injunction issued in the *Reed v LAUSD et al.* lawsuit. . . is a lower court ruling, and is not binding authority that would allow the District to skip other schools this year or any District schools in the future," it explains.[101] It also justifies the need for legislative action by saying that the Education Code only allows the district to skip teachers for layoffs when not skipping would constitute a constitutional violation. Since only the court can determine that, it is not surprising that the school board is nervous about relying on that provision justify non-seniority based layoff decisions.

The Black Box: Negotiating a Settlement

Neither party appealed the preliminary injunction. Instead, after it was issued, the parties (LAUSD, UTLA, Plaintiffs' attorneys, and the Partnership) spent "several months negotiating a settlement of this action."[102] Because of confidentiality agreements, it is hard to know exactly what happened during settlement discussions, which were "encouraged" by the court.[103] We know that the negotiations took place "regularly between May 17th and October 5th, 2010, and that "the parties circulated multiple drafts of proposed settlement terms, with a key draft coming on July 29, 2010 (the first draft that included the key final provision that would define the settlement approved months later).[104] On October 5th, the LAUSD school board voted in closed session to approve the settlement proposal. The UTLA never supported it.[105]

The union says that the settlement was "the backroom work of superintendent-elect John Deasy (who will be paid $330,000 a year, which is more than virtually any other public official

[99] City of Los Angeles Press Release "Mayor Urges Schoolboard To Reform Teacher Layoffs," June 15, 2010. http://mayor.lacity.org/PressRoom/PressReleases/LACITYP_010526

[100] "Protecting Equal Access and Opportunity for All Our Students," LAUSD Resolution adopted June 15, 2010, by a vote of 5 ayes, 1 no, and 1 abstention. http://209.80.43.43/fmi/iwp/cgi?-db=RESOLUTIONS&-loadframes

[101] *Id.*

[102] Findings and Order Granting Final Approval of Settlement, 1.

[103] *Id*, 6.

[104] *Id*., 7.

[105] *Id*.

in LA, and $80,000 more than Cortines [outgoing superintendent]), Mayor Villaraigosa, the ACLU, and some School Board members."[106] The court acknowledges that "during the process some negotiations occurred without UTLA present," and that "it appears that the other parties continued to negotiate towards settlement without advising UTLA of each bargaining session and each updated proposal," but explains that "at first the absence may have been due to unavailability of key persons from UTLA," and that "other parties wanted to proceed even if UTLA chose not to participate actively on a timely basis."[107]

Further, the union argues that the named defendant (the District) colluded with the Plaintiffs and used this case to "execute an end-run around long-established contract and State Education Code protections for teachers."[108] They point to UTLA's absence during some of the negotiations as evidence that there was collusion among the settling parties."[109] Reporter Jason Felch thinks that this is a disconcerting piece of the story. "Were there really opposing parties? The Mayor recruited ACLU and Public Counsel to file this case." Further, he says, he heard that at one point the district encouraged the plaintiffs to expand their claim to try to strike down the seniority based hiring/firing decision altogether. "I was never able to get a straight answer from Mark Rosenbaum about this," he said, but he assumes it was a strategic decision to "not overreach." If the defendants and plaintiffs were strategizing together, it is not hard to see why the UTLA claimed collusion. However, my conversations with Lhamon at least provide some evidence that she was very much ideologically opposed to the district's arguments against all forms of seniority based hiring decisions, and thus the plaintiff decisions were not the result of collusion, but of their own principled feelings about the issues.

The court rejected the union's argument, saying that "LAUSD vigorously opposed issuance of the preliminary injunction in this case."[110] It is true that LAUSD actually defended itself in court, arguing forcefully against the preliminary injunction despite the fact that the plaintiff's arguments clearly aligned at least in part with the policy work that Noah and the Superintendent's task force were advocating for. When pressed to extrapolate on why the district did this, and whether they were just going through the motions but hoping to lose, Lhamon explained that the stakes for the district were very high. "If the district had gone out on a limb and agreed with us [by acting to skip the hardest hit schools in RIFing], and lost [when the union sued them for statutory violation], it would have suffered very significant financial burden. . . What I heard from LAUSD is that they don't know for sure when students' [constitutional] rights are being violated. They don't know how to use that [statutory] exception and so they don't."[111] Essentially, the district seems to have been protecting itself from liability by building a strong court record and waiting to act until a court explicitly told them to. It is hard to argue that this "covering our ass" rationale was good enough to ensure that they were representing UTLA's interests.

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[106] "ACLU Settlement: Why the students lose," UTLA press release, January 26, 2011.
[107] Findings and Order Granting Final Approval of Settlement, 1-2.
[108] "UTLA Demands Social Justice for All Students: Why the proposed ACLU settlement gets it wrong," UTLA press release November 8, 2010.
[109] *Id,* 8.
[110] Findings and Order Granting Final Approval of Settlement, 7.
[111] Personal Interview with Catherine Lhamon.

Nonetheless, UTLA *was* officially joined as a Defendant, so the issue seems less problematic than it might otherwise have been. I cannot come up with another defendant that should have been included in order to ensure the full benefits of the adversarial process.

Result: Settlement

On January 21st, 2011, the court granted final approval of the settlement immediately after holding a three day "fairness hearing." The settlement provides that in implementing budget based Reductions in Force (which will still be guided entirely by seniority), the District must skip classroom teachers in up to 45 "targeted schools." The 45 are made up of two groups:

(1) The 25 API rank 1-3 schools with the highest "teacher turnover rate" which are *also* demonstrating growth over time, and
(2) Up to 20 schools at the District's discretion.

To be ranked 1 through 3 in the API rankings, a school must be in the bottom 30 percent of statewide performance on standardized tests. The teacher turnover rate is calculated on a three year rolling average. The demonstrated growth is to be based on multiple measures of school-wide performance, and must take into account all the subgroups of students listed in No Child Left Behind.[112]

The three plaintiff schools are included as target schools explicitly until June 30, 2013, and then will be included only if they fall into one of the two groups described above. The settlement also seeks to avoid pushing all the turnover onto the schools that fall just outside the 45 targeted school realm by stipulating that the "District will ensure that no other school is impacted greater than the District average."[113] This ensures that court-ordered skipping does not adversely impact schools that are already losing a higher percentage of their teachers than the District-wide average for that year. Note that this essentially means that layoffs will be determined using school based seniority instead of district based seniority, since each school will now experience approximately the same level of turnover. Teachers' incentives to choose different schools as they gain seniority may be affected by a very different set of incentives under this plan than under the prior status quo – now it matters if you're the most senior teacher at your school, and moving into a "nicer" school full of teachers with a lot of seniority might be detrimental to job security.

The court orders an entire "intervention program" for the targeted schools, of which RIF-skipping is only one provision. The parties – including UTLA – all support the remainder of the court-ordered interventions, which include collaboration between the District, UTLA, and school site leadership to fill vacancies (no matter how they arise); assurance by the District that all teachers hired at any of the targeted schools be NCLB complaint and fully credentialed for the classroom they are assigned; and development of a retention incentive programs for teachers and administrators that stay at the targeted school site.

[112] Findings and Order Granting Final Approval of Settlement
[113] *Id*.

The court retains jurisdiction over the settlement, which is entered into as a consent decree. It will hold a status conference each year following any RIF "to review the success and challenges associated with the interventions required herein," and "may, at any time, order that the agreement be terminated, continued, or continued with modifications."[114]

The standard of review in California for court approval of a final settlement is whether the settlement is "fair, adequate, and reasonable for class members overall."[115]A proposed settlement is "presumptively fair where '(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'"[116]

The court found that the Settlement Agreement was presumptively fair, because it met each of the four above listed requirements.[117] In cases of presumptive fairness, an objecting party such as the UTLA then bears the burden of demonstrating that the decree is unreasonable.[118] The court found that the UTLA did not meet this burden, and that the settlement was reasonable. In making this reasonableness determination, Judge Highberger goes through extensive discussion of the factual, on-the-ground situation in LA public schools. It is a winding exploration that finds the following four things about the current "problem" that the settlement is attempting to address: (1) academic performance in LAUSD schools is dismal, for the most part; (2) teacher turnover is higher in LAUSD than most other school districts, is concentrated in the schools with the lowest academic achievement, leads to mis-assigned and non-credentialed teachers, and destroys teacher support systems and student-teacher bonds that are necessary for quality delivery of education; (3) budget-based RIFs exacerbate an already bad situation, and are particularly frustrating since they exile teachers who actually *want* to be at these difficult to staff schools; (4) RIFs implemented solely on the basis of teacher seniority fall disproportionately on low-performing schools (because as soon as they have enough seniority to choose a more affluent, easier to teach in school, teachers tend to do so, and so the newest teachers are located in the hardest to teach schools).

The court's final step is not logically the clearest. It concludes that the status quo is a likely Constitutional violation, and that the court has a duty to remedy the violation. But in the next breath, it acknowledges that this settlement prohibition on RIFs at targeted schools is not guaranteed to improve the educational opportunity provided to the students at those schools. Instead, it avoids any additional harm that would be caused by new RIFs, and lays the groundwork for positive reform efforts which are dependent upon a stable teaching force. Perhaps anticipating the difficulty in interpreting this logic, Rosenbaum's ACLU press release frames the decision as establishing an "educational Hippocratic Oath to do no harm to fragile, struggling schools that are trying to turn the corner."[119]

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[114] *Id.*
[115] *Id*. 16.
[116] *Id*, quoting *Dunk v Ford Motor Co.*, 49 Cal.App.4th 1794, 1802 (1996).
[117] *Id,* 17.
[118] *Id*, 16.
[119] "Needy campuses get more stability, veteran Valley instructors may face layoffs," by CJ Lin, Contra Costa Times, http://www.contracostatimes.com/california/ci_17163387?nclick_check=1.

The UTLA says that the settlement does exactly the opposite – harms students instead of helping them. They argue that the settlement will "'fence in' less effective junior teachers" at the precisely the vulnerable schools the court is trying to help, dooming the students there to a career with the least experienced teachers.[120] The court rejected this argument. First, it said, the settlement does not prohibit firing teachers because of poor performance, so any bad teachers would still theoretically be able to be dismissed from the schools. Second, there is no evidence that laying off junior teachers at these schools will lead to more effective teachers replacing them. This argument is interesting, given the LA Times article claiming that at Markham, there *was* evidence that the layoffs led to more effective teachers filling the classrooms. That article came out a month before this Final Order was issued, and one wonders if the judge considered its arguments. Perhaps this is where Lhamon and her team "convinced the judge" that test scores were not the appropriate way to judge the success of a school. Finally, the court said, more senior replacement teachers often leave quickly after being placed at these hard to staff schools, which simply exacerbates the teacher turnover problem for students.[121]

UTLA also argues that the settlement ignores the deeper root causes of problems at these hard to staff, under-performing schools and does a disservice to the students by distracting advocates from addressing these issues. The court ignores the "distracting advocates" prong of this argument and says that from its perspective, the only relevant question is whether seniority based RIFs are unconstitutional. Regardless of whether they "make an unconstitutional violation worse, or take a barely tolerable situation in terms of constitutional analysis and make it a violation of the constitution," the RIFs are unconstitutional.[122]

The last set of arguments the UTLA makes are about statutory, contractual, and constitutional rights of the teachers. First, the union says that statutory language already provides for an outlet if the district needs to skip particular teachers during a RIF process: Education Code § 44955(d)(1) allows a teacher to be skipped in seniority based RIFs if the "district shows a specific need for personnel to teach a specific course or course of study." But the court rejects teacher by teacher approach as a viable solution to the underlying constitutional harm. First of all, it would take an exceptionally long time, and second, it does little to address the underlying Constitutional harm which is the disruption to educational services caused by *widespread layoffs* at particular schools.

In a related argument, the union claims that the court is overstepping its power by issuing a consent decree that encompasses substantially more teachers than those represented by the plaintiffs. But the court dismisses this argument as well, by explaining that a party-negotiated settlement can be broader than the remedy a court would be empowered to give at the conclusion of a trial, and by pointing out that there is ample evidence of likely constitutional violations at the additional schools.

Judge Highberger further explains that this settlement is in line with the legislature's obvious intent in enacting § 44955, which provides an exception to seniority based hiring and firing "for the purposes of maintaining or achieving compliance with constitutional requirements related to

[120] Findings and Order Granting Final Approval of Settlement, 35.
[121] *Id*, 36.
[122] *Id*, 37.

equal protection of the laws."[123] In the end, the court makes it clear that not only is this settlement in line with statutory language and legislative intent, but even if individual teachers have some contractual or statutory rights to seniority based job security, "the court has the power to override" both types of rights to remedy constitutional violations.[124]

When the settlement was officially approved, Superintendent Deasy said "[t]his is a historic decision for the State of California. The court stood and lifted up the voice of youth. That voice was loud and clear."[125] Rosenbaum said the settlement was "about giving our most disadvantaged children a fighting chance at their schools."[126] The UTLA promised to appeal, claiming that "what it is really saying is that experience in teaching has no value," and that "this remedy, if allowed to go through, will actually exacerbate the problem," by, as Tom Torlakson (newly elected State Superintendent of Schools) explained, maintaining inexperienced teachers at the 45 schools "instead of seeking ways to bring more experienced, arguably more effective teachers" into the schools.[127] Mayor Villaraigosa claimed the Judge's decision would be upheld on appeal and called on the union to work with the District in implementing this settlement.

Interestingly, in making his media remarks, the mayor asserted that the settlement "would expand the dialogue on performance evaluation of teachers, which has been a hot button issue."[128] The Mayor continued by saying "No one is saying seniority shouldn't be a factor, but in what successful system, when isn't performance taken into account at all? This isn't a radical notion."[129] The Mayor brought a conversation about performance based evaluation into the settlement, which is simply not about replacing seniority with performance as the basis for hiring or firing decisions. The settlement does stipulate that the twenty five schools protected by formula must show school wide growth. But this is far from individual teacher level effectiveness evaluations that the mayor is referring to. Clearly the players all have different ideas about how this lawsuit fits into their larger policy agendas.

LAUSD board president Monica Garcia expressed support for the agreement. "We have a very hard job ahead of us. The fact that we can now factor things other than seniority will help us serve our students better," she said in reference to the next round of layoffs that were facing the Board in 2011.[130]

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[123] Cal Ed. Code § 44955(d)(2).
[124] Findings and Order Granting Final Approval of Settlement, 45.
[125] Christina Hoag, L.A. Judge Limits Seniority Based Teacher Layoffs, Associated Press, 1/21/11 http://www.valleynewslive.com/Global/story.asp?S=13886258&clienttype=printable
[126] *Id.*
[127] *Id.*
[128] C.J. Lin, Needy Campuses Get More Stability, Veteran Valley Teachers May Face Layoffs, Contra Costa Times, 1/21/11 http://www.contracostatimes.com/california/ci_17163387?nclick_check=1.
[129] Christina Hoag, L.A. Judge Limits Seniority Based Teacher Layoffs, Associated Press, 1/21/11 http://www.valleynewslive.com/Global/story.asp?S=13886258&clienttype=printable
[130] C.J. Lin, Needy Campuses Get More Stability, Veteran Valley Teachers May Face Layoffs, Contra Costa Times, 1/21/11 http://www.contracostatimes.com/california/ci_17163387?nclick_check=1.

Today

The same day the court approved the final settlement, the UTLA announced that it would appeal. They also asked the judge to stay implementation of the settlement while the appeal was pending, but he refused. Thus, along with its substantive appeal, the union filed a writ of supersedeas (a writ commanding that proceedings be stayed). In the second week of March, 2011 the Court of Appeal denied the writ, and then on Monday, March 14th, the California Supreme Court denied to issue the writ.[131] This means that the settlement governs the 2011 round of RIF notices that went out in March, regardless of whether it is eventually overturned.

The process by which the list of forty five protected schools was created it somewhat of a mystery. Bookman, from LAUSD, says he thought the School Board had made a point to make the deliberations public for maximum transparency. This is important, as the LA Times' Felch explains, because the settlement granted the district with quite a bit of discretion in making this list, and it certainly is not hard to imagine each Board member getting to "pick five schools to protect" or some other such politically volatile process.[132] Scrutiny of the Board's meeting agendas and meeting documents reveal no discussion of the creation of this list. What is clear: it was final by February 15th, 2011, at the latest. On that date, the School Board was presented with a plan to balance the LAUSD budget that involved sending RIF notices to more than 4,000 teachers. On page 13, the plan explicitly listed the 45 "Reed schools" to be skipped in this process, but did not explain how that list was created.[133]

Meanwhile, UTLA is undergoing internal reform. In January, 2011, a subgroup of teachers created "NewTLA" which is designed to "move UTLA into a progressive era."[134] The NewTLA website explains that "NewTLA believes 'quality-blind' reductions-in-force and teacher displacements ignore both the experience of students and contributions of teachers. NewTLA supports the inclusion of negotiated indicators in addition to seniority in reduction-in-force and displacement decisions." On March 31, 2011, a NewTLA-endorsed candidate, Warren Fletcher, earned a surprise victory over Julie Washington to become UTLA's next President (AJ Duffy is term limited). Washington was considered Duffy's handpicked candidate, and her loss "appears to be a rebuke of his leadership."[135] Fletcher's approach to the Reed lawsuit remains to be seen. The LA Times writes that "Fletcher's views suggest no sharp departure from current union thinking,"[136] and his campaign for the job focused on bread and butter union issues including a promise to fight for every job. But he has also made some oblique comments clearly designed to win over the NewTLA contingency. For instance, he told the LA Times for the same article, "If when I say I'm going to focus on pay and benefits, you think that means UTLA would be opposed to education reform? That's a nonsensical statement. The fact that I like pizza doesn't mean I'm opposed to spaghetti."[137] No word yet on whether the new UTLA leadership will continue their appeal of *Reed*.

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[131] Personal Interview with Mark Rosenbaum.
[132] Personal Interview with Jason Felch.
[133] Board of Education Report No. 204-10/11, 2/15/2011. http://www.laschoolboard.org/files/02-15-11Sp.pdf
[134] http://www.dailynews.com/news/ci_17107180
[135] http://blogs.laweekly.com/informer/2011/03/warren_fletcher_wins_utla_elec.php
[136] http://articles.latimes.com/2011/mar/31/local/la-me-0331-union-prez-20110331
[137] *Id.*

Conclusion

"Teacher Layoff Plans in Los Angeles Pose Broad Implications," reads a March 4, 2011 New York Times headline.[138] The Times isn't wrong. *Reed* and the resulting settlement make 2011 the first year in which any district in California lays off teachers on the basis of anything other than district-wide seniority. In fact, it will be one of the first times this happens anywhere in the country. No doubt, the ramifications for teachers are substantial.

But what of the implications for students? This remains to be seen. The majority of education reform litigation in the United States has taken the form of school finance cases. These lawsuits challenge the use of local property taxes as schools' primary source of funding because of the inevitably unequal budgets that result for schools located in rich and poor neighborhoods. These suits, when successful, have in fact reduced within state inequality in funding for schools, even if they do not close the gap completely.[139]

Reed is similar to these cases in that it asks the court to declare a certain type of input inequality unconstitutional. In this case the input is "teacher stability" instead of dollars. If prior education finance cases are a guide, the court decision will in fact increase equality in the input in question – teacher stability.

But whether this will actually increase student learning is an entirely separate question. As discussed above, there is widespread disagreement on the impact of added dollars on the quality of education. The concept of teacher stability as a factor in creating positive student outcomes is far less studied (se Michelle Fine's expert statement claiming that it is important, but relying solely on correlations). The truth is that as matter of policy, we have very little evidence about what *Reed* is likely to mean for Concepciona or Sharail or the class of students they represented. Will they, as Lhamon suggests, receive a message that their education is worth something? That the school district is investing in them by protecting their teachers? And will that translate into better learning? Better grades? Better test scores? Better chances of graduating from high school? Or, will they simply get the "benefit" of having less effective than average teachers stick around for another year, leaving them further behind their district peers than they were at the beginning of the lawsuit?

Not unlike most social science research questions, the answer here is very likely "all of the above." Should this stop advocates from pursuing change that rectifies a situation that, at a gut level, *feels* bad for students? No, I don't think so. Empirical, quantitative research might be the gold standard that we strive for. But sitting on our hands waiting for researchers to stumble upon that magical p-value that is lower than .05 before we go to court asking for a change would be letting the perfect get in the way of the good. Sometimes students and teachers and educational experts and their gut feelings are all we have to go on, and so long as we have weighed all sides of the issue, those gut feelings that something isn't fair are better than nothing.

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[138] "Teacher Layoff Plans in Los Angeles Pose Broad Implications," Jennifer Medina, The New York Times, March 4, 2011.

[139] Sheila Murray, William Evans, Robert Schwab, *Education-Finance Reform and the Distribution of Education Resources*, The American Economic Review, 88 4 September 1998, 789-812.