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HELD MONDAY, OCTOBER 9, 1972 AND WEDNESDAY, OCTOBER 11, 1972

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DURING THE CALENDAR YEAR 1972

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the legislatures will wisely choose to concentrate educational resources in the inner cities where they are most needed. And I concede that it is even probable that no constitutional crisis will occur. But surely all of these are substantial risks of public harm. We are entitled to insist on knowing: what is the public benefit to be attained by undertaking these risks?

The complaint in the California case urges that the beneficiaries of a judgment for the plaintiff would be the poor children residing in the underfinanced school district. In fact, as I have noted, the children of poor districts are not necessarily poor. They have no particular demographic qualities, except that northern states tend to be rural. The advocates of *Serrano* do not seriously contend that these children will in fact benefit in any measurable way, either by the expenditure of additional funds at their schools, or by having less spent at the schools of their peers in other districts. Indeed, the only clearly identifiable result is that the teachers in poor districts will have more resources available to them for payroll increases. We are left to speculate on the extent to which such increases in teacher pay, or reductions in class size, will make a real difference.

We are told, indeed, that the real consequences are of little import, that the important goal is to serve the moral principle which is offended by an unnecessary favoritism. Here, to be sure, *Serrano* is on strong ground. Its moral premise is impeccable. The standard of equal educational opportunity is an expression of the best of our national idealism. As a small time politician, I have been proud to try to express that same moral principle whenever possible. But even we who invoke it are bound to reckon with its limits as a source of wisdom. Commitment to the ideal does not bid us to disregard the financial, political, and educational hazards which are features of the course set by *Serrano*.

Thus it is that I temper my admiration for the skill and compassion of the *Serrano* advocates with serious doubts about the wisdom of their cause. It is my hope that the Supreme Court of the United States will not adhere to the reasoning of *Serrano* in the similar matter which now pends in that Court. I would hope that the Court will not reject the meritorious morality urged by the advocates, but that it would resist the invitation to invoke it so boldly. Perhaps a less hazardous legal principle will emerge to be invoked in some later case, which can give expression to the moral teaching but with less risk. But the case has not yet been made strong enough to justify the remedy sought. (Applause)

CHAIRMAN BREAK: Thank you, Paul.

Now, to present the opposite case, Mr. Stephen D. Sugarman, who is Professor of Law, University of California, Berkeley.

## THE SELLING OF *SERRANO*

STEPHEN D. SUGARMAN

Professor of Law  
University of California  
Berkeley, California

I agree that *Serrano* has been oversold. The so-called "revolution" some promise *Serrano* will bring has seemed trivial to many critics of American public education. For example, for those whose concern is that public schools provide a dehumanizing experience for children, the constitutional fundamentality of education declared in *Serrano* loses its sheen when they find out that the case deals only with money.

Even for those who are interested in the economics of education, the *Serrano* doctrine has acquired some tarnish in the year since its announcement, even before the United States Supreme Court has had an opportunity to pass on it.

This tarnish comes from various quarters. Part of it is the new packaging by people at Harvard of the Coleman Report and other data. Both the Mosteller and Moynihan package of essays [On Equality of Educational Opportunity] and the recent Jencks essay [Inequality] gloomingly detail our seeming inability to demonstrate a nexus between school performance gains and extra resources. At the same time have come cries from others that *Serrano* will mean less money for cities and, in turn, that means less money for the children of blacks and the poor. Taken together there is some tension between these criticisms. Nonetheless, independently each asks whether this new judicial foray into educational policy making will be worth the candle. I am still optimistic that it will be.

I say this because I feel the real function of *Serrano* is to break the legislative logjam in school finance that has plagued state legislatures for the last 50 years. Indeed, I suppose the main difference between the critics and myself is in our confidence in state legislatures.

Since the 1920's, state legislatures have viewed school finance as a matter of state aid to local school districts which has meant that the state role has been seen as supplementary both quantitatively and psychologically. This has been so even though state aid to schools may have been the largest single item in the state budget. This legis-

lative attitude stems, I think, from the legislative alliances among the "haves" against the "have-nots" that have been created by the local wealth based system now employed to finance schools. What *Serrano* promises are new alliances and, therefore, an opportunity for state legislatures to adopt a rational state school finance policy.

It is quite true that under certain assumptions about the legislative response to *Serrano* a school district such as San Francisco's, where I live, could wind up with substantially less money to spend on its children than it does today. I hasten to add, however, these assumptions usually assure spending gains in San Diego and Sacramento, for example. What I hope, of course, is that because all big cities seem to have urban education problems, they will join together at the state legislative level to push policies aimed at such needs. All too often in the past the urban interests have been split apart because the differences in their local tax base have made them see their interests as conflicting.

Because of these conflicts, new state money has tended to flow into education by way of small tinkering with state aid formulas which, in the end, generally has meant "give something to everyone."

In responding to *Serrano*, the non-policy approach will not do. A legislature will be required, for example, to face up to the question of whether or not money makes a difference. If it believes that compensatory education funding is important, or at least deserves a real chance despite the Harvard reanalyses, then we may see true compensatory aid programs adopted (rather than the many programs masquerading as compensatory education today). If the legislature sides with the Harvards and concludes that it is not very cost effective to put extra money into the central city schools, then it should take that stand and put its funds into something else, such as income supplements.

Returning to my California based example, I assert that San Francisco is not entitled to the vast amount of money it has now available to spend on its public school children simply because San Francisco is rich, which it is. If it can be demonstrated that San Francisco should spend what it does on the basis of its specially needy children and specially high costs, then I suspect the same case can be made for Los Angeles which needs a huge boost in spending to catch it up to its Northern California counterpart.

In the same vein it seems to me that *Serrano* forces the legislature to face up to the criticisms of the property tax. Most who have looked at new systems conclude that there is required either a rather substantial statewide property tax or some massive revenue-generating alternative. Moreover, if a statewide property tax in substantial amount is employed to fund schools, then a state legislature will have

to be more concerned about assessment practices than it has been in the past.

The reapportionment experience may be instructive. While the one man/one vote rule has not eliminated partisan gerrymandering and other practices seen as evils, it has made some reforms possible. Moreover, I think it has made legislative officials generally more responsive, even though, in terms of numbers of representatives, the beneficiaries of one man/one vote have often been the suburbs rather than cities as was the original expectation of most people who supported the reapportionment movement.

I will turn here to describe briefly the school finance policy proposal that is contained in a staff report to the California Senate Committee set up in response to *Serrano*. I do this to indicate the kinds of things the California legislature will be considering during its 1973 spring term. The staff was headed by Professor Charles S. Benson of the University of California at Berkeley.

First, the report recommends a substantial compensatory aid program — half a billion dollars — which is to be funded by the state directly to schools rather than to school districts. A school's entitlement is based upon both its pupil readiness scores and the socioeconomic status of its students.

Second, the proposal calls for the state to assume fully the costs of construction, transportation and food services (lunches).

Third, it calls for a "one-kinked district power equalizing formula" for the financing of general current operating expenditures. What this means simply is that districts generally will face a financial incentive to select a spending level at what the state feels is most appropriate for most cases. It will be possible for a district to ignore the incentives and spend less or, if it makes a substantial tax effort, it can spend above the state target level. Thus the plan allows some of the interdistrict competition that exists to continue but, since districts are power equalized, it allows poor districts to be in the competition.

Fourth, the plan calls for what some have described as circuit-breaker property tax relief. It is a proposal to give rebates to people with respect to property taxes, whether they are owners or renters. Owners would pay less property tax; renters would get income tax credits; the poorest renters would get cash grants. The plan would operate on a graduated basis and phase out above \$12,000 adjusted gross income. The cost of this part of the plan is \$400 million.

Keeping property taxes at about their current level on the average statewide, these four parts of the proposal cost about \$1.2 billion. Where is the state going to come up with \$1.2 billion? I do not know. In California you get about \$500 million for every cent in sales tax.

Finally, let me note that schools are not the only things which are financed at the local level. Indeed, the same kind of evils *Serrano* finds in school finance exists for police service and sanitation services, etc. Although I do not believe that courts — even if the U.S. Supreme Court adopts the *Serrano* principle — will require equalizing of sanitation services and police services, I do feel that public policy makers will be forced to face up to the question of whether or not it is fair that certain communities can much more easily and do provide adequate sanitation facilities and others cannot and therefore do not.

In sum, those who expect the *Serrano* doctrine to provide the answers to our school finance troubles will surely be disappointed; the overselling of the case has been by those who insist it will deliver more than it ever promised. Yet to those who still believe in reasonable state-level policy making, *Serrano* truly does present an exciting opportunity. (Applause)

**CHAIRMAN BREAK:** Our next speaker will discuss education in tax reform from the black perspective. He is Melvin E. Banner, President of the United Teachers of Flint, Michigan.

### EDUCATION AND TAX REFORM — THE BLACK PERSPECTIVE

MELVIN E. BANNER

President  
United Teachers of Flint  
Flint, Michigan

I think that most of us here will readily assent to the statement that "Plain, simple discussion about our problems of public education in America is long overdue."

Many of us are familiar with the stories of shortchanged "Inner City Schools," fundwise, ill-equipped, overcrowded, and poorly administered. To put it more bluntly, those who have been the victims of societal oversight, are seeing their own children punished by being denied the right to a decent educational opportunity.

Yet, in all fairness, we must consider the feelings, hopes and aspirations without regard to color now, of those who have made many sacrifices to move into areas where their children would be able to attend "better schools," but now face the prospect of being bused

back to inferior schools. However, the greater tragedy is the fact that there are blacks and other minorities who do not wish to remain in the ghetto, sending their children to inferior schools, but because of economic, social and housing discrimination, they are not allowed to make this sacrifice!

Black Students have been trail blazers. Critics have accused Black Students of: 1) lowering standards, 2) Diminishing value of degrees, 3) taken places of highly qualified whites, 4) caused campus unrest. Facts deny all this.

- A. Blacks are 3% of white institutions.
- B. Performance same as whites.
- C. Disrupters are white, middle class.
- D. 6.6% of college students.

Past segregation, and other discriminatory practices, have left deep scars which all of us, irrespective of race or color, must share the responsibility and the cost of erasing every vestige of discrimination in our society. Viewed within this frame of reference, our public education system becomes a most important area of concern, and especially to blacks, and other minorities.

Our schools became citadels of segregation in two ways: (1) by law in some localities (17 states) and (2) the results of many years of economic, social, and housing discrimination, thus creating racial and ethnic ghettos.

It was the white society that, in general, imposed restrictive zoning and land use, unconscionable practices of realtors and mortgage lenders, and separate neighborhood practices.

To make a long story short, because it does no good to kick a slowly dying horse (segregation), I feel those from all walks of life, who honestly care for all children, and the future of American Democracy, realize that the real issue is one of quality, integrated, equal education. This is the greatest concern of Blacks, and other minority peoples, still trying to "Lift their Lamps beside the Golden Door."

Quality, integrated education to Blacks designates those qualitative, integrative efforts of institutions which provide major assistance to blacks, and other minorities, in fulfilling their needs to alter (in legitimate ways) those elements of the social structure that will promote equal, integrated opportunity for all. To them, the major task of our public schools is to help turn the promises of democracy into realities.

Scientific evidence from laboratory and field studies demonstrates that the mental development of children occurs primarily through