Two weeks after the Texas Supreme Court ordered state education authorities to restructure the entire system of financing the public school system, the State Board of Education adopted a formal resolution on the matter.

First, the resolution requested the Attorney General to appeal the case to the Supreme Court of the United States. If the result of such action were a reversal of the Rodriguez decision, the State Board of Education could continue to follow its present course.

Second, facing the possibility that the U.S. Supreme Court might uphold the Texas Court's order, the resolution stated:

"The State Board of Education ... assumes full responsibility for developing a proposal to be submitted to the Governor, the Legislature, and to the general public which will provide for financing public school education in Texas in accordance with standards of high quality commensurate with the financial ability of Texas."

* A summary of remarks made by Dr. Marlin Erockette, deputy commissioner, Texas Education Agency (TEA), at the NCAEW Seminar on School Finance, held October 3, 1971, at the University of Texas at Austin.
Several officially appointed study groups have been working on the problem of Texas school finance for many years. So that the final proposal presented for legislative action would represent the "broadest participation by citizens," the State Board has invited these groups to coordinate their findings with its own.

Each of these groups is working independently but all are using the same data base. This includes TEA's estimates of future school needs and its study of market value of taxed property in Texas school districts, as well as a compendium of school statistics prepared by the Texas Research League.

To help these study groups, the State Board has prepared a chart for procedure -- a visual guide. This is shown on the last page in this section.

To guide its own staff in planning, the State Board drew up a statement of principles of school finance. The dominant note in this statement is support for local control of school financing. This appears to move in a direction opposite to that implied in Rodriguez. However, the State Board affirmed that in drawing up the guidelines it was considering not only the general problem of improving school financing but also the specific concerns of Rodriguez. "Local taxes should continue to be used in the district collected," is one principle laid down. Added to this is the caution that districts should not be restricted in their efforts to add to their funds by their own efforts.
Les less controversial is the point that control of the district's funds should be vested in the citizens residing in the district. An evident allusion to the existence of "tax-havens"--districts gerrymandered to minimize or avoid the taxation of wealthy property-owners--is made in this section. It is observed that emphasis on local control will require "responsible district organization and financial structure."

Regarding state financing to equalize district income, the principles are stated in very broad terms. For example: (a) "The allocation of state funds shall give consideration to the ability of the local school district to provide local tax and other revenues; and (b) "Guaranteed funding of the state's share of basic educational opportunity for all children must continue to be a key element."

This contrasts with the court order which called for an entirely new plan by which public education is made a state function of the state as a whole and not of the district.

While recognizing the need for improving the state's method of financing its schools, the Board of Education holds that the demands of Rodriguez are impracticable. The Board's position is made clear in papers by Ben R. Howell, Board Chairman. In these Mr. Howell discusses the Board's reasons for requesting appeal of the case. The gist of the argument is as follows.
The State Board of Education agrees that Texas should improve its method of financing education. Mr. Howell calls the disparity among districts in evaluation of property and return from tax effort "a horrible example of inequity." He deplores the existence of "tax havens with a tiny number of children and a huge tax base." The Board, he says, has asked for authority to reorganize districts and should be given it.

But, Mr. Howell contends, to accept the court's demand that variations in wealth among governmentally chosen units may not affect spending for the education of any child presents problems seemingly unsolvable. The Board's reasons for this stand are stated in the brief filed by the Board's attorney, Charles Alan Wright, in a request for a U.S. Supreme Court hearing. The brief holds in effect: (a) that the court's demands are unreasonable; (b) that to bring all districts up to the present district average of spending per/student would more than double the amount the state now spends upon education; (c) that it is very "unlikely" that the state could produce that amount of money; and (d) that such spending would not be wise public policy. Other social needs are still unmet in Texas because of underfunding, it notes. Further, it argues that it cannot be proved that greatly increased spending for education would improve quality.
A management task force of the Texas Education Agency and consultants are now developing alternate plans for the State Board of Education. Regardless of the outcome of Rodriguez, the Board states as its goal, "improving the below-average standard schools without pulling down the best schools."
**PROPOSED STEPS FOR DETERMINING A METHOD OF FINANCING FOR PUBLIC SCHOOLS**

<table>
<thead>
<tr>
<th>Scope of Public School Education Determined:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Populations</strong></td>
</tr>
<tr>
<td>What age groups will be financed by the state?</td>
</tr>
<tr>
<td><strong>B. Programs and Services</strong></td>
</tr>
<tr>
<td>What kind will be financed to meet the objectives of the goals adopted?</td>
</tr>
<tr>
<td><strong>C. Elements of Quality</strong></td>
</tr>
<tr>
<td>What criteria will be used to determine the quality of services as far as money is concerned?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Organization - Structure of Governmental Units Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>What structure should be used to better use of resources?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Level of Funding Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much money needed to carry out these plans?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Method of Financing Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>What approach for distribution of funds?</td>
</tr>
</tbody>
</table>
Introduction

The appropriate men to address my topic, "What Happens if Rodriguez Is Upheld?" are the other men on our program, Dr. Marlin Brockette, Deputy Commissioner of Education, and Mark Yudof, of the UT Law faculty and counsel for the plaintiffs in the case and Dr. Glenn Ivy, Director of the recent Governor's Committee on Public School Reform. What I shall do is discuss the possibilities, most of which are not political probabilities. At the end of my presentation I shall go into what I consider to be politically relevant forecasts.

* Address by Daniel C. Morgan, Jr., to the National Council for the Advancement of Education Writing, J. Thompson Conference Center, University of Texas at Austin, October 3, 1972.
The Assumptions

First, I shall assume that the court rules that wealth discrimination is what the Rodriguez case is about, and that wealth discrimination between districts is out henceforth, i.e., that it must be eliminated very, very quickly. Obviously the court need rule no such things, and my personal guess is that they will not. But I want to operate initially with strong case assumptions and leave to the lawyers and the politicians the realistic compromise forecasts. So I shall assume that the high court says, "No more wealth discrimination among the school districts of Texas." Under such a ruling practically anything in the way of system or solution is legal, the only prescription being that the state of Texas is not to discriminate on the basis of wealth among its many school districts. To keep things simple I shall assume that the only alternative systems open to the state are these:

1. Full State Funding
2. Minimum Foundation Program approach--fixed unit variety
3. Minimum Foundation Program approach--variable unit variety
4. Power or percentage equalizing of some sort; or
5. Some combination of these four.

To make the illustrations as simple as possible, I'll manufacture a mythical state with . . .

1. Four districts--A, B, C, D
2. Each district with 25 pupils
3. Wealth per pupil as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>Wealth/pupil</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$10,000</td>
</tr>
<tr>
<td>B</td>
<td>20,000</td>
</tr>
<tr>
<td>C</td>
<td>30,000</td>
</tr>
<tr>
<td>D</td>
<td>40,000</td>
</tr>
</tbody>
</table>
This mythical state differs quite a bit from Texas reality, with its 1149 districts (not 4); with fantastic differences in wealth per pupil, (not just 4 to 1 ratio). [In the latest study, published by the Texas Advisory Commission on Intergovernmental Relations, the range of market value per/pupil goes all the way from $5,147 per pupil in Edgewood to $10.9 million per pupil in Provident City, or over 2,000 to 1!] And of course the actual range of students among Texas districts is immense.

Let me assume a system somewhat like Texas where the state provided a foundation guaranteeing so much per/pupil, say $400, with the state paying 80% of the cost of the State program and the local districts collectively paying 20% (with each district paying in accordance with its respective capacity; let's say that this is measured by its wealth per/pupil). But in addition to the State program the local districts can provide whatever they wish -- or "local enrichment" is completely up to the local district. Let us assume that each district decides to make the same tax effort -- highly unlikely.

Then we would have this situation to begin with, pre-Rodriguez:
So pre-Rodriguez we commence with immense disparities in total revenue per pupil, as Column (5) shows, going from $600 in A to $1200 in D. The source of the differences is the local districts' wealth bases: they range from $10,000 per pupil to $40,000 per pupil, so that equal tax rates of 2% (or 20 mills) give a range from $200 to $800 per pupil in local districts revenues. [This is nothing like actual differences which ranged from $300 or so to thousands in the years pertinent to the Rodriguez case.]

We wish to end the discrimination. [Notice that the total cost of the program, State + local, is $3600. Notice also that cost to the State government is only $1280.] So suppose that we wish to keep costs (State plus local, combined) constant, at $3600. We equalize to the middle at $900 per pupil.
Equalizing to the Middle Under

**A State Flat Grant**

Say that we take the route of 100% State Funding, using State flat grants of $900 per pupil, ending all local district taxation (compulsory as well as voluntary local enrichment). Now only the State bears the taxes. So we get:

<table>
<thead>
<tr>
<th>Wealth per pupil grant</th>
<th>Compulsory local taxes</th>
<th>State local aid</th>
<th>Total local enrichment</th>
<th>Total revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A $10,000 $900 $0 $900 $0 $900</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B 20,000 900 0 900 0 900</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C 30,000 900 0 900 0 900</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D 40,000 900 0 900 0 900</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$100,000 $3600 $0 $3600 $0 $3600</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Half the districts gain (A and B) but half the districts lose (C and D):

A = +$300; B = +$100; C = -$100; D = -$300.

Total cost (and average revenue per pupil) is the same as before, but then notice how costs to the State government rise: They were $1280 earlier; now they are $3600 -- nearly a 300% increase in costs! Not too popular with state legislators.

But even with this we see C and D's children hurt. Some would say, surely we don't want to let them be hurt. If we equalized everybody to the level of D's children (1200), costs would go to $4800.
Now total costs (State and local) have risen from $3600 to $4800, or 33 1/3%. But costs to the State government have risen from $1280 to $4800, nearly fourfold.

**Full State Funding**

One alternative, then, is for the State government to take over the entire funding of the education program, thereby relieving the local school districts of all their property tax obligations. The State could do this either through *centralization* or by *flat grant* payments to the school districts. Probably implicit in centralization and State operation of the schools is the idea that the State government will make all of what we think of as the big education decisions, decisions such as the level of program and such as the allocation of our education resources. Centralization is not about to happen as the result of *Rodriguez*, so for the sake of brevity I'll pass it by as an alternative. But the State government could make grants to the districts and continue to make the decisions it presently makes and have the local districts make most of the decisions they presently make. State flat grants could be equal per/pupil or per/task unit (whatever the unit may be) or it could be weighted, so that certain pupils or units receive more than others. (In Texas we presently have much of the latter and there would be heavy pressure to keep it so.)
So, saying "flat grants" does not necessarily imply equal amount per/pupil. If we wish more money for needier pupils, this is perfectly legitimate under Rodriguez, so long as the differences are not invidious distinctions or if classifications.

Seeing how this works out with an over-simple mythical state example, it should come as no surprise to us then that actual empirical costs to the State in Texas jump immensely under 100% State funding. Even if we keep total costs of education constant in Texas and equalize it up to the middle it would cost the State government about $1 billion today. And say that we equalized up to the level of Texas City (just under $1000 per pupil in 1970-71 or the 95th percentile in Texas), it would cost nearly $2 billion! (This is so even though it would cost state + local together only between $600 and $700 million.)

The State government is not apt to foot this entire bill, needless to say. They will at the very least turn to a Minimum Foundation Program approach (as we used to call it; in Texas we now call it a Foundation School Program). Under this approach even though the State may guarantee money or services it compels the local districts to put up some portion of the cost; the State does not bear it all alone.
Foundation Program Approaches

Under a Foundation Program the State lays down a compulsory uniform rate tax on the local school districts. It makes the portion it wishes the districts to put up equal to anything the State wishes. Texas has used 20%, roughly, but it could be more than this. The portion that each district pays of this total percent depends on its relative capacity to pay taxes, the given district's ability relative to the ability of the others. This can be measured all kinds of ways: Texas uses an Economic Index to measure it. There is plenty of pressure nowadays to measure it in accordance with full market value of property.

One big question after Rodriguez, if the court rules for the plaintiffs, is: if we use a foundation program, can there be any local enrichment atop this even as little as 5%, 10%, or 15% -- that continues to use the fantastic differences in wealth without using power equalization (which I'll talk about in a minute). Certainly and logically the answer is NO! Any amount continues to give wealth discrimination: districts with dozens of times the wealth per/pupil hold the big advantage still; you would simply be reducing the dollar amount of it if you allow any local enrichment atop the state foundation program without power equalizing for the local portion.
So let me assume for a moment that there is only a State foundation system and no local enrichment atop it, as we think of the term local enrichment today.

There are two basic types of foundation programs:
1. the fixed unit approach
2. the variable unit approach

Some of each of these is found in Texas' Foundation School Program today. But the dominant part is the variable unit approach. This is very unusual among the states. It comes about because of how our Salary Schedule dominates our foundation program — 80% to 90% of its total costs. But the fixed unit approach is easier to understand; so I'll start with that and play as if the entire system is fixed unit, for a moment.

Fixed Unit Approach to Foundation Program

To go back to my original example, if we want equal spending per/pupil but no increase in State + local district costs, we provide $900 per/pupil again. This makes the situation:

<table>
<thead>
<tr>
<th>Dist.</th>
<th>Wealth per pupil</th>
<th>Foundation guarantee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$10,000</td>
<td>$900</td>
</tr>
<tr>
<td>B</td>
<td>20,000</td>
<td>900</td>
</tr>
<tr>
<td>C</td>
<td>30,000</td>
<td>900</td>
</tr>
<tr>
<td>D</td>
<td>40,000</td>
<td>900</td>
</tr>
<tr>
<td>Total</td>
<td>$100,000</td>
<td>$3600</td>
</tr>
</tbody>
</table>
If we want to keep the State-local division at 80-20, then local districts must pay $720 or 20% of $3600. It would be divided so that A would pay 10% of this because it has 10% of the ability, ($10,000 is 10% of $100,000); B would pay 20%; C would pay 30%; D would pay 40%.

Notice that the original cost being paid by the State government pre-Rodriguez was $1280. Now it is [$3600 - $720] or $2880. More than double. And the children of C and D are receiving less money than pre-Rodriguez. So, there would almost surely be equalizing up; so the increase to the State government would be greater than this.

It is easy to see that if the State goes to an all-out Foundation program approach it will almost surely be changing the State-local ratio; so the local districts will be paying more than 20% of the program’s costs.

As we work on these things it comes clear pretty fast that Rodriguez is not going to mean the end of property taxes for schools if it means the end of wealth discrimination and any real help for the poorest districts!

### Costs to State Government of Alternative Splitting Arrangements, 1970-71

<table>
<thead>
<tr>
<th>Costs</th>
<th>80-20</th>
<th>60-40</th>
<th>50-50</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Keep average costs/pupil constant ($704)</td>
<td>$691 mil.</td>
<td>$518 mil.</td>
<td>$432 mil.</td>
</tr>
<tr>
<td>2. Equalize up to Odessa (86th%): $804</td>
<td>1,006 &quot;</td>
<td>745.3&quot;</td>
<td>629 &quot;</td>
</tr>
<tr>
<td>3. Equalize to Texas City (95th%): $959</td>
<td>1,321 &quot;</td>
<td>984 &quot;</td>
<td>820 &quot;</td>
</tr>
<tr>
<td>4. Equalize to Deer Park (99.1%): $1277</td>
<td>1,943 &quot;</td>
<td>1,463 &quot;</td>
<td>1,251 &quot;</td>
</tr>
<tr>
<td>5. Equalize to Andrews (99.9%): $1708</td>
<td>2,624 &quot;</td>
<td>1,968 &quot;</td>
<td>1,640 &quot;</td>
</tr>
</tbody>
</table>
Local districts will not be relieved of property taxes.

We'd have to equalize everybody down to Edgewood's level. That would lower total (State-local) spending $700 million, and the State government would just break even!

But Andrews would lose about $3 million, i.e., over $1,000/pupil; Alamo Heights would lose about $500/pupil; Houston and Dallas would lose between $55 and $55 million each, between $300 and $400/pupil.

(When people say money doesn't matter, just suggest to them that we solve our equalization problem by cutting everyone down to Edgewood's level!)

**Variable Unit Approach to Foundation Program**

Some foundation programs, though rare nowadays, are not per/pupil based, or per/classroom, or per/task unit. They are not fixed unit approaches, they are variable unit approaches. The common variable unit approach is the State minimum salary schedule approach. The State sets up a minimum salary that each teacher of designated characteristics or qualifications must receive no matter what district she or he teaches in. Usually the teachers with more schooling and more experience are deemed to provide the better teaching services and the districts with these teachers receive the greater State aid. This is the major part of the Texas Foundation School Program.
The Foundation Program has some other aspects that are 100% State funding, and some that are fixed unit foundation approach, like the $660 per classroom teacher unit for maintenance and operation. But $660 for, say, 25 pupils per classroom unit, comes to about $26 per/pupil. (It really goes a little higher than this, to about $30 for the average CTU.) But all this is peanuts compared to the salary schedules.

The State Board of Education and most people concerned seem to want to retain this unusual salary schedule approach as a basic for aid to the school districts. As things stand now, with local enrichment based on the immense differences in wealth, not only do we have great differences in local enrichment money per/pupil among the districts, we even often have the State Foundation's program giving more money to the rich districts than to the poor, contrary to what we would expect. This is because the richer districts are more able to hire the teachers with the more degrees and experience, and to hire more aides, etc., that the program pays them for having.

So one question that faces us if we retain any kind of local enrichment at all and at the same time retain the salary schedule as a major part of our foundation program is, is this not wealth discriminatory and unconstitutional?
If the richest districts have the best chance of attracting the teachers with the qualities that give the biggest State money -- because a given tax effort by richer districts gives them more money -- are we not wealth discriminating? In other words, is not the Salary Schedule approach unconstitutional? Almost certainly it would not be if we have power equalization among the school districts, so that each district has an artificial equal economic potential per/student, thus an equal ability to attract a given characteristic of teacher.

With all this talk about "power equalization," it is time to talk about it!

The Power Equalization or Percentage Equalization Approach

So far we have talked only about reforms that turn the big education decisions over to the State government -- at least decisions as to the level of outlay and how that outlay is to be distributed among the various school districts.

But suppose we want the local school districts to make practically all the big decisions? In other words, suppose we really favor the principle of local control, practically all the way?
If the plaintiffs win Rodriguez, clearly we can't just say "Local enrichment all the way," leaving the wealth disparities per/pupil remaining immense, as they are in Texas today. With our immense disparities, with equal tax effort the revenues per/pupil differences would be immense. But does this mean that local control is out completely? This is one of the decisions the court must deal with. But my guess is that it will say no. Local control is perfectly okay, the Supreme Court will say, so long as there is power equalization among the school districts. Many people fail to understand this point because they don't understand power equalization or equalization of fiscal potential per/pupil.

Many people assume that with Rodriguez (if affirmed) we must choose between two alternatives, both of which they consider bad:

1. Local control (good) but with wealth discrimination (bad)
2. State uniformity and/or no local control (bad) but with no wealth discrimination (good).

But, theoretically at least, we can indeed have both local control and diversity of levels of education among the various school districts if we do it under conditions of "fiscal neutrality" or equal resources per/pupil.
The idea is for the end of wealth discrimination but to continue to allow the local districts to decide the levels of program they want through the tax rates they are willing to pay, except not like today, where Edgewood can tax itself out of existence and raise very little money while Andrews can make very little effort and raise a barrelfull. The State government plays a subsidizing role in setting up a situation so that equal tax effort gets districts the same revenue per/pupil no matter their real wealth per/pupil. But higher effort gets you more money and you, the district, make the decision about how much effort you wish to make.

This is done with formulas but the basic idea of one kind of power equalization where the State keys on the richest district can be displayed easily. First assume, unrealistically, that each district puts forth the same true tax effort:

<table>
<thead>
<tr>
<th>Dist.</th>
<th>Actual Wealth per pupil</th>
<th>State wealth guaranteed tax rate per pupil</th>
<th>Local revenue by local district</th>
<th>Total Tax Paid</th>
<th>State aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$10,000</td>
<td>$40,000</td>
<td>2%</td>
<td>$800</td>
<td>$200</td>
</tr>
<tr>
<td>B</td>
<td>20,000</td>
<td>40,000</td>
<td>2%</td>
<td>800</td>
<td>400</td>
</tr>
<tr>
<td>C</td>
<td>30,000</td>
<td>40,000</td>
<td>2%</td>
<td>900</td>
<td>600</td>
</tr>
<tr>
<td>D</td>
<td>40,000</td>
<td>40,000</td>
<td>2%</td>
<td>800</td>
<td>800</td>
</tr>
</tbody>
</table>
In this case every district pays an equal percentage of its true wealth in tax, and with equal effort all districts receive equal total revenue per/pupil.

But of course districts will not all have the same "appetite for education and taxes," and will not make the same effort. Suppose A makes 1% and D makes 1%, while B makes 3% and C makes 2%. Then we have the following:

<table>
<thead>
<tr>
<th>Dist.</th>
<th>Wealth per pupil</th>
<th>Wealth Base</th>
<th>Total State revenue by:</th>
<th>Tax paid per pupil</th>
<th>district aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$10,000</td>
<td>$40,000</td>
<td>1% $400</td>
<td>$100 $300</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>20,000</td>
<td>40,000</td>
<td>3% 1,200</td>
<td>600 600</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>30,000</td>
<td>40,000</td>
<td>2% 800</td>
<td>600 200</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>40,000</td>
<td>40,000</td>
<td>1% 400</td>
<td>400 0</td>
<td></td>
</tr>
</tbody>
</table>

$1,700 $1,100

Equal effort of A and D gives equal revenue per pupil (total): $400 per pupil. Higher effort gives higher taxes and higher revenue per/pupil. The local districts make the crucial decisions --"local control." But, unlike today, every district has an equal chance: equal effort yields equal revenue per/pupil.

Of course if it wishes the State can say: you must make at least so much effort; or you can’t make above so much effort.
Combinations of Approaches

Now the previous example assumes complete local control -- no more foundation system. But of course the State can create a foundation system -- fixed unit approach and/or variable unit approach -- and put some power equalization above it.

In other words, it can make up any combination of the above approaches it likes. For example: the total system might be: \[ E\{1 \} + E\{2 \} + E\{3 \} \]

1. Some things -- full State funding
   + (2). Foundation program:
     more fixed amount per/pupil or per/class-room district than the present system has;
     plus
     continuation of the present Salary Schedule approach
   + (3). Power equalization (with some limits) above these State programs. Clearly this ends wealth discrimination and is constitutional. (So long as the local is power equalized and not just local enrichment based on the present power bases.)

Forecasting What the State Will Do

What will the State do? What will come from the Texas Education Agency, Texas Research League, "Mauzy Committee," Texas State Teachers Association, et al, studies, plus politics?

I believe the lines are emerging and that Dr. Brockett can answer the question for us. I think that the Texas Education Agency plan, or something related to it, is what will emerge. Let us not worry for a moment about whether the plan is wealth discriminatory.
I am fully certain that what the Legislature passes will continue to be a highly wealth discriminatory plan. The plans that end it are either too expensive or hurt too much those who've "got it" now, while those who are being hurt don't have the power to assert their rights.

What will emerge will be a plan that improves the Foundation School Program considerably; it will be phased in over several years; it will continue local enrichment (which is clearly wealth discriminatory); it will continue capital outlay and dept service with districts, giving no aid from the State, (which is also wealth discriminatory); it will put a lot of emphasis on creating new staff positions [Out of the Governor's Committee Report the main result was increases in teachers salaries; now there are a couple of teachers looking for work for every job opening, and TSTA is anxious for more openings]; it will increase the State program and money per/pupil which will help the poorest districts. In other words, the emphasis will be on making the foundation program more adequate, more than today's, and this will help the poorest districts.

But it will leave heavy wealth discrimination, and we will be back in court immediately trying to show how wealth discriminatory the plan remains and trying to get the court to force a nondiscriminatory plan on the State.
On October 12, 1972, the Supreme Court of the United States heard the oral arguments in case number 71-1332—San Antonio Independent School District, et al., Appellants, v. Demetrio P. Rodriguez, et al., Appellees. Eight justices were in attendance:

Warren E. Burger, Chief Justice
William O. Douglas, Associate Justice
William J. Brennan, Jr., Associate Justice
Potter Stewart, Associate Justice
Byron R. White, Associate Justice
Harry A. Blackmun, Associate Justice
Lewis F. Powell, Jr., Associate Justice
William H. Rehnquist, Associate Justice

Charles A. Wright, of Austin, Texas, was the lawyer for the Appellants. Arthur Gochman, San Antonio, Texas, was the lawyer for the Appellees.
First, excerpts (and some summary) from arguments put forth by Charles A. Wright:

"I would like to take as the text for my argument this morning a sentence from an article that Professor Coons and his collaborators, Sugarman and Clune, wrote last year. It is cited at page 44 of my initial brief. They said: 'Of all public functions, education in its goals and methods is least understood and most in need of local variety, experimentation, and independence.'

That, I think, is wise counsel. I believe that is the argument for reversal in this case. In our view, the Texas system of school finance, imperfect as it is... does allow for local variety, experimentation and independence; not as much as I would like it to, but that is its goal, that is its rationale, and for that reason there is a rational basis to it, and I will undertake to develop our view that the rational basis test is the appropriate test.

The view adopted by the district court that there is a rigid constitutional mandate that the quality of education may not be a function of wealth, except the wealth of the state as a whole, in my submission, is based on educational assumptions about matters that are today not understood and about which educators are not ready to form firm judgments,...
[It] would seriously inhibit, if it would not destroy altogether, the possibilities for local variety, experimentation and independence, of which Messrs. Coons, et al., quite properly speak so warmly.

"Proposition One, the proposition adopted by the district court in this case, would impose a constitutional strait jacket on the public schools of 50 states. It would mean that hereafter and permanently, or at least until a new book is written and the Constitution changes again, that all measurements in terms of the public schools, must be in terms of per/capita or per/pupil student expenditures, even though there may be many other things that we ought to be worrying about in an effort to cure the problems of public education."

Then followed a discussion of district power equalization by Mr. Wright with question from the court.

Justice White asked Mr. Wright if it was not necessary for the court to assure a minimum level of spending throughout the State of Texas, to which Mr. Wright responded in part: "I do not think you have to decide that. I am prepared for purposes of the present argument, Justice White, without foreclosing what I may say the next time I am up here before you on a different case, to concede that there is a constitutional minimum that could be required."
"I think that there were certainly overtones of that in Yoder last term when the court talked about a basic education and quoted what Thomas Jefferson had to say about it and things of that sort, so that I can understand what to me is a viable constitutional argument, that a minimum education is required. But I do not think there is any issue between the parties in this case on whether or not Texas is providing a minimum education. As far as I know...

I certainly would not want to put words into the mouths of my friends. But their pleading is not drawn on the theory that the foundation program does not give Edgewood enough. Their theory is that it does not give Edgewood as much as Alamo Heights and that there is the constitutional violation. And that is certainly the constitutional violation found by the district court. The district court made no finding that we fall below whatever the constitutional minimum may be..."

Then followed an exchange by Justice Rehnquist and Mr. Wright.

JUSTICE REHNQUIST: "Do you know of any case in this court which has ever held that it would be unconstitutional for a state simply to get out of the business of public education bag and baggage?"

MR. WRIGHT: "I know of no such case, and I would say there were certainly strong implications in the Prince Edward county case that a state could do exactly that..."
JUSTICE REHNQUIST: "Then why do you say that a minimum education may be a constitutional requirement if a state could get out of it entirely?"

MR. WRIGHT: "I, of course, you recall, sir, made my concession entirely in terms of this case. I think I can safely concede it here, but I do not have to take on that argument in order to win this case; even if a minimum is constitutionally required, Texas wins here. I must say I am attracted, Justice Rehnquist, as a scholar to the argument that it might be, despite the intimations of your previous cases, that today the failure of state to provide an education altogether would inhibit the First Amendment rights, that a state has an obligation to teach children to read and to write. I do not know that I would accept that argument, but I can see the possibilities of sketching out an argument of that kind."

JUSTICE REHNQUIST: "In the past two or three years, did not Mr. Justice Black in one opinion, whether part of the holding or not, did he not say pretty flatly a state could close all its schools if it wanted to?"

MR. WRIGHT: "I think he said something of the sort in Palmer v. Thompson, the swimming pool case--"

JUSTICE REHNQUIST: "Is there a question, however, that once the state undertakes to furnish education, then it must furnish a certain minimal adequate education for everybody? Once they start to go down that row, they must follow through."
MR. WRIGHT: "We certainly must do it for everybody, yes. If we are going to do it for any, then we must do it for every young person in the state."

Justice Brennan next asked a question about district power equalizations.

"On district power equalizations, what about the percentage of ratings? Do they not differ in Texas? They seem to everywhere else. Some places assess at 30 percent and some at eighty and some at a hundred."

MR. WRIGHT: "They differ very widely in Texas as they do in most states, Justice Brennan, and I think that if a state were to adopt district power equalizing, it as a practical matter would have to adopt statewide assessing, I do not see any other way in which the scheme would be feasible. Otherwise you simply use a favorable rate, and you get more than you are entitled to. And I think that demonstrates the further incursion on local government that the ideas presented here by the Appellees [lawyers for Rodriguez] represent, that very little is to be left of local government if the decision below is to be affirmed.

"We contend, of course, that if we are subject only to the rational basis test, that this is not one of those cases in which we must demonstrate a compelling state interest in order to justify the results for which we argue and justify the state plan."
"And we think that there are quite a number of very recent cases in this court, some of them ignored by the lower court and some of them still more recent, that show exactly that and show that this court is not going to impose a constitutional strait jacket on the states in difficult, intractable questions of social reform, welfare, economics, Pardridge, Lindsey, Jefferson v. Hackney, cases of that kind, and we think this is clearly in the area with which we are concerned. The appellees undertake to distinguish these and to suggest that in some way the educational needs of the poor are fundamental, while their needs for food, for housing, are not. And, with respect, this is a distinction that I think simply is not a tenable one, that it is hard to say that a higher salaried school teacher is more fundamental to a poor child than food or a sound roof over head."

Mr. Wright then took up several issues regarding the relationship of money to quality and education. He challenged the district court's findings "that there is a correlation between poor people and poor school districts," arguing that the information which the district court had had was not truly representative. He cited a study in Connecticut which tended to show the opposite "that it is the poor people who live in the area where the most is being spent on education and the rich people live in the areas where the least is being spent on education."
This discussion was interrupted by Justice Douglas who asked, "As I read this record, Mr. Wright, it seemed to me that the testimony -- I am not sure about the findings -- pretty clearly demonstrate there is unequal treatment of these respondents who are Americans of Spanish ancestry at educational levels. Is that any part of this litigation?"

MR. WRIGHT: "The racial issue is in this litigation, yes, Justice Douglas. It is a major portion of the plaintiffs' complaint. The trial court did not rely on it in its opinion. It put its holding squarely on the dollar inequality without regard to whether the particular plaintiffs were of Spanish ancestry of Anglo or what. But the issue is certainly there.

"We think that the issue is one that is fairly readily answered, that although it is of course quite true that in the Edgewood School District in Bexar County, Texas, the great majority of the students are of Spanish origin and not as much money is spent there as in other school districts. But we doubt that this would be found to be true as a general matter. But the poor school districts are not that congruent with racial distributions, that it is, in other words, a happenstance. We have a case in which we have particular plaintiffs who are Mexican-American and who live in a district with low taxable resources."
"Again, on these factual statistical problems, we think that the state of the literature simply does not permit the conclusions that are essential to the position of my friend; and that even if their conclusions were sound, we still think that our legal argument would have great merit. But if their conclusions are not demonstrable at the present time because they are the essential premises of the results for which they argue, we think that the inability to demonstrate the accuracy of these assumptions is fatal to their case."

Chief Justice Burger interrupted: "I assume you use the term 'state of the literature' in the broader sense of state of the human knowledge on this?"

MR. WRIGHT: "Yes, yes. That is exactly the sense in which I use it, Mr. Chief Justice. I would like... Just to quote from the book by Messrs. Coons, Sugarman, and Clune. They say -- the quotation appears on page 24 of our initial brief -- 'It is not surprising that even the present litigation is understood by many of its close supporters as a racial struggle. The fact is otherwise. There is no reason to suppose that the system of district-based school finance embodies racial bias... No doubt there are poor districts which are basically Negro, but it is clear almost by definition that the vast preponderance of such districts is white.'"
"Professor Coons and his associates have supported that statement, by figures showing that in California, for example, 59% of minority students live in districts in which the assessed values are above the median and therefore, if we would have strict equalization, they would get less than even now."

Mr. Wright concluded his testimony thus:

"I am not here to apologize for the Texas school finance system, and I have said repeatedly that it seems to me far from perfect. I think that the Texas system does assure, as evidence in the record shows, more than merely a minimum; it insures a basic education to every school child in the state, and it then lets districts, if they have money and want to spend money, go beyond that. As I understand the argument of my friend, Mr. Gochman, it would not matter if Texas were giving each school district in the state $2,000 per student. If Alamo Heights were still free to tax, with its heavy resources, and spend more than Edgewood was, he would still find this to be impermissible, although, for reasons that are not persuasive to me, he regards the same result as quite different if it stems from district power equalizing than if it comes out of the mere facts as they are."
"I have said several times in my brief -- and I want to say here and say with the utmost sincerity -- how much I admire the creative scholarship of Professor Coons and his associates, my colleague Professor Udall, and others who have written in the field, and I admire also the devotion and the ability with which Mr. Gochman has persevered in this case. These people have opened the eyes of the whole country to a very serious problem. I think that every one in this courtroom would agree that what we want is better education for all children and especially for poor children, that the real differences between us are whether a new system should be adopted because this court finds that the Constitution requires it or whether we look to legislatures to provide remedies and the difference about whether the proposals they make would indeed lead to better education or only more expensive education, whether they would relieve poor children or only children who happen to live in poor school districts, and indeed if district power equalizing is to be taken seriously, whether the remedy that has been offered here is not one that is of no benefit to children but only of benefit to taxpayers."

Arthur Gochman presented the case for Rodriguez, et al, substantially as follows.
"The court below held the Texas system unconstitutional because it distributes educational benefits on the basis of district wealth. The court said, as might be expected, those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poorer districts are poorer in income and predominantly minority in composition.

"The court further found that there was no rational or compelling reason that could be offered for this invidious discrimination. This court is to decide whether or not to reverse the lower court and approve District 12 as a proper basis for distributing public school education.

"The defendants admit that there is a perfect correlation between the property tax base per/student and the amount of dollars each child gets for his education. Yes, Mr. Justice Brennan, tax rates do vary in Texas. But the district taxing at the highest rates in Texas get the lowest dollars per/pupil, and the districts taxing at the lowest rate get the highest dollars per/pupil; and we have showed it in exhibits in Bexar County where my clients live, a metropolitan area, and we showed it statewide."

Mr. Gochman was interrupted by two justices who challenged whether or not there weren't some school districts where the per/capita income is low, but the schools do have a lot of money to spend.
While Mr. Gochman agreed this could and did happen, he emphasized that this was not the case in Bexar County, where Edgewood I.S.D and San Antonio I.S.D are located.

Mr. Gochman was asked about other social services such as police and fire protection and public health facilities. He replied, "I think what is important is the constitutional importance of education. And that is, education affects matters guaranteed by the Bill of Rights. It is preservative of other rights, unlike some of these other services. It is related to every important right we have. It is related to the right to vote, [to] speech, [and to] jury service. You cannot serve on a federal jury if you cannot read, write, understand, and speak the English language. It is education this court has used as the high water mark for measuring the importance of other rights..."

"Public health, food, lodging, these things are of great economic importance. But they are not matters that are related to those things guaranteed by the Bill of Rights. And in importance, education lies at the apex up and down the ladder. It is important to the free enterprise system, to the individual not to the poor. It is important to fulfill individual potential. It is universally relevant. And it is the only thing the state provides that it compels you to utilize for this period of time."
"But a child has to go to school for ten years. That is the importance that the state puts on it. It molds the character and the personality of the individual. And it is vital for the United States to compete in the world.

"But they seek to rationalize this and say it is all right on the basis of local control, on the basis of diversity, variety, independence. [Local control is the] one thing the Texas system does not have, because those that tax at the highest rates, as I said a moment ago, have the lowest expenditures per/pupil. And those that tax at the lowest rate have the highest expenditures per pupil. This is just the reverse of local control.

"In San Antonio, Edgewood taxes at a rate 20% higher than Alamo Heights. But they raise thirty some-odd dollars a pupil. Alamo Heights raises over $400 a pupil. It is the property tax base that determines how much you have for a child's education. And who set that base and who set that standard? The state. And they agree that this is a state system of public school education. And these school districts were set up by the state for the convenience of the state in affording public school education.

"They also agree that these district boundaries serve no educational function, and they have no rational basis."
Next Mr. Gochman was asked if he agreed with Mr. Wright that the state foundation contribution is sufficient to provide an adequate education. He said he did not and followed with a question of his own.

"What is a minimum? What kind of morass is Mr. Wright asking you to get into? What is a minimum?... Are we going to have two classes of citizens, minimum opportunity citizens and first-class citizens? I think in Sweatt we took care of that, and I think in McLaurin we took care of that."

Mr. Gochman then got into the issue of power equalization when he was asked the following question: "In power equalization, if after providing a minimum education, if a district decided that they wanted to spend more money on education, they could decide to spend it; is that right?" Mr. Gochman agreed.

Another justice asked if there was any system which would satisfy Mr. Gochman's objections to the present Texas system. To which Mr. Gochman replied in substance:

"One thing they are looking at in Texas for example is, you take all the nonresidential wealth and you tax it statewide and you tax the residential wealth on a county-wide basis. In taxing the residential wealth on a county-wide basis each district, by improving its own tax rate, will get itself more money."
"but there is a basis, because pretty well, on a county-wide basis throughout the state, the residential and tax basis will be equal or the variance will relate to the higher cost of living."

A justice then summarized, "As I get your position, it is not that just unequal inputs per se violate the equal protection clause. So far it sounds like you are saying that the fact that there are some districts that are locked in is what violates the equal protection clause. There is nothing they can do about having a better education either from the state foundation program or from taxing at higher rates."

Again Mr. Gochman agreed.

A long discussion on power equalization followed. Then Mr. Gochman concluded his oral arguments by stating:

"One thing [the Appellants] are asking you to do in this case is to declare constitutional a system that is based on money making a difference and giving incentive matching grants to those schools that have the most money and put up the most money for education, and ask you to declare that system to be constitutional on the ground that money makes no difference. Actually at the trial of this case they all agreed that money made some difference. Now they say that a minimum program is enough, which is an admission that money must make a difference, that there must be a maximum program."
"But again I want to go into the fact that Sweatt, I think, did away with minimums. And I want to point the court to McLaurin, because this is what the state did. And it is not what will happen as a result that counts. In McLaurin the State of Oklahoma said this child shall sit in the back of the room. This law student shall sit in the back of the room. 'Well, nobody else would have sat with him anyway; so, the statute ought to be upheld because it wouldn't be any different if we didn't have it.' And the court said, 'What the state did is what is important.'

"I want to say, in concluding, that the San Antonio Independent School District, the central city district, is a main defendant in this case. And they fought us hard at the trial level, got out on a motion to dismiss; but on appeal of this case, after seeing the decision of the trial court, and the equity involved and the vast discrimination, filed a brief in support of the decision of the trial court."
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