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SENATE EDUCATION

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Education

Who needs a bad teacher when you can get a worse judge?

NEW YORK

The courts are making a mess of America's schools

ONE reason that America's public schools do badly in international rankings, despite getting more money, is that nobody is really accountable for them. The schools are certainly not run by Washington: the federal government pays only 8% of their costs. Most of their money comes from state and local government, but often responsibility for them lies with school boards. And within the schools themselves, head teachers usually have little power either to sack bad teachers or to expel rowdy pupils.

Until recently, the main villains of the piece had seemed to be the teachers' unions, who have opposed any sort of reform or accountability. Now they face competition from an unexpectedly pernicious force: the courts. Fifty years ago, it was the judges who forced the schools to desegregate through *Brown v Board of Education* (1954). Now the courts have moved from broad principles to micromanagement, telling schools how much money to spend and where—right down to the correct computer or textbook.

Twenty-four states are currently stuck in various court cases to do with financing

school systems, and another 21 have only recently settled various suits. Most will start again soon. Only five states have avoided litigation entirely.

Nothing exemplifies the power of the courts better than an 11-year-old case that is due to be settled (sort of) in New York City, the home of America's biggest school system with 1.1m students and a budget nearing \$13 billion. At the end of this month, three elderly members of the New York bar serving as judicial referees are due to rule in a case brought by the Campaign for Fiscal Equity, a leftist advocacy group, against the state of New York: they will decide how much more must be spent to provide every New York City pupil with a "sound basic" education.

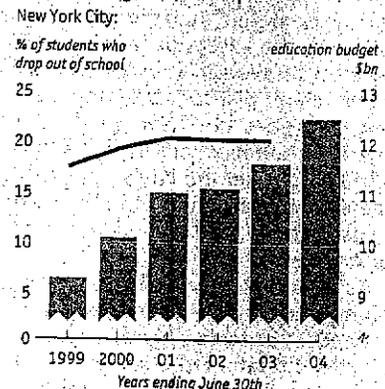
The idea that the state must provide a "sound basic" education was laid down by New York's Court of Appeals in 1995. At first blush, the term sounds obvious and modest. In practice, it is anything but. The New York courts have since said that schools must provide an education that gives "the intellectual tools to evaluate complex issues, such as campaign-finance reform, tax policy and global warming".

This is a standard most congressmen probably could not meet.

Trying to guess the amount of extra money the court will mandate has virtually become an industry in itself. State officials think the schools may need a top-up of \$2 billion-5 billion a year; others say twice as much. Seeing that both the city and the state have large budget deficits, that will mean uproar (already there is talk of introducing slot machines to help meet the cost), followed by a fresh burst of litigation. The state and the city will also fight over who should contribute what to the settlement. Needless to say, talks with the teachers' unions have also stalled, as the unions wait to see how much extra money they can get for their members.

What is going on? *Brown v Board of* ▶▶

More money, more drop-outs



Source: New York City Department of Education

Education concerned a fundamental principle of racial equality. Although the current cases often refer back to *Brown*, they are to do with the far more complex issues of social class and educational excellence.

Traditionally, American schools have been funded by local property taxes, which inevitably meant that richer areas ended up with more lavish schools. In the 1970s, social reformers launched lawsuits to force states to equalise spending between rich and poor districts. Most were unsuccessful: the courts did not think they could mandate equality. But this changed in 1989 with a Kentucky case, *Rose v Council for Better Education*, where the court decided that education in poor school districts was inadequate, rather than merely unequal. The Kentucky court set specific standards that the children in state schools must reach.

In the wake of *Rose*, similar cases were brought across the country. In New York, the Campaign for Fiscal Equity seized on the phrase "sound basic" education, which had ironically been used by a state court in an earlier decision denying an attempt by Levittown, a Long Island school district, to equalise funding across the state. The case of *Campaign for Fiscal Equity v State of New York* was launched in 1993; so far, most of the decisions have gone the plaintiff's way.

Laying down the law

Rare is the politician willing to argue that more money for schools is a bad thing. But are the courts doing any good? Two suspicions arise. First, judges are making a lazy assumption that more money means better schools. As the international results show, the link between "inputs" and "outputs" is vague—something well documented by, among others, the late Senator Daniel Patrick Moynihan of New York. Second, the courts are muddling an already muddled system. Over time, they have generally made it harder to get rid of disruptive pupils and bad teachers.

New York illustrates both these points. Back in the 1980s, Kentucky ranked 48th among states on spending for each child. But New York City spends, on average, more on each child than the average in any state with the exception of Connecticut, and more on average than the next 30-odd largest school districts. Despite this, New York City does not have good schools: more than half its pupils in grades three to eight fail to meet the city's standards for maths or English, a fifth of its high-school pupils drop out, and its buildings are falling to pieces.

As for complexity, back in 1979 the city was successfully sued for failing to meet the needs of a severely handicapped pupil. This well-intentioned litigation has since mushroomed into a vast, court-directed "special education programme" with

172,000 children, very few of whom are handicapped as badly as the original plaintiff. To satisfy its requirements, the court lays down innumerable mandates, rules and reporting requirements that are the bane of many teachers' lives.

The current case could be even worse. The courts have already said that, in order to determine the necessary spending, they may consider everything from class size to the availability of computers, textbooks and even pencils. This degree of intervention is all the more scandalous because the courts have weirdly decided to ignore another set of "inputs"—the archaic work practices of school teachers and janitors.

David Schoenbrod and Ross Sandler of New York Law School reckon the demands of the court will simply undermine reform and transform an expensive failure into a more expensive one.

And of course, the litigation never ends. Kentucky, for example, is still in court 16 years after the first decision. A lawsuit first filed against New Jersey for its funding of schools in 1981 was "decided" four years later—but it has returned to the court nine times since, including early this year, with each decision pushing the court deeper into the management of the state's schools. Bad judges are even harder to boot out of school than bad pupils. ■

The economy

A series of fortunate events

WASHINGTON, DC

The sliding dollar could help to redress America's economic imbalances. But don't count on a smooth ride

CONVENTIONAL wisdom holds that George Bush's first-term team could not create jobs and did not care about deficits. Less than a month after the presidential election each of those views needs adjusting. With 337,000 new jobs in October, more than twice as many as analysts predicted, the supposedly "jobless" economy is looking decidedly perky.

Meanwhile, far from dismissing deficits, America's economic policy-makers are suddenly talking about little else. On November 17th, John Snow, America's treasury secretary, argued in London that America's fiscal deficit was his "most pressing issue". And Mr Bush himself claimed that America was "committed to deficit reduction, both short-term and long-term". In Frankfurt on November 19th, Alan Greenspan, chairman of the Federal Reserve, endorsed the new emphasis with uncharacteristically pointed comments about America's current-account deficit, now 5.7% of GDP and rising.

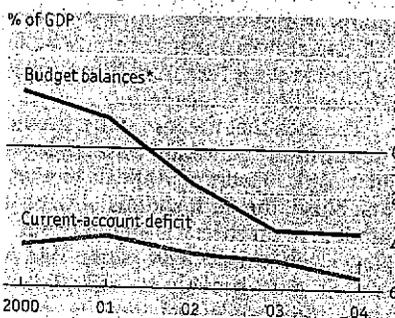
Given the size of the imbalance, he argued, "a diminished appetite for adding to dollar balances must occur at some point," before making clear that reducing the budget deficit should be part of the way out.

Right on cue, Congress passed a surprisingly frugal spending bill on November 20th. The bill allowed for a growth rate of only 1% in discretionary spending outside defence and homeland security, the lowest figure in almost ten years.

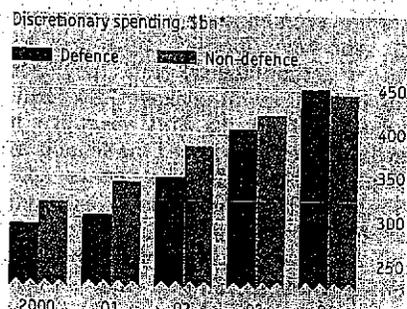
If you think unexpected economic strength and unexpectedly prudent political rhetoric sound too good to be true, you are probably right. America's economy faces some big, possibly painful adjustments over the next four years.

The most striking economic news since the election has been the dollar's slide. Since November 2nd, the greenback has fallen steadily and this week hit new lows against the euro and several Asian currencies (see page 75). Foreign investors are finally fretting about America's imbalances. ▶▶

A hole in my bucket



Sources: Office of Management and Budget; Bureau of Economic Analysis; House Appropriations Committee



* Fiscal years ending Sep 30th. † Current-account estimate for 2004