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Separate But Unequal: The Status of America's Public Schools

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SEPARATE BUT UNEQUAL:
THE STATUS OF AMERICA'S PUBLIC SCHOOLS

UNIVERSITY OF MICHIGAN LAW SCHOOL
SATURDAY, FEBRUARY 9, 2002
ROOM 100, HUTCHINS HALL

PROCEEDINGS

WELCOME AND INTRODUCTORY REMARKS

JEFFREY S. LEHMAN: Good morning. My name is Jeffrey Lehman, and as the Dean of the University of Michigan Law School, it is a pleasure for me to welcome you to this symposium today. For the past four years, we at the University of Michigan have been defendants in litigation. That litigation has challenged our authority to act affirmatively through our admissions process to promote racial and ethnic integration on our campus. The plaintiffs in the lawsuit do not question the benefits of integration; they contend instead that we just should not be allowed to pursue it consciously. They argue that it's not our problem if the experience of race in America today means that children finishing high school have not had identical life experiences, and enjoyed the benefits of identical investments in their development. They argue that we may not acknowledge the consequences of those inequalities through admissions processes that take race into account.

Now, the plaintiffs happen to be wrong as a matter of law, and as a matter of educational policy, but that's not my point today. My point is that when I take the plaintiffs at their word, they would join us in concern for our K-12 educational system, they would join us in asking whether almost 50 years after *Brown* we have achieved anything like integration, anything like equal educational opportunity. Today's symposium is going to engage those issues head on. Does Integration Matter? Are there other non-traditional approaches to equal education that might do better? What can litigators do to improve things? The *Michigan Journal of Race & Law* has brought together a nationally distinguished group of experts to discuss these and other pressing issues. The participants bring to the discussion an extraordinary range of real world experience and academic understanding. I know that today's events, like last night's speech, will be provocative and illuminating. I want to thank the student members of the *Michigan Journal of Race & Law*, and I want to thank the many co-sponsors of the symposium who are listed on the front of the pamphlet. All of their collective efforts are in the finest tradition of the University of Michigan, and we are proud and grateful for their achievement today. So without further ado let me turn things over to the first panel and to its moderator, James Forman, who will introduce the other panelists. Thank you.

SESSION I
DOES INTEGRATION MATTER?

JAMES FORMAN, JR.: Okay, let's get started. The first panel is: Does Integration Matter, and the first speaker on this panel is Carla O'Connor, who is a professor here at the school of education. She has degrees from Westland, and the University of Chicago, she teaches courses on urban education, cultural studies, and the sociology of education. She's been published in a bunch of journals. The main thing is, though, that she was a teacher in Bedford Stuyvesant in a sixth grade classroom in New York City. That's the thing about her biography that I'm the most interested in. Professor O'Connor is going to talk today about a study that she's conducting of a predominantly White high school, and looking at how minority students within that high school negotiate racial identity issues. Professor O'Connor.

CARLA O'CONNOR: Good morning. While I'll be drawing from that study, I'll actually not be talking about the students' racial identity. I'll be talking about their experiences in predominantly White classrooms—and you can imagine what those classrooms are. They're the advanced and the accelerated courses. This panel is defined by the question; does integration matter. And in order to answer that question, I'd like to turn to the voices of African-American students who, as I told you, attend a predominantly White high school that we'll refer to as Hillside.

Hillside High School is neither a magnet school nor a suburban school. It's a school in a predominantly White college town. The student body of this high school is 75% White and 25% minority. And approximately 2/3 of the minority population is African American, namely 14%. And the remaining minority population is represented by Asian American, Latino and Arabic youth. The young people you will hear from today are all high achievers, they have GPAs of 3.0 or higher, and have been enrolled in accelerated or advanced placement courses throughout their high school career. They're juniors and seniors, and the seniors amongst them are applying to, and have applied to, Yale, Harvard, Princeton, Duke, Amherst, Northwestern and Moorehouse. Some of them have already received full scholarships at some of the most competitive state institutions in the nation. I'll particularly highlight the experiences of three African American . . . young women, all seniors, . . . I call them the Black academic elite of this high school. While this high school has a population of between 2,700–3,200 students depending on the year, with anywhere from 700–800 students per class, there are approximately 80 African-American students per class. And of those, we only have maybe 25 in the junior and senior classes who have GPAs of 3.0 or above. And of those students, we have very few who are taking mainly advanced placement and accelerated courses. That means that at any point in their transcript, they're taking four or so advanced placement courses. Well, these young

women who you'll hear the most from are part of that group. And these young women are also carrying extraordinarily high averages with that load, they have 3.8 and 3.9 averages.

But despite the academic success of these young women and the other students in the study, their voices give us insight into the social and psychological toll associated with the re-segregation that occurs within integrated high schools. These students explain that they are often the only Black, or in the rare instance, one of two Blacks in their courses, and they indicate that the social isolation comes at . . . a cost, albeit not necessarily an academic one, though as I will discuss, the academic consequences in their cases are indirect.

By listening to these students' voices, we hear a slightly different story regarding the ills of within school desegregation. We already know about the direct academic consequences of tracking, and how they play out against the subject of race. We know that students in higher track classes encounter higher teacher expectations, have greater access to knowledge, more engaging learning experiences, and privileged exposure to educational resources. And it is generally the opposite scenario for children in lower track classes. We also know that poor and minority students are underrepresented in high track classes, and over represented in low track classes, even after we have controlled for achievement and proxies of ability. We know that such racially stratified placement systems contributes to the gap between Whites and minorities, a gap that grows as students move through their schooling careers, particularly in the case of African-American and Latino youth.

However, we hear very little about the social/psychological stresses that are a function of racially stratified academic placement systems. When racially stratified placement systems are reported on, the focus is usually on how low track placement students become stigmatized by these practices, and the presumed and accordant effect on their self esteem and academic self concept. There's almost no discussion of the social-psychological toll imposed as a consequence of being one of the few, or the only minority in a high track class. Through these student's voices we will learn how this toll can potentially reinforce the already racially segregated expression of Hillside's track placement system while limiting student's opportunities to learn.

But before I report on the social and psychological toll that is articulated by these young people, I will first use their voices . . . to lay out the pattern of segregation that occurs at Hillside. I want to begin with the voice of a young woman by the name of [Jasmine]. In this excerpt, Jasmine tries to give us insight into how Hillside is organized. She explains, "Hillside is structured so that the math department is together, the English department is together, and the History department's together; and then, towards, like, the back of the school are classes in Ecology, Core Math, and Integrated Math." [O'Connor speaking to the audience: The

Code words for the less than challenging courses.] “A lot of my friends are in those classes,” and she means her Black friends, “So I don’t see them at all. We’re separate. And that’s another thing; I feel like when people tell me there’s 11% Black kids in this school, I say, ‘No there’s not, because I only see, 3% of them during my school day, because I’m [on]the main hall, and then they’re back in [North] hall.” And she goes on to say she never can get back there, because she only has X amount of minutes to get to her next class. And later on, you’ll hear about the social isolation she feels in not being able to connect with African-American students.

Just to reiterate on how Hillside is organized, even in this conversation with two juniors, they sort of lay out the same pattern for us, except they also talk about the segregation that occurs between floors. [Speaker draws the audience’s attention to the following overhead that captures her conversation with the two African American juniors, Deanne and Sharon]

CARLA: What do you think we [i.e., my graduate student research assistants and I] should pay attention to? What do you think would give us insight into Black life at [Hillside?]

DEANNE: The hallways.

SHARON: Yup.

DEANNE: All the Black people are on the first floor particularly down like [North Hall]. And then you see some of them on the second floor and even less on the third floor. Except during second and third hour when they’re all on the third floor . . .

SHARON: Because they’re all taking African-American Literature [both Sharon and Deanne who were then enrolled in the course laughed enthusiastically].

So [Deanne and Sharon] again target [North Hall]—where the less challenging courses are—and find that a higher population of African-American students move about that hall. But they also talk about how as you move up—and [this is]because a lot of AP classes are on the third floor—you’re seeing less and less African-American students as you move from the first to the third floor except, as they put it, there’s the African-American Lit class, which is a second and third hour class on the third floor, and then they say you see “all” of the Black students [on the third floor]. And interestingly . . . while the advanced placement courses are of course predominantly White, the African-American Lit and Western Civ class are predominantly Black. So in classes of 20 something students, you may have four Whites, if that many, and maybe an Asian student, and maybe an Arabic student [while the remaining students are all Black].

Now, there is a cost to this pattern of segregation. Jasmine explains in revealing this cost to me that, “I don’t feel like I fit in.” She goes on to

point out that unlike when she's sitting in her AC English class where she has her best friend who's an African American, in her other classes, she doesn't feel like she belongs. She feels that the students, the White students, are not prone to work with her academically, and she also feels very different from most of the students in these classes because she's usually the only Black in her class. And it's important, because this feeling of not fitting in . . . [is] also tied to not being able to connect with the other students academically and means she finds less academic support in this classroom than she feels she might [have] if she had other African Americans in her classroom.

Another student explains, and most of them sort of allude to this, that it's hard to be a high achiever in academic, advanced and accelerated courses, because in her words, her name is Makela, "the classes I take are hard and if you're the only Black person, you're sitting around a lot of White people, you get intimidated." What's important . . . is the source of the intimidation? The source of these student's intimidations comes from the fact that they are conscious that the absence of Black faces in their classroom does not only result in their peers believing that African Americans lack intelligence, but reinforces similar beliefs amongst their teachers. For them, there's a sort of visual or symbolic confirmation that Black students cannot handle the challenging subjects. In response, these students expend a tremendous amount of psychic and emotional energy in their effort to dispel these symbolic images. They carry the burden of having to prove Whites wrong, or at least not prove them right. And that burden is revealed in the following quotes I will share with you. The students indicate that when they walk into, in the case of Sidney, when she walks into an AP or AC class, first the teacher's surprised that she's there. "And if I feel the teacher does have feelings, some feelings like that, I will make an effort to show my intelligence or something like that, and catch them off their guard." There's a constant effort to always perform in ways that will sort of work against the presumptions about Black ability. Hearing the voice of Makela again, she explains, when I ask her would she give any advice to an incoming freshmen initially, and then I ask what advice would you additionally give to African Americans who are coming into hillside, she explains that there are going to be a lot of stereotypes and, "There's this big barrier to show that you can do it," and while I've truncated the quote, she talks about the kind of energy she expends to show what she can do. And of course the second part of her quote also talks about the fact that the pressure involved in being the representation—the representative of the race. Jasmine is probably the most poignant in discussing the need to prove Whites wrong, and to prove Black ability. And she goes on to say, "It's like I don't know how to explain it. It's like I work just as hard as my White friends, but I feel like working just as much as them is not good enough. I need to go beyond what they do to prove things to people," and throughout her interview, she talks about trying to

prove White people wrong. And she also provides us with an indication of what happens when she doesn't perform at the A level. And this happens very rarely in Janala's case, who has a 3.9 average. She gets a B in her [math class her] freshman year, she walks into a class her junior year to take AP analysis with the same teacher. The teacher continues to come up to her desk to ask her if she can handle it; is it okay. And in fact, she points out on the first day of class the teacher, in front of the class, asks her, "Do you think you can handle this class, Jasmine?" Now, Jasmine, while it's not as evident in this quote, talks about how hard she worked to get an A on that first exam, because she's decided she would drop this class, but she didn't want to drop it and leave it in the minds of the White students that she was dropping it, because she couldn't handle it. And so she strives to get an A, and then feels validated when her White peers get Cs and Ds. And while one might say, "Well, it motivated her," . . . what was the cost for that level of motivation?

A similar question about the cost of motivation can also be raised in the case of Sidney. Sidney says she wasn't doing well in calculus. Actually she was running a B. Sidney is an unusual case, because in her junior year she basically used up all the courses at Hillside High School, and is now taking a couple of college courses at a local university. So during her junior year she was enrolled in mostly senior courses, and this is in her calculus B/C, which is the top level of calculus. And she was very upset, because she was actually running a B in this course. And she said, you know, it flickered in her mind to drop it, but then she realized it would make a profound statement to drop that course. And again, she might have been motivated, but again, at what cost?

It's important to know that Hillside does not have a formal tracking system. Students are not assigned to main tracks or streams, so you don't have a formal college prep track, or a comprehensive track or anything like that. However the courses are hierarchally [sic] organized, and like most integrated high schools, end up being racially stratified. Whether we reference the work of Jeannie Oaks or Maureen Hallinan, we know the track placement is based not only on academic considerations but non academic factors such as counselors and teachers recommendations, parents, students and teachers preferences, and often when these non academic factors come into the play the heterogeneity or the racial stratification of these tracks are magnified. At Hillside High School middle school counselors and teachers recommendations matter, at least for your freshman courses. Of course, that can put you on a track for future courses. But parents get to sign off on those recommendations. But we are reminded that in [some] parents' minds you need to have a Ph.D. to interpret the book that makes you understand how to track your child for college prep in the end, or, or to be admitted to college. And in fact they say—if they were not in the social networks that they were in, they would not know how to negotiate Hillside's academic system, and they would

not have known not to sign or to sign in order to support their [child's] achievement.

But there's also something else going on at Hillside. The students have a great deal of autonomy. And I would say that this autonomy becomes an issue, particularly if you consider the kind of stress that's involved in being the only one. One African-American male explained to me when I asked him what advice he would give an incoming freshman, he said given his own experiences in being AP and AC classes, "I would, I would say you should take classes where you know African Americans are going to be there so you can just have a chance to socialize with them, and get to know them, kind of make sure you kind of stay around." But of course in a system like this if you are where the African Americans are, you're probably getting less access to academic resources and a less stimulating and challenging academic curriculum. In accord with the perspective of Kevin, who I just quoted, another student explained to an audience of concerned Black parents, district administrators and community activists, "It's hard being the only Black student in a class. There's a lot of pressure. That's why a lot of Black students don't sign up for advanced classes."

It's interesting how the voices of these students remind us of the findings in the Board of Ed., in terms of the social science findings that supported the case. In Brown, however, they talked about the badge of inferiority of being enrolled in racially segregated settings that were minority. But there's a fallout to that kind of segregation. It's the fallout that arises for the token [minority] students who moves into predominantly White settings.

So the question for this session was does integration matter? Yes, it does, both in terms of the academic and the social psychological welfare of minority students. But we must also raise questions about the social psychological welfare of White students in racially stratified placement systems. Is there a cost individually and socially when White children unreflexively [sic] have the opportunity to perceive themselves as intellectually superior given the segregation of American schools, at least with regards to within school segregation? I believe that there is, and we witness this cost every day in avid resistance to de-tracking, affirmative action, and other reform efforts designed to address structured inequities. Thank you.

JAMES FORMAN, JR.: Thank you very much. I suspected that with a panel called Does Integration Matter, that we were going to end up getting some very different perspectives on the same issue. And I'm glad to see that I and none of us are going to be disappointed on this. Because our next speaker is going to bring a perspective of having taught in a school with a different set of issues than the school you just heard about. She will talk about schools in which all the children are Black. Jane Ehrenfeld is a first grade teacher at Nathan Hale Elementary School in

Roxbury, Massachusetts. She graduated from Swarthmore College and Columbia Teachers College, she's a member of Phi Beta Kappa. After she graduated from these schools, she began teaching, she's taught in Oxenhill, Maryland, she's taught in Pennsylvania, and now—she now teaches in Massachusetts. And we are particularly grateful to have her here, because she was teaching all day yesterday, and walked out of her classroom and got on a plane to be here last night. So we're very thankful for that. Just one point before I bring Ms. Ehrenfeld up, which is at the end—we're, we're hoping to have a lot of questions out of this panel. And the way we're going to do it is at the end of the third speaker, there's three speakers, we're going to take a, take a two minute break, you have cards in your folders, and so the idea is for you to write questions on those cards. At the end of the third speaker, the cards will be collected, and then we'll bring all three of the panelists up here together, and I will ask the questions based on the cards that you all have submitted. So you should feel free as people are speaking to fill out your cards. If you don't have a card it doesn't matter, write on a piece of paper, come whisper in my ear, just get us the information and we'll get the questions up here to the panelists. Jane Ehrenfeld.

JANE EHRENFELD: Good morning. I'm here today to represent a teacher's perspective on integration, to attest to the daily effect that segregation has on the hearts and minds of children. But before I begin—I'd like to ask you to turn your minds back 48 years to the days of Brown vs. Board of Education. I'd like you to imagine a panel being convened in those days to address the question, "Does integration matter?" I don't know about you, but I can't imagine it. In those days, whether people opposed integration or whether they supported it, it seemed to be a generally accepted fact that the issue mattered. And now, half a century later, with our minority children still languishing in under-funded, segregated schools all over the nation, we've come together to ask the question whether this issue that people once risked their lives for is still important.

As a teacher, as an American with a desire to live in a just society, as an adult beginning to imagine the world I want to leave to my children, I say integration couldn't matter more. Everywhere, we see school districts giving up, coming out from under court desegregation orders, throwing up their hands, saying, "We did our best," even if it isn't true, and starting construction of what in polite terms we call neighborhood schools, but what are really completely segregated schools, segregated by race and segregated by economic class.

I taught at such a school for three years. In fact, in seven years of teaching, in five schools, in four states, I have never taught at an integrated school. Not one! Which is why I'm here today, to tell you that for the children that I teach, whose segregation is going to doom most of them to desperate ghetto lives, we can't afford to let the question does integration matter crowd out the far more important question of what we're

going to do to make integration possible. We can't allow the children whose futures are being ground to dust in schools that would pass any Jim Crow standard of separation to be d** by our own resignation. I think our future as a country depends on it.

When I was 21, and fresh out of college, I took a job teaching third grade in a school outside of Washington D.C., and for the three years in that school my students, who were Black, called me Black. Not all the time; when they were angry at me, they called me White. The rest of the time, I was what they referred to as light skinned. It wasn't just me. The other White teachers at the school were experiencing the same thing. We weren't teaching at a school for the blind, we weren't teaching at a school for children who had spent their entire lives locked in their rooms without television, and we weren't teaching in a remote region of a country where the presence of White people was so rare there was no word in the local dialect for them. We were teaching smart, savvy children two blocks from Washington D.C.

Our students were adamant about us being Black. For three years, despite the fact that I told them over and over that I was White, introduced them to my extremely White parents, and taught countless lessons about race, they insisted that I and their other White teachers could not possibly be White. The idea of us being White was actually funny to them, and kind of dangerous.

One day, when I was teaching fourth grade there, we were coming back from a field trip on a bus, and I was kind of dozing in a seat, but I was listening as behind me the other fourth grade teacher, who was also White, was sitting with one of my students, and somehow the issue of skin color arose. And this teacher, Jen, asked the girl what color she thought Jen was. The girl said, "You're light skinned, of course," meaning Black. Jen paused and asked, "Well, what color is Miss Ehrenfeld?" "Oh, she's light skinned too." "And Miss Lankey?" This was another teacher at our school, who was so blond, and so pale her skin was almost translucent. There was this silence, and then this burst of hysterical giggles from the girl, "Miss Lankey? She's White." There were a couple more giggles, and then she said, "No, I'm just kidding. Miss Lankey's light skinned, too." Now, despite these lighter moments, the tragic fact is that these children could not love a White person, they could not understand or befriend a White person. White was a bad thing, it was a word to be hurled at someone in anger. For them to call me White and also like me would have been a social oxymoron, more difficult even than the biblical injunction, "love thine enemy."

For all of these three years, and in the years since, I've struggled with the question of why not a single one of my students was able to see me as White. And the answer that keeps sneaking into my head when I've exhausted all other possibilities is that it had to have been a direct result of the complete and terrible segregation that these children experienced in

all areas of their lives. It wasn't just that their neighborhood was segregated, their school was segregated as well, just as urban schools all over the country are segregated.

During the civil rights movement unit I taught, while discussing the story of Ruby Bridges, who as most of you probably know was the first Black girl to integrate the New Orleans public schools, one of my students raised his hand and said, "But Miss Ehrenfeld, when's our school going to be integrated?" Well, what was I supposed to say to that? I stumbled through an answer that tried to mask all the bitterness I felt that a child could actually ask such a question in the year 2000, 46 years after *Brown*. And I told him that the difference between our school and one that was truly segregated was that a White kid could go to our school if she wanted to. But the answer rang hollow in my own ears, and the boy who asked me the question looked unconvinced by my halfhearted words. I suppose in retrospect I should have answered, "I don't know." It would have been a more honest response to the most d** question I've ever been asked by a student.

For me, this question also shattered permanently the illusion that gives lukewarm comfort to many of us who are deeply troubled by the persistent segregation in this country, that at least the children in these separate schools are not yet conscious of what's being done to them. My students knew that they went to a school where everyone was Black, and I believe even before I made it explicit by teaching about school integration they had the sense that if they went to an all Black school there must be other schools elsewhere that were all White. In their minds at that time I don't think the separation was linked to words like racism or prejudice, but they must have felt that there was some sort of intention in keeping Black and White children apart. And I wonder how many years will it be before this sense of intention grows into a more definite understanding of bigotry? And then, how long will it be before their awareness of the segregated system around them makes them angry, or depressed, or filled with self-hatred and self doubt? How long before they begin to understand that if Black children and White children are educated separately, that this must imply that one group is considered superior, and that they're not members of that group? How long before they give up, or fight back, or explode their lives in acts of self-destruction?

In these past seven years I've taught Black children, and I've taught White children, and I've taught Latino children, I've just never taught them at the same school. Now I find myself in Boston, in Roxbury, in a school that claims to be diverse because only 83% of our students are Black, 15% are Latino, and the other 2%, which in a school of 173 students is about four students, are either Asian or White. The good news is that the students here know that I'm White. The bad news is that this doesn't lead them any closer to leading integrated lives themselves.

Proponents of neighborhood schools like the one I taught at in Maryland claim that Black children don't need to sit next to White children in order to learn, that separate really can be equal. Well, maybe this is possible with respect to facts like the multiplications tables, or the proper use of apostrophes, although, to be honest, I don't want to live or teach in a society that educates it's children on the mandates of *Plessy*. But this falls flat in the face of the extensive social education that children receive at school. How are my children ever going to learn how to succeed and thrive in a diverse world when they've never been exposed to cultures other than their own? How will they learn tolerance, open-mindedness, the critical lesson that the colors of people's skin says nothing about who they are individually, about their strengths and their weaknesses? And how will White children, sitting in their segregated schools, learn that about my students?

We speak of busing now as if it were an outdated notion, just another failed social experiment. And we explain the trend of re-segregation in our schools as the only way to keep affluent White parents from sending their children to private schools, or as the inevitable result of people's natural preference for being around others who look, and talk and act like they do. We appease ourselves when considering current segregation by imagining that it has happened by accident rather than intent, that because there are no policies in place now that require children of different races to attend different schools, that somehow modern segregation has come about for reasons other than intentional separation of the races.

But when we face the hardest questions that we sometimes dare to ask ourselves, we know for sure that minority children are sitting in separate schools from White children now, in the year 2002, for the exact same reason as they sat in separate schools in 1954. And we also know that had this nation truly wanted integrated schools, such a thing could have happened years ago.

But then we put away this knowledge of what's really happening in our country, and we gather together to ask the question of whether integration matters, and once again our hearts whisper that it does, while some part of us wishes that the answer could be no so that we can sleep well at night without worrying too much about all the segregated children in their segregated schools. But 48 years ago, all nine Justices of the Supreme Court concluded that segregation could not be free of the implication that one race was superior to the others, and all nine Justices concluded that segregation did irreparable harm to the hearts and minds of children. It was a brave and true conclusion then, and it is every bit as true now.

For the sake of the children whom I teach, and for the sake of all of the children who attend monoculture schools in every corner of our land, I ask you one thing. Do not equivocate when you speak of the crime of segregation, do not soften your words to appease the powerful, and allow

them the easy comfort of their reign, do not betray the children that I love, and whom you would love, too, if you knew them, by lightening your tone and fearing to upset the status quo. Rage! Sharpen your words on the whetstone of your fury, and demand we mend every promise we've ever made to these children, and then broken. Do not talk of the plight of urban schools as if the only cause of this desperate separation was an accident of address. Say segregation, and don't speak it, shout it! My students are six and have no voice and most of them probably won't have a voice even when they're sixty.

But you, the well educated, the influential, can be their megaphones, and magnify the message that we've allowed so terribly to fade: our schools are separate, and they're unequal, and everywhere this inequality dooms a staggering percentage of minority children to death, to prison, and to miserable days of trying to survive on the crumbs of the feast that so many of us have enjoyed. And if this sounds extreme, or needlessly hysterical, I can introduce you to all of the children I know whose grim fates are being written and sealed in the dark hallways of their ghetto schools, and on the streets of their desperate neighborhoods, and you would know that there is no excess of emotion strong enough to describe the horror of what happens to children who are separated from other privileged children, the ones we really care about, and who live life in the shadows. For the sake of these shadow children, don't ask the easy question, Does integration matter? Ask the question, What can I do to help integration happen? For the sake of these shadow children, I beg you, rage!

JAMES FORMAN, JR.: Well, last night Jonathan Kozol told us that he was frequently angered at dinner by the hypocrisy of a lot of the people that he was forced to eat meals with. Now, I understand that he occasionally has a meal with Miss Ehrenfeld, and my guess is that those meals are substantially more pleasant.

Ruth Zweifler is our next speaker, and she's the founding member and executive director, of the Student Advocacy Center of Michigan. She does advocacy for children both on an individual level, and on a policy level, and she documents the failure of school systems, and she asks for additional government oversight to educate low income children, and children of color. She graduated from Bryn Mawr College, and she is extremely active in the local community. She's a member of a number of organizations, including the Ann Arbor NAACP. She's also the mother of six, and the grandmother of thirteen. Ruth Zweifler.

RUTH ZWEIFLER: Good morning. Integration is the absolute ideal, and absolutely essential if we are to achieve a robust democracy. The goal must be to assure all children, not just the talented tenth, a quality education. But the issue right now is not integration, or segregation, but whether we will stand for the elimination of a strong public school system, and with it, the elimination of a significant number of vulnerable students. We no longer have to say the politically unacceptable words like

“nigger” or “retard” to remove children from school. One word, “dangerous,” now gets immediate action, though rarely careful scrutiny.

In 1954, *Brown v Board of Education* promised equal educational opportunities of color. In the mid '70s, state and federal laws mandated educational services for children with disabilities. At long last it appeared that the commitment to universal public education was assured. With the passage of the federal 1994 gun free schools act, that dream is withering. The harsh zero tolerance school laws, policies, and informal practices sweeping across this nation are, in the process, sweeping uncounted numbers of our most vulnerable and needy children into the streets, and there they remain, uneducated, un-served, and unsupervised.

Passage of the gun free school act spawned state laws that go far beyond the prohibitions and penalties of that act, and the list of offenses that trigger zero tolerance responses continues to grow. These policies are marketed as a way to stop dangerous punks, older adolescents with guns. In reality, instead of netting sharks, the law and its attendant policies and practices are catching minnows, young children caught in a tangle of sanctioned behaviors who are often frightened, sometimes thoughtless, rarely dangerous, but now clearly endangered. Absent specific legal sanctions, many school districts nevertheless invoke the language of zero tolerance, and expel children for violating school rules. Once snared, regardless of the offense, the student is likely to be treated as if he or she has violated the weapons law, and will receive all the harsh penalties that accompany the charge of possessing a gun including permanent expulsion and referral to the courts. The US Justice Department statistics document a steady decline in violent crime by juveniles since 1993. Other equally reliable reports identify school as the safest haven for children. Yet states continue to enact harsh and ever multiplying punitive laws that criminalize student behaviors. These laws go far beyond punishing the alleged miscreants. The very act of legislating lends credibility to climate of anxiety and suspicion that permeates our state schools today. If we need these laws, surely there must be a danger. The emphasis on punishment and repression impacts the whole school population, staff and good students, as well as those unfortunate enough to be caught in the net.

Recently I met with a group of high school students from 50 very different school districts across the state. All of them spoke of the oppressive climate permeating their schools. They expressed deep concern for their fellow students, as well as anxiety about the way youth in general are perceived. Yet there is no forum for young people to examine concerns, and identify strategies to make school safe and nurturing places for all students.

Michigan does not assure a constitutional right to an education; therefore, local districts and the state are absolved of responsibility for educating expelled students. In an action worthy of Pontius Pilate, the Michigan expulsion laws charge parents of expelled children with the

obligation of providing an education for their children. Never mind that an 11 or 12 year old has little if any access to alternatives. The legislature has fulfilled its responsibility although for most families, of course, there are no alternatives. Home schooling is not realistic for a poor, ill-educated, or overworked parent. Access to private alternatives, or to another public school district is highly unlikely. Even if a school is willing to admit expelled students, prohibitive fees, transportation and age requirements present insuperable barriers for even the most determined families. In spite of the disastrous impact of these policies and informal practices, accurate and comprehensive documentation is virtually absent. The reports that are available confirm several unsettling facts; children of color are disproportionately affected. Surprise! Young children, grades seven and eight and nine, represent the largest cohort, low income adolescents are two and a half times as likely to be suspended or expelled as higher income adolescents. Again, surprise. What isn't reflected in the data, but what we at the Advocacy Center are encountering, is the disparate impact on children who are now, or who should be, receiving special education services. Again, our vulnerable children.

Patterns of the disparate impact of exclusionary practices on children of color have been documented for decades. A 1996 study of suspensions reported that from 1978–1986 the suspension rate for minorities was 141 per thousand as compared to a rate of 56 students per thousand for non-minority students. By far the highest incidence of suspension involved African Americans who were suspended at a rate of 167 per thousand. These patterns persist over time, but now, rather than short-term suspensions, which were bad enough and disruptive enough, we're talking about permanent expulsion from school.

Although required by law to do so, Michigan school districts are not reporting expulsion data. In September 2000, the Michigan Department of Education responded that, "due to an encryption problem no data exists for the state, though required." An analysis of the raw data, which we ultimately obtained, found that only four percent of the state's districts reported, and in those districts 589 students were reported expelled. African-American students constituted the largest number. In the Lansing school district, 51% of the expulsions were African-American students, while African-American students comprise 33% of the population. For the 2001 school year, 50% of the districts submitted information. But even those districts reported such erroneous or incomplete data that the state has not disseminated it.

The paucity of a social policy that puts young people on the streets with neither services nor supervision is associated with a multitude of consequent and troubling practices. Due process protections commensurate with the magnitude of the penalties are lacking. Lawyers, please note. Many families have no access to advice or representation. District personnel act as investigator, prosecutor, judge and jury, and there's a failure to

assess and address undesirable behaviors in an educationally and socially sound manner. Many states, including Michigan, do not provide alternative education services for expelled children.

Does this really hurt the children? Hmm. There's a disparate impact on our most marginal and vulnerable children. Charges are escalated, and children needlessly criminalized. Behaviors such as pushing and fighting are now called assault, and the children referred to the courts. Appropriate support services for children who are truly troubled and in need of help are few. Many children, expelled for a minimum of one school year, are never readmitted. And what does that do to the rest of us? The hardship on working parents is enormous. Balancing work and daily supervision of a school age child is virtually impossible. The growing morass of punitive laws legitimizes a poisonous climate of fear and suspicion on the part of both staff and students. And of course, the commitment to universal public education is drastically eroded. We must renew the commitment to assure the civil rights of all children, to assure safeguards against discriminatory discipline practices that have a disproportionate impact on children of color, and those with special needs. We must assure clear due process protections, provide needed services and supports for all school children, and require high quality alternative education services for expelled children. And we must collect the accurate and comprehensive data about who is expelled, and what happens to them subsequently.

During the Advocacy Center's first 20 years, we advocated on behalf of public school students, many having disciplinary problems in school. At school conferences, the best interests of the child were addressed and meshed with the needs and expectations of the school community. This is the ideal, but it happened often. The outcomes were most often assuring to everyone. With the enactment of the mandatory expulsion laws all that has changed. We continue to get calls from frantic parents who tell stories similar to those we heard in our first two decades. But now, there's a huge difference. There is no longer an opportunity to sit down and examine the child's needs. The children are permanently out of school, they have been dumped on the streets. They are members of a growing class: our least wanted children. Each child thus rejected represents a tragedy for that child and family. In addition, there is a costly societal failure when we deny the necessary resources that enable a child to function effectively and constructively in his or her community.

Beyond these somewhat specific negative consequences, there is a far more ominous philosophy that threatens a fundamental democratic tenet. Democracy depends upon an educated and participating citizenry. With the acceptance of zero tolerance policies, we have abandoned the commitment to universal public education. Without apology, school is now available only to "those who deserve." This is the foundation of an elitist society that should be repugnant to anyone who believes in democracy.

JAMES FORMAN, JR.: Write out your questions, fill out your cards. We're going to bring the panelists up here, and we're going to get your input.

We're going to start asking the questions and getting the panelists comments, but people should feel free to continue to hand things up. There are journal members who are collecting the cards. The first question I'll address to Professor O'Connor, although other members of the panel may also want to contribute. The question is, why have methods of achieving the goals of tracked classes within heterogeneous non-track classes not found their way into classrooms around the country? Is it the fault of the schools, or something more deeply embedded in our society?

CARLA O'CONNOR: It's interesting, I was just reviewing an article by Amy Stuart Wells and Oakes, and in this article they review the efforts of ten schools that were making pretty aggressive stances to detrack. And they talked about the severe political resistance to detracking. We know there's currency in being enrolled in honors classes and advanced classes, currency not only in terms of status, but in terms of admissions to colleges, particularly competitive institutions. And one of the things they emphasized in this article is that the resistance to detracking is not simply a resistance to technical issues; it's not a resistance to concerns over pedagogical issues, or anything of that kind: "will my child learn," though it's often represented in that way. It's often an issue of a contestation over power and privilege, and they say what's often at the heart of the contestation, whether we're speaking about teachers, or we're speaking about parents is a sort of commitment to traditional notions of intelligence, and the belief that some merit their place and others don't, particularly for competitive spaces. And at the point where people do in fact believe there's some kind of inheritance, that intelligence is uni-dimensional, that it's innate, and it's unchanging. There are the privileged, usually White and middle class who have it, or have a lot more of it, and minority children, particularly of low income background who have a lot less of it. And so there's a fight over denying them access, because they don't think they warrant those spaces, because in fact, they're afraid that their children will lose out. So what often happens is people present a lot of information about how we know from successful experiments of detracking that those achieving a previously low achieving students gain, and previously high achieving students don't lose when heterogeneous grouping is paired with good instruction. But people are not willing to accept that because of their normative commitments to traditional notions of intelligence. And fight to make sure that their children have an advantage relative to other children.

JAMES FORMAN, JR.: Okay, we have a lot of questions, so we're going to just have one speaker answer each question, and keep in mind the number of questions that we have. This question is directed to Jane Ehrenfeld. How do we make integration happen when the sad fact is that

mostly-minority schools are under funded and dead end? What do affluent White, Asian, Black parents do? Send their children to these inferior schools to make an important statement, or send their children to private schools? How can we send our children to integrated high quality schools?

JANE EHRENFELD: I think that is probably the question at the very heart of this whole matter. And what I would say is, we can't forget how tied school integration is to residential integration, that we're talking about schools a lot of the time as if they exist in a vacuum. And what we need to really do is examine policy and practice around the country with respect to residential segregation. If you've got real estate agents who are funneling parents, or potential parents, into areas where their children will certainly go to schools that are completely segregated, then it's going to be almost impossible to break segregation in the schools. And I understand that dilemma. You want to make a moral stand and say, "Well, I'm for sending my own child to a school where they're not going to be only around people their color, their race, their economic class," but then you don't want to send your child to a school that is not going to give them the best education possible. I think we need to reexamine how we look at segregation, and talk about policy in a wide number of areas in the country and not just in schools. Because busing is a temporary solution, it's a stopgap solution, but it's not going to change where people live, it's not going to change communities into integrated communities with good schools for everybody.

JAMES FORMAN, JR.: The next question is for Professor O'Connor, referring to your students. The issues that these students had to deal with seem like issues they'd have to face eventually in the real world. Isn't it better they experience it now so they can overcome them and succeed in a society dominated by White men?

CARLA O'CONNOR: You know, we have a lot of information that suggests that sometimes African-American students sometimes do better if they're in segregated systems, because they become inoculated—build strength, and when they move into integrated settings, they are in fact prepared. I mean, there's some evidence, for example, African Americans who go to HBCUs, are sometimes in many ways more competitive with [Black] students who attend predominantly White settings. So no, not necessarily, right? But at the same time we have to consider the fact that these students don't have to be isolated individuals in these classrooms. They can be participating in much more integrated classrooms, and they do in classrooms where they can find support, and yet they're in a diverse setting, and people think in fact, it will prepare them to deal with the dominant culture. And remember, these—the students I talked about are doing well. The question is would they be doing even better? If they're expending this kind of psychological and emotional energy, and they still have 3.8 and 3.9 averages, what could be their performance level if part of

their energy wasn't taken up with these kinds of social psychological challenges? So I think that's also the question at hand.

JAMES FORMAN, JR.: Another question for Professor O'Connor. Let's assume the absence of racism in the operation of Hillside High School. In a course of 30 students, four will be Black. Shouldn't the four Black students just suck it up, and stop whining? It's unfair to the four students, but life is unfair.

CARLA O'CONNOR: They're right. Because this school is predominantly White, it is 25% minority, but we have to remember if these classes were detracked, it would be four African Americans, there would be approximately 2-3 Asians in each class, there would be approximately 2-3 Hispanics in class, and there'd be one Arabic in the class, which means the class would be [quarter] to half, approximately 1/4 minority and 3/4 White, which would provide much greater support [for the minority students who were enrolled in these classes]. So this is not an issue of having to suck it up. This is an issue of why aren't institutional policies designed to create not only racial balance, but how that racial balance will then play out again as opportunities to learn, and equitable opportunities to learn.

JAMES FORMAN, JR.: This question is for, for Ruth Zweifler. Year by year, day by day, the fight to keep disciplinary issues in schools in proper perspective gets harder and harder for districts, for leaders, and for teachers. How, when we have so many horrible things going on in schools, do we convince people that zero tolerance policies really don't work, how do we convince people that relationship building, and connectedness, and keeping discipline issues in perspective is what will really change things?

RUTH ZWEIFLER: I guess I would refer you to Jane's closing statements. We have to rage against some of these things. When I get calls from the media about a child who's been thrown out of school because of a butter knife, or whatever, I keep saying, "These are not aberrations, this is what we're punishing children for, we are not talking about guns." We've always had effective laws that are there to respond to genuine violence. What we have to do is insist that there are the kinds of supports within the school, within the community that will assure us that we're going to nurture all children. Let me tell you two stories that illustrate the pervasive attitude to students that kids "don't deserve." One is from a young man in Detroit who told me when we were talking about resources just within the Detroit district, that "the kids at my high school, well, people would say they don't deserve the same resources as those kids who go to Renaissance High or Cass Tech." And then, there's the youngster from Ann Arbor, from an integrated, highly acclaimed school who, when I asked him what he liked to read, or what he had read, said, "Oh, I can't read." I pressed him and finally he said, "Well, I read *Black Boy*, I really liked it." These kids face, every day, a persistent erosion of belief in them-

selves. And, and that ultimately will—may—erupt in behavior that's not what we would like.

JAMES FORMAN, JR.: This is a two-part question. The first part to Professor O'Connor, and the second part to Miss Ehrenfeld. The questions came in separately, but they're related to one another. To Professor O'Connor, except for one brief comment in her conclusion, which seemed an afterthought, nothing in Dr. O'Connor's talk would make one believe that students benefit from integration. Her talk could easily be cited by Jessie Helms in arguing segregation is healthier for both races. Does she wish to comment? And to Miss Ehrenfeld, what impact do you think it would have on White students if they sat in class with your Black students on a regular basis? Would they view them as inferior, as is implicated by Dr. O'Connor's research?

CARLA O'CONNOR: In light of the question, the interesting thing is I think that many times, particularly if it's a supportive environment, African Americans can sometimes find—feel more comfortable—be more supported segregated settings. The problem is, is when we think long term, right? When we think about the fact that in segregated settings what we usually have are under resourced schools, under funded schools, poor infrastructure and the like, and we think about the fact that when we have White students segregated they continue to develop a sense of superiority and privilege. And that means when they become adults they're unlikely to vote in ways that will ensure that the children in the segregated schools that may, in some instances, be more socially supportive, depending, and I want to say depending . . . they'll deny resources to these schools and access [to their resource rich schools]. Right? And because you can't untie the two, integration becomes critical if you want the dominant group to even entertain creating access and supporting access for those who are not as privileged.

JANE EHRENFELD: I would agree with that, and just ask you to think for a minute, when you think of the word "segregation" who do you think of? I mean, I know that I think of minority children. The discussion isn't of the effect of segregation on White children, that the best way to ensure that White children are going to grow up thinking that minorities are inferior is to keep them in schools by themselves without any experience dealing with other people. But that is the single best way to make sure that they grow up and want to live in neighborhoods with White people, and send their own children to schools with White people. I don't think there is a chance that a kindergarten class that was well educated, and well integrated would have a problem with the White children in that class treating the minorities in an inferior manner. I don't think there's the slightest bit of chance that that would happen. We can't just talk about segregation as something that happens to minority children, it's something that happens to White children, and it's every bit as damaging, maybe more so.

CARLA O'CONNOR: To all of us.

JANE EHRENFELD: To all of us.

JAMES FORMAN, JR.: I'm going to pose a question which I'm going to address to the panel, because it's already been asked, but it's been asked in so many cards, in so many forms, and it was asked last night. It's also asked at dinner with the people that Jonathon Kozol eats with. I'm going to ask it now, because I really quite seriously think that we're not completely answering it on this panel. And the question as stated in this card goes like this: currently Detroit public schools and Grosse Pointe schools are unequal. Let's say that busing is the answer. How do you convince Grosse Pointe—that the best thing for them is that their child should be bussed into Detroit? And how do you convince a Black parent that they should leave the child in Detroit public schools rather than sign them on with a charter school? I understand your argument for the masses, but how do you convince one parent? How do we deal with this question of integration on an individual basis? To Jane Ehrenfeld, what keeps you going when frustration at the hypocrisy and racism of public school teaching gets to you?

JANE EHRENFELD: You know, you made much this morning of me racing out of school yesterday to catch a plane. That keeps me going. Yesterday was the 100th day of school. There was no way I was going to miss it, we had a big party. It was great. What keeps me going is being able to walk into a classroom every morning and see 21 beautiful little first graders who come running up to me, and say, "I love you," that's what keeps me going. I'm incredibly lucky right now, because I'm in a very good school, even though it is in a very desperate neighborhood, and I have a visionary principle who lets us do pretty much what we please, which is great. At my last school, I almost gave up a few times, I really did, I almost walked away. And the answer to me is very simple, it is that I love being with the children, and that's what reminds me. There are daily frustrations, there are a lot of days where I think, Boy, wouldn't it be nice to have a lunch hour. Wouldn't it be nice not to ever hear the words "standardized test" ever again in my entire life. But I still think I have the best job in the world, I really do. Every day that I consider myself lucky to be doing my job is another day that I can keep going despite the madness of the public school system these days.

JAMES FORMAN, JR.: This question is to anyone on the panel: I have taught six years. The first five years, I only had three African-American students. Now, teaching in a new school district where I only have four White children, I have observed and interacted with more disadvantages for these children than I had ever thought possible. No library, no social worker, no books, etc. Most of these children have family members on drugs, in prison, or have experienced things that are unthinkable for anyone, let alone a seven year old. My question, how can I

along with others break this pattern of dropping out of school and going down the wrong path?

CARLA O'CONNOR: Let me go first, because I'm just going to be brief. If schools were loving and nurturing, children from the kinds of families and communities that are described in that question couldn't be kept away from the school. So as—we're not here to address the larger societal issues that certainly permeate and underlie all of what we're talking about, but we can make schools a loving place, the kind of place that Jane has suggested for all of the children, and certainly Jonathan Kozol's description of the kinds of schools that we feel are inappropriate for some children are a shame to all of us.

JANE EHRENFELD: I would say also that we can't afford to underestimate the parents of these children. I think often as schools, and definitely as a society, we have a very racist and combative attitude towards parents of inner city children, and what I've found is most of the parents of most of my students would kill to keep them in school, get them through, and get them to college. They are determined, and so often what deters them is the school coming back at them with this attitude of, It's your fault, whatever's going on with your child is your fault, the zero tolerance madness; the first thing your child does wrong, they're out. And so we underestimate the strength of the parents. If you ask them honestly, and this kind of goes back to the general question, you ask any inner city parent, "Would you like your child to attend a really good school where they are going to get a great education, are you going to support them all the way through, or would you like to send them to a really badly underfunded inner city school that treats you like you have no idea what you're doing as a parent," and you'd get a very clear answer. I mean, it's a very clear answer in my mind. And so we have to get the parents in on this, we have to trust them, and support them, and bring them into the school community, and let them know that we understand what they're doing for their own children. And the more we don't do that, the more they want to walk away also. I think those doors have to be opened.

CARLA O'CONNOR: Absolutely.

JANE EHRENFELD: I don't want to marginalize the importance of structural inequities that occur outside of schools. These things don't happen as a consequence of accidents. They're historical consequences of racial segregation. But I think the point that Ruth made, that we know that even within communities like that, there are some teachers who are making a difference, and other teachers aren't. There are some teachers who the children may not go to any other class, but they'll attend that teacher's class, and will learn in that class. The question is what is the teacher doing differently with the same kids who've may be having the same stressors that the other teachers aren't doing?

JAMES FORMAN, JR.: I have two related questions, which will go to the whole panel. 1) My northern city tried integration in the mid

'70s, 20 years after *Brown*. Integration was implemented by the complete abuse of Black children, they were sent some distance to White schools. These schools are now all Black and Latino, but still in White neighborhoods, and still failing our children. Why continue that abuse? We never try to integrate, but only import Black bodies. What is the new vision of integration? 2) And related to that, we often speak to and discuss the idea that segregation is not good. For our educators and child advocates, what do we mean now by integration, where does it start?

CARLA O'CONNOR: With the bussing issue. That's not always been the first effort. The first effort, has sometimes been trying to redraw our district lines, to redraw district lines in ways that would incorporate suburban communities, but as you all know, that there's always been tremendous resistance to those efforts, and people thought those were novel efforts where Black children and Latino children wouldn't have to pay the cost for integrating White schools. The question is can we ever develop the kind of political force to redraw district lines in ways that allow for those new districts that in fact are integrated, and can we also develop policies that may reduce the kind of housing segregation and housing discrimination that occurs to produce highly segregated communities.

JANE EHRENFELD: I think we can. I think there are communities that are doing it. I think you give people incentive to be in a certain community, and they're going to be there, you give them good mortgage rates if they move into a neighborhood that is majority of a different race than their race, you give them real incentives to be part of integration, and that's just one small example of the many things that you could do to get people interested in being part of integrated communities, and they're going to go. But if you present it as a last ditch effort to make some sort of dream from a long time ago come true, and you present it in a way that shows that you're not really all that interested in doing it, but we kind of have to, because we said we would in 1954, of course you're not really going to get much support for it. I think there are a lot of incentives—both economic and social—that could be put in place in neighborhoods across the country that would give people a reason to want to be in integrated neighborhoods, and send their kids to integrated schools. I just don't think we've ever tried, I really don't.

RUTH ZWEIFLER: I think there are many blueprints and suggestions, and it is absolutely possible and essential to succeed, but again, I think we do not have the will, and that may bring our country down eventually.

JAMES FORMAN, JR.: Just so you all know what people are asking, I'm going to read just four very short questions that are, I direct to all the participants for today. First, what benefits are there for sending my White child to an inner city school, and for my family to live there, too? Second, what can be done to keep neighborhoods integrated so the schools would be integrated? Third, do you have any suggestions for

starting a grass roots movement to prioritize integrated and equal schools in the 21st century? Fourth, how do you convince or give suggestions to create more integration into a society that is divided into many different economic status? To Professor O'Connor, two questions. Given integration does indeed matter, how do we ensure that integration of the public school such as Miss Ehrenfeld's does not result in the curricular segregation that Miss O'Connor described? And the second question, have you found that high achieving African-American students are considered outcasts by their Black peers?

CARLA O'CONNOR: Very different questions. With regards to the first question, I mean, detracking has been relatively successful. The issue is how do you provide teachers with the supports and the strategies necessary to figure out how to deal with classes that are more rather than less heterogeneous. I want to also point out that even tracked classes are highly heterogeneous. There is more heterogeneity in terms of ability within tracks or within classrooms that are tracked than across them, and substantial overlap. The difference is teachers enter those classrooms imagining there's less heterogeneity than there is. And so their whole psychological disposition is a little different when they're met with having to teach heterogeneous classes. But at the same time, they have to be more skillful. With regards to the second question, it depends whether they're outcasts or not. It depends whether they feel an affiliation with the other African-American students in the school, and class sometimes plays out as a factor as well. So would I have African-American students in the study who in fact believe that African-American culture may be deficient. They are treated as outcasts by their peers, and while I also have [among my sample of students] those who affirm and celebrate African-American culture, and they very easily cross the divide between their predominantly White classrooms and the rest of the African-American students. So determining whether you're an outcast in fact has to do, it seems, with the kinds of messages they may be communicating to their Black peers.

JAMES FORMAN, JR.: Two questions for Ruth Zweifler. First, what do you recommend to deal with the very real threat of violence and the infusion of drugs into our schools? Do you recommend fewer rules? Then how will we deal with the offenders? Or do you recommend alternative learning centers for expelled students? And the other question is, can you talk about the variety of offenses other than guns that students are being expelled for?

RUTH ZWEIFLER: Yes. Start with the second first. One youngster I'm working with right now is a young man who was repeating ninth grade for the second time. He had struggled in school from second grade on. His mom finally requested support help and was able to get an evaluation. In eighth grade, instead of doing the kind of comprehensive evaluation that is required by law, the district gave him some achievement tests and concluded that he's very bright, which everybody knew anyway.

But he was failing, and there was no attempt to diagnose the cause. Then, the second time around in ninth grade, he came to school and had on his belt a little jackknife with a two and a half inch blade, he was not brandishing it. He's a kid who has a high interest in machines and spends a lot of time doing things with tools. He's been out of school since October, we can't get him in because that was a weapon charge, and typical of the non-violent weapon charges we see. But many expulsions are not even about weapons. For instance, the little boy who practiced and practiced for a school play and memorized his part, because in fact he did have difficulty reading. Then there was an incident on the playground, and the teacher said, "Okay, you can't be in the play." The youngster comes in and is crying at his desk and says, "I wish she were dead," and he's out of school, because he made a threat to the teacher. So it's really absurd.

In fact what we're doing is ignoring the very real concerns these children have. Would alternative schools be acceptable in some cases? Probably, but I worry that it's just a ploy to throw them out and move them on into a place where we don't have to bother with them. It's yet another kind of segregation. And we're not looking at these kids as people. I had two other youngsters who were recommended for expulsion this year and we were able to have the process stopped, and the kids are back in school. Both of them came to visit for second semester, and both of them are grinning from ear to ear, and so excited about going back to school. We have several ideas about services that may be available for the youngster who had the small knife in his possession but he's saying, "I don't want to bother anymore." So, you know, again, the messages that we're giving kids who are in any way troublesome, troubling, whatever, are so alienating, so off putting, so destructive to them.

CARLA O'CONNOR: Ann Ferguson has a wonderful concept of adultification, and she uses it to explain why African Americans are more likely to be sent down to the detention hall or be suspended. And she argues that while, in terms of how the boys performed their masculinity, she noticed few differences between how White boys, and Black boys, and these are elementary school boys—perform in their masculinity. Teachers read the behaviors of African-American boys as if they were adults, that when they misbehaved, they would interpret it as conscious, and willful, and intentional acts of aggression or what have you. When White boys engaged in the same behavior it was read as boys will be boys, they require edification. And so often the acts that are then reprimanded are maybe similar acts, but the question is . . . , why they're likely to be read in one body as being transgressive and assaulting, and read as innocent and in need of edification in another.

JAMES FORMAN, JR.: This question is for Jane Ehrenfeld. How do you feel an undergrad who is working in an all-Black school can approach the issue of integration? These students are kindergarten through third grade, and they see what is going on.

JANE EHRENFELD: I think you have to teach kids their history. I think you really do. And it's not just about teaching Black kids about the Civil Rights Movement, about Black history, and White kids about George Washington, and how he never told a lie. I think everyone needs to know the history of this country, but then, extending that, you have to make it real for them. It means picking an issue that's important to them, it doesn't have to be something that you feel is about social change necessarily, but something that they see as unfair in their own lives that is a battle that can be won. When I taught fourth grade, the issue was air conditioning, how all the rich schools had it, and we didn't, and on 90 degree days my kids were getting nose bleeds and having asthma attacks. And luckily I happened to be teaching in Washington, or right outside Washington, so we got to march on Washington, which was fun, and lobby our congressperson, and we got air conditioning. It was something small, it was a winnable battle; something they could do. We also boycotted Nike for a while, and wrote to the CEO about how we didn't approve of sweatshop labor, which was a little different, because it wasn't in their community. But picking a battle, something simple, something a first grader could see, or a third grader, something right in their own lives that's right there, that's about injustice in some way, and then trying to win it, and then tying that all in with history. Not presenting Martin Luther King as this very sanitized peace maker who we talk about every year for one day, but talking about his struggles, his real moral and ethical struggles, about him staying nonviolent in a society that was incredibly violent, talking about some of the heroes of the Civil Rights Movement whom we don't really hear about enough, who went through incredible personal battles, and not making it sound like it's fun and easy, or it's about singing songs in a circle, but that it's really about changing the world, and giving them real role models they can look up to, and real winnable battles that they can fight in their own lives.

RUTH ZWEIFLER: Yes, I'd like to make a comment, maybe even going back to the questions for me earlier, because I've been so struck, especially during the King holiday, at the hand over the heart obeisance to Martin Luther King's dreams coming from a government that is using the most obscene language and carrying out some pretty obscene actions, and then telling children to be nonviolent. That is an appalling contradiction.

JAMES FORMAN, JR.: The next three questions address, in some sense, alternatives to traditional approaches to public education, and I very much hope that both the people that asked these questions and everyone in this room will be at the panel at 1:30, because I know that a lot of issues that are raised in these questions are going to be discussed at the 1:30 panel. But I wanted to get them out on the table here to find out if there was any comment from our panelists on them. The first question is: I agree with the argument that neighborhood schools is a euphemism for ghetto schools. What alternatives are there? It seems neighborhood

schools have the best chance of engaging parents and alleviating problems with school truancy. Second question, many churches and community centers are opening schools for those who are expelled, pushed out of school. Why not vouchers for them? The third question is, how about a dialog and sharing of resources with the self chosen Afrocentric choice schools, which are the continuation of the other civil rights legacy, the freedom schools? So we have questions on the table about neighborhood schools, about vouchers, and about Afrocentric schools or, or freedom schools, and I will open up to the panelists. Nobody should feel compelled to comment, but if anybody wants to comment on any of those three please do.

JANE EHRENFELD: I'll take the neighborhood school question. Right now, I'm teaching in a school that isn't a neighborhood school. It's still almost completely segregated, it's just our kids are bussed in from other segregated neighborhoods into our school neighborhood. And I don't see a problem with truancy or parental involvement. My kids' parents get up to the school from wherever they happen to be, they're involved, truancy isn't an issue. I think those are things we jump to quickly and blame on busing, and blame on students' movement out of their neighborhoods. I was bussed when I was growing up. Most people don't call it busing, but I got on a bus every day and spent two hours—one hour each way—going to a private school in northern New Jersey, and my parents were every bit as involved there as they would have been in a local high school. I think those arguments against busing are easy outs. I've struggled with this question, because I know that good schools build good neighborhoods, that a school can be a center of a community, and that it's damaging to a community to have all your kids exported to other communities. But I think for what it's worth right now, busing is a temporary solution that has to happen until children are growing up and wanting to live in integrated neighborhoods of their own, because they've been in integrated schools all their lives. I don't think it's a permanent solution, but I don't think we can let these very minor concerns stop us, I don't think they are serious concerns. The kids I have right now who are bussed into my school, their parents are there every bit as much as the ones who live down the street.

RUTH ZWEIFLER: I have great concern for the proliferation of alternatives, whether they're vouchers, charters or whatever, because even when the rhetoric says these are schools that will be better for all children, I don't believe it, and the research indicates that they repeat the same patterns. We must reinvigorate support and sustain a public school system that serves *all* children well.

CARLA O'CONNOR: I don't know how much more I could add to what Ruth says. When you think about how these voucher programs, for example, are even presented, every child will get \$2,500, but what would that buy you? And where will it buy it for you? Chances are you'd

still have the same kind of segregation, inequity and lack of opportunities you see on top of the fact, what of the kids nobody wants? Right? What opportunities will they have—because the schools will have a choice to deny admittance, and we still aren't able to address the needs of those children.

JAMES FORMAN, JR.: We have three more questions, and stay for all three in case you're thinking of running to the bathroom, because the last one's really good.

What would be the impact of having additional minority faculty in minority schools? What difference would that make in the quality of the education in minority schools?

CARLA O'CONNOR: It depends. It depends on the politics and orientation of those minority faculty. As, sad as it may be, some minority faculty can be as destructive to the students in their classes, as White faculty members. There was some interesting quantitative work, and I'm sorry it wasn't followed up by a qualitative investigation where, in terms of trying to make sense of which teachers had the biggest impact on the performance of their students, African-American students. I think it went something to the effect of White teachers from upper middle class backgrounds, and Black teachers from low income backgrounds had the biggest impact compared to White teachers from working class or low income backgrounds, and Black teachers from middle class backgrounds. So at least it gives us something to think about.

RUTH ZWEIFLER: An impression that I have, and I don't have anything to back me up except walking into schools, is that I see a lot of vice principals who are minority, and a vice principal's role is to maintain discipline.

CARLA O'CONNOR: Oh yeah, I should point out that this particular high school, the students all complained about the fact that students are often targeted as the disciplinary sanctions in the halls, and they always point out, that the hall monitors are African American.

JAMES FORMAN, JR.: Does the manner in which teachers are assigned to classrooms affect the equity within the schools? If so, how? In other words, are poor teachers relegated to low track courses?

RUTH ZWEIFLER: The research suggests that, yes, that in fact the less—least capable teachers, the teachers who either have—whether you're talking about their ability to manage time, or their knowledge of the curriculum, or what have you, they're not the ones teaching AP and AC courses.

JAMES FORMAN, JR.: Next to last question. Integration essentially requires leveling the playing field, and in so doing why would White communities and individuals buy into something that challenges the majority's platform of advantage?

JANE EHRENFELD: As far as the statistics that I have seen, I think we're moving towards the day very quickly when Whites are no

longer the majority in this country, and I think it's in all of our best interests to challenge our own way of life as our country's demographics change. It's going to be a very different position that Whites occupy in a few years, so I think our future kind of depends on it, on us challenging what we assume about what we're entitled to, and what we have.

RUTH ZWEIFLER: I think the work that Jeannie Oakes has done indicates that children who have been achieving at a lower level are benefited by being in classes that are more stimulating and taught at a higher level, while not interfering or impacting negatively on those children who are already sailing along.

JAMES FORMAN, JR.: Last question. Last night Jonathan Kozol in his talk raised an issue that I'm sure would resonate with this audience. He talked about how life is not as dangerous as people older than you would lead you to believe that it is, and specifically pointed out that you don't need a graduate degree to change the world, and once you have one, you won't want to. Related to that point is a question in handwriting that is suspiciously similar to Mr. Kozol's handwriting. Miss Ehrenfeld made an appeal for rage, a passionate response to Apartheid. Is this passion, urgency, incompatible with legal temperaments. We're at a law school after all, and with academia in general, has her rage resonated in this room over the past hour, or has it been somewhat diffused?

JANE EHRENFELD: Shouldn't the audience be answering that question?

JAMES FORMAN, JR.: Well, as soon as we finish this panel will end, and then the audience can be answering that question to one another, and to us, in the hallways, and at lunch. But you have to answer it first.

JANE EHRENFELD: I don't think it has to. We need so many tools in our tool belt, and as was pointed out last night also, the opposition is very well armed against us, and they're very well organized, and they're not shying away from bringing in legal minds and academic minds to answer this question. I would like to see the day when this question of how we best educate every single child in this country is so important to everybody that the best minds in the country, whether they be legal minds, or academic minds, or teaching minds want to solve it together. I think that once we respect the question, and once we respect the feeling that comes behind the question, that our most critical job as a nation is to educate all of our children equitably, and together in integrated schools, that that issue will resolve itself, because all of those wonderful passionate minds in their fields that may feel trapped right now by the lack of passion in general for the question, will be reinvigorated. I think there's a lot of latent passion in law, and in academia, and definitely in teaching, and if we just light that match, I think there'll be a huge bonfire that results.

RUTH ZWEIFLER: I think we're being bullied in this country into shutting up, and I think we have to defy that every way we can.

Several years ago I spent a fair amount of time in a school—in fact, it was called Martin Luther King Jr. School—and there were a few Black children there who were being really abused by the system. Teachers would come up to me and say, “Oh, you know, the principal is this” or, “this is going on,” or whatever, “Yet, you know, I can’t say anything, because I’m worried about my job,” and this is not unusual. How can an adult who’s responsible for the lives of children sit back and watch those children being abused emotionally, physically, whatever way, and not speak up? How can you live with yourself?

CARLA O’CONNOR: Well, I’m sorry I’m the last one to go, because I’m not sure how enraged people are. Especially when you’re a part of the privileged, even if you’re not racially privileged, you may be educationally privileged, or privileged by social class, and you may not be struggling with these things on a day to day basis. You think about past movements, and I guess the question is, will there ever be leadership that sort of motivates a fire in people to take action possibly with grass roots organizations—and can those grass roots organizations spread out and multiply in ways that might create the necessary reach, and the necessary voice to change things in this country.

JAMES FORMAN, JR.: 1:30 in this room: rage, solutions. Thank you very much.

END OF SESSION

SESSION II
ABANDONING TRADITIONAL SCHOOL METHODS

RICK HILLS: Hi. I'm Rick Hills and I teach Education Law at the University of Michigan and my only function here is to call things to order, and introduce the speakers. We're a little bit late right now, ten minutes late, so on behalf of everyone, we need to keep to a time as much as possible during the next presentation, because it will be a very exciting one. As you know, since 1983 many prominent individuals in the field of education have conducted extensive studies contemplating new strategies for dealing with what looks to be an educational crisis, the problem of underachievement at schools. All four of our panelists today are experts on student achievement. They're very important, as we have representatives of public schools, public charter schools and academia here. All are nationally recognized educational leaders.

Representing and speaking first on public schools in Indianapolis is Pat Payne. She is Director of Multicultural Education for Indianapolis School District. She has won many honors as a teacher. In 1984, she won the teacher of the year in Indianapolis. She was the NEA Carter Woodson award winner. She's won an NAACP Education Award. She's traveled throughout the world in countries as diverse as Switzerland, Canada, Botswana, South Africa, Israel, Nigeria to participate in international organizations and help study the problems of education.

Our second speaker, Ray Johnson is president of Infinity Consultants. He has thirty years of experience in innovative educational strategy. He has been a Pioneer in education as a founder and developer of pioneering schools nationwide. Among his efforts to enhance self-esteem and inculcate positive values, he created the Man to Man program. He has won the National Head Start's Outstanding Contributors to Education Award. And we're very glad to have him here today.

From charter schools, and speaking third, will be David Domenici. He is the Executive Director for See Forever, and principal of the Maya Angelou Public Charter School in DC, which, as you know is a nationally recognized charter school. He comes to education with a long history of volunteering and public service, having served as a Volunteer Director for DCWorks—a residential, summer-based, pre-college program for high school students from Washington, D.C., Philadelphia, and New York. His experience includes teaching in Washington, an internship at the Public Defender Service for the District of Columbia, two years in finance on Wall Street, and three years in general law practice.

Finally we have academia represented by Professor Wilbur Rich from Wellesley. Professor Rich has written widely on urban politics and education, including a book about Coleman Young and Detroit politics and a book about the relationship between city mayors and school politics. As you know, that's an extraordinarily hot topic today in New

York, in Chicago and Cleveland. So we're very glad to have him here today.

With no further ado, I'd like to introduce our first speaker, Pat Payne, and each speaker will speak for ten minutes. After that we will have a breakout session.

PAT PAYNE: I would like for you to meet Massah Pat Rooney of Indianapolis, owner of Golden Rule Insurance Company, and creator of the choice charitable scholarship program, started 11 years ago in Indianapolis, when tax supported vouchers failed to pass. His program provides 2,000 low-income families of the Indianapolis public schools with vouchers that allow them to switch to private schools. Massah Rooney is upset, because 94% of the slave chilluns who attend Holy Angels Catholic School failed the math and English portions of the 2001 IStep(?) test, that's the state standardized mandated test. Massah is scolding the slave parents, and threatening to withdraw their financial manna. He's putting fear into the hearts of the slave parents, and telling them, and I quote, "At that passing rate, you are only getting daycare, not education for my money. For daycare alone, you might as well send your children to the Indianapolis public schools, that at least is free daycare." Massah Rooney to me is symbolic of the entire effort to privatize education to include charter schools funded with tax dollars. Good afternoon. I'm going to leave this picture, I just keep thinking he's going to reach out but that's alright, because I'm going to hit back if he does.

This year, I celebrate 40 years as an educator in the Indianapolis public schools. Twenty-five of those years were spent mostly as a second grade teacher. And now, I am director of multicultural education. The most depressing moments in my career came with the passage of the charter school law. After a seven-year battle for a law, the governor of Indiana finally signed the bill in 2000, and in 2001 Indiana became the 38th state to sanction charter school legislation. The center for education reform ranked Indiana's law as the seventh strongest in the country. The first charter schools are scheduled to open in Indianapolis this fall.

Under the Indiana law, charter schools must be proposed and organized by non-profit entities, but can hire for profit organizations to run the school's operations, including hiring staff and providing meals and transportation for students. Non-profit groups hoping to organize a charter school law had to—no, hoping to organize a charter school had to submit their proposals to one of three bodies for sponsorship. Those bodies included the mayor of Indianapolis who is just so happy. He's the first mayor in the country to okay charter schools. The other two entities were local school boards and public universities. The only local school board to raise their hand as a sponsor during the first year, and I say this with a great deal of embarrassment and bewilderment, was the Indianapolis public schools—the school district that will be hit the hardest in terms of decreased student population, decreased funding, larger

class sizes, loss of staff and programs. No submissions, however, were received by the December 1st deadline, and that's probably because the proposed schools did not want to be governed, even with their waivers and limited restrictions by the school district they would soon be sucking dry. Funded with public tax dollars—charters are open to any school in the state of Indiana, regardless of race, religion, disability or academic ability. As per the Indiana law charter schools, of course, cannot charge tuition and may not adopt admission policies.

I'm going to skip down here to the first year impact on the Indianapolis public schools. IPS has 3,000 teachers and a total student enrollment of about 41,000. Of this number, there are approximately 24,000 Black students, 13,000 White students, 2,500 Hispanics, 154 Asians, 60 Native Americans and a little over 1,000 multiracial students. Sixty three percent of our students receive free lunch, and 15% receive reduced cost lunch. 57% come from single parent households. As the legislation is now worded, the per-pupil funding allocated to the students home district state and local taxes will follow that child to a charter school within the first year of transfer. For IPS, that amount will be approximately \$6,000 per child. It doesn't matter where the student comes from, whether they were in IPS already, whether they were home schooled, or if they come from a private school and never entered the school district. For each and every one of them, the IPS budget is decreased by \$6,000. If just the four schools sponsored by the mayor's office successfully recruit and fill the enrollment anticipated, IPS stands to lose 1,740 students and over \$6,000,000.00 during the first year of charter school implementation.

Now, as I was putting the finishing touches on my presentation, in the *Star*—that's our newspaper—appears this article on the editorial page, and the title was "Funding Dispute Threatens Charters." It was the most timely news article I ever saw. And it says, and I want to just read you a little bit of what has happened now with the charter schools that thought they were going to be implemented this fall. "Because of our complex funding formula, the first five months they will get no money at all, and they thought they were going to start getting these funds right away.

But the law in question involved Indiana's formula, which says the school districts receive a state check each month starting in January based on a student head count the previous September. Well, they weren't in operation the previous September, so they will not get the check. Charters will go through the same process with their first check arriving five months after they open. But unlike traditional school districts, which receive an additional stipend for increased enrollment, charters will never see state compensation for the initial lag between head count and check distribution. In short, these new schools, whose creation was supported by the governor and the legislature, will have to be conceived, delivered and nursed for their first five months of life without any public support."

Now, that's the end of the article, and after I read it I just said, "God is good." But as I give my concluding remarks, I've entitled the last portion of this paper as "What Happens to Those Left Behind." The powers that be, I don't doubt, are going to find some way to open these schools on time. Now, I'm not crazy, and I know they've got so many benefactors, they're going to make sure that these schools open on time. I stand in strong opposition to the funding of charter schools with public tax dollars. I don't oppose choice, and I don't oppose charter, but I do oppose them being funded with tax dollars. I also oppose the abandonment of one of our most fundamental democratic institutions, the traditional public school, where the masses of our children will continue to go.

I pose the following questions for your consideration; *Question:* What happens to those left behind? The ones who are not the cream of the crop, the ones who were admitted to the charter school, but didn't measure up, and through subtle and not so subtle ways, landed right back in the now depleted traditional public school where they are trapped in unconscionable conditions. *Question:* How is it that the very same elitist conservative power hungry middle and upper class groups who, since the 1954 Supreme Court decision, have historically fought against the funding of racially integrated schools have now become the guardians of the welfare of our children and parents? These same groups are now pouring funds and resources into the legal battles for voucher plans and tax funded charter schools. Could it possibly be that since they haven't been able to win the battles for privatizing the system, they are not settling for tax funded charters as a way to create quasi-voucher schools that will compete for tuition tax dollars and escape regulation? Is this their way of increasing the amount of schooling they feel is beholden to the marketplace, and in reality, not in the least bit beholden to local democratic control, parental choice or competitive incentives to improve traditional schooling? *Question:* Charter school laws have eased in on the backs of the disenfranchised, but who will be sitting in those seats a few years down the road? *Question:* Shouldn't we be concerned that the for profit management firms operating a majority of these charters with their cookie cutter approaches will make big money from tax funded charter schools?

For example, Edison Schools, Edison and I guess it's called Sabis, S-A-B-I-S, are two of the firms that will be running the schools that the mayor selected. Edison Schools would earn \$921,153 of the 4.3 million in revenue from it's first year of operating one of the schools. That jumps to 1.2 million of 4.8 million the following years, and continues to increase each year. Add to this the fact that two of these schools are organized by churches, a third by a multimillionaire philanthropist, and a fourth by our community center. None were organized by practitioners. *Question:* Does the charter school movement and its predecessors have anything to do with the need for the agents of this institutionally racist and elitist society

to keep the myth in place that African-American students and other students of color are genetically inferior? In the words of Dr. Barbara J. Holmes in her article entitled "Education Reform and African American Students," she writes, and I quote, "Too often, socioeconomic status is used as a surrogate for continued racism, and the disguised belief in lower intelligence among Black students, the myth that continues to plague America. The nation has been content to allow the performance gaps to continue, because they play out into the larger society and perpetuate a system of disproportionate representation of Blacks and other minority groups in a variety of social arenas" end of quote. *Question:* If we already know so much about what it takes to educate an inner city child, and we really care about the welfare of that child, why hasn't the same thing been done so far in the traditional public schools? There already exists a body of knowledge that tells us what we need to know, have and be able to do to make a positive difference in a child's schooling experience, among them smaller class sizes, adequate funding parental involvement, well trained teachers who appreciate and acknowledge the brilliance the students bring with them in their blood; curriculum, text books, classroom environment and instructional strategies that reflect the experience and cultural orientation of the learner; reform in teacher training institutions, and the elimination of courses that focus on deficit models of research that link failure and socioeconomic status, failure and cultural difference, and failure and single parent households. We already know this and more. So why are the power brokers creating yet another bureaucratic layer called charter schools? It is suspect at least, and deceptive at best.

Last paragraph. Ron Edmunds, educator emeritus and past president of the National Alliance of Black School Educators, said many years ago, "We can, whenever and wherever we choose, successfully teach all children whose schooling is of interest to us." We already know more than we need to do that, whether or not we do it must finally depend on how we feel about the fact that we have not done it so far. Thank you.

RAY C. JOHNSON: Good afternoon. You know, I don't know, but this morning, we didn't have someone hold up those cards on those presentations, and Pat, you were going so good I was going to donate some of my time for you to continue with the discussion. I went to a school on the other side of Michigan called Michigan State, and yet, being here is always a joy, it's always exciting. And on Tuesday, I spent that day with my son, who happens to be there, my baby boy at Michigan State.

And yet I'm right here in Ann Arbor, and I'm excited to be here, and excited to be a part of this process. I want to acknowledge three sisters, I was with one historic sister on Monday night at Rosa Parks, her 89th birthday. There's another historic sister here who just brought me up a newspaper showing one of the schools that I started on the front page of the Chronicle, talking about their excellence and their student achievement. This young lady is Shahida Mausi, stand up Shahida, who brought

Nelson Mandela to Detroit, and at that time, Tiger Stadium, and whose mother was over the Council of the Arts. And of course, you had an opportunity to meet Pat. I last saw Pat in West Palm Beach, and she is still doing all the things that, that she continues to do. And then, there's a sister here, Cynthia Overton. Cynthia Overton, would you stand up please? Please indulge me as I recognize these sisters. Cynthia Overton. This young lady who participated in the Paul Robeson Academy, the school that I started some years ago. We started that particular school out of a response for a need. We decided that we wanted to have an alternative approach to education.

At that particular time, we recognized that youngsters, particularly our males, were falling out, dropping out, involved in underachievement, as well as violent acts. They asked, "What can we do to begin to address some of those needs," and there was this particular initiative that stated, "Why don't we take a look at having a school that will focus on the needs of many of those at risk boys and girls?" And so out of that came the Paul Robeson Academy and Malcolm X and Marcus Garvey academies. From that school back in 1990 and '91 after a challenge to the courts over Title IX of the Civil Rights Act, we opened our doors.

But we opened our doors with a new kind of curriculum. We decided that integration, of course, would be an ideal place in America. We decided, of course, as I did, as the former executive director for the Michigan chapter of Southern Christian Leadership Conference back in the early '70s, when I debated Joe Madison with the NAACP on whether or not forced busing to achieve integration should be our goal.

I made international news when I took the exception of Dr. King's organization that was one of their executive directors that would say that I resist forced busing to achieve education and integration in America. I happen to know that the fact is that we must take a look at housing patterns. You must understand then it is not necessary, nor prerequisite for our young people to have to sit next to someone else for them to be able to achieve themselves, and achieve their own goals. We have a philosophy of a village concept with schools. This village concept said that everyone in the village is a teacher starting with the parents, being the primary teachers. We had the concept of an asset model, not a deficit model. We took a look in that village and found and discovered that there was brilliance and genius there. And so, from our curriculum, we started with the fact from a multicultural umbrella that we would begin to help young people to see and know who they are, and whose they are, to recognize when John says he can't do algebra or geometry, I say, "That's awful strange, John, when you built the pyramids, your ancestors in 2750 BC took 3,200,000 stones, each stone weighing between 15 and 30 tons, and they carried it 300 miles down the Nile." "Don't tell me, Helena, you cannot do geometry, when I've gone to Mexico and I've seen the step pyramids that your ancestors have been able to do. Those same genius

flows through your veins today and if we accept the evolutionary process that we're even greater now in comparison to what we were then, that genius right now flows with you."

And so we started out with our school in the basement of another school, a school within a school, if you will, that would focus on the assets of the genius within that particular building. That was in 1990 and the planning began. And now, 2002, and the current *Chronicle*, as has been reported on CNN, as we've been introduced and invited to come to 60 Minutes, as it has been reported in *Fortune Magazine*, as we've gone across this country to recognize that our young people come with an innate genius within them.

But there are some elements that must be there; there must be the vision, there must be the capacity, there must be the unlimited expectation, there must be the faith and belief in their ability to do so, there must be a situation that creates the environment of security and safety that recognizes the ability and their capacity where at our school, over 2,000 applications come a year for only 100 slots in the urban inner city school, reversing the trend of those trying to leave. Thirty percent of those applicants come from private charter schools that kick them out, and suburban schools to come to an urban setting school district.

And then, our most recent graduate last year, Kevin, who's now attending the school that George W. Bush attended, Andover, on a \$40,000 scholarship a year. My proudest moment I would imagine when he walked up to the president, he went there to meet him, and he introduced himself, he said, "I'm Kevin Hatchet. I attended Paul Robeson Academy in Detroit. It is not a charter, it is not a private, it is not a Catholic, it is a Detroit public school, sir, and when I return to my city, my beloved city, I will have a city on the hill, and when I return to my city, the Motor City from your town to Motown, I will give back." My proudest moment indicates to me that our young people have the gift that keeps on giving.

I have this particular video, and I want you to see, if you can just show just a couple moments of that particular video, that gives an example of some of the things that we'd be able to do, and throughout the country, we've had the opportunity now to pre—present this kind of information to many school districts across the country. Some of the key elements that we take a look at is this, we can no longer have business as usual, that we have to take a look at those assets and those resources, that if we have equitable funding and finances for all of our schools, our youngsters can not only achieve alongside others, but they can excel. As this article indicates that our school in the 2001 and 2000 MEAP scores had outperformed the city and the district, with over 90% in terms of satisfactory performance on the MEAP scores and testing. We looked at some of the high value restructuring, at age eight years old where they would have to travel throughout the world in Europe as well as in Africa. We took a look at understanding that it's impossible for them to embrace

others if they have not embraced themselves. It's impossible for my youngsters to integrate with others if they have not integrated their own values, and know whose they are, and who they are. We looked at some of the ten or eight Rs, routine, rituals, responsibility, respect, relevance, academic rigor, remember, and resilience. In an article in *Fortune Magazine* in 1992, they said, "Ray, aren't you expecting too much? We see here that your four year olds are taking French and Spanish, and Swahili. Don't you know who they are?" I said, "I know exactly who they are, and whose they are."

And then, when I resisted having youngsters who, in their head start and preschool to go a half day, I said, "Everyone will go a full day," and they called me a renegade, and said, "We're illegal," that they must go only a half a day, and we continued with the full day. And now, we're finding that throughout the districts, the hue and cry now is to start them earlier, and keep them longer, and yet we'd introduced that over ten years ago. And then, on Saturday schools, where they would attend the Saturday schools, and then on Sundays when we keep the building open, we asked a question, "How is it that in our city that the newest buildings would be the prison as well as three casinos?" and yet, we have over 85 year old dilapidated school buildings within our communities. We asked the question, "How is it that someone can gamble all night, and yet youngsters cannot attend the school after 4:00, 5:00 and 6:00?" I asked the question, "How is it that you can get a martini on some occasions on Sunday at Sunday brunch, and yet, I can't have doors open, or allow our young folks to come to the place of knowledge, not only acquire new knowledge, but become creators of new knowledge?"

And so we began to open those buildings, so seven days a week you can come to school, and so we started football programs and mentoring programs, and so it was man to man that we started starting with only ten men, and they said, "You need a funded program," I said, "All I need is commitment," and from those ten men we went to over 1,000 men, and over the last 20 years have helped thousands of kids throughout this nation. And so even your Chris Webber who was here and performed so long, and Jalen Rose who was here and performed so long, and even Derek Coleman, who was not here, but in Philadelphia and back who performed so long, who've gone through and been touched by our mentorship program, how can you do that? Don't you know, you need to be on a bus to go to Cranbrook? How can you do that? We can do that, because we know who—exactly who they are, and the level of unbridled commitment, and rallying the kinds of equitable funding necessary to do so we can have that. And how is it that you would take 100 youngsters who are eight, and nine and ten to London, and then to Africa, and Dakar, and Senegal, and how you would have them to stand at the pyramids and look at camels, and how you would teach them the legends of their history, and how is it that you will have exchange programs where they

would come from Japan to study your works and what you do, and how they would come from Paris, because you're teaching them French, and how are you teaching them Japanese? Because the genius of our youngsters vibrates within their souls, because you have a teacher like Cynthia Overton, who now walks with the assistance of a cane, who I watched, who has the skill, the will and the zeal, who walked out one day, and we noticed a limp. She was paralyzed, and yet the moment that she could stand, she returned to the building, and she began to teach again, and she's touched lives. And she keeps giving the gift that keeps on giving. You are our Harriet Tubman, you are the Rosa Parks, you are the Winnie Mandela.

And now, I see you now, I see in these ivory halls still researching, still searching. Went to Hampton University, that Black school, when they said, "You need to go to University of Michigan." That Black school. Well, you came out and now, in another year or so, she'll have her PhD from the University of Michigan. That little Black school. That little Black school. In Detroit, we look at efficacy, we have abandoned the notion that we can only receive that information and knowledge and comprehension in only one place, but we want the kind of personnel and the kind of parents with that level of commitment. As was said earlier, we already know all there is to know, we needn't reinvent anything but just implement all of it. I end with this because we won't show the video. The notion is this, when they said, "Ray, how are you going to get young people to come to school, to your school, and you're talking about them wearing uniforms? We can't get them to come to school, and you're talking about uniforms. White shirt and blue tie, blue pants and dress shoes, no gym shoes, no designer clothes. Staff does not wear designer clothes. There has never been a day that there hasn't been staff to work and volunteer on a weekend. The question is this, we often talk about excellence, but I say that if greatness is possible, then excellence is not enough. And greatness *is* possible. Thank you.

RICK HILLS: After speaking with the organizers of this event, there are two things we'll be doing differently. First of all we'll have to give each speaker ten minutes, and the remaining speaker fifteen minutes. Well I gave them fifteen. Second of all, because it would take so much time at the breakout sessions, we will not have breakout sessions. Instead, we will have extended audience feedback, okay, so that everybody here can ask questions of all the panelists who made comments, at the microphones. At the close of the panel, we will all remain here. We will have a very good, I think a very robust discussion. With those things established, I invite Dave Domenici to have fifteen minutes worth of time to speak about the issues that he deals with at the Maya Angelou Public Charter School.

DAVID DOMENICI: First, I want to thank everyone for letting me come today. My name's David Domenici, I work at a place called See

Forever in the Maya Angelou Public Charter School. I want to focus first on what I think some outcomes are that most of us in the room believe we want for young people, and then talk about three steps that I think we all should take in order to get there. On the outcome side, what I believe all of us would want from young people becoming adults: we want people who are tolerant, we want people who are caring, we want people who are well educated, and therefore can make choices for themselves about what they do with their futures. It seems like most of us would like young people to be at least sort of, if not very, rebellious, and taking from Mr. Kozol yesterday, we would like young people to consider being on the correct bridge now and in the future.

My thoughts on how we can get there. First, I think we have to admit where we are. Second, we need to take big risks. One risk is to get re-engaged in public education, and secondly, we need to support people in programs that are doing innovative things with young people, particularly if they have a few key elements, which I'm going to call make them student-centered programs.

To the first point, where are we today? Let me tell you a little bit about where I am today with the students that I work with. Fifteen students graduated from our small public charter school last summer. Over half of them did not go to school the year before they came to our school. That means they did not attend school, they were high school dropouts. Fifty percent of them have been involved in the court system, over 80% of them have an older brother or sister who's been incarcerated, approximately 50% of them have a mother or father who'd been incarcerated, 92% of them qualify for free or reduced lunch. The district as a whole has almost as bad a set of demographics. Eighty five percent of the young people who attend public high schools, whether public charter or traditional public high schools in the District of Columbia, test below basic on the Stanford Nine, which is a widely accepted standardized test. Less than 50% of the young people who started high school three and a half years ago in any public institution in the District of Columbia will graduate this June. The one statistic I don't have, and have never been able to find, but I know it's exceptionally high, is that a very small percentage of young people who drop out of high school who ever return to graduate from high school. Which means that of those 50% who do not graduate in four years, very few of them will ever be high school graduates. Some significant portion of them unfortunately will end up incarcerated.

Two other things about the state of play in the District of Columbia; there are over 2,000 White students who attend public elementary schools in the District of Columbia, there are 227 White students who attend public high schools in the district of Columbia. That's the facts about life in the District of Columbia, and life at the entering class of the Maya Angelou Public Charter School, which mostly means we have students

who were not wanted by, or failed out of, or in some way just were not able to have their needs met by a more traditional system.

So they came to us, an alternative system. I'm not here to talk about integration, because integration is not a reality in the near term. Like other people, I would support any efforts at litigation or anything else that would seek to achieve more integrated public schools. But the students that I work with have gone to, and will continue to go to schools in the District of Columbia that are all Black, or all Black with a few Hispanic students. That won't change tomorrow, that won't change in the next few years. Maybe 40, 50 years from now, but from everything I know about history, it will never change. That's one. Second thing is, my students are exceptionally poor, again, over 90% of them qualifying for free or reduced lunch. Unfortunately, but candidly, that's not changing either.

The task before us, I believe, is to say, "What can we do to create institutions that will work given the present realities?" The present realities are that schools are segregated, Black and Hispanic young people living in urban settings are very, very poor, and exceptionally isolated. And that's where you start. But where can they get to? They can get to the goals that I believe most of us in the room would agree on, and that I enumerated at the start. How can we get there? The first step after you've admitted the bad facts is to say, "Can we get people and resources re-engaged in the lives of young people?" The first step is, in fact, a moral step. It is a requirement on all of us to decide that those young people are worthy of the opportunity to gain the knowledge so that they can successfully participate in adult lives that we all participate in. That's a moral imperative that all of us should feel, and that we must preach and live day to day.

There are things, programmatic changes that can be made, that will get more people engaged in the lives of those young people, and by getting more people engaged in the lives of those young people, the cycle might change, and the moral imperative will become more of a normal way of being. And at our school we try to do that in some ways that traditional public schools have a difficult time doing, and that's one of the reasons why I'm a big proponent of finding innovative ways to get people into the lives of public education, so you can get resources, and you can get civic engagement around that young person.

Our students, to back up just a little bit about what our students do, our students arrive at 9:30 in the morning, and they stay till 8:00 at night. We serve breakfast, lunch and dinner. We have two non-profit businesses that are integrated into our school, so all of our students have a part-time job as a part of their school day. They all earn money, if they come to work they all learn how to save that money, they learn how to invest that money. We have 70 students, three full time mental health professionals, a part time psychologist, three residential counselors, and two dormitories. It's an immensely expensive program, and it's immensely comprehensive, and it is centered on young people.

But how do we get people more involved in the lives of our children hoping that that involvement will change their perspective of our children, and then help them understand why it is that they need to get more involved in their lives? Well, we have tutoring four nights a week that runs from 6:50 until 8:00 at night, we have 70 people a night that come into our building to tutor or just to work one on one with a young person. That dialogue right there is, I believe integration. And the only integration really that's going to happen. There is not going to be integration between 9:00 and 3:00. But between 7:00 and 8:00, our school is filled with, on a typical night, 20 students from Howard University, 25–30 people from downtown, accounting firms, law firms, ten or fifteen people that work in the non-profit arena, or the legal community. Those are people that our children would not interact with on a day to day basis, nor would any of those people, except for a few, ever be interacting with our students on a day to day basis.

And some of the exact gains that many people believe take place through integrated classrooms can start to take place through other integration type programs, and that's one of them. So you have an immense amount of camaraderie and gained understanding that takes place when young people interact with people from all ages, genders and races in the evenings towards a common goal, academic excellence.

Secondly, we have an internship program that is built into our school calendar. We go twelve months a year, and every ten weeks, after doing that incredibly difficult schedule of going until 8:00 at night, our students participate in what we call "exposure activities." Some of those exposure activities include having internships with companies from around the city. Some of those exposure activities mean they go to Colorado and Montana to go on two and three week outward-bound trips. Some of those activities mean they go to Tuskegee for a summer program, or they go to Wesleyan for a summer program. Some of those activities mean they go to Italy for the summer.

Again, the goal is for our students to experience life outside of our little corner school, and outside of their neighborhood, not because things outside of their neighborhood or outside of our corner are better, but because the world is full of things outside of our corner, and outside of each of our neighborhoods. And by going to work downtown, by going to work for a non-profit that tries to influence policy on juvenile justice issues, by spending a summer on a college campus when you were a high school dropout, you change the way you think about your future—because you are surrounded by other young people who believe, and probably believed from the moment they hit high school, that they were going to get a full scholarship to Cornell, and they're there, and you're there right there with them, and we're one phone call away, we're a counselor away, we do everything we can to help them be successful there. The one thing you do, though, is you know hopefully, if we do things right,

when you leave that six week summer program, you know you can compete, you know you're just as smart as those students, and you know that you deserve a seat at Cornell's admissions table just like they do.

Again, those sorts of activities provide a base for our students to think about themselves and their futures differently than they would if they could not ever leave the nurturing environment of our school. But it's not an idea that they can't accomplish things in their own neighborhood, and in our school. It is a way to build hope, and to build dreams, and to help them build a skill set so they can achieve them. So the middle piece of this puzzle is to get people and resources reengaged in the lives of young people, and young people who are isolated engaged in other activities. And these activities help that happen. They help people and resources get reengaged in public education, because when you live in the District of Columbia, and you work downtown, and you are White, you never interact with an African American in the way that you do when you come to our school to tutor that young person. You have no reason to, there's no prerogative, there's no reason for you to have to. But this gets you into the life of that young person, and it gets you engaged and starts to help you understand what's going on in that young person's life. Hopefully, it then helps you contribute resources, funding or otherwise, into public education in some capacity in the District of Columbia. And that changes in the long term potentially the way education can work.

The third piece of this is, okay, admit we have a problem, let's get reengaged in public education. Now, let's think about doing some things differently, let's not support crazy ideas that are just floating around out there, let's support innovative ideas that go right where we should, which is to the heart of a young person, and say, "What does that young person need and want in order to become this young adult that we all want that young adult to be?" And that's what we try to do at our school. And what we came up with was a model that said a 16 year old who reads at the fifth or sixth grade level, who has experienced significant trauma in his or her life, who may have been arrested, and who most likely has not—and has never been successful, at least not in a junior high and high school years, what do they need, and what do they want?

Well, how about having a conversation with them asking them what they would come back to school for? They would come back to school if you told them they would have small classes, and the teachers would really care about them, no one's going to read the paper, and just sit there and tell them to doodle away on some piece of paper. They would come back to a small class where the readings were based on things that made sense to them, that were relevant to them, and would help them in their future. They would come back to school if a part of school was a job where they could earn money and gain responsibility.

So why think about school as a 9:00–3:00 thing? We don't. We think about school as a program that will meet the needs of a young person

where they're at, and help them get someplace else. So how about building into your school day non-profit businesses where young people can go to work, earn money, learn job skills, get responsibility so that's a part of their school day? Young people—and a lot of us have an awful lot of pent up stereotypes about what it means to talk with a counselor, talk with a social worker, see a psychologist—but young people do want to have a place to go where they are comfortable, they have someone who will help them work through problems they're facing, they do want to work with people who will help them resolve their problems without violence, and build inside of themselves a greater sense of self confidence, and a greater sense of trust of others. How do you do that? You make counseling and mental health work just a natural integrated part of a school day. You don't only go see your counselor because you're crazy, and you don't just go see the school psychologist one day a week by hopping on the metro and having to miss four hours of classes and come back, get behind in school and have everybody else in the school know you had to go see the psychologist. You do that because you build into your school day a system that says, we are here, each of us, to become the best we can, and to work on what we need to work on. And if that means you need to work on your writing skills, we're going to build a program to help you build on your writing skills, if you need to work on dealing with anger, then we're going to try to help you work on how to manage your anger. So those things all get built in.

And the last thing, what gets built in is what I talked about earlier, which is a way for students to get exposed to people and ideas way beyond their walls. And by supporting programs like that, you potentially can end up in a place where students can become the young adults that we all want them to become. Let me give a couple quick examples, on what it means, what creating a student-centered approach to education can do. We have a young man at our school who had been labeled, and carried the baggage of being mentally retarded with him since he was 7 years old. He has been with us since September. Since September, he has read "Slam," he has read "The Giver," he is now reading "A Lesson Before Dying" and at the same time he is reading "Man Child in the Promised Land." Before he came to our school, he never read a novel, because the system, the schools that he went to before, had labeled him mentally retarded, and no one had taken the time to really sit with him, and build a schedule that met his needs, and help him become an educated young man. In December, he made the Dean's list, he came back from his Christmas holiday, and you ask him how his holidays were, he says they were great, "Because my people were proud of me, and they took me out to dinner, and did a whole bunch of other things for me." He's not mentally retarded, he should have never been labeled mentally retarded.

We have another young man who dropped out of school last year, totally dropped out. Why? In his attendance records the comments from

teachers all said the same thing: "He's disinterested, he just doesn't come to school." What did he do in the English classes at our school? Well, he read this term, "In the Shadow of a Saint" by Ken Savo-Wiwa. He's reading books that make sense to him, he's reading books and talking about things that he wants to talk about, that make him know that he can get to another place. I could give some other examples of students, but I have to call it quits.

How does this conversation about where we are, and where we can get to relate to the younger people in the room? Well, I would like to echo just what other people have come up here and said, which is that for those of you that are in undergraduate or in graduate school, you have to take risks. The downside of taking risks probably aren't that great. You're going to be unemployed for a while, you're going to be a little frustrated with the job you took, you're going to have to look around for another job. But the upsides are so immense. I know I can speak for myself, I'm quite confident that James and other people who I've spent a lot of years working with can say the same thing, most of you who take risks to get on the right bridge, and live on the right bridge will find your life incredibly more valuable and rich than it otherwise would have been. And that's a risk worth taking. You should do it, and if it doesn't work you can always come back to grad school, and then find another job. Thanks.

WILBUR C. RICH: I'm very happy to be a part of this panel and this program. I would like to say that I don't believe that we can have a dual system of education in this country, one Black and one White, and have an effective system. And I think that that's 50 years ago, we were convinced that the only way to save the American public schools was to integrate them. Now, we have lost faith in integration, and we have nothing to show that will convince White people that they should send their kids to, to integrated schools.

So what is happening is that the U.S. in the year 2002 is forced to educate the majority of its minority kids K-12 in segregated and inadequate schools, which basically limit their life chances. And put bluntly, absent a reversal of attitudes toward integrated schools, inner-city kids will be destined to be isolated in separate classrooms with inadequate facilities, less talented teachers and what I consider a very poor learning environment. I would argue that race and class segregated schools are inherently unequal.

Now, the question becomes how do we protect our kids from the consequences of this dual system of education. What has happened is that the nation's feel so guilty about creating this dual system that it's now looking for what I call face saving solutions, and those face saving solutions basically say the unspoken word is that, "Let us do a better job of teaching minorities in ghettos and barrios." There's a lot of theories about how to teach minority kids. None of these theories have seemed to work, and therefore people are now scrambling around, trying to find a way to

teach kids in the ghetto and also in the barrios. I've been studying basically big city mayors, and how they have tried to enter the so called educational reform movement. I've looked at several cities, and as you know, several cities now have mayor centered school systems; in Cleveland, Detroit, and to some extent, Washington DC, and Boston the mayor appoints a school board, and also the chief executive officer. What has happened is that the state legislatures have lost faith in the elected school boards, and they have allowed the mayor to appoint the school board, and also select the—they don't call them superintendents anymore, they call them chief executive officers, who has apparently more power than the old superintendent had. The truth remains however, that most Americans don't want to send their kids to schools in the inner city, integrated schools or whatever you want to call it.

The other thing that I think is important is that none of us will admit that school politics is very much a part of the whole school business, and so I think a tacit agreement between the Black leadership class and the state legislature has existed for a very long time; the legislature has agreed to give up control of the school system and the Black leadership agreed to give up on integration. And I think that because the dual school system didn't work for the old south, it's certainly not going to work for the nation as a whole.

But in any case, you can see that part of the reason they accepted this tacit agreement is because of the control of the schools and the political power that comes from that control. And in my book, "The Black Mayors of School Politics" I've talked about what I call, "a public school cartel," that had taken over the school system. This cartel is basically union leaders, the central staff of the board of education, and school activists, and basically they control the school system. And in one of the school systems I looked at was of course Detroit school system. I lived in Detroit for ten years, so I know Detroit. The Detroit school system is in terrible shape, it's almost to the point that you really can't do anything in Detroit school system except keep it running so to speak and part of the reason for that is the Detroit school system has been for a long time dominated by this group, this so called public school cartel. And you say, "Why and how did this happen?"

One of the reasons it happened is that historical. There's a good book by Ira Katznelson and Margaret Weir called "Schooling for All" and they conclude that, "For the most part, the White working class had lost most, if not all, of their political influence in the school system by the 1950's. And by the 1960s, the Whites had surrendered their control or influence to the rising new Black educated class. And in abandoning this inner city school system for the inner suburbs, the Whites took with them their tax base, and their political leadership, and their skills." Despite the fact that the federal government attempted to stop this process with federal grants, and incentives, and busing, which took place during the Johnson period.

For a while busing was one of the national policies used to keep Whites in the school system. It didn't work, and the sort of prophesy of the Kerner report, that we were moving toward two nations, was in a sense realized.

Now, busing was, I thought, a good idea in some ways. I know some people in here disagree with me on that. I didn't see any other way to integrate school systems. And Jesse Jackson said it right, "It ain't the bus, it's us that people were afraid of." And the most important case for law students here is *Milliken v. Bradley*, this happened in Detroit, and in this case the court said that the Constitution does not require cross district busing.

And that was the end of integration as we know it. This was a plurality decision, and in a practical sense, it's a reversal of *Brown*. And what *Bradley* did really was to unleash a vicious bidding war for the White working—middle class. To a certain extent, Paul Peterson's work deals with how these suburbs lured away all of the Whites by offering them safe and small classrooms. As a result, most of the inner strength, the inner core of inner city schools were, in a sense, lured away. So *Bradley* is also beginning to have an erosive effect on the Black middle class, many of them moving to the suburbs these days, and their kids are now going to parochial and private schools.

So basically, after *Bradley* the nation's 15,000 school districts slowly evolved into a dual system based on class and race. And we have what Gary Orfield calls the re-segregation phenomenon. By 1990 his research found that 70% of all the nation's Black kids now attend predominantly minority schools. This is up from 62% some time ago, in 1980. And so what is happening is during this whole process of re-segregation is a process that is destroying American schools. And why did the Whites leave? Not all of them were racist; I know some of my friends that relocated to the suburbs that were not racist. They had some very good reasons to leave: they said that the schools were deteriorating; the buildings were old and dilapidated; they felt that violence had overrun the school system; they felt that the teachers were underpaid and so forth and so on.

They had a variety of reasons to leave, but I think that the sum of all of the reasons stated is that they left because they thought their kids would get a better education in the suburbs. They knew instinctively that the money would be in the suburbs, and they knew that they could keep their competitive advantage if they moved to the suburbs, and the competitive advantage that they have, of course, is related to a variety of things, but they wanted to keep that competitive advantage, because they knew that their kids were going to be in a competition for elite universities and so forth and so on.

So it was very difficult for them to say, "Well gee, I'm really for integration, Wilbur; I'm for you. I want to integrate the school system, but it's

my kid you're talking about, and therefore I'm going to make sure that my kid gets the best education possible." And so a lot of them left the city school system.

So what is happening is that you have this conversion for the first time in cities like Cleveland, Detroit, Gary, Indiana; you have this Black educated class who are now controlling the school system. I don't think that the school system will ever be reformed given the structure of the school system. It cannot reform itself. Now, it is true I'm a conservative because I don't think that it's possible to reform the school system, and because of this some of my conservative friends want me to endorse charter schools. One of them was trying to explain to me at a conference "Do you realize that \$600,000,000,000 is in the education market and \$300,000,000,000 of that is in K-12." So it's a lot of money, so that's why people like the Edisons and so forth are involved in trying to get some of this money, and trying to expand the charter school movement. So these people are not just after the money, they're also after the power, the power that is now invested in the public school cartel. They want to destabilize that, because that is the most powerful group ever formed in the inner cities. These are the people who fund raise for the school board, these are the people who get the funds raised for the mayor's office, these are the people who fund raise for presidential campaigns. And so they are very, very concerned about breaking up and destabilizing this cartel.

Then the question becomes, what do you suggest? There are a variety of things that we could do. I think that we could change the way schools are organized in terms of labor unions, we could change people's attitude toward the education process itself, to make general society feel a much more collective responsibility for everybody's child, not just their child. We could also eliminate the 15,000 school districts; we have too many of them, they aren't efficient, and they are promoting and accelerating the dual system. We can perhaps reinvent the curriculum as I know it. I mean, they're trying to use the same books in White schools they use in Black schools. These kids come from different background, we can probably change that.

So we have to think outside the box, we cannot continue thinking the way we're thinking if we want to do something about the school system. And so I've advocated all of this, I also think we should test teachers, which always gets me into a lot of trouble. I think we should test teachers before they become teachers, and after they become teachers to make sure that they are of high quality. Also, there are some very fine private schools, but the majority of Black kids are trapped, and they're trapped in these really terrible schools. So we have to do something to get them out. Thank you.

RICK HILLS: That concludes the panelists and the panel presentation. Good, questions will be taken at the microphone, or comments. I do want to emphasize one point, which is that I've been instructed to limit

questions or comments to two minutes. With that, take two minutes, and we'll open the floor for questions or comments.

Okay, I think we should begin, because I'm told by organizers that we are going to end at 3:15. That gives us twenty minutes for questions. And so the organizers have asked me to repeat to you all of the questions that they had posed as discussion questions for the breakout group. One of the questions was, many of the speakers today have touched on charter school reform. Do you agree with their evaluation of the strengths and weaknesses of charter schools? I want to add to that question my own little addendum—it's my privilege I guess as moderator—I want you to consider Ms. Payne's question, what will happen to the kids left behind, and who is interested in charter schools? Now as a Professor of Education Law, I should add the gallop in the New York Times polls '98 and '99 very consistent majorities of poor Black families who support charter schools, in fact, in larger percentages than White families. And likewise the voucher proposals that were proposed in Michigan were supported in large numbers in Black districts and opposed in suburban Republican White districts. A second question that was asked is, do you think that public schools are managed inefficiently? And a third question, which people thought was important to get out there is, how do you measure what's a good teacher, and what should be done to encourage good teaching. Finally, I want to ask a question that the organizers gave, which I think is especially relevant to Dave Domenici's comment, how can we encourage parental involvement and improve the home environment, is this necessary to educational achievement? With those questions given by the organizers I now open the floor to questions reminding you of two minutes, this signals you at one minute, this signals you at 30 seconds, this signals you're out of time. First question, why don't we start from left to right?

AUDIENCE MEMBER #1: Hi, I'm Melissa Gilbert, and I'm a first year student in the combined program in education psychology, which is a doctoral program here at Michigan. I've previously taught in California public schools for the previous four years. I very much appreciate all of the speakers today, and I had two questions that I'd like the panelists to comment on. First of all, as a Wellesley then Stanford and Mills(?) college educated teacher who was in public schools, I would like Professor Rich to please talk about your testing of teachers, and exactly how further testing of teachers will be different than our testing of children in terms of how are we actually going to measure what we expect teachers to do? So if you could comment on that, and also, it sounds like that, from what I heard from Pat, that the kind of program that David has would be something that would be draining from the regular funds for the public schools. I was wondering how Pat would feel about his type of program because it does sound to me a little bit like the kids served by

David's program would be kids who would just not be served at all otherwise, and I'm wondering how to balance that. Thank you very much.

WILBUR C. RICH: Well, in my book, *Black Mayors and School Politics*, there are lots of sentences that writers like to quote, but they usually don't cite the reference that I made about public school teachers losing their cultural authority. Teachers were once community icons and highly respected as professionals. My mother and my two sisters were public school teachers. In my mother's time, teachers were respected in the community. Parents respected them and more importantly, students respected them. I believe teachers have lost the respect of students and parents. There are several explanations for this. Some writers believe that schools are more bureaucratic, while others believe it is related to changes in the overall changes in the status of women. Smart women, once the bedrock of teaching, now have more job opportunities. Accordingly, we are not getting the "smartest women" going into teaching as a profession. I might add we're not getting the best men either, but recruitment is just part of the answer. The root of the problem can be traced back to the fact that teachers are no longer accorded as much respect as other professions.

As to testing teachers, I've always advocated testing teachers on the subjects they teach. I don't believe you can teach math if you cannot pass a simple math test. Quiet as it is kept, the reality is that most inner city teachers were not trained at the top college and universities. For example, many of the teachers in the Chicago school system graduated from the Chicago State University and Northeastern. Although these institutions try hard, they are not elite institutions. We need more University of Chicago or University of Michigan graduates teaching in the Chicago school system. We are not getting the best students entering the teaching profession. In some cases, we're getting people who graduated at the bottom of their classes or cannot qualify for other professions. Granted, teachers are better represented than their predecessors. Unionization has improved salaries and benefits but not professional standing. Based on the student performance on achievement test, some inner city teachers are not doing their job in the classroom. Let's be frank about it, many of our tenured public school teachers are not capable of teaching the poorly prepared inner city child. If you want to build a first-rate school system, you must recruit first-rate people. In order to do this you must pay them a competitive salary and accord them the professional status they need to do the job. Thank you.

PAT PAYNE: I'd like to respond to, to that one, too, and very briefly to say that a person that knows his or her subject matter is only half the battle in teaching, because you can be *summa cum laude* in the teacher training institution, but that doesn't mean you can reach one child. It has to go beyond book knowledge, it has to be the ability also to reach and teach that child, because you want to be there. I guess the testing of teachers is not really something new. Florida, I think, was doing it,

and Georgia was also doing it. I don't know if they're still doing it or, or not. But I think it has to go beyond just knowing your book knowledge.

Oh, and then the next question, what I see David and James do, because they are partners in this, is something a little different than what I was talking about. I also had an opportunity to travel to Phoenix and visit with an ex IPS educator who doesn't take students directly from the public schools. What they do is get students who are already out for various reasons, will never go back, and it looks like what they did was give them a lifeline to bring them back. So I have a lot of different ideas and perceptions about it being done that way, and would certainly favor it more than just directly sucking students out of the Indianapolis—or not just the Indianapolis, but the public schools in general.

RICK HILLS: Okay, other side?

AUDIENCE MEMBER #1: Okay. How and what do you do when your school district forces you to teach in a way that is against your teaching beliefs, teaching methods such as direct instruction, which just spoon feeds students, and robs them of cooperative learning, higher level of thinking, problem solving, managing, exploring, planning, all the skills that are very critical as adults.

DAVID DOMENICI: You find a principal who allows you to, to get away with that, get away with not doing that, basically. I don't know any other good options.

AUDIENCE MEMBER #1: And that's not there, and the superintendent is very firm on teaching direct instruction. And she's also African American.

DAVID DOMENICI: Well, I think it—

AUDIENCE MEMBER #1: Well, because they say there's no structure in their home, so they need to have structure in the classroom. And I've never seen it done in any other community, except in the inner city.

DAVID DOMENICI: In the near term, as a teacher, you'd probably have to make some decision about how you can do as much that's interesting and creative within the classroom, within the confines of what your boss tells you. In the big scheme of things, you have to hope that, as public policy sort of goes round and round on things like this, that the standardized testing movement will most likely sort of collapse under its own weight here at some point in time. Because as more and more of the wealthy suburban school districts convince people this is insane, because our kids score really high on other tests, and basically get accepted to very good colleges without doing well on these, those people aren't going to put up with it for that long. In another area, it may be the case that as significant numbers of students fail these tests because they just don't make any sense, again, at some point the politics of it will probably play out that you can't fail out everybody, so the tests will get re-weighted or changed or something along the way. It probably just creates for a more miserable

existence for very good teachers—some good teachers who wish they could do their job without having to be stuck living by these standards. [Several comments at once].

AUDIENCE MEMBER #1: I'm definitely staying in this school district because. People who believe what I believe, they leave. So then what leads these children? That's not fair to them.

WILBUR RICH: I believe inner city teachers must become insurgent teachers; slip the kids some outside reading materials, supplement the curriculum. Teachers should make students aware that they will need to know more than the minimum. I mean, some of my teachers did that for me and they encouraged me to read and to question what I was learning. All students need to believe they are smart and special. A good teacher makes the kid think he or she is special by engaging them in the learning process. Teaching requires an awareness of student needs and aspirations.

PAT PAYNE: I agree with what both these gentlemen said, but I want to comment on the part where you said, "And this is an African-American principal." Every time I do a workshop with teachers, I make sure they know I am not just talking to White teachers. I am also talking to teachers of color, some of who are very misguided. I mean, one of the leaders of the charter school movement in Indianapolis is an African-American woman, who by the way, is very close friends with Clarence Thomas. Need I say more?

RICK HILLS: Okay, we'll take this side.

AUDIENCE MEMBER #2: I've never understood the legal structure of charter schools, they're paid for by the public funds with the same amount of money per child as the other kids. So why, don't teachers also have to be in the same unions, and why don't they have the same educational criteria? And the other part of it is, why can't they be considered just alternative schools within the system, like, special emphasis schools? Bronx has, I think, art and, I don't know, music and art, things like that, there are science schools. What makes them different from special emphasis schools?

DAVID DOMENICI: Well, the short, short answer is that public charter schools are created, are a function of the state law that creates them. One example is the concern that public charter schools often hire for-profit management companies to run them. A state legislature could change that, and some state legislatures prohibit that, they say public charter schools cannot contract with for-profit entities to do school management. So there are a lot of nuances about public charter schools that relate to how each state's law reads. To your specific question, in some states or school districts, New York City probably being the best example, where there was a strong alternative public school system within a system that allowed for a lot of school choice within a public system, and allowed for some more tailoring to create alternative, publicly funded, publicly managed schools within this system, those tend to be some of the last

states or districts that are opting for public charter schools. Candidly, because there isn't really a sense that there's a great need for them, because people are saying, "Within the system we've created ways to have flexibility to create different schools to meet different student's needs." In some states, the response to inflexibility about doing things like that leads people to then want to public charter schools, which then enter a public system, and create competition and, and lever the system to think about alternative ways of using public funds to educate students. It is probably worth it just to make sure that everyone in the room knows that public charter schools are public schools, and all states' statutes that support public charter schools do bar discrimination upon entry into the public charter schools. And I don't think any states permit public charter schools to have admissions criteria to accept students. Due to a lot of things related to what parents would find out about public charter schools, and send their students to public charter schools, there are very legitimate concerns about who would benefit from them. But public charter schools are not permitted to have an admissions test, and if students don't score at a certain level, to deny them admissions. That's against the law in the District of Columbia and every other state that has a public charter school statute.

AUDIENCE MEMBER #2: Are they likely to keep on being legal if they have private enterprises running them.

DAVID DOMENICI: Well, I don't think there's been any legal challenge to say that the management contracts violate some use of public funds. It could be the case that in some states, laws would get rewritten that would say that public charter schools can only contract with non-profit management companies for management and, and technical assistance. That could happen.

PAT PAYNE: That's one of the reasons that they don't make much sense to me, because they have all of the same things that our traditional public schools have except they have waivers, and different things that they don't have to abide by that we have to abide by. Why can't they try to do the same thing in the traditional public schools? That's my question.

(Over here on the side).

AUDIENCE MEMBER #3: Hi, I'm Kate Bower, and I'm the founder and director of a charter school in Cincinnati, Ohio. We serve students in grades 9–12 that have been dropped from the educational system. I've been a public school administrator for 17 years, served as a special Ed director in a very affluent suburban school district, and as a principal in affluent practically all White suburban school district. And what I have found in public education is that the kids that we're talking about in these urban settings are the kids that are not getting a fair chance. And in a suburban school district, they're the kids that are the throwaways and pushed out. And I worked in the system for 22 years trying to meet the needs of those students, and was not able to do it, because of the

bureaucracy, because of tenure laws, and all of the other issues that we for some reason are not adequately addressing in public education. But I think, Miss Payne, you have stated about every myth there is about charter schools. Number one, that charter schools are skimming the cream of the crop, like David, 92% of our kids qualify for free and reduced lunch. They have been dropped from the public school system for violating board policies, discipline, drug and alcohol violations. Tax dollars are being stolen from school districts? We do not receive any funding for facilities. We receive only the per pupil foundation dollars, \$5,000 per pupil. If a kid left the school district and went to another suburban school district, nobody was up in arms. Charter schools have created alternatives for poor Black kids that have been trapped in inner city schools for years, and suddenly everybody's up in arms, because charter schools are giving Black families a choice. The third is that charter schools are run primarily by for profit companies. We are not run by a for profit company. We've had to raise \$600,000 to provide a program for kids that includes a class size of ten to one, and full time licensed social workers, and service learning projects, and career exploration opportunities that these kids never had in a traditional high school. That's not for profit. That's the good will of people in a city that are very frustrated with the school district, and the fact that they have a 60–70% drop out rate

PAT PAYNE: Now, what happens to the ones who are left behind?

AUDIENCE MEMBER #3: Hopefully, the public school system is going to feel enough pressure because of declining enrollment, they're going to make changes. Any thoughts.

WILBUR RICH: Well, all I can say is that charter schools do not solve the racial integration problem. Everybody seems to want his or her own little separate space. However, I don't believe that a dual school system, one white, one black (or brown) can work. I grew up in the south, and I know it didn't work there. And I don't think that politicians will be fair in allocating money for this dual system. I applaud the enthusiasm of people who want to start charter schools, but I wonder what will happens 20 years down the road. What happens when some of the passionate charter school proponents reach retirement age? The next group of Charter school folks may not be the same type of true believers. Frankly, I am really undecided about the efficacy of charter schools. I need someone to show me some data that proves that charter schools do a better job of teaching than regular public schools. Do Charter schools kids do better on achievement tests? Unless charter school advocates can show me the supporting data, I am not convinced that charter schools are the answer to the problems of inner city schools.

WILBUR RICH: I agree with her. I don't know what exactly Charter schools trying to do.

WILBUR RICH: I know. But let us see the tests. Now, if charter school graduates start making better test scores, then I'll be convinced. Okay.

RICK HILLS: On this side of the room here?

AUDIENCE MEMBER #4: Well, let me throw another variation into the mix here. First of all, I think one of the things that gets left out of this debate and statistic and labeling of the public school versus private choice charter schools is the question of what is good education, what kind of teachers should we be. And I want to thank the panelists, first of all, the stories from Indianapolis, DC, and Detroit I thought were very empowering. I have a question about labor unions. First, my name is Rick Whaley, I teach in public schools in Milwaukee, I'm a labor union rep for my building for teacher's assistance. I also am in favor of the afro centric private charter choice schools in Milwaukee in a city where 2/3 of the high school—the kids who come out of middle school into our public schools never finish and never graduate. So I'm under no impression that the progressive, political work I need to do is going to take place in the union beyond workplace conditions for teachers. And I don't think that's the key issue for what is best for children at this point in time. I also think choice charter schools haven't been around long enough for us to measure whether or not they're going to succeed, but I would like to leave out of the argument this question of if you haven't succeeded by now, in five years we're going to get rid of you, because if that's the criteria used to judge public schools where I teach, we're finished. But anyway, my question for Professor Rich is this, I want to hear more about your ideas about the role of labor unions in the public schools, because I'm trying to reinvigorate that aspect of teaching as well. Do you think the labor management antagonistic model is appropriate to public education, and where do you see unions in the mix today?

WILBUR C. RICH: Well, after the state of Illinois decided to turn the school system over to the mayor of Chicago, they restricted the scope of bargaining for unions, and I don't think that made any difference. Paul Vallas, the former CEO of Chicago Schools, did change the way the school system operated. However, in the six years he was the CEO, there was no dramatic change in achievement test scores. I don't know what is needed. I don't believe labor unions can infuse teachers with the cultural authority they need to be successful in the classroom. The unions can certainly get them higher pay and teacher's aides, and a variety of rules they really want, but I am not sure whether labor unions can actually go further than that. Now, some people read my book *Black Mayors and School Politics* as anti-teachers union. It is not anti-labor. What I'm saying is that the situation is so bad that unions can't get inner city schools out of their failure mode. That's all I'm saying. I'm not saying eliminate the unions, but changes need to be made in the school system, and right now, the unions have vetoed everything school reformers have tried to do. I mean, they

vetoed site based management before it got off the ground and they're trying to veto or limit the number of charter schools. I am willing to grant some space for unions to exist, but I also want to have some space for school reform, and right now we have less space for reform because the unions are so powerful.

PAT PAYNE: I think NEA is moving toward at least trying to support some of the charter schools and they're still wavering on it, but at least they're looking a lot more at what's going on in charter schools than they used to.

RICK HILLS: This side of the room?

AUDIENCE MEMBER #5: I'm Claude Nelson, concerned parent, and a concerned citizen of Ann Arbor as to what's happening in the schools, and no employment connection to any university or school. My question is to David. On the surface, the program you describe seems like it would be expensive, the long school day, the staffing, this sort of thing. Could you say something about whether or not indeed you are running such a program on the standard per pupil allowance, and if so, how are you doing it? Or, if it is more expensive than the, the standard allowance in the District of Columbia, where's the money coming from, and is it a model for the rest of us if we would like to encourage something like that?

DAVID DOMENICI: It's significantly less expensive, excuse me, than Andover apparently, based on what I heard yesterday. And, and it's significantly less expensive than any juvenile detention facility. The program costs about \$20,000 a year for a student who's non residential, and about \$27,000 a year for a student who is residential.

That said, again, I'll try to be real brief, because the per pupil numbers that you typically hear thrown around both in discussions about public charter schools, and in discussions about per pupil spending in most school districts are not particularly accurate when you look at the most at-risk students who need the most services. So students with severe special education needs in this city, or any other city, are not being served on \$7,000 a year. In fact, significant numbers of them are being shipped off to private schools at fifty, sixty, seventy thousand dollars a year, to try to get them the appropriate services. So about 70% of our money comes from public charter school money, even though the stipend is only \$7,000, because the charter school law allows for other funding to come in for students who live with us, so there's a residential supplement, there's a supplement for students with special education needs, there's a facility supplement, there's a host of other things that make that number bigger than what it is. And those are the same numbers that we would be hopefully getting towards the students if they were being served appropriately in the traditional public school setting.

But part of that gap is that we are not really running just a school—we're trying to run a program that would provide the services and

programming that a young person would need. So another way to look at this is, if a young person is 16, and has certain things going on, how much public dollars right now is being spent on that young person? Are they being spent well? Where are they coming from? Could you coordinate them better and have them all come from one central place?

So for example, we will ultimately get juvenile justice dollars to help support some of our funding. For all of our youth employment-training program right now, we've had to support that through private sector contributions, but going forward, it most likely will come from youth employment programs of other government funding. So as a bigger model that could be carried forward, it probably does require private funding to get it started, and to always supplement it, but in the right municipality where you had the right people coming together, and willing to sort of break down traditional walls, you could use education funding, job training money, social service delivery funding, juvenile incarceration funding, and you could put together a package that would allow you to run a school similar to ours mostly on public money. That's my guess.

RICK HILLS: The organizers are extending the time of the panels by ten minutes.

AUDIENCE MEMBER #6: I'm Terry John, I'm from the School of Medicine, I'm a pediatrician. I grew up in the south when they had defacto(?) segregation in the schools. As a result, I've attended private school, catholic school in my neighborhood, and we also had our reunion, 30-year reunion this past November, and the turnout was pretty good. I was impressed with how many people were—were still alive, number one, and how many people came back. I realize that a lot of us were successful because of the impact of this education we got, an opportunity to go to quality education, despite the fact that the public school system was segregated wherever they get a rather diverse experience within a catholic school in the '60s in Alabama. So my question for the panelists and anyone willing to address this issue, we haven't discussed ways in which a private charter or religious schools can provide diversity. We talked a lot about White flight for the suburbs in terms of public education, and people in the suburbs fleeing the cities, but I think what we forget is perhaps the opportunities for some schools, charter schools, religious schools to provide a diversification and culture diversity in an educational system. Anyone wish to comment on that?

WILBUR RICH: I was born in Alabama also. I believe that the Catholic schools are doing an absolutely great job of educating Black people. I went to what was called a university laboratory high school. I don't think they have that here. Although they are since terminated the school, Alabama State University for years operated a school for the training of teachers. Alabama State Laboratory High was a very small school with tuition that operated like a private school. I believe there is a role for

private schools or public schools that behave like private schools. These schools can have an impact on the system.

DAVID DOMENICI: I'd agree. It seems to me there's fairly significant distinction between public charter schools, which are public, report to public authorities, receive public funding, have public mandates, and private schools that get public money, and religious institutions. I think, a lot of us would be very concerned about public money going to private schools, particularly private religious schools. Vouchers are yet another distinction. There are no voucher programs where the value of the voucher would really be worth the per pupil or similar allotment amount. So again, many people, including myself, are concerned about a voucher strategy that only provides a couple thousand dollars, because that couple thousand dollars probably only allows a lower middle income family to get their kid into a private school. It doesn't allow a really poor family to walk around with something that would get them into whatever school their child could get into. So in my mind, there's a distinction between public charter schools that are just as non religious as any other public institution and private schools getting public money, where concerns arise about voucher programs both because they could put kids into private schools, and about their own efficacy given the amount of money being proposed to run most of the voucher programs.

RICK HILLS: Well, I have been told that we were only extending the time by ten minutes, it is now ten minutes past 3:15 when our panel was supposed to end. So I'm not sure whether I have permission from the powers that be (and I do not) that we can take any more questions. I call the session to end. But I want to say I'm extraordinarily impressed with the high quality of this event and *Michigan Journal of Race & Law*, who sponsored it, and I think they all deserve—the panelists, the questioners and the *Journal*, a big round of applause.

END OF SESSION

SESSION III

WHAT NOW? LITIGATION FOR EDUCATIONAL JUSTICE

CHARLOTTE JOHNSON: Why don't we go ahead and get started, and I guess folks who are still out or getting coffee can just filter in. For those of you who don't know me, I'm Charlotte Johnson. I am assistant dean of students here at the law school, and also a graduate of this law school. I want to thank the *Journal of Race & Law* for inviting me to participate this afternoon. It has been, from all reports, and from everything I've seen, just a fantastic conference, and I'm really proud that the students have put this on this weekend.

The integration of American schools and universities was hard fought. Though decades behind us, the vivid images of forced desegregation are still with us, a permanent part of our collective memory as a nation. Now, many decades later many of our nation's schools are more segregated and unequal than ever. So what now? Can we move forward using litigation as a tool for educational justice? Our distinguished group of panelists will explore this topic as we seek to move in a new collaborative direction.

The format of the panel this afternoon will be that I'll introduce them just before each speaks, each will speak for about ten minutes, and that should leave us about an hour for questions from you all at the end. Our first speaker this afternoon will be Hector Villagra. Mr. Villagra is regional council for the Los Angeles regional office of the Mexican American Legal Defense and Educational Fund. He is a graduate of Columbia University, and Columbia University School of Law, where he was the recipient of the Jane Marks Murphy Award. Early in his law career, he clerked for the Honorable Robert N. Wilentz, Chief Justice of the New Jersey Supreme Court, and the Honorable Stephen Reinhardt, a judge on the U.S. 9th Circuit Court of Appeals. In 1996, Mr. Villagra received the MALDEF/Fried Frank Fellowship, a four-year fellowship that combines practice at MALDEF and Fried, Frank, Harris, Shriver & Jacobson, an international law firm known for its *pro bono* services. While at the firm, Mr. Villagra received its *pro bono* recognition and achievement award, his *pro bono* work included *Lily v. Virginia*, a case in which the U.S. Supreme Court reversed a death sentence. He served on the board of directors for the Los Angeles Center for Law and Justice from 1999–2000, and he currently serves as a member of the community advisory board for KCET. I introduce to you Mr. Hector Villagra.

HECTOR VILLAGRA: Thank you. You know, it's funny. You spend your entire educational career trying to meet minimum page requirements, and then you spend your entire professional career trying to cram everything into the maximum allowed pages or time. Let's see if I can get all of this into ten minutes.

Fifty years ago, the struggle in the civil rights movement was to desegregate the public school system, to break down the system that officially prevented children of color from attending schools with White children. That system has been broken, there's no one today standing at the door blocking entrance to African-American and Latino children. But African-American and Latino children today do not attend schools with White children, and the schools they attend are plainly unequal. Now, it may not be the official policy of this state or any other state to do this, but the effect is the same. And the struggle now is to break down this unofficial system of segregation that puts students of color disproportionately in unequal schools.

On the anniversary of *Brown v. Board of Education* almost two years ago, MALDEF, the ACLU, and a collection of other acronyms filed suit against the state of California. The suit's known as Williams versus California, and it involves schools that lack the bare essentials required of a public school education, things that the majority of students throughout the state enjoy and take for granted, like trained teachers, educational materials and supplies, and facilities that meet basic health, safety and educational standards. We sued the state, because it's the state that's responsible for education in California, and we sued the state for failing to enact standards regarding these various essentials, failing to monitor compliance with these standards, and failing to correct inequities when it detects them.

Many students in California are taught by persons who, however motivated or well meaning, have received not so much as one hour of instruction in how to teach children. The state permits districts to hire and place in classrooms unlimited numbers of persons who have only emergency teaching permits.

Many students attempt to learn without textbooks in core academic subjects where they must share textbooks during class time, sometimes three or four students to a book, with no opportunity to take the books home to do homework.

Many students attend schools that are in absolutely deplorable conditions. If they were housing units, we would condemn them as slums. Some schools have bathrooms in wretched condition, with toilets that back up or leak, with faucets that don't work, with floors that are wet and smell of human waste, causing kids to avoid going to the bathroom during the entire school day, and waiting until they get home.

Many schools lack air conditioning and heat, leaving children in a constant sweat in temperatures of 90 degrees and above, or with a persistent chill so severe that they have to wear coats, hats and gloves while they're in their classrooms.

The growth of mold and fungus in many classrooms induces asthma attacks, and leads to regular illnesses among children and teachers.

Cockroaches, rats and mice infest many school buildings, threatening disease, and ensuring distraction from learning. Leaky roofs, broken windows, peeling paint, defective electrical systems, and other indications of maintenance long deferred are all too common in these schools.

We at MALDEF are focused on the most basic resource of all: schools themselves. There's an absolute school facilities crisis going on in California right now; the state admits that one out of every three students is either in an overcrowded school or a school that is in need of repair. As enrollment has grown, outpacing the construction of new schools, more and more schools have resorted desperately to what are called multi-track, year-round calendars instead of building new facilities. From 1987–1999 California enrollment grew from 4.4 million to about 5.8 million. But over that same period, enrollment in multi-track schools grew from about 160,000 to over a million. And the reason is simple: multi-track, year-round calendars allow a school to enroll more students than their facilities could otherwise accommodate. By dividing the student body into separate groups or tracks, and rotating these tracks throughout the school year, a school can artificially, without building any additional classrooms, house more students over the course of the school year.

But this didn't just happen by accident. The state put its finger on the scale and tipped the balance. In the late 1980s, the state decided that it was much cheaper to go multi-track than to build new schools, so it created significant financial incentives for schools to go multi-track. And the state was clear when it did this that its primary and sole interest was fiscal. It said that other interests were not conclusively established enough to justify there being state interest. Now, what might those other interests be? Education, pedagogy maybe? When the state suggested that the educational benefit of multi-track, year-round education was not conclusively established, what it actually meant was that at that point, the only study that had been done on the topic, which had been done by the California Department of Education, found that multi-track schools had a significant negative impact on student achievement.

But let's take the state at its word; let's assume that it decided to try out this experiment in California. The problem is the experiment is not evenly distributed across the state. The majority of students in multi-track schools are from low income families of color, and just to give you one statistic, a study a couple of years ago found that 82% of students in multi-track schools participate in the free or reduced lunch program. That's twice the statewide average. And the problem is that we're now 12 years into the experiment. That's a student's entire career in the public educational system. And the state has remained willfully ignorant of the results of this experiment on poor children of color, despite evidence of its harmful impact.

Nowhere has the growth and enrollment in multi-tracking been as dramatic as in Los Angeles Unified School District. That district has an

enrollment of about 700,000, and about 70% of its students are Latino. Multi-tracking was introduced in LAUSD at a single school about 25 years ago as a temporary measure to alleviate overcrowding. By 1989, more than 25% of the district was on multi-track, year-round education, and as of last year, more than 47% of total enrollment, about 340,000 students, attended schools on multi-track, year-round calendars. To deal with this severe and unprecedented overcrowding, LAUSD has been forced to do what no other district in the world has had to do, put hundreds of thousands of kids, not only on multi-track year round calendars, but on the Concept 6 calendar. And again, the reason is simple: the Concept 6 calendar makes the most effective use of a schools existing classroom space; it allows the greatest increase in capacity. On the Concept 6 calendar, capacity at a school can be artificially increased by 50%. No other calendar allows you to do that.

But, while the calendar may make sense from a space or a money perspective, it doesn't from the only perspective that really counts, the education of students. It's the most severe form of the experiment in multi-trade, year-round education that the state has encouraged. On the Concept 6 calendar, the school year is shortened by about four weeks. To make up for the lost weeks, extra minutes are added to daily class periods. By lengthening the school day, the concept six calendar in theory provides the same amount of instruction as the traditional calendar. But, in practice, it doesn't afford teachers or students the same opportunity to cover the material required by the state's curriculum.

I could bore you with a lot of the specifics of why multi-tracking, and Concept 6 in particular, don't work, but I thought it might be easier to just quote for you some of the assessments made by the people most familiar with it. Governor Roy Romer, the Superintendent of LAUSD, has called his multi-track calendars "a handicap." Genethia Hayes, the former president of the LAUSD school board, compared students at these schools to "rats in a maze." Tom Payne, who is a California Department of Education consultant, stated in a newspaper article recently, "There's no school in California that would choose to do multi-track. Most of those poor schools are packed to the gills." And, if you needed anyone else to make the obvious clear, just recently the State Superintendent of Public Protection in California, Delaine Eastin said, "I would love to get rid of Concept 6, but schools didn't move to it because they were trying out some educational innovation. It was out of desperation."

Now, given the unanimity of opinion on the harmful effects of the Concept 6 calendar, you might wonder why it hasn't been gotten rid of. Right now, in Sacramento, the terms of a school construction bond are being hammered out through the political process. To date, the best compromise currently under discussion sets aside about \$5,000,000,000 for what are termed severely overcrowded schools, schools like those in LAUSD that are on the Concept 6 calendar. That might sound like a lot

of money, but the truth is it's only a drop in the bucket. It wouldn't even fix the problem in LAUSD. It would cost about \$9,000,000,000 to return every child in LAUSD to a neighborhood school, and the state is unwilling to put that kind of money on the table. Whenever the issue is raised that the bonds are clearly insufficient to deal with the extent of overcrowding, the response is always the same: any bond that would provide more money for severely overcrowded schools would be dead on arrival. To get statewide support, other less crowded districts must stand to receive funding under these bond programs. So, the bottom line is the political process is unwilling or unable to solve the fundamental inequity in California's education system. That's why we sued, no one likes to sue, and every time I say that no one believes me, but it's true. No one likes to sue. But when the political system fails to represent all of us, there's no option but to sue.

Thank you.

CHARLOTTE JOHNSON: Next, we'll hear from James, or Jim Ryan. He's an Associate Professor of Law at the University of Virginia School of Law. He earned a JD from the University of Virginia School of Law and his undergraduate degree from Yale University. After graduating from law school, Professor Ryan clerked for the Honorable William H. Rehnquist, and then served as a legal assistant to the Honorable Charles T. Duncan at the US Iran claims Tribunal. He later completed a two-year Gibbons fellowship in public interest and constitutional law, working pro bono cases and projects in the areas of constitutional and civil rights law. He began teaching at Virginia in 1998, and teaches courses in constitutional law, law and education, land use law, local government law, and environmental justice. Professor Ryan.

JAMES E. RYAN: Thanks. First of all I'd like to thank the organizers for inviting me. I'm delighted to be here, although I have to say when I told my colleagues I was coming to Ann Arbor in February, some of them looked at me like I had lost a bet. I'd like to talk a little bit more broadly about education litigation, it's goals, it's prospects for success, and how it fits within larger efforts at education reform.

But before I do, I'd just like to go back and address a question that has been lingering since the first panel. The question, posed by Jonathan Kozol, is whether lawyers can be passionate about this topic, and whether passion is consistent with legal reform. I firmly believe that the two are perfectly compatible. I for one am quite compassionate about this, in large part because education has transformed my life. I grew up in a blue-collar suburb, and neither of my parents went to college, but both understood the importance of education, and now I do. And I'm passionate about extending that same opportunity to others. But it is easy to get dispirited, especially if you focus on education litigation, which I think has not been an overwhelming success.

The core of the problem, which we have danced around a bit today but haven't addressed head on, is one that's not unique to education. The core of the problem is that there's a great imbalance of wealth and power in this country, and if you want to improve education, you've got to redistribute some of both, and that is not an easy task. The challenge, I think, is to remain hopeful while at the same time remaining realistic, and that's a perspective I'd like to bring to my remarks today about education litigation. Let me start by talking about the goals of this litigation.

In the '50s and '60s, the, the goal of education reform litigation was primarily racial desegregation. Starting in the '70s and continuing until today, that goal has shifted to focus on education funding. School finance reform once supplemented the school desegregation effort, but now it has largely supplanted it. This is, in many ways, where the action is in terms of education reform litigation. Challenges to school finance systems have been brought in over 40 states. They have been successful in close to 20, although success in the courts by no means guarantees success in the legislature.

Prior to entering legal academia, I worked in Newark and spent a lot of time working on the school finance litigation in New Jersey, which has been going on for quite a long time, and I think has been quite successful, again, at least in the courts. And I am currently working with some legal aid attorneys in Charlottesville who are considering bringing a challenge against The Commonwealth, claiming that the state is not doing nearly enough to ensure that poor students have the opportunity for an adequate education. Despite my involvement with school finance litigation, and despite the fact that I think that equalizing and increasing education spending is a compelling goal, and an incredibly important one, I've become something of a friendly critic of school finance litigation. And that's because, although I think that equalizing funding may be a worthwhile goal, there is another goal that is just as, if not more important. That goal is to enhance socioeconomic integration.

Socioeconomic integration is obviously not identical to racial integration, but they do overlap, as I'll discuss. It seems to me that there is a pretty solid consensus today, although there are some exceptions, that school segregation by race and by class tends to perpetuate academic failure and inequality. There's an equally strong consensus, I think, that nothing much can be done about it. As a result, education reformers, including school finance advocates, often take as a given that schools will always reflect residential segregation by class and race, and they devote most of their efforts to making separate schools more equal. In these brief remarks, and I will keep them brief, I'd like to challenge that second consensus and explain why and how advocates should consider ways to advance socioeconomic integration.

Now, let me be clear. My goal here is not convince you that socioeconomic integration is some nice idealistic academic goal that professors

have the luxury of thinking about, but could never happen. My goal is to convince you that this is something that can and ought to be addressed. Progress has already been made, and more progress can be made. It will be difficult, undoubtedly, but I don't think that's an excuse for looking the other way. Let me start by talking about the cost of socioeconomic isolation and the benefits of socioeconomic integration.

The Heritage Foundation recently issued a report, entitled "No Excuses, in which it celebrated 21 high-performing, high poverty schools in the nation. To put this number in context, the Department of Education released a report around the same time that found 7,000 under performing high poverty schools. The inescapable truth is that schools of concentrated poverty almost never perform as well as their middle class counterparts. There are a lot of reasons for this, including the influence of peers, the comparative lack of good teachers, lower level of parental involvement and general lack of resources. Obviously, increasing resources for schools with poor kids will address some of these problems.

But some of them are beyond the reach of money. Indeed, one of the most important influences on student achievement is the socioeconomic status of the student's peers. It is very rare to find any consensus in the social science literature when it comes to education questions. But there is consensus on this point; studies going back to the Coleman Report of the 1960s confirm again and again that the socioeconomic status of the student body has a very strong influence on student achievement—for intuitive reasons. Peers matter because they set the tone of the school, and middle class kids will typically come to school with higher expectations about education and about their future, which in turn influences the behavior and expectations of both the other kids and teachers in those schools.

As a result, the odds are pretty good that a poor kid in a poor school is probably not going to do very well, but if you took that same kid and put him or her in a middle class school, you'd likely see some improvement. Now, it's not just the peers in middle class schools that end up helping poor kids. Poor kids in middle class schools also benefit from the fact that middle class schools usually have better and more experienced teachers, and greater parental involvement, both of which have been shown to influence academic achievement, and neither of which is easy to purchase with money. That is, it's not so easy to lure good teachers to predominantly poor, especially urban schools. Money may not be enough, the same with parental involvement.

Socioeconomic integration holds a promise not only of academic benefits, but of social and political ones as well. Socially, socioeconomic integration will increase racial and ethnic diversity given the link between race and ethnicity and socioeconomic status. That is, a school integrated by income is likely to be pretty well integrated by race as well. Enhancing diversity in schools also enables students to learn from and be exposed to

those from backgrounds different than their own, which not only will help them in the workforce, but can increase social cohesion. Money alone, of course, does little to enhance this goal.

As for the political benefits, increasing socioeconomic integration can, if successful, and that may be a big if, create self-sustaining reform insofar as middle class parents will work to ensure that the schools that their children are in are good ones. To the extent that poor kids are in those schools as well, they'll obviously benefit, and will continue to do so as long as middle class parents have political clout. School finance reform, by contrast often pits poorer schools against middle class ones, which means that even when court cases are won, the resulting reforms are politically quite fragile, and often hard to sustain.

Now, this sounds very nice, I suppose some of you are thinking, but it'll never happen. So why don't we just concentrate on reforms that have a chance of success, like increasing some funding, and leave these pipe dreams to academics like myself? Well, the answer will hopefully surprise you. There is a growing list of districts that have either volunteered to integrate by socioeconomic status, or have done so in response to litigation. As for the former, Lacrosse, Wisconsin and Wake County, North Carolina, both have socioeconomic integration plans designed to ensure that none of the schools in those districts is predominantly poor. Cambridge, Massachusetts and Montclair, New Jersey, among others, have controlled choice plans that are controlled by socioeconomic status. Under these plans, there are no neighborhood schools in the district. Parents rank the schools in order of preference, and then school officials assign students with an eye toward giving parents their first choice, and with an eye towards making sure that none of the schools is predominantly poor. Boston, Milwaukee and Hartford all have programs that allow a relatively small number of urban students to attend suburban schools. Other states have broader interdistrict public school choice programs.

These examples suggest that, first, we ought to think about ways, outside of the context of litigation, to replicate these programs elsewhere. It just can't be the case that socioeconomic integration can only work in these districts. As for litigation—and my time is drawing to a close, so I'll be very brief—as for litigation, there have been claims raised based on education clauses where the claim is not that students are entitled to additional funding in order to receive the constitutional guarantee of an adequate or an equal education, but that they are entitled to attend a school that is integrated by race and income. The most famous of these cases, and so far the only successful one, is *Sheff v. O'Neill*, from Connecticut, where the Connecticut Supreme Court ruled that defacto racial segregation violates the state constitution, because it deprives students in Connecticut of their state constitutional right to equal educational opportunity. Similar cases have been brought in Minnesota and Rochester.

The Minnesota case settled fairly favorably for the plaintiffs, and there's a case pending in Rochester.

In addition to raising claims that an adequate education requires the opportunity to attend socioeconomically integrated schools, it's also possible in the context of these cases to suggest socioeconomic integration as one alternative remedy. States often balk at court orders to increase funding. Often you can achieve the same goal—increasing academic achievement—by moving not only money, but by moving students. So I think a pretty clever strategy for plaintiffs in these cases would be to say to the state, "If you're interested in bringing poor kids up to the same level as wealthier kids, you can either devote the additional resources that are necessary, and everyone recognizes that poor kids cost more to educate, or you might think about a plan that might cost less money, which is creating schools where the student body is not predominantly poor."

As I said, working to increase socioeconomic integration has been and will continue to be hard. But I think it's too important a goal to leave by the wayside. At the very least, I think we ought to raise this issue in every context possible. Otherwise, a fight for, say, improving school finance equalization or some other educational reform, could be construed as a tacit approval of the current levels of segregation that exist in far too many schools. We ought never to be seen as condoning this degree of separation. Thank you.

CHARLOTTE JOHNSON: Our next speaker is Germaine Ingram. She is the current vice president for the Children's Defense Fund's Black Community Crusade for Children, has worked in various related fields to improve the quality of human and community relations as well as the quality of life for women, children and disadvantaged minorities, and to increase accessibility and impact of the arts and culture in communities and schools. During her 30 year career, Miss Ingram has taught at Temple University and the University of Pennsylvania Law Schools, was a senior attorney for Community Legal Services, practiced law privately, served the Philadelphia school district as general council, chief of staff and special advisor to interim chief executive before joining the Children's Defense Fund. She earned an undergraduate degree from Syracuse University and her law degree from the University of Pennsylvania. Miss Ingram was a Harvard University fellow in law and humanities, she has served on numerous boards, and presently on those of the Philadelphia folklore project, and Friends of Farm workers. In conjunction with her civic activism, Miss Ingram, a professional tap dancer, also performs and teaches workshops nationally and internationally. Miss Ingram.

GERMAINE INGRAM: At this hour of the day, you'd probably rather see me tap dance than to hear me talk. Too bad. First of all, I want to thank all you stalwarts for sticking with us this afternoon. It's really hard to know how to take a small slice of a huge question and compress it

into ten minutes. And Jonathon Kozol last night, in very succinct and powerful statements, expressed something that was very close to my views on this issue. I'm going to try to embroider a bit on the foundation that he created last night.

What I'd like to do is tell some stories from my experience as legal counsel and chief of staff in the School District of Philadelphia during the time that we had three pieces of litigation going to try to bring about greater equity and adequacy in education opportunities for our children. But I want to give you a little context for those stories. I'll go as far as I can in the brief time allotted.

First of all, it seems to me, we have to ask what under the best circumstances we would want courts to provide or help to provide. A lot of people here earlier today talked about what our schools should look like, what the vision of effective schooling should be. For me, one of the most profound statements on that topic is an article published in 1992 by Claude M. Steele, and with your indulgence I'd like to read some from that article, because I can't say near as eloquently as what he says here in this article. He says, "For too many Black students, school is simply the place where more concertedly, persistently and authoritatively than anywhere else in society, they learn how little they are valued." And his response to that condition he says is "wise" schools, or "wise" schooling. He suggests a few components, four basic components for "wise" schooling. First he says, "If what is meaningful and important to a teacher is to become meaningful and important to a student, the student must feel valued by the teacher for his or her potential and as a person." He says that "the children's present skill should be taken into account, and they should be moved along at a pace that is demanding, but doesn't defeat them. Remediation defeats, challenge strengthens, affirming their potential, crediting them with their achievements, inspiring them." He goes on to say, "Evaluating the teacher-student relationship goes nowhere without challenge, and challenge will always be resisted outside of value and relationship." He says that "racial integration is generally a useful element in this design, if not necessary." And he says, "the particulars of Black life and culture, art, literature, political and social perspective, music must be presented in the mainstream curriculum of American schooling, not consigned to special days, weeks or even months of the year, or to special topic courses and programs aimed essentially at Blacks." Finally, he says, "We cannot yet forget our essentially heroic challenge to foster in our children a sense of hope and entitlement to mainstream American life and schooling, even when it devalues them."

Courts aren't good at that stuff. Courts aren't good at making relationships that are the centerpiece of "wise" schools. All you have to do is walk into a family court or dependency court, and you realize how poor courts are at mending relationships. Frankly, I don't think courts are that good at justice. When I used to do a lot of employment discrimination

litigation, my clients would come and say to me, "I want justice." I said, "Well, I can't assure you justice. Probably the best I can assure you is good process." And that's not intended to be a disparaging statement, because very often, good process is hard to achieve, and it may be the best that we can get. And if we really concentrate on good process, I think sometimes we can luck up and get some justice.

But if courts aren't good at providing the kind of stuff that is the essence of "wise" schools, what can they do to help the cause? I think that there are maybe a few things: they can assure that there are fair and adequate resources like the kinds of things that Hector's trying to achieve; they can reduce racial separation and possibly socioeconomic separation that has been fostered by public policy and private choices; they can see that certain structural elements exist in an education system—decent facilities, sufficient numbers of teachers, curricula that respond to the demands of the 21st century. But even if we judge their capacity against these fairly modest standards, courts, in and of themselves, are pretty crude and ineffective tools for bringing about the types of changes in education systems that improve the measure of adequacy and equity of learning opportunities for poor and minority children. Without there being powerful political actors outside the courts—a strong and invested business community, a committed governor, a group of influential legislators, or most importantly, a strong grass roots mobilization—the power of courts to effect meaningful and lasting change is extremely limited. Some of the reasons for that are, I think, the limits of courts' constitutional authority.

Some wise person said that courts don't have armies or banks, and because of that, when they issue an order, especially an order in the context of such a politically charged issue as education, they're constantly asking "Do they hear us? Are they listening? What are they going to do?" and very often legislatures and executives do nothing. Courts have limited know-how when it comes to fixing schools. Most judges don't know enough about how to make informed and coherent decisions about education, and the processes by which courts learn about conflicts and remedies in the area of education are slow, unreliable and cumbersome. Courts, in some instances, have tied their own hands when it comes to remedies that might help. When the courts say that you can't create metropolitan districts as a remedy for racial segregation, when courts conclude as they did in Pennsylvania, that you can't use—and in Philadelphia, that you can't even consider forced busing as a remedy for racial isolation, then that ties the hands of people who are trying desperately to expand the options for achieving educational quality and equity. Some courts, through ignorance, bias, and gutlessness have used their authority affirmatively to create and justify conditions that detract from education justice. The Pennsylvania courts have been particularly obstructive to efforts to increase the measure of justice in education for poor and minority children.

An area where the Pennsylvania courts have been especially disappointing is funding equity. Let me say up front that adequate—or even ample resources—are no guarantee for effective schools. Going to this issue of ample resources, ample resources obviously don't guarantee, adequate schools, or why schooling. But I think it's extremely hard, if not impossible to promote effective teaching and learning without adequate resources. Pennsylvania has been ranked by Education Week as one of the half dozen worst states in terms of equity in education funding. A system that relies heavily, and over the past ten years, increasingly, on local property taxes for education funding has resulted in gross disparities in pupil spending depending on whether a kid lives in a wealthy suburb, or whether a kid lives in a rural district or in an urban area that has low property values.

In Pennsylvania, the result of a regressive school funding formula is a difference of about \$2,000 between what the per pupil spending is on a Philadelphia child, and the average for a child going to a school in the 61 surrounding suburban districts; and there's about a six to seven thousand dollar differential between the per pupil spending in Philadelphia and the per pupil spending in the richest of Philadelphia suburbs. During the time that David Hornbeck was superintendent in Philadelphia, and I was general council or chief of staff to the school district, we prosecuted three separate lawsuits to try to correct this disparity. One action was brought under the state constitution, under the "thorough and efficient" clause that says that the state, in particular the state legislature, has responsibility for guaranteeing a thorough and efficient system of public education. We argued that the system was neither thorough nor efficient where the results were the wide disparities and the graphic inadequacies that existed for districts like Philadelphia and other predominately minority districts, but also poor White districts across the state.

In a hearing *en banc* (and for those of you who aren't lawyers, that means where all the judges on the court are sitting together rather than individually or in panels of three) before the Pennsylvania Commonwealth Court, the attorney for the defendant legislature argued that the courts were not competent to say what the "thorough and efficient" clause of the state constitution meant, and that the case ought to be dismissed, because a thorough and efficient education is whatever the legislature says it is. One of the judges, testing the limits of that pretty startling statement, asked the attorney, "Well counsel, suppose the legislature were to say that a thorough and efficient education is teaching a child to tie his shoes and nothing more, are you telling me that this court could not say that the constitution requires something better?" The government's attorney replied, "That's exactly what I mean, your honor." As astounding as that is, it was even more astounding when the whole court accepted that interpretation of the court's authority, and then the Supreme Court of the state affirmed.

If I had more time, and I see that I don't, I would talk about how the courts of Pennsylvania have interpreted the charter school law in ways that have exacerbated racial separation, allowed charter schools to camp on the outskirts of Philadelphia county lines in order to draw White students from Philadelphia into charter schools just across the line, pulling millions of dollars from the Philadelphia district, and even reducing our capacity to comply with an existing order to remedy defacto segregation. I would tell you how I think a really earnest judge, recognizing the limits on her ability to bring about racial and socioeconomic integration, has tried to install some elements of school reform, but because of the institutional limitations of courts—that is, their inability to provide rigor, coherence, and persistence in an education system—has, I think in some ways, been more of a detriment than a support. People have said all day today, we know how to make education better for all kids. The problem is not the know-how; the problem is the absence of will. Courts can provide some degree of impetus for creation of the political will, or can provide cover for those who have some degree of will, but feel that they need an excuse to follow it. But the courts are not a substitute for political and civic will to do what's right for children.

CHARLOTTE JOHNSON: Can I just say I feel an incredible amount of guilt as the moderator having to cut these folks off. I'm sure that each speaker could go on for at least twice as long. But since we do want to take questions from you all, we are limiting the speakers this afternoon. Now, the last speaker we'll hear from is Nancy Fredman Krent, a good friend of the law school. She's a partner in the law firm of Hodges, Loizzi, Eisenhammer, Rodick & Kohn in Arlington Heights, Illinois that represents more than 100 school districts, cooperatives and educational institutions statewide. She is an officer of the National School Boards Associations Council of School Attorneys, and will serve as chair of the council for 2003–2004. Previously as a board of director's member, she chaired the council's publications and urban law committees. Miss Krent has taught public school law, and frequently lectures for the council. She is coauthor of NSBA monographs on the American with disabilities act, selecting a school attorney and student-to-student sexual harassment. Miss Krent, a member of Phi Beta Kappa, is an honors undergraduate of the University of Michigan, and a *summa cum laude* graduate of U of M Law School. She is a former note editor for the *Michigan Law Review*. Prior to her current position, she practiced in Washington DC and Charlottesville, Virginia for 11 years in the areas of private and public sector employment law and in school law. Miss Krent.

NANCY FREDMAN KRENT: First of all, let me say how pleased I am to be here. It is so nice to sit on this side of room 100 instead of that side. I took several classes in here, and so I know what it's like over there. The topic that I was asked to speak on is the effectiveness of litigating for reform, and what you need to know is I've spent virtually the

entire 20 years of my career as a litigator. It's something that I love to do, something that I think is a great thing to do. But it is not an effective way to get reform. And I say that having litigated on both sides, as a plaintiff and as a defendant.

The fact of the matter is for those of you who are law students now, you will come out of law school, you will start your career, you'll be handed a case file if you're a litigator, and when you make partner that case will still be there. So you talk about students who are waiting for change in their schools, and if you file a lawsuit to get it, they will have long graduated before the matter's resolved. I hope Hector is successful in California in getting school construction funds where they're really needed. But the fact of the matter is filing a lawsuit in Los Angeles County, letting it go either through the federal courts or the state courts, going up on appeal, and let me tell you, in most cases at least twice, not once, and then coming back down, getting a judgment, try to get it enforced, then eventually getting the school construction funds where they belong if you're successful, and then building those schools is a 20 year project.

If you want reform, you have to find a better way to do it. I think reform is important. I think that we have to make changes. I think that most public school districts, and this is something that is very important for everyone to recognize, most public school districts in this country support diversity, and they support reform. The National School Boards Association, which represents the interests of local school boards throughout the country, has adopted a policy in support of diversity and has filed amicus briefs or has acted as counsel of record in many of the major diversity cases that are pending, or that have been decided.

But the fact of the matter is it's not really up to the local school boards anymore, and we've talked about cases like *Milliken v. Bradley*. The power has shifted to the state, and to some extent, to the federal government. And so we need to find strategies that let advocacy groups partner with school districts to achieve the kinds of goals that both groups want, that look at ways to go to the state or to the federal government in the political arena to achieve the kinds of benefits that need to be achieved. I think that it's clear that funding is something virtually every speaker has addressed in one way or the other all day. Contrary to what we hear on some political agendas about the problem with schools not being money, the problem is money. We heard from David Domenici about a wonderful program. I wish we could provide that kind of service level to every student. But we don't have the money to do it.

And the fact of the matter is public schools have been asked to provide virtually all of those same services to all their students with no additional funding. My clients come to me, and they say, "Well, how can we be asked to do X or Y or Z," whatever the flavor of the month is from the legislature. Your public schools have become the social service agency

of last resort for children in this country. There is simply no way schools can operate as educational institutions and as social service agencies at the same time, and do it on the budgets they have. That's why, throughout the country, school districts are in crisis.

Someone mentioned earlier that \$300,000,000,000 is, is being spent on public education K-12. To put that in context, almost one-third of that amount, over \$90,000,000,000, is for special education services. We talk about the concept of full federal funding for special education, because the IDEA (Individuals with Disabilities Education Act) is a federal program. "Full" federal funding would mean the federal government would pay 39% of the cost. That's what the government calls "full." At this point, the federal government is only paying 14% of that budget, up from 11%.

So there is, without a doubt, a funding crisis in this country, and the place to go for that money is either the state or the federal government. The problem is in most cases it's the school district that gets sued. Because of various standing questions and the way the laws are written, it is often the school district that is the target of choice. But the school district's ability to make changes that have any real meaning on a large scale to the students involved is very limited.

So we need to refocus and work together to get more money into the schools and to look at creative ways to solve problems other than litigation. Let me tell you this, I'd be perfectly happy if every one of my 100+ clients were involved in school litigation all the time. My billings would go sky high, I'd do great! But that won't achieve anything for schools except to take the money that ought to be going for public education, and put it into the private sector, where I will spend it liberally in the economy, and therefore we'll have trickle-down benefits, I suppose, back into my school district. I don't really think, however, that that is the best way to achieve reform.

I want to give you now a few pointers from the inside, because I only have a few minutes left, about how to work effectively with school districts to come up with some creative solutions. The first thing you need to know is that school districts are not monolithic. You need to know what kind of district you're dealing with, and you need to know who to go to for which kind of problem. We've talked an awful lot about urban districts. There are a tremendous number of problems in urban districts, but that's only one kind of district, and that's only one kind of district in which issues of diversity and funding exist.

And I want us to be careful not to lose focus on another very fertile area for creating opportunities for diversity. And that's in suburban communities; communities further out with newly emerging minority communities, communities where minority populations are relocating when they can leave failing public schools, in the inner city. And so those school districts are in fact becoming more integrated, and there are real opportunities to try something different there. The community in which I

live has developed a significant Spanish speaking minority, of primarily Mexican families who moved into the area in recent years, and became part of the public school district. The superintendent, the administration and the community, working together, decided rather than treating that as a problem to be solved, as children who needed remediation into our district, turned it into a real asset, and created a two way bilingual program that is now being discussed nationally. The program operates in three separate schools, and in those schools, all the students, not just the Hispanic students, go home with their school announcements in English and Spanish. My daughter participates in the two-way bilingual program, and has since kindergarten, and now at the age of eight, in third grade, is not only bilingual but bi-literate. This program is an opportunity for which both the Spanish-speaking and the English-speaking parents are standing in line to participate, and we've taken that community and helped people see it as a valuable asset.

And those are the kinds of programs that don't cost nearly as much as some of the other programs we're talking about, because all those kids had to be educated in some classroom somewhere in the district anyway. All we needed to do was find some teachers who could speak Spanish. So there are lots of ways to create opportunities and to create those kinds of solutions that we need to explore, and they are often easier to explore in smaller communities first, and then perhaps if we're lucky, we can import them into some of our largest school districts where the problems seem the most intractable.

You need to approach school districts by playing to their strengths and not playing to their weaknesses. I have seen client after client being told by someone who comes into the superintendent's office screaming, "We're going to sue you, we're going to get our lawyers. You must do this for us now!" I've seen the school district essentially shut them out, and the instruction that's given to me is, "Make those people go away, we don't want to listen to them, we don't want to talk to them." I've seen the same proposal succeed where someone walks in and says, "I see that you've got a problem here. Here's what we've thought of as a possible solution. We know that it's going to cost X, Y and Z. Maybe we can do this, because we've looked at your budget, we see where we can operate." Or, "We're going to help you do some fundraising," or, "Here are some concerns, we'd like you to tell us what we can do." If you come at almost any organization that way, you're going to get a lot farther.

If you have a legal dispute, rather than simply screaming for action, a better approach is to come in calmly and say, "I think that what you're doing right now has some legal problems. I've gone to MALDEF, I've gone to the ACLU. Here's what we think, here's why we think it. I want you to take a look at it, and then, let's talk about it, and maybe we can find some way to deal with it." School districts listen to those people. I get those letters sent to me by the client. I call the client, and I say, "You know

what? They're right," or, "They're not entirely right, but they've pointed out some problems." On the other hand, when the first time we hear that there's a legal problem is when the complaint lands on the door, it's a little too late to be collaborative. Then the school district has its back to the wall; then you've made it a battle that we have to fight. It's not the best way to get things done if the goal is to solve problems. It is a good way to get publicity. It's a good way to create divisiveness. It's not a good way, in my opinion, to be effective.

It is also important to remember that School Boards are run by people who are, in most cases, elected. If you don't like what your school board is doing, then organize, elect people who you think ought to be elected. When people are running for office, ask them questions about where they stand on those issues, and publicize their answers, publicize their answers everywhere you can, because most people who vote in school board elections don't know enough about the people who are running. Those seem like obvious answers, but those are the kinds of things that you need to do. Those are the ways to get change faster than 15 or 20 years from now.

CHARLOTTE JOHNSON: Okay, we've got about 40 minutes or so for questions. So if you've got a question please go to one of the microphones on either side of the room.

AUDIENCE MEMBER #1: This doesn't make sense. It's like Professor Ryan's being the only person on the plane this morning. This is directed to all of you including moderator Charlotte Johnson, because you all have been through law school, some are presently teaching at a law school, or you have taught at a law school, and may be particularly concerned about University of Michigan's affirmative action suit asking, is it permissible to include race as a factor in admission to law school? The lower court said no. My question is, if our Washington administration, as a state action, can set aside only Muslim or Arab males, however innocent, for interviewing about potentially negative actions or knowledge, why can't race be one of the factors in selecting students for a potentially positive outcome of being admitted to law school?

NANCY FREDMAN KRENT: I want to start out by saying that I'm not sure that I want to accept the premise that it would be constitutional in fact to single out only Arab American or Muslim men for questioning, because I don't think that that's constitutional. I do however think that the University of Michigan's admissions program is constitutional, notwithstanding the fact that I don't think the other is. I think that there are significant benefits to diversity in education that have to be recognized, and that the courts will recognize.

You have to use strict scrutiny in these cases. There's no doubt about that. But there are very compelling state interests in this. Academically, if we view public education in part as civic education, then it is a valuable educational process to teach people to function in a diverse society, to

open up discourse to diverse opinions, and to teach students to function in diverse communities. It also makes them better employees, which for many people is an important factor, because it makes them able to function in a diverse workplace, and it makes them better citizens, which is, by the way, the reason why we created a public education system in the first place hundreds of years ago.

JAMES E. RYAN: I agree with Nancy that it's not entirely clear that racial profiling as you describe it would be constitutional. I also agree that, in my opinion, race based affirmative action is constitutional. But I can't even get my own students to care about what I think about the constitution. The question really is what will the court say about this? And I'm optimistic for a couple of reasons. One is that I think the consequences of holding that there can be no consideration of race in admissions policies would be dramatic, and I think some of the swing members of the court are just not prepared to go that far. And second, there's a hopeful sign from the voting rights area where the court has embraced this somewhat odd conception about districting, and has decided that it's okay to draw district lines as long with race as a consideration, as long as race is not the predominant factor. It seems to me quite possible that the court will follow a similar approach when it comes to questions of affirmative action. One last thing: one of the reasons I've become more and more attracted to the idea of socioeconomic integration has to do with this very issue, which is to say that if the court does hold that you can never use race in the context of university admissions, it could also mean that school districts could not take race into account when assigning students. So voluntary efforts to desegregate on the basis of race would then become unconstitutional. You don't have the same constitutional impediments to taking into account poverty, so school districts that are prohibited by the constitution from taking race into account in assigning students could take socioeconomics into account.

GERMAINE INGRAM: I think there might be somewhat different calculus, though, when you look at K-12 education as compared with college admissions.

HECTOR VILLAGRA: The only thing I'd like to add is that I think there are doctrines out there that could be used to uphold an affirmative action program like Michigan's, but courts can be outcome oriented, and not necessarily consistent: they can use a doctrine to review voting rights claims, but effectively use the opposite doctrine to review an affirmative action plan.

AUDIENCE MEMBER #1: Thank you so much.

AUDIENCE MEMBER #1: I agree—I'm sorry.

AUDIENCE MEMBER #2: Hi, my name's Jane Levy, and I'm a teacher here in Ann Arbor in the public school system. I have a question, I'm a little bit concerned about socioeconomic integration as a way of

getting equity for everybody, because I'm afraid that it's based on a real faulty idea of equating socioeconomic status with student achievement. It's kind of a circular argument. Most of the tests that we use to show that there's student achievement going on basically you wouldn't have to test the kids at all. All you'd need to do is measure how many square feet are in their house or whatever their socioeconomic status is in their community. So it feels a little circular to me, and I'm scared that if we say that that's a way to help the inner city schools, what you're really saying is another way of saying if you're poor and Black, you're—you don't have the ability to learn unless you're with these other kids that are White and not poor, or Black and not poor, and that's a scary dilemma to me, and I was wondering what the other panelists think about that, Dr. Ryan.

JAMES E. RYAN: I have a couple responses. I don't think that it's circular. The argument is not that socioeconomic status is going to be completely determinative of the student's achievement. It's that the socioeconomic status of a student's peers has an influence on the student's achievement. And I'll give you an example of a study that might be helpful. David Rusk did a study of a couple of school districts in Texas, call them district A and district B. District A spent more money than district B, but it turns out that poor kids in District B did better than poor kids in district A. Why was that?

Well, one of the big differences was the level of overall poverty in the districts. In district A, which spent more money, something like 80% of the kids were poor. In district B, 20% of the kids were poor. Now, you're right, I think, to be uncomfortable with the idea that in order to learn, one kid has to sit next to any other kid. That, though is not the exact point. Rather, the point is that peers do tend to matter, and do tend to set the tone of a school. But even beyond that, predominantly poor schools, that is schools that are filled with kids who are predominantly poor, tend not to have the same kind of resources that middle class schools do. So it's a combination of all of those things that I think makes it incredibly difficult to expect that poor kids in predominantly poor schools are going to achieve at the same levels as their middle class counterparts. This is not to deny, by the way, that if we poured a lot of resources, and I'm talking at the level of the resources at David's school, you know, \$20,000 per student, that you might see similar results. It's just to say that it may be more effective if you try to eliminate as many predominantly poor schools as possible.

HECTOR VILLAGRA: I just wanted to say I like the idea of using socioeconomic status in the current environment that we're in, where race isn't really allowed to be taken into account. But for me it's unfortunate that we're forced into this position, because it forces us to ignore this country's tragic history when it comes to race. Discrimination didn't happen because you were low income, it was because you were Black or Hispanic or Asian. And I think our policies should recognize that fact, and

not try to hide it under some other label. Now, I understand that that may be all that we're left with, but it didn't have to be that way.

GERMAINE INGRAM: I agree with Hector, but, my experience indicates that concentrations of poverty have a real impact on the ability of schools to help every kid learn, and if we can address that, if we can reduce those concentrations, that gives us a better chance of improving the quality of teaching and learning.

NANCY FREDMAN KRENT: I agree with what's been said. I think it's important that we distinguish between what should be true, and what is true. It should be true that children could get a quality education whether the kids next to them are poor or the kids next to them are wealthy. Kids are inherently able to learn, and we should be able to maximize that potential. The sad fact is for the most part in schools that are predominantly poor we are not doing that. And so as one step, I think we need to look at changing the environment so that we can find ways to improve that, and then maybe we will be able to go back to a situation where we won't need to be considering that. But right now the evidence shows that that is having an impact for whatever reason.

AUDIENCE MEMBER #3: I'm Claude Nelson, a citizen in Ann Arbor. I agree with the points that litigation is not my first choice for reform, but I'd kind of like to know if there's this stick back there in the closet that somebody might think is effective? My question is, are there legal cases and arguments for within school practices being illegal on some grounds like equal protection, if a school building is doing things like having the low salary, inexperienced teachers in the low track with the certain students, are there grounds, legal grounds to say, "If you don't fix this, we're going to sue you,"?

NANCY FREDMAN KRENT: Yes, there are. You could bring an equal protection claim there. You could argue that this was a decision intentionally made by the school district based on race to disadvantage those students, and you would have a cause of action there.

HECTOR VILLAGRA: And whom you sued would depend on who had actually made that decision. Is it a policy of that particular principal? Is it a policy of the district? Has the district abandoned its responsibility to oversee what that particular school is doing? The answers to all of those questions would determine whom you sued.

GERMAINE INGRAM: I don't think any of us is saying that litigation is irrelevant to improving the status of education. It's one of the tools that we need to use along with a whole bunch of other tools. We are just, at least I'm trying to say that we have to be really conscious of the limitations of that tool, and the costs in time and other factors associated with using litigation as our principle strategy.

JAMES E. RYAN: I agree completely with Germaine. In this context, plaintiffs who want to challenge these sorts of practices unfortunately have less of a stick and more of twig. You could bring an equal protection

claim, but in order to be successful, you'd have to prove that the school officials are intentionally putting minority students in lower tracks, and that the lower tracks are hurting them rather than helping them. Proving it, proving intent to discriminate in this context is a next to impossible task.

There's another alternative, which is suing under Title Six. The regulations of Title Six allow claims to be brought based on disparate impact. So theoretically, you could show that if there are a disproportionate number of minority kids in low tracks, and again, that the low track classes are hurting rather than helping them, you might have a title six claim. You wouldn't have to show intent, you'd just have to show that there's a disproportionate number. The problem is that it's not entirely clear anymore, in light of a recent Supreme Court decision, whether individuals can bring Title Six claims. It may just be that the federal government can bring Title Six claims. But guess what: for the foreseeable future, there aren't going to be many Title Six disparate impact claims brought by the government.

The other problem is that the way courts have interpreted Title Six. All schools have to do in response to a Title Six claim is to show that there is some educational justification for tracking. So that even if there is a disproportionate number of minorities in low track classes, if schools can come forward and show there's some debatable educational justification for the tracking, courts will uphold it. And you know, I think this is one of the unintended and unfortunate consequences of the experience with desegregation. Courts have become quite wary of getting involved in education policy questions, and so because schools can always point to competing evidence about tracking, courts will say, "Well, we're going to leave this decision to school officials." So while there have been some cases challenging tracking on that ground, very few, and none in the last ten years, I think, has been successful.

AUDIENCE MEMBER #4: Real quickly to Dean Johnson, my talk about of diversity and integration, I want to exclude the law school, because what we're dealing with is a little bit different. But I think that—someone was saying earlier that we're tap dancing around a certain issue, and I think we're doing that again when—because when we say "integration" we really mean with White people. If we take a Black school and a Mexican American school and put them together, most people are not really going to call that integrated, and not for the same reasons. And so that being said, I feel like—Hector, right? What Hector is talking about, although it may take 20 years, it's still an investment, and after 20 years there might be some change. When we're talking about socioeconomic integration, it seems like we're taking students away from one situation, putting them somewhere else, and creating success stories, individual success stories, but not necessarily addressing the problem from which they came. And so I'm wondering if the aversion to what Hector's talking

about is the timing, the cost, and after that, what are your suggestions? I know it's a broad question, but what are your suggestions for fixing the situation, the original situation? Because I feel like even school choice students are going to go somewhere, but they're not going to be sent somewhere else, right? And it's like the same thing as vouchers, and I feel like it's still kind of ignoring the problem, but then we have these feel good, let's call them Isaiah Thomas success stories, where someone makes it out of a certain place, and we can hold them up as a poster of childhood success, but it's not necessarily addressing the real issue. So my first thing is it means with White people, and we should just say that, and the second thing is, what are we doing about the origin of the problem, and if we can fix it in 20 years, although I hope it doesn't take that long, we should fix it in 20 years, and not tap dance around the fact that it's going to take 20 years.

HECTOR VILLAGRA: It's probably the hardest thing I have to do, when I sit down with my clients and talk to them realistically about what their involvement in a case could do. To me, it really just shows the incredible courage and determination of our clients, that they go into these cases knowing that they are going to be subjected to harassing depositions and discovery requests, and if the case should get to trial, to heavy cross examination from the district or the state. But they're willing to do that, and often not for their own children, because it's true, if we won tomorrow—and it's impossible that the case could be resolved that quickly—it would still take six years for the money to turn into new schools for kids in Los Angeles. So, if our clients are in high school now, they'd already have graduated by the time the schools were built. It's really only the ones in kindergarten, then, that we could have any hope of helping right now.

But I think, just as Mr. Kozol was saying last night—that you should not believe what you're told about how dangerous the world can be—you should not necessarily believe how little you can actually achieve. I'm constantly amazed by how just a couple of people can take on the system and do some things. Before we filed the *Williams* suit, we filed a precursor suit under a proposition that had been enacted by voters in California in 1998, and it put about \$7,000,000,000 out there for new school construction. Halfway into the distribution of bond funds, we did an analysis of where the money was going, and it was very interesting that the lower your level of overcrowding, the higher the chance you had of actually having gotten money, the higher your level of overcrowding, the lesser your chance of having gotten money. We sued, and the suit was settled. As a result of the settlement, LAUSD, which was eligible for approximately \$1,000,000,000 worth of new school construction money, but which stood to get about zero given how the funds were being distributed, now has a very good chance of getting about \$450,000,000. And that won't happen in 20 years, that'll happen this June. It'll still take those five or six years to build those schools, but I'm glad that we did it. As a result of that

lawsuit, and as a result of the publicity from that lawsuit, people in California are now actually focused on multi-track year round schools, and targeting money to overcrowded schools in a way that they weren't three and four years ago.

So the litigation, apart from whatever it might achieve in and of itself, can also be the impetus for change and movement in the political process. I don't know if the current discussion of putting \$5,000,000,000 out there for severely overcrowded schools would have happened if we hadn't filed our suit. It probably wouldn't have. If this bond passes, and they put \$5,000,000,000 out there, we're going to scream to high heaven that it's not enough to fix the problem, because it just isn't close to being enough, but it's certainly better than nothing. And the truth is even if our litigation took 20 years to achieve its intended effects, nobody else was out there even trying to get this solved within 20 years. It just wasn't an issue. If nothing else, this litigation has put this issue on the state's agenda.

NANCY FREDMAN KRENT: I think that what is important is using the means that you think is most effective to get things on the state agenda. Most of these things have to be solved as political issues. That's where the money is, in the political process, and finding ways to get that money where it needs to go is really important. It's important for all parties to work to find better ways of working together, of building those coalitions, because that's the most effective way. The more groups you have in your coalition, the bigger your political clout, and the more political clout you have, the more likely you are to get your issues on the agenda, and get some results.

JAMES E. RYAN: I'll answer that first question about whether we are talking only about integration with Whites. I don't advocate socioeconomic integration as a sly attempt to get around constitutional restrictions on using race. I really believe that it's independently worthwhile, and so that means if it involves integrating poor White students with middle class White students, I think there are reasons to do it. I think socioeconomic integration often is accompanied by racial and ethnic integration, which is in my mind a double benefit.

As for the broader question, I understand the question as basically being how can you use education reform to get at what I see as entrenched poverty, how do we get at the root of the problem. And I think one way to do it is not to fixate on one approach as opposed to another. That is to say, I don't think the choice has to be advocating methods for increasing socioeconomic integration, or trying to equalize school funding, or improve school facilities. I think you use every arrow in your quiver. You try working through the political process. If that doesn't work, you try litigation. The hard question is, and this is a question that rarely gets asked is, with every education reform, I mean, you name it, what to do with the kids who are "left behind." If that's the case, and it will be with almost every education reform, what's the second best solution? Is it

to do nothing, or is it to help as many as you can in the hope that this in turn will encourage more reform? I'm squarely in the latter camp, but I think many people are uncomfortable with that. But that is the key question with so many education reforms: Do you do nothing until you can ensure that every kid is helped, or do you do as much as you can to help as many kids as you can as quickly as you can?

GERMAINE INGRAM: I think we do both, because I think we're capable of crafting systems that have the capacity to help every child. We just haven't had the will, and the commitment to do it.

AUDIENCE MEMBER #5: I thought this was an extraordinary panel, I really learned an awful lot the past hour and a half. I have two questions about the wisdom or futility of bringing suits, to all of you really. And I kind of identified with Germaine's sense of heartache in Pennsylvania having seen hopes raised, and dashed in all these suits all over the country. But I still kind of cheered up when I heard Hector insisting that he's going ahead with this and looking for the victories he can win. And that kind of prompts the question I wanted to ask. It's sort of a disorganized question, because I don't know any of these answers, or I wouldn't ask it. First of all, even if there's no chance of getting vindication in some of these suits when they just go on and on forever, even if we get terribly excited as all my friends did in New York last year when we won the campaign fiscal equity suit. Even if it never goes anywhere, as I said last night and we had a lot of disappointments, does it not have one extraordinary benefit that it forces the mainstream press to address our issue? We could never get the New York Times to touch this issue for years unless it was a story that had to do with another part of the country. Not New York until now, suddenly we've had the Times doing editorials and some of them actually taking a discernable position. We can actually finish the editorial and say, "Gee, they're on our side." That's educated a lot of people, and I was going to say, even though it must seem an awfully exhausting and expensive route, doesn't that justify it to some degree?

But the bigger question I wanted to ask is this, I can utterly understand Germaine's and Nancy's sense of futility about litigation and whether this strategy is socioeconomic or racial. As I'd sort of go along with James, whichever works. I would do whatever is possible. But I wonder if the futility we hear here about litigation reflects strategic thinking short term based solely on the present political bent of the federal bench, and the probable results of the last presidential election itself determined by the political bent of the Supreme Court, or whether your futility that I sense in both ends of the table on this, whether this comes from a reading of American history, or apart from the last 30 years or so? To state it differently, I share everyone's heartache, I suppose everyone in this room tends to feel heartache that Brown was, to some degree, invalidated by decisions such as *Rodriguez* and *Milliken*. *Rodriguez* sort of denying us the federal recourse for any kind of equity between districts, and *Milliken* exempting

the suburbs from participation. It's hard to see what was left. And yet, *Brown* did transform much of the south and anytime I want to see anything in any school that looks anything like Dr. King's dream, I go down south to schools that are still under court order after all these years, despite the worst that all these courts have done ever since. They still are under a court order in Newport News, Virginia, and there you can see real good integrated schooling, which Black and Latino parents approve thoroughly, and nobody in that town ever asks you whether busing is such a good idea, because they all ride the bus, and they all go to good schools, and so I want to know why we're not thinking ahead creatively to the next big inventive battle on that scale rather than sort of lying down and saying, "The way things are now, we can't win, so let's no longer try." It sounds to me like chronic depression in the legal profession.

NANCY FREDMAN KRENT: Well, I'm going to admit that I'm actually a closet optimist. I simply think that litigation is not the best route. I think we need to think creatively. I think we need to think "outside the box," and litigation may have become "the box." That *Brown* was an enormous success in its own right, and it did transform American public education. Most of my friends who represent some of those districts in fact are working with their districts to keep them under court order for as long as they possibly can for the very reason that as soon as they get out from under that court order, they have to start dismantling the programs that they think have made their schools so successful.

But I think that we need to be careful about assuming that if it worked well once, then if we find the right court decision, we can get the same kind of thing to happen again. I think there are limits to what litigation can achieve, because of the problems we're looking at now, which include poverty and tremendous inequity from community to community. This was not the case at the time of *Brown*, because in those communities, the school districts had money, they just weren't distributing it equitably.

But I do think that there are times when litigation is important. Look, as I said, I make my living litigating. I hope we don't stop litigating, I'll be out of a job. I think we just need to decide when we want to use it, and we need to understand what its limitations are. I think putting a matter on the political agenda is itself a valid reason to litigate if you go into it as Hector said, knowing that that's what you're trying to achieve in a particular case. I think we need to look at all of our options; I think that Jim is right, every arrow in the quiver's what you need to use.

GERMAINE INGRAM: Your question reminds me of something that Griffin Bell said in response to some question. Somebody asked him whether he was depressed by some legal or political occurrence, and he said, "Well, I'm not impressed, I'm not depressed, I'm just pressed." And I think that applies here. I am optimistic about the prospects of changing these circumstances, and part of my optimism is that we're having just this type of discussion. I think part of our—paralysis sometimes is that we've

been too reliant on courts and lawyers to do what we really can't do. And if we recognize the limitations of these strategies, hopefully we will begin to employ strategies that have a greater possibility of bringing about more lasting, more profound and more powerful change. And I think it's perfectly appropriate, I've done it myself, to use litigation as a way of focusing a light on an issue, even if the prospects of winning are fairly low. But I think that type of litigation tends to be different litigation than what we conventionally see. It's more client focused, rather than lawyer focused; it plays to a different audience, and has a different rhetorical style. If we are going to make the courts and litigation more effective tools for education equity, we need to change their construct and conventions.

HECTOR VILLAGRA: I think there's no question that litigation can't be the only tool that we use to try to achieve change. I think we've heard it now again and again, that what often happens is the courts run up against the lack of political will in state legislatures. And the only way to affect that is to have a broader mass movement that is going to register with the folks who sit in our state legislatures, and who will either obey court orders, or even better, do the things they have to do in advance of a lawsuit and avoid being taken to court in the first place. For a lot of you out there, this probably won't make any sense, but for those of you who are considering being a public interest lawyer, I think this gets at the sort of schizophrenia of being a public interest lawyer. There are days when you go to work because you want to change the world, but then you read some of the cases, and you learn some of the limitations that have been imposed, and you know that the chances of success are not great. But you have clients with very real problems who come to you often because they have no one else to go to. And you can do two things: you can do nothing or you can do something. And you can accomplish something even if not successful in the litigation. You can force the mainstream of society to confront some of these issues. You can, in effect, give voice to the complaints of communities that often have no other route to do it. That's something. We've had children in our Williams case tell representatives of the state that they don't understand why they don't have textbooks, they don't understand why they have roaches and rats in their classrooms, they don't understand why the state is spending so much money hiring a private law firm to defend itself in this lawsuit when it could have used put all that money into these schools that are obviously in need of, of help. I think there is a lot of value to giving voice to the complaints that otherwise would go unheard by the larger society.

JAMES E. RYAN: I completely agree that you can use litigation to shine a spotlight on an issue, even if you don't have much prospect for success. And I'll give you an example. I mentioned earlier that we're, in Virginia, considering bringing a claim that the Commonwealth is not doing enough to ensure that poor kids receive an adequate education. There's this odd little provision in the state constitution that no one's

really noticed, but it says that the board of education has to draw district lines in a way that enhances the chance, essentially, that all kids will do well. Kind of interesting, right? So we thought, Boy, you know, if you look at the way districts are drawn, you've got Richmond, for one example, very poor, predominantly minority, the test scores are abysmal, surrounded by two of the wealthiest and highest performing counties in the entire state. So why not bring a claim that says you can't draw districts this way—that you can't concentrate poor kids into a single district, because they are not going to perform as well as, as kids in other districts.

Well, there is not a chance in the world that that claim would ever be successful. There's no way that a state court in Virginia would ever say to the General Assembly, "You need to redraw the district lines and draw them so that suburbs in the city of Richmond are one district." But that would be a way to get the issue out into the public and discussed by the press. Now, I think there's a double edged sword to using litigation for educational reform. Gerald Rosenberg talks about this generally in a pretty interesting book, entitled "The Hollow Hope," a title which gives you some indication of his feelings about litigation and social reform. The risk is that you can mistake the illusion of change for real change. That is, if you are satisfied with a court victory, you may get exactly what you ask for, but you may not have asked for very much. In addition, as I mentioned earlier, even when you win in court, you will not necessarily achieve legislative change.

So one of the things that I think needs to happen if you are relying on litigation for structural reform is that if and when you secure a court victory, you've got to work to build the political capital to make sure that that court victory results in legislative change, which is why Michael Rebell, who runs the Campaign for Fiscal Equity in New York, is spending a lot of time right now trying to build up political support for the court victory that he achieved, because he recognizes, looking across the universe of school finance cases, that winning in court is only the start of the battle.

AUDIENCE MEMBER #6: Hi. I just started volunteering with a high school in southwest Detroit where I work with a large number of students that are illegal immigrants, and at our very first college club meeting their biggest concern was that they had a student the prior year who'd received an enormous number of scholarships only to learn that they couldn't go to college, and they couldn't accept any of the scholarships because they weren't legal. My question is first, is it true, and second, is anyone looking at that? I mean, that seems like a really terrible screening mechanism to me.

HECTOR VILLAGRA: They certainly would not be eligible for any federal scholarships. A lot of private scholarships have that same restriction. We are talking to those groups to try to get them to eliminate it. One of the other lesser known facts about undocumented students is

that often when they apply for college, they are forced to pay out-of-state tuition rates even though they're residents of that state. We've been working with governors in a few states to try to get those restrictions changed, and recently in Texas and California bills have been enacted that allow certain undocumented students—if they have met certain requirements, like graduating from a California high school, having attended California high school for three years—to become eligible for the in-state tuition rate. In California it makes a huge difference; it can be a one to eleven ratio between in-state and out-of-state tuition rates. Now we need to work get these students scholarships so they can pay those lower tuition rates.

AUDIENCE MEMBER #7: They're also very concerned about being sent out of the country, because they're illegal being found out because they're applying to college. Do you know—first of all, is that—does that occur, and second of all, can you suggest any or resources for how I can sort of transmit to them the information that you have on this topic?

HECTOR VILLAGRA: You know, that I'm not sure. Sometimes they are asking about information that, to the applicant, feels like it's about their immigration status, but there be some other purpose for it. It would depend on exactly what it is they're asking for, and we can definitely talk afterwards.

CHARLOTTE JOHNSON: Okay that was the last question, so I'd like to have you all join me in thanking our panelists this afternoon. And can I invite some of the members of the *Journal of Race & Law* actually to come up, or stand up if you're here, because this was an excellent weekend, and you all did a great job, and I think we should acknowledge that.

LUTTRELL LEVINGSTON: On behalf of the *Michigan Journal of Race & Law*, I want to thank you all for coming out and listening today to our panel of experts, practitioners and people who care about children talk about how we can improve education. We've been very happy, very pleased with this event, we've been very happy to have all of you take part. I want to invite those of you that are registered for the banquet to come back at—the banquet is at 6:30 at the Campus Inn, and we're very excited for that, and we'll get to hear Mr. Kozol speak again, and I just want to particularly thank right now all of the *Journal* members that have worked very hard on this, my co chair, Charlotte Gillingham, our Editor-in-Chief, Teig Whaley-Smith, and the best symposium committee that Charlotte and I could possibly have ever imagined. Thank you, and go out and rage!

END OF SESSION

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