

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

*James Forman, Jr.**

"I wasn't supposed to make it. I was supposed to be pulled in by the drugs on my streets, the liquor stores on every corner, the poverty in the neighborhoods. I was supposed to have failed at the underfunded and mismanaged schools I attended by default."

—Donny Gonzalez, Maya Angelou Public Charter School

This Symposium, convened by the *Michigan Journal of Race & Law*, was designed to address many of the issues raised in the above comment by Donny Gonzalez, a student at a Washington, D.C. high school. Bringing together a diverse group of speakers and attracting a broad cross-section of the university and Ann Arbor communities, the Separate but Unequal Symposium addressed a range of issues, including: the ongoing relevance of integration, the role of charter schools and other alternative programs, and promising strategies for achieving greater educational equality. A theme linking these various topics was the question of what students could do to end separate and unequal schools in America.

The first panel tackled the issue of integration from a variety of perspectives.¹ Jane Ehrenfeld, an experienced elementary school teacher, described what it meant to have taught students of all races, but never to have taught them in the same 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," she asked. "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?" Moreover, as she pointed out, the harms of *de facto* segregation are recognized by children, even if not by law. Ehrenfeld described teaching at an all Black, low-income school in Prince

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1. One perspective that did not get the attention it deserved was that of newly emerging minority communities, including Latino, Asian, and Arab-Americans. Diego Bernal, a student participant, suggested that the language used to describe integration remains stuck in a Black-White dichotomy, despite the changing face of America's schools. Bernal pointed out that if a school is half Black and half Mexican, we don't call it integrated. Given that, he suggested, the language should reflect what we mean: if by "integrated" we mean, "with White people," we should say that. Similarly, if by "segregated," we mean, "without White people," we should say that too.

George's County, Maryland, 2 blocks from the border of Washington, D.C. She had just finished teaching the story of Ruby Bridges, the first Black girl to integrate New Orleans schools, when one of her own 4th graders raised his hand to ask: "But Ms. Ehrenfeld, when's our school going to be integrated?"

Of course, as Professor Carla O'Connor reminded us, even integrated schools can sometimes be demoralizing for Black students, when such schools have their own racially stratified academic system. Professor O'Connor invited the audience to reflect on the psychic burden that high-achieving Black students face when they must navigate an environment that questions their worth and forces them to carry the burden of an entire race.

While Ehrenfeld and O'Connor focused on problems of long-standing origin, Ruth Zweifler addressed a newer set of policies that harms students and has a racially disparate impact. Zero tolerance policies that mandate suspension or expulsion for a wide range of disciplinary violations, said Zweifler, are "sweeping uncounted numbers of our most vulnerable and needy children into the streets, and there they remain, uneducated, un-served, and unsupervised."

Stories of school officials reacting bizarrely to student misbehavior are legion; everybody has their favorite. Mine comes from Mississippi, where five students were suspended and criminally charged for throwing peanuts on a school bus, one of which hit the bus driver. According to the sheriff: "This time it was peanuts, but if we don't get a handle on it, the next time it could be bodies."² The racial implications of zero tolerance policies are worth investigating. Professor O'Connor pointed to education research on the process of "adultification," suggesting that teachers are more likely to read African-American boys as adults, and conclude that their misbehavior is conscious and willful. Similar behavior by White boys, she argued, is more likely to be interpreted as "boys will be boys." Indeed, according to Zweifler, suspension rates are racially skewed: the suspension rate for minorities was 141 per thousand as compared to 56 per thousand for White students.

The demand for zero tolerance policies in schools stems in part from the public's belief that schools are getting more violent. As the school shooting phenomenon demonstrates, the culture of fear often survives without an evidentiary basis. For example, though the overwhelming majority of Americans never will be victimized by a school shooting, 71% of respondents to a recent NBC/Wall Street Journal poll felt that a school shooting was likely in their community. Similarly, although youth crime is declining steadily, 62% of poll respondents felt it was rising.³

2. James Forman, Jr., *Overkill on Schools*, WASHINGTON POST, Apr. 23, 2001, at A15.

3. Lori Dorfman, Berkeley Media Studies Group & Vincent Schiraldi, Justice Policy Institute, *Off Balance: Youth, Race & Crime in the News*, at 3 (April 2001),

While there is a temptation for all sides of an issue to name the media as a culprit, in this instance there is some factual basis to suggest that the media shares much of the blame for the public's erroneous belief that school shooters lurk everywhere. The media focus on school shootings is part of its general infatuation with crime coverage. Though crime dropped 20% nationally from 1990 to 1998, network coverage of crime increased 83% during that period, according to a 2001 study prepared by the Berkeley Media Studies Group and the Justice Policy Institute.⁴

David Domenici, co-founder of the Maya Angelou School in Washington, D.C., provided the link between the first panel's discussion of integration and zero tolerance, and the 2nd panel, which focused on school choice and alternative approaches to reforming public education. Maya Angelou serves many of the students who Pat Payne of the Indianapolis school system argued should be the focus of reform efforts: those who "have been left behind." As a Washington, D.C. high school, integration with White students is not on the horizon for Maya Angelou's all-minority population.⁵ As Domenici pointed out, only 227 White students attend public high schools anywhere in D.C. Professor Wilbur Rich reminded the audience of the deep-seated hostility to integration that exists in many communities, by quoting the Rev. Jesse Jackson on busing: "It ain't the bus, it's us that people were afraid of."⁶ But racial segregation is perhaps the least significant of the obstacles facing Maya Angelou's students: 50% have involved in the court system, over 80% have an older brother or sister who has been incarcerated, half have a parent who has been incarcerated, and 90% qualify for free and reduced lunch.

Because many of these students arrive years behind their peers, the Maya Angelou program must be comprehensive. As Domenici said, "Why

<http://www.buildingblocksforyouth.org/media/media.pdf> (on file with the Michigan Journal of Race & Law).

4. *Id.* at 10.

5. Nor is Washington, D.C. alone. As Professor Wilbur Rich pointed out, Gary Orfield's research suggests that schools are getting more, not less, segregated.

6. Those interested in thinking further about questions of racial stigma would do well to consult Glenn Loury's recent book, *The Anatomy of Racial Inequality*. According to Loury, stigma "is about who, at the deepest cognitive level, [people] are understood to be." Who Blacks are "understood to be," says Loury, is rooted in slavery and its accompanying dishonor. GLENN C. LOURY, *THE ANATOMY OF RACIAL INEQUALITY* 61, 68-70 (2002). And though racial attitudes have certainly evolved, Blacks remain stigmatized, forever branded as "the other." *Id.* at 76. Thus, Loury argues, high rates of Black imprisonment or other indicators of social disadvantage do not provoke much "public angst," for they do not "strike the typical American observer at the cognitive level as being counterintuitive.

To demonstrate the persistent power of stigma, Loury offers the following example. When people see a sign on a store that says "Smith and Sons," few fear that they will be served by an unqualified beneficiary of nepotism. Upon seeing a black as their surgeon, however, many will suspect that because of affirmative action they are about to be treated by an unqualified doctor. Loury says that this difference in perception "has little to do with political principles, and everything to do with racial stigma." *Id.*

think about school as a 9–3:30 thing? We don't." Maya Angelou students are in school 10 ½ hours a day, year-round, mostly studying core subjects like reading, writing, math, and history. When not in class, they work in student-run businesses, where they earn money and learn job skills. Group and individual counseling are incorporated into the structure of the school day for all students, and some live in school dormitories. The results have been impressive. More than 70% of graduates go on to college, compared to a citywide rate of just 50%.

While many conference participants were impressed with Maya Angelou's success, I believe it raises two important points. First, Maya Angelou is not alone. The school choice movement has produced successful educational models around the country.⁷ Second, a great many of these schools are upstart non-profits, with the desire, but not the capacity, to expand. Institutional obstacles—including inadequate funding for basic operations and the difficulty of paying for school buildings—present huge barriers to expansion, even for the most successful programs. At Maya Angelou, for example, it took three years of relentless effort—energy that should have been gone into education, not fund-raising—to obtain the resources necessary to turn an abandoned building on a drug-infested corner into a model school and inviting community center. While many civic leaders have urged Maya Angelou to expand to additional sites and serve more students, financing additional facilities remains as an insurmountable obstacle. In light of this, I suggest that investing in the capacity of schools that have proven successful with low-income populations must be a priority for those interested in improving urban education (including the federal government through its Title I funding).

Like Domenici, I am involved with the Maya Angelou School, and anytime I have doubts about the importance of expanding our small program, I think back to e-mails such as this one, which we received last spring from a D.C. high school student interested in attending our school:

My name is Jennifer⁸ and I am currently a student at Anacostia Senior High School. My older sister Tyesha also attends Anacostia Senior High School, BUT there is only one problem with that. We both feel that we are not reaching our full potential at our current school because of the lack of discipline towards students and the fact that the teachers here don't actually care if we succeed or not. I am sorry if I am troubling you in any way by this e-mail but my point is coming. My mother also feels the same way about Anacostia, she can see that they very seldom involve the parents in their child's education whether they are failing and having

7. The Boston non-profit Jobs for the Future has identified many effective schools and programs; descriptions can be found at its website, www.jff.org.

8. I have changed the names to protect the identity of the students.

problems or not. Thankfully, we found the website to Maya Angelou. We have tried to apply to other charter schools because they seem to be the best for us at this time. Unfortunately they are filled or claim to be. My sister, my mother and I all like what we see from MAPCS. Im obviously a student who cares about my education. From the website, I printed out a application and recommendation form for my sister and I. They will be sent in the mail VERY VERY soon. If there are no slots left in your school i dont think two more students will hurt, especially if they are not trouble makers and take their education seriously. Please keep us in mind. thank you, Jennifer P.S. I would greatly appreciate it if you can reply to me at jennifer@yahoo.org.

The day's final panel raised an implicit challenge to the suggestion I just presented, however. While applauding the work of those like Domenici, Professor Jim Ryan suggested that the focus on improving high-poverty schools was destined to have limited impact. By way of example, Ryan contrasted a Heritage Foundation report featuring 21 high-poverty schools that work, with a Department of Education report focusing on 7,000 under-performing high poverty schools. The difference in numbers between the two reports, said Ryan, stems from "the inescapable truth . . . that schools of concentrated poverty almost never perform as well as their middle-class counterparts."

In light of this, said Ryan, the focus of reform efforts should be achieving integration of a different sort—socioeconomic integration. Drawing on the research of Richard Kahlenburg⁹ and others, Ryan highlighted jurisdictions that have made progress in achieving socioeconomic integration, and pointed out that, because of the close nexus between race and class, socioeconomic integration in many places will also further racial integration.

As Ryan and others have argued, last Term's school voucher decision¹⁰ and the No Child Left Behind Act, both highlight the importance of socioeconomic integration.¹¹ School voucher proponents hailed the Court's decision upholding the Cleveland and Milwaukee voucher programs as the *Brown v. Board of Education* of our generation. If taken seriously, it just might be. The premise of the voucher movement is that it is immoral to deny poor parents the right to choose the best school they can find. If parents are willing to make the sacrifice to get their child to

9. See RICHARD D. KAHLBERG, *ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE* (2001).

10. *Zelman v. Simmons-Harris*, 122 S. Ct. 2460 (2002).

11. See James E. Ryan & Michael Heise, *Taking School Choice to the Suburbs*, *WASH. POST*, July 3, 2002, at A23; see also Gordon Liu, *Real Options for School Choice*, *N.Y. TIMES*, Dec. 4, 2002, at A31.

that school, then the government should facilitate that choice. But what if the best school available is located, as such schools often are, in a suburb? Should poor children be denied the right to attend the suburban school? Suburban governments near Cleveland and Milwaukee chose not to participate in the voucher programs, making their schools inaccessible to city kids. But voucher supporters who view this as a moral issue must be prepared to answer the question: if it is immoral for government to deny children the freedom to attend private schools, how is it less so to deny them the choice of suburban schools?

In addition to discussing the best vision for equalizing educational opportunity, the day's final panel also debated how to achieve that vision. Of particular importance to the aspiring lawyers in the room was the question of the usefulness of litigation in achieving educational reform. Germaine Ingram, of the Children Defense Fund's Black Community Crusade for Children, argued that courts are often not the best forum for achieving justice. She said that she advises clients who tell her that they "want justice," that "I can't assure you justice; probably the best I can assure you is good process." Another litigator, Nancy Fredman Krent, reached similar conclusions. Krent, who has both sued and defended school systems, explained that though she makes her living litigating, she doesn't think it is an effective way to reform school systems. According to Krent, cases take too long; if you start off your career as a first year associate, and get handed a case file on a school system lawsuit, that file will still be there when you become a partner. Meanwhile, the students who are your clients will have long graduated before the case is resolved. Krent cautioned that *Brown v. Board of Education's* impact a generation of lawyers may have caused us to mistakenly assume that litigation is the answer.

The final critique of litigation was offered by Ryan, who suggested that the problem was not that reformers could not win in court, but rather that even when they did, limits of the legal process mean that their court victory may not produce as much change as they had hoped. For Ryan,

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 might get exactly what you ask for, but you may not have asked for very much. . . . 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 the court victory results in legislative change.

At the same time, as the panel recognized the limits of litigation, California litigator Hector Villagra cautioned that failures in the political system sometimes leave public interest lawyers with little choice but to go

to court. Villagra spoke for many when he discussed the “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.

Villagra’s comment also resonates with a final theme of the Symposium, which was how the various participants kept up the energy to struggle for change, given the daunting obstacles. While the answers were varied, I was particularly struck by Ehrenfeld’s. She recognized that, “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.’” But, what keeps her 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.’”

I don’t work with first graders like Ehrenfeld, and I don’t represent clients anymore like Villagra. But what keeps me going is watching students like Donny Gonzalez graduate from high school when the world said they could not. The quote at the beginning of this Foreword is excerpted from Gonzalez’s graduation speech, which he delivered in the summer of 2002. Here is a longer excerpt from the speech:

In the year 2001, my counselor at Theodore Roosevelt High notified me that my classroom performance was inadequate, that I would not graduate, and that I should consider a GED. Today I will be walking across this stage to receive my official high school diploma. It will be a magnificent sight, not just because this is a respected ceremony, but also because it will be a contradiction . . . an oxymoron . . . an inconsistency. I wasn’t supposed to make it. I was supposed to be pulled in by the drugs on my streets, the liquor stores on every corner, the poverty in the neighborhoods. I was supposed to have failed at the underfunded and mismanaged schools I attended by default. My spirit was supposed to be broken by disrespectful, misguided, stereotyping police officers. I should have failed! But I did not. I endured . . . like the tree did, although the odds were against it. Now it is my job to pave the way for young leaders to come. I have to be l’homme engagé—the intellectual man of action. Whatever I

do in life, I will never divorce my actions from politics, and never stop taking a critical look at the world I live in.¹²

The inadequate, won't graduate, best-you-can-hope-for-is-a-GED Gonzalez, is now a freshman at the University of the District of Columbia. If that doesn't keep you going, nothing will.

12. The entire graduation speech is available at www.seeforever.org.