

CHILD POLICY FORUM OF NEW YORK

Publication of the Children's Studies Center
Brooklyn College of The City University of New York

**Edited Proceedings of the
Fourth Child Policy Forum of New York**

**The Human Rights of Children:
On the 55th Anniversary of *Brown v. Board of Education*
and the
20th Anniversary of the
U.N. *Convention on the Rights of the Child***

**A Children's Studies Cosponsored Event
In Collaboration With
The Schomburg Center
for Research in Black Culture of the New York Public Library
515 Malcolm X Boulevard
New York, New York 10037**

November 14, 2009

In Memoriam
John Hope Franklin
(1915-2009)

**The Human Rights of Children:
On the 55th Anniversary of *Brown v. Board of Education* and the
20th Anniversary of the U.N. *Convention on the Rights of the Child***

The Children's Studies Center of Brooklyn College, The City University of New York (CUNY) and the New York Public Library Schomburg Center for Research in Black Culture, organized the *Fourth Child Policy Forum of New York* on the occasion of the exhibition *Courage*, which was created by the Levine Museum of the New South, Charlotte, N.C. The exhibit is about a congregation and its pastor and their lawsuit, which was the first of five lawsuits that led to *Brown v. Board of Education*. Sarah H. Ramsey and Douglas E. Abrams, editors of *Children and the Law*, note that *Brown* vindicated children's substantive constitutional rights [in the United States].

November 20 is the 20th anniversary of the adoption by the U.N. General Assembly of the U.N. *Convention on the Rights of the Child* (CRC), a human rights treaty for children (ages 0–18), which has since been ratified by 193 countries — with the exception of the U.S. and Somalia.

Discussion included *Brown v. Board of Education* and the U.N. *Convention on the Rights of the Child* and their implications for children and young people today, along with perspectives from key legislators on major issues, with a focus on children in New York City and State.

Gertrud Lenzer, Director
Children's Studies Program and Center
Brooklyn College

Forum Introduction

Gertrud Lenzer, moderator
Professor, Brooklyn College and The Graduate Center, CUNY
Director, Children's Studies Program and Center
Brooklyn College, CUNY

Good afternoon, I am Gertrud Lenzer, the director of the Children's Studies Center of Brooklyn College and The City University of New York. It is my distinct pleasure to welcome and introduce to you a wind ensemble that comes from Public School 46. The principal, Mr. Young, is there and we welcome you as well. This wind ensemble is a part of a thirty-member band at P.S. 46. They will introduce and provide a musical prelude to our *Forum*. I would like to state very, almost say categorically, they're not just a musical adornment. Since this whole *Forum* is really for the purpose to talk about the human rights of children, they are young people and the children who we are talking about. So, they are a very important part of these proceedings.

I'd like to welcome and introduce to you to Ned Ellis, who is the music teacher of the ensemble. He will be accompanied by Sarah Beaty. She is the artist of the Carnegie

Hall Academy. Let me just say very briefly that Carnegie Hall, together with the Juilliard School and the Weill Institute of Music, have this tremendous and fabulous initiative. They select highly accomplished musical fellows — that means those who have probably gone through Juilliard and other major musical education institutions — and these fellows work together within the New York City Public School System with music teachers. So, I would like to welcome Sarah Beaty, a Carnegie Hall Academy artist. Last, but certainly not least, I would like to welcome the students in the wind ensemble: Rashad Bey, Dania Dilone, Jada Fraser, Christian Uruga and Christopher Valentin. The wind ensemble will perform...

Ned Ellis: “Take the A Train” by Billy Strayhorn

(The P.S. 46 Wind Ensemble performs, “Take the A Train” by Billy Strayhorn)

George Young
Principal of Public School 46

Thank you so much and good morning everyone. I just wanted you to know that it is a great honor to have our children here to perform for you. At P.S. 46, we are located on the Polo Grounds. Not only is it very important for us to have an extremely rigorous academic program for our children, but we also immerse them in a very rich performing arts program. You just saw a little snapshot of it, so thank you very much and have a good day.

Welcoming Remarks

Howard Dodson
Director, Schomburg Center
Welcome to Schomburg Center
55th Anniversary of Brown v. Board of Education
Courage Exhibition

Good afternoon ladies and gentleman. For those of you who do not know, my name is Howard Dodson. I am the director of the Schomburg Center and it is my pleasure to welcome you here today for this *Fourth Child Policy Forum of New York*. About a month ago, we opened two exhibitions here at the center, both of them dealing with the question of education and the struggle for quality education, specifically for African Americans in this country. One of the shows is actually curated and produced by the Levine Museum in Charlotte, North Carolina. They chose to organize the exhibit around the story of a community of African Americans in South Carolina who filed a suit in the 1940s. They basically asked that the Board of Education of that community provide a bus so that the African American kids who lived in that community could, in fact, be transported to the predominately white school, which was a well-funded, well-supported, well-developed physical plant with all these supports — in contrast to the really second class school that

the children had been attending for so many years. That suit by that community was the first of five that eventually became the *Brown v. the Board of Education* case that eventually appeared in the Supreme Court and changed the whole structure of racial segregation in American schools; I would like to say forever, but that has not actually been the case. The exhibition is here at the Schomburg Center and will be here through the end of next month and is in our main exhibition hall as well as in the Latimer/Edison Gallery. I extend an invitation to you to stop by and take a look at it before you leave.

The second exhibition is one that we here at the Schomburg Center decided to curate, specifically to pose the question: What have been the experiences of African Americans in New York City in the pursuit of quality education? This show goes back to the Colonial Period, looks at the efforts of the society for the propagation of the gospel in foreign parts, the missionary armor of the Anglican Church of England here during the colonial period, and comes through the 18th, 19th and 20th century efforts, through law, social action and through other means, to try to provide quality education for African American children in this city. It is an exhibition that certainly will be controversial and probably provocative, but one that I feel we need to be at least engaging in the content of it at this stage. We are in the 21st century and there has been a dramatic change in the demographics of the city and the school system. The Board of Education, and its functioning, is attempting to adapt itself and address the needs of that community and I thought it important for us to provide some kind of background to where we are today. That exhibition is in the American Negro Theater Space downstairs and I extend an invitation to you to check that out.

It was in the context of that exhibit opening here that we received a call from Gertrud Lenzer, who is a friend and associate of the director of the Levine Museum, proposing that we cosponsor this *Fourth Child Policy Forum*. We were of course delighted to join with her and the Children's Studies Center at Brooklyn College to present today's program. Why? Because I would argue that in the 21st century, certainly one of the major, if not the major, human rights challenges facing American society is the challenge of providing basic human rights to its children. We are still struggling here in the United States with even agreeing on what are the actual universally accepted principles of the human rights of children. We have not, by way of example, signed the U.N. *Convention on the Rights of the Child*. It is certainly important for us to have that kind of dialogue and there is no better time to start it than today. So, our program is really organized to do some of that activity.

I want to bring up now the individual who has been central in bringing the program to us, and as equally important, framing the structure of the program and keeping this particular issue on our city's agenda. She is Dr. Gertrud Lenzer, the founder and director of the Children's Studies Program and Center at Brooklyn College, where she is also a professor of sociology, both there and at The City University Graduate Center. In 1991, she led Brooklyn College's efforts to become the first academic institution to develop an interdisciplinary liberal arts Children's Studies Program. Professor Lenzer also founded the sociology of children as a new field and a section of the American Sociological Association in 1991 and was designated its founding chair. She has received numerous

awards and fellowships and can be very easily recognized as one of the leading figures in the field of sociology of childhood and in the efforts to advance the interests of children in this country. Please welcome to the podium at this time, Dr. Gertrud Lenzer.

Gertrud Lenzer

Mr. Dodson, thank you for this wonderful introduction to our *Forum* and much undeserved comments on my own personal achievements. On behalf of the Children's Study Center of The City University of New York, I would like to extend to all of you assembled here a warm welcome to the special occasion of the double exhibit, that you just heard about from Mr. Dodson, of *Courage* from the Levine Museum of the New South and the special exhibit, curated especially here at the Schomburg Center, on the conditions of African American students in the New York City public school system. Before anything else, I would like to extend our thanks to the Schomburg Center of Research and Black Culture and its director, Mr. Howard Dodson, for cosponsoring this discussion of the legacy of two historic projects and events. For one, the U.S. Supreme Court decision, *Brown v. Board of Education* of 1954, and on the other, the adoption of the United Nations *Convention on the Rights of the Child* by the United Nations Assembly on November 20, 1989, of which we have the twentieth anniversary next week — both of which were designed to solidly establish and advance the human rights of children in this country and across the globe. In particular, we would like to express our deep gratitude and welcome to Howard Dodson again, the director of the Schomburg Center of the New York Public Library; to University Dean for Academic Affairs of The City University of New York, Dr. Joan Lucariello; to Deputy Mayor for Education and Community Development of the City of New York, Dennis Walcott; and to our glorious wind ensemble — again, many thanks and gratitude to P.S. 46 and the Carnegie Academy. Moreover, we are deeply grateful to our distinguished keynote speakers: Owen Fiss, Sterling Professor of Law at Yale University and Howard Davidson of the Center on Children and the Law of the American Bar Association in Washington. It is also a special honor to have the participation in a panel discussion of our distinguished New York State elected officials: the Honorable Senator Velmanette Montgomery, and the Honorable Barbara Clark and the Honorable William Scarborough, both members of the New York State Assembly. We also would like to welcome, in addition to our distinguished guests, our students, colleagues and friends — a warm welcome to the audience!

The purposes and mission of what brings us here together are two-fold. For one, we wish to commemorate the profound historical turning points in the position of children and young people, as they were established constitutionally by *Brown v. Board of Education* in 1954 and by the adoption of the United Nations *Convention on the Rights of the Child* in 1989, in the societies of all those that have signed the convention. One hundred and ninety-three countries have ratified this human rights treaty on behalf of children and young people since 1989. But secondly, and equally importantly, we wish today to measure the distance we still have to go and assess the large tasks that still lie ahead of us in order to fully realize the provisions and guarantees provided by the U.S. Constitution, by *Brown v. Board of Education* and by an ever evolving international

jurisprudence to children and young people by the *Convention on the Rights of the Child*. As we all well know, giant steps have to be taken to realize major established and guaranteed rights as they exist *de jure*, to see them come into existence *de facto*.

In fact, the arc of today's consultation — *Forum* assessments, reflections and plans for the present and future well-being of our children and young people — will first focus on the United States with Professor Fiss's address "*Brown v. Board of Education* and Its Implications for Children Today." From there, Howard Davidson, the director of the Center on Children and the Law of the American Bar Association, will connect the national with the international human rights agenda on behalf of children in his address, "Does the United Nations *Convention on the Rights of Child* Make a Difference and What Would United States Participation Mean?" Three, from there the discussion will circle back — that is from the national to international then circle back to focus on the conditions and needs of children and young people in our State and City of New York. To this end, we have had the good and great fortune to enlist the help of three New York State elected officials. Assemblyman William Scarborough in the Assembly and Senator Velmanette Montgomery in the Senate are both chairs of the important standing committees in the New York State Legislature on children and families. We are also particularly delighted that Assembly Member Barbara Clark is a member of this panel. Since 2005, Barbara Clark has been spearheading legislation, against all the odds and pushbacks, for the establishment of an independent Office of the Child Advocate in the State of New York. This child ombudsman's office would officially and independently represent children and young people, give them a voice, provide oversight and accountability to the numerous public and private agencies, which attend to the children of the state and see to it that major systemic changes be devised and implemented on their behalf. Thank you, Barbara Clark for all your efforts. In short, the arc of the discussion today attempts to connect all significant and important areas, and in particular, tries to tie together the local, state, national and international strands of developments, all of which wish solidly to establish and promote the human rights of children and young people.

One last word — we have the honor of dedicating today's consultation and *Forum* to the memory of Professor John Hope Franklin, the distinguished African American scholar and activist who died earlier this year. I am sure, had he been alive today, he would have been with us today. We are taking the privilege of including him in today's proceedings. Not only was he a friend and promoter for our Children's Studies Program and Center, but much more importantly for today's events, he was intimately involved in the fight to bring about the decision of *Brown v. Board of Education*. It was in 1953 and 1954, that he worked closely with Thurgood Marshall, then at the NAACP Legal Defense Fund, to help to prepare the arguments that led to *Brown*. I should also mention that this is another anniversary; it is the 100th anniversary of the establishment of NAACP. Last, but not least, Professor Franklin's entire life, until the very end, was dedicated to breaking down the color line in the United States, as so memorably chronicled in his autobiography, *Mirror to America*. He led a life of courage and dedication and is a model for all of us. And this is why we wish for him to be in our memories today and inspire us.

Let me conclude my introduction by conveying to you our deep concern about the troubling conditions of children and young people generally, and children from minorities in particular, in our society, state, city, our systems of education, our systems of child welfare and juvenile and adult justice. Indeed, segregation has ended *de jure* with *Brown* in the public schools, the *Civil Rights Act* of 1964, and the *Voting Rights Act* of 1965 — generally. Yet, we must have the courage to face that segregation by race, ethnicity and by economic, social and cultural conditions persists in a measure that should not be permitted and not be tolerated to exist. Therefore our *Forum* today, although informed by research and analysis, is also informed by the hope that our audience will actively be involved to help change these adverse conditions our children and young people find themselves in and to help to create a world for them in which human rights have become a reality. Please join us, and let us start at home, thank you.

It is now my privilege to introduce to you and welcome, University Dean at The City University of New York, Dr. Joan Lucariello. She will bring greetings from The City University, thank you very much.

Joan M. Lucariello
University Dean for Academic Affairs, CUNY

Good afternoon, I am both delighted and honored to be here to represent The City University of New York. I want to send particular greetings to you from our Chancellor, Matthew Goldstein; from our Executive Vice Chancellor and University Provost, Alexandra Logue; and from our Senior Vice Chancellor, Jay Hershenson. A lot of Vice Chancellors there — it is like working for a foreign government. We are very proud at CUNY of the great work being done at the Children's Studies Center and of its director, Dr. Gertrud Lenzer. Today, we highlight the policy work of the center and its link to the community, as evident by our being here at the Schomburg Center and hearing from its director, Mr. Howard Dodson. Indeed, I am very honored to be here at the center today. We are celebrating two anniversaries today: *Brown v. Board of Education* and the U.N. *Convention on the Rights of the Child*. I think our speakers are eminent legal minds — Professor Fiss and Mr. Davidson — and our honorable legislators, Scarborough, Clark and Montgomery, will guide us in understanding both the past accomplishments in relation to children's human rights in historical context, but also the current challenges that we face, which from all that we know and that we have heard today are still pretty significant challenges. I am very grateful for the invitation to be here today and I look forward to the presentations of the speakers to come. I also want to mention that Deputy Mayor Walcott is here, and I look forward to working with him in my new capacity as University Dean, in particular, on education for children in New York City. Thanks again.

Opening Remarks

The Honorable Dennis M. Walcott

**Deputy Mayor for Education and Community Development
Office of the Mayor, New York City**

Thank you very much and good afternoon to all of you. It is really an honor to be here and, to the Professor, to Howard Dodson, to the distinguished speakers, to Dean Lucariello, to the assembly members and the state senator who will be here later on and to all of you, I am here to bring you greetings from myself and also on behalf of Mayor Bloomberg. What I would like to do — Principal Young and I were talking a little while ago because we have known each other roughly fifteen years and I think we have a golden, golden opportunity on this 55th anniversary to reshape the direction of where we are taking education, especially in New York City — while we have improved a lot of what is going on in education, we realize we have a long way to go.

Before I came here to the Schomburg this morning, I was up at Riverbank State Park and I was at the New York Urban League Children's Aid Society at this historically Black College Fair where there were close to 4,000 families, children and adults walking in and out and really surveying the scene as far as the types of colleges they want their children to go to. To me, it was really an exciting thing. As the prior president of the New York Urban League, I've seen this college fair just grow and grow, with the interest on the part of the community on how they can participate and learn more about colleges. At the same time, I balance that excitement that I saw up at the fair with the reality that we have a lot of challenges left in our educational system to tackle. And not just in education, but we have challenges in our city and our country as far as making sure that our children are able to get to school to be educated, so that way they can take that rung up the ladder. If you take a look at New York City — even though crime is at a record low — if you really look at that data and the figures, you will see that roughly 53 percent of the perpetrators of gun violence are people twenty-five and under. Thirty-seven percent of the victims of gun violence are twenty-five and under and a majority of those are children between the ages of fifteen through nineteen. That is just totally unacceptable in our society. So we have a dual responsibility to make sure that we are educating our children, but we also have a dual responsibility of making sure that we are providing safe communities for our children to be able to go to school.

That is why we look forward to partnering with the City University system, with our cultural institutions, with all of you as far as making this city a better place for our children, especially with the 55th anniversary in front of us, but more importantly with the opportunities of reshaping the direction of education from this point on. We are no longer talking about a 20th century problem, we are talking about a 21st century problem, and I think all of us in our respected positions have a responsibility to dedicate ourselves to improving education to make sure that it is a level playing field for all of our children and to providing equal opportunity for all of our children. So I am here today to pledge the support of our administration and make sure that we partner collaboratively with all the individuals to make sure that all of our children benefit and all receive a quality education and live the dream of *Brown v. Board*. Thank you very much and thank you very much for organizing this conference.

Keynote Speakers

(Keynote speeches were submitted for publication by the speakers.)

Gertrud Lenzer

We now have the pleasure and the honor to hear two distinguished keynote speakers. Our first speaker is Owen Fiss, Sterling Professor of Law at Yale University. He was educated at Dartmouth, Oxford and Harvard. He clerked for Thurgood Marshall when Marshall was a judge of the United States Court of Appeals for the Second Circuit and later for Justice William J. Brennan, Jr. He also served in the Civil Rights Division of the Department of Justice. Before coming to Yale, Professor Fiss taught at the University of Chicago. At Yale he teaches procedure, legal theory and constitutional law and is the author of many articles and books on these subjects, including most recently, *Troubled Beginnings of the Modern State; Liberalism Divided; The Irony of Free Speech; A Community of Equals; A Way Out: America's Ghettos and the Legacy of Racism; Adjudication and its Alternatives* (with Judith Resnik) and *The Law as it Could Be*. Professor Fiss also directs extensive law school programs in Latin America and the Middle East at Yale University.

Owen M. Fiss

Sterling Professor of Law, Yale University

Brown v. Board of Education and Its Implication for Children Today

Owen M. Fiss: Thank you very much and good afternoon.

Brown in the Age of Obama*

In May 1954, at the time of the Brown decision, America was marked by a racial caste system that had its origins in slave times.

Society was racially stratified. Whites occupied the positions of power and prestige while blacks were grouped at the lower ranks. There were many whites who lived impoverished lives, but because almost all blacks lived that way, their disadvantaged status defined them as a group.

Like any caste structure, the chances for upward mobility primarily depended not on individual achievement, but rather on membership in the group into which individuals were born. Now and then, individual blacks miraculously scaled the heights – I have in mind the Jackie Robinsons of those days – but these individuals succeeded in spite of their membership in the disfavored group.

Moreover, as is true of any caste system, the racial hierarchy that then governed America was self-reinforcing and self-perpetuating. Membership in the disfavored racial group constituted a disadvantage any individual had to overcome in order to succeed, and

the failure of these individuals to succeed had the effect of perpetuating the subordinate position of that group. Sometimes the disadvantage blacks faced arose not directly from race, not even implicitly, but rather from the lack of skills and resources attributable to earlier practices that had excluded them because of their race from jobs or schools or relegated them to the most inferior opportunities.

Viewed from this perspective, the *Brown* decision that we honor today should not be seen as just an education case, making certain that the schooling of black children is equal to that of whites, but rather as a broad edict condemning the racial caste system. This edict was of transcendent significance in American society and brought into being what has been called the Second Reconstruction – a massive reform program in which all the branches of government participated and which received much of its energy and direction from a social movement inspired by *Brown* and spearheaded by the black community.

The Second Reconstruction was not confined to schools but sought to eliminate the disadvantage suffered by blacks in almost every domain of social life — schools, yes, but also public accommodations, employment, housing, police practices, the judicial system, transportation, social services, even voting. The target of reform was not just decisions based on race, but also those decisions based on seemingly neutral criteria, such as performance on standardized tests, because they also had the effect of relegating blacks to the lowest economic and social strata or excluding them from participating in the social and political life of the nation. Efforts were also made during the Second Reconstruction to counteract the self-reinforcing character of caste by giving blacks limited but indeterminate preferences in the competitive processes that controlled access to the most prestigious and powerful institutions in the country.

Maintaining the force and vitality of the Second Reconstruction was never an easy matter and by the late 1960s this extraordinary endeavor began to falter. The assassination of Martin Luther King in 1968 deprived the civil rights movement of its most charismatic leader and the election of Richard Nixon in November of that year institutionalized his so-called Southern Strategy. For the next 25 years, excepting only the Carter intermezzo (1976-1980), the White House remained in the hands of the Republican Party, no friend of the Second Reconstruction. The republican presidents used their power to stymie or even roll back many of the reforms of the Second Reconstruction. They hesitated in the enforcement of the law and made a number of crucial appointments to the Supreme Court and to the lower federal courts that had the singular purpose of cabining the *Brown* decision.

The turning point came in 1974 with the Detroit desegregation case. That decision created a near impenetrable barrier between black inner city schools and white suburban schools. It also placed beyond the reach of the *Brown* decision any intra-district school segregation that was attributable to the neighborhood school plan. Fortunately, the democrats controlled Congress for much of this period and through a series of measures such as the 1982 amendments to the Voting Rights Act of 1965 and the Civil Rights Act of 1991, Congress assumed responsibility for civil rights. The congressional role, however, was largely defensive, trying to preserve the achievements of an earlier era and Congress most assuredly stayed far away from politically explosive issues such as metropolitan school desegregation. Even this source of support, limited as it was, ended in 1994, with the election of the Newt Gingrich Congress and the passage of the welfare

reform law of August 1875. When President Clinton signed that measure into law, the curtain was brought down on the Second Reconstruction.

This final turn of events is surely to be regretted. But it should not obscure the fact that over the life of the Second Reconstruction and largely due to its many policies, scores and scores of blacks have risen to the upper echelons and in fact obtained many of the most prestigious and powerful positions in American society. Many describe this achievement by heralding the creation of a "black middle class," with the understanding that the word "middle" often understates the matter. Most Americans, even the most wealthy and successful, consider themselves members of the middle class.

The election of Barack Obama on November 4, 2008, is the most stunning example of the rise of a black elite, but it only consolidated a trend in making. Even before his election, other blacks had achieved great success in American public life. Here I refer not simply to the world of entertainment and sports, but also to those, Thurgood Marshall for example, who had been appointed to the highest public offices of the nation. Blacks also became a significant presence in the student bodies and faculties in the leading universities in the nation, such as Harvard, Yale, Princeton, and Stanford. Blacks are now represented in all the professions, including medicine and law. It is now commonplace for Wall Street law firms – once all white – to have a good number of black associates and even some have black partners. Some of the most successful and powerful corporations in the nation are headed by blacks.

Under these circumstances, we can no longer say that America is governed by a racial caste system. Blacks now occupy the highest positions in the nation including the presidency. Admittedly, in many contexts, too many, race still operates as a disadvantage, but the social stratification necessarily implied by the idea of caste – whites on top, blacks on the bottom – no longer prevails. Such a development should of course be applauded – indeed I believe it is of world historic significance – but it should not blind us to the fact that a portion of the black community – sometimes referred to as the black underclass – has not changed. They remain at the lower ranks of society measured in terms of income, educational achievement, or occupational status. Many whites are poor, but a disproportionate number of blacks find themselves in this position and that sets them apart as a distinct group. In contrast to the stratification present at the time of Brown, however, the most disadvantaged group in American society – the black underclass – is not just defined by race but also by economic and social parameters.

The policies of the Second Reconstruction that brought into being the black middle class must be continued. This will have the effect of consolidating the gains of the last 50 years and enlarging the number of black families that can move upward. For that reason, we must continue to counter those practices that have the purpose or effect of disadvantaging blacks and continue the system of giving preferences to blacks in order to enhance their access to elite institutions. Yet this will not be enough. We must also create genuine opportunities of upward mobility for the sector of the black community that remains impoverished and confined to the lowest social and economic strata of society. This is the challenge of what might be called the Third Reconstruction.

The reforms of the Third Reconstruction must embrace all facets of social life – education, jobs, housing, social services, police practices, even transportation. However, to illustrate the distinctive character of the reform program I contemplate we might well focus on education. It was the starting point for the Second Reconstruction and of course

the immediate context of Brown. But unlike Brown, we should not focus on racial integration in the abstract. We must situate the disadvantaged group geographically and recognize that poor black families are not randomly scattered throughout society but are likely to be concentrated in the inner city. This means that if school boards continue to assign students on the basis of the neighborhood school plan, then we are likely to confront extremely high concentrations of children from poor black families in the public schools of the inner city. With such concentrations, peer learning will be minimal, maybe even negative, and in any event confront individual classroom teachers with enormous challenges, both in maintaining decorum and imparting the necessary skills.

Accordingly, in the Third Reconstruction we must encourage, and if necessary require, departures from the neighborhood school plan in order to avoid such concentrations. As part of this effort we must break down the divide between inner city schools and the suburbs. At the same time, we must commit additional resources to inner city schools in order to radically reduce class size and attract teachers who are able to meet the extraordinary challenges of the classroom. The charter school movement is often defended as a means of avoiding the bureaucratic rigidity and malaise of the public school system, but in truth it owes much of its success in the inner city to the unique financial capacity of charter schools to respond to the special needs of inner city students. The public schools should also have the abundant resources needed to do their job. Equal per capita expenditures throughout a school district ignore the special needs of students in inner city schools and thus should not be taken as the true measure of equality.

Account must be taken of the family structure that typifies inner city communities – a single parent, often of a limited educational background and at best with a low paying job. In practical terms this means that we must support and enlarge those programs such as Head Start and Educare, that begin school at the earliest possible moment. Parents must also be part of these programs. Parents must come to understand what is expected of them and be in a position to discharge these responsibilities – getting children to school on time, emphasizing the importance of education, making certain that their children have the necessary environment to do their homework, perhaps even helping with the homework. No educational program, whether it be preschool or at the elementary and secondary school levels, maybe even at college, will be successful unless the parents actively support and participate in the program.

In addition, the Third Reconstruction must support parents in their efforts to protect their children from the violence that often inflicts their neighborhood and to stop the recruitment of their children by the criminal gangs that often operate in the inner city. Law enforcement policies must be adjusted accordingly to respond to these needs, although never in a way that compounds the dynamics that add to the burden of the families in the inner city. The full weight of the law should be felt by those who come to the inner city to purchase drugs or participate in other criminal activities or by those who head and manage the various criminal enterprises that pervade the community. Those who work the streets should of course be intercepted and prosecuted, but they should not be subject to the especially long prison sentences associated with the war on drugs. The disproportionately high rates of incarceration of young black men in part accounts for the joblessness that pervades these communities and to the dominance of the single parent family – a phenomenon that only increases the burdens on the schools serving the inner city.

As is clear from the example of education, in formulating the policies of the Third Reconstruction the temptation will be great to ignore race and to structure the reform program in terms of class. The thought is that we should, for example, pursue economic rather than racial integration, or provide abundant resources to the schools of the poor, rather than those of blacks who are poor. Or, as some have argued, affirmative action policies applicable to universities should be reformulated so that preferences are given to the poor, rather than to blacks who happen to be poor.

President Obama has not spoken to these issues with any clarity, but he seems inclined toward class-based policies. This became evident when he retold the story of Ashley at the conclusion of his most sustained speech on race, *A More Perfect Union*, delivered in Philadelphia in March 2008. Ashley, you may recall, is a white woman who worked for the Obama campaign and who was, at the time of the speech, twenty-three years old. When she was nine, her mother was diagnosed with cancer, soon lost her job and her health insurance. Dirt poor, the family tried to cut food costs and Ashley, trying to do her part, convinced her mother that she loved to eat mustard and relish sandwiches. The speech, which had begun by trying to account for the grievances blacks felt, ends with an elderly black man, called on to explain his reason for participating in the Obama campaign, saying, "I am here because of Ashley."

Superficially, the shift from race to class may seem to hold great political advantages. If we assume that self interest is the guide for most voters, and people identify with the racial group to which they belong, such a shift would broaden the electoral base that might support social reform programs. Whites will not support race-specific policies, but class-based reforms will have the support of all the poor, both white and black. What this position does not account for, however, is that the magnitude of the reforms that would be necessary to improve the life chances of poor black families if class-based rather than race-specific policies are pursued. For example, a class-based affirmative action program would have to be much more extensive than a race-based one in order to achieve the same benefits for blacks who are poor and that increase in the scope of the program is likely to create its own political opposition.

Some account must also be taken of the imperatives of justice that drive race-specific policies. Race is in large part the cause of the poverty of the so-called black underclass and continues to operate as a source of disadvantage and a barrier to their upward mobility. Of course, poverty may pose barriers to upward mobility too, but the demands of justice may be different. Justice may not call for a remedy when the economic status of an individual is due to some deliberate choice on his or her part – when, for example, an individual decides to become a poet rather than an engineer. Moreover, even when poverty is entirely faultless, as is true when it is the condition into which a child is born or is experienced by the disabled, it does not make as strong an appeal to justice as when the source of disadvantage is race. The condition of being poor, that is, of lacking economic resources, may impede upward mobility, but people are not disadvantaged by others because they are poor. Poverty is not a badge of inferiority. But blacks may well be disadvantaged because they are black and thus members of a despised minority. In that sense, it's worse to be poor and black, than simply poor.

The so called black underclass bears the burden of America's history of racism and for that reason makes a special appeal to justice. Considerations of justice not only make the judicial remedy available, as they did in Brown, but they are also an important

engine of American politics. The Second Reconstruction was the work of not just the courts, but also of the legislative and executive branches, as well as of a protest movement of ordinary citizens, both white and black. Considerations of justice got people beyond self interest and the politics of racial polarization and led them to make sacrifices that would otherwise be unimaginable. Considerations of justice also led to the great awakening that made Barack Obama's election possible and will be necessary to bring the Third Reconstruction into existence and to enable us to fulfill the promise of Brown.

* Unedited address as submitted by Owen M. Fiss

Gertrud Lenzer

Professor Fiss, thank you very, very much indeed for your magnificent analysis and recommendations and your announcement of an era of a Third Reconstruction, based on the principle of justice.

May I now introduce Howard Davidson. He is the director of the Center on Children and the Law. He has been involved in child advocacy law for thirty-five years and during most of this period, he has directed the Center on Children and the Law of the American Bar Association in Washington. The center, which recently celebrated its 30th anniversary, works on improving laws and courts systems serving children, on enhancing legal system responses to child abuse and neglect, child sexual exploitation, foster care and adoption, as well as the legal representation of children and other child-welfare related activity. He publishes the *ABA Child Law Practice* periodical. The center operates the federally supported National Child Welfare Resource Center, which works on legal and judicial issues and educates the bench and bar on adolescent health and infantile development, as they relate to children involved with the law and the courts.

You have Mr. Davidson's biography in hand, but let me just add this: Howard Davidson has been, for many years, a wonderful colleague and friend. We have been involved in many conferences on children's rights and ombudsman for children, and I'll say that he is one of the most distinguished experts on child welfare systems, laws and everything that's around us in this United States. May I welcome Howard Davidson and please welcome him as well.

Howard Davidson, J.D.
Director, American Bar Association
Center on Children and the Law

*Does the U.N. Convention on the Rights of the Child
Make a Difference and What Would U.S. Participation Mean?*

Thank you. Thank you very much, Mr. Dodson. Thank you, Professor Fiss. It was an honor to listen to you and the distinguished guests, and especially the students. Raise your hands, students! We have a lot of students. How many of you think you may want to go to law school? Raise your hands. I don't see many hands. Ok, how many of you think you may want to go into work that helps children and families? All right. Good to see more hands.

I took the train from Washington to get here a little early because I wanted to walk around Harlem. I haven't been here since a long time ago. I'm guessing about forty years or more was the last time I was in Harlem. I went to the Apollo then and I do remember that. But last week, I read the book *Push*, by Sapphire, that has recently been made into the movie, *Precious*, and I felt that I really wanted to kind of walk the streets and look at the people now. The book *Push* was set about twenty years ago — about the same time the *Convention on the Rights of the Child* was promulgated by the United Nations. For those of you who haven't read the book, and I haven't seen the movie yet, even if you haven't seen the movie, you might have read reviews, and you know about the horrible life that this girl suffered, but how having meaningful people in her life made an incredible difference.

This was a fictional story, but this happens every day and so those of you who are in the audience who are students who want to dedicate your careers to help kids and their families, I commend you and I hope you will stay with it. You can do it by going to law school and becoming a lawyer. And, if you are ever interested in that route, please be in touch with me.

But, *Precious* suffers in the novel from a lack of recognition of her as a person, of her rights as an individual, and so she suffers horribly until people intervene. The *Convention on the Rights of the Child* is intended to make governments pay better attention to the invisible among us who are often marginalized children.

**Has the U.N. *Convention on the Rights of the Child* Made a Difference?
What Would U.S. Participation Mean?
20th Anniversary Observations***

Howard Davidson¹
Ashley Waddell²

The U.S. Supreme Court decision of *Brown v. Board of Education*³ was about equality. It was about giving every child an equal chance at life, liberty and the pursuit of happiness. It was about deciding that the law will no longer tolerate a system that allows

¹ Howard Davidson, J.D., is director of the American Bar Association Center on Children and the Law.

² Ashley Waddell is a J.D. candidate at Georgetown Law.

³ 347 U.S. 483 (1954).

some children to thrive, while failing to protect and nurture other children. In a way, the *Convention on the Rights of the Child* hopes to accomplish the same thing. While this treaty establishes a worldwide right to education, it also addresses every other area of law that touches children's lives. The *Convention on the Rights of the Child* seeks, like *Brown*, to take the first steps toward creating a world in which any child—even the most vulnerable refugee—can be aided to reach his or her full potential.

The *Convention on the Rights of the Child* (“CRC”) is a multilateral treaty designed to promote the protection of children worldwide. During the Reagan Administration, the United States played a major role in drafting the CRC,⁴ which quickly became the most universally ratified human rights treaty in history. One hundred ninety-three countries are party to it.⁵

As of the date of the 20th Anniversary of the Convention's promulgation, November 20, 2009, only two countries in the world have yet to ratify the CRC: Somalia (which does not have a recognized national government), and the United States. This is most unfortunate, given that since 1948 the United States has been a leader on the world stage in the promotion of special legal protections for children. That year, we were *instrumental* in the drafting and adoption of the first United Nations document that recognized protective rights for children, The Universal Declaration of Human Rights (“UDHR”).⁶ Article 25(2) states, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”⁷ In 1959, the U.S. voted with the rest of the world to adopt the Declaration on the Rights of the Child unanimously in the United Nations General Assembly. The Declaration asks parents and governments to ensure certain critical rights for children, such as name and nationality, access to healthcare, treatment for disabilities, free education, and protection from exploitation and neglect.⁸ Finally, the U.S. is a party to the International Covenant on Civil and Political Rights (“ICCPR”), which addresses the special status and protection of children in Article 24:

“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social

⁴ Luisa Blanchfield, Cong. Research Serv., *The United Nations Convention on the Rights of the Child: Background and Policy Issues*, at 1 (2009) (on file with the authors).

⁵ UNITED NATIONS TREATY COLLECTION, STATUS OF TREATIES, <http://treaties.un.org/> (click “Status of Treaties (MTDSG)” hyperlink under “Frequently Accessed”; then click “Chapter IV – Human Rights”; then click “11. Convention on the Rights of the Child”) (last visited Nov. 19, 2009).

⁶ See, e.g., Mary Ann Glendon, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001); Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 415 (1979).

⁷ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3rd Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) *available at*) [hereinafter UDHR]. The UDHR passed by a vote of 48 in favor, zero against, and eight abstentions. The United States voted in favor.

⁸ Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), at 19, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc A/4354 (Nov. 20, 1959) *available at* <http://daccess-ods.un.org/TMP/3311433.html>.

*origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”*⁹

The United States played a pivotal role in the drafting of the CRC between 1979 and 1989, when the treaty was adopted by the General Assembly.¹⁰ Specifically, the Reagan and George H.W. Bush Administrations actively contributed to negotiating the treaty’s text. Under these two Republican presidencies, the United States made textual recommendations for 38 of the 40 substantive law articles of the CRC, and contributed more new substantive provisions (which had not been in the original draft of the document) than any other country.¹¹ Specifically, we submitted initial proposals for the CRC articles that establish a child’s right to family reunification, freedom of expression, freedom of religion, freedom of association and assembly, privacy, protection from abuse, and periodic review of treatment.¹²

Although the Clinton Administration signed the treaty, it never submitted it to the Senate for its advice and consent to ratification because of strongly stated personal opposition led by then-Senate Foreign Relations Committee Chairman Jesse Helms.¹³ The George W. Bush Administration opposed the Convention, citing federalism, sovereignty, and parental rights concerns.¹⁴ However, that Administration pushed for ratification of the U.N. Optional Protocols on Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography. As a result, the U.S. ratified both Protocols in December 2002.¹⁵

Currently, as we mark the 20th anniversary of the CRC’s entry into force, the Obama Administration is conducting a legal review of the Convention to determine whether the President will submit it to the Senate for its advice and consent.¹⁶ The review will also determine the reservations, understandings, and declarations the administration will propose to condition the ratification of the CRC.¹⁷ This is nothing new; the U.S. always conditions ratification of international human rights treaties.¹⁸

⁹ International Covenant on Civil and Political Rights art. 24, Dec. 16, 1966, 999 U.N.T.S. 14688 (entered into force for the United States on Sept. 8, 1992) [hereinafter ICCPR].

¹⁰ *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 13* (Jonathan Todres, Mark E. Wojcik & Cris R. Revaz, eds., Transnational Publishers 2006) [hereinafter Todres].

¹¹ *Id.*

¹² *Id.* at 14.

¹³ Alison Dundes Renteln, *Who’s Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT’L & COMP. L. 629, 632-33 (1997).

¹⁴ *Id.* at 1, 6.

¹⁵ Todres, *supra* note 10, at 294.

¹⁶ Blanchfield, *supra* note 4, at 5.

¹⁷ *Id.*

¹⁸ BARRY E. CARTER, PHILLIP R. TRIMBLE & ALLEN S. WEINER, *INTERNATIONAL LAW* 178 (5th ed. 2007).

Why is it important that the United States finally, at long last, ratify this Convention? We hope to answer this question and also address some of the major critiques of the Convention offered by those who oppose our country's ratification.¹⁹

Simply put, the United States should ratify the Convention because its *international leadership* on the protection of vulnerable human beings is best practiced *from the inside*. When we fail to ratify a major human rights treaty, we pay great foreign policy costs.²⁰

First, the U.S. is precluded from playing an influential role in the creation of highly relevant, evolving international human rights law for children because, as a non-party to the core underlying treaty, it cannot participate in the institution that interprets the treaty, the international Committee on the Rights of the Child. The Committee also establishes inter-country norms and decides upon the need for and development of additional related protocols or other instruments.²¹

Second, non-participation in the Convention's implementation impedes the full success of American diplomacy, because the U.S. cannot credibly encourage other nations to embrace human rights norms for children if it has not itself embraced those norms.²² Acknowledging the importance of joining major human rights treaties, so as to strengthen the legitimacy of U.S. foreign policy around the world, during the 2008 presidential campaign, then-candidate Obama specifically remarked on the U.S. non-ratification of the CRC, saying "It is embarrassing to find ourselves in the company of Somalia, a *lawless land*. I will review this treaty and other treaties to ensure that the United States resumes its international leadership in human rights."²³

The U.S. has ratified four major human rights treaties in addition to the two Optional Protocols of the children's convention: the Genocide Convention in 1988, the International Covenant on Civil and Political Rights in 1992, and in 1994 both the Torture Convention and the Convention on Elimination of All Forms of Racial Discrimination.²⁴ A good example of how the U.S. has become a leader in implementing human rights treaties it has ratified is the progressive work we have accomplished after ratifying the Optional Protocol on the Sale of Children, Child Pornography, and Child Prostitution in 2002.

Since that time, significant child protection related amendments to the U.S. Trafficking Victims Protection Act have become law, the U.S. PROTECT Act has strengthened the work of those who prosecute sexual exploitation of children, and the

¹⁹ The views expressed here are our own, but we do want to note that the American Bar Association has long supported U.S. ratification of the Convention on the Rights of the Child.

²⁰ Curtis A. Bradley & Jack L. Goldsmith, *Treaties, Human Rights, and Conditional Consent*, 149 U. Pa. L. Rev. 399, 414 (2000).

²¹ *Id.*

²² *Id.*

²³ Patrick Geary, *United States: Is Obama's Win also a Victory for Children's Rights?*, CHILD RIGHTS INFORMATION NETWORK, Nov. 7, 2008, www.crin.org/resources/infoDetail.asp?ID=18874&flag=news. A video of the statement is hyperlinked to the online article.

²⁴ Bradley, *supra* note 21, at 415.

Adam Walsh Child Protection and Safety Act has enhanced the oversight of convicted child sex offenders.²⁵ These and other federal and state laws have closed loopholes that had inhibited victim protection, increased penalties for those who would abuse and exploit children at home or abroad, and improved assistance programs for victims, including enhancing a special visa program for immigrant child victims of trafficking, abuse, neglect, and parental abandonment.²⁶

The U.S. should also ratify the Convention because it is, contrary to the naysayers' writings and website postings, an effective international instrument to advance the protection of children. Despite what the CRC fear mongers say about threats of forced U.N. interventions into individual family lives, no international police force exists to enforce provisions of *any* international human rights treaty.

Some treaties, including human rights treaties, provide countries with a cause of action to seek remedies in special tribunals to enforce the terms of a treaty. While human rights treaties create international law that can be enforced against parties through the mechanisms established by each treaty, they essentially represent agreements between countries to commit themselves to achieving *certain common aspirations*, and to – which is only fair – open themselves up to scrutiny by the international community as to whether they are living up to the provisions of the treaty.

Through the steady development of what legal scholars call “hard and soft law” at the national and local levels, the CRC has proven to be a powerful tool in the hands of child protective advocates and reformers over the past twenty years. To truly understand the impact of the CRC, it is important to understand the distinction between what legal scholars call “hard law” and “soft law.” Hard law is what we normally think of as law: legislatures write it, the executive branch enforces it, and courts interpret it and make final, enforceable judgments based on it.²⁷ Soft law, on the other hand, is often expressed in the form of declarations, statements, guidelines, and initiatives; it is essentially hortatory or aspirational, a “we hope you will comply, but we can't do anything to make you.” Much of its force is in *moral suasion, and shaming bad behavior* by shedding a light on it.²⁸

Despite lacking “enforcement teeth,” soft law can be very powerful when it comes to encouraging actions by governments to better protect vulnerable populations. It has incredible norm-creating value, as agendas of advocacy organizations and corporate codes of conduct are shaped and bolstered by soft law principals and policies.

Soft law is most frequently a precursor to instruments that may have elements of hard law,²⁹ just as the non-binding Declaration on the Rights of the Child was the precursor to the *Convention on the Rights of the Child*. While international treaties are not typically thought of as soft law, the CRC does not include a traditional enforcement mechanism, such as a right of action in an international tribunal or the threat of

²⁵ Todres, *supra* note 10, at 301-03.

²⁶ *Id.*

²⁷ JAMES B. ATLESON, ET AL., *INTERNATIONAL LABOR LAW: CASES AND MATERIALS ON WORKER'S RIGHTS IN THE GLOBAL ECONOMY* 8 (2008).

²⁸ *Id.*

²⁹ Dinah Shelton, *Normative Hierarchy in International Law*, 100 AM. J. INT'L L. 291, 320 (2006).

sanctions.³⁰ Perhaps the CRC's influence is most deeply felt in the not-easily-quantifiable area of soft law, as its very existence prompts norm-influencing discussion -- from the classroom to the legislature to hopefully the boardrooms of multinational corporations.

In addition to inspiring the creation of soft law to promote increased protection of children, the CRC generates its own soft law through the written reports and recommendations of the Committee on the Rights of the Child.³¹ The Committee is an 18-member body of child protection experts that reviews periodic reports by signatory nations, usually supplemented by independent reports from international and domestic non-governmental organizations. These recommendations often help international and domestic civil society set the priorities for change in a particular country.³²

For example, in a report released this year, Save The Children Sweden wrote that because of the CRC, the world's most vulnerable "[c]hildren have become more visible over the last twenty years."³³ This increased visibility has led to increased concern and action.

When countries actually undertake legislative reform in response to the Committee's recommendations, harmful practices, such as judicial canings and female genital mutilation, have been challenged and debated. Soft law becomes hard law when new legislative initiatives are successful. Indeed, three recent reports have surveyed the effects of the CRC on legal reform and, most importantly, on how legal reforms have improved the lives of children.³⁴

In the area of legal reform, the impact of the CRC is very impressive. Among 52 countries in Asia, Africa, Europe, the Middle East, and the Americas, UNICEF found that 21 had incorporated some or all of the CRC into their national constitutions.³⁵ Two-thirds had incorporated the Convention directly into their domestic law, and nearly every country had either adopted comprehensive children's codes based on the CRC, or was engaged in a gradual, systematic reform of existing law.³⁶

There have also been throughout the world, facilitated by language in the CRC, extensive reforms in the areas of civil rights, health care, education, family law, responses to abuse and neglect, sexual exploitation, and refugee law. In the area of civil rights, the right of a child to nationality through birth registry and citizenship is fundamental to the ability of children to engage in civil society and enjoy social benefits

³⁰ Todres, *supra* note 10, at 28.

³¹ *Cf. id.*

³² SAVE THE CHILDREN SWEDEN, WHAT HAPPENED? A STUDY ON THE IMPACT OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN FIVE COUNTRIES: ESTONIA, NEPAL, PERU, UGANDA AND YEMEN, 40 (2009) (on file with the authors) [hereinafter SAVE THE CHILDREN].

³³ *Id.* at 5.

³⁴ SAVE THE CHILDREN, *supra* note 32; UNICEF, LAW REFORM AND THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (2007) [hereinafter LAW REFORM]; UNICEF, PROGRESS FOR CHILDREN: REPORT CARD ON CHILD PROTECTION NO. 8 (2009) [hereinafter PROGRESS].

³⁵ LAW REFORM, *supra* note 34 at 13-16.

³⁶ *Id.*

such as schooling. The Convention has inspired law reforms to increase birth registrations in poor countries and, on the recommendation of the Committee, Sweden and the U.K. have discontinued the practice of not granting citizenship to children born in their territory to unwed native fathers and non-native mothers.³⁷

Several Convention-promoted law reforms have focused on improving health care for children, especially through free and universal immunization, AIDS prevention, pre- and post-natal care, and specialized care for children with disabilities. For example, several countries have recently passed legal provisions that make immunizations to help stop the spread of communicable diseases, free and mandatory. They include Nigeria, Indonesia, Japan, India, Egypt, and several Latin American countries.³⁸

Major legal reforms in the area of education have mainly involved state provision of free and compulsory primary education, raising the age of compulsory schooling, and increasing opportunities for girls and children with disabilities to attend school. Girls, children with disabilities, and poor children around the world continue to be denied educational opportunity. Chief Justice Warren remarked in *Brown* that it is doubtful that any child could “reasonably be expected to succeed in life if denied the opportunity of an education, and that such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.”³⁹ His words should inspire us to continue to fight for educational equity both at home and around the world.

In the area of family law, the Convention has promoted increased services and support for poor families and working mothers and important cutbacks in the use of state institutional care of children. A recent UNICEF report states: “[T]he provisions of the Convention concerning the family as the ideal setting for satisfying the needs of children, has struck a responsive chord, encouraging a shift away from reliance on State institutions to social programmes that provide benefits to children through their families.”⁴⁰ Thus, a new Romanian law has established parental rights to “raise and ensure the proper development of the child” as well as “receive information and specialized assistance that are necessary for upbringing, caring for, and raising the child.”⁴¹ A fairly recent law in Italy reinforces assistance to families with children with disabilities to reduce the institutionalization of such kids.⁴² Finally, many countries in Latin America and around the world are increasingly recognizing the *equal* rights and responsibilities of both parents to take care of their children, meaning that legal reforms to recognize the paternity and role of unwed fathers are underway.⁴³

In cases of abuse, abandonment, and neglect, countries working to comply with the Convention are adopting measure to increase family foster care and decrease institutionalization, of children who must be removed from their homes for their safety. For example, in Belarus, the law requires that “[c]hildren may be placed in an institution

³⁷ *Id.* at 35.

³⁸ *Id.* at 39-40.

³⁹ *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

⁴⁰ LAW REFORM, *supra* note 34, at 52.

⁴¹ *Id.* at 51.

⁴² *Id.* at 52.

⁴³ *Id.* at 53-54.

only when placement in a family is ‘impossible.’”⁴⁴ In addition, many countries, such as Slovenia, are developing laws to protect child victims in the criminal prosecution of child abuse cases. In that country, children under the age of 15 may not testify at trial; rather, their testimony is presented in the form of a pre-trial deposition.⁴⁵ Were it not for the CRC, we would also not have the current development, through UNICEF, of *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Commentary*.⁴⁶

Finally, the United Nations counts harmful and discriminatory customs and practices as forms of abuse which should be outlawed. These include female genital mutilation, forced feeding of young women, virginity testing of brides, ritual sacrifices of children, abandonment of children with birth defects, honor killings, and child marriages.⁴⁷ Among countries that have recently passed laws, inspired by the CRC, to ban these harmful practices are Burkina Faso, Togo, Ethiopia, South Africa, Nigeria, Nepal, Korea, India, Sri Lanka, Egypt, Lebanon, Jordan, and Bangladesh.⁴⁸

To specifically address the sexual exploitation of children, many countries have raised the age of legal consent for sexual relations, amended their criminal codes to include the sexual exploitation of minors through trafficking and pornography, and provided for increased enforcement against adult pimps and perpetrators of child sex abuse. Since 1990, Fiji, India, Indonesia, Japan, Nepal, Philippines, Korea, Sri Lanka, and Vietnam have passed new laws concerning the sexual exploitation of children.⁴⁹ One notable example is the revision of Sri-Lanka’s 100 year-old Penal Code which now criminalizes trafficking of children for the purpose of sex, provides for protection of victims of both sexes, raises the age of consent from 12 to 16 years old, and eliminates the requirement of physical injury to prove lack of consent to sex.⁵⁰

In Honduras, child rape victims no longer have to bring a complaint in order for their perpetrator to be charged; the responsibility for prosecution now rests with law enforcement.⁵¹ Several countries, such as Guatemala, are doing away with the practice of barring prosecution when the offender marries his child victim.⁵² Finally, many European countries have created new legislation to establish jurisdiction over their own nationals who commit child sex offenses while travelling abroad. These provisions are especially important to address child sex tourism.⁵³

There have also been many positive legal reforms for refugee and asylum-seeking children around the world. In Slovenia, children whose applications are denied are not

⁴⁴ *Id.* at 60.

⁴⁵ *Id.* at 68.

⁴⁶ U.N. Office on Drugs and Crime [UNDOC], *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Commentary* (April 2009) available at www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf.

⁴⁷ LAW REFORM, *supra* note 34, at 69.

⁴⁸ *Id.* at 70.

⁴⁹ *Id.* at 72.

⁵⁰ *Id.*

⁵¹ *Id.* at 73.

⁵² *Id.*

⁵³ *Id.* at 75.

returned to their country until safe arrangements can be made.⁵⁴ In the UK, children who cross borders unaccompanied are given priority in asylum interviews and can request reunification with family members in lieu of custodial detention.⁵⁵ Italian law now provides for humanitarian visas for vulnerable children who do not receive refugee status.⁵⁶ Canada's new Immigration Act explicitly requires that "all decisions concerning children should be guided by Article 3" of the Convention, which articulates the best interests of the child principle.⁵⁷

Unfortunately, because we have not ratified the CRC, *we were not a part of aiding any of those reforms*. This is a distressing failure of U.S. foreign policy, since we have so much expertise to potentially share through promotion of CRC reforms in areas where our country has developed model laws, policies, and practices.

Changing laws already on the books is only the beginning of reform; new laws have to be promulgated and enforced to be meaningful to children in need of protection from harm. While comprehensive studies that would yield a wide range of quantifiable data are still needed, there is positive, quantitative data in the areas of juvenile justice, health care, and child trafficking and exploitation. In the next section, we highlight some of these achievements.

Article 37's prohibition on torture or other cruel, inhuman or degrading treatment or punishment against children has caused a tradition of brutal judicial canings to become outlawed in South African and Uganda. In South Africa, children were sentenced to be caned in over 35,000 cases per year before the Supreme Court decided in 1996, based on a new provision on the rights of the child in their constitution, that the practice was unconstitutional.⁵⁸ In Uganda, beatings by law enforcement have also been outlawed as a sentence for children.⁵⁹

Article 24 of the Convention, establishing the child's right to health, has had significant impact. New laws prohibiting the practice of female genital mutilation have resulted in prosecutions in Egypt, Burkina Faso, Ghana, Senegal, and Sierra Leone.⁶⁰ In Egypt, the practice has already been reduced by 20 percent.⁶¹ New legislation in Nepal has led to 63% of households using iodized salt, which prevents goiter.⁶² The Indian Supreme Court referenced Article 24 when it held that free lunches must be provided to hungry children in government-run primary schools.⁶³

Article 32, recognizing the child's right to protection from economic exploitation, inspired legislation that created a national anti-trafficking agency in Nigeria. In the first

⁵⁴ *Id.* at 96.

⁵⁵ *Id.*

⁵⁶ *Id.* at 97.

⁵⁷ *Id.*

⁵⁸ *Id.* at 111.

⁵⁹ SAVE THE CHILDREN, *supra* note 34, at 33.

⁶⁰ PROGRESS, *supra* note 34, at 23, 28.

⁶¹ LAW REFORM, *supra* note 34, at 111.

⁶² *Id.*

⁶³ People's Union for Civil Liberties v. Union of India & Ors., (Nov. 28, 2001), *available at* <http://www.righttofoodindia.org/orders/nov28.html>.

twelve months of the agency's existence, it rescued hundreds of children who had been abducted and forced to labor in quarries and on plantations.⁶⁴

These are but a few examples of how the CRC is inspiring and guiding meaningful legal reforms that have significant positive consequences for children in need of greater protection. However, readers may be surprised that, despite these hugely positive effects over twenty years, the CRC has many detractors within our country.

Critiques of the CRC come in three general forms. First, some critics call the CRC ineffective because it has no enforcement teeth. Second, critics claim the CRC could undermine U.S. sovereignty and our principle of federalism. Third, some critics assert the CRC is anti-family and will reduce parental control over their children in favor of the State. I'll address each of these in turn.

Some critics claim the CRC is simply ineffective to stop the world's most horrifying abuses of children, such as child trafficking for sexual exploitation, compulsory child labor, child soldiering, forcible child marriage, and female genital mutilation, because it has no enforcement mechanisms adequate to end them.⁶⁵ While they are correct to say these atrocities violate the rights of children as set out in the CRC, the conclusion that their continued occurrence is evidence of the ineffectiveness of the Convention is wrong.

First, child trafficking and soldiering are largely perpetuated by *criminals and outlaws*, not governments that are State parties to the Convention. Likewise, harmful cultural practices such as female genital mutilation and child marriage are *carried out by families and religious groups*, not formally by governments.

Second, the Convention is the first step, never meant to be the last, in addressing these problems. The CRC is not a criminal enforcement statute; rather, by establishing positive legal rights for children to be protected from abusive and harmful treatment, it provides an important legal framework that legislators and reformers can and should use to advocate for domestic legislation, policies, and practices that enforce those rights within their own countries.

Other critics fear that our U.S. ratification could undermine United States sovereignty and federalism. These concerns are neither new nor completely invalid; however, the U.S. has adequately addressed them in the *other human rights treaties it has ratified* through the use of *reservations*. Reservations are an international treaty tool that allows countries to "harmonize" treaties with their domestic law and leave domestic implementation of treaty provisions to their legislatures.⁶⁶

Some reservations are more substantive, explicitly declining to consent to particular treaty obligations. One example is a U.S. reservation to the International Covenant on Civil and Political Right's restriction on propaganda for war and hate speech, a reservation taken out of concern that it might conflict with U.S. First Amendment guarantees.⁶⁷ Others provide key interpretive limitations, such as the U.S.

⁶⁴ LAW REFORM, *supra* note 34, at 111.

⁶⁵ Lynne Marie Kohm, *Suffer the Little Children: How the United Nations Convention on the Rights of the Child Has Not Supported Children*, 22 N.Y. Int'l L. Rev. 57, 63, 82, 87 (Summer 2009).

⁶⁶ CARTER, *supra* note 19 at 107.

⁶⁷ Bradley, *supra* note 21, at 417.

reservation attached to the Torture Convention's prohibition on "cruel, inhuman, or degrading treatment or punishment" that interprets that phrase to mean "cruel and unusual punishment" within the meaning of the 8th Amendment of our Constitution.⁶⁸ In addition, the U.S. attaches what are called "non-self-executing" declarations to human rights treaties so that they will not automatically change federal or state laws, and *not be enforceable in U.S. courts*, without very specific implementing legislation from Congress.⁶⁹

Finally, the United States routinely places "federalism understandings" on human rights treaty ratifications to establish that any new treaty obligations can only be "implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein."⁷⁰ This is so that the laws of state and local governments will not be federalized through Congress's exercise of the treaty power.

A federalism understanding would be critical to the U.S. ratification of the CRC, because regulation of child/family issues is, and should be, primarily matters for the states. Notably, the U.S. attached a federalism understanding to its ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.⁷¹

Fears have also been expressed by some that U.S. sovereignty will be threatened by Article 44, the modest enforcement mechanism of the Convention, which asks States parties to "undertake to submit to the Committee... reports on the measures they have adopted."⁷² Here it must be noted that the Committee responds to State reports only with Observations and Recommendations *that are not binding*, but rather function as their name suggests – to recommend areas for improvement.

This mechanism to respond to government shortcomings in implementation of the CRCs aspirations is actually *considerably weaker* than those of other international human rights conventions that the U.S. government has ratified. For example, the International Covenant on Civil and Political Rights provides for state-to-state complaints; the CRC only allows an international committee to comment on a State party report.⁷³ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment vests an International Committee Against Torture with power to receive and process complaints against State parties by individuals.⁷⁴

Finally, critics of the CRC within our country allege that conferring rights on children will undermine parental care and control by pitting, through the Convention's elements, children against their parents – in court or in the home. In fact, a careful analysis of the CRC and its history shows the contrary is true.

⁶⁸ *Id.* at 418.

⁶⁹ *Id.* at 419; *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 (1987).

⁷⁰ Bradley, *supra* note 21, at 422 (quoting U.S. federalism understanding to the ICCPR).

⁷¹ Todres, *supra* note 10, at 300.

⁷² Convention on the Rights of the Child, art. 44, G.A. Res. 45/25, art. 37, U.N. Doc. A/RES/44/25 (Dec. 12, 1989) [hereinafter CRC].

⁷³ Todres, *supra* note 10, at 28 n. 32.

⁷⁴ *Id.*

First, the Convention does not provide any means for a child to bring a lawsuit against his or her parents in court. Laws in the United States already allow a child to sue his parent for physical injuries resulting from intentional violence or gross parental negligence.⁷⁵

Ratification would not change this right of action, but it would also *not add any other basis* for child-parent litigation. Of the dozens of official Committee Observations directed at different countries that we have reviewed, *none have suggested* that countries create any private rights of action for children to sue their parents in order to comply with the CRC.

Far from encouraging strife between children and parents, the essential role of parents in raising their children is listed within the Convention directly after the child's right to life, highlighting the protected role of the family in the CRC.⁷⁶ In fact, almost all of the Committee Observations we reviewed have actually encouraged countries to *do more to support struggling families* in order to make sure children stay under the care and control of their parents, rather than enter the custody of the state.

In its Observation on Sweden, for example, the Committee recommended that state programs “give priority to protecting the natural family environment...”⁷⁷ and in recommendations to Bolivia, the Committee stressed that all necessary measures should be taken “to return [children] to their families whenever possible and consider placement of children in institutions as a measure of last resort and for the shortest possible period.”⁷⁸

Some have also expressed fears that Article 14's requirement that the *government* “respect the right of the child to freedom of thought, conscience, and religion”⁷⁹ would undermine parents' attempts to raise the child in their own religious tradition. The opposite is true.

In its twenty-year history, the Committee has only commented on religion when governments, especially through their educational systems, have tried to limit religious freedom or have engaged in practices that discriminate against certain religious groups. For example, the Committee expressed disapproval of a law that banned religious symbols in German schools because “this does not contribute to a child's understanding of the right to freedom of religion.”⁸⁰ The Committee further recommended that both

⁷⁵ *Id.* at 24.

⁷⁶ In fact, after the first four articles (which establish the definition of a child, the principles of non-discrimination and the best interests of the child, and State responsibility to undertake to pass legislation implementing the Convention), article 5 requires that States “respect the responsibilities, rights, and duties of parents,” article 6 recognizes a child's “inherent right to life,” and article 7 establishes the child's “right to know and be cared for by his or her parents.” CRC, *supra* note 73, arts. 1-7.

⁷⁷ U.N. Comm. on the Rights of the Child, 51st Session, Concluding Observations: Sweden, ¶ 35, U.N. Doc. CRC/C/SWE/CO/4 (June 12, 2009).

⁷⁸ U.N. Comm. on the Rights of the Child, 52nd Session, Concluding Observations: The Plurinational State of Bolivia, ¶ 46, U.N. Doc. CRC/C/BOL/CO/4 (Oct. 2, 2009).

⁷⁹ CRC, *supra* note 73, art. 14.

⁸⁰ U.N. Comm. on the Rights of the Child, 35th Session, Concluding Observations: Germany, ¶ 30, U.N. Doc. CRC/C/15/Add.226 (Feb. 26, 2004).

Korea and France take measures to ensure that children do not experience discrimination based on their religious traditions.⁸¹

Some have expressed particular concern that the Convention's provisions requiring states to provide an adequate education to all children *might undermine homeschooling*. Again, we found the opposite is true. For example, homeschooling in Great Britain rose by 80 percent in 2007.⁸² Yet, the Committee's observations, communicated to the British Government in 2008, did not even comment on this trend, but rather expressed concern about how the British public school system was excluding or inadequately serving children with disabilities, children seeking asylum, and poor children.⁸³

In every report we reviewed, the Committee expressed similar concerns about the right of girls, children with disabilities, immigrant children, and poor children to access quality, free public education. In these same reports, the Committee has *never commented about homeschooling*. This trend in Committee Observations corresponds to the position of a group, known as the Homeschooler's Model U.N. Club, that the Convention does not circumvent the role of parents, but rather protects children and their families from government intrusion.⁸⁴

World experience with regard to the CRC demonstrates that: 1) it is helping countries make a collective difference in the lives of their most vulnerable children, but that 2) there is still much work to be done, including work on topics in which the U.S. has made huge advancements and has incredible expertise. The world can greatly benefit from more direct U.S. leadership in protecting children. The fact that our country has ratified other human rights treaties clearly suggests, as others have observed, that "it is possible for the U.S. to ratify international human rights instruments related to children without conceding sovereignty, disturbing principals of federalism, or detracting from the valuable role of parents and family."⁸⁵

Thus, ratification can and should be achieved in the U.S. as soon as possible. And the CRC is *worth the effort*. While this article provides only a narrow snap-shot of

⁸¹ U.N. Comm. on the Rights of the Child, 50th Session, Concluding Observations: Democratic People's Republic of Korea, ¶ 30, U.N. Doc. CRC/C/PRK/CO/4 (Mar. 27, 2009); U.N. Comm. on the Rights of the Child, 52st Session, Concluding Observations: France, ¶ 46, U.N. Doc. CRC/C/FRA/CO/4 (June 11, 2009);

⁸² Katie Razzall & Lewis Hannam, *UK Home-School Cases Soar*, CHANNEL 4 NEWS, Sept. 26, 2007, <http://www.channel4.com/news/articles/society/education/uk+homeschool+cases+soar/847157>.

⁸³ U.N. Comm. on the Rights of the Child, 49th Session, Concluding Observations: United Kingdom of Great Britain & Northern Ireland, ¶¶ 33, 45, 65, 67, U.N. Doc. CRC/C/GBR/CO/4 (Oct. 20, 2008);

⁸⁴ See U.S. Fund for UNICEF, *Voices of America's Children & Homeschooler's U.N. Club, Presentation on Opposition to the Convention on the Rights of the Child: Exploring Counterarguments and Seeking Clarification*, www.childrightscampaign.org/documents/OppositiontotheCRC.pdf (last accessed Nov. 19, 2009).

⁸⁵ Todres, *supra* note 21, at 309.

constitutional and statutory reforms, as well as some concrete evidence of improvements in the lives of children, resulting from CRC-inspired reforms, it is impossible to fully quantify how the Convention is changing the way people, and governments, think about children. Convention detractors have failed to see, or at least acknowledge, this progress, choosing instead to focus on sovereignty and federalism which have been addressed successfully in other human rights treaties we have ratified. The Convention protects children, preserves and strengthens families, and is unquestionably improving the lives of kids.

Just as the effort to curb global warming takes cooperation of every country in order to tackle a problem so big and so vital to the survival of the human race, so too will U.S. ratification of the CRC do nothing but bolster the efforts of the world community in safeguarding our *most valuable* natural resource – our children. And deferred dreams of too many American children need the CRC to motivate necessary changes in federal and state law, policy, and practice that will enhance the safety, permanency, and well being of America's most marginalized children.

* Unedited address as submitted by Howard Davidson

Gertrud Lenzer

Howard Davidson, thank you so very much. Only someone like Howard Davidson, who is thoroughly familiar with the opposition to the *Convention on the Rights of the Child* and the arguments that have been advanced against it, will understand how powerful it is. Indeed he has discredited most of the arguments advanced by the opposition.

Panel Presentation

*Perspectives from Key Legislators on Major Issues Affecting Children in New York City and State:
Past Legislative Accomplishments and a State Plan of Action for the Future*

The Honorable William A. Scarborough
Chairperson of the Standing Committee on
Children and Families, New York State Assembly

The Honorable Barbara M. Clark
33rd Assembly District, New York State Assembly

The Honorable Velmanette Montgomery
Chairperson of the Committee on
Children and Families, New York State Senate

Gertrud Lenzer
Introduction

As I said in my introduction earlier, we are moving from the national to international, but now we are focusing and coming straight home to the State of New York and New York City. We are exceptionally privileged to have three key legislators here to discuss major issues that affect children in New York City and New York State. They will discuss past accomplishments and also give us a preview of some of their priorities they might be pursuing and setting for themselves in their legislative agendas for the near future. I would like to welcome Assemblywoman Barbara Clark, Senator Velmanette Montgomery and Assemblyman William Scarborough. You have no idea how privileged we in Children's Studies feel to have been able to gain their agreement to come here and discuss these incredibly important questions concerning the children and young people of New York with us today. As I mentioned earlier, both Senator Montgomery and Assemblyman Scarborough are chairing the Committees on Children and Families, both in the Senate and in the Assembly. So this is just a wonderful contribution to our *Forum* this afternoon. As I also mentioned, Assemblywoman Clark has been spearheading legislation for an independent Office of the New York State Child Advocate since in 2005. It has passed the Assembly year after year and I think it would have passed the Senate had there not been some little problems in Albany. But apart from that, I would like to say she has really worked extraordinarily hard on behalf of the children and young people of New York.

I will give the floor first to Assemblyman Scarborough for one reason — because he happens also to teach in our Children's Studies Program. We have the very great privilege that he has become Professor Scarborough this semester. He teaches a course on "Children, Government and Social Policies in New York State" in our Children's Studies Program, with great enthusiasm among all his students. He is a very much beloved teacher.

The Honorable William A. Scarborough

Thank you, Professor Lenzer. Good afternoon, ladies and gentleman. As Professor Lenzer said, I am Assemblyman William Scarborough, the chair of the Assembly's Committee on Children and Families and the Assemblyman from the 29th District in Queens. I am also, as Professor Lenzer said, teaching in the Children's Studies Program and I have to confess, it is still kind of surprising every time somebody says, "Professor?" I am looking around to see whom they are talking to. I am not used to being called that yet, but I certainly enjoy the work in the program and it pleases me to be here with you this afternoon. I had the privilege of also being at the *Third Child Policy Forum* and it is good to continue to advance this effort and to move ahead, and hopefully one day we will have ratified the U.N. *Convention of the Rights of the Child*.

I would like to start by talking briefly about a couple of pieces of legislation that we did pass, which I think speak directly to some of the things in the Convention in the Optional Protocol. One of the pieces of legislation, I had the chance to speak about at the *Third Policy Forum* event, was the *Safe Harbor for Sexually Exploited Youth*, which I am pleased to have been the sponsor. This is, I believe, a landmark piece of legislation, which makes New York State the first state in the nation to change the way children

involved in commercial sex are viewed and how they are treated under the law. It will decriminalize those that we commonly know as — even though I do not like the term — child prostitutes. What the legislation does is decriminalize it; it actually brings those children in line with the rest of the treatment of young people in the State of New York because under law, no child under the age of seventeen is considered legally capable of giving consent to have sex; whether it is consensual or not, their partner is subject to statutory rape charges. The only children that were carved out of that exception were those engaged in commercial sex. So under this new legislation, it changes that exception and brings them in line with the other children in the state and gives them an opportunity to reclaim their lives, to get services in educational opportunities, and so on. We are very hopeful that this will have a positive affect on the youngsters who are unfortunately in that category.

We also passed — which Assemblyman Dinowitz spoke about at the last *Forum* — a landmark anti-human trafficking law, which recognized and dealt with the two major issues of human trafficking in the United States and in New York State: trafficking for sex and domestic servitude. That piece of legislation will increase the penalties for those who engage in those activities for up to twenty-five years. It recognized, for purposes of prosecution, that children engaged in commercial sex were victims and provides a wide range of services for them. I just think it is a very advanced piece of legislation and I am glad to have assisted Assemblyman Dinowitz in doing that.

A piece of legislation that I think is very important, and that my partner here and I were able to sponsor this year, was a piece of legislation that eliminated the mandatory support enforcement requirement for persons seeking child care. To me, that is a major piece of legislation because when you talk about the way children are treated and their ability to have a good life, you have to think about the fact that if a person has to go out to work to provide for those children, they need to feel comfortable that they have quality child care.

Prior to this legislation, what was in place by an executive order under the Pataki administration, was that any person who applied for child care subsidies was required to take out a child support enforcement order against their mate, whether or not they had an arrangement to receive child support or had amicable relationships with that partner. They were required to take out a child support enforcement even if they were not asking for subsidies for that child, so if they went in and asked for a subsidy for one child and they had other children, perhaps whose father was not the same, they were required to take out an enforcement order against that parent. This did great insidious harm: it had the impact of keeping people from going forward for the benefits that they were entitled to. It created possibilities and indeed instances of domestic violence. It created concerns about immigrations and deportation orders and it was just an insidious piece of legislation. I am pleased, along with Senator Montgomery that we were able to pass a law to eliminate that and the governor signed it, and I think that children of this state will be better off.

There are a number of things that we need to do for the children of the state, but by virtue of the areas that we are engaged in, I am going to try to talk about two of them — one of which is child welfare and the other is juvenile justice. We were fortunate again, Senator Montgomery and I, to attend a forum in Tampa, Florida last week, having to do with the safe reduction of foster care. That has to be one of the primary goals of our state. We have to reduce the number of children that are taken away from their parents and placed into foster care or congregate care, or in other ways taken out of their homes. I think one of the things that we found from that forum — that was at least very comforting to me — was that we do not have to reinvent the wheel. There are many good things going on around the country and simply by sharing information and investigating what other states and other entities are doing, we can improve what we are doing here in New York.

We found that Florida, Illinois, Minnesota and others had done some tremendous things in reducing the need to take children out of their homes. By identifying methods to reduce abuse and neglect — and of course, once you do that you assist not only in reducing foster care, but you start to impact the juvenile justice system — you start to impact disconnected youth because the causes or the underlying reasons that we have a lot of these social ills stem from the same thing. So, that has to be one of the goals that we have and one of the areas that I would like to see us move, which has been greatly successful, is in expanding programs of alternative response — or, we call it dual track. In New York, there are about eighteen counties now who do not take the children out of the home when they encounter certain problems as long as the child is not being violently abused or their safety is not at risk. Often times, it is a matter of neglect or not having the types of material things that the parent needs to maintain these children and so we are beginning to provide them with services while keeping them in the home as opposed to removing them from the home and putting them in foster care. I would like us to expand our efforts at alternative response. I would like to see that throughout the state. I would hope it would become the norm.

Another area of reducing the number of children going into foster care on the front end is more engagement of kin, more engagement of kinship guardianship, locating other relatives, and making it easier for them if they choose to take the child as opposed to putting them into a strange home. It has been shown that if a child can't stay with their birth parents, putting them in a kinship situation, they do much better than in another home or in a foster care home. These are the things we need to do. It has a benefit not just in terms of keeping the child in the home and reducing foster care, but there is a connection between the children in foster care and the kids that end up in juvenile justice and on public assistance, so we are talking about the same children. We are talking about the same family of children. We need to do more in those areas. We need to do more in terms of providing prevention programs. We need to expand diversion programs and I think that is particularly important right now because the Senator and I were talking about how at risk these things are because of our budgetary situation. So, it is especially important now that we work on these things. On the back end, if the child is in foster care, we need to try to reduce their stay in foster care and speed up the time that they can come out. Of course, we have to deal with the issues of children aging out of foster care

and we need to deal with subsidies to make it advantageous to move children out of foster care and into a permanent home. We need to deal with the circumstances of the courts and I am happy to say that one of the outcomes was that the legislative, executive and judicial branches have agreed to continue to meet here in New York State to deal with those issues going forward.

Again, these same things apply to juvenile justice. In juvenile justice, we have an imperative, which is that the Department of Justice released a report that just skewered New York State's justice system, and rightfully so. It really pointed out the abuse that children undergo in our juvenile justice system. To their credit, the Office of Children and Family Services — which I have to say has been moving, in my opinion, in the right direction even before this report has come out — has chosen not to try to litigate, not to try to fight it but is planning to work with the Department of Justice to improve and reform our system; that is going to give us an imperative in terms of juvenile justice. One of the things that we certainly agree with is that there are an unnecessary number of placements. We have facilities in upstate who are fighting to keep these children because they have become economic engines for communities and the concern is not what is being done for these children in juvenile jails but how does it affect my economy? And, that becomes a political battle that we have been fighting for years. We have to reduce those unnecessary placements. We need to make incentives for alternatives to detention because there is a financial piece to who gets put in detention and who doesn't.

Again, the Senator and I have sponsored a piece of legislation called *Re-Direct New York*. Hopefully that will be a major push as to what we can do to take a quarter of the monies that are saved from the closing of facilities — and there will be closings — and use that as an incentive to municipalities and communities to use alternatives to detention, and hopefully we can keep to push those numbers down. There are reports, including one from the Washington State Institute on Policy, which specifically puts a cost benefit on these preventive programs, such as home visiting and alternatives to detention and so on. I think we really need to start using those things because not only do they serve a moral benefit, but they have a financial benefit and they have quantified that early childhood education for children has a benefit of \$9,000 per child, that the nurse-family partnerships and home visiting have benefits of \$17,000. This is savings and benefits in terms of what you will spend on that child if you don't do these things as opposed to the cost of doing them. Adolescent diversion programs are quantified at saving \$22,000 per child. So I think not only from a moral perspective, but from a cost perspective, it makes sense for us not to throw these things out — to make use of them, and hopefully with my partners here, we can use these things as an effort to improve the lives of the children in the State of New York.

The Honorable Velmanette Montgomery

Thank you, Professor Lenzer, Loretta Chin and everyone here at the Brooklyn College Children's Studies Center for inviting me to participate in your *Fourth Child Policy Forum of New York*. This is a very special opportunity to talk to child care experts

as well as the young people who are impacted by the policies that we put in place to help them.

We have now embarked on a mission to change what Marion Wright Edelman has identified in the nation as, our “cradle to prison pipeline process.” It begins when children are first born — especially children of color who are born into poverty — who then grow up, suffocated by a narrow and crippling pipeline that often leads them to prison, without hope of any positive outcome.

Here in New York City, we still have an 18 percent poverty rate. We have an obligation to reverse this trend and help create positive outcomes for our young people, beginning at birth. I am going to raise some issues around the weaknesses in our system that do not support this possibility — because being born poor was, at one time in our nation, not an automatic sanction into prison, because there were opportunities that America provided to support and protect families and to provide opportunities.

A large barrier to this positive occurrence for young people, families and juveniles, in particular, is lack of access to programs and services that will support their personal and professional development. There is a particularly large need for access to health and mental health services. There are several cities in our state that have a 20 to 30 percent poverty rate. The Bronx, right here in the city, has one of the highest poverty rates in the nation.

Why do I emphasize health and mental health as an access issue? Because a very, very high percent of young people who end up in foster care, end up in a juvenile facility upstate, end up in trouble, and many have mental health issues. There are countless young people going to school with problems, who live with a family member on drugs, who has a loved one in prison or who lives in chaos and dysfunction. There are so many issues that arise — that cause them to act up and act out. And, who is on the front lines to address these problems? It should be a health care professional or a nurturing mentor, but more often than not it is the police.

Do you know that we now have a law on the books that say that if you come to school and you have an encounter with the police that are there, you can be charged with a felony. So you begin your “pipeline process to prison” in school.

Now, one of the issues that I have tried to address and push is expanding access to school-based health care. There are more than 200 sites throughout New York — comprehensive health care delivery systems in schools where young people spend the majority of their days. Here they can get primary medical care, mental health services and even dental services. We need to expand the number of centers. I invite you to join me in mobilizing support around this issue.

Now, all that you hear about is the stimulus money. Everybody wants to know from us where the stimulus money is; well, we want to know too, but that is a different meeting. For certain, one of the things that I have asked, and that we all have promoted,

is that any stimulus money that comes into our state for work activities, employment preparation, workforce preparation — we have to dedicate a part of it to youth. The reason I say that is because we have no voice for young people, especially if they are already struggling; so any program that we have, whatever access to resources that I have as an elected official, I want to make sure that young people are included. Our kids need to work. They need a little walking around money and they need opportunities to learn how to be a productive citizen, and to working and so on.

I hope you will remember as you leave today, whatever else we talk about, please know that you are an important player in the process of changing what happens in Albany, in Washington and in this city. Don't underestimate the important role that you play in effecting positive change. Advocacy is important and, not only should you come to us — your elected officials — to ask us to take action on your behalf, you should come to us with an idea for a program, a new law or anything that will improve the outcomes for you and your peers. Remember that we are fighting for our kids. That is our job. That is our responsibility. Please remember that. Come to us. And even when it looks dark and dim, if you've got the numbers, you have the voice and should use it to speak for young people. I thank you again for being here.

The Honorable Barbara M. Clark

Good afternoon. This has been quite a learning experience for me to hear some details of things that I knew a little about in terms of the professor and the attorney's presentations this morning. I wrote a lot of notes and I look forward to reading their speeches as soon as they are posted online so I won't forget anything. I will respond quickly to what a couple of my colleagues have said. Let me start by saying that those areas where we all work together, I support what they are doing very much. I focus more of my attention, since I have been in the Legislature, on education. But, in order to get children educated, you have to address all of the issues that impact or affect a child's safety and well being.

One particular issue that bothered me when I started to delve into the areas of child welfare was the policy which required the child, rather than the abuser to be removed from the home. My familiarity with this issue predates my tenure in the Legislature. Immediately before I ran for office, I worked as a youth coordinator and in one of the forums we sponsored on the maltreatment of children in Queens, I asked the then chair of Children and Families why such policies exist since they doubly traumatize the child; they've been abused and now they get removed from their home. His response was that the abuser would have to stay in the home so that he or she could continue to support the family. I did not feel that such a rationale was legitimate enough when balanced against the harm being done to the child, especially since the alleged "abuser" could secure housing in places like the YMCA until the investigation took its course. When I got to Albany I raised it with the next committee chair of Children and Families. At that point, I didn't know I was not supposed to tell people about my ideas for bills so the committee chair ended up writing the bill and I was only able to sign onto the bill, rather than carry

it as its lead sponsor. But the important thing is that this bill which removed the abuser from the home passed and I was very excited about that.

You would be surprised at some of the peripheral issues that can affect a child's welfare. For example, there actually wasn't a law until I passed one in Albany to require a child to start school at six years old. We always just sort of understood that, but many of the parents, whose children were often held at home, or attending with very irregular attendance in kindergarten or pre-school programs, now had to bring those children to school, once my bill became law. Today, there are some people who want to go further and require that children attend school at four years old. It's great but I have concerns about whether we can afford this addition to public education since we currently cannot adequately afford to fund education for the six-to eighteen-year-olds and the large numbers who remain in the public school system past age 18 because they were not prepared to graduate.

Another more central and critical issue related to child welfare and education is the thirteen-year battle fought in conjunction with the Campaign for Fiscal Equity, which brought a lawsuit that would require the state to give more education dollars to children of New York City. I was the only legislator to actively support and testify in support of this action asserting that the budgetary and academic practices/policies were consistently shortchanging New York City children. While we all agree that under the system of checks and balances the force of legal decisions carries tremendous weight, however, very often the implementation of those decisions does not achieve what was intended. Just like the successive decisions in *Brown v. Board of Education* were revised to the point that it diluted the impact of the original rulings. The same thing is happening with the decision in the Campaign for Fiscal Equity (CFE) case. The state's highest court, the Court of Appeals found in the CFE case that New York State was underfunding schools in New York City and therefore our children were not getting a sound basic education, which our Constitution promises that it would provide. The successive decisions in the CFE case have decreased the billions of dollars awarded by Judge Leland Degrasse and amended the decision to spread its impact statewide, thereby decreasing the monies intended for New York City. Consequently, now that the state is in such a dire budget situation, even the lesser amounts of money that the court awarded for the third year are likely not to be coming. This statewide solution means that, whatever limited amounts of funds become available, they must be shared. Somewhat unjust, in my opinion, but politically it is what we had to do. So where we do go from here? It will depend on people like you, sitting out in this audience, weighing in on these issues, or they won't happen. A sound basic education is critical to a child's well being.

The cornerstone of my current efforts in the area of child welfare is my child advocate bill. If you know any of the history of national education reform, you may know that it was not until the President elevated educational issues to an executive cabinet level position (Secretary of Education) that reform became central and critical to presidential policy and politics. I believe the same thing should happen at the state level with the appointment of a child advocate, to spearhead and streamline policy and regulatory changes that impact on children in New York State. The bill would require the governor

to appoint a person to be in charge of the well being of New York State's children. It is a critical piece to me because there must be someone who is accountable to the governor when his budget is being put together, to say, "Governor, we found this issue out here with our children and if we don't address this now this will cause us to spend more money. It will cause the children more heartache and more pain." However the agencies and service providers still need to be convinced that a child advocate works to their benefit as well. It is my hope to keep all stakeholders targeted to this larger goal of committing to make child welfare an executive or state cabinet level position, from which policy and regulatory decisions could be given the priority attention it deserves.

I am going to stop here and let you ask some questions. Thank you.

Gertrud Lenzer

I would like to put a little plug in for our Children's Studies Center, particularly to young people so that you know, as Senator Montgomery said, that these ideas for legislation can come from us, the citizens. It was our policy symposium in 2004 on "Children and the Law in New York," which had as its objective to explore the possibility of establishing a New York State Child Advocate office as it exists in the states of Connecticut, Rhode Island, New Jersey, Georgia, Delaware and now Massachusetts — which happened just last year. The idea really was promoted with help from the Carnegie Corporation, which supported the symposium, and from then on, Assemblyman Green and Assemblywoman Clark forcefully took on the legislation. It is really up to us citizens to promote and to advocate for important causes. Of course the exhibit here, *Courage*, gives another example of how a clergyman and his congregation, in effect and in the opposition of segregation, leads to the first lawsuit out of five that led to *Brown v. Board of Education*. I would like now to open the floor to questions and answers from our distinguished panel members, to whom I would like to thank very much indeed, for your presentations.

Question and Answer

Question: Good afternoon, thank you. My name is Rolando. I happen to be a Latino immigrant and my 40 years experience in New York City is that New York State is the most racist state in the Union. So to our legislators, I'm glad you are thinking out of the box; otherwise, we will never get any results.

First, I think we need three changes in legislation, besides all the good things you have said. We need to allow parents to home school their children. Right now the state law prohibits parents to home school the children as groups because parents could get together and have community learning centers where the children could get a real education. That is not allowed right now. It is forbidden and you can only do it individually, which goes against the common good because right now public schools in New York City have nothing to do with public; it's government mandated to dumb-down

the masses to keep the masters in charge. My question is, “Can legislation be passed to that effect?”

Also, if we could change the laws to cut funding to foster care, because foster care is a profit-driven, predatory industry that preys on those who have the less power — and rather, I would say, cut 90 percent of the funding to foster care and put it in preventive services.

And last, we need jury trials in family court. Family court in New York City is an institutionalized system of injustice. There are already 13 states that have jury trial in family court, so let the people decide if you are abusive because those 47 family court judges, who are appointed by the mayor, they are not doing any justice to our families. I wonder if there is anything you can do about those?

The Honorable William A. Scarborough:

Well, I will take a couple of those. The home schooling I’m not going to touch because I am not an expert in that area. In terms of foster care, we are seeking to reduce the need for foster care and that is one of our priorities. That is one of the things that I was talking about. We cannot do it by just cutting the funding because there are children in foster care. There is a system that has to be supported whether or not we are happy with the way it works. I do think it needs to be reformed and I think we have to make more efforts at prevention. We have to make more efforts at stopping children from going into foster care in the first place — doing things so that they don’t end up in the system. And, if they are in the system, doing things to get them out more quickly. I do agree that a lot of that has to do with prevention funding and so on and we certainly need to work on that.

In terms of jury trials, that probably has some merit. I think the big problem right now is you do not have enough judges. You have a huge backup in family court right now, and if you introduce a system of jury trials you would just hopelessly clog it. This is not to say that some day down the road that wouldn’t be something to look at, but right now, I just don’t see how it would work.

Question: One of the things I would like to do is thank Senator Montgomery for talking about having the children engage in what’s going on with them and I would like to tell the youngsters, especially the ones that are here, that they need to register to vote as soon as they can. And, they need to learn how to lobby because that is a process you need to learn how to do.

I have a few quick questions and want to start with why are we not creating situations or developing laws that will enable us to prepare our children for the world they are going into? Not the world we are in or went into. For example, particularly in Harlem, and I don’t know where you stand on charter schools, but this charter school stuff that is going on there now, we are losing fixed science classes with science tables. I’m a physician so science is very dear to my heart. The kids are not getting languages so

that they'll be ready for the global economy that they are going into. There are very few AP courses that are happening in our community in the middle school area, as well as in the high schools. This is detrimental to us in terms of the world that our children are going into. Were any Harlem politicians, who are on the education committee, invited today? And if so, could you tell us who the Harlem politicians are? Amistad legislation is very nice, but how will that be enforced in our schools in terms of teaching our youth about themselves? Thank you.

The Honorable Velmanette Montgomery:

I would like to respond to the whole issue of charter schools and the relationship of the resources for education in our state and city. What we have not done is that we have created an alternative system without alternative funding to support the system. What we are doing now is we are just peeling off some of the public education funding for this alternative system. So I think what we need to begin to talk about as it relates to education. We need to raise those issues that you were raising especially as it relates to the fact that we have a system that is creeping along that, in the back of which, is a corporate interest, so we have to be very clear about what it is that is happening to education. This is the largest investment in young people in our nation — through the educational system. Now, the second largest is through the criminal justice system. We don't want to lose one for the other and I think we have to consider that and we need to talk about that a lot more while we go down this path of having two educational systems.

Question: Since *the First Child Policy Forum* what have you accomplished and what are you planning on doing in the future? What recreational centers have you either built or invested in? How do you plan to unify the community? Because it does take a village to raise a child. And, how do you plan on improving the retention rate of black men within colleges? Because that is a direct correlation to what black women choose in terms of mating, and it's also, in effect, how we build our families up. We need that foundation. Thank you.

The Honorable William A. Scarborough:

I was not at the *First Child Policy Forum*, but I do think some of the things that we mentioned in terms of legislation, especially the *Anti-Human Trafficking, Safe Harbor Act* and other things — certainly things that were part of the *Convention for the Rights of the Child* and the kind of directions that the Convention is asking us to go to in terms of recreation and programs — one of the things that I have been supporting, and I am pleased to see that President Obama and his administration have come out in support of it, is the concept of community schools. This is where the school becomes the center of the community, and I was able to open two of them in my district starting this year. It's an upgraded Beacon school because you have — Senator Montgomery, who was talking about the mental health — you have the mental health clinics there. You have parenting skills there. You can actually have a health clinic in there. One of them in Washington Heights has a dental clinic, and in addition to all of the recreational things that children need to keep them out of trouble after school, you can have a seamless transition from school. So if you start to see problems, if you start to see mental health issues, you start to see family issues, they can be dealt with right there. We can seamlessly refer them to

these programs that are right there in the school before they become part of the juvenile justice system or the public welfare system. I think that is a direction that we certainly need to go in.

In terms of working with black males, we have a whole package. The Black, Asian and Hispanic Legislative Caucus has a package to deal with that. We have pushed with spotty success, trying to move those things along. One of the things that I am doing which speaks to that is that I have a piece of legislation that would provide tuition-free access for children coming out of foster care to the city and state universities. That impacts a lot of black males and a lot of black females. It would provide an opportunity for them to be able to go to college and better themselves so they can be successes, coming out of the foster care system. We have a whole system of things that we need to work on in that regard.

Question: My name is Susan. I'm a retired psychiatric social worker and actually worked for 25 years in Senator Montgomery's district. I also taught and trained social work students.

I came up with this idea, where different generations could come together and teach each other skills. Young people have a lot of skills that they can teach older people, but older people have a lot of skills. We have a lot of people of all ages who have skills, especially in this economy where people can't afford education, but we have a lot of retired union people who could come teach skills. I know the City Council just passed some kind of bill about having some kind of program like that but I don't know whether the state would be working on it. Because so many people know so much stuff, and often if you are not legitimized, you don't have a degree, people don't even know that you have magic in you, that you have all these wonderful things that you could share. So I am interested in finding out whether you'd be interested in that idea. Also, community employment — where neighborhood people could employ young kids to do things, on a community bulletin board of an organization — I'm interested in that idea and if any of you would be interested in that idea, I'd be interested in working on it.

The Honorable Velmanette Montgomery:

We can talk about that for sure. I just want to caution us that for young people in particular, some of the assumptions that we make about volunteerism — they just, you know, it is very hard for them because they really need to be paid for their experiences. I just want to put that out there, but I like your idea.

Question: I have a question I want to address to Mrs. Clark. I was hoping that you could clarify for the audience when the original Campaign for Fiscal Equity judgment came down? What was the settlement for it, the amount? What was it whittled down to? What is it currently and when will that be enforced and how will it be enforced? We'd like to know when that money will be coming to the schools.

The Honorable Barbara M. Clark:

The original case started in about 1995, I believe. It was completed in 2004, I think, I'm not giving you the number of years, but it was a 13-year trek through the court system. The amount of the settlement ended up being about 5.7 billion dollars. The original settlement was supposed to be about 21 billion. We ended up with this lower amount because there were a number of cost out studies that came up with the different amounts done by different people. When we had this court change we ended up with what was the lowest amount, which had been done by Standard & Poor's. When we will get it? Over the last two years we've gotten an infusion of money. I think it was 1.6 billion last year and I don't know what the amount was the year before. This year, we don't have any of the courts requirements in this year's budget because of the budget cuts that we are experiencing right at this point. We've backfilled the funding deficit that it would have created with the stimulus money. New York City still received about 600 and some million dollars from the state for this year's educational funding. We may end up going back and cutting some if it, depending on how this whole thing plays out that you are reading about in the news now. Those are the quick numbers I can give you, I didn't bring those all written down and those are what I can remember.

Question:

I see a disconnect and I'm curious if it is noticeable, with corporations vrending things out overseas and youth jobs. An example I can give is a very large corporation who will be vrending out to India, the "takeout window." I see that as a huge problem for teenagers and young people because I was in technology for many years and those are the jobs we were able to get and it just seems like it is dwindling and dwindling where now you have older people looking for jobs, but there are just no jobs for youth. Or, they are so very low paid that they can't function. They can't even go on a date because the movies are so expensive.

The Honorable Barbara M. Clark:

I can take a shot at that one question. Years ago, I read in one of the business publications about Coca Cola, that about four years ago, 73 percent of their operation was overseas. Everybody is talking about how our kids are overweight because one of the reasons is the amount of soda they drink, which contains high fructose syrup, which you can't put in overseas, but you can here. Those are the kinds of issues — when I talk about public involvement and kids understanding and knowing what we are living with — those are the kinds of issues that you can get your arms around, and your hands on, and can do something about, if you do some community activity, and even kids can do that. They can go home and tell their parent just what I said, and maybe some of those jobs will have to come back to this country. I also would urge you now to have kids and families and everybody else look into the one major area of growth besides the green thing, which is transportation. We are ferrying airplanes overseas to get them repaired right now. You can't do that with trains, buses, bridges and that is where a lot of money is going to be going into. But, you have to make children interested in knowing what those kinds of jobs are, where they are and where they are going to be, because they can get into those things with minimal education — in many instances, right out of high school, if they get the right training in high school.

The Honorable Velmanette Montgomery:

Everybody in here, I'm sure, maybe the only three people in here who may not text are us. I'm sure all the rest of you text. We all have an e-mail address. We are just very fortunate that we have someone that opens the e-mails for us. When we get 500 e-mails on one thing, everybody looks very different. That is how you guys got Barack Obama elected; you all text each other across the country. I know because my son and everybody in his age group, they all took total credit, and I give it to them because they used that thing. They didn't listen to any of the talking heads. They just text each other, "We got to do this and we got to do that." You can text your legislators and say what the issue is and you are right. That affects all of us, all of America. We hurt every time one of those corporations takes their business overseas and creates jobs that are paid less and no benefits to people across the ocean. And we lose jobs, so it's not just for young people. Text the people in Congress.

Question:

You were talking about how we as citizens of New York have to help with foster care and how we need to make sure things are done in terms of it. Is there anything teenagers can do in terms of volunteering?

The Honorable William A. Scarborough:

You can help by volunteering in any number of programs. What we need to do is build up those things that prevent children from having to go to foster care. Those can be things like making sure that people have clothing, food, recreational programs, mental health programs and making sure there are alternatives in the community to putting these children in jails. You can volunteer by mentoring, by providing children or somebody who might stray off the path with a mentor or big brother or somebody to guide them. Those are all things that can help children stay out of foster care and provide assistance to the families that are stressed and end up abusing or neglecting their children.

The Honorable Barbara M. Clark:

I think volunteering is very, very important but here is the area that always goes missing, as far as I am concerned — parents, the people who bring these children into the world have many problems — there is no doubt about that. I deal with parents every day that are working every day and won't come to the PTA meetings. I think there is a lot that needs to be done and it can come from children. There is more that has got to be done to hold parents accountable to a large degree as to what is not happening with their children. I've had a registered nurse tell me that — when I'm fighting for an academically centered after school program because the fifth grade scores were going backwards — and hear, "I don't care what kind of program it is; all I want is a place for my child to go after school." After school is important for a working parent, but that is a horrible statement to make. You don't care about anything but your child having a place to go after school. It's not just real poor parents. It's a lot of parents who believe that everybody else should do something for their children.

I really believe we are missing the mark in not having, creating another set of accountability. Government is fine but government can't rear children. To having another

set of accountability for many, many parents who are not stepping up to the plate where their children are concerned. I know that because I worked everyday when I had four children and a husband. I had a family and that is the only reason it made it really easy—I had a big family. We traded around babysitting, put my children in my car, drove them to my mothers' job, put them in her car and she drove them back home and by that time my husband was home from work. I know everybody does not have that perfect situation but the reality is that you have to take responsibility for your children if you want them to go someplace; you have to at least show that you love them. And that is not happening in a lot of instances. Thank you.

Closing Remarks

Gertrud Lenzer

May I conclude this *Forum* by thanking everybody, our distinguished speakers and the people who have introduced the *Forum*. As it just occurred to me, we actually wound up from the high tops of mountains of discourse all the way into a regular town hall meeting. I never expected this could happen in my wildest dreams. I think those of you who are here, in case if you want to participate, please be in touch with our Children's Studies Center and perhaps we will find some new causes that we can all work on together and bring to our legislators. Thank you very much indeed! Until another time.

Speaker Biographies

The Honorable Barbara M. Clark 33rd Assembly District, NYS Assembly

Barbara M. Clark was elected to the New York State Assembly in November 1986. She represents the communities of Bellerose, Cambria Heights, Hollis, Queens Village, St. Albans and part of Floral Park in the 33rd Assembly District.

She has been unrelenting in her battle to change New York State's inadequate and inequitable school finance system. She continues to be an active supporter of the lawsuit brought by the Campaign for Fiscal Equity (CFE) against the State of New York. In January 2001, New York State Supreme Court Justice Leland DeGrasse ruled, and the Court of Appeals affirmed, that New York State school finance system was discriminatory and unconstitutional, and directed the state to remedy this injustice. Notably, Assemblywoman Clark was the only state legislator to testify at the trial.

She is currently the chair of the Education Committee of the Black, Puerto Rican, and Hispanic Caucus, a member of the Majority Steering Committee and the assistant majority whip. She has also sponsored significant pieces of legislation in the areas of education, health and consumer fraud. On the national level Assemblywoman Clark

served as vice-chair of the National Conference of State Legislators' (NCSL) Education, Labor, and Job Training Committee and is a member of the Human Services Committee. She is a member of the Education Partners, a public policy group of the National Conference of State Legislators, aimed at assisting state legislators and other policymakers throughout the country in making decisions about education policy, particularly in the area of finance. The group has produced several publications: *Educational Adequacy: Building an Adequate School Finance System*; *Principles of a Sound State School Finance System*; *Taxation and Revenues for Education*; *The Relationship Between Education Expenditure and Student Achievement: When Does Money Matter?* and *The Search for Equity in School Funding*; all of which are available through the NCSL.

She has been a commissioner of the Education Commission of the States (ECS) since 1989. She served a four-year term on the ECS Steering Committee. ECS is a national education policy organization, representing all fifty states and U.S. territories.

She is also the sponsor of ongoing legislation for an independent Office of the Child Advocate for New York, whose idea originated from a policy symposium held by the Children's Studies Center in 2004.

**Howard Davidson, J.D., Director
American Bar Association Center on Children and the Law**

In 2009, Howard Davidson marks his 35th year of full-time involvement in child advocacy law. During most of this period, he has directed the Center on Children and the Law for the American Bar Association in Washington, D.C. The center, which recently celebrated its 30th anniversary, works on improving laws and court systems serving children and on enhancing the legal system's responses to child abuse and neglect, child sexual exploitation, foster care, adoption, legal representation of children and other child welfare-related concerns. It engages in extensive program consultation, legal education and research activity. It publishes the *ABA Child Law Practice* periodical. It operates the federally supported National Child Welfare Resource Center on Legal and Judicial Issues, and educates the bench and bar on adolescent health and infant/toddler development and education-access issues, as they relate to children involved with the law and the courts.

Howard Davidson has served as chair of the U.S. Advisory Board on Child Abuse and Neglect. He is a founding board member of the National Center for Missing and Exploited Children. He served as a U.S. Delegate to the First World Congress Against the Commercial Sexual Exploitation of Children and, during the 1980s, wrote some of the first published material on child sexual abuse/exploitation and the law. His books and published writings cover a wide range of legal issues affecting children in the court system, including *Legal Rights of Children*; *Children's Rights in America* and *Establishing Ombudsman Programs for Children and Youth*. His latest article "Federal

Law and State Intervention When Parents Fail: Has National Guidance of Our Child Welfare System Been Successful?" was published in the fall 2008 *Family Law Quarterly*.

**Howard Dodson, Jr., Director
Schomburg Center for Research in Black Culture of the New York Public Library**

Howard Dodson, director of the Schomburg Center for Research in Black Culture of the New York Public Library since 1984, is a specialist in African American history and a noted lecturer, educator and consultant.

Under Dodson's leadership, the Schomburg Center has developed into the world's most comprehensive public research library devoted exclusively to documenting, interpreting and publishing the literature, history and culture of the African diaspora. During his tenure, the Center's collections have more than doubled and now total more than 10 million items; annual users have increased from 40,000 to more than 125,000. Two successful capital campaigns have raised more than \$41 million. In addition, the Center produces and presents four to six exhibitions and 50 to 75 programs annually.

Dodson has published five books, including *Jubilee: The Emergence of African-American Culture* and *Becoming American: The African-American Journey*.

**Owen M. Fiss
Sterling Professor of Law, Yale University**

Owen M. Fiss is Sterling Professor of Law at Yale University. He was educated at Dartmouth, Oxford and Harvard. He clerked for Thurgood Marshall (when Marshall was a judge of the United States Court of Appeals for the Second Circuit) and later for Justice William J. Brennan, Jr. He also served in the Civil Rights Division of the Department of Justice. Before coming to Yale, Professor Fiss taught at the University of Chicago. At Yale he teaches procedure, legal theory and constitutional law and is the author of many articles and books on these subjects, including more recently, *Troubled Beginnings of the Modern State*, *Liberalism Divided*, *The Irony of Free Speech*, *A Community of Equals*, *A Way Out/America's Ghettos and the Legacy of Racism*, *Adjudication and its Alternatives* (with Judith Resnik) and *The Law as it Could Be*. Professor Fiss also directs extensive Law School programs in Latin America and the Middle East at Yale Law School.

**Gertrud Lenzer
Professor, Brooklyn College and the Graduate Center/CUNY
Director, Children's Studies Program and Center, Brooklyn College/CUNY**

Gertrud Lenzer is the founder and director of Children's Studies, as well as a professor of sociology at both Brooklyn College and the CUNY Graduate Center. In 1991, she led

Brooklyn College's efforts to become the first academic institution to develop an interdisciplinary liberal arts Children's Studies Program. Under her leadership, a minor in Children's Studies was established in 1994 for all liberal arts majors. In 2001, a 30-credit interdisciplinary children's studies concentration for majors in early childhood education teacher and childhood education teacher programs was introduced in cooperation with the Brooklyn College School of Education. An interdisciplinary Bachelor of Arts degree in Children's Studies was launched in Fall 2009.

Professor Lenzer also founded the Sociology of Children as a new field and section of the American Sociological Association in 1991, and was designated its founding chair. She received the national 1997 Lewis Hine Award in Honor of Outstanding Service on Behalf of Children and Youth from the National Child Labor Committee, founded by an act of Congress in 1904. Professor Lenzer has received a number of distinguished fellowships during her career, among them the American Council of Learned Societies Fellowship; a Rockefeller Foundation Fellowship in the Humanities, with residency at the Institute for Advanced Study, Princeton; a fellowship at the National Humanities Center and a research fellowship at the Rockefeller Bellagio Center, Italy. In addition she was selected as the first American scholar and the first woman to deliver the 12th Auguste Comte Memorial Lecture at the London School of Economics. Most recently, she has worked closely with legislators to spearhead legislation for an independent Office of the Child Advocate for New York.

Joan M. Lucariello
University Dean for Academic Affairs, CUNY

Joan M. Lucariello received her Ph.D. in developmental psychology from the Graduate Center of The City University of New York, where she was a National Institute of Child Health and Human Development (NICHD) predoctoral fellow. Thereafter, Dr. Lucariello was awarded a two-year postdoctoral fellowship from the National Institute of Mental Health (NIMH). She then became a member of the graduate faculty of the New School for Social Research for several years.

Dr. Lucariello then assumed high level science-policy posts in Washington, D.C. She joined the staff of the American Psychological Association (APA) as senior scientist, where she worked with federal funding agencies and professional societies on issues related to behavioral science. Thereafter, Dr. Lucariello became director of Research Programs in Cognitive, Social, and Affective Development at the NICHD at NIH where she oversaw a \$22 million grant portfolio.

Before coming to CUNY, Dr. Lucariello returned to academe. She was professor of applied developmental and educational psychology at Boston College, where she was director of the doctoral program in that area for five years. Dr. Lucariello's expertise is on the relation between cognition, learning and education. She is the author of thirty-five articles and chapters and editor of the volume, *The Development of the Mediated Mind: Sociocultural Context and Cognitive Development*. She was co-principal investigator on a

major grant from the U.S. Department of Education Institute of Education Sciences to develop a teacher-use assessment to diagnose student algebraic reasoning. She is also developing a curriculum to teach, improve and assess reading comprehension in low-SES children. She is a member of the American Psychological Association (APA) Task Force on the Applications of Psychological Science to Teaching and Learning, whose goal is to identify scientifically-based, effective instructional strategies and disseminate information on these nationally to teachers through an APA website. She is a member of APA's Coalition for Psychology in Schools and Education, where she represents APA's Board of Scientific Affairs. She has just been nominated to serve on APA's Board of Educational Affairs. Dr. Lucariello is on the editorial board of the *Journal of Applied Developmental Psychology* and formerly on the consulting editorial board of *Child Development*.

Dr. Lucariello has been a visiting faculty member at Columbia University and UCLA and a fellow at Princeton University. She is a fellow of the American Psychological Association and the Association for Psychological Science and an inaugural fellow of the American Education Research Association.

The Honorable Velmanette Montgomery
Chair of the Committee on Children and Families
New York State Senate

Velmanette Montgomery is recognized for her effective leadership and steadfast commitment to her constituents of north and central Brooklyn, as well as to New Yorkers statewide. In her role as chairperson of the Senate Committee on Children and Families, Senator Montgomery is committed to helping young people achieve positive outcomes through reform of the State's juvenile justice, foster care and adoptive care systems. In 2008, the senator authored a law that allows adopted children to claim two parents of record, even if one parent dies before the adoption is final.

Senator Montgomery continues to be one of New York's leading proponents of school-based health care as a model system for delivering comprehensive primary and mental health services to children of all ages, in the school setting where youth spend most of their day. The senator's Teen Health Agenda includes legislation that requires, among other things, the teaching of age-appropriate, medically accurate sexuality education in kindergarten through 12th grade.

Most recently, Senator Montgomery's *Anti-Shackling Bill* was signed into law. It prohibits the inhumane practice of shackling pregnant inmates in labor during transport and delivery.

The Honorable William A. Scarborough
Chair of the Standing Committee on Children and Families
New York State Assembly

William Scarborough represents the 29th District in Queens County. He is a graduate of Queens College of The City University of New York, earning a Bachelor of Arts in psychology and political science. Elected to office in 1994, during his tenure, Mr. Scarborough has focused his efforts in the areas of health care, education and youth services. He has funded and sponsored many education and youth programs. Among them is the Julius Erving Center for Physical Culture in St. Albans, an extended-day youth program modeled after the nationally recognized Jackie Robinson Center in Brooklyn.

Assemblyman Scarborough chairs the Assembly Committee on Children and Families, which has jurisdiction over all legislation affecting: 1) child welfare, including foster care and preventive services, child abuse and neglect, runaways, daycare and adoption; 2) juvenile justice, including youth development and delinquency prevention programs; and 3) other services and programs for children and their families, including Family Court processes.

He is the sponsor of the *Safe Harbor Act* (Bill A5258) legislation to make New York the first state in the nation to provide specialized services and safe housing for children who have been sexually exploited. Along with his co-sponsor in the Senate, Dale Volker (S3175), this legislation was signed into law by Governor Paterson in 2008.

The Honorable Dennis M. Walcott
Deputy Mayor for Education and Community Development
Office of the Mayor, New York City

Dennis M. Walcott is the deputy mayor for education and community development. In that capacity, he oversees and coordinates the operations of the Department of Education and the Department of Youth and Community Development, as well as maintains liaison with and reviews the activities of the New York City School Construction Authority, The City University of New York, City University Construction Fund and the New York City Housing Authority. Walcott is also responsible for maintaining liaison with community-based organizations citywide and coordinating policies concerning youth programs and adult education. He serves as co-chair of the Mayor's Commission for Construction Opportunity. A product of the New York City public school system, Walcott received a Master of Social Work from Fordham University and a Master of Education from the University of Bridgeport. He and his wife, Denise, have four children and one grandchild.

SPECIAL THANKS AND ACKNOWLEDGMENTS

P.S. 46 Wind Ensemble Performers:

Ned Ellis, Music Teacher

Sarah Beaty, Carnegie Hall Academy Artist

Students: Rashad Bey, Dania Dilone, Jada Fraser,

Christian Uraga, Christopher Valentin

The P.S. 46 Wind Ensemble is a small group of students from within the 30-piece concert band at P.S. 46, the Tappan School. The Wind Ensemble includes one band graduate who is now a student at La Guardia High School of Performing Arts. In addition, clarinetist Sarah Beaty, a fellow of the Academy — a program of Carnegie Hall, The Juilliard School and The Weill Music Institute in partnership with the New York City Department of Education — teaches woodwind students during the course of the school year.

The Academy is a two-year leadership program designed to develop the skills and values necessary for careers that combine musical excellence with education, community engagement and advocacy. The program serves postgraduate musicians with opportunities to perform in concert halls, to teach in public schools, to engage in local communities and college campuses and to support this work through professional development. The program reflects the belief that the artist of tomorrow will require both the ability to perform at the highest level and the capacity to give back to the community, inspiring the next generation of musicians and music lovers.

Levine Museum of the New South

Exhibit: *Courage: The Vision to End Segregation, the Guts to Fight for It*

The Children's Studies Child Policy Forum of New York

is made possible in part by grants from:

Colgate-Palmolive Company

CUNY Diversity Projects Development Fund

The New York Community Trust/Mark Family Fund

Oak Foundation

Special thanks to all of those individuals who have helped to contribute to the success of this *Forum* event and publication.