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## AGENDA

	Page
Opening Remarks by Walter Klitz, Director FNST	4
Choice in Education and Beyond – An Introduction Michael Zöllner, Council on Public Policy	5
Panel I: American Schools and Education Policies	
Chair: William Dennis, Author	11
Introduction by Chester E. Finn, Fordham Foundation	14
Comment by Ulrich Littman, Fulbright Commission	30
Comment by George A. Pieler, Institute for Policy Innovation, Director IPI Center for Education Freedom	37
Comment by Stefan Gleason, Vice President, National Right to Work Legal Defense Foundation, Inc.	51

Panel II: From Wall of Separation to True  
Private Choice

Chair: Robert Holland, Lexington Institute	89
Introduction by Richard Komer, Institute for Justice	91
Comment by David Gordis, Hebrew College Boston	103
Comment by Aaron Saiger, Woodrow Wilson School of Public and International Affairs, Princeton University	116
Comment by Marie E. Gryphon, Cato Institute	125

Panel III: "Voucherization" -- Legal and  
Economic Aspects

Chair: Jens Lemke, Council on Public Policy	161
Introduction by Bridgett G. Wagner, Heritage Foundation	162
Comment by Jane Hannaway, Urban Institute	176
Comment by Enrico Colombatto, Director, International Center for Economic Research, Turino	198

Panel IV: The Public Debate on Forms and  
Variants of Choice

Chair: Eugene DuBow, Consultant	225
Comment by Karen Horn, Frankfurter Allgemeine Zeitung	230
Comment by Casey Lartigue, Cato Institute	238
Comment by Lori Yaklin, Director of School Choice, Office of the Undersecretary of Education, Department of Education	256

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## P R O C E E D I N G S

MR. KLITZ: I welcome you once more after the interesting evening last night. And it is my pleasure to welcome specially our speakers of today. And I think after the introduction last night, that we will have a great exchange of arguments today as well.

So Mr. Turner, when we met -- I think it is a little bit more than half a year ago, and we talked about this conference, I was immediately ready to support this idea, not only because this is an interesting topic for our foundation, it is also an interesting topic for the political discussion in Germany.

This is a so-called dialogue project, trying to bring reform discussions in America to Germany, to the German political discussion, and on the other hand trying to explain to people in America what is going on in politics in Germany, where it is not easy at the moment to tell you the truth.

So this is -- I wouldn't say the German-American relationship is poisoned, because the patient is still alive. He just needs some treatment. But this will take some time.

But anyway, this is part of our job. Thank you to everybody for joining. Let's say this is part of rebuilding the relations, working relations, at least. The other question is how to handle it on the higher level between the politicians themselves.

Mr. Zöllner will give you a short introduction on choice in education and beyond. Mr. Zöllner, the floor is yours, and thank you very much for the great support you gave to the Naumann Foundation. So he made it mostly himself, yes.

MR. ZOELLER: Good morning everybody and welcome to our workshop on choice in education which, as Walter Klitz mentioned already, was jointly organized by the Friedrich Naumann Stiftung and our newly founded fledgling think tank, the Council on Public Policy.

Early on this year, discussing a lot of different things, we also wondered how

the Supreme Court would rule on the constitutionality of vouchers and we immediately agreed to follow up on that soon after the court's decision.

I'm not really introducing our subject right now and that is why it will not take 15 minutes. First of all, we had a keynote speech last night, Mr. Petrilli already highlighting all the major controversies.

Then, in addition, the four sessions into which we broke down this workshop are really organized around the obvious questions. And the first session is very much designed to explain the American educational system to our German participants.

And finally, we prepared a whole newspaper page to explain what this meeting is about for the Frankfurter Rundschau, our media partner in this project. And this page was published already Wednesday. So in case you read German, you can find there what we expected you to say today. But that still doesn't take your freedom away because it's in German.

So let me just say a few words on why we picked choice in education, and why we think -- and that is my Leitmotif, why we think it is not just about education and it's not just about America.

Everywhere in modern societies, more so, of course, in urban centers, there is the paradox of efficiency to which Mr. Petrilli already pointed yesterday. What you can say about welfare spending also is true for spending on education.

There is an enormous increase in all western societies, beginning in the 1960s, in spending, but there is no appropriate -- there is no respective improvement in performance, however you want to measure performance, whether you want to measure it by reading abilities or whatever, and quite independent of the fact that we all represent different degrees of being uneducated.

So the reaction also was quite similar in all western societies, people moving out of the inner cities. You may call that educational migration. And as we know, from polling data, in Great Britain, in the Scandinavian countries, but mainly in

the U.S., most of them are naming the school situation as the most important motive.

And of course, which is the core of our problem, we are leaving behind those who cannot afford such a move, cannot afford such an unintended variety of choice in education.

So the paternalizing conclusion of many is, then, nobody should be free to choose, which leads to a whole new meaning of a term educational administrators love, the old term free compulsory education, which really acquires a whole new meaning by that.

Anyway, those who say choice will make societies more divisive do not convince me. Society is already disunited, not least because some are free to choose and others are not.

The question therefore is are we going to give the same freedom to those who don't have it yet, or are we tolerate -- if I may put it a little bit loosely, the are taken hostage by others who are not interested in educational achievement or, by those who are simply interested in maintaining the status quo.

So choice is not primarily about efficiency or saving tax money.

Even though vouchers may initially work as a cap on spending, (but only initially) we are not discussing fiscal policies here. We are dealing with legitimacy not with efficiency, more specifically with the question whose business it is to make educational choices.

Even though in all western countries the state has in the age of nationalism (and in the name of nationalism) nationalized education. The state nevertheless is ill equipped to decide who needs what kind of education when and where.

So I'm repeating my leitmotif -- it's not only about education and it's not only about America, but instead of trying to explain another untranslatable German piece of terminology: "Subjektförderung versus Objektförderung", which is

something like supporting people, not institutions, and dropping the one-size-fits-all approach. I am trying to make my point using a metaphor, which I owe to Uwe Reinhardt.

There are two means of feeding a bird. One is to feed a horse first and expect the bird to literally pick up. And the other way, of course, is simply to feed the bird.

In other words, there is an alternative I think opponents and proponents of the active state can agree on without discussing the welfare state as such, which is, to empower people, not bureaucrats.

I'm aware that this is broad brush and a very broad picture. And as a German colloquialism goes, the devil is in the details. And that is why I'm now turning the floor over to Bill Dennis. I leave you in his experienced hands.

#### **Panel I: American Schools and Education Policies**

MR. DENNIS: Let me just say a word, since I am rather late to arrive in the sense of being plugged into the conference. And I don't even have a vitae in the book.

I've had about two careers. I worked as a college professor, taught American history at Denison University for half that time. And for the other 16 years, I was a program officer at Liberty Fund in Indianapolis. I moved to the Washington area following my wife, Kim Dennis, whom some of you know, last January.

I had a short interlude during that second half as a political appointee in the United States Department of Interior, where I developed a great interest in environmental policy, as I noticed in reading through the vitae that some of you have as well. So we have quite a lot of things to talk about.

For the German participants, I might say that Liberty Fund sent me to

German-speaking Europe six or seven times. I have warm memories of my trips there, and drove so many thousands of kilometers around your beautiful lands, and was very well treated, and hope someday to get back.

I'm something of a theorist rather than a policy expert. And if I were participating in this conference and making my views known, I think I would talk about theoretical questions. And maybe I can do that some this afternoon, even.

But to me, at least, if you start thinking about what education is and how it -- what its purposes are and how it might be delivered, before you start talking about the public policy aspects, the question of choice becomes much clearer and much more necessary. I'm unsure you can have any real, meaningful education without substantial choice.

Now, with those quick comments, let me turn to our speaker. We have some opening remarks by Chester Finn, whose vita you have before you in your program, and who I'm sure many of you know.

He certainly is one of a handful of Americans is the best informed and most articulate in the questions of how education could and should be run. He's written widely. He speaks daily on this subject. It's a great pleasure to have him here.

He'll be followed by, it says in the program, three commentators. Do we have all three here? And we'll find out when we get to that point, I guess.

MR. FINN: My assignment was to create a larger context for this choice debate in the United States. One could do that by tracing the history of the choice idea in American education, its liberal roots, its conservative roots, experiments with it over the last 50 years, etc.

I'm not going to do that. Instead, I want to talk about the bigger picture of what's going on in American education right now, which will bring us back to the topic of school choice.

I think that all of you know how American education is organized. It's not so different from German education, i.e. organized by state. Our 50 state education systems are surprisingly independent. They have the constitutional responsibility for delivering education to the people of the states. Most of them use local school systems as their principal vehicle for doing this, but the constitutional, legal, moral, and financial responsibility, for the most part, rest with the states.

Our national government has a much smaller role in education. For every dollar that is spent on primary and secondary schooling in the United States, about seven cents comes from Washington. The other 93 cents come from state and local sources.

We've recently enacted an enormously complicated and intrusive federal education reform law, which is probably the fullest flowering of federal-level efforts to reshape American education that we've ever seen. Still, the principal responsibility remains with the states.

We have in the United States not only 50 state education systems, but about 15,000 local school systems, ranging from tiny ones with a few children to New York City, with more than a million.

About 85 percent of all our children attend government-operated schools. About 12 percent attend privately-operated schools. And the remaining 2 or 3 percent are either schooled at home or attend something we call public charter schools, a subject I'll come back to.

That's the big picture. And it's accomplished a lot. It has numerous virtues. It's universal. It is, for the most part, free.

You can have as much of it as you want. You can come back and try again. Indeed, you're welcome to come back any time for more. You can continue on with post-secondary education almost whenever you like, and generally can find a reasonably-priced way to do this.

We have substantially broken down the barriers that we once had by

race. We now admit and encourage disabled children to come into the schools. On most indicators, girls have caught up with boys, and on many indicators, now surpass boys. We have some excellent schools within the system. We have some children getting a very good education. Thus there is more than a little.

About 20 years ago, however, we also began to realize that we had a great deal of bad news. We saw about a quarter of all our children not completing secondary school; that's still true today. We had flat test scores on our national assessment exams at a time when other countries in the world were rising in their achievement.

We had university professors claiming that the people coming into their universities were not prepared to do university-level work.

We had employers complaining that the young people coming out of secondary school into jobs didn't know enough, didn't have the skills, didn't have the knowledge, didn't have the habits, the anything, to be ready to do the jobs well.

And on international assessments of various kinds, we found that American youngsters were not doing very well, and by the end of secondary school were indeed doing very poorly.

The most recent TIMSS data, as you probably know, show American fourth-graders doing rather well in math and science by international standards, American eighth-graders in the middle, and American twelfth-graders, very low. This led former Secretary of Education William Bennett to comment that, as far as he could tell, the United States is the only country in the world where the longer you stay in school, the stupider you get.

Twenty years ago, the National Commission on Excellence in Education, after reviewing American schools, said we had a national crisis on our hands and needed to take drastic action to improve the performance of our primary and secondary schools.

This report, known as "A Nation at Risk," has entered into the annals of

modern American history as a turning point, at least in consciousness, about the education system because fundamentally what it did was shift us from a sense of complacency about our schools to a sense of worry and alarm about our schools.

It proved easier to get worried, however, than to change them. And we know have 20 years of experience with efforts to improve and reform our education system. We have spent a lot of money. We have tried a great many different things. And nothing has worked very well.

Today, 20 years later, our scores remain essentially flat. Our international comparisons remain discouraging. Our professors remain unhappy. Our employers remain unhappy. And our percentage of children not completing school has not risen, either.

Indeed, a number of OECD countries now surpass us in their percentage of high school graduates and also in their percentage now of university graduates. That's never before happened, until very recently. We always could say we had the largest fraction of university graduates. Several northern European countries, however, now surpass us on that measure.

So 20 years of effort has yielded few gains. And this has led to frustration. It's also radicalized many Americans about the nature of the remedies needed in the K-12 education system.

I will risk over-simplifying where we are now by saying that there are three big ideas in the land today about how to reform our education system. One of them you can dispense with quickly. It is the idea favored by educationists, namely that we should give them more money, more people, smaller classes, more this, more that, and somehow, if we give them enough, they will produce better results.

That is without question the preferred remedy of the people who work in the education system. But few others buy it any longer.

So let's set that idea aside. There are two other important reform ideas that have come from outside the education system itself, chiefly from elected

officials, from the broader citizenry, from business leaders, et cetera.

One of those ideas we call standards-based reform. The other we call choice-based, competition-based or market-style reform. It's important to have both in your mind as we spend the day discussing the choice version, because both are going full-tilt forward, and they occasionally bump into one another.

They frequently confuse people. But once in a while, they turn out to be complementary or mutually beneficial to one another.

Standards-based reform is the dominant idea today. It's the idea behind the recent federal law, President Bush's No Child Left Behind Act. And it is binding law now on all 50 states.

Standards-based reform essentially says that some public authority, normally the state, will prescribe the standards of academic achievement that students should reach, the skills and knowledge that they should have at the end of their schooling, the level of reading they should be able to do, the level of mathematics they should be able to do, et cetera.

Then state-administered exams will determine how well these things are being learned. Then a variety of incentives and interventions, consequences, and sometimes even punishments, will come to bear in order to alter the behavior of children and teachers, in order to cause them to learn more.

It's a very behaviorist idea. It comes from outside the education profession. It is designed to leverage change within the classroom by altering the incentive structure and furnish external standards and benchmarks and measurement systems.

Every state must now define what it means by proficiency for its children. Every state now has twelve years to get all of its children up to a level of proficiency. And every state has a series of interventions that it is supposed to make in public schools that are not performing satisfactorily.

One of those interventions is giving the children in that school the

freedom to leave it, exercising a limited form of school choice in order to exit from a failing school.

For political reasons, the options given to children under that form of school choice are restricted to government-operated schools in the same school district. But this is not working well at all.

The standards-based reform is the second of the three ideas of how to fix things.

The third idea is choice or markets. The basic proposition here is that the education system cannot be fixed from the top down in this state-centered, dirigistic, government-knows-best model of standards-based reform, and that a better way to improve education is to create competition, freedom, and alternatives. Under this theory, the marketplace will bring about stronger achievement for the children directly affected by it, i.e., the children who go to a different school, and will also leverage improvement in the schools that they are leaving. The latter is due to the fact that those schools will find themselves losing market share and, like any sensible organization, will reform themselves in order to retrieve their students and their revenues.

This marketplace theory of education change thus incorporates two ideas about how it will make education better. One idea is that some children will benefit directly. They'll be able to leave a bad school and go to a better school. The other idea is that competition will cause bad schools to get better in order to preserve their attendance, their students, their market share.

This idea of choice takes many, many, many forms. We could spend the entire day making a list of the variants of school choice in the United States today.

There's a broad spectrum, from a very limited form of public school choice within the government system to a wide-open, take-the-money-and-do-whatever-you-like-with-it approach, which in some formulations would allow parents who are home schooling their children to take the

state money and use it for home schooling purposes.

Indeed, there's even a handful of libertarians in the United States that believe that the state should completely vacate the field of education, spend no money on education, and if anybody wants an education for their child, they should pay for it out of their own pocket using their own private resources.

I stop somewhere short of that position. I do think that school choice is a good thing, but also that the state has an obligation to see that we have an educated citizenry, although the state doesn't have to operate a monopoly school system in order to produce that result.

The two forms of choice worth mentioning here are the voucher idea and the charter school idea.

The voucher idea would give parents the money and let send their children to the schools they select, including private schools. We now know that this is constitutional, thanks to this ruling last June. We also know that it's politically controversial, and therefore is happening in only a very few places with public dollars.

Depending on how you define vouchers, you might find as many as five places where it's happening. But realistically, I think it's happening in three places, and in all three of them on a small scale, a few thousand children. It's fiercely resisted by all of the political forces in public education, and many others, too.

What's spreading faster than vouchers is the charter school idea. Charter schools are independently operated but publicly funded and publicly accountable schools that are not run by the bureaucracy but instead by a group of educators, a group of parents, a private firm or a community organization.

Think of charter schools as independently operated public schools. We're up to 2,700 of them in the United States right now. They've been growing by several hundred per year. About 40 of our states have permitted them. And in six or eight of those states, it's become quite a significant event.

You can go to places in the United States where there are 50 and 60 and 70 charter schools operating within a single city. And you can go to some cities where as many as 15 percent of all children now attend charter schools.

But they're not all working well. Some of them are really silly, frivolous schools. Note, though, that they don't have a permanent life expectancy. The idea is that they only last so long as they're doing a decent job and so long as somebody wants to come to them. They are schools of choice.

So not only do we have about 2,700 charter schools operating today in the United States, but we have also closed down about 200 charter schools over the last ten years. These have closed for a wide variety of reasons, ranging from criminal behavior to educational failure to the fact that nobody wanted to attend them.

Some people believe that the closing of a school is a tragedy. I actually regard it as a success for a system in which there is some accountability for results, such that a school that is not producing a decent result doesn't have the right to continue operating. That is how it works in the charter school world. It's not yet true in our regular public school world.

I'd like to leave you with the thought that many forms of school choice still represent a rather small fraction of American education. But the idea of choice as a reform strategy has many adherents. Some forms of it are more controversial politically than other forms, although they're all controversial to those who prefer a government monopoly.

I think we're going to continue making serious, interesting strides on the school choice front. But we are also going to continue struggling on a massive scale with standards-based reform.

At the intersection between those two ideas, there's some very interesting possibilities. But I'd rather save that for the discussion because I think you've now listened to me long enough. So thank you very much.

MR. DENNIS: We're now going to hear from Ulrich Littman, who, you

can see from your program, has had an (inaudible) career. And you're now at the University of Bonn? Is that where you're currently located?

MR. LITTMAN: Well, currently with the Fulbright.

MR. DENNIS: All right. Currently with the Fulbright. And very glad to have you here, and why don't you come up and use this other available microphone, or the mobile one if you would rather.

The program calls for comment, but it may be that you have less comment and more just your own views. So that's fine, too.

MR. LITTMAN: Thank you. Just a few comments.

Let me start out with the fact that American education served as a model for German educational reforms after World War II. The result of some of those reforms were not only the so-called comprehensive schools, but even more so, the introduction of American textbooks for civic education because civic education was the key for American democracy, which we had to learn in Germany.

And in order to get the Germans well trained in this, they translated American textbooks written for an American audience into German and used it in our civic instruction. It did not work at all, and our politicians were quite flabbergasted.

I'm using this example to show that certain things which we take for granted as being of the same sort do have completely different meanings. I used to use a pair from genetics to explain basic differences. These two are phenotype and genotype in genetics.

The phenotypes of our educational systems are, as you pointed out, very similar. It looks as if it is very similar. The genotype shows that there is a very basic difference, and this is where the terms sometimes are very different and difficult, in fact.

I don't want to take too much time, just try to explain a few things. But certain terms we associate with legal structures or processes. A very simple example, which is not exactly on schools but on higher education, comes up when we

talk in conferences like this about higher education.

We use English because that's our common language. And higher education, of course, includes the universities in America, the post-secondary institutions. And here we have all the experts talking. And what comes out, they don't understand each other. As soon as we come to equivalences of degrees, to the usability of certain approaches, it doesn't work.

Our current reforms -- and this goes for both higher education and secondary education -- are referring to American models and mean something entirely different because for you, to use just this one example, higher education and college implies automatically general education requirements. This is absolutely natural for you, and if you talk about higher education, that term education is a very important one.

For Germans, university is an institution for academic training. Education does not play a role. The introduction of bachelors degrees in Germany and masters degrees in Germany has disregarded this issue completely, and they say our secondary schools are so infinitely better than American institutions that we can skip the first year in college and finish our degrees in three years, and that is all about.

And then people start wondering why American students can discuss, academically and otherwise, things that our German students could not dream about. That has to do with the general educational requirement. In other words, I could use any number of terms where we have certain feelings and different approaches, and still look for something very similar.

Now, one of the main things in this area that we are looking right now at in Germany in our secondary schools, experiments in some of our states (inaudible), that schools operate their own administration. And they get a certain amount from the state, and they can decide about curriculum, about the teachers, the teachers they want to hire, because that's the way it is in America.

But the people who are dealing with this issue have never heard about a school board, for one. And there are certain structural implications that make this whole thing different.

And when they talk about these American models, with the autonomy of the school system, they think about the teachers and the principals and the school authorities of a city, but they don't think of the citizens. And when I tell them that the turnout in school board elections usually is higher than the turnout in political elections in the United States, they just can't understand this.

Now, this is just one of the points I want to point to. The other thing is, you mentioned a nation at risk. This is a big thing. One of the bigger issues in our educational discussions some years ago was another publication, "How to be Equal and Excellent, Too."

The result in Germany was, when we discussed this in certain Americanistic terms, we didn't have to work about this because German schools are both excellent and equal.

And therefore, we didn't have to worry because we have the structure of divided school systems, the general schooling of eight years and the middle school -- here you have the terminology again. It's not the American type of middle school, even though the name is the similar thing; it's a five-year secondary school -- and the college-bound gymnasium, in themselves, were equal and they were excellent, of course.

And therefore, we didn't have to worry until we suddenly are faced with a large number of foreign workers' children who are partly German, who are partly in their own home economy. And here we have the larger problems and where choice in education will take a totally different form, as we already see in the discussions in (inaudible) or in some of our other states.

And there is one point that I would like to make quite clear, where all our discussions suddenly come to a very fast end, sort of. The American system is

based on different educational philosophy historically. That's where the genetic part comes in.

If you go back into the historical development, they are still palpable, even if you discuss different terms now. The influx of immigrants of all kinds of things, all the debates that has been taking place from last century to the '20s and through all the commissions' works and so on, had to do with the fact that foreign people had to be integrated. And even the issues of civil rights and so on had something to with the Americanization.

And the net result of this was, well, if you are a good American, you can show this by an exam. And the net result is, in America, you have entrance exams, from college through the bar exam and through the license exams.

In Germany, we still have this notion that if you have achieved a certain degree or level of achievement, you have entitlements. The idea of entitlements is one of the main differences that we have.

And this is where the question of choice and quality will come up in Germany at some later date. And I hope they will not use too many of the American models unless you know what you are talking about. We can go into some of these other things. I don't want to take too much of the time here.

But I think, and from my own experience, we have to look not so much at the phenotypical similarities, but if we apply them, we have to look at the genotype of certain differences. Thank you.

MR. DENNIS: Thank you. Very interesting indeed. And to me, I was intrigued by the thought that the Germans looked to the American models, or had it thrust upon them, after World War II. Many of the American models go back to 19th Century German models.

MR. LITTMAN: That's a different chapter.

MR. DENNIS: That's a different chapter. Right.

Well, we now have George Pieler. I'm sorry I did not have a chance to

meet you beforehand. He's at the Institute of Policy Innovation, and also Empower America, two, I think, very interesting think tanks working on not just educational policy but many other areas today in Washington, D.C. and around the country. So it's great to have you here.

MR. PIELER: Thank you very much. Actually, I'm not with Empower America any more. I did consulting work for them for a couple of years, but that expired, actually, around 9/11, but it didn't have anything to do with 9/11.

First of all, I want to thank the Naumann Foundation for setting up this very interesting agenda. Since my background is mainly in school choice, I will talk to that to some extent. But I also have looked at the agenda. I know you have many, many fine experts on that topic later on in the day, so I don't want to dwell too much on choice per se.

But my understanding is this panel is about the politics of American education as much as it is about what types of reform measures might be considered. So let me start by giving a little analogy that I think will resonate with both our German and American guests.

Suppose, for example, that you don't like your local gas station. The gas station may be five blocks away. Bad services, prices too high. You want to go to another gas station, maybe half a mile away or a mile away. But you can't do that on your own. You have to ask permission of the government first.

The government says, well, it would be nice if you could go to the gas station a mile away. We don't have an inherent objection to that. But the law does not now provide for that. So you need to go to the legislature of your state -- and since Germany and America both have a state/federal system, I think this also is analogous to both countries -- so you have to go to your state legislature and get them to modify the law so that it says, yes, in fact, you can go to the gas station a mile away. It may even say, you can choose among three or four different gas stations within a five-mile radius.

So you get the legislature, after some degree of effort, to pass a law saying that you have that right. Unfortunately, then other parties tell you that, well, the legislature said that, but I'm not sure that's constitutional under the supreme federal law, the constitution of the United States.

So they take the matter to court, and the state court says, where this fight would normally begin, state court says, well, no. Actually, you can't do that. That's not consistent with the federal law.

Then you have to go to the federal court to see if you have that right. And ultimately, you have to go to the United States Supreme Court to see -- remember what we're talking about: Can you go to the gas station half a mile away as opposed to the one that's closest to you?

Well, that's not an exact analogy, but it's not radically different than the situation that led up to the Supreme Court case in *Zelman v. Harris-Simmons*, which provides a major premise of this conference, as I understand it - to look at what might happen in the light of that Supreme Court decision.

So what I want to address is not just choice, not just educational reform, but how you -- what you have to go through to get anything done that fundamentally changes your rights as a citizen in educating your children, or your rights as a child or young adult in finding another educational option.

Again, I think the analogy shows you have to deal with many, many different sources of power -- that education is a highly political issue, certainly in the United States. I'm not as familiar with Germany, and others have spoken to that.

School boards are political bodies. Local governments are political bodies. State governments are political bodies. And we have a multi-level court system of state, federal, and Washington-created courts of final decision that are not entirely political bodies, but they're politically accountable in that the judges are appointed politically.

All these elements have to be brought to bear if you want to do

anything significant to change American education. Now, it's true that there are occasionally dramatic changes like the No Child Left Alone -- I mean, sorry, No Child Left Behind Act -- there is controversy over this legislation, as Checker Finn knows quite well.

But the federal legislation that the Bush Administration negotiated with Congress has not had a serious court challenge, to the best of my knowledge, while there have been a lot of state and local objection -- there has been lots of state and federal friction in implementing the terms of the law, which is just really coming on line this year.

For example, several states take advantage of the fact that the law gives the states substantial but not total freedom in deciding what are failing schools. Failing schools, as Checker pointed out, if your child is in one, you have limited rights to transfer your child to another public school and possibly get some tutoring supplemental services, as approved by state or local authority, or both.

But when the states came up with their lists of failing schools for purposes of this law, it was discovered that a number -- not a huge number, but a number of the schools on the failing school list were identical to schools that the federal government, the U.S. Department of Education, had certified as Blue Ribbon Schools of Excellence in the not too distant past.

So the point I'm making is that when you have a central body of legislation at the federal level in the United States coming out of Washington, D.C., it's never going to fit quite right with all the state and local situations. And good intentions aside, there are risks to looking at centralized options as opposed to state-based options.

The movement for choice, as I see it at this moment, is highly dependent on Washington. Now, the ideas like charter schools, tax credit proposals to help people choose different options, vouchers themselves, those came up as -- you know, bubbled up from state legislatures and activists in the state who

wanted to change things.

But, now, the federal government has also moved heavily into the scene and the federal courts have moved heavily into the scene. Now, the federal courts have always been on the scene. They've been on the scene for well over a century, at least, if you look back at the old case *Plessy v. Ferguson*, which was the U.S. Supreme Court case which ratified formally legally segregated education in America, and which was not even rejected until 1954 in *Brown v. Board*.

So national policy, federal law, federal courts, have been huge players in education for many years, not entirely because of education issues, but because of other issues of race, equal protection, fair classification of people, that sort of thing, which are very fundamental to our values in America and which we've made, I think, tremendous progress.

And everyone would agree we've made tremendous progress on that front, not just in education, but in civil relations generally. And that's partly due to the courts and it's partly due to people thinking differently. And that's not just a political process; it's sort of a cultural evolution as well.

But the fact is, if you want school choice now, yes, you can go to your state legislature. But you can't just walk out the door with what you want unless you have a lot of money. Now, clearly, like with any service that's commercially available, you can buy education services on the market if you have the wherewithal, whatever the laws of public schooling may be.

And choice advocates generally make the point that, yes, you can buy yourself out of the government school system, but you have to have a lot of money because you're paying lots of money in taxes already to support the government schools, and if you don't use them, you're paying twice, basically, for educating your children.

And that's roughly true. But it's more true of what I would call the middle class and lower middle class population than of others. First of all, let's face

it, politically, no one cares about the wealthy. The wealthy can buy their education, and politically, whether it's just or not, no one is too concerned that more well-to-do citizens have to pay taxes to support government education as well as perhaps pay privately to support the education of their own children.

At the other end of the scale, the focus, as Checker indicated, on failing schools and the focus and much of the voucher movement in America today is towards inner city schools, minority-based schools, economically disadvantaged populations, and giving those people -- who by every standard of reckoning are the most disadvantaged in the government education system today -- giving them more rights and options, whether it be vouchers, charter schools, or what have you.

But that leaves a huge population unaddressed. And it's that middle class population that probably, in most polls, still shows up as the most -- not reluctant, but the least interested in the voucher option as such because they know what the local public schools are.

They have, in many cases, even though it imposes a degree of financial hardship, chosen where they live because they think the public schools are better. And they're paying for them through taxes.

But that low-income population, by and large, is not paying the level of taxes that go to support the public schools, and there may not be benefits -- they certainly aren't benefitting too much, either.

But the point is that the notion of double payment applies mainly to this middle class population, which is not primarily the beneficiary of most things that are going on outside the government school system, that is those types of options, whether it's vouchers, supplemental tutoring services, or tax credits that let you go somewhere else to educate your child. But they do benefit from charter schools in many cases. They do benefit from other reforms. They do benefit from standards-based reform.

But until this population is addressed -- and this is a political issue for

the future, I think, for this country, and maybe for Germany as well -- until the middle class population is convinced there are fundamental problems with the system as we know it, whether their focus is on national legislation or their own local situation, we have a -- I can't call it a problem, but a phenomenon in America which I think is the same for politics as it is for schools: Most people in polls will say, Congress is corrupt. I hate Congress. I don't trust any congressman. If you ask them about their own congressman, it's the reverse. He or she is a great congressman. I like my congressman.

So they all like their own, but they don't like the body as a whole and they don't like everyone else's congressman. Very similar with schools. Most people, if you poll them, are relatively satisfied with the local school or the school they use. But they say -- they're much more inclined to say, that the system as a whole is a mess. I mean, those other schools are horrible.

So there's a notion -- Americans are what I call, in a large degree, small-c conservative. They like what they know and are familiar with, and it takes a lot to convince them that there's any fundamental problem. Even you present them with all the evidence, it's a national concern, and if they don't see it, today in their local situation, then they're not as concerned. They're concerned, but they're not going to act on it.

Let me touch on one other point before I yield the floor, which is that in addition to the political structure, which is a fairly complicated maze in the American political and judicial system that colors how the education reform and school choice debate plays out, there are what I call the private actors. And I think sometimes their impact is understated in terms of the education reform debate, and the school choice debate in particular.

For example, home schooling: Home schoolers did not start out to change the system, but home schooling as a phenomenon is probably -- has been and probably still is the fastest growing change agent in American education, people

on their own deciding that they are going to teach their children at home.

And a whole universe of services has sprung up in the last decade or so that serves this population through course materials, online tutoring, sharing networks, curriculum, books, all that sort of thing. That movement had no political origin per se because it was just people making the decision on their own and then forming associations on their own.

The same is true of what I call the private scholarship movement, which was inspired partly by a desire to replicate what a government voucher program would look like, that also sprang up somewhat spontaneously.

In other words, private philanthropists decided, we're tired of waiting for the political process. We're tired of doing what I just said, going to the legislature and the court and the other court and the other legislature before we can get satisfaction.

Let's just do it. Let's just raise some money, offer scholarships on a private basis to local students, and see what happens. And there are, I think, 40,000 students nationwide now in that kind of a system, which is not a huge number. It's not something that's going to change everything.

But the success, which has been documented by a number of studies including Paul Peterson's Harvard studies, of the children participating in those programs has been a tremendous factor, in my view, in moving the voucher debate along and making it more palatable in the political process as well as in the world of private philanthropy.

These change agents that come from outside the political system as such, whether it's philanthropy or home schooling or just people deciding, we're going to actually scrape together the money and send our children elsewhere, these change agents are critically important to leveraging both the debate and what happens in the political process and the judicial process because they are the troops on the ground showing what can be done to the politicians and the establishment,

which Checker has very artfully for many years called "the blob."

And all I would say in closing is that I think as we look at these reforms, and I hope that the leadership in Germany and of the German states when they look at reforms will consider the fact that there's a risk to centralized approaches as opposed to grassroots approaches, and there needs to be some creative tension among the political players in the process if we want to really have reforms that will last for decades. Thank you.

MR. DENNIS: Thank you. Just stay where you are.

MR. PIELER: All right. I didn't know if somebody needed the chair.

MR. DENNIS: And our last panelist is Stefan Gleason, vice president of the National Right to Work Legal Defense Foundation, one of the sub-groups, I guess you might say, of the National Right to Work Committee, which is one of the very old players in the policy games in Washington, D.C. and one of the most effective, I think. So great to have you here, too.

MR. GLEASON: Thanks. It's good to be here.

National Right to Work comes at the issue from the angle of individual rights and fighting what is, I think most people recognize, the primary obstacle to education reform – government-granted coercive union power.

We're not against voluntary union participation or voluntary participation in any organization or professional association. But the problem is, over the last 40 years, the education establishment has granted a tremendous number of privileges to union officials, giving them the power to coerce teachers into their ranks and force them to pay dues as a condition of employment.

I think much of the education reform movement has realized that the union coercive power is the chief obstacle to accomplishing the reforms that are necessary. And, dismantling these union special privileges in public schools must be a high priority.

MR. DENNIS: Sure.

MR. GLEASON: Thanks. I'd stand up, but I'm so tall I might distract you guys.

Now, the NEA teacher union 30 or 40 years ago decided that it wanted to effectively control who enters and leaves the teaching profession. Public sector forced unionism is a relatively new phenomenon that started in 1961 in New York City, where the American Federation of Teachers sought its monopoly bargaining power, and started to change the way that education policy was thought about.

Instead of sticking with their original missions of serving professional associations, they began turning into militant trade unions. And increasingly, the public sector has been unionized since that point.

Union officials, using their government-granted privileges, have been able to block education reform from both the top down and the bottom up. When I say that, I mean from the bottom up, I am referring to the fundamental power known as "exclusive representation" which allows union officials to be the exclusive spokesman for all unionized teachers to the school board, and that means that the school boards have to negotiate with union officials over all issues governing teachers' working conditions. Increasingly that scope is being expanded to things like curriculum and peer review and teaching standards and certification. And at the same time they are, at the local level, very involved in electing the school boards using their political clout and their union dues money.

And so what you have in many jurisdictions is, in fact, the union sitting on both sides of the bargaining table. The management is also the politician who is elected with union support. At that point, there's really no one representing the interests of the people. And as far as those independent-minded teachers who may not be in lock step with the union hierarchy, they're not represented in that situation either.

In fact, even the National School Board Association and the state affiliates have been, to a great extent, coopted into supporting this union monopoly

model of running public schools, and they are not very helpful in getting school board members who are elected educated on what's happening or equipped to challenge it.

And, those who are elected by union support, of course, are going to do a lot of the things that unions want them to do. But others are just steamrolled because they don't have necessarily the background to fight back.

Now, what can be done? Well, there are two fundamental union powers in the public sector that have allowed teacher union officials to be permanently installed in the driver's seat, so to speak.

The first is the power to compel membership and the payment of union dues. And in about 20 states, teacher union officials have this power.

The second, and more fundamental, is monopoly bargaining, which is the idea that in a school district where the union is either elected or somehow declared as the representative of teachers, regardless of the wishes of some teachers, or even a majority of teachers, the union is designated as the exclusive spokesman for all teachers. And it becomes illegal under that system for the school board or the principals to bargain or to discuss working conditions individually with teachers at all. It's flat-out illegal.

The first step, breaking the forced union dues stranglehold, if you will, is important in terms of making the union hierarchy more accountable to its members. If a union official has all the teachers' dues handed to him on a silver platter, then why do you have to care what they think? Why do you have to represent their best interests?

Instead, it's much easier for the union hierarchy to promote its own institutional interests and its ideological interests which, almost without exception, is very far left and very much in favor of bigger government and all kinds of far out social causes that have nothing to do with educating children.

For example, the NEA has a position on the International Criminal

Court, on nuclear freeze, gun control, statehood for Puerto Rico, all kinds of things that are unrelated to education.

One good example of why ending forced union dues increases union accountability are the remarks of an Iowa education official on radio a couple years ago. When asked whether the Iowa affiliate of the NEA, would celebrate the national NEA-mandated gay and lesbian heritage month, the executive director said, heck, no. We don't support it. Iowa is a right to work state. If we did that, we'd loose all our members."

The second and most fundamental step in breaking the teacher union stranglehold is to end the root form of compulsory unionism, exclusive representation or monopoly bargaining. This is the power to force all teachers to accept union representation whether or not they want it, and the power to force the school boards to bargain, mandated by law, with union officials over all matters governing wages and working conditions, as well as other things.

Thirty-three states currently have, for teacher unions, imposed monopoly bargaining by state law, and ten more allow it or tolerate it at the local level. So 43 states recognize or allow teacher unions to be exclusive bargaining agents for all employees.

What's little understood is the extent to which union operatives use their monopoly bargaining power to exercise sweeping control over virtually everything that goes on in schools: Authority over compensation and assignments given teachers; authority over curriculum, textbooks, and standards; authority over which teachers get promoted and which ones are held back.

There's an unbelievable number of work rules in these collective bargaining agreements which really have a crippling effect on the effective and efficient management of schools.

And in some states, they're even reaching to actually include

curriculum as a mandatory subject of bargaining. At this point, much like other internal school governance, most states the teacher union has the ability -- the exclusive right to pick who sits on various school committees, whether it be curriculum or peer review or professional standards. So they have tremendous influence already.

But in California, for example, that wasn't enough. It wasn't enough to pick the curriculum committee. They now want the curriculum to be a mandatory subject of bargaining. And there is a law pending this year that dealt with that. It didn't pass, but they're coming back next year.

And in most states, the law declares, as I mentioned, that it's illegal for a teacher to bargain individually with their own employer. And this is important because, instead, they have a one-size-fits-all contract imposed on them that discourages merit, discourages excellence. And some of the best and brightest and most productive teachers are disenchanted in this kind of environment and leave the profession.

I can't -- I think it was the Hoover Institute or some organization recently said that the last saving grace of public schools is the altruism of some teachers who've stuck around despite this system.

Unions go in there and negotiate, for example, against merit pay. They're opposed to merit pay. And this, of course, is not rewarding to the best and brightest teachers. And it shows that -- it puts the lie to the idea that union officials represent the best interests of teachers.

So, you know, those who are especially involved in union issues and are most activist and militant are the ones that are favored by the union hierarchy for positions within the school system, who get the support of the union for promotions and so on, and those that are independent-minded teachers are often shoved aside within the system.

As I mentioned, in the early '60s the AFT first sought this power in New

York City. And the NEA at that time was a professional association that was not a union. And albeit it was somewhat left of center, they did have an anti-compulsory unionism wing within the NEA headquarters. My boss, Reed Larsen, talks about having actually been there in the early '60s.

And at the point in the early '60s when the AFT started competing in cities for this monopoly bargaining power, they found that they could effectively take members away from the NEA because when, you know, you have a union as the exclusive spokesman, even if you don't have to join the union or pay dues to the union, that's kind of the only game in town. And the NEA started losing members.

So ultimately, they decided, and the militants within the NEA took over the organization and turned it into a union and realized, we have to compete for this same power. And they were stronger in the rural areas, and they started working to pass laws there, and they started competing with the AFT to get the monopoly bargaining privilege within the inner cities. And now the NEA and the AFT combined have 80 percent of America's teachers under these union collectives.

The point is, it's not necessarily the people running the system that creates the problem. It's the system. And you'll find that in the few states where unions do not have this privilege, independent professional associations that are focused on school reform and other, you know, professional issues dealing with education policy, those groups flourish in states where this monopoly bargaining privilege does not exist.

In fact, in Georgia and Missouri, and I believe Texas also, the independent professional educators' groups, which are generally very sympathetic, usually right of center, and very sympathetic and active in school reform, those groups are actually larger than the unions, the union affiliates, in those states. And they do not seek and do not want exclusive bargaining power. They understand that that's a problem.

However, if those states were to strengthen those laws or change those

laws, these groups would be devastated, or they'd have to become like the enemy and compete for that toehold, as the NEA did 30, 40 years ago.

National Right to Work, we're an organization that represents individual teachers in fighting back against union abuse. We have about a hundred legal aid cases around the country. And we've gone to the Supreme Court a few times on behalf of teachers and established that at least teachers do not have the -- cannot be compelled to pay union dues that are spent for non-collective bargaining activity.

But this has been a very difficult thing to enforce because it's like trying to recover the stolen loot rather than preventing the theft. The courts have not at this point had the courage to address head-on the constitutionality of monopoly bargaining. We hope to someday get the court to seriously address that. It's never squarely addressed it, believe it or not.

The National Right to Work Committee is working to roll back these laws that we talked about, and we have a lot of work to do. It's a lot of hand-to-hand combat but we're making some progress in a few states. They passed right to work law in Oklahoma last year, and hope to pass one in New Hampshire and Colorado, and repeal monopoly bargaining, potentially, in Utah.

That would be real progress. But these are, you know, the core union privileges which are jealously guarded, and so it's a very high priority of the union hierarchy to oppose those types of efforts.

Just a couple points on how -- a couple examples of how union power has been used to derail or at least thwart or harass education reform efforts even after it's been passed. Of course, they're opposing, you know, in the political process. They're opposing it within the schools from ever becoming seriously considered or ever passing.

But where it has been instituted, there have been some problems also. There was an incident in Wichita. United Teachers of Wichita has exclusive

representation power dealing with the public schools, and the public school board awards the charter. And I think that's how it normally works for public charter schools.

So that means that the union, while it may not have the exclusive bargaining power to control the way that the charter schools are run, has tremendous clout with the granting authority of the charter, and used it very effectively to try to stop the opening of charter schools and then get some concessions on working conditions and so on within the charter schools.

In New York there was a charter school law that passed a couple years ago, and it was almost as though the union wrote the law because it requires that after 250 students get into these charter schools, the union is automatically declared the exclusive bargaining agent on behalf of all teachers. And in New York, you also have to pay dues if the union is the exclusive bargaining agent.

So in that situation, you know, we're importing a system after the school gets to a critical mass that has helped to ruin the public schools. And so that's a problem. I'm not sure if any of them have reached that threshold at this point, but we know that that could be a problem once that happens.

So under the private sector also, under the National Labor Relations Act, as vouchers might become more prevalent, private schools can also be unionized under the same type of laws that exist in most of the states. And so that's a problem, you know, ultimately down the road that needs to be addressed.

I guess the bottom line point of my remarks is that in order for meaningful education reform to take hold, we have to address the government privileges that hand union officials this unique power not exercised by any other individuals. Because so long as they have that power, they'll be installed in a place where they can derail education reform.

## Panel II: From Wall of Separation to True Private Choice

MR. HOLLAND: Well, I guess since I'm the chairman, I'm in charge here. I'm Bob Holland from the Lexington Institute here in Washington. Welcome to Panel II, discussion of "From Wall of Separation to True Private Choice."

To what extent is there or was there or should there be a wall of separation between church and state that should preclude or limit the ability of individuals to use government education subsidies to choose a religiously affiliated school.

I will not infringe on the time of our panelists. We have a most impressive panel who have the expertise to bring light to this subject. I will confine myself to introducing and then maybe refereeing a little in the discussion phase. And I hope we'll have ample discussion.

To introduce this topic, we have someone who has been at the forefront of the battles for true private choice in American primary and secondary education, Richard Komer, who is senior litigation attorney at the Institute for Justice, the advocacy firm that has represented parents seeking school choice for the past decade.

Dick Komer was heavily involved in the litigation that led up to the U.S. Supreme Court's historic verdict last June upholding under the federal constitution the use of public vouchers for choosing religiously oriented schools, provided there's a full spectrum of choice among competing kinds of schools.

Currently Mr. Komer is engaged in challenges to provisions in many state constitutions that try to exclude religious schools from the range of choices students and parents may exercise.

Prior to coming to the Institute for Justice, Mr. Komer worked as a civil rights lawyer for the federal government, particularly at the Departments of Education and Justice, and also served as special assistant to the Chairman of the

Equal Employment Opportunity Commission, Clarence Thomas, who now, of course, is an associate justice of the U.S. Supreme Court.

Dick Komer.

MR. KOMER: Thank you very much, Bob, and I'm delighted to be here, in part because, as my name may express, I'm of German extraction. And my father spent a very large proportion of his adult life working on NATO issues, and consequently spent a great deal of time in Germany. So I like Germany and I like Germans, and my sister is one of the few people in the United States today who actually speaks German.

But of course I didn't hear the entire first session today, and so I'm not sure to what extent anyone has blamed the American public school system on Germany yet. But they should have because the American common school, which really evolves from Massachusetts and the ideas of Horace Mann in Massachusetts, used as its model the Prussian school system, which they felt was so effective at indoctrinating its students to be good citizens.

And the American public school system really starts in Massachusetts and develops from there. And one of the things that I'd like to focus on today is the distinction between government-operated schools, following the Prussian model, and government-funded education.

Because in the United States, our lower education system, the elementary and secondary years, is characterized by government-operated schools, while our higher education system, which some people believe is the envy of the world, is more of a government-funded education system.

In the elementary and secondary years, about 90 percent of American students attend publicly operated schools. That means only 10 percent are in private schools.

Of the private schools, approximately 80 percent are religiously affiliated, but with a wide variety of denominations, although the largest by far is

Catholic because the American public schools initiated in the 1820s were Protestant institutions.

They were nondenominational schools in the lingo of the time, but that just meant that they were intended to be comfortable for people of all Protestant denominations. They would not teach the doctrines that separate Baptists from Methodists or Presbyterians, but they would teach the doctrines that separate Protestants from Catholics.

And the schools were in part designed to civilize the heathen, which at that time were, among others, Catholics, mostly Irish Catholics, but German Catholics and Italian Catholics, and as time went on, Catholics from anywhere.

And the schools were inhospitable to the Catholics, in large part because they were religious institutions. They studied the Bible. That was very important. They prayed. They sung hymns. But always from a Protestant perspective and the Protestant King James Bible.

As a result, the Catholics set up their own separate school system, which is why such a large proportion of the private religious schools in the United States today are Catholic, although the Lutherans have also maintained separate schools in the United States.

Now, one of the things that is hard to understand about the American constitutional system is that at roughly the same time that Germany was becoming a unified country in the 1860s, the United States was undergoing a tremendous centralization as a result of its Civil War, which basically was to some extent over slavery and to some extent over whether the national government would be primary over states' rights, state governments.

And as a result, a number of constitutional amendments were passed subsequent to the American Civil War, and a number of federal programs were started as a result of the Civil War, that resulted in a tremendous centralization of authority in the United States in the federal government, which has continued to this

day.

But the first wave is at the end of the Civil War or in the course of the Civil War, followed by another wave in the 1930s and '40s in reaction to the Great Depression.

Now, throughout the early years of the American education system, there were efforts on the part of the Catholic schools to get equal treatment, and efforts on the part of the Protestant majority to basically outlaw the private schools.

In 1925, it reached a showdown, when Oregon passed by plebiscite a new law that would require all students to be educated in the public schools, resulting in the United States Supreme Court decision called *Pierce vs. Society of Sisters*, in which they affirmed the right of every American family to direct the education of their children, and the right of private schools to exist in the United States.

In 1947, the U.S. Supreme Court, for the very first time, extended the two religion clauses of the federal constitution and made them apply to the states. This part of the federal constitution, the very first amendment to it, passed shortly after the constitution was adopted.

It says that Congress shall establish no law respecting an establishment of religion nor prohibiting the free exercise thereof. So we have what's called the establishment clause and the free exercise clauses.

But they were addressed to Congress. When they were put in there, most states existing at that time had a state religion. Massachusetts had established Congregationalism as their state religion. Virginia had established the Episcopal Church as their state religion. And these religions received support through the tax system from everyone.

In 1947, the Supreme Court said that states could not establish religion nor prohibit the free exercise thereof in a case called *Everson*, where they upheld as constitutional under the federal constitution a system that provided transportation

subsidies to every school child regardless of the school they were attending, including those who were in private school, most of which in New Jersey were religious schools.

There was a similar decision in 1968 upholding free textbooks for all students, free secular textbooks for all students. The principle here was that the aid was going to all students, not just to those in religious schools.

Subsequently, however, the Supreme Court began striking down a number of enactments that were, in its view, a violation of the establishment clause, like providing direct assistance to religious schools.

Because of the prevalence of the religious schools in the private sector, the issue with respect to choice-type programs is fought out as a religion issue. We, of course, at the Institute for Justice are not a religious-based organization, but we are a choice-based organization, and so we have gotten into this religion issue in a big way because that is the primary sword the other side uses against choice programs.

For us, it's vital that religious schools -- this is a bit of a tangent -- be included in choice programs because in America's inner cities where the schools are the worst by far, and the people who live there know it, a choice program that doesn't include the private religious schools that exist side-by-side with the public schools is doomed to either insignificance or failure because the religious schools are there and are working and working well, and the public schools are failing. That's why it's an important issue for us.

Now, in 1971, the U.S. Supreme Court established the Lemon test in a case in which it held that the states could not subsidize teachers' salaries in private religious schools. And they set a three-part test. A program could not have a primary purpose of advancing religion, nor have a primary effect of advancing religion, and it could not excessively entangle the state with religion.

In 1973, they struck down an effort by New York to directly subsidize

private religious schools through maintenance grants, to indirectly subsidize them by tuition grants to parents using those schools, and also to subsidize them indirectly via tax deductions for slightly better-off taxpayers. That case, the Nyquist case, is the primary case that the opponents have used against school choice programs in the United States.

On the other side, they did address an issue called the GI Bill. In the United States, individuals who have served in the military are provided with stipends after they have left the military to attend higher education institutions.

And it's given to the individual, and they can utilize it at whatever college or university they choose, including religious ones. And the Supreme Court reserved the question of a program like that, when it struck down the program in Nyquist.

Since then, they have elaborated on that reserved point in a series of at least three cases, including one in which an individual was using state money to attend a private religious college to become a minister. The distinction here has been that they view the programs as religiously neutral and as providing the individual with a true and genuine independent choice of what kind of school.

In the Zelman case, which the Supreme Court just decided, they addressed one of the six school choice programs, voucher programs, which exist in the United States today. It was established in inner city Cleveland, and it basically gives a scholarship of \$2250 for any family in K through 3 that wishes to use a private school for their child through eighth grade.

Almost all of the kids in the program have been using these stipends to attend private religious schools in Cleveland because almost all of the private schools in Cleveland are religious.

The issue before the Supreme Court was whether or not Nyquist controlled this program and made it illegal or unconstitutional, or whether these other cases, like the case of the college student, distinguish Nyquist and allow the

individuals to use their public dollars to attend private religious schools.

The Supreme Court, in a 5-4 decision, upheld this as true private choice. The other side, the dissenters, argue that critical blocks have been removed from the wall of separation between church and state, which is a metaphor first used by Thomas Jefferson in 1802.

From our point of view, school choice programs are an absolutely critical element of school reform, to bring competition where competition is most needed. One of the conundrums that was pointed out in the last panel is that most people think their public schools are pretty good, but think that public schools in general are in decline and that many are failing.

It is, in fact, true. Most public schools in the suburbs are pretty good. Most public schools in the inner cities are really terrible. And one of the explanations for that is that in the suburbs, people exercise school choice.

In the United States, you can choose where to live. And one of the bases that you choose on where to live, especially if you have kids, is the quality of the public schools.

People here in this area choose the suburbs to live in because the public schools are good there. People with means move to the suburbs. They do not stay in D.C.

If you are dissatisfied with the public schools in the suburbs, you have the financial wherewithal to choose private education, and there are plenty of private schools in the suburbs.

Those are forms of school choice, and the suburban school authorities know it. They know that if they do not provide a decent product, people will leave. The public school authorities in the inner city have little to fear in that regard because America's inner cities now are characterized by low-income families who lack the resources to send their kids to private school or to move to the suburbs.

As a result, they are provided with a totally inadequate public

education. And school choice offers them a way out. So the programs, the experimental programs, in Cleveland and Milwaukee we regard as absolutely vital to reform of the American public education system.

Thank you.

MR. HOLLAND: Thank you, Dick. Dick is -- oh, I'm sorry. Go ahead, applaud if you like. By all means. Dick is one of two panelists in the, I would say policy wonk legal community here in Washington whose work I'm very familiar with and admire very much. Our other two panelists are on the academic side, and thanks to the delightful dinner last night facilitated by a bottomless glass of wine, I was able to meet our next two speakers. And I'm sure they'll have a lot of lively comments to add to this discussion.

For our leadoff commenter, we turn to Dr. David M. Gordis, who is currently president and professor of rabbinics at Hebrew College, and founding director of the Susan and David Wilstein Institute of Jewish Policy Studies.

Prior to assuming the presidency of Hebrew University in 1993, he served in the top rungs of academic leadership at the University of Judaism in Los Angeles, and was lecturer of Jewish law at UCLA. He has also been executive vice president of the American Jewish Committee and the founding executive director of the Foundation for Conservative Judaism in Israel.

In addition to serving in a wide range of leadership positions so numerous that I would spend the rest of the hour here if I mentioned them all, with such organizations as the United Synagogue Council on Jewish Education and the Association of Colleges of Jewish Studies, Dr. Gordis has lectured and published extensively throughout America and Israel on Jewish life and issues.

Dr. Gordis?

DR. GORDIS: Thanks very much. I do want to limit my comments to just a short period of time. We've had some remarkable presentations. I know

there's a lot of discussion that we're all hungry for.

I'm fascinated by the fact that there are at least two levels of discourse that are going on. There are many more, including Dick Komer's really remarkable presentation of the legal material. But I'm referring primarily to what I would call a political philosophical level of discourse versus a pragmatic level of discourse.

Now, it's not unusual that both should go on in dealing with a complex matter of public policy. Very often, our attitudes towards specific pragmatic issues are shaped by the overall political attitudes and philosophies we bring to those problems. And the converse is also true, that in a way, our political philosophies can be a kind of a composite of the approaches that we take in a variety of specific areas.

So there's nothing illegitimate either about the two dimensions of discourse or about the fact that they both are taking place. But there are certain risks involved in confusing the two levels of discourse. And those risks involve a confusion and imprecision in the way we read the facts; sometimes philosophical or ideological positions have an impact on the very language that we use, creating a tendentious argument without overtly suggesting that it's tendentious. And ideological positions also risk a misreading of the motivations of our opponents. In reality, most issues require a tempering of ideological positions by pragmatic considerations. In the present discussion, for example, those who would generally favor limitations on the size of government rarely advocate the privatization of the military to trim governmental size; advocates of church-state separation rarely advocate abolishing the military chaplaincy or eliminating tax exemptions for religious institutions; and proponents of free choice hardly argue that free choice should prevail at a red traffic light. Discriminating between ideological and pragmatic considerations serves to clarify arguments and even strengthen them.

So I think that one of the things that I would like to suggest is a clarification of where we come from in our discourse and why we come from that particular point. Let me tell you about my own standing in this discussion: Though

you saw that my credentials are not primarily in the area of the public policy debate on education, I have been involved in the debate more than peripherally. Together with my friend Marshall Breger, I published a small book called "Vouchers for School Choice," which was the product of a conference that our Wilstein Institute of Jewish Policy Studies held at the Columbus School of Law, Catholic University which co-sponsored the conference. The book is a broad, multi-positioned look at the issue itself. Marshall is a political conservative and a strong advocate of school vouchers. I am a strong advocate of church-state separation and am skeptical about school vouchers. So this is an area in which I have had considerable involvement.

Let's return for a moment to my concerns over the contamination of policy discussions with unstated ideological positions. Allow me to illustrate my concern from our conversation. I'm struck by the fact that we've talked here about "government" schools. "Government schools" does two things: It suggests a kind of adversarial relationship between government and community, which in a democratic country is really not the way we construct the public square; and it's a substitute for the term "public education", which is a much less charged term.

Now, that doesn't mean that the problems that exist in public education are not serious problems, nor does it suggest automatically that government involvement is necessarily a solution. But when we heard Checker Finn talk about the fact that some of the panelists might not agree that a kind of balance in terms of locus of responsibility for education between parents and public is appropriate, one might say from the point of view of certain political philosophical positions, well, we're talking about the problem of big government, and anything which involves big government needs to be resisted, and that's the position from which vouchers are advocated.

The truth is that in most of these areas, a much more subtle kind of examination is necessary. Let me give a couple of examples.

Most of us would say there is no such thing as optimally big

government or small government. What's needed is government which is appropriate to the functions that the community and society assigns to it.

So that when one talks about "government schools," and "the monopoly of government schools" -- it's intriguing that we don't talk about the monopoly of the government in police. We don't talk about the government monopoly in defense.

We are really talking about certain functions which ought to be publicly shared, and some which are best left to the private sector. But the use of loaded terms imposes a kind of sweeping generalization, and the conversation revolves about unstated political/philosophical considerations rather than the intersection of ideological and pragmatic considerations.

Similarly, the use of the term "choice." We had some reference -- I think we anticipated already last evening -- that these two dimensions of discourse relate to how we're using "choice." There are some who argue for choice through vouchers, because from the philosophical point of view it should be individuals who determine the most important decisions in their lives. That's a political philosophical/ consideration.

That's very different from using specific strategies of choice to deal with whatever pathologies the schools are facing. And here, too, the risk is that the imprecision suggests that we mean very many different things in choice. Let me bring to bear some of the experience of Jewish positions on the subject.

Many people look at the kind of pathology we observe in inner-city public schools as the key argument for vouchers. The suggestion is that by providing an alternative, presumably a better alternative, children in the inner city would gain access to a better education and the competition with the public schools will result in a sustainable improvement in the public schools as well. Some advocates of vouchers in the Jewish community have a very different problem in mind. They are committed to Jewish Day School education as the best guarantor of Jewish

continuity and they see vouchers as a way for Jewish parents and the Jewish community to deal with the spiraling costs of Day School education. There may be a degree of self delusion here on the part of a community that is quite affluent, because vouchers anywhere near the amounts generally discussed will cover only a tiny fraction of Day School costs. Besides, any new funds injected into day schools may have the impact that we were concerned about with regard to increasing budgets for public schools. If that money becomes available, costs will go up and staffing will expand, but it will do nothing to save the system itself.

Of course, the same kind of phenomenon exists in the Catholic community where the notion of choice is not primarily a concern with dealing with the problems of the inner city, but as a way of dealing with the economic pressures on Catholic parochial education. It is a perfectly legitimate concern, and it is legitimate to advocate vouchers for this purpose, but there ought to be some clarity of where we're coming from and what the proposed policy is aimed at.

Now, one of the things that I think emerged last night is that if we're talking about choice as a way of introducing a competitive model to the field of education, then the choice has to be a genuine choice. It has to be a choice which doesn't fool us into thinking that real alternatives exist.

For example, the existence of two alternatives doesn't suggest necessarily that one of those alternatives is going to be any better. One could have three or four alternatives, none of which is responsive to the need for solving the problems and the pathologies in the public educational sphere.

Here again, ideology will sometimes come in and suggest, well, the competitive model, the market model, will do it because the market model is a panacea for all issues that we face in the public sphere.

Well, recent American public history will demonstrate some of the pathologies of the market model. Competition does not necessarily assure success, nor does it assure efficiency. Often it does just the opposite.

Let me bring this kind of general position to bear on the question of the church/state issue, which Mr. Komer correctly said is often trotted out as the principal challenge to vouchers and issues of school choice in this area.

As stated earlier, I am generally a proponent of church/state separation. But I try to do that from a pragmatic rather than ideological point of view. The truth is -- and I think you are already anticipating it -- we don't have a wall of separation in the United States despite the Jeffersonian usage.

There are many gaps in the wall of separation, whether it's the public support of a military chaplaincy, the differences between primary and secondary and higher education in terms of government funding, tax exemptions for religious institutions, and other kinds of government support of religious entities in society. We have a principle of separation, modified in a number of ways to create a "modus vivendi," a living pattern that has emerged through the negotiation of the ideological and the pragmatic through the history of the republic.

So to simply say, okay, the wall has to be drawn just the way it is now, that is something that Mr. Komer has to battle out in the courts, but I, as an advocate of church/state separation, don't believe that that's a basis on which one can oppose school vouchers. The wall is not impenetrable, and the present pattern need not be maintained precisely as it exists today.

But the fact that something may pass constitutional muster does not necessarily make it good public policy. Legality is one level of discourse, but the question of good public policy is another. And here, I would suggest that there are some problems that have not been faced.

The difference between the American experience and the German experience in terms of the size of the society, the diversity of the society, the nature of its history, may be relevant because what we have reached in terms of American society is, and I reiterate, not a wall of separation, but a "modus vivendi," a way of conducting our society which has balanced the interests of religious groups and

public policy and government funding and government entities. By and large, our model has worked.

It's been observed that this has been extraordinarily strengthening and invigorating both for American society and for religion in America. Ironically, people will talk about America being perhaps the most religious country in the western world, and some will relate that to the fact of that evolved "modus vivendi." So in order to justify tampering with the status quo, one has to have very good data to suggest that those changes are going to work and be good public policy.

Problems: If, in fact, one allows an expansion via vouchers of public support in one form or another -- and we all heard the large number of hybrids that exist -- for the private sector, do we not risk fostering a proliferation of models which in a sense we are compelling the public to support, and which most of us would not feel are appropriate objects of support by government or by the public?

Do we want to have -- and forgive me just for using the term -- do we want to have a network of fundamentalist madrassas around the country to be supported by public funding, directly or indirectly?

Now, one can say, well, that's a matter of choice. But the truth is that as long as the government mandates education, it seems to me one way or another some involvement of government in establishing standards to say what qualifies as education is going to be necessary.

And one may begin by talking about those standards in terms of performance on mathematics and science and reading skills. But there are other elements involved where standards will need to be set, and it's likely that government will need to enter those areas as well.

So ironically, from a political philosophical point of view, in talking about smaller government and non-involvement, beyond the issue of proliferating possibly undesirable models, one may actually be making an argument for the construction -- and I would say this is probably true in Germany as well -- of a

rather elaborate bureaucratic structure, which will require a greater rather than lesser involvement of government in education.

In earlier discussion, we've alluded to the fragmentation of society and the loss of the acculturating and assimilating function provided by public schools. I think that is a real consideration. Beyond that, how does one deal with the notion of setting standards and criteria for what constitutes schooling, what goes on in those schools, without opening a Pandora's box which involves a major risk and raises the question about whether this is wise public policy?

My bottom line is this: This is a complex issue. Proposed solutions should not be guided by broad brush strokes of political ideology or philosophy alone but by a consideration of pragmatic outcomes set against an ideological/philosophical background. In this particular issue, because of its complexity, pragmatic considerations, that is, issues of how these experiments -- in the plural -- work, need to be examined. Data has to be gathered carefully.

The Court, in the case of the Cleveland experiment in which Mr. Komer was involved, has made its statement. There are a few operating voucher programs. There are many more charter school programs. A range of hybrid programs, existing and new, should be experimented with.

What I advocate is that we move along very slowly, examine very carefully the impact and the results of these experiments, both positive and negative. We need to assess the risks that some of these policies entail, not simply write them off for ideological reasons but consider them seriously. We must also assess the achievements of these programs, evaluating them against the claims made for them by their proponents.

What is the impact on the quality of education in the inner schools?  
What is the impact in terms of the quality of the public schools that are neighbors of these new alternatives?

It's only by carefully evaluating the data on these experiments that we

can tell whether the risks in tampering with the current "modus vivendi" are justified by the improvements we achieve through these experiments.

Vouchers and other models need to be viewed as

experiments. They should not be viewed as a

crusade. And that's why I would argue that we

must separate out the levels of discourse, which was

the point with which I began and with which I

conclude. Thank you very much.

MR. HOLLAND: Thank you, Dr. Gordis. I feel vindicated as chairman. I told you would have a lot of provocative ideas thrown out, and the wine wasn't fooling last night when it told me that.

Our next panelist, also a dinner companion last night, is Aaron Saiger, a fellow at Columbia University School of Law -- there we go. Aaron is a PhD candidate at the Woodrow Wilson School of Public and International Affairs, Princeton University. His research interests are at the intersection of federalism, public education, and American administrative law, which is certainly a very interesting intersection.

In the most recent term of the U.S. Supreme Court, during which, of course, the high court upheld the constitutionality of the Cleveland voucher program, he served as judicial law clerk to Associate Justice Ruth Bader Ginsburg, and previously served as law clerk to Chief Judge Douglas H. Ginsburg of the United States Court of Appeals for the District of Columbia.

MR. SAIGER: Good morning. I want to thank the foundation for inviting me. What I would like to do briefly, if I could, is make a few comments for this group about the state of the law of religion and school choice after the *Zelman* decision.

The first thing I want to say is that Professor Finn is quite right that the major school choice endeavor in the United States today is the charter school movement. And at this point, charter schools cannot be founded if they provide religious instruction. This may be something that people will challenge in the future, but today most school choice activity in the United States is charter school activity, and every state that permits them requires such schools to be secular. The legal status of government aid for parentally selected education is thus far from being fully resolved. Charters are one of the major areas in which resolution has not been achieved. It's important to keep that in mind.

I want to say another thing about an area which is now alive in the courts. In the American system, it is for the states to establish or not establish systems of public aid for religious schools. The acceptability of such aid under state constitutions is therefore an issue in every state. As Mr. Komer [please check spelling] well knows and is involved in litigating now, the constitutions of many states forbid the provision of direct or indirect aid to religious schools. These constitutional provisions have yet to be litigated.

The provisions in question are generally called Blaine amendments. Blaine amendments appear in many, but by no means all, state constitutions, and prohibit, in reasonably direct language, public aid to religious educational institutions. In many cases the language is sufficiently clear that it is hard to see how voucher programs that include religious schools could survive them. In those states voucher proponents' only recourse is likely to be an effort to argue that Blaine amendments themselves conflict with the federal constitution's Establishment Clause and are therefore without force.

Such an effort is likely to rely heavily upon the history of American anti-Catholicism. There is an argument to be made that Blaine amendments were introduced into state constitutions as a way of interfering with the creation of Catholic schools. To the extent that the amendments were based upon anti-Catholic feeling, with the goal of blocking the educational activities of a particular sect, it can be claimed that they violate federal constitutional strictures against passing state laws founded in religious animus. Obviously these arguments depend heavily upon historical detail, both that surrounding the initial passage of the amendments and that surrounding subsequent revisions of state constitutions during which such amendments were re-ratified.

I point this out primarily to emphasize that we should expect to see a great deal of activity around the question that many people casually say has now been resolved by the U.S. Supreme Court: Is it constitutional to give state money to religious schools? And the answer is, we don't really know. All we really know is that it's okay in Cleveland, and it is okay in Milwaukee. We should expect to see a great deal more activity and a great deal more uncertainty going into the future. So I want to just correct any impression that the constitutional questions are finished. In the United States, constitutional questions are never finished. That's how lawyers keep themselves in business, after all.

My final point lies at the intersection of constitutional law and sensible public policy. It regards the Supreme Court's current test for determining when it is permissible to have voucher programs that include religious schools.

We were asked earlier this morning to consider an analogy between school choice and gas station selection. You often hear in the rhetoric of some choice proponents, especially during election times, that the goal of school choice movements is to give poor people the same kind of choice that President Clinton had when he decided to send his daughter to Sidwell Friends.

To my knowledge, there is no viable school choice proposal in the United

States that involves making it possible for poor people to send their kids to Sidwell Friends. No one is talking about that kind of money. Right? Nor are we talking about gas stations, because public education is a massively subsidized market. People's gas purchases come out of their pockets. As was mentioned earlier, there is a libertarian position that suggests that parents ought to educate their kids, if they so choose, from their own resources. But the vastly dominant American view is that the government should pay. And basically, the government engages in a massive transfer of wealth from the rich to the poor, and especially from non-parents to parents, to pay for the education of children.

In my view, the question appropriately framed is when the government structures an educational market that it then intends to subsidize, what are the constitutional limits? The answer that the Court has given us is that they can do it so long as they provide "genuine and independent choice" to parents.

It's still quite unclear to me what that ought to mean. Consider the concurring opinion of Justice O'Connor, who provided the crucial fifth vote to uphold the voucher program in Cleveland. That opinion spends quite an amount of ink on the structure of the charter school system in Cleveland.

The reason she does this, in my view, is a very good one: The Cleveland school voucher is \$2250. You cannot, if you're a school entrepreneur, found a school in Cleveland and have your balance sheet show that your intake is going to be \$2500 a student and expect to make a go of your new enterprise.

Justice O'Connor concluded that the existence of charter schools made the difference. In Cleveland, the schools that were functioning on the vouchers successfully were almost all Catholic schools, which have an additional source of funding.

Justice O'Connor tells us that Cleveland parents, nevertheless, had a choice because the charter schools were available to them. Those charter schools got about \$4,000 a year, which also, incidentally, is the amount of the voucher in Milwaukee.

And Professor Finn mentioned that number earlier today. He said that there is reasonably good data that you can find a decent school on about 4- to \$5,000 per student. I don't have an independent view of that evidence, and I'm not sure exactly what evidence he referred to. But I do believe that is a very important number because "choice" now, along with whatever other political or philosophical meaning it has, has also become a legal term of art. The Supreme Court's test is parents must have a genuine and independent "choice." I think you have such choice in a government-subsidized market only if the market permits realistic entry. Choice in a market is a valuable thing because we expect markets to respond to demand. Markets cannot respond to demand if the subsidy is very low.

I think that should be the constitutional standard. Religious schools can be included in a voucher subsidy if the subsidy is such that market entry is feasible. On a \$2500 student Cleveland school voucher, you do not expect to see market entry. That voucher will not stimulate entry into the private school sector. The Cleveland voucher program was constitutional only because it was an adjunct to a broader program of choice, the charter school program, which did provide a subsidy that was consistent with market entry.

That's what choice proponents ought to want, and very happily, that now appears to be the direction in which the law is going. It is in the interest of states, in the interest of advocates of religious participation in publicly-funded education, and in the interests of people who want kids to get good schools, to make that voucher number a serious number.

Professor Finn said 4- to \$5,000. He also said, of course, some of those places exist in miserable facilities and they manage anyway. It's in the interests of kids, parents, religious schools, and non-religious schools to have these schools *not* exist in miserable facilities.

And I think that there is a potential, especially in state courts, which have, after all, the right to evaluate programs of religious aid according to a more stringent

standard than the one used by the Supreme Court, to see advocacy for voucher numbers that are serious and that will allow the stimulation of a real market. This in turn will allow parents to exercise a much wider, truer, and more realistically independent kind of choice than the kind that they were given in Cleveland.

Thank you very much.

MR. HOLLAND: Thank you, Aaron.

And finally, and certainly not least -- we will play musical chairs again -- I'm pleased to introduce Marie Gryphon, who analyzes legal and policy issues relating to education for the Cato Institute and its Center For Educational Freedom here in Washington.

School choice is at the heart of her work, but she also works on other educational issues ranging from preschool to higher education. Recently, Ms. Gryphon co-authored a well-received and influential Cato Institute policy analysis on reform of special education law in the U.S., with parental choice as a key element. And she's authored a soon-to-be-published paper, which I'm looking forward to reading, entitled, "True Private Choice: Education Reform After Zellman v. Simmons Harris."

Ms. Gryphon came to Cato from a private sector law firm in Seattle, and has worked with the Educational Excellence Coalition in Washington State since 1996.

MS. GRYPHON: Thank you very much. I'd like to thank the Naumann Foundation for inviting me to speak today at a conference dedicated to educational freedom, that is, to the concept that individuals and their families are best suited to making all the important decisions about education.

I know that today's discussions have drawn largely on American law and American traditions. But certainly, there have been important things written

about educational freedom in Germany and its history as well.

Wilhelm von Humboldt, I think, eloquently wrote against politicization of education because he said that the government would always favor one particular form of schooling. On the contrary, he said, education must everywhere be as free as possible, taking least account of civic circumstances.

Of course, ironically, von Humboldt later became the first Prussian head of the department of education. Even then, of course, however, he was known for his idealism. A colleague observed that: "Humboldt is inspired by elevated ideas of education, but unfortunately their execution is impossible given the condition of our states. Therefore, his qualities as a thinker are of little use to him as a statesman."

There are a lot of educational reformers here in the United States who can sympathize with von Humboldt about this. Although we have been gifted in America with a wonderful legal and intellectual tradition of supporting educational freedom, we have struggled for decades under a heavy cloud of doubt about whether we can in this country, under our constitution, offer all Americans the same educational autonomy now enjoyed by affluent Americans.

Educational freedom is, of course, critical to intellectual freedom, which in turn forms the basis for a healthy republic. Our Supreme Court has historically recognized this. In 1926, for instance, as Dick Komer, I think, pointed out at length, that the state of Oregon passed a ban on all private primary education and required by law all school-age students to attend only the government-run primary schools.

Our Supreme Court struck down that mandate in *Pierce v. Society of Sisters* because the Court held that parents and guardians have a fundamental liberty interest in directing the upbringing and education of the children under their control.

So while the courts have traditionally protected educational freedom in America, too many parents have, as a practical matter here, lost their liberty to direct

the education of their own children to a combination of compulsory school attendance laws and the inability to collect sufficient after-tax dollars to pay twice for education, first through coerced contributions to the government school system, and then again a second time for tuition at a private organization.

Millions of American children are thus compelled by the state each year to attend schools that are both dangerous and ineffective. In Cleveland, Ohio, for instance, the program that was challenged before the Supreme Court this year, students in the public schools there were more likely to become a victim of crime on campus than to graduate on time with senior-level proficiency. Whenever you hear things like that, you need to ask not whether a reform is too radical, as has been suggested, but whether a reform is radical enough.

Here in the District of Columbia, our nation's capital, 70 percent of tenth and eleventh graders fail basic competency examinations in mathematics. A majority flunked the U.S. Armed Forces qualification test, and that was high school graduates, not dropouts. Other children across the country are, of course, every day taught values that are inimical to their parents' beliefs and to their beliefs as well.

To address these types of travesties and to make educational freedom available to all rather than merely some Americans, the school choice movement has fought for years to implement programs that allow families, particularly low income families, to direct a portion of their education tax dollars to an alternative school of choice.

As you know, these programs have been attacked as establishments of religion because some parents, when offered a choice, have chosen to send their children to an alternative religiously-affiliated school.

This summer the U.S. Supreme Court struck a blow for educational freedom in the form of the *Zelman v. Simmons Harris* decision. This was widely held as the most important education-related decision since *Brown v. Board of Education*.

In *Zelman*, the Court upheld Cleveland's program allowing children in the city's failing government schools to transfer to an alternative public magnet school, a community charter school, or an alternative non-public school. The program provides tuition vouchers directly for parents, and parents are responsible for making the decision about where that voucher is spent.

This decision was far better than even advocates of school choice here in America had dared to hope for before it was released. The Court's opinion was not a highly technical or fact-specific application of the Court's confusing recent precedents.

Rather, the Court clarified the law to say that school choice programs will be upheld in this country, at least under the federal constitution, provided that they give parents a true private choice about where their child goes to school.

The rules for education reform are now relatively simple, and it's hard to imagine a formulation that could be better for educational freedom. Programs of true private choice must benefit a broad class of people not defined by religion.

They must be neutral between religious and other options, in no way artificially encouraging parents to choose a religious school alternative. And finally, they must allow parents a wide variety of adequate educational options.

In short, the more parents who have choices, and the more choices they have, the more likely it is that a particular school choice program will be constitutional under *Zelman v. Simmons Harris*. This is great for educational freedom.

And we hope that it provides us further acceleration to an existing intellectual shift in this country away from a one-size-fits-all government-run approach to education, and towards a dynamic and competitive system of independent schools that reflect the unique needs and preferences of students and their families.

The Supreme Court warns decades ago, in *Pierce v. Society of Sisters*,

that the child is not a mere creature of the state and the state should not be permitted to "standardize children" by forcing them to accept instruction from a government source only. Indeed, the Supreme Court's focus this year in *Zelman v. Simmons Harris* on the multiplicity of options available in the Cleveland program underscores the importance of pluralism in education.

For too long, we have maintained two unequal educational systems, one in this country for those who can afford to pay twice to ransom their children from a failing government system, and another for those who cannot.

While significant legal and political battles do remain in the struggle for choice, the Court's decision in *Zelman* has articulated our priorities perfectly.

School choice in this country is not just about reducing bureaucracy, although surely that will be necessary. Nor is school choice in America solely about raising test scores, although that is absolutely critical. School choice in America is also about respecting the dignity and autonomy of every American family.

That said -- this was short -- and I was fascinated by some of the remarks that have been made. So if I could address briefly four points before I finish up, that would be fabulous.

I was impressed by the really articulate discussion of the power of rhetoric in this debate, and impressed partially by the solid analysis provided, but also by the fact that school choice people, the school reform movement, has gotten so much traction in public debate over the five to seven years that we now inspire rebuttals on this score. We were losing the rhetorical battle until about seven years ago.

But the example that was mentioned was to talk about public education versus government schools. It's true, school reformers talk a lot about government schools rather than public education. And it's for this reason: We believe it's possible to educate the public through means that are not exclusively limited to government schools.

And this is an important not only philosophical but policy distinction that we want to keep in the public eye. And it's been positive that there is no right size for government but that which is arrived at by social consensus.

School reformers tend to think that's not true. We tend to go back to first principles and say, well, how much of your life do you get to run yourself in terms of highly personal decisions about raising children and educating them? Those are decisions that should be made on an individual rather than social consensus level. It is, you know, sort of fundamental to a liberty-based system of government that we allow people their choices. It's not purely a social consensus issue.

It's been positive that we need this incredibly strong empirical justification. There is an empirical justification for school choice in America, and it's developing rapidly. But they say we have an insufficient empirical justification for departing from the status quo.

But when you have had a status quo that is failing, that is inarguably failing, that has been failing for 30 years, I think you need a very strong justification for sticking with a system that has that lousy a record.

Finally, we talk about the limits of markets. Sure, markets are imperfect. They do have limits. There are market failures. But it's been very fashionable this year in American political discourse to talk about, you know, recent business failures as being indicative of the failure of the marketplace in general. We shouldn't trust the market. Look at Enron. Look at, you know, WorldCom.

And you look at those things and you say, you know what? That was bad business and it was damaging, but thank the Lord they failed. The Cleveland public school system is still in business. That's the true crime.

### Panel III: "Voucherization" – Legal and Economic Aspects

MR. LEMKE: Welcome to the third part of our conference today. The topic will be the legal and economic aspects of voucherization.

First of all, we will listen to an indication by Ms. Bridgett Wagner. As a director of coalition relations, Ms. Wagner serves as Heritage's liaison to policy organizations, experts, and activists at the state, national, and international level.

She advises think tanks on ways to build support for the policy prescriptions and build support for the Heritage agenda beyond the Beltway. She's a trustee of International Policy Network, and a member of the President's Advisory Council of the State Policy Network.

Ms. Wagner edited "Heritage Policy Experts 2000," a guide to public policy experts and organizations, and she oversees the Heritage job bank, internship program, and speakers bureau.

Ms. Wagner holds a B.A. in economics from the University of Dallas. So will you please start?

MS. WAGNER: Thank you to Michael Zöller and the Center for Public Policy and to the Friedrich Naumann Stiftung for putting on this very interesting program.

Because we have a very brief amount of time today and because we've already touched on the legal aspects of choice in education, I will focus my comments on the economic aspects of choice.

Also, I should point out I'm not an education expert, but I have followed the debate as a parent of three children living in the District of Columbia, a jurisdiction that boasts the third-highest level in education spending in the United States but sadly claims the lowest level of academic achievement.

Fortunately, my husband and I are able to afford parochial schools for our children, but many of our friends and neighbors are not. I see the impact of our failing schools in neighborhoods of our nation's capitol, and I also see the funds that have been provided to many of my children's friends, whose guardians have chosen to send them to charter schools or who were lucky enough to get a private scholarship provided by the Washington Scholarship Fund. So, today I speak as a very interested observer of the choice debate in America.

Michael Petrilli's remarks earlier in the program noted that over the past 30 years, the cost of American education has gone up while achievement has declined. According to the 2000 National Assessment of Education Progress (NAEP), only 32 percent of our fourth graders are proficient in reading, 26 percent are proficient in math, 29 percent in science, and – it only gets worse, – 18 percent in history. Over half of all poor students fail to reach the basic level on the assessments in most subjects.

In 1998, 71 percent of students graduated on time from high school, but just over half of minority students graduated. Over the past 30 years, average per-pupil expenditures for public, elementary, and secondary schools have increased exponentially. I won't say a number because this morning I think we heard several different numbers, but needless to say, it's gone up a lot.

If you were speaking in terms of productivity, or achievement per dollar spent, controlling for achievements differences in the students, then it could be said that American schools are in a productivity crisis, and policies that boost schools' productivity are badly needed.

Setting aside the philosophical arguments that were well argued in the

last panel, we should ask "Why should we care about falling scores, failing schools, and declining productivity?" Individual students and their parents should care because academic achievement translates into economic achievement in the real world.

According to the U.S. Census Bureau, the average high school dropout earns approximately \$16,121 annually. A high school graduate earns approximately \$24,000, a person with an associate's degree \$32,151, and a person with a bachelor's degree approximately \$45,678. This is quite a difference.

We should also care about how to get the most for our education dollar because there are many new claims on these tax dollars. In fact, many state and local governments are now facing budget shortfalls, and as Mike Petrilli again mentioned last night, the bulk of our education spending in America is done at the state and local level.

In a political environment that calls for greater levels of accountability, that grades schools on their performance, and in many states actually publishes these grades for the public to see, the pressure is growing to find cost-effective ways to improve academic achievement.

Caroline Hoxby, of Harvard University and the National Bureau of Economic Research, has done extensive work on how school choice and competition affect curriculum, school atmosphere, the teaching profession, and productivity.

She's examined for-profit schools, nonprofit choice schools, and regular public schools that face inter-district choice. She's looked at vouchers and charter schools and examined the recent choice reforms, and in each case she found that the regular public schools boosted their productivity when exposed to competition. And they increased the growth rates of their productivity by raising achievement, not by cutting spending while maintaining current levels of achievement.

Hoxby has described how school administrators respond to competition. In the short run, she says, it may induce the staff to work harder, get

rid of unproductive staff and programs, allocate resources away from non-achievement-oriented activities and towards achievement-oriented activities like math and reading.

In the slightly longer term, the administrator can renegotiate teacher contracts to make the school more efficient. This is something that our Education Secretary, Rod Paige, did when he was Superintendent of the Houston public school system.

But choice could also affect productivity in the long term in more interesting ways. For example, the financial pressures of choice may actually bid up the wages of successful teachers whose work raises achievement and attracts families to the school.

The rise in wages may then draw people into teaching who would otherwise pursue other careers. We're actually seeing this begin to play out in those schools that face tough competition. As Bob Holland of the Lexington Institute described in a recent article, public charter schools and private schools that must attract students in order to receive funding do seem to be hiring a different sort of teacher. Only 20 percent of regular public school teachers attended competitive or selective colleges, contrasted with 36 percent of charter schools and private school teachers. Fifty-six percent of the teachers in charter schools majored in a field of the arts and sciences compared within only 37 percent of regular public schools teachers."

Caroline Hoxby goes further and says that choice "may change the entire structure of rewards in teaching, and thereby transform the profession." She also points out that the need to attract parents may force schools to issue more information about their achievement, and may gradually make parents into better education "consumers".

And we're seeing this already in states like Colorado that issue report cards on the schools. Colorado's website that includes these report cards is highly

trafficked by the parents and others looking for the latest statistics on their schools.

And if you're interested in looking at some examples of these school report cards, The Heritage Foundation has issued a report card on report cards that, highlights the most user-friendly and most comprehensive report cards, compiled by both state governments and the private sector (See: <http://www.heritage.org/research/education/reportcards/>). So, we see this as a new industry that's helping to provide information to a marketplace.

Hoxby goes on to note that because parents' decisions are more meaningful when schools are financed by fees they control, choice may make schools more receptive to parent participation.

And as was confirmed just last week in a U.S. Government Accounting Office report, "parents of privately funded voucher students are more satisfied with their children's education and the safety of the school."

Parental satisfaction, voucher advocates contend, normally leads to increased parental involvement and a parent's desire to pursue academic excellence for their student, their child.

Other possible long-term effects of choice might include the abandonment of pedagogical techniques and curricula that are empirically unsuccessful but philosophically appealing. And even in the longer term, we no doubt will see the enrollment of schools in districts expand and contract, and private schools and charter schools will open and close.

But we should ask, "Has choice actually improved parent satisfaction and academic achievement? Do we have any evidence to point to this in the short term?" Well, the GAO report that I mentioned earlier evaluated the privately-funded voucher programs in New York City, Washington, D.C., and Dayton, Ohio.

The study found that the programs were successful in attracting students from low-income families. The average family income of the students in each program, in fact, is about \$10,000. And it found that among African-American

students, vouchers are beginning to yield positive academic outcomes. In New York, these students outperformed public school students in math and reading.

There were no significant gains for the other ethnic groups in the study, but the parents of the voucher students, regardless of race or ethnicity, were more satisfied with their children's education and the safety of their schools.

A similar evaluation was conducted last year of the publicly funded voucher programs in Cleveland and Milwaukee and had similar findings with regard to parental satisfaction and use of vouchers among minorities and low-income students.

Hoxby has done further research on Milwaukee schools, and she found that public schools have a strong positive productivity response to competition from vouchers. And the schools that face the most potential competition from vouchers, those with the poorest students, had the best productivity response, interestingly.

Her research that looks at the state of Michigan showed that public schools responded to competition from charter schools, which is the form of competition in Michigan. They responded with what she described as "a burst of productivity growth" once charter competition reached a critical level that was discernible from regular flows of enrollment, which was the critical tipping point.

Hoxby also examined productivity gains in the state of Arizona that resulted from competition provided by charter schools, and found results similar to Michigan.

I'll just end with a couple of comments about Florida's A+ program. The first is from a report by Jay Green of the Manhattan Institute, who described the A+ program as "a school accountability system with teeth."

In Florida's program, the schools with two failing grades from the state during a four-year period have vouchers offered to their students. Jay Greene's report examines whether schools that face the prospect of having vouchers offered to their students experience larger improvements in academic achievement than other

schools.

The results show that schools whose students would have been offered tuition vouchers if they failed achieved test score gains more than twice as large as those achieved by other schools. Schools with failing grades that faced the prospect of vouchers exhibited especially large gains.

His report shows that the performance of students on academic tests improved when public schools are faced with the prospect that their students will receive vouchers and exit the system.

For example, during the 2000–2001 academic year, 78 of Florida's schools faced the prospect of a second year of failing grades and the loss of their students to the voucher. Instead of failing, all 78 schools moved into action, and within the year all 78 had improved enough to avoid the failing description.

The Urban League of Greater Miami actually hired an education writer, Carol Innerst, to look at these schools to see if they took special steps to avoid the second failing designation. After her review, she reported that the A+ program had "instilled in the public schools a sense of urgency and zeal for reform not seen in the past, when a school's failure was rewarded only by more money that reinforced failure."

One example that she cites in her study is the response of the Hillsboro County superintendent of schools, who had a very innovative approach. He pledged, in fact, to take a 5 percent pay cut, \$8250, if any school in his jurisdiction received a failing grade. This is something you would not see most public administrators offering to do outside the Florida program.

I don't want to end with your thinking that I believe it's only with the threat of vouchers that schools in poor neighborhoods can succeed.

At Heritage, we launched a project a couple of years ago that we called "No Excuses," which identified, at the time, 21 high-performing high-poverty schools all across the country. To qualify as a "No Excuses" school, these schools had

three-quarters or more of their low-income students qualifying for the federal lunch program.

Nonetheless, these schools had building-wide median test scores above the 65th percentile on national academic achievement tests. At the time of the publication of the book (2001), eleven of those schools scored at or above the 80th percentile. By contrast, schools with similar numbers of poor children typically score below the 35th percentile in America.

The book identified seven common traits and five common practices of these schools. Perhaps the most important thing that they had in common was that they had principals and teachers who strongly believed that every child can learn and they do.

The study is not Anti-public School, but it's a fairly damning indictment of public education as it is currently structured in most of our country. Most of the schools profiled in the book are public schools, but they succeeded in spite of, not because of, the incentive structure and the culture of public education today.

The "No Excuses" study concluded that the incentive structure has to be completely overhauled, and the culture of excuses replaced by culture of achievement. We believe that choice creates such an incentive structure for change.

To increase choice for parents, especially for low-income neighborhoods, will require more than opening up private schools, though. Not all parents will choose private schools. Real choice will also require freeing up inner city public schools so they can compete effectively for parent support.

We believe that the experiments we're seeing today are the best step in that direction. Thank you.

MR. LEMKE: Thank you, Ms. Wagner, for showing us what positive effects competition and the market system can have and already has for the educational system.

I am quite sure Ms. Hannaway will give us a short -- or further information, but not before I introduce you. Ms. Hannaway's work focuses on the study of educational organizations. She is currently director of the education policy center at the Urban Institute in Washington, D.C. She has also been a senior researcher with the Consortium of Policy Research in Education. Her recent focus is on structural reforms in education, particularly reforms promoting accountability, competition and choice.

She recently completed her term as vice president of the American Educational Research Association, and also served on the executive board. She is also on the Council of the Association for Public Policy and Management.

Ms. Hannaway is the immediate past editor of Educational Evaluation and Policy Analysis, the main policy journal of the American Educational Research Association.

MS. HANNAWAY: Thanks. I guess I should begin by saying neither the Urban Institute nor I nor any of my colleagues take a policy position on vouchers or on school choice or, indeed, on any other policy area. What we attempt to do is to do third party arm's length studies of various policies and their effects. And if you look at the work of the Urban Institute, for example, you can find places where, at least in the last administration, our findings came out supporting some of the administration's policies, and in other cases they were findings that did not support the policies, and in all cases the findings were made public.

I'm involved right now in a very large study of Florida, the Florida accountability system with vouchers. We call it accountability with a kicker. This is work that is being undertaken by myself at the Urban Institute, C.C. Rouse at Princeton, David Figlio at the University of Florida, and Dan Goldhaber at the University of Washington.

When the '99 legislation, the A+ legislation, was passed in Florida, we

immediately went to every major foundation in the country and tried to get support because we thought there should be a completely objective analysis of the effect of this policy.

Our main concern -- I think all four of us, our main concern, is the great disparity that we have in student performance in the United States that Bridgett talked about. Poor kids in cities, especially, are performing four grade levels, on average, below other kids, their suburban counterparts.

And this leads to problems not only individually for those kids, but it also leads to great social divides in the country as well as to social costs in the country. So that was our main concern in going in.

We got tremendous response from the foundation. We didn't get any money, and didn't ask for any money, from the State of Florida, because again, we wanted the whole thing arm's length. We also got funding from the Department of Education recently, and also from NICHD. So what we have underway is a multi-million-dollar, multi-year analysis of the Florida program. And I have no results to report.

But let me tell you a little bit about what we're doing and why we're doing it. I think all four of us are by nature skeptics. We have a lot of questions about the research that's on the table to date on vouchers, and that's on both sides of the table on the issue.

We think it's a fairly -- it's a very weak database. I mean, if you look at the evidence subjectively, there isn't a whole lot there. But there are some things there. And it certainly is an area that should be pursued vigorously.

Let me give you some examples. You know, the first studies that came out were the Coleman studies comparing public and private school performance. And what those studies generally found, Coleman found, was that on average, kids in Catholic schools were performing marginally better than kids in public schools. When you start doing corrections for self-selection, then the findings don't come

through any more.

However, if you look at the gains for different type of students, you see the biggest gains for poor kids from minority backgrounds. So it looked like the Catholic schools were doing something special and something different for at least -- if not for the average kid, at least for that sub-population of kids.

Then the more recent studies, the experimental studies of the various scholarship programs, those directed mainly by Paul Peterson, have also come up with, I think, some interesting findings, but again, very, very limited. I think it's safe to say that those studies are showing that at least for some kids in some grades in some subjects, and all those things vary by site, there appear to be some benefits.

So again, we see some benefits. But it's, you know, some kids and some grades and some studies. You're not getting a real big thing. But there is -- you know, again, there's something there, but let's not overstate what's there.

The other thing I think it's important to say about these studies, these are not studies of voucher policies. These are studies that are in many ways akin to the Coleman studies, but taking care of the self-selection issue through their experimental design.

Because what these studies are doing is, for the most part, they're looking at the performance of kids in existing public schools and kids in existing non-public schools, mainly Catholic schools, and comparing their results. Now, that's not a voucher program because a voucher program theoretically is supposed to kick of all sorts of other dynamics.

So for the most part, that's what those studies are doing. That's not in any way to diminish those findings that are out there. But again, they're weak, they're small, and they're, inconclusive across studies.

Then there's Caroline Hawksby's work, which is very clever. I think Caroline's work is terrific. For the most part, she's doing non-experimental studies and using what's called instrumental variable approaches. And for those of you who

do technical empirical work, you know that the findings are heavily driven by the instrument that is chosen.

So again, we have sort of something coming out there. It's with methodology that I don't think any of us would say, you know, gives us clear proof of what's going on.

Now, you could say, well, it's with some self-interest that you're saying there needs to be more research because I am a researcher. And maybe there's a grain of truth in that. So let me describe a little bit for you what we're doing in Florida and why we think we'll sort of have the hands-down study going.

We have data in Florida on every single child in the public school system, and that database -- longitudinally, some of it going back to birth weight, which means we can get fantastic controls, background controls, on these kids. And the database follows kids that use vouchers into the private sector. So we have every kid in the state.

In addition, we have at the school level -- Florida itself is a very data-rich state for historical accidental reasons, but it is a very data-rich state. So for every school in the state, we have detailed personnel information on who's in the school, what's the staffing pattern, and who at the individual level. So we know the background of everyone who's in each of these schools, again, longitudinally every year for the state, for every school in the state.

Similarly, we have financial information, how each of these schools is spending their money and how it's been over time. In addition, we have surveyed every school in the state, and the reason we -- for those of you who are researchers, you can imagine the sorts of debates we had because it's very expensive to survey a complete census of schools.

And, of course, our sampling statisticians would say, that's crazy, that's crazy, you know, because they're sampling statisticians. You can get just as good data from a sample as you can from a census.

But we knew that we were working in a state with a dynamic policy environment. We knew that this was a policy that probably wasn't going to be stable, and there's no way we were going to be able to predict which way it was going to go.

So we decided to take the risk adverse route and get every school in the state. And we've gotten fantastic responses. We built in incentives for the survey. We had lotteries, you know. The school got the survey and -- we've done that so far twice for every school so we can look at behavioral change at the school level. We've also done it twice at the district level for every district.

We've done a random sample of teachers in the state to find out what teachers are thinking and how they are responding. We've also done a random sample of parents in the state, and will be going out with a second wave of those two surveys.

We're asking four questions, the four critical questions that we don't think there is currently sufficient definitive information on in any way.

The first question is, who chooses and why? While it certainly is the case that the private voucher scholarship programs show that a large number of parents of poor kids will come forward to take a voucher, when we just say what percentage that is, we have to be a little bit careful because these scholarships are only intended for relatively low income people.

So it's a restricted pool that we're starting from anyway. We aren't really sure at this point exactly who will take advantage of a voucher or not. The reason it's important, who chooses and why -- the why part is just as important -- the reason it's important is we don't want to -- the American education system right now is terribly segregated, racially and economically. We certainly don't want to create a system that is any worse. And if we are, we want to know if we're doing that.

If we're in fact creating a system that is better that in fact does lead to

greater racial and social integration, and we think it may also lead to greater housing integration if you have choice for schools, then we want to know that, too. So it's an important objective in its own right.

We also want to know why people choose because you would only expect to get the efficiency benefits out of choice if, in fact, the reason parents are making a choice is for education quality.

We aren't quite sure what the basis is of lots of choice. Location is certainly an important factor. Athletic facilities could be important for some kids. There could be lots of reasons why parents -- after-school programs. There could be lots of reasons why parents choose one thing than another.

And so we want to try to get a handle on the reasons parents are choosing one school over the other. So that's our first question.

The second one, which is the ultimate question, of course, that everyone is interested in, and again driven -- our interests are primarily driven because of the terrible inequities or disparities in performance -- is, what are the academic efficiency benefits to choice?

And because we have the full data set in Florida, we can also get a very good handle on what happens to the kids left behind, not only who's left behind but also how well they perform. And we'll be able to track the kids who make choices into their new settings.

We'll also, at least for the kids left behind, be able to say a lot more about peer effects which, I think, most researchers think is a critical factor in affecting student performance, especially of adolescents. I mean, they're always looking to each other to figure out what's cool to do.

And parents know this intuitively. I know when I selected a school for my kids, when I would walk around the school I wanted to know who their friends were going to be and what the friends' interests were going to be because that was going to have a significant effect on what my kids were going to value. So clearly we

are going to be looking at the academic outcomes.

Our third question is: Do public schools respond, and if so, how? And that's where we're behaviorally getting this from survey data as well as from the personnel data and the financial data about how public schools, who are under performance pressure, either from competition or from the accountability system, respond. And we'll have a large number of schools to actually get a good handle on this.

Fourth, and this is a question that no one really has been able to address yet because most of the voucher choice programs are small programs where kids go into existing other public schools or existing private schools, but the extent to which any choice program is going to be successful is going to be directly dependent on the types of new schools that emerge.

So the whole supply response is one that is critical to try to get a handle on. So at the same time that we are surveying all the public schools in the state, we're also looking at the nonpublic schools in the state because we want to know what type of schools are going to emerge.

You can't expect that lots of Catholic schools, like the Catholic schools that are currently out there operating and have a hundred-year history of development behind them -- we can't assume that they are just going to pop up.

We have no idea what the new schools will be like. And for those of you who have any close connection with schools, you know how difficult it is to get a new school going and up and running. So that's another question that has not been addressed yet, but will ultimately have a big effect on what the overall quality of the system as a system is.

Let me tell you a little bit now about why we don't -- or during this year we'll be getting out some of our first papers where we'll be looking not at student achievement yet, but what we will be looking at is behavioral change at the school level. And this is our first year of analysis of the data. The previous years

have all been spent just getting the data in and cleaned and up and running.

But I can tell you a little bit about some case studies we've done. I went down and visited a number of schools, and my purpose in doing that was basically to get my ear to the ground, to talk to teachers, talk to principals, and get my ear to the ground to make sure our survey instruments were picking up what was going on as well as just to get a sense from actors whose lives were being affected by these policies what they were saying.

And this was about the same time that Jay Green's paper came out, which I think is a very clever paper. If you give me a second, let me just review again what Jay did.

Jay went in and compared schools -- has this been explained in every session? No? Jay went in and compared the low-performing D schools -- in Florida, schools are rated A to F -- the low-performing D schools with schools that had an F. Now, if you have an F, you're voucher-threatened because if you get another F, that's it. Vouchers come in.

If you have a D, you're very low-performing, and probably the difference between a low D and an F is, you know, chance, basically. And so very cleverly, he went in and compared the low-performing D with the F. Makes a lot of sense.

And he found a huge difference, huge difference, between the F and the low-performing D, which he attributed to voucher threat. Not an unreasonable conclusion at all, and the differences were, in fact, very dramatic. We went in and said, well, he didn't use any controls. Would you still get it with controls? We reran the data, put in all sorts of controls that come through.

So I'm down there, and I'm in F schools and I'm in A schools. And I came across some surprising findings, which gave me some pause. First, the A schools, which I expected to be operating underneath the radar screen -- I mean, the FCATs, which are the Florida tests, are not difficult tests. And these A schools, the

kids in these schools, all of them were well above the 98th percentile.

I'm sitting in the A schools doing a focus group with teachers, and the teachers are in tears. The teachers are in tears. They said they feel such tremendous pressure in order to maintain their A status -- and it's very difficult to drop below A status -- that they had stopped all -- this is the A school; everyone is above the 98th percentile -- they had stopped all field trips until after March. They narrowed the curriculum. They stopped all project work. They narrowed the curriculum to what was being tested. And the teachers were very frustrated by this.

I had a focus group with parents and, you know, I said, what do you think about the accountability? And they go, you know, we know that our kids are going to do well. We also know that the FCAT is not the SAT. But, you know, we're A type personalities, and we want to make sure our school continues to be an A school.

And the principal verified this, that the parents were -- even though they intellectually knew, you know, that there were no real consequences for the school, there was lots of pressure put on that school and they were behaving in ways that I suspect were limiting the educational experience of the students. But it's limiting it in a way that was never going to show up on the tests because most of their more intellectual work in that school went way beyond what was being tested.

So that surprised me. I thought -- I expected no change in those schools underneath the radar screen. Big deal, accountability system. No way. The information gets out there. The ratings get out there. People pick up on them. They want a high grade, regardless of what the grade is measuring.

Then I go to the F school. The F school is where I expected to see teachers in tears. The F schools I went to, the teachers were gleeful. The teachers were gleeful. You know, they said, it's wonderful here. I said, well, tell me about it.

And they said, well, we were completely shocked when we got an F because we knew that our students weren't performing that well. But we didn't realize that they were performing as poorly as they are. We didn't realize that they

were performing even more poorly than schools serving similar populations.

And after we got over our shock, we sort of really pulled together and decided, we really have to do something about this. So, in fact, it turned these teachers around and livened them. They felt threatened as a group; it pulled them together. Turnover in the principal.

In addition, the district brought in new resources. Class size was cut dramatically. All the federal class size money that was coming was getting directed to those F schools.

There was a narrowing of the curriculum, which could have been a good thing. And I've been in a lot of very low-performing schools, and you go into some of these schools and it's unclear who's minding the score. So while I think the tests appear to narrow the curriculum, in those schools I would be more likely to say it focused the curriculum.

However, and this gets back to the Green study, when I looked at the data for Florida of how the F schools were performing, it turns out that 40 percent -- 48 percent of the F schools in the state who got out of F status, got out of voucher threat by getting above an F on their next, did it solely on the basis of the writing test. Solely on the basis of the writing test.

And the other 52 percent also improved significantly on the writing test as well as on one other test. So it would have been possible for all the F schools to get out of F status just on the basis of the writing test.

Now, when I asked questions about, you know, how has this affected instruction -- and this was before I looked at these numbers; it was only after I talked to people in the schools that I went back and looked at the numbers -- what the principal told me was, we brought in writing consultants.

And I said, why writing? He said, writing was the easiest test to get by. He said, let me tell you, to get by the writing test, for a kid to get a pass on the writing test, the kid has to write three paragraphs. The first paragraph has to begin,

"First." The second paragraph has to begin, "Then." And the third paragraph has to begin, "Finally."

If you can get kids to write three paragraphs and begin each paragraph with those words, you pass. He said, our pass rate -- this is true. This is true -- our pass rate on writing that first year at this school was the lowest in the state, 7 percent. Seven percent pass rate. After they started doing first/then/finally, their pass rate -- they had the largest jump, and they had like a 78 percent pass rate in writing.

So my reason for bringing this up is that it's very important to do these behavioral studies and try to figure out why -- now, the state is smart, and like any policy, there's this game going on. So next time around what the state has done -- this current time what the state has done is in order to get out of F status, there's a heavy weight put on reading and there's a much lower rate put on writing. So they figured this out. I mean, everybody -- it's like, you know, this repeated game. It's basically game theory going on.

But I think we have to be very careful about coming to conclusions that this was voucher threat that was driving it because these F schools were, number one, getting attention they never got; they were getting new personnel put in; they were getting inundated with new resources; and they figured out very quickly how to game the test.

Now, all those things are not bad, necessarily bad, in and of themselves. And I think, in fact, the F schools were better off. But I would not, as a researcher, come to the conclusion that it was the threat of vouchers that was driving.

In fact, when I talked to the teachers -- because I wanted them to tell me something about vouchers -- they were not interested in vouchers. That was not their immediate concern. They said, if vouchers ever happen, that's something way down the line. We're not worried about that. What I care about is I go to the

grocery store and I have this scarlet letter F written all over me because everybody knows where I teach. And so it was this shame that was driving a lot of it.

So we're in there. We're trying to, you know, do these studies. We'll get some first findings out this year. It's very large. It's a long-term study. I think there are theoretical reasons to expect that vouchers could have a very beneficial effect, especially for kids at the bottom.

And that's where I would expect to see the biggest effects, as we saw for, you know, the accountability system in Texas: The biggest effects at the bottom. The accountability system in North Carolina: Biggest effects at the bottom. Reduced class size: Biggest effects at the bottom.

Anything we can do to make the system better is going to have its biggest effects at the bottom. And that's what I would expect for vouchers, too. But it's going to be a number of years before we get there.

MR. LEMKE: Thank you, Ms. Hannaway, for giving us that information about the empirical data concerning the American educational system. We will now listen to our second comment from Enrico Colombatto. He is professor of economics at the University of Turino, where he teaches economic policy and environmental economics.

He currently serves as chairman of the department of economics and finance at the school of economics in Turino, and director of one of Italy's research institutes, the International Center for Economic Research, ICER.

He is also a member of the (inaudible) Society. He has been a consultant to several foreign governments. His present research interests cover the economics of the transition and development of an institutional viewpoint.

MR. COLOMBATTO: Thank you very much.

I'm going to make three sets of remarks. One is about principles, as I mentioned earlier on this morning, and I apologize for coming back to this. Then I want to make a few comments about my perception of the differences between the

U.S. and Europe as regards vouchers and voucher systems. Finally, I shall make a few remarks about preferences.

Principles. It is true that what I'm going to say is never going to allow me to win an election. But we are not talking about elections here. What I am saying is just what (free-market) common sense would suggest.

Of course, vouchers don't make much sense from a free market-viewpoint, for two reasons. First, a voucher system includes all the redistribution elements that are typical of a state system. Whatever its version, a voucher scheme requires the taxpayer to subsidize or transfer income to families with children, and the transfer is of course greater, the larger the size of the family. You might want to add a twist to it; that is, you do not only transfer money to families, but also to teachers, and more so if the voucher system is applied to a state school framework.

On the other hand, in a free market economy you are not legitimated to violate individual property rights. From a free market viewpoint, it is unacceptable that you take away resources from a class of people as if they were guilty of not having children, and give it to those who do have children. Those who do not have the money to send children to school – or that have the money, but do not want to spend it on schooling – should rather think twice before they have babies.

The second reason why having vouchers is not a very good idea is that once you launch a voucher scheme, you have to certify which schools qualify for it. And then, of course, you must have somebody -- call it the decision-maker, call it the department of education, and call it Mr. Voucher -- who runs this certification process.

But if you do this you violate, once again, one of the fundamental principles of free market economics, which is freedom of entry. Because if you have to persuade the decision-maker in order to start a school that qualifies for a voucher system, educational competition is weakened: new companies, (i.e. new schools) are no longer in a position to enter the scene with low entry costs and persuade

consumers (rather than bureaucrats).

On the other hand controls make sure that at least some bad schools are prevented from exiting the system. One way or another, these schools will succeed in bribing or negotiating with Mr. Voucher. And whenever they persuade him so as to enjoy some sort of subsidy, others are prevented from coming in.

I have mentioned the role of the regulator on several occasions. By and large his/her presence is due to an alleged social contract, whereby the regulator or the agency acts on behalf or in the interest of the citizen. My notion of a social contract is based on a voluntary agreement. But in the case of the voucher system nobody asks the taxpayer permission to take away his money and give it to somebody else.

Surely, we are not in a perfect world and we have to bear with politicians and policy-making, whether we like it or not. In that respect, there is no doubt that although the voucher scheme is far from satisfactory, it nevertheless preferable to a state system. Vouchers would indeed be a huge step forward from the present state schooling systems.

As for its applicability, the U.S and the European situations show substantial differences. By and large, the voucher system is understood in Europe as a policy with strong redistributive elements. That is, when you talk about vouchers in Europe, nobody means quality. Nobody talks about standards. The basic issue is, should we put private schools on an equal footing with state schools? The prevailing idea in Europe is that you don't give the money to the consumer. Rather, you transfer resources to the school so as to bridge the gap between the fees you pay in a private school and the fees you pay in a state school.

That is, although there is a lot of talk about vouchers, vouchers actually play a minor role in the European debate. Many do realize that something must be done about education, but the solution is subject to the preservation of

redistribution, whereby we keep exploiting the rich in order to give money to the poor, or to those who pretend to be poor.

Even those who believe that the voucher system makes sense tend to oppose it, because it would weaken the welfare state. That is, the welfare state is considered to be untouchable. It's like a dam. If you take away one brick, you fear that the whole dam might collapse.

As a consequence, even those with no children tend to support the state school system as part of the welfare state as a whole. Put differently, when there exists a deep-rooted culture of the welfare state and redistribution, the voucher system is perceived as a threat and thus opposed. Indeed, the fight for the voucher system in Europe is a fight against redistribution. Choice, educational quality or other similar issues fade away.

Part of this lack of concern about quality is also due to the fact that in several European countries primary and secondary education is not so bad. Moreover, most state schools are far superior to many private schools, for a number of reasons. Teachers are well treated in the state system. They don't work very much. They cannot be fired. They have a relatively good salary. There is even some room for underground activities (i.e. tax free). Working conditions would be much harder in the private sector. As a result, you have good teachers going to state schools and bad teachers to private institutions – with exceptions, of course.

Enough for Europe. As far as the U.S. story is concerned, my perception is that there is no such a deeply entrenched redistribution principle ant to defend. Instead, people react whenever things are not performing well. Hence the debate remains focused on the evaluation of the voucher system as a satisfactory response to falling standards. Similarly, the comparison between the voucher and charter school systems on the one hand, and other possibilities on the other is based on your evaluation about quality.

Of course, this is not without problems. Once you introduce an

evaluation criterion, agents (schools, in this case) adjust for the criteria, not necessarily for the quality required by the consumers. This generates distortions, which are however inevitable when you deny people freedom to choose.

This leads me to the third issue, namely preferences. A few hours ago we were told that preferences should not be violated. And we were also told that families might choose the wrong way.

This is true. Families can and do make mistakes. Everybody can, including bureaucrats, of course. Should we then advocate cooperation between a perfectly knowledgeable bureaucrat and a family? For that is probably what was meant by the social contract: the bureaucrat tells the family what to do. If the family agrees, then you have cooperation. If not, then you have stupidity on the part of the family. Coercion-free advice seems to be excluded.

Surely, we may not agree on what other families decide. Many parents do not look at the school as a place where to send their children to learn and to qualify for future life. Rather, it is often looked upon as a parking lot where you leave your kids at 8 o'clock and pick them eight hours later or so. Homework should be light because parents are unwilling to help (especially during weekends). Good grades are appreciated to clean up your conscience.

As one would expect, you usually get good grades from bad schools looking for pupils and nobody complains. On the contrary, many parents do complain when teachers tell them that their children's poor performance might also be parents' responsibility. This is typical in Europe. I'm not sure to what extent that is applicable to the U.S. But the main idea in Europe is that the school system works all right as long as you get good grades. If you get bad grades, it is the school system that must be revised and reformed.

And since you do not want to discuss or to question redistribution in the welfare state, you ask for more teachers, more assistants, more resources, and more field trips so that kids can widen their cultural background. The rest can wait.

And after all, even if they don't speak good German, good Italian, is that really necessary? It's the street language that matters, not the literary one. If pupils get bad grades in German, Italian, or French, it is because the teachers are 50 years behind and do not know what the language in the street is.

But if parents sometimes don't care, or don't care enough, what can be done? Once again, the U.S. and the E.U. take different approaches. In the U.S. bad decisions are paid in the labor market. That is, once your children leave school and look for a job, salaries and wage rates reflect the difference between highly educated people and lower educated people. Put differently, education is an opportunity to go up the social ladder, and lack of education makes it easy to fall down.

That's not the case in Europe, where social mobility is much lower. Which means that your lack of education is not punished in Europe as much as in the States. And it also means -- look at tax rates -- that investment in human capital is less remunerated than in the U.S.

Given this incentive structure, it is perfectly rational for parents to tell their children to go to school and have fun. Learning doesn't pay. Enhancing human capital is not the name of the game, redistribution is much easier.

#### **Panel IV: The Public Debate on Forms and Variants of Choice**

MR. DUBOW: My name is Eugene DuBow. I'm now a consultant for a German organization called the Bridge of Understanding. But for 36 years, I worked for the American Jewish Committee, and I was the founding director of the American Jewish Committee office in Berlin.

I am not an expert on education. Heike MacKerron, a friend of mine

from Berlin, said earlier that she's not an expert. She's probably more of an expert than I am.

I remember a story about a fellow from Des Moines who was asked at a conference to say a few words about a certain subject. He said, "Well, I'm not an expert on the subject, but I'd like to say a few words about Des Moines".

Well, I'm not an expert on the subject of education. But I would like to say a few words about Michael Zöllner because not much has been said about Michael Zöllner and about the Council on Public Policy. And I would not want this conference to close without at least somebody saying a few words about both.

Michael and I are very close personal friends, and I know that he has worked on this project for a good many years and has put in an enormous amount of work, time, trouble and travel all over Germany and the U.S. in order to get support.

I think it is the first and only -- maybe I'm wrong, but I don't think I am -- think tank not connected with anything that's directly political in Germany. That in itself is an absolute achievement, and to get people, very political people like Graf Lambsdorff and the former President Herzog behind this effort is outstanding.

So I believe it's a major achievement in the development of public policy in Germany. I further believe that someday you will be able to say that you were at the historic first conference that the Council on Public Policy had in the United States. The time is ripe for this sort of thing.

Having said that, I just want to say a word or two myself and about the conference so far. Fascinating to me. Fascinating, in a good way and in a negative way. In a good way that there are so many ideas, so many different ideas, and things, frankly, I hadn't thought much about before.

But in a bad way, I was really surprised at the kind of cynicism and negativity I detected about public education. There has not been much talk about bolstering public education as we now have it – unless, of course, people feel it's a

write-off and we can never do anything about it; that we might as well burn it to the ground, sow the ground with salt, and start all over again.

That disturbs me. There seems to be so much negative feeling about school boards, about administrators, about unions, teachers, parents, and school systems.

And these are not -- after all, in my own opinion, evil people. These are people who are in a system and trying to improve it. Perhaps some people feel it's not a system that can be improved much. But I think that the public school system in the United States -- of which I am a product of the New York City school system; my children are products of the Nyack, New York school system -- offers experiences with a very mixed group of other kinds of people -- I think it was very much of a positive, and that it adds something over and above just the education.

Maybe the education in New York or Nyack wasn't as good as the Scarsdale schools or some of the private schools. But it had the effect of integrating us with many other different kinds of people. And I think that somehow in the discussion the importance of that didn't come through. At least, it didn't come through to me.

So in any case, those are my own feelings on the matter. And so now let me introduce the panel.

Our first speaker is Karen Horn. Karen was born on Geneva, Switzerland. It gives the date when she was born. I couldn't believe the date on her c.v. because to me she looks about 15 years younger. She completed her Ph.D. in public finance at the University of Lausanne, Switzerland.

Since 1995, she has worked at the Frankfurter Allgemeine Zeitung, the FAZ.

When I first went to Berlin, people told me that the FAZ is the New York Times of Germany. After being in Germany, I realized that the New York Times is in fact, the FAZ of the United States.

Karen works as an economics editor specializing in economic policy from a free market point of view. It doesn't surprise me that she was selected as a speaker here today. Karen has also published a book on morals in markets.

MS. HORN: Thank you very much. I'm very happy to be here. Actually, I was being asked to comment on something, and as there's nothing to comment on, I'll just give you some of my ideas, some of my thoughts. They might be not as well structured as they should be, but I'll just throw them at you and maybe I'll make you give me some response.

Most of the ideas that I have do reflect some of the things that have already been said, by Enrico, mainly. But actually, I'd like to start with the question that Casey was asking. He said, well, if we think about choice in education, about vouchers, about different forms of choice, the basic question to ask is: how do we get from here to there? Look at what the free-market perspective would recommend us to do. And look at what we have right now. There seems to lie a whole universe between those two extremes.

I think that we need to really address philosophical questions. We heard David Gordis talk about the fact that we should be a little more pragmatic and not ideological. I think he's completely wrong. I think we should do exactly this, and expressly so.

It's like the notion of individual liberty as such that we all cherish. When we talk about it in politics, what we actually talk about is positive liberty.

Remember, when the GDR disappeared and some people in Germany could start to travel for the first time in their lives. In the eastern part of the country, people started to travel, people began to buy bananas, et cetera. They suddenly realized what positive freedom meant.

They managed to make certain material things come true. They really

knew what it was all about. Before, they knew what they didn't have and couldn't do; afterwards, instead, they realized what they could have. This positive notion of liberty really had some importance, even in public debate.

Now, that's a long time ago. People feel pretty much at ease. They are pretty satisfied with the situation such as it is, and nobody seems to aware any more that, for example, the state accounts for 50 percent of GDP.

Nobody -- well, when you look at your payroll, you realize that taxes are extremely high, and that does give you a little pinch. But otherwise, you are not really dissatisfied. You don't really feel the absence of freedom as it comes from the coercion through the state.

And that's because nobody talks about negative freedom. That concept is not being used at all in the public debate. I am afraid that this represents a major shortcoming. We should not fall into that trap.

The same is true for choice in education. We should stop talking about efficiency only, or about improving quality. That is good and that is important. But if we focus exclusively on that, we'll never get from here to there.

We have to talk about what we heard this morning from Marie. She talked about the dignity of the American family. That's what we should talk about. About freedom of choice for parents who have the fundamental right to decide what kind of education they want their kids to have. If they consider one particular kind of education to be the right one for their kid, we have no right whatsoever to tell them that theirs is not a good choice. We simply don't have the criteria for that.

It is necessary to radicalize the question that we are asking. We should not be content even with a voucher system, even though, of course, that would be much better, as Enrico said, than what we have right now.

But still, we shouldn't stop there because that would actually mean that we put up with simply trying to simulate markets within a certain framework that is fixed and determined by the state, a framework that actually boils down to

some redistribution device, and that is being controlled through standards set by the state. I don't think that is where we should stop.

Because within such a system, when we say that we simulate markets or that we simulate competition, what we do allow for is accountability and competition according to criteria like staff and the qualification of staff, pedagogical skills, orientation, equipment, things like that. But we don't talk about the one thing that is really the most important. That is issues. That is curriculum. Proficiency standards. The outcome of that process. As for now, we still leave that to the state to determine.

If home schooling is still below 2 percent even in the States, here is the main reason why that is so. If people accept the effort of training their kids themselves by hiring teachers, by having them gather small classes in their garages or whatever, if they do bother to go through all that trouble, they of course want to determine what to teach their kids and they don't want to be controlled by a school board or by any authority. If they do that, they want precisely to determine the outcome. If you don't allow them to do that, they simply won't do it.

So I think we should think about leaving quality control to the market. We don't know what is really good. Competition should be the mechanism that allows us to discover it. There should not necessarily be state-administered exams. This is by the way a huge topic in German politics right now. When the PISA study came out and people realized that, well, Germans were more stupid or less cultivated than we thought they were, then -- well, the opposition immediately suggested that we should have a more centralized system with centralized controls, et cetera. To my mind, however, that's exactly the wrong way to go.

Let me come back to something else that David Gordis said a little time ago. He said that if the state gives subsidies, then it's normal that it should require some control over how those subsidies are being used. If you have a mechanism of redistribution, if you require people to subsidize others, then they want to have a say

on what they are going to spend their money on. That's normal. I agree with that.

But where does that take us? It leads us to questioning whether subsidizing education is a good thing or not. And I believe we should really think about that. The usual argument is that you have to subsidize education because schooling has positive externalities.

Now, from an economist's point of view, you would have to ask, are those positive externalities pecuniary ones not? Frankly, I suppose that most of them are in fact pecuniary. So the market is perfectly able to take them into account. But I think we should talk about that a little bit more.

Another question from a moral point of view is the following: could there be made a point for the necessity to protect children against their parents? What do you think about that? If we consider that parents might not be able to take care of their children and not be able to decide to which school or whatever to send them, should the state be doing this? Is there a good argument for that? I have doubts.

The last question that I would like to ask as a suggestion for future discussion, maybe, is whether we need active measures for integration. There is a lot of talk about inequities in society and lack of integration, et cetera. And there seems to be a thrust for saying that these inequities need to be reduced and we have to foster integration anyway.

Again, you can already guess what my question will be. If a lack of integration is what people actually want, why should we try to merge those different sectors of the society? Do we have to foster integration? If I come to Washington and if I decide to send my kids to a German school with other German kids, that's my choice. So simply let me do that.

As Enrico said this morning jokingly, it's all a matter of minding your own business. I think that's the basic message to receive. Thank you.

MR. DUBOW: Thank you, Karen.

Our next speaker is Casey Lartigue. He is a policy analyst with the Cato Center for Educational Freedom. His research expertise includes school choice, teacher quality, minority education. His writings have been published in USA Today, Education Week, the New York Post, Asian Week, and the Washington Post. Wow. I submit my stuff to the Weekly Reader.

Before joining the Center, he worked as a staff writer at Cato, and prior to joining Cato, he taught English and worked as a language examiner in Taiwan and South Korea, and received his bachelors and masters degree from Harvard.

MR. LARTIGUE: Okay. Thank you.

MR. LARTIGUE: Before I begin my prepared remarks, I would like to address something said earlier. Ms. Hannaway discussed writing standards in Florida. She made many good points, but I would just like to point out that we shouldn't underestimate the value of kids being able to perform even basic writing tasks. During the recent mayoral election in Washington D.C., the mayor's campaign handed out name stamps to voters. The main reason? Thirty-seven percent of D.C. residents read at the third grade level or below.

I was told that the topic was wide open. One issue that I've been looking at is the level of support for school choice among black Americans. A lot of the justification for school choice is made on the fact that lots of blacks are struggling, achieving four or five grade levels behind whites and Asians.

I'd like to make the following points today: 1) The level of support for school choice among black Americans is soft, despite what polls say. 2) Black Americans have some very serious concerns about choice not evident in simplistic polls. 3) Until some of the concerns are addressed and answered in a truthful way, the support will remain soft.

Let's look at the first point, about the level of support among black Americans for school choice. According to different opinion polls, blacks do support school

choice. Most significantly, according to the Joint Center for Economic Studies, a black-oriented think tank located here in D.C., 57 percent of blacks support school choice. Seventy-five percent of blacks under the age of 35 support school choice. Seventy-four percent of black parents support school choice. That's the good news. The bad news is that even though polls do show that blacks support school choice, blacks do not support candidates who support school choice.

That might appear to be baffling. In Newark, New Jersey, for example, one candidate said he supported educational options. The other presented school choice as a racist conspiracy against blacks. Newark has one of the worst systems in the country. Just shutting down Newark's public schools and giving the kids \$15,000 each per year would be a better investment and the kids would learn as much.

The pro-choice candidate, Cory Booker, was denounced as an Uncle Tom, a sellout, a House Negro. Some people were even saying he is actually white. He lost the race, with school choice being one of the major issues.

Of course, we also had the presidential election in 2000, with Al Gore, an opponent of vouchers, squaring off against George W. Bush, who said that he supported vouchers. An estimated 93 percent of black voters cast their votes for Gore.

So how do we explain the fact that there's a policy that we're saying should be tried, many say, mainly because of blacks, but that blacks are voting against it?

I think there are some reasons for it, but the main point I want to make is that the level of support among blacks is soft. And when you see the polls, just be somewhat wary. The support is a mile wide and an inch deep. All it takes is some union members coming in and digging and saying that this is bad for blacks, playing to their concerns, and that people will end up voting against it.

Why is that level of support soft? I'd say it is because some of the concerns blacks have about school choice aren't rebutted in a brutally honest way. I'd like to give four examples of what I mean. The first one is the idea that parents make

mistakes when making educational choices. The second one is addressing the topic that there is creaming. Closely related to that is the third point: that there are going to be some kids left behind if you try school choice. And the final one is the idea that vouchers are inherently racist.

School choice supporters haven't really addressed these concerns in a straightforward way. The phrase school choice supporters should keep in mind is: Keep it real. Be honest even when it could hurt your position in the short-term.

For example, parents don't always make good decisions. This is what some opponents of school choice will say, that you give someone educational freedom and they'll choose schools for non-academic reasons, such as the team has a good football team.

By ridiculing school choice opponents as being paternalistic for saying parents will make mistakes, school choice supporters end up undercutting their own credibility. But we know that people make mistakes. All people make mistakes. But somehow, when someone gets a voucher, they're not going to make mistakes? What I hear from people is, Hey, wait a second. I've got relatives. They make mistakes all the time! You're telling me that if they get a voucher, they're not going to make mistakes?

I would say it would be better to say, You know what? People do make mistakes. Everyone may not be a good chooser. But who is going to make that decision?

I mean, who decides who will decide? And who is going to decide who is going to decide that? Are you going to rely on Al Gore or Ted Kennedy or other people to make the decisions for you, or should you make the decision yourself?

Winston Churchill once said that democracy is the worst system in the world, except for all the others. The same could be said of parents making decisions about how their children will get educated. It may be a terrible system because parents will make mistakes, but having parents be responsible is the best system we've been able

to come up with. School choice supporters must be willing to admit that people will make mistakes.

The second point school choice supporters have trouble being brutally honest about—creaming by school choice programs. That is, the best students will be “stolen away” by the private schools, as if the government schools have some monopoly or some right to claim these kids from the beginning.

In this case, school choice supporters have history to deal with. There's an old joke about a minister who is asked, Do you believe in baptism? The minister says, not only do I believe in baptism, but I've seen it done!

What a lot of blacks will say is that in the 1960s and the 1970s, when blacks—especially upper income blacks who were stuck in ghettos had a chance to escape, they did. So then, telling people that there won't be creaming in schools is like telling them that they didn't see what they saw and it's not going to happen again. And they're thinking, I don't believe you.

So I think that school choice supporters must be willing to admit that creaming can happen. There is some empirical data showing that it's the kids who are the worst off who are trying to flee the public schools.

I bring up the point about creaming and try to answer it, pointing out that the people who are upset that some kids may be leaving are upset that *any* kids are leaving. It's not just the fact that some of the upper income or motivated kids might be leaving. They don't want anybody to leave. The unions are even opposed to private scholarship programs, where there's no taxpayer money involved, where it's only for low-income kids.

The second thing I point out is that creaming is already going on in suburban schools. Wouldn't we prefer that decisions be made based upon achievement and motivation, instead of income or geography?

And the last thing I ask: Why is it that when someone rich, like Jesse Jackson or Al Gore or Ted Kennedy, keeps their kids out of the public schools that it is not

considered creaming? But suddenly when some low-income mother says, My child is in a bad school, I want to get him out, that people are saying, No, no, no, no, you've got to stay where you are.

At a more basic level, when people complain about creaming, I ask them, Are you suggesting that we should have put a fence around ghettos in the 1960s and told people that they can't leave, in the same way that you want to put an exit on the school door and say that the motivated people can't leave?

Or during slavery, would you have said that we can't try to help any slaves until we can free all of them? I would have said try to free them one at a time and as quickly as you could.

Closely related to the idea of creaming is the question: What happens to the kids left behind? The reality is that in any system, there are going to be some people more motivated than others. That's just a fact of life.

What we need to look at is that having an exit benefits even those who choose not to exit. It's not until you *can* exit that the people in the system will actually listen to you. Before then, if you must be there, why should they listen to you? So the kids who get left behind, they can actually benefit from the fact that others can escape.

How is that so? Consider what has been referred to as the supermarket effect. We all benefit from coupon clippers. When you're standing in line at a supermarket like Giant or Safeway or something, there's always that one little lady with 20 coupons, and she's counting them out and giving them to the cashier. Don't get frustrated. You should kiss that woman on the cheek because what she does is she makes it better for you because the store cannot rip you off.

Giant would sell you a box of washing detergent for \$100, if they could get away with it. But because there are some very aggressive shoppers, they know they can't. Because those are the people always looking for discounts, and they're always looking for a good buy. The stores are always going to get the business of lazy

shoppers, but it is the aggressive shoppers they are fighting over.

The same thing would happen in the schools. The fact that there are some very aggressive parents who are shopping around looking for different schools means that even if you're someone who's free-riding, that you're still going to benefit from the fact that someone else can leave.

One final point about vouchers. When school choice opponents are desperate, they can always use race. The 1954 *Brown v. Board of Education* decision banned segregation in schools. A few years later, a number of leading Congressmen signed the Southern Manifesto, declaring they would defy *Brown*. Then in late '50s, early '60s, you had some people using vouchers to go to segregated academies.

This is still a sticking point for a lot of civil rights leaders. A lot of them recall that time and can't get past whites using vouchers to escape their children. So it is tough for them to support choice today. I believe school choice supporters have underestimated how important this issue is.

But I think that we have to try and point out that school choice opponents who use the racial angle have very convenient memories. Try to think about what else was going on in America at that time. It's not like America was like an integrated country, and just a handful of crazies started using vouchers to avoid blacks. I don't hear anybody saying, Bus companies discriminated against blacks in the 1960s, so now we should all walk to work. And there were segregated colleges in the 1950s and '60s, so blacks should just avoid any Southern colleges.

My mother told me she was rejected by the University of Houston because of her race in the 1960s. When it was time for me to go to college, it was clear that she didn't want me to go there, even though I had been accepted. Go to any other Southern school, but don't go to that school. But I don't hear people having a broad-range program saying, avoid those schools.

Using the logic that vouchers-were-racist-then-so-we-shouldn't-use-them-now, that would mean that blacks shouldn't attend public schools either. Think about

it, what was *Brown v. Board of Education* in response to? Segregation in public schools.

What the point does is give power to the segregationists from the grave. Wouldn't they be surprised that 40 years later there are young black kids who need to use vouchers or some form of school choice in order to escape?

The point that I hope you leave with: When you hear about polls discussing blacks and their feelings about school choice, look at them with suspicion. When push comes to shove, when it's time to vote on these things and people start in with misinformation about vouchers being racist, that there will be creaming, or that some kids will get left behind, recognize that those nice poll numbers will drop the closer you get to an actual vote. School choice supporters need to go on the offensive, not relying on what they hear from pollsters.

MR. DUBOW: Thank you very much. Aren't you glad you didn't go to the University of Houston but went to Harvard instead?

I'll share one of my personal secrets with you. I'm a cereal eater. I love cereal. And when I eat cereal, I love bananas. And I always eat the cereal first, and I leave the bananas for last. I always leave the best for last.

So in this panel, we have the best for last.

MR. YAKLIN: I'll give you that \$10 now.

MR. LARTIGUE: I would have given you 20.

MR. DUBOW: I'm going to ask you to sit over here in a moment.

Lori Yaklin is the director of school choice -- this will be an interesting back and forth -- in the Office of the Undersecretary of the U.S. Department of Education. Ms. Yaklin's diverse career has included work in the auto industry, television, education, and public policy.

Her interest in K to 12 education reform began while teaching business and ethics at the college level, and led to her work as the founding executive director of a reform-minded school board association. She holds a bachelor of business

administration and a master of administration degrees.

Lori? Why don't you come and sit here and I'll move over.

MS. YAKLIN: Thank you. Well, I've been working on school choice for about four years. And he mentioned, in my prior life -- that's what I say, the life that happened before the U.S. Department of Education got me about eight weeks ago -- I got involved in K-12 education reform because of my observations as a college instructor for six years.

After teaching college for six years, I became so alarmed at the lack of skills and the poor preparation of my freshmen coming into the college that I actually sought out K-12 education reformers to try to find out what was being done in the K-12 education reform world to try to fix things.

And I had already been doing some public policy work on the side and a variety of other issues, and came to the conclusion, probably partially through my business background, and much because of my background in teaching at the college and what I observed there, that the system was desperately broken and needed to be fixed. And I believed that market-based reforms were the key to fixing that.

And just as background, I've heard school board members talked about a lot. It was mentioned last night in one of the questions at dinner. And there are many school board members around this country that believe that school choice and competition will improve public education. They do not have a voice. I won't say that they are the majority, but I will say that they are there.

They do believe that charter schools and public school choice and other forms of choice do spur the schools into better performance, which is why I helped found a school board association for school board members who were public -- well, choice advocates generally. So they're out there. You just don't hear from them very much. And we tried to make sure that they were heard from.

I have participated in hundreds of debates and forums on school choice, and they usually go something like this. The people that are against school

choice talk about all the arguments basically that Casey just talked about -- you know, it creams the students; it's going to destroy public schools; and then it usually ends on a note, especially when I was in debates during voucher initiatives and so forth, that those folks over there, the school choice people, they want to destroy public education and they want to completely dismantle the system and they want to actually destroy the foundations of the democracy. That's pretty much where it goes, usually.

And then the advocates of school choice like myself, we refute all that, and we hold up our studies and statistics and graphs. And we do a pretty good job of refuting the claims of the other side. But unfortunately, we don't do it in a way that the public can grab.

We are very policy wonkish and we don't often speak at the level that the public understands. And that is because we spend so much time as school choice advocates talking about the difference between public school choice, tax credits, tax deductions, federal tax credits, state tax credits, state tax deductions, federal tax deductions, refundable tax credits, nonrefundable tax credits. And the general public really only understands the concept, I think, at the most basic level, which is choice or no choice?

And quite frankly -- and I'm including myself in this bunch of people I'm about to describe -- we are not normal. Okay? We school choice advocates that sit around at tables like this -- I'm sorry if I'm offending anyone -- but we're just not normal.

And so one of my pet peeves, then, is that I don't think that we have spoken about this in terms that resonate with the public. And I think part of it is in turn because we are a little too intellectual about it, and partly because, what Karen said, we have not made it a moral imperative.

We spend a lot of time talking about research and refuting research, and we have dueling researchers. Right? We have this camp researching. And it all

disputes, and no one agrees on anything.

And meanwhile, I would suggest that those of us who are these odd folks that find C-Span riveting television -- yes, I'm looking at you, Casey -- that we put down the policy briefs and we go talk to real life moms and dads in the inner city.

As Casey mentioned, I don't think we've been real. I think part of the reason we haven't been real is because we haven't listened. And I applaud your work right now, Casey, because I think the key is that we don't listen, and we don't speak normal language, and we intellectualize the debate to the point that it doesn't mean anything to a lot of people.

And so I think we all need more field trips. I think we all need to be out there in the field talking to the parents in the inner cities and finding out what it is they want, what are the problems, and how can we address their concerns. I guess I'm unloading my pet peeves. We talk amongst ourselves an awful lot, which is a good thing. But we need to not just talk amongst ourselves.

One of the most eye-opening things that I had happen about two years ago is I went to a Black Caucus meeting and spent three days. And it was an interesting experience for me. But you know what? I learned a lot, and I listened a lot.

And what I heard from them -- and yes, eventually I am going to get into the forms and variants of choice, I promise -- but what I learned from them is that they really have legitimate concerns about us -- and I would say this true not just of the Black Caucus but a lot of groups that we're all trying to reach with the school choice message -- is that you people, is what I was told, come in here with your PowerPoint presentations, you spend an hour with us, and you go out the door.

And you don't listen to us. And I watched people come in. I spent three days. I went and listened to jazz at night. I ate with everybody. Three solid days, I stayed there and I listened.

But what I saw was polished folks coming in with their PowerPoint presentations trying to convince these folks that school choice was a good thing, and then they scooted out the door. And what I watched was them throwing away the material as they walked out. No one read it. No one picked it up. No one was really listening. Because you know what? We were talking in bar graphs, and we were talking in statistics, and we were talking about the differences between tax credits and vouchers and refundable tax credits and we didn't listen.

And I learned an important lesson that weekend, which was no matter what the research says, we have to speak at the gut level and this has to be a moral imperative. And it is a moral imperative. It's just that it's wonderful to have the studies to back you up.

I carry them with me in case someone questions me. I carry references sometimes to studies as backup. But I don't spend a lot of time describing the studies because it's become more important to me to speak to this as a moral imperative.

And we expect that a school choice debate is going to be one side saying, you guys are trying to destroy public education, and our side saying, you guys don't care about kids, you only care about the system. That's expected.

But have you ever been in a room with a bunch of school choice supporters who are all arguing over what form of school choice is the best? I mean, that is the most entertaining of all because the school choice folks, when they get behind closed doors, don't agree.

And it can get quite vicious behind closed doors because they say, well, what camp are you in? Are you a tax credit person or are you a voucher person? Do you believe in refundable tax credits? And all of us weird people who like to sit around and -- we'll actually sit around and talk about the fiscal neutrality of tax credit legislation.

And so, on to kind of one of my other pet peeves, which actually does

have to do with the forms and variants of choice, is that when we all sit in these conferences and we discuss the forms and variants of choice -- which the public has no idea; choice is choice -- we become purists, in a way.

We say, well, if we can't have this pure form of school choice, then we don't want any. And in fact, there are areas in the country right now that could have some school choice if it weren't for all of us arguing amongst ourselves and not being able to agree on what the legislation should look like that gets presented.

And so because of squabbling, school choice doesn't happen. And that's in some ways because we are philosophical and we do have these ideals, and those are good things. But so many of us fail to accept incrementalism as an approach.

Now, I have been accused of being one of those people that likes things black or white. In some ways I'm very much a purist. And I could describe Utopia, you know?

But I don't want to lose sight of those moral discussions and those philosophical discussions because I think they're important, but I do think that we all need to do a better job of sitting around the table and discussing what can get done in an area perhaps incrementally.

What I find interesting among my free market friends is that my free market friends will say, you know, if we could just, pick a country that has a very closed economy, if we could just get into wherever and we could just give them a taste of economic freedom, just this much, we can pry open the door and we can bring capitalism to that country. We all agree?

But those same friends of mine, some of them will not allow the door to be opened this much on school choice

(Interruption to tape.)

MS. YAKLIN: (continuing) --If we believe that principle applies to countries, that when you give people a taste of freedom, that they want more, then

why don't we agree that perhaps public school choice is better than no school choice?

So at its most basic form, I'm just saying this: We need to make this more of a moral imperative. And then other thing I think we need to do is we need to turn the argument around on the other folks.

First of all, I'm not saying we shouldn't have our differences of opinion and discuss forms and variants of school choice. I think that's healthy. We shouldn't do it to the point where we don't get anything done.

The other thing that we all need to do is to make sure that we turn the argument over. We always play defense, and it's time to play offense. It is definitely time to play offense with school choice.

Turn the argument around. Say to the other folks, instead of us defending -- oh, we don't cream, we don't do this, no, school choice won't do that, it won't destroy public schools -- why not say to the other side, what is right about telling children that one size fits all? What could be right about that?

Or what could be right about asking the parents of a seventh-grader to wait for a five-year improvement plan? What could be right about that? How could you be right about that? Make them defend their side. What could be right about forcing a parent to send their child to an unsafe school?

We play offense. They play defense. What could be right about restricting options for parents, and what makes you think that zip codes should determine opportunity?

So I've pretty much given out my pet peeves here today. We don't speak at the gut level. We haven't made it a moral imperative because we intellectualize the debate. We fight amongst ourselves so much that we don't often get the job done. And we play defense instead of offense, and it's time to play offense.

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