



2013 PILCOP SYMPOSIUM ON EQUALITY  
PRIVATIZATION: LOOKING OUT FOR THE  
PUBLIC GOOD

THURSDAY, SEPTEMBER 12, 2013

2013 PILCOP SYMPOSIUM ON EQUALITY TAKEN IN  
THE LEVY CONFERENCE CENTER OF UNIVERSITY  
OF PENNSYLVANIA LAW SCHOOL, 3400  
CHESTNUT STREET, PHILADELPHIA,  
PENNSYLVANIA 19104, BEGINNING AT 9:00 A.M.,  
BEFORE ALICIA FORTIN, A PROFESSIONAL  
REPORTER AND A NOTARY PUBLIC IN AND FOR  
THE COMMONWEALTH OF PENNSYLVANIA, AND  
KIMBERLY HUSSEY, CCR, CM.

VERITEXT NATIONAL COURT REPORTING COMPANY  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

## INTRODUCTION

**Mr. Joseph:** Welcome. Welcome.

**Audience:** Good morning.

**Mr. Joseph:** Thank you. Good morning. Welcome to a day of intellectual challenge, to information and learning sponsored by the Public Interest Law Center of Philadelphia, commonly known as PILCOP.

I have every reason to believe you will be provided insights no matter how considerable your expertise is in the subject matter of any one of these panels.

I can give you these assurances based on the experiences I have had chairing three prior conferences or symposiums and standing in admiration of the work of PILCOP, both in its representation of clients and putting on these wonderful conferences.

I am Donald Joseph. I'm a professor at Rutgers Law School and can make these assurances of excellence because it is not I who brings the expertise. It is not I who knows the leading experts in the field. It is not I who finds them and brings them here, and then arranges to have their speeches and discussions melded together.

These symposiums grow out of the work PILCOP does, but they're not meant to highlight that work. Rather, they're meant to push the edges of thought and see if real insights can be learned.

I have struggled, as I'm confident many of you have, with the place privatization plays in our providing services to the poor. And I look forward to sharing the day learning with you.

Before introducing our venerable executive director of the center, first let me remind you of a few things and extend appreciation where due.

I don't usually do this, but we are honored to have a couple of celebrities with us. So I'd, at least, like to mention a professor now at Temple Law School, I understand, but our former mayor, John Street –

**Audience:** (Applause.)

**Mr. Joseph:** -- and our former chancellor of the Bar Association in Philadelphia, Andre Dennis.

**Audience:** (Applause.)

**Mr. Joseph:** To the Penn Law School and its Toll Public Interest Program, our thanks for the venue you have provided us. Arlene Finkelstein, its director, managed to get us this space and worked hard to do it. And two student participants, Sara Marcy (ph.) and Kevin Hogeland-Hanson (ph.) will be participating in today's events.

I also want to thank Morgan Lewis, a large Philadelphia law firm, for publishing this huge book of materials.

And I want to thank the Sheraton here on Chestnut Street for its considerable discounts that it has given to our speakers who have stayed overnight. And Jennifer Kates who bailed us out, she works at City Council, when one of our speakers from out of town pulled out at the last moment.

I also want to thank my own Rutgers Law School and its Journal of Law and Public Policy for their agreeing to publish this symposium.

The very first issue of the journal, some decade ago or more, published two articles written by lawyers from PILCOP. Indeed, one of them is here today, Michael Churchill, who you will hear from later on.

They have, then, published two prior symposiums and are going to publish this one. Thus, our work today will be memorialized and available for others interested in the subject of privatization and these panels.

And the proceedings could not be published were it not for a court reporter or court reporters who are donating their time to convert these words into a permanent record.

Thank you, Alicia Fortin, Kimberly Hussey, and Veritext, the court reporting services that you work for that provided this service.

The panels are made up of speakers, experts in their fields. I'm not going to go through thanking them individually. But we do thank them whether they have traveled from Michigan, as our keynote speaker has, or across the campus as one of our speakers on today's first panel has.

You can see their bios in the materials, so I don't think that any of our introducers are going to spend much time on introductions. We'll get right to the substance.

As a logistics matter, do not forget to turn in your CLE forms, and further, your evaluation forms, and where applicable, photo releases. They should be delivered to the registration table in the hallway at the end of the conference.

The evaluations are especially important because we get to review them and find out how to improve these conferences.

Our introductions are not to give the bios as I said, but I would be remiss if I did not tell you how fortunate we are, as an organization, to have the next speaker, Jenny Clarke, as our executive director running a tight ship that is floating now in the ether of accomplishment.

I am confident I speak for the entire board in saying we are grateful to have you running our gem of an organization.

Jenny, please come up and give us what we have called the preamble. Lead us through the overarching questions for the day, and give us the perspective so that we can

then, perhaps, take from these three panels and our keynote speech lessons to be learned.

And perhaps, we'll be able to generalize ways of seeing the pros and cons whenever government seeks to delegate to the private sector work and services it normally provides.

**Audience:** (Applause.)

## PREAMBLE

**Ms. Clarke:** Thank you, Donald. I am so glad to have you all, see you all here today. And I'm particularly happy to see so many brilliant minds because we have a lot of work to do because we have a very difficult question that we're going to spend the day answering.

And that is, when should services that are being provided by the government be provided by some other entity, by a private entity, or some other individual, or quasi-governmental entity?

Now, if you're like me, you've started collecting some of the examples of when that debate has happened.

When I visited my son in Meridian, Mississippi, on the naval air station, the housing was being provided by a private entity.

I was just talking to Graham about the fact that, in Iraq, all of the security was provided by a private entity.

We had a discussion about a year ago about whether we were going to sell our turnpike. And more recently, in Pennsylvania, we've had a discussion about whether our state Liquor Control Board should be disbanded and the sale of liquor should be done privately.

We can go on and on. We all have our favorite examples. Prisons, many prisons are being provided now by private companies.

School districts, we have examples where school districts are no longer being run by elected officials, but are being run by government appointed officials.

We have our own School District of Philadelphia. And more recently, we have Chester Upland School District, a few miles south of us.

We have entire cities. We have Detroit, which is being run, not by publicly elected officials, but by a government-appointed official.

So typically, in public discourse, when we hear answers to these questions, when should these services be provided by publicly elected officials and when by someone else?

Typically, the answer is based on some sort of broad philosophy about government. Government is good, or government is bad, or worse yet, the answer breaks down bi-partisan political affiliations. We saw that with the discussion about the State Liquor Control Board here in Pennsylvania.

The answer broke down pretty neatly into Democrats and Republicans. But the problem with those simplistic frameworks, is that it doesn't really help us to think through and answer the questions, when should these services be provided by a government, and when should they be provided by someone else?

The simplistic formulations, also, have the problem that they gloss over huge differences when we talk about what it means to turn a service over to a non-governmental entity.

There's a huge difference between turning over a service to a for-profit corporation on the one hand, or to provide community input on the other hand.

So this government good, government bad, just glosses over that distinction. It also glosses over the distinction when we talk about what does it mean to have a government service?

Are we talking about public education? Are we talking about public education run by, say, the School District of Philadelphia or charter schools that are also supposed to be public education?

So these very simplistic formulas I'd suggest to you, and the reason why I think you're all here, really don't help us answer the real question.

And that is, when should government services be provided by publicly-elected officials and when should they not?

We're going to try to answer the questions through the lens of three issues.

First is land use. Land use has many aspects of this question, the most classic of which is eminent domain. Privately held land taken by a governmental entity for some use.

And sometimes it has a third dimension, as we see in Eastwick here in Philadelphia, that is the government takes land from private entities, and turns it over to a for-profit entity, so we see this issue in land use.

We also see it now in Philadelphia with vacant land, vacant land owned by either the city, or some governmental entity, or by banks, or other private owners, but who aren't paying taxes. So we see the issue in land use and we're going to talk about that today.

We also see the issue in the area of healthcare, particularly services provided to low income children, very low income adults, and people with disabilities. Today these are required to be provided by the government through the Medicaid program, and there are different ways that that service can be provided.

It can either be provided by the government, which directly contracts with doctors, or a more recent model is that we see those services turned over to insurance companies.

And in particular, we'll see that with the Affordable Care Act, which is almost completely based on a model of turning over that service, which we thought of as a government service, to insurance companies.

And finally, we're going to look at this question through the lens of public education and with public education, of course -- first of all, we have the question of outsourcing.

Schools have begun to outsource a number of functions: curriculum, leadership, training, food. But then, of course, there's the question of outsourcing the education itself.

In Philadelphia, we've had a number of experiments with that. We've had companies running public schools, and then we also have either talked about or implemented models, which provide public money to private schools through either tax credits, which we have, or vouchers, which we don't yet have.

So we're going to look at those three areas and here are some of the questions that we're going to talk about and ask. Accountability, so the questions are going to be, what should we be thinking about when we're thinking about are these good models, or are they bad models?

We're going to talk about accountability. So what do we do if we don't like the result of a privatization model or a privatization experiment?

One of the pieces in the materials you have are some articles about what happened in Hartford when the insurance companies that were hired to provide services to low income people under Medicaid. The insurance companies refused to turn over data about what prices they pay the doctors, just refused.

And so, the Governor had a dilemma because what are you going to do with these insurance companies that have been hired to handle your Medicaid?

And the Governor said I'm going to cancel all these contracts and we're going to take it over. Now, just think about how difficult that is.

So accountability is, what are we going to do if we turned over these things to private entities and we don't like what they do? And do we have, actually, a choice?

Closely related to that is transparency and public input. Do we know whether we like the results or not? Is it transparent? That's a question that we're going to talk about -- how we can answer that today.

Do we even have the systems in place or the data to know whether we like the results? When we turn over our Medicaid programs to insurance companies, do we know whether they're doing a good job or not? How are we going to measure that?



When we turn over our public education to privately managed companies, do we know whether we like the results of that?

When we've decided on a measurement, let's say, public education, the measurement being test scores, is that the right measurement?

Those are some questions that we'll be answering. Then, there's also money. And we'll be talking about money today.

When we privatize something, when we turn it over to a private company or an individual, are the financial incentives lined up with the interest that we want to promote?

Is the insurance company's financial incentive lined up with the incentive of providing low-income people healthcare?

Is the privately owned company that is operating the school, is its financial incentive lined up with providing the best education?

Or are there intermediate ways of making sure that those financial incentives are lined up?

Another issue that we're going to be thinking about today: Is this an area where we're content to let market forces take their course?

Are we content to allow failure? Is innovation something that works in this area?

And finally, and, maybe, most important, we're going to look at the values and the results that we want.

We're looking at costs. Is this the cheapest? That's one of the justifications for privatization. Is cost important here? And does cost come at the expense of quality?

When the operation of Medicaid programs is turned over to insurance companies, the justification is it's cheaper. Well, is that the value that we want, or is it at the expense of quality?

And then there is the question of choice: Is choice something that is important in this situation? That's also another value that's used in order to discuss and talk about privatization.

So these are the kinds of questions that we're going to be asking today. And our speakers will be talking through their experience in order to help us answer those questions.

I'm very much hoping that all of you will join in the conversation. We've got a rich variety of experience in the room. And I'm hoping you'll challenge our speakers and that you'll offer your own perspectives as well.



Again, I thank you all so very much for coming.

- - -

(Whereupon, there was a recess in the symposium from 9:20 a.m. to 9:34 a.m.)

- - -

**Ms. Clarke:** So good morning, again. And I hope you all enjoyed as much as I did the opportunity to start to get to know your fellow workmates in this joint endeavor, because again, we do have a lot of work.

It's my great pleasure now to turn the podium over to my colleague, Amy Laura Cahn.

Amy Laura is a lawyer at the Law Center. She is a Skadden Fellow, which is a very prestigious fellowship that she's just finishing.

She's the director of our Garden Justice Legal Initiative. And she's a graduate of the University of Pennsylvania Law School, Amy Laura.

**Audience:** (Applause.)

## SESSION 1 - LAND USE & ECONOMIC DEVELOPMENT

**Ms. Cahn:** Thank you very much and good morning.

**Audience:** Good morning.

**Ms. Cahn:** We have been calling this the Land Use Panel, but it's really an opportunity to talk about a host of intersecting issues, neighborhood development, housing, the real estate market, mortgage foreclosures, urban renewal past and present.

All of which, for me, converged with the question of how we create healthy cities and healthy communities.

For us at the Law Center and also for these panelists, this is not a dichotomist conversation about public versus private, or even a public and private partnership.

Each of the speakers you're about to hear, work, think, and write about these questions in terms of public, private, and community.

It's a three-dimensional conversation. What are the roles, powers, and obligations of each? And how to balance these

interests and still ensure transparency and accountability, like Jenny spoke about.

My introduction, Tom Sugrue, is the David Boies Professor of History and the director of the Penn Social Science and Policy Forum at the University of Pennsylvania, a graduate of Columbia; King's College, Cambridge, and a Ph.D. graduate of Harvard.

Mr. Sugrue has authored several books and publications, notably, *The Origins of the Urban Crisis*.

He is a member of the faculty advisory committees for the Urban Studies Program, Urban Education Program, and a faculty fellow and executive committee member of the Penn Institute on Urban Research.

Tom is originally from Detroit, Michigan and we'll hear about Detroit today.

Tom Streitz, next to him, is currently the Housing and Policy Development director for the City of Minneapolis.

He founded the Twin Cities Community Land Bank -- we're very interested in Philadelphia about that -- the story of which, he'll be sharing with you today.

He's a graduate of the University of Nebraska, Seattle University School of Law, Georgetown University, and a long-time resident of Minneapolis, Minnesota.

And Mr. Streitz has served as a mayoral representative to the Family Housing Fund, deputy executive director of the Minneapolis Public Housing Authority, and as legislative counsel for the U.S. Senate. Tom has also spent many years as a legal aid lawyer.

Rob Robinson, has been involved with the New York City Housing Movement since 2007.

He currently sits on the leadership committee of the Take Back the Land Movement. He's also a volunteer in the Human Rights Housing Program at the National Economic and Social Human Rights Initiative.

In the early 2000s, Rob lost his job with a Fortune 500 company, and spent more than three years homeless.

Since then, he has advocated for housing as a human right, both here and abroad, including his post in 2009 as chairperson for the first official visit of a UN Special Rapporteur on the right of adequate housing.

We welcome all of our speakers here today.

**Audience:** (Applause.)

**Ms. Cahn:** Tom Sugrue is going to start us off with some historical and present day contents.

And then Tom Streitz and Rob Robinson will be providing some perspective on innovations and provocative solutions.

I'm going to hand it over to Tom Sugrue.

- - -

**Mr. Sugrue:** Thanks very much, Amy Laura, and thanks to all of you for coming out today. I am looking forward to the program.

I think it's going to be a very important intervention at a moment when questions of privatization and the public good seem more pressing and more unresolved than ever.

I'm the story and context guy, so my task this morning is to raise some big questions, and then to offer an overview of how we got to where we are, and then, maybe, come back to those questions.

And then leave it to my co-panelists to come up with some possible answers to the questions.

So I'm going to make five points or a mixture of points and questions, and then I'm going to get down into the detail.

First, privatization in terms of urban and land use policy is not a new thing. It's been with us for a very long time. At least, since the development of urban renewal policies in the 1940s and 1950s and I want to talk a little about that.

Secondly, the question that privatization and its trajectory in urban policy, from the middle of the twentieth century all the way up to present day, the fundamental question that it raises is: What is the appropriate balance between the public good and the private interests?

What that balance is, and how we adjudicate between those two, has shifted over time. The balance, I would contend, has gone strongly toward private interest.

And given the fact that privatization and various experiments involving it are deeply rooted, we need to think about recalculating that balance between the public good and private interest.

A fundamental question that privatization and its long history raises is:

Who speaks for the people?

Who represents, gives voice to, and involves the community in decisions about the balance between the public good and the private interest?

It's a fundamental question and it's one that's been answered in different ways at different times and I want to talk about that for a little while.

Next, I want to talk about what, I think, is the fundamental policy mismatch that we face right now in terms of urban development and land use policy, a mismatch between the solutions that we have largely been acting upon over the last few decades and the realities that we're confronting.

There's a big gap and it's a gap that in many ways has been growing in recent years, despite some signs of hope.

Finally, I throw out the question: What are the alternatives? And I'm not going to answer that question, but leave it to my fellow panelists to come up with some alternatives to the policy mismatch and imbalance that we face right now.

So let's begin with a really quick historical snapshot. We think of privatization as a phenomenon of the last couple of decades, right? As market-based solutions, they have shaped nearly every aspect of public policy.

And it's true that in certain arenas, like education, privatization and market-based solutions, in the form that they're in now, are relatively new. But in many respects, in urban policy, privatization is a long-running theme.

It's something that grew out of various experiments in how to deal with problems in American cities in the middle of the twentieth century, and in many respects, crests at the creation.

The federal role in public policy, of course, really takes off during the New Deal and the aftermath of the New Deal.

At that moment, you can say that the balance of public and private tilts, most heavily at that moment, towards the public.

For example, programs to construct affordable housing in cities that sorely lacked it to improve the living conditions for the working class and the poor; however, the public side of the ledger tended to be politically fraught and often very underfunded.

Public housing, of course, is the obvious example of this. It emerges as a federal intervention in the 1930s and expands in the 40s and 50s, but it is a poor cousin to the massive federal programs that subsidized urban and metropolitan expansion, and especially, suburbanization through subsidized mortgages on the housing market.

By the 1940s, however, as mayors, legislators, and public officials, and academics begin to look at the condition of America's declining industrial cities, they begin to come up with proposals for how to deal with them and solve those problems.

The most significant tool available, since the first part of the twentieth century in most places is, of course, one that you're all familiar with: the use of eminent domain.

That is the use of the power of the state to acquire land and set it aside ostensibly for the public good.

By 1940, twenty-five states used eminent domain as a tool for urban redevelopment. In 1949, the federal government passed and President Truman signed the Taft-Eleanor Wagner Housing Act of 1949.

It calls for the clearance of slums and blighted areas -- that's the language from the legislation -- and uses the power of eminent domain, with federal funding, to do that.

The idea behind Taft-Eleanor Wagner, at least as it was sold to the public, was we're going to construct lots of public housing projects in the United States using federal money to solve the problem of overcrowding and poor living conditions.

It also provided replanning. The federal government mandated local officials engaged in long-term planning to think about the impact of these things on the communities as a whole.

However, the way the Taft-Eleanor Wagner and the 1954 Housing Act, also known as urban renewal, implemented to began tipping the balance towards private interest in very significant ways.

This, in some ways, is the moment, or the beginning, of this re-calibration, this balancing that I described at the beginning.

Taft-Eleanor Wagner and the 1954 Housing Act created a substantial pool of resources that allowed for the acquiring of blighted land and the sale of that land to developers, below cost, to private developers for redevelopment.

There were, of course, set asides for public housing, but increasingly, those two urban renewal tools became vital for

giving the additional resources to private developers to transform the landscape of our cities.

A living example of that, of course, is here in Philadelphia, where Society Hill was transformed from a misused, rundown, working class neighborhood of factories and shanty houses to a magnet for the well-to-do in the 1950s and the 1960s, the so-called redevelopment period.

Using the tools of eminent domain and using government money to transform that neighborhood into a Class A market, ostensibly, for public good, but often, for private benefit.

Over the course of the 1960s, this paradigm of urban renewal came under challenge from two different directions.

On the right, folks like Martin Anderson, who wrote about the federal bulldozer, as he called it, argued that it was a costly form of social engineering, and an unwarranted expansion of government power that interfered with the free market, which, if left to its own devices, would solve urban problems.

If urban areas were declining and blighted, let them go. The market would ultimately create alternative solutions, probably, in the suburbs or elsewhere that would solve the disequilibrium of cities.

On the left, there was a twofold critique of this regime of urban policy. One focused on the racially disparate impact of urban redevelopment policies, urban renewal was negro removal, as it was often described in that period. It's an undemocratic process.

Secondly, it called for community participation in every aspect of planning, from deciding what the priorities should be, to planning, to development, and thus benefitting from these in the long run.

The trajectory from the 1960 time forward, in many respects, builds on both sides of this critique of federal policy in the middle of the twentieth century, but further pushes the scales towards privatization.

To significantly reduce government spending, the right pushed for a series of market-based programs to transform metropolitan landscapes.

This begins in the 60s, but really takes off in the 70s, 80s, and 90s with market-based incentives to attract employers or developers to cities largely through two strategies.

The first strategy was tax abatement and the other was government expenditures. Nearly all of them encouraged downtown offices, retail, and tourist-oriented development, and by the 1990s, upscale housing in many metropolitan areas as well.

The rationale was this: cities were becoming poorer and the key to their revitalization was attracting better-off residents. Bring them back either as residents or as tourists and they would spend their money and bolster the regional economy.

These cities needed competitive advantages. That is, if we live in a world where city, municipality, and state are all competing with each other, cities needed to play their cards by offering a bundle of incentives that was competitive with other places.

The second strategy was to channel resources to the grass roots, to small-scale community development organizations and community-based non-profits.

This is the model that took off in the 1970s, largely with the development of the Community Development Block Program in the Nixon Administration.

Nixon is interesting. He once empowered community organizations, but on the other hand, he did it as a way to reduce, significantly, federal funding for big cities.

The idea here, though, is one that builds on much of the current to the left. Community groups would be more responsive to the demands of their neighborhoods. Development would be at a human scale.

The interest would be of ordinary poor working class people, not the kind of folks who were benefitting from downtown development.

But this model also had to appeal on the right, it had to reduce government spending. It would create a type of self-sufficiency that many believed was necessary to undo the dependency upon the state.

These two paradigms, then, were, on one hand, channeling resources to downtown development and using the power of tax expenditures to do so, and, on the other hand, putting diminishing resources into community economic development with the idea that community participation should be front and center.



Those two paradigms more or less shape the way we think about land use and urban development today.

And that leads me to my final point about some of the questions that both of these models raise: large-scale downtown development seldom trickles down into neighborhoods.

The assumption behind the model is that somehow building new office towers and attracting wealthy people to downtown would benefit everyone in the rest of the city by creating jobs, by bringing more money into the tax coffers.

It did that in some ways, but it left large sections of the city untouched. Small-scale community development, on the other hand, offered those outlying neighborhoods an opportunity -- a lifeline, but the programs were often underfunded. They were dependent on the whims of foundations. They were run by folks who often didn't have the capacity to keep organizations going over time.

Many of them faded away relatively quickly and their impact was often on a very micro-scale. They had, in other words, the will, but not often, the capacity to deal with the macro-level problems that were transforming metropolitan America.

A final issue to consider in thinking about the community-based model: Who speaks for the people?

The premise behind community participation is this: Ordinary folks representing themselves, giving a voice to the process, will make planning more democratic.

But as community organizations, community activists, and community developers found, often, it was a very small and very vocal segment of the community that claimed to be speaking for the community, without necessarily a good process to bringing the diversity of voices in a community into the process.

As we look out onto the situation today, I would contend that we have a policy mismatch that arises from a series of solutions developed at a different time in response to this crisis of urban renewal in the mid-twentieth century.

The mismatch is between those solutions: upscale downtown redevelopment, which many see as a sign of a city's success, versus small-scale, community economic development, which often has micro-level impacts on it, but doesn't really change the overall political-economic trajectory of the city.

As we look out onto these two solutions, we need to think about how we can build on some of their successes, but move

past many of their limitations and failures, to think about how we respond to the difficulties of assembling land, giving people a voice, but not trapping them in places that don't offer economic opportunity, dealing with this investment, facing the foreclosure crisis, ultimately, coming up with a series of responses that give voice to the people that build on community participation.

But also, to serve as vital and viable tools for urban redevelopment in ways that don't simply benefit a small number of private interests against a larger segment of the population that remains largely left behind by both of these paradigms.

So how we go from there, I'll leave it to the next few speakers to address.

**Audience:** (Applause.)

**Mr. Streitz:** Thank you for having me in Philadelphia. I'm very pleased to be here. My name is Tom Streitz, and I am the Economic Development Director for the City of Minneapolis.

It's a long way from Minneapolis to Philadelphia; they are very different cities. I've spent many years living in cities across the country.

I want to share with you about what I think are some essential questions around land use and its benefits.

Etched on the wall as you walk up the stairs here at Penn Law School are three words: truth, simplicity, and candor. I hope that in everything I say today you see those elements and in that we will have a dialogue right now.

I like to be very direct with my approach to things. I've sat at all sides of the table. I'm formerly a Legal Aid lawyer. I started my career there -- Thank you. I see some thumbs up there. Thank you very much.

I started my career in legal services, went and worked in the U.S. Senate as legal counsel for many years, went back to work at Legal Aid, became a lobbyist at Legal Aid. And then I sued the City of Minneapolis and HUD, won a civil rights lawsuit against those entities. And in the middle of it, they said you're so smart, you can try to figure this out.

The Public Housing Authority -- I was then with the Public Housing Authority for many years, and now I'm the Housing and Economic Development Director for the City.

These different lenses through which I look at land use, have brought me to some conclusions. Number one: whoever controls the land controls the future of that neighborhood, that block, that city.

I spent a lot of time in the western United States - California, Colorado, Nevada – where I observed land redistribution.

There are millions of acres out there that are public land, that are our land, and these acres have been given every day for hundreds of years to private interests.

It's a long way from eastern Colorado to Philadelphia. The point is that public land is being used by private entities for their own gain.

We've decided to do that sometimes. Okay. That's all right? Maybe so, maybe not, but it brings up the question of what happens to vacant, public land in our cities?

And that question, really, to me, crystallized around the foreclosure crisis.

I lived in a community that is very wealthy in many, many ways, but it's segregated.

We have the north part of Minneapolis that's largely African American, largely minority, largely poor. The foreclosure crisis was like a tsunami.

It just wiped out all these gains we had made in home ownership and ownership society. And I saw people's communities wash away.

The question is: Who's going to benefit? Is it the banks? What happens now?

Land is a problem, if it's foreclosed, if it's vacant, or it's an opportunity, right.

A lot of different things will bring us to a vacant property. In Philadelphia -- tell me if I'm wrong – there are roughly 40,000 vacant parcels of land. Is that right? Does it sound right? I don't know. That's what I was told. That's a lot.

What's going to happen with those? A lot of it stems from forfeiture, foreclosure, or just abandonment.

So solutions, who wins? The land could be bought by private developers, it can be bought by government, or it can go into the government's hands for tax forfeiture.

Or in the case of Minneapolis, what I did was form something called the Twin Cities Community Land Bank. I want to offer it as a model.

If there's one thing I want you to think about, it's the model of a land bank. I understand that as being debated here now in Philadelphia, or at the legislature.

I wrote a bill that's before the Pennsylvania Senate that I think is interesting. It has problems and I want you to think about how we may fix that bill before it's passed. I want to offer some solutions around that.

Who wins under the three possible scenarios of buyers of land? Private sector, private sector exists to make a profit. We know that.

Profits are not bad. Everyone likes money, but at the end of the day, that's the point of private involvement.

Government may buy the land or the land ends up in government hands. That was my situation with all the foreclosed land.

And what happens to that land when it gets into city hands will probably be a lot of process. There's a lot of process involved in government -- even in efficient government, you have to be transparent. You have to engage. It takes a long time for land to be acquired, and redeveloped, and put back into the community.

The other entity or possibility is a land bank or community-based entity. My answer is that's the best choice to achieve the goal.

So in Minneapolis, we are faced with this crisis. I sat up late one night and I was thinking what are we going to do with all the land because of the foreclosures and the tax forfeitures.

My instinct was to figure out some way to get it out of the hands of government, to be honest with you. Because I'm the housing director of the city, I'm not criticizing government because I love the city.

I know we have a former mayor here. My friend is the Mayor of Minneapolis, R.T. Rybak, great guy, smart guy.

But it's too burdened by process and it's not responsive enough even in the most efficient circumstances. And so I had this sense that we had to go in a different direction.

Number one, we entered into an agreement with the county. The county is the entity that does the tax forfeitures in Minneapolis.

Our agreement with the county was we could buy any tax-forfeited property for \$1 and transfer it to the land bank for \$1.

And all the fees, assessments, and penalties went away. That was a big agreement with the county. The reason they did this is that we did an economic analysis of a parcel of land in our poor parts of our city.

The data showed that with the cycle of purchasing, eviction, foreclosure, purchased by another investor, eviction, foreclosure, the county wasn't really getting any tax money for that property anyway. They were losing.

I said, here's the deal: We, the land bank, buy the land. We get it in the hands of a community developer. We get a new homeowner in, or renter, who is stable and pays taxes.

The reason they agreed to this is because, ultimately, the county gets more money.

The other reason was agreements with large banks. About eight years ago, maybe, seven years ago now, at the height of the foreclosure crisis, I went to Washington, D.C. with a guy named Craig Dickerson.

We negotiated with the largest banks an agreement that came out of what's called the First Look Program.

The First Look Program allowed us, in Minneapolis, as a pilot, to buy every foreclosure owned by those eight large banks in the city, which was ninety percent of the City's foreclosures.

We had the first right to buy the house, and we got it at a big discount. Why? Because they didn't have to foreclose, I didn't have to go through the process, protecting the property, paying the taxes, marketing the property.

So I convinced them that it was better to sell it to me through the land bank than to foreclose and try to remarket the property.

Since we reached an agreement to do that, the land bank, which we created simultaneously, has purchased thousands of these properties through the banks.

Then, we worked with community non-profits, which fixed the homes up to a high standard, new roof, new windows.

We came up with financing mechanisms to allow low-income owners to buy those properties or rent them through a program called Contract for Deed. There are different words for it.

But our version of it, with a \$50 million pool, is you basically get into the home, even with poor credit. You have seven years to get your credit up and then get a prime loan, just like anybody else.

If within those seven years, you're living in this home, and your credit never quite gets there, you've rented a great house for seven years. That's the worst thing that happens. And most people end up owning these homes.

So we create a pool of money here and buy vacant houses from the banks at a discount. That's how we're able to get people into homes and save whole blocks, entire communities, through the land bank.

The other thing we did, confronting the banks, has tremendous benefits.

I have an agreement with Bank of America and almost every bank that operates in Minneapolis to give me half of their properties in certain zip codes.

I, literally, get them for free after they foreclose. The City doesn't want anyone to get foreclosed, so they're trying to stop it.

I deal with the back end. I deal with the real estate end. Once it's going through the process, that's what I try to address – the back end.

We went to the Commissioner Mary Tingerthal, the head of the Minnesota Finance Agency. I asked her to give the land bank a \$20 million line of credit and she said yes.

Now the land bank not only has discounted properties, we have money that we can lend to the non-profit developers to buy the house, to get a family in the house, using government money. So government is not all bad, I work for the city. Using state money, we're buying land and moving families in.

The other thing we did is work with philanthropy. I met with the MacArthur Foundation and other national foundations and they have these programs called PRIs, Program Related Investments.

Anybody ever heard of those? When their investments were down, they didn't want to give away money anymore. They wanted to loan it at a really low interest rate.

We got money from the large foundations at one percent interest. We're using that money now toward community-based development.

So here you have a guy from city government who's gone to the banks and said to the banks, you got to be part of the solution, you, the private sector.



I went to the public sector, I said you've got to be part of the solution and they gave me money. They had to fill the properties.

Institutions said we need an answer to this problem and they gave us money as well. Money is important. We know that. Now, I want to get to the essence I will leave you with and have a conversation about, because I do think the land bank legislation that is pending in front of your legislature; it has potential, but I think it's flawed. I'll tell you why.

But, first of all, I want you to see this mission of our land bank. It's pretty simple. We capture real estate opportunities to foster economic equity in alignment with community goals for people with low allotted incomes.

We accomplished this through a strategic acquisition community enlightened program that I just described to you. Pretty simplistic philosophy: truth, simplicity, candor. All residents of the Twin Cities should enjoy healthy housing in a neighborhood complete with the amenities of quality everyday life.

We now operate, in the whole county of Hennepin, around thirty-six communities. We entered into this agreement with the banks, not only to buy houses in the inner city, but also in the suburbs. We get expensive properties that help fund the land bank.

Who speaks for the people? I never know how to answer that question, you know. That's come up this morning many times. You posed that question to us, Jennifer. Who speaks for the low-income people?

We tried to answer that question in our Board of Governors. We have eighteen leaders in the field of government housing, real estate development, policy, non-profits, and financial service, and we have bankers, too, on the board. We have several executive directors of non-profits and myself, as a mayor's representative, and two representatives from counties.

Each city is represented. What we try to do on the board is make sure that we have the right mix of people who are all dedicated to this mission that I described.

In the Pennsylvania land bank model that I see, my concern is the need for truth, transparency, and candor. It appears to me the board that is going to be running this entity is largely government.



I don't think that's the right balance. I think you guys have to think closely about who is on the land bank's Board because, ultimately, they're going to make the decisions around where money is spent.

The other problem you have in government, I can tell you, and your former mayor can tell you well, is that when you go as a government representative, people don't want to give you money.

They say, "You're the government I'm not giving you any money." Foundations don't give governments money, but they'll give a non-profit land bank money.

The important part of the entity I created -- what's different about this land bank is that it's not a governmental entity; it's a quasi-governmental entity; it's a non-profit entity; a 501(c)(5). A little buried part of the tax code allows non-profits that serve a function of government to be funded.

Tom, you're asking the question about public versus private, and this is something in-between.

There are lots of people willing to give money to a non-profit that is truly controlled by a community-based board.

Who owns the land? This is where I started. All real estate-based community development comes down to the principle: who owns the land, controls the future.

That's the essential question for Philadelphia and any cities with vacant land. Who controls the land, controls the future.

So I will leave you with this third way I'm describing, I believe, can help in almost any community.

Land banks have been formed around the country, and I've been involved with a lot of them; some are working and some really are not.

If all you're doing is creating a land bank that is almost identical to government, what have you done?

You've just created another process and that's what I would take out when I look at the Philadelphia, Pennsylvania model.

Thank you.

**Audience:** (Applause.)

**Mr. Robinson:** Wow. Good morning, everyone.

My name is Rob Robinson. I'm the co-founder of the Take Back the Land National Movement.

I also work with a not-for-profit (NPO), called NESRI. The acronym is for the National Economic and Social Rights Initiative, which uses human rights framing to work with grass roots organizations around the country to support the work that they do. I want to thank both of the previous speakers.

In our work at Take Back the Land, we understand who should be involved in what a city looks like. It should involve everybody, right?

Our work has been lifted at Take Back the Land by working with academia, working with visionary thinkers, like Tom, and those who work in different sections of government.

But at that point, I will say, we, at Take Back the Land, have deduced that government is a big part of the problem. For that reason, we try not to work with government.

It doesn't mean I don't want to have some conversation with Tom later because he's, obviously, got a process that works and we can learn from that.

But I want to tell you why we represent grass roots communities, particularly poor communities of color. We believe the way you get the attention of government is through resistance.

The only social change we've ever seen in this country has come as a result of social clashes or civil disobedience. By social clashes, I mean, something like the Civil War.

It was a war, but when you think about it, the North wanted to move to industrialization, while the South wanted to profit off the backs of slaves. It caused a social clash that ended up in a war, right?

Civil disobedience would be through the Civil Rights Act when people of color refused to be pushed to the back of the bus anymore, refused to be pushed off the lunch counter, and decided "I'm going to sit here, and I'm going to stand up for my rights."

Just because it's a law, doesn't mean it works for you. That's why you do civil disobedience and direct action.

There are two main objectives of Take Back the Land: to elevate housing to the level of a human right and secure community control over land.

We do this to build a movement for our objectives. We're a trans-local network. We're not an organization and we don't receive any funding. We are not a 501(c)(3).

We bring together grass roots organizations that share a political objective and political ideology.

We use, what we call, the spear model of organizing. It's an arrow. At the top of that arrow, is what we call positive action, non-violent civil disobedience or direct action.

When people are about to be evicted from a home, we do eviction defense. We'll bring a hundred people to stand around that home and send a message to the authorities that are coming to boot that family. You're going to have to get through these hundred people.

We're not looking for a clash, but if you come on this property, you will be answered with one. What we try to do is create public policy dialogue, like Tom was talking about.

However, we do it in a way that we send a different message. We don't want to have the conversation with you because you created the problem.

However, we do have partners that we work with and we call those strategic partners that will have those conversations for us, or on our behalf.

Support services are also needed to make the spear model work. There's a political process. Take Back the Land formed a political strategic partnership with NESRI to get the human rights framing.

We work with the Center for Constitutional Rights in New York. That's our legal entity.

Going to the Center for Constitutional Rights was an incredible situation. Max Rameau, the other co-founder, and I walked into the hallowed halls of the Center for Constitutional Rights in New York.

Three lawyers were sitting before us; they asked how they could help us and said they knew our work. I didn't know what to say, so I just said, "I don't know what I'm exposing people to in Des Moines, Iowa when I tell them they need to break into a house because housing is a human right."

They responded by saying, "We can help you with that." It created the dialogue that we needed to have to form that partnership.

Then we outlined some of the program areas of the Take Back the Land work. More of it is in the details than in the documents for this program.

Katherine Lennon, a woman who was foreclosed and evicted from her house, received international attention when the City of Rochester sent a SWAT team to remove her from the house.

We engaged some of our political partners from around the world, such as the Shackwells in South Africa and the International Alliance of Inhabitants to start calling the New York Senate to ask why she was being evicted. That forced government and banks to dialogue with us.

It wasn't the best dialogue in the world. Eventually, we were able to move her back into her house. We gave her a Mother's Day present in May 2011 by moving her back in that day.

We challenged the authorities in Rochester. "Every time you do an eviction in Rochester, you're going to have to send a SWAT team? That would eventually bankrupt your police department if you were to think about it."

The police chief said, "You're right." Katherine Lennon remains in that house today, and Bank of America eventually turned it over to us at no charge because they were tired of the discourse back-and-forth in the press.

I want to switch now to the private versus public. You heard Tom open up with public housing and the value that public housing had in this country.

It was the main social safety net for poor people in this country for the longest time, but then it started to undergo a change in the late 70s, early 80s, when the government started to pull back funding.

In 1986, the federal housing budget, at that point, for public housing was about \$85 billion. Today it's about \$30 billion. This investment was pushed back on the people. Government and public started to say that they don't take care of their buildings. Buildings were falling into a state of disrepair. Gangs were hanging out there. It was starting to fall by the wayside.

We need to de-concentrate poor people and put them next to rich people. Poor people thought: "As if that's going to change my life. You know, I'm comfortable with the people that I'm comfortable with, right, so why are you going to dictate my life?"

It's just communities coming together. If the government was really serious about supporting public housing, there's a mortgage tax deduction that is given to wealthy people to the tune of \$30 billion a year.

Take that away to people who can afford it. There's more money going to subsidies to wealthier people than there are to poor people.

I'm scratching my head. Because when I read the Universal Declaration of Human Rights, it says the fact that I'm a human being, I deserve a decent place to live. We have to challenge the government in these particular ways. How do you challenge? I just laid out resistance as one methodology that we do, but I want to get into alternative structures, something both of the previous speakers talked about.

The one thing we targeted as the other way in New York was the community land trust. That's getting land out of the hands of corporations, banks, and other people that own it and putting it into a trust for the community.

You put land into a nine-nine-year lease, let the community govern that land, and you build housing on top of it that's truly affordable.

If this family was to buy a home for \$40,000, and they decided they wanted to move, you could not profit off of that home. The next person gets to buy it for \$40,000. That means that when you move out, you're only going to get your \$40,000 back.

That keeps the home truly affordable. The land underneath it is owned by the community, governed by the community. That's another alternative structure and we can talk about that.

Land banks are another alternative and eminent domain was something that Tom Sugrue mentioned.

A mayor in Richmond, California by the name of Gayle McLaughlin is going to use eminent domain against the government. She's in government and she's going to turn around and use it against government.

We've seen this play out in New York City where a big basketball arena was built in Brooklyn for the Nets. They used eminent domain to push people out of their homes in order to build a basketball arena for a wealthy owner.

It doesn't make sense. We've seen baseball stadiums around the country be built. Finally the public is starting to educate themselves and say, "Why am I building this playpen for the wealthy owner?"

They stopped funding these around the country. We have to get into that mindset of resisting. If a professional sports team

owner wants to build a wealthy arena, he should pay for it. "It's your toy, you pay for it."

Gayle McLaughlin has made a statement to the banks in California by saying, "My city is suffering from the foreclosure crisis. People are struggling in my city. Here's what I'm going to tell you to do, banks. Reduce the mortgage, because the value of that property has gone down."

After the foreclosure crisis, if you bought a home valued at \$250,000 the payment will amount to \$350,000 by the time you pay it off in thirty years. But because of the financial crisis, the value of your home has now dropped to 150,000, but you're still making payments on \$250,000. It's unfair. It's punitive. Banks are just sitting there profiting, and they're not about to change it.

The way we can force them to change it -- and we've done it at Take Back the Land -- is to say, "We'll defend this family against eviction, and at the same time, we're going down the street to shut down the local Bank of America branch." They come running to agree to give you a principal reduction, saying, "Just don't do that."

It's an easy task that highlights that the settlement with the government to the tune of \$25 billion really does nothing for people.

If they settle for \$25 billion, it probably should have been \$100 billion. Because banks are smart, they're going to negotiate the amount down.

We at Take Back the Land have effectively put all of this discourse into the public arena and had conversations. This made Bank of America back up to a certain degree. We think we need this type of resistance to go on.

Finally, I want to close by saying the importance of human rights. As we work in the not-for-profit world dictated by foundations -- and we are being dictated by foundations -- we find ourselves being accountable to the foundations.

We need to be accountable to the people within that particular community. They should dictate the work. We should be consulting for our foundation, which is one of the reasons why Take Back the Land says, "We don't want your money. We'll reach into our own pockets as a community and support ourselves." But when you use human rights framing, it



goes back to something that Jennifer talked about earlier: transparency in government and accountability.

These are principles and values that we have to look at more so than the American Dream we've been sold. Universality, what works for all of us, works for all of us as a community. We need to think differently.

We need participation to be part of the process. As I am a formerly homeless person, Mayor Bloomberg doesn't like me in New York because I've asked him very straightforward questions. "If you make decisions about homeless people, have you ever slept on a piece of cardboard? Then, how is it that you're making decisions about people who do?"

Shouldn't those folks be at the table? We should all be at the table making decisions about our life. In America, do we truly have a democracy?

You have to start asking the questions and I think human rights framing asks those particular questions in a way that gives value to the work that we do. Thank you.

**Ms. Cahn:** Thanks to all of you. There's so much going on now. I want to take us a step back. I want to let you all go at it.

I want to take us back a step and ask one of the core questions that Jenny raised. As a core question of this conference: How do you respond to the notion that we should let the market decide about many of these decisions?

We can start with Tom Sugrue and go down the line.

**Mr. Sugrue:** The assumption that the market is all-wise, and all-knowing, and will lead to a just and equitable distribution of resources, is so commonplace today across the political spectrum, from right to left, that it's very difficult to dislodge.

But as we know, and I needn't reiterate this to most of you in this audience, in a place like Philadelphia, the market has left huge swaths of the city and its population behind.

Market-based solutions have not proven, particularly, efficacious in dealing with the distribution of land with the persistence of poverty with the quality of our public education.

You know, it's impossible in the current political climate to imagine throwing some elements of market-based policy out the window. It's not going away. It's not going away because the



Democratic Party and the Republican Party, for all their differences, share much in common when it comes to the virtues of privatization and the market.

What we need to do, to reiterate my point said earlier, is to think about how we put as much public interest and public good into the equation as possible because the market, ultimately, doesn't care about public good. It cares about private interest and profit.

How do we, how do we tilt the scale that puts public interest in the foreground, rather than as an assumed beneficiary or afterthought?

**Mr. Streitz:** First of all, the market is a fallacy. The market is a creation of rules. It's an agreement between government and the private sector about who wins. That's all it is.

When people talk about the market, the market is just an agreement between government and corporations about the rules under which they're going to play. And the public interest isn't part of that equation, so you can see where I'm going.

My view is, if the private market has a role to play, we need private equity in our cities. We need them for tax reasons. We need strong jobs.

But essentially, the idea that somehow there's this magical thing called the market that persists and somehow produces good, is kind of ridiculous. It's just an agreement about a set of rules. So anytime you have a market system, you have to make sure that those rules include the public good.

If they don't, then, it's just an agreement between government and corporations about who's going to split up the money or share the gain.

And in poor communities, there essentially isn't a market because there isn't enough economic gain to be made by a corporation. So then you have vacant land. That's the end part of the equation I just walked you through.

So when you have very little value in land, you have to rewrite the rules of what the market is. In that case, you have to create value in the people that live there and provide a mechanism to recapture economic gain in those places that have been discarded by the system that I described the need for a set of rules between business and government to make these communities places where there can be economic gain.

It doesn't exist in large parts of our urban communities. Detroit doesn't have a market; otherwise, GM would be back there. GE would be there. Siemens would be there. They're not because they don't see value in it now.

We have to recreate markets where there are none. The way you do that is by leveraging money, creating land trusts or land banks, and in essence building from the ground up again.

Some of the most fascinating experiments going on are in communities like Cleveland and Detroit where literally urban pioneers are moving back into the city, reclaiming land and starting small businesses. They're creating markets.

But I think the idea just ridiculous that somehow the marketplace is an answer to land that no longer has value.

**Mr. Robinson:** This is interesting. Tom is talking and, folks, you see me shaking my head, no. There is some disagreement among our panel. I'm going to be very straightforward. A lot of my thinking with respect to the market and capitalism, the economic system that we're run on, comes from the Marxist theorist, David Harvey. He teaches at the City University of New York and I co-teach in a lot of David Harvey's classes.

Every semester he brings me in as a community organizer to talk about the work that's being done. And I learned a lot about how market forces work under capitalism through a Right to the City Reading Group.

Henri LeFebvre, a French writer, wrote about the right to urban centers back in the 60s. Three professors in New York, Peter Marcuse, David Harvey, and Neil Smith, a professor and anthropologist in New York who just recently passed away, created the Right to City Reading Group and helped community organizations to understand what a right to the city meant and what was happening before their eyes.

We started Take Back the Land, based on the fact that housing and land as market commodities do not work for poor people. I'm going to disagree with fact that you need a market for a community to thrive.

Detroit is in the place that it's in because jobs were exported out of this country and people wanted to profit off the backs of people in other countries.

If I'm a manufacturer making shirts and the union in Detroit says you must pay a union worker \$20 an hour, or I can put it on a boat and send it to China, where people are underpaid, I am going to send the work to China. They started to export those jobs. That's what's happened to a lot of our communities; lots of jobs were sent overseas. I don't want to go into detail because this could be a long debate. It's still playing out in New York in David Harvey's classes with the students challenging us.

I just think capitalism doesn't work when it thinks that there is a market for land and houses, as commodities for poor people.

One percent of the population in this country owns the wealth, and ninety-nine percent of us are left out. When that one percent owns the wealth, it dictates how we live. How do you change that equation is the bigger question. How do you shift that the wealth? That's part of the conversation.

It's not to say that you can't have communities that work without the market, but maybe, that's a different kind of community. The folks that I work with from poor and low-income communities know that housing as a market commodity doesn't work. We have to figure out alternative structures.

**Ms. Cahn:** Thank you. We heard from Tom Sugrue about the policy mismatch; Tom Streitz about the need for new rules, and Rob about how the system is not working.

I'm interested in where the opportunities for new policies are at the federal, the state, and local level. I want to put that question on the table and open up the discussion for questions from the audience. We have a lot of interesting folks in the room. Any questions? Anyone want to start us out?

Yes, Steve. Here's a mic.

**Mr. Sugrue:** If you could identify yourself for us that would be great.

**Audience Member:** My name is Steve Gold. I'm a civil rights attorney, and I've been a tenant sharing office space with the Public Interest Law Center since 1983. When I do training around the country, I always ask the following question of people: What is the largest federal agency that deals with housing?

Virtually every time they get it wrong. It's not HUD. It is the IRS through the low-income housing tax credit program. It's probably been the largest federal housing program in the country, at least since 1992.

My question to you is as follows: How would you change it? To segue for Amy, how would you change it to satisfy some of the concerns that this panel has raised?

**Mr. Streitz:** You are referring to the Low-Income Tax Credit, ninety percent program. In Minneapolis we actually get our own allocation of tax credits. I write the rules about where the tax credits go in our city, so it's something I know a lot about and care about.

How would I change the program? I would require that the minimum incomes be lowered because right now you can go up to sixty percent of the median income. Median income in Minneapolis in Hennepin County is around \$90,000 dollars.

At sixty percent of median, you're certainly going to have more people than the poor benefitting. We need the program in our cities, but it is giving away billions to house people in what is essentially market-rate housing.

I would simply lower the renter threshold and say that people below forty percent to fifty percent of median should be the ones served by that program.

If we're going to have massive subsidies for low-income people, they should actually go to low-income people. It's a very simple change.

**Mr. Robinson:** I'm going to jump in. This is one time where Tom and I agree solidly.

Let me just say that in New York City, much like Minneapolis, it's a separate program. We call it 80/20. Eighty percent of the units in a particular building have to be market-rate and twenty percent have to be for lower, fixed-income people.

However, the area to determine the median income – includes the five boroughs of New York City, and the counties of Nassau, Suffolk, Long Island, and Putnam County. Putnam is northwest of New York City but is not even contiguous to it.

Putnam County is a relatively wealthy county, and thus is skewing and inflating the number artificially. As Tom said,

when you go to do sixty percent of that number from all those jurisdictions, you're still serving middle-income people.

I would argue that in poor areas of New York City, West Harlem, Brownsville, and Brooklyn, the true area of median income is \$20,000. The people you're meaning to help are left out. It's not making sense.

When I get in front of elected and government officials in New York, they say to me, "How would you change it, Rob?" I say, "That is simple; use the zip code as the measure.

The entire county is not one zip code. It's about political will. The two-party system of Republicans and Democrats might as well be a single party because they're really not thinking about the people.

In New York, everybody is happy right now that Bill de Blasio got elected to run on the Democratic Party. They think everything is going to change.

You know what? He received money from real estate interests. He's not going to make too many decisions that go against the people lining his pockets.

We really have to change the two-party system. That's what's at the doorstep of a lot of this problem; the lack of political will. We need to force our elected officials to represent us in a real way.

**Ms. Cahn:** Other questions?

**Audience Member:** Let me try one. You asked the question: What're the problems with the private market?

And we heard it, frankly, doesn't have a value for taking care of the poor, or that's the answer I heard.

But the other side of it is, why has the panel given up on government? Tom Streitz said it is too bureaucratic to function. And the question is: Is that inevitable?

Is there some solution to make government actually work for the values that Rob has been talking about? I'd like to hear the opinions of the panel.

**Mr. Sugrue:** Your name?

**Audience Member:** I'm sorry. I'm Michael Churchill. I'm one of the staff members at the Law Center.

**Mr. Robinson:** Outside the U.S., human rights law is elevated to be the law of the land. Here, we believe in civil rights; what's written is the law.

The law written here doesn't necessarily work for us, but in the international community, human rights law is used.

If I could just read to you Article 25, it tells me the government has a little bit of a responsibility to its people.

Article 25 here says: "Everyone has a right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing, and medical care, and necessary social services, and the right of security in the event of unemployment, sickness, disability, widowed, old age, or other lack of livelihood due to circumstances beyond his control."

Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social factors."

When you evict somebody in Sweden, you better have another place for her to stay because it's written in the law.

South Africa's constitution was written in 1996 post-apartheid. The shack-dwellers were forced off vacant lots of land that they used to come and build houses on.

They ended up going into Constitutional Court and winning. They can't be forced off the land anymore. Housing is a human right in South Africa.

America refuses to believe in human rights. The government has yet to own up to this document that it signed in 1948.

**Ms. Cahn:** Did you want to comment?

**Mr. Streitz:** I want to be clear that I wasn't indicting government wholesale. I think quite the opposite.

I'm a big believer in government if it's well rounded, being a positive force. I was telling someone this morning that Jerry Brown is Governor of California, again. She said it was going to be a disaster.

He inherited one of the largest deficits of any state in the country, tens and tens of millions of dollars. They said it was going to be impossible to fix.



Last year, Jerry Brown just passed, one of the most progressive taxation systems in the country. They now have a surplus. He's funding education.

All the things that we're being told can't be done by government is accurate only because we're choking government off at its core. We take the approach to government that it should be put in the bathtub and slowly allowed to drown.

That's what he said the Republicans are doing. I'm sorry to get political for a second. They want to kill government slowly. The programs are bound to be less and less efficient because government has no money to operate. Blue states in this country have the highest median incomes, the highest educational outcomes, and the least disparity. That says something.

Jerry Brown is proving progressive government can be a tool for very, very good things.

What I was trying to say here is, when you have a massive problem that's largely based in the private sector, you need an entity that can operate outside that system.

I don't want to wholly write off government. Government, if it's funded and transparent and accountable, can be an amazing force of good in this country.

**Mr. Robinson:** Can I jump in? But is it? I hear what you're saying, but I'm looking at New York City. We all got enthused as this guy got nominated for mayor, but you can't get property in Manhattan.

There's one community land trust in Manhattan. As we promote this model, honestly, deep down inside, it ain't going to happen in Manhattan. We're not going to create anymore community land trusts. The air is set for sale in New York City.

**Mr. Sugrue:** Breathe it now before it's gone. I'll riff off of what you both said.

The story of the last forty or fifty years is a story of steady federal withdrawals from cities. The biggest moment, of course, was the 1980s when federal urban expenditures dropped from twelve percent to three percent, a really dramatic drop in a very short period of time.

Now of course, a component is the indifference or hostility of many state governments. Pennsylvania is a case study of this,



leaving the fate of cities to city governments to come up with solutions to all these problems.

City government doesn't have the capacity and, certainly, doesn't have the resources. In addition, there are a lot of agencies and governmental structures at the local level that were created a long time ago in response to a wholly different set of political and economic circumstances that are entrenched and hard to change.

Some reformers state that the solution is to make city government look more like a business. New York is a good example of this view.

We're going to outsource and privatize as a way of dealing with the gap of what our institutions look like and the problems we need to solve.

But that doesn't get at what are the real root problems that city governments, however restructured, are not going to be able to deal with the plethora of problems that they face as long as they're being screwed at the state and at the federal level. This means that we need to think about building the kinds of coalitions between local governments around the state.

I've seen this in some parts of the country. I'm from Michigan originally. Detroit is really messed up right now, as you know, but one of the main problems that Michigan has faced is inequitable education funding across districts.

There have been coalitions working with the state legislature that bring together these little towns that have been left behind and have no property tax base to fund the local schools. These coalitions are pushing the state legislature for more equitable, cost efficient funding.

In other words, we can't simply look to community organizations to solve all these problems. We can't simply look to City Hall to help revise all these problems.

We also have to push for change at higher levels because otherwise, we're going to be spinning our wheels.

**Mr. Streitz:** Tom, let me give you a couple of examples in what you just talked about. In the state of Minnesota, we had twelve years of Republican governors who had anti-city agendas.

They cut our local government aid, or what we call LGA in Minnesota, by \$125 million and then they asked us to just do less.

In the last two years, we have had a Democratic governor, a Democratic House, and a Democratic Senate. They've restored our LGA. We're able to do the upkeep we need to do.

Who is in the governor's office matters; who controls legislatures matters. A lot of these folks have an anti-city bias because they don't see people with these concerns voting for them. It's that simple. That's how they think. It is shortsighted, I agree, but that's one example.

Another example, I'll go back to California. Jerry Brown through this new progressive tax code has just done something you were advocating, Rob.

He is now allocating money by zip code. Those people, who live in the lowest-income zip codes, get more per student and they're seeing great outcomes.

There's an example of a progressive taxation system whereby government can influence public education and the public good, if you invest in it.

**Mr. Sugrue:** I'll throw out one more example that's been in the news the last week or so. It's not as happy a story as California, but it's a story nonetheless of one of the small victories that could provide examples for other places and that's Missouri.

Many of you may have followed the debate about a Republican who proposed to the state legislature a tax cut in the state.

The Democratic governor with 100 school districts in a pretty conservative state said, "We can't afford to give these relatively modest tax breaks and see our already perilous school funding, social services, and mental health services cut even more than they have been cut.

The school boards made the case. A hundred school boards around the state came together around a single issue with a pretty strong voice.

Just yesterday the governor's veto of that tax was not overridden, which means that the funds will remain in place.

I'm a Philadelphia public school parent – As I look out onto the situation in our schools right now I look at the devastating consequences of profound cuts -- I know that's the subject for this afternoon's panel -- but I look at those devastating cuts.

And it's, ultimately, at that level, at the state level, especially, that we really need to think about all sorts of creative ways of putting pressure on our political institutions as a way of beginning this process.

So we look more like California, Missouri, or Texas.

**Ms. Cahn:** I find it hard to not always go back to public education right now, particularly, in Philadelphia, so I'm totally with you.

Are there other questions in the audience? Yes, Marla.

**Audience Member:** Marla Conley, I co-chair the not-for-profit practice at Schnader Harrison, a law firm.

When I was working in Affordable Housing Development for about a decade, there was this real focus on mixed income, advising people from different demographic groups to live together.

The non-profit developer I worked for was very interested in having the lower income groups intermixed with others, and the business model works because you have higher end groups who are paying higher rents.

I have two questions. My first is: Is that even still a goal? Is that something that works?

And then from the perspective of the question we've been asking about: Who speaks for the people? Who does that work?

Do the lower income people retain a voice, or are they, essentially, washed out by the people who are paying or making the business model work?

**Mr. Sugrue:** I'll jump in very quickly on this one. Maybe Rob and I have a slightly different opinion on this, but I understand exactly where he's coming from.

Concentrating low-income people together in predominantly low-income communities has been the major trajectory of American public policy for the last eighty years and it's failed miserably.

You put a lot of disadvantaged people together in the same communities without economic resources, with underfunded schools, with infrastructure that's crumbling, and then somehow

miraculously ask them to do it for themselves, to pull themselves out of that.

We've tried it. We've tried again and again. Rob said this earlier. Proposals bringing people of different socioeconomic statuses together through housing, for example, having working class people rubbing shoulders with upper or middle class people isn't somehow going to magically cause some personal transformation.

And we shouldn't think about it that way. We should think about it, instead, in terms of quality of life and allocation of resources. The real issue, I think, with mixed-income housing is that we just don't do it on a big enough scale.

And in many cases, the mixed income houses, especially, some of the replacements for public housing projects, have done a lot more for the middle class people living in those neighborhoods and much less for the folks who lived there previously who are displaced and not necessarily finding themselves with better housing options than the ones they left.

It's a matter of making those programs more scalable, thinking more about the mix, and how over time we can make them work.

**Ms. Cahn:** Rob, do you want to jump?

**Mr. Robinson:** I pretty much agree with Tom. I speak a lot from the public housing perspective because, again, as I said earlier, that's a true social safety net in this country for poor people.

We saw that play out in what Tom just laid out at the Scott Carver Projects as part of Hope VI down in Miami. I was homeless on the street at the time, but didn't understand what was going on in Miami. And then later on, I started studying all of this history.

I realized people were displaced and dispersed. And now the City of Miami government doesn't know where eighty percent of those residents are, those same poor people who were guaranteed a place to stay that was to be affordable.

And the people who moved into that area are middle and upper income people. It really transformed Liberty City in Miami in a way that made the government and private entities one.

But to answer the original question, there are challenges within the communities, especially in New York because of the real estate reality.

First of all, developers don't want to build those mixed income areas. What they want to build in New York City and many parts of the country are million dollar condos.

When I was in Miami, homeless on the streets, you would see signs. They built so many of them, they couldn't do anything with them. Then all of a sudden, they became rental properties where, if you sign a one-year lease, they give you two months free rent because they couldn't do anything with them.

It's people thinking about greed and grabbing money. Capitalism is based on greed and producing as much as one can.

The other way it plays out in New York City is that some of the those community development corporations become the livelihood of people.

When somebody like myself speaks out against such a problem, they try to use that against me. They say, "You benefitted." I live in one of the 80/20 buildings that you have to go through a lottery to get.

But I'm on Social Security/Disability, I should live in one of those, buildings. It doesn't mean my life is not changing. I'm in a different project, but I'll come back to public housing again.

What living with those particular folks served, was, for example, when I needed a babysitter, I knew I could always take my child to up to 6C, Miss Johnson's house. And she's going to watch my child.

With a mixed income development, if I go knocking on the door at 6C, they will call the police on me because they don't know who I am. They're not talking to one another.

There's some social value, too, that we have to think about. There are a lot of things that come into this mix that we really have to think about.

I know I'm harping on this, -- but again, back to public housing, it's starting to be destroyed. We have 380,000 units of public housing and now the government in New York City is trying to privatize those units and sell off the properties.

If you were hungry in one of those buildings, you could count on your neighbor. It became a community.

I remember one of my aunts saying, I could always send my child to 4B, have her knock on the door, and they would give

her a chicken. I can go to 8A and they're going to give me some greens. And then I can go to 3C and they will give me some rice. And, now I have a meal.

And that's the way folks are thinking. These are poor folks that don't have much. There's a lot we need to think about as we start to separate this.

Quickly, I'll touch on the federal government trying to take its twelve subsidized housing programs and offer them to the private market under a program called RAD, Rental Assistance Demonstration.

This was started by Keith Ellison, who we challenged in 2010 at the Congressional Black Caucus. He was frazzled. He was sitting in a room with Shawn Donovan. They're transforming rental assistance.

Now this Rental Assistance Demonstration is moving forward where they're going to take the twelve rental subsidies and, basically, expose them to the private market.

This is really troublesome; it's something that academia, with Tom as a member, and other urban planners are really having some deep conversations about.

**Mr. Streitz:** Thanks, Rob. Let me answer your question simply. Absolutely mixed income projects can work.

Everything in real estate development depends on the market. When the new mayor came along twelve years ago, I looked at the areas that had the strongest command, the strongest market in Minneapolis.

There are parts of our city that every developer wants a piece of. We charge them a fee for admission to those places. We make them pay into something I created, called the Affordable Housing Trust Fund.

I've taken money from the richest part of our community and I reallocated it. Now, I know that's not popular to some people, but I think most of you like that.

What we say to developers in the strongest parts of our city is, "If you get any city subsidy, any subsidy at all, if you bite anything off the apple, you have to either make twenty percent of your units affordable to people at or below forty percent of the median, or pay into the trust fund.

They pay millions into the trust fund not to have poor people living in those buildings every year and I've invested the trust

fund money in quality projects in lower-income parts of our city and created economic development opportunities. Literally, taking the money from one pot and putting it into another. In ten years, the city has invested \$77 million in the Affordable Housing Trust Fund. We've leveraged \$800 million into creating 7,000 units of housing and \$600 million of tax space. When the council members used to say, "Why are we doing this?," I just hand them that sheet and I leave. It works. What you have to do in any city that has disparities is to capture wealth being created and find a way to get it into infrastructure so the streets look good, cleaning up things, and building high quality housing that looks just as good as the housing everywhere else.

That's the other thing we do. Our affordable housing is built at a very high level. You drive down the street; you think that's a fantastic place to live. A lot of poor people live there, but it looks great.

That's one answer, it can absolutely work to capture the real estate values where they are and find a way to get them into communities that are suffering; that is number one. I could go on and on.

**Ms. Cahn:** I want to hear our next question from Mayor Street. Do you want to ask a question?

**Mayor Street:** I have a couple of comments more so than a question, if it's okay?

**Ms. Cahn:** Sure.

**Mayor Street:** Some of you know me. I actually got started in community advocacy way back in the sixties and in the early seventies. I had the occasion to go to Temple Law School in 1972 through 1975.

And I knew more about protests and civil disobedience and the clashes, that Rob talks about, before I even knew that there was a ward leader.

Much of that we have done in this city was that we took hundreds, if not thousands, of public housing units and we put people in them, tore the doors down. We put people in scattered



sites over the protest of the housing authority, which board I ended up chairing twenty years later. They didn't do it then.

We did all of that. And as successful as it was, they shut us down in ten minutes. The Commonwealth of Pennsylvania changed the trespass laws and made defiant trespass a felony.

We were out of business, out of business, period. Because no decent, self-respecting lawyer is going to have people lining up, getting arrested, and getting charged with a felony, for which you are defenseless.

That's what happened in the Commonwealth of Pennsylvania. I don't know about other places. We were out of business because I was not going to advise people that they should run the risk of felony convictions.

In the Commonwealth of Pennsylvania, we had a Democratic governor named Ed Rendell. Then the School District of Philadelphia did not have a financial problem.

We changed governors, and three years later, our system is in the worst financial shape, maybe, of any major school district in the country.

This morning at four o'clock, I was looking at Chicago, Los Angeles, Detroit; that's what you do when you teach a class up at Temple. We may be worse off than any of those people in three years, or less than three years.

The sad part about it is that in the general election of 2010 enough Democrats, registered Democrats, in the City of Philadelphia chose not to vote in numbers sufficient to have changed the outcome of the election in Philadelphia, period.

This idea that there's no difference between the parties in the Commonwealth of Pennsylvania is something with which I have to take great issue.

Now, the good news is that in 2014 there's another election. People, again, will have an opportunity to decide how they're actually going to vote.

I talked to a lady at Temple who remembers the 2010 election. She said in her division, twenty-eight out of 1,100 people voted.

Notwithstanding anything else, if you're from the City of Philadelphia and you can only get twenty-eight out of 1,100 people to go to the polls, then you have no reason to expect that anybody is going to pay attention to you.

In fact, during the election, in our class, we looked at the governor's papers on education. We looked at all of this. He told us he was going to do what he is doing. It's not like anybody should be surprised here.

I believe in all of that stuff. I mean, in some way, shape, or form, all of it is absolutely necessary. Because at some point, you have to create a political environment where our elected officials feel like it is in their best interest to respond to the needs. I'm not trying to say those things aren't necessary. They absolutely are necessary.

In the City of Philadelphia, the Commonwealth of Philadelphia cut our funding by \$225 million and the mayor's representative on the SRC, which controls our schools, voted in favor of it.

It makes it hard for advocates to run to the Commonwealth of Pennsylvania and say, "You're not doing justice for your schools" if the mayor's representative on the SRC, actually, votes in favor of a budget that accepts those cuts.

When you're the mayor of a city, when you are a council president, or a council member, the one thing you don't have the luxury of is you don't have the luxury of living in a fantasyland. And I have experience because I served in all of those capacities.

We have 40,000 vacant properties in the City of Philadelphia. That's 40,000 that no one wants to buy. The city counsel, the mayor, everybody is trying to figure out what to do with those properties.

I hear Council President Clark all the time say we have to get them back on the tax rolls. If we think our local non-profits are going to be able to get them back on the tax rolls, then we're fooling ourselves.

They're not going to be able to do it.

At some point in time, partnerships with banks, various other financial institutions, working with government, working with housing agencies, working with community organizations, and a whole mix of activities are actually going to have it happen.

Unfortunately, in the City of Philadelphia, we find ourselves in the position where eighty percent of our children are eligible for free lunch.

We speak eighty-two different languages. We discharge 500 prisoners from our prison every day, most of whom are unemployed, unemployable, and troubled.

We have to find a way to change the ratio of poor people and well-off people. We have a poverty rate of almost thirty percent. That puts our city in a very different and unique position.

I agree a little bit with all the things discussed this morning. The problem is we don't have a one-size-fits-all situation. Things that might work in Philadelphia may not work in Camden. They might be inappropriate some place else.

But by and large, I actually believe that things are probably going to get a little bit worse before they get better.

The good news is that in our state in 2014 we elect a governor. 2015, we elect a mayor. 2016, we elect a president. Two out of three of those offices will not have an incumbent.

If I were asked what should we be doing, I would say we should be organizing politically.

**Audience:** (Applause.)

**Mayor Street:** Every single person in this city, who's eligible to be registered, ought to be registered.

We have to make sure each one of them votes in every one of those elections. I think a lot of this, actually, could be reversed. That's my story. I'm sticking to it.

**Audience:** (Applause.)

**Ms. Cahn:** Thank you very much. We're coming to a close, but I want to just give each panel member thirty seconds, and I'm serious, thirty seconds just to close this out, starting with Rob.

**Mr. Robinson:** Real quick, folks. Neil Smith, the anthropologist who is recently deceased, always said to me, "Robby, you and Max always talk about positive, non-violent civil disobedience, but the revolution is violent."

I've been impressed by what's happened in Egypt over the last couple of years. I think our moment was when the

government took our tax money and gave it to banks. That's when people in the United States should have risen up.

**Mr. Streitz:** Quickly, I just want to leave you with the simple fact that I know there's an enormous issue facing Philadelphia, as described just now by the former mayor.

There are ways to create entities that can start solutions now. One of them would be a land bank, if it were appropriately structured. I think funding it, getting money into it, and getting control of property are all essential. I think in the long term that will create the best outcome for the community.

The Twin Cities Community Land Bank is one model to do that. There are parts of Philadelphia that are producing income, as I described earlier, that can be used to help low-income communities.

I agree, at its core, it comes down to political will. [Mr. Mayor], your points are well taken. But I want to leave you with a ray of hope.

I travel around the country and I work in a lot of communities that face similar challenges. The land bank model has potential and so does the land trust.

I would encourage you to get involved in a conversation about it at the legislature and look at models that will be truly reflective of the community.

**Ms. Cahn:** Thank you. Finally, Tom Sugrue.

**Mr. Sugrue:** Yeah, I'll be really quick.

First, we should think locally, but fight our battles at the state and federal level as much as we do at the local level. It's really important, as the mayor and others have pointed out. We have to think big, not just small. Secondly, creativity in responding to the problems we face is essential. What I like about my co-panelists was that both of them had creative responses.

Putting pressure on the system from the outside, working to come up with new institutions that end-run around or transcend the limitations of the current ones are both really important solutions.

There may be pros and cons for these models, but we need to do it. Finally, I would say we have got a lot of work to do.

**Ms. Cahn:** That's for sure. Thank you very much. We're going to have table talk right next to this podium. We'll have a break for about fifteen minutes, if you don't want to join the table talk.

- - -

(Whereupon, there was a recess in the symposium from 11:03 a.m. to 11:17 a.m.)

- - -

**Ms. Kerr:** It's really hard to stop on a particular topic. That's the problem with having three different focuses today.

Thanks a lot to our panelists for sticking around for the table talk and Amy Laura for moderating. The next part of the program is a short video. As we were contemplating today's program, and trying to come up with what we were going to present, we were trying to have some kind of visual.

In education, you are always taught you want to show people as well as talk with people. We came up with a short clip about privatization in Great Britain and we're going to share that with you now.

- - -

(Whereupon, there was a video played from 11:18 a.m. to 11:22 a.m.)

- - -

**Ms. Kerr:** That's the humor for the day and, perhaps, it is the ultimate extreme of what can happen.

Now we are turning to our keynote. It is my pleasure to introduce Sam Bagenstos, who for many here does not need an introduction.

Mr. Bagenstos is a nationally renowned expert in civil rights and disability rights. We're very grateful that he has agreed to share his expertise with us today. He will provoke us to think about civil rights and how civil rights values can be maintained when privatization occurs.

Mr. Bagenstos is, perhaps, most well-known for his services as the Principle Deputy Assistant Attorney General for Civil Rights at the United States Department of Justice from 2009 to 2011.

As the second in command of the Civil Rights Division, he led the first comprehensive update of the American Civil Disabilities Act regulations, which revised the disability

standards for government facilities, lodging accommodation, ticketing procedures, provision of assistant communication devices, and an increased accessibility at numerous types of facilities.

He also dedicated his position to making sure that thousands of people with disabilities were given greater opportunity to live in the most integrated setting possible. His work was to strengthen enforcement of the United States Supreme Court's decision in *Olmstead versus L.C.*

Mr. Bagenstos is currently a professor of law at the University of Michigan where he teaches civil rights, public law, and litigation.

His current position follows previous teaching positions at his alma mater Harvard, as well as Washington University and UCLA.

Mr. Bagenstos remains an active litigator, litigating civil rights in federalism cases in his spare time and testifying before Congress in support of a Fair Pay Restoration Act and the Employment Non-Discrimination Act, among other things.

He is published. He tweets. He keeps up a blog. You can read his full bio in your program book.

Without further ado, please join me in giving a warm Philadelphia welcome to Sam Bagenstos.

**Audience:** (Applause.)

## KEYNOTE PRESENTATION

**Mr. Bagenstos:** Thanks so much. That's great. Yes, follow me on Twitter. It's the new world. We need to make sure we're all on social media.

It's really, really, really great for me to be here. I really appreciate the opportunity to talk to you. I've been such a fan of PILCOP's work for a very long time, since actually my days as a very junior attorney at the Department of Justice about twenty years ago. Folks from this organization told me then this case I was working on was terrible, and was not going to go anywhere, it was really bad, and what the hell was I doing.

We lost in the Third Circuit; they were right and I learned something very important. I also came to know the incredible advocacy of this organization.

Obviously, Steve Gold, a tenet of the Law Center, who spoke earlier, is a huge hero of mine and somebody I've worked with a lot. So I'm very, very happy to be here.

I wanted to begin by talking about something Philadelphia, and I really could not come up with anything. Then, walking over to the symposium, I realized my two favorite movies of all time are set in Philadelphia.

Number one is *Trading Places*. It's a commentary on race and class in America, in part.

Number two is *1776*. All I could get from it was, literally, it's hot as hell in Philadelphia, which it is.

But I don't think I'll talk further about movies. I think what I'll do instead is talk about what I'm here to talk about, which is civil rights and privatization.

I have come up with this theme of civil rights and the two faces of privatization. In part, I use this theme because I want to talk specifically about the way civil rights values can play in debates around privatization and can play in multiple ways in debates around privatization.

I, actually, think the last panel, of which I saw the second half, nicely frames this. One of the things you saw, if you paid attention for the last panel, was you have lots of interaction between the public and private sector. Sometimes it's the public sector that is advancing civil rights interests. Sometimes it's the private sector that's pulling the public sector along. Sometimes, it's the public sector that's a problem, and sometimes, it's the private sector that's a problem.

The debate around privatization in America has tended to focus on very high level abstract ideological questions; questions about individualism and human freedom on the one hand versus community responsibility on the other.

The video was also very interesting to watch. Margaret Thatcher's privatization approach was being parodied as the advancement of human freedom, which I thought was an interesting way to describe, selling off the railroads and the coal companies.

In any event, privatization gets discussed in terms of human freedom versus community responsibility. It gets discussed in a more negative way as bureaucrats versus rent-seeking private interests.



These are very important debates. They're very valuable debates and they're debates that a lot of the discussions today are focusing on.

What I want to focus on is very specifically the civil rights implications of privatization. I think for a lot of civil right advocates the instinctive view of privatization is a view that's driven by the historic use of privatization as a way around civil rights obligations.

Desegregation comes to mind: the seg academies in the South and the use of public funds to finance the ability of white students to avoid desegregation by going to private schools. This is a very important continuing face of privatization. It's one I'm going to discuss. It's not the only one.

There's a second face of privatization and that's one in which privatization, if it is carefully managed, if it's carefully regulated can, won't always, but can advance civil rights interests. I want to discuss that as well.

I take as my inspiration here, the saying that I learned from my former congressman in St. Louis, Bill Clay, who said politics have no allies, no permanent relationships, only permanent interests. He actually took the idea from Lord Palmerston, a mid-nineteenth century British prime minister, who played footsie with the Confederacy, which I also thought was an interesting application of that saying.

I think that that's the way to think about privatization, if you're a civil rights advocate, as so many of us in this room are. You know, as civil rights advocates, the government is not always your friend. Often state, federal, local governments are not doing what civil rights advocates want.

You know that the private sector and quasi-public, quasi-private entities are not always your enemy. The job of civil rights advocates is to make sure that the interests of civil rights are preserved, whatever the mode we come up with for delivering government services.

It's the job of civil rights advocates to make sure that the second face of privatization, the face of opportunity prevails, instead of the first face of privatization, the face of threat, and to fight efforts that are driven by that first face.

Unfortunately, we see too often the first face of privatization that has ascended in America. It is the face of the segregation

academies in the civil rights era South, but you see something similar in education to this day.

You see in the race discrimination context the U.S. Department of Justice, just two weeks ago, filing to re-open a longstanding desegregation case in Louisiana because the State of Louisiana has a voucher program that is being used in a way that encourages white students, who are in the minority in their schools, to transfer to private schools using vouchers where their race is in the majority, undermining desegregation.

You see in the disability discrimination context a similar situation. The Department of Justice, just a couple of months ago, responded to a set of complaints about a Wisconsin school voucher program.

It affirms the principle that when the state chooses to administer its education program by giving parents vouchers to attend private schools, it must ensure that those schools don't discriminate on the basis of disability.

Now, why did the Department of Justice say that? What prompted it to make such a statement? Very disturbing complaints arose about the Wisconsin voucher school systemically excluding students with disabilities, suspending them, or expelling them for minor behavioral actions that wouldn't have led to suspension or expulsion for other students.

Moving from vouchers to charter schools, I know it is a topic of great concern in Philadelphia as elsewhere. We see similarly troubling signs.

In the disability area again, a GAO report last year found the charter schools enrolled substantially smaller percentages of students with disabilities than the surrounding ordinary public schools.

They're very troubling signs that disability segregation has taken place among the charter schools that do accept kids with disabilities.

Not only do they skim the cream, essentially, accepting the kids with disabilities that require less in the way of involvement, but the schools that accept kids with disabilities tend to be schools with very, very, very high percentages of kids with disabilities undermining the integration effort and the integration goal of disability anti-discrimination law.

When you see news reports and litigation records, they give texture to these statistics. You see stories across the country of

public schools being closed because of under-performance on standardized tests.

Kids are being sent to charter schools and then the charter schools are not accepting kids with disabilities. These are often kids who, because of their disabilities, don't score as well on the standardized tests -- not a surprise, when you judge schools based simply on standardized test scores. It is the kids with disabilities who lose out.

An ongoing suit by the Southern Poverty Law Center, alleges that in New Orleans, where seventy percent of students attend charter schools, students with disabilities are systemically denied the same opportunities to attend charter school as are their fellow students.

Louisiana's charter school funding formula is a significant part of the problem. The problem is that funding formula gives charter schools an incentive not to take kids with disabilities because the funding formula doesn't pay the full cost of education for kids with disabilities.

You know about litigation right here in Pennsylvania about the different perversity of the school funding system in which you have a school funding system that effectively encourages charter schools to accept kids with less significant disabilities, and leave the kids with greater disabilities, more significant disabilities, for the public schools.

Essentially, the charter schools realizing a profit with the kids with less involved disabilities and leeching away, siphoning away the money that the public schools need to educate the kids who are left there.

These examples, they're all different, but they have a common structure. And the common structure is this, and it's one of the most significant concerns for civil rights advocates about this first face of privatization.

The structure is that you have a civil rights law that takes place, an unquestioned obligation, on the state and local government. An obligation of non-discrimination on the basis of race or disability, an obligation to desegregation on the basis of race, an obligation of integration on the basis of disability.

And then, nonetheless, you have a system in which the entity that has a public responsibility, a civil rights responsibility, is choosing to deliver its services through a third party, through a voucher school, which is private, through a charter school,

which is public in a way, and because it's delivering its services through a third party, it essentially washes its hands of its civil rights obligation.

That's the face of privatization that civil rights advocates have to fight. That's the face of privatization that I know the Law Center here is fighting and many of you in this room are fighting. It's a fight that I'm very happy and very proud that folks in this room are taking up.

When advocates of vouchers or charter schools see the Department of Justice or civil rights advocates challenging this face of privatization, they often react harshly.

I've often been on the bad side of people who are reacting so harshly. They say, "You guys are attacking the idea of choice. You're attacking the idea of vouchers. You're attacking the idea of charter schools."

I don't think that's necessarily right. I think we can have debates about voucher schools, charter schools, privatization -- choice in general. I think they're valuable debates to have.

But from a civil rights perspective, one can be agnostic about those concepts. In fact, I think the problem that's being identified in the litigation that the Department of Justice is bringing on in the litigation that the Law Center has in other cases brought, the problem is not identified as vouchers or charters per se.

The problem is the use of techniques of privatization, like vouchers and charters, in a way that undermines compliance with core, acknowledged civil rights obligations.

When I hear defenders of charter schools or vouchers saying, "Anytime you want to apply civil rights law to us, you are attacking charter schools or vouchers." That, to me, is the most damning thing one could say about charter schools or vouchers.

I don't think it should be essential to the model that you discriminate on the basis of race; that you exclude kids on the basis of disabilities; that you undermine integration goals that are reflected in our law, in our practice, and in the basic principles of American civil rights.

That's the most damning statement one can make; yet that is the statement made by the defenders of charter schools and vouchers: applying civil rights laws to them is an attack on the whole idea.

In my own home state of Michigan, we're seeing the first face of privatization in a particularly insidious way. It explains a lot of these things but also adds other problems.

For many reasons, some having to do with mismanagement for sure, but most, having to do with decades long shifts in economic and residential patterns intersect with the way we decide to fund municipalities in this country. This way we fund, is driven in many ways by the kind of anti-city bias that people discussed on the previous panel.

A number of cities in our state, as in others, have experienced great financial distress. In a city like Detroit, the largest city in Michigan, that financial distress has very serious human consequences.

Almost half of Detroit's street lights don't work. It takes city police fifty-eight minutes on average to respond to the highest priority calls. And the schools are in a perpetual state of crisis.

Now these statistics are pretty striking. But think about what life is like, what life seems to promise to a kid who is walking to a Detroit public school in the morning, at a time when it's dark, when the street lights are not on, walking past blocks of largely abandoned houses, knowing that there's no effective police protection.

Think about what it's like for the teachers and principals in those schools who are trying to give the children in those schools an opportunity.

That's where this all comes home. I have to turn away. I have to say this is just so horrible that this happens in America, in the richest country in the world. It's heartbreaking.

And that's what the cost, the human cost of the financial crisis in American cities, and Michigan's cities, Detroit in particular.

It's an urgent problem. It's a financial problem, but it's also a human problem. It's a problem that I think we all have to recognize might require very difficult short-term solutions to get bills paid right now.

But short term solutions, like budget cuts, like adjusting dealings with creditors, aren't going to solve all the problems that are problems of deindustrialization, problems with white and middle class flight from the cities, and problems created and exacerbated by the way we fund cities in Michigan and in America.

These are problems that took decades to create. They're problems that require systemic changes in economic development practices, as well as how we finance local government.

When Tom Sugrue said, in the last panel, "We all need to think locally but we also need to recognize the need to work at the state level, and at the federal level," he was exactly right. Everything one needs to learn about Detroit or about American cities, one can learn from Tom Sugrue; he is the most insightful commentator on those issues.

But it's absolutely true in Detroit and in Michigan that the problems of Detroit were not created simply within the boundaries of Detroit and can't be solved within the boundaries of Detroit.

We need to recognize that an entire state, like Michigan, depends on and benefits from the health of its large cities, like Detroit.

The city should not be forced to rely, to such an extent that it does, on its own overstretched tax base. The math doesn't work.

To the extent that people, who live in the surrounding suburbs benefit, that people who live in the state surrounding the city benefit from living in a state and from living in proximity to the great American city, they are and should recognize those benefits.

I live in the greater Detroit area. We should recognize that it is our obligation to invest in the city. But that's not what we're seeing.

You're seeing the results of similarly shortsighted municipal financing decisions, though, not in exactly the same way, but in a 30,000 foot level, they are then similar.

Here, in Philadelphia right now with the schools' budget crisis, with other problems going on in Philadelphia, with hostility between the city and the state, the results are similar.

In Michigan, unfortunately, we're not headed in the direction of solving the systemic long term problem. Instead, the financial crisis of our cities has been used as an excuse for creating a draconian and emergency management law, in which unelected managers take over all of the reigns of local government.

It's really all the reigns of local government. It's, basically, a complete receivership of the local government.



They have unilateral power to cut budgets. They have unilateral power to privatize services. They have unilateral power to break contracts, contracts made notably with unions and workers who have worked very hard, and who are, incidentally, in cities like Detroit, the backbone of the African American middle class.

In the number of school districts that have been taken over by emergency managers in Michigan, the district that continues to exist is nothing more than a financial shell.

It pays off debts. It raises taxes from whomever it can raise taxes from. These dwindling tax bases are supposed to pay off the debts. And the schools have been sold off to these private for-profit charter corporations that have the buildings and the students, while the school district is just a shell that's raising taxes and paying off debts.

This serves a broader agenda. It's an agenda my governor has supported in general of privatizing K-through twelve public education. He has a very comprehensive plan of how to privatize K-through-twelve public education.

But this agenda and the way it's being served by emergency managers in Michigan is a complete mismatch with the problem that has supposedly justified the appointment of the emergency managers in the first place.

If a school district can't pay its bills, the solution is to find more money, find ways to eliminate mismanagement and inefficiencies, and find more efficient ways of delivering services. But the solution does not require closing the public schools and turning them over to for-profit charter schools. My governor, who sends or sent his kids to a very fancy private school in my city, would never send his kids to charter schools for profit.

This is a mismatch. This is the use of a financial crisis, really to serve a privatization agenda. And the civil rights problems with this misuse of the financial crisis are many. The jurisdictions under emergency management, which are deprived of a choice of whether to keep or privatize their services and whether to keep public schools or have their kids attend for-profit charters, are disproportionately populated by African Americans.



About seven percent of Michigan's population lives in cities under emergency managements. For African American residents of Michigan, it's just a hair under fifty percent.

There are three school districts under emergency management in the State of Michigan -- Detroit, Highland Park, and Benton Harbor -- and each is more than seventy-five percent black.

The problems of these municipalities are serious. They require serious and difficult solutions, but what they don't require is depriving nearly half of the black residents of the State of Michigan of the ability to control their local governments, particularly, when the replacements for those governments are making far-reaching decisions, like turning over the local schools to private-for-profit charter operators.

I would say this is a civil rights problem of the first order. Civil rights advocates in Michigan have challenged the emergency management law in court, including in Detroit's current bankruptcy proceedings, and they've challenged the political process. People say, "Organize." People say, "Turn out to the polls."

At the polls, in the last election, the voters of the State of Michigan overturned the State's emergency management law. And almost immediately thereafter, a lame duck legislature rammed through a reenactment of the State's emergency management law with a slight change designed to make it impervious to being overturned by the referendum again.

Yes, organize. Yes, fight in court. You have to fight everywhere because one of the great sayings of civil rights lawyers is, "Our victories are only temporary and our defeats are permanent." And sometimes you feel that way.

But I think this is a struggle that's going to continue. It's going to continue in the courts. It's going to continue to challenge the process.

I've talked for two-thirds of my time about the first face of privatization, the face of threat. Let me talk about the second face, the face of opportunity.

There are harmful uses to which privatization has been put for sure, but privatization does, in important circumstances, provide key opportunities to advance civil rights interests. I, actually, think some of the topics of discussion on the first panel today are a good example of that.

But in the best case, privatization can do everything that privatization advocates say. It can provide a safety valve for people who are trapped by systems that don't take account of their needs or interests.

It can shake up entrenched, ossified, out of touch, unresponsive bureaucracies. And it can provide breathing room to incubate new models of delivered social and human services that serve the interest of excluded groups better than current models do.

If you've been doing civil rights advocacy any length of time, you know this. You know these are real problems and you know that privatization can sometimes be a piece of a strategy for responding to them – if carefully managed.

I'm going to talk about a couple of examples from the disability rights area, because that's an area I spend a lot of time in.

One example many of you know is the area of private school placement under the Individuals with Disabilities Education Act (IDEA). Clearly, it provides an important safety valve for people who are not being served by an unresponsive school system.

If a school system is not providing appropriate public education for your child, you can take the kid out of school, enroll her in a private school, and get the tuition reimbursed by the state. That might provide incentive for the school system to become responsive in the first place.

And it's become a key tool in protecting the educational rights of kids with disabilities. Now, there are problems with it. I'm going to talk about them in a second.

It's not perfect. I have a lot of skepticism about it, but it shows that, at least in some circumstances, as a way of advancing civil rights interests and disability rights interests, reliance on public finance, and private entities can at least be helpful.

Consider the requirement that states serve people with disabilities in the most integrated setting appropriate. When people with intellectual disabilities, developmental disabilities, mental illness, were in large state institutions, it was often private, not-for-profit providers of services that developed the most integrated models of delivering services.

That developed models of delivering services that made people with disabilities, actually, full members of the

community. That led to choices on a day-to-day, minute-to-minute, moment-to-moment basis for people with disabilities.

It did not treat people with disabilities as tenants or residents of the institution, or as inmates of an institution, but as people with choices that, like everybody else, they get to make.

When there were large cases seeking deinstitutionalization, the successful cases, including some in Pennsylvania, contained remedies that required states to pay those private providers to serve folks that had been previously served by the state, privatization.

Privatization in a way that advanced human freedom. Privatization in a way that advanced civil rights interests, not human freedom like the abstract thought, free to choose.

But human freedom, like the day-to-day freedom of a person with a disability to decide when to have lunch, and with whom, what time to turn out the light at night. A right denied in a state institution.

These are real opportunities. The face of opportunity for privatization is real and it's one that folks in this room should not shy away from. But the first face, the face of threat, is never far away.

Private placement of kids with disabilities under the IDEA can encourage segregation. It clearly does, right. One of the things we have seen in private placement, under the IDEA, they often send kids to schools that are largely, if not exclusively, for kids with disabilities.

Taking kids with disabilities out of the public school systems, out of the mainstream school systems, and integrated with other kids, and recreating the old system of segregation.

Private placement under the IDEA has very significant class effects because parents have to front the money that they might not get back. And private placement under the IDEA can bleed dry public schools. It's not perfect. It's got problems. It needs to be carefully managed and watched.

Privatized services for equally privatized residential services for people with disabilities, like the kinds of services that resulted from deinstitutionalization views, could be provided with a voucher to a private apartment with services coming to the individual with the disability, and the individual getting to make choices on full basis of independence.

Or, they could be provided in nursing homes, boarding care homes, adult homes. Private providers have an incentive both to get more money from the state and to cut the quality and extent of the services that they provide.

Privatization driven by riding on the profit train necessarily is going to be threatened. Civil rights advocates have to be alert to these problems with privatization, but ought not shy away from the opportunities presented by privatization.

One of the things that we already saw in the first stage of this conference is the ways in which the public and private sector working together can help to solve problems of lack of access to housing and of homelessness. These are problems that have no easy solutions that no individual institution is going to be able to solve by itself.

A government-only solution has no approval that it can work. Private sector entities often have incentives that are very difficult and potentially perverse, but the best solutions have often emerged from a mix of different kinds of institutions participating.

In the healthcare field that people are going to talk about this afternoon, the delivery system in America is changing dramatically right now: in part as a result of the Affordable Care Act and in part as a result of general changes that are going on in the economics of healthcare.

We are seeing states around the country experimenting with different ways of delivering healthcare services that integrate public sector and private sector entities.

It's going to be the job of civil rights advocating, like the folks in this room, to fight to make sure that there's no private sector involvement in healthcare. OK, that is impossible.

We have always, even under Medicare, which is our single payer system, even under Medicare, we have always had private sector doctors delivering care to most people.

Even under Medicaid, which is, I think, the most effective and significant anti-poverty program and disability program in America, we have had the state paying private doctors and providers to deliver services.

You're not going to get rid of the private sector involvement. I don't think it would be a good idea to do so but, civil rights advocates have to fight to make sure the civil rights values are incorporated in these interactions between the public and

private sectors, to make sure that delivering services through a third party does not allow the state to wash its hands of its civil rights obligations, to make sure that delivered services through a third party do not encourage segregation on the basis of race or on the basis of disability, to make sure that privatization occurs in a way that takes account of civil rights. Privatization is inevitable; it has been present from the beginning and always will be.

Now, let me, back up from the issue of privatization and just talk about civil rights for a second.

It has been more than twenty years since I graduated law school, I've been a civil rights lawyer, basically, the whole time. Civil rights in America has always been a struggle.

My favorite of the many favorite quotes from Dr. King is the quote, "The arc of the moral universe is long, but it bends towards justice."

One of the reasons I like that quote is that it's like the Torah. You can read so much, and there's so much in that one little quote; there's just so much there.

One of the lessons that I take from "the arc of the moral universe is long but it bends towards justice" is that when times seem bleak, keep fighting.

It's a long distance, but we're going to get to the destination. When times seem bleak, don't get down because we'll get there. And that's important sometimes.

We're going through some bleak times in America involving the issues that I've been discussing this morning and that this conference has discussed. It's important to stay focused.

When I think of the saying "the arc of the moral universe is long but it bends towards justice," I think about another aspect, the arc. I sometimes, I think about the arc as being from the place where we were doing things right, to a place where we're doing things wrong, to a place where we're going to do things right, again.

This time is sort of a lost Eden; that is the idea it conveys to me anyway. We can think back to the fights that we've had in the past and the ways in which we have fought to make sure the public sector and the private sector interact, and take account of civil rights realities. We can really draw strength from that.

But the thing I really like about “the arc of the moral universe is long, but it bends towards justice,” is that it makes me think about how’s it bending and what makes it bend.

Is it like some inherent law of the universe? Is that what Dr. King was saying? Does it just happen that way? It’s like Einstein’s curvature in space-time. I never understood what that meant. But it sounds similar, right? A curvature of some kind.

No, I don’t think that’s what he was saying at all. What he was saying is it bends towards justice because a very activated group of people in the community are fighting for their own rights, who are fighting for the rights of people who need help in fighting for their rights.

You have civil rights lawyers. You have civil rights activists. You have community organizers who are working to make sure that in all of the compromised ways in which our society tries to solve real problems, issues of equality, issues of opportunity, issues of full inclusion and full participation in our society, remain front and center, and continue to be adhered to by the very difficult, compromised, negotiated, and often provisional solutions we come up with.

When I hear “the arc of the moral universe is long, but it bends towards justice,” I hear it as a call to action, as a call to continue to fight because it’s you guys in this room and all the people you work with who make that arc bend.

My old boss, Tom Perez, now the Secretary of Labor, formerly the great Assistant Attorney General for Civil Rights had a favorite saying: civil rights is about persistence; and he was right about that.

You’re fighting these issues year after year after year. Sometimes you make progress. Sometimes you backslide, but you keep fighting and that’s what needs to happen with the issue of privatization.

Thank you very much. I’m very happy to have spoken to you today.

**Audience:** (Applause.)

**Ms. Kerr:** Thank you, Sam. That was just terrific and I don’t know what to say beyond that. It was just fabulous.

- - -



(Whereupon, lunch recess commenced at 12:00 p.m.)

- - -

(Whereupon the first reporter was relieved by the second reporter during lunch recess)

- - -

**Sonja Kerr:** Any questions for Sam?

**Sonja Kerr:** Can you identify yourself?

**Evan Fieldston:** Evan Fieldston. I'm a pediatrician here at CHOP (Children's Hospital of Pennsylvania), at Penn.

One question I had in terms of the privatization side of things, I was wondering if you would distinguish for-profit private sectors and not-for-private private sectors. How are those actors different or the same?

**Samuel Bagenstos:** Yes. That's a good question. I have said privatization is pretty much inevitable.

At some level, everything I say applies equally to both.

One could be agnostic about whether it's for-profit or not-for-profit entities that are delivering services or discharging public responsibility.

Not surprisingly -- as an empirical matter -- you often find less of a commitment from for-profit entities to the kinds of civil rights values that we're talking about, but this is not uniform.

Let me give you an example of disability advocacy involved in a public/private system that is very hot in the disability community right now. The system of providing work through sheltered workshops, for people with intellectual developmental disabilities or people who are blind is a big target of attack by the disability rights community. I've spent some time working on some of these cases.

The biggest community-organizing effort going on right now in the disability community is spearheaded by the National Federation of the Blind against Goodwill. It basically is a not-for-profit entity which often pays people with disabilities in sheltered workshops way below minimum wage. As the folks who are spearheading this campaign have pointed out, many of the regional executives of Goodwill make enormous amounts of money; \$900,000 a year kinds of enormous amounts of money.



Not-for-profit doesn't mean no profit motive anywhere, but it's true that the more you have entities that rely on the profit motive, the more you have to make sure that the incentives created by the privatization system align with whatever the public values are, but the answer is you can never fully do that.

I think empirically speaking, the for-profit entities are of greater concern, but that doesn't mean they're always of concern and it doesn't mean that not-for-profits are of no concern.

**Sonja Kerr:** Other questions?

**Samuel Bagenstos:** You can talk amongst yourselves. I didn't mean to intrude on your lunch, I just thought that would be a good idea.

**Sonja Kerr:** All right. Here we go, we do have another question.

**Audience Member:** Thank you for coming and listening to us and enlightening us.

Would you care to address privatization at the federal level? Whatever your position is on the "Snowden affair," a lot of commentators have said, so much of the defense establishment is now outsourced to the corridor that goes up to Rock Hill, is another manifestation of growing more toward a generalized focus on privatization. Is there a way to stop developments like that, and other gravy trains? Is there a way to build a less politically-laden case against privatization?

**Samuel Bagenstos:** I agree with everything you've said except less politically laden because yours doesn't sound less politically laden to me. I do think that what everyone thinks of the "Snowden affair," it has brought home to many people the fact that at the federal level, we have lots and lots of people who go to work for the federal government, punch a ticket, then go to a private contractor and do the same thing for way more money.

This is basically a system that was sold as a way of saving money. Not only is it lining people's pockets, but it's probably not saving any money and it's probably not serving public values as well. This is one of the other aspects of the "Snowden affair"

that I think is interesting and may have something to say about the civil rights concerns that I talked about.

My answer to the last question as a person who has received top-secret clearance, I wondered how did a guy like Snowden get top-secret clearance. I remember, the background check being difficult. And it turns out that we also outsource background checks!

(Audience laughter.)

**Samuel Bagenstos:** We do, and the contractor is incentivized to do a lot of background checks, and they cut corners all the time. I don't know whether they had cut corners in the Snowden case, but they cut corners all the time.

That's one of the concerns that I have with privatization, particularly with folks who are operating on the profit motive. The concern is that they will shortchange whatever public values you're trying to achieve in the program.

The "Snowden affair" in some ways is horrible because there are many different moving parts, and people who agree on a couple of moving parts disagree violently on the others. But one of the nice things is that it does provide an opportunity to focus attention on this problem that is essentially an outsource of government to contractors like Snowden but also to the contractors like the people who gave them security clearance.

**Sonja Kerr:** We're going to take one more question.

**Audience Member:** You've talked eloquently about the need of getting the civil rights values into the privatized area.

I wonder if you can talk about what kinds of extra tools and new tools, you think would be helpful. What kinds of counter-incentives are there at work? We all know the safety fallbacks don't seem to work in the corporate finance area. Are there private incentives at work or new government regulatory tools that you would like to see that would help us get more of the civil rights values enforced? There are limitations as to how far you can carry over rights you can assert in public entities to private ones.

**Samuel Bagenstos:** Yes, this is a very difficult question. The most important tool is to establish the principle that a public entity cannot wash its hands of its civil rights obligations by having services delivered by somebody else.

I think that is an obvious principle, and I know it seems old to litigate cases about this forever. It's an obvious principle in some ways, yet when the Department of Justice in the Obama Administration has asserted the principle, it has provoked incredible ire from the folks who support these kinds of privatized arrangements. I think that's the most important thing.

You can talk about having quantitative metrics for measuring various kinds of things, and that sounds great. But if things measured are embedded in a system that doesn't ultimately serve civil rights values, then merely measuring civil-rights-related quantities is not going to answer the problems.

The example I give is No Child Left Behind. There are many very good civil rights advocates who supported No Child Left Behind, and some who continue to support it because it has these requirements that you report achievement by group and that you try to close gaps between groups. Great. That certainly is a way of advancing civil rights interests, but it's embedded within this whole system that declares failing schools and sends people off to charter schools that then don't accept certain kinds of kids. In the end, it doesn't serve civil rights interests.

One has to be careful looking at the whole system. The most important rules: firstly, by privatizing responsibilities to civil rights cannot be avoided. Second, this principle of responsibility must be made clear.

**Audience Member:** Sam, Mr. Gilhool is sitting right. He is the father and godfather of the first statute to enable kids to have the civil right to not be excluded from public education.

**Samuel Bagenstos:** Yes.

**Audience Member:** My suggestion in your last comment is that civil rights are much more fluid than we ever thought they were.

In the seventies when Tom and PILCOP brought the right-to-education case, these kids were being totally excluded from

all education. Now, we're in the twenty-first century and they're not, but they are still being segregated. It's a different twist on the civil rights issues, and we just have to face up to it and deal with it.

**Samuel Bagenstos:** Yes, I agree.

**Sonja Kerr:** I want to say thank you so much, Sam, for joining us.

(Audience applause.)

**Sonja Kerr:** Your keynote speech and the Q and A that followed have been fabulous. Now we're moving to our Healthcare Panel.

**Symposium Moderator:** Thanks again, Sam.

As we move into the Healthcare Panel, it's my pleasure to introduce Kevin Hoagland-Hanson to the podium.

**Kevin Hoagland-Hanson:** Welcome back from the break, everyone. I hope everyone enjoyed her boxed lunch. Please continue eating as the program continues.

My name's Kevin Hoagland-Hanson, and I'm a 2L at Penn Law. I had the pleasure of interning at PILCOP this summer and working with everyone there. I had a wonderful summer experience. I worked extensively with Jim Eiseman who will talk to you briefly after me. I had the pleasure of working with Jim at a very interesting time for Medicaid in Pennsylvania. I'm sure many of you were watching the Governor and the legislature's somewhat thwarted attempts at expanding Medicaid in Pennsylvania.

Jim is a senior attorney at the Law Center and a moderator in today's Healthcare Panel. Jim has an impressive history of working to improve the delivery of health care services for a variety of vulnerable populations. He has been with the Law Center since 2003.

Please join me in welcoming Jim as we kick off today's discussion about privatization of health care.

(Audience applause.)

## SESSION 2 - Healthcare

**Jim Eiseman:** I will make the introductions one at a time to facilitate those of you with short-term memories. To briefly introduce this subject, as our Executive Director pointed out to me once, we recognize that not everybody in the room is a "health care wonk."

We're going to be talking mostly about Medicaid today. Medicaid is the joint federal/state program designed to help low income and disabled people with health care. Medicaid services approximately sixty million people and spends somewhere between three and four hundred billion dollars a year.

That's what we're going to be focusing on. Our focus will not even reach Medicare, which is primarily a federal program that spends another several hundred billion dollars and takes care of another several tens of millions of people who are elderly.

So without further ado, let me introduce our first speaker, Ann Torregrossa, who has had over four decades of experience in health policy and Medicaid law. She is currently Executive Director of the Pennsylvania Health Funders Collaborative.

During the Rendell Administration, she was Deputy Director and then Director of the Governor's Office of Health Care Reform. In that position, she helped to develop the Prescription for Pennsylvania and the Comprehensive Health Care Reform Initiative.

Ann has taught at Penn, Villanova and Temple Law Schools, and she previously ran a public interest law firm dedicated to health care access.

Ann lives in Swarthmore and is a graduate from Villanova Law School. Ann.

(Audience applause.)

**Ann Torregrossa:** Good afternoon.

**Audience Members:** Good afternoon.

**Ann Torregrossa:** I don't mind you eating in front of me, it's okay.

I thought the first thing that might be great to talk about is my perspective. I think each one of us on the panel here has a

perspective, and it's important to know the perspectives that we're coming from. All of our experiences have been very different in the states that we're working in.

My perspective, as Jim said, I've been a public interest lawyer for thirty-three years. I've sued the Medicaid program more times than they wanted to ever be sued.

I worked with -- and with my colleagues represented -- the Consumer Subcommittee of the MAAC, so monthly we would go to the Medical Assistance Advisory Committee and bring in whatever complaints, problems, that we were seeing with the Medicaid program and tried to work them out with the Administration.

We had, and have, an 800 Helpline for any low-income person who's having trouble accessing services through Medicaid or uninsured people that are having trouble getting coverage.

So we saw every possible problem going on in Pennsylvania as to how both the Medicaid fee-for-service program and managed care was not responding to the needs of the clients. I had to be absolutely apolitical because we had to work with whichever Administration was in power.

I didn't apply for a job with the Rendell Administration, and you can imagine my absolute shock when the phone rang one night and they offered me a job doing their health policy work in Harrisburg. This is the one we've sued and sued and negotiated and sued.

And you can imagine the absolute shock and horror of the people from the Department of Public Welfare when I walked in and they found out that I was going to be working with them in trying to fix some of the problems with Medicaid.

So for eight years I tried to do from the inside what I had been trying to do from the outside to achieve that, and it was a real life lesson, I can tell you.

Since then, I've been working with about thirty-three health foundations who have come together and collaborated to try to use whatever pull they have to try to improve the health care policy in Pennsylvania and nationally, particularly during this absolute critical period.

So that's my perspective; it's a long one. And I think because I started out in the dark ages of Medicaid when things did not



work well, it has really influenced my perspective on how I see today; so take that with a grain of salt.

I've also seen how difficult it is to get anything done in government. When I would go to those Medical Assistance Advisory Committees and they would agree they were going to fix something, I'd come back month after month after month and things didn't get fixed, and I couldn't understand why it took so long. And then I got in state government, and the layers of bureaucracy and sign-off that had to occur are just unbelievable.

And the other things that I've seen are how private companies, managed-care entities, can be much more agile, much lighter on their feet than state government, both doing good things and doing bad things. Of course, our goal is to try to get them to do the good things.

So when we talk about privatization in health care, as was noted by our keynote speaker, it's really different than other privatization discussions because our health care has always been provided by private hospitals, private doctors, private nursing homes, etc.

The real change in the context of health care is putting the private health entities and the insurance companies and providers at risk, financial risk, with the care that they're providing us, and that really is a whole different ball of wax. That can really put them in real conflict-of-interest positions with the needs of the consumers who need health care.

Let me tell you a little bit about the dark ages of Medicaid in Pennsylvania. We were one of the first states in 1965 to embrace Medicaid. For the doctors, we adopted the Blue Shield Plan C Fee Schedule, which was pretty good. And then for fifteen, seventeen years, they did absolutely nothing to increase rates, absolutely nothing to add any new procedures, including, for example, ultrasound for women.

This was in large part – I don't know if there's anyone from the Medical Society here -- at that time because the Medical Society thought Medicaid was socialized medicine and they wanted absolutely nothing to do with it; so they did not go to the legislature, they did not try to get seniors added, they did not seek fee increases.

The hospital association, on the other hand, had to take people into the emergency rooms, they had to then follow the

requirements that they had to stabilize people, and so they wanted to make sure they were paid. So, they were up there lobbying to make sure that the hospital rates were as good as they could get.

The physicians that were basically enrolled in Medicaid when I started my health care work in the late-seventies were physicians who worked in hospitals, had to see people in the hospitals, wanted to get paid, and were, in large part, private physicians who signed over to Medicaid in case their private pay patients had bad times and they needed to continue to treat them. But it was very, very difficult for a low-income person to find a doctor that would accept the medical assistance card. So, the card was not coverage; it was a hunting license.

My friend Roy Wyman always said it was just a hunting license, and you had to take that medical assistance card and try to hunt and hunt and hunt to try to find someone who would take it so you could get the health care that you needed.

Of course, there was no care coordination, no duty of care. Those doctors had no duty to take that card and to treat you. And the few primary care doctors who took it had to admit patients into the hospitals in order to get specialists to begin to pay attention to their needs. This really was the dark ages of Medicaid in Pennsylvania.

I brought a lawsuit in 1981 called *Simpson v. Schweiker*, and the Commonwealth really didn't have a leg to stand on in court; things were absolutely abysmal; and so they entered into a consent decree. But before I brought the suit, I went to the Medical Society and said, "Shame on you, shame on you, look what you pulled out of the hat. If we're going to go to court to try to increase fees and add procedures, we need a commitment that things are not going to be the way they've been in the past."

The Medical Society managed to go county by county to each medical society and encourage the physicians to participate in Medicaid.

We agreed to add 800 new procedures, including ultrasounds, significant fee increases for physicians, and a monthly process to look at what Medicare was adding as far as new procedures and, in the process, to look at the advocacy of fees.

During that same 1980s, managed care was rearing its ugly head, and initially it was pretty ugly. I don't know how many of

you were around in the eighties when managed care first came on the scene, but there are some really terrible war stories of women barely out of labor being discharged, women being sent home right after mastectomies. It was slash and burn as far as trying to cut down the costs of health care.

And in Pennsylvania they started with the HealthPASS Program. We were very concerned about that for Medicaid, and there were just terrible enrollment scandals. They sent agents out and they would get so much ahead as long as the person wasn't in a wheelchair or on oxygen, and they were signing people up who didn't know what they were signing up for. They were losing their own doctors. It was just an absolute nightmare. So our beginning with managed care in Pennsylvania was not so great.

And when Pennsylvania moved to do mandatory managed care in 1997, we were selected along with another company to file suit because the networks were just not adequate, they didn't have enough doctors, enough pharmacists, enough hospitals signed up, but we really did have a unique way of trying to develop managed care in Pennsylvania.

A number of the foundations had funded some public interest law firms to work with the Department of Public Welfare (DPW) to bring in some people from around the country who had tried managed care already so that we could learn the things that are good and the things that are bad and try to put them into our kind of practice.

Sara Rosenbaum, who is just a great person from DPW, helped us draft the Medical Necessity Definition, which really meant that if you had a benefit, you could legally, actually realize it even if you had disabilities, such as developmental disabilities.

We heard about the need to have special needs units, people who could really on the spot concentrate on helping people get care coordination, and not just with management, but people like this in Oklahoma that go out into the community and try to work with people.

We had standards on network advocacy, quality measures, teeth for noncompliance, public report cards, and of course our monthly meetings with the Medical Assistance Advisory Committee; it was the beginning of a fairly elaborate process.

Given where we started in the dark ages in Pennsylvania, it was better. There's no question it was better. It was not perfect.

As a lawyer, I loved the fact that if I got a call from someone with a problem, I had someone who had a duty to provide that care contractually and I could call her up and get some attention, as opposed to fee-for-service where you called DPW and not much would happen. We had standards for access, we had standards for regular appointments and some community attempts at care coordination. It wasn't perfect.

Tom Gilhool is here and he's pointed out to everyone that Early Periodic Screening, Diagnosis, and Treatment (EPSDT) was so important for kids, the importance of screening kids periodically, addressing problems early.

When we look at the record of managed-care plans and even fee-for-service, kids were not getting the screening they needed to get. And if they weren't getting the screening, you knew they were not getting the treatment.

Again, under Tom's leadership, *Scott v. Snyder* was brought. And Tom may disagree with me, but I think if it had only been brought against the Department under fee-for-service without the help of managed care trying to whip some of those PCPs in shape less would have happened. It really took both the Department and the managed-care plans working with the PCPs to begin to address this problem, and it's still not where it should be. It did provide us with some accountability, some duty of care, some attempt at care coordination. It is not perfect. And I'm sure there are people who have been working at this as long I have who maybe feel a little differently in this room.

The other thing that it did was our legislature -- and I hope there's no one here from the General Assembly. No.

(Audience laughter.)

**Ann Torregrossa:** -- particularly those legislators who were in the middle of the state -- really don't like to provide money for poor people's programs. And we really saw that, didn't we, with what was done with physicians' reimbursement?

So one thing that I found was that the managed-care plans were very astute at lobbying to get resources for health care for poor people, they had their associations, they knew who to make the campaign contributions to.

And I know Sheldon's had a very different experience as to where that money went in his state, but a lot of that money went into care, and it went into care that was desperately needed in our state.

Managed care privatization really did a better job of working the political process to get resources for our clients. Of course, having actuarially sound requirements for managed care helped, too.

I think the thing to do with managed care -- we're getting there, but I don't think we're quite where we need to be -- is to get them away from the slash-and-burn mentality and to get them to realize that eighty percent of the expenses are for about twenty percent of the people, that they're the people with the most chronic needs, the people who need the most care coordination, that it's in both the consumers' best interest to get that care and in the financial interest of the Health Maintenance Organization (HMO) to provide that care. And if we can get those two needs aligned, hopefully we can get the best out of managed care.

When I was in Harrisburg, we had a payer patient-centered medical home initiative that involved the DPW and Medicaid HMOs. It's really difficult to get primary care providers to focus on improving care because they've got ten, fifteen different payers. And one payer wants them to focus on obesity, another payer wants them to focus on diabetes, another payer wants them to focus on something else. And guess what? Nothing gets done.

What we tried to do was to get them to focus on providing a patient-centered medical home for everyone and have all the payers rewarding them for doing that, ultimately helping to share in the savings when they had a reduction in affordable hospitalizations, etc., and I don't think fee-for-service could ever have done that.

I think the big issues coming down the line for us on privatization in health care are the dual-eligibles. Those are the people that are eligible for both Medicare and Medicaid. They've got a terrible situation. They've got not only the usual fragmented health care, but they've got two different entities paying for it, Medicaid for some things and Medicare for others, and they often fall through the cracks because of this fragmentation in health care and payment.

And we've seen that the Centers for Medicare and Medicaid Services (CMS) has asked states to do a demonstration where they both join and contract with the managed-care plans to provide care and hopefully eliminate some of the fragmentation of payment and eliminate some of the fragmentation in care. So this is going to be a big important area to watch.

Long-term care nursing facilities and home community-based services are such a big a part of the state budget. We know that this is something that they're going to want to look to see whether privatization can help stabilize costs and the cost curve.

I know my colleague, Gordon Bonnyman from Tennessee, sued the State years ago to have managed long-term care Medicaid because he thought this would align the interests of the plan to avoid nursing facility placement, to avoid institutionalization, to have the consumer be in the least restrictive placement.

And I know Sheldon takes great acceptance in that and we'll hear his comments on that, but it's an area that's coming down the pike. It's a terribly critical area because people are so much more vulnerable, and there are not good quality measures out there. What's the role of medical technology for people? All of this needs to be worked out.

And then there's the Accountable Care Organizations. Anyone not know what that is? Good for you.

(Audience laughter.)

**Ann Torregrossa:** Did you see the look on that doctor's face?

(Audience laughter.)

**Ann Torregrossa:** Let me tell you about it. It's coming out of the Affordable Care Act and it's seen, I think by some, as the new silver bullet. The idea is to get a large group of health care providers who are large enough to assume risk to come together and to work collaboratively together under the theory that they know where the inefficiencies are. And if we can get them to work together to eliminate some of the silos of health care, if we have some quality measures, and if we have forced



them to reduce waste, that we could get better care for people while reducing the cost of health care.

This came out of the Dartmouth Group who found that most consumers receive their health care from a pretty limited group of health care providers who are often loosely associated. The primary doctor they are going to is associated with a hospital and uses its home health service. They're already pretty much loosely associated and we just need to get them working more together.

In order to get the shared savings, they have to meet certain quality standards so that there's no debate of whether the quality standards are adequate and whether this is really putting doctors in a conflict-of-interest position with patients. It also rewards the most inefficient providers because the health systems that are the most costly have the most ability to save.

Whether we talk about privatization or not, our health care system, our need to change, has many, many issues. We obviously need payment reform. We've been paying for volume instead of value.

We need to figure out how to pay so that we get the outcomes that we need and that we want. We need to put a lot more resources into primary care. And will managed care do that? I think they found that to some limited extent.

We need to do something about the fragmentation in our health care system. We've got behavioral health over here, even though this head is attached to this body, and other care over there. We have to do something with the fragmentation of payments.

Health care providers steer one way or another because they have ten, fifteen different payers. Mostly we need to do this because we need a consumer centered and transparent health care system.

My thoughts, in conclusion, are that we've got some interesting times ahead. We've got this whole concept of Accountable Care Organizations (ACOs) where the Medicaid programs and CMS are contracting directly with the health care providers and health systems without regard to the managed-care plans. On the other hand, we have the marketplace starting January first and they're heavily using managed-care plans, and that's kind of different.

A lot of people feel that we have really come to a crossroads, and that the Affordable Care Act is really providing the last opportunity for the private system, for private insurance, to show that it can provide efficient, quality health care.

Thank you.

(Audience applause.)

**Jim Eiseman:** Our next speaker is Sheldon Toubman who is and has been with New Haven Legal Assistance Association since the 1990s. He works as an advocate at both the local and federal level and, as you will learn today, he has a particular expertise in Medicaid issues.

Currently, Sheldon is involved in the campaign to secure a Basic Health Program in Connecticut for those living between 133% and 200% of the poverty level.

Sheldon attended the University of Pennsylvania Law School and I believe worked at a local firm here, Berger & Montague, for a number of years before he transplanted himself to Connecticut.

Please welcome him.

(Audience applause.)

**Sheldon Toubman:** Good afternoon. I have to tell you, it's really strange talking here because I spent many hours for three years studying in the library in this space. There were tables at which I spent very long hours. This is where I got the need for these [indicating glasses]. But, anyway, I'll try to adjust.

I think one of the most interesting aspects of this panel is that the moderator has chosen people with different perspectives. I think that's what you're going to get between Ann, myself and Joan as well.

I do have a different perspective. I will be right up front and say where I'm coming from so you'll know to discount things I say based upon my prejudice.

My view is that privatization in the form of contracting with for-profit at-risk insurers can't work in the Medicaid program. I would even probably say it can't work with nonprofit at-risk entities in the Medicaid program, but perhaps the door is open a little bit on that one.

I'm going to talk about three things together; and I'll try to do it in twenty minutes, which is impossible, but I'm going to talk about the history briefly of what we did in Connecticut with managed care privatization as a war story. I'm going to talk about it as a sort of a primer -- and one of the documents in here, in the materials, is a three-pager I produced called Medicaid Advocates' Guide for Holding Medicaid Managed-Care Organizations Accountable. And I'm also going to try to weave it into privatization, which is the reason that you all put this together.

In Connecticut, we went to capitated managed care. When I say capitated, that means the entity gets paid a fixed amount of money per member/per month in order to provide comprehensive health care, and it's on them to do it.

What risk means, of course, is that if a case is expensive, it comes out of their pocket. But one of the misconceptions is that as long as you pay them enough, then everything will be fine because now they have enough. Wrong. If they're a for-profit entity, they have a legal obligation to only one entity: the shareholders. They must make as much money as possible for them.

The argument that if we just pay the HMOs enough, everything will be great because they'll make enough profit is wrong because they can never make enough profit.

Anyway, we went to a capitated system with eleven entities back in 1996. Eventually that got down to four. At the time, I had just moved up to Connecticut and I didn't even understand what was going on, didn't even really understand Medicaid, and so I didn't fight it because I didn't know what to fight. But then we started hearing the stories and started hearing stories about the kids, kids can't get access to basic health care, some of the things Ann talked about in the battle days of fee-for-service; so we started looking at this.

One of the things that's important to realize is that the industry is really, really good. As Ann said, they've got lots of lobbyists and they're really good at selling themselves. And they sell themselves in three ways: One, we save money; two, we group quality of care; and, third, we will coordinate care in a way that isn't possible with other systems.

Ann talked about how fee-for-service is never going to allow coordination of care. I agree with that as long as you include the

concept of patient-centered medical homes, truly incentivized patient-centered medical homes, as not being part of fee-for-service. Raw fee-for-service probably won't work, but if you use patient-centered medical homes, it actually can work to coordinate care.

In any event, these are the three big arguments they make. Usually, they have nothing to back it up. It's true that they have fancy PowerPoints when they do presentations.

Right now, throughout the country -- and I was just invited to one last week -- for about \$1,500 to \$2,000, you can go to a seminar where you can learn all about how you can make lots of money in Medicaid managed care because this big expansion is happening in 2014 in most states -- hopefully including Pennsylvania -- and, therefore, the managed-care companies can come in and make money. They're doing all of that. But in the end, is it really about quality, is it really about cost, is it really about coordination of care?

Joan is going to talk about the cost issue, what's been proven or not, but it's important to understand that these are the lobbying points they make all the time.

But what did we find? We found it seemed to be pretty expensive. We found that people could not get access to care. We found that the coordination of care didn't exist.

When clients would call the HMO for customer service and say, "Hey, you know, my kid's disabled and they're not getting this and they're not getting that and nobody is talking to each other," and they ask for care coordination services, the people on the other line say what is that? It's not our responsibility.

One of the most interesting things about cost -- and I'll only talk about Connecticut on the details because that's what I really know -- is that in order to run managed care, in most states it's done through a waiver. Not all states do it this way, but for most of them you have to get a waiver that will cover me. In order to get a waiver, you have to show it's cost effective, meaning that it costs less than it would without the insurance company involved. That's a problem because maybe it isn't cheaper.

And here's what happened in Connecticut: It's just one of so many war stories and I'm trying to save doing that, but just one more little war story.

The Administration came in and said they wanted to give ten and a half million dollars to these insurance companies. And the legislator said, "Why do you want to do that?"

"Because we want to keep these insurance companies happy because they're running the managed care system in Connecticut for the Medicaid enrollees."

"Why don't you just pay them more, just increase their capitated rates; wouldn't that solve the problem?"

"We could do that, but the problem with that is we might run into a problem with the federal government. We have to show each year that it's cost effective, and they count the money we spend on capitated rates. If we spend the money this way, through the back door, as a tax break it doesn't count."

What's wrong with this picture? It's all taxpayer money, and the whole idea is it's supposed to be cost effective.

Another area -- okay, I said I wouldn't do war stories: The child welfare agency in our state had the responsibility for all of the health care and everything else for kids they took in. These kids were also enrolled in these HMOs that had an absolute obligation to provide comprehensive health care, and they got paid every month to do it. They weren't doing it. The taxpayers were paying tens of millions of dollars extra for health care for these kids where the taxpayers were already paying the HMOs to provide that. That's some of the information that we looked at on the cost side.

Now, on the quality side, there were serious issues of access to the right kinds of providers. You could not get in to see providers. And one of the things that the State finally did under pressure was what's called a secret shopper survey. The secret shopper survey is where people call the doctors who are listed in the HMO's current website as being currently enrolled to take patients. They say, "I'd like to make an appointment." The survey assessed for five categories of providers: neurologists, dermatologists, pediatricians, orthopods, and dentists. They assessed whether they could get appointments or not. For the four HMOs -- by then we're down to four -- only twenty-five percent of the time pretty much consistently could they get an appointment.

The plurality of the reasons for denial that you couldn't get appointments: "we don't participate in the Medicaid program" or "we don't participate in that particular plan."

Remember, these are doctors listed on the current website of the HMO saying they're participating in seeing patients. That was quite an item. We were aware, of course, about the denials being a constant problem with insurance.

By the way, to answer the question, why is it so bad to have a for-profit capitated entity running health care, on what was wrong with that kind of privatization, first of all, if it's a for-profit entity, it's got to make a lot of profit.

Under the ACA, there's going to be a limit of either 15 or 20% on administrative costs. That doesn't apply in the Medicaid program. Some Medicaid HMOs are pulling way more than those percentages off the top and that just can't continue.

In any event, the money has got to go to shareholders, and that's a big problem. Second of all, unlike a nonprofit, there's no mission there. They don't have a mission. Their job is to make money – Ann said it in the first bullet on one of the slides, their initial idea was they wanted to make money. That's still their idea. They're only in it to make money. You don't have, as with the nonprofit, some kind of mission. We did have a couple nonprofits, and one of them at least definitely accepted the mission concept.

We felt we had to do something about all of these problems. And one of the things we did early on was to bring a lawsuit about lack of due process.

Due process is basically -- for those who are not lawyers -- that when people are denied something by the state or a private-contracted entity that takes over the role of the government, when it denies or terminates something, it must do a written notice that states the basics on what was denied: why, on what regulatory basis, and how the patient can appeal.

They weren't doing it. It was all by phone to the doctor and blatantly illegal. We sued one of the HMOs and the State. That litigation went on for years.

The second thing, though, was much more interesting and arguably more political --and not in a partisan way, more political. We started raising questions about whether these huge entities that are taking hundreds of millions of taxpayer dollars should be accountable to . . . guess? The taxpayers who are paying the bills.

The way it was litigated, is that there was a small group of advocates/activists/academics in New Haven, where my office



is, who got together to talk about the access to specialists issue that I talked about before; that there's a real problem there. I was not part of this group, I had nothing to do with it, but they came to ask the question, why is that? And somebody said, maybe it's because they're not being paid enough. Maybe the providers in the Medicaid program through the HMO are being paid crappily and, therefore, they don't want to participate; so let's find out. But how should we find out? They said, "Let's do a request to the State and ask how much it is paying doctors." What, of course, did the State say? "Oh, we contract with these companies, it's their responsibility, we don't know how much they pay, you'd have to ask them, but, by the way, they're not governmental entities so you can't get it from them; so, like, go away."

They then called me. This was the perfect opening because we had already been looking at this issue. And in Connecticut – and you, too, can adopt a statute like this.

Our statute says -- like every state in the country -- that the Freedom of Information Act (FOIA) or Sunshine Law says governments have to produce documents about government operations and things like that. But it also said, if there is a private entity that has taken over the role of the government, then it can be subject to the FOIA, Freedom of Information Act, directly as well, as long as it's taking at least 2.5 million dollars a year under contract. And there was a test for what is a governmental function, but it's basically taking on the high-level role.

Connecticut was easy because simultaneous to running the fee-for-service program for the elderly, disabled, and the other Medicaid groups, the State had contracted away their responsibility for kids and parents to the HMOs. They were doing the exact same thing simultaneously; therefore, it's a really easy argument to make that they're taking on the role of the government.

We litigated this issue for two years and won, but more important than that there is a take-away message. If you want to be an advocate, and you want to do something about privatization, and you want to hold private entities accountable, or if you agree with me in the case of for-profit capitated HMOs that you think you want them to leave, then you must act as follows.

Everything you do about holding them accountable has to be in the press. If it's not in the press, it didn't happen. And why is that important? Because if you're a state bureaucrat or a state official, it really looks bad if you're not doing your job of seeing where the money is going, keeping track of where the money is going.

If you're a politician, it could be fatal. There are huge governmental contracts, hundreds of millions of dollars; you're the politician responsible nominally for them; and you don't even know, you haven't even asked, you have no idea where the money is going. It's a very dangerous thing.

If it's in the media that people are asking questions about what's going on here, people are going to have to pay attention.

One of the items that I put in the materials is just a nice little one-page editorial from the Hartford Courant, and it's about holding HMOs accountable. It's about the fact that they're taking \$740,000,000 million dollars a year and the Governor doesn't want to make the entities taking this money accountable for where the money's going! What does accountability mean in this context? It raised that Freedom of Information Act issue; do they have to be accountable to the taxpayers, the public, the Medicaid enrollees and providers the same way as if they were the State itself?

Remember, I told you the issue specifically about provider rates, but there's another issue, too: denials of drugs, denials of drugs at the pharmacy because of the way that the HMOs were running their formularies and making it so patients couldn't get access to prescriptions. How often is that happening? That was another kind of information they didn't want to reveal.

We litigated that issue, and in the course of all of this litigation, and all of the press about how these companies are doing a terrible job, costing a lot of money, and don't want to be held accountable, finally -- I included the announcement of that, a newspaper article in the materials -- the Governor was basically pushed up against the wall and had to say, "Okay, then you will agree to be bound by this public accountability obligation or you're out." The Government was forced to say, "You're out."

Now, fast forward because it's so complicated and we don't have any time. I'll just say that the Governor redid it, brought in new HMOs, and then ultimately we beat up on them some more

about accountability, even though they said they'd be bound by that Freedom of Information Act obligation. We beat on them some more by emphasizing cost and equality. There's a third option out there that we haven't really been talking about, but first, focus on costs.

On the cost side, we've got data on medical-loss ratios. Remember I said that now and even after 2014, there's no maximum amount of money that can be spent on administrative costs and profits? We've got the figures. A lot of the money was not going to health care.

In one extreme case -- this was for our Children's Health Insurance Program (CHIP) for kids -- it was sixty-two percent. That means only sixty-two cents on the dollar with this one HMO was actually going to health care. The rest was going to the HMOs' administrative costs and profits.

The quality? We got the data on encounters and how few times kids were going in for the various kinds of services.

Here is an alternative.

The big lie out there in my view is that only insurance companies can coordinate care. And it's being done with the dual-eligibles, too. Only a capitated insurance company can provide quality care because only it knows how to coordinate care.

Here's a suggestion: Perhaps an entity -- which is not really an entity but, like, a doctor who actually knows a patient -- perhaps that person might be in a really good position to coordinate her own patient's health care or maybe somebody else in her office. Maybe somebody really local who's an actual health care provider can best coordinate patient care. Maybe we could pay them something a little extra to do that, and maybe we could pay them more to reward them for when they do well.

In Connecticut, we looked at other states, particularly North Carolina and Oklahoma. Why those two states? Because those two states have developed good programs of what's called primary care case management, what Ann was referring to as purchase-centered medical home care or patient-centered medical home care. The difference, though, is that these patient-centered medical homes work within the fee-for-service system; that is to say, the providers are paid fee-for-service for each unit of care they provide, but they also are paid extra for coordinating the care.

In North Carolina it's a very successful program where the providers compete in a healthy, professional way to say who's doing better. It's organized regionally. Which group is doing better in terms of bringing kids in for immunizations, etc.

By offering that as an alternative, when the insurance industry came in and said, "We save money. We coordinate care. We have better quality. We were able to say . . . ." That's a lot of bunk, but, in any event, other states have found a better way.

Finally, after about 350 or 400 newspaper articles about all of the problems with these HMOs, that they're expensive, they take a lot for administrative costs and profits, the quality is bad, patients can't find a doctor, and HMO's are not accountable, the results came with the new governor.

Governor Malloy felt enough is enough. And that little program we've been advocating for, he's basically said that's what we're going to do.

In January of 2012, the second round of HMOs got the boot and we now are running fee-for-service, but with patient-centered medical homes. It's developing. Only one third of our clients are in it right now, but it's growing. That's the model that we are working with to do all of the things that the HMOs claimed they did, but somehow never quite managed to accomplish.

For anybody in the room who is a Medicaid advocate -- I don't know if there are any -- take a look at my guide because that's a way to learn. If you really want to look, it's not just the things we did in Connecticut; it's things that people in other states did; things that we thought about doing but never did; a bunch of ideas that you could look at to try to hold HMOs accountable in Pennsylvania.

In response to Ann who pointed out that things in the dark ages were much worse and are better now with the HMOs, I would say, yes, but maybe there's a third way, maybe there's a better way to do it still.

And, lastly, since it's come up, you know, Sam mentioned it, Ann mentioned it, ACOs, private care organizations, are a function of the Affordable Care Act.

I shouldn't say it; that's not entirely true. ACOs predated the Affordable Care Act, but the Affordable Care Act was the major

impetus for ACO's with a lot of funding for the various experiments.

In health care advocacy, there are always at least two different ways of casting things. Freedom sounds good, that sounds really great, and throwing people to their own devices doesn't sound so great; they are talking about the same thing.

Accountable Care Organizations are going to coordinate care; they're going to group together and they're going to look at the whole patient; they're going to look at waste and all of that. Yes, that's right, but how is it really going to happen?

Follow the money. The concept is that these entities will make more money if they can control the cost of care of their patients. The line is always given that by doing that, they will reduce inefficient care. Will they? Are they going to save money by eliminating redundant tests or are they going to save money - and, thus, get more money for themselves -- by restricting access to appropriate care!

Since Ann pointed out my disagreement with her and my colleague Gordon Bonnyman in Tennessee about pushing for capitated managed care and the need to take over the long-term care, here's why I disagree: You could say if a managed care entity is capitated and it gives only so much money for each patient, it will want to keep people out of nursing homes because nursing homes are more expensive, they'll be encouraged to work hard to get them out into the community where it's cheaper. I think that's probably true in part.

But here's the other problem. Once they're out in the community, what incentive does the insurance company, the for-profit entity, which reports to those shareholders over there, have? What incentive does that entity have to do anything but provide the absolute bare minimum services to that elderly man or woman in the community? They're going to give the absolute littlest they have to -- the littlest they can give just to avoid the person back being institutionalized where it might be more expensive. They have no incentive to give quality care. They only have the incentive to save money.

I think that the ACO concept and applying capitated managed care to frail, elderly, and disabled people is a really unfortunate development and I hope that people will be joining me in looking at alternative ways.

Thank you.

(Audience applause.)

**Jim Eiseman:** Thanks so much, Sheldon.

Our third and final speaker is Joan Alker, Executive Director of the Center for Children and Families at the Georgetown Health Policy Institute.

For the past decade, Joan has dedicated her research to health coverage for low-income children and families. She has authored numerous studies on Medicaid, Children's Health Insurance Program, or CHIP, and the Affordable Care Act.

Joan has a vast range of experience on topics such as Medicaid waivers, premium assistance and insurance coverage. And I had the pleasure of working with Joan in PILCOP's Florida children's Medicaid case in which she was retained as an expert for the plaintiffs whom we represented as co-counsel.

Joan is a graduate of Bryn Mawr College and holds a Master's degree from Oxford.

Please welcome her.

(Audience applause.)

**Joan Alker:** Thank you, Jim.

As you heard from that bio, I'm not a lawyer.

(Audience applause and laughter.)

**Joan Alker:** At first, when Jim asked me to be on this panel, I said, "Sure, I like Philly. I went to Bryn Mawr. I like taking the train, and it sounds like an interesting topic. Yes, that's great. I will come."

I couldn't quite figure out exactly what I was supposed to talk about, what I was going to contribute, but then I had this revelation that actually my entire career has been built around how confounding this public versus private issue is.

I don't think Jim even knows this, but I'm going to go rogue with what I told him I was going to say. I will say that I'm also feeling I am the perfect choice for you.

I did actually go to Oxford when Mrs. Thatcher was prime minister, and I wrote my thesis in college about the Coalminers' Strike in England. She basically busted the Coalminers' Union.



And despite having lived through all of that time in England, I was so enchanted with how they were committed to social welfare there. I was so enchanted that I actually worked in British politics.

When I came back to the U.S., my first job was at the National Coalition for the Homeless for five years. I worked with homeless people and on homeless housing issues, and it was very different from being at Oxford and doing political philosophy.

But it really struck me when I came home that, despite the fact that Mrs. Thatcher was running rampant in England, our public discourse here is so different from Europe's. I'm sure that many people have thought about this: it's our rugged individualism or whatever it is, but our public discourse is just very different. And there isn't that fundamental commitment, I don't think, to viewing many essential goods, such as food, housing, and health care, as a right, and it's very difficult.

I was born in Connecticut, and grew up in Massachusetts. For whatever reason, I have found it attractive to work in states that are completely unlike that.

I've worked a lot in Florida, but I'm going to talk to you today about Arkansas. For whatever reason, I am attracted to diving into those battles where this public/private issue is very, very challenging. It's confounding, and it's frustrating, but it's so important.

Our last speaker did a fabulous job teeing up a lot of what I wanted to say. It's not so much due to the public versus private in health care. And Ann talked about this, too. Our health system is essentially a private system, so we're using public dollars in most cases to buy private health care. It depends how we're going to get it.

We talked some about the incentive structure when you move to a capitated structure, but the public discourse around public versus private is really messed up.

A lot of times working in public policy is in a fact-free environment. We find that a lot when we're talking about all kinds of issues, and that is certainly true in health care and certainly right now.

And I think you would all agree that health reform is the most politicized issue. It has become a proxy battle about the

role of government in our society and whether we should help poor people.

The public versus private rhetoric is just vastly oversimplified by both the right and the left in the health care debate, and it's a lot more complicated than that.

I'm going to talk for a few minutes now about the issue that I think is absolutely critical for you all here in Pennsylvania. It's actually a perfect example of what I'm going to talk about -- that is whether this state is going to adopt the Medicaid expansion.

A friend of mine, Joe Weill, who leads the Food Research and Action Center (FRAC), an anti-hunger group -- he's the only one in the country who predicted this. He said, "If I were John Roberts, I would not strike down the individual mandate," -- a Republican idea that was Bob Dole's plan to counteract Bill Clinton's plan in the nineties when I first started working in health care -- "what I would do is strike down the Medicaid part of the statute because that's the part that is for poor people and that is the part that builds on what is, in my view, the most important entitlement that low-income people have."

Indeed, the framework of making it optional has happened, and today we are in a fierce debate in many parts of the country about whether or not to go ahead with Medicaid expansion. This is of vital importance.

When the ACA was being crafted, the thing that really got me going about it was the Medicaid expansion. These were the homeless people that I've worked with. The childless adults, let's face it, are the lowest on the totem pole, of our society; they have the least political support. Hundreds of billions of dollars are going to those people who are the least popular in our political system. I was just over the moon about the Medicaid expansion. But along comes John Roberts and now it's optional.

So fast forward to where we are today. We have about half the states accepting the expansion. Unfortunately, in some of the states where a lot of the uninsured people live, like, Florida and Texas, just to name a couple, are not moving forward yet. We came real close in Florida. We worked a lot on that, and I personally worked a lot in Florida.

And here in Pennsylvania, this is an enormously consequential decision. This decision affects whether over 500,000 people get health coverage. How often is it that our elected officials are faced with such a consequential choice?

We've been talking today a lot so far about the delivery system of how Medicaid delivers care, but I want to talk a minute about the public/private issue and the concept of whether they even get into the Medicaid system.

So I've been working a lot in the State of Arkansas recently. Over my career, I've looked at a lot of programs called Premium Assistance Programs for Medicaid. They're very small, but they use public dollars to buy private coverage. I was really fascinated by this because, again, when I first came to it, I asked, "Why would a state do this?"

In the contexts I've worked in before, it's mostly been about buying somebody's Wal-Mart plan for them or, buying their employer-sponsored coverage. And then I thought, "That's more expensive." The cost-sharing rules aren't as good, and the benefits aren't as good, so why would we spend public dollars on something that's more expensive? And it's not like everybody loves our private health insurance system. A lot of people always complain about their insurance companies.

Why does this happen? There's a lot of administrative costs and it doesn't work very well, but it continues to happen. In some parts of the country, the rhetoric around private being better was leading them more and more down this path.

In the Medicaid expansion choice, the State of Arkansas decided to move forward using something called the private option. What does that mean?

What the State of Arkansas wants to do is really obscure and it's a little sketchy, but it's out of the bag. It's been happening in Medicaid for a while through an obscure statutory provision, to use the Medicaid dollars in the expansion to buy coverage on the exchange. I don't know if states set their own or the government set it up, but now those states have an exchange and it is private insurance companies providing that coverage.

In Arkansas, they happen to be in a fee-for-service system. Now, a lot of states, are all in managed care, at least for their children and families population. The parents would be coming into managed care through the public expansion in some places, but Arkansas actually isn't all managed care.

Arkansas had a Democratic governor who had to deal with a legislature that's Republican, and had had a little Tea Party surge in the legislature. They were only going to go forward with the private option.

First of all, again, thinking about our terms, the Arkansas plan is using public dollars to buy coverage on the publicly regulated marketplace, the exchange, from private insurers.

Now, in some places, most of the care in Medicaid already is being delivered by private insurers, and it's being called the private option.

Your governor, who's been pretty ambiguous about whether he will go forward said yesterday if he does go forward, he wants to do what Arkansas is doing.

That's one of the reasons I'm talking to you about this. I've blogged quite a bit on this, and we just did very extensive comments on the waiver that the State of Arkansas has submitted to the federal government.

I'm going to sum that up for you, my feelings about Arkansas, by saying I just blogged about this recently. My blog was entitled "One Thumb Up, the Other Hand is Holding my Nose".

(Audience laughter.)

**Joan Alker:** That's my short summary, but what is so fascinating about hearing the discussions today is that the key issues that we're identifying in the Arkansas waiver are exactly the issues that have been discussed here today; that is, how do you ensure the critical protections that Medicaid beneficiaries have?

Medicaid is a very good law on paper. It's not always being enacted and enforced, but there are wonderful things in the Medicaid statute. Like the EPSDT that we talked about. That is the gold standard for kids according to the Academy of Pediatrics. It's not always happening. But, for example, Arkansas ultimately wants to put all of their children into the exchange because they say Medicaid is so bad, it's terrible, and the private sector is more efficient. There are all kinds of logical inconsistencies in their argument, which I won't get into because I don't have enough time.

But the critical point is that a lot of the fundamental issues that are arising relate to how those rights will be enforced in this context. Basically the State is saying, "We are just going to sign an MOU (Memorandum of Understanding) with the private insurance that all of the Medicaid beneficiaries will go on the

exchange, and it looks like on paper they don't even want to have contracts with those plans." How are people going to enforce their rights? This is a huge question.

They already want to put the nineteen and twenty-year-olds in EPSDT, and they say, "If they need EPSDT, they can get out and get it."

That's not a very satisfactory answer. How will they know that they have EPSDT benefits? Who's ever heard of an EPSDT benefit when you're nineteen? How will they know what that benefit covers? How will they know how to get it?

And the reality is, EPSDT is not something that, if you need it, you can get it. That's their benefits package, and they have a right to that benefits package.

I can go on, but I raise this for you as the subject of further discussion as your state begins on this debate. You could hear from "One Thumb Up, the Other Holding My Nose," that it is critical that states move forward; it's a critical civil rights issue.

If you look at the numbers in those states where they are saying no to Medicaid, this is a huge issue from a civil rights perspective. I think getting states to pick this up is the most important question that's come before this panel today.

I will move on now to talk a little more specifically about managed-care plans in the program. Ann covered some of this.

From the kind of national perspective, such as where I sit, we went through a period where lots of children and families went into capitated managed care in the 1990s. In 1997, Congress passed the Balanced Budget Act that states don't have to get a waiver for low-income kids. Some of the biggest groups in the program can require folks to participate in managed care.

Now, today, we're really seeing another surge by the managed-care companies to try to capture more market share, and there's a couple of reasons for that: one is the Medicaid expansion. They see those big federal dollars going in there and they'd like to get them. And we've got to keep them honest. In a place like Florida, managed care, along with the hospitals, are our best allies for getting Medicaid expansion through.

I think this is very troubling: some states really are moving to capitate the long-term care piece, moving more disabled populations into managed care. That makes me very, very worried for the obvious reasons: it's a very vulnerable population.

We have a lot of challenges ahead of us and we face really hard questions because I don't believe that most states are going to be able to go down the path that Sheldon outlined. I love Sheldon's path. I can tell you I spent a lot of time in Florida advocating for North Carolina. We tried to push that piece that's in the model and it didn't work; it went nowhere with the legislature.

Having said that, in Florida, Governor Bush, working with Newt Gingrich, came up with this Medicaid reform that was going to be "great," it was going to inject all kinds of private market elements into Medicaid. This is where I always have to come in and get involved because I find it so intensely annoying. Is the private market working so well in our health care system?!

But in any event, they were injecting all kinds of "wonderful" private market principles, such as consumer choice. The HMOs are going to get flexibility to decide which benefits you could get. So you could pick the benefits package that would work best for you, which, again, I find very confounding because you can go to *Consumer Reports* and you can see which car is going to be best and you can pick the car. Health care is really not like buying a car. You don't actually have perfect knowledge as a consumer of what your health care needs are going to be, do you? And when you get hit by the bus, you're not really going to be looking at your benefits package and figuring out, "I wish I had picked AmeriGroup because they have more physical therapy that I'm going to need."

(Audience laughter.)

**Joan Alker:** There are all kinds of really interesting things to engage in in this discourse. I'd really like to try to engage in these kinds of discourses in a subtle way because you have to be a little more subtle in the South.

Over time, we did a big study monitoring the Medicaid managed-care pilots and we found a lot of problems with it. Once President Obama was elected, the State was coming in to renew that authority. Some people in Florida were surprised that the Obama Administration approved a waiver last year to go big into managed care. You can already do a lot of managed care in Medicaid without a waiver.



The State submitted what they wanted to do and they didn't even need federal approval. I don't even know why they asked for it in some cases, but they did need approval for long-term care, the dual-eligibles, and some other populations.

In response to all of the concerns that the providers, consumers and others had raised in the Florida context, the Administration put in the waiver agreement -- the toughest set of terms and conditions that I've ever seen in a waiver agreement. For example, they have a medical-loss ratio, which Sheldon talked about. There is no medical-loss ratio that applies to Medicaid programs in the country at large with the ACA, but in the Florida agreement, there's an eighty-five percent medical-loss ratio. That's the first time I've ever seen the federal government including such a ratio in a state waiver agreement.

That's just one example I'll give you. There's a lot in there. We're writing a paper about it; it should be out in about a month. But the question is, will those protections be enforced? Will people know about them? What is the transparency involved? That's why we're writing the paper, because it's great that they put all of this good stuff in there, but if nobody knows about it, it's not going to help that much, and that's where all of you come in.

I think it's critically important, and I really feel we're kind of at a key moment in time. Our first objective has got to be getting the folks in the Medicaid program. That's just absolutely critical. It saves lives, period, end of story.

But Florida is a great case study to look at all of these issues and to see that it's going to be so critically important for the legal services community there, which has been decimated really. Their funding is very, very troubling right now. The consumer advocates are stretched very, very far in implementing the ACA. They've got so many battles; everything's a fight there. How are these protections going to be enforced?

Even in Florida, to some extent the State is very close to managed-care companies, but there actually is some concern, on the part of the state government about the managed-care companies because the State had a lot of problems with them dropping out of the market, all kinds of stuff that doesn't look good. The State's capacity to oversee is very, very low right now. They've had a lot of their good people retire, they're underfunded, and they don't have enough personnel. The

conditions are not good for making sure that these consumer protections will be monitored and enforced. But I think that's a challenge for all of us. In Medicaid, we really have a very serious challenge ahead of us as states move to managed care, and I think they will continue to move. We can fight it and try to stop it, but many of them will still move into capitated managed care to those very vulnerable populations.

The consumer community, the private philanthropic community, and the provider community to some extent are going to have to work together to make sure that we do have some good consumer protections and that they get enforced.

At the deeper or the bigger level, the challenges with the Medicaid expansion are moving forward in a more difficult environment. That's where we are now; we're in phase two. We've got about half the country. The next half is going to be a lot harder. These questions on the private versus public and how to retain the essential features of the Medicaid program that we like are going to be the challenge going forward.

Thank you.

(Audience applause.)

**Jim Eiseman:** Questions? Steve?

**Audience Member:** I agree with you about the one thumb up and the other holding the nose. I wouldn't have said that forty-eight years ago when Medicaid was passed, which, by the way, is quite different than it is now. It is the one ray of hope I have on what we're fighting for right now and that we will be able to change it. But do you hold your nose more for the insurance companies running it or the MCO running it?

**Joan Alker:** You mean insurers as opposed to capitated insurers?

**Audience Member:** Yes.

**Joan Alker:** I think a lot of them are going to be capitated in Arkansas, so I don't think you're going to see a lot of insurers in Medicaid who aren't capitated. It's strange because at the time, the rest of the health care system in the nineties was

actually moving away from capitation, in the private insurance market, but Medicaid was really moving in the opposite direction. I'm going to indulge in a couple of things that have driven me crazy about the application and the rhetoric.

The rhetoric is all about the claim that Medicaid's terrible and it's so horrible, we would never want to grow that program, and that's why we're doing this private thing that is going to be so wonderful. Then they say, "This is so much better. You'll get better health care." This is a good thing, they're keeping, and they have to keep, people out who are medically frail, so the medically frail aren't going to this new system.

If the private is so wonderful and that's where you get good health care, why don't you put people who actually need health care in the private? Then you're going to say that the private is more efficient and cheaper. Sure it is, but that's because you kept the expensive people out.

There are all kinds of things like that, which are very, very galling about the rhetoric, and then there's a lot of practical concerns, too, but you could just reduce it right down to: Medicaid bad, private good.

**Jim Eiseman:** Go ahead.

**Audience Member:** I'm struck listening to the panel. I don't really understand health care policy, but I'm going to take a shot in the area I think I know a little bit more about, which is politics.

Watching what's going on around the country, you've got a lot of governors who haven't bought into the Medicaid expansion. You've got the Gallup poll that came out today, which said that public support for the Affordable Care Act has actually dropped a lot in the last month. You've got a political environment that never gets to any of the questions the three of you have talked about. Public or private is easy. Private always does everything better. The government groups socialize and it must be horrible, all of that.

It's reassuring on the one hand to hear about lawsuits that are successful in particular places, but at a more macro level, the issues you're talking about aren't going to be settled piece by piece unless you get some changes in the political environment.

My question to the three of you is: how come we're doing so badly in the political environment?

**Jim Eiseman:** Ann, would you like to answer that first?

**Ann Torregrossa:** Messaging, messaging, messaging, I think they've out-messed us.

Just to go back to Joan's point, in Pennsylvania we have mandatory Medicaid managed care across the Commonwealth. We have private insurance companies that are providing this care, but our governor does not want to put Medicaid expansion into these private companies; he wants to put it into companies that are on the exchange. Why? Because in the Medicaid managed-care plans, all of the things we like about Medicaid are baked into the contracts. What the Governor is trying to do is have a different Medical Necessity definition. He is trying to take all of the things that we like about Medicaid, that we fought so hard to get into those contracts, and put them into a small business framework. That's what we've really got to be careful about.

Joan, you talked about the discourse and we've talked about similar ideas here. It was the fiftieth anniversary of Martin Luther King and that was nice, but we didn't translate some of those things that were happening to what's happening today.

Medicaid expansion, as Joan has said, is the biggest civil rights issue in our country, and we're not framing it that way. We're not talking about it that way. We're not talking about the need for health care as a right. Those other people are framing the issues, spinning the issue and getting vulnerable people to dwell on their fear instead of dwell on the possibilities of togetherness, rights and opportunities for us all.

**Jim Eiseman:** Sheldon.

**Sheldon Toubman:** The big question of attacking Obamacare is really attacking Obama. They are calling it a government take-over, and it just is not one. We're losing that battle. I'm not sure I have an answer, but there's something useful from the small perspective of what we did in Connecticut. Although we're obviously a blue state, we're also the insurance

capital of the country. Though some may debate that other states are, mostly we're the insurance capital.

Aetna is headquartered in Hartford. Several other insurance companies either are headquartered there or are essentially headquartered there and sitting there, and they are incredibly powerful. Given that they're incredibly powerful, you'd think they would win any fight about privatization, privatizing through insurance companies is better than government money, which is, of course, wrong. But you think they'd win that. And the reason I emphasized "the media" in my talk is that accountability is something that nobody disagrees with or at least they say they don't. Everybody says they agree on accountability. Accountability, transparency, responsibility -- being in the loop, everybody, taxpayers too, says they agree with that. Of course they don't, but officially, in the public, they say they agree with that.

What we did is to emphasize that these for-profit private entities won't be responsible to the taxpayers. You could be a small government person and really relate to that concept. That's what we tried to do, and we successfully did, such that we were able, beat back the rhetoric from the wealth of the insurance industry. Now, if you're in a deep red state, then you've got deeper problems than the politics.

But I would cite the example of North Carolina, which, as I said, I think is the gold standard for the "fee-for-service, primary care case management, truly care coordinated system" that doesn't have private companies taking money off the top on capitated entities. They have a very strong Tea Party legislature right now and they've got a Tea Party governor who's come in who wants to destroy the very program that I'm saying is fantastic, using exactly the rhetoric that Joan just talked about, exactly that: private always does better; it's just the way it is. But even there, they've been able to push back.

Maybe it's a fact-free environment, but one of the things that they have on their side is doctors who do talk about facts and talk about the fact that the system is running pretty well without insurance companies. I hope I answered your question.

**Jim Eiseman:** Joan.

**Joan Alker:** Just a couple of things. One is, it strikes me -- I always find this kind of ironic, but to the extent your governor wants to put the newly eligible up on the Exchange rather than Medicaid, he wants to put them in Obamacare rather than your own state Medicaid program. That program is the one you all have worked many years to make what it is. That's maybe the message, but I don't know.

I try a little bit to look at the glass half full, though I do think we've got real problems on this private versus public issue. I always use Sheldon's message about holding managed-care companies accountable and taxpayers losing control and all of that. It's the best we've got. It doesn't always work, but I think it's clearly the best we've got.

But those of us in the progressive community are always in this struggle between the short term and the long term. We have to do both. The posters always say, "You can't change what people think." You have to be able to change their mind; you have to work with their preexisting beliefs.

We did actual message testing around the Medicaid expansion and what we found is, surprisingly enough, actually that the best messaging was just the very obvious message. It is these hardworking families that need the security of getting health care. Just a very basic message. But the message that resonated probably the best after that is we're always spending money on "these people" that are going to the emergency room. I think it's a little bit more brass tacks to a decision-maker audience. It has worked well. Actually I did work on this here in Philly and it worked great here. I should have brought this up earlier.

A smarter, more efficient use of taxpayer dollars would be to give them for preventative and primary care up front. It's better for "these people," it's going to be better for the health care system, and it's going to be a more efficient use of our taxpayer dollars. That really made sense to people. They didn't necessarily come to that on their own, but when you say that to them and talk about it that way, it resonates. Everybody wants more preventative care; everyone says preventative care is like apple pie; everybody agrees that's good. It's not like money isn't being spent on "these people"; it's just being spent in the worst possible setting, the emergency room.



We do have to be smarter and more disciplined about our messaging. On the other hand, to some extent, we might lose because our messaging is bad. But, right now I actually don't think so. I think the Republican Party is not really in good shape and it's got a lot of problems right now.

The silver lining here is, there has been an intense reaction to having a black man as president. I don't even know how else to say it. I work a lot in the South. It's a very intense reaction and it has provoked a small minority, who basically fundamentally is racist, to get extremely politically active. Obamacare is, like, the face of it, and so everything has been thrown at it; "How many more things can we think of to try to stop it," but it's going to keep happening. On the other hand, that's not really a good long-term political strategy when you look at the change in the demographics of our country and who will benefit from the ACA.

We have to keep our helmets on, weather the storm right now and keep our eye on the prize. To me right now, that prize is Medicaid expansion. I'd really encourage all of you to get out there and work on it.

**Jim Eiseman:** Ann.

**Ann Torregrossa:** One other thing: trying to put people in the Medicaid Expansion on the Exchange or marketplace divides and conquers. When we we're trying to get Medicaid expansion, we had pediatricians, we had the hospitals, and they're all pushing for the Medicaid expansion. But when you now say, "Okay, commercial coverage," guess what? Commercial coverage means better payment. All of the sudden we're losing the support of our hospitals and pediatricians, our doctors, who, understandably want higher reimbursement. It's thus a divide-and-conquer strategy along with doing away with important Medicaid protections.

**Jim Eiseman:** Donald.

**Audience Member:** A quick question, one that I find shocking, the Affordable Care Act provides a restriction on this loss ratio, about eighty percent. How does Medicaid get out of that, what kind of politics led to that?

**Jim Eiseman:** Who wants to tackle that?

**Joan Alker:** I'm not even sure that people thought about it. I remember when the bill passed a bunch of us around town were thinking, does it apply or not. We were trying to figure it out. One of the readings that I provided for the symposium materials is this Kaiser

Fifty-State Survey. Medicaid in Florida now is going to have one, and some states have enacted some form in state law; actually quite a few states do have some kind of medical loss ratio. Sometimes it's not for all of the benefits or not for all of the program and it offers the medical loss ratio in different ways. Between ten to twenty states do have some kind of medical loss ratio. There are many things that we'd all like to fix about the Affordable Care Act, but it's not going to happen any time soon for obvious reasons.

But there are state opportunities. This is the beauty of Medicaid. I used to lobby in Washington, and I'm so happy I don't do it anymore because it's not successful and nothing really happens. That's why I now work more in states. Change happens in the states; there is where we have to make stuff happen.

**Jim Eiseman:** Any other panelists want to respond?

**Joan Alker:** For good or bad, stuff happens.

**Sheldon Toubman:** I think it may have been that it wasn't thought about because the insurance industry was obviously focusing on the exchanges, which were entirely new and important. By the way, the loss ratio is eighty or eighty-five percent for the large group plans, which is the same ratio Joan was talking about for Florida.

A quick advertisement for a lot of states like ours: the medical loss ratio where our Connecticut government is running the program is about ninety-six percent. Putting aside all of the arguments and all of the issues we've talked about, that's very high. Almost all the money that the taxpayers are coughing up is actually going to health care. Maybe that's a pretty good deal.

Medicare is, maybe ninety-seven percent; it's really high. That's really very significant.

On the other hand, we're not really talking about Medicare here; but there's privatization of Medicare as well.

Famously, the previous president defended the fact that the capitated entities that were in the private part of Medicare were costing the government more. In other words, the same services cost more when delivered by the insurance companies whose administrative costs are capped and profits come off the top. It costs more. The president at the time, the one before we have now, famously said, "How can we justify this?" And the answer was because private entities do it more efficiently.

**Jim Eiseman:** Ann.

**Ann Torregrossa:** Yes. I think the concern in the past with the law has been that states are not adequately funding the managed-care plans. For that reason the plans will not provide adequate services; so you have the actuarially sound criteria. They were thinking differently than they were with individual coverage or small business coverage. They were thinking the challenge was to make sure enough money was there, not that they were making too much money.

**Joan Alker:** The medical loss ratio, for example in Florida, is making me a little worried because the managed-care companies are fine with it. It actually was included in the state legislation and they didn't really fight it. They're not crazy about it, but they're actually in some ways fine with it, which makes me worried.

It's good to have the medical loss ratio, but I don't think it solves all of our problems. It comes down to what I was talking about earlier: it's on paper, but who's going to keep an eye on the definition? What counts as your medical expenses? How the companies are complying with it is supposed to be transparent. But, just keeping an eye on that loss ratio and making sure it's actually being complied with, is a big job.

Florida is such a fascinating state. It's a purple state. It's not a totally red state. It's a bridge state in a lot of ways. They have had some really wonderful legal services folks there. They've had some strengthening of consumer advocacy, but as a

statewide matter, the consumer advocates get killed in the legislature. The legislators won't really even talk to them. I mean, it's just dismal how much power the HMOs and, to some extent, the providers have, but it's really the HMOs. But anyway, I'll digress.

**Jim Eiseman:** Rob.

**Audience Member:** I work with a group in New York, Nazari National Economic and Social Rights Initiative. It works with the Vermont Workers Center to realize universal health care in Vermont. I know that this is different than Medicaid, but I'm asking this question based on what I heard from Joan and Ann.

Ann mentioned the phrase civil rights and Joan talked about working in the international community. I wanted to know in the messaging if using human rights language would help move this issue. I think it works in Europe. It works outside of the U.S. If we start to incorporate this language, do you think it would move this issue more in the direction that we want to see it go?

**Ann Torregrossa:** Good point.

**Joan Alker:** Yes. My husband is actually a human rights advocate.

The second part of what I meant to say, is that people believe we have to live in the world of the now. That's one of the hardest things about emergency care and using that to press the Medicaid expansion. We all have a responsibility at the same time to do the longer-term part, to change the underlying political discourse.

That's why in my Arkansas example, we have lots of practical concerns and suggestions about the waiver, but I also felt that I had to blog a little bit about the things that are just wrong about what they're saying. Medicaid is more efficient than private insurance; to keep speaking some of those truths is important. At the same time, I try to be very strategic and to spend most of my time actually trying to fix it because it's moving forward. On the other hand, we all need to reserve a certain amount of space

and our discourse to keep our eyes on the big picture. Thank you for raising that.

**Jim Eiseman:** Go ahead.

**Ann Torregrossa:** Joan, I'd direct this to you. We had a call yesterday and we think the Governor is going to announce on Monday that he's going to do an Arkansas/Iowa-type plan. What should our response be? Should we be going "ick" or can you give us some political advice? We don't have any of the details. It could be a total gut of all the things we like about Medicaid.

**Joan Alker:** Right.

**Ann Torregrossa:** On the other hand, he's taking that first step. He may be proposing something to CMS [Centers for Medicare & Medicaid Services, the federal agency responsible for acting on waiver requests] that he knows they will not agree to. He has said he wants a work search requirement, which they've made quite clear is not part of the Affordable Care Act, nor do they have the legal authority to grant.

What advice would you give us on Monday and then on Tuesday, Wednesday, and Thursday, when we get the details? How do we talk about this as human rights, hopefully how to end up not having to hold our noses?

(Audience laughter.)

**Joan Alker:** Yes. I'd say a couple of things and then we should have a call next week when we see what he does. First of all, clearly you want to say this is great that he wants to move forward. Let's just talk about the way he wants to move forward.

I've just been reading Iowa's plan; it's very complicated. There are parts of Iowa that I really don't like, for example its wellness component, but the private option part is actually better in Iowa than Arkansas. In Iowa they're increasing eligibility for the Exchange from 100% up to 138% of the poverty line. In Arkansas, they're starting at zero; that is terrible.

They argue the private option is better because there will be less cheating. If you have somebody who is 120% of poverty and

her income changes over the year to 140%, they still get a tax credit for the Exchange even though her income is higher than the limit for a tax credit. You can just stay in the same plan; and the continuity of providers is good. We'd all agree that in theory continuity is a nice thing, but that makes far more sense to me if you're looking at the 100% to 138% group. I don't think it makes sense to put folks with incomes at 20% of poverty into the Exchange.

Homeless people and similar populations have been getting care from community health centers. If they then have to find providers, they will not be able to see the same medical providers. Providers from insurers on the Exchange will differ from the community health centers, and the insurance providers won't have experience with that population.

That would be my short answer. It's a lot more tolerable to me. By using Iowa, the questioner is focused on the move from 100% to 138%.

I'm going to write a blog about this soon. I keep reading these plans of Republican governors. My blog will be called "From Simplicity to Complexity". A state can just expand the Medicaid program. Compare this to setting up the Exchange and doing everything else needed to do this. It involves providing a lot of people with insurance, and a lot of questions on how to do it. And a functioning Medicaid program already exists. All of these different ways that these states are thinking about it will cause enormous administrative complexity.

I worked on it; they're going to have four different systems, with all of these complicated exceptions. It's crazy. It is going to be so administratively complex. That might be another way to think about it. From an administrative perspective, it's just going to be extraordinarily complex and ironically, it's going to increase government red tape.

**Jim Eiseman:** You have about forty-five seconds.

**Sheldon Toubman:** Those of you who have tomatoes; hold on to them because I'm going to say something that will make a lot of you angry.

There is a perspective that you don't want to destroy the Medicaid program, that an expansion is so incredibly important



to the point where these variations from waivers effectively destroy the Medicaid program.

In 1965 not every state signed up for Medicaid; Medicaid has always been an optional program. When it was rolled out, it was “socialized medicine”; it was “communism.” It was a long time ago, I don’t remember it, but I read about it. Yet after it was accepted as the law, all of the states did sign up, even at the low reimbursement rates then used. Contrast that with the 100% the expansion involved, and after three years it goes down. The lowest point it will be is ninety percent!

**Audience Member:** Yes.

**Sheldon Toubman:** Every state will still be 90%. Even at the much lower reimbursement rates, every state will be signed up at some point.

Why I said, “Hold on to your tomatoes,” is that with the Arkansas model we will be completely privatizing health insurance for the poor on the Exchange. The insurance companies will not even have contracts with the state government. As it is, we talked about the importance of the managed care contract; it sounds really good. Our Connecticut managed-care contracts were the gold standard. I’ll share the reality with anybody who wants to hear it. They’re fantastic contracts on paper, but almost never are they enforced.

Under the Arkansas model, there isn’t even the pretense of the fantastic contract on paper. All of the basic consumer protections may not really happen. For example, copays that people can’t afford are supposed to be covered in Medicaid, but it may not happen. If it’s that bad, I’d just throw out the question whether it might be worth saying, “it’s terrible”. But maybe we should say we should wait a bit.

**Jim Eiseman:** Let’s give our panelists a big round of applause.

(Audience applause.)

**Jim Eiseman:** At this point we will adjourn to the table talk for about twenty-five minutes. We thank you very much for your attention.

(Table Talk Recess.)

**Sarah Morrissey:** My name is Sarah Morrissey. I'm currently a 2L at Penn Law. This past summer, I had the opportunity to intern at the Public Interest Law Center of Philadelphia.

I'm pleased to introduce to you our final panel of today's event. It will focus on one of the most important issues currently affecting our local community: public education.

During my time at the Law Center, I had the pleasure of working with Michael Churchill who has been with the Law Center since 1976.

(Audience applause.)

**Sarah Morrissey:** -- Who has been with the Law Center since 1976. He is renowned as an expert in public education funding and equity issues, and has led some of the most difficult public interest fights for a better public school system.

Please join me in welcoming Michael who will moderate today's panel on public education.

(Audience applause.)

### SESSION 3 - Education

**Michael Churchill:** Thanks for being here. I've been really looking forward to this panel.

I do want to tell you, you have some materials in your book. You have a wonderful piece by Michael Katz and Mike Rose. Michael Katz, who we're fortunate to have here with us, but it is from his recent publication and I think you will find it extraordinarily helpful.

Secondly, there are excerpts from a piece that Natalie Gomez-Velez has written. Do not be confused that the pages are not consecutive: we gave you extras. If you want the whole long piece, you can find it in the journal and there's a reference to it in there.

So with that said, we are not going to discuss, at least at the beginning of today, the consequences of bad-faith starvation of

school districts, which we are all confronting here in Philadelphia, and the use of privatization as a way of helping the starvation and the use of the starvation as a way of helping privatization, the process that is going on.

The only comment I want to make now is if you saw the pictures of the shuttered library at Central High School, the best high school in the state has its library shuttered.

**Audience Member:** And now that you've said that, we wouldn't be sitting here today.

**Michael Churchill:** Yes, yes. You would cry and you would understand that there is a process around of driving panels to despair to say why do I have to put up with this kind of situation and I'm going to leave. That's what we're confronting in a very systematic way.

But before we discuss that, there's another problem that we have to acknowledge. And the reason why there is even any support for that kind of a policy is because I think we have a crisis of faith going on in the public school system as to whether public education can any longer be the road towards equality that it was traditionally believed to be.

Now, that belief may be a partly idealized myth, just as we heard of a partially idealized myth this morning about the wonders of living in public housing and having your neighbor provide you with chicken soup.

We know that high schools were rare in agricultural areas in the nineteenth century. The percentage of students who went to college was really low until the GI Bill of Rights in the 1945 to the 1950 period changed our conception of who was college material. And African Americans were barely served even in the North as a story in today's paper reminds us of how long segregation lasted in Pennsylvania and tells us. But the desire, the felt need that education is to serve all, remains a dominant value in our culture.

And so the visible failure of urban education to provide that and to serve people in poverty, plus the opportunity for many people to make money, has provided a real crisis as to whether we should continue to invest in public schools that have had such failures or whether we should try alternatives.

So, you know, you can approach that issue in a lot of different ways, but I think one of the things that Sam Bagenstos told us this morning was we have to stop talking about ideology in some places and begin to look at the actuality: What are the problems? Can they be surmounted? Why is it that public education -- traditional public education -- is not serving and is it irreparably ruined? Or can it be fixed so that it's worthwhile investing in that, or must we turn to the alternatives?

So our first speaker is an expert on that. Chris Lehmann -- in fact, all of the biographies are in the book, I'm not going to go through it -- is a social entrepreneur. He is the principal of the Science Leadership Academy who chose to do creative work in the Philadelphia School District. And I've asked him to talk about how he did it, what were the barriers, why he didn't choose a charter group, what can be done to make sure others can do the same kinds of things that he did or is it -- are we stuck with just, you know, individual entrepreneurs who are geniuses who can do this? If that's true, we're in trouble no matter what system we have.

So if you look again at Michael Katz and Mike Rose's piece, you will see that what is really important in education reform is what goes on in the classroom, how you get the teachers in the schools to work together so that they can begin to help their students learn.

So one of the questions is, are the conditions that he wanted to create to have successful schools in Philadelphia that he's created, were those impeded by the Philadelphia School District rules? To the extent that they were, can those be changed or must they inevitably be there? What will it take to make our schools work for us and can they?

So with that, I hope with that small assignment, I turn you over to Chris.

(Audience applause.)

**Chris Lehmann:** Thank you. On behalf of the 500 families that are at Science Leadership Academy, you know, to quote our most friendly rival as the best school in Philadelphia, we like to think we are. Again, Central is a very friendly rival, but we would make the case that we're kind of different, too.

So let me tell you a little bit about SLA, Science Leadership Academy. We are just starting our eighth year. We opened in September of 2006. We are a fully inquiry-driven, project-based modern school. What does that mean? Everything that we do in our school is based off of our five core values: Inquiry, the questions being asked; Research, how do we find answers to those questions; Collaboration, how do we work together to make those answers deeper and richer and better; Presentation, how do we show what we know; Reflection, how do we step back and learn from what we've done.

Everything that we do, whether you are in English class, math class, art class, stems around those five core values. What that also means is the idea of how we manifest that learning is not when you give an answer based on somebody else's test, but rather, when you create something on your own. True project-based learning is the idea that kids in the community need to learn, kids are creating something that is theirs, they have ownership of it, they helped to design and create it, they're not just following a recipe that some teacher has given them.

And, finally, we also believe in the idea of modern tools, the idea that we put in the kids' hands the tools that they need to own their learning.

We've been a 1:1 laptop school for the last eight years and we are an Apple Distinguished School for the last several, and we really believe that if you want to transform learning, you have to have schools that really reflect the world that we live in.

You know, just out of curiosity, how many of you in either your work or personal life have to share a laptop or a computer with seven-to-ten other people, right?

(Audience laughter.)

**Chris Lehmann:** At the SLA school, that's the ratio we're talking about with the modern tools and access to the modern tools. If we want to create new schools, we've got to have them reflect the society we live in; we've got to make sure they have the tools in their hands.

By the way, some really exciting things have happened in educational technology and I'll just address that. If you look at Chromebook, which is a Google cloud computer, \$300 a computer, we are really now at a point where we can put tools

into kids' hands that actually are giving them financially kind of a push to the amount of money that we spend on all of the other supplies and books and what have you even in our urban schools. So we really are seeing the price point of educational technology being in a place where there's no longer a good excuse not to be doing this.

I never thought about starting a charter school, well, at least not (inaudible). Obviously, since then it's like, "What, were we crazy?" But we're very happy to be a district school, and there are some amazing models across this country for large district schools having amazing (inaudible) where they can start innovative programs that could then be sort of learning labs for the rest of the district.

If you look at the alternative superintendency in New York City, especially under

Steve Phillips back in the early 1990s, and if you look at Central Park East Secondary School, Beacon School, there's so many amazing innovative programs that were started as district schools.

The funniest thing is -- and I taught in New York City at one of those schools for almost a decade -- and for a very long time, the charter school movement could get no traction in New York because there was no need for it. There were so many innovative schools. And then finally, due to political pressures I think far more than any sort of educational concern, the charters finally established a foothold there, and once they got that foothold, it changed quite drastically, but for the longest time -- especially at the preschool level. But some of the most innovative schools in the country were in New York City.

You also look at the Boston PILOT (Payment In Lieu of Tax) program, and the Boston PILOT schools are another amazing example. Debbie Meier's school, Mission Hill, being one of the prime examples of the district and the unions collaborating to create initiatives for innovation. So there are incredible models for innovation at the district level.

And for me, for years this is what I did in New York City. I'm from Philadelphia; I went to college, you know, here, and I always kept my eye on Philadelphia wondering if they were ever going to consider small schools as a mode of innovation, similar, of course, to the mode of innovation that existed in the seventies when Philadelphia started some of the most innovative schools



probably in the entire country, the Parkway Schools, which is impressive education. They were national beacons of what was possible.

Under Paul Vallas, you know, while -- and I will just say that I found Paul to be one of the most fascinating schizophrenic human beings I've ever met.

(Audience laughter.)

**Chris Lehmann:** Because on the one hand, he created the conditions for SLA and absolutely paved the way for us to have the autonomy we needed to get started and to be really innovative and do amazing things at the same time.

He was a fan of -- and this is a direct quote of his -- a shrink-wrapped curriculum that was teacher-proof. And I used to say to him -- you know, and he and I used to argue a lot. This is one of the things I didn't like about Paul is he would argue with you. I would say to him -- he would say to me when are you going to leave and run one of my big high schools. And I would say to him never, I don't believe in big high schools, I'm a small schools person. And he said, well -- you know, and I pushed back and said I'm never going to do something in a school where I've got to tell the teachers this is the only curriculum you can teach, I said I would never do that. And he would say, "Chris, if I had more eighty-one principals like you, I wouldn't need a shrink-wrapped curriculum." And I said, "As long as you have a shrink-wrapped curriculum, you will never get eighty-one principals like me!" And, you know, that was a laughing point.

I'd like to think that even though he lives in a charter world, when he went to New Orleans we actually did give schools more timing and more freedom. They were charters, but even that -- at least I'd like to think that pedagogically I had some sort of influence there. I may be fooling myself. I'm okay with that.

Being in a bigger school as a district school: what are the pros of that? To me, the idea that the district can have an R&D wing and that we can be useful is really powerful, and that was the biggest reason why we wanted to do this. The idea wasn't just start one school. It was to start a school that could then influence other schools and that was a real goal of ours.

How successful have we been? It's been difficult. The single greatest challenge we've faced within the district has been the

churn. We've been open for eight years now. I'm on my seventh superintendent. I'm on -- I believe my last count -- my ninth -- if that's a reasonable term -- regional or assistant superintendent. I have literally, on average, more than one a year. It's always exciting to me when I have the same one in September. Even though I don't think they're the greatest boss in the world, I'm like, "At least it's a devil I know." That has been the massive challenge even before what is now one of our greatest challenges, which is the absolute financial disaster that we are in as a school district.

This idea that it's somehow naturally okay that urban school superintendents spend on average 2.6 years, I believe that's the last -- am I right about that? -- in their districts is ridiculous, and that churn has also trickled down.

So I've been on my -- I've been on the job almost -- I started, like, late September of 2005, so I'm coming up on my ninth anniversary as the principal of Science Leadership Academy.

As someone with nine years of building experience, I am now the second most senior principal -- high school principal -- in Philadelphia. There's literally one woman who's been in our school a decade, everybody else has moved on. I am an old hat -- and that's ridiculous.

You want to see amazing public schools? Have a sustainable leadership. Let people build a culture. We used to understand that it took seven years to change the culture and really inculcate that change in a school.

And when I look across the country and I see the cheating scandals and I see all of the things that are happening, we've created this "get rich quick." And I use that term deliberately because I do think it's related to the privatization piece of it. Because I think it's a mindset -- as much as it is anything else -- that someone can come in, spend two years getting the scores up, get ridiculous numbers that defy statistical logic, and then move on to the next thing. I think that's part of the same mindset we see in T of A, I think that's part of the same mind-set that we see --

**Michael Churchill:** Do you want to translate that?

**Chris Lehmann:** I'm sorry, Teachers of America.

I think that's part of the same mind-set we see in the corporate world where it's, "How good were your last quarter's numbers?"

And, by the way, there's some really amazing people out there in the corporate space who are questioning this kind of mind-set as well. Hopefully we're seeing the toxicity there changing as well, and I think we now are seeing it at the leadership level. Two years means nothing.

And more than that, the quickest way to do that, the quickest way to raise the test scores with true leaders is to teach for the test and drill the kids. The way to do it authentically takes a lot longer, it's less reliable, but it's a whole lot better.

So we face some massive changes. And one of the reasons that I think SLA has been successful is that we've managed to sort of hold the line. We have an amazing partner in the Franklin Institute. They have been able to swing a pretty heavy bat when they've needed to, when people have said we're going to make SLA do X, Y and Z because it's the latest and greatest new thing that we're doing. And we've been able to leverage our partners to protect them. And, also, I'm not quiet, so I'm willing to yell when necessary. And we've managed to hold the line on being what we are no matter what new things are going on.

But if you look at the challenges the schools face -- I'll just give you a simple example. For several years, the district had a way that they helped kids called CSAP. It stands for Comprehensive Student Assistance Program. It was pretty good. But whatever it was, it was the thing that we all developed, and the schools had developed great robust ways of doing that and all of the rest of it. And I say this to say that I happened to very much personally like Dr. Height, and I hope that he is successful and I hope that he stays, but he came in and he decided we're doing away with CSAP and we're going to move to something called Response to Intervention, RTI.

I'll be honest with you: I don't care what is actually better. I care that schools had seven years invested in building capacity at the CSAP process, and then had that ripped away from them and were told they've all got to do something new. That is one example. And if that was the only time that it ever happened, maybe we could all do that.

But the number of curricular, pedagogical, structural changes that schools have to face as a district, when the

leadership churn is this fast and every superintendent wants to make their mark that fast, is the single greatest impediment we have to building better schools. The labor discussion we have to have, the finance discussion we've got to have, but we also have to have a structural conversation about how districts actually function so that people can build sustainable lives, sustainable careers, sustainable schools and sustainable learning. And we used to know this.

There's an amazing book called *Schoolmaster of the Great City* -- I'm blanking on the author's name right now -- written in 1917 by a guy who was a principal and then later a district level administrator in the South Bronx. He wrote this literally -- he taught a mile away from what is now, you know, Geoffrey Canada Harlem Children's Zone. And what he said was that the goal of the system is not to make one school like another, but to make each unit wide awake, responsible to its people, the best of its kind.

The challenge with districts is we've gotten away from that. We've gotten away from: how does a district support each school to be the best version of itself? Instead, we have leaders who come in and say, "We're going to make everybody do this now, I want to make everybody do that." And when that churn happens this quickly and it's layered on top of the financial crisis, when it's layered on top of the labor crisis, when it's layered on top of the challenges we face in Philadelphia from an economic standpoint, those challenges become, while not insurmountable, profoundly difficult. They are surmountable. We've got to start with leadership; we've got to start with a system structure; we've got to start looking at how do we let schools within districts be smart about becoming the best versions of themselves.

**Michael Churchill:** Before moving on, I just want to direct a couple of questions, but first a comment.

One: your comment about churn reminds me of a most remarkable book, whose name I can't remember now, about the experiences of Union City, New Jersey, which just came out this spring, where in a much smaller, but nevertheless very urban school district right next to Hackensack and Jersey City, with a high population of poor and English language barriers, have gotten astonishing scores. They have had two superintendents

since they've instituted this program in 1989. The current superintendent was the high school principal who instituted it under the previous superintendent.

And the message of the book is that you can do it if you go slow and steady, if you work on the culture, and you don't need a whole lot of fancy other things. There is a lot of confirmation for what you've said, and there's another example.

One of the questions, though, that is widely opposed in connection with making schools work is that principals can't control the teaching force with the tools we have. We need more assessments, more ways of having principal control over the teaching force.

You're living, I assume, with the same work rules as the rest of the district. Have you gotten any waivers? Tell me what they are. If not, have you found any impediments to what you're doing or have you been able to create this culture within those work rules, and, if so, how?

**Chris Lehmann:** Sure. So, by the way, I looked it up because I couldn't remember the name of the book either. It's *Improbable Scholars: The Rebirth of a Great American School System and a Strategy for American Schools*. It's by David Kirp, who is amazing.

**Natalie Gomez-Velez:** Another generation.

**Chris Lehmann:** Yes. I did say I run a modern school, right? We have no exemptions that are unique to us, so we are a full site selection school, but any school in the district can be fully site selected. Sixty percent of the faculty votes for site selection, and we've never had anything but a unanimous vote for site selection; we vote for it every single year.

We have a slightly different schedule. Our schedule is not seven hours and four minutes a day. It is the average of seven hours and four minutes a day over the course of a week, and we vote for that as a school-based option within the union contract every year.

New York City does a better job of using SBOs, school-based options, than Philadelphia does. You can create a lot of flexibility with school-based options where you are building a community around that. And what exemptions to the contracts

do we have? We have the exemptions to the contract that the teachers vote for. That's empowerment, that's democratic education, but that's also leadership.

And I will tell you that one of the reasons why we have 100% site selection – you know, 100% vote on the site selection every year is that our site selection process is far stricter as far as how we decide who comes to work with us than what the district's site selection policy is.

The district's site selection policy is that the hiring committee, which is made up of the principal, the teachers and parents, can give three candidates to the principal and the principal can choose from those three. We do a full consensus, so we don't hire anybody until everybody around the table says, "Yup, that's the person, that's the one we want," and we will go around on it.

I mean, everybody has had that experience of having to give up a candidate that they wanted over somebody else, but you have to trust that process. It's harder. I don't necessarily recommend it as a district-wide policy. There is not the relation of trust in the district for the schools to have that, but I do think it is time for full site selection in schools if we did it smart.

And here is one example of what doing it smart could look like: I would like to see a full site selection where the principal had a third of the votes, the teachers had a third of the votes and the parents of the high-school-level students had a third of the votes. That would create a system where you could get true empowerment on every stakeholder in the building on who the teachers were that were teaching in there.

And if I, as a principal with a thirty-three percent block, can't get the candidates that I think should be there, I'm doing something wrong and that should tell me something. That could be a way towards a sane policy for employment in this district that did get rid of the seniority list. Because I don't think just because you've worked twenty-five years in the district, you should be able to teach wherever you want. But that empowering of school communities, all of them, to choose powerfully the colleagues that they work with -- which I also think is something that New York City has as well – that that should be true for the principals as well. The idea that the School District of Philadelphia can overrule and override the community choice for a school leader is crazy.



Teachers, students, and parents should be the votes in picking who their next leaders are, not at the whim of somebody who decides they want to put someone there. Those are the kind of sane policies that actually encourage democratic institutions and encourage empowering teachers and parents to have a deeper say in their schools, and the union should get behind them.

**Michael Churchill:** We'll return to Chris and any questions you want, but the next speaker is Professor Gomez-Velez. You can read her biography in our book, but she is from New York and has had enormous experience at the governance levels with all of the issues that we have been talking about.

And one of the things that I think is important when we're talking about charters, by the way, is, you know, I think many of us feel that to the extent that charters are successful, they do it by skimming, by the self-selection process, by who they push out, but that's not always the case.

We have here in Philadelphia, for instance, some different charters that work with the same traditional schools where there does not seem to be churn, where they do seem to have had more success.

So one of the questions are, does the methodology of how the charters are governed, their accountability and transparency, make any kind of difference, does it make it easier to replicate and ensure success or not, and what are the values that they are supporting?

Because while some of the charters work with all students, we also know that the figures show a large number of them that have fallen prey to the skimming and churning process that Sam Bagenstos talked about this morning.

So with that in mind, we're going to turn to Professor Gomez-Velez.

(Audience applause.)

**Natalie Gomez-Velez:** Good afternoon. I'll try and move this a little closer because I know it's hard to hear.

So it's really interesting because I wasn't exactly sure in terms of, you know, what we were going to be talking about specifically with individualized schools. And I have to say, I was

encouraged to hear the discussion about effective pedagogical teaching within the public school system.

One of the things that I think that we're facing -- and there was some discussion about this -- is this rhetoric of private is better every time and public is terrible every time, which I think is oversimplifying it and it doesn't tend to be true.

And this question about churn and moving toward privatization, the fact that there are mixes of issues around privatization and innovation within public education, you know, need to be explored -- and I think can be explored -- looking at governance processes and thinking about the ways -- from the big picture system-wide, we should be thinking about what are the ways in which we really keep our eye on the ball in terms of the quality of education for all students and how we manage that in a world where there is "so much churn" -- to borrow that phrase -- going on with respect to education reform and education change.

So my presentation is going to pick up a little bit on several of the themes already discussed. It's going to relate to urban education reform in New York City, it's going to be noticing governance change and its relationship -- the relationship to policy change, accountability, and outsourcing and privatization of educational functions.

And as I think many of you know, New York City, as many places, has experienced a stunning array of changes in public education governance and policy over the last ten years, and these have emanated from the local, state and federal levels, and much of it has been facilitated by mayoral control.

And I have to say there was a lot of excitement at the time mayoral control came into play because there was a sense that the old system was too entrenched, unaccountable, etc. And this move to mayoral control was based on claimed failure, abject failure, of the public schools to prepare students adequately, and particularly students of color in low-income urban schools. And, again, the key buzzwords for the changes have been accountability, achievement, and equity. And so now, more than ten years in, we've got several questions that emerge, and most of those questions involve how are we doing on those points. But one major question also is what is the role of outsourcing or privatization under the various urban education policy changes following mayoral control in New York?

And so it seems that -- and this notion of rhetoric versus reality comes into play here -- that following a wave of structural and policy changes, it turns out that much of the reform has paved the way for increased privatization and to move increasingly to market model approaches to delivering public education, starting with, you know, contracting out for supplemental educational services under No Child Left Behind, leadership training for principals, to the move to increase the number of charter schools.

Many of the reforms in governance changes that we've seen in New York City have focused on contracting out to private entities to provide public school services. And I say that in New York City, it means something because we've traditionally been committed to the public notions of public education and to education equality, as well as to notions of innovation. So it's interesting to see the way that things have moved even in places like New York City and I think that's why it's a good example.

So let's look at New York City. First of all, I just want to mention the budget. There's a huge budget in New York. The school system educates approximately 1.1 million students across five boroughs and counties. According to the DOE (Department of Education), the public schools' operating budget, just the operating budget for 2013–14, is around 19.8 billion dollars. When you add in the capital budget, it takes it up around twenty-four billion dollars. So there's a way in which what we're talking about is of great public interest in this public institution, which I view as a public trust.

Right now, the operating budget goes through a discussion of the moneys being used for teachers, principals, textbooks, supplies, and it also discusses so-called non-Department of Education costs, including costs for contracts with non-Department of Education schools, special ed. programs that are offered. There was some discussion during a keynote today about that. The moneys go to nonpublic schools, parochial schools, yeshivas, and about a billion going to charter schools so far, and we're at the beginning of offering the charter school option in New York.

So let's look briefly at New York under mayoral control over the last ten years or so. Again, a number of changes starting with centralization, changing to decentralization, and ultimately moving in the direction of increased reliance on standardized

tests and a narrow test score-based accountability structure, combined with a push towards school choice and an increased use of outsourcing.

So the key components in mayoral control included the elimination of elected school boards for each of the City's thirty-two school districts, the replacement of the central Board of Education that had been appointed by multiple citywide elected officials with a board comprised of a majority of mayoral appointees.

I don't know if you remember back in the sixties when there had been a move toward a community control of schools. So this was like the opposite of taking that community control out of the communities, taking sort of the citywide control of education and centralizing it within the mayor and the chancellor, centralizing the school budget under the Department of Education rather than away from the thirty-two districts, and it started with adopting a uniform curriculum and centralized academic oversight and administrative functions. And, again, the primary rationale given was accountability.

So this initial centralization involved, again, restructuring the thirty-two-school-district system into ten regions. I don't know if you can see that, but you've got sort of larger numbers superimposed on smaller numbers. And those larger numbers were the regional structure that was superimposed over the thirty-two-district structure as it existed prior to mayoral control.

So initially this regional structure was designed to provide still somewhat locally based and contiguous academic oversight and administrative support for schools through regional superintendents and regional operations centers, but it really gave the mayor and chancellor the power over curricular, administrative, and budgeting decisions and removed local district superintendents and replaced them with regional supervisors. And some of that was in response to concerns about just what we're talking about, that there was political stuff going on and there were supervisors being able to control it. This kind of took it in the first instance over into one of the superimposed regional structure control by the mayor and then -- so that structure was taken back.

And at the same time, under mayoral control, the mayor and chancellor no longer reported to a Board of Education or to

elected school boards. Instead, the Board of Education -- we call it now the Panel for Educational Policy -- was reconfigured so that it was comprised of a majority of mayoral appointees. So thirteen members, eight of which are appointed by the mayor. You know what a majority is. Do the math. That's mayoral control.

However, the legislation indicated that the appointees included eight mayoral appointees and five appointees, one by each of the borough residents who were supposed to be parents of students currently enrolled in the public school system. And that was designed by the legislature to have the Panel for Educational Policy retain some advisory powers, some input, from the communities.

It was portrayed initially as an inclusive policy, but it soon became apparent -- and, actually, there was a need for full disclosure. I sat on the Panel for Educational Policy, I was the Bronx representative at the beginning, and we understood that we had a role. We were supposed to be kind of bringing to this panel, you know, the intricacies of our communities, this is what people were concerned about, and there was a lot of excitement and there was a belief.

That ended abruptly in 2004 on the eve of a vote on the high-stakes testing retention policy that, again, was based on the third grade promotion on a single standardized test. They were going to say if you're in the third grade and you didn't pass this test, you don't get promoted, period. There was a lot of concern that that was wrong. There is a lot of concern that it still is wrong.

What happened was basically the mayor on the eve of the vote removed three of the panel members to two male appointees and a Staten Island appointee who indicated they were going to vote against it and replaced them summarily with people who vote yes. And since then, the panel has been understood to serve as nothing more than a sounding board, maybe and a rubber stamp, unresponsive to significant concerns and protests over education policies and a whole range of issues.

And fourth -- and I'll stop talking about the restructuring after the next slide -- in 2007 -- so we started with this centralization and consolidation and then, just as the public began to figure out that regional system that we just saw, the mayor and chancellor changed course. The regions were

disbanded, their superintendents were re-purposed and school principals were given greater authority over school budgets, curriculum and hiring decisions. And there were many people that said that's a good thing, you know, that's a favorable thing.

Principals were given this power in exchange for greater accountability, but that accountability was based primarily -- pretty much exclusively -- on students' performance on high-stakes tests. So the schools would be issued report cards and if they didn't make the grade, those schools would be closed.

Talk about churn, one of the big issues in New York City has been the closing of schools, etc. And the decentralization led to the itemized structure that you see in this picture. So rather than having a district structure in neighborhood school districts, you had to have these networks where schools individually choose which networks to be associated with, they provided structural support of the schools' oversight, of the principals, and they participated in selecting them. And so the result is this broad decentralization of public school oversight. And this decentralization made the organization of schools more diffuse and less neighborhood-based in either the district or the regional structure.

All of these changes were taking place at the same time that we were seeing overlapping changes on the state and the federal levels, and it created a great deal of public turmoil.

So to look at it, it seemed as though people were real engaged and involved in what was happening in public education, but there was this sense that if you brought it to -- the only place to bring it to was the Panel for Educational policy, all of those rules were lined up already, you know, and they really weren't making a difference. There was an outcry that the changes were doing more harm than good and that there was unresponsiveness to these concerns.

At the same time, in some quarters, there continued to be support for the mayor's effort. Business communities, those who were favoring charter schools, and even some communities that were desperate for change and desperate for improved schools were saying, "We'll go with it, we'll keep trying this approach." So there was a lot of retention.

After the financial crisis of 2008 and the great recession that followed, budget cuts further complicated education policy



debates, and the issues around funding increased the influence of federal and private money.

And so then, you know, coming up to 2008, 2009, what do the results -- what do the outcomes look like? Well, initially -- and I excluded a whole bunch of slides because I had too many -- initially we were seeing, at least with the state tests, these dramatic improvements in state scores.

If you look at the NAEP test, the National Assessment of Educational Progress, you weren't seeing the same kinds of improvements, but there were dramatic improvements in New York State test scores.

But then in 2009 -- and, again, we saw a mixed record. We were seeing reports coming back in terms of performance between traditional public schools, small schools, and charter schools, again, some excellent-to-good and some bad-to-abysmal, but they were within each category so you couldn't make a uniform assessment across the board.

After 2009, in 2010, and in 2012, reports had come up showing these dramatic New York test score gains, the graduation rates were not moving over time in any dramatic way, and that, in fact, the test score gains were due to teaching for the test and watered-down state tests. Again, these are tests not for learning, just (inaudible).

Now, I think it's interesting to note that at the time that these high dramatic increases in test scores were being talked about, it was right before the mayoral election. It happened once in 2005 and it happened again in 2009, and of course each time the mayor was re-elected and elected again after term limits. I'm not going to get into that.

(Audience laughter.)

**Natalie Gomez-Velez:** So yet despite his lack of substantiated improvement in educational outcomes, the high-stakes testing model -- after that Monday night massacre when the votes were rigged, the third grade retention was incorporated for every grade, so you had to pass the test in order to proceed. But notwithstanding, you know, this lack of substantiated improvements, the high-stakes testing in school-choice-based market model reforms are continuing. And what's interesting is they're not only continuing, they're accelerating at

this point. And they're supported by several catalysts, including federal and private funding support.

So Race to the Top comes into play and starved state budgets enhance the influence of the federal government's race to the top. When you look at it, compared to the budget of the school system, it doesn't seem like that much money. But as an incentive, it's a significant chunk of change and it resulted in a lot of changes at the state level.

The focus is to race to the top in order to win a grant. High-stakes test scores were focused on -- to drive school policy and teacher evaluation, it also supports the school choice model that emphasizes the expansion of charter schools.

So in the drive to get this money, you started seeing an unprecedented wave of legislation. For example, New York passed legislation increasing the allowable number of charter schools from 200 to 460 and, also, it included some loopholes in the legislation around not-for-profits and allowing for-profit entities, where New York was, like, you want a charter school, it must be nonprofit.

Now, it's a little more slippery and blurry than that and it implemented a teacher evaluation system, which was really very hard for all, and that was based in part on test scores despite significant opposition to that.

Again, another remarkably rapid development, in 2010 and 2011, the vast majority of states adopted the state common core standards, and people who were paying attention to this were, like, what, it just happened. And the adoption of the standard testing characterized it as a state-based effort. However, the emphasis on the need to improve standards for purposes of the Race to the Top grants and the response to the embarrassing revelations about watered-down state tests, combined with an organized and well-founded push for standardization, competition, etc., are converging to pave the way for a greater privatization under the model of school choice.

And so it's important to note, I think, that many of the school choice and market-based efforts are supported heavily by private-venture philanthropists or social entrepreneurs, some people have called them philanthrocapitalists, such as the Gates Foundation, the Broad Foundation, the Walton Foundation, among others, and, again, the response has been mixed. Some people say, great, we're having people investing in public

education, what could be better than that, but I think it also raises some questions about how policymaking is happening, right?

So, for example, with common core in New York State, it's *deja vu* all over again in New York. This past year -- and I don't know if that happened here as well -- before the teachers had an opportunity to fully implement the new common core curriculum, students across New York State were tested under common core standards. And the results were awful, right? I mean, we're talking -- right? This just makes no sense to me and I'd like someone to explain it to me if they see a way that makes sense. It doesn't make any sense to me.

So, for example, some of the results -- I don't think you can see them, but in that first bar, you see New York City, the first set of little bars, the first one that's way up is the inflated test scores that had taken place in 2009. And then if you look all the way at the other end where it's way low, those are the scores that had come up. And we're talking about 29.6% of students in New York City proficient under the common core standards. It gets even worse when we look at race and ethnicity across Grades three through eight. 16.1% African Americans and 17.7% of Hispanic students being deemed proficient.

We're going to have to think about what that does to kids who are told, "This is how you did." But why it's being done in this way, I can't tell you aside from -- and Susan DeJarnatt has talked about this rhetoric of failure. It seems like we feed off the rhetoric of failure, otherwise, I don't understand why that's happening.

So if these stated goals -- and, again, I mean, the rationale that's being given is we're improving standards, we're raising standards, we're making them more rigorous, it's a better program. If that's the goal, this is counterintuitive; testing too soon seems counterintuitive. It's efficient: They got it done, but it seems too soon to make any sense.

And if these goals of improved achievement, equity, and accountability aren't being reached, then you've got to ask yourself what is motivating this continued acceleration of governance and policy change supporting these high-stakes test-based models and these market-based school-choice models.

And, again, it raises this question about venture philanthropy as policymaking, this push through foundations,

and whether or not the motives behind some of the education reforms that are being put into place are part of a bigger picture in terms of significant policy change.

For example, the Broad Foundation in its material says basically -- and I quote -- "With an agenda that echoes our decade of investments--charter schools, performance pay for teachers, accountability, expanded learning time and national standards, the Obama Administration is poised to cultivate and bring to fruition the seeds we and other reformers have planted."

So there's a real focused effort, right, to make these changes and there's a question about, well, where's the public in all of this policy change?

And the other concern that has been thrown around is this notion of the public schools as a market. And this is a quote from an article that was in Reuters that basically says the K through twelve market is tantalizingly huge: The U.S. spends more than \$500 billion a year to educate kids, ages five through eighteen, right. And there's this question about concerns about not only private policymaking by a small group of elites who don't consider the range of impacts, it doesn't include discussions with the state (inaudible), and what is the impact of that and what does that mean for mixed motives or, you know, other motives that serve private interests rather than public interests, including profit motives, when really what we should be serving are public goals here.

But even if you set that aside, if you say, Natalie, you're being too paranoid, you know, we're just trying to reform education, even if you set it aside, you still have to ask this question about private policymaking: Is this something that should be happening? Is this consistent with our notion of what public education is, not only in terms of its function and teaching kids to read and write and to be effective citizens, etc., but public education as an important component of participatory democracy is something that we all -- as citizens, as a public interest, we're supposed to be involved in it, we're supposed to be engaged in the changes that are being made, what does it mean, as well as this longer term question about market motives replacing public goals.

And so even assuming the profit motive is not there, it raises this question as well: Is everything bad about -- is every reform bad? No.

I've characterized New York City's experience with reform as encompassing the good, the bad, and the ugly, right? So the good is we have seen some innovation and some positive change. We have seen and we've had, actually over the long term, some excellent programs in New York, including some of the small schools where, you know, in some instances, New York City has contracted with non-profit organizations to establish small schools. We've seen some excellent model programs and schools, including some charter schools and including some community-based -- truly community-based -- charter schools as well.

But the bad, we've got these issues of the failure of public policymaking and public lobbying, failure of inclusion. Failure of trust, I mean, there's a real trust deficit in New York City around education these days and there's a real polarization in the debate.

And, also, that leads to a question about sustainability of the reforms. Even if you say there are a number of reforms that have taken place that are good, there's a lot of worry.

We're in the middle of a mayoral election. There's a real question about which, if any, of the reforms will be sustainable because there is such contention around the way they've been rolled out.

The bad is also abandoning the formalist notion of the public nature of public education, you know, what about educating for democracy and inclusive citizenship?

And then the ugly, the ugly is the real concerns, the really serious concerns, lack of equality, the creation of winners and losers in a system that is supposed to include all, undermining the public system perhaps irreparably, reinforcing privilege even more than it's already reinforced in the system, and excluding the most vulnerable.

Other concerns, policy chaos. It is unbelievable what the City has gone through over the past ten years: lack of trust, public exclusion, again, concerns about equity oversight, accountability, corruption, and the intrusion of private profit motives, all of which are lurking in the background.

It's interesting to hear another context, you know, these questions about being able to get access to information, the availability of due process rights in a privatized environment. These are issues that come up in this context as well.

So I will conclude, actually, with some questions because many, many, many questions remain. And among them are can privatization help to improve public education as a common endeavor or is it an approach that can only help a few? Should the role of outsourcing and privatization be limited to public/private partnerships that support innovation and that include appropriate transparency, oversight, and control?

And, remember, in New York, the charter movement started out as one that is exactly what you were talking about, laboratories for innovation that would then be transferred and sort of be used and offered to the public system to incorporate. That has changed. Now, we're in a market model where it's, like, you fight and compete and parents just would vote with their feet.

If you look at Harlem, if you look at places across the Bronx, I have to say I was one day driving up Third Avenue in the Bronx and the number of charter schools is startling.

But what we've seen, too, going back to this question of churn, we're seeing a lot of churn among the charter schools and from the public to the charter schools, which is what raises these questions about continuity and whether or not you can compare apples to apples, etc.

And so the final question is, can a balance be struck that takes the best charter schools, small schools, and the different management models we have to offer and benefits public education overall? That's a really tough question. I'm so glad that so many of you are here grappling with that question in this context and in others, and I'll stop there.

(Audience applause.)

**Michael Churchill:** Professor, you cite in your article the Stanford CREDO Study --

**Natalie Gomez-Velez:** Right.



**Michael Churchill:** -- to say that on average, there are no better results in charter schools than there are in the traditional public schools. And is that still the best study there is or is that still your conclusion as to --

**Natalie Gomez-Velez:** I knew you were going to ask me that question. There has been another study, another CREDO study, that showed greater improvement in charter schools in some circumstances. So there is a more recent study that is showing more promising results in charter schools than that study. I don't know that it completely answers the question, but Susan DeJarnatt actually wanted to address --

**Susan DeJarnatt:** There's a lot of controversy about probably false studies. And I am not a statistician so I can't speak to that, but I will say that for parochial concerns, even the second CREDO study concluded that those advances were not true for the charter schools in Pennsylvania, the vast majority of which -- or at least over half of which are in Philadelphia and was particularly untrue for cyber charters.

**Michael Churchill:** Right. The cyber charter schools were completely off the wall.

**Natalie Gomez-Velez:** I just wanted to let you know this is Professor Susan DeJarnatt. We've actually appeared on a couple of panels together and she has written extensively on this rhetoric of school reform around charter schools.

**Michael Churchill:** I just have a couple of issues first and then we'll turn to Susan.

With respect to this issue, when charters were proposed in Pennsylvania, the pitch was that they were going to be innovative, they were going to get us better results than you had otherwise, and they do it for the same amount of money or cheaper. And, you know, in the first instance, we actually had a slightly different model when there was pressure on the School Reform Commission to turn over city schools to the EMOs, Educational Management Organization, and they did so.

The very first thing that happened was they said, "Oh, we can't do it for the same price as you're paying to all of the other

schools. We need 500, 750, I think 900.” Well, they actually asked for \$1,000 per student more.

And the very first thing Paul Vallas did when he came to Philadelphia was to bargain that down to an average, if I remember, of \$500, but they weren't doing it for the same price.

When you look at charters and you ask are the charters getting these results for the same price or more, I think the answer is we don't know because on the transparency issue, they're not required to tell us.

On the accountability issue, although ninety-nine percent of their money, we think, is public money, they don't really give us any kind of audited financials so that we can find out how much private money they are putting in in order to get some of these very good results that some of the schools are doing. Is it because they're doing the same amount and are actually more efficient or are they spending a lot more private money?

**Chris Lehmann:** And in fairness, if you look at, for example, one of the oldest charter folks out there, which is KIPP (Knowledge is Power Program), KIPP has in the last two or three years done incredible work at trying to increase their level of transparency.

The KIPP Open Book Project -- and KIPP pedagogically is about as far away from SLA as you can get, but I respect the fact that they are actually really working hard to try to increase their level of transparency, and they will admit that their scores have flatlined.

I have a good friend of mine, a gentleman by the name of Ira Socol, who said the worst thing that ever happened at KIPP is they actually succeeded in their mission. They did slightly less than the neighborhood schools that they were actually competing against, but they don't know how to get to the next level, and they don't.

They have milked a longer school day, a burnout of teachers, and test prep as far as it will go. And some would argue kicking kids out didn't take it there, but, again, at least in Philadelphia, KIPP Philadelphia has worked very, very hard to address that particular issue and they are to be commended on that, and they are publishing their data.

And as far as I'm concerned, there are many issues by which we have to look at charters and ask a lot of questions. And the

biggest one is the privatization issue and where the money is going and some of the issues.

I was at an amazingly scary conference that happened at Arizona State University at the Education Entrepreneurship Summit, and the people in this room need to be aware of it. Because I don't like to wear my tinfoil hat and yet, you know, there were a bunch of people in the room who decided to destroy public education and then they invited me to the room. And they don't know what to make of me because I use technology and do all of this stuff, so I'm that guy that gets to be involved with it which was a really fun position to be in.

And I sat in their plenary session where the former CEO of Kaplan said the year we stopped being a test prep company and became a curriculum company, we created more millionaires than any other Fortune 500 company.

(Audience applause.)

**Chris Lehmann:** Also in the room was Mayor Fenty who did a lot to destroy public education or to at least increase the language of the rhetoric of failure in D.C., which has some very challenged public schools, but he -- you know, not knowing that someone like me would be here in the room, he said to a roomful of education entrepreneurs -- or edupreneurs as they call themselves -- by the way, they don't call it a K through twelve market, they call it a sector, just so you know.

He said these two statements -- and these are direct quotes -- "Firing teachers is not just good policy, it's fun." And he said if, "I could have fired more teachers, I could have bought more of your products." So I don't like to wear a tinfoil hat, but, like, at the same time, it is now squarely on my head and these people really do see it that way.

Now, that means there is a lot of other people who are really trying to be good actors who just might have some profound disagreements with what I believe, and that's fine. Smart good people who are trying to do good can disagree, that's great. But if your job is to take a finite pool of money and you are pulling more of it out and away from children, you are doing harm. I am sorry; nothing that one says will convince me otherwise.

When charters are trying to increase transparency and that are getting to that place, it turns out this is harder than we

thought it was. All I can say is, “Welcome, brother, we've been waiting for you.” You know what I mean? Like, “Good for you, well done, and, yes, let's have this conversation, let's have an active discussion on teaching, what it looks like and how we believe the system should be structured.” I welcome that conversation, I think we need to have that conversation, but transparency has to be there.

It is fascinating to me. Maybe I'm being a little unfair but what is happening in education right now is we see shrinking markets in so many different economic sectors in our country right now that folks are looking to places that have never been markets before and trying to create markets. Where one sees that is with a lot of for-profit work that is happening.

The former head of the Gates Foundation, I'm blanking on his name...

**Natalie Gomez-Velez:** Vander Ark.

**Chris Lehmann:** Vander Ark, Thomas Vander Ark. He and I got in an argument. I said this is my problem with for-profit schools: You're taking money out of a system that cannot get more money. There's a finite amount of money and you're taking money out of it. He said, “Chris, there aren't that many for-profit schools.” And I said, “I'm sorry, if you set up a nonprofit and then that nonprofit contracts with a for profit to do everything, that's a for-profit company.” And that's happened. We've got Rocket Ship Education in California; we've got k12.com and K12education. These are for-profit companies and they are running dozens, if not hundreds, if not thousands, of schools in this country, and we need to be aware of that.

**Michael Churchill:** Let's remember equity is a concern. There is a lot of data that says that students with disabilities, English language barriers, and African American males were represented in lower numbers in charters. I don't think it's accidental.

The question is, how does one enforce the standards to make sure that a public school and public money serves equally all.

Secondly, on the funding issues and transparency issues that we've mentioned, it is important to note that charters get their principal amount of money based on the amount of money that

is available to the public schools a year later. When Philadelphia is cut this year, the charters don't feel it until next year. But Philadelphia was actually cut last year, too, so they're beginning to feel it.

For the first time, charters say they are going to have a stake in how much money goes into public education. They have two possible remedies. One is to argue for more money for public education, and the second one is to delink/unlink those two, take the buck away, get a separate source of funding out of the state.

Watch out for them because if that happens, you'll find that the charters will argue their position the grounds of more uniformity. It's as crazy as they say it is. Now the same school which has a student from Lower Merion and from Southeast Delco and from Philadelphia is getting three separate payments at three different rates for a seat in front of the same teacher.

That's our current system. It's irrational. On the basis of that irrationality, Charters are saying, "Don't tie us to the school districts." If you don't tie them to the school districts, you will find that any incentive they have to support adequate funding for their district is going to disappear. Make note of it; that's on the horizon.

Finally, we need to remember that when we're talking about charters and how much they pull out of schools, the funding formulas currently are really crazy.

In Chester, for instance, a school district where the average price for a student is about \$11,000, \$14,000, and where the tuition payment to the charter for a regular student is \$10,000, the tuition payment for a special ed student is going to be this year \$35,000. It is because the formula doesn't work; it has a whole bunch of little gimmicks in it that were there by accident and they are going to fight to not see that change.

But that's what bleeds: the district. In a district where twenty-four percent of the students are special ed., if you're taking out \$35,000 per special ed. student and if you're taking only the students that need an hour of speech and language a week, one, you're making a lot of money and, two, you're bleeding the district of any ability to have any funds left for its own students.

You can see the recent data. The school districts in Pennsylvania in the most desperate shape happen to be the

districts that have the highest percentage of charter schools in them.

**Susan DeJarnatt:** I don't even know where to start and I don't want to talk for an hour, I assume most of the people in this room are either working in Philadelphia, living in Philadelphia or nearby. We really need to take to heart what this privatization means.

My numbers are two years old and it's worse now, but when I was working on that article on governance in charter schools, I would ask friends, "How much do you think the Philadelphia School District is spending on charter schools?" They would say, "I don't know, \$100,000." I would say, "No, try \$500 million." That amount has grown. That's a huge amount of taxpayer money and there's almost no oversight over it. Similarly, the cyber charter schools in Pennsylvania are getting almost that same amount of money. It's much harder to pin that down.

The short version of the role of philanthropy in decision making by the Philadelphia School District. This is replicated throughout the country.

In August, parents like me in the school district got an email saying, "come down to the district offices; we're developing a new report card, and we want parental input." This was a report card of the schools, not a report card for kids. A bunch of us went down to Austin, Texas. Michael and Susan Dell of the Dell Foundation decided, what Philadelphia needs in this year on a \$7.8 billion budget is a new way to rate schools. They were essentially making the district do this.

Most of the parents in the room tried to point out that was a really stupid use of resources, that we already had plenty of information about our schools, and what we needed was resources. My favorite moment was when one of the parents asked the consultant what his deliverables were. I thought his teeth were going to fall out because he clearly didn't think he was going to have to deal with a Philadelphia public school parent who knew that term.

It turned out that they had no interest in what we had to say. They canceled the remaining parental forums promptly after that one, but said, "We're going to continue the project, but we



have to find a different way of getting the input that we need.” That’s anti-democracy in action to me.

I didn’t vote for Bill Gates to run the Philadelphia schools or the New York City schools.

I am going to end with a question mostly for Chris because I know you do run this really creative and interesting school, and you attract some of those people. How do you thread that needle? How do you take foundation money without being sucked in?

**Chris Lehmann:** I was six foot three when I started the school.

(Audience laughter.)

**Chris Lehmann:** That’s a really hard question. Michael Dell has been to SLA and so has Bill Gates, although Mr. Gates didn’t like it very much and I’m okay with that. You’re very careful, is the answer. You must be very careful not to drink the Kool-Aid.

But at the same time, you have to -- here is the hard part: This is the really seductive, dangerous part. These people are smart, they are always well-dressed, they smile, they say the right things. Our side always looks a little schlumpy. Let’s be honest. We’re always kind of hurrying; I’m the first one to do that, I was fixing my tie as I came over here.

Here’s the other thing that’s really hard: There are many of the folks who aren’t in this to make money. I don’t think Bill Gates is trying to make any more money. I believe -- and I believe this in my heart -- he honestly objectively wants better schools in this country.

The problem is that he’s Ayn Rand’s greatest dream. Bill Gates believes in his heart of hearts that if the smartest people in the world just told the rest of us what to do, we would have a better planet. He believes that, and he has way too much money to convince other people of that.

The hard part is that if we demonize the other side, we will lose. We’re outmanned and outgunned and outspent. We have to listen very carefully because on some very basic level, we do have to own that we’re not as good as we’d like to be on our side of things.

There are schools in Philadelphia -- and both of my children go to Philadelphia public schools, but they go to Greenfield. It's a lovely little school. There are a lot of schools in Philadelphia I would not feel comfortable sending my children to, and I own that. We have to do better.

A lot of those problems are the structural problems that I was talking about earlier. If we did a better job of creating better structures to allow wonderful schools to be wonderful, we would get there.

We've got some folks that are working at McMichael right now, a Mantua public school. It's an incredible school, as you all know. And if we win the battles we're fighting right now to get it left alone, we think that it is going to become a really different school very, very soon and that would be amazing. McMichael has been doing a really good job for a long time and it does some innovative things. We could improve a lot of things by doing that the right way.

So how do you do it? You listen, you listen for the places of agreement, you never compromise your core values, and you walk a very fine line.

We took a lot of flack from people who have traditionally looked at SLA to be a wonderful place, but we took PSP money. Why did we take two million dollars from PSP?

**Michael Churchill:** Tell the people what PSP is.

**Chris Lehmann:** PSP is the Philadelphia School Partnership. It has a lot of private money to replicate school models. It has traditionally given to charter schools and parochial schools. PSP dipped its toes in the water in dealing with the district. A lot of people said, "You shouldn't take their money." We gave it a lot of thought in our community.

We are the school of choice, just like Central, just like a lot of schools in New York City. We did 1,040 interviews this year for 125 seats in our freshman class. We turned away phenomenal children because we only have 125 seats. Why did I take PSP money? I could add 125 seats and we could build a second school.

(Audience applause.)

**Chris Lehmann:** Not everybody thinks we should have done that. It was really controversial. We took money for other schools here: The Sustainability Workshop in West Philadelphia, Hill Freedman in Northwest Philadelphia. The Sustainability Workshop is going to be one of the most innovative pedagogical places on our planet. I cannot wait to see what it does. Simon Hauger, Michael Clapper, and Matthew Riggan, who run that school, are brilliant people. Hill Freedman is now going to build a five through twelve magnet and is camouflaging that it will be based on an Ivy curriculum, which is a pretty wonderful curriculum and pretty impressive.

This organization that traditionally has supported schools that pedagogically are not in line with the things I believe, Mastery suddenly and said, “We’re not only going to support district schools.” It was willing to dip its toes into the district structure. But also, “We’re also going to give to the three most whacked-out progressive schools in the School District of Philadelphia.” We took a risk. They’ve never asked me to bash a union, they’ve never asked me to say anything I don’t believe. And if they do, I’ll say no.

(Audience applause.)

**Chris Lehmann:** Thank you. But this is a hard line. I know that people disagree with me on, and I’m willing to have that argument if I can find somebody, such as George Soros who wants to give me two million dollars to build another school, I’ll take that, too, but we don’t have that offer. There are not that many people giving that money away.

Eight years ago, the district had that money and could have put the extra money in school start-up costs to get them to rapidly succeed. The district doesn’t have that money anymore, which gets back to the question: shouldn’t there be more money to enable districts to do those things? My answer is, “Yes, we shouldn’t need PSP.” In the current environment, we had a chance to build a second school and we couldn’t turn that down.

**Sarah Morrissey:** Other questions?

**Natalie Gomez-Velez:** I just had a quick comment. Another area we have to explore is to find tools and instruments,

legal tools, etc., to limit the ability of folks who give the money to have the kinds of influence that they have.

Another thing that I meant to mention earlier is this lack of trust in the motivations of the for-profits. It brings to mind New York City's school chancellor for a long time, Joel Klein. He made a deal soon after he had left to work for News Corporation. He made a deal with it, the wireless generation, but ultimately the contract was canceled, a contract for computer systems within the schools. I have my doubts whether it will be resurfacing in some other way

We really have to give attention to the kinds of oversight tools to make sure that they're in place, to make sure that they're being enforced to prevent that kind of thing, and to reduce the degree in which there's a temptation to use that funding leverage, that they have, for goals that have nothing to do with improving public education.

**Michael Churchill:** Beth Olanoff.

**Beth Olanoff:** Good afternoon. My name is Beth Olanoff. I'm the Executive Director of the Pennsylvania League of Urban Schools, which is a small nonprofit of urban superintendents across Pennsylvania. I came to tell you that there's a disaster that is unfolding in Philadelphia. It's unfolding as well in other districts across the state, though maybe moving more slowly.

My experience has taught me that poverty is an essential issue of the educational achievement question. We haven't really talked that much about the effects of poverty today, although it is certainly in the materials. Without significantly increasing the resources, the issues of poverty, the kids, are in the schools. Accordingly, that's where those issues need to be addressed only because the children are sitting there, but they're not really educational issues. We are going to be unable to have children from growing common communities achieve the same high-rigor standards, a relatively new expectation. We didn't ask all of our children to achieve at those levels because the economy didn't require that, but now we are asking. Without adding additional resources that deal with the family and community poverty. I don't think we're going to be able to solve this problem. The kids don't have the middle-class supports that most of our kids had.

I certainly don't see a political willingness in Pennsylvania for wealthier communities to share their resources across the state with poor communities. Whether that's "placist" or racist or both, and I would just like to hear your comments about that.

**Natalie Gomez-Velez:** I'll comment on that. I think it's a really important point and an important issue.

One of the issues in New York state, was allocation of resources and how to target resources to poor under-resourced schools and under-resourced communities. First a cause for celebration and then devastation was the Campaign Fiscal Equity case that changed the funding formula in New York state. It was designed to send more dollars to New York to urban school districts, and was also combined with contracts for excellence that were supposed to target money to the neediest of school districts. Then budget cuts took that away, but there is some recognition of the problem.

I also think that this question around the relationship between poverty occurring in the school districts and that's where resources and reforms are most needed for school districts are also those communities that are most vulnerable and that have made many of the discussions around charter schools very fraught and difficult. For example, in New York, there's a lot of targeting, in the South Bronx and in Harlem and these districts that need them. One is not in a good position to be saying to parents sending their kids to the charters and those schools that are working, "You can't have them," another is opposition that you have some opposition to them.

At the same time, those same communities are vulnerable to churning, to being kicked out of school because you're not wearing your uniform, and to in terms of getting abused.

Part of the answer does have to be around the resources themselves and targeting those resources. The other part has to be around making sure that there is oversight and equality in the programs. Those two absolutely do go hand-in-hand.

**Michael Churchill:** I agree with you, absolutely, Beth, that appropriate funds to take care of poverty of the students in the schools is a necessity. I completely disagree with you on your statement that there's not much support for that. I think we need to actually start looking at the polls.

It is the number one most fascinating reason why the governor is having so many problems at the moment in his polling is his cutting funds to education. They understand that those cuts are important because the costs were widely advertised in one of the very best pieces of public information that the advocates have done in the past two years. It was really widely seen that those cuts hurt urban school districts and poor kids more than others. People understood that and they're saying that's wrong.

A long time ago, my colleague here, Tom Gilhool, got a hold of a series of corporate polling data for almost five years. The data is pretty old now, from 1998 to 2001 or 2002, but the data were from a time when people said the suburbs hated Philadelphia.

The polling data asked respondents their view when told that the city was getting more state money than the suburbs, but that it wasn't enough for the city to be able to spend as much as the suburbs. The data showed that even then respondents said, "That's not fair. We need to get more money to the urban students."

There is a huge understanding even in this state that the playing fields are not level and that it's not fair. We need to organize around it.

Recall what Mayor Street told us when we started this morning that it is on us to politically organize to make sure that the people who agree with us come out to vote. We need to do that in order to avoid the failure to have turn-out in our traditional supporting areas being the reason why we get a candidate who doesn't support our values.

**Audience Member:** My name is Robert. On that same note, I had a question about the transparency for public moneys, specifically, for charter schools.

This sort of came to a head, I suppose, in two places, one of which is the Research for Action, RFA. Recently, a report written by said charters in a few years are going to be a number-one line item for the School District of Philadelphia, and from a transparency standpoint, charters are known to bend the rules a little bit.

This particularly came to a head when the Spirit and Mentor Organization (ph.) recently said it lost or misplaced tens of



millions of dollars; to which the School District of Philadelphia then said not only did it not know where that money went, but it had no legal purview to go searching for that money.

Could you explain both how this arrangement of the lack of transparency exists for charter schools and charter management organizations, and what kinds of legislative tools and techniques are available for people who would like to see that change. Thank you.

**Chris Lehmann:** On one level, you've got to realize that in Philadelphia, the charter law was a compromise against vouchers. There was a huge push under Governor Ridge for vouchers. And the charter law was compromise Charter law varies wildly state-to-state.

Many charter folks have told me that Pennsylvania's charter law is a bad charter law. So I think on some level, looking for better models, looking for models that do encourage more accountability, and also realize that right now -- and this is one of these ridiculous things.

In the School District of Philadelphia right now -- and the budget cuts have actually decimated the Charter Oversight Office, which wasn't very big to begin with. I'm laughing only because this is so sad.

Everybody sits there and says we should lay off more people at 440, that's where the waste and corruption is, except oversight actually requires people sometimes.

**Natalie Gomez-Velez:** At all of the times.

**Chris Lehmann:** Right, all of the times. On some very basic level, which was not a great mechanism to begin with, oversight in the charters is now even weaker because there are insufficient people to do it.

That's one reason; that's the main layer. There are many more layers, but it's the utter lack of people or the utter lack of human capital to do the work.

**Michael Churchill:** Do we have time for one more question?

**Audience Member:** Thank you very much. I really appreciate everything that you've all shared with us today, and especially the notion that some sort of venture philanthropy exists, as well as some articulation of the relationships between nonprofits and for-profits and how they are rewriting legislation.

I just wanted to share and hear your thoughts on a few things. I was a core member of Teach for America in Philadelphia.

I was kicked out of the organization yesterday. I was kicked out of the organization because I have repeatedly been out in the community and standing in solidarity with them as it calls for fair funding for our schools and stopping the building of prisons, supporting the schools as well as standing against the closing of community schools, and the privatization of its schools and the turn-over of them to charters.

This year in the core in Philadelphia, over 100 twenty-two-year-olds without experience were placed in schools, while many experienced veterans put out to the street. We replaced exclusively in charters that have proliferated under the antidemocratic FRC who is carrying out the recommendations to the Boston Consulting Group.

So it's certainly quite concerning that our values in Teach for America are being used to enact these antidemocratic policies and, I'm curious, what are your thoughts on that? Thank you.

**Michael Churchill:** I think it's worthwhile to see whether there's any comment on the use of an inexperienced teacher core and how that affects the ability to deliver education reform.

**Natalie Gomez-Velez:** There's been a lot of commentary that the goal is deregulatory, so you don't have the kinds of protections.

The notion that it's anti-union is so that the teachers that work at charters aren't -- depending on how you do the rhetoric -- burdened with all of these job protections, meaning that you probably don't have any job protections; that means you can be let go for any reason or no reason. And so that's one of the elements; it doesn't freeze us with all of these union requirements.

And you get the story on the other side: we couldn't fire a teacher who showed up drunk in the classroom because of those union rules and all of the due-process protections. So that's one of the things that's in place with respect to the arrangement.

And, again, as you said, there are different arrangements with respect to charter schools versus public schools. Charter schools are basically operated by a contract. Sometimes the money just goes over to the charter with very little oversight, or with some oversight, or some maybe robust oversight. It really depends on those terms, the degree to which they can do what they're doing.

But if it turns out that you are an at-will employee without a contract, there's not a whole lot of due process that you get in that circumstance. There was some discussion of that earlier.

On this question of experienced teachers, I think we really heard a lot about how important it is to have some experience. And I remember a forum several years ago when I was at a teachers college where they were talking about that the problem with programs that rotate teachers in and out: they're not taking into account the benefits of experienced teachers. But what tends to happen is inexperienced teachers are less expensive and so there's an incentive to hiring inexperienced teachers.

**Chris Lehmann:** I'm sure you've had a very long day, so I will gladly save my conversation for a glass of wine later on.

(Audience applause.)

## CLOSING REMARKS

**Donald Joseph:** First of all, let's get the logistics out of the way. Besides the table talk going on after this, if you're seeking CLE credit, you must turn in your forms. This year we have photo releases. This is something where we may be able to use the pictures of the population here.

The last logistic is, please, everyone, fill out the feedback forms, and fill them out fully. We are planning the next symposium, so please fill out both the good and the bad.

One of the things I regret in this is that we did not leave enough time to get to the generalized learning that we spent all of this time doing and maybe next time we'll do that.

That having been said, wow, I counted eighty people still here at the end of the day. I hope you agree that we've lived up to the billing of excellent and thoughtful speakers giving you some understanding, information and food for thought. The key that PILCOP is driving us to look at is privatization.

Before I go further, there is a dignitary here that I want to acknowledge, a patriarch of sorts, certainly one of the great theoreticians of all of PILCOP. Tom Gilhool, please stand up.

(Audience applause.)

**Donald Joseph:** To our wonderful panelists and keynotes, you've lived up to your billing. You delivered information, learning, intellectual challenges, and insights that we will take forward with us. And you have made this day, like the other equality forums we've put on, memorable.

For those of you who are still here, please stand up so we can give you another hand of applause.

(Audience applause.)

**Donald Joseph:** Another key ingredient of these symposiums is you, the audience, who pay attention, who challenge us to be first rate, and who recognize the wonderful work that PILCOP does. Thank you for coming to support us. So let's give a hand to you the audience.

(Audience applause.)

**Donald Joseph:** To Penn Law School for renting us the wonderful space and supporting us on the logistics, and to Penn Law students, Sarah Morrissey and Kevin Hoagland-Hanson, we thank you.

We also thank the court reporters of Veritext, Kimberly Hussey and Alicia Fortin, and, again, the Sheraton Hotel for its discounts and assistance, and Morgan Lewis for printing the programs.

The PILCOP staff, of course, needs and deserves recognition for the work that goes on in putting on these symposia.

I should tell you a little bit about how they're put together. The staff comes up with a topic and we start meeting in

February for forty-five minutes every week. We pick out potential speakers, we go through what the questions ought to be, we vet them, we get speakers to commit, and we have conference calls to plan the contents of the panel. And what we get, I think you all will agree, is pretty darn good information. And we have had the benefit during that process of interns who give us feedback, impressive young students, undergraduates, and law students that do so much.

So to our legal staff, the lawyers who put on this program, and we're not just talking about the ones who have presented. There are at least two other lawyers who didn't have a part up here. So let's stand up, every one of you, come forward.

(Audience applause.)

**Donald Joseph:** The work, of course, could not be done without the non-lawyering staff that implements these logistics, LaTrice Brooks, our office manager, Owen Taylor, our community organizer, our new and exciting director of development, Liz Pensley, and our volunteer readers, to all of you, we thank you.

**Donald Joseph:** And, finally, but absolutely not least, Barbara Macholz whose title is communications associate.

(Audience applause.)

**Donald Joseph:** She has turned the job of being chairman of these events into a ceremonial one. She organized the volunteers; she organized the logistics --

(Audience applause.)

**Donald Joseph:** -- she organized the conference hall; she organized conference calls, venue, and logistics for the out-of-town speakers and much more. Barbara, you are a genius for organizational detail, you have done it all with a low-key style, but with the utmost preparation.

(Audience applause.)

**Donald Joseph:** With six lawyers, it's probably too much to ask for a symposium every year and it's likely that we will continue the present schedule of every other year. We hope to see all of you at least in two years when we have the next symposium, but we further hope to see you at many other events, including our Gala on October the 17th.

And with that, I think we have nothing more to say except it's a pleasure to welcome every one of you to share in cocktails downstairs in the great hall. And, hearing no objections, I declare this symposium to be completed and adjourned. Thank you.

**Jennifer Clarke:** I'm going to take the floor for one more minute. I want to thank our wonderful symposium chair, Donald Joseph.

(Audience applause.)

**Donald Joseph:** Let's go get some drinks.

\*\*\*

END OF SYMPOSIUM