

**Delaware's Constitutional Mirror Test:  
Our Moral Obligation to Make the Promise of Equality Real**

**A Reflection on the Resegregation of Our Schools**

By

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Seventh Annual  
James R. Soles Lecture  
On the Constitution and Citizenship

3:00–5:00 p.m.  
September 22, 2017  
Roselle Center for the Arts

The Department of Political Science and International Relations  
University of Delaware

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This is a very special occasion for me. This lecture is dedicated to one of the finest people I was ever privileged to know, and has been shepherded by the person—Ed Freel—who best fulfills Professor Soles’ legacy of caring for our society and the students at this University, and marrying those commitments by nurturing students of all political persuasions who have an interest in public service. I owe much of whatever success I have had to Dr. Soles and Ed Freel, and others, like Dr. Pika, who instilled in University of Delaware students a sense that we could make a difference and who helped us find the diverse paths that worked best for each of us. I hope to do justice by them and by the spirit of this lecture series by talking directly about justice, and the role of the citizen in giving life to one of our core constitutional ideals.

I am going to address that topic head on and in a way that is very personal to those of us who call Delaware our home. The most famous words of the Declaration of Independence say: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>1</sup>

As all of us know and most of us acknowledge, our nation did not come close to living up to this ideal. Many were not treated equally, and were considered lesser or even worse, to be the “other” and less than fully human. No group more so than Americans who were black. Sitting alongside the inspiring words of the Declaration of Independence were provisions of the Constitution that recognized the legitimacy of slavery, and that accorded states with slaves credit toward having three-fifths of a person for each slave for purposes of representation in Congress.<sup>2</sup> “WE THE PEOPLE” did not include black people as equal.<sup>3</sup>

Eventually, a bloody civil war was fought for one reason and one reason only. A group of states were so committed to enslaving black people and extending that subjugation to other states that they turned traitor to their nation, and turned their guns on their American brothers and sisters. The confederacy

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<sup>1</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>2</sup> U.S. CONST. art. IV, § 2, cl. 3; *id.* art. I, § 9; *id.* art. I, § 2, cl. 3.

<sup>3</sup> *Id.* pmbl.

existed for one singular reason: to create a nation where white people could continue to own black people.<sup>4</sup>

As we know, the union won out and our nation began a second rebirth. President Lincoln consecrated the sacrifice required for that new founding in the

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<sup>4</sup> See, e.g., *Confederate States of America - Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union (adopted Dec. 24, 1860)*, YALE L. SCH., [http://avalon.law.yale.edu/19th\\_century/csa\\_scarsec.asp](http://avalon.law.yale.edu/19th_century/csa_scarsec.asp) (“[A]n increasing hostility on the part of the non-slaveholding States to the institution of slavery, has led to a disregard of their obligations, and the laws of the General Government have ceased to effect the objects of the Constitution. The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin and Iowa, have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them.”); *Confederate States of America - A Declaration of the Causes Which Impel the State of Texas to Secede from the Federal Union (adopted Feb. 2, 1861)*, YALE L. SCH., [http://avalon.law.yale.edu/19th\\_century/csa\\_texsec.asp](http://avalon.law.yale.edu/19th_century/csa_texsec.asp) (“The States of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, Pennsylvania, Ohio, Wisconsin, Michigan and Iowa, by solemn legislative enactments, have deliberately, directly or indirectly violated the 3rd clause of the 2nd section of the 4th article [the fugitive slave clause] of the federal constitution, and laws passed in pursuance thereof; thereby annulling a material provision of the compact, designed by its framers to perpetuate the amity between the members of the confederacy and to secure the rights of the slave-holding States in their domestic institutions—a provision founded in justice and wisdom, and without the enforcement of which the compact fails to accomplish the object of its creation. Some of those States have imposed high fines and degrading penalties upon any of their citizens or officers who may carry out in good faith that provision of the compact, or the federal laws enacted in accordance therewith. In all the non-slave-holding States, in violation of that good faith and comity which should exist between entirely distinct nations, the people have formed themselves into a great sectional party, now strong enough in numbers to control the affairs of each of those States, based upon an unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of equality of all men, irrespective of race or color—a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law. They demand the abolition of negro slavery throughout the confederacy, the recognition of political equality between the white and negro races, and avow their determination to press on their crusade against us, so long as a negro slave remains in these States.”).

Gettysburg Address, where he made clear his view that the central tenet of our constitutional form of government was the principle of human equality in the Declaration of Independence. As the President famously said, “Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.”<sup>5</sup>

After President Lincoln lost his life to a person whose hateful descendants just marched on Charlottesville, Virginia, the nation struggled to live up to his words. The Thirteenth Amendment was adopted, abolishing slavery.<sup>6</sup> The Fifteenth Amendment was adopted, protecting the voting rights of the freed slaves and black Americans.<sup>7</sup> And the Fourteenth Amendment was added to the Constitution, applying the principles of equality in the Declaration of

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<sup>5</sup> Abraham Lincoln, Gettysburg Address (Nov. 19, 1863); *see generally* GARRY WILLS, LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA 26 (1992), <http://srnteach.us/portfolio/projects/Gettysburg/pdf/Wills.pdf> (“The tragedy of macerated bodies, the many bloody and ignoble aspects of this inconclusive encounter, are transfigured in Lincoln’s rhetoric, where the physical residue of battle is volatilized as the product of an experiment testing whether a government can maintain the proposition of equality.”).

<sup>6</sup> U.S. CONST. amend. XIII (ratified Dec. 6, 1865).

<sup>7</sup> *Id.* amend. XV (ratified Feb. 3, 1870).

Independence to the states by providing: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>8</sup>

But, as we know, that promise of equality was hollow, and extinguished by a racist backlash, which is fairly embodied in two words: Jim Crow.<sup>9</sup> Instead of the candid subjugation of slavery, there was the less honest, but hardly less brutal and less soul-destroying system of separate but equal: phony systems of voting eligibility designed to weed out black voters,<sup>10</sup> and a systemic pattern of laws that made the words of the Fourteenth Amendment hypocritical, and made a mockery of our supposed commitment to the idea that all of us are equal under the law.<sup>11</sup>

Where was Delaware in this mix? Sadly, among the worst. Delaware was a union state but took no action to emancipate slaves within its borders.

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<sup>8</sup> *Id.* amend. XIV (ratified July 9, 1868).

<sup>9</sup> *See generally* JIM CROW AMERICA: A DOCUMENTARY HISTORY (Catherine M. Lewis & J. Richard Lewis eds., 2009) (using primary source materials to document the creation and effect of Jim Crow); Hugh H. Smythe, *The Concept ‘Jim Crow’*, 27 SOC. FORCES 45 (1949) (documenting the development and usage of the term Jim Crow).

<sup>10</sup> *See* F. MICHAEL HIGGINBOTHAM, GHOSTS OF JIM CROW: ENDING RACISM IN A POST-RACIAL AMERICA 91 (2013) (describing tactics used to prevent blacks from voting, such as grandfather clauses, poll taxes, literacy tests, and, when those failed, violence).

<sup>11</sup> *See generally* ERIC FONER, THE STORY OF AMERICAN FREEDOM 131 (1998) (describing the racial subordination of blacks in the early twentieth century, characterized by “Exploitation, Disenfranchisement, Segregation, Discrimination, Lynching, Contempt” and noting that “[S]outhern whites did not create their new system of white supremacy alone. The effective nullification of the Fourteenth and Fifteenth Amendments occurred with the full acquiescence of the North.”).

Emancipation came only in December 1865 with the adoption of the Thirteenth Amendment, which Delaware waited until 1901 to ratify.<sup>12</sup>

Delaware was a Jim Crow state, host to hollow promises of separate-but-equal and some of the worst incidents of mob violence against black people—lynchings.<sup>13</sup> The Delaware Constitution required “separate schools for white and colored children”<sup>14</sup> and Delaware criminalized marriage between a white person and a “negro or mulatto.”<sup>15</sup>

Simply put: Delaware denied black people equal rights. And there was nothing equal about the separate facilities Delaware provided to black people.

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<sup>12</sup> Eric Foner, *Abraham Lincoln, the Thirteenth Amendment, and the Problem of Freedom*, 15 GEO. J.L. & PUB. POL’Y 59, 67 (2017) (“Delaware, the border state where Lincoln had begun his emancipation initiative in 1861, became the first to reject the amendment; not until 1901, long after it had become part of the Constitution, would it gain Delaware’s approval.”).

<sup>13</sup> EQUAL JUSTICE INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* (3d ed. 2015), <https://lynchinginamerica.eji.org/report/>; see, e.g., *One Arrest Made for Delaware Lynching*, N.Y. TIMES (Jun. 23, 1903), <http://query.nytimes.com/mem/archive-free/pdf?res=9E02E2D7143AE63AA15757C2A9609C946297D6CF> (“The excitement attending the gruesome tragedy enacted last night outside the city limits when George F. White, the negro murderer of seventeen-year-old Helen S. Bishop, was burned at the stake, has subsided. The swift and dire punishment meted out to the perpetrator of the terrible crime is the sole topic of conversation, but to-night the details are calmly rehearsed. Public sentiment appears to deplore the resort to mob violence, but the consensus of opinion is that summary vengeance alone could atone for the brutal outrage upon the life and honor of the young girl.”); Yohuru Williams, “*Revenged in the Most Terrible Manner*”: *The Lynching of African American Civil War Veteran William “Obie” Evans*, 34 DEL. HIST. 33 (2013).

<sup>14</sup> Del. Const. of 1897, art. X, § 2.

<sup>15</sup> PAULI MURRAY, *STATES’ LAWS ON RACE AND COLOR* 71–72 (1951).

Nothing. Many black children could not go to high school because there were not high schools for black kids in each county.<sup>16</sup>

Now, of course, we in Delaware like to remember, and we should, the 1952 ruling of Chancellor Seitz in *Belton v. Gebhart*.<sup>17</sup> In that case, he held that as a state trial judge he could not deviate from the separate but equal doctrine of *Plessy v. Ferguson*, even though he wanted to do so.<sup>18</sup> But as a judge in equity, he did know what was equal and what was not, and he held that the schools made available to black children were not equal and that they therefore should be admitted to the schools for white kids.<sup>19</sup> His ruling was in one of the cases that

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<sup>16</sup> See ROGER C. MOWREY, DEL. STATE DEP'T PUB. INSTRUCTION, DELAWARE SCHOOL DISTRICT ORGANIZATION AND BOUNDARIES 5–6 (1974) (noting that “[b]efore the early 1950’s, secondary education for blacks was neglected, and a complete high school education was almost impossible” and reporting the school years in which high schools for black children opened as 1951–1952 (William C. Jason Comprehensive High School District 192 in Sussex County), 1952–1953 (William W.M. Henry Comprehensive High School District 133 in Kent County), and 1953–1954 (Louis L. Redding Comprehensive High School in New Castle County).

<sup>17</sup> *Belton v. Gebhart*, 87 A.2d 862 (Del. Ch. 1952), *aff’d*, 91 A.2d 137 (Del. 1952), *aff’d sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

<sup>18</sup> *Id.* at 865 (“In other words, by implication, the Supreme Court of the United States has said a separate but equal test can be applied, at least below the college level. This Court does not believe such an implication is justified under the evidence. Nevertheless, I do not believe a lower court can reject a principle of United States Constitutional law which has been adopted by fair implication by the highest court of the land. I believe the ‘separate but equal’ doctrine in education should be rejected, but I also believe its rejection must come from that Court.”).

<sup>19</sup> *Id.* at 869–71 (“It seems to me that when a plaintiff shows to the satisfaction of a court that there is an existing and continuing violation of the ‘separate but equal’ doctrine, he is entitled to have made available to him the State facilities which have been shown to be superior. To do otherwise is to say to such a plaintiff: ‘Yes, your Constitutional rights are being invaded, but be patient, we will see whether in time they are still being violated.’ If, as the Supreme Court has



went to the Supreme Court as part of what became known as *Brown v. Board of Education*.<sup>20</sup>

Although we celebrate Chancellor Seitz's ruling in Delaware now, we did not honor it as a state after it was issued. Less acknowledged in our history are the brakes that the court I sit on, the Delaware Supreme Court, put on desegregation in its ruling in *Steiner v. Simmons*.<sup>21</sup> Delaware was in no hurry to desegregate and it did not.

Too often forgotten in our consideration of this period and of the reasons why economic inequality persists is that many widely celebrated programs, such

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said, this right is personal, such a plaintiff is entitled to relief immediately, in the only way it is available, namely, by admission to the school with the superior facilities. To postpone such relief is to deny relief, in whole or in part, and to say that the protective provisions of the Constitution offer no immediate protection. . . . I conclude that the State's future plans do not operate to prevent the granting of relief to these plaintiffs by way of an injunction, preventing the authorities from excluding these plaintiffs, and others similarly situated, from admission to Claymont High School on account of their color. . . . For the reasons stated in connection with Claymont I do not believe the relief should merely be an order to make equal. An injunction will issue preventing the defendants and their agents from refusing these plaintiffs, and those similarly situated, admission to School No. 29 because of their color.”).

<sup>20</sup> *Brown v. Board of Ed. of Topeka, Kan.*, 347 U.S. 483, 487 (1954) (describing the action as originating from cases in Kansas, South Carolina, Virginia, and Delaware and noting that Delaware “adhered to [the] doctrine [of separate-but-equal], but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools” whereas the other three states denied plaintiff schoolchildren admission to public schools on the basis of the separate-but-equal doctrine).

<sup>21</sup> *Steiner v. Simmons*, 111 A.2d 574, 583 (Del. 1955) (describing the State Board of Education's go-slow approach to implementing desegregation as “reasonable, and (if we may say so) embody[ing] a commendably wise and cautious approach to a problem of great delicacy and difficulty”).

as the minimum wage provisions of the New Deal, the G.I. Bill, and federal housing legislation that helped many working class Americans into the middle class and to a university education, were not administered equally.<sup>22</sup> Black people were denied many of the benefits of these programs, as they either could not use the benefits at all because of continued segregation, or could only use them in a much more constricted way.<sup>23</sup> Segregation in housing was particularly egregious and extended to things such as real estate codes, which made it a violation of professional ethics for real estate agents to sell houses to black people in white neighborhoods.<sup>24</sup> As in the post-Civil War era, Delaware did not lead the way toward a more equal nation, it was dragged along.

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<sup>22</sup> See generally Ira Katznelson, Opinion, *Who Really Got Handouts*, N.Y. TIMES, Aug. 13, 2017, Sunday Rev., at 2; Michael Tonry, *The Social, Psychological, and Political Causes of the Racial Disparities in the American Criminal Justice System*, 39 CRIME & JUST. 273, 298 (2010) (citing DOUGLAS S. MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993)); Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods: A Constitutional Insult*, 7 RACE SOC. PROB. 21, 22 (2015) (citing P.A. Jargowsky, *Concentration of Poverty in the New Millennium: Changes in the Prevalence, Composition, and Location of High-Poverty Neighborhoods*, CENTURY FOUND. & RUTGERS CTR. URB. RES. & ED. (2013), [http://www.tcf.org/assets/downloads/Concentration\\_of\\_Poverty\\_in\\_the\\_New\\_Millennium.pdf](http://www.tcf.org/assets/downloads/Concentration_of_Poverty_in_the_New_Millennium.pdf)).

<sup>23</sup> See generally Ira Katznelson, *When Is Affirmative Action Fair? On Grievous Harms and Public Remedies*, 73 SOC. RES. 541, 545–46 (describing the exclusion of blacks from public policies through “racially laden” legislation and the administration of social programs by “local officials who were deeply hostile to black aspirations”).

<sup>24</sup> See generally *Evans v. Buchanan*, 393 F.Supp. 428, 434–35 (D. Del. 1975) (subsequent history omitted) (describing racially restrictive housing covenants, which, although found to violate the Fourteenth Amendment in *Shelley v. Kramer*, 334 U.S. 1 (1948), were recorded in

Eventually, in New Castle County Delaware, another lawsuit was filed to eliminate segregation in our schools. For nearly a decade, the federal courts all but begged the state to remedy the problem itself. The state failed to do so, and a remedy that included busing was put in place.<sup>25</sup> Ninety percent of suburban parents opposed busing.<sup>26</sup> They opposed busing even though before the court order, many suburban students went to schools that were not the closest to their home.<sup>27</sup> They did so even though the major burden of busing under the court's

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New Castle County deeds until 1973 and the Code of Ethics of the National Association of Real Estate Boards, which instructed that realtors “should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood”); *see also* BRETT GADSDEN, *BETWEEN NORTH AND SOUTH: DELAWARE, DESEGREGATION, AND THE MYTH OF AMERICAN SECTIONALISM* 189–92 (2012) (describing witness statements offered in *Evans* to establish the link between housing segregation and school segregation, which included testimony that “the state’s real estate primer advised agents to follow the National Association of Real Estate Boards (NAREB) code of ethics that counseled—at least formally through the late 1950s—against introducing blacks into white residential areas,” that “only 7 percent of the listed properties in the Multiple Listing Service (MLS) of the Greater Wilmington Board of Realtors were designated as ‘open’ and thereby available to prospective minority buyers,” and detailed the experience of municipal court judge Leonard Williams who, in order to buy a property in Rockford Park, asked a white lawyer friend to inquire about the home, posed as an electrician’s helper working for the lawyer in order to view the house himself, and had the lawyer negotiate the sale of the property and then transfer the deed to him and his wife).

<sup>25</sup> *See generally Evans v. Buchanan*, 379 F.Supp. 1218, 1220 (D. Del. 1974) (subsequent history omitted) (describing the history of New Castle County’s desegregation litigation).

<sup>26</sup> JEFFREY A. RAFFEL, *THE POLITICS OF SCHOOL DESEGREGATION* 174 (1980).

<sup>27</sup> *See* CAROL G. HOFFECKER, *CORPORATE CAPITAL WILMINGTON IN THE TWENTIETH CENTURY* 246 (1983) (“[A]s recently as a decade before, some suburban children had attended city public schools, because the city schools were then perceived to be superior to the schools in the suburb. Now that the situation was reversed and the suburban schools were better equipped and had

ruling was on the children of Wilmington. The “9-3” plan required suburban children to spend just three consecutive years in the city schools, but required city children to spend up to nine years in suburban schools.<sup>28</sup>

Under the Court’s original remedy, it ordered the creation of one school district for all of northern New Castle County, as that was what educational experts said was best for children and allowed for the most coherent approach.<sup>29</sup> State officials, however, wanted more districts and got the court’s approval to create four school districts. If you imagine a pizza cut into four pieces, Wilmington was at the narrow end of each slice, where the round plastic thing is put. There is a caveat to this though. One of the districts, Christina, has its narrow end of the pizza in the same box as the other four districts. But its bigger end piece is in a box of its own,

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fuller programs, especially for college preparatory students, city people were prohibited from enrolling their children in public schools outside the city limits.”).

<sup>28</sup> *Coalition to Save Our Children v. State Board of Ed.*, 90 F.3d 752, 757 (3d Cir. 1996) (“The 1978 Order required a 9-3 student assignment plan, which provided that all students would attend formerly predominantly ‘white’ suburban school districts for a maximum of nine years and would spend at least three years in the formerly ‘black’ school districts.”).

<sup>29</sup> See BRETT GADSDEN, *BETWEEN NORTH AND SOUTH: DELAWARE, DESEGREGATION, AND THE MYTH OF AMERICAN SECTIONALISM* 183–84, 190–92 (describing sociological evidence presented at trial, including testimony of sociologist Karl Taeuber who justified a metropolitan remedy with the fact that achieving racial balance in only the city schools ““would do nothing to end the pervasive area-wide segregation between black Wilmington schools and white suburban schools””) (citing PAUL R. DIMOND, *BEYOND BUSING: INSIDE THE CHALLENGE TO URBAN SEGREGATION* (1985)).

separated by 15 to 20 miles of I-95.<sup>30</sup> Yes, the small end of the pie slice and the bigger end do not connect geographically at all.<sup>31</sup> A supermajority of voting power in each of the districts rested firmly in the suburbs.<sup>32</sup>

Whatever one otherwise thinks of the remedy, one thing it did for sure was to greatly reduce racial and economic segregation. By contrast to many other urban areas, neither Wilmington nor its suburbs was characterized by high-poverty, highly-segregated schools. Although there were specific challenges, such as concerns about the viability of Wilmington High School, the overall result was a desegregated school system,<sup>33</sup> with a reasonably equalized funding formula.<sup>34</sup>

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<sup>30</sup> WILMINGTON EDUC. IMPROVEMENT COMM'N, 1 SOLUTIONS FOR DELAWARE SCHOOLS 69 (2016) (“The Christina School District is one of a small number of school districts across the nation that is discontinuous. The western segment of the district is separated from the eastern segment by 16 to 20 miles, with parts of the Red Clay Consolidated and Colonial School Districts occupying the space between the two Christina segments.”).

<sup>31</sup> ARIELLE NIEMEYER ET AL., THE COURTS, THE LEGISLATURE, AND DELAWARE’S RESEGREGATION: A REPORT ON SCHOOL SEGREGATION IN DELAWARE: 1989–2010 18 (2010) (“State officials found it difficult to deal with a single district that had a substantial majority of all the state’s students. In 1980, legislation permitted the New Castle County School District to be divided into smaller districts, which would be easier to manage and more responsive. The state Board of Education created four pie-shaped areas where each incorporated a portion of both the city and suburban areas.”).

<sup>32</sup> Jeffrey A. Raffel, *After the Court Order: The Changing Faces of School Desegregation in the Wilmington Metropolitan Area*, 9 WIDENER L. SYMP. J. 81, 104–05 (2002) (“The school districts in the desegregation area elect their school boards by nominating areas. The electorate of the entire district elects board members within nominating districts. This balances the need for city board members with district-wide goals. . . . Of course, there is no ‘black control’ as had developed in the city prior to the desegregation order.”).

<sup>33</sup> *Id.* at 93 (“By the 1990s, with a new generation of students since school desegregation was ordered in the Wilmington metropolitan area, the positive effects of the plan were quite clear.

But, all of this was under dint of court order, and in the early 1990s, the state sought to be relieved of federal court supervision and succeeded in that effort in 1996.<sup>35</sup> In seeking a declaration that it had proven that it could operate its school system consistently with constitutional principles of equality, the state argued:

- “[T]he 1978 Order had created schools with near-perfect student and faculty racial balance and had desegregated classrooms two to three times more effectively than a national sample of comparable districts.”<sup>36</sup>
- “[A]n average of 80% of the students in the Four Districts attended classes that were 10–49% minority . . . [and] classroom imbalance in the Four Districts was ‘[one-third] to [one-half] of the imbalance in a national sample of schools collected by the Office of Civil Rights in the United States Department of Education.’”<sup>37</sup>
- “[T]he Four Districts went far beyond constitutional requirements by continually readjusting attendance zones to maintain racial balance long after the 9-3 Plan had desegregated the schools in September

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‘Black’ schools and ‘white’ schools had become ‘just’ schools. Gary Orfield, a leading scholar of school desegregation, had identified this metropolitan area as one of the most desegregated in the nation. Based on the Interracial Exposure Index, (the average percentage of white students in the average black student’s school) an analysis of school enrollment data indicated that the degree of desegregation had increased from 25% to over 70% in the desegregation area. That is, the average black student had well over twice as many white students in their school 17 years after the desegregation order was implemented than before the order. Schools in the city increased on this index from 7.3 to 65.6%, an amazing change.”)

<sup>34</sup> *Id.* at 87–88 (identifying as one of the benefits of a metropolitan desegregation plan that “the resources of the entire metropolitan area are available to the district, both financial and cultural or educational that may be the foundation of magnet schools or an enhanced curriculum”).

<sup>35</sup> *Coalition to Save our Children v. State Board of Ed.*, 90 F.3d 752 (3d Cir. 1996).

<sup>36</sup> Answering Brief of Appellees at 7–8, *Coalition to Save Our Children v. State Board of Ed.*, (3d Cir. 1995) 1995 WL 17145650, at \*8.

<sup>37</sup> *Id.* at \*11 (internal citations omitted).

1978. . . . The result was unprecedented and sustained racial balance for seventeen years.”<sup>38</sup>

- “It cannot be sensible to assume—let alone find, after contrary proof—that present performance differences in New Castle County result from the long-abandoned segregated school system.”<sup>39</sup>

The state got what it sought, which was the freedom to run the schools in New Castle County without federal monitoring.<sup>40</sup> In other words, “WE THE PEOPLE” of Delaware took into our hands responsibility for giving life to our society’s commitment to equality. What did we do with that responsibility?

I am not going to get into a detailed historical examination of how we got to where we are now. Certainly, the so-called Neighborhood Schools Act, however, accelerated the resegregation of city schools.<sup>41</sup> There is plenty that could be said about that. But we all—I emphasize, all—have a share in it.<sup>42</sup>

So, what have “WE THE PEOPLE” of Delaware done with that responsibility?

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<sup>38</sup> *Id.* at \*43 (internal citations omitted).

<sup>39</sup> *Id.* at \*53 (internal citations omitted).

<sup>40</sup> *Coalition to Save Our Children v. State Board of Ed.*, 90 F.3d 752 (3d Cir. 1996).

<sup>41</sup> *See, e.g., NIEMEYER ET. AL.*, *supra* note 32, at 9 (“[The Neighborhood Schools Act] virtually guaranteed that patterns of neighborhood segregation would be replicated in Wilmington area schools. Basically, state law required the resegregation of schools regardless of the desires of educational leaders or local communities.” (discussing The Neighborhood Schools Act of 2000, 72 Del. Laws ch. 287 (2000) (codified at 14 *Del. C.* § 220)).

<sup>42</sup> We includes me. Given how things have turned out, I have often reflected back on whether I made the right decision in *Harden v. Christina School District*. 924 A.2d 247 (Del. Ch. 2007).

By any objective measure, we have resegregated our school system.

Remember how we bragged in that brief in 1995?

Well, here is where we are in 2017.

Inside the Wilmington city limits, there are 13 elementary schools.<sup>43</sup> More than 60% of the students at each of these schools are low income and fewer than 25% of the students at these schools are white.<sup>44</sup>

At the same time that we have resegregated our elementary schools, we have left in place a system where city kids have to travel to the suburbs for their middle and high school years. As of today, no academic high school in the City of

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<sup>43</sup> There are eight elementary schools with grades K–5 and five elementary schools with grades K–8 inside Wilmington’s city limits. WILMINGTON EDUC. IMPROVEMENT COMM’N, 1 SOLUTIONS FOR DELAWARE SCHOOLS 59 (2016).

<sup>44</sup> For example, Warner Elementary in the Red Clay District is 75% black and 83% low income and Elbert-Palmer Elementary in the Christina School District is 78% black and 89.3% low income. *Warner Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=266&districtCode=32>; *Elbert-Palmer Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=356&districtCode=33>. Because of their similar socioeconomic characteristics, white and Asian American students share the label “white” throughout this speech’s discussion of school demographics. Asian American Delawareans are 1.3 times less likely to be in poverty than white Delawareans and 2.7 times less likely to be in poverty than black Delawareans. CTR. COMM. RES. & SERV., AN OVERVIEW OF POVERTY IN DELAWARE 2 (2014). Asian American Delawareans are two times more likely than white Delawareans and three times more likely than black Delawareans to have a bachelor’s degree or higher. U.S. CENSUS BUREAU, *2011–2015 American Community Survey 5-Year Estimates*, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.



Wilmington exists that is open to all kids from all districts.<sup>45</sup> Putting pressure on the idea that opposition to busing was about the length of bus rides, the old Wilmington High School is now the Charter School of Wilmington. I take a certain amount of pride in that school, having worked with Governor Carper, Paul Fine, and Red Clay to write the charter school law and help that school succeed. And succeed it has. It has the highest test scores in the state.<sup>46</sup> But instead of becoming a model for how an urban school could serve all, it is itself largely segregated.<sup>47</sup> In a city that is 58% black and has 25.4% of kids 5 to 17 living

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<sup>45</sup> Matthew Albright, *A Vision for Wilmington Schools*, DEL. ONLINE, <http://www.delawareonline.com/story/news/education/2015/03/06/vision-city-school/24534621/> (“Since desegregation spurred the splitting of districts, high school students who don’t attend charter, magnet, vo-tech or private schools have been bused out of the city into high schools located in the suburbs. Wilmington residents have long decried this system, saying it has sundered any sense of community.”).

<sup>46</sup> THE CHARTER SCHOOL OF WILMINGTON, *2015–2016 Awards*, <http://charterschool.org/2015-2016-awards/> (“The Charter School of Wilmington continues to have the highest high school scores on every Delaware State Assessment Test for 10-12th grade. The Charter School of Wilmington continues to have the highest SAT scores in the State among all public high schools.”).

<sup>47</sup> A fairly large number of city students now attend a variety of charter schools. However well-intentioned these schools are, none have been given extra resources, they have not served as a model for systemic change, and they have not driven outcomes that have closed the wide disparities this lecture addresses. In fact, there is an argument that the proliferation of uncoordinated charter schools in Wilmington that do not provide a viable model to serve all kids with similar needs is a symptom, not a cure, to the basic illness of inequality we face. For a consideration of some of the issues raised by having four districts and a bunch of charter schools in Wilmington, see WILMINGTON EDUC. IMPROVEMENT COMM’N, *1 SOLUTIONS FOR DELAWARE SCHOOLS* 15–17, 97, 115, 144, 167–68 (2016).

below the poverty level,<sup>48</sup> only 6.3% of the Charter School of Wilmington's students are black and only 4.5% are low income.<sup>49</sup>

For the most part, city kids therefore have to go outside the city for their middle school and high school years. They now come to those schools out of high poverty, highly racially concentrated schools, meeting classmates who have come from elementary schools with very different characteristics, and who can more easily take advantage of afterschool activities as they live closer to school.

We have built schools, though. Two are familiar to me. I was a kid when the desegregation order came. The elementary schools in my community were closed, as those were the ages where kids in Hockessin went into the city. So Hockessin and North Star elementary schools were closed.<sup>50</sup> And so was the nearby Brandywine Springs Junior High School.<sup>51</sup>

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<sup>48</sup> THE CITY OF WILMINGTON DELAWARE, *Demographic Profiles: City of Wilmington*, <https://www.wilmingtonde.gov/home/showdocument?id=336>.

<sup>49</sup> CHARTER SCHOOL OF WILMINGTON, DEL. DEP'T EDUC., <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=295&districtCode=32>.

<sup>50</sup> See Maureen Milford & Jane Harriman, *15 More Schools to Close?*, EVENING J., May 21, 1981, at A-1 (noting that Hockessin and North Star elementary schools will close and those students will instead attend H.B. DuPont Elementary School).

<sup>51</sup> *Id.* (reporting the closing of Brandywine Springs Junior High School and noting that those students will attend Skyline Junior High, Stanton Junior High, Thomas McKean High, or John Dickinson High).

A new North Star School and a revived Brandywine Springs, now serving students in kindergarten through fifth grade, were reopened in 2005 and 2000, respectively.<sup>52</sup> Within its first year, Brandywine Springs leapt to 13th highest of sixty-seven elementary schools in the state for student achievement in math and 12th highest in the state for student achievement in reading.<sup>53</sup> North Star in its first year was ranked second highest in student achievement for both math and reading out of sixty-four elementary schools in the state.<sup>54</sup>

Why might that be so?

Well, let's start with demographics. North Star's student body is 88% white and less than 4% black.<sup>55</sup> Brandywine Springs' student body is 78% white and only 6% black.<sup>56</sup> Less than 5% of North Star's student body is low income and less than 15% of Brandywine Springs' student body is low income.<sup>57</sup>

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<sup>52</sup> NORTH STAR ELEMENTARY SCHOOL, DEL. DEP'T EDUC. 1 (2006) (noting that North Star Elementary reopened in 2005); BRANDYWINE SPRINGS ELEMENTARY SCHOOL, DEL. DEP'T EDUC. 1 (2005) (noting that Brandywine Springs reopened in Fall 2000).

<sup>53</sup> Rankings based on Grade 3 DSTP reading and math mean score for the 2000 school year. Underlying data, compiled and analyzed by the author, is available at DEL. DEP'T EDUC., DELAWARE STUDENT ASSESSMENT REPORTING & ANALYSIS (ver. 2017), [https://pubapps.doe.k12.de.us/DSARA\\_Public/GeneralSummary.aspx](https://pubapps.doe.k12.de.us/DSARA_Public/GeneralSummary.aspx).

<sup>54</sup> *Id.*

<sup>55</sup> *North Star Elementary School*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/school/profiles/School/Default.aspx?checkSchool=270&districtCode=32>.

<sup>56</sup> *Brandywine Springs School*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/school/profiles/School/Default.aspx?checkSchool=261&districtCode=32>.

<sup>57</sup> *Id.*; *North Star Elementary School*, *supra* note 55.

Now, given that these schools vaulted to near the top in their first year, we have to acknowledge the strong probability that demographics drove these results.

But, let's look at their staffs. Approximately 81% of the teachers at both North Star and Brandywine Springs are “veterans” with ten or more years of teaching experience.<sup>58</sup>

Now, let's compare the demographics of these schools to two of their counterparts in Red Clay in the city: Shortlidge Elementary and Warner Elementary.

Shortlidge's student body is 77% black and less than 4% white.<sup>59</sup> More than 86% of Shortlidge's students are low income.<sup>60</sup> Warner's student body is 76% black and 3% white.<sup>61</sup> More than 83% of Warner's students are low income.<sup>62</sup> The majority of the teachers at both of these schools have less than ten years of experience: 60% at Shortlidge and 54% at Warner.<sup>63</sup>

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<sup>58</sup> Author calculations from school profiles available at: *State of Delaware*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/State/Default.aspx> [hereinafter Education Calculations].

<sup>59</sup> *Shortlidge (Evan G.) Academy*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=248&districtCode=32>.

<sup>60</sup> *Id.*

<sup>61</sup> *Warner Elementary School*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=266&districtCode=32>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*; *Shortlidge (Evan G.) Academy*, *supra* note 59.

Now, is this just a Red Clay dynamic? No, it is not. In the Christina School District, Stubbs Elementary’s student body is 85% black, 1% white and almost 89% low income.<sup>64</sup> Only 13.6% of its teachers have more than ten years of experience.<sup>65</sup> Downes Elementary has a student population that is 63.9% white and 20% black—31% of its students are low income.<sup>66</sup> And 77% of the teachers at Downes have more than ten years of experience.<sup>67</sup>

Likewise, in Brandywine School District, Harlan Elementary’s student body is 90% black, less than 3% white, and over 67% low income.<sup>68</sup> Fifty-six percent of Harlan’s teachers are veterans with ten or more years of experience.<sup>69</sup> By contrast, Forwood Elementary has a student body that is 66% white, 22% black, and 28% low income.<sup>70</sup> A strong super-majority—84% or nearly 30% more than Harlan—of Forwood teachers have more than ten years of teaching experience.<sup>71</sup>

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<sup>64</sup> *Stubbs (Frederick Douglass) Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=362&districtCode=33>.

<sup>65</sup> *Id.*

<sup>66</sup> *Downes (John R.) Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=362&districtCode=33>.

<sup>67</sup> Education Calculations, *supra* note 58.

<sup>68</sup> *Harlan (David W.) Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=156&districtCode=31>.

<sup>69</sup> Education Calculations, *supra* note 58.

<sup>70</sup> *Forwood Elementary School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=124&districtCode=31>.

<sup>71</sup> Education Calculations, *supra* note 58.

There are essentially only two middle schools in the City: P.S. duPont Middle School and Bayard Middle School.

P.S. duPont Middle School is the home of the “gifted” program for the Brandywine School District,<sup>72</sup> is much closer to the suburbs it serves, and has demographics closer to the other middle schools outside Wilmington’s city limits. P.S. duPont Middle School’s student body, for example, is only 46% black, is 44% white, and is 35% low income.<sup>73</sup> But the racial composition of the gifted program suggests that P.S. duPont is in some ways two schools: one serving an 80% white and 4% low income honors program, and one serving a 46% black and 35% low income general population.<sup>74</sup> This divide is also visible in P.S. duPont’s test scores: while less than 10% of both low income and non-low income 6th graders at Bayard scored proficient on their English exams, 35% of low income students at P.S. duPont scored proficient and 76% of non-low income students scored

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<sup>72</sup> *The Gifted Program*, P.S. duPont Middle School, <https://www.brandywineschools.org/Page/3012> (“P.S. duPont Middle School is proud to be home to The Brandywine School District Middle Level Gifted Program. The program offers specialized programming to meet the individual needs of the gifted learner. The Gifted Program is not a separate entity unto itself, students are actively engaged with whole-school activities and related arts courses.”).

<sup>73</sup> *DuPont (Pierre S.) Middle School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=124&districtCode=31>.

<sup>74</sup> *Id*; select gifted program demographic information provided by Delaware Department of Education.

proficient on that same test.<sup>75</sup> At the same time, it is also the case that the school overall is less segregated by race and poverty, and the data suggests this greater diversity is likely to benefit its black and poor students.<sup>76</sup>

Christina's Bayard Middle School has demographics like the city elementary schools in the districts that precede it: 68% of Bayard's student body is black, less than 3% is white, and almost 79% is low income.<sup>77</sup>

More than 90% of Bayard's students scored less than proficient on their sixth, seventh, and eighth grade English and math exams. Put another way, fewer than 10% of these kids scored proficient.<sup>78</sup>

Comparatively, more than 22% of sixth through eighth grade students in the Christina School District overall scored proficient on their math exams, and more

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<sup>75</sup> DELAWARE STUDENT ASSESSMENT REPORTING & ANALYSIS (ver. 2017), *duPont (Pierre S.) Middle School (170) Smarter Summary - ELA (2017 Smarter) By Low Income (Direct Cert)*, [https://pubapps.doe.k12.de.us/DSARA\\_Public/DisaggSummary.aspx](https://pubapps.doe.k12.de.us/DSARA_Public/DisaggSummary.aspx) (last visited Sept. 6, 2017).

<sup>76</sup> See *infra* note 124 and accompanying text.

<sup>77</sup> *Bayard Middle School*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=352&districtCode=33>.

<sup>78</sup> Eight percent, 6%, and 8% of sixth, seventh, and eighth grade students at Bayard Middle School, respectively, scored proficient on the ELA exam in the 2016–2017 school year. Six percent, 2%, and 0.89% of sixth, seventh, and eighth grade students at Bayard Middle School, respectively, scored proficient on the math exam in the 2016–2017 school year. *Bayard Middle School*, DEL. DEP'T EDUC. (2017), [https://pubapps.doe.k12.de.us/DSARA\\_Public/SchoolSumMenu.aspx?s=352](https://pubapps.doe.k12.de.us/DSARA_Public/SchoolSumMenu.aspx?s=352).

than 31% did so on their English exams.<sup>79</sup> Honestly, the statistics for the Christina School District, regardless of which school you look at, are concerning. Even as worrying as the Christina results are, it appears the middle school students outside of Bayard did at least 4 times better (and as much as 31 times better, in the case of 8th grade math proficiency).<sup>80</sup> To be fair, from the time the state divided New Castle County in four and gave Christina a portion of the city that had no geographic or otherwise natural connection to the city, that district has faced perhaps the most difficult challenge of any in balancing the needs of all its students.

Take George V. Kirk Middle School in Newark, for example. Kirk Middle School lies in the bigger piece of the Christina School District, which as mentioned is not contiguous with the City and is separated from the city portion of the district by 20 or so miles of I-95.<sup>81</sup> Kirk Middle School's student body is 34% black, 40%

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<sup>79</sup> Thirty-one percent, 31%, and 36% of sixth, seventh, and eighth grade students in the Christina School District, respectively, scored proficient on the ELA exam in the 2016–2017 school year. Twenty-two percent, 23%, and 24% of sixth, seventh, and eighth grade students in the Christina School District, respectively, scored proficient on the math exam in the 2016–2017 school year. DEL. DEP'T EDUC., *Christina School District Smarter Summary*, [https://pubapps.doe.k12.de.us/DSARA\\_Public/GeneralSummary.aspx](https://pubapps.doe.k12.de.us/DSARA_Public/GeneralSummary.aspx).

<sup>80</sup> Author calculations based on data available at DEL. DEP'T EDUC., *Christina School District Smarter Summary*, [https://pubapps.doe.k12.de.us/DSARA\\_Public/GeneralSummary.aspx](https://pubapps.doe.k12.de.us/DSARA_Public/GeneralSummary.aspx).

<sup>81</sup> WILMINGTON EDUC. IMPROVEMENT COMM'N, 1 SOLUTIONS FOR DELAWARE SCHOOLS 69 (2016) (“The Christina School District is one of a small number of school districts across the



white, and 40% of the students are low income.<sup>82</sup> More than 40% of sixth, seventh, and eighth grade students at Kirk demonstrated proficiency in English, and more than 23% demonstrated proficiency in math.<sup>83</sup> More than half of the teachers at Kirk Middle School—63%—have ten or more years of teaching experience.<sup>84</sup>

Now, you ask, surely there was some tradeoff when these changes were made. It must have been recognized that if kids who had less were all put in the same school, they and their teachers would need more. More days of learning? More hours in the day? More experienced teachers? More school-annexed activities to give kids struggling with academics a sense of belonging and self-esteem that would help them persevere in their studies?<sup>85</sup>

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nation that is discontinuous. The western segment of the district is separated from the eastern segment by 16 to 20 miles, with parts of the Red Clay Consolidated and Colonial School Districts occupying the space between the two Christina Segments.”).

<sup>82</sup> *Kirk Middle School*, DEL. DEP’T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/School/Default.aspx?checkSchool=374&districtCode=33>.

<sup>83</sup> 41.94%, 40.68%, and 45.38% of sixth, seventh, and eighth grade students at Kirk Middle School, respectively, scored proficient on the ELA exam in the 2016–2017 school year. 23.42%, 30.93%, and 34.5% of sixth, seventh, and eighth grade students at Kirk Middle School, respectively, scored proficient on the math exam in the 2016–2017 school year. *Kirk (George V.) Middle School*, DEL. DEP’T EDUC. (2017), [https://pubapps.doe.k12.de.us/DSARA\\_Public/SchoolSumMenu.aspx?s=374](https://pubapps.doe.k12.de.us/DSARA_Public/SchoolSumMenu.aspx?s=374).

<sup>84</sup> Education Calculations, *supra* note 58.

<sup>85</sup> See generally Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods: A Constitutional Insult*, 7 RACE SOC. PROB. 21, 22 (2015) (describing how social and economic disadvantages depress school performance).

The only fair answer to that is no. And it is likely worse than that. Put aside for a moment the reality that sweat and effort matter and that these kids who come to school with less preparation and whose parents cannot afford the extra academic enrichment that so many upper-middle class parents give their children are at a disadvantage.<sup>86</sup>

Let's focus on the most expensive input into the education budget: the teaching staff.<sup>87</sup> Our state provides higher pay to teachers with more years of experience, with more years of education, and with Professional Board certification.<sup>88</sup>

The premise of this is rational: we want to encourage teachers to become better at their jobs and we recognize that more experienced teachers tend to be more effective at their jobs.<sup>89</sup>

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<sup>86</sup> See generally Daniel T. Willingham, *Why Does Family Wealth Affect Learning?*, 36 AM. EDUCATOR 33 (2012) (describing two theories—the family investment theory and the stress theory—that explain the effect of socioeconomic status on learning).

<sup>87</sup> *Finance*, DEL. DEP'T EDUC. (2017), <http://profiles.doe.k12.de.us/SchoolProfiles/State/Finance.aspx> (noting that Instructional Service accounted for 57% (approximately \$1.2 billion) of state expense allocation for the 2015–2016 school year and that teacher salaries made up 63% of the Instructional Service salary allocation).

<sup>88</sup> 14 *Del. C.* § 1305.

<sup>89</sup> LINDA DARLING HAMMOND, *THE FLAT WORLD AND EDUCATION* 108 (2010) (“[C]ontrolling for student characteristics, schools with the greatest proportions of [novice] teachers lost more than 20 percentile points in achievement relative to those with a more senior teaching force.”).

So, of course, it must be that the most experienced, most highly-qualified teachers are assigned to the kids who need them most. We should expect that we would find the schools we outlined to have the most experienced, most highly degreed staffs.

Our commitment to equality, especially if we are going to resegregate, must surely be strong enough to insist that we put our dollars where our principles are. And surely, our most experienced, best qualified teachers should predominate at the schools with the hardest jobs to do.

Well, no. As we have seen, that is not the case.<sup>90</sup> And what starts as a state funding formula that is equal, actually turns at the district level into one that is anything but.<sup>91</sup>

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<sup>90</sup> STRATEGIC DATA PROJECT, SDP EDUCATOR DIAGNOSTIC: DELAWARE DEPARTMENT OF EDUCATION 4 (2015) (“Specifically, over one quarter of public school teachers in Delaware have taught for five or fewer years, and 8% of teachers are novices with no prior teaching experience. How these new and early-career teachers are distributed across schools and students in the state is an important policy question; both national evidence and Delaware-specific findings reveal that novice teachers tend to be less effective than those with more years of teaching experience. Related to this, we find that in Delaware, students in high-poverty schools are more likely to be taught by newly hired teachers, and that Delaware’s new and early-career teachers typically teach students who are further behind academically than the students their veteran colleagues teach.”); cf. *The Set: What Are the Most Significant “Teacher Equity” Gaps in Delaware?*, DEL. DEP’T EDUC. TEACHER AND LEADER EFFECTIVENESS UNIT 1 (2015) (“Schools with the greatest shares of minority students have higher turnover: In schools with the greatest share of minority students (top quartile) the turnover rate was 18.6 percent compared to 10.7 percent in schools [in] the bottom quartile.”).

I suppose none of this would matter, if the overall outcomes for black and white students in New Castle County were somehow nearly equal.

But, they are not.

Dropout rates for black students are nearly three times as high as dropout rates for white students in New Castle County.<sup>92</sup> As problematic, black students drop out earlier. In Delaware, of all four years of high school, the dropout rate for black high school students is highest in the ninth grade.<sup>93</sup> And during this first year of high school, the dropout rate for black ninth graders is twice the dropout rate for white ninth graders.<sup>94</sup>

In the 2015–2016 school year, there was a 28 percentage-point achievement gap between the number of black students and white students that were proficient in English.<sup>95</sup> The achievement gap was even larger for the number of black

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<sup>91</sup> There are other reasons, too. *See* DEL. DEP’T EDUC., DELAWARE EDUCATION FUNDING: A SUMMARY OF THE CURRENT SYSTEM AND RECOMMENDED CHANGES 2 (2015), <https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/366/Delaware%20Education%20Funding%20Matrix.pdf> (“Equalization funding does not make up for the significant differences in school districts’ ability to raise enough funds to educate all students. The majority of states [other than Delaware] provide adequate operational funding levels to all districts to ensure that every district can meet the needs of its students regardless of local property values.”).

<sup>92</sup> 2015–2016 DELAWARE DROPOUT SUMMARY STATISTICS 6 (2017).

<sup>93</sup> *Id.* at 3.

<sup>94</sup> *Id.*

<sup>95</sup> RODEL FOUND. OF DEL., DELAWARE PUBLIC EDUCATION AT A GLANCE (2017), <http://www.rodelfoundationde.org/ata glance/#student-achievement>.

students proficient in math—31 percentage points—as compared to white students.<sup>96</sup>

I suppose, again, that none of this would matter as much if somehow these realities translated into equal outcomes among adults.

But they do not.

Nearly 60% of black families in Delaware are at or below 200% of the federal poverty level, as compared to 26% of white families.<sup>97</sup>

In a state where 22% of the population is black, black people comprise 57% of our prison population.<sup>98</sup>

And things are getting worse, not better, if one focuses at the younger level. Although black children comprise only 26% of all children in Delaware, they comprise 64% of young people arrested for crimes and 68% of those under the supervision of Youth Rehabilitative Services (“YRS”).<sup>99</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> NAT’L CTR. CHILD. POVERTY, *Delaware: Demographics of Low-Income Children* (2015), [http://www.nccp.org/profiles/DE\\_profile\\_6.html](http://www.nccp.org/profiles/DE_profile_6.html).

<sup>98</sup> JOHN M. MACDONALD & ELLEN A. DONNELLY, *EVALUATING THE ROLE OF RACE IN CRIMINAL JUSTICE ADJUDICATIONS IN DELAWARE* 11 (2016).

<sup>99</sup> KIDS COUNT IN DELAWARE, *2017 FACT BOOK* 138 (2017), <https://www.sppa.udel.edu/ccrs/SitePages/KCDE2017/default.aspx>; Andrew Cohen, *Race and Ethnicity by Program*, DIV. YOUTH & REHAB. SERV., <https://public.tableau.com/profile/andrew.cohen#!/vizhome/DemographicDataByProgramandYear/TotalClientsServedbyFiscalYear> (reporting that for fiscal year 2016, 68% of program clients were black and 31% of clients were white); *see also* DIV. YOUTH & REHAB.

Worst of all is the sickening and disheartening level of violence that has characterized our community. Don't tell the Fresh Prince, but heck, I would love to spend some time with Jada Pinkett Smith. But, I didn't like hearing she might be the lead in a TV series about our community called Murder Town USA,<sup>100</sup> a series that would have largely been about young black males engaged in the drug trade who end up shooting each other and other members of their own community.<sup>101</sup>

A series of that kind would make even more obvious a reality that every day is limiting our attractiveness to businesses seeking to locate new operations and thus our ability to create the job growth that is critical to lifting people out of poverty. It would have underscored the fact that the major city in an affluent state has a violent crime rate exceeding that of cities like New York and Los Angeles.<sup>102</sup>

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SERV. OFFICE OF DIR., POPULATION STATISTICS SNAPSHOT 3 (2014) (reporting that 75% of clients were black).

<sup>100</sup> See Ryan Cormier, *New ABC Drama 'Murder Town' Set in Wilmington*, USA TODAY, Nov. 11, 2015, <https://www.usatoday.com/story/news/nation-now/2015/11/11/tv-wilmington-murder-town/75601032/>; Ryan Cormier, *'Murder Town' TV show 'probably dead at this point'*, NEWS J., Aug. 12, 2016, <http://www.delawareonline.com/story/entertainment/2016/08/12/murder-town-tv-show-probably-dead-point/88614690/> (discussing why ABC “passed on the project”).

<sup>101</sup> *Id.* (describing the plot line as “Delaware’s first African-American district attorney,” played by Jada Pinkett Smith, who “finds herself confronted by old loyalties and loves, a shocking revelation about her murdered husband and a polarizing, racially charged case that threatens to burn her and her city to the ground”).

<sup>102</sup> FBI, *Table 8 Offenses Known to Law Enforcement by City by State* (2015), [https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.2015/tables/table8/table\\_8\\_offenses\\_](https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.2015/tables/table8/table_8_offenses_)

And it would have highlighted the statistics that suggest that kids are more likely to be shot in Wilmington than in any other city in the United States, including Chicago.<sup>103</sup>

For our law enforcement and corrections community, these circumstances are maddening. They find themselves at the crosscurrents of two converging floods of justified public sentiment. On the one hand, there is the urgent concern that something is wrong when it is so much more likely that a black person will end up incarcerated than a white person.<sup>104</sup> How can it be fair, for example, when white people generate so much of the demand for illegal drugs, that it is the black

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known\_to\_law\_enforcement\_by\_state\_by\_city\_2015.xls/view (documenting 25,156 violent crimes in Los Angeles, which has a population of 3,962,726; 50,088 violent crimes in New York City which has a population of 8,550,861; and 1,231 violent crimes in Wilmington, which has a population of 72,078. These figures result in violent crime rates, defined as the number of violent crimes per 100,000 people, of 634.8 for Los Angeles, 585.7 for New York City, and 1,707.8 for Wilmington; *see also* NIC, CORRECTION STATISTICS BY STATE: DELAWARE, <https://nicic.gov/statestats/?st=de> (“The crime rate in Delaware (2015) is about 13% higher than the national average rate.”); ALL THINGS CONSIDERED, *Wilmington, Del., Struggles With Outsized Murder Rate*, NPR (Jan. 1, 2014), <http://www.npr.org/2014/01/01/258889969/wilmington-del-struggles-with-outsized-murder-rate> (“The city of Wilmington, Delaware has a problem: gun violence. It has just 71,000 residents but if its homicide rate were compared to larger cities, it would rank fourth behind Flint, Michigan, Detroit and New Orleans.”).

<sup>103</sup> Brittany Horn et al., *Wilmington: Most Dangerous Place in America for Youth*, NEWS J., <http://www.delawareonline.com/story/news/crime/2017/09/08/our-babies-killing-each-other/100135370/>.

<sup>104</sup> Although blacks are 22% of the Delaware’s population, blacks make up 42% of arrestees, 42% of criminal dispositions, 51% of incarceration sentences, and 57% of the incarcerated population. JOHN M. MACDONALD & ELLEN A. DONNELLY, *EVALUATING THE ROLE OF RACE IN CRIMINAL JUSTICE ADJUDICATIONS IN DELAWARE* 11 (2016).

people who get caught up in the commerce of drugs who end up in prison?<sup>105</sup> How can it be fair that so many black teenagers find themselves facing sentencing as an adult and generations of imprisonment?<sup>106</sup>

On the other hand, there is the legitimate demand to take the shooters off the streets, and that our police will identify them and employ strategies to make our

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<sup>105</sup> THOMAS P. EICHLER, DEL. CTR. FOR JUSTICE & METROPOLITAN WILMINGTON URBAN LEAGUE, RACE AND INCARCERATION IN DELAWARE 6 (2005), [https://static.prisonpolicy.org/scans/Race Incarceration.pdf](https://static.prisonpolicy.org/scans/Race%20Incarceration.pdf) (“Whites are an estimated 73% of those [in Delaware] using illicit drugs, [b]ut Blacks are 86% of those doing time for drug charges.”); NAACP, *Criminal Justice Fact Sheet*, <http://www.naacp.org/criminal-justice-fact-sheet/> (“African Americans represent 12.5% of illicit drug users, but 29% of those arrested for drug offenses and 33% of those incarcerated in state facilities for drug offenses.”).

<sup>106</sup> NAT’L JUV. DEFENDER CTR., DELAWARE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN JUVENILE DELINQUENCY PROCEEDINGS 57 (July 2017), [http://njdc.info/wp-content/uploads/2017/07/Delaware-Assessment\\_NJDC.pdf](http://njdc.info/wp-content/uploads/2017/07/Delaware-Assessment_NJDC.pdf) (finding in 2014, children of color in Delaware were “prosecuted in adult court 1.92 times more than white children”). Twelve percent of black children, 6% of white children and 8% of all children in Delaware had a parent who was ever incarcerated in a data sample from 2011–2012. KIDS COUNT, *Children Who Had a Parent Who Was Ever Incarcerated by Race and Ethnicity*, <http://datacenter.kidscount.org/data/tables/8978-children-who-had-a-parent-who-was-everincarcerated-byraceandethnicity?loc=9&loct=2#detailed/2/any/false/1021/10,11,9,12,1,13/17930,17931>; NAACP, *Criminal Justice Fact Sheet*, <http://www.naacp.org/criminal-justice-fact-sheet/> (“Nationwide, African American children represent 32% of children who are arrested, 42% of children who are detained, and 52% of children whose cases are judicially waived to criminal court.”); Benjamin H. Harris & Melissa S. Kearney, *The Unequal Burden of Crime and Incarceration on America’s Poor*, BROOKINGS INST.: UP FRONT (Apr. 28, 2014), <https://www.brookings.edu/blog/up-front/2014/04/28/the-unequal-burden-of-crime-and-incarceration-on-americas-poor/> (“Sadly, having an incarcerated parent is a fact of life for 2.7 million American children. . . . [F]or an African American child whose father does not have a high school diploma, there is roughly a 50 percent chance that his or her father will be in prison by the time of the child’s fourteenth birthday.”).



communities safer.<sup>107</sup> That, of course, involves more intensive policing of the communities where violence is occurring and more arrests.<sup>108</sup> That involves prosecuting the people caught and incapacitating them for some period of time. And if the supply of crime does not abate, those charged with enforcing the law are required to do their jobs.

Wanting to do the best we could to take a hard look at ourselves, we as a criminal justice system commissioned a study of the causes of disparities at the sentencing stage of the criminal justice system. We asked: What explains why black offenders were more likely to be sentenced to a prison term than white offenders?

We got one of the most respected criminal justice experts in the nation, John MacDonald, Professor of Criminology and Sociology, and the Penny and Robert

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<sup>107</sup> See, e.g., *Purzycki to Get Help from State and County in Crackdown on Violent Gun Crime*, DEL. BUS. NOW (Jan. 24, 2017), <http://delawarebusinessnow.com/2017/01/purzycki-gets-help-from-state-and-county-in-crackdown-on-violent-crime/> (noting that even though the city police force will be increased by 19 officers, the Mayor is also seeking assistance from federal, state, and county agencies to address violent gun crime in known crime areas and stating that people who live in high crime areas are eager to “stop the relatively small number of criminals who are obtaining guns and shattering lives and communities”).

<sup>108</sup> See Trey Popp, *Black Box Justice*, PENN. GAZETTE, Sept.–Oct. 2017, at 38, 43 (referring to “evidence that rates of drug use and selling are comparable across racial lines,” David Rudovsky, civil rights lawyer and senior fellow at the University of Pennsylvania law school observed that “[b]lack kids get arrested a lot more frequently for drugs—not because they use drugs more frequently, but because that’s where the cops are”).

A. Fox Faculty Director for the Fels Institute of Government, at the University of Pennsylvania,<sup>109</sup> to lead the study. He engaged as his co-researcher, a terrific young post-doc named Ellen Donnelly, who I am proud to say has now joined the University of Delaware as an assistant professor. They started with a large nominal disparity: a black defendant in Delaware is nearly 1.6 times more likely to receive an incarceration sentence than a white defendant.<sup>110</sup> They then examined what explained that difference. What they found was revealing, which is that when one looked at certain criteria, the disparities that existed tended to dissipate.

That is, the more the white offenders and the black offenders shared certain characteristics, the more equally they were treated. And what were these characteristics?

The key ones were things like: whether the defendant had been arrested as a kid, the nature of the current case and charges the defendant faced, whether the defendant spent time in jail before trial, and how many times the defendant had been arrested before.

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<sup>109</sup> U. PENN., *John MacDonald*, <https://crim.sas.upenn.edu/people/john-macdonald>.

<sup>110</sup> JOHN M. MACDONALD & ELLEN A. DONNELLY, *EVALUATING THE ROLE OF RACE IN CRIMINAL JUSTICE ADJUDICATIONS IN DELAWARE* 25 (2016).

Using factors like these, the researchers were able to explain over 70% of the disparity.<sup>111</sup> Three factors—whether the defendant had a juvenile record, whether the defendant had prior arrests, and whether the defendant was able to post bail or had to spend time in jail—account for approximately 40% of the nominal disparity.<sup>112</sup> And, these three factors are all correlated with poverty and educational failure.<sup>113</sup>

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.* (finding that detention accounted for 19.94% of the difference, juvenile record accounted for 5.78% of the difference, and number of prior arrests accounted for 14.62% of the difference, for a total of 40.34%). The other factors identified by the researchers that explain the balance of the 70% difference are arrest charge type, most serious arrest charge, violation of probation case, whether the defendant is male, age at arrest, county in which the defendant was sentenced, whether the defendant used a public defender, and the number of prior violent convictions, drug convictions, and felony convictions. *Id.*

<sup>113</sup> See, e.g., Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53, 108 (2012) (noting that “[l]ongitudinal studies demonstrate that arresting children and placing them in the juvenile justice system increases the likelihood of their continued involvement in the courts both as youths and adults”); Liana M. Goff, *Pricing Justice: The Wasteful Enterprise of America’s Bail System*, 82 BROOK. L. REV. 881, 912 (2017) (summarizing the links between poverty and pretrial detention and noting that “[s]tudies spanning six decades have firmly established that the denial of liberty pretrial has plea-inducing and criminogenic effects; that pretrial incarceration as a result of poverty alone ‘so pervades our system that for a majority of defendants accused of anything more serious than petty crimes, the bail system operates’ as an outright denial of liberty; and, that ‘there is an extraordinary correlation between pretrial status (jail or bail) and the severity of the sentence after conviction’”) (citations omitted); Francisca D. Fajana, *The Intersection of Race, Poverty, and Crime*, 41 CLEARINGHOUSE REV. 120, 124–25 (2007) (chronicling the “long tradition of intertwining race, poverty, and crime” and noting that incarceration results in reduced social capital, “lost work experiences, diminished skills, severed social networks, irregular employment, and depressed wages”); see also *infra* n.114 and accompanying text).

Although the professors will be following up their study in detail, I would summarize my intuition from the initial study thusly: the more a white offender tends to have been in poverty and gotten in trouble early in life, the more the outcomes look exactly like the black offenders, most of whom share these attributes.

Police, prosecutors, and correctional employees are rightly frustrated at being the focus of a problem that they are dealing with long after it should have been addressed. By the time someone has dropped out of school, committed youth offenses, and been caught using a weapon in a drug crime, there are no easy answers, and there is no answer that does not involve some aspect of punishment.

And it is neither rational nor fair to believe that the answers to the deeper inequality in our state can be found in the criminal justice system itself. We should do better, and that is why there are major efforts going on to: improve the fairness of our criminal code and our bail system; reduce the effects of any form of bias, implicit or explicit, on decision-making by judges, lawyers, police, and correctional officials; and deepen our efforts to help offenders rehabilitate and become productive members of society.

But everything we know about crime suggests that the agriculture industry in our state extends north and that it involves the cultivation of continuing crime.

Why do I say so?

Well, we know that someone who grows up in poverty is much more likely to engage in crime than someone who does not.<sup>114</sup> Social science research confirms that assertion, but if you don't believe it, perhaps you might believe Aristotle, who once said: "Poverty is the parent of crime."<sup>115</sup>

We also know that a person's earnings affect their likelihood of going to prison. For example, one study shows a \$100 increase in weekly pay reduces the chances of going to prison by about one-quarter.<sup>116</sup> That same study estimates the declining wages and employment rates for young black dropouts during the 1980s and 1990s increased those men's chances of imprisonment by 20%.<sup>117</sup> This relationship between poverty and imprisonment is mirrored in the median income data for prisoners: "[I]n 2014 dollars, incarcerated people had a median income of

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<sup>114</sup> Research supports "a policy of saving children from a life of crime by intervening in childhood to tackle key risk factors." Poverty is a "key risk factor" inducing future criminal behavior. U. MINN., SOCIAL PROBLEMS: CONTINUITY AND CHANGE 358 (2015), <http://open.lib.umn.edu/socialproblems/> (citing Welsh & Farrington, *Save Children From a Life of Crime*, 6 CRIMINOLOGY & PUB. POL'Y 871, 871–79 (Nov. 29, 2007)).

<sup>115</sup> ARISTOTLE, POLITICS, Book 2 § 1260(b).

<sup>116</sup> BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 78 (2006).

<sup>117</sup> *Id.*

\$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.”<sup>118</sup>

We know that someone who drops out early is more likely to engage in crime than someone who does not.<sup>119</sup>

We know that someone who does not get a high school degree is much more likely to engage in crime than someone who does not. Black high school graduates or recipients of GEDs born between 1965 and 1969 were more than three times less likely than black dropouts to be imprisoned between the ages of 30 and 34 (3.6% versus 11.2%).<sup>120</sup>

We know that someone who lacks a college degree is more likely to engage in crime than someone who does not. In fact, high school dropouts 16–24 years old are more than 63 times more likely to be incarcerated than college graduates.<sup>121</sup>

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<sup>118</sup> Press Release, Prison Policy Initiative, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

<sup>119</sup> An additional year of schooling reduces the annual probability of incarceration by 0.6 percentage points for whites and 2 percentage points for blacks. Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests and Self-Reports*, 94 AM. ECON. REV. 157, 180 (2004). A one-year increase in average education levels is estimated to reduce arrest rates by 11%. *Id.* at 175.

<sup>120</sup> Andrew Sum et al., *The Consequences of Dropping Out of High School*, CTR. LAB. MKT. STUD., NORTHEASTERN U. 27 (2009).

<sup>121</sup> *Id.* at 9, 12.

We know that the difference in average education between blacks and whites can explain up to 23% of the black-white gap in incarceration rates.<sup>122</sup>

What we also know is that the difficulties of being poor are compounded by economic and racial segregation. Poor kids who live in socioeconomically diverse neighborhoods and go to socioeconomically diverse schools do better.<sup>123</sup> Concentrating all the kids and families with the most need in the same communities and neighborhoods limits their chances to escape poverty and increases the likelihood that children will fail in school and get involved in crime. Students who go to high-poverty, high-minority segregated schools are far more likely to have poor educational outcomes than students who go to desegregated schools,<sup>124</sup> and thus are at a greater risk of being involved in crime. Now, let's look at the realities in Delaware.

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<sup>122</sup> Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests and Self-Reports*, 94 AM. ECON. REV. 157 (2004).

<sup>123</sup> See e.g., LINDA DARLING HAMMOND, *THE FLAT WORLD AND EDUCATION* 36 (2010) (“A number of studies have found that [the] concentration of poverty [in racially segregated schools] has an independent influence on student achievement . . . confirming the 1966 Coleman Report finding that ‘the social composition of [a school’s] student body is more highly related to student achievement, independent of the student’s own social background, than is any other factor. All kinds of students, both poor and nonpoor, have lower achievement in high-poverty elementary schools.’”) (citing JAMES COLEMAN, *COLEMAN REPORT* 325 (1966)).

<sup>124</sup> See, e.g., GOV’T ACCOUNTABILITY OFF., *K–12 EDUCATION BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION* 42 (2016), <http://www.gao.gov/assets/680/676745.pdf>. (“More than 60 years after the *Brown* decision, our work shows that disparities in education [in the United States] persist and are particularly acute

A black person is 4.8 times more likely to be in prison than a white person.<sup>125</sup>

A black youth is more than twice as likely to be under the supervision of Delaware YRS than a white kid.<sup>126</sup>

How surprising is that in light of these realities:

A black person in Delaware is more than twice as likely to be in poverty than a white person.<sup>127</sup>

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among schools with the highest concentrations of minority and poor students.”); John R. Logan, Elisabeta Minca, & Sinem Adar, *The Geography of Inequality: Why Separate Means Unequal in American Public Schools*, 85 SOC. ED. 287, 289 (2012) (finding that black students are concentrated in high-poverty schools and that the racial and ethnic disparities in educational achievement are related to poverty level); Gregory J. Palardy, *High School Socioeconomic Segregation and Student Attainment*, 50 AM. ED. RES. J. 714, 732 (2013) (finding that students at schools with a low socioeconomic composition earn lower GPAs, score lower on math and reading achievement tests, and experience disruptions to learning due to poor facilities and inadequate equipment); Roslyn Arlin Mickelson & Damien Heath, 68 J. NEGRO ED. 566 (2012) (examining educational outcomes from the Charlotte-Mecklenburg, North Carolina school district and finding that many schools remain segregated at the district level and within academic tracks, that blacks are disproportionately assigned to lower level academic tracks, and that both forms of segregated schooling had negative effects on educational outcomes, whereas black students who experienced desegregated schooling had better educational outcomes).

<sup>125</sup> Studies show that 2,002 of every 100,000 blacks in Delaware are incarcerated, and 414 of every 100,000 whites in Delaware are incarcerated. PRISON POL’Y INITIATIVE, *Delaware Profile*, <https://www.prisonpolicy.org/profiles/DE.html>.

<sup>126</sup> Andrew Cohen, *Race and Ethnicity by Program*, DIV. YOUTH & REHABILITATIVE SERVICES, <https://public.tableau.com/profile/andrew.cohen#!/vizhome/DemographicDataByProgramandYear/TotalClientsServedbyFiscalYear> (reporting that for fiscal year 2016, 68% of program clients were black and 31% of clients were white); *see also* DIV. YOUTH & REHAB. SERV. OFFICE OF DIR., POPULATION STATISTICS SNAPSHOT 3 (2014) (reporting that 75% of clients were black); Jessica Masulli Reyes, *Six in Ten Delaware Inmates Are Black*, DEL. NEWS J. (Oct. 19, 2015), <http://www.delawareonline.com/story/news/crime/2015/10/17/six-10-delaware-inmatesblack/73585456>.



A black person in Delaware is almost twice as likely to be unemployed as a white person.<sup>128</sup>

And let's not forget the profound educational disparities that I already highlighted.

So, here, my fellow Delawareans is a question for us on the week of Constitution Day.<sup>129</sup>

Have we lived up to our own responsibilities to make real the concept that all of us are created equal? Have we truly come close to overcoming over 300 years of racial oppression that preceded the adoption of the Civil Rights Act of 1964?<sup>130</sup> What have we done with the responsibility we asked the federal court to return to us in the 1990s?

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<sup>127</sup> CTR. COMM. RES. & SERV., AN OVERVIEW OF POVERTY IN DELAWARE 5–6 (2014).

<sup>128</sup> DEL. DEP'T. LAB., DELAWARE ANNUAL ECONOMIC REPORT 62 (2016), <https://lmi.delawareworks.com/Content/Publications/Documents/Delaware%20Annual%20Economic%20Report%202015.pdf>.

<sup>129</sup> LIB. CONGRESS, *Constitution Day and Citizenship Day*, <https://www.loc.gov/law/help/commemorative-observations/constitution-day.php> (noting that Constitution Day is observed on September 17th of each year to commemorate the signing of the Constitution on September 17, 1787).

<sup>130</sup> The time span of racial oppression measured here begins with the slave trade in the United States and ends with the Civil Rights Act of 1964. See NAT. GEO., *A History of Slavery in the United States*, <https://www.nationalgeographic.org/interactive/slavery-united-states/> (estimating the American slave trade spanned from 1619 to 1807).

If you are like me, you find it unsatisfying for someone to identify a real problem, but then leave it to others to identify how to tackle it.

Consistent with my message that we all have a responsibility in Delaware to honor by our actions our constitutional commitment to equality, I will venture some thoughts on a way forward.

In doing so, I acknowledge that there have been important efforts to improve the realities I have addressed. In particular, the citizen leaders of the Wilmington Education Improvement Commission have worked tirelessly for many years, both as members of that Commission, but even before then, to do something substantial about our decline into a resegregated school system. Most recently, having been urged by political leaders to come up with a solution that the existing bureaucracies in the four northern New Castle County school districts would accept, a plan was developed that would have given Christina's part of the city to Red Clay, along with some additional resources.<sup>131</sup> That well-intentioned plan was a step forward, but as a plan that had as its pre-condition the acceptance of each school district, it

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<sup>131</sup> WILMINGTON EDUC. IMPROVEMENT COMM'N, 1 SOLUTIONS FOR DELAWARE SCHOOLS 3 (2017) (summarizing the redistricting recommendation that "[e]ffective July 1, 2018, the boundaries of the Christina School District should be altered so that it no longer services the City of Wilmington . . . [and e]ffective July 1, 2018, the boundaries of the Red Clay Consolidated School District should be altered to include the portion of the City of Wilmington now served by the Christina School District").

left city kids divided among three districts and put almost all of the new burden of the plan on Red Clay.

When push came to shove, the school districts' supposed support was not accompanied by any concerted effort or ability by them to get legislative support. The nascent effort died, and lest the opposition to the plan be seen as based solely on a lack of concern for city kids, a reality about that plan has to be acknowledged. Precisely because the plan was a political compromise involving groups with a vested interest in the status quo, there was a good faith concern that one district was being saddled with more than it could handle, without the resources or guiding vision to serve the additional students in any better way. Without the vision or the necessary resources, there was a concern that a bad situation would just get worse.

No doubt there were diverse motivations and reasons for the lack of support the plan ultimately generated. Nor is there any doubt that after a generation of freedom from court supervision, the children of Wilmington find themselves under the governance of four school districts that no longer make any effort to desegregate schools.<sup>132</sup> When the desegregation case was being litigated, there was

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<sup>132</sup> In fairness, the school districts can no longer make these efforts under state law because they would be inconsistent with the Neighborhood Schools Act. *See* The Neighborhood Schools Act of 2000, 72 Del. Laws ch. 287 (2000) (codified at 14 *Del. C.* § 220).

a debate among black leaders in Wilmington. Many believed that desegregation was vital and had to involve city kids having access to suburban schools. Others feared, however, that school districts dominated by a suburban electorate would leave city residents powerless and without the ability to do what was right by their children.<sup>133</sup> While the Courts oversaw the four districts, the city's relative lack of voice in those districts was at least balanced by a high degree of desegregation, both by race and by poverty.

Since the court got out of the picture, city kids have the worst of all worlds.

The city as a voting base is divided among four districts where city residents are a

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<sup>133</sup> JEFFREY A. RAFFEL, *THE POLITICS OF SCHOOL DESEGREGATION* 65–66 (1980) (“The Wilmington School District was chiefly interested in maintaining control over the city schools . . . Its representatives opposed plans that would divide the district, especially if no other district was dismantled. . . . It was becoming obvious that the Wilmington Board’s desire for desegregated education was in direct conflict with a strong black interest in maintaining the Wilmington School District. The Wilmington school system was the only power base that local black leadership possessed.”); *see also* Antonio Prado & Andréa Miller, *The 40-Year Legacy of Evans v. Buchanan: A Struggle over Education, Race, Power*, HOCKESSIN COMTY. NEWS (Oct. 21, 2008), <http://www.hockessincommunitynews.com/article/20081021/NEWS/310219952> (“Still others thought interfering with the [Educational Achievement] Act would damage the black community’s newly gained political power, since by 1971 the seven-member Wilmington Board of Education had gained a black majority for the first time . . . . ‘For the first time, blacks had their own school board and many blacks felt they should build up the schools . . . .’”) (citing Dr. Raymond Wolters, University of Delaware history professor); Robert Taggart, *The Failure of Apparent Successful School Desegregation: Wilmington, Delaware, 1954–1978*, 32 AM. ED. HIST. J. 94, 99 (“Many black community leaders and educators opposed the combination of the Wilmington school district with surrounding suburban districts because blacks finally had a majority on the school board and feared that a white majority would not treat them or their children well.”).

minority and not the driving force.<sup>134</sup> And there is no compensatory commitment to desegregation and equal opportunity.

So, what might be a strategy for realizing the promise of equality, and as important, creating the kind of educational and economic opportunity that will make our state more prosperous and safer in the long run?

I am going to begin by stating a stark reality: there ain't no way legislation will be passed that makes suburban kids in New Castle County go to school in Wilmington again. Just ain't going to happen. A mandatory desegregation plan will not happen, and under current U.S. Supreme Court doctrine,<sup>135</sup> it is not even clear that school districts could do that if they wanted to, and the majority of their electorate doesn't want them to. Not only that, but current state law limits their ability to do so anyway.<sup>136</sup>

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<sup>134</sup> See INST. PUB. ADMIN., U. DEL., DELAWARE SCHOOL DISTRICT ORGANIZATION AND BOUNDARIES (Mar. 2004), <https://www.doe.k12.de.us/site/handlers/filedownload.ashx?moduleinstanceid=3431&dataid=10922&FileName=DelSchDistOrg-Boundaries.pdf>.

<sup>135</sup> *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 735, 770 (2007) (distinguishing elementary and secondary schools from the “unique context of higher education,” finding no compelling interest in attaining a diverse student body at the primary and secondary level, and striking down a school district’s procedure for racially balancing school-level demographics through student assignment).

<sup>136</sup> The Neighborhood Schools Act of 2000, 72 Del. Laws ch. 287 (2000) (codified at 14 *Del. C.* § 220).

Rather, we are going to have to deal with the reality that schools will be more segregated than they were under the court order. But with that should come an acknowledgment of a corresponding moral duty to make the conditions for students in city schools ones that give them an equal opportunity to thrive. That moral duty has been ignored, and it cannot be fulfilled unless fundamental change is undertaken that puts kids first, and recognizes that kids who have less, need more.

A vision for doing that logically starts by identifying a first-best, uncompromised vision that puts children, families, and the community first, and that does not fear taking on entrenched interests.

It is not rocket surgery or brain science to create a school district that would serve all the children of Wilmington. A northern New Castle County school district could be easily drawn that would be geographically compact, would take in the entire city, the Red Clay and Brandywine School Districts, and the parts of Christina and Colonial that are closest to the city. That district would make sense to any planner or educator who wanted to do right by kids and match a district naturally with communities. That district could also take in parts of the suburban part of Colonial that are closest to the city and logically a part of a Northern New Castle County school district.

This new district would be one of the wealthiest in the state with nearly \$10 billion in assessed property value to support its students.<sup>137</sup> The new district would no longer be forced to share revenue with districts who are no longer charged with educating city kids. And as part of meeting the needs of its low socio-economic status children, consideration should be given to letting it raise revenue more flexibly.

The new District would therefore make geographic and economic sense. City kids should continue to have a right to go to a suburban school, but those schools would all be relatively close to the city and part of a coherent community. As important, it must be remembered that it is not COINCIDENTAL that Red Clay and Brandywine are affluent districts. It is because they are annexed to Delaware's economic engine, the city of Wilmington. It is therefore fitting for them to be together.

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<sup>137</sup> Based on available statistics, it appears that a combined district of this kind would have over one third of the state's assessed value and about 28,000 to 29,000 students. The entire state, minus assessed value going toward vo-tech schools, has \$26.1 billion in assessed value to cover 114,000 or so students in the public schools that are not vo-tech or charter schools. DEL. DEP'T EDUC. & STATE BOARD EDUC., SEPTEMBER 30TH STUDENT ENROLLMENT AND UNIT ALLOTMENT REPORT 1-24, 70 (2016), [https://www.doe.k12.de.us/site/handlers/filedownload.ashx?moduleinstanceid=2782&dataid=19000&FileName=2016Enrollment and Unit Allotment Report.pdf](https://www.doe.k12.de.us/site/handlers/filedownload.ashx?moduleinstanceid=2782&dataid=19000&FileName=2016Enrollment%20and%20Unit%20Allotment%20Report.pdf).

There should be special governance provisions to ensure an adequate voice for city residents in a district that will be majority suburban. A single northern district with the city as a component will improve the lack of voice city residents now have, but it is not a sufficient answer.

The governance provisions should also provide a model that could be used in other challenging parts of the state. To that end, consideration should be given to establishing Wilmington as an innovation zone, with the new District given the flexibility to be innovative within the zone to address its special needs.

The funding provisions should also provide a model that is scalable statewide to address the needs of *all* Delaware's children who have less and thus need more. From the get-go, an explanation should exist of how this can go statewide.

Now, it is also vital that this change in structure not be seen as an end in itself. It is not. But structural change is vital to giving kids and their families what they need. Kids on the west side of Wilmington do not have different needs from kids on the east side. Kids in Brandywine Hundred don't need to learn different things than kids in Westover Hills. The current lack of coherence and focus that comes from divided governance is costly to effectiveness and especially harmful to



kids at the narrow end of the pizza slices, who can move a few blocks and find themselves in an entirely different school district.

Creating one high quality district would cut down on the school-by-school, district-by-district tinkering approach, and allow for the selection of a highly qualified educational leader to implement a consistent, well-thought-out approach that recognizes that kids and families who have less need more, and that address the realities of twenty-first century families who are economically challenged.

What would such a vision involve? How about this?

- A 220-day school year, starting at kindergarten and extending upward over a number of years. This could start with low socio-economic status schools but spread to all schools eventually.<sup>138</sup>
- A full day, including after-school homework time, nutritional snacks, and activities.<sup>139</sup> And an early arrival option, with breakfast.

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<sup>138</sup> Instructional time of at least 300 hours more than the conventional district calendar is one of the strongest predictors of higher achievement. Moreover, more time in school can help mitigate the effects of poverty on learning, such as poorer health, less stable home lives, and fewer out-of-school learning opportunities. DAVID A. FARBMAN, NAT. CTR. TIME & LEARNING, *THE CASE FOR IMPROVING AND EXPANDING TIME IN SCHOOL: A REVIEW OF KEY RESEARCH AND PRACTICE 3* (2015) (citing Will Dobbie & Roland G. Freyer, Jr., *Getting Beneath the Veil of Effective Schools: Evidence from New York City* (NBER Working Paper No. 17632, 2011); see also Caroline Hoxby and Sonali Murarka, *New York City Charter Schools: How Well Are They Teaching Their Students?*, ED. NEXT, Summer 2008, at 54–61 (concluding from the same data set used by Dobbie & Freyer that learning time is one of the strongest predictors of student outcomes).

<sup>139</sup> Jill K. Posner & Deborah Lowe Vandell, *Low-Income Children's After-School Care: Are There Beneficial Effects of After-School Programs*, 65 CHILD. & POVERTY 440 (1994) (“When

- A requirement that all students grade seven and up engage in an after-school activity all year round, like the independent schools in our state do.<sup>140</sup>
- The restoration of some city middle and high schools, so as to foster community pride, parental participation, and important things like theatrical events and sports games within the city. Special efforts should be made to ensure that these schools are high quality, safe, and desegregated to the extent feasible.

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maternal education, race, and family income were controlled, attending a formal after-school program was associated with better academic achievement and social adjustment in comparison to other types of after-school care. . . . Children in formal programs spent more time in academic activities and enrichment lessons and less time watching TV and playing outside unsupervised than other children. They also spent more time doing activities with peers and adults and less time with siblings than did other children. The time that children spent in these activities was correlated with their academic and conduct grades, peer relations, and emotional adjustment.”).

<sup>140</sup> See generally Ralph B. McNeal, Jr., *Extracurricular Activities and High School Dropouts*, 68 SOC. EDUC. 62 (1995) (“[P]articipation in athletics and in fine arts serve as key intervening variables in the dropout process, magnifying the direct relationships between race, gender, academic ability, and dropping out. These findings persist even after crucial ‘dropout’ forces (such as race, socioeconomic status, and gender) and ‘pull out’ forces (such as employment) are controlled.”). Year-round activities are required at independent schools in Delaware. See, e.g., WILMINGTON FRIENDS, *Athletics at Wilmington Friends*, <https://www.wilmingtonfriends.org/page/our-programs/athletics> (“All upper school students (grades 9–12) are required to participate in one sport per school year; many of our students play two or three sports each year.”); SANFORD SCHOOL, *STUDENT/PARENT ATHLETIC HANDBOOK 2017–2018*, [https://sanfordschool.myschoolapp.com/ftpimages/572/download/download\\_1827639.pdf](https://sanfordschool.myschoolapp.com/ftpimages/572/download/download_1827639.pdf) (“All 7th and 8th graders are required to participate in each of the three sports seasons. In grades 9–12, students are required to accumulate a total of four athletic team credits, and earn an additional four co-curricular credits, prior to graduation.”); TOWER HILL SCHOOL, *Athletics*, <https://www.towerhill.org/page/athletics/athletics/athletics-handbook> (“We believe it is clear that individual high school athletes and athletic programs in general make significant contributions to the vitality of life in the school and its larger community. Therefore ninth and tenth graders are expected to participate in one of the after-school athletic activities offered during each season of the first two years of Upper School. Eleventh and twelfth graders may take one season off.”).

- More opportunities to allow kids to approach school earlier through the prism of real world jobs, including consideration of creating grade seven to twelve vocational models. Effective vocational and career oriented high schools have been shown to decrease dropout rates and increase attendance rates.<sup>141</sup>

Think of how this plan would address what we know are hard truths about the families with children in our public school system who live in Wilmington:

- 23.5% of Wilmington residents (as compared to 10.7% of New Castle County residents) live in poverty.<sup>142</sup>
- 33% of children in Wilmington (as opposed to 14% in New Castle County) live in poverty.<sup>143</sup>
- Many kids have parents who both must work.<sup>144</sup>
- Many kids have a single parent who must work.<sup>145</sup>

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<sup>141</sup> Students at career and technical schools in New York City, for example, “have proven to have higher graduation rates and are four times less likely to dropout than students who attend academics-only institutions. These schools even boast attendance rates which are above the high school city average.” SHARNELL CREARY, A CASE FOR CAREER AND TECHNICAL EDUCATION IN REDUCING HIGH SCHOOL DROP OUT RATES AND YOUTH UNEMPLOYMENT AMONG URBAN YOUTH 17–18 (2016), [https://www.fordham.edu/download/downloads/id/5794/sharnell\\_creary\\_\\_a\\_case\\_for\\_career\\_and\\_technical\\_education.pdf](https://www.fordham.edu/download/downloads/id/5794/sharnell_creary__a_case_for_career_and_technical_education.pdf).

<sup>142</sup> CTR. COMTY. RES. & SERV., AN OVERVIEW OF POVERTY IN DELAWARE 2 (2014).

<sup>143</sup> *Id.* at 5–6.

<sup>144</sup> Seventy-three percent of Wilmington families with children of the householder aged six to seventeen have all parents in the family in the labor force. United States Census Bureau, *Selected Economic Characteristics 2011–2015 American Community Survey 5-Year Estimates: Wilmington City, Delaware*, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>145</sup> *Id.* Over 60% of black children in New Castle County live in single-parent families. In Wilmington, 84% of black children live in single-parent families. DEL. COMTY. FOUNDATION, *Family Support*, <http://delawarefocus.org/children-youth/family-support/single-parent-families-by-race-ethnicity>.

- Many families are unable to afford afterschool care or extra tutors.<sup>146</sup>
- Many families are unable to afford summer camps.<sup>147</sup>
- Kids often are unsupervised when out of school as a result.<sup>148</sup>
- Kids often enter the school system less prepared and thus need more time to catch up.<sup>149</sup>
- Kids are more likely to need nutrition, which relates to achievement.<sup>150</sup>

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<sup>146</sup> 29.9% of Wilmington families with children under eighteen related to the head of household had incomes below the poverty level in the past twelve months. U.S. CENSUS BUREAU, *2011–2015 American Community Survey 5-Year Estimates*, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. On average, before and after school care in a childcare center in Delaware costs \$3,495 and full-time summer care costs \$1,631 for a school-aged child. Similar care in an unaccredited family childcare home costs \$2,731 for before and after school care and \$1,343 for full-time summer care. CHILD CARE AWARE OF AMERICA, *2017 STATE CHILD CARE FACTS IN THE STATE OF: DELAWARE 2* (2017), [http://usa.childcareaware.org/wp-content/uploads/2017/07/DE\\_Facts.pdf](http://usa.childcareaware.org/wp-content/uploads/2017/07/DE_Facts.pdf).

<sup>147</sup> *Id.*

<sup>148</sup> “By 2006, in poor families, 7.5% of children aged 5–8 were home alone; nearly 14% of kids 9–11 were.” JOAN C. WILLIAMS, *WHITE WORKING CLASS 23* (2017).

<sup>149</sup> *See, e.g.*, NAEYC, *BRIDGING THE VOCABULARY GAP* (2010), <https://www.naeyc.org/files/yc/file/201007/ChristWangOnline.pdf> (discussing low income children’s vocabulary gap upon entering school—3 year old children from low income families know 600 fewer words than children from families with higher incomes, and this gap grows to 4,000 words by second grade).

<sup>150</sup> 19.4% of Delaware children under eighteen experience limited or uncertain availability of nutritionally adequate and safe foods at some point during the year. NO KID HUNGRY, *Hungry Kids Aren’t Getting the Resources They Need*, <https://www.nokidhungry.org/problem/hunger-facts>; NO KID HUNGRY, *HUNGER DEVASTATES CHILDREN 2* (2016), [https://www.nokidhungry.org/pdfs/Fact\\_Sheet-2016.pdf](https://www.nokidhungry.org/pdfs/Fact_Sheet-2016.pdf) (“Undernourished children don’t learn as fast or as well as nourished children. . . . Lack of healthy food can impair a child’s performance in school. . . . Teens who regularly face hunger are more likely to be suspended & have difficulty getting along with others.”).

- Short school schedules endanger parental employment because they make it more difficult for parents to balance their need to earn wages to support their family with their obligation to make sure their kids are safe.

Think of how this plan would address the root causes of crime in our community:

- Kids who don't achieve in school can't make a good living and end up at high risk of creating crime.
- At worst, this behavior starts before they are adults.
- Kids without options are more likely to create new kids before they are ready, and kids they cannot support.<sup>151</sup>
- When parents and relatives think their children have no hope, they also have less reason to sacrifice and to focus on constructive behavior to ensure that their kids' fate is better than their own.
- Kids who are unsupervised are unsupervised. They do stupid stuff and worse.

Note that this model is one that would serve all kids well, regardless of race.

For all poor kids, these policies would allow them the extra learning time and other support they need. And for all kids, this model would better fit with the realities of

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<sup>151</sup> See, e.g., DEL. HEALTH & SOC. SERV. DIV. OF PUB. HEALTH, DELAWARE ADOLESCENT SEXUAL HEALTH STATE PLAN 11 (2010), [http://bidcondocs.delaware.gov/HSS/HSS\\_11020HealthyOutcomes\\_Add1A.pdf](http://bidcondocs.delaware.gov/HSS/HSS_11020HealthyOutcomes_Add1A.pdf). (“In Delaware, in 2004, annual taxpayer costs associated with children born to teen mothers included: \$5 million for public health care (Medicaid and SCHIP), \$5 million for child welfare, \$12 million for incarceration, \$7 million in lost tax revenue, due to decreased earnings and spending.”).

family life for all families in the twenty-first century, and also recognize that if American kids are going to compete in a global economy, they need to spend more time on academics.<sup>152</sup>

For far too long we have failed to give poor kids and the good people who work hard to teach them the main thing that they both need: more time with each other to help these kids catch up and keep up and learn the skills they need to be effective citizens and productive workers in a globalizing, competitive world. In every other context, we recognize that sweat—time on task—matters. But, we have yet to take that seriously in this most important of all realms: the education of our children.

Furthermore, by focusing on addressing the needs of the impoverished, we can reduce racial inequality, but by race-neutral means. Precisely because black kids are poorer on average, anything that targets poverty will help reduce racial inequality but in a way that provides an equal opportunity to all kids in poverty.

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<sup>152</sup> In 2012, the United States ranked 27th in mathematics, 17th in reading and 20th in science out of the 34 OECD countries that administered the PISA test. Compared to the top overall PISA scoring nation (South Korea), the United States has approximately 20% fewer days in its school year. Compared to the top PISA scoring nation in the European Union (the Netherlands), the United States has approximately 10% fewer days in its school year. OECD COUNTRY NOTE: UNITED STATES, *Programme for International Student Assessment (PISA) Results From PISA 2012*, <https://www.oecd.org/unitedstates/PISA-2012-results-US.pdf>; OECD, EDUCATION AT A GLANCE 481 (2012), [https://www.oecd.org/edu/EAG%202012\\_e-book\\_EN\\_200912.pdf](https://www.oecd.org/edu/EAG%202012_e-book_EN_200912.pdf).

The opioid crisis is showing again how views change when a problem hits people who look like them. One hopes that all of us can have the empathy to recognize that kids who have less, need more.

At this point, the hard-boiled among you are saying, sure Strine, that sounds good but how can we afford to pay for it?

My first answer is how can we afford not to if we really care about our constitutional commitment to equality?

My second answer is how can we afford not to if we want our state to be safer and to be a place where businesses want to locate and create jobs?<sup>153</sup> Anyone who thinks that the facts I have outlined about crime, poverty, and our educational system do not cost our state jobs every day must think that businesspeople are stupid. They are not, and they have plenty of choices.

My third answer is that we are already paying in other dumber ways. Money that could be spent on giving kids more learning time, a safe place to be when their parent is working, and on long-term hope and independence is now going into

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<sup>153</sup> “In the U.S., high school dropouts commit about 75% of crimes.” Keenan D. Dorsey Sr., *A Proposal for Implementation of a Dropout Prevention Program for Students Ages 16–21 in a Delaware Public School District 2* (executive position paper for Doctor of Education in Innovation and Leadership, Wilmington University), <http://delaware.contentdm.oclc.org/cdm/ref/collection/p15323coll5/id/30224> (citing C. Amurao, *Fact Sheet: Is the Dropout Problem Real?*, TAVIS SMILEY REP. ON PBS 1 (2013), <http://www.pbs.org/wnet/tavissmiley/tsr/education-under-arrest/fact-sheet-drop-out-rates-of-african-american-boys/>).

youth detention centers, prisons, and constant demands on police. Our antiquated school year and day causes us to spend money on a patchwork of after-school programs and summer programs. Frankly, even affluent parents know the silliness and cost of finding camps, childcare coverage, and other ways to ensure that children in school for too little of the year get the enrichment and supervision they need. Kids with parents who can't afford it have time to get in trouble, and time to fall even further behind in their studies.

You pay one way or another, and instead of paying to deal with the wreckage resulting from not addressing economic and educational inequality, we should pay by investing in a better future for our children and our community.

My final answer is that the question is not whether we can afford to do this, but whether we choose to do it. During the same period, we have resegregated our schools, we have stopped asking ourselves to do a central thing necessary to being citizens of a community that cares about reducing inequality. That is paying taxes.

During the past twenty years, we have relied on ephemeral sources of revenue like slots and escheat more and more, and less on taxes we ourselves pay. One industry I know a lot about—entity formation and legal services—has been asked to generate more and more of our state revenue, shifting our tax base from our human citizens to our voluntary corporate citizens.



Three of the most popular and effective governors in our state's history were Pete DuPont, Mike Castle, and Tom Carper: two Republicans and one Democrat. All were excellent governors and all were respected by the business community for their skills at economic development. If you look at the tax rates we paid when each of them was twice-elected as Governor, you will find that those rates were higher than those we now pay.<sup>154</sup> But when we did that, we were happy to do so, because our state was in good shape, crime was under control, and we knew that those taxes went to services and infrastructure that benefitted us all.

Perhaps it is time for us to face the constitutional mirror test and ask ourselves whether we can make the same sacrifice we made during those years of prosperity. And lest some of my Republican friends think I am leaving something important out, perhaps we can also address the reality that the public deserves a government that spends money wisely and not on costly overhead.

If having nineteen school districts with nineteen costly superintendents gave us the number one results, perhaps we should stick to the status quo. But it

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<sup>154</sup> Under Governor Carney's recent proposal to raise personal income taxes to a level well below most of these time periods mentioned, over \$200 million would have been raised. Moreover, if the General Assembly took action to liberalize the uses for fuel taxes and increased our fuel tax to the regional average—the region including Maryland, New Jersey and Pennsylvania—nearly \$100 million a year could be raised. These revenues would also not include any additional funds that could be raised by adjusting gross receipt taxes to be more in line with past levels.

doesn't. There is no reason we could not have three New Castle County districts (a northern, middle, and southern district), one Kent County District, two Sussex County Districts, and one—yes, one—statewide vo-tech district that puts the needs of kids who need vo-tech the most first. The reductions in overhead and duplicative costs, and the increase in coherence in approach, would result in more impact at the classroom level.<sup>155</sup>

Likewise, remember those school level experience absurdities I mentioned? How about we insist, as a matter of law, that any teacher who gets paid more by the state for experience, degree, or certification agree to serve in the school selected by their district on the basis of where the teacher is needed most?

Put simply, we need to invest both more and more wisely. The public will support that if leaders put the served ahead of the vested interests.

This vision is one that would serve not just Wilmington students but all Delaware students. The sad reality is that profound racial inequality pervades our entire state and is a direct legacy of our history of racial oppression. By sensible school district consolidation statewide, we could reduce non-classroom spending,

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<sup>155</sup> See, e.g., Nikole Hannah-Jones, *A Dream Deferred*, N.Y. TIMES MAG., Sept. 10, 2017, at 39, 48 (noting that smaller school districts tend to have fewer resources and administrative costs “up to 60 percent more per pupil” than their larger counterparts.).

increase the coherence of curriculum and teaching strategies, and give our teachers more resources to do their jobs. By giving all kids who have less, more, we tackle racial inequality in a race-neutral way. And by creating a school calendar and school day that is based on what families and children in the twenty-first century need, we will give all our kids a better chance to succeed, and make our state a place where high quality businesses want to locate.

We have a governor who cares a great deal about the kids of Wilmington and our state. He showed a willingness this spring to talk about hard issues like this. I have no doubt he is thinking deeply about how to tackle the problems I have been discussing.

But he cannot tackle these problems unless we all recognize as citizens our obligation to make our constitutional ideals come alive in reality, and not just as rhetoric on patriotic occasions.

Precisely because the situation is so urgent, one could imagine it being sensible to take immediate action to address the dire problems in the city's elementary schools, while getting the legal and fiscal authority to make the larger structural changes that are vital to lasting progress. But it is difficult to get to a destination if you don't have one in mind, and it is important that the emergency actions that may need to be taken are recognized as just that, what is needed to

stabilize a desperate situation. The need for emergency measures makes plain the requirement for more fundamental, structural reform to give Wilmington kids the educational opportunities they deserve.

The only way to make the promise of equality in our constitution genuine is for us to be willing to fight for what is right. That means matching the boldness of our actions to the size of the problem. There is no shame in losing a fight in the name of a good cause, as that is often necessary to beat down the barriers to long-term progress. But it is now over a generation since the courts left the scene and trusted us with the responsibility to guarantee the constitutional promise of equality. The time for excuses, for delay, and for a lack of action has run out. It's damn sure time we do something, and do something big.