

## 9

# The Government School System

IN JUNE 1994, a high school graduation ceremony was held in a Bethlehem, Pennsylvania Unitarian Church for two local schoolchildren, Lynn Steirer and David Moralis. The two seniors could not join their classmates at the regular graduation festivities at Liberty High School—a school whose name turns out to be quite a misnomer—not because they dropped out, or took drugs, or failed final exams. They were prevented from graduating because as a matter of conscience they refused to submit to their school’s mandatory community service program.

“I think that volunteering is a good thing to do,” explained Lynn Steirer. “But volunteering is doing something of your

own free will, and out of the kindness of your heart, not because someone forces you to do it.”

At the same time, Chapel Hill, North Carolina, honor student Aric Herndon was learning that the hundreds of hours he spent volunteering through the Boy Scouts would not count toward his high school’s mandatory community service requirements because he was “compensated” for it by earning Eagle Scout honors.

Meanwhile, in Maryland, which has statewide mandatory community service requirements championed by former Lieutenant Governor Kathleen Kennedy Townsend, the state devised a chart depicting the hierarchy of possible community service activities—with “lobbying” at the very top.

“Compulsory volunteerism” is the latest oxymoronic fad sweeping public schools across the nation. As of the mid-1990s, approximately one-third of all government schools required community service as a condition of graduation. While no one can contest that volunteerism is noble, the question is in what realm it belongs: individual autonomy or government coercion. An aspect of life that previously was left to the discretion of parents and students—often as a matter of religious conscience—is now becoming a matter of government compulsion in school districts around the nation, which dictate when, where, and how much time students will volunteer, and which activities will count toward the requirement. So far, the federal courts have declined to strike down the programs as a violation of parental autonomy.<sup>1</sup>

As political institutions, government school systems often reflect the values of powerful interest groups. A few years ago, self-esteem was all the rage. The principal of one of my sons’ schools told me that the school had two objectives: to impart learning and to make the students feel good about themselves. No, I replied; if you do the first part right, the second will follow. Instead, by defining their objectives in that man-

ner, the schools can be assured of meeting half of their objectives: kids who may not be able to read or write but nonetheless possess tremendous self-esteem. As if to confirm that fear, a teacher recently told me not to worry about my son's deplorable spelling, because "we don't really do spelling anymore." The whole situation seems head-spinningly Orwellian to me, but at least I can take action about it. I can only imagine how parents fare who, unlike me, don't sue bureaucrats and specialize in education issues for a living.

While government schools are spending resources doing things they shouldn't be doing, their track record is far worse when it comes to fulfilling their essential goal of providing the educational basics. Many parents in the suburbs are vaguely aware of the problem, particularly when standardized tests reveal vast numbers of failing students (which usually is followed by demands not to fix the problem but to get rid of the tests). But the reality is most grim in large urban school districts across the nation, where children in public schools face a much greater likelihood of lives in poverty or crime than of going on to higher education or productive livelihoods.

I gained my perspective on this subject in the trenches, having litigated education issues in inner-city school districts for more than a decade.<sup>2</sup> My efforts involving the Cleveland public schools culminated in a 2003 Supreme Court decision upholding the Cleveland school choice program.<sup>3</sup> During that litigation battle, the phrase "one in fourteen" haunted my psyche. A child in the Cleveland public schools had slightly less than a one-in-fourteen chance of graduating on time with senior-level proficiency. The same child had slightly less than a one-in-fourteen chance of being a victim of crime, inside the schools, each year. In Milwaukee, whose school choice program I litigated during most of the 1990s, the typical child in the public schools had less than a 50-50 chance of graduating.

For children from families on public assistance, the odds declined to 15 percent.

When similar numbers are replicated elsewhere—as they are in many large inner-city government school systems—we have a serious national crisis on our hands. For that reason, we should not be worrying whether particular reform proposals are too radical. We should be worrying whether they are radical enough.

Our nation's public school system as a whole is not doing a particularly good job in accomplishing its mission of providing basic educational skills to America's schoolchildren. Whether compared with other industrialized nations or measured against state or national standards, our public schools often produce dismal, sometimes embarrassing, results. Foreigners flock to the United States for our postsecondary system of education; but few come except from third-world countries for our K–12 schools. Not coincidentally, America's postsecondary schools are characterized by competition and choice: Students can use government grants or loans at any school they choose, public or private. But our K–12 system of public schools, by contrast, represents perhaps the largest socialized delivery system outside of Communist China. And the results are all too predictable.

Many conservatives cling nostalgically to the notion of “local control” of education. And indeed, local control unquestionably is vastly preferable to national control. Given that the consumers of education are children, and no two children's educational needs are the same, it makes sense that educational services should be as decentralized as possible. But local school boards, particularly in large urban school districts, provide perhaps the greatest example of the inefficiencies and dysfunctions of any governmental entities in the United States, exemplifying vividly and painfully the presci-

ence of James Madison's warnings about the negative propensities of local governments. Many local school districts are controlled by self-interested political pressure groups—namely, the people they employ. As a result, the educational interests of the children often are sacrificed to political expediency. The schools operate as a monopoly, sheltered from the market consequences of failure. As indicated in chapter 1, over the past several decades there has been enormous consolidation of school districts across the United States, making them even more bureaucratic and resistant to reform than before. And because they are governmental institutions, public schools are subject to every passing political fad that gains currency among the political elite.

Nor do most popular reform proposals hold much promise. In their most recent book, *No Excuses*, Abigail and Stephan Thernstrom examine nearly every reform that has been tested in government education in recent years, from smaller class sizes to increased funding to accountability measures.<sup>4</sup> They found that apart from modest gains attributable to increased standards in states such as Texas and North Carolina, few reforms show much promise. Moreover, the system's ability to adopt and respond to meaningful reform is paralyzed by special interests who have a powerful interest in preserving the status quo. The Thernstroms characterize the racial gap as "the most important civil rights issue of our time," and urge that the "nation's system of education must be fundamentally altered, with real educational choice as part of the package."<sup>5</sup>

Those who suffer the most are typically the same children who need education the most: youngsters from economically disadvantaged families;<sup>6</sup> this manifests itself in large racial disparities in student achievement. As touched upon in the preceding chapter, the academic gap between white and

Asian students on the one hand and black and Hispanic students on the other is gaping and growing. The 2000 National Assessment of Educational Progress, for instance, revealed that a shocking 63 percent of black fourth-graders and 56 percent of their Hispanic counterparts scored below the most basic level of reading proficiency.<sup>7</sup> On a recent Scholastic Aptitude Test, 10 percent of all testees scored at least 1300 (out of 1600 points), the usual minimum cut-off for many elite institutions of higher education. But only 1.5 percent of black testees—or 1,877 nationwide—scored 1300 or higher. Nationally, 13,897 testees scored 1500 or higher on the SAT. Only 72 black testees in the entire country scored that high.<sup>8</sup> The national graduation rate in the public high school class of 2000 was 69 percent; but for black students it was only 55 percent, and 53 percent for Hispanics.<sup>9</sup> For many children of color, the promise of equal educational opportunities issued a half-century ago in *Brown v. Board of Education* has proven illusory.

While wealthier families have the ability to move to communities with better public school systems\* or send their children to private schools, low-income families usually do not. Their children typically are consigned to dangerous, poor-quality, inner-city schools in large urban school districts where, unlike in suburbia, parents have little influence over their children's fate.

It was not supposed to be this way. Under our constitutional system, parents—not the state—are entrusted with the primary role in the education of their children. A century ago, nativists attempted to homogenize public schools and restrict

\*Federal tax policy supports such choices. When families move to more expensive communities in order to avail themselves of better public schools, they may deduct both their higher mortgage interest and local property taxes from their federal income tax.

educational options. The Ku Klux Klan helped persuade Oregon to require all children to attend government schools. The U.S. Supreme Court struck down the law because it “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children,” declaring unequivocally:

The fundamental theory of liberty upon which all governments in this Union repose excludes any power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.<sup>10</sup>

Today, real parental choice in most states is nonexistent, as bureaucrats have supplanted parents and teachers as the primary determinants of the educational fate of children. And again, the less economic or political clout parents have, the less influence they will have over their children’s education.

The consequences of that inverted power structure were probed insightfully by two educational scholars, John E. Chubb and Terry M. Moe, in a pathbreaking 1990 study for the Brookings Institution titled *Politics, Markets & America’s Schools*.<sup>11</sup> They set out to answer an intriguing question: Why are inner-city government schools so shockingly bad, while inner-city private schools and suburban public schools generally do a decent job? They found that although student ability and family background are important factors in student achievement, school organization also plays an important role. Specifically, they determined that over a four-year high school experience, effectively organized schools “increase the achievement of [their] students by more than one full year” as compared to ineffectively organized schools.<sup>12</sup> What makes a

school more or less effective? Chubb and Moe found that common denominators among effective schools were a clear mission, strong leadership, autonomy for principals and teachers, and parental choice. They observed that large inner-city government school systems are characterized by massive bureaucracies that make it difficult for principals to lead, for teachers to teach, for parents to exert influence, and for reform to take hold.

Moreover, Chubb and Moe found that urban public school systems, in particular, are especially sensitive to special-interest manipulation. All government school districts are susceptible to such influences because they are by their nature political institutions. As such, they are answerable not to the consumers they serve—parents and children—but to politicians. In turn, the groups that are influential in the local political process, especially teachers' unions, tend to dominate policy. In school board elections, which usually experience notoriously low voter turnouts, groups like unions can dominate the process. The school board in turn hires school district officials. When it comes time to negotiate over contracts, the unions often end up negotiating with themselves. And the entire system, not surprisingly, is decidedly resistant to reform. The situation is exacerbated in large urban districts whose sheer size makes them unreceptive to the concerns of individual parents, and whose nominal constituents (the parents) lack the ability to pick up and move their children elsewhere.

By contrast, parents in suburban school districts have clout because they possess the means to move their children elsewhere, which would deprive the school district of the per-pupil resources allocated for those children. That financial consequence makes bureaucrats take notice. Similarly, in private schools, which are fully dependent for their survival on



satisfied parents, the consumer reigns supreme. For that reason, Chubb and Moe concluded that the availability of educational choices, especially for poor parents, is a vital prerequisite for educational reform and improvement.

Chubb and Moe's findings are borne out in the real world. I'll never forget statistics that I learned when litigating a school choice lawsuit in Chicago in the early 1990s. At the time, the Chicago public schools had roughly 400,000 students and 3,200 bureaucrats. Chicago Catholic schools, by contrast, had about 100,000 students and 40 administrators. Hence the ratio of public school students to private school students was about 4:1, whereas the ratio of public school administrators to private school administrators was 80:1. When the low-income parents I represented were asked why they didn't try to improve the system from within, they spoke of the difficulty of influencing a massive bureaucracy warehoused in an old Army barracks on Pershing Road in an isolated section of the city. Chicago's situation is not an aberration: In many large urban school districts, 50 cents out of every educational dollar is siphoned off before it ever reaches the classroom. That is why school districts like Newark, New Jersey are spending upwards of \$14,000 per student with hardly anything to show for it in terms of student achievement.

Meaningful education reform requires what I call "the three Ds": deregulation, decentralization, and depoliticization. Government schools should be unshackled so that each individual school has control over its curriculum and programs—in other words, as former president Bill Clinton once advocated, all schools should be charter schools. Funding should be student-centered. Except perhaps for capital expenditures, funding should come not through the decrees of a central bureaucracy, but through the student, with an

equal amount allocated for each child. School districts would evolve from central political command structures into service providers, allocating resources that have significant economies of scale, such as special services for disabled children.

Such a system would be highly responsive to the particularized needs of individual children. The concept of one size fits all, reflected in today's homogenized and politicized curricula in which each regular public school in a district is likely doing the same thing at the same time as every other school, does not work. Indeed, student-based educational funding would allow children to choose from a menu of educational services—from computer-based education to private or public schooling to tutoring or special services. A school's success would depend largely upon satisfying parents. The focus would be on educational basics, rather than on passing educational fancies. And such a structure would largely eliminate special-interest pressure over education.

In sketching a system along those lines,<sup>13</sup> Chubb and Moe observe that the “crucial difference” between the current system and one characterized by school autonomy and parental choice is that “most of those who previously held authority over the schools would have their authority permanently withdrawn, and that authority would be vested in schools, parents, and children.”<sup>14</sup> They argue, “There is nothing in the concept of democracy to require that schools be subject to direct control by school boards, central offices, departments of education, and other arms of government. . . . There are many paths of democracy and public education.” Displacing the current top-down, command-and-control system of education with a system characterized by school autonomy and parental choice, they conclude, is necessary “to get to the root of the problem.”<sup>15</sup>

The single most important reform element in moving toward such a system is parental choice. In April 2004, I

joined the newly created Alliance for School Choice as its president and general counsel to help further the cause of parental choice. Fortunately, we are moving in that direction, albeit at a seemingly glacial pace.<sup>16</sup> Most states have adopted some form of deregulated charter public schools, though they still comprise only a small fraction of the overall national student population. Some states have created public-school choice and open enrollment programs. A few pathbreaking states, such as Wisconsin, Ohio, Florida, and Colorado, have adopted programs that allow children who come from disadvantaged families or who attend failing government schools to choose private schools. Others, including Arizona, Illinois, Florida, and Pennsylvania have enacted tax credits for private school tuition or scholarships. At the national level, the No Child Left Behind Act requires school districts to make alternatives available to children in failing government schools, though such options are woefully inadequate<sup>17</sup> and the promise apparently is not legally enforceable by parents and children. Most recently, in 2004, Congress enacted and President George W. Bush signed into law a pilot school choice program for children in the dysfunctional District of Columbia Public Schools.

But such systemic reforms are resisted tenaciously by public school officials and their reactionary allies, the National Education Association, the American Federation of Teachers, People for the American Way, the American Civil Liberties Union, the National Association for the Advancement of Colored People, and others. That is the lesson that Wisconsin State Rep. Polly Williams learned when she pioneered the nation's first urban school choice program in 1990. The program was a modest experiment, limited initially to 1 percent of the Milwaukee Public Schools' students, who could use the state share of their public school funding as full

payment of tuition in participating nonsectarian private schools.

In the first year of the program, during the 1990–91 school year, fewer than one thousand schoolchildren and a dozen private schools participated in the program. Yet the education establishment reacted as if a bomb had been set off. Not only did the teachers' union file a lawsuit challenging the program's constitutionality, but the superintendent of public instruction—a man who, ironically, had two *Sesame Street* names, Bert Grover—tried to sentence the program to death by bureaucratic strangulation by imposing a blizzard of regulations on the private schools.

Working with Rep. Williams, I represented low-income parents who intervened to defend the program and challenge the regulations. Recognizing that education was essential to give their children a chance to lift themselves out of poverty, the parents were desperate to get their children out of failing schools and into good ones. Pilar Gomez typified the spirit of the parents. "I will find a way to have my children attend private school even if it means less food on the table," she declared. "A quality education for my children is that important."<sup>18</sup>

The parents traveled by bus from Milwaukee to Madison, Wisconsin, for a Saturday court hearing in the middle of August, 1990. Wearing red, white, and blue school choice buttons, they bore silent testimony to how much was at stake. Arrayed against an army of government officials and special-interest lawyers, they made for a classic David versus Goliath battle. But David won, when Judge Susan Steingass upheld the constitutionality of the school choice program and struck down most of Grover's rules.<sup>19</sup>

That decision was upheld two years later by the Wiscon-

sin Supreme Court. Justice Louis Ceci captured the importance of the program:

Literally thousands of school children in the Milwaukee public school system have been doomed because of those in government who insist upon maintaining the status quo. . . . The Wisconsin legislature, attuned and attentive to the seemingly insurmountable problems confronting socioeconomically deprived children, has attempted to throw a life preserver to those Milwaukee schoolchildren caught in the cruel riptide of a school system floundering upon the shoals of poverty, status-quo thinking, and despair.<sup>20</sup>

The Milwaukee school choice program performed well, expanding substantially in the mid-1990s to encompass as many as 15,000 children and to include religious schools among the educational options. Not only did the students who were able to move to private schools do well, but the competitive pressure from the choice program forced the Milwaukee Public Schools to improve and adopt long-overdue reforms. Still, intransigent government officials and their special-interest allies continue to try to stymie the program.

That same potent political combination has thwarted school choice in most other states; and where it has been enacted, it inevitably has led to legal challenges.<sup>21</sup> Eventually, following a court hearing outside of which hundreds of low-income parents and children gathered from all around the nation to demonstrate their support for school choice, the U.S. Supreme Court ruled 5-4 to uphold the Cleveland program and to lift the federal constitutional cloud that had hovered over the nation's most promising education reform. As Justice Clarence Thomas declared, "Today many of our inner-city schools deny emancipation to urban minority students," who "have been forced into a system that continually fails them."<sup>22</sup> He observed, "While the romanticized ideal of uni-

versal public education resonates with the cognoscenti who oppose vouchers, poor urban families just want the best education for their children, who will certainly need it to function in our high-tech and advanced society.”<sup>23</sup>

Those battles are far from over. The teachers’ unions have reached into what National Education Association general counsel calls their “bag of tricks” to invoke state constitutional provisions in their effort to block school choice. School choice programs in Florida and Colorado, aimed at helping children in failing public schools, are mired in state constitutional litigation bankrolled by the teachers’ unions and their allies. The battle to transform the American educational landscape through parental choice will be a long and difficult one. But if we are to finally vindicate the unfulfilled promise of equal educational opportunities, prying the governance of our schools away from self-interested government bureaucrats is essential.

Public education is the most important function of state and local government, arguably even more than police protection. Indeed, police resources are strained in large measure precisely because our schools so often have failed. Public schools consume a vastly disproportionate percentage of taxpayer expenditures, with an insatiable demand for more. Yet they have done both far too much and far too little, operating as bastions of political correctness even as they frequently fail at their core mission. Only through decentralizing authority to the level of schools, teachers, and parents; only by directing funding not to institutions as ends in themselves but to the system’s intended beneficiaries; only by returning control over basic educational decisions to the people with the greatest stake in success—the parents—will we ever have an educational system of which we can be proud. That day cannot come quickly enough.