

**To: Barbara Arnwine, Executive Director
John Brittain, Chief Counsel**
From: Derek Black, Staff Attorney Education Project

Date: March 18, 2005

**Re: Achieving Educational Adequacy in the Southeast and the Role of the
Lawyers' Committee for Civil Rights Under Law**

On March 11-12, 2005, the Lawyers' Committee for Civil Rights Under Law co-sponsored "Ensuring a Quality Education for All the South's Children: What's Adequacy Litigation Got to Do with It?" in Atlanta, Georgia with the Southern Education Foundation. The conference brought together attorneys, organizers, advocates, commissioners, researchers, and media from across the Southern states to discuss their work toward achieving educational adequacy in their respective states, share strategies, and establish connections for collaborating in the future. Litigation challenging the quality and substance of educational opportunities under state constitutions is currently underway in North Carolina, South Carolina, Georgia, Texas and Kentucky, with the prevailing theory being that the state is not providing the funding and support necessary for school districts to deliver an education that allows children to learn the skills they will need for current academic and later job success. Others states have either been through previous litigation on these issues or are considering initiating litigation.

The conference included several distinguished panelists, among them David Sciarra, Executive Director of the Education Law Center in Newark, New Jersey; David Hinojosa, Staff Attorney at the Mexican American Legal Defense and Education Fund and lead counsel in the Texas Adequacy Litigation; John Powell, Director of Kirwan Institute-Ohio State University School of Law; Alan Richard of Education Week; and Amy Totenberg, Counsel for Consortium for Adequate Funding in Georgia. Through the quality remarks of panelists and the enlivened response of participants, the conference evolved into a long-running conversation that bridged the various presentations and fostered collective thought. In addition, although the conversation thoroughly covered legal issues, it refrained from making those its sole focus and instead produced an interdisciplinary exchange between individuals from various different fields. The participants found this exchange to be particularly invaluable. Bringing together such a diverse group also helped forge several new working relationships and cement old ones.

Substantively, the conference addressed the toughest and most meaningful questions in the educational adequacy movement. First, adequacy cases are the progeny of *Brown v. Board of Education* and, in the South particularly, the prevalence of inadequacy too often reflects the current effects of past segregation and deprivation. However, the civil rights community, as of late, has not played a significant role in adequacy cases. Instead, school districts, which represent some of the poorest communities in a state, largely drive and fund these cases. Unfortunately, as a historical matter, an inherent tension exists between school districts and school children, as the

institutional interests of school districts can be at odds with the remedies that are necessary for children to receive a quality education. Second, effective remedies to inadequacy require a complex set of considerations, because the children who suffer from an inadequate education face barriers that extend beyond the classroom and include health care, housing, and pre- and after-school activities. The remedies that offer poor and minority children a real opportunity to receive a quality education must be multifaceted and offer various support systems for children, which civil rights organizations are more apt to recognize and champion than school districts. Third, panelists cautioned that winning a legal victory is only the first part in statewide education reform. A legal victory must be followed by a sophisticated legislative strategy that places pressure on the state. Moreover, the legislative and remedial strategy must be included in the initial planning stages of the litigation. The litigation and legislative strategies should also be coupled with a media campaign that makes use of print, radio, and television and delivers consistent and concise messages that appeal to the public. Fourth, successful litigation engages the client community. If the community understands its stake in the litigation, it can apply the legislative pressure that will carry the legislative action. Last, although it is unfair to place the burden of success on the plaintiffs in adequacy litigation, in today's climate of standardized tests and measures, the days are soon coming when we will be forced to demonstrate the results of the additional investment in education that comes from the adequacy movement. Our responses may include measures of success that rely on "soft variables," but they must also include "hard variables" such as test scores or high school graduation rates.

All of these issues and questions provide a solid, substantive basis for exploration through further research or a second conference. Moreover, the success of this convening suggests that a second gathering could produce measurable steps in answering these inquiries. Yet, regardless of the feasibility of a second gathering, the issue raised regarding the involvement of the civil rights community presents an open avenue and need for the Lawyers' Committee to reengage in a legal movement that it helped spearhead leading up to the Supreme Court's decision in *San Antonio Independent School District v. Rodriguez* in 1973 (in which the Court rejected education as fundamental right under the Fourteenth Amendment that would bar funding inequities in schools). As a general matter, the Lawyers' Committee ought to continue its participation in future national adequacy conferences to maintain current relationships, build new ones, and stay abreast of developments. More directly, the Lawyers' Committee can reach out to its client populations to educate them as to the legal movement that is affecting their interests. This can also provide a venue for identifying more precisely where their interests may diverge from school districts, and establish a basis upon which the Committee can file amicus briefs or provide direct representation. Last, the overlap between adequacy and racial and ethnic discrimination claims should encourage the Lawyers' Committee to be particularly cognizant of adequacy when evaluating its clients' and potential clients' educational barriers. Adequacy may provide for substantive remedies beyond those that we could secure in pure discrimination cases or provide a cause of action where none other can be made due to adverse changes in school desegregation and anti-discrimination law decided by the federal courts.