

## A Conversation with Julius Chambers

*On March 11, 2013 Roslyn Arlin Mickelson interviewed Julius LeVonne Chambers in his law office in Charlotte, NC. During his career, Julius Chambers successfully litigated several cases that changed the contours of civil rights law, including Swann v. Charlotte-Mecklenburg Board of Education (1971), and two employment discrimination cases, Griggs v. Duke Power (1971), and Albemarle Paper Co. v. Moody (1975). He served as the head of the NAACP's Legal Defense and Education Fund, Chancellor of North Carolina Central University, and professor of law at UNC Chapel Hill. Chambers was the founder and first director the UNC Center for Civil Rights. He was a founding partner, with James Ferguson, II, of the firm Ferguson, Stein, Chambers, Gresham and Sumter, P.A. He practiced law in Charlotte until his death in August 2013.*

*The goal of the loosely structured interview was to learn Chambers' views on the status of desegregation and educational rights in Charlotte and the nation now that the federal legal landscape had changed and so many school systems, including Charlotte's, had resegregated. The interview turned out to be more of a conversation than a formal interview. Chambers reflected on the Charlotte experience and discussed the future of educational rights jurisprudence. Mickelson brought Chambers, a diabetic, some nuts on which he munched throughout the conversation. That day he was in failing health and was mourning the death of his wife, Vivian Giles Chambers, who passed away the previous year. The edited<sup>1</sup> transcript of the conversation presented here captures Chambers' thinking and voice near the end of his life.*

RM: I wanted to hear your reflections about what has obviously been a significant part of your life's work: the desegregation of the Charlotte Mecklenburg schools. And our interest is in looking at the past, the present, and the future. So if you'll indulge me, I'm going to ask you some questions and you just reflect away, so to speak. How are those nuts?

JC: Good.

RM: Thinking back to the historical factors, the individuals, the organizations, that made desegregation possible from the 1970s to 2002, which ones come to mind? What do you think were the key actors and the key forces?

JC: One thing I always think about is the leadership provided by the community—white and Black—in moving to desegregation of schools. And I think the leadership was very important (for bringing) the community through the crisis we were facing because we were faced with some threatening possibilities of people fighting and doing things (inaudible).

RM: What form did the leadership take?

JC: I saw some people step out to tell the community, 'Let's do what we've got to do.' And they did. I saw heads of some of the organizations, because I thought a lot of people were afraid that moving as we were, or as rapidly as we were, could adversely affect the economy of the community and some people

advocated that we should do this peacefully and they emphasized that. I thought that they have to enable the community to move to a desegregated school system without all of the violence that was attended to in a number of other communities.

RM: Can you talk a little bit about the role of the African American community at that time back in the '70s?

JC: Well, I think that the African American community was extremely important because they were committed to desegregation of the schools and they weren't going to back down. That was important because I think the leadership in the community saw that black Americans, at least in Mecklenburg County, were determined to desegregate the schools and they weren't going to take no for an answer. So they had to stay committed to the objective that they were pursuing and they had to convince the community that they were committed to this objective, so that was important.

RM: Was there unity across all sectors of the community?

JC: Well not complete unity, but I think the Black community was pretty committed to this objective and they weren't listening to anything else.

RM: Okay. I also read about the possible role of white labor unions, like the firefighters. Because you had taken their case, they then supported desegregation. So did that create a kind of synergy across class and race?

JC: Well, you can't say all whites were supportive of the effort because of the union, because they represented a very limited part of the white community. They were important and it was great to have their support throughout the effort.

RM: Who were the allies of the black community in the white community? Were there groups that basically said, "this is what we need to do, in the white community"? You mentioned the business leaders. Were there others?

JC: You had some church leaders who were supportive. I can't say that they were all committed to the effort, but there were many in the white community who supported the effort because of the leadership of the churches. After that, I think the white community was pretty much opposed to what we were doing.

RM: You mean beyond the church leadership.

JC: Right. Uh huh.

RM: Well, when we (Mickelson and Smith family) arrived in 1985, we were looking for our house and ended up in Stonehaven<sup>2</sup> —but we were shopping for real estate all over. No matter where we were, people talked favorably about desegregation and these were almost all white homeowners because the real estate agents were showing us —we said we wanted to live in an integrated neighborhood— but we weren't shown houses in integrated neighborhoods. But people (we met looking at homes) would

talk about the schools - and I remember one White father saying, 'you know, I was opposed to it. I grew up in segregated schools, but I'll be darned if my children are not getting an excellent education and they have some very nice black friends.' And he had little kids! There was sort of this ...

JC: Some support. But that was an element of people in the labor movement [inaudible] very much opposed.

RM: What segments of the labor movement were opposed? Do you recall?

JC: The ones I knew and the ones I'm thinking about were the regular labor folk working in factories and people that I saw or knew included people working in the lumber area, people working in the textile (mills).

RM: How did you deal with that?

JC: Fortunately, some of the things that I had done before [inaudible], brought me in touch with a lot of the people —you mentioned the firefighters — there was also the work we had done in the medical field, getting to know some doctors, working with the doctors, Dr. Hawkins for example, to open up practices for all people. That enabled me, at least, to talk more with physicians and dentists, in particular. Not that they were in love with what I was doing. I could at least talk to them and talk about why what we were doing was crucial and the right thing to do.

RM: When you say Dr. Hawkins you mean Reginald Hawkins.<sup>3</sup>

JC: Yes. And I had also worked with educators, which was helpful.

RM: How was it helpful.

JC: I was able to meet and talk with a lot of the educational leaders and to gain their support, not enthusiastically, but they at least would listen. They may not agree with everything I was talking about, but I could at least talk to them.

RM: What role, if any, did the way (Judge) McMillan framed the decision play?<sup>4</sup> Did people believe that his decision was going to support their interests across the board?

JC: I don't know about that. I know that he at least wrote some of it to avoid creating a lot of enemies in the process. People listened and they believed that what he was saying was the right thing to do and they might not agree with what he was talking about, but they at least didn't get offended with what he was saying and the way that he said it. His language was such that people sort of understood what he was talking about.

RM: I'm sure that you've looked back at the *Swann* case many, many times. Have you ever considered what, if anything, you would have done differently from the time of the decision of the court in moving forward since (then)?

JC: See, I don't think so. I think we had to move the way that we did and I had worked in school desegregation in a number of communities including Durham and Greensboro and Raleigh and Charlotte was much more enlightened and helpful, because of the experiences that I had had in some other cities. Comparing it with Durham, we didn't have the outreach across the communities that we had in Charlotte. We had a number of elements in the community who were involved and supportive because of the approach that the court and others had taken to get those elements involved. We didn't have the outreach to convince people that what we were talking about and doing was the right thing for the community based on the experiences that others in the community had had. We didn't have outreach to teach it.

RM: What did the outreach look like?

JC: People telling teachers that their jobs were not going to be jeopardized because of what was happening, but would be enhanced in efforts to get involved in the community or the schools.

RM: Was it the case that black educators did not lose their jobs as they had in other places?

JC: They did not lose their jobs as much as they had in other places. Principals weren't excluded or dismissed. Threats weren't made. Teachers wouldn't be dismissed as they had been in some other places. That helped because teachers and principals saw there were opportunities for them in the process of desegregating schools.

RM: Let's move to the next 30 years. Between the initial implementation of the plan and the late '90s, [did] the social forces and political forces and community forces that were supporting desegregation began to crumble or to weaken?

JC: Not necessarily. I think you're talking about— you're talking about the Charlotte community?

RM: Yes, focusing on weakening support?

JC: I don't know. Has it weakened? I don't think so. Others may differ and I will respect their differences, but I haven't seen the crumbling of the positions that people have taken to support integration of schools. In fact, it's been amazing to me, in Charlotte, that people have reached out to continue to promote the integration of schools and I've been impressed with it.

RM: The school board, for example, has four blacks on it now, I believe. Yet, none of their policies, including their pupil assignment policies, involve creating diverse schools. They're not opposed to it, but their not actively seeking it.

JC: I agree with you.

RM: What do you think is going on with the school board?

JC: You know, years ago when I was talking with (Judge) McMillan about integration of the schools, he was telling me that his past experiences had led him to believe that integration of the schools was the right thing to do. And he was trying to do what he could in as peaceful a manner as possible. Now, I

don't think we have that kind of commitment today on the school board. Well you don't have it today. Blacks and whites on the board that I know simply aren't convinced that integration of the schools is the best thing to do.

RM: Why do you think they are not convinced? The evidence is pretty striking that it is.

JC: I would think so. But, you know, the people that I see on the board are good friends, but they haven't had the kinds of problems that I had or McMillan had growing up. They had a lot of things passed on to them without a fight, so they haven't been that convinced that they really need to do something to gain support for position. And a lot of people otherwise in McMillan's era, in my era, had to really fight to really get what they thought they were entitled to. And others had a different kind of experience in growing up. They weren't as convinced or as committed to the idea of integration. Why ... should they be nice to White people? Why should black people be nice to white people? Why should White people be nice to black people? What happens if they are in an integrated environment? Where is the need to fight for the kind of rights that you would like to have? People don't—having to go through that experience is one thing and not having to is another story. It's interesting to me to watch some of the black members of the board. I don't want to criticize them, but they take a lot of things, for example, as givens, 'I don't need to fight to do this, I can just point out why I think what I'm advocating is the right thing to do.' Well, not everybody agrees with that. We just move on.

RM: Back in 1999 after (Judge) Potter's unitary decision, there was a period where the black community united behind the law team. . . [at] Ferguson Stein and their appeal.<sup>5</sup> Do you remember there was a big rally at one of the churches? Were you part of building that support in the black community for the appeal?

JC: For the appeal?

RM: Of Potter's decision. Could you talk a little bit about your role? What people like you did to get the black community active in support of the appeal?

JC: Well, the legal community, lawyers—black lawyers, kept talking with parents and adults and young people, in fact, about why what we were advocating was in the best interest of the Black community long range and why it was important for everybody in the black community to fight to support the effort. We had been advocating that and had been fighting for that all the time. Additionally, we had gone through several experiences that made it easy for us to talk with the Black community about why they should be involved or why they have to be involved. And they became more supportive or remained supportive of the effort. It was good to get the Black community out, involved in what we were doing.

RM: And who made the connection between all of these successes and integrated public schools?

JC: I think all of us did. The leaders in the black community could point to teachers who had succeeded, to athletes who had done well, students who had done well. And that was extremely helpful. And the people in the black community didn't hesitate to identify other schools that had succeeded.

RM: Why isn't this happening now?

JC: First of all, that's a good question. You hadn't written your book (laughter). They need it. They need your book and they need, really, your leadership.

RM: You're making an... assumption that people make evidence-based decisions.

JC: A lot of them do and it would be—that's why your book would be helpful.

RM: From your lips to G-d's ears....

JC: You know one other thing that we had—we had a more active religious community that brought a lot of the minority and non-minority communities along to support the efforts that we were pursuing.

RM: Have other things changed in the nature of the people who live here now compared to then?

JC: Well, I think, but I haven't seen how their involvement really has affected the community, but I haven't looked that closely to see. I know that the religious community was much more involved and provided leadership that is desperately missing now. I know that the White community was much more involved because of the effort to enhance the economy of the community. And so it's really—first of all we don't have the leadership that we had then. We need it, in my opinion. Secondly, the religious community was much more involved and we need the leadership of the religious community. And third, I don't see the business community as involved as they had been and I guess the business community thinks that we made all the advances that we need to make in that connection. But there are some real problems still facing the community and I think there's a role that the religious community and [the business community] can play or needs to play and I just don't see it right now.

RM: Has the legal structure that undergirded desegregation efforts changed in ways that make it more difficult?

JC: Yeah, well, the legal community is not as committed to this effort as it was. We don't have the legal community as involved and as available to provide support and help. It's a big gap between what we had and where we are now.

RM: Let's assume that I'm Judge Manning and you and I are having a conversation and I have laid down all these rulings with respect to Leandro.<sup>6</sup> Can you speak to me as Julius Chambers and I'm Judge Howard Manning? Tell me what to do, what I ought to do—you know, we're having a little drink and relaxing, but tell me what to do.

JC: Well you've got to do more rulings, first of all. You've got to be a little bit more forceful than you've been.

RM: How so?

JC: Well, you issued a ruling and you haven't done anything to enforce it and so people don't feel as charged with your ruling as you would like for them to be. That's one thing. You issued a ruling and nobody pays any attention to it.

RM: Which aggravates me as Judge Manning.

JC: He issued a ruling about the elementary schools and did nothing to enforce it. He didn't try to. He might have been told not to. So that's one thing and then you've got, today, a more conservative governor and legislature. And so there's only so much that he can do. It's pathetic that our state legislature is so inept or deprived of any authority to do anything. But it is and so what do you expect? And then the Black legislators are really disappointing.

RM: How so?

JC: They're not there.

RM: You mean they're physically there, but not there?

JC: Yeah. And I don't know that they have a voice at all in the legislature. I don't think that anybody pays any attention to the black legislators. So that's a problem. And it removes a major supportive force in the community from what we had and that is adversely affecting what we can do.

RM: Alright, I want to ask you a big question.

JC: Mm Hmm.

RM: Your late colleague Derrick Bell had this interest convergence theory that proposes that whites will support policies and practice that benefit blacks only when whites perceive that their own self-interest overlaps with the interest of blacks.<sup>7</sup> Is he right?

JC: Well, the question is only when and I don't know. And "support"—I think you have to sort of define all of that. What do you mean by support?

RM: Well desegregation is a good example. The business community in Charlotte supported desegregation because it helped their business interests.

JC: That is an argument. I don't know that it's true in all its senses is the problem.

RM: When you look back at what's happened in Charlotte, do you see evidence that white, powerful people no longer see desegregation as in their interests? And therefore they don't seem to support it?

JC: Well, we haven't articulated why the desegregation efforts will support the white community and we've dropped that effort. And I think it's important to revive it and talk about it and advance it, but right now we haven't done it.

RM: I have a young colleague who is an African American sociologist ... studying blacks who return to the south. They had lived a generation or two in the north and returned to the south. Now these are all

blacks who moved here recently. And I asked her, “How do people (you’ve interviewed) who recently came to Charlotte view the primarily segregated black CMS schools that their children attend?” And she said, “They think they're great schools compared to Newark, Philadelphia, New York, Cleveland, Chicago!” What do you think of that observation, that even though they're segregated, Charlotte schools are providing black children with some degree of quality education when compared to the disastrous schools elsewhere?

JC: I think it's difficult for an integrationist to make a strong argument about integration with the comparisons that you mentioned. A lot of the schools in the north are bad and are not doing very much because we don't have the leadership in the north to advance education. I think, this doesn't answer your question, but what we see in the north is basically what we're going to have in Charlotte in a day or so because you can't really build an educational program in the north or anywhere else with the lack of leadership that we have. If you look in the north and ask about what is happening with the schools, you'll see that you don't have anybody promoting anything and it's what this community is evolving to. I think it ought to be frightening to all of us that we don't have any better leadership than we have.

RM: How do you know a leader when you see one?

JC: That's a more difficult question. I think a leader has to see all of the things that we've been talking about in terms of how do you bring a community to a certain point? You look back now at Charlotte Mecklenburg—who here now is promoting education? Why aren't we talking more about education? And I'm talking about across the board, so that we have blacks and whites talking about education, we just don't have it right now. And you talked about young blacks now comparing Newark, for example, ...with (education) in Charlotte and we just aren't doing very much on either side of the pond. And it's, to me, crucial I think a lot of the blacks I know will argue with me about whether it's bad for the black community or even for the white community to have this kind of (school) board, but look, what I see is we all are going to suffer because of the lack of leadership. And what black now is talking about going to Harvard? Or to Yale? Or wherever? Or to become a real educational leader? Nobody is talking about that. And the kids—and I know my kids don't think about the kinds of challenges that would encourage them to do better educationally or in the labor market or anywhere.

RM: How many kids do you have?

JC: Two. I have two, but now they're adults. Both of them.

RM: I know you have a son.

JC: And a daughter.

RM: And a daughter. Are they parents?

JC: Yeah, my daughter is. Well both of them are.

RM: Do they send their kids to the Charlotte Mecklenburg schools?



JC: Yes.

RM: Are they pleased with the education their children are receiving?

JC: You know they don't really talk about it.

RM: How ironic.

JC: They don't even talk about it because nobody is really raising that issue and somebody needs to be raising it.

RM: Do your grandkids ever talk about school with you?

JC: Yeah, I've got a granddaughter who does.

RM: Does she know your historical role in—

JC: Yeah and she talks about the educational programs. But even that has dwindled in the past year or so. My granddaughter has raised the issue but even she has stopped talking about the quality of the programs. That's been disappointing.

RM: I think you're raising an important issue. One of my former students who is now editing this book with us ... was a CMS teacher and then she got her PhD at UNCC.... Her dissertation was about how the class of 1997 was integrated, but (she found) nobody knew its history. She was at South Meck and so she interviewed people in South Meck's Class of 1997, people in North Meck's Class of 1997 and people in Garinger's Class of 1997. They didn't know the (district's) history. (She concluded that) part of (the problem) is not knowing CMS's history, which is what you're telling me about your grandson and your granddaughter. I have one final—do you have time for two questions?

JC: Go ahead.

RM: I want you to think about your career in the law. Have the Rehnquist and the Roberts' Courts changed your view of the role of the law and of litigation as tools for broadening justice and social change in our nation?

JC: Not at all. I think my view is (the role of the law) becomes more and more pronounced and more important now because I think the courts can still play and must play a major role in insuring that educational opportunities for children in this district, for black children. And you've got to go through and carve out some constitutional reason for supporting black children in my district. It's not as easy as it had been when segregation was denounced, but it's still about the only basis that one can advance to gain support for the kids. Look, right now, what basis is there for a court looking at minority children and talking about it's important for the state to provide support for them, wherever they are? You've got to develop a legal basis now for providing that kind of support. The court will decide this term, I think, that you can't provide continuing basis for minority children and it isn't legal, it isn't based on any constitutional principal that the court will support.

RM: You're talking about the *Fisher v. Texas* case with affirmative action?<sup>8</sup>

JC: Yes.

RM: You're pretty convinced that they're going to—

JC: Well, they took the case to weaken affirmative action, so we'll see what happens with that.

RM: I'm confused. If the court is marching in this direction with *Parents Involved in Community Schools*,<sup>9</sup> they took away voluntary desegregation if it involved individual student race, and with *Fisher* they are likely to take away affirmative action period.... (How) do you think the court will still play a role?

JC: I think they have to, first of all. And second, I think they will because I think they will see the necessity for stepping in and providing that kind of leadership. I don't know exactly how you carve out, what you would do to carve out a constitutional role, but I know that it is extremely important that we do. I don't see any other basis for providing that kind of support. ...To me, (it) is not substantially different than the role the court had to play back in the '30s and '40s. You have, first of all, a need and you have some efforts that are being made now to address that need and I'm sure those efforts are going to talk about constitutional issues and the only way that I see you do that is tie it to something like race or even poverty.

RM: What would the constitutional basis for poverty be? I thought poverty is not a protected class.

JC: ... You're right. It isn't, yet—(laughter). It's something that you have to evolve and I think some efforts are being made to do that.

RM: Alright. Well, I think we've run out of questions. Now is there anything that this conversation has triggered in your mind that you'd like to say that I didn't ask you?

JC: Yeah, and I think you didn't talk that much about poverty and why that is a fertile ground for constitutional litigation. And it is a good question and I think, though, that we all see the correlation between poverty and race. After all, its been shown that poverty has resulted from racial discrimination in the past. How successful they are is going to be with that argument is questionable, but it is still a basis.

And I'll tell you it's about, in my opinion, the only basis out there now to ensure protection. It would be fought as hard or harder than the race issue, because if you're talking about moving money from the wealthy, which I guess Obama was talking about, they'd—I mean they in the power base—will not sit back and just allow that to happen.

RM: Does focusing on poverty allow for coalitions among white, Latino, and black people and their advocates that are much more viable... because there is a common interest?

JC: Yeah. Yep. And I think some efforts are being made to form those coalitions, but it also allows for opposition and that opposition is developing or evolving as well.

RM: What do you do with *Rodriguez*?<sup>10</sup>

JC: I don't know if *Rodriguez* stays as it is.

RM: Well we'll see.

JC: Yeah, we'll see.

*The conversation ended with mutual wishes for the other's health and well-being and the success of this book.*<sup>11</sup>



Roslyn Arlin Mickelson and Julius L. Chambers October 1, 2011 Johnson C. Smith University, Charlotte. The picture below was taken following Mr. Chambers' keynote luncheon address to the audience at the North Carolina NAACP's Annual Meeting held at Johnson C. Smith University on October 11, 2011. Earlier that morning Mickelson presented her research about the reciprocal nature of neighborhood and school integration and/or segregation.

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<sup>1</sup> The transcript of the conversation was lightly edited for clarity.

<sup>2</sup> Stonehaven is a middle ring suburb in southeast Charlotte.

<sup>3</sup> Dr. Reginald Hawkins was a Charlotte dentist, ordained minister, and civil rights activist. He fought for Blacks' voting rights and against school segregation. He was the first African American to run for governor of North Carolina since Reconstruction. Dr. Hawkins was considered by many as a leader in Charlotte's early civil rights movement. He died in 2007.

<sup>4</sup> Judge James McMillan was the federal judge whose 1969 decision permitting the use of busing to remedy what he considered to be "apartheid education in Charlotte" was unanimously upheld in 1971 by the Supreme Court in *Swann*. Mickelson interviewed Judge James McMillan 1987 in his office in the federal courthouse in Charlotte, NC. Julius Chambers argued the case for the original *Swann* plaintiffs before McMillan and later before the Supreme Court. Judge McMillan died in 2005.

<sup>5</sup> In 1999 Judge Robert Potter held that CMS was unitary in the consolidated *Capacchione v. CMS* and *Belk v. CMS* cases (see Ch. 2 and Ch. 12 for a discussion of these cases and Potter's political activism against desegregation prior to his appointment to the federal bench). Chamber's law firm, Ferguson, Stein, Chambers, Gresham and Sumpter represented the Black plaintiff-interveners in the 1999 trial. Chambers' colleagues James Ferguson and Luke Largess were the attorneys of record in the case (see Chapters 2 and 10). Judge Potter died in 2009.

<sup>6</sup> Judge Howard E. Manning Jr. is the North Carolina Superior Court Judge who presides over *Leandro v. State of North Carolina*, the 1994 lawsuit filed on behalf of students and parents from five low-wealth North Carolina counties. Judge Manning's rulings in the case hold that the state has failed to provide a "sound, basic education" to all students. His rulings have been largely upheld by the North Carolina Supreme Court. See Chapter 10 for a discussion of *Leandro I* and *Leandro II*.

<sup>7</sup> Professor Derrick Bell was the first African American to be tenured at Harvard Law School, a position he ultimately resigned to protest the absence of Black women among the tenured faculty. He is associated with the development of critical race theory (CRT), a highly influential framework used widely across many disciplines including law, education, and the social sciences. His interest convergence thesis proposes that Blacks' interest in racial justice is generally accommodated only when that interest converges with the interests of Whites. Professor Bell died in 2011.

<sup>8</sup> Chamber's prognostication about the likely direction of the Supreme Court's ruling in *Fisher v. University of Texas at Austin* 570 U.S. (2013) proved wrong as of 2013. The case involved the use of race in undergraduate admissions in Texas and had implications for affirmative action and race-conscious policies in education more broadly. The 7-1 majority reiterated that affirmative action plans must pass the test of "strict scrutiny" and that the university's continued use of affirmative action can be constitutional only if it is "narrowly tailored." Although the Court did not revisit the constitutionality of using race as a factor in college admissions, it voided the lower appellate court's ruling in favor of the University of Texas. The Court remanded the case back to the appellate

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court, holding that it had not applied the standards of strict scrutiny. If, after a strict scrutiny review, the case comes back up to the Court, it could mean the end of affirmative action. Chambers may ultimately be right about *Fisher*. *Fisher* departs from *Grutter* (*Grutter v. Bollinger*, 539 U.S. 306 (2003)) in a few ways, but, most significantly, it appears to heighten the requirements for narrow tailoring from merely "considering" race-neutral alternatives to demanding their "exhaustion." *Fisher* also shifts responsibility for this from the University to federal courts (John A. Powell & Stephen Menendian, 2014. "Fisher v. Texas: The Limits of Exhaustion and the Future of Race-Conscious University Admissions." *University of Michigan Journal of Law Reform*, 8: 899-933; see pp. 905-915).

<sup>9</sup> The issue in *Parents Involved in Community Schools v. Seattle School District No. 1*, 55 U.S. 701 (2007), often known as PICS, was whether a school district's voluntary use of an individual student's race in a pupil assignment plan was constitutional. The Seattle, WA and Louisville, KY school systems voluntarily employed an individual student's racial classifications as part of their school assignment plans designed to create integrated schools. The Court held that while seeking diversity and avoiding racial isolation are compelling state interests, the school districts' plans were not sufficiently narrowly tailored to be constitutional. As Chapter 10 indicates, PICS severely constrains, but does not eliminate, the possible use of race in K-12 pupil assignments.

<sup>10</sup> In *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), the Supreme Court held that while under certain circumstances educational funding formulas were subject to heightened judicial scrutiny under 14<sup>th</sup> Amendment equal protection standards, they only had to have a rational basis to be lawful. The Court found that there was no fundamental constitutional right to education, and that socioeconomic status or wealth was not a suspect class, and therefore strict scrutiny analysis did not apply in that case. The Court's 5-4 decision held that the right to an education was not "explicitly or implicitly" protected in the Constitution. Absent any impact on a fundamental right or a suspect class, the Court had to accept the school district's articulated rationale for its formula. Although the funding formula challenged in that case provided more resources to wealthier, primarily White areas of the school district, it passed the deferential "rational basis" review. After *Rodriguez*, many education and civil rights advocates turned to state constitutions for relief from inequalities in educational funding. *Leandro v. North Carolina* is an example of a state lawsuit of this nature.

<sup>11</sup> Mr. Chamber's remarks during a 2004 American Sociological Association panel celebrating the 50th anniversary of the *Brown* decision motivated Mickelson to develop the Spivack Archive (<http://spivack.org>).