

TRANSCRIPT

"SOCIAL MOBILIZATION AND STRATEGIC LITIGATION FOR EQUAL EDUCATION IN SOUTH AFRICA"

A Conversation With Brad Brockman, James Goldston, Dmitri Holtzman, and Jonathon Fairhead

Moderator: Tracey Gurd

TRANSCRIBER'S NOTE: AUDIENCE MEMBERS' NAMES TRANSCRIBED PHONETICALLY.

ANNOUNCER:

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TRACEY GURD:

My name's Tracey Gurd. I'm with the strategy unit. And I lead the new enterprise support-- work. But in a former life, I used to work with J.I. and work on-- strategic litigation, doing advocacy around it. So I was absolutely thrilled when Jonathon asked me to moderate this panel. And I feel like there's few guarantees in life. But one thing that I can guarantee is the next 75 minutes will be a fascinating conversation.

Because we've got-- two really quite brilliant activists with us today-- who are goin' to lead us through their journey that they've taken over the last four years-- fighting one of the most pernicious legacies of-- of apartheid-- which really left-- a separate and deeply unequal school system-- which is reflected in the infrastructure.

So in South Africa-- Jonathon was just showing me this morning-- an example of a public school that looks more like a university with lavish grounds, with quadrangles,

with beautiful structures. And as we'll hear about today and see today-- that's almost opposite to a lot of the schools that exist in South Africa-- as a result-- of apartheid.

Some being mud structures, for example. So through social mobilization and also strategic litigation-- our guests here today have led a journey over the last four years-- where they've had-- a significant victory that came through last year, which was to get the-- minister of education to-- issue binding-- legally binding norms and standards-- minimum norms and standards around the school infrastructure.

And so this will really-- I mean, it's significant because it will really change the face of-- schools in South Africa over the coming decade, which is really enormous. So here to tell us about their great victory and how they did it-- is-- is Brad Brockman, who is the general secretary of Equal Education.

He will help us understand the history of the campaign-- how he-- he and his team actually were really engaged in mobilizing students, parents, community members to really put pressure on the government to achieve this victory, and how they worked together-- with-- with actually our other guest, who's Dmitri Holtzman, who's the executive director of Equal Education's north center-- who undertook the strategic litigation-- actually.

And that-- that actually was settled by the minister-- bef-- that led to the-- the-- the issuance of the norms and standards. So they will tell us a little bit-- about their campaign and the history today. Dmitri will talk about the litigation element and how he worked together with Brad.

We've got Jim Goldston here also who's a respondent for us. So as-- as I think everyone knows, Jim-- has also been-- a lead figure in international strategic litigation-- including on education issues. And I was lucky enough to work with Jim in implementing one of the cases he had won on D.H. and others-- versus the Czech Republic, which was about the segregation of Roma children on the basis of-- of ethnicity in the Czech Republic.

And we've also got our organizer, who is Jonathon Fairhead, who-- who is also gonna speak to us a little bit about how the education support program-- sees strategic-- strategic litigation and the type of work that Dmitri and Brad have been doing as really quite integral to their strategy and some of the lessons you've been learning from-- from that. So we're gonna start off today actually with a short video that really sets the scene for the discussion-- this afternoon.

(VIDEO NOT TRANSCRIBED)

TRACEY GURD:

So Brad, what was striking to me, I think, in that video is the conditions there really highlight how terrible it is for a lot of learners at schools. But these conditions aren't-- even that unusual for many schools. And in case-- in-- in-- in fact, I don't think that's even the worst case scenario for a number of schools. So maybe you could--

help us understand the history of how schools got to this condition and what led to your campaign-- over the last four years.

BRAD BROCKMAN:

Thanks. Thanks, Tracey. Good afternoon, everyone. I think the-- you know, the first thing that I'd like to say is just with regards to the-- the schools that you saw in the video-- many of those schools, particularly the mud schools, were actually built by black communities themselves during apartheid when the white apartheid government would not build those schools-- and would not provide those educa-- those-- you know, those facilities for black children.

So that was really a community response to-- to a need. And with-- with-- Bantu education under apartheid, of course schools were segregated by race. Schools were segregated by ethnicity. And there was also a massive disparity in the amount of money which was allocated to the education of the different race groups in South Africa.

So, for example, in 19-- in 1976, the apartheid government was spending, you know, 10 rand-- on the education of every white child. And for every 10 rand, they were spending one rand-- on the education of every black child. So they were spending ten times as much on the education of white children than they were on black children. And that was reflected in infrastructure.

That was reflected in teachers, in the quality of teaching within schools. And it was very definitely also-- reflected in outcomes. Now, the-- the policy of-- of-- of Bantu education was very explicit in its intention. So in 1953-- Mr. Hendrik Verwoed, who at the time was the minister of-- of native affairs-- he made the statement in-- in justifying and explaining why-- Bantu education as a policy was necessary.

And he said that, "There is no place for the Bantu in the European community about the level of certain forms of labor. What is the use of teaching the Bantu child mathematics when it cannot use it in practice? That is quite absurd. Education must train people in accordance with their opportunities in life according to the sphere in which they live in,"

So it was just a very deliberate attempt, a policy which was institutionalized and implemented for more than 50 years. And that policy really just sought to undermine black education and to-- as some-- as some would say, to intellectually dispossess black people. And we are dealin' today with the-- the legacy of that policy.

So within South Africa today after-- after 1994, school-- of course, schools-- were no longer segregated by race and by ethnicity. But what we do find is that schools are essentially segregated by class. So most children in South Africa attend public schools, government-funded schools. There's about t-- 25,000-- of these public schools.

Now, 60% of public schools are not allowed to charge school fees. But 40% of public

schools are allowed to charge school fees. And those school fees are set by the parents of the children at those 40-- at that 40% of schools. And essentially, the schools which were built under apartheid (UNINTEL), those eras were only available for-- for white children to attend.

Those schools are now open to everyone, but they are attended by white children and by black middle class children. And so the disparities in resources, in teachers, in outcome, in school (UNINTEL) management still exist. And even though legally the system is not designed to do so. Or the intention-- or at least the explicit intention of-- of the education system in South Africa is no longer just to oppress black people.

But what we do find is-- is a class by suppression which is linked very closely to race. So essentially-- in South Africa-- it's-- it's sort of accepted that about 75% of our schools are dysfunctional, are dysfunctional in terms of resources but also in terms of outcomes. And those schools are located within, you know, poor, still predominantly black communities-- in very poor rural areas like you saw in the video.

Now, Equal Education, we are-- and the organization is essentially a response to this systemic inequality. This inequality, which manifests itself in, you know, a massive disparity in resources-- but also very important in terms of outcome. So, you know, I-- I know that in America, there's-- a high school dropout rate of probably around 7%.

In South Africa, we are talking about 50%. Now, if we look at where that 50% is coming from, it's coming from children who are attending-- poor black children who are attending these poor working class schools. And then, you-- you know, when you look at how many students are actually graduating or who are actually graduating with-- you know, marks which will enable them to go onto university, it's a very, very small number. So education for most black children in South Africa, poor black children, is not a pathway out of poverty.

In fact, it's a poverty trap. It keeps them in the same socioeconomic conditions that-- that their families are in. And so that is-- you know, that is a major challenge to the future of South Africa. And it's also a major reason why South Africa remains one of the most unequal, if not the most unequal country in the world.

Now, as-- as Equal Education, we are a grassroots response to this inequality. And the-- the way in which we approach this problem is primarily through community organizing. And that means is really to organize the people who are most affected by this inequality, which are children who attend schools in townships, which are our version of, you know, project ghettos. I don't know if that's the right terminology you are actually using. You know-- and rural-- and very poor rural-- schools. So those children and their parents.

And what we do is that these-- students and these parents, they become members of the organization. And the organization acts like a vehicle which-- organizes them, which organizes them in this movement, which sh-- shares and educates s-- students and parents about the education system, about inequality within the education system, and how it's structured, and how it's perpetuated, and also explains to them about the law, about activism and history, and how through coming together,

through using research, through using organizing, through using campaigns, through using litigation, one can actually achieve change within individual schools and across the education system.

So the organization has been around since 2008. We've started in-- one of the largest townships in South Africa. It's in Capetown. It's a place called Khayelitsha. There is about 700,000 to a million people who live in this one particular township. More than-- I would say about more than 50% of the people who live in that-- in that township live in informal using.

So that's what we call shacks which are made out of aluminum and wood. Very, very, you know, poor access to basic services around sanitation-- around health care. Security is also a major issue. And so that's where we started to organize. And that's where-- our membership base is really from.

And so the students who come and-- and-- and join Equal Education, we engage-- we engage with them on a weekly-- weekly basis. We hold meetings which we call youth group meetings where students come together and we-- we learn these things. But we also discuss the issues that are affecting students directly within their schools.

And importantly, we-- we talk about and we plan how students comin' together, how they can put pressure on other students, teachers, the district, or the education department as a whole to effect change. And so that's really the model which we-- which we use. And the types of-- of campaigns that we take up. An (UNINTEL) in the organization was started in 2008. We took up-- very local campaigns focused on individual schools.

And that's-- you know, a principle of organizing is really to start where people are at, and to take up the issues that they can understand, and that directly affect them, and that they want to act to change, and use that as a basis to build sort of-- you know, a more developed consciousness of educational inequality and what are all the different-- factors which go into creating this particular system. But start from where people are at.

And so we started mainly with issues around infrastructure. So our very first campaign that we took up in 2008 was really just about addressing the fact that at one of the-- the-- the 20 high schools in Khayelitsha, there were 500 broken windows across the school. And these windows had been broken for many years. And so students were sitting in classrooms in winter, and rain, and the wind.

And they would just be completely miserable-- in these classrooms. And it was very difficult for the students to-- to concentrate with-- either when it's hot or when it's cold. And they identified that as an issue that they would like to take up. And then what we did was that we-- we helped the students to do research about this. We helped them also. And we-- together with the students, we engaged with government about the issue.

They told us, "You know, the school is actually scheduled for maintenance. But that's gonna happen in three years' time." We said, "We can't wait that long." And we also assisted the students to organize other students and to go and have-- you know, with

petitions to explain to other students both at their own school and other schools in the area what was happening.

We organized a march to the provincial education department and picketed out there, wrote letters-- to the media. And eventually, we got to a situation where the sort of state or, you know, provincial education minister actually agreed to fix the 500 broken windows and also to-- you know, to-- to allocate an additional 700,000 rand-- which is-- how much is that? My math is--

(OVERTALK)

MALE VOICE:

--\$70,000.

BRAD BROCKMAN:

\$70,000-- which is a lot of money, you know, just for-- to-- to do further upgrades for that particular school. After that, the students-- you know, after that victory which brought a lot of students into the organization within the high schools in Khayelitsha, it actually also brought in other students from other townships who w-- heard about this organization that was actually doin' something to change the conditions in this school and it was actually winning something.

And so it also brought lots of students into the organization. The next campaign that the students identified-- was around late coming, okay? And within South Africa-- about 20% of students come late to school every day, and about 20% of learning and teachin' time is lost due to late comin' in, absenteeism. And that particular statistic comes from-- research which was done by an economist at the University of Capetown.

But the students themselves, they experienced (UNINTEL) their schools. We're talkin' about-- I mean, we're not talkin' about 20% average. You know, in their schools, 50% or more and teachers are coming late to school. And they could see that that was a real problem, that they were missing out on teachin' time and that, you know, they were not able to cover the curriculum.

And they wanted to do something about it. And also importantly for the campaign-- it was about really the students s-- saying, "It's not only about what we can get from government. It's also about, you know, what we can do-- to show that we are serious about our education." And so the students with that particular campaign-- school starts at-- at 8:00 every morning.

At half past 7:00, the members of Equal Education, so let's say 15 to 20 students at all of the high schools in Khayelitsha, they would stand outside the school with placards, they would sing songs, and they would hand out pamphlets to other students, just explainin' to them about why it's important to come to school on time but also then

sayin', you know, "As students, like, this is what we can do-- this is what we can do better to make sure that we can leave the house earlier and get to school on time."

And so that's really about using, you know, peer pressure-- you know, students applying it to other students. So that-- that was the-- the second campaign that we took on. We've taken up, you know, other school campaigns around individual issues in schools. So a school where there-- there wasn't a math-- a mathematics and science teacher for the final-- you know, for the final year students for four or five months into the year.

We took up that particular issue as well. And then in 2009, the organization decided that we'd managed to build up a sizeable membership base, we'd managed to build up experience in-- in campaigning-- relevant experience, and that we wanted to now attempt something much more broader. And so we took up our first national campaign, which was a campaign for school libraries which was focused on tryin' to get the university of basic education to adopt a policy which would provide for every school to have a library and librarian even if that's over 20 (UNINTEL).

Within South Africa, 93% of schools don't have access to stocked libraries. Only 7% of schools have access to-- to these libraries. And the government actually doesn't pay for-- for-- for librarians. It's only schools that have got the money, that have raised money through, you know, parents-- that are able to actually pay for-- for-- for libraries and for-- for librarians within schools.

The-- the next big national campaign that we took up and which Dmitri's gonna, you know, take forward the-- the-- the explanation on is really the campaign for norms and standards. And the video that you saw-- came out of that particular campaign. It was a tour-- a high-- you know, a high-profile tour that we organized.

It was really just about, you know, b-- at that particular point in the campaign-- I mean, the campaign has-- has a long history. We took it up in 2010. We got norms and standards at the end of 2013. That was the particular point where we organized this-- this visit-- to, you know, elevate the issue into the public much more than it had been.

The-- just the-- the last thing that I'll say before I-- before I pass onto Dmitri is really that-- you know, as-- as an organization, we seek through our campaign work, which is based on-- and which is really, you know, the foundation of that is the organizing work, the policy work, the research work which we do in (UNINTEL).

You know, we seek to achieve our-- our campaign victories prim-- primarily through political means, through-- p-- primarily through organizing-- and not through court cases. We see litigation as a last resort. But at the same time, we use our lit-- we use litigation very strategically.

And for us, it's important that the-- you know, the-- the students who these issues affect and the parents whose children these issues affect, that they are-- are centrally involved in taking up these-- these issues. And so even when a campaign actually gets to the point of litigation, they are fully aware, they support the decision to move now to litigation, and also that once the campaign reaches a point of litigation, the

mobilization doesn't stop.

In fact, it intensifies. And so, I mean, that's-- we can talk-- I'm sure we're gonna talk more about just the way in which we combine our organizing and our, you know, mobilization with litigation. But we see the two things as-- as-- as very complementing.

TRACEY GURD:

So thank you-- thank you very much, Brad. I think-- it's really amazing to hear about the amount of-- people you got onboard, the powerful constituency that you got. You also mentioned how-- the resort to legal action is really your last resort. It's when all other democratic avenues have been exhausted at least.

Can I then turn to Dmitri and say, you know, how did you as part of the campaign-- maybe you can explain a little bit about the legal center. And how did you together figure out-- the point in the campaign where legal action was needed? And can then you explain-- what the legal action was and what kind of results that you achieved with it?

DMITRI HOLTZMAN:

Sure. Thanks very much, Tracey. And-- again, good afternoon to everybody. I-- I-- I guess just for starters, it's probably important for me to just clarify-- something which-- sometimes it's-- it's something that's overlooked-- which is that on the particular case at the point at which the-- litigation was actually initiated-- on behalf of Equal Education-- that was actually done by the Legal Resources Center, which is-- a different-- public interest law firm and which had been working together with us-- on the campaign for norms and standards-- for a little while before we actually made the decision to-- to-- to launch the case.

In fact, at that time-- I was working at-- at Equal Education-- in the law center. At the time (UNINTEL) the papers for-- for the case had-- had only just really been established. So the Equal Education Law Center-- sometimes confused with Equal Education, which-- in fact was-- was purposeful-- naming on our part-- is a separate legal institution-- and which is much younger than Equal Education, the organization itself.

And in fact, in-- in terms of the-- kind of-- linear progression-- of Equal Education having-- having been started in 2008 and the law center only coming about-- in 2012 is actually in some ways quite instructive and reflective of-- of general strategy towards litigation in relation to-- to social mobilization.

In a sense that, as Brad was describing, it's-- it's often-- even though we would be-- and I say we now as Equal Education Law Center together, would be building a ri-- human rights-based campaigns, which-- and I'll get to in a moment the norms and standards cases-- is a good example, which is a political campaign which looks at

holding social mobilization but which almost at its fundamental level had in fact-- a legal basis.

What we are asking for was norms and standards, which is a set of-- legal regulations. And so in-- in that sense, you know, as I say, it's-- it's-- it's descriptive of how it is that we see the role of litigation, in fact even the role of the law center-- in some ways as being somewhat subsidiary to-- the social mobilization work of Equal Education.

And often, you will hear-- you know, us talkin' about the fact that we-- the kind of battles that we have to fight in tryin' to hold the state accountable, we would much-- we would much prefer to be able to win that on the streets than in the courts. And it's only at certain points at which you-- you are kinda forced into that situation of sayin', "Well, now it is that we have to consider-- takin' legal action."

And I also would-- would like to come back to, you know, some of the, I think, important reasons and principles underlying-- our perspective on that and why it is that we see-- litigation as-- as such. So-- perhaps then to just go to-- to-- before going to the case, I think something (UNINTEL) important is-- another way of describing the work of Equal Education and the Equal Education Law Center.

You know, it's-- it's-- it's important for us to remind ourselves, I think, that what-- what-- what-- the purpose of-- of bolding social mobilization is-- is not to usurp the powers or responsibilities of the state-- but fundamentally is actually-- it's a question of bolding social mobilization towards state accountability.

So when we're talkin' about education, we are talking about that as a fundamental human right which is protected in our constitution and which immediately then means that it is the state which has the primary obligation to actually fulfill that. What Equal Education has been doing is usin' democratic processes including rights to m-- mass mobilization, to demonstration, to-- the rights to engage with parliament in the law-making, and-- public accountability or state accountability oversight mechanisms, and ultimately also litigation and the courts, all being these avenues-- forward which are in essence provided to-- to civil society-- and the public within which to then hold the state t-- to account.

And so again just back to the original point, litigation is one of those democratic processes and tools that we use-- in ultimately holding the state to account to ensure that it provides a decent-- and adequate public education-- on an equitable basis.

And that's again-- brings me to the next point, which is also that, you know, while the w-- there is-- quite a specific moment even in the norms and standards case as an example-- where it is that we have to decide now that the campaign has got to the point at which we have to actually take it t-- to court-- you know, it's-- it's-- as I was saying earlier, it's actually-- it's not that that's the only point at which litigation or the legal mechanisms come into play.

It's a stage at which we are movin' into somethin' quite specific. But ultimately, there is almost poise-- an interaction between-- use of the law-- and the social mobilization-- aspect. So then perhaps to-- to just give-- as brief an overview of what-- what transpired-- in the norms and standards campaign and at the point at

which it-- it did-- as I say, it's not necessary a separation.

But-- we kind of had to move into a phase of-- of litigation. Was ultimately-- after the realization that the-- the campaign and the engagement that had been happenin' between Equal Education-- the Equal Education members and the minister of education had reached the point at which-- it seemed that there was no more constructive engagement that was actually happening.

In fact-- what-- what the-- the basis of the decision ultimately to (UNINTEL) is that we actually have to litigate to force the minister's hand. It was at a point at which he turned around to say, "In fact, norms and standards for school infrastructure as-- as-- regulations is not what I need to do in order to address this problem. What we are going to adopt instead are going to be non-binding guidelines for school infrastructure."

I've taken us all the way to the point at which we decided-- that litigation was then goin' to be important. That was really a turning point. But to take a few steps back-- up until that point, the engagement with the minister was that-- or-- or let me-- let me say the-- objectives of the norms and standards campaign was actually based on the fact that the state had already begun the process of adopting norms and standards-- and adopting-- a policy.

These were both two-- two documents. One was a draft policy on school infrastructure. And the other was a draft set of norms and standards-- for school infrastructure. Those were actually adopted-- by the previous minister of education in 2008. The background to that is actually that in 2007, parliament had amended the-- main piece of legislation which regulates-- schooling in-- in-- in South Africa and had basically in that-- in that amendment given the minister of education the power to adopt minimum norms and standards.

In essence, parliament was sayin' to the minister, "The right to education--" we understand from parliament's perspective that one of the elements of providing for the right to education is to ensure that there is adequate school infrastructure. It was clear that parliament's recognition was then that the minister should-- in order to address the infrastructure backlogs-- adopt a set of these regulations-- that would be binding on the state and that would, as I say, apply to all schools across the country and deal with every element of school infrastructure.

So in essence, the law said thus. It said, "The minister of education may adopt minimum norms and standards for school infrastructure. And if he or she does-- those regulations must provide for at the very least--" and provided a list of about seven or eight-- elements of school infrastructure that well could-- could be seen as fundamental to-- to any school environment.

It said that it must provide for water, electricity, sanitation, fencing-- and then also included things like science laboratories, computer labs, and-- and school libraries. So it was quite a clear direction to the minister that if she was goin' to adopt these standards, these would be the things that would have to be-- accounted for in those standards.

Then they talk-- also amend-- re-amended that section to say that the minister would actually-- in adopting those standards, would have to do so after consultation with the minister of finance obviously on the recognition that any-- standards that would have to be met would obviously require resources which would ultimately have to be allocated initially at least from-- the minister of finance.

The interesting thing then is that you have these draft regulations that are sitting around, collecting dust in essence. And we don't actually know what happened between 2008 when-- those draft regulations, which in fact were very comprehensive-- and became in fact the basis-- Brad had mentioned the school libraries campaign.

When we s-- when he spoke about-- Equal Education actually having developed the draft policy for school libraries, we based that-- we even c-- designed architect-- we got architects to design what a standard library should look like-- as part of a policy on the basis of the draft regulations which the government itself had actually-- as I say, initiated.

So in fact, quite-- quite succinctly to sum up what the campaign was actually about was to say to the minister of education, "Please follow through with what it is that you've already done." In other words, "Just make sure that those laws ultimately get passed." The reason that's important-- I think, also, it goes back to the question of state accountability as being, I think, one of the central features of what it is that Equal Education and the Equal Education Law Center are doing, which is to hold the state accountable.

And one of the ways in which we can do so is to be-- to base the objectives of the campaign or what it is that we would be requesting from government-- on what it is that exists in law or in policy. So in essence, that was-- we-- we have seen-- we have always seen, for example, the school infrastructure campaign-- and it's been called the minimum norms and standards for school infrastructure.

The first objective of that was to simply say, "We need that law to be passed," because that in itself-- the law can-- the law is not passed. It hadn't necessarily meant that there's been an immediate change to school in-- the school infrastructure environment across the country. But it-- it now gives us a legal basis upon which to continue to hold the government accountable in the way in which it actually-- develops its plan for school infrastructure and actually implements that-- over-- over a number of years.

And I think that's, again, an important point about why it is that we were asking for norms and standards rather than going to the court-- rather than ultimately going to court and sayin', "We want the-- the-- department of education to fix all schools." And that's what made it more a systemic case rather than, you know, looking at things on-- on a more-- on a more individual level.

And importantly, a systemic-- it was a systemic-- it was setting up the basis for accountability in a systemic way that really only s-- lays the foundation for all the work that's gonna have to go into makin' sure that that law now gets-- gets implemented. So in-- in essence, what was happening: The minister actually up until

that point was saying, "Yes-- we're gonna-- we're gonna give you the norms and standards."

And in fact, there was a number of deadlines which-- she herself had actually set to adopt those standards. Equal Education was campaigning heavily around that. In fact, one of the most significant-- you know, kind of milestones in the campaign was a march of 20,000 learners to parliament-- on Human Rights Day-- to remind-- simply remind the minister that her deadline was coming up to adopt these norms and standards-- and that they were expecting-- they were-- they were ready to welcome-- welcome the adoption of these standards.

It's important to say that the minister actually chose not to attend that march-- which is most-- most likely the biggest youth march in South Africa post-1994. And I think it was also in itself-- reflective of what the attitude by-- the attitude of government towards the increasing-- relevance and-- and-- noise that Equal Education was actually makin' around this.

You know, something that I-- I think is just a small anecdote. I remember speaking-- once having a meeting while we were still doing the libraries campaign. And we started-- we-- we'd identified the-- these draft regulations that were collecting dust as I was saying. I was meetin' with quite a high official in the education department where-- I was told quite directly-- sayin' that-- she said to me, "You know-- do you know why it is we won't give you these norms and standards?"

And I said, "No, I don't know why." And she says, "Because the moment we adopt these norms and standards, you're gonna take those very norms and standards and run off to court to sue us because we aren't actually achievin' them." And I think it was quite an interesting-- an interesting point to note. Because, you know-- we-- here we are saying, "Why is it that you won't do what it is-- do what it is that you were doing?"

When those norms and standards were initially d-- adopted-- sorry-- drafted, Equal Education wasn't even in existence. And-- I think there was an immediate realization of the power that-- a set of regulations like that would provide to civil society in holding the state accountable-- which they were, I think, quite-- quite fearful of.

In any case, what then ultimately developed into a string of broken promises by the minister of education. She-- and-- and-- and even at this point, I must say that there was discussions about whether or not there'd be a strong case-- to bring against the minister to actually compel her to-- to-- to adopt those norms and standards. But it was only at a point at which she then did a 90° turn-- 180° turn, sorry.

And-- and s-- and suddenly after she'd been promising in parliament, she'd been promising us the draft was almost ready, they'd now got concurrence from the minister of finance in terms of the act, and she suddenly turned around and said, "No." She wrote a letter to Equal Education, saying-- "In fact-- the law does not compel me to adopt regulations. So instead, I'm choosing to adopt guidelines for school infrastructure," which for us was-- far, far short of what it is that we would expect.

And guidelines can change anytime they want. I mean, it's-- it's a suggestion rather than a legally binding standard. And it was really at that point that the decision was then made to say, "Look, we-- th-- there's no point in-- in-- in further engagin' on this level. And the minister's made a clear-- position on wh-- on the status of those-- those norms and standards."

So that was at the end of 2011. We then as Equal Education-- as I said, 2011, the law center was actually be-- we were preparin' to actually establish the law center at that point. And what we did-- I'm just gonna give my last two minutes-- a quick description of-- of-- of the actual-- the way in which we crafted the case-- which I think is also just quite important in terms of how-- what our approach to it was.

What we then did was-- even though it was-- it was almost quite clear cut that the-- the power was there for the minister to use, there'd been-- a non-- a series of acknowledgements by the education department, by parliament that the best way to deal on a national level with the massive infrastructure backlogs is that the first step in that would be to adopt minimum norms and standards.

Then we came along, and they were saying, "Actually, no, we don't need to do that anymore. We're gonna go against everythin' that we've just described numerous times before." But even though that would have seemed like-- seemed like quite a clear-cut case, we used the-- the court case in fact as another step in the campaign in itself. One of the dangers, I think, that you face when-- decidin' to take a campaign case to court is that then you get a process pretty much stuck in the court system.

So, I mean, it's-- it-- it again goes also back to one of the reasons why you have to be quite careful, I think, about when it is that you choose to take on strategic litigation. Because you-- you in essence are now takin' away a certain space-- with-- in which to engage and-- and-- and ultimately getting potentially stuck in what could be quite a long, drawn-out court process, which I think is-- is-- again-- a caution to any of us when makin' these decisions.

But we used the c-- the-- the case and the filing affidavit, for example, firstly as a record of the entire process of engagement that had happened over the years before. And-- and so even the-- the legal process in itself became a political tool. You know, the-- you don't-- it-- it's-- it's slightly unorthodox for us to have gone into so much detail as to how many times we had written to the minister and how many times she had promised.

You know-- we'd-- we'd collected expert evidence which-- made sure that there was a clear link between-- or that demonstrated a clear link between school infrastructure and the right to basic education, which is one of the things that the minister-- ironically responded to in saying, "Well, look--" at some point, it was-- people were sayin' things like, "Look, you can-- you can find the schools under a tree.

"Why is it that that-- you know, infrastructure is necessary for-- for a schooling-- a proper schooling environment?" But thirdly, we also then went around-- we visited seven provinces. Our initial target, I'll never forget, was to try and get 100 affidavits-- from schools all across the country or from principals-- teachers, and-- and-- and

parents describing the effect of poor infrastructure on their ability to actually-- you know, effect proper schoolin'.

We ended up with just over 20 affidavits from-- from different schools, which all described different ways in which sanitation, or the lack of-- electricity actually had an effect on their schooling environment. And in that way, it was a way to say, "This is not just an abstract campaign. We're not just askin' for an abstract set of laws at this high national level.

"We wanna show that these are people's stories, that-- and this is the-- the-- the direct (UNINTEL) consequences of the lack of proper planning and-- and proper regulation at-- at the top." Just-- okay, I'm-- I'm gonna stop now 'cause I-- I-- I think I'm going on (LAUGHTER) a bit long. But just to say that the-- what we did was to-- the respondents in the case-- oh, well, sorry, the applicants in the case first were two schools in the eastern Cape which were, you know, of-- they s-- they were schools that represented-- I think one of them was-- was-- was Hippavideo (PH).

Might-- might not have been. Anyway, but they were schools that-- that represented the kind of worst off-- int-- in relation to school infrastructure. And so those were two applicants that, again, bring the real, direct, and immediate story. And that also allowed for-- us to bring the-- the-- the case on an urgent basis.

'Cause these were schools that not only-- you know, they didn't just need norms and standards. They needed immediate and urgent relief. But we were able to then attach the court case-- the emergency relief aspect for those two schools-- two of the bigger, more systemic issue. And in that way, also made sure that we could bring the bigger case in together with-- the smaller, more-- more-- emergency case so to speak.

Equal Education was then also applicant-- which-- again, is also a strategy that gets used in-- in the strategic litigation to ensure that we don't bring the case on behalf of two schools-- sayin' that they need this emergency relief and norms and standards, and the department comes back and says, "Okay, don't worry. We will fix-- we will settle this case out of court. We will fix those two schools," and the-- the rest of the bigger issue kinda falls away.

Equal Education is an institutional body that allows for-- even if there is-- the basis for a settlement agreement on those two applicants, there would still be-- a cause of action that-- we can follow through with on the bigger institutional level. And the respondents in the case were the minister of education, the minister of finance, and all nine provincial-- provincial ministers of education.

Last point. I'll end on this. The interesting thing about all of this was that-- one of the interesting things about the case which was a bit baffling in many-- in many ways was that we were askin' for the minister, who is the-- who sits at the top. She is the national minister. She must-- her main objective, her main responsibility is to set standards and policies that must then be implemented by the provincial-- provincial ministers of education.

So if anything, they have got the most difficult job. She can set the standard of the-- and they-- they are then required to actually be implementing that in each of the

provinces. And yet the minister was resisting this-- this action. We were sayin', "Look, I mean, once-- once you adopt those standards, our attention f-- will then actually shift away from you to the provinces, and the pressure will really be-- put on them to-- to-- to implement."

At some points, there-- there was-- I'm pretty sure the minister was actually telling us that there was resistance from those-- from the-- the provincial EBCs (PH)-- which was-- you know, finally out of mind. When we did file court papers, we filed against all of them. And the only respondent-- that actually filed notice to-- defend the case was the national minister.

All the provincial EBCs actually filed notice to say, "We would abide by whatever the court's decision actually is." And I think that was also quite an interesting l-- legal-- you know, once we-- we moved into the process of litigation, it was quite an interesting change and turn. Ultimately, three days before court after the minister had in fact filed notice of intention to defend, they'd filed answering papers with extremely weak legal arguments-- quite embarrassing legal arguments I'd actually say.

And-- we were preparing to go to court. And-- I mean, we can come back to that in a moment. But just to say it was important that in that process, the campaigning never stopped. Equal Education even held a picket after the minister failed to meet the deadline to-- to reply-- to the court papers. Equal Education had a picket outside parliament, for example, to just remind the minister that your papers are due and-- in fact, we've given you an extension.

So there was this constant engagement and-- political and social mobilization happening quite alongside-- the-- the-- the litigation strategy. Needless to say, the case was settled-- out of court. The minister agreed to adopt norms and standards. And since then, we've had two draft-- the first of which was absolutely-- think of a nice thing to say.

It-- it was just-- it was, again, just embarrassing. It was an eight-page document which basically had no standards in it at all. Equal Education had organized for public hearings. We-- we would-- we got input from the public about what their reflections on those were, made-- submissions to the minister again.

Another set of regulations were adopted, slightly better this time. Public comment ensued after that. Ultimately, we very recently got-- got-- pretty decent, I'd say, norms and standards-- for school infrastructure. And I-- I wanna stop there for now. That's okay.

TRACEY GURD:

No, that's fantastic. As someone who used to work on advocacy implementing these decisions, I can really speak to how amazin' it is that you were able to get such a level of mobilization of people and achieve this really important legal victory-- in the space of four years. And I-- I think-- and maybe we can get into this in the discussion time.

But I-- I think-- the level-- we haven't even got into the level of sophistication of the campaign, which was really, truly inspirin' to me. I mean, it included social media-- masked ma-- matches, right, where they put masks-- the students put on masks of the minister's face-- as part of it. There was a big balloon that you told me about when-- did-- she didn't turn up somewhere. And so they had her as a balloon-- (LAUGHTER) there and as a presence--

DMITRI HOLTZMAN:

(UNINTEL PHRASE) minister.

TRACEY GURD:

Yeah, there was gonna be a camp outside of the high court-- to stage debates and-- and discussions while the hearing was supposed to take place. So it was a very, very sophisticated and creative campaign that went alongside and hand in hand with the legal case, which I thought was just absolutely brilliant.

And I think now actually turning to us, thinkin' about O.S.F., I wanted to turn to you first, Jonathon, and say, you know, this is a really interestin' way of promotin'-- social change, using-- strategic litigation and social mobilization. I wonder if you can speak about why-- the education support program-- as a donor decided to support this particular tool, this methodology for tryin' to achieve the outcomes that you're looking for in a strategy.

JAMES GOLDSTON:

Absolutely. You know, I-- it's-- it's an interesting answer-- interesting answer to that question. And our relationship with-- E.E. has grown organically over time-- starting, you know-- quite some small initial supports-- and engagement. And then-- we've-- we've already sort of grown-- and learned t-- together.

So-- there's no sort of direct answer. We didn't-- we didn't really-- set out knowin' what E.E. was goin' to become or what E.E. was going to do. I have-- a line-- here that I just sort of-- I was glancing at our-- our current strategy this morning. And-- it just sort of shows how-- at least in the time that I've been with E.S.P.-- you know, our-- our thinking has grown-- with E.E.

And, you know, currently E.S.P. supports social mobilization to demand accountability and the use of strategic litigation where feasible and where other tools are used. You know, so-- a lot of our-- our current thinking around-- strategic litigation-- in education has been informed by our relationship with E.E.

And-- you know, and-- our-- our thinking is still very much that litigation is strategic when it builds on the will of the people, and it comes out of a social movement. So

for E.S.P.-- it's strategic litigation only when it's connected to a social movement. So-- and therefore E.S.P. doesn't see litigation as a place for-- for political process.

(LAUGHTER) I think that, you know, what's especially relevant-- for E.S.P. is the fact that-- in the E.E. case, they-- the social movement is leading the charge.

The lawyers report-- not only to E.E. but to their members-- and to their-- the-- the-- the youth-- who they meet with on a weekly bas-- basis at their office in Khayelitsha and across the country-- in these sort of-- in these-- education camps which inform the young people about-- their this, the history of the struggle in South Africa, which is lengthy, the role-- the-- the place of this current struggle for-- education justice within that-- struggle.

And then-- there-- there's a conversation that develops-- between-- between school-- learners in South Africa but between school-- school-goers. E.E.-- s-- school-goers at other schools and-- and those channels can go all the way up-- through (NOISE) to-- to the minister and the courts. S-- so I think that's especially-- important to us. So yeah.

TRACEY GURD:

Thank you. And-- and Jim, how about you? So for-- for Justice Initiative, strategic litigation is part of our-- I used the royal we. Still count myself as J.I. Is part J.I.'s bread and butter. I'm curious what your reflections were-- as you listened to Brad and Dmitri. Are there lessons for J.I.? Are there-- productive exchanges? Are there-- what are the-- or are there other issues that-- that emerged for you as someone who's been-- a long-term litigator in ter-- in educati-- in the education space? What were the resonant points for you that came out of this discussion?

JONATHON FAIRHEAD:

Thanks Tracey. Well, first of all, I mean, I just-- you know, I-- the most resonant point is how impressed-- one is by seein' the sophisticated thinkin' and translatin' that thinkin' into action about how to pursue an initiative such as this. And I was trying to-- think about building on the informal conversation from yesterday.

"What have been the ingredients of the success to date anyway in the campaign that-- Brad, and Dmitri, and others have led?" So one, of course, we've got, as we've talked about-- a community-based campaign-- with many members drawn from the community themselves. Brad talked about students and their parents who are themselves part of this effort.

As we just said, it's-- it's a campaign which thinks in a very sophisticated fashion about its own role and the interconnections among various kinds of advocacy and litigation which it's pursuing. It's a campaign which-- seems at least relatively well resourced. And that's important and not trivial. Recognizing, of course-- I'm sure they could use more. But-- but-- but they've got-- they've got some resources to work

with.

I-- I-- this is a question. But I assume as well-- and I-- I'm interested to-- to hear more about, you know, the fact that this campaign exists today in South Africa 20 years after the end of-- an-- a historic struggle against apartheid. And one-- one-- one always thinks about South Africa as the richness of its civil society-- which is in many ways the benefit of that struggle against apartheid.

So to what extent-- this campaign is informed-- by the struggle-- the lessons of that struggle, the losses of that struggle, et cetera, I don't know. We also have other ingredients of success. South Africa is a society, whatever its flaws and its challenges, with a relatively strong culture of respect for the rule of law and for courts. So litigation is significant in that context-- it means something in that context.

The courts are on the whole independent. The judges are on the whole capable and knowledgeable. And you can present fact-based arguments and-- and-- and appreciate that they'll be heard and considered. As-- as Dmitri said yesterday-- the South African constitution is world renowned and one of the strongest and most progressive, and detailed in terms of its delineation of rights that exist today.

So that's a very useful tool. South Africa has a large pool of highly capable of lawyers-- upon whom it is-- struggle can-- can draw. Obviously, there are resource issues there. But-- but there's-- there's a huge-- human resource pool. And I was surprised to hear, and please correct me if I'm wrong yesterday, that the colleagues in the campaign believe that the government, whatever its resistance, it's lagging, it's delays, is on the whole relatively supportive of the aims-- of the campaign.

And that matters a lot. So those are a lot of-- of distinctive factors it seems to me. I'm sure there are many others that are-- so you have an-- I started to think about this in comparison with some of the struggles that we've been involved in. So one, of course, is the-- the situation in-- central and eastern Europe around access-- to education.

And there, you know, in the Czech Republic, in Hungary, in Greece, in Romania, in Croatia, not many of these factors are present. You do have-- you know, you do have a solid legal framework, often at the national or constitutional level. Not as-- not as great as the South African constitution, but they generally do the right things.

And the European legal framework, which is very strong. And you've got courts that are at least formally independent. But-- you know, activism for educational equality is generally not undertaken by broad-based community organizations like this, at least that I'm interested to hear what colleagues have to say.

But my sense is it's largely in the hands of a relatively narrow elite that often has tenuous ties to-- to-- a small segment-- small segments of the communities at issue. And there's relatively limited community engagement, at least particularly on issues that I'm mostly familiar with when it concerns the Roma.

There has been activity at the highest levels in generating rhetorical commitment in governments and European regional bodies. But with some exceptions, there's been

relatively-- little grassroots organizing among-- affected minority communities themselves-- of anything approaching approaching this kind.

The number of lawyers in these countries who's willing-- who are willing to devote themselves to these efforts is far smaller by comparison. The quality of national courts itself is mixed. And though the quality of the regional courts, the European Court of Human Rights and the Court of Justice of the European Union, is high-- the place of those institutions and their impact on national discussions is very uncertain and sometimes quite limited.

So as a result, 17 years after Roma rights advocates started-- various kinds of initiatives for educational equality, they've won some landmark victories-- they've gotten some nice national policy declarations, but-- and they've gotten some pilot initiatives that have achieved some change. But on the whole, most Roma are not in a different place in terms of their educational equality today than they were-- you know-- 15, 17 years ago.

And then you've got the United States where many of the factors that exist in South Africa are present. You've got very active communities. You've got very independent c-- you know, very capable courts on the whole. You have in principle, though it's-- it's-- it's varied over time, a government commitment formally to-- to educational quality and equality.

And yet-- you know, the struggle for educational quality in the United States has as yet failed to achieve either of the two aims that were sought by those who brought *Brown v. Board of Education* 60 years ago, either integrated education or quality education for everyone. In respect of racial integration, the high point was reached in the 1980's, and it's regressed since.

We've had significant re-segregation in the last 25 years in this country, right? And in terms of quality, we've seen how hard it is to-- secure quality education for everyone. Just if we look in New York State, landmark litigation ten years ago won a ruling that said that all children are entitled to a sound basic education in New York State.

And-- and the court not only did that. They s-- they ordered that the state spend almost \$2 billion a year more to educate kids. But translating that court ruling, detailed and powerful as it was, into reality has been hard. Since then, we have had a recession. And the legislature and the governor over-- over two administrations has been relatively mixed so that the funding hasn't really come through.

So I'm left with an appreciation 1) on the extraordinary challenge of securing education equality for everyone. Secondly, as I said, the incredible respect and esteem that I've got for Brad, and Dmitri, and the colleagues they're working with. Third, I guess it makes me wonder given the long-term nature of this struggle-- how those in South Africa are thinking about maintaining political commitment to funding this over the long term.

And then finally, we talked a little about yesterday. If there's any time, what's the role of race in the struggle for equal education in South Africa today? In the U.S., the initial approach 60 years ago was very much about race. And that's been much

criticized since as perhaps a lost opportunity.

In Europe, advocates for the Roma and for persons with disabilities have struggled sometimes together, sometimes apart for inclusion in mainstream schools-- in part because they say segregation itself is dangerous and in part because that improves quality. In South Africa-- so these materials and I haven't-- you will know best.

They don't reference race as much as class, it seems to me. And I wonder is that conscious? Does that reflect the reality? I'd be curious just to know how race and class-- play out in terms of the struggle that you are fighting. But again, just incredible respect for what you're doin'.

TRACEY GURD:

Thank you, Jim. And maybe before we go to Dmitri and Brad to address some of those questions, we might actually open it up, I think, to people here. 'Cause I'm sure this conversation has prompted a lotta questions and thinking about-- what's been achieved in South Africa.

And I think Jim just brought in a beautiful counterpoint, just reminding us how difficult it is in some other contexts-- and how the legal, political, and community context can really play a role in how successful different tactics can be, including strategic litigation-- in achieving change.

So-- I think we've got a lot of food for thought here. I just wanna open it up to people here. And also to our lovely colleagues in London who are sittin' there late in the evening for us. So-- looking very relaxed. (LAUGHTER) Please jump in if you have questions, too. So just opening it up now.

AISHA:

Yes. Hi-- I'm Aisha. I work at the Economic Development Fund on the 9th floor. Just joined last week. So what I'm interested in knowing is what are the takeaways for countries where the litigation and the sys-- the law is not so strong so you cannot really, you know-- approach it from this angle, but the quality of education and the access to education is very poor. So from your experience-- working-- on this, what are your-- what are the lessons that can be applied in other places?

TRACEY GURD:

If you could, (UNINTEL PHRASE) questions. And then they can answer all together if that's okay. Alicia?

ALICIA TAYLOR:

Good afternoon. Alicia Taylor. I work with Jonathon in the education support program. And-- (UNINTEL) your question. I just wonder to what extent has-- an example-- of E.E. and the law center sort of inspired similar movements or activism in either neighboring countries or in other parts of South Africa where you aren't active.

MARC KRUPANSKI:

Hi, all. This is Marc Krupanski from Justice Initiative currently calling from Barcelona. Thank you. Thank you for-- very much for the presentation. I found it fascinatin'. My question for-- for Brad and Dmitri. If-- if you-- I'm curious 'cause the litigation really came out of-- a popular mass-based campaign-- strategy.

And I'm wonderin' if you can speak to how, you know, litigation can often be-- alienatin'-- or isolatin' for-- broad grassroots memberships. And I'm wonderin' if you can speak to how you tried to engage-- your membership in the litigation or how you tried to bring the litigation to the people in other words.

(OFF-MIC CONVERSATION)

BRAD BROCKMAN:

I just wanna start maybe with-- with time to-- to-- to answer Marc's question. Look, Marc-- Marc, I think, you know, with us, we made a very conscious effort to keep our members involved-- and to give them a say in terms of the campaign, including when we decided to actually-- to-- to go to court. So by the time we actually made the decision to go to court, we'd actually been campaigning for about two years.

And by that time, you know, our members were ready. And I agreed. And I felt that it's time now to take the minister to court. But what's also interesting is that at different stages within the campaign and during one stage in particular-- after the minister had disappointed us, you know, numerous times and reneged on all sorts of promises-- you know, in the middle of-- of 2013, she asked for an extension.

Okay, she asked for an extension-- to-- to adopt norms and standards. And we took that to the membership. And we asked the membership-- how they felt about that particular-- request. And overwhelmingly, they said that we shouldn't give the minister an extension. Now, as the leadership of the organization, you know, we consulted within. But in actual fact, we decided to give the minister an extension but to give her a limited extension.

And we did that because on the one hand, we were informed by what the members felt. But also, we felt very strongly-- together with our lawyers, we felt that-- if we didn't give this minister this extension and the matter were to go to court, the judges may be very sympathetic toward the minister or saying-- and seein' what she was saying as quite reasonable.

And we might even get into a situation where the judge gives-- a much longer extension than we would have, you know, given her and agreed to in the first place. So that created a lot of, you know, tension-- within the organization. I'll, you know, be frank about that. But it's-- it's-- it's-- it was important for us to consult. And it was also important for us afterwards to explain our particular-- our particular choice.

And in th-- in that, I think we made the right choice-- with that. Just in terms of-- of-- of race and class within the struggle-- you know, as I said, at the moment in South Africa, if you've got the money, whether you're black or you're white and you can afford to actually pay t-- for a good quality education, you can access that.

Now, the children of politicians, the children of civil servants-- you know, the children of-- of-- of the black middle class are going to schools which are well resourced and which are, you know, performing well. And so-- in-- in terms of our-- our advocacy-- that-- that-- that-- that's-- a very interesting dynamic. And so the members who are-- members of Equal Education, they are predominantly black and poor, okay?

And so we have to-- the-- the issue of-- of-- of class has to feature within-- within our politics. Race as well because all the children that are poor are essentially black. So race does feature. And there is-- a link. But, you know, sometimes the education department and those who are critics try and use race against us in, you know, very pernicious ways.

And so, for example-- after-- you know, we had staged mass marches across the country in the middle of 2013, the minister very publicly attacked Equal Education and said Equal Education is a group of white adults that is organizing black African children with the half-truth-- and-- and-- and-- and that this is dishonest.

And, you know-- you know, and so we had to-- you know, we had to be able to-- to counter that. And we got a lot of support. And that was-- and we got a lot of support from our members, from their parents, from other people in saying that it was a clear thing that the-- the minister was trying to use race in a very negative way.

Because our organization is non-racial. We are building solidarity across racial and across class lines as well. But, you know, our-- our membership race is very clear. And the leadership of the organization represents the demographic of those who are, you know, oppressed and still continue to be so. And I think I'm gonna stop there 'cause we did say three minutes. And I'll hand it over to you.

(OVERTALK)

TRACEY GURD:

Thank you, Dmitri. You're gonna send us out with a bang, aren't you?

(OVERTALK)

DMITRI HOLTZMAN:

Sure. Yeah. (LAUGHTER) I will try. Pressure. Okay, I mean, act-- unfortunately, two of the questions are-- are quite direct. And I feel they are very difficult to answer. You know-- Jim was mentioning one of the major advantages that we have in South Africa is being, you know, this very progressive constitution. And in fact-- quite extensive laws-- that-- that frame the-- the-- the rights in education specifically.

I'm-- I'm not quite sure what the answer is to what you-- what you do when you don't have that kind of environment other than perhaps just suggest that, you know, those be-- be-- starting blocks or aims to which either litigation or social mo-- mobilization would actually move towards, is to push for the development and securing of certain-- in-- in a sense, kinda the details of rights-- through policy and legislation.

Because that-- that gives you some backstop-- you know, which we are-- outside South Africa in a fortun-- fortunate position that we don't actually have to be-- to be fighting for from a legal perspective those-- those basic-- those basic guards. So, I mean, my answer is: I-- I don't know what you do in a different situation.

Unfortunately-- my experience particularly is only in an environment where those tools are actually-- accessible. To Alicia's-- comment, I mean, I thought Brad was maybe gonna have-- a go at that. I'm-- I'm-- I don't know. I don't know whether we-- you know, whether we've inspired other people to-- to be able to take up-- similar-type struggles.

BRAD BROCKMAN:

We-- we can say we've been inspired by other examples

DMITRI HOLTZMAN:

Ex-- exactly. And that's-- thank you. I was gonna say just (LAUGHTER) that actually. Most-- most definitely. I think I-- I wanted to also speak to Marc's question but also to go to something which-- which John raised. Marc was askin' about how it is that we ensure that the kind of legal aspects don't alienate members, which I think is-- is-- is a very important question.

And in some ways to ans-- to answer that in-- in a way where I'll speak about the-- the law center, you know, one of the reasons we started the law center was because-- amongst others, we recognized the importance of lawyers working very closely with the activists, with the members-- of the organization so that firstly even in our thinking-- we are not, you know, seen as separate or that we come in to save the day when we need to go to court.

We've gotta see ourselves in a sense as being part of that movement. And-- and-- and understanding that our role is not only to just be there to go to court. We-- we try to constantly be engaged with Equal Education. So we would go to some of the youth

groups, for example. And if there's-- I mean, recently, we've had an incident where-- we've had trouble during a demonstration.

Equal Education was-- was-- confronted in-- in a way by the police-- which had-- direct implication not necessarily on-- education rights specifically but on the Gatherings Act which regulates the way in which demonstrations are meant to be held. So we would have our lawyers going out to youth groups now to make sure that there's workshopping and trainin' around what-- what the law says around that and similarly for questions like norms and standards. You know-- no-- we talk about the norms and standards for school infrastructure campaigns. Gotta be-- the most boring names ever. But (LAUGHTER)

TRACEY GURD:

That's true.

DMITRI HOLTZMAN:

Never mind what's in the actual policies, okay? So-- and again, that's something that we have to feel, that members need to be fully on top of-- they need to understand what it is that we are ultimately goin' to go to court for. And so we are not just w-- we are not just-- a legal institution wait-- waiting for court-- you know, court proceedings to be initiated.

We are constantly engaged in the-- even political education or-- what Equal Education is doing with its members. And so I think that is one way which-- as-- I'm-- I'm tryin' to look up because Marc's-- is just somewhere (LAUGHTER) in the ceilin'. And then--

MARC KRUPANSKI:

Yeah, thank you.

DMITRI HOLTZMAN:

But-- but secondly, I think another-- another very interesting question-- which is-- and it relates again to-- to somethin' Marc was sayin' but also again to-- to a point that Jim raised, which I think is-- is somethin' that we find-- I find at least to be quite unique about litigatin' the right to education, which is that it has a complexity, I feel, which is-- is unique to that right that you don't really find in other socioeconomic rights.

What is it that the state must do in order to provide a decent education? Can anybody give me the full and comprehensive list and then create a set of legal

standards-- which describe that and which we can then enforce? Yes, we can get to those points. But it-- it's very difficult.

And in fact, there would be, you know, differences in opinion even within education fields about what the top pri-- pri-- priorities are, for example, in ensuring that the right is (UNINTEL)-- in-- is in fact fulfilled. That brings immediate challenges when you talk about separation of powers.

Do we then go and ask a judge to say that-- you must order that, you know-- funding-- funding alone should be increased for a particular school or for a particular state?

And will that necessarily mean that there will be advances around the right to education? That complexity, I think, is both-- you know, it's important to recognize.

I think it can be both limiting, but it's also somethin' that we have to be cognizant of as litigators around the right to education. Let us not pretend that a judge is better suited to answer what a strategy to improve an education is better than-- an education minister. But what we can do-- and this goes back to what Jim's-- question is about-- which is the-- the question of alienation.

If I had time-- I'm not going to go into it. But you'll see that we've got annual reports of the law center-- on the table. In there, you will see a description of a particular case which we've taken on which I think is-- you know, it's a newer case. It's much more difficult because it deals with a school that has almost all the problems you can possibly imagine a school having.

Drunk teachers, a principal that was absent for nine months, textbooks from 1986-- overcrowded classrooms. And ultimately, the main legal question that we're looking at is: Why is that a s-- the state-- the-- in-- in other words, the education department, is not actually providing additional support and oversight to that school to get it out of that situation?

Even in answerin' that question, it's complex. We don't know what the answer is. But what we've done through the limitation and what I think is gonna be an increasing strategy that we want to take on, is to say that there is clearly the-- we describe what the facts are, which is the-- the terrible circumstances of the school.

The major question that we are lookin' at goes back to what I was saying about the state ultimately being accountable towards these schools, and providing for the right to education, and assisting the school in getting out of that situation. There has been a complete sense of neglect from-- from the state.

The way which we got the case was a high school that was thinking they were calling the education department and somehow got one of our colleagues from Equal Education on the phone to-- to say that we need some help from somewhere. They didn't say-- this is one of our colleagues. He said, "Look, write-- write-- write us a letter and describe what's going on."

And you'll see the letter. We printed it in there itself. They-- there's a desperate plea for some kind of help. And there's-- and the-- one of the things that strikes you is that against this backdrop, there is not even-- the decency of a response from the

department of education.

Now, that's a worse alienation. And-- and to Marc's-- you know, to come at Marc's question from the flip side-- and we have used the litigation to now say, "We don't wanna give you the answers of what it is that you need to do in order to get that school outa the situation." But we've litigated and asked for a structural interdict that will force the department to come and respond to the community, to say to them, "Okay, we've identified these are the problems.

"This is what we are goin' to do." And in terms of the court order, they must now come and-- and-- report back up until the point at which that school actually improves. And in that way, the litigation is actually ensurin' that there isn't in fact a alienation. It's providing a kind of legal covering-- and-- and environment within which the state is then forced to not only address the problems but to do so in a way which consults with-- those that I affected.

And in a sense, it allows for-- in fact, it's a space within which Equal Education's assisting in organizing the community around the objectives of the court order. And is-- it is almost a flip side of-- of-- of what we've been talking about. So my bang is to say basically (LAUGHTER) that I don't think that there-- there is a simple answer or model-- to the way in which strategic litigation and social mobilization must-- must happen.

I think the point was made earlier that it does require a kinda ongoing reflection, ongoing changing of strategy. You know, prodding the-- the state parliament side and then at the, you know, minister of education, and sometimes deciding to go to court. And, you know-- but I do think that one of the key things that we've learned to do, which is why I guess you've asked Equal Education and the Equal Education Law Center to speak is that we don't see ourselves as separate-- you know, as adopting separate strategies.

We've set up the law center as an extension of Equal Education specifically so that there can be this ongoing engagement-- between the legal and-- and-- social mobilization strategy so to speak and that the two are-- are often one and of the same. Thank you.

TRACEY GURD:

That's actually the perfect bang to go out on. So thank you so much for that, Dmitri. Thank you everyone for-- for coming and joining with us. I think if you're the same as me, I feel like I wish I had hours more to actually engage and learn more about the work. But thank you so much, Dmitri and Brad, for sharing with us what you've done. It's really a remarkable achievement.

Thank you Jonathon for setting this up and organizing it. It's really great and to hear your thoughts and how they fit into your strategy. And thank you so much, Jim, for joining us and giving us that international perspective. So-- and it's great to have the disembodied voice, too, Marc. (LAUGHTER) (UNINTEL PHRASE) But thank you so

much--

MARC KRUPANSKI:

My pleasure.

TRACEY GURD:

--everyone. Oh, thank you London, too (APPLAUSE).

* * *END OF TRANSCRIPT* * *