TRANSCRIPT

Court Audio: The following case is 181855 Gary B. et al. vs. Gretchen Whitmer et al.

[Court audio switches speakers.]

Court Audio: And the district judge quite correctly described the allegations in this complaint as representing deplorable conditions in the schools at issue here, and that those conditions have led to outcomes that are devastating to the class of students that have been named in that complaint.

[School bell ringing sound, footsteps, sounds of a school hallway.]

[1:00]

[music fades in]

Court Audio: We are in a situation today, just as we were in 2016 when we filed this complaint, where we know that there are schools that have no books, and the books are 20 or 30 years out of date, we have classes with no teachers, we have 8th graders teaching 8th graders, we have circumstances where people cannot learn…. [fades out]

Jamarria Hall: I was able to go to school in California, I was able to go to school in Ohio, I was able to go to school in Canada. I was able to see different educational atmospheres and different public educational structures. So coming back to Detroit, having metal detectors, having bars on the outside of the windows, black mold and mildew, unusable bathrooms and urinals and sinks, unfeasible or undrinkable water, I mean these things were insane. Rodents running around the classroom and inside the classroom, outdated HVAC systems -- so in the winter, it's very very cold and in the summer it's very very hot. My father was also a teacher, so I also got to see the other side of separation of what the teachers were going through. They were doing so much not only out of their own pocket, but also outside of salaried time.

[2:15]

Helena Brittain: That was Jamarria Hall, a former student at a Detroit public high school. Jamarria and his peers knew they weren't getting the education they deserved, so they sued the governor of Michigan, arguing that they were being denied the most basic educational foundation: literacy.

JH: My name is Jamarria Hall. I am the lead plaintiff in the *Gary B. v. Whitmer*, settled as *Gary B. v. Whitmer* lawsuit, which was a lawsuit that was filed by students based on the right to a quality education, saying that the minimum basis of a quality education is a right to literacy, saying without the right to literacy we cannot be productive citizens of society.

[2:58]

Court Audio: You are compelling these children to be in a place where the only reason to justify compelling them to be in that place is the expectation that you will provide them at least access to literacy. These are schools in name only, and you cannot take students, any human beings, and say I'm going to put you in a yard for 8 hours a day unless you're going to offer them a quid pro quo. And here, the quid pro quo is access to literacy. That's the whole reason for this.

[Musical chimes.]

HB: I'm Helena.

Noah Howard: And I'm Noah.

HB: In this podcast we will be discussing Gary B. v. Whitmer, focusing on the heart of the case: a proposed right to literacy.

NH: We'll tell you about the origins of the case, its ultimate outcome, and where the right to literacy goes from here. But first, let's step back a bit.

[Rewind sound.]

HB: What is literacy, and why is it so important that this community in Michigan decided to go to court?

NH: Literacy can mean a lot of different things, but what we're talking about here is the ability to read and write to a degree that allows you to fully participate in society and live your life how you choose. However, many Americans are not getting the education they need to become fully literate.

HB: In 2013, approximately 1 in 5 American adults was functionally illiterate in the English language. This means they were unable to complete tasks like comparing or contrasting or paraphrasing information.

[4:30]

NH: It's also important to understand that failures in the American education system that result in low literacy are disproportionately impacting people of color and

Black people, in particular. For example, the high school graduation rate for Black students is about 14% lower than for white students.

HB: This disparity is also in the context of a history where Black people were not only enslaved, but intentionally denied access to literacy, so issues of literacy are inherently critical race issues.

NH: To get a better understanding of modern-day barriers to literacy and why literacy is so important, we spoke with Lillian Mitchell, a former New York City high school and middle school teacher in what she describes as a very ethnically diverse school district.

[Sound of phone ringing.]

Lillian Mitchell: My name is Lillian Mitchell, and I was both an adjunct professor and a high school business teacher. I taught at I.S. 323 in Brownsville, Brooklyn and I also taught at Queens Vocational Technical High School in Long Island City.

HB: We asked Ms. Mitchell about some of the challenges her students faced.

LM: They had grade-level comprehension skills, they lacked. They also had limited grade level vocabulary. They did not know the parts - most of them did not know the parts of sentence structure and writing a clear simple sentence.

[6:17]

HB: Ms. Mitchell explained how students' lack of literacy skills carried over and hindered their ability to learn other subjects.

LM: I was a technology teacher, so I taught the Microsoft Office, but I found myself teaching English more than anything else, because I was teaching the children in my technology class something as simple as writing a latter. But now, if they write a sentence, I had to teach them vocabulary and parts of speech. And this was 6th, 7th, and 8th grade. So what happened before they came into my class in 6th grade? Where did the breakdown begin?

[6:55]

Court Audio: What is at issue is the failure to provide access, whether or not that access is accepted, whether not those kids do what they ought to do or can do what they ought to do. The argument is that there's no access. You've not made it available.

[Court audio switches speakers.]

Court Audio: There's a difference between a serious problem, one that rises to the level of a constitutional fundamental right, and the difference of having no access to

education. Nobody here would ever say that that's great, that only less than 10% are past the proficiency rankings, but the fact that there are some students that do belies the point that this is an empty warehouse.

[Court audio switches speakers.]

Court Audio: But isn't this a constellation of factors? This is not just about, well, some of them could do it, so we have sufficient literacy in this group, so we're not going to discuss the underlying problem. Because the underlying problem is evidenced by everything in the complaint, not just the fact that you might have people with zero proficiency, but in fact that you have people with zero proficiency in the buildings that have been described, in the school situation, in the teaching, in the availability of the things its students need to learn. Don't we have to look at that whole constellation in making this determination?

[8:22]

NH: So, for kids who have been struggling in school and struggling throughout college, what happens to them throughout their adult lives? What is the long-term impact of how they're able to run their lives?

LM: I would say it affects their lives because first of all, can they build wealth? That's number one. Can they take care of their family? Can they read instructions? I remember when I taught economics, perhaps, but reading the fine print. Most people skip the fine print, so you're signing a contract but you don't know what's in the contract. So you just put your name to it, now you're liable.

[9:00]

HB: Studies have shown that people with low literacy are more likely to struggle with finding employment opportunities and more likely to have lower income. Low literacy also correlates with higher crime rates and contributes to disproportionately high rates of illiteracy in prison, which we will discuss more later.

NH: The educational breakdown that Ms. Mitchell described is happening across the country, with some of the lowest educational outcomes in Jamarria's hometown of Detroit.

JH: Donald Trump had put out a list of the lowest 50 performing schools throughout America, and on that list was nine of the thirteen high schools in Detroit. So I think that brought national attention to Detroit.

[Musical chimes.]

NH: Now that we have a better understanding of why literacy is such an important issue, let's turn back to *Gary B. v. Whitmer*. Jamarria gave us a little more background about the city of Detroit to help us understand why this community was the starting point for a movement towards a constitutional right to literacy.

[10:10]

JH: Detroit also being a predominantly Black city, at the time the largest predominantly Black urban city, and just really thinking about the impact and proficiency that has come out of Detroit with the first automobiles, the first freeways, even public education as a whole was first introduced within Detroit and within Michigan, the model that we use for public education today: gearing students towards mass factory production. It was the first utilization of public education of students to go somewhere to be what their parents are at factories. That was still much of the condition within Detroit. Once you become educated you begin to just look at the condition that you are being educated in. For me, as a young man growing up in poverty, and coming from poverty, education was supposed to be a tool for me to get out of my circumstances, and it was always utilized or pushed to me in that manner of "this is how you can be successful, and this is how you can be a productive citizen, if you're educated." Then going to school and seeing that that wasn't the case, and in many cases I was not only being indoctrinated into systems but also being uneducated and being dis-educated. So understanding those aspects was really a part of, as you stated, it was a class action lawsuit. So it wasn't just about my generation or just those 20 years, but also the past generations within classrooms. I had the same book that my mother had. My mother graduated in 1998, and I was born in 1999.

[11:50]

HB: And then I was wondering if you could tell us a little about how you got involved in the lawsuit in the first place?

JH: Yes, I know you also interviewed the wonderful Mark Rosenbaum. I mean, just a wonderful wonderful, outside of just a tremendously great and amazing lawyer, just a great human being. Him just coming to a basketball game, coming to a basketball game and asking questions. Asking questions about, how did we feel about our education? Do we feel like we're being educated? And I think for Mark, being able to meet me, a young man that also was understanding that what was going on wasn't correct and was also actively speaking out at the time already.

HB: We also spoke with Mark, the lawyer whose team brought this case to court on behalf of Jamarria and other Detroit students.

Mark Rosenbaum: I'm Mark Rosenbaum, and I am the director of strategic litigation at Public Counsel in Los Angeles.

[12:59]

NH: Mark explained to us why he chose to bring this suit in Detroit.

MR: I remember Sean Reardon, from Harvard and then I think Sean was at Stanford by then, took out a map of the country and a grid and he showed that if a student was in a predominantly low-income, students of color district, they were going to be below the mean. And there was no exception to that. And ground zero for that was Detroit.

[13:38]

Court Audio: Access to education is even more significant when you are fighting the back fires that are in the community. That's part of the issue here. What type of education do you have to provide in a community that's already having existing problems?

NH: We asked Mark about his litigation strategy in *Gary B. v. Whitmer*.

MR: Who wins cases? Those who can tell the best stories and have the affected students and families be the storytellers. I met with the basketball team at Osborn High School, and we went to an Applebee's, and in the background there was music from the film *Frozen*. And one of the players on the team started humming the song, and I said to him "I mean no disrespect, but how do you know that?" And he said, "It's because we don't have courses. We sit and watch movies. We watch *Kung Fu Panda* and *Frozen* over and over again." I met with a young woman who was in the 8th grade who was a teacher because they didn't have teachers. An 8th grader teacher. So the answer to your question is, you know, it came out of really being in the schools and listening to those stories.

[15:01]

NH: Mark's legal team worked with Jamarria's community to tell the story of the case. And that story involved a new legal concept: a constitutional right to literacy.

MR: The legal theory wasn't complicated. It went to the basic definition of liberty and what an ordered system of liberty demanded. And that was that children be able to have the opportunity to learn to read and write.

JH: At first I did not understand it, and I didn't see it or I didn't really pick up upon it because it was like, we're struggling in so many different areas. Like I can go probably in a science class and see the same thing. But for me when it came to literacy, I looked at literacy as the understanding and comprehension and application aspect are really laid upon the comprehension aspect of, people need to be able to comprehend what is happening. If you can't comprehend what's happening, you're totally totally lost.

[16:00]

MR: You know, originally, when individuals were enslaved, when Black people were enslaved, it was a crime to teach a Black child to learn how to read. A crime punishable by death. Frederick Douglass writes about it. Frederick Douglass taught himself to read, and taught others to read even under that threat. Then the Ku Klux Klan went after teachers who were the teachers for Black children. And then there were literacy tests. And a theme that we developed, which Judge Clay talked about, was that public education, like everything else in America, has a racial component. And that the strategy now to deny students even an opportunity to learn how to read, to be literate, was a strategy to attempt to disenfranchise their communities and subordinate them as individuals. That stigma they would carry, it was something that was understood in terms of permitting individuals to better their circumstances, it was understood as part of a strategy where it would be denied to attempt to keep people of color, people from low income families of color, out of the political process, and the argument was that there was no defense to that and that liberty couldn't exist without it. So that became the guts of the case.

[17:31]

JH: Understanding that the masses of the world, the masses of citizens, have never been fully literate. We've never had the access and opportunity to be fully literate to our maximized potential.

NH: At the heart of *Gary B.*, and the right to literacy, is the idea that people have a right to learn the basic reading, writing, and comprehension skills that are a foundation for further education and for the ability to fully participate in society.

HB: Now we're going to turn to another key site where education is systemically denied to a marginalized segment of society: prison. To help us get a deeper understanding of why literacy is important and how we should define the right to literacy, we'll be speaking to three more guests about their experiences with education in prison, and the relationship between incarceration and literacy.

[18:20]

[Musical chimes.]

Selina Fulford: So my name is Selina Fulford. I went to prison and I was sentenced to 2-4 years in prison. And so I was really shocked, kind of thrown back by the amount of people that were in prison that was illiterate. Like literally couldn't read.

HB: Approximately 70% of incarcerated adults are functionally illiterate, which means they can't read at a fourth-grade level. That's more than triple the national rate of illiteracy.

NH: Selina now has several master's degrees, but during her time in prison, she had very limited access to education.

[19:09]

SF: You know when you go upstate, they give you a whole series of different tests to take, I guess to see where your literacy level is. So I took all the tests, pretty much passed all the tests, and then that was the end of that. There was nothing for me to do because the only thing they were offering was GED classes.

NH: Most prisons provide optional GED programs and basic education classes, which are mandatory for those who can't pass an exam at a middle school reading level. However, this is often the only education available.

SF: I don't know why they even – I used to ask myself, why do these call these places correctional facilities, because they wasn't correcting anything? And, you know, there was just no educational programs, period.

[20:10]

HB: We also spoke with Mika'il DeVeaux, who is now a professor at Nassau Community College after having served a 25-year prison sentence.

NH: Professor DeVeaux explained that, while prison GED programs while the ones Selina mentioned may be founded on the idea that there is a right to some basic education, we should not think of literacy in such narrow terms

Mika'il DeVeaux: I too was shocked by the fact that there were men, you know, 30, 40 years old that couldn't read. I didn't see how that was possible. I thought that everybody could read. And so I was permitted, I was 22-23 years old, to teach the class. I'd go to the class, the instructor would say "you're the teacher, man, you know more than I do!" You know what I mean? So I had fun teaching and then, this was at a prison called Clinton Dannemora, I went to another prison and I was teaching accounting. I was in Green Haven. So I've always been some kind of, you know, instructor in terms of my relationship with other men, you know designing programs here and there, so forth and this and that. It kept me busy. But in terms of some personal opportunity, I knew that one of the things I had to figure out while in prison, was how do I continue to grow intellectually? [21:35] And so this was in 1986, I was able to get to Sing Sing Prison, or Ossining. There they had a massive degree program in theology. I said, "a master's degree in donut making is better than no master's degree at all." I didn't care what it was, it just was something to do, you know what I mean? It was a fun activity.

[22:07]

HB: We also spoke with Judith Clark, who spent 37 years in Bedford Prison and worked with her community to create a college program there.

Judith Clark: My name is Judith Clark. I am the community justice advocate for Hour Children. That's H-O-U-R. We work in the prisons facilitating the mother-child programs at Bedford Hills, and Taconic, and Rykers, and on the outside we provide housing and services for women emerging from incarceration.

NH: Studies have shown that for people who are able to access education in prison, the outcomes are much better in terms of both job prospects and the likelihood of returning to prison.

[22:53]

JC: The Department of Corrections actually did a study, a quantitative study, that showed the miniscule recidivism rate of anyone who gets higher education when they're inside. Our ultimate goal was to show that college was productive at every level from transformation and capacity for people to really take hold of our lives and become productive citizens, to creating a better environment for everyone that worked in the prison and lived in the prison, and for the families and communities that the women came from.

SF: People with degrees don't recidivate. So I think that it would change the whole recidivism rate in prison because, people come out of prison with degrees, they are less likely to come back to prison. Like most of – I was a part of an organization called College & Community Fellowship, which was an organization for women. They helped us to get into college and to earn degrees. And their recidivism rate was almost zero. People with master's degrees or, I think it was like 1% of people go on back to prison. Whereas people with no degrees, it's almost like 60-65-66% of people recidivate and go back to prison. So I think that the right to literacy would be a plus for people in prison because you're going to come home, it's going to eliminate the barriers that you face when you come home from prison. It will help you to get employment. [25:12] It just gives you the opportunity to reclaim your life and become law-abiding, change your economic status, your social status. You become most, most of us vote now. We're voters, taxpayers, so – and also it's a chance for intergenerational cycles of change because people come home and they get their families back together, especially women come home and get their children back. And, yeah, so they educate their children and it just is a plus for the community.

[26:10]

NH: However, Ms. Clark reminded us that as much as education plays a crucial role in improving people's lives, it's also important that we take a critical approach to defining literacy and designing educational programs.

JC: I think oftentimes women who may have taken 10 years to get their GED, they just couldn't and were seen as bad students basically, once they got to college when they were in an environment where it was not just test-taking but really utilizing their whole capacity for critical thinking, they became brilliant students. So I think that, specific literacy skills, oftentimes if you connect them with other capacities, other intellectual capacities that people have developed in other ways, you find that people are able to redefine themselves and what they're capable of doing, and working together are enormously intelligent and productive.

[27:16]

NH: A critical definition of literacy involves robust education aimed at personal development, rather than just job preparation. It also requires leaving room for forms of knowledge and learning beyond traditional English reading and writing conventions.

MD: I know some people that couldn't read and write. And when I was in the PhD program I used to ask them questions. Like "man what they talking about?" "Oh they ain't talking about nothing." [Laughs.] You know what I'm saying? They were literate as far as I was concerned because they were able to answer, you know, questions, you know, based on the experience that I just had no idea. But when we talk about education, we're not talking exclusively about literacy, you know what I mean, and education, depending on which definition you use, might not be good for you either. [28:07] Some education ain't nothing but training. You know, you train to maintain the status quo. You know what I mean? People get educated, and they think everything is hunky dory. But they're illiterate, you know what I'm saying? [Laughs.]

JC: I also think that there's a segment of women inside, and for men inside as well, who have undiagnosed learning disabilities, and so saw themselves as educational failures when one good evaluation, and work in relationship to a good diagnosis, would have made all the difference. And that happens to children every day in our public school system.

HB: Both Ms. Clark and Professor DeVeaux emphasize the need to view the issue of prison education within a larger national context of education.

[28:56]

MD: The pre-prison experience has an effect on one's in-prison experience. One's in-prison experience and pre-prison experience has an effect on one's post-prison experience. So we can't disconnect, you know, any of those points in time along

the continuum, as we talk about this particular issue. So we're talking about the right to literacy inside the prison, what about the right to literacy before anyone goes to prison? You know what I mean, in terms of those communities that have been traditionally marginalized, segregated, separate but equal, you know what I mean? I mean you know, there's a lot historically that has to be taken into consideration if we're talking about, ok, inside the prison is after the horse has already run out the barn!

JC: Our ultimate goal is not expanding college to expand in prisons, but to expand access to higher education so that you can begin to reduce the numbers in prisons and the people that are in prisons can become the kind of assets they can become and have shown themselves to be able to become when they are released.

SF: You know when I came home from prison and after I earned the three master's degrees, it just put me in a whole different place. Like, I was concerned about the world. [30:34] I decided to travel. And so I left prison and came home and started working, I got a good job, and I started traveling, like I've been literally all over the world. I've been to Europe, I've been to Africa, I've been to all of the United States, all of the states inside the United States, Hawaii. I just did a lot of traveling, and, you know, having the education, just put me and criminal activity, like stole, it was just a complete disconnect. I couldn't even imagine myself committing a crime. I won't even pick up a pack of gum out the store. Like I just, you know, it just puts you in a different place. And what's better for public safety than to have people come home educated?

[31:37]

JC: For the last decade, we've seen an enormous increase of the numbers inside and the length of sentences, and so the whole idea that we should be investing in people is not one that people have thought about or seen as a value. And I think that the, most of the, the vast majority of the people who end up in prison are poor and people of color and Black people in particular, and their communities are communities that are also not invested in. If you really want to talk about how to begin to create safer communities, the safest communities are well-resourced communities, and so those are the communities where you should see libraries and good schools as well as at the higher education level. Then you would see less of a pipeline leading to prison to being with. And at the same time, I don't think that that's what's seen. I think that the prison system is seen as the place, as the dumping ground for all the unsolved problems in our society, and therefore it's kind of put them out there, and forget about them, isolate them, forget about them, and certainly disinvest from them.

[33:11]

NH: Now that we have a better sense of what a more meaningful definition of literacy looks like, let's turn back to the fate of *Gary B v. Whitmer* and its proposed right to literacy.

[Ethereal transition music.]

HB: The Detroit students initially won their case in *Gary B.* and established precedent for finding a constitutionally protected right to literacy.

NH: However, fearing that the decision might be overturned by conservative-dominated higher courts, the parties reached a settlement agreement. The settlement gave $94.4 million to Detroit public schools. While that is a lot of money, and while that amount will certainly make a difference, both Jamarria and Mark both agreed that it was not enough to fix Detroit's public schools after decades of neglect.

[33:59]

JH: At least for the past three years of even trying to get the money disbursed to Detroit has been a tough battle, but also now since the money has been dispersed and has been approved to be dispersed in Detroit, being able to have, again, who is most impacted being a part of that process. So I think a lot of times in situations such as these, the defendants oftentimes are the solution providers. They're often the people that are providing the solution afterwards. And I don't know how impactful, the amount of money really doesn't matter if your goal or your intentions aren't correct. So we've done so much with no money at this aspect, and even the amount of money that was agreed upon was not even one fifth of the amount of money that we were trying to ask for just to get the schools in Detroit up to date and to humane conditions.

[34:51]

MR: Well it's not enough. I mean, again, I'm proud of what these groups and individuals did in terms of effectuating that settlement. You know, I think you know the history was that after, after the decision came down 2-1 from the Sixth Circuit saying that a right of access to literacy existed under the Fourteenth Amendment, the Republican legislature went into a frenzy. And they got amicus briefs, they petitioned for, the legislature sought to intervene in the case. They had been sitting on the sidelines throughout that. They'd been attempting to destroy public education in Detroit. So we went in to conversations with Governor Whitmer and her attorneys. She was terrific. She had actually campaigned on the fact that her opponent, then-Attorney General Schuette, was the, was the leader of the argument that the right didn't exist and it was the intellectual limitations of the kids that was the problem. When we realized we had to settle this case fast or they'd light a match to the decision, she stepped up and put in the provision, we were able to get some meaningful community involvement in the process of what

takes place in the schools. And $94.4 million to be specifically ticketed for literacy-enhancing programs: teachers, aides, literacy coaches, other programs. Does that get the job done of, over 11 years of the state attempting to decimate public schools in Detroit? Absolutely not.

[36:52]

HB: Mark explained that the right to literacy litigation has been stalled by current attitudes in federal courts.

MR: And so anyone who files a right of access to literacy case in federal court should be disbarred given the composition of the courts and the hostility towards recognizing fundamental rights. But that doesn't mean that the theory itself is dead even as a legal matter. It's being used in other cases around the country to both educate as to what is actually going on in these schools and viable options under state constitutions. Look, you wouldn't be asking me about this if in fact the spirit and letter of the *Gary B.* case existed beyond Detroit itself. And so that story is out. Literacy is part of the conversation. I feel the case did its part in contributing to that. But there are, as I said to you, Detroit may have been ground zero, but it hardly is alone and there's a lot more work to be done with respect to this right in other communities.

NH: Jamarria shared what his involvement in the *Gary B.* lawsuit has inspired.

[38:12]

JH: The litigation piece is just one aspect. It takes both sides of the spectrum to really get these things done, so understanding that it is going to take advancements of policies, of litigation, laws to be able to make these things a lot easier so it doesn't happen. But also there needs to be people a part, and that are fully fully affected by these solutions and by these problems to be a part of the solution so we can have long-lasting solutions. Because even sometimes when we have litigation that is successful and that has changed, like the lawsuit has been used in multiple different states, it has had quite more success than we had in Michigan. So just understand that, even just getting it out is also powerful but also understanding that that's not the end because it's just a start. In 2024 I will be launching the Gary B. Initiative. I will be launching the Gary B. Fund, which would be a nonprofit, and I will be launching the Gary B. Institute where I will be able to provide tools and engage in consulting to different institutions and different individuals to try to create understanding that this has sparked a fire across the nation and across the world. But also understanding that with that fire we need solutions. At the core center of this is really just trying to find solutions, picking up off of Mark's philosophy and using other civil rights activist philosophies that they've documented, specifically around the Voting Rights Act and how the Voting Rights Act was conducted. But just really trying to use it as a tool to not only let students,

but let communities and those most impacted advance society and be a part of social advancement.

[39:55]

HB: We hope that the right to literacy will continue to take root both in courts and through grassroots organizing. Literacy is a crucial area for increasing racial equity, decreasing mass incarceration, and improving outcomes for formerly incarcerated people. But as our society continues to define what the right to literacy actually means, it's important that we push for an inclusive and robust understanding of literacy that goes beyond just basic language skills and fosters critical thinking and personal development. We'd like to thank our wonderful guests: Jamarria Hall, Lillian Mitchell, Mark Rosenbaum, Selina Fulford, Mika'il DeVeaux, and Judith Clark. Thank you for listening.

[End.]