

THE THIRD CIVIL RIGHTS MOVEMENT

*Clint Bolick**

It is a pleasure to be here. I was delighted when The Federalist Society decided to put this forum together. I think it is long overdue. I agree that this is the most important issue in America. School choice is the civil rights issue of the millennium.

This work, litigating in support of school choice programs is difficult work. We coined the motto a few years ago that if you have a school choice program, you have a lawyer. And any time you offer high quality, good legal services for free, you do not have a shortage of people looking to take advantage of that. In this instance, I am very, very glad about that. That means that our docket is always full and thankfully growing.

But beyond that, every single time we go to court, we face one of the biggest coalitions of special interest groups ever assembled inside a courtroom. But you know what, that is part of what makes it not only tough but absolutely exhilarating. In fact, if we can choose the people on the other side, we would choose exactly who is there. This is a civil rights movement, and that is why, no matter how hard the work may be, no matter how tough the struggle may be, at the end of the day there is tremendous joy.

I was a toddler in the 1960s, I was not a party to that civil rights movement, but I tell you I am not going to miss out on this one. Many things unite civil rights movements in this country. They include a very strong moral imprimatur, an idea of wrong versus right; also, all of the civil rights movements in our country have tapped into the unfinished business of making good on the most basic American principles and values.

The first civil rights movement was the abolitionist movement. The second was the movement to gain equal opportunity. Frankly, I

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believe that we are part of the third great civil rights movement, the movement for individual empowerment. In fact, all of them have been about individual empowerment, but this more than any before.

I was pleased that Joe Vitteriti started by asking the question, what is civil rights? And I think the fact that we are discussing whether this is a civil rights movement is precisely because over the last few decades, we have lost sight of the meaning of the concept of civil rights. Sometimes my colleagues and I have been accused of being ahistorical and yet when I look at recent civil rights books, they almost all start in the 1950s or the 1960s. Civil rights in this country, and the civil rights movement in this country, started before our nation even was born. And as for Martin Luther King, I think one of the aspects that made him so successful was that he keenly understood that what he was talking about was nothing new, it was old. It was, as he put it, cashing in a promissory note to which every American was heir, since the founding of our nation.

The concepts of individualism, universality of rights, the equality of rights, are all at issue on the front lines in the battle for school choice. These arguments permeated *Brown v. Board of Education*. That case was not about forced busing, it was not about compulsory racial balance. It was about disestablishing a system of segregation where black youngsters were being bused past their neighborhood schools to inferior schools because of their race. Oddly, since we have gotten into amnesia over the meaning of civil rights; today, there are communities in our country where black children are bused past their neighborhood school to inferior schools because they are black and that is called the *remedy* for the underlying violation.

I would invite you all to imagine that instead of going down the road of force, which has contributed to the devastation of dozens of inner city school systems around the country by contributing to the white flight, by undermining the tax base, by segregating the schools more than ever before, we went down a different road. And, in fact, in Kansas City recently, I thought we finally had seen the ultimate in where this philosophy takes us. The plaintiffs pointed out, we have spent all of this money, we have engaged in massive social engineering, and you know what? — nobody's test scores have gone up. Except, they would argue that that meant that there had to be more of the same. To me it suggests that we need to break the mold in a radical fashion and return to the original goal of school desegregation, the

original goal of civil rights. That is to fulfill, at last, one of the most sacred promises ever issued in this country, and that is, the promise of an equal educational opportunity for every school child in America, white or black, rich or poor. And imagine if we had allowed children in the 1950's to pursue the educational opportunity that was best for them.

Well, it is not too late to do that. In fact, one of the movements that has somewhat supplanted the forced busing movement is the so-called educational equity movement, where, again, there is a tremendous moral imperative to eliminate the funding inequalities in our society, just as there was a compelling moral mandate to curb practices of segregation. But, again, the remedy is totally out of whack with the underlying violation.

Imagine this — kids are in bad school systems. They have funding disparities, and the remedy is to give the school systems that are failing these kids more money. Imagine if General Motors said that to someone they gave a lemon, a totally defective car, and a plaintiff goes to court, and the court says we have the remedy. We are going to give General Motors more money to figure out how to produce a better car, and maybe at some point in your lifetime, you might be able to buy that car. I think you would leave the courtroom feeling slightly unsatisfied. Well, that is why parents are feeling unsatisfied. We have a guarantee of education in this country and we have no money back guarantee or remedy for the default on that product.

Although the people who are suffering most from the denial of equal educational opportunities are a finite group in our society, this is also a civil rights struggle because many people do not have that same interest are freedom fighters working with people who are unfree in our society. We are putting together coalitions that, like those in the 1950s and 1960s, are unprecedented. In this case, libertarians and conservatives work with low-income families, who are predominantly minorities, toward a common goal of educational emancipation.

Just to give you some examples, in Milwaukee, the parental choice program, even though it actually was challenged in court by the NAACP, commands, according to the Milwaukee Journal-Sentinel, the support of 90% of the African-American community. The Joint Center for Political Studies has done extensive polling on school vouchers and found that support for school vouchers among African-

Americans is extremely high, but it is highest among the age cohort between 30 and 37, precisely the age range where a majority have children. There the support for school choice was 80% in favor and 9% opposed to voucher programs.

In the aftermath of the veto by President Clinton of the D.C. Scholarship Bill, giving rise to the comment by Polly Williams that Bill and Hillary Clinton should not be the only people who live in public housing, but get to send their kids to private schools, the Washington Post found something very interesting. They too found overwhelming support among black residents of the District of Columbia for school choice. They broke it down by income. And it turned out that black residents with incomes \$50,000 and above were evenly split on the issue. Black residents with incomes \$50,000 and below, were nearly 3 to 1 in favor of school choice.

This issue separates the leaders from the minority community. I remember reading recently that Julian Bond, the new Chairman of the Board of the NAACP, was asked in EMERGE magazine, "You know, your organization has been losing members by the tens of thousands in recent years. Is there a problem with the leadership?" And Bond answered, "There is no problem with the leadership, the problem is with the followship."

Well, we are discovering now that indeed you cannot lead if there is no followship. And the reason that the people are not following is because they do not want to follow where the so-called leaders are leading. This, I think is also an epiphany for many of us who call ourselves conservatives and libertarians. You know, we talk about these issues and these ideas all too often in the abstract. And where this movement has helped lead us is the recognition that we have got to get beyond abstract philosophical arguments and into the real world. We must humanize and personalize the freedom philosophy. There is nothing more important than giving people control over their children's education.

It also is a source of joy, as well, as a lawyer to work constantly with parents and children, and have the NAACP and the ACLU on the other side, it absolutely drives them nuts. The ACLU lawyer in Wisconsin, Jeff Castle, once said when I walked into the courtroom with a whole bunch of families, in Madison: "Oh, here comes Clint and his children again." And I thought, isn't this interesting how the tables have really begun to turn. Where the ACLU and groups like

that purport to represent civil liberties – and the National Education Association, you would think an organization with the name education in its title would actually have some children on their side in the litigation. There aren't any. They are all on the other side. I think we ought to do a heck of a lot more as conservatives and libertarians, actually, get into the trenches and represent the real interests of real people.

I want to finish very briefly with an anecdote. One of the things that we learned in the Institute for Justice from our liberal friends in public interest law is that it is very important to humanize litigation when it is about people's rights. We like to work to where parents and children are not only represented in the courtroom, but are actually in the courtroom. Thus, the parents and children can see what is happening and it is very, very clear to the judges that this is not just about abstract legal issues, but about real lives. The last time we went to the Wisconsin Supreme Court, just about a year ago now, it was our practice to charter a bus to bring kids and parents who were interested in coming from Milwaukee to Madison. This last time we asked our friends to do that again. They put out the word and it turned out we did not get a bus, we got 16 buses. And we all gathered on the steps of the state capitol where the court is located and it was the first time that I had sang songs that have not been sung all that often since the 1960s.

This is a civil rights movement. It is about the real lives and the most fundamental rights of people in our society. And I am proud to be a part of it. When I look around this room, I see people who have devoted themselves heart and soul to this battle. I want to conclude with a quote from one of the first voucher advocates in the United States, also, the first person that I have found to have actually used the term "civil rights," Tom Paine, who faced challenges that make ours today look simple by comparison. But he said this, "Tyranny, like majority is not easily conquered, but we have this consolation, the harder the conflict, the more glorious the triumph."