

# THE HERITAGE LECTURES

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Courts, Cases,  
and  
Conservatives in  
the 1990s

*By Jerald L. Hill*



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# Courts, Cases, and Conservatives in the 1990s

By Jerald L. Hill

Landmark Legal Foundation is having a birthday party. We are celebrating fifteen years of litigation in the public interest—fifteen years in courtrooms from New Hampshire to California and from Texas to Wisconsin. We have spent fifteen years battling, prodding, arguing, and convincing judges, bureaucrats, and courts to do what they should and to stop doing what they shouldn't.

During those years Landmark has been involved in hundreds of cases dealing with important issues that concern national policy makers. We have litigated everything from court-ordered taxes to artificial sweeteners, the Legal Services Corporation to the snail darter and the Endangered Species Act, and the regulation of nuclear power plants to shoeshine vendors. In all cases we promote certain principles, regardless of whether the issue was at the front of the national agenda, or the focus of media attention. We believe these principles must be espoused and protected, because they are endangered every day in courtrooms across the country. These are the principles that gave birth to our country, that define who we are as a nation and how we live as a people.

Let me summarize our principles. We believe government derives its mandate from those who are governed. Therefore, government can only do for, with, and to the people what they wish as embodied in the written Constitution and through their elected representatives. We believe that individual rights of citizens must always take precedence over the demands of government bureaucracies. We also support the principles underlying our system of government—federalism, the separation of powers, and checks and balances. We believe these principles cannot be ignored by government to suit the ends of government. And finally, we believe in the marketplace. Whether we are dealing with economic policy, entrepreneurship, education, or political discourse, the marketplace provides the best check on those in positions of power.

The market free is the best vehicle for those striving to gain a share of the American Dream.

**Setting Precedents.** Over the past fifteen years Landmark Legal Foundation is pleased to have earned its share of successes in litigation. Taxpayers in Kansas City have \$41 million in tax refunds in their pockets today because we succeeded in overturning federal court-ordered taxes in a Kansas City school desegregation case. The money in their pockets, however, is less important than the progress made in reining in the federal judiciary and making it clear that judges do not have the authority to levy taxes directly. We are not finished. This is an ongoing battle that we will hear more about in the months ahead.

There is a non-union plumber in Omaha, Nebraska, who is in business today because we represented him in a lawsuit against the plumbers' union and the city of Omaha. Together they attempted to drive him out of business solely because he was non-union. More than one plumber benefitted from that case: so did businessmen across the country. That case set a precedent for applying civil rights laws in union disputes and non-union workers won the right to go to court under federal civil rights laws.

Today, there are school children in Milwaukee, Wisconsin, excelling in private schools instead of failing in public schools. Landmark's litigation defending the parental choice plan of Wisconsin leg-

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He spoke at The Heritage Foundation on May 7, 1992, in the Resource Bank series of lectures featuring leaders of conservative education and public policy organizations.

ISSN 0272-1155. ©1993 by The Heritage Foundation.

islator Polly Williams has had a dramatic impact on the lives of those children. More important, the case has proved to the nation what can happen in a community when parents are empowered and recapture the authority and responsibility for the education of their children.

You can now have your shoes shined on the streets of Washington, D.C. Entrepreneurs are making a buck — or sometimes five bucks — shining shoes. Through our litigation on behalf of Ego Brown, government—particularly local government—is learning that it cannot regulate small businesses out of business. We must encourage those who are trying to earn an honest dollar by starting businesses that have been avenues of economic advancement for the poor and minorities.

And most recently, James Florence and other black special education students in California now for the first time can have programs tailored to their special needs because with Landmark's help they fought against a statewide ban on I.Q. testing. Even more important, the state government of California is learning that paternalistic bureaucrats are not empowered to make decisions that should be made by parents and individual students about the education programs they receive.

So, Landmark Legal Foundation's anniversary is a time to recognize our significant achievements. But we are also using this milestone as an opportunity to chart our future course, to look at what kind of organization we should become, and to decide what issues we should address. I welcome this opportunity to establish our agenda for the 21st century.

**The Los Angeles Riots.** Last Wednesday night I left my office, went home, and took one of my sons to Little League practice. (By the way, he hit a home run, first time at bat, first game.) Later, I returned to my office to work on this speech. As I sat at my desk, I listened to the initial news reports on the radio describing the Los Angeles riots. As the evening went on there was full-scale coverage of the violence, the murder, and the looting in that city. I must say that as I listened it affected my thinking as I considered Landmark's role and questioned how we can have an impact on our society.

I titled this talk, "Courts, Cases, and Conservatives in the 1990s." After Los Angeles, a better title might be "Posturing, Principles, and Practical Solutions." We all have different ideas about the meaning of events in Los Angeles, but one thing is clear: that weekend the veneer was lifted off a segment of our society. Whatever the cause, we saw the hopelessness, the frustration, the despair, the anger, and the hatred that caused the violence, lawlessness, and murder. The riots occurred and those of us who seek to shape public policy for this nation must be willing to confront this ugliness. We must be willing to deal with the causes and work on solutions. There is much posturing about the causes and solutions to these serious urban issues. Fingers of blame are pointing in both directions up and down Pennsylvania Avenue in Washington, D.C. The media are defining the entire sequence of events in terms of race. As a result, they are further polarizing the nation around the racial issue. The overarching assumption by the media, of course, is that undoubtedly Ronald Reagan is to blame for what happened that tragic weekend in Los Angeles.

The nation was traumatized. The question is not whether we will respond, but what our response will be. Will we turn to policies based on the principles that undergird and strengthen what is good in this nation? Or will we rely on the failed programs that have undermined those principles?

**The Welfare Plantation.** We must also strengthen our families, because a strong family is the key to a healthy community. The welfare system cannot be allowed to undermine society's values and lock citizens into perpetual poverty. The outgoing mayor of the National Conference on Black Mayors recently said: "We must get our people off the plantation of government welfare and dependency." He is exactly right. The dynamics of a welfare system that turns assistance into dependency must be changed. That is not an easy task.

**Empowerment Solutions.** Decent affordable housing must be a priority. We must give people an economic and social stake in their communities through resident management and ownership of public housing. Look at the actions of resident management leaders in public housing projects in Los Angeles during the riots. In those communities where tenants are managing their public housing projects and working toward ownership there was little violence and almost no destruction. It doesn't surprise me. It doesn't surprise me that residents who once wielded baseball bats and chased drug dealers out of their housing complexes made sure their community was not engulfed in lawlessness.

In comparison, consider what is happening between residents and bureaucrats in St. Louis. There Landmark represents public housing tenants who are being sued by the St. Louis Housing Authority. The Authority is trying to overturn a state law that allows two of its seven members to be public housing tenants elected by their peers. Consider the overwhelming efforts that the St. Louis housing bureaucracy is making to keep tenants from having any role in the control of their destiny. The bureaucracy must be stopped. We must empower tenants by giving them an economic stake in their community through control, management, and eventual ownership of their housing.

We must also empower families to regain control of their children's education. We must link the opportunity of school choice to parental responsibility so families can have a voice in preparing their students for the future. Wisconsin state legislator Polly Williams had this in mind when she proposed giving school choice to inner-city students previously locked in a decayed urban public school district that was not teaching students. The Milwaukee school choice plan is now in operation despite stiff opposition from the education establishment. Through litigation by Landmark on behalf of parents, students, and private schools, the plan gives parents state funds to spend as tuition at private schools where education excellence is a priority.

We must provide hope for those who want to participate fully in the economic life of our country. We must remove regulatory barriers built by local governments that stifle the creation of new jobs by small business and entrepreneurs. It doesn't matter whether these barriers are shoeshine regulations in Washington, D.C., or taxicab regulations in Houston or day care regulations in Cleveland—these burdensome rules keep low-income people out of the marketplace and limit economic opportunity. They must be removed so all people have a chance to move from poverty to self-sufficiency through the marketplace.

In Oregon, Landmark is involved in welfare reform litigation. Last year, a substantial majority of 58 percent of Oregon voters passed the most comprehensive welfare reform plan in the nation. The plan takes some current welfare benefits and administrative costs and converts them into private sector jobs that generate paychecks. Workers on welfare will receive more money working than they currently receive from entitlement programs. Their new jobs will give them skills and the incentive to move to better jobs. In the process, the state government will save millions of dollars. Is the program operating in Oregon? No. The welfare establishment, the bureaucrats who control it, and the politicians they control, refuse to carry out the plan. So, Landmark is in court in Oregon fighting to obtain court orders requiring public officials to implement the program overwhelmingly adopted by the people.

**Equal Treatment Before the Law.** We must demand that our law are applied so all citizens are treated equally without regard to race. No matter what the motivation to give some groups special treatment by judges, Congressmen or even the President. When Americans are treated differently because of race the action divides society, engenders distrust, and harms the very people it is trying to help.

One of Landmark's most interesting recent cases involves one aspect of the struggle in Kansas City over school desegregation. In that case, the judge ordered a racial quota to keep a statistical bal-

ance of races in the classrooms. As a result, there are empty desks in some new schools that haven't enrolled prescribed number of white students. At the same time minority students are housed in schoolyard trailers near old overcrowded buildings. This quota was put in effect at the request of the National NAACP Legal Defense Fund and the plaintiff's lawyer who are co-counsel in the litigation. Landmark represented the local chapter of the NAACP, Operation Push, the Black United Front, and the Black Chamber of Commerce. We challenged the quota system, because minority parents in Kansas City know that the quotas are harming their children, despite the good intentions of those who imposed them. Quotas are denying equal opportunity to their children because of their race.

**The Constitution and Our Laws.** Finally, we must protect the integrity of our Constitution and our laws. The ideas of separation of powers, federalism, and checks and balances do make a difference. They are not abstract ideas left over from the 18th century. They have an impact every day on how we live and how we are governed. We must stop blurring the lines of constitutional authority. We must stop treating states as administrative subdivisions of the federal government, and we must end the way Congress tries to micromanage the executive branch. When you talk about checks and balances to someone on Capitol Hill, he thinks you are talking about the House banking scandal instead of the Constitution's separation of powers. We cannot solve our social problems if we do not restore the constitutional framework instituted over two hundred years ago.

These are some of the areas and issues we need to pursue. I believe Landmark Legal Foundation is in a unique position to play a pivotal role. We can't do it alone, but we will do our part. The litigation agenda we began in the 1980s—promoting education choice, encouraging tenant management of public housing, reducing barriers to entrepreneurship, defending welfare reform, demanding governmental integrity—is now at the forefront of the national policy debate and Landmark has matured and is in a position to act.

Sometimes the problems seem overwhelming and you wonder if a public interest law group can make a real difference. Can actions in courtrooms affect people's lives? Let me share two recent experiences. They are burned into my consciousness and have helped me understand why I am enthusiastic about my job.

**School Uniforms and Self Respect.** Last fall I went to Madison, Wisconsin, for the oral argument in our school choice case before the Wisconsin Supreme Court. Landmark rented three buses for the trip from Milwaukee to Madison and loaded them with students, parents, and teachers. We wanted them to hear the oral argument and see the legal process. And we also wanted the judges to know that they were dealing with real people and not just lawyers and legal arguments.

After the hearing I talked with several parents outside the Supreme Court chambers. One mother told me her child, who is a participant in the Milwaukee choice program, now attends a private school that requires its students to wear school uniforms. She told me about that uniform's influence on her child, her family, and her community. Tennis shoes and designer blue jeans are no longer status symbols. In her community the school uniform has become the status symbol, and students in her child's school are respected. She described what that did for the students' self-worth and how it changed the community's values. I left feeling good about that.

A few weeks later in Kansas City I left my office, got into my car, and turned on the radio. As I said earlier, Kansas City is now in the midst of the largest desegregation program in the history of the United States. The program requires a capital expenditure of \$1 billion that is intended to build the finest school system in the nation. The centerpiece is the central high school and middle school complex—when completed they will be the most expensive school buildings ever constructed—\$32 million for the high school alone.

That day the radio reported that two thirteen-year-old students met on the sidewalk outside one of those costly school buildings. One wore a Los Angeles Raiders jacket and the other one wanted the jacket. Both students were armed. A few minutes later one student lay dead ten feet from the front door of the most expensive school ever built in the United States. That is the difference. That is the impact public policy decisions can have on individual lives. I don't know what is in store for the kids who are in the Wisconsin choice program, but I do know that they will not be shot on the school doorstep. I know that when they finish their education in the choice program they will be better equipped for the future than most of the kids attending the most expensive school ever built in the United States.

The experience we have gained at Landmark Legal Foundation over the past fifteen years will serve as a springboard to opportunities in the next decade and beyond. We know we have made a difference. We believe we can help change the dynamics of public policy debates and help focus the attention of the public and our leaders on the principles that undergird our society. The solutions to our social and economic problems are based on those principles.

