

BEYOND DEROLPH
SEPTEMBER 17, 2003
VET'S MEMORIAL
COLUMBUS, OHIO

Elbert Green Hubbard, a nineteenth century American author, editor and printer once said:

"There is no failure except in no longer trying. There is no defeat except from within, no really insurmountable barrier save our own inherent weakness of purpose."

Thomas Carlyle, an eighteenth century Scottish essayist and historian said:
"Every noble work is at first impossible."

These thoughts occurred to me as, in preparation for this meeting, I had to once again think in some depth about DeRolph v. State. I reflected on our long tortuous journey together over what at times has been a very lonely road. My involvement began in 1986 when I was first asked to focus on educational funding issues. Out of that has come what we not so affectionately refer to as "DeRolph I, II, III and IV. Yet today, there are fundamental issues yet to be resolved and my message today is to be of good cheer-and never, ever give up fighting for what you know is right.

Lest we think we are alone and pioneers in pressing a long-running law suit, I remind you of the Charles Dickens work, published in 1852, Bleak House, wherein the celebrated English novelist described Chancery lawyers and the Chancery Courts of his day. The author described for us the long-running case of Jarndyce v. Jarndyce. It was a dispute where several generations of the Jarndyce family wait in vain to inherit money from a disputed fortune in the settlement of the lawsuit of Jarndyce v. Jarndyce. Dickens was pointedly critical of England's Court of Chancery in which cases could drag on through decades of convoluted legal maneuvering. He wrote:

"Jarndyce and Jarndyce drones on. The scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff and defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless."

Some would describe our plight in the same context as Jarndyce. I would not and will not be of that mind-set and neither should any of you be so disposed. We just don't have the time to lament that over which we have no control. Instead we need to declare at least partial victory and keep on truckin' until we cross the goal line.

What would be the authority for taking such a position. The record, my friends, the record. You have had an extensive history lesson on what has gone on in this case and I'll not repeat that here. We could have become discouraged with the bombastic reception those of us involved received from some elected officials, some segments of the media and a fair number of well-meaning citizens after the first decision in DeRolph was released.

But then, as now, there was more work to be done. To many of us, public education is the cornerstone of our democratic way of life. The definition of a "fundamental right" is one that can be found either explicitly or implicitly in a Constitution. Since we in Ohio have devoted a full article to public education in our Constitution, I wrote in DeRolph I that "I would hold that education in Ohio is a fundamental constitutional right guaranteed by the Ohio Constitution." While that proposition didn't carry the day with a majority of the Court, it did set the tone for DeRolph I and what was to follow.

DeRolph I required "a complete systematic overhaul" of the school funding system. The Governor and General Assembly, it is fair to say, did not warmly embrace that decision. In fact, as I have pointed out, many castigated the Court majority. It was suggested that the decision would hasten the day of Armageddon. For the most part, those in power pretty much ignored the teachings of DeRolph I. Their proclivity to maintain the status quo resulted in DeRolph II. Therein I pointed out that the Court's "sole mission is to see to it that the Constitution is honored and that Section 2, Article VI of the Ohio Constitution is being obeyed. When it has been, we should say so, when it has not- then it is our duty to say that too."

Even with subsequent litigation, the core issue has yet to be confronted. I must admit that I was both gratified and pleased, however, when on Sunday, December 15, 2002, just shortly before I left the Court, the Columbus Dispatch wrote in a feature editorial that:

"Ohio has vastly increased the resources devoted to education and has gone far to shrink the disparities between wealthy and poor school districts." Then my friends at the Dispatch said: "The high court did not err in 1997 when it declared

those original disparities unconstitutional. ... The lawsuit forced school funding to the top of the legislative agenda. Much good has resulted."

Of course I was pleased and it is only fair at this point to make clear that I believe that each Supreme Court Justice, then and now and, for the most part, each media outlet weighing in on the subject were doing and are doing what they believe is the right thing to do as they see it. There are no "bad guys" or "good guys" in this debate. All want the best educational opportunities for all of Ohio's children. Our divergence is on the question of the proper course to follow to reach the goal.

Although the complete systematic overhaul remains elusive, some major accomplishments have emerged from the DeRolph decisions. I believe it is both fair and safe to say that the \$23 billion school facilities program and a much higher priority of the state budget assigned to public K-12 education were triggered by the Court orders. Hundreds of new school buildings are in place and more are under construction or on the drawing boards. New funding categories such as equity and parity aid have been enacted for public schools. The DeRolph decisions, I am happy to say, have had a profound effect on the 1.8 million public school children in Ohio.

DeRolph has been a very important case to me. As I told the [Akron Beacon Journal](#) just before leaving the bench: "Any fair-minded person would have to concede that without DeRolph, most or none of this would have happened. While it has been a very great and satisfying victory, it has been one of my disappointments because I ran out of time before I could finish the job." Like in [Jarndyce](#), I was born into and, in effect, died out of it. I did what I could while on my watch, and on this and all other issues I continue with charity towards all and malice towards none.

Mr. Phillis has been ever persistent in asking me, and has asked me to comment today on the question of "Where do we (meaning you) go from here." It is a fact of life, and there is nothing nefarious about it at all, that the new Court majority has a different philosophy regarding school funding than the previous majority. Recognizing this as a fact of life, the school community must engage in new approaches.

The school community, as far back as I can remember as an active PTA participant, has always been hesitant to get involved in the rough and tumble world of real-life politics. We have often eschewed, as school officials and the school community, saying or doing anything that might be considered, if you will, politically incorrect. It may be time for those days to be over.

I respectfully suggest that much of your emphasis be switched to the political arena. Several school districts could get together, form a mini-coalition, elect representatives to a central body and then, on a House and Senate district basis, invite candidates to meet with the group. At such meetings the candidates should be asked to directly respond to questions with regard to their position on the issue of "complete systematic overhaul." The questions should be specific and anything less than a direct answer, such as "I'm not on the finance committee" or "it is so complicated I would first have to see what is proposed" or that is in the hands of the Governor and Leadership" or "I don't know where the money would come from" or any other such response that begs the question, should be met with the same responses that you give students when they are not prepared and refuse to get prepared. Then you could let them know that you (your coalition) will be working to elect those who will commit to enacting a constitutional thorough and efficient system of public education and working to defeat those who are not so committed.

Revolutionary? I suppose, but what do you have to lose. You have already, with your existing coalition that you should never let die, moved heaven. Now you need to move earth.

Imagine, if you will, the political incorrectness of John Hancock, Thomas Jefferson, Benjamin Franklin and their 53 friends when they, on that fateful day of July 4, 1776, penned their names to the Declaration of Independence of the United States of America. In doing so they said: "and for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred Honor.

Revolutionary? I'd say so. Can or should we do less in pursuit of our calling in this great debate? To me it is unthinkable!

Perseverance must be our watchword. Tribulations we expect and accept. Defeat should not be in our lexicon. In his Epistle to the Romans, the Apostle Paul, in Chapter 5 verses 3 and 4, wrote:

"We exult in our tribulations, knowing that tribulation brings about perseverance; and perseverance proven character; and proven character, hope."

Our hope can and will be realized because our cause is just, our motivations right and our thirst for success is not quenchable.

As I leave you now, I speak as just one caring citizen speaking on behalf of many. Thank you for all you have done, and what yet you will do.

Former Supreme Court Justice Andrew Douglas