



## Supreme Court of Kentucky

**Daniel J. Venters**  
Justice of Kentucky

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### Justice Daniel J. Venters speech for Black History Month

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**Feb. 19, 2009**  
**Capitol rotunda**

It is in awe and with great humility that I stand in this rotunda before the statue of Abraham Lincoln, alongside these esteemed leaders. Governor Beshear, President of the Senate Williams, Speaker of the House Stumbo and assembled guests.

My first thought as I pondered this 2009 Black History Celebration is that the words black history and celebration are not words that go together well.

Rather than Black history, we find it easier to celebrate the great contributions of the African-Americans to our national culture. We celebrate the rich African-American influence in our language and literature, our fashion and arts, athletic achievements and scientific endeavors. But the fact remains that historically, much of that contribution was born of the oppressive conditions which brought the African to this continent and kept him here in chains – first the visible chains of iron, then the invisible chains of segregation. Soul food is, after all, derived from the poor food and scraps left for the slaves. And the blues is, after all, the blues.

As a representative of Kentucky's Judicial Branch, I thought I would search the record of Kentucky jurisprudence of the late 1800s and early 1900s for words of enlightenment and eloquence from the first Kentucky judges to interpret and apply the civil rights laws enacted by Congress to implement the abolition of slavery and the newly adopted 14th Amendment's guarantee of equal protection to all citizens regardless of race. But the heroes, if there, are well hidden. Our court, during the decades after the Civil War, almost always upheld state laws that continued the deprivation of civil rights to citizens of African descent and too often ignored or struck down ones which did not. The record of the U.S. Supreme Court was no better. In a series of cases, that court issued rulings that must have dashed the hopes of that first generation of free Negro citizens. Jurisprudence remained locked in the old, pre-war culture.

One Kentuckian, however, stood apart and shines in the light of history – Justice John Marshall Harlan of the U.S. Supreme Court. A former slave owner who fought for the Union in the 10th Kentucky Infantry. In case after case, Harlan stood as a lonely dissenter, urging the court and the nation to keep the promise of the Declaration and the

Equal Rights Amendment for which so many Americans, white and black, had fought and died. His most scathing and prescient dissent came in the 1896 infamous case of Plessy v. Ferguson, when the Supreme Court enshrined in law the separate but equal doctrine that would for decades provide legal cover for the most offensive mistreatment of human beings since slavery itself.

Harlan wrote: “But in view of the Constitution, in the eye of the law, there is no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest man is the peer of the most powerful. The law... takes no account of his color when his civil rights are involved. In my opinion, Harlan said, the judgment this day rendered will, in time, prove quite as pernicious as the decision made by this tribunal in the Dred Scott Case ... The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under sanction of law.”

But so it was. Segregation was the law of the land. Harlan’s words, of course, had no immediate effect, but by his dissent, he had planted seeds of his own in the published words he left for a future generation of lawyers and judges, the likes of Thurgood Marshall and Earl Warren who nearly 60 years later would use Harlan’s words to destroy the sanction of law that protected racial inequality and injustice.

Our nation has finally raised a generation of children, now grown into adults, who have no memory of segregated schools, and restaurants and bathrooms, who have no memory of murder of citizens whose only offense was the desire to vote and live free and to help others do the same. We have a generation of adult Americans who do not remember the shame heaped upon a mixed-race child, but instead know that their president is a biracial American born of a black African man and a white American woman. It is a generation that did not see black children in Little Rock, Arkansas, able to enter a school only because soldiers of the 101st Airborne Division from Fort Campbell, Kentucky, stood guard over them with rifles loaded and bayonets fixed. Instead, they have seen black children enter the White House as its lawful residents amid barely a whisper of political discontent.

In that generation lies our hope for the history that we will one day be able to celebrate.