

On behalf of the Judicial Department and everyone in the Stamford/Norwalk Judicial District, I would like to welcome you to this year's Law Day ceremonies.

This year, the Law Day theme is equality under the law. 50 years ago, Martin Luther King Jr. said that he had a dream of equality for all – he was speaking at a time of great changes in our society with respect to civil rights and equality.

Instead of discussing “where are we now?” my focus will be on how we got here. In so doing, I will have to address the meaning of the concept of “equality,” which has changed over time.

50 years ago, Kurt Vonnegut wrote a story, “Harrison Bergeron”. That story is set in the future, and the premise is a form of equality. To partially quote from the opening:

... [E]verybody was finally equal. They weren't only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else. Nobody was better looking than anybody else. Nobody was stronger or quicker than anybody else. All this equality was due to the 211th, 212th, and 213th Amendments to the Constitution

[Anyone whose intelligence was above normal] had a little mental handicap radio in his ear. He was required by law to wear it at all times. It was tuned to a government transmitter. Every twenty seconds or so, the transmitter would send out some sharp noise to keep people ... from taking unfair advantage of their brains.

The story goes on to describe how people who were stronger or more graceful were required to wear weights to offset their natural advantage. People who were prettier or more handsome had to wear masks to hide their actual appearance. And so on.

The premise of the story suggests at least two notable points. First, equality under our law is not equality of outcome. The other point – a counterpoint – is that if our societal sense of equality does not evolve on its own, there is always the possibility that some form of equality can be imposed by law.

Equality under the law means that everyone is treated fairly, using the same standards. People are rewarded or punished for reasons having to do with their abilities, the notion of personal responsibility for behavior, and other individual characteristics.

As Theodore Roosevelt said:

“I am an American; free born and free bred, where I acknowledge no man as my superior, except for his own worth, or as my inferior, except for his own demerit.”

We tend to see what is around us, now, and assume that that is how things are and how they always have been. Few if any people in this room saw, firsthand, the types of signs I put on the courtroom door relating to the forced evacuation and internment of people of Japanese origin on the west coast, during WWII. And only those few people in this room who may have lived in, or visited, the South prior to the mid-1960's would have seen the "whites only" type of sign shown in the other picture I have put on the door to the courtroom.

To appreciate how far we have come, then, a review of history is essential.

Let's start 240 years ago, in 1773 – the year of the Boston Tea Party.

Colonists felt that they were not being treated fairly by the British – they complained about taxation without representation and other ways in which they felt that they were treated as second-class citizens.

Three years later, in 1776 – the Declaration of Independence was signed.

The second sentence is often quoted:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Those are noble thoughts – “all men are created equal” and that they have the unalienable right to “life, liberty and the pursuit of happiness.”

A statement referring to “all men” – today – would likely be interpreted as referring to all people. However, the use of the phrase “all men” could also mean all people who biologically are men – people with a Y chromosome – males.

When used in 1776 – given the times – it probably is safe to assume that it was even more limited. Women did not have the same rights as men. Native Americans – so-called Indians – generally were perceived to be savages. And slaves were treated as property, not people.

The Articles of Confederation, the predecessor to the Constitution, became effective in 1781, and contained the following language:

“... [T]he free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States ...”

So, to have the privileges and immunities of a citizen under the Articles of Confederation, you had to be free but in addition you could not be poor or homeless.

In 1787, the Constitution was ratified.

- * Article I § 2 states that slaves are to be counted as 3/5 of a person for census purposes

- * Article IV, § 2 states that escaped slaves are required to be returned on demand

As to women's rights, they were going backwards. Initially, women could vote in a few states, but by 1807, the last state to permit women to vote, New Jersey, eliminated that right.

Let's skip ahead to 1857.

The US Supreme Court issued the *Dred Scott* decision – some have described it as the worst decision ever to come out of the US Supreme Court. The Court ruled that:

- Current and former slaves are not citizens of the US.

- Congress did not have authority to limit slavery in new states and territories

- It did not matter if a slave had been brought into a free state or territory where slavery was illegal; the status — slave or free — was to be decided based on the state in which the slave found himself (and in this case, it was back in Missouri, a slave state)

On the women's rights front, women still could not vote. One of the first documented attempts to organize in support of that right was a convention held in Seneca Falls, NY in 1848 – the start of a long process.

From 1861 to 1865, the Civil War was fought, and as a strategic measure, in 1863, the Emancipation Proclamation went into effect, freeing slaves in the South. Of course, the southern states did not recognize the validity of that Proclamation, so the Proclamation did not mean that suddenly, all slaves could walk away, without facing any possible consequences.

After the Civil War, the 13th, 14th and 15th amendments were enacted, abolishing slavery, declaring citizenship of former slaves and guaranteeing their civil rights, ensuring former slaves the right to vote – imposing consequences on states that excluded any males from voting. Efforts were made to have these post-Civil War amendments include recognition of the rights of women, but they were unsuccessful.

DESPITE THE CONSTITUTIONAL CHANGES

Former slaves were still second class citizens, especially in the South. So-called Jim Crow laws were enacted, to restrict the rights of former slaves, and to create a half-true system of separate but equal – definitely separate but rarely if ever equal.

By the 1870's, women were making some progress in terms of rights. States and territories began to recognize their right to vote, starting with the Wyoming territory in December of 1869. Nonetheless, in 1872, Susan B. Anthony, perhaps the most famous leader of the movement for women's right to vote, was arrested in Rochester NY for trying to vote in a presidential election.

In Connecticut, in 1877, the Married Women's Act was passed. Until then, when a woman got married, most of the rights she had while single were lost, as she generally became subject to her husband's control. The Act allowed a married woman to own property, enter contracts, etc. in her own name.

In 1896, the Supreme Court issued its decision in *Plessy v. Ferguson*, stating that separate but equal was constitutionally permissible. In that case, the state of Louisiana required railroad companies to segregate seating by race, and the Court found no fault with that.

Emphasizing how painfully slow progress can be – the dissent in that case accurately predicted:

“In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case.”

Skip ahead to 1920 – the 19th Amendment was finally enacted, after numerous unsuccessful attempts — guaranteeing women the right to vote.

A quarter century later, during WW II, the Supreme Court ruled that the government could require evacuation of people of Japanese descent from the West Coast, even if they were loyal citizens. Most of them ended up in internment camps – the camps were a far cry from the concentration camps of Europe, but that did not prevent some people from making the comparison.

After World War II, things started moving more quickly - or perhaps it just seems that way because it is closer in time and the events are more familiar.

1945 - NY passed what probably was the first anti-discrimination law in the country since the Reconstruction era.

1947 - Jackie Robinson broke the color barrier in Major League baseball — coincidentally, there is a very recent movie about this story – “42” – which still may be some in theaters.

1954 – the Supreme Court issued the landmark decision in *Brown v. Board of Education* – separate but equal public education was impermissible under the Constitution.

December 1, 1955 – Rosa Parks refused to give up her seat to a white person, triggering one of the earliest large-scale protests against discrimination – a boycott of the bus company in Montgomery, Alabama.

1957 — President Eisenhower had to use federal troops to overcome resistance in Little Rock, Arkansas to desegregation of the public high school, after the governor of that state had attempted to use the National Guard to prevent desegregation.

Early to mid 1960's – freedom riders and others, many from the North, protested the continued existence of discriminatory laws and practices in the South. Some protesters were beaten, some were killed. (The movie, "Mississippi Burning," is loosely based on the murder of three civil rights activists, and the long process to bring the perpetrator to justice)

1964 – the 24th Amendment to the US Constitution went into effect. Some states had tried to limit voting by imposing a tax on the privilege to vote, with what generally was believed to be a discriminatory intent; this amendment prohibits payment of a tax as a condition on the right to vote.

1964 and 1965 – Civil Rights and Voting Rights laws were passed by Congress, putting real teeth into efforts to end discrimination and ensure equality under the law.

Coincidentally – *Shelby County v. Holder* is a case that was argued this past February before the U.S. Supreme Court concerning whether there still is a need for certain parts of the Voting Rights Act – or whether society has made enough progress that we can stop imposing at least some special rules on states with a history of discrimination.

1972 – the Equal Rights Amendment, guaranteeing full equality for women, was passed by Congress, but it failed to win support in enough states to become part of the Constitution. Connecticut *did* amend its state constitution in 1974, to add language prohibiting discrimination on the basis of sex.

As times have changed, so has Connecticut's law prohibiting discrimination – it has been repeatedly amended, most recently in 2011, so as now to prohibit discrimination based on "religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability."

We have come a long way. It is hard to say how much further we need to go – sometimes we need to hear someone say “that’s not fair” before we can recognize that there is a problem. Or we may sense that there is a problem, but choose to ignore it because the problem is not ours.

The short answer is: We cannot ignore problems just because they do not affect us directly. Intolerance is corrosive; trying to ignore it hurts not only the targets but in a more subtle way, all of us. If nothing else, it makes all of us more vulnerable.

There is a famous poem based on the rise of Nazism in Germany. Here is one variation.

In Germany they came first for the Communists, and I didn’t speak up because I wasn’t a Communist.

Then they came for the Jews, and I didn’t speak up because I wasn’t a Jew.

Then they came for the trade unionists, and I didn’t speak up because I wasn’t a trade unionist.

Then they came for the Catholics, and I didn’t speak up because I wasn’t a Catholic.

Then they came for me, and by that time no one was left to speak for me.

[Martin Niemoeller]

It is not easy to identify areas in which we will see progress in equal rights in the future.

Two of the issues that are now getting attention on the national level are same-sex marriages and the related question of rights of people in such relationships under federal law. Almost every year, for the last several years, additional states have authorized same-sex marriages, and the US Supreme Court is currently considering whether the Defense of Marriage Act, which limits the rights of people in those relationships, is constitutional. On a global scale, human trafficking and the rights of children and women are among the areas some have suggested as areas in which much work is needed.

The process can be slow — embarrassingly slow. The movement for women’s right to vote began to take shape in the late 1840’s, and it took about 25 years to BEGIN to see results. It took another 40 years to attain the passage of a Constitutional amendment guaranteeing that right. The broader Equal Rights Amendment never made it into law, despite decades of trying.

It took almost 200 years to go from slavery to emancipation to civil rights laws that attempted to address racial discrimination in a meaningful way. And it would be naïve to suggest that

discrimination – a lack of equality in treatment – does not continue to exist at least in an attenuated form.

A different and more personal way to look at things is to recognize that probably most of the people in this room come from a heritage that to a greater or lesser extent has been the subject of oppression and discrimination.

At the base of the Statue of Liberty is a poem by Emma Lazarus, which contains these memorable words –

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!

Many of us are second and third generation "wretched refuse" – having parents or grandparents who came here looking for a better life. At times, in addition to discrimination against descendants of slaves, this country has seen discrimination against people from Ireland, Italy and most of Eastern Europe; people from Germany and Japan (and not only in wartime); people from Asia and Africa. People of Hispanic heritage. People who are Catholic, Jewish, Mormon or Muslim. More recently, discrimination against non-traditional families and lifestyles has gained widespread attention.

The especially sad piece of this is that often, people who have been subjected to discrimination or whose not-too-distant relatives were subjected to discrimination, in turn discriminate against others – because those others are too different. Because they want to feel that they are better than someone else.

Some who study what is called evolutionary psychology have suggested that a distrust of people who are different is at least partially genetic – that in prehistoric times, there was a survival value to that type of simplistic behavior. Society has evolved and *if* such behaviors are to some extent inherent in us all, it is all the more important that we recognize and suppress any such sentiments. They are legally unacceptable, and we must make sure that they are socially unacceptable as well. Society, if not our genes, has evolved far beyond that.

Conversely, there is a danger in being over-confident as to the extent of our progress. Voltaire's satirical work *Candide* tries to show the folly behind the proposition that we live in the best of all possible worlds. It *may* be true that in terms of equality, our current society is better than any that has gone before but we cannot be complacent.

I do not know what new challenges we will face – but history has shown that we can and will move in the right direction. Sometimes it will be through the courts, even if belatedly, as in *Brown v Board of Education*. Sometimes it will be through enactment of laws such as the Civil Rights amendments of the 1860's and the Civil Rights and Voting laws passed by Congress 100 years later. Sometimes it is the decency of large numbers of people that triumphs, such as the resistance in the North to the spread of slavery which eventually led to the Civil War – and the refusal, 100 years later, of protesters to allow the status quo of racial discrimination to continue. Sometimes there is a single individual who becomes the face for a movement – Susan B. Anthony for the right of women to vote, and Martin Luther King Jr. for the end of racial discrimination.

The scope of equality guaranteed by Connecticut's current anti-discrimination law would have been incomprehensible, 100 years ago. As far as we have come, we must remain vigilant to the possible need for further expansion of the concept of equality.

Let me conclude with a quote from Martin Luther King Jr., from a speech he gave in 1963, a quote that I mentioned earlier – in which he quoted from the Declaration of Independence but gave the words their broadest possible meaning:

... I say to you today, my friends, that in spite of the difficulties and frustrations of the moment, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal."

May we all live to see that vision of equality for all men – and women – realized.

Thank you.