The Court Legacy

The Historical Society for the United States District Court
for the Eastern District of Michigan ©2009

Vol. XVI, No. 4
November 2009

Special Annual Meeting Issue

What Was Really at Stake in *Plessy v. Ferguson*

By: Trevor Broad[1]

Almost fifty years ago, Harper Lee published the Pulitzer Prize-winning novel *To Kill a Mockingbird*. The novel continues to enjoy acclaim for its vivid depiction of racial inequality and injustice in the deep American South during the Great Depression. The plot of the story is familiar to many: Atticus Finch, the father of the young female narrator, Scout Finch, is a lawyer asked to represent a black man, Tom Robinson, who stands accused of raping a young white woman. Atticus Finch's representation of Robinson is inspirational, and serves as a paradigm of criminal defense work despite the fact that the innocent Robinson was unjustly convicted.[2]

Homer A. Plessy, a Creole from New Orleans, was arrested for violating the Louisiana Separate Car Act as amended to apply only to intrastate travel.

The date of the novel's publication is important because it came at a time when the Civil Rights Movement was gaining momentum. Indeed, some have even attributed the novel's success in part to its publication date.[3] Within a decade of the book's publication, Judge Stephen J. Roth,[4] and later Judge Robert E. DeMascio of the U. S. District Court for the Eastern District of Michigan would become embroiled in the Detroit school busing cases and the fight over integration and attempts to overcome institutionalized racial inequality and disparity.

On October 24, 2005 Rosa Parks, the "Mother of the Modern-Day Civil Rights Movement" who famously refused to give her seat to a white passenger on a bus in 1955, passed away. As her funeral procession made its way to Detroit's Woodlawn Cemetery on November 2, thousands of people lined the streets in tribute to Rosa Parks. The outpouring of support was an unmistakable testament to her legacy.[5]

Ironically, ten miles east of Woodlawn Cemetery is Elmwood Cemetery where Justice Henry Billings Brown, the author of *Plessy v. Ferguson*,[6] is buried. In a fascinating twist of fates, Rosa Parks, the woman who helped end racial segregation in America, is buried a short distance from Justice Brown, the man who wrote the opinion that is credited with giving constitutional protection to the doctrine of "separate but equal." Adding to the irony is the fact that Rosa Parks was born in 1913, the same year that Justice Brown died.

The story of America's continuing struggle for racial integration, equality, and justice almost always begins with the doctrine of "separate but equal," and the Supreme Court's decision in *Plessy v. Ferguson*. The fact that accounts begin with the doctrine of separate but equal is not objectionable; rather it is what some accounts state or imply about the *Plessy* decision that has led to the emergence of some historical misconceptions. For example, Richard Kluger stated, "To write [the opinion in *Plessy*], Chief Justice Fuller chose one of the Court's dimmer lights, . . . Henry Billings Brown."[7] Kluger continues, "Brown was thoroughly grounded in federal law and procedures . . . his guy wires were fastened to unadorned, conservative, Anglo-Saxon, Protestant, white, middle-class values that were probably close to the national consensus as a computer might have determined it."[8] Charles Lofgren simply attributed the decision to "the spirit of the age."[9] This article provides a different perspective on the story behind *Plessy v. Ferguson* including the strategy and arguments that were made during the course of the litigation to offer a fuller picture of the case and its context.

THE COURT LEGACY
John P. Mayer, Editor
M. Ellen Dennis, Assistant Editor

Published periodically by The Historical Society for the United States District Court for the Eastern District of Michigan, Office of the Clerk, Room 216, Theodore Levin United States Courthouse, Detroit, MI 48226-2797.

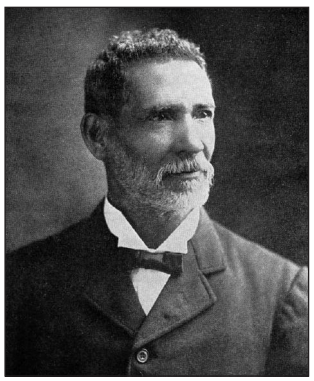
Subscriptions available through any Society membership. Membership benefits include the Newsletter, voting privileges, and the Annual Meeting. The Historical Society has extended the benefits of membership to members of the Eastern District of Michigan Chapter of the Federal Bar Association.

Papers are encouraged to be submitted to the Newsletter editor for consideration as MS Word (preferred) or WordPerfect documents to jmayer@wyan.org or m.ellen.dennis@gmailcom.

Pressing the Issue: Mounting a Challenge to The Separate Car Act

Plessy v. Ferguson was a test case designed to challenge the constitutionality of the Louisiana Separate Car Act under the then recently enacted Reconstruction Amendments to the U.S. Constitution. The Act 'requir[ed] all railway companies carrying passengers on their trains in [Louisiana] to provide equal, but separate, accommodations for white and colored races, by providing separate coaches or compartments. . .[and] authorizing [railroad officials] to assign passengers to the coaches or compartments set aside for the use of the race to which such passengers belong[ed].'[10] The case was orchestrated by the Citizens' Committee to Test the Separate Car Act. The Committee was a group of educated men of color in New Orleans led by Louis Martinet and formed in 1891, a year after the Louisiana Legislature enacted the Separate Car Act. In 1892, the Committee convinced Albion Tourgée, a radical Republican who had served as a state superior court judge during Reconstruction in North Carolina and who was also the author of the best-selling novel, *A Fool's Errand, By One of the Fools,* to lead the constitutional challenge, along with New Orleans attorney James C. Walker.

The foundation of the *Plessy* challenge began with the Committee's first test case, *State of Louisiana v. Desdunes*.[11] Daniel Desdunes, a twenty-one year old New Orleans Creole of mixed ancestry, who by most accounts could be seen as "white," purchased on February 24, 1892, a first-class railroad ticket on a train bound from New Orleans to Mobile, Alabama on the Louisville and Nashville Railroad. Upon boarding, Desdunes took his seat in the whites-only car. The Committee had previously informed the railroad of Desdunes' mixed ancestry and worked out an arrangement whereby Desdunes would be arrested and charged with violating the Separate Car Act.[12]



Rodolfe L. Dedunes from New Orleans was one of the founders of the Comité des Citoyens (Citizens' Committee) which launched the Plessy case. Daniel Desdunes, the defendant in *State v. Desdunes,* was his son.

Desdunes' attempt to overturn the Separate Car Act revolved around four main arguments. Desdunes maintained that the Louisiana statute violated the Fourteenth Amendment's Privileges and Immunities and Equal Protection Clauses because it "used race to condition his rights by directing it to be the

basis for refusal of service on a common carrier."[13] Moreover, to use race in this way, Desdunes argued, constituted a badge of slavery, which the Thirteenth Amendment was intended to abolish.[14] He argued next that the statute violated the Commerce Clause of Article I of the Constitution because the train was engaged in interstate commerce and therefore only Congress had the power to regulate the carrier.[15] Desdunes also contended that the State did not have the constitutional authority to give a train conductor the power to determine a passenger's racial identity, and therefore a passenger's right to take a seat in a particular car. To give this power to the conductor, Desdunes averred, violated the Fourteenth Amendment's Due Process clause because racial identity constituted a property right that was being arbitrarily decided by railroad conductors.

The court, however, did not need to reach most of these substantive questions. On May 25, 1892 the Louisiana Supreme Court issued a decision in *Abbot v. Hicks* holding that the Separate Car Act only applied to intrastate commerce.[16] Because Desdunes was traveling from Louisiana to Alabama, the train was engaged in interstate commerce, making the Separate Car Act inapplicable. Consequently, in July 1892 "newly installed Criminal District Court Judge John H. Ferguson without opinion essentially dismissed the State's case against Daniel Desdunes."[17]

The Committee counted this a partial victory, vindicating their Commerce Clause argument. But the Separate Car Act still stood as law governing travel within the State. To put the law to the test again, the Committee set about building a new case. Homer A. Plessy, a thirty-year-old Creole shoemaker and Freemason from New Orleans, agreed to participate in another carefully-orchestrated train trip. He purchased a first-class ticket on the East Louisiana Railway for a trip entirely within Louisiana, from New Orleans to Covington. Like Desdunes, Plessy boarded the train and sat in the car reserved for "whites."

The Committee prearranged with the railroad company for the conductor to ask Plessy whether he was a "colored man," and then upon receiving his answer in the affirmative, to instruct him to move out of the whites-only car. Upon his refusal, police officers arrested him for violating the conductor's order under the Separate Car Act.[18] Plessy was then charged with "unlawfully, insist[ing] on going into a coach to which, by race, he did not belong."[19] The statutory penalty for breaking the Separate Car Act was either a twenty-five dollar fine or up to twenty days in jail.[20]

In the trial court James Walker and Albion Tourgée defended Plessy by arguing that the court lacked jurisdiction to enforce the Separate Car Act because it was unconstitutional under the Thirteenth and Fourteenth Amendments of the Constitution. The arguments were the same arguments that had been made in the Desdunes case. Judge John Ferguson rejected their jurisdiction arguments and "warned Plessy that he faced fine or imprisonment unless either a writ of prohibition or certiorari arrested jurisdiction and in effect sustained his constitutional argument against the statute."[21]

Consequently, Tourgée and Walker made the decision to appeal Judge Ferguson's decision by seeking a writ of prohibition from the Louisiana Supreme Court. The claim to the State Supreme Court was that Judge Ferguson, by allowing the case against Mr. Plessy to proceed, was "exceeding the bounds of judicial power by entertaining a prosecution for a crime not created by law."[22] The Louisiana Supreme Court denied Plessy's plea for a writ, calling the majority of Plessy's claims "argumentative" and noting that most of the arguments failed to cite "provisions of the state or federal constitutions" as a basis for the relief requested.[23] The Court disposed of the Thirteenth Amendment and Privileges and Immunities claims by relying on the Supreme Court's holding in the *Civil Rights Cases*.[24]

With respect to the Fourteenth Amendment Equal Protection argument the Court upheld the constitutionality of the legislation calling the statute a valid "exercise of the police power. . [that] expresses the conviction of the legislative department of the state that the separation of the races in public conveyances. . . is in the interest of public order, peace, and comfort."[25] The Court also dismissed the Fourteenth Amendment Due Process argument stating, "The discretion vested in the officer to decide primarily the coach to which each passenger, by race belongs, is only that necessary discretion attending every imposition of a duty, to determine whether the occasion exists which calls for its existence."[26] The next step in the case would be to appeal the Louisiana Supreme Court's decision to the Supreme Court.

Tourgée knew that the task of convincing the Supreme Court to invalidate the Louisiana Separate Car Act would be difficult. He was well aware of the decisions in the *Slaughter-House Cases, U.S. v. Cruikshank,* and the *Civil Rights Cases,* which together limited the scope of the Thirteenth and Fourteenth Amendments. In the *Slaughter-House Cases,* the Court held that state citizenship was separate and distinct from national citizenship, and

Albion W. Tourgee was the lead attorney for Homer Plessy. Tourgee, descendant of French Huguenots, was born in Ohio and fought in the Union Army. Injured in combat, he studied law and served as a journalist. After the war, he worked tirelessly for the civil rights of freed slaves bringing him to the attention of the Comité des Citoyens which chose him for the Plessy case.

the Fourteenth Amendment protected the privileges and immunities of national citizenship, not state citizenship.[27] The Court also narrowly construed the Thirteenth Amendment, holding that the purpose of the Amendment was to eliminate the chattel relationship of human slavery.[28]

The Court had ruled in *U.S. v. Cruikshank* that the Fourteenth Amendment only applied to state action, not individual action.[29] In the *Civil Rights Cases,* the Court invalidated a provision in the Civil Rights Act of 1875 that prohibited segregation in public accommodations. The Court held that the section in controversy exceeded Congress' legislative authority under the Equal Protection Clause because it targeted private action.[30] Furthermore, the Court declared that the Thirteenth Amendment did not prohibit "every act of discrimination."[31]

Although the Court had restricted the scope of the Reconstruction Amendments, these decisions left open the question whether racial discrimination *mandated* by a state statute violated the Fourteenth Amendment. The Separate Car Act was not aimed at reaching discrimination in private; it was aimed at requiring discrimination in public. *The Civil Rights Cases* and *Cruikshank,* by contrast, had concerned actions by private individuals.

Tourgée saw a window of opportunity because in *Strauder v. West Virginia,* the Court had held that West Virginia's exclusion of black citizens from the jury in a criminal trial based purely on their perceived race violated the black defendant's rights under the Equal Protection Clause of the Fourteenth Amendment.[32] Moreover, in the *Civil Rights Cases,* the Court had indicated that the Thirteenth Amendment was intended to abolish "all badges and incidents of slavery," though it was unclear what constituted a badge or incident of slavery.[33] Finally, there was the question of the definition of race. The Separate Car Act referred to "white" and "colored" cars but the statute failed to define either category of people, leaving the decision to the railroad conductor.[34] Tourgée wrote that the definition of race 'is a question [the Supreme Court] may as well take up, if for nothing else, to let the court sharpen its wits on.'[35]

A crucial component of Tourgée's legal strategy was to increase public pressure on the Court. Tourgée described the Court as 'the foe of liberty until forced to move on by public opinion.'[36] Consequently, he initiated the National Citizens Rights Association (NCRA) to expose violations of civil rights of both blacks and whites. Tourgée hoped the NCRA would include over one million members by the time the Court heard *Plessy v. Ferguson.*[37] He explained, 'If we can wipe out the indifference of the white people of the North upon this subject, there is a chance that the Supreme Court . . . when moved by the awakened and potent conscience of the people, may grant its edict against caste.'[38] Although the NCRA failed to garner the support Tourgée had imagined, falling short especially with middle-class Northern blacks,[39] Tourgée did not abandon his conviction that the Court's precedent failed to secure civil rights generally, not just the rights of blacks. In his legal argument, Tourgée would attempt to turn white supremacy on its head by connecting the privileges of whiteness through the uncertainty of racial identity to the insecurity of civil rights for blacks *and* whites.

The Argument

Tourgée anticipated that he would face hostility from the Court. By 1893, the best outcome that Tourgée could imagine in the Supreme Court was a five-to-four majority in his favor.[40] In assessing the political and jurisprudential make up of the Court, Tourgée figured that at least four of the justices would be aligned against him, and he could only count on Justice Harlan to be in his favor.[41] Additionally, there was one vacancy on the bench, and of the three remaining justices, "[H]e believed one inclined toward them 'legally' but not 'politically,' and two others 'may be brought over by [our] argument.'"[42]

The main thrust of his legal argument focused on the Fourteenth Amendment, which he claimed initiated a new conception of citizenship. Rejecting the *Cruikshank* decision, Tourgée stated, "[The Fourteenth Amendment] creates a *new citizenship* – new in character, new in extent; new in method of determination, new in essential incident."[43] He elaborated further, "[I]t enlarged the privileges and immunities of pre-existing citizenship by changing the method of determination and adding to it the right of State-citizenship to attach immediately upon residence obtained in the State, without regard to State legislation."[44] Tourgée thus rejected the theory of passive citizenship. If a state granted a public privilege to its citizens, the state could not then deny the enjoyment of that privilege to a portion of its citizenry because that portion was black.

Tourgée declared, "The prime essential of all citizenship is *equality* of personal right and the *free* and secure enjoyment of all public privileges. These are the very essence of citizenship in all free governments."[45]

Tourgée's legal argument was radical.[46] His assertion that the Reconstruction Amendments shifted the means by which rights were to be secured from the states to the Federal government was a direct affront to the Court's precedent. Tourgée argued that the Reconstruction Amendments destroyed the institution of slavery, and that the institution of slavery had included more than the traditional chattel relationship. "Slavery was a caste, a legal condition of subjection to the dominant class, a bondage quite separable from the incident of ownership."[47]

Tourgée's argument also linked "whiteness" to property rights by showing that racial identity was directly connected to economic opportunity. This argument was likely an effort to pique the Court's interest in the case. It also might have been an attempt to draw the Court out of abstract legal theory and pull it into life in the South. He challenged the Court, "Suppose a member of this court, nay, suppose every member of it . . . should wake to-morrow with a black skin and curly hair . . . It is easy to imagine what would be the result, the indignation, the protests, the assertion of pure Caucasian ancestry."[49] Adding to the boldness of his argument, Tourgée referred to the reality of interracial mixing and ancestry. As Tourgée biographer Mark Elliott explains, "Tourgée's brief repeatedly hammered home the reality that racial intermixture and intermarriage – the bugaboo of integration – was an accomplished fact that was benign, commonplace, and could not be stopped by segregation laws."[50]

It might be argued that Tourgée could have improved his chances of victory had he taken a less radical approach, perhaps by focusing on the manifest inequality of the conditions of the "white" and "colored" train carriages. To take this tack, however, was to legitimate the public and invidious distinctions involved in the state-mandated actions of the conductors. It was precisely to refuse this public humiliation that the Committee was pursuing the legal challenge in the first place. Consequently, he declared, "We insist that the State has no right to compel us to ride in a car 'set apart' for a particular race, whether it is as good as another or not."[51]

Ultimately, the Court rejected Tourgée's argument. However, the Court did not uphold the Separate Car Act in its entirety; it invalidated the portion of the statute that exempted a railroad company and conductor from civil liability for erroneous racial classifications.[52] Yet, that part of the decision was of little consolation to Tourgée, who, after the decision, entirely withdrew from "civil rights agitation."[53] While Tourgée eventually came to believe that the *Plessy* challenge was a mistake,[54] those he represented insisted, 'We think that it is more noble and dignified to fight, no matter what, than to show a passive attitude of resignation.'[55]

As radical as Tourgée's arguments were perceived to be in 1896, they would receive some vindication in 1950 after Justice Robert Jackson rediscovered Tourgée's brief while researching segregation laws. After discovering the brief, Justice Jackson wrote, 'I have gone to [Tourgée's] old brief, filed here [at the Supreme Court], and there is no argument made today that he would not make to the court. His brief is a rather witty production of points.'[56] Tellingly, Justice Jackson concluded that a 'post-mortem victory' for Tourgée's position might soon be realized.[57]

An Interlude: A Perspective on Justice Henry Billings Brown

Justice Henry Billings Brown was appointed to the Supreme Court of the United States in 1890. During his fifteen-and-a-half-year tenure on the Supreme Court, Justice Brown wrote hundreds of opinions for the Court, mainly in, but not limited to, admiralty and patent law, which were his specialties.

Justice Brown was a pleasant, sociable, and gracious member of the Fuller Court. Those familiar with him noted that he worked both efficiently and diligently on cases before him, and was dedicated to the ideal of doing "justice." He remained humble and was never given to pretension. His colleague, Justice Day described him as "a capital judge and a genial and loveable companion, free from littleness, rejoicing in the good fortune of his brethren, and at all times upholding the honour and dignity of the Court."[58]

Henry Billings Brown was born March 2, 1836 in South Lee, Massachusetts, a small paper manufacturing town. Henry became acquainted with industrial life at an early age. He recalled, "Among my earliest recollections is that of sitting in a forge, watching the sparks fly from the trip hammer and marveling why water was used to stimulate instead of extinguish fires." Henry's father owned and operated several lumber mills in South Lee, which further exposed Henry to industrialization. He had "a natural fondness of machinery and was never so happy as when allowed to 'assist' at the sawing of logs and shingles and the grinding of grain in

Henry Billings Brown at the time he sat on the U.S. District Court for the Eastern District of Michigan.

[his] father's mills." Henry appreciated a strong work ethic and was often described as diligent, dedicated, and efficient in completing his work.

Henry entered Yale University in 1852 at the youthful age of sixteen, two years younger than most of his peers. Years later, he would write that being younger than his peers made it difficult for him to adjust to life in college. He eventually earned a degree from Yale and spent the following year traveling in Europe. Upon his return home, he went back to Yale for law school but after just nine months at Yale, Henry moved to Cambridge and began attending Harvard Law School, where he stayed for the next six months. Henry enjoyed law school, as it was free from many of the compulsory duties he had experienced during his undergraduate education, but in the end, Henry did not earn a law degree from either school. He had grown tired of the rigors of academic life and was ready for a new phase in his life.

After leaving Harvard, Henry was determined to find his own niche in the world, and he eventually settled on Detroit, moving there in 1859. His reasons for settling in Detroit were twofold. His mother's uncle lived in Detroit, and through social connections in Pennsylvania, Henry received two letters of introduction to use in Detroit. Soon after arriving in Detroit, Henry joined the law firm of Walker & Russell, where he completed his legal studies. In July 1860, Brown was admitted to the Michigan Bar and became a practicing attorney. He spared no time in making new connections and acquainting himself with local legal practice in Detroit, which at the time was mainly concerned with shipping and admiralty law.

Brown received his first professional break in the spring of 1861 after the election of Abraham Lincoln. Through a family friend, Brown was appointed Deputy U.S. Marshal. As Deputy U.S. Marshal, Brown came into contact with numerous admiralty lawyers, and this fostered a passion in Brown for the practice of admiralty law, Brown wrote, "[The appointment] was out of the line of professional advancement, but I had no hesitation in accepting it, as it not only gave me an immediate income, but also brought me into connection with vessel men of all classes who naturally gravitate toward the Marshal's office whenever any question arises as to 'tying up' a vessel to secure a claim."

Shortly thereafter, Brown was appointed Assistant U.S. Attorney for the Eastern District of Michigan. He was extremely active in the office, trying cases, interrogating witnesses, preparing indictments, and attending the sessions of the grand jury. As Brown later recalled, "This was really the beginning of my professional activity, and by the expiration of the District Attorney's official term I had built up a practice, principally in the admiralty branch, which justified my taking an office to myself." Through his hard work and dedication as an Assistant U.S. Attorney and a Deputy U.S. Marshal, Brown was able to open a private practice, which specialized in admiralty law. On December 31, 1861 Brown wrote in his diary, "Indeed, I have already had quite a number of admiralty cases (for which I have a particular partiality), brought to me through my connection with the marshal's office . . . My professional business is much greater than it was a year ago, and long may it live and grow." Yet, Brown never enjoyed the competitive nature of private practice, and the constant need to secure business: "I have done but little because I could get but little to do, and it is not my nature to drum business as most Western lawyers do."

In 1868, Republican Michigan Governor Henry Crapo appointed Brown to a temporary position on the Wayne County Circuit Court in Detroit. However, his time on the bench was short-lived. The increased voter turnout out because of the presidential election in 1868 did not help Brown, who ran as a Republican for re-election in predominantly Democratic Wayne County. Brown's contemporary, Charles Kent wrote, "Judge Brown was defeated by a candidate far inferior, simply because the Democrats were in a majority in this county." Yet, Brown's time on the circuit court bench was crucial, as it opened his mind to the possibility of a judicial career.

In his *Memoir,* Brown stated, "I was decisively beaten at the November election, though I ran considerably ahead of my ticket. But short as my experience was, it gave me a taste for judicial life which has much to do in fixing my permanent career." After his defeat in the election, Brown returned to private practice at the well-known admiralty firm of Newberry & Pond, which later became Newberry, Pond & Brown. He practiced at the firm for seven years, all the while remaining active in Republican Party politics.

He even tried, albeit unsuccessfully, to win the Republican nomination for Congress in 1871. Despite his political disappointments, Brown's return to private practice at Newberry & Pond "was a most important step in his professional progress, and soon gave him business of more importance than he had before had."

While in private practice, Brown often viewed the practice of law with pessimism. For example, on May 30, 1862, Brown argued his first case in the Michigan Supreme Court, and lost. In response, he wrote, "Verily there is little certainty in the law." In another journal entry in 1863 he wrote, "How sad it is to think that [a lawyer's] prosperity generally grows fat upon the miseries of the rest of the world." In an entry on July 21, 1869 he scribbled, "Won disgracefully a little case in the justice's court. The justice of the peace's partiality so marked I was ashamed of him and myself." Moreover, in his *Memoir,* Brown noted, "I felt my health was giving way under the uncongenial strifes of the Bar, and the constant fear lest by some mistake of my own the interests of my clients might be sacrificed." Brown was a competent lawyer, but private practice left much to be desired. It was only after his appointment to the U. S. District Court that many of his desires and ambitions were satisfied.

On March 11, 1875, Judge John W. Longyear died, creating a vacancy on the U. S. District Court for the Eastern District of Michigan. Brown, although saddened upon hearing the news of Judge Longyear's death, "at once entered on an active canvass for the position of United States District Judge," for which there was little competition. Kent stated, "I do not remember that there were other candidates. The salary of a District Judge was then but $3,500.00 per year, an amount too small to attract competent lawyers, who were dependent on their earnings." Brown, who was well respected in the Detroit legal community, in a short time received the appointment from President Ulysses S. Grant and was unanimously confirmed by the Senate. Yet, Kent wrote, "I do not think that either [Brown] or his best friends thought him more deserving of judicial honours than some others. His great distinction was that he had a great ambition to be a judge and was able to accept the position with the small salary then paid."

Judge Brown sat on the District Court for fifteen-and-a-half years, which in his opinion were "characterized by no event of special importance, were full of pleasurable satisfaction and were not overburdened by work." During these years, Detroit continued to be a major shipping hub. Accordingly, admiralty cases dominated Judge Brown's docket, and he became nationally recognized as an expert in admiralty jurisprudence. In 1876, Brown published a treatise on admiralty law, titled *Brown's Admiralty Reports,* which was well received and highly respected among admiralty scholars. In fact, according to Kent, "The admiralty business greatly increased in Detroit after Justice Brown went on the Bench . . . His Court not only had the business which naturally belonged in Detroit, but also absorbed considerable from other ports. Cases were frequently brought from other places by consent in order to have the trial before him." Judge Brown's impeccable reputation in admiralty law and his congenial and cordial personality were important traits that would help him earn a position on the Supreme Court.

Brown was a well-respected trial judge. He was known for carefully listening to both sides of an argument. His decisions were concise and his jury instructions were always clear. Overall, Brown was conservative and hesitated to overturn well-established precedent. Still, if he was convinced that he had erred in his reasoning, he was willing to reverse himself. However, "he had no ambition to attract attention by new or extravagant views." Kent wrote, "Perhaps his greatest fault was an ambition to understand a case and express his opinion too early in the argument."

Brown was appointed to the Supreme Court by President Benjamin Harrison to replace Justice Samuel Miller, who had died on October 13, 1890. In his *Memoir,* Brown attributes his promotion to the Supreme Court to the support of then Circuit Judge, but later Supreme Court Justice, Howell E. Jackson. Brown had developed affable relations with Judge Jackson in Tennessee while riding the judicial circuit earlier in his career. They became close friends and in his *Memoir* Judge Brown fondly recalled Judge Jackson's visits to Detroit, and Judge Jackson's pleasant stays at his home. Judge Jackson had developed a friendship with President Harrison while they were both serving in the U. S. Senate years earlier. Judge Jackson informed President Harrison of Judge Brown's well-respected reputation and his expertise in admiralty law. Ironically, but fittingly, Brown says that it was he who later encouraged President Cleveland to appoint Justice Jackson to the Supreme Court.

On the Supreme Court, Justice Brown's opinions reflect an acute awareness of Gilded Age society and the competing relationships within it. The manner in which he tried to balance those relationships differed from the means professed by either classical or

progressive legal thought. Brown's legal thought could be best described as pragmatic, as he recognized the demands of the changing environment and believed that the law should change with society. He was not interested in reforming the legal system as the progressives were, but he also questioned the tenets of laissez-faire constitutionalism, upon which classical legal thought relied heavily. For example, he argued that there was nothing unnatural about the unequal distribution of property, but stated, "I am by no means satisfied that the old maxim, that the country which is governed least is governed best, may not in these days of monopolies and combinations, be subject to revision."[59]

Like most of his brethren on the Fuller Court, Justice Brown was "faithful to a well-established constitutional tradition."[60] However, that tradition was unable to deal with the rapid expansion of industry, influx of immigrants, and innovation that characterized the Gilded Age. As Howard Gillman wrote, "The crisis in American constitutionalism [during the Gilded Age] was triggered by the judiciary's stubborn attachment to. . . an increasingly anachronistic jurisprudence, one that had lost its moorings in the storm of industrialization."[61] However, "It was [a] mischaracterization of turn-of-the-century constitutional jurisprudence… to view judicial opinions as empty rhetoric designed to mask policy preferences rather than as principled explanations for legal decisions."[62] Justice Brown often relied on precedent as a guide, but not as a cloak for his personal or political advantage. In his *Memoir,* Justice Brown claimed, "I have never known partisan considerations to enter into the disposition of cases. By common consent politics were abjured when taking a seat upon the Supreme Bench."

Interpreting the *Plessy* Decision

Justice Brown's decision in *Plessy v. Ferguson* followed the traditional legal approach that had been applied to cases concerning state police powers. In the decision, Justice Brown held that the petitioner's attorney failed to demonstrate how the Louisiana Separate Car Act constituted slavery, and that Plessy had not been deprived of his property since he was not entitled to the legal status of a "white man" under Louisiana law. The definition of "white" was a matter left entirely to the states. Justice Brown wrote, "If he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so called property [i.e. his reputation]. Upon the other hand, if he be a colored man and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man."[63] As a result, he found the Louisiana statute to be a valid exercise of the police powers of the state.

Justice Brown relied heavily on school segregation precedent to reach his conclusions. Various state and federal courts had held school segregation to be within the constitutional purview of state legislatures. In the school segregation cases, the courts had recognized the legitimacy of the argument that white parents ought to be able to choose with whom their children were associating in school, though they gave no such veto to black parents. However, courts also recognized that black children had the right of access to an equal education. Thus, the issue in the school segregation cases was construed as one of balancing freedom of association as protected by the First Amendment with racial equality as protected by the Fourteenth Amendment. Justice Brown believed that the issues involved in *Plessy* mirrored those in school segregation cases. Accordingly, Brown drew the same conclusion as previous Courts had drawn in the school segregation cases.

A point of contention between Justice Brown and the lone dissenter, Justice Harlan, was over the intended purpose of the Louisiana statute. A passage from Brown's opinion, which is often cited by scholars to show Brown's lack of tact and his legalistic approach, reads, "[T]he assumption [is] that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."[64] Justice Brown contended that the purpose of the statute was not to make one race subservient to the other, and "Brown's point was not to suggest . . . that the perception by blacks of Jim Crow as an insult would be unfounded or gratuitous, but only that racial degradation or the maintenance of white supremacy was not the purpose or the end of the statute."[65]

According to Owen Fiss, author of the Holmes Devise volume on the Fuller Court, "Brown hypothesized a much more benign purpose for the statute, one that presumably did not transgress the principle of equal treatment."[66] Although Justice Brown did not explicitly state in his opinion what he thought the purpose of the statute was, he did indicate that he believed separation of blacks and whites to be acceptable if it done to help avoid confrontation between the two groups. Justice Brown wrote, "In determining the question of reasonableness, [a state legislature] is at liberty to

act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order."[67] Inclined to take at face value the claim of Louisiana's white legislators that they represented "the people," despite that same legislature's aggressive involvement in suppressing black voting, Justice Brown could imagine the Louisiana statute as a simple defense of "custom" aimed at avoiding violence, hence a justifiable exercise of the State's police powers.

In 1910, four years after retiring from the Supreme Court, Justice Brown gave a speech against women's suffrage to the Ladies' Congressional Club of Washington, D.C. In his speech, Justice Brown referred to what he saw as the problems that arose in response to the extension of voting rights to blacks in order to make his point that the extension of the right to vote to women would be ill advised. He stated, "While in the North, where the colored vote is small, no great harm has resulted, the [Fifteenth] amendment has been generally disregarded in the South, and a serious attempt to enforce it by the military arm, if persisted in, would probably have resulted in another civil war."[68]

His belief in the unenforceability of the Fifteenth Amendment in the post-Reconstruction South – though contested by subsequent historians - may shed light on the *Plessy* decision. Given his statement in 1910, it is possible that Justice Brown took a pragmatic approach to whether the separate train car law was a deprivation of liberty. He may have decided to hold the law constitutional because he believed that the white-supremacist state governments in the South would ignore the Court's decision if it found legally-mandated segregation to be unconstitutional. Successful defiance, he may have feared, could destroy the Court's legitimacy.

In an ideal world, Justice Brown may have reasoned, separation had no effect on equality and this made it possible for facilities to be separate but equal. However, Justice Brown avoided the normative question of whether forced separation itself was just. Therefore, it is reasonable to believe that Justice Brown saw segregation as a necessary means to protect against conflict in the south, such as that which might erupt between blacks and whites, by allowing the state to separate the races. In a letter to Charles Kent, Brown wrote, "My experience has taught me that the natural position of two [races] toward each other is one of hostility, to which there are very few exceptions."

This begs the question of whether Brown's decision reflected a belief that the state should enforce white supremacy. Some scholars have argued that Brown's opinion in Plessy reflected Herbert Spencer's social Darwinism, and point to the passage, "Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences,"[69] as evidence. They equate Brown's reasoning with the prevalent racism of the Gilded Age. However, a closer reading of Brown's reasoning suggests that Brown believed that it was entirely possible to both keep the races separate and to have equality.[70] Brown envisioned that the two races would exist independently of each other, which would eliminate racial antagonism. Brown's assumptions about racial separation were neither novel nor extreme. Booker T. Washington, an educated outspoken black leader during the Gilded Age, asserted in 1895, "In all things that are purely social [Blacks and Whites] can be as separate as the fingers, yet one as the hand in all things essential to mutual progress."[71] Brown's argument rested on the belief that the Court could not force social equality, and if it tried, it would "only result in accentuating the difficulties of the present situation."[72] He added, "I know nothing more ineradicable than racial antipathy, except, perhaps, national antipathy."

The Aftermath

Brown, in reflecting on the decision after his retirement could not help feeling that the Court had sacrificed the spirit of the Reconstruction Amendments to the letter of the law by failing to "secure the equality of the two races in all places affected with a public interest."[73] He came to recognize, as Justice Harlan had pointed out, that the Louisiana law was designed not to protect blacks from the hostility of whites, but was to keep blacks from associating with whites. Brown explained, "[T]he statute had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied or assigned to white persons."[74]

Perhaps, like Justice Robert Jackson in 1950, Justice Brown's contrition, just a year before his death, about what he saw as the true purpose behind the Separate Car Act may have been a forecast of a "post-mortem victory" for Tourgée's public rights position. The very fact that Justice Brown took the opportunity to address the *Plessy* decision years later is intriguing because the case had not gained the degree of notoriety that it has today.

His reflections on the case show that he may not have fully understood the structural impediments that white supremacists sought to impose by enacting legislation like the Separate Car Act. While Justice Brown's comments about the strength of "racial antipathy" in the country indicate a genuine understanding of racism in America, he, like Atticus Finch in *To Kill a Mockingbird,* "believed in the power of changing hearts"[75] as the means to eliminate racial hostility. In his *Plessy* decision, Brown writes, "If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals."[76] The problem with the changing hearts approach is that it is "the alibi of people who do not wish to endanger the status quo."[77] As Malcolm Gladwell in his recent *New Yorker* article on Atticus Finch explains, "[I]njustice requires more than a change of heart."[78] Justice Brown came to see that only after he had written the decision in *Plessy v. Ferguson.* By upholding the constitutionality of the Separate Car Act, Justice Brown had in effect allowed control of the status quo going forward to be in the hands of the white supremacists. ■

End Notes

1. Acknowledgements: I am grateful to Professor Rebecca J. Scott of the University of Michigan Law School for her generous and active support in putting this article together. Much of the research and ideas in this article come from Professor Scott's recent article on *Plessy v. Ferguson* in the Michigan Law Review. *See* Rebecca J. Scott, *Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge,* 106 MICH. L. REV. 777 (2008). I would also like to thank my parents for their attention and willingness to share ideas with me. Much of this article is taken from the Senior Honors History Thesis that I wrote in 2005. *See* Trevor Broad, *A Forgotten Man in a Tumultuous Time: The Gilded Age As Seen by U.S. Supreme Court Associate Justice Henry Billings Brown* 2 MICH. J. HIST. 1 (2005); *See* also Trevor Broad, *Henry Billings Brown* in 27 SUP. CT. HIST. SOC. QUART. 1 (2006).
2. But *see* Steven Lubet, *Reconstructing Atticus Finch* 97 MICH. L. REV. 139 (1999) (arguing that Atticus Finch attempts to shift blame by exploiting negative female stereotypes in defending Tom Robinson).
3. *See* JOSEPH FLORA, *Harper Lee, in* SOUTHERN WRITERS: A NEW BIOGRAPHICAL DICTIONARY 249, 249 (2006) (stating that the book "arrived at the right moment to help the South and the nation grapple with the racial tensions [of] the accelerating civil rights movement").
4. Judge Roth was appointed in 1962 to fill the vacancy created by current U.S. District Judge John Feikens.
5. Over the course of two days, thousands of people came to pay their final respects to Rosa Parks, who lay in state in the United States Capitol Rotunda, making her the first woman and only the second African-American to receive the honor of being laid in honor in the U.S. Capitol Rotunda.
6. *Plessy v. Ferguson,* 163 U.S. 537 (1896).
7. RICHARD KLUGER, SIMPLE JUSTICE 73 (1975).
8. *Id.* at 73-74.
9. CHARLES A. LOFGREN, THE PLESSY CASE: A LEGAL-HISTORICAL INTERPRETATION 197 (1987).
10. *Ex parte Plessy,* 11 So. 948, 948-949 (La. 1892) (quoting 890 La. Acts 152).
11. State v. Desdunes, No. 18,685 (Section A, Criminal District Court, Parish of Orleans 1892). The facts of the *Desdunes* case are taken from Thomas J. Davis, *More Than Segregation, Racial Identity: The Neglected Question in Plessy v. Ferguson,* 10 WASH. & LEE RACE & ETHNIC ANC. L.J. 1, 22-26 (2004).
12. *See id.* at 22-23 (stating that "railroad officials eagerly agreed to work with the [Committee].").
13. *Id.* at 23.
14. *See The Civil Rights Cases,* 109 U.S. 3, 20 (1883) (stating that the Thirteenth Amendment was intended to abolish "all badges and incidents of slavery").
15. Desdunes was relying on the U.S. Supreme Court's decision in *Hall v. DeCuir,* 95 U.S. 485 (1877), which held that state legislation that "impose[s] a direct burden upon inter-state commerce… encroach[es] upon the exclusive power of Congress" and is unconstitutional. The Supreme Court determined that states could not require carriers engaged in interstate commerce to provide integrated facilities; only Congress had that power.
16. *Abbott v. Hicks,* 11 So. 74, 74-75 (La. 1892).
17. Davis, *supra* note 11, at 26.
18. *See KEITH WELDON MEDLEY, WE AS FREEMEN: Plessy v. Ferguson* (2003) (discussing the details of the exchange between Homer Plessy and the conductor).
19. Affidavit of C.C. Cain, *Ex parte Plessy,* 11 So. 948 (La. 1892) (No. 11,134) Louisiana Supreme Court Archives, Special Collections, University of New Orleans Library. Photocopy courtesy of Rebecca Scott.
20. Act of July 10, 1980, No. 111, 1890 La. Acts 152, 152-153, *reprinted in* Record of Case at 6-7, Plessy v. Ferguson, 163 U.S. 537 (1896) (No. 15,248).
21. Davis, *supra* note 11, at 27.
22. *Ex parte Plessy,* 11 So. 948 (La 1892).
23. *Id.* at 949.
24. *See id.* at 950 (quoting Civil Rights Cases, 109 U.S. 3 (1883)).
25. *Id.*
26. *Id.*
27. 83 U.S. 36, 78-80 (1873).
28. *Id.* at 69.
29. 92 U.S. 542, 554-555 (1876).
30. *Civil Rights Cases,* 109 U.S. at 14.
31. *Id.* at 24.
32. 100 U.S. 303, 310 (1879).
33. 109 U.S. at 20.
34. *See* Brief for Plaintiff in Error at 9, No. 210, *Plessy v. Ferguson,* 163 U.S. 537 (1896) (arguing that strict racial categorization was unattainable).
35. MARK ELLIOTT, COLOR-BLIND JUSTICE: ALBION TOURGÉE 307 (2006) [hereinafter COLOR-BLIND JUSTICE] (quoting Albion Tourgée to J.C. Walker, March 11, 1892, item 6101, reel 29, Tourgée Papers, *surpa* note 12).
36. *Id.* at 310 (quoting Albion Tourgée to Louis A. Martinet, October 31, 1893, item 7438, reel 34, Tourgée Papers, *supra* note 12).
37. *Id.* at 308-309.
38. *Id.* at 310 (quoting Albion Tourgée to Bishop Turner, October 1983, item 7433, reel 34, Tourgée Papers, *supra* note 12).
39. *Id.* at 311.
40. *Id.* at 310.
41. *Id.*
42. *Id.* (quoting Albion Tourgée to Louis A. Martinet, October 31, 1893, item 7438, reel 34, Tourgée Papers, *supra* note 12).
43. Brief for Plaintiff in Error, supra note 29 at 26 (emphasis in original).
44. *Id.* at 27.
45. *Id.* at 14 (emphasis in original).
46. *See* Mark Elliott, *Race, Color Blindness, and the Democratic Public: Albion W. Tourgée's Radical Principles in Plessy v. Ferguson,* 67 J. S. Hist. 287, 310 (2001) (describing Tourgée's argument as "radical") [hereinafter Elliot].
47. Brief for Plaintiff in Error, *supra* note 34 at 32.
48. COLOR-BLIND JUSTICE, *supra* note 35 at 289 ("It is doubtful that Tourgée was sincere in his assertion that whiteness should be considered property, but rather more likely that he intended to force the Court to consider the social meaning of whiteness.").
49. Brief for Plaintiff in Error, *supra* note 34 at 35.
50. COLOR-BLIND JUSTICE, *supra* note 35 at 289.
51. Brief for Plaintiff in Error, *supra* note 34 at 29.
52. See COLOR-BLIND JUSTICE, *supra* note 35 at 292 (discussing Justice Brown's majority opinion).
53. *Id.* at 295.

54. *Id.* at 289.
55. Elliott, *supra* note 44 at 310 (quoting Rodolphe Lucien Desdunes, OUR PEOPLE AND OUR HISTORY, 174, translated and edited by Dorothea Olga McCants (Montreal 1911; Eng. Ed., Baton Rouge, 1973).).
56. *Id.* at 328 (quoting Robert H. Jackson to Mr. Ernest Crawford and Mr. Walter H. Edson, April 4, 1950 (copy in the Tourgée Papers)).
57. *Id.*
58. The quotations in this section, unless otherwise noted, are taken from Charles A. Kent, *Memoir of Henry Billings Brown: Late Justice of the Supreme Court of the United States,* (New York: Duffield & Company, 1915) and from the personal papers of Henry Billings Brown located in the Burton Historical Collection at the Detroit Public Library.
59. Henry B. Brown, "The Distribution of Property," *Report of the Sixteenth Annual Meeting of the American Bar Association* (1893) at 237.
60. HOWARD GILLMAN, THE CONSTITUTION BESIEGED 11 (1993).
61. *Id.*
62. *Id.*
63. 163 U.S. at 549.
64. *Id.* at 551.
65. OWEN M. FISS, TROUBLED BEGINNINGS OF THE MODERN STATE, 1888-1910, at 364 (1993).
66. *Id.*
67. 163 U.S. at 550.
68. Henry Billings Brown, "Women's Suffrage," A speech before the Ladies' Congressional Club of Washington, D.C., (April 1910) at 11, *available* at Harlan-Hatcher Graduate Library, University of Michigan, Ann Arbor, MI.
69. 163 U.S. at 551.
70. An interesting fact is that Brown was responsible for bringing the first black bailiff to the United States Supreme Court. See Rhonda Bates-Rudd, "Uncovering the Buried History of Black Detroiters," *The Detroit News,* 2 February 2000 <http://www.detnews.com/2000/african/0002/15/02020040.htm>. Brown, while he was on the Federal district bench in Detroit, became close friends with his bailiff Richard Bush who was an ex-slave. Upon his appointment to the Supreme Court, Brown brought Mr. Bush with him to the Supreme Court, and to be the first black bailiff for the U.S. Supreme Court. Additionally, they are both buried in Elwood Cemetery in Detroit, Michigan.
71. Booker T. Washington, *Booker T. Washington Advocates Self-Help, 1895,* in MAJOR PROBLEMS IN THE GILDED AGE AND THE PROGRESSIVE ERA 302 (Leon Fink and Thomas Paterson, eds., 2000).
72. 163 U.S. at 551.
73. Henry Billings Brown, *Dissenting Opinions of Mr. Justice Harlan,* 46 AM. L. REV. 335, 336 (1912).
74. *Id.* at 338.
75. Malcolm Gladwell, *The Courthouse Ring Atticus Finch and the Limits of Southern Liberalism,* THE NEW YORKER, Aug. 10, 2009, at 4, *available at* http://www.newyorker.com/reporting/2009/08/10/090810fa_fact_gladwell.
76. *Plessy v. Ferguson,* 163 U.S. 537, 551 (1896).
77. George Orwell, *Charles Dickens,* available at http://www.george-orwell.org/Charles_Dickens/0.html; see also Gladwell, *supra* note 75, (quoting George Orwell's Charles Dickens).
78. Gladwell, *supra* note 75 at 5.

Henry B. Brown - First Assistant United States Attorney in the Eastern District of Michigan

By: Ross Parker

After he moved to Detroit in 1859 and was admitted to the Bar the following year, Henry Billings Brown embarked on a course of self-education on the subject of admiralty law. This effort, as well as his meager income, was furthered by his appointment as a Deputy U. S. Marshal by a family friend, Colonel Dickey. The Marshal's office was frequently the scene of discussion and enforcement actions concerning claims against commercial vessels which made shipments to and from Detroit's busy port.

In 1863, Michigan was divided into two federal judicial districts, the Eastern and Western, with one District Judge, Marshal and U.S. Attorney for each. Alfred Russell, who had served since 1862 as U.S. Attorney for the District of Michigan, was appointed by President Lincoln in the Eastern District. The increase in federal litigation and his occasional absences, sometimes on assignment by the Lincoln administration, necessitated the hiring of an Assistant U. S. Attorney.

Like many who succeeded him, Brown's duties as an Assistant U. S. Attorney were his introduction to the practice of law. Most of his work involved the criminal side of the Office, including preparing all of the indictments, making grand jury presentations, and attending initial appearances. U. S. District Court sessions in Detroit were held on the first Tuesday of March, June and November, with admiralty cases the first Tuesday of every month. Sessions continued until all docketed cases were disposed of. Brown tried routine cases, especially when Russell was away. Since his employment was part-time, he was able to build a practice, primarily in admiralty law, by the end of his four years as an Assistant.

One category of cases he handled was the enforcement of the unpopular 1863 draft law. The fact that the statute allowed an exemption for anyone who could afford the $300 commutation fee aggravated the negative feeling about the law. Somewhat ironically, Brown was one of the 2,000 more affluent men of the District who took advantage of this provision.

The period of the Civil War and its aftermath was one of considerable change in the work of the U. S. Attorney's Office and the U. S. District Court. A crime wave after the war resulted in substantial increases in prosecutions for fraud, embezzlements, and crimes of violence. There was a growing realization that the Federal judicial system was inadequate in view of the admission of new states and the growth of the business economy and accompanying commercial litigation. The Federal Courts were increasingly assigned the responsibility of enforcing new Federal statutes designed to regulate economic growth. The result was a severe case backlog in the Federal Courts.

Into this atmosphere, Brown developed his lawyering skills and his reputation as an up-and-coming admiralty attorney. Like many of the estimated five hundred men and women who followed in Henry Brown's footsteps as an Assistant U.S. Attorney during the past 150 years, his work in that Office was an opportunity to learn how to be a litigator, to introduce him to Michigan's legal community, and to serve his country. ■

Membership Application

Annual membership dues:
(Complimentary to Federal Bar Association members)

☐ Professional/Member	$ 25.00
☐ Sustaining/Patron	$100.00 *or more*

Please make checks payable to:

Historical Society – U.S. District Court – E.D. Michigan

Mail to Historical Society, c/o David A. Gardey, U. S. Attorney's Office, 211 West Fort Street, Floor 25, Detroit, MI 48226
Email: david.gardey@usdoj.gov
Telephone: (313) 226-9591; Fax: (313) 226-3265

Membership contributions to the Society are tax deductible within the limits of the law.

Name: _____

Address: _____

City: _____

State/Zip Code: _____

Phone: _____
DAY EVENING

This membership is a gift from: _____

Questionnaire

We would like to know about your interests and skills. Please fill in this questionnaire and mail it with your membership fee.

Legal practice area *(if applicable):*

_____

Special interests in the field of legal history:

_____

_____

Yes, I would like to assist and/or actively participate in the following of the Society's activities *(Check as many as may apply):*

- ☐ Writing articles for the Society newsletter
- ☐ Conference planning
- ☐ Oral history
- ☐ Research in special topics in legal history
- ☐ Fund development for the Society
- ☐ Membership recruitment
- ☐ Archival preservation
- ☐ Exhibit preparation
- ☐ Educational programs
- ☐ Other *(please describe):* _____

_____

Suggestions for programs or projects:

_____

This Form May Be Duplicated And Submitted With Your Membership Fee

The Historical Society
U.S. District Court
Theodore Levin U.S. Courthouse
Detroit, Michigan 48226