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Posthumous pardon for Homer Plessy

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Most of us recall the U.S. Supreme Court's "separate but equal" doctrine from its flawed holding in *Plessy v. Ferguson*, which the court later overruled in *Brown v. Board of Education*. But many of us don't remember that the civil rights group Comite des Citoyens (Citizens' Committee) chose Homer Adolph Plessy — a seven-eighths white and one-eighth black Treme shoemaker — to commit civil disobedience by challenging the constitutionality of the Louisiana Separate Car Act of 1890.

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The act, ostensibly enacted "to promote the comfort of passengers on railway trains," required railway companies carrying passengers in the state to provide — as they termed it — "equal but separate accommodations for the white and colored races."

On June 7, 1892, in New Orleans, Plessy bought a first class, "whites only" ticket, boarded the train, declared that he was colored under Louisiana law, and was promptly arrested for sitting in the proscribed car section. Civil rights leaders Louis A. Martinet, Albion Tourgee, and others fought the act's reach, but courts upheld the constitutionality of Plessy's arrest at each level beginning with Orleans Parish Judge John Ferguson's decision.

The U.S. Supreme Court issued a 7-1 decision upholding the act. The lone dissent was by Justice John Marshall Harlan, who found the act violated both the 13th and 14th amendments. The railway car segregation imposed "badges of slavery or servitude" on African Americans and "[t]he thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches."

Later known as the Great Dissenter, Harlan declared the court's majority opinion would one day "prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case," and he wrote what is perhaps his most famous passage:

> In view of the constitution, in the eyes of the law, there is in this country 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 is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.

After winding its way for years through the legal system, the case was over. Plessy pleaded guilty as charged before Judge Ferguson, and he paid the prescribed fine for violating the act. A marker memorializing his arrest now stands at Royal Street

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and Homer Plessy Way (the former site of the Press Street Railroad Yards).

Notably, Plessy's criminal conduct in 1892 was virtually the same as Rosa Park's courageous protest 63 years later in Montgomery, Alabama, when she refused to leave a seat designated for white riders.

In 2009, heirs of Plessy and Ferguson formed a civil-rights-education, non-profit foundation that aims to help schools teach the significance of the case. And finally, 125 years after his guilty plea, Plessy's conviction is no more. How did that happen?

In 2006 the Louisiana Legislature passed the Avery C. Alexander Act. The act, authored by State Senator Edwin Murray of New Orleans, created an expedited process for posthumous pardons, and Homer Plessy, who died in 1925, met all the criteria of the law. In recognition of the upcoming 125th anniversary of Plessy's conviction by his guilty plea, Orleans District Attorney Jason Williams applied to the Louisiana Board of Pardons and Governor John Bel Edwards for Plessy to receive a full gubernatorial pardon. (It was the Orleans District Attorney's Office that originally sought Plessy's conviction.)

On January 5, 2022, Governor Edwards signed Louisiana's first posthumous pardon: the pardon of Homer Plessy. The governor was joined by descendants of Homer Plessy, Justice John Harlan, Judge John Ferguson, as well as by Southern University Professor of Law Angela Bell, Orleans District Attorney Jason Williams, and a number of state and local elected officials.

"The first six decades of the 21st century should have been filled with infinitely more promise and progress in race relations, and they would have been had slavery and segregation given way to equality and freedom as a plain reading of the 13th and 14th amendments required," Governor Edwards said. "Instead, the 1896 *Plessy* decision ordained segregation for the explicit purpose of declaring and perpetuating white supremacy, as immoral and factually erroneous as that was — and is."

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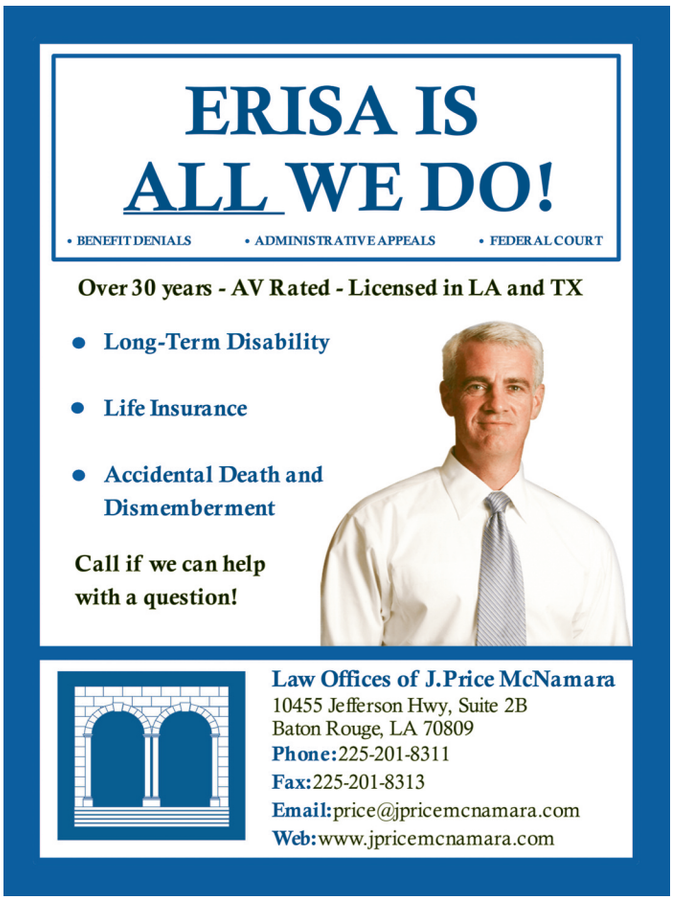
"The fictitious notion of 'separate but equal' remained with us until the United States Supreme Court revisited the issue in 1954 in the context of public education and implicitly overruled *Plessy*. Mr. Plessy's conviction should never have happened. But, there is no expiration on justice. No matter is ever settled until it is settled right. It is with great joy that today I pardon Homer Plessy and settle this matter. We still have a long way to go when it comes to equality and justice, but this pardon is certainly a step in the right direction."

Keith Plessy, a descendant of Homer Plessy, said, "With the stroke of his pen, Governor John Bel Edwards opens a new chapter in the legacy of Homer Adolph Plessy. This historic posthumous pardon is proof that 125 years after his conviction, the state of Louisiana recognizes and honors Plessy for his role in opening the gates of the Civil Rights Movement of the 20th century."

"We cannot undo the wrongs of the past but when our government officials publicly acknowledge them and take steps to legally correct them, we give hope to this generation and the next, who will continue to be on the front lines in the fight for justice and equity in America," Phoebe Ferguson said. She is a descendant of Judge John H. Ferguson.

"On behalf of the Harlan descendants, I am honored to participate in this historic pardon of Homer Plessy, which represents an important step of progress and healing," Kate Dillingham said. "Our family has always valued the lone but vigorous dissent of our great-great-grandfather, Supreme Court Justice John Marshall Harlan, in *Plessy v. Ferguson*. He was deeply committed to fairness, equality, and justice under the law, and we are moved to see this righting of a profound wrong that he identified 125 years ago."

District Attorney Williams said, "While Homer Plessy's actions made him guilty of a crime under law, it was the law that was the real crime." A copy of the pardon is available at *https://gov.louisiana.gov/assets/MrHomerPlessyPardon.pdf.*