Plessy v. Ferguson, 163 U.S. 537 (1896). African-American activists and eighteen black members of the Louisiana state legislature of 1890 organized to defeat a bill requiring racial segregation on railroads by trading votes with white Democrats on the issue of a state lottery. When the "equal, but separate" law passed, lawyer-editor Louis A. Martinet marshaled much of the group to test the law's constitutionality, hired white Reconstruction judge and popular novelist Albion W. Tourgée as the organization's lawyer, and recruited Homer Plessy to board a railroad car reserved for whites. Arrested by arrangement with the railroad company, which wished to avoid the expense of maintaining separate cars for patrons of each race, Plessy was arraigned before Orleans Parish Criminal Court Judge John H. Ferguson.

Tourgée argued that segregation contravened the Thirteenth and Fourteenth Amendments because it was a "badge of servitude" intended not to separate the races -- black nurses could travel with white employers -- but purely to emphasize blacks' subordinate status. It was also arbitrary and unreasonable because it allowed mere railroad conductors to determine a person's race and because race had nothing to do with transportation.

After Judge Ferguson and the racist Louisiana Supreme Court rejected or sidestepped these arguments, Tourgée appealed to a U.S. Supreme Court undergoing unusual personnel turnover, adding five new justices during the four years that *Plessy* was pending. Different appointments might have led to a different decision. As it was, the Louisiana law was upheld, 7-1, with four of the positive votes coming from members of the more racist political party, the Democrats.

The arguments between justices Henry Billings Brown of Michigan for the majority and John Marshall Harlan of Kentucky in dissent came down to three basic points: First, Brown thought racial separation and social inequality natural, unalterable by statutory or constitutional law, while former slaveholder Harlan pointed out that it was Louisiana law, not custom, that imposed segregation here. Stealing a phrase from Tourgée's brief, Harlan announced that "Our Constitution is color-blind." Second, the justices disagreed on whether the separate car law had an invidious purpose, the northerner denying it, but the southerner knowing better. Third, Brown ruled the legislature's imposition of segregation "reasonable," citing laws and lower court decisions from other states that supported his position, but deliberately ignoring the fact that nearly every northern state had passed laws prohibiting racial segregation in schools and public accommodations. In response, Harlan criticized "reasonableness" as merely another name for a judge's personal values, agreed with Tourgée that the law was arbitrary, and predicted that the *Plessy* decision would stimulate racial hatred and conflict. Thus, the disagreements between Brown and Harlan turned more on facts and armchair social psychology than on precedent or public opinion.

The terms of the argument between Brown and Harlan insured that the campaign of the National Association for the Advancement of Colored People to overturn *Plessy*, which eventuated in *Brown v. Board of Education* (1954), would spotlight testimony by professional social psychologists and focus on social facts.

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