



Society Update

FROM THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY

Fall 2001

Michigan Supreme Court History: The Civil Rights Struggle

The following text was written by 2001 Coleman Intern Melissa Witcher to accompany a PowerPoint presentation on the same topic. This article encompasses the first half of the presentation dealing with African-American right, the second portion discusses cases involving the rights of Native Americans. To view a copy of the PowerPoint presentation, please contact Angela Bergman at 517-346-6419 or abergman@micourthistory.org.

The Civil Rights Movement exemplifies the sense of justice and the rule of law that is the foundation of the American way of life. The struggle of African Americans to find equality through the law has given all people, regardless of race or ethnicity, a greater understanding of the legal system.

For minorities wishing to revolutionize a society that oppressed and dismissed them, the fight began on a local stage. Each victory brought celebration and each defeat took the battle to the next level. The Supreme Court of each state struggled with the issues of the civil rights movement. Some transcended the expectations of the time and some merely reflected the mindset of the majority. In Michigan, as in many other states, the Supreme Court contemplated the issue of racial equality even before statehood. Whether the Court failed those seeking justice or aided the cause, the ramifications of their decisions still affect the people of Michigan today.

The Supreme Court of Michigan offers a voice to people

who are often unheard or unnoticed. It has the highest authority in the state and has ruled on such issues as where a man can sit, where someone can live, who can vote, and what constitutes equality. Determining whether decisions of the past were right or wrong is beyond the scope of this analysis. Evaluating the merit of a decision without the context of the time or place, with no feeling for social pressures or norms, can result in a skewed perception. The purpose of this presentation is to demonstrate that every decision the Court makes, the actions and processes of the Michigan Supreme Court, affect every citizen in this state, regardless of race or gender.

THE ISSUE OF SLAVERY AND THE DEFINITION OF 'WHITE'

As early as the 1800s, the territory of Michigan was grappling with the ramifications of slavery and the ideals of human dignity. In one early case, *Denison v Tucker* (1807), a family of slaves petitioned the Supreme Court of the Territory of Michigan for their freedom and were denied a writ of habeas corpus by Judge Woodward. In this case, a Detroit resident, Catherine Tucker, inherited four slaves from her husband, who had owned the slaves legally under the laws of Upper Canada before Britain surrendered Detroit to the United States. The Denisons argued that British law allowed for emancipation, but Judge Woodward remanded the family back to the custody of Ms. Tucker. Woodward's reasoning was that the slaves had been legally possessed under the laws of Upper Canada and that the treaty between the United States and Great Britain regard-

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ing American, French and British subjects living in Michigan “had guaranteed foreign subjects the right to maintain their property, including slaves, held at the end of British occupation in 1796.” (Mitchell 2)

In his decision Judge Woodward set a precedent that repeats throughout Michigan judicial history; even though he found slavery distasteful, and said of the institution “absolute and unqualified slavery of the human species in the United States of America is universally and justly considered (its) greatest and deepest reproach” (DCL Vol.1986, Winter), he still decided in a manner that supported the institution. Many future justices would follow in those footsteps by making decisions they found morally reprehensible and yet they believed to be legally valid.

Another complexity of Michigan’s judicial system that dates back to the time of its status as a territory is the contradiction amongst cases. One month after the *Tucker* decision, Judge Woodward ruled *In the Matter of Richard Pattinson* that the Territory was not bound to return fugitive slaves Joseph and Jane Quinn to their owner Richard Pattinson. In this case, the

two slaves escaped from their home in Canada to seek refuge in the Territory. The decision emphatically stated that there was no obligation to give up fugitives from a foreign jurisdiction. According to Judge Woodward, the same Upper Canadian law that allowed Ms. Tucker to keep her slaves did not require Pattinson’s fugitive slaves to be returned to him. A review of African-American civil rights cases repeatedly demonstrates similar contradictions.

VOTING RIGHTS AND CITIZENSHIP

Voting is considered by many to be one of the most essential civil liberties a person can possess. The right to vote acknowledges a person as an equally contributing member of a society and gives them an opportunity to contribute within the structure of their community. In Michigan, three cases in particular demonstrate the struggle of African Americans to attain recognition of their citizenship and, by extension, their right to vote. In all three cases, the right to vote was denied to non-white citizens. *Gordon v Farrar* and *People v Dean* are two cases that involve the definition of the term

‘white’ and the legislation of the racial content of a person. Once it was decided, due to constitutional provisions, that voting was an exclusively white male privilege, the question of how to define ‘white’ became the focus of the struggle for the right to vote. In the *Gordon* case, the Supreme Court denied Gordon the right to vote without broaching the subject of what percentage of African blood would serve to disqualify a voter; skin tone was determinative and inspectors were empowered to decide.

In their decision in the *Dean* case, “Justices Campbell, Christiany, and Cooley as a majority concluded that a person was white who had less than one-fourth African blood” (1986 DCL 1127). Dean was allowed to vote, but only because it was determined that he was ‘white’ based on this definition.

After the passage of the 15th Amendment, which states that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” there was denial of citizenship for ex-slaves, which constituted the majority of the black population in the United States. In *Hedgeman v Board of Registration*, the question revolved around the rights of citizenship for the son of ex-slaves. While the justices again lamented the horror of slavery in the history of the United States, they ultimately decided that because Hedgeman’s parents were not U.S. citizens, neither was he, and consequently he could not vote. It would be a long time before African Americans could vote without restriction.

In January of 1869, the governor recommended that the word ‘white’ be stricken from the constitutional article specifying the qualifications of electors. The amendment to the Michigan constitution was passed in November, finally granting suffrage to black male Michigan citizens.

‘SEPARATE BUT EQUAL’ EDUCATION

One of the first Civil Rights victories in Michigan occurred in 1869, through the decision in *Workman v Detroit Board of Education*. This case demonstrates the very progressive nature of the legislature in Michigan at that time. The case originated in 1868, when Joseph Workman attempted to enroll his son in the Duffield Union School and the son was denied admission based solely on his race. In 1842, the legislature had given the Detroit Board of Education full power and authority regarding the establishment

Don't Forget!

A Special Session
of the
Michigan Supreme Court
honoring the
300th Birthday of the City of Detroit
featuring special guest speaker
Chief Justice Thomas E. Brennan
will take place at ten o'clock on
Tuesday, the ninth of October
at the
Spencer M. Partrich Auditorium
Wayne State University Law School
Detroit, MI

For more information, contact
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of schools and educational policies. Detroit had subsequently created two schools specifically for African-American children and had required African Americans to travel, regardless of location, to those schools, which did not have higher-level grades. In 1867, the Michigan legislature enacted the general school law prescribing racial equality in Michigan school districts. The Detroit Board of Education fought this law on the premise that segregation spared African Americans from having to be confronted by "strong prejudice against the colored people among a large majority of the white population" and that the Detroit school charter had been re-enacted after the passage of the law. The Court's decision held that the law superseded the Detroit charter. The Court chose not to discuss arguments of policy and did not address the plaintiff's argument of injustice due to inequality. This ruling did not provide for integration, but the subsequent segregation that dominated the 20th century was not founded on state law, in part thanks to the decision in *Workman v Detroit Board of Education*.

PUBLIC ACCOMODATION

The issue of segregation within the realm of public accommodations manifests itself through several cases. *Day v Owen* was the first public accommodation case in Michigan and affirmed the practice of segregation. *Day* was followed by *Ferguson v Gies*, in which the Court followed the dictates of the Michigan Civil Rights Act and unanimously decided that discrimination based on color/race, was illegal. *Bolden v Grand Rapids Operating Corp.* gave African Americans the undisputed right to sue for damages if discriminated against.

Day v Owen preceded the Michigan Civil Rights Act and affirmed the legitimacy of segregation in that time period. Owen possessed a steamboat that offered transportation from Detroit to Toledo. When Day attempted to purchase cabin accommo-

dations and was denied that opportunity, he sued. In this instance, the Michigan Supreme Court held that a steamboat operator could refuse passage to a Negro. "The Court held that while a common carrier could not have refused to transport Day, it could require him to conform to the reasonable regulations of the vessel. Regulations were reasonable if 'calculated to render the transportation most comfortable and least annoying to passengers generally.'" (Mitchell 19) In other words, the carrier could not refuse to transport a Negro because he was black, but could refuse to transport him if it would make the other passengers uncomfortable.



Justice Allen B. Morse
(Michigan Supreme Court Historical Reference Guide)

The first case brought to the Supreme Court after the passing of Act 130, known as the Civil Rights Act of 1885, was *Ferguson v Gies* in 1890. The Court, in complete unison and agreement, found for Ferguson. William W. Ferguson had entered a restaurant in Detroit and had been told that he could only be served in a specific location, what was known as the 'saloon' side of the restaurant. Finding this side to be less desirable and still being refused service, Ferguson decided to sue the establishment owner. He employed D. Augustus Straker and sued for damages. Initially Ferguson was defeated

in court, but he forged ahead. The Michigan Supreme Court reversed the lower court's ruling on the grounds that the judge had instructed the jurors that 'separate but equal' applied to Act 130 and that equal did not have to mean exactly the same. The Michigan Supreme Court countered by saying that discrimination based on color was illegal under Act 130. Referring to *Day v Owen* and dismissing the precedent, Justice Morse stated, "It is but a reminder of the injustice and prejudice of the time in which it was delivered." *Ferguson v Gies* forced the Court to qualify that the 'separate but equal' doctrine inherently classified African Americans as inferior. This case came to be known as "Michigan's Great Civil Rights Case." (73 MBJ 296)

In the *Bolden v Grand Rapids Operating Corp.* case, Emmet N. Bolden, a dentist, was refused seating on the first floor of a movie theater because of his race. That refusal clearly violated Act 130, known as the Civil Rights Act, which "provided against discrimination in persons because of race, creed, or color, in regard to accommodations and privileges of inns, restaurants, theaters, etc." The decision reiterated the findings of *Ferguson v Gies*. In addition, this case set the precedent for use of police power. The Court stated "under the police power, supervision may be exercised over the use of private property, when the health, morals, or welfare of the public demands it." (239 Mich 318)

AFRICAN-AMERICAN ROLE MODELS

The people represented in the cases held as much import as the actual decisions. They provided role models for young minorities and pioneered new territory in the fight for equality. William W. Ferguson was the first African American admitted into the Detroit public school system after the *Workman v Detroit Board of Education* decision. He later became a lawyer and the first African-American



William W. Ferguson
(On-line source)

legislator in Michigan. He was a trailblazing pioneer who helped improve the conditions of African Americans not only in Detroit but also in the entire state.

D. Augustus Straker defended William W. Ferguson in *Ferguson v Gies*. He too was a very prominent African American and one of the first minorities to argue before the Michigan Supreme Court. Detroit Mayor Dennis Archer recently opened a time capsule from 1900, to which Straker was the only contributing African American. His letter reads:

Sir-none who have lived the allotted time of human life, within the confines of our beautiful city can fail to notice the changes, and events which have marked the 19th century, and especially so as relates to the colored people living, and who have lived in Detroit. The 19th century found the colored people of Detroit a race of slaves although slavery is not known ever to have had a foothold here. The incoming 20th century finds every man, and woman, and child of the colored race enjoying complete freedom under the law. The 19th century

found the colored race in Detroit ignorant, uneducated, poor, and unenlightened, save with few exceptions. As the 20th century dawns upon us with every school door in the City of Detroit, wide open, welcoming within its walls, every colored, as well as white child....The 20th century finds the colored citizen of Detroit in the enjoyment and right to go, and enter every public place established for public accommodation.... If we should augur from the past and present, we have the brightest expectation for the future. A prejudice does now exist on the fringe of the 20th century – I predict that the sunlight of a more perfect understanding of the Fatherhood of God and the brotherhood of man will drive out the demon prejudice and when the 21st century arrives he will find no resting place in the beautiful city of the straits.



D. Augustus Straker
(Detroit News Online 2/7/01)

Workman v Detroit Board of Education, Ferguson v Gies, and Bolden v Grand Rapids Operating

Corp. gave D. Augustus Straker, and other minorities, hope for the future.

RESTRICTIVE COVENANTS

Housing was one of the last bastions of legally upheld segregation. Many theories attempt to account for the actions of the Court, which repeatedly decided against segregation in education and accommodations but allowed discrimination in zoning policies to continue. One theory is that “housing was perhaps considered too traditionally personal to allow interference by the legislature or judiciary.” (26 WnL 24) An early example of a case involving a restrictive covenant is *Parmalee v Morris* in 1922. The Parmalee’s had attempted to buy land in a subdivision with specific restrictions against blacks and liquor businesses. They subsequently sued under the premise that the practice of racially restrictive covenants was contrary to the 13th and 14th Amendments. The Court “took the view that a covenant forbidding the occupation of property by colored persons is not forbidden by the Federal Constitution.” (66 A.L.R 532) Racially restrictive covenants were again upheld in a very prominent case, *Sipes v McGhee*. *Sipes v McGhee* was later consolidated with *Shelley v Kraemer* and the United States Supreme Court ruled that racially restrictive covenants are illegal.

RAMIFICATIONS

The cases chosen for this presentation represent a varied mix of the Court’s work. Early in its judicial history, the Michigan Supreme Court made powerful decisions that helped both promote and stifle change. Typically, the Court reflected the conservative beliefs of Midwestern Michigan society. “Michigan’s approach to the problems of a multi-racial society has been basically conservative; that is, the legislature and the Supreme Court have rarely been in the forefront of social change. In a couple of surprising and striking instances, Michigan law was decades

ahead of the United States as a whole with regard to racial equality.”
(Mitchell 1)

Whether the results were positive or negative, the Court has had an undeniable impact on our lives.

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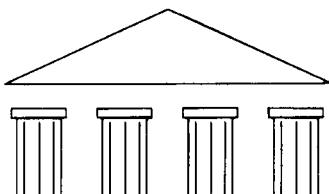
Transactions of the Supreme Court of the Territory of Michigan 1805-1814, Volume II, Blume, William Wirt ed., University of Michigan Press (1935)

- A. *Denison et al. vs. Catherine Tucker* (Case 60)
- B. *In the Matter of Richard Pattinson* (Case 76)

Gordon v Farrar;
People v Dean; 14 Mich 406 (1866)
Hedgman v Board of Registration;
26 Mich 51 (1872)
Day v Owen; 5 Mich 520 (1858)
Ferguson v Gies; 82 Mich 358 (1890)
Bolden v Grand Rapids Operating Corp; 239 Mich 318 (1927)

Works Consulted/Cited:

- 1) 378 US 226, page 290
- 2) 53 A.L.R. (Ann) 189n
- 3) 171 A.L.R. (Ann) 921n
- 4) 64 MBJ 518
- 5) 50 McL 204
- 6) 73 MBJ 296
- 7) 73 MBJ 279
- 8) 33 WnL 1659
- 9) Mitchell, Marilyn Hall, 26 WnL 1, “From Slavery to Shelley- Michigan’s Ambivalent Response to Civil Rights,” Detroit College of Law Review volume 1986, Issue 4
- 10) Straker letter to Mayor of Detroit: http://www.detroit300.org/eventsCentury_box/LettersStrakers%20letter.htm



Beam Signing Held for Hall of Justice in Lansing



On a grey day in Michigan's capitol, Chief Justice Maura D. Corrigan welcomed a small crowd of Michigan Supreme Court justices and staff, State Bar of Michigan officials, and construction company executives to a special beam signing for the new Hall of Justice building.



Court Commissioner Mike Murray addresses the crowd.

The event, held Thursday, September 13, came hard on the heels of Tuesday's tragedy. Chief Justice Corrigan spoke of the hard work of her colleagues, specifically of former Chief Justices Riley and Weaver, and of Justice Cavanagh.

Justice Cavanagh, the supervising justice for the project, also offered remarks on the building and what it will mean Michigan citizens.

Due to the tragic events of this



Chief Justice Riley places her signature on the beam.

Tuesday, I thought that perhaps we should postpone this beam signing to a time further removed from the horror and destruction we all witnessed. But as I reflected further on the significance of recent events and on the forever changed skyline of

New York, I thought that today's event presents an opportunity for us to reflect on the great strength and optimism of the American spirit. This six story structure of some 280,000 square feet, built with 2,390 tons of structural steel, 14,000 individual pieces

of Indiana limestone, 16,000 cubic yards of concrete, and 269 caissons to bedrock will house almost four hundred judicial employees. This building rises and will stand as a symbol of the citizens of this State and of all Americans' commitment to continue our pursuit of justice. Construction of the building remains on schedule, and the Court plans to open its doors in the Fall of 2002.



Justice Weaver signs the beam.

In Recent News...

Society Receives Grant for Its 2001 Education Pilot Project

The Michigan Supreme Court Historical Society has been awarded a \$2,961.97 grant by the Michigan Humanities Council to produce its "2001 Education Pilot Project."

The project will result in 100 complete two-week lesson plan packets that will focus on familiarizing students with the general history of the Michigan Supreme Court, its members, important cases, the state judicial system and its role as it pertains to the law. Packets will include ten lesson plans along with supporting materials, fun activities and worksheets, quizzes and projects, and packet evaluation forms. These packets will be distributed to area teachers in Eaton and Ingham counties as well as other statewide law-related educators who will pilot the plans in their classrooms and report on their effectiveness.

For more information about the lesson plans, please contact Executive Director Angela Bergman at (517) 346-6419 or abergman@micourthistory.org



Save the Date!

The Officers and Directors

of the

Michigan Supreme Court

Historical Society

cordially invite you

to attend the portrait presentation of

Honorable Patricia J. Boyle

Thursday the first of November

at two o'clock

at the Spencer M. Partrich Auditorium

Wayne State University Law School

Detroit, Michigan

Reception to follow from 4:00 p.m. to 6:00 p.m.

at Opus One, Detroit.

For more information, please contact

Angela Bergman at 517-346-6419 or

abergman@micourthistory.org

Biography of Otis M. Smith Published

Wayne State University Press has published and made available *Looking Beyond Race, The Life of Otis Milton Smith*. The book contains Smith's memoirs, which he dictated during the three years before his death in 1994, and was written by historian Mary M. Stolberg. Ms. Stolberg, a former reporter for the *Pittsburgh Press*, is also the author of *Fighting Organized Crime and Bridging the River of Hatred: The Pioneering Efforts of Detroit Police Commissioner George Edwards*.

The book deals with Smith's own experiences with racism and his unique struggle to overcome the prejudices that surrounded him.

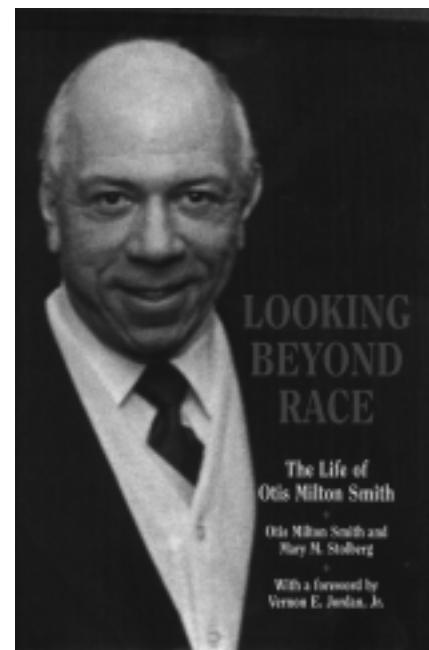
"Born in the slums of Memphis, Tennessee, Smith was the illegitimate son of a black domestic worker and her prominent white employer. Although he identified with his mother's blackness, he inherited his father's white complexion. This left him open to racism from whites, who resented

his African American heritage, and blacks, who resented his skin color.

"In *Looking Beyond Race*, Otis Milton Smith recounts his life as an African American who overcame poverty and prejudice to become a successful politician and the first black elected to statewide office since the nineteenth century.

"*Looking Beyond Race* is a compelling tale that ends with the inspirational story of Smith's reconciliation with his white relatives who still live in the South. In this highly readable memoir, *Looking Beyond Race* provides a moving tale that will appeal to readers interested in African American history, politics, labor relations, business, and Michigan history." (Text taken from cover flap of *Looking Beyond Race*.)

The book is available at most major bookstores and costs about \$25.00.



20th Century Portrait Collection Completed

In the spring of 2001, the Society commissioned the post-humous portraits of Justices Neil E. Reid and Edward M. Sharpe. Justices Reid and Sharpe were the only justices who served the Court in the 1900s for whom the Court did not have official portraits.

The portraits, which were completed by Detroit artist Robert Maniscalco of the Maniscalco Gallery, provided some unique challenges to the painter. The only materials available to the Society at the start of this project were single, black and white photos of each justice. Research produced little information regarding the stature and coloring of the two justices. To complete the project, Maniscalco relied on the little information available to him and his artistic judgment.

The portraits will be dedicated to the Court at a later date and will be hung as the Court deems appropriate.



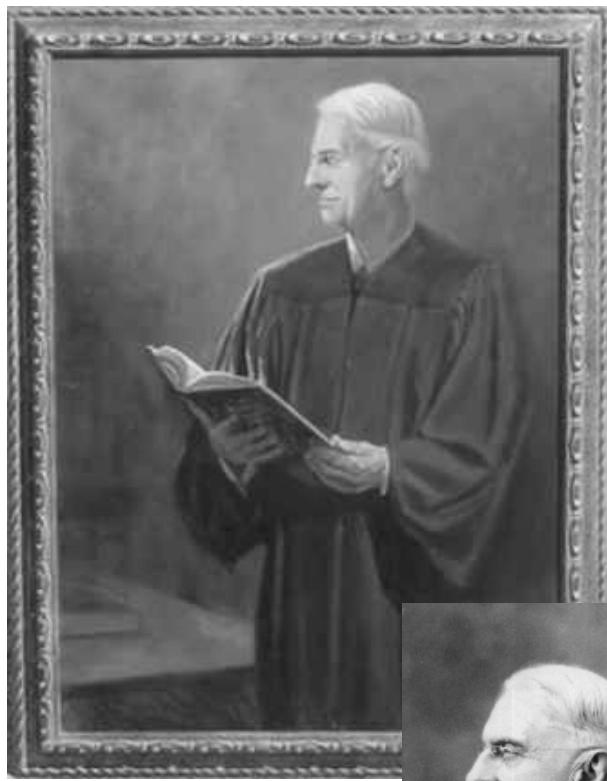
Edward M. Sharpe, 61st Justice

Served From 1934 Through 1957

Edward M. Sharpe was born on a farm in Bay County, Michigan on December 18, 1887. He was of Scottish and Irish descent and attended rural public schools in his youth. Sharpe graduated from Ferris Institute and then from the University of Michigan Law School in 1914. He was admitted to the Bar that same year.

For five years, Sharpe was a teacher in public schools before he made law his chosen profession. He was elected to the Michigan Supreme Court in 1933 and began his service in 1934. He served until December 31, 1957. Sharpe was re-elected in 1941 and 1949. Upon his retirement, Sharpe, having served twenty-three years, had seniority status.

Edward M. Sharpe died at the age of 87 on March 3, 1975, in Bay Medical Facility.



Neil E. Reid, 67th Justice

Served From 1944 Through 1956

Neil E. Reid was born in Bruce Township, of Macomb County, Michigan on April 24, 1871.

Governor Fred W. Warner appointed Reid judge of the Probate Court over which he presided for thirteen years. He had a reputation for being a tough judge, especially with cases regarding prohibition violators and armed robbers.

Reid was the first man to win a seat on the Michigan Supreme Court by defeating an incumbent. His campaign was deemed a "postcard" campaign in that he sent all his friends postcards requesting their votes. Reid credited his "many friends" for the victory. He began his service on the Court in 1944.

Reid was described as a six foot four, gaunt, yet colorful man. He died of a heart attack on May 4, 1956, while still employed by the Court.

(Above information was taken from the Michigan Supreme Court Historical Reference Guide. For details on ordering, see the back of this newsletter.)

Order the Michigan Supreme Court Historical Reference Guide



Court by years, which lists the Court's composition for each year since 1805.

Call 517-346-6419 to order your copy!

Mission Statement

The Michigan Supreme Court Historical Society is a nonprofit, 501(c)(3) corporation dedicated to preserving documents, records and memorabilia relating to the Michigan Supreme Court. The Society produces publications, special events and other projects to achieve its goals in education and restoration. Current officers and directors are:

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