

***MINORITY AND JUSTICE COMMISSION
2022 SUPREME COURT SYMPOSIUM***



REPARATIONS FOR AFRICAN AMERICANS

**WEDNESDAY, JUNE 1ST, 2022
8:30 A.M.—12:35 P.M.**

Thank you to our Co-Sponsors:

This year's Supreme Court Symposium program is brought to you thanks to the generous contributions of the following legal education partners to the Minority and Justice Commission:

Seattle University School of Law

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The Law School Admissions Council

The Superior Court Judges Association

The District and Municipal Court Judges Association

2022 Washington Supreme Court Symposium: **Reparations for African Americans**

SYMPOSIUM SCHEDULE

JUNE 1, 2022 | 8:30 AM - 12:35 PM

I. Introduction | 8:30 AM - 8:45 AM

Justice Mary Yu, Co-chair, *Washington State Minority and Justice Commission*, Carsen Nies, *Seattle University School of Law*, and Mynor Lopez, *Seattle University School of Law*.

II. Keynote Scholarship and Panel Discussion, facilitated by Christopher Sanders | 8:45 AM - 10:15 AM

Professor Jamila Jefferson Jones, *Wayne State University Law School*, Professor Adjoa Aiyetoro, *William H. Bowen School of Law*, and Professor Eric Miller, *Loyola Law School*. Keynote scholars discuss the moral and economic necessity of reparations to Black Americans, and explore the implications on justice under law.

BREAK: 10:15 AM - 10:25 AM

III. The History of Anti-Black Discrimination in Washington | 10:25 AM - 11:05 AM

Dr. Quintard Taylor, *University of Washington*. Detailing the sweeping history of anti-Black discrimination in Washington State and the preceding territories. Professor Taylor will trace the unbroken lineage from the founding of the Washington Territory as a state exclusively for white people to modern day inequality and discrimination in Washington State.

IV. Expert Grassroots Panel, facilitated by Nikkita Oliver | 11:05 AM - 12:35 PM

A roundtable discussion on the ways local groups around the state of Washington address the cause of Black reparations. The panel will explore ways that cultural, land-based and monetary reparations can advance equality in the state and justice under law and highlight some of the grassroots initiatives that advance reparations for Black Washingtonians. Panelists include K. Wyking Garrett, CEO, *Africatown Community Land Trust*; Judge LeRoy McCullough, *King County Superior Court*; TraeAnna Holiday, Media Director, *King County Equity Now*; and Chardonnay Beaver, Journalist, *The Facts*.





2022 Supreme Court Symposium: Reparations for African-Americans

Table of Resources:

Introduction

Primary Resources:

- I. DONTAY PROCTOR MILLS, MYNOR LOPEZ, SAM SUEOKA AND CARSEN NEIS, REPARATIONS MEMO (Seattle University School of Law 2020 Calhoun Fellows, July 28, 2020).
- II. Major General W. T. Sherman, *Special Field Order No. 15*, MILITARY DIVISION OF THE MISSISSIPPI HEADQUARTERS (Jan. 16, 1865), <https://www.blackpast.org/african-american-history/special-field-orders-no-15/>.
- III. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

Secondary Resources:

- I. Allen J. Davis, *An Historical Timeline of Reparations Payments Made from 1783 through 2022 by the United States Government, States, Cities, Religious Institutions, Universities, Corporations, and Communities*, UMASS AMHERST LIBRARIES (last updated 13 January 2022), <https://guides.library.umass.edu/reparations/timeline>.
- II. Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 117th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/40>.
- III. National Coalition of Blacks for Reparations in America (N'COBRA), *What is Reparations*, N'COBRA (2020), <https://www.ncobraonline.org/reparations/>.

Cultural Reparations

Primary Resources:

- I. Eric Miller, *Republican, Rebellious Reparations*, 63 HOWARD L.J. 363 (Spring, 2020), https://heinonline.org/HOL/Page?handle=hein.journals/howlj63&div=23&g_sent=1&casa_token=&collection=journals.

Secondary Resources:

- I. Gregory Scruggs, *The City Block: 23rd and Union*, SEATTLE TIMES (May 1, 2022), <https://projects.seattletimes.com/2022/features/this-city-block-23rd-Union-central-district-seattle/>.
- II. Gregory Scruggs, *The Lesson of 23rd and Union is That There's a Way*, SEATTLE TIMES (May 1, 2022), <https://www.seattletimes.com/life/the-way-forward-at-23rd-avenue-and-east-union-street-in-seattles-central-district/>.
- III. Angela Ford, et al., *African American Media Today: Building the Future from the Past*, THE OBSIDIAN COLLECTION (Feb. 2019), https://cdn.givingcompass.org/wp-content/uploads/2019/03/28115008/2019_DF_AfricanAmericanMediaToday.pdf.
- IV. Deborah Douglas, *Meet the New Black Press: How Nimble, Mission-Driven Outlets and a Citizen-Focused Initiative are Telling Stories About — and for — Black Communities*, NEIMAN REPORTS, <https://niemanreports.org/articles/meet-the-new-black-press/>.



Land-Based Reparations

Primary Resources:

- I. Jamila Jefferson-Jones, “Community Dignity Takings”: *Dehumanization and Infantilization of Communities Resulting from the War on Drugs*, 66 U. OF KANSAS L. REV. 993 (July, 2018), https://kuscholarworks.ku.edu/bitstream/handle/1808/26698/10_Jefferson-Jones.pdf?sequence=1&isAllowed=y.
- II. Robert Jeffrey, Jr., *Right Past Wrongs of Racist ‘Urban Renewal’ and Pay Reparations to Seattle’s Black Community*, SEATTLE TIMES (July 16, 2021), <https://www.seattletimes.com/opinion/right-past-wrongs-of-racist-urban-renewal-and-pay-reparations-to-seattles-black-community/>.
- III. Char Adams, *Evanston is the First U.S. City to Issue Slavery Reparations. Experts Say it’s a Noble Start*, NBC NEWS (Mar. 26, 2021), <https://www.nbcnews.com/news/nbcblk/evanston-s-reparations-plan-noble-start-complicated-process-experts-say-n1262096>.
- IV. Lilly Fowler, *Black Pastors and Activists Want Central District Land as Reparations*, CROSSCUT (July 30, 2020), <https://crosscut.com/equity/2020/07/black-pastors-and-activists-want-central-district-land-reparations>.

Secondary Resources:

- I. Gregory Scruggs, *Activists Push for Black Land Ownership in Seattle*, HIGH COUNTRY NEWS (July 7, 2020), <https://www.hcn.org/articles/social-justice-activists-push-for-black-land-ownership-in-seattle>.
- II. David Bollier, *Black Commons, Community Land Trusts, and Reparations*, DAVID BOLLIER BLOG (July 10, 2020), <http://www.bollier.org/blog/black-commons-community-land-trusts-and-reparations>.
- III. Lynda Mapes, *Timber Company Returns Waterfront Property to Tribe*, US NEWS & WORLD REPORT (Dec. 23, 2021), <https://www.usnews.com/news/best-states/washington/articles/2021-12-23/timber-company-returns-waterfront-property-to-tribe>.

Monetary Reparations

Primary Resources:

- I. Adjoa Aiyetoro, *Addressing Reparations While Respecting Our Differences: A Model for Black Reparations*, 63 HOWARD L.J. 329 (Spring, 2020) https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/howlj63&id=357&men_tab=srchresults.
- II. Rashawn Ray and Andre M. Perry, *Why We Need Reparations for Black Americans*, BROOKINGS INSTITUTE (Apr. 15 2020), <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>.

Secondary Resources:

- I. Editorial Staff, *Billions in Reparations Have Been Paid to Suffering Ethnic Groups Except One*, SYLLABUS MAGAZINE (Aug. 3, 2016), <https://syllabusmagazine.com/here/billions-in-reparations-have-been-paid-to-suffering-ethnic-groups-except-one/>.
- II. William Darity, Jr., *The True Cost of Closing the Racial Wealth Gap*, NEW YORK TIMES (Apr. 30, 2021), <https://www.nytimes.com/2021/04/30/business/racial-wealth-gap.html#:~:text=After%20accounting%20for%20the%20higher%20enrollment%20rate%20of%20reduction%20in%20the%20racial%20wealth%20gap%20of%20%241%2C864>.
- III. Anjali Nair, *What Slavery Reparations From the Federal Government Could Look Like*, NBC NEWS (May 12, 2021), <https://www.nbcnews.com/news/nbcblk/slavery-reparations-federal-goverations-looks-2021-rcna900>.
- IV. Darrick Hamilton, et al., *What We Get Wrong About Closing the Racial Wealth Gap*, SAMUEL DUBOIS COOK CENTER ON SOCIAL EQUITY (April 2018), <https://socialequity.duke.edu/wp-content/uploads/2019/10/what-we-get-wrong.pdf#:~:text=What%20We%20Get%20Wrong%20About%20Closing%20the%20Racial.cents%20on%20the%20dollar%20compared%20to%20white%20households>.

2022 Supreme Court Symposium: Reparations for African-Americans

Panelist Biographies

Professor Adjoa Aiyetoro, *William H. Bowen School of Law, University of Arkansas-Little Rock*



Adjoa A. Aiyetoro joined the UALR William H. Bowen School of Law faculty in 2004. She is currently Professor of Law and the Director of the Racial Disparities in the Arkansas Criminal Justice System Research Project. The project released a comprehensive report of its research findings in August 2015. Aiyetoro served as the inaugural director of UALR's Institute on Race and Ethnicity from July 2011 to December 2012.

Before joining the law faculty Professor Aiyetoro had a career as a human rights attorney and social worker. As a social worker, she served as the supervisor for the Malcolm Bliss Community Mental Health Center's Model Cities' outpatient program. Aiyetoro began her legal career as a staff attorney with the United States Department of Justice, Civil Rights Division, Special Litigation Section where she litigated cases involving the rights of the institutionalized and developed an expertise in prisoner rights. She joined the ACLU National Prison Project in 1981 where she remained until 1992.

Since 1992 Aiyetoro has served as the Executive Director of the National Conference of Black Lawyers, the Director of Administration for the Congressional Black Caucus Foundation, Inc., a consultant to the Lawyers' Committee for Civil Rights Under Law, organizing its 1995 delegation to the United Nations Beijing Conference on Women, represented the Women's International League for Peace and Freedom (WILPF) at the preparatory meetings for and the World Conference Against Racism (WCAR) held in South Africa, and the Chief Legal Consultant for the National Coalition of Blacks for Reparations in America (N'COBRA). In March 2014 Professor Aiyetoro received the Washington University George Warren Brown School of Social Work's Distinguished Alumni Award and in April 2014 she received the Arkansas ACLU's Civil Libertarian of the Year Award.

Publications include: *Black Women and Reparations Movements in Black women and International Law: Deliberate Interactions, Movements and Actions*, ed. Jeremy I. Levitt (Cambridge University Press 2015); *Racial Disparities in Punishments and Alienation: Rebellious for Justice; Why Reparations to African Descendants in the United States Are Essential to Democracy*, *J. Gender Race & Justice* (Spring 2011); *Historic and Modern Social Movements for Reparations: The National Coalition of Blacks for Reparations in America (N'COBRA) and its Antecedents*, 16 *Tex. Wesleyan L. Rev.* 687 (2010) (co-author Prof. Adrienne D. Davis).

Professor Jamila Jefferson Jones, *Wayne State University Law School*



Professor Jamila Jefferson-Jones writes about the property rights of communities and groups on the margins of society. In line with her interest in property rights on the margins of society, she uses critical race methodologies to interrogate the ways in which members of favored racialized groups seek to exclude racial and ethnic minorities from public and private spaces, including through the use of or threat of police action to enforce both the racial segregation of space and racist notions of supremacy. Her recent article on this subject, [#LivingWhileBlack: Blackness As Nuisance](#), was published in the *American University Law Review* and featured in the *New York Times*. In addition to this work, Professor Jefferson-Jones has written a number of law review articles and book chapters on the sharing economy and is a recognized expert on the housing segment of the sharing economy, particularly on discrimination in that sector. She has also studied the property rights of those with ex-offender status to reveal the intersection of property and criminal justice theory.

Professor Jefferson-Jones will be joining the faculty of the University of Kansas School Of Law in July 2022 as Professor of Law and Associate Dean for Diversity, Equity, Inclusion and Belonging. She currently serves on the faculty of the Wayne State University School of Law Professor of Law and Associate Director for Property, Equity and Justice at the Damon J. Keith Center for Civil Rights.

Jamila Jefferson-Jones is a graduate of Harvard Law School and Harvard College.

Professor Eric Miller, *Loyola Law School*



Eric J. Miller is a professor and Leo J. O'Brien Fellow at Loyola Law School in Los Angeles, where he teaches and writes in the areas of legal theory, reparations, and policing.

Professor Miller is an internationally recognized expert on reparations for Black people in the United States. He has testified before the House Judiciary Committee Subcommittee on Continuing Injustice: The Centennial of the Tulsa-Greenwood Race Massacre in 2021; on HR40 and the Path to Restorative Justice in 2019; and on the Legacy of the Trans-Atlantic Slave Trade in America in 2007. In addition, he has provided testimony before the Inter-American Commission on Human Rights on Reparation for Slavery and Other Forms of Structural Racial Discrimination in the United States, Washington, D.C., September 24, 2019.

Professor Miller was a member of the Reparations Coordinating Committee, and took a leading role in drafting the complaint in the pathbreaking federal reparations lawsuit on behalf of the survivors of the Tulsa Race Massacre of 1921, *Alexander v. State of Oklahoma*. He is currently a member of Lawyers for Justice for Greenwood, and again took a lead role in drafting and arguing a reparations public nuisance lawsuit, *Randle v. City of Tulsa*.

Professor Miller received an LL.B. from the University of Edinburgh, and an LL.M. from Harvard Law School, where he was also a Charles Hamilton Houston Fellow. He clerked for the Hon. Myron H. Thompson in the Middle District of Alabama and the Hon. Stephen Reinhardt of the Ninth Circuit Court of Appeals.

His publications include: *Republican, Rebellious Reparations*, 63 How. L.J. 363 (2020); *Representing the Race: Standing to Sue in Reparations Lawsuits*, 20 Harv. BlackLetter L.J. 91 (2004); *Reconceiving Reparations: Multiple Strategies in the Reparations Debate*, 24 B.C. Third World L.J. 45 (2004). Professor Miller is currently working on a book entitled *Demanding Reparations*.

Dr. Quintard Taylor, *University of Washington (Emeritus)*



Quintard Taylor is an historian, author, and website director. From July 1, 1998, until June 30, 2018, Taylor was the Scott and Dorothy Bullitt Professor of American History at the University of Washington, Seattle and as such he held the oldest endowed chair at the University. He is now retired and holds the title, the Scott and Dorothy Bullitt Professor Emeritus.

Taylor is the author of *The Forging of a Black Community: Seattle's Central District from 1870 through the Civil Rights Era*, described in 2020 as one of the 10 most influential books published by the University of Washington Press in the past Century, and *In Search of the Racial Frontier: African Americans in the America West, 1528-1990*, nominated for a Pulitzer Prize in History, His *Dr. Sam: Soldier, Educator, Advocate, Friend, An Autobiography*, which Taylor co-authored with the late university administrator and career army officer, was released in the summer of 2010.

Taylor is also the author of over fifty articles. His work on African American Western History, African American, African, Afro-Brazilian, and comparative ethnic history has appeared in the *Western Historical Quarterly*, *Pacific Historical Review*, *Oregon Historical Quarterly*, *Journal of Negro History*, *Arizona and the West*, the *Western Journal of Black Studies*, and the *Journal of Ethnic Studies*. He is also editor of the *Race and Culture in the West Series* for the University of Oklahoma Press. Twelve titles have appeared in the series since its launch in 2007. A link to the complete list of books in the series appears below.

On February 1, 2007, Taylor and other volunteers created an online website resource center for African American history called [BlackPast.org](http://www.blackpast.org) (www.blackpast.org). The center houses more than 8,000 pages of information and features contributions by nearly 1,000 academic, independent, and student historians from six continents. It is now the largest reference center of its type on the Internet. In 2021, 6.1 million people from more than 190 nations visited the website and so far since its launch more than 47 million people have accessed information from the pages of [BlackPast.org](http://www.blackpast.org).

In October 2011, Taylor completed his one-year term as the 50th President of the Western History Association (WHA). Taylor has taught at universities in Washington, Oregon, California, and Nigeria over his 47-year career in higher education. In April 2017 Taylor received the Lifetime Achievement Award from the Pacific Northwest Historians' Guild and in September 2017 he received the Robert Gray Medal for his Lifetime Contribution to Pacific Northwest History from the Washington State Historical Society. On March 28, 2019, he received the Alpha Civic Award from Alpha Phi Alpha Fraternity at its 71st Western Regional Convention in Bellevue, Washington.

For additional information please see the following websites:

BlackPast.org: www.blackpast.org | Personal Website: www.quintardtaylor.com/ | Race and Culture in the West Series for the University of Oklahoma Press:

<https://www.oupres.com/series/race-and-culture-in-the-american-west-series>

Nikkita Oliver, *Creative, Educator and Attorney*



Nikkita Oliver (they/them) is a Seattle-based creative, community organizer, abolitionist, educator, and attorney. Working at the intersections of arts, law, education, and community organizing Nikkita strives to create experiences which draw us closer to our humanity and invites us to imagine what we hope to see in the future. (Nikkita identifies as Black, multi-racial, queer, and non-binary.)

Nikkita has opened for Cornel West and Chuck D of Public Enemy, featured on the [Breakfast Club](#), KUOW's The Week in Review, [Cut Stories](#), and performed on The Late Night Show with Stephen Colbert. Nikkita's writing has been published in the [South Seattle Emerald](#), [Yes! Magazine](#), Crosscut, [the Establishment](#), [Last Real Indians](#), [The Seattle Weekly](#), and The Stranger. Nikkita organizes with [No New Youth Jail](#), [Decriminalize Seattle](#), [Covid-19 Mutual Aid - Seattle](#), and the [Seattle Peoples Party](#).

Nikkita is the executive director of [Creative Justice](#), an arts-based healing engaged space for youth and young adults impacted by the school-to-prison pipeline and other harmful systems and institutions.

Nikkita was the first political candidate of the Seattle Peoples Party running for Mayor of Seattle in 2017 narrowly missing the general election by approximately 1,100 votes; coming in third of 21 candidates. They also ran for [Seattle City Council City-Wide Position 9](#). Despite losing the race in the general election, Nikkita continues to actively organize with communities impacted by oppressive systems - organizing for collective healing and care and the abolition of harmful systems. Nikkita speaks and performs for events, at universities and conferences, and facilitates trainings on equity, law and justice, education, and arts activism all over the United States.

Chardonney Beaver, *Journalist, The Facts*



Chardonney Beaver is a storyteller, writer, student, and influential speaker from Seattle, WA. Chardonney believes storytelling invokes connection and empathy, promoting measurable progress and social good. She was raised in Seattle's Central District, a historic Black neighborhood. Chardonney's interest in history, service, community, and impact was nurtured at an early age.

In 2019, Chardonney established WOWbyChar (Words of Wisdom by Char): a platform designed to empower individuals in their pursuit of authenticity, purpose, and progress. In Summer 2020, Chardonney transitioned WOWbyChar, from the digital space, into a weekly column published in The Facts Newspaper ("The Facts"). The Facts is a six-decade, award winning Black-owned newspaper publication based in the Pacific Northwest. Since 2020, Chardonney's work has appeared in The Facts Newspaper, South Seattle Emerald, The King County Beloved Anti-Gun Violence Campaign, and other outlets.

Currently, Chardonney partakes in an undergraduate experience at the University of Washington. She also continues to use her platform to speak truth to power for ultimate transformation in individuals, culture, and society. In closing, Chardonney's faith in Jesus serves as a compass, driving her to be a light in this generation.

K. Wyking Garrett, CEO, *Africatown Community Land Trust*



Third-generation community builder, social entrepreneur and current President and CEO of Africatown Community Land Trust in Seattle, WA. Wyking designs programs and initiatives that catalyze, mobilize, and activate communities for sustainable social impact. He has been a co-catalyst for numerous ventures including the Africatown Seattle community development initiative, Liberty Bank Building, Umoja PEACE Center, Hack The CD, Black Dot, Umoja Fest and Africatown Center for Education Innovation.

Wyking was an inaugural member of the Seattle Music Commission and a past fellow with a national advocacy organization, Green For All. He has been honored with the Center for Ethical Leadership Legacy Leadership Award, Tabor 100 Crystal Eagle Award and was recognized as Seattle Magazine's most influential people of 2019 and Seattle Times' thirteen most influential people of the decade.

TraeAnna Holiday, *Media Director, King County Equity Now*



TraeAnna Holiday, a true Seattleite, has watched her city change in many ways. From the age of nine, her deepest passion was in the creative field, which flourished at Garfield High. She took that passion to Howard University, where she studied Theater Management in her first year of college. Through studying abroad multiple times at the University of Washington Tacoma, gaining her degree in Communications and Urban Studies, and being displaced by gentrification, she's now fueled to tell her neighborhood's stories through film and education.

She found ways to work on the solutions as an Ambassador with Africatown Community Land Trust, Media Personality and Producer with Converge Media, and Media Director for King County Equity Now. As a steward of community with a passion for storytelling, she brings her ideals to life and strives to help her family and others do the same.

Judge LeRoy McCullough, *King County Superior Court*



After private practice, service as an Assistant General, as a Seattle Municipal Court Judge Pro tempore, and after 10 years as the Chief Hearing Examiner, Judge McCullough joined the King County Superior Court Bench in 1989. He continues as one of the most tenured judges in Washington State. Judge McCullough has vast experience in presiding over criminal, civil, juvenile court and family cases and in a variety of operations and committee work of the court. He has chaired or co-chaired his court's Security, Personnel, Courts and Community and Jury Committees. His past service to the court also includes an assignment as Chief Judge of the MRJC as well as chief Judge of the King County Juvenile Drug Court. He continues as judicial advisor to Courts and Community-sponsored court programs that acknowledge and celebrate Native, Latinx, Asian-Pacific-Islander, African American and other groups' history and heritage.

Judge McCullough has maintained membership in the Minority and Justice Commission since its inception. Through the Commission he continues active community and youth outreach and education. He is Co-Founder and active Advisor to the annual Judge Charles V. Johnson Youth and Law Forum, a 30-year community outreach program supported by the Minority and Justice Commission and other community partners that strengthens community youth and guardians in areas of legal rights and responsibilities.

Judge McCullough's awards include: Leadership Living Legacy Award, Washington State Coalition of African Community Leaders, 2022; Washington State Association for Justice Judge of the Year, 2021; Washington State Access to Justice Board Judicial Leadership Award, 2019;

King County Bar Association Judge of the Year, 2009; American Board of Trial Advocates (ABOTA) Judge of the Year, 2009.

Judge McCullough has also received the Washington Association of Judges Nevins Award for youth education, a YWCA Father of the Year award, an Alpha Kappa Alpha Sorority Community Service Award, and the Alpha Phi Alpha Fraternity Award. He has been recognized on two occasions as First AME Church Man of the Year. He is past Vice-Chair of the First AME Board of Trustees and continues in leadership in the First AME and general faith community. He also holds a Life Membership in the NAACP.

Judge McCullough received undergraduate and law degrees from the University of Washington and is also an alumnus of the National Judicial College, Reno, Nevada.

Judge McCullough is a father, grandfather, godfather, uncle mentor and friend to many. He enjoys outdoor recreational sports; reading; international food, art and culture; African history; and family.

Minority and Justice Commission 2022 Symposium Planning Committee:

Justice Mary I. Yu, *Co-chair, Washington State Minority and Justice Commission*

Mary Yu was appointed to the Washington Supreme Court on May 16, 2014, and subsequently elected in 2014 and 2016. Justice Yu joined the Supreme Court after more than 14 years as an accomplished trial court judge in King County Superior Court where she presided over a wide variety of criminal, civil, and juvenile cases, and presided over hundreds of adoptions and other family law matters.

Prior to becoming a judge, Justice Yu served as Deputy Chief of Staff to King County Prosecutor Norm Maleng and as a deputy in the Criminal and Civil Divisions. Before attending law school, Justice Yu worked in the Peace and Justice Office for the Archdiocese of Chicago first as staff and later as Director of that office following her appointment to the position by Cardinal Joseph Bernardin.

Justice Yu has an extensive record of service both on and off the bench, mentoring young attorneys, law clerks, and students; co-chairing the Court's Minority and Justice Commission; chairing the Board for Judicial Administration's Public Trust and Confidence Committee; teaching at Seattle University School of Law and serving as Jurist in Residence; and co-chairing the Washington State Bar Association/University of Washington Law School Leadership Institute. Justice Yu has served on the board of FareStart from 2009 - 2018, and the advisory board for the University of Washington School of Law's Gates Public Service Program from 2014 - 2018. She is personally devoted to the Seattle Girls' School Mock Trials, serving as their judge for the last 14 years. Justice Yu is a member of the American Law Institute.

Justice Yu was raised in Bridgeport, a South Side neighborhood in Chicago, by immigrant parents; her mother came from Mexico and her father from China. She is the first in her family to graduate from college. She received her B.A. from Dominican University, her M.A. in Religious Studies from Mundelein College of Loyola University in Chicago, and her J.D. from the University of Notre Dame Law School. Justice Yu is the first Asian, the first Latina, and the first member of the LGBTQ community to serve on the Washington State Supreme Court.

Jeffrey Beaver, *Miller Nash LLP*

Jeffrey Beaver is a partner in the Seattle office of Miller Nash LLP. He has extensive experience as a trial lawyer and focuses his practice on condemnation, financial institutions, and commercial litigation. Beaver has represented clients in a variety of industries, including transportation, timberlands, financial services, and manufacturing. He has successfully tried numerous multimillion-dollar cases and has obtained favorable verdicts or settlements in some of our area's largest eminent domain cases.

Throughout his career, Beaver has been a leader in the legal community. In the Spring of 2018, Beaver served on King County Inquest Process Review Committee, formed by King County

Executive Dow Constantine. Most recently, Beaver used his firm sabbatical to provide pro bono services with the non-profit organization Lawyers Without Borders around the issues of human trafficking and wildlife crime in the United Republic of Tanzania. He currently serves on the United States Magistrate Judge Merit Selection Panel, the Washington State Bar Special Disciplinary Counsel and the Washington State Minority and Justice Commission. He also serves as a board member of Friends of the Children-Seattle, the Washington Leadership Institute, the University of Oregon School of Law Dean's Advisory Council, and the University of Oregon Foundation Board of Trustees. He has been elected to the American Board of Trial Advocates, the American College of Trial Lawyers, and The American Law Institute. He has been actively involved in the American Bar Association's efforts to provide advocacy training and assistance to Sudanese lawyers representing victims of the Darfur conflict before the International Criminal Court. Early in his career, Jeffrey was a member of the Hirabayashi Coram Nobis team.

Beaver has been elected to the Fellows of the American Bar Foundation and has been recognized by the NAACP Legal Defense and Educational Fund, Inc. as both an Earl Warren Scholar and a recipient of the John Warren Davis Award. In 2018, Jeffrey was also honored with the Lifetime Achievement Award from the Loren Miller Bar Association. In addition, he has been selected for inclusion in Washington Super Lawyers magazine since 2003.

Bob Boruchowitz, *Seattle University School of Law*

Robert C. Boruchowitz is Professor from Practice and Director of The Defender Initiative at Seattle University School of Law. Before joining the faculty in 2007, he was Director of The Defender Association in Seattle for 28 years. He founded the Defender's Racial Disparity Project. He has appeared at every level of state and federal court. He was an expert witness in the Hurrell Haring case in New York State, in the Best v. Grant County case in Washington, and in a motion to stop appointment of defender cases in New Orleans. He was co-principal investigator on the report, "An Analysis of the Economic Costs of Seeking the Death Penalty in Washington State." He was lead researcher and co-author of "Minor Crimes, Massive Waste--The Terrible Toll of America's Broken Misdemeanor Courts." He worked on a Justice Department funded project with the Sixth Amendment Center to improve public defense in several states. He developed a Right to Counsel Clinic that won a writ of mandamus on right to counsel in Department of Corrections revocation hearings, a decision affirmed in the Court of Appeals. He taught in the Youth Advocacy Clinic where he pursued due process rights for children in truancy proceedings. He has taught criminal procedure and a seminar on Right to Counsel. He developed and taught a seminar on Law and the Holocaust and the Abuse of Executive Power. He wrote "Diverting and Reclassifying Misdemeanors Could Save \$1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel," published by the American Constitution Society.

As founding president of Washington Defender Association and a former member of the Executive Committee of the American Council of Chief Defenders, Bob has been instrumental in

developing defender standards in Washington and nationally. He was a Soros Senior Fellow working on access to counsel. On a similar project with a grant from the Foundation to Promote Open Society, he worked in Kentucky, South Carolina, New Hampshire, and Washington. He has received numerous awards including the National Association of Criminal Defense Lawyers Champion of Indigent Defense Award, the Washington Association of Criminal Defense Lawyers William O. Douglas Award, the Washington State Bar Association Professionalism Award, the ACLU-W Civil Libertarian Award, and the Washington Defender Association Gideon Award.

Karen Murray, *Public Defender (retired)*

Karen W. Murray is a 1991 graduate of Seattle University School of Law. Prior to attending law school, Ms. Murray earned a B.A. degree in Sociology and a Master of Public Administration from the University of Washington.

Ms. Murray spent her career serving as a dedicated public defender and powerful advocate for indigent defendants. She is a respected leader throughout our legal community, previously serving as president of the Loren Miller Bar Association, as a member of the Race and Criminal Justice System Task Force and Washington Minority and Justice Commission, and as co-chair of KCBA's Rev. Dr. Martin Luther King Jr. Annual Luncheon Committee. Her significant contributions to our profession and to the development of young attorneys have been rightfully celebrated with such awards as the WSBA Public Service Award, the Sally P. Savage Leadership in Philanthropy Award, and the KCBA's President's Award. For years, Ms. Murray has served as mentor to Seattle University law students, and in 2018 she received the BLSA Alumni Award. Ms. Murray is a committed community member and exemplifies what it means to be continuously engaged and supportive to causes that promote access to justice while structural racism exists throughout our institutions preventing equity to be achieved for all.

Mynor Lopez, *Seattle University School of Law*

Mynor R. Lopez is a recent Seattle University School of Law graduate and a former Calhoun Family Fellow. Prior to transitioning into the legal field, Mynor worked as a policy and legislative advocate for the Latine and the small minority business communities. Since starting law school, Mynor has worked to advance racial justice and took the opportunity to present to Minority and Justice Commission about reparations as a Calhoun Fellow in the summer of 2020. He is committed to continuing the fight for a more equitable and racially just world in his career and will be joining Breskin Johnson and Townsend, PLLC, a plaintiff's side employment discrimination firm.

Carsen Nies, *Seattle University School of Law*

Carsen Nies a 2022 J.D. Candidate at Seattle University School of Law. Prior to law school, Carsen worked for a nonprofit called the Freedom Education Project Puget Sound, which offers a college degree program to folks incarcerated at the Washington Corrections Center for Women.

During law school, Carsen was a 2020 Calhoun Family Fellow, for which she worked with the other fellows to draft a memorandum on reparations that inspired this Symposium. She was also a 2021 advocacy intern with Columbia Legal Services, a certified law clerk for the District of Oregon Federal Public Defender, and an extern with the ACLU of Washington's legislative team.

Callan Oki, *Seattle University School of Law*

Callan Oki is a rising 3L at Seattle University School of Law and hopes to pursue a career in public defense upon graduation. She will be a Rule 9 intern at Snohomish County Public Defender Association this summer and is looking forward to getting in the courtroom. Callan moved back home to Seattle following her undergraduate studies at Georgetown University in Washington DC where she worked with incarcerated persons at the DC Jail and completed her senior thesis regarding the social dynamics of carceral institutions.

Christopher Sanders, *Federal Public Defender (W.D. WA)*

Christopher M. Sanders is an Assistant Federal Public Defender for the Federal Public Defender for the Western District of Washington. From 2014 to 2018, Christopher served as a public defender for the Pierce County Department of Assigned Counsel and for the King County Department of Public Defense. Christopher is a member of the Washington State Bar Association's Disciplinary Board. Mr. Sanders is also a former president of the Loren Miller Bar Association ("LMBA") and a faculty member of the LMBA's bar exam studies program. In addition, he is a co-founder of the Washington Coalition of Minority Legal Professionals, a statewide coalition of minority bar associations which issues ratings for candidates seeking elected prosecutor and sheriff positions.

He is board member for the Northwest Community Bail Fund, a commissioner for the Washington State Minority and Justice Commission, and a Co-Chair for the 32nd Annual Judge Charles V. Johnson Youth and Law Forum, an event hosted by the Seattle First AME Church. Christopher holds a Bachelor of Arts degree from Oberlin College and a Juris Doctorate from the Seattle University School of Law. He and his wife, Erika, live in Seattle.

Frank Thomas, *Washington State Minority and Justice Commission*

Frank Thomas is the Senior Court Program Analyst for the Minority and Justice Commission. He has a B.A. in Finance and Marketing from the University of Washington, and a JD from the University of California, Irvine School of Law. In law school, Frank worked on various public interest projects in law school including the Initiative to End Family Violence and the UCI Law International Human Rights Clinic. Since joining the Commission staff, Frank has lead community forums in the wake of 2020's demonstrations against police brutality, co-authored original research on Washington girls of color in detention, and represented the Commission in various stakeholder groups confronting numerous issues of minority equity and justice under law.

To: The Minority and Justice Commission
From: Dontay Proctor Mills; Mynor Lopez; Sam Sueoka; Carsen Nies
Date: July 28, 2020
RE: Reparations Memo

Executive Summary

Introduction

The 2020 Calhoun Family Fellows propose that the Washington State Supreme Court Minority and Justice Commission (“MJC”) engage in a research study of reparations for Black and Indigenous people and communities of color in Washington State and develop and present an education program about Washington’s racial history and the results of the study on how Washington may develop reparations measures. This proposal falls within the MJC’s mission of taking affirmative steps to address and eliminate racial, ethnic, and national origin bias.¹

Education Proposal

For its 2022 Supreme Court Symposium, we recommend that the Commission present an educational program that addresses the following: (1) the history of racial oppression and exclusion in Washington State; (2) different examples of reparations that have been made in the United States; and (3) suggested reparations measures that Washington may take. A symposium on these issues would align with the MJC’s Education Committee’s goal to improve the administration of justice by eliminating racism and its effects by offering and supporting high quality education programs designed to improve the cultural competency of legal professionals.²

The Commission should also consider supporting the Mandatory Continuing Legal Education Board’s suggested amendment to Admission to Practice Rules (APR) 11 that would require each licensed legal professional to complete an hour of equity, inclusion and the mitigation of bias as part of the minimum requirement of six ethics and professional responsibility credits.³

Research Proposal

With the guidance of our preliminary research, we recommend that the MJC conduct a more extensive research study to determine how best to implement reparations measures in Washington. Further, we recommend that the Commission work with community organizations, such as King County Equity Now⁴ and Africatown Community Land Trust,⁵ in its research on

¹ *Minority and Justice Commission*, Mission Statement (Last visited Jul. 15, 2020, <http://www.courts.wa.gov/?fa=home.sub&org=mjc>).

² *Minority and Justice Commission*, Education Committee (Last visited Jul. 23, 2020, <https://www.courts.wa.gov/?fa=home.sub&org=mjc&page=education&layout=2&parent=work>).

³ MCLE Board, *Special Meeting Agenda: Suggested Amendments to APR 11* (2020), (Last visited Jul. 23, 2020, https://www.wsba.org/docs/default-source/legal-community/committees/mcle-board/mcle-board-report-and-recommendation.pdf?sfvrsn=52e008f1_4).

⁴ King County Equity Now is a coalition of accountable, Black-led, community-based organizations fighting to achieve equity in King County. (Last visited Jul. 24, 2020, <https://www.kingcountyequitynow.com/>).

⁵ Africatown Community Land Trust was formed to acquire, steward and develop land assets necessary for the Black/African diaspora community to grow in the Central District. (Last visited Jul. 24, 2020, <https://www.africatownlandtrust.org/>).

how best to implement reparations measures in Washington. The three areas of reparations we have explored are the following: (1) monetary, (2) land, and (3) cultural. We have also explored a couple of international reparation examples.

Examples of monetary reparations that we have researched include the following:

- Japanese American reparations, for which 82,219 eligible Japanese American claimants were given \$20,000 each;⁶
- Reparations for victims of the Tuskegee Experiment, for which living survivors of the experiment were given lifetime medical benefits and burial services;⁷ and
- Reparations measures other jurisdictions have taken or will soon implement, including Chicago, which will research how to pay reparations to its citizens⁸ and Evanston, which has established a \$10 million reparations fund;⁹ Asheville, whose City Council recently voted to provide reparations to the city's Black residents and descendants;¹⁰ Tulsa, where a scholarship fund has been established for the descendants of those affected by the Greenwood Race Massacre;¹¹ and Florida, which paid \$500,000 to African American families who were affected by the Rosewood Massacre of 1923¹² and passed a bill to include instruction on the 1920 Ocoee Election Day Riots in schools.¹³

Examples of land reparations that we have researched include reparations for Native Hawaiians, for whom the United States committed that land that was ceded to the U.S. Government must be used for the betterment of the Hawaiian people under the Admissions Act of 1959.¹⁴

Examples of cultural reparations that we have reviewed include the following:

- The Native American Graves Protection and Repatriation Act, which requires federal agencies and institutions that receive Federal funds to transfer Native American human remains and other cultural items to the appropriate tribes;¹⁵

⁶ David Takami, *World War II Japanese American Internment- Seattle/Ling County*, HistoryLink, (November 06, 1998), <https://www.historylink.org/File/240>.

⁷ Centers for Disease Control and Prevention, *The Tuskegee Timeline*, U.S Public Health Service Syphilis Study at Tuskegee, viewed July 15, 2020, <https://www.cdc.gov/tuskegee/timeline.htm>.

⁸ Heather Cherone, *Chicago Will Not Create Reparations Commission After Lightfoot Objects*, WTTW (2020), <https://news.wttw.com/2020/06/12/chicago-will-not-create-reparations-commission-after-lightfoot-objects>.

⁹ See Eric Lutz, *One city's reparations program that could offer a blueprint for the nation*, The Guardian (2020), <https://www.theguardian.com/us-news/2020/jan/19/reparations-program-evanston-illinois-african-americans-slavery>.

¹⁰ Joel Burgess, *In historic move, North Carolina city approves reparations for Black residents*, USA Today (2020), https://www.usatoday.com/story/news/nation/2020/07/15/asheville-passes-reparations-black-residents-historic/5441792002/?fbclid=IwAR1HqSdYx8zaT1zPjFJ7YA3HXGA4J_CBB9EiwpN2WZ3XD5voOdrTX3SSmN.

¹¹ Okla. Stat. Ann. tit. 70, § 2621 (West).

¹² Fla. HB 591 (1994).

¹³ Fla HB 1213 (2020).

¹⁴ Admission Act of March 18, 1959, Pub. L. No. 86-3, § 5(f), 73 Stat 4. <https://dhhl.hawaii.gov/wp-content/uploads/2020/02/Hawaiian-Homes-Commission-Act-1921-As-Ammended-Searchable.pdf>.

¹⁵ 25 U.S. Code, Chapter 32, Section 3005, (Last visited Jul. 22, 2020), <https://www.law.cornell.edu/uscode/text/25/chapter-32>.

- The Equal Justice Initiative Memorial, which built the National Memorial for Peace and Justice in Montgomery, Alabama, to remember the legacy of enslaved black people,¹⁶ and which developed the Community Remembrance Project to memorialize documented victims of racial violence throughout history across the nation;¹⁷ and
- The transfer of Portland, Oregon-based Yale Union's land and building to the Native Arts and Cultures Foundation, which is a Native-led national organization that works with artists, communities, and leaders to advance Indigenous arts and artists.¹⁸

Finally, examples of international reparations measures we have researched include New Zealand, where the Crown created the Waitangi Tribunal to consider claims of the Māori people and provide recommendations to parliament¹⁹ and which has also paid over 2.2 billion New Zealand dollars, or nearly 1.5 billion U.S. dollars, in settlements to the Māori people,²⁰ as well as Germany, which has paid over \$80 billion to Jews who suffered under the Nazi regime²¹ and has criminalized the public use of symbols of unconstitutional organizations.²²

Recommendations:

Along with our proposals that the Commission provide an education program and conduct a study on reparations in Washington, we recommend the MJC support the following changes:

- A renaming of eight counties in the state that were originally named after slaveholders, including Pierce, Douglas, Stevens, Grant, Thurston, Jefferson, Clark, and Lewis counties;²³
- Eliminating the bar examination, which has a racially disparate impact;²⁴
- Retroactivity for legislation such as SB 5288, which has removed robbery in the second degree from the list of offenses that qualify an individual as a persistent offender, and similar legislation for resentencing purposes;²⁵
- An inclusion of Washington's racial history in K-12 curricula; and

¹⁶ Equal Justice Initiative, *The National Memorial for Peace and Justice*, (Last visited Jul. 18, 2020, <https://museumandmemorial.eji.org/memorial>).

¹⁷ *Community Remembrance Project*, <https://eji.org/projects/community-remembrance-project/>.

¹⁸ Naomi Ishisaka, *Arts organization Yale Union transfers its land and building to Native ownership*, *The Seattle Times* (2020), (Last visited Jul. 23, 2020, <https://www.seattletimes.com/entertainment/arts-organization-yale-union-transfers-its-land-and-building-to-native-ownership/>).

¹⁹ Te Ahukaramū Charles Royal, *Story: Treaty of Waitangi*, *Te Ara - the Encyclopedia of New Zealand* (Last accessed Jul. 14, 2020 <https://teara.govt.nz/en/treaty-of-waitangi/page-7>).

²⁰ New Zealand Office of Treaty Settlements, *Healing the Past, Building a Future*, 22 (Jun. 2018) <https://www.govt.nz/assets/Documents/OTS/The-Red-Book/The-Red-Book.pdf>.

²¹ Rebecca Staudenmaier, *Germany extends Holocaust compensation to include survivor spouses*, *Deutsche Welle* (2019), (Last visited Jul. 22, 2020, <https://www.dw.com/en/germany-extends-holocaust-compensation-to-include-survivor-spouses/a-49438399>).

²² Andreas Stegbauer, *The Ban of Right-Wing Extremist Symbols According to Section 86a of the German Criminal Code*, *German Law Journal* Vol. 08 No. 02, 178, 184 (2007), https://www.time.com/wp-content/uploads/2018/08/3e228-glj_vol_08_no_02_stegbauer.pdf.

²³ Knute Berger, Opinion, *8 Washington Counties Carry a Racist Legacy in Their Names*. *Crosscut*. (June 30, 2020, <https://crosscut.com/2020/06/8-washington-counties-carry-racist-legacy-their-names>).

²⁴ Society of American Law Teachers, "Statement on the Bar Exam" (2002). *Statements*. 2. https://scholars.law.unlv.edu/saltarchive_statements/2.

²⁵ Final Bill Report, S.B. 5288, 66th Leg (2019).

- The establishment of memorials or markers to remember leaders of color and victims of racial violence in Washington.

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I. Introduction

The Calhoun Family Fellows propose that the Washington State Supreme Court Minority and Justice Commission (“MJC”) engage in a research study of reparations for Black and Indigenous people and communities of color in Washington State and develop and present an education program about the results of the study on how Washington may develop reparations measures. This proposal falls within the MJC’s mission of taking affirmative steps to address and eliminate racial, ethnic, and national origin bias, as stated below:

The Minority and Justice Commission seeks to foster and support a fair and bias-free system of justice in the Washington State courts and judicial systems by: (1) identifying bias of racial, ethnic, national origin and similar nature that affects the quality of justice in Washington State courts and judicial systems; (2) **taking affirmative steps to address and eliminate such bias, and taking appropriate steps to prevent any recurrence of such bias**; and (3) working collaboratively with the other Supreme Court Commissions and other justice system partners.

Minority and Justice Commission, Mission Statement (Last visited Jul. 15, 2020, <http://www.courts.wa.gov/?fa=home.sub&org=mjc>) (emphasis added).

The MJC also is an appropriate entity to address the issue of reparations because of the Washington Supreme Court’s acknowledgement of racism in court cases such as *State v. Gregory* and *State v. Monday*, and most recently in its June 4th, 2020, letter to the judiciary and legal community following the deaths of Mr. George Floyd, Ms. Breonna Taylor, and Mr. Ahmaud Arbery. In this letter, the Supreme Court of Washington acknowledged the Court’s role in systemic racism in Washington. “This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant. We cannot undo this wrong—but we can recognize our ability to do better in the future.” *Dear Members of the Judiciary and the Legal Community*, June 4, 2020, (Last visited Jul. 23, 2020, <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>). The wrongs of courts do not go away when a new judge steps through the door or when new Justices of the Washington Supreme Court step in the halls of the Temple of Justice. The MJC understands its responsibility and its role to identify and eradicate the effects of racial, ethnic, and cultural bias in Washington state’s court system. See *Minority and Justice Commission, History* (Last visited Jul. 23, 2020,

<https://www.courts.wa.gov/?fa=home.sub&org=mjc&page=history&layout=2&parent=about>).

Conducting research on reparations with an eye toward Washington's history and developing and presenting an education program on reparations would help meet the Commission's goals.

II. Defining Reparations

The Latin origin of the word reparation is "to restore". This simple definition is sometimes lost in the discourse of what reparations means in a modern context. The idea of restoration or repair is central to the idea of reparations for Black and Indigenous people and communities of color. Reparations means reconciling with America's past atrocities through recognition of our racist history, meaningful investment in our disenfranchised communities, and restructuring our racist institutions.

Professor Charles Ogletree has written:

...almost every minority has been singled out, wronged or discriminated against. The fundamental difference in the case of African Americans is that it was written and enforced law, not just a matter of custom. Equally important is that slavery in America, which existed for nearly 250 years, was followed by an era of legalized discrimination and continuing practices that perpetuate black subordination. The legacy of slavery is seen today in well-documented racial disparities in access to education, health care, housing, employment and insurance, and in the form of racial profiling, the high rate of single-parent homes and the disproportionate number of black inmates....

My own view is compensation shouldn't be in the form of individual checks. It's not designed to benefit the Tiger Woodses and Oprah Winfreys or so many other who have overcome the barriers of institutional discrimination. Instead, a trust fund should administer money received through claims, and an independent commission should distribute those funds to the poorest members of the black community, where damage has been most severe.²⁶

III. Past and Present Atrocities in Washington Call for Reparations

Washington State has a long history of racism against its peoples, including Native Americans, Black Washingtonians, Washingtonians of Japanese Descent, Latinx Washingtonians, and Washingtonians of Chinese descent.

A. Against Native American Individuals

²⁶ "The Case for Reparations", Charles Ogletree, Jr., *USA WEEKEND*, Aug 16-18, 2002, pp. 6-7, http://instruct.westvalley.edu/kelly/History17a_on_campus/Readings/reparations.htm.

Washington committed atrocities against the Native American peoples of the state. In 1841, the Distribution-Preemption Act was passed by Congress and signed into law to encourage the settlement in the Oregon Territory, which included all or portions of five present-day states, including Washington, until the Washington Territory was established in 1853. David Bernstein and Chris J. Magoc, *Imperialism and Expansionism in American History: A Social, Political, and Cultural Encyclopedia and Document Collection*, 24–25, (2005); The Oregon Encyclopedia, *Creation of Washington Territory, 1853* (2018) (Last visited Jul. 22, 2020, https://oregonencyclopedia.org/articles/washington_territory_1853/). The law allowed adult men to claim 160 acres for themselves. *Id.* Shortly thereafter, on August 18, 1848, Congress officially established the Oregon Territory. *Id.* After the establishment of the territory, provisional Governor and first delegate to Congress, Samuel R. Thurston, advocated for the passage of the Donation Land Act. *Id.* This act granted “white settler[s] or occupant[s] of the public lands, American half-breed Indians included,” the right to 320 acres for themselves and an additional 320 acres for their wives. Oregon Donation Land Act, Sec. 4 (1850). These claims applied without regard to Native American claims to the land. *Id.* While advocating for this bill, Thurston advocated against allowing Black people to settle in Oregon, as well as Hawaiians, stating that they were “a race of men as black as your negroes of the South, and a race, too, that we do not desire to settle in Oregon.” Jean Barman and Bruce McIntyre Watson, *Hawaiians in the Oregon Country*, Oregon Encyclopedia (Last visited Jul. 19, 2020 https://oregonencyclopedia.org/articles/hawaiians_in_the_oregon_country/).

Prior to the passage of these laws, white settlers in Washington, such as Marcus and Narcissa Whitman, attempted to convert and colonize Native American tribes. Public Broadcasting Service, *New Perspective on the West, Marcus Whitman, Narcissa Whitman*, (Last accessed Jul. 6, 2020, https://www.pbs.org/weta/thewest/people/s_z/whitman.htm). These efforts by white settlers routinely encroached on Native American land, disrespected traditional Native American religious beliefs, and spread disease that ravaged the tribes. *Id.* The outcome of the colonization of Washington was the outbreak of a decade long series of wars between Native Americans and white settlers in Washington. The string of wars began with the Cayuse War in 1847, followed by the Yakama War and the Puget Sound War in 1855, and the Coeur d'Alene War of 1858. *Id.* During these wars, 10 treaties were signed between Washington’s provisional governor Isaac Stevens and various tribes. Washington State Historical Society, *Treaty Trail:*

Background Readings (Last visited Jul. 14, 2020 <https://www.washingtonhistory.org/education/curriculum/treaty-trail/treaty-trail-background-readings/>).

Despite the signing of these treaties, the state continued to discriminate against the Native American Tribes of Washington. Indian Boarding Schools were created throughout the state from the 1880s to the 1920s, which were notorious for their harmful “assimilating” efforts. See Carolyn J. Marr, *Assimilation Through Education: Indian Boarding Schools in the Pacific Northwest*, University of Washington (Last accessed Jul. 14, 2020 <https://content.lib.washington.edu/aipnw/marr.html#movement>); Marsha King, *Tribes confront painful legacy of Indian boarding schools*, Seattle Times (Feb. 3, 2008) <https://www.seattletimes.com/seattle-news/tribes-confront-painful-legacy-of-indian-boarding-schools/>. The Washington state government attempted to limit the fishing rights of Native Americans in the state. See e.g. *State v. Tulee*, 7 Wn.2d 124, 109 P.2d 280 (1941), *rev'd sub nom. Tulee v. State of Washington*, 315 U.S. 681, 62 S. Ct. 862, 86 L. Ed. 1115 (1942); *State v. Towessnute*, 89 Wash. 478, 154 P. 805 (1916) *vacated* Order No. 13083-3. Washington leaders cried foul when Kennewick Man, the 9,000-year-old remains found in the Columbia River, were not returned to the Umatilla tribe under the Native American Graves Protection and Repatriation Act. See Tasneem Raja, *A Long, Complicated Battle Over 9,000-Year-Old Bones Is Finally Over*, National Public Radio (May 5, 2016) <https://www.npr.org/sections/codeswitch/2016/05/05/476631934/a-long-complicated-battle-over-9-000-year-old-bones-is-finally-over>; Conrad Wilson, *Inslee Asks Army Corps To Return 'Kennewick Man' To Tribes*, OBP (Jun. 23, 2015); Sarah Schilling, *Sen. Murray introduces bill to return Kennewick Man to tribes*, Tri-City Herald (Aug. 6, 2015) <https://www.tricityherald.com/news/local/article32235597.html>.

As of today, there are 35 federally recognized tribes²⁷ and seven tribes that are seeking federal recognition²⁸ in the state of Washington. See, Washington Governor's Office of Indian Affairs, *Federally Recognized Indian Tribes*, (Last visited Jul. 18, 2020 <https://goia.wa.gov/tribal-directory/tribal-chair-contact-information>); Washington Governor's Office of Indian Affairs, *Non-Federally Recognized Indian Tribes*, (Last visited Jul. 18, 2020 <https://goia.wa.gov/tribal-directory/non-federally-recognized-indian-tribes>).

B. Against Black Individuals

Throughout its history, Washington has had a passive relationship with anti-Black racism and white supremacy. In 1857, the Supreme Court held that even if a slave moved to a "free" state, his status was not changed, and he and his family remained property, a "right distinctly and expressly affirmed in the Constitution." *Dred Scott v. Sandford*, 60 U.S. 393, 451, 15 L. Ed. 691 (1857), *superseded* (1868).

Washington welcomed free Blacks, in contrast to Oregon, which had a "lash law" to prevent free Blacks from moving to or staying in the territory. The Oregon Black Exclusion Law of June 1844 required free Blacks over 18 to leave Oregon or be subject to trial. Thomas C. McClintock, *James Saul, Peter Burnett, and the Oregon Black Exclusion Law of June 1844*, *The Pacific Northwest Quarterly*, Vol. 86, No. 3, 122(1995), <https://www.jstor.org/stable/40491550?seq=1>. If found guilty, the person was to "receive upon his or her bare back not less than twenty nor more than thirty-nine stripes, to be inflicted by the constable of the proper county." Darrell Millner, *Black in Oregon*, *The Oregon Encyclopedia*, (July 20, 2020, https://oregonencyclopedia.org/articles/blacks_in_oregon/#.XxXaApNKiqA). The punishment was to be repeated every six months until the person departed. *Id.*

²⁷ The Coeur d'Alene Tribe, Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Chehalis Reservation, Confederated Tribes of the Colville Reservation, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of Warm Springs Reservation of Oregon, Cowlitz Indian Tribe, Hoh Indian Tribe, Jamestown S'Klallam Tribe, Kalispel Tribe of Indians, Kootenai Tribe of Idaho, Lower Elwha Klallam Tribe, Lummi Nation, Makah Tribe, Muckleshoot Indian Tribe, Nez Perce Tribe, Nisqually Indian Tribe, Nooksack Indian Tribe, Port Gamble S'Klallam Tribe, Puyallup Tribe, Quileute Tribe, Quinalt Indian Nation, Samish Indian Nation, Sauk-Suiattle Indian Tribe, Shoalwater Bay Indian Tribe, Skokomish Indian Tribe, Snoqualmie Indian Tribe, Spokane Tribe of Indians, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Indian Tribal Community, Tulalip Tribes, Upper Skagit Indian Tribe

²⁸ Steilacoom Tribe, Snoqualmoo Tribe, Snohomish Tribe, Marietta Band of Nooksack Tribe, Kikiallus Indian Nation, Duwamish Tribe, Chinook Indian Tribe

George Bush, a free mixed-race Black man, traveled west in 1844 along the Oregon Trail. Knute Berger & Stephen Hegg, Culture, *Mossback's Northwest: The Black Pioneer Who Launched the Puget Sound Settlement*. Crosscut. (May 8, 2020, <https://crosscut.com/2020/05/mossbacks-northwest-black-pioneer-who-launched-puget-sound-settlement>). He initially arrived in Oregon but was forced north by the lash law. *Id.* He and his family settled and established the Bush Prairie in modern day Tumwater, near Olympia. *Id.* George Bush has a memorial Butternut Tree at the State Capitol in Olympia, the seed for which came from the one of the oldest Butternut Trees in the world on the Bush Prairie. Jennifer Crooks, *Honoring a True Pioneer: The George Bush Butternut Tree on the Washington State Capitol Campus*, Thurston Talk, Feb. 11, 2018, (Last viewed July 22, 2020, <https://www.thurstontalk.com/2018/02/11/george-bush-butternut-tree-washington-state/>).

Recently, it came to light that white settlers from Missouri brought slaves to Oregon Territory, some of whom lived where what is now Washington. Knute Berger, Opinion, *Yes, There Were Black Slaves in the Pacific Northwest*, Sep. 30, 2019, (Last visited Jul. 20, 2020, <https://crosscut.com/2019/09/yes-there-were-black-slaves-pacific-northwest-historians-are-making-our-region-confront-it>). Charles Mitchell was an enslaved young Black man brought to the Washington Territory by the Tilton family. Lorraine McConaghy, *Charles Mitchell, Slavery, and Washington Territory in 1860*. Black Past, Jul. 14, 2012, (Last visited Jul11, 2020, <https://www.blackpast.org/african-american-history/charles-mitchell-slavery-and-washington-territory-1860/>). In 1860, young Charles caught the attention of representatives of the Black community in the Crown Colony of Victoria, Canada. *Id.* He was informed the community was 25% Black and that he would be free upon his arrival, so he stowed away on a ship headed for the colony but was eventually discovered. *Id.* When the ship arrived in Canada, he was held captive. *Id.* When the patriarch of the Tilton family, James Tilton, learned that Charles had run away, he protested, and leveraged his connections to the local and federal government for the return of his property. *Id.* Representatives of the Crown Colony of Victoria hired a lawyer and filed a writ of habeas corpus to have Charles released. *A Fugitive Slave Case*, The Daily British Colonist, Sept. 26, 1860, at 2, (Last visited Jul. 27, 2020, <https://archive.org/stream/dailycolonist18600926uvic/18600926#mode/1up>). The writ of habeas corpus was granted. The judge held that no man could be held as a slave on British soil and “ordered Charles be forthwith set at liberty.” *A Fugitive Slave Case*, The Daily British Colonist,

Sept. 27, 1860, at 2, (Last visited Jul. 27, 2020, <https://archive.org/stream/dailycolonist18600927uvic/18600927#mode/1up>).

The story of Washington's fugitive slave was reported in a collection of local papers. James Tilton was described as a master, an employer, a guardian, an owner, and a father-figure to Charles Mitchell. Lorraine McConaghy, *supra*. Conversely, Charles was called a slave, an employee, a ward, property, and like a son to Tilton. *Id*.

William Clark, of the Lewis and Clark expedition, brought a slave on the trip and refused to free him after the success of the expedition. See *An enslaved man was crucial to the Lewis and Clark expedition's success. Clark refused to free him afterward*, Washington Post, January 12, 2020, <https://www.washingtonpost.com/history/2020/01/12/york-slave-lewis-clark-expedition/>.

During the Civil War, many of Washington's political leaders sympathized with southern states and the desire for enslaving human beings but joined the Union forces to preserve the Union they looked forward to joining. John Caldbick, *Civil War and Washington Territory*. HistoryLink.org Essay 10253. (Jan. 12, 2013, <https://www.historylink.org/File/10253>). Eight counties in the state were named after men with connections to slavery. Knute Berger, Opinion, 8 *Washington Counties Carry a Racist Legacy in Their Names*. Crosscut. (June 30, 2020, <https://crosscut.com/2020/06/8-washington-counties-carry-racist-legacy-their-names>). Senator Stephen A. Douglas, for whom Douglas County in Eastern Washington is named, was loyal to the Union, but also opposed abolition and wanted to allow states and territories to decide on slavery on their own. *Id*. Douglas inherited a family plantation of 100 slaves in Mississippi and managed the plantation personally from a distance, using its profits to fund his political ambitions through the 1850s. *Id*.

A local chapter of the United Daughters of the Confederacy commissioned a Confederate monument that was erected in Seattle in 1926. London Jones, *Confederate Monuments in Seattle, Hidden in Plain Site*, Seattle Spectator (2020), (Last visited Jul. 27, 2020, <https://seattlespectator.com/2020/01/23/confederate-monuments-in-seattle-hidden-in-plain-sight/>). Granite used for the monument was imported from Georgia's Stone Mountain, which is considered sacred ground by the Ku Klux Klan. Marjorie Ann Reeves and Paula Becker, *Alaska-Yukon-Pacific Exposition in Seattle Celebrates Dixie Day on August 24, 1909*. HistoryLink.org Essay 8802. (Oct. 6, 2008, <https://www.historylink.org/File/8802>). Further, the Daughters of the Confederacy petitioned to name a portion of U.S. Highway 99 after Confederate President

Jefferson Davis. Richard F. Weingroff, *Jefferson Davis Memorial Highway*, U.S. Dept. of Transportation Fed. Highway Admin. <https://www.fhwa.dot.gov/infrastructure/jdavis.cfm>. A stone marker for the highway served as a monument to Davis at the north end of the highway, at a small park in Blaine named after the Confederate President. The monument was removed in 2002. Susanna Ray, *Davis Marker Heads for Storage*, Herald Net, March 27, 2002, (Last visited Jul. 23, 2020, <https://www.heraldnet.com/news/davis-marker-heads-for-storage/>). The stone marker was donated to the Sons of Confederate Veterans Pacific NW Division along with a second marker placed in Vancouver, which was removed and placed in storage by the city of Vancouver in 1998. *Confederate memorial owners in Washington undeterred by recent removals*, YakTriNews.com, Jul. 8, 2020, (Last visited Jul. 23, 2020, <https://www.yaktrinews.com/confederate-memorial-owners-in-washington-undeterred-by-recent-removals/>). In 2007, the Sons of Confederate Veterans Pacific NW Division created a new monument to the Confederate President with stone markers on private property in Ridgefield. *Id.*

During World War II, Black refugees fled the South during the Great Migration. Many Black families arrived in Washington in search of a future free from the Jim Crow South but could not outrun the reach of white supremacy. Black southern workers were drawn to Kennewick, Pasco, and Richland (Tri-Cities). Kennewick was known as the “Birmingham of Washington.” Robert Bauman, *Jim Crow in the Tri-Cities, 1943-1950*, 96 no. 3 *The Pacific Northwest Quarterly* 124-31 (2005) (Last visited Jul. 15, 2020, www.jstor.org/stable/40491852). Workers were needed for power plant construction to help the war effort. *Id.* Black workers were relegated to temporary menial jobs and were denied government housing reserved for those who held permanent white-collar positions, mostly white employees. *Id.* Richland had covenants that prohibited the selling of homes to Black families, which forced Black families to live in East Pasco, often in trailers or shacks. *Id.* There was an influx of Black families in Pasco during the war. *Id.* In response, Pasco implemented its own brand of Jim Crow. Restaurants, bars, diners, and theatres developed a de facto segregation. *Id.*

In contrast to some of Washington’s history, the city of Centralia was founded by a Black couple, George and Mary Jane Washington. In 1875 the couple established a town they named Centerville. Kit Oldham, *George and Mary Jane Washington found the town of Centerville (now Centralia) on January 8, 1875*, HistoryLink.org Essay 5276, Feb. 23, 2003, (last viewed Jul. 20, 2020, <https://www.historylink.org/File/5276>). Washington sold lots in town for \$10 each to

anyone who would settle. *Id.* In 1883, as the town grew, the name was changed to Centralia to appease settlers who did not like the name Centerville. *Id.* Washington set aside land for Centralia's Central Park, which is now George Washington Park. *Id.* Washington sold property for little money down, offered loans at no interest, and provided work when nothing else was available. *Id.* Washington's assistance became crucial when the panic of 1893 hit and Centralia, along with the rest of the country, went into an economic downturn for most of the decade. *Id.* Washington organized a private relief program and traveled to Oregon by wagon for rice, flour, and sugar to be distributed to needy residents *Id.* Washington declined to foreclose on mortgages he held, and when other properties went up for auction, he bought them to save the town from absentee ownership or bankruptcy. *Id.* In 2018, the city unveiled a bronze statue of the city's founders. Brian Mittge, *Centralia Unveils Bronze Statue of Founders*, The Daily Chronicle, Aug. 24, 2018, (Last viewed Jul. 20, 2020, http://www.chronline.com/news/centralia-unveils-bronze-statue-of-founders/article_ec010640-a80c-11e8-bf9c-03116f8a2c74.html).

C. Against Washingtonians of Japanese Descent

Washingtonians of Japanese descent have also suffered discrimination. In the early 20th century, Japanese Americans became targets of discrimination by the federal government. In 1907, President Theodore Roosevelt brokered an agreement with the Japanese government to limit the number of visas and passports granted to day laborers. *See* History.com Editors, *Gentlemen's Agreement*, History.com (Last visited Jul. 19, 2020 <https://www.history.com/topics/immigration/gentlemens-agreement>). That agreement would later be reinforced by the Immigration Act of 1924, which severely limited the number of Japanese immigrants into the United States. U.S. Office of the Historian, *The Immigration Act of 1924 (The Johnson-Reed Act)*, Milestones in U.S. History (Last visited Jul. 19, 2020 <https://history.state.gov/milestones/1921-1936/immigration-act>).

In 1902, the Washington Supreme Court refused to allow a law graduate from the University of Washington to be admitted to the bar because Japanese people were barred from becoming citizens under the U.S. law in force at the time. *See In re Takukji Yamashita*, 30 Wash. 234, 239, 70 P.482 (1902). Takuji Yamashita left Japan as a young teen in 1893 and made his way to Tacoma. Rebecca Cook, *Justice Failed Japanese Immigrant*, Los Angeles Times (2001). When he arrived in Tacoma, he attended Tacoma High School where he graduated in two years

and then attended law school at the University of Washington. David Wilma, *State Supreme Court denied citizenship for UW School of Law grad Takuji Yamashita on October 22, 1902*, HistoryLink (2000). Mr. Yamashita was among only 10 members of the class of 1902 at the University of Washington law school. Four days before receiving his law degree, he picked up his naturalization papers from the Pierce County Superior Court. Steven Goldsmith, *A civil action: UW Law School tries to right a historic wrong*, University of Washington Magazine (2000). The following week, Mr. Yamashita rode the train to Olympia with eight classmates to take the oral bar exam. *Id.* He passed with a performance that The Seattle Times described as “highly creditable.” *Id.* Although he had passed the oral bar examination, he still needed to obtain citizenship in order to practice law. *Id.*

As the gatekeepers of the bar, the Supreme Court decided that Mr. Yamashita could not be a licensed lawyer in Washington because no person of his ethnicity could ever become a citizen and, therefore, he could not practice law. Washington Attorney General Wickliffe B. Stratton stated that Mr. Yamashita could not become a citizen because “in no classification of the human race is a native of Japan treated as belonging to any branch of the white or whitish race.” Mr. Yamashita challenged Washington State’s law and filed a 28-page brief arguing that shutting out a person on the grounds of race affronted the core values of “the most enlightened and liberty-loving nation of them all ... in which all men are equal in rights and opportunities.” At the end of the Washington Supreme Court’s opinion in *In re Takukji Yamashita*, the Court clearly stated, “The applicant cannot be admitted, because he is not a citizen of the United States.” 30 Wash. 234, 239, 70 P.482 (1902).²⁹

Race was the central and deciding factor in not allowing Mr. Yamashita to be a licensed attorney in Washington. See *Id.* at 234-39. The question presented to the Washington Supreme Court was whether someone of the Japanese race is eligible under the naturalization laws, for admission to citizenship and, therefore, eligible to be admitted to the Washington bar. *Id.* at 235. The Court deferred to Acts of Congress relating to naturalization in reaching its decision. The relevant revised statute stated that: “Any alien being a free white person may be admitted to be a

²⁹ The Washington Supreme Court posthumously admitted Mr. Yamashita to the Bar. See, “Takuji Yamashita: State’s leaders honor a man once rejected because of his race”, University of Washington News, at <https://www.washington.edu/news/2001/02/12/takuji-yamashita-states-leaders-honor-a-man-once-rejected-because-of-his-race/>.

citizen.” 16 Stat. 256, § 7. This was afterward revised, and placed in the Revised Statutes, — section 2169 (see 18 Stat. 318), —so as to read, “The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent.” *Id.* at 236. This meant that only two races were eligible for citizenship under the naturalization laws: (1) free white persons and (2) aliens of African nativity and to persons of African descent. *Id.* The Court referred to Japanese people as part of the “yellow race” and that this division of race was described by Johann Blumenbach, an 18th-century anthropologist from Germany. *Id.*; Raj Bhopal et al., *The Beautiful Skull, and Blumenback’s Errors: the Birth of the Scientific Concept of Race*, *The BMJ* (2007). The Court cited precedent that supported the notion that “white” does not extend to the “yellow race” or the “brown race” or the “red race.” *Id.* at 237. The Washington Supreme Court wrote:

In 1880 it was determined that a native of British Columbia, half Indian and half white, could not be naturalized. *In re Camille (C. C.)* 6 Fed. 256. *In Re Po (City Ct. Alb.)* 28 N. Y. Supp. 383, a native of British Burmah was denied admission. In *Re Kanaka Nian*, a Hawaiian was denied naturalization. 6 Utah, 659, 21 Pac. 993, 4 L. R. A. 726. *In Re Saito*, 62 Fed. 126, the federal circuit court adjudged that a native of Japan was of the Mongolian race, and therefore not eligible to naturalization.

Id.

Unfortunately for Mr. Yamashita, his story of oppression did not stop at Washington Supreme Court’s decision in *In re Takukji Yamashita*. In 1922, Mr. Yamashita, undeterred by Washington State’s treatment, attempted to start a real estate business. The Secretary of State refused to receive and file Mr. Yamashita’s articles on the ground that, being of the Japanese race, Mr. Yamashita was never entitled to naturalization under the laws of the United States. *Yamashita v. Hinkle*, 260 U.S. 199, 43 S.Ct. 69 (1922). The Secretary of State said that Mr. Yamashita was not qualified under the laws of the State of Washington to form his proposed real estate corporation or file articles naming him as a sole trustee of said corporation. *Id.* Yamashita appealed to the Supreme Court of Washington for a writ of mandamus to compel the Secretary of State to receive and file the articles, but the Supreme Court refused. *Id.* Mr. Yamashita appealed to the Supreme Court of the United States by writ, only to be denied naturalization under the same holding as *Ozawa v. United States*, another case that was decided shortly before Mr. Yamashita’s case. *Ozawa v. United States*, 260 U.S. 178, 43 S.Ct. 65 (1922) (stating that petitioner Takao Ozawa, a resident of the United States for over 20 years, a graduate of Berkeley

California High School and a student of the University of California, a father who raised his children in American schools and only spoke to them in English, could not be considered a United States citizen despite fully assimilating to U.S. values).

Discrimination and oppression persisted in Washington against Japanese Americans. Anti-Japanese sentiments emerged after the attack on Pearl Harbor. Days after the attack, FBI agents began arresting Japanese community leaders. See David Takami, *World War II Japanese American Internment — Seattle/King County*, HistoryLink.com (Nov. 6, 1998) <https://www.historylink.org/File/240>. After the signing of Executive Order 9066 by President Franklin D. Roosevelt, Japanese Americans were removed from their homes, farms, and communities. *Id.*

Mr. Yamashita was among those who were wrongfully interned³⁰ by the United States government. Takuji Yamashita Photograph Collection, University of Washington (1999). As an Issei, or first-generation Japanese immigrant, Mr. Yamashita’s “loyalties” to the US government were being tested. Mr. Yamashita was forced to leave his business and home in Washington where he was the Proprietor of People’s Cafe in Bremerton and ran an oyster business in Silverdale. *Id.* Mr. Yamashita was removed to internment camps across California and Idaho. *Id.* The internment camps were the final blow that weakened Mr. Yamashita’s spirits. Goldsmith *supra*. Unable to pay their bills for three years locked inside three camps, the family lost all its holdings³¹. *Id.*

Across the West Coast of the United States, American citizens were removed from their homes, forced to put their belongings into trash bags, and incarcerated in barbed wire protected camps. Lt. General John DeWitt, head of the Western Defense Command, left no doubt that Japanese and Japanese Americans were singled out for mass exclusion on racial grounds. David Takami, *World War II Japanese American Internment- Seattle/King County*, HistoryLink,

³⁰ We note the following comment in a news article:

Use of the word “internment” is debatable. They were concentration camps—as defined by Merriam Webster as “a camp where persons (as prisoners of war, political prisoners, or refugees) are detained or confined.” They’re also associated with the mass imprisonment of ethnic minorities. That’s not to say the camps were comparable to the hell Jews suffered in Nazi “concentration camps.”

75 Years Ago, Only One Paper Opposed Japanese American Internment Camps, Seattle Met, April 2, 2017, at <https://www.seattlemet.com/news-and-city-life/2017/04/75-years-ago-only-one-paper-opposed-japanese-american-internment-camps>.

³¹ On March 1, 2001, Takuji was posthumously inducted into the state bar in a formal ceremony. H.R. 2001-4626 (2001)(last visited July 24, 2020), <http://lawfilesexternal.wa.gov/biennium/2001-02/Pdf/Bills/House%20Resolutions/4626-Takuji%20Yamashita.pdf?q=20200720085750>.

(November 06, 1998), <https://www.historylink.org/File/240>. On February 14, 1942, DeWitt wrote, "The Japanese race is an enemy race and while many second and third-generation Japanese born on United States soil, possessed of United States citizens have become 'Americanized,' the racial strains are undiluted." *Id.* On February 19, 1942, President Roosevelt signed Executive Order 9066, authorizing the forced evacuation. *Id.* Both Seattle Mayor Earl Millikan and Governor Arthur Langlie declared their support of the removal. *Id.* On March 30, 1942, Japanese Americans from Bainbridge Island in Puget Sound became the first group in the nation to be evacuated. *Id.*

A few weeks later in Seattle, on Tuesday, April 21, "evacuation" announcements were posted on telephone poles and bulletin boards. *Id.* The community was to leave the city in three groups the following Tuesday, Thursday, and Friday. *Id.* Because the Army limited Japanese Americans to bringing only what they could carry, people made arrangements to store their belongings at churches or at the homes or businesses of friends. *Id.* A total of 12,892 persons of Japanese ancestry from Washington state were incarcerated. *Id.* Seattle and Puyallup Valley Japanese were sent to the Puyallup "assembly center" and then onto Minidoka in Idaho. *Id.* The *Bainbridge Island Review* was the only newspaper that opposed the removal of Japanese-Americans. See, *75 Years Ago, Only One Paper Opposed Japanese American Internment Camps*, Seattle Met, April 2, 2017, at <https://www.seattlemet.com/news-and-city-life/2017/04/75-years-ago-only-one-paper-opposed-japanese-american-internment-camps>. When the war ended and these families came home, some decided not to return to their previous communities. In the Yakima Valley, only 10 percent of the Japanese American community returned, which caused Yakima's Japantown to fade and become a historical landmark. Yakima Herald Staff, *Not Forgotten*, Yakima Herald, (Last accessed Jul. 19, 2020), https://www.yakimaherald.com/special_projects/not_forgotten/).

Judicial actors and entities have played a significant role in both perpetuating injustices against Japanese Americans and in correcting injustices against Japanese Americans. See e.g., *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193 (1944); *Korematsu v. United States*, 584 F.Supp.1406, 16 Fed. R. Evid. Serv. 1231, (1984) (conviction vacated under a writ of *coram nobis*).

In 1944, the Supreme Court of the United States affirmed Fred T. Korematsu's conviction for defying a military exclusion order which prohibited all persons of Japanese

ancestry from being in a certain place. *Korematsu*, 323 U.S. at 216. The Supreme Court reached its conclusion by accepting that “hardships are part of war”, and that racial prejudice was unrelated to the issue at hand. See *Id.* at 223. The court stated that Mr. Korematsu was excluded merely because “we were at war with the Japanese Empire”, and that the exclusion had nothing to do with his race. *Id.* Circuit Judge Schroeder described the Supreme Court’s decision in *Korematsu* as one that has never occupied an honored place in history. *Hirabayashi v. U.S.*, 828 F.2d 591, 593 (9th Cir. 1987).

Much like Mr. Korematsu, Gordon Hirabayashi was a staunch advocate for justice. Mr. Hirabayashi, as a 22-year-old- college student, chose to defy the curfew and exclusions orders that culminated on the West Coast during World War II. Lorrain K. Bannai, INTRODUCTION: THE 25TH ANNIVERSARY OF THE UNITED STATES v. HIRABAYASHI CORAM NOBIS CASE: ITS MEANING THEN AND ITS RELEVANCE NOW, 11 Seattle J. for Soc. Just. 1 (2012). Mr. Hirabayashi was born and raised in Seattle. *Id.* at 3. Mr. Hirabayashi challenged the constitutionality of the curfew and exclusion orders, but the Supreme Court deferred to the government’s argument of military necessity. *Id.* In 1983, a team of attorneys reopened Mr. Hirabayashi’s case and argued that the government had suppressed and destroyed material evidence that would have shown that there was no bona fide military necessity for the internment of thousands of Japanese people. *Id.* An archival researcher, Aiko Herzig-Yoshinaga, discovered a report made in preparation of the State’s case against Mr. Hirabayashi. *Id.* The report made by Lt. Commander Kenneth Ringle of the Office of Naval Intelligence advised against any mass removal of Japanese Americans. *Id.* at 6. The attorney for the Department of Justice advised Solicitor General Charles Fahy that the government had a duty to inform the court of Lt. Commander Ringle’s report, and that “any other course of action might approximate the suppression of evidence.” *Id.* The government ignored its counsel’s advice and suppressed materially relevant information. *Id.* Considering the evidence that material information had been suppressed and destroyed, Judge Mary Schroeder affirmed the lower court’s findings of prosecutorial fraud and vacated Mr. Hirabayashi’s curfew conviction and exclusion conviction. The *coram nobis* cases are relevant examples of how judicial wrongs can be corrected and how there ought to be no statute of limitations on correcting moral wrongs.

D. Against Latinx Washingtonians

Mexican Americans have a history in Washington that began prior to the territory's statehood. Mexican Americans created the mule packing system, which was the backbone of the transportation system for the mining economy of the late nineteenth century. Gonzalo Guzman, *Latino History of Washington State*, Aug. 27, 2006 HistoryLink.org, (Last visited July 22, 2020, <https://www.historylink.org/File/7901>). Mexican mule packers were in high demand because of their skill. Because most white miners preferred mining to loading, many packers throughout the Pacific Northwest were Mexicans. *Id.* In the twentieth century, particularly after the start of World War II, Mexican migrants from the Southwest and immigrants from Mexico made up a large part of the labor force that brought in Yakima County's harvests. Elizabeth Salas, *Mexican American Women in Washington*, Dec 30, 2003, HistoryLink.org, (Last visited Jul. 22, 2020, <https://historylink.org/File/5629>). Migration from U.S. southwestern states and immigration from Mexico and South America began to increase dramatically in Washington during the 1940s. This was in part due to the demand for labor created by the departure for the war of men from the region, and in part due to significant racism toward Asian and Native American laborers. Conditions for migrant workers in the Yakima Valley were inadequate. Mexican laborers were forced into a state of political and economic subjugation. Oscar Rosales Castañeda, *The Fusion of El Movimiento and Farm Worker Organizing in the 1960s*. The Seattle Civil Rights and Labor History Project, University of Washington, 2009. (Last viewed July 23, 2020, https://depts.washington.edu/civilr/farmwk_ch6.htm#ftn_ref_13). A United States Department of Agriculture study ranked the economic status of the rural population of Yakima County among the lowest two-fifths of rural populations of all counties in the United States. Yakima farm workers suffered from low wages, lack of job security, poor health, high mortality and injury rates, inadequate nutrition, education and housing, discriminatory exclusion from the benefits of social welfare legislation enjoyed by others and a lack of political power. Charles E. Ehlert, *Report of the Yakima Valley Project* (Seattle: American Civil Liberties Union, 1969).

This ACLU report triggered a series of lawsuits and the spread of organizing efforts to improve the conditions of Mexican laborers. In 1969 farm workers sued Yakima County for the discriminatory practice of administering literacy tests for Mexican American voters. *Mexican American Fed'n-Washington State v. Naff*, 299 F. Supp. 587 (E.D. Wash. 1969). In 1968 the plaintiffs were attempting to register to vote, accompanied by Guadalupe Gamboa, who spoke to the deputy registrar in English. *Id.* at 589. Gamboa stated that he would interpret from Spanish to

English and English to Spanish for the plaintiff applicants so that the deputy registrars would be able to obtain essential information for their records in effecting a proper registration of the plaintiff applicants. *Id.* at 589-590. Plaintiffs were told they could not use interpreter services. *Id.* The defendant registrars refused to register plaintiffs because plaintiffs were unable to speak and read the English language. *Id.* In 1969 the Washington State Constitution required voters have the ability to read and write English. *Id.* at 588. The farm workers claimed the provision violated the Federal constitution, the Civil Rights Act and the Voting Rights Act. *Id.* The trial judge held that there was no evidence that a test had been administered by the defendant when plaintiffs were asked about their ability to read and write in English. *Id.* at 593. The judge found that the defendant's inquiry was not discriminatory, did not constitute a test and did not infringe on the rights of the plaintiff. *Id.* In 1971, the U.S. Supreme Court vacated the judgment. *Jimenez v. Naff*, 400 U.S. 986, 91 S. Ct. 448, 27 L. Ed. 2d 434 (1971).

E. Against Washingtonians of Chinese Descent

Asian immigrants have been in the Pacific Northwest since its inception. As Washington became a territory, Chinese immigrants were forced to endure conditions similar to the Jim Crow South. Matthew W. Klinge, *A History Bursting with Telling: Asian Americans in Washington State*, Center for the Study of the Pacific Northwest University of Washington Department of History, <https://depts.washington.edu/cspn/wordpress/wp-content/uploads/2017/09/A-History-Bursting-With-Telling.pdf>. The Washington Territory passed a series of anti-Chinese legislation, including a measure in 1853 that denied Washingtonians of Chinese descent the right to vote; an "Act to Protect Free White Labor Against Competition with Chinese Coolie Labor and to Discourage the Immigration of Chinese in the Territory," which led to the "Chinese Police Poll Tax of 1864;" an Act relating to witnesses and evidence in 1864, which prohibited Washingtonians of Chinese descent from giving evidence in the courts in cases involving whites; a law in 1867 which disallowed Washingtonians of Chinese descent from voting in school elections; and legislation which disallowed Washingtonians of Chinese descent from owning land. Northwest Asian Weekly, *Seeking resolution for a sad chapter in Seattle's history* (2015), (Last visited Jul. 27, 2020, <https://nwasianweekly.com/2015/07/seeking-resolution-for-a-sad-chapter-in-seattles-history/>).

Following the enactment of the Chinese Exclusion Act of 1882, there was a rise in racial violence aimed at Chinese immigrants. Klinge, *supra*. In 1885, business and civic leaders in

Tacoma planned the expulsion of the city's Chinese residents. Priscilla Long, *Tacoma Expels the Entire Chinese Community on November 3, 1885*, HistoryLink.org, (Jan. 17, 2003) <https://www.historylink.org/File/5063>. In early November of that year, a white mob went door to door and forced Chinese residents from their homes. *Id.* The mob led the families to the train station, where Chinese families boarded to Portland. *Id.* Chinese families lost everything, as their homes and businesses were burned to the ground. *Id.* The perpetrators were indicted, brought to Vancouver in Washington Territory, and went before Judge Hoyt, who set them free on bail. *Id.* They returned to Tacoma as heroes in a welcoming parade. *Id.* The trial was transferred to Tacoma the following year and all the indictments against the perpetrators were dropped. *Id.* In 1993, the Tacoma City Council passed a resolution to make amends and apologize for the city's actions. *Id.* Spurred by a local pastor,³² the City of Tacoma established The Tacoma Chinese Reconciliation Park. <https://www.tacomachinesepark.org>.

IV. Education Program Proposal for Minority and Justice Commission

For its 2022 Supreme Court Symposium, we recommend that the Commission present an educational program that addresses the aforementioned history of racial oppression and exclusion in Washington State, provides examples of reparations that have been provided in the United States, and presents reparations measures that Washington may take.

The MJC has previously presented symposia that address ways the state court system and other institutions are affected by racial bias. Some of the topics of more recent symposia include reentry, pre-trial justice, jury diversity, legal financial obligations, and bias within the use of artificial intelligence. *Minority and Justice Commission*, Supreme Court Symposium (Last visited Jul. 23, 2020), <https://www.courts.wa.gov/?fa=home.sub&org=mjc&page=symposium&layout=2>). A symposium on the racist history of Washington and on reparations measures that the Court and the State may take would address possible solutions for issues brought up in past symposia. Furthermore, such a symposium would align with the MJC's Education Committee's goal to improve the administration of justice by eliminating racism and its effects by offering and

³² "Tacoma pastor wanted to right Tacoma's shameful past," News Tribune, April 27, 2018, at <https://www.thenewstribune.com/news/local/article209992204.html>.

supporting high quality education programs designed to improve the cultural competency of legal professionals. *Minority and Justice Commission*, Education Committee (Last visited Jul. 23, 2020,

<https://www.courts.wa.gov/?fa=home.sub&org=mjc&page=education&layout=2&parent=work>).

Furthermore, we recommend that the Commission support the Mandatory Continuing Legal Education Board's suggested amendment to Admission to Practice Rules (APR) 11 that would require each licensed legal professional to complete at least one credit hour of equity, inclusion and the mitigation of bias as part of the minimum requirement of six ethics and professional responsibility credits per each three year MCLE reporting period. MCLE Board, *Special Meeting Agenda: Suggested Amendments to APR 11* (2020), (Last visited Jul. 23, 2020, https://www.wsba.org/docs/default-source/legal-community/committees/mcle-board/mcle-board-report-and-recommendation.pdf?sfvrsn=52e008f1_4). The suggested amendment would not increase the total number of ethics hours required. *Id.* The original proposal was drafted by the WSBA Diversity Committee and the Washington Women Lawyers with the support of eight minority bar associations: the Asian Bar Association of Washington, Cardozo Society of Washington State, Filipino Lawyers of Washington, Pierce County Minority Bar Association, Loren Miller Bar Association, Latina/o Bar Association of Washington, South Asian Bar Association of Washington, and QLaw. *Id.*

The MCLE Board has stated that this suggested amendment will better equip legal professionals with tools of cultural competency and understanding in working with the diverse public they serve. *Id.* at 3. Further, the Board has stated that part of the Board's role in determining compliance with the minimum education requirements is to develop, propose, and support continuing legal education that will not only educate Washington licensed legal professionals on the state of the law in various subjects but also improve intercultural communication, improve equitable outcomes, and reduce the risk of potential liability. *Id.* The MCLE Board was created and appointed by the Washington Supreme Court, and the Court will ultimately vote to approve or reject the amendment when the amendment recommendation is sent to the Court in October of 2020. *Id.* at 5. We recommend that the Commission consider the importance of such an amendment to expand upon racial equity education for the legal profession in Washington, and that the Commission advocate for the amendment to the Court.

As Ta-Nehisi Coates stated in his article, *The Case for Reparations*, “What I’m talking about is more than recompense for past injustices—more than a handout, a payoff, hush money, or a reluctant bribe. What I’m talking about is a national reckoning that would lead to spiritual renewal.” Ta-Nehisi Coates, *The Case for Reparations*, *The Atlantic* (2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>. Our national reckoning must begin with education - the learning and understanding of our history and how such a racially violent past has affected our current struggles to achieve racial equity and justice.

V. Proposal to Commission for Research on Reparations

With the guidance of the preliminary research below, we recommend the MJC conduct a more extensive research study to determine how best to implement reparations measures in Washington. Further, we recommend that the Commission work with community organizations, such as King County Equity Now and Africatown Community Land Trust, in its research on how best to implement reparations measures in Washington. The three areas of reparations we have explored are the following: (1) monetary, (2) land, and (3) cultural. We have also explored some international reparations measures. In many of the examples below, reparation measures encompass more than one type of reparation.

A. Monetary Reparations

a. Japanese American Reparations

In 1978, thirty years after the closing of the internment camps, the Japanese American Citizens League (“JACL”) launched a campaign for redress seeking restitution in the amount of \$25,000 per internee, an apology by Congress acknowledging the wrong, and funds to establish an educational trust fund. *Id.* JACL’s strategy was focused on the loss of individual freedoms guaranteed by the Constitution and enumerated in the Bill of Rights. *Id.* Because of how small the Japanese population was in America at the time of internment, they needed to be strategic. *Id.* JACL set out to utilize the media to educate the public about the internment camp atrocities and built a coalition group willing to support the legislative effort. *Id.* Within six months, JACL made its way into major newspapers, and network television. During this time the JACL made the critical decision to pursue legislation that would create a federal commission to investigate the facts and circumstances surrounding the exclusion and incarceration of Japanese Americans.

Id. Like any group of people, the Japanese people are not a monolithic group; many Japanese Americans were resistant to the idea of reparations. Isabella Rosario, *The Unlikely Story Behind Japanese Americans' Campaign For Reparations*, NPR: Code Switch, (2020)

<https://www.npr.org/sections/codeswitch/2020/03/24/820181127/the-unlikely-story-behind-japanese-americans-campaign-for-reparations>. This conflict most often occurred between generations. *Id.* The Nisei generations, which means second-generation Japanese Americans, embraced traditional values that encouraged them to put the past behind them. *Id.* The Sansei generation, which means third-generation Japanese Americans, grew up in the midst of the Civil Rights Movement. *Id.* They viewed the internment camps as another form of racial oppression. *Id.*

JACL formed coalitions with civil rights groups and others to help support their interest in legislation that would research the Japanese internment camps. In 1979, H.R. 5499: Commission on Wartime Relocation and Internment of Civilian Act ("CWRIC Act") was introduced in Congress. By 1980, the CWRIC Act was signed into law by President Jimmy Carter. By 1982, the commission issued its findings to Congress and the president. The report, titled "Justice Denied," concluded that Japanese Americans were unjustly forced from their homes and incarcerated. The report stated that the underlying reasons for this treatment were racial prejudice and a failure of political leadership. A ten-year redress program was established in 1988 by the Civil Liberties Act of 1988. U.S. Department of Justice, *Ten Year Program to Compensate Japanese Interned During World War II Closes Its Doors* (1999) <https://www.justice.gov/archive/opa/pr/1999/February/059cr.htm>. The Justice Department's Office of Redress Administration ("ORA") was charged with administering the ten-year program. *Id.* ORA provided \$20,000 in redress to 82,219 eligible claimants, totaling more than \$1.6 billion. Monetary compensation was not the only form of redress that was provided to the Japanese Americans who were incarcerated. The Civil Liberties Act of 1988 also included an apology on behalf of Congress and a public education fund to finance efforts to inform the public about the internment of the Japanese Americans so as to prevent the recurrence of any similar event. Civil Liberties Act of 1988, <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf>.

b. Reparations for African Americans

i. Tuskegee Experiment Reparations

In 1974, the victims of the *Tuskegee Study of Untreated Syphilis on the Negro Male*, also called the Tuskegee Experiment, were awarded \$10 million in an out-of-court settlement.

Centers for Disease Control and Prevention, *The Tuskegee Timeline*, U.S Public Health Service Syphilis Study at Tuskegee (Last retrieved Jul. 15, 2020

<https://www.cdc.gov/tuskegee/timeline.htm>). The Tuskegee Experiments officially ended in

1972. More than 65 years later, President Clinton apologized for the U.S. government's role in

the research study. Centers for Disease Control and Prevention, *Tuskegee Study, 1932-1972*, U.S Public Health Service Syphilis Study at Tuskegee, viewed July 15, 2020,

<https://www.cdc.gov/tuskegee/index.html>.

In 1932 the United State Public Health Service, along with the Tuskegee Institute, began a study to record the natural history of syphilis on Black subjects in Macon County, Alabama.

Centers for Disease Control and Prevention, *The Tuskegee Timeline*, U.S Public Health Service Syphilis Study at Tuskegee, viewed July 15, 2020, <https://www.cdc.gov/tuskegee/timeline.htm>.

The initial study involved over 600 Black men. *Id.* The men recruited for the study were poor

Black laborers and sharecroppers. The study was conducted without informed consent and

patients were misled about the study's details. Black men with syphilis were deliberately left

untreated to study the disease's progression. Although originally projected to last 6 months, the

study actually went on for 40 years. *Id.* The men were never given adequate treatment for their

disease. Even when penicillin became the drug of choice for syphilis in 1947, researchers did not

offer it to the subjects. *Id.* As part of the 1974 settlement, the U.S. government promised to give

lifetime medical benefits and burial services to all living participants. *Id.* In 1975, wives, widows

and offspring were added to the program. *Id.*

c. Different Jurisdiction Measures

i. Chicago and Evanston

Chicago's City Council recently approved a revised resolution to create a subcommittee that will study how to pay reparations to Chicagoans and will make annual reports on its findings

to the City Council. See Heather Cherone, *Chicago Will Not Create Reparations Commission After Lightfoot Objects*, WTTW (2020), <https://news.wttw.com/2020/06/12/chicago-will-not-create-reparations-commission-after-lightfoot-objects>;

Fran Spielman, *City Council approves reparations resolution*, Chicago Sun Times (2020), <https://chicago.suntimes.com/city->

hall/2020/6/17/21294638/city-council-slavery-reparation-subcommittee-resolution. More specifically, the subcommittee will be charged with exploring ways to close the racial gaps in homeownership, education, employment, health care and more that face the city's Black community. Cherone, *supra*. Chicago is not the only city in Illinois that has begun reparations. Evanston established a \$10 million reparations fund in November 2019 to help the city's Black population stay in Evanston, as the suburb's Black population had been declining due to increasing disparities in wealth. See Eric Lutz, *One city's reparations program that could offer a blueprint for the nation*, The Guardian (2020), <https://www.theguardian.com/us-news/2020/jan/19/reparations-program-evanston-illinois-african-americans-slavery>; Genevieve Bookwalter, *Evanston will use recreational marijuana sales tax proceeds to fund local reparations program*, Chicago Tribune (2019), <https://www.chicagotribune.com/suburbs/evanston/ct-evr-evanston-reparations-marijuana-tax-tl-1205-20191126-g3ifwaikrjfmrillfv6ytwvgii-story.html>. The reparations fund will also provide training for jobs and other benefits for the town's Black community. Bookwalter, *supra*. The money in Evanston's fund will come from a cannabis sales tax. *Id.* The city's new measure came after City Alderman Rue Simmons partnered with Evanston's City Council's Equity and Empowerment Commission to hold community meetings on the subject of reparations. Lutz, *supra*. Following these town halls, Evanston's City Council approved a plan to establish a reparations program, in which housing initiatives aimed at addressing the impact of redlining on the suburb's black community will likely be prioritized. *Id.* The city will likely start disbursing the newly allocated reparations funds later this year or early next year. *Id.* According to Alderman Simmons, the source of the reparations fund is especially appropriate, as many Black residents were victims of the "war on drugs" and had spent time in jail for smoking marijuana, a substance that in specific quantities will soon be permitted in Illinois. *Id.*

Chicago has already established certain reparations measures specifically for victims of police violence. Following years of Chicago communities fighting police torture under police Commander Jon Burge, who for nearly three decades allegedly tortured more than 120 Black and Latino men into making false confessions, the city recognized that something had to be done to support survivors. Sarah Macaraeg and Yana Kunichoff, *How Chicago Became the First City to Make Reparations to Victims of Police Violence*, Yes Magazine (2017), <https://www.yesmagazine.org/issue/science/2017/03/21/how-chicago-became-the-first-city-to->

make-reparations-to-victims-of-police-violence/. The city's first effort towards repairing harm was legal: Jon Burge and officers under his command were brought to trial, and Burge was sentenced for perjury. The statute of limitations had expired on many of the cases of police torture. *Id.* Attorney Joey Mogul, who litigated cases on behalf of people who claimed to be victims of Burge's torture, stated that Police Commander Burge's conviction was a hollow victory at best given the trauma and painful memories the survivors experienced under Burge's command. *Id.*

Recognizing that Burge's conviction did not ultimately resolve the trauma that many of his survivors were experiencing, Mogul and other activists and lawyers formed the Chicago Torture Justice Memorials (CTJM). G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 NW J L & Soc Pol'y 330, 340 (2016), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1136&context=njls> p. The first project CTJM took on was calling for proposals on how to memorialize Chicago police torture cases, and eventually the group developed an idea for a city ordinance which, in part, would recognize the city's legacy of torture. Macaraeg, *supra*. The ordinance was drafted in 2012 and included a request for financial compensation for Burge's victims, a curriculum to teach about the Burge tortures in Chicago Public Schools, and free enrollment for survivors in the city's community colleges. *Id.* More specifically, the ordinance called for an official apology and compensation to the survivors, and requested tuition-free education at the City Colleges of Chicago for all torture survivors and their families as well as a center on the south side of Chicago that would provide psychological counseling, healthcare services, and vocational training to those affected by law enforcement torture and abuse. Taylor, *supra* at 344.

In May of 2015, the Chicago City Council unanimously adopted the ordinance and a resolution. *Id.* at 349; City Council of the City of Chicago, *Reparations for Burge Torture Victims Ordinance*, https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf; City Council of the City of Chicago, *Resolution*, https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf. In January of 2016, individual torture victims each received \$100,000 in compensation. Taylor, *supra* at 351. The ordinance limited financial relief to people tortured during Burge's exact time on the force between May 1, 1972 to November 30, 1991, despite evidence that police torture continued after he left. Macaraeg, *supra*.

Further, the ordinance stated that victims who had already received compensation, such as by settlement of his or her claims arising out of the torture, would only receive up to \$100,000 minus the amount of the prior compensation from the reparations fund. City Council of the City of Chicago Ordinance, *supra*. Fifty-seven survivors each received a total of \$100,000 compensation from the city. Taylor, *supra* at 351.

After monetary compensation was sent to survivors, representatives from CTJM, the Chicago Public Schools, and the Chicago Teachers Union established a mutually acceptable curriculum for teaching the history of Chicago police torture to eighth and tenth grade students in Chicago's public schools. *Id.* In the spring of 2018, teachers began to implement this new curriculum citywide. Thai Jones, *How Chicago's Public Schools are Teaching the History of Police Torture*, *The New Yorker* (2018), <https://www.newyorker.com/news/dispatch/how-chicagos-public-schools-are-teaching-the-history-of-police-torture>. While the Chicago police union denounced the curriculum as “biased and incomplete” and parents in some neighborhoods expressed concerns about exposing their children to graphic details of police torture, instructors noticed that students quickly made connections between the torture cases of the nineteen-seventies and eighties and recent stories of police abuse, including their own firsthand encounters. *Id.* Jen Johnson, the chief of staff at the Chicago Teachers Union, recognized that, particularly for communities of color, where students have had their own experiences with police, and at the high-school level, where there are actual police officers in the schools, the students are learning not just about history but also about the present state of policing by which they are affected. *Id.*

Although the City Council's resolution included plans to work with the Chicago Torture Justice Memorial to construct a permanent memorial to the Burge victims, the memorial is the only piece of the ordinance which the city has not yet implemented. City Council of the City of Chicago Resolution, *supra*; Logan Jaffe, *The Nation's First Reparations Package to Survivors of Police Torture Included a Public Memorial. Survivors are Still Waiting*, *ProPublica Illinois* (2020), <https://www.propublica.org/article/the-nations-first-reparations-package-to-survivors-of-police-torture-included-a-public-memorial-survivors-are-still-waiting>. A reason for this may be that former Chicago Mayor Rahm Emanuel did not commit funds to building the memorial before he left office, and while current Mayor Lori Lightfoot has expressed her commitment to continuing to work “on proposals for a memorial that honors the victims of injustice,” it has been

unclear where she stands on building a specific memorial to recognize Burge torture survivors. Jaffe, *supra*. Advocates for the memorial say that the memorial's specificity is important to help establish the experiences of survivors as the dominant narrative of how the city remembers a shameful part of its past. *Id.*

ii. Asheville, North Carolina

Just recently, the Asheville City Council apologized for the city's role in slavery, discrimination, and denial of basic liberties to Black residents. Joel Burgess, *In historic move, North Carolina city approves reparations for Black residents*, USA Today (2020), https://www.usatoday.com/story/news/nation/2020/07/15/asheville-passes-reparations-black-residents-historic/5441792002/?fbclid=IwAR1HqSdYx8zaT1zPjFJ7YA3HXGA4J_CBB9EiwpN2WZ3XD5voOdrTX3SSmNs. Further, the Council unanimously voted to provide reparations to the city's Black residents and their descendants. *Id.*; Resolution Supporting Community Reparations for Black Asheville (2020), <https://drive.google.com/file/d/1WKialVISWzu72mhasyy9SslDbVGMSj5U/view>. The resolution will make investments in areas where Black residents face disparities, as opposed to mandating direct payments, in order to increase minority home ownership and access to other affordable housing, increase minority business ownership and career opportunities, grow generational wealth, and close the gaps in health care, education, employment and pay. Burgess, *supra*. To determine how best to invest the public funding over the coming year, the resolution calls for a panel of experts to convene a commission and examine how to create equity among the city's Black residents on issues including education, public transportation and home ownership. Vanessa Romo, *Asheville, N.C., Approves Steps Towards Reparations for Black Residents*, NPR (2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/15/891700076/asheville-n-c-approves-steps-toward-reparations-for-black-residents>.

iii. Tulsa, Oklahoma

In 1921, Tulsa, Oklahoma, was the site of the Greenwood Race Massacre. Human Rights Watch, *The Case for Reparations in Tulsa, Oklahoma*, (Last accessed Jul. 19 2020 https://www.hrw.org/news/2020/05/29/case-reparations-tulsa-oklahoma#_ftnref187). This Race

Massacre destroyed what was known as Black Wall Street. *Id.* In response to decades of activism within the community, the Oklahoma state legislature began to consider the claims for reparations. *Id.* The legislature passed a bill to create the Tulsa Race Riot Commission, which was tasked with investigating the impacts of the Greenwood Race Massacre on the Black community of Tulsa. *See* Okla. Stat. Ann. tit. 74, § 8000.1 (West). Upon the completion of the report the Commission recommended the following:

- 1) Direct payment of reparations to survivors of the Tulsa Race Riot.
- 2) Direct payment of reparations to descendants of the survivors of the Tulsa Race Riot.
- 3) A scholarship fund available to students affected by the Tulsa Race Riot.
- 4) Establishment of an economic development enterprise zone in the historic area of the Greenwood District.
- 5) A memorial for the reburial of any human remains found in the search for unmarked graves of riot victims. . . [and] [e]xtension of the Tulsa Race Riot Commission.

Oklahoma Commission to Study the Tulsa Race Riots of 1921, *Final Report*, 21 (Feb. 7, 2000).

As a result of the Commission’s report, the Oklahoma state legislature created a scholarship fund for the descendants of those affected by the Greenwood Race Massacre. *See* Okla. Stat. Ann. tit. 70, § 2621 (West). In addition to the scholarship fund, the legislature created other revolving fund programs for redevelopment of the Greenwood area. *See* Okla. Stat. Ann. tit. 74, § 8207 (West) (1921 Tulsa Race Riot Centennial Memorial Revolving Fund); Okla. Stat. Ann. tit. 74, § 8223 (West) (Greenwood Area Redevelopment Authority); Okla. Stat. Ann. tit. 74, § 8206 (West) (Funds for the 1921 Tulsa Race Riot Memorial of Reconciliation). Recently, forensic investigators broke ground at a possible site of a mass grave in Oaklawn Cemetery. Ben Fenwick, *The Massacre That Destroyed Tulsa’s ‘Black Wall Street’*, *New York Times* (Jul. 13, 2020) <https://www.nytimes.com/2020/07/13/us/tulsa-massacre-graves-excavation.html>.

iv. Florida

Florida, like Oklahoma, has recognized the past atrocities committed against Black communities in the state. The Florida legislature recognized the harm of the Rosewood Massacre of 1923 when it decided to grant “equity, justice, fairness and healing” to survivors of the massacre and authorized financial compensation:

An appropriation of \$500,000 from the General Revenue Fund is made to the office of the Attorney General to compensate African American families who can demonstrate real and personal property damages sustained as a result of the destruction of Rosewood. Each eligible family is to receive \$20,000, but the Attorney General is authorized to settle claims up to \$100,00 if he finds the losses exceed \$20,000... [Also, t]he Comptroller is to distribute the \$1.5 million from the General Revenue Fund based on information supplied by the Attorney General and to prorate the funds if they are insufficient to make maximum awards to each eligible person.

Fla. HB 591 (1994); Jerry Fallstrom, *Senate Oks \$2.1 Million for Rosewood Reparations*, SunSentinel (1994), (Last visited Jul. 22, 2020, <https://www.sun-sentinel.com/news/fl-xpm-1994-04-09-9404080701-story.html>).

Senator Daryl Jones from Miami stated that the “system of justice failed the citizens of Rosewood” and that passing the legislation was the Senate’s “chance to right an atrocious wrong.” Fallstrom, *supra*. Additionally, the legislature passed funds for twenty-five scholarships of \$4,000 each for descendants of the Rosewood Massacre. Fla. HB 591 (1994). The full payment of the reparations totaled \$2.1 million. *Id.*

Following the Rosewood reparations, Florida apologized for slavery in 2008. In its joint resolution, the legislature “express[ed] its profound regret for Florida's role in sanctioning and perpetuating involuntary servitude upon generations of African slaves.” Fla. Concurrent Resolution 2930 (2008). Even more recently, Florida passed a bill that directs the Commissioner of Education’s African American History Task Force to examine ways in which the history of the 1920 Ocoee Election Day Riots may be included in required instruction on African American history and to submit any recommendations to the Commissioner of Education and the State Board of Education by March 1, 2021. Fla. HB 1213 (2020). The 1920 Ocoee Election Day violence occurred on the day of the general election in November of 1920, when a Black resident named Mose Norman went to the polls to vote but was told he was not permitted to do so because he had not paid his poll tax. Office of Program Policy Analysis and Government Accountability, *Ocoee Election Day Violence – November 1920* (2019), 3, <https://oppaga.fl.gov/Documents/Reports/19-15.pdf>.

Norman’s attorney advised him to return to the polling place and record names of the polling officials who were denying people the right to vote, but when Norman returned, he was again told that he could not vote. *Id.* According to varying accounts, Norman stopped at the home of July Perry before fleeing Ocoee that evening. *Id.* Later in the day, white Ocoee residents

formed a posse, and the Sheriff Deputy granted them the power to arrest Norman and Perry. *Id.* The posse kidnapped Perry's daughter, and Perry was eventually captured by a white mob who lynched and shot him. *Id.* at 4. After Perry was murdered, a mob set fire to all of the Black-owned buildings in the northern part of Ocoee throughout the night, which destroyed more than 20 houses and killed what was reported to have been upwards of 60 people. *Id.* At least 253 Black residents were displaced from Ocoee after fleeing the Election Day violence. *Id.* at 5.

This new bill not only requires instruction on the 1920 Ocoee Election Day Riots in school curricula, but according to the bill's language it also directs the Secretary of State to determine ways in which the Museum of Florida History and other state museums will promote the history of the riots through exhibits and educational programs, and to collaborate with the National Museum of African American History and Culture of the Smithsonian Institution to seek inclusion of the history of riots in the museum's exhibits. *Id.* Finally, the bill directs the Secretary of Environmental Protection to assess if any state park or facility will be named in recognition of any victim of the riots and encourages district school boards to assess opportunities for naming school facilities in recognition of victims of the riots. *Id.*

v. Other Jurisdictions

Other states have begun taking steps towards addressing reparations and slavery in their states. California, Vermont, and New York have introduced bills in their respective legislatures that would create workgroups to study reparations. See N.Y. Assembly Bill A3080A (2019); Cal. AB-3121 (2019); Vermont H. 478 (2019). Nine states, Alabama, Connecticut, Delaware, Florida, Maryland, New Jersey, North Carolina, Virginia, have passed resolutions that acknowledged and apologized for slavery. Alabama House Joint Resolution 321 (2007); Con. House Joint Resolution 1 (2009); Del. House Joint Resolution 10 (2016); Fla. Concurrent Resolution 2930 (2008); Maryland Joint Resolution 1 (2007); N.J. Assembly Concurrent Resolution 270 (2008); N.C. Joint Senate Resolution 1557 (2007); Virginia Senate Joint Resolution 332 (2007). Tennessee passed a joint resolution that stated, "the General Assembly acknowledges with profound regret the fundamental injustice, brutality, and inhumanity of slavery and the discrimination that was slavery's legacy." Tennessee Joint House Resolution 847 (2014).

At the federal level, both the House and Senate have issued apologies for their involvement and reinforcement of slavery in the United States. *See* U.S. S.Con.Res.26 (2009);

U.S. H.Res.194 (2008). But, Congress has yet to implement reparations for slavery. In 1990, Representative John Conyers introduced House Resolution 3745, a bill that would acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes. U.S. H.R. 3745 (1990). This same bill has been introduced in every Congress since 1990, a total of 30 years, and had its first committee hearing in over a decade in 2019 as House Resolution 40. Adam Harris, *Everyone Wants to Talk About Reparations. But for How Long?*, The Atlantic (Jun. 19, 2019), <https://www.theatlantic.com/politics/archive/2019/06/house-committee-explores-bill-study-reparations/592096/>. The resolution's namesake comes from Special Field Order No. 15 by General William T. Sherman which would have granted 40 acres of land and a mule to all freed slaves. *Id.*

B. Land Reparations

a. Reparations in Hawaii

Prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion. Overthrow of Hawaii, PL 103-150, 107 Stat 1510 (1993). At that time, Native lands were divided up into three different categories: (1) crown lands, (2) government lands, and (3) konohiki lands³³. Jon Van Dkyke, What Are the 'Ceded Lands' of Hawaii? Civil Beat (2010). <https://www.civilbeat.org/2010/10/5914-what-are-the-ceded-lands-of-hawaii/>.

In 1893, American businessmen, with the support of US military forces, staged a coup to overthrow the Hawaiian Kingdom and deposed Queen Lili'uokalani for the purpose of annexing Hawai'i to the United States as a means for business interests. Native Hawaiian Data Book,

³³ Konohiki are heads of ahupua`a or land divisions under the chief of a particular district. Konohiki manage land and fishing rights within their ahupua`a as well as the people residing in the ahupua`a boundaries. It was the responsibility of the konohiki to be an expert in the land he cared for in order to ensure the prosperity of his land and the people.

Chronology of Government in the Hawaiian Islands, Office of Hawaiian Affairs (2020)³⁴. In order to avoid violence against her people, Queen Lili'uokalani yielded her authority to the businessmen. Those businessmen declared themselves the “Republic of Hawai’i” (The Republic). The leaders of the Republic broke up the Crown and Government lands into homesteads for small farmers, and enacted the Land Act of 1895, which repealed an 1865 statute that prohibited Crown Lands to be sold. Van Dkyke, *supra*. By 1895, around 46,594 acres of Crown and Government Lands were sold by the Republic. *Id.* In addition to the sale of these lands, the Republic recategorized the land, no longer respecting the three divisions mentioned above.

Issues of land ownership would prove to be central to reparation movements for Native Hawaiians. Native Hawaiians have fought for reparations to regain their sacred lands in many different ways, such as through constitutional amendments, legislation, community organizing, and litigation. See e.g., Melody Kapilialoha and MacKenzie, *Hawai’i ‘78: Where We Went and Where We Go From Here*, Ka Huli Ao Center For Excellence in Native Hawaiian Law (2018)(last visited July 23, 2020), <https://blog.hawaii.edu/kahuliao/ka-moae/spring-2018/hawai%CA%BBi-%CA%BB78/>; H.R. 15666, 93d Cong., 2d Sess. (1974); H.R. 1944. Office of Hawaiian Affairs, *History: The Establishment of OHA* (2020) <https://www.oha.org/about/abouthistory>; *Ka ‘ai ‘ai v. Drake*, Civ. No. 92-3742-10 (1st Cir. 1992). Native Hawaiians were able to gain traction through constitutional amendments due to the unique history of Hawai’i and its colonization. In 1898 the Fifty-fifth Congress of the United States of America, in a joint resolution, accepted The Republic's cession of the Hawaiian Islands. In this resolution, Congress wrote:

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local

³⁴ The Office of Hawaiian Affairs’ (OHA) *Native Hawaiian Data Book* is an effort initiated in 1994. The data book is produced as a response to OHA’s fiduciary obligation as written in Hawai’i Revised Statute (HRS), Chapter 10. The statutes calls for compiling “basic demographic data on native Hawaiians and Hawaiians” and to identify “the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians.” [HRS, Chapter 10, § 10–6(1)].

government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes. [Emphasis added].

Cong.J.Res. To Provide For Annexing the Hawaiian Islands to the United States, 55th Cong. (1898)(last visited July 23, 2020), https://www.ourdocuments.gov/doc_large_image.php?flash=false&doc=54.

The Fifty-Fifth Congress acknowledged that the Hawaiian lands were special and that “[t]he existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands.” *Id.* This acknowledgement and promise that the land in Hawaii was to be used for the benefit of the Hawaiian people was one of many in a long list of congressional resolutions.

In 1921, Congress had passed the Hawaiian Homes Commission Act (HHCA) to “rehabilitate” Native Hawaiians of not less than 50 percent Hawaiian ancestry through a homesteading program. Melody Kapilialoha MacKenzie, *Native Hawaiian Law: A Treatise*, Ch. 5, 10 Native Hawaiian Legal Corporation, Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law, and Kamehameha Publishing (2015). The HHCA had set aside approximately 203,500 acres of the former Government and Crown Lands for the homesteading program. *Id.*

In 1959, the United States granted all public lands to the State of Hawaii through the Admissions Act. Admission Act of 1959, Pub. L. No. 86-3, § 5(f), 73 Stat 4 (1959), <https://www.doi.gov/sites/doi.gov/files/migrated/ohr/upload/An-Act-to-Provide-for-the-Admission-of-the-State-of-Hawai.pdf>. The Admissions Act directed the state to hold the following types of lands and proceeds of these lands in trust for the Hawaiian people:

The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians.

Id.

Subsection (b) of the Admissions Act includes all the public lands and other public property, and all lands defined as “available lands” by section 203 of the HHCA.³⁵ Section 203 of HHCA is defined as follows:

All public lands of the description and acreage, as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to, as "available lands.”

Hawaiian Homes Commission Act of 1921, *supra*.

Subsection (c), (d), and (e) of the Admissions Act states that the United States government is able to retain some land however, within five years from the date that Hawaii is admitted into the Union, each federal agency having control over any land or property must report to the President of the United States “the facts regarding its continued need for such land or property...” *Id*.

Subsection (f) of the Admissions act listed the five purposes for which the land and the revenue of these lands must be used for: (1) the support of public education, (2) the betterment of the conditions of Native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, (3) the development of farm and home ownership, (4) the making of public improvements, and (5) the provision of lands for public use. *Id*.

The State’s obligation to provide revenue from public land to Native Hawaiians did not come to fruition until the mid-70’s after political pressure. See Office of Hawaiian Affairs, History: The Establishment of OHA (2020) <https://www.oha.org/about/abouthistory>. During Hawaii’s 1978 Constitutional Convention, several amendments were made for the advancement of Native Hawaiians to regain their share of land and revenue. Melody, *supra*. One of the most impactful constitutional amendments was the creation of the Office of Hawaiian Affairs (OHA) and its mandate to administer twenty percent of Native Hawaiians’ pro rata share of revenue made from the public lands. *Id*.

Today, OHA provides more than \$800,000 in scholarship money to help pay for college for Native Hawaiian students annually. Office of Hawaiian Affairs, *About* (Last visited July 23,

³⁵ Section 203 of the HHCA goes into greater detail of what constitutes as “available lands.” See e.g., Hawaiian Homes Commission Act of 1921.

2020), <https://www.oha.org/about/>. OHA has given out more than \$34 million in loans within the past 10 years to help Native Hawaiians start businesses, improve homes, consolidate debts and continue their education. *Id.* OHA has also awarded an estimated \$16 million to various organizations aiding Hawaiians, including Hawaiian-focused charter schools. *Id.* In 2006, the Legislature and OHA agreed to \$15.1 million as the temporary amount that should be transferred annually to OHA. Office of Hawaiian Affairs, *Fulfilling the State's Public Land Trust Revenue Obligations* (last visited July 23, 2020), <https://www.oha.org/plt>. In 2019, Act 178 was enacted by the legislature of Hawaii, which required state agency reporting to provide data on what revenue was being generated from the use of public land trust (PLT) lands. H.R. 173, 13th Leg., (2019). Based on independent audits and the state's own accounting, this "interim" amount falls far short of the 20 percent of PLT revenues that Native Hawaiians and OHA are entitled to. Office of Hawaiian Affairs, *Fulfilling the State's Public Land Trust Revenue Obligations*, *supra*. The Department of Hawaiian Homelands (DHHL), which is governed by the HHCA of 1921, oversees over 200,000 acres of public land. Department of Hawaiian Homelands, *About the Department of Hawaiian Home Lands* (last visited July 24, 2020), <https://dhhl.hawaii.gov/dhhl/#:~:text=The%20land%20trust%20consists%20of,native%20Hawaiians%20in%20many%20ways>. DHHL provides direct benefits to native Hawaiians; for example, beneficiaries may receive 99-year homestead leases at \$1 per year for residential, agricultural, or pastoral purposes. *Id.*

Native Hawaiians have also attempted to achieve reparations through legislative action. In 1972, the Aboriginal Lands of Hawaiian Ancestry, Inc. Association ("ALOHA") was one of the most active groups that was calling attention to the U.S. involvement in the overthrow of the Hawaiian government. As a result of ALOHA's efforts, a series of reparations bills were introduced in Congress. See, e.g., H.R. 15666, 93rd Cong., 2d Sess. (1974); H.R. 1944, 94th Cong., 1st Sess (1975).

Native Hawaiians also fought for land reparations in court. In 2008, the Office of Hawaiian Affairs (OHA), and native Hawaiians, brought action for declaratory and injunctive relief against the State of Hawaii and the Community Development Corporation of Hawaii (HCDCH). *Office of Hawaiian Affairs v. Housing and Community Development Corp*, 117 Hawai'i 174, 177 P.3d 884, (2009). OHA was seeking to enjoin the defendants from alienating ceded lands from the public lands trust. *Id.* OHA argued that an injunction was proper because,

in light of the Apology Resolution, any transfer of ceded lands by the State to third-parties would amount to a breach of trust inasmuch as such transfers would be “without regard for the claims of Hawaiians to those lands” to whom the State, as trustee, owes a fiduciary duty. *Id.* at 189; See e.g., Apology Resolution, Pub.L. No. 103–150, 107 Stat. 1510.

The Hawai‘i Supreme Court held in *Office of Hawaiian Affairs*, that the State possessed a fiduciary duty to preserve the ceded lands as an integral part of the reconciliation process. *Office of Hawaiian Affairs, supra*. The Court used the following reasons in its holding: (1) that the land has cultural importance to Native Hawaiians, (2) that the ceded lands were illegally taken from the Native Hawaiian monarchy, (3) that future reconciliation between the state and the Native Hawaiian people is contemplated, and (4) that once any ceded lands are alienated from the public lands trust, they will be gone forever. *Id.*

C. Cultural Reparations

a. Native American Grave Protection and Repatriation Act

In 1990, Congress enacted the Native American Graves Protection and Repatriation Act (NAGPRA) to provide for the protection of Native American graves and the repatriation of Native American remains and cultural patrimony. U.S. Senate Report 101-473 (1990), (Last visited Jul. 22, 2020, <https://www.nps.gov/subjects/nagpra/upload/SR101-473.pdf>). The NAGPRA had its origins in a hearing that was held by the Select Committee on Indian Affairs in February of 1987. *Id.* at 1. In his testimony on a bill to provide for the repatriation of Indian artifacts, Smithsonian Secretary Robert McCormick Adams indicated that of the 34,000 human remains that were in the Institution’s collection at that time, approximately 42.5% or 14,523 of the specimens were the remains of North American populations, and another 11.9% or 4,061 of the specimens represented Eskimo and Aleut populations. *Id.* Following Secretary Adams’ testimony, Indigenous tribes around the country called for the repatriation of those human remains that could be identified as associated with a specific tribe or region for their permanent disposition in accordance with tribal customs and traditions, and for the proper burial elsewhere of those remains of Native Americans that could not be so identified. *Id.*

During 1989, the Heard Museum in Phoenix, Arizona, sponsored a year-long dialogue between museum professionals and Native Americans. *Id.* at 2. The purpose of the dialogue was to develop recommendations to address the necessity of responding to tribal demands for

repatriation. *Id.* Findings and recommendations made by the participants in the dialogue were published in the Report of the Panel for a National Dialogue on Museum/Native American Relations in 1990, which found that the process for determining the appropriate disposition and treatment of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony should be governed by respect for Native human rights. *Id.* The Panel also recommended the development of judicially enforceable standards for repatriation of Native American human remains and objects. *Id.*

On May 11, 1989, Senator Daniel Inouye introduced S. 978, the National Museum of the American Indian Act. *Id.* This bill included provisions related to the proper treatment and appropriate disposition of Native American human remains and sacred objects. *Id.* The President signed S. 978 into law on November 28, 1989 (Public Law 101-185), the provisions of which authorize the repatriation of human remains and funerary objects from the collections of the Smithsonian Institution, and which established a precedent for further legislative action. *Id.* On May 17, 1989, Senator McCain introduced S. 1021, the Native American Grave and Burial Protection Act, to provide for the protection of Indian graves and burial grounds. *Id.* On November 21, 1989, Senator Inouye introduced S. 1980, the Native American Repatriation of Cultural Patrimony Act, to provide for the repatriation of Native Americans group or cultural patrimony. *Id.* The provisions of S. 1980 would extend the inventory, identification and repatriation provisions of Public Law 101-185 to all Federal agencies and any institution which receives Federal funding. *Id.* On May 14, 1990, the Select Committee on Indian Affairs held a hearing on S. 1021, S. 1980, and the Report of the Panel for a National Dialogue on Museum and Native American Relations. *Id.* After hearing testimony from museum representatives, tribal leaders, and archaeologists, the Committee adopted an amendment to S. 1980 to enact the NAGPRA with the belief that the Act would prevent future instances of cultural insensitivity to Native American peoples and with the intent that the legislation would encourage a continuing dialogue and promote greater understanding between museums and Native American tribes and Native Hawaiian organizations. *Id.* at 3-4. The Act was signed by the President in November of 1990 and became effective law under 25 U.S. Code, Sections 3001-3013. 25 U.S. Code, Chapter 32, Section 3001-3013, (Last visited Jul. 22, 2020, <https://www.law.cornell.edu/uscode/text/25/chapter-32>).

Under NAGPRA, federal agencies and institutions that receive Federal funds, including museums, universities, state agencies, and local governments, are required to transfer Native American human remains and other cultural items to the appropriate parties by consulting with lineal descendants, Native American tribes, and Native Hawaiian organizations. *Id.*; National Park Service, *Native American Graves Protection and Repatriation Act* (2019), (Last visited Jul. 22, 2020, <https://www.nps.gov/subjects/nagpra/getting-started.htm>). Further, federal agencies and institutions must identify and report all Native American human remains and other cultural items in inventories and summaries of holdings and must draft a notice for publication prior to repatriating human remains and other cultural items. 25 U.S. Code § 3005. Finally, NAGPRA also has a provision that allows for the Secretary of the Interior to make grants to Native American tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items. 25 U.S. Code § 3008.

b. Equal Justice Initiative Memorial

The Equal Justice Initiative (EJI), started by Bryan Stevenson, opened the National Memorial for Peace and Justice in Montgomery, Alabama, in the spring of 2018 to remember the legacy of enslaved black people, people terrorized by lynching, and people of color burdened with contemporary presumptions of guilt and police violence. Equal Justice Initiative, *The National Memorial for Peace and Justice*, (Last visited Jul. 18, 2020, <https://museumandmemorial.eji.org/memorial>). The memorial was built because EJI believes that publicly confronting the truth about our country's history is the first step toward recovery and reconciliation with our past, and because our history of racial injustice must be acknowledged before our society can recover from mass violence. *Id.* The public commemoration of a memorial plays an important role in prompting the community to learn the truth of our nation's history. *Id.*

In addition to the memorial, EJI has developed the Community Remembrance Project, which partners with community coalitions to memorialize documented victims of racial violence throughout history and foster dialogue about race today. Equal Justice Initiative, *Community Remembrance Project*, (Last visited Jul. 18, 2020, <https://eji.org/projects/community-remembrance-project/>). Through the Community Remembrance Project, EJI has begun joining with communities to install narrative historical markers at the sites of racial terror lynchings across the country and has collaborated with partners to gather soil at lynching sites for display

in exhibits that bear the victims' names. *Id.* As of February 2020, EJI has sponsored historical markers to memorialize lynching victims in eighteen different communities across the South and has collaborated with five community partners across the country to facilitate soil collection ceremonies. Equal Justice Initiative, *Community Historical Marker Project*, (Last visited Jul. 18, 2020, <https://eji.org/projects/community-historical-marker-project/>). An example of these markers is the Alexandria Community Remembrance Project in Alexandria, Virginia.³⁶ The project has identified two lynchings that took place in the city.

c. Native Arts and Cultures Foundation

Earlier this month, Portland arts organization, Yale Union, announced that it would be transferring its land and building to Native ownership. Naomi Ishisaka, *Arts organization Yale Union transfers its land and building to Native ownership*, *The Seattle Times* (2020), (Last visited Jul. 23, 2020, <https://www.seattletimes.com/entertainment/arts-organization-yale-union-transfers-its-land-and-building-to-native-ownership/>). Specifically, Yale Union will be transferred to the Vancouver, Washington-based Native Arts and Cultures Foundation (NACF), which is a Native-led national organization that works with artists, communities, and leaders to advance Indigenous arts and artists. *Id.* NACF Board Chair and U.S. Poet Laureate Joy Harjo has called the transfer “unprecedented” and has stated that “this sharing of resources in a place first occupied by Indigenous peoples initiates healing for the whole community.” *Id.* Since its opening in 2010, Yale Union has presented the work of hundreds of artists and has created a cultural community by hosting events, providing subsidized studio space to local artists, and facilitating numerous community programs. Native Arts and Cultures Foundation, *NACF to Gain Ownership of the Yale Union Building in Portland, Oregon* (2020), (Last visited Jul. 23, 2020, <https://www.nativeartsandcultures.org/nacf-yu-press-release>). Yale Union will collaborate with NACF to co-present artistic programming in 2021 and will dissolve its nonprofit later in 2021 to transfer the property to NACF. *Id.* The new national headquarters for NACF will be called the Center for Native Arts and Cultures and will be a gathering place for Indigenous artists and local partnerships to present and exhibit their art. *Id.*

³⁶ See web page at <https://www.alexandriava.gov/historic/blackhistory/default.aspx?id=106501>.

D. Reparations Around the World

a. New Zealand Reparations Measures

New Zealand has had a tumultuous history in recognizing past wrongs. The Māori people were the original inhabitants of New Zealand. Te Ahukaramū Charles Royal, *Māori - Pre-European society*, Te Ara - the Encyclopedia of New Zealand, (Last accessed Jul. 10, 2020, www.TeAra.govt.nz/en/maori/page-2). The first European contact occurred in the late-17th century and colonization efforts began in the mid-18th century. *Id.* European settlement and the introduction of new technology, such as muskets, sparked significant upheaval and war between the Māori tribes. *Id.* In 1840, Māori Chiefs and representatives of Queen Victoria signed the Treaty of Waitangi. *Id.* The English version of the treaty stated sovereignty was ceded to England whereas the Māori version guaranteed chieftainship to the Māori. *Id.* Following the signing of the Treaty of Waitangi, millions of acres of land were confiscated from the Māori; an estimated 50 percent of the Māori population died from war and infectious diseases; and the government banned Māori language and cultural practices. *See* Malcom Mulholland, *New Zealand's Indigenous Reconciliation Efforts Show Having a Treaty Isn't Enough*, The Conversation (May 11, 2016) <https://theconversation.com/new-zealands-indigenous-reconciliation-efforts-show-having-a-treaty-isnt-enough-49890>; Tamaki Māori Village, *Fascinating History of New Zealand's Native Language*, (Last visited Jul. 10, 2020, www.tamakimaorivillage.co.nz/blog/maori-language-history/); NZ History, *Te Wiki o Te Reo Māori - Māori Language Week*, (Last visited Jul. 10, 2020 <https://nzhistory.govt.nz/culture/maori-language-week/history-of-the-maori-language>).

In the early-20th century, the Māori people began a cultural and political movement to bring awareness to the impact of the colonization of New Zealand. Te Ahukaramū Charles Royal, *Māori - Pre-European society*, Te Ara - the Encyclopedia of New Zealand, (Last accessed Jul. 10, 2020, www.TeAra.govt.nz/en/maori/page-2). As a result of this political movement, the Crown apologized to the Māori and after nearly thirty years of advocacy passed the Treaty of Waitangi Act of 1975. Te Ahukaramū Charles Royal, *Story: Treaty of Waitangi*, Te Ara - the Encyclopedia of New Zealand (Last accessed Jul. 14, 2020 <https://teara.govt.nz/en/treaty-of-waitangi/page-7>). This act honored the original terms of the Treaty of Waitangi and created parity between the Māori and New Zealand governments. *Id.* Further, the act created the Waitangi Tribunal, which was tasked with considering the claims of the Māori people and

providing recommendations to parliament. *Id.* As a result of the treaty, Māori culture has become a central part of New Zealand governance. Parliament created entities such as the Office of Race Relations, the Office of Treaty Settlements, and the Te Puni Kōkiri (Minister of Māori Development) to represent Māori interests. *Id.* As of 2018, the New Zealand Government has paid cash settlements of more than 2.2 billion New Zealand dollars, which amounts to nearly 1.5 billion U.S. dollars, to the Māori people. New Zealand Office of Treaty Settlements, *Healing the Past, Building a Future*, 22 (Jun. 2018) <https://www.govt.nz/assets/Documents/OTS/The-Red-Book/The-Red-Book.pdf>. This settlement valuation does not include the land and fishing rights granted to the Māori people since claims began. *Id.*

b. Germany

In 1952, following the atrocities committed by the Nazi regime in World War II, only 5 percent of West Germans surveyed reported feeling guilty about the Holocaust, and only 29 percent believed that Jews were owed restitution from the German people. Coates, *supra*. This unwillingness among Germans to face squarely their history went beyond the polls and permeated other facets of German society. *Id.* Because of this resistance by Germany to make amends for the Holocaust, the country was divided in its decision to pay reparations to Israel. *Id.* On the other side of the conversation of reparations were the Jews of Israel, for whom such conversations provoked violent reactions. *Id.* On January 7, 1952, the future prime minister of Israel, Menachem Begin, claimed that all Germans were Nazis and were guilty of murder. *Id.* The reparations conversations that followed set off a wave of bomb attempts by Israeli militants aimed at the German foreign ministry in Tel Aviv and at the postwar German Chancellor Adenauer, and ultimately led to West Germany's agreement to pay Israel what would be more than \$7 billion in today's dollars. *Id.* Individual reparations to Jews followed, including reparations for psychological trauma, for offense to Jewish honor, for halting law careers, for life insurance, and for time spent in concentration camps. *Id.* According to Israeli historian Tom Segev, the reparations money from Germany funded about a third of the total investment in Israel's electrical system, which tripled its capacity, and nearly half of the total investment in the railways from 1953 to 1963. *Id.* (quoting Tom Segev, *The Seventh Million*).

Since 1952, the German government has paid over \$80 billion in pensions and social welfare payments to Jews who suffered under the Nazi regime and has also agreed to pay into

the Claims Conference fund for “Righteous Gentiles,” or non-Jews who helped Jewish people survive the Holocaust. Rebecca Staudenmaier, *Germany extends Holocaust compensation to include survivor spouses*, Deutsche Welle (2019), (Last visited Jul. 22, 2020, <https://www.dw.com/en/germany-extends-holocaust-compensation-to-include-survivor-spouses/a-49438399>). Moreover, Germany has more than 2,000 memorial sites that acknowledge the Nazi-committed horrors that killed 6 million Jews and millions of others during World War II. Kim Hjelmggaard, *Germany slowly relaxes its grip on how it confronts the Holocaust*, USA Today (2017), (Last visited Jul. 22, 20, <https://www.usatoday.com/story/news/world/2017/01/18/germany-wannsee-conference-nazis-holocaust/96480360/>).

German officials also established a task force charged with determining the provenance of various pieces of art that Nazis had stolen from a Jewish home during the Third Reich after discovering many of the pieces of art in the apartment of the son of head art buyer for Adolf Hitler, Hildebrand Gurlitt, in 2012. Becky Little, *Four Works of Nazi-Looted Art Identified and Returned to Jewish Family*, History (2018), (Last visited Jul. 26, 2020, <https://www.history.com/news/nazi-stolen-art-identified>). A number of the pieces that were recovered, for which the task force was able to determine the works’ provenance, have been returned to the heirs of the artworks’ original owners. *Id.* In March of 2017, Germany’s Lost Art Foundation partnered with university researchers and descendants of Rudolf Mosse, who fled to France in 1933 after the Nazis began to rise to power, in support of the Mosse Art Research Initiative to locate expansive lost art from Mosse’s collection. Jewish Virtual Library, *Holocaust Restitution: Recovering Stolen Art*, (Last visited Jul. 27, 2020, <https://www.jewishvirtuallibrary.org/recovering-stolen-art-from-the-holocaust>). In 2018, a stolen sculpture discovered in the Bode Museum in Berlin, Germany, was returned to the original owners’ heirs, who have been successful in finding eleven other pieces out of the hundreds that were stolen from their family. *Id.*

Furthermore, Germany has included in its Criminal Code a provision against the use of symbols of unconstitutional organizations. Anyone who disseminates in Germany or produces, stocks, imports or exports or makes publicly available through data storage media for dissemination in Germany or abroad the propaganda material of a political party which has been declared unconstitutional by the Federal Constitutional Court, of an organization which has been

banned because it is directed against the constitutional order, or of which is intended to further the activities of a former National Socialist organization, may incur a penalty of imprisonment for a term not exceeding three years or a fine. German Criminal Code, Section 86(1), *Dissemination of propaganda material of unconstitutional organizations*, (Last visited Jul. 20, 2020, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html). Further, Criminal Code Section 86(a) bans the public use of symbols of unconstitutional organizations, including the use of flags, insignia, uniforms, slogans, and forms of greetings. German Criminal Code, Section 86(a), *Use of symbols of unconstitutional organizations*, (Last visited Jul. 20, 2020, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html). The purpose of these sections is to prevent the revival of banned organizations and to safeguard political peace. Andreas Stegbauer, *The Ban of Right-Wing Extremist Symbols According to Section 86a of the German Criminal Code*, German Law Journal Vol. 08 No. 02, 178, 184 (2007), (Last visited Jul. 20, 2020, https://www.time.com/wp-content/uploads/2018/08/3e228-glj_vol_08_no_02_stegbauer.pdf).

VI. Recommendation for Reparations in Washington

A. Renaming Counties

Eight counties in Washington State were named after slaveholders, white supremacists, people who sought to extend slavery in the United States, or people who tried to ban Black people from the Pacific Northwest altogether. Berger, *supra*. These counties include Pierce, Douglas, Stevens, Grant, Thurston, Jefferson, Clark, and Lewis counties. *Id.* Washington has already re-designated King County to honor Dr. Martin Luther King Jr. in 2005. The county was originally named for an Alabama slave owner, William Rufus De Vane King. *Id.* Washington should not celebrate slave owners and white supremacists by memorializing them through county names. We recommend that the MJC support renaming these eight counties after the Native American tribes who live in or near these counties. For example, Pierce County may be renamed as Muckleshoot County after the Muckleshoot Tribe, Douglas County may be called Colville County after the Colville Confederated Tribes, Stevens County can be renamed as Kalispel County for the Kalispel Tribe, Grant County may be called Wanapum County after the Wanapum Tribe, Thurston County can be renamed as Nisqually County after the Nisqually Tribe, Jefferson County may be called Hoh County after the Hoh Tribe, Clark County can be

renamed as Chinook County after the Chinook Indian Nation, and Lewis County may be renamed as Chehalis County after the Confederated Tribes of the Chehalis Reservation. Tribal Directory & Map (Last visited Jul. 24, 2020, <http://www.indian-ed.org/resources/tribal-directory-map/>); Millie Hobaish, *Tribes of the Columbia River System* (2019), (Last visited Jul. 24, 2020, <https://www.confluenceproject.org/library-post/tribes-of-the-columbia-river-system/>).

B. Eliminating the Bar Examination

The Washington State Supreme Court granted diploma privilege on June 12, 2020, in response to the extraordinary barriers facing applicants who were registered to take the bar examination in July or September 2020. Supreme Court of Washington, *Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules* (2020). It is not certain that the public health emergency of COVID-19 may be ended by February when the next bar exam is scheduled. And, applicants may still face racial disparities associated with the exam, which are further detailed below. Bar testing began around 1870 and was in use in most states by the 1920s, when strong anti-immigration sentiments were on the rise. Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. Mass. L. Rev. 332, 365 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436495. In the 1920s, after the American Bar Association (ABA) unwittingly admitted three black lawyers, the ABA asked its membership to vote on possible expulsion and emphasized the importance of “keeping pure the Anglo-Saxon race.” *Id.*

Today, the cumulative cost of the bar examination and bar preparation courses can be as much as \$4,500 to \$5,000, depending on the bar preparation course. See *Washington Lawyer Bar Examination: Frequently Asked Questions*, Washington State Bar Association (2020), (Last visited Jul. 26, 2020, https://www.wsba.org/docs/default-source/licensing/admissions/bar-exam/bar-exam-faq.pdf?sfvrsn=62120df1_28); *Breaking Down the Cost of the Bar*, Bar Exam Toolbox (2019), (Last visited Jul. 26, 2020, <https://barexamtoolbox.com/breaking-down-the-cost-of-the-bar-the-fees-no-one-tells-you-about/>). The expenses associated with the bar examination negatively affect those who cannot afford quality bar preparation courses. As our society still has economic disparity that adversely affects Black law graduates, inability to afford quality bar preparation can lead to the skewed bar passage rates along racial lines, which has led

to a profession in which Black lawyers only make up 5 percent. Lauren Hutton-Work and Rae Guyse, *Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in the Legal System* (2020), (Last visited Jul. 23, 2020, <https://theappeal.org/2020-bar-exam-coronavirus-inequities-legal-system/>). A six-year study commissioned by the Law School Admission Council (LSAC) showed that first-time bar examination pass rates were 92% for white applicants, 61% for Black applicants, 66% for Native Americans, 75% for Latino/Latina and 81% for Asian Americans. Society of American Law Teachers, "Statement on the Bar Exam" (2002). *Statements*. 2, 5. https://scholars.law.unlv.edu/saltarchive_statements/2. Although the disparity between pass rates narrowed when applicants retook the bar examination, a substantial number of applicants who failed on the first attempt did not re-take the exam, and for those who did re-take the examination, the psychological and financial cost of doing so was extremely high. *Id.*

The authors of the aforementioned articles have both recommended that state bar associations reimagine the assessment process for determining who will make a competent lawyer. *Id.* at 7; Hutton-Work and Guyse, *supra*. They argue that maintaining the status quo of justifying policies and procedures that disadvantage diverse and low-income test-takers is not enough. *Id.* The Society of American Law Teachers has offered possible alternatives to the bar exam, including diploma privilege for graduates of ABA accredited law schools; a practical skill teaching term, which would include completion of a ten-week teaching term to improve interviewing, advocacy, legal writing, and legal drafting skills; and a "public service alternative to the bar exam," which would give bar applicants the option of taking the existing bar exam or working for 350 hours over ten weeks within the court system and completing a variety of assignments that would be evaluated by law school clinical teachers. Society of American Law Teachers, *supra* at 6.

The legal profession may start to address its racial disparities and become more of an equitable profession if the bar examination is eliminated and an alternative to assessing applicants' competence is used. To that end, we recommend that the MJC encourage the Court to eliminate the bar exam and replace it with one of the above alternatives suggested by the Society of American Law Teachers for graduates of ABA accredited law schools.

C. Setting a Standard of Retroactive Application under the Washington Constitution

Retroactive application of statutes can be used as a form of reparation when the retroactivity would help alleviate racial disparities. In 2019, Washington’s legislature enacted Senate Bill 5288, which removed robbery in the second degree from the list of offenses that qualify an individual as a persistent offender. Under RCW 9.94A.570, a persistent offender must be sentenced to life in prison without parole when the person is convicted of a most serious offense on three separate occasions, or when the person is convicted of certain sex offenses on at least two separate occasions. Final Bill Report, S.B. 5288, 66th Leg (2019). The language in the original bill included a retroactivity provision that would allow people sentenced under the old three-strikes law to be eligible for resentencing. *Id.* However, largely because of an amendment that was pushed by the Washington Association of Prosecuting Attorneys, the bill that was passed into law does not have a retroactive application. Tom James, *Lifer inmates excluded from Washington ‘3 strikes’ change*, *The Seattle Times*, (May 20, 2019, 10:11 pm), <https://www.seattletimes.com/seattle-news/its-just-wrong-3-strikes-sentencing-reform-leaves-out-62-washington-state-inmates>.

If it were not for the removal of the retroactive language in the bill, 62 incarcerated people convicted of second-degree robbery would have been eligible for resentencing and would not likely be facing a sentence of life without parole. *Id.* The racial makeup of these 62 prisoners is grossly disproportionate, as nearly half are Black. *Id.* The harsh reality of not having a retroactive application in this bill is that all 62 prisoners whose sentences could have been recalculated will die in prison for a law that no longer applies to people similarly situated. *Id.* In other words, preventing retroactivity creates an inescapable disparity: Two prisoners with identical records could end up with vastly different sentences, solely based on when they were sentenced. *Id.* We encourage the MJC to advocate for retroactivity as a tool to fix laws that have a racially disproportionate effect.

D. Including Lessons on Washington’s Racial History in K-12 Curricula

Similarly to actions in Chicago and Florida, the Commission should support implementing more in-depth curriculum on slavery with a specific focus on Washington’s racial history in Washington public schools. In the Seattle Public School system, the 2019-2020 K-12 Social Studies Learning Standards curriculum included the word “slavery” four times in 119 pages of writing and did not mention how racism has been upheld through other systems since

slavery ended. Washington State Learning Standards, *Washington State K–12 Learning Standards for Social Studies*, Office of Superintendent of Public Instruction (2019), (Last visited Jul. 23, 2020, https://www.k12.wa.us/sites/default/files/public/socialstudies/standards/OSPI_SocStudies_Standards_2019.pdf). Given the importance of learning the truth of our history and acknowledging our past, Seattle Public Schools and the rest of the state’s public school systems should move toward implementing in the curricula lessons that tell the honest truth about slavery and racism, including teachings on the Washington experience outlined above, the Tulsa Race Massacre, redlining, the Tuskegee experiment, anti-literacy laws, Jim Crow, voter suppression laws, and mass incarceration.

E. Memorials to Remember Leaders of Color and Victims of Racial Violence in Washington

We recommend that the Commission support the creation of monuments to memorialize leaders of color in Washington, including a replacement to Capitol Hill’s Lake View Cemetery Confederate monument. One possible monument would be to memorialize the Gang of Four, which was a group made up of four Seattle-based activists from different ethnic groups, including Bernie Whitebear, Roberto Maestas, Bob Santos, and Larry Gossett, who is the only member still alive. *Robert "Bob" Santos Oral History, Part 4: The "Gang of Four" and What It Accomplished, Writing a Book, Winning over Foes, and a Few Regrets*, History Link (2014), (Last visited Jul. 20, 2020, <https://www.historylink.org/File/10964>). Through their activism, the Gang of Four were able to acquire an old school that is now the community building of El Centro de la Raza. *Id.* The men also provided services to the Black community, especially in the central area, and worked to preserve neighborhoods and build housing in the International District. *Id.* The Gang of Four fought to build community and better their neighborhoods, and the Commission should consider publicly memorializing and remembering them for their work.

Another possibility for the Commission to consider supporting is that of establishing a memorial or marker similar to those created by EJI to raise local consciousness of racial history, memorialize victims of racial violence in Washington, and remember the state’s past, as EJI has not yet sponsored historical markers or facilitated soil collection ceremonies in Washington State.