

CHAPTER 17

ADDRESSING THE RACIAL DIVIDE: REPARATIONS

There should be no mistaking the fervor of the reparations movement. The claim that America owes a debt for the enslavement and segregation of African-Americans has had historical currency for over 150 years. Occasionally, the clamor for repayment of that debt has intensified, particularly in the period following the Civil War. Although the civil rights strategy of Dr. King did not focus on reparations, the rhetoric he used at the March on Washington, about America's giving blacks a check marked "insufficient funds," certainly has the sound of a claim for reparations.¹ I have to believe that if King were alive now, he would come to the same conclusion I have reached. Today, in America and worldwide, we again face one of those historically significant moments when the clamor for reparations increases, and arguments that seemed morally and legally precluded are certain now to become part of the political mainstream. The voices of reason and passion have subsided and been replaced by a consensus demanding justice, and demanding it now. The movement has moved from the courts, and from the churches, to urban America. The call for reparations has moved to those blacks who did not relocate to the suburbs as a result of integration and who were not lifted up as a result of affirmative action. The masses who were left behind feel comfortable in shouting slogans like "No justice, no peace!" These voices demand their reparations. The collective failure to embrace *Brown* may now cost us all a lot more.

The strength of the reparations movement can be attributed to the absence of judicial and political leadership. Thurgood Marshall articulated a plan to promote equality in education, both in his cases as a civil rights lawyer and in his clarion voice as a member of the Supreme

Court. The louder he seemed to shout, the more he was dismissed as out of step with reality. Political leadership can also be blamed. We have had ten presidents in the White House with the political authority to move the *Brown* mandate forward. In many respects, they have failed. President Eisenhower was not committed to the notion and did little to further the goals of *Brown*. We do not know what President Kennedy would have done had he not been assassinated, but his administration saw little progress on *Brown*. Ironically, President Johnson, a southerner from Texas, embraced *Brown* in more concrete terms than all of his predecessors. His actions were both symbolic and substantive.

Johnson's symbolic efforts included using his 1965 commencement address at Howard University to address the thorny issue of racism in America in the twentieth century. Speaking to the graduating class eleven years after *Brown*, he directly admitted America's failure to do what needed to be done in promoting racial equality:

[F]reedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights.²

Johnson was aware that there were many "subtle" and "complex" reasons for the failure of African-Americans to achieve equality in America. But there were also two "broad basic reasons" for this lack of equality. One was poverty, which affected all races. The other, "much more difficult to explain, more deeply grounded, more desperate in its force," the president identified as "the devastating heritage of long years of slavery; and a century of oppression, hatred, and injustice."³ Johnson did not mince words in describing the devastating impact of racial injustice on African-Americans:

For Negro poverty is not white poverty. Many of its causes and many of its cures are the same. But there are differences—deep, corrosive, obsti-

nate differences—radiating painful roots into the community, and into the family, and the nature of the individual. These differences are not racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and present prejudice. They are anguishing to observe. For the Negro they are a constant reminder of oppression. For the white they are a constant reminder of guilt. But they must be faced and they must be dealt with and they must be overcome, if we are ever to reach the time when the only difference between Negroes and whites is the color of their skin.⁴

Johnson eventually called for the creation of an affirmative action program, to address the persistence of racism as a barrier to racial progress in America. His words were powerful, and generated great hope for change. What followed was the passage of many civil rights laws to meet the demands of *Brown*. In 1967, he appointed Thurgood Marshall to the Supreme Court. Despite these historic events, *Brown's* hope for equal educational opportunity went largely unmet.

As a result of this failure, a movement that was long dismissed as marginal and not credible is now being discussed with increasing frequency in national newspapers, on television and radio, and in conversations in the office and over dinner tables. The failure to pay the debt of slavery and discrimination by offering quality education has given momentum to the call to pay blacks trillions of dollars for this country's role in using slaves to build a powerful economy.

The level of reparations litigation alone is extensive, with an increasing number of cases being presented in state and federal courts throughout the United States. A focus on reparations for African-Americans⁵ reveals that suits have been filed in Illinois,⁶ Texas,⁷ New York,⁸ New Jersey,⁹ Louisiana,¹⁰ California,¹¹ and Oklahoma.¹² These reparations lawsuits have been brought by different groups of attorneys in different jurisdictions asserting different theories on behalf of different classes of clients. Many of the suits have been consolidated before a court in the Northern District of Illinois.¹³

At least four statutes addressing reparations for African-Americans have been passed at the state and municipal level, most notably in Rosewood, Florida,¹⁴ but also in California,¹⁵ Oklahoma,¹⁶ and

Chicago.¹⁷ Representative John Conyers's bill, H.R. 40, demanding an investigation of slavery and recommending appropriate reparations, has again been presented to Congress.¹⁸

These legal and legislative initiatives can be analyzed from two perspectives. One model of reparations litigation includes the multidistrict litigation consolidated in Chicago as well as H.R. 40 and the California Slavery Era Insurance statute and the Chicago ordinance. These actions focus on injuries inflicted during and through the institution of slavery. Other models, such as the Tulsa, Oklahoma, case and the Rosewood, Florida, legislation, address injuries inflicted during the Jim Crow era. Some of the most vocal critics of the reparations movement in general are more supportive of the Jim Crow cases than of the slavery era cases.

Understanding the historical roots of the reparations movement is essential to understanding its current prominence. It is often believed that the reparations effort on behalf of African-Americans is based on the recent successful litigation in the Holocaust reparations movement¹⁹ or on the successful reparations claims approved by Congress on behalf of Japanese Americans interned during World War II.²⁰ Neither is a basis for African-American reparations claims, which date back much farther. The historical precedents of African-American reparations efforts actually confirm that elements of the Holocaust and Japanese American cases derive from the African-American experience.

The first reported demand for African-American reparations dates back to the nineteenth century.²¹ Vincene Verdun details the history of reparations efforts covering four distinct periods. These waves, as he describes them, were "inspired by the tension between the Union and the Confederacy and the attendant desire to restructure the South in order to enhance the Union's military advantage."²² In the first wave, a broad coalition of white and black activists sought to use reparations not only to complete the emancipation of slaves but also to engage in compensatory (as opposed to distributive) justice by tying the award of property to freed slaves to the disenfranchisement of the former slave owners.

Verdun identifies the attempt by African-Americans to escape the South and achieve a semblance of freedom and economic parity in the North as the second period of reparations pursuit; it included an effort

to force “Congress to pass legislation appropriating economic relief to freedmen.” This, like subsequent reparations initiatives, contained a strong “black nationalist” element. During World War II, Senator Theodore Bilbo of Mississippi proposed to appropriate newly acquired territories for colonization by African-Americans, and his proposal was supported by another reparations advocate, Marcus Garvey, founder and leader of the United Negro Improvement Association.²³

The most recent model of reparations efforts came during the 1960s and 1970s, at the height of the civil rights movement.²⁴ Dr. King’s “I Have a Dream” speech can be seen as containing the seeds of a request for reparations, though this interpretation would be questioned by those who do not associate King with such a request. The central focus of his speech was not his dream for a color-blind society but his frustration with the deplorable state of race relations in America. King came to Washington to declare that America had defaulted on “a promissory note in so far as [America’s] citizens of color are concerned.”²⁵ Other reparations claims were raised in those years, including a demand by the Nation of Islam that the federal government provide African-Americans with several states located in the regions with large African-American populations as compensation for the work provided by slaves.²⁶

One of the most widely publicized and controversial reparations events occurred in 1968, when the activist James Forman interrupted a Sunday morning service at Riverside Church in New York City to introduce the “Black Manifesto,” which demanded \$500 million in reparations for African-Americans. Interestingly, Forman demanded payment from the churches, synagogues, and other “racist institutions,” rather than from the federal government, and he explained how the funds would be used to further the cause of African-Americans in the United States.²⁷

During the last quarter century, many law review articles have dealt with reparations.²⁸ The national reparations effort has been promoted, most notably, by NCOBRA, the National Coalition of Blacks for Reparations in America. Without its continued activism, the movement would have little chance of remaining viable.

Interest in reparations in the twenty-first century has been spurred by two timely events. One was the publication in 2000 of Randall

Robinson's book *The Debt: What America Owes to Blacks*, which argued, "No race, no ethnic or religious group, has suffered so much over so long a span as blacks have, and do still, at the hands of those who benefited, with the connivance of the United States government, from slavery and the century of legalized American racial hostility that followed it."²⁹ While not suggested as a legal brief on the issue, the book admirably states the case for reparations, in light of the history of black misery in America and the disenfranchisement of African-Americans:

Race is and is not the problem. Certainly *racism* caused the gap we see now. The discriminatory attitudes spawned to justify slavery ultimately guaranteed that, even after emancipation, blacks would be concentrated at the bottom of American society indefinitely. . . . [However,] the use of *race* by itself as a general category for comparison is a dangerously misleading decoy. . . . [African-American children] fail [educationally and socially] for the same reasons that Appalachian children fail. Grinding, disabling poverty. Unfortunately, blacks are heavily overrepresented among the ranks of America's disabling poor. Owing to race and only race, it was American slavery that created this bottom-rung disproportion.³⁰

The second major reparations event was the effort by Congressman John Conyers, who closely watched the united congressional action in support of Japanese Americans who were forced to live in internment camps, through passage of the Civil Liberties Act of 1988,³¹ and decided that it was time for a similar legislative study to determine whether African-Americans had a viable claim against the government. Conyers's H.R. 40, in contrast to the Civil Rights Act of 1988, generated limited support and stiff opposition. Indeed, some African-Americans,³² including a majority of the members of the Congressional Black Caucus,³³ remain opposed to reparations.

The first known reparations lawsuit, *Johnson v. MacAdoo*,³⁴ was filed in 1915. In *Johnson*, the plaintiff, Cornelius J. Jones, sued the U.S. Department of the Treasury, claiming that the government's taxation of raw cotton produced by slave labor constituted an unjust enrichment from the labor of African-Americans. The D.C. Circuit Court of Appeals ruled against him, concluding that the government was immune from suit on sovereign immunity grounds.

In a broader lawsuit, *Cato v. United States*,³⁵ filed in the early 1990s, an African-American woman brought an action for damages against the U.S. government, alleging the kidnapping, enslavement, and transshipment of her ancestors, as well as continuing discrimination on the part of the government. It sought acknowledgment of the injustice of slavery and Jim Crow oppression, in addition to an official apology from the U.S. government.³⁶ The *Cato* lawsuit was also dismissed.³⁷

My involvement in the reparations movement has had three different phases. The first occurred when I attended the Black National Convention in Gary, Indiana, on March 10–12, 1972, where there was a solidarity movement of African-Americans to seek a third political party, not tied to the Democratic and Republican parties. The conference was hosted by Gary's black mayor, Richard Hatcher, and included a wide range of radical political perspectives. Black nationals and Black Muslims, black Hebrews and black Communists, black ministers and black politicians—all were present in Gary.

The most striking person there, though, was Queen Mother Audley Moore, a Black Nationalist who struck a powerful chord with me. While this Gary conference focused on black political power, Moore raised an issue unknown to me at the time. She argued that people of African descent in the United States are entitled to billions of dollars because of the slave labor of their ancestors in building this country. She made an urgent plea for reparations.

Queen Mother Moore was born in New Iberia, Louisiana, in 1898. Her grandparents were slaves who suffered greatly. Her great-grandmother was raped by her owner, and her grandfather was lynched in front of his wife. Moore attended public segregated schools through the third grade and then traveled across the South, experiencing the virulent racism of the Jim Crow period in America. During World War I, she went to Anniston, Alabama, my father's hometown, and helped establish a center to aid black veterans of the war, who were denied meaningful assistance by the Red Cross. In the early 1920s, she met Marcus Garvey, the leader of the Universal Negro Improvement Association, an organization planning to relocate people of African descent in the United States back to Africa. In 1931, she joined the movement, led by the Communist Party, to stop the lynching of the Scottsboro boys, nine black teenagers falsely accused of raping a white woman and

scheduled to be executed. Her focus on the harm to Africans, at home and abroad, led her to push, in 1955, for reparations for African-Americans. In 1963, she organized the Reparations Committee of Descendants of U.S. Slaves, demanding reparations from the government. Incredibly, she was able to gather over one million signatures from citizens supporting this demand; even more remarkably, she managed to present the signatures to President Kennedy, along with the demand. She finally moved to Harlem, where she became a household name, thanks to her commitment to fighting discrimination practices against blacks and other poor people.

Despite her success in raising consciousness about slavery in 1963, many participants at the Gary convention in 1972 were scarcely aware of her great legacy. That would change, though. Moore was a powerful speaker, and, in an African and African-American gathering where men normally dominated the speaking roles, and black women were in subservient roles, she stood out as a powerful orator, and a leader. When she spoke, everybody listened. I did not learn much about her in Gary, but by the time we both were boarding a charter plane for Africa a year later, I had made it a priority to find out about this advocate for reparations.

The second phase of my involvement with the reparations movement came in 1973, when I was a student at Stanford and traveled to Africa for the first time. My intellectual mentor, a noted Pan-Africanist, Dr. St. Clair Drake, had hired me as a research assistant to work on one of his many projects focusing on the end of neocolonial rule in Africa. Dr. Drake advised me to study the progress of colonial rule and how colonialism by European countries in particular led to the underdevelopment of Africa. I read Sir Walter Rodney's classic book on the topic, *How Europe Underdeveloped Africa*, as well as works by Ghana's first president following independence, Kwame Nkrumah, and by the great leader of Tanzania, President Julius Nyerere. I was struck by the number of African leaders who were educated in Europe and the United States. Drake's constant reminder to me, and others, that there should be an unbroken chain linking Africa and the black diaspora, which included people of African descent living in the Caribbean, South America, and North America, also resonated with me.

When I gave Drake, who had traveled to Africa and the Caribbean,

memos based on my research, he would respond by sharing stories of his personal involvement with these African leaders. He wanted to expose Stanford students to a world beyond our imagination. When he offered me the opportunity to attend the Sixth Pan-African Congress, I jumped at it. Professor Tetteh Kofi, a Ghanaian economist teaching at Stanford, accompanied me.

I flew from San Francisco to New York, where we were to take a charter flight to Africa. Given that we were all people of African descent on this charter and that it was in a sense our pilgrimage to Mecca, or return to the homeland of Africa, we wanted to make sure that our trip had a serious Afrocentric focus. Many of the delegates, who came from throughout the United States, wore dashikis and other African clothing and carried African artifacts with them. Professor James Turner led the delegation from the Africana Studies Department at Cornell University. Courtland Cox, a policy analyst in Washington, D.C., who had extensive ties with Africa, was there. The delegation also included a number of people I had met a year earlier, at the Black National Convention, in Gary, Indiana. Among these was Queen Mother Moore. The Ashanti people of Ghana had named her Queen Mother while she was in Africa to pay her respects to Kwame Nkrumah. As we boarded the plane, many of us were focused on the need to end colonial rule in Africa and to ensure that the new African leaders did not become neocolonial rulers. Moore told us that, while we needed to fight for African liberation on the continent, we also needed to fight for the liberation of descendants of Africa in the United States, by keeping the pressure up for reparations.

My most recent involvement in the reparations movement, as a lawyer, was largely accidental. When I was in Washington in the early 1980s, I met Randall Robinson, also a Harvard Law School graduate and the founder of Transafrica, a black American think tank that lobbied for economic and political development in Africa and the black diaspora. I served on the board of Transafrica, but had been retained by Randall to represent him and others who chose to violate Washington's trespass laws by protesting apartheid at the South African embassy. Randall's goal was simple: get arrested in front of the embassy and then bring the issue of South Africa's apartheid system before the court. Our

defense theory in these cases was called the necessity defense. It is a rarely successful, but generally applied, defense in political cases. The strategy is straightforward. While admitting that trespassing is against the law of the land, protesters argued that the continuation of the racist apartheid system in South Africa, as symbolized by the embassy in D.C., was an even greater crime against humanity. Thus, the protesters did not deny that they broke the law, but held that they did so in order to address the larger crime of apartheid.

Using this strategy, thousands of ordinary citizens from D.C., national elected officials, and other dignitaries were also arrested. The U.S. attorney, not wanting to get into this political hotbed, dropped all of the charges against my client, Randall Robinson, and the thousands arrested later. As momentum against South Africa grew, we also pushed Congress to impose economic sanctions against South Africa. The increasing pressure for sanctions, nationally and internationally, and widespread internal protest, eventually led to the dismantling of the apartheid system. On February 2, 1990, Nelson Mandela, the leader of the South African resistance movement, was released after serving twenty-seven years in prison. For me, this was a lesson that pressures outside the narrow parameters of the law can lead to fundamental changes in society.

Randall Robinson was convinced that the use of political pressure to bring national and international attention to issues could make a difference. Reparations for African-Americans was the campaign he pushed onto the national scene in 1999. His book *The Debt* made the case for reparations, and he called a group of scholars in law and the humanities, and reparations activists, as well as Congressman Conyers, to Washington in 2000, to discuss the subject. Randall arranged for the meeting to be covered live on C-Span, and we all gave our views about the importance of reparations. After the meeting, in response to press questions, Randall was asked whether he planned to sue anyone in particular for reparations and, if so, how he would proceed. Randall responded forthrightly, telling the press that a suit would be filed against the federal government and against corporations that had been involved in the slave trade. He went on to say that the leader of this effort would be Charles Ogletree, the legal scholar from Harvard Law School, a

Transafrica board member, and a dear friend. There was one problem with this announcement: Randall had never mentioned the possibility of lawsuits to me, nor had he asked me to chair the Reparations Coordinating Committee. It was an enormous challenge. But I remembered Queen Mother Moore's advocacy for reparations decades earlier, all the way up to her death, in May 1997. She had carried the movement on her back for nearly fifty years, and it was now time for her followers to carry it forward.

I agreed to co-chair the reparations Coordinating Committee with Randall Robinson; later on, Adjoa Aiyetoro, the legal counsel for NCOBRA, joined us as a third co-chair. We began to research possible grounds for a reparations lawsuit. As it turned out, we did not have to look far.

In September 2002, I was invited to give the Buck Colbert Franklin Lecture at the University of Tulsa Law School and to discuss reparations. I learned two important points that night. First, Mr. Franklin was a lawyer who was involved in a historic event in Tulsa, Oklahoma. He represented black residents in one of the most horrific eruptions of racial violence in our country's history. Second, he was the father of John Hope Franklin, the legendary scholar of African-American history at Duke University. I knew Dr. Franklin well and soon got to know him even better. While in Tulsa giving the Franklin Lecture, I learned about the city's history with Jim Crow segregation and about a reparations case waiting to be filed by some committed lawyers. The story was over eighty years old, but I was not intimately familiar with it.

The community in Tulsa called Greenwood comprised about thirty-five square blocks. W. E. B. Du Bois called it the Negro Wall Street in America. That name surely seemed appropriate. Greenwood was developed by blacks, for blacks, because local white segregationists did not want blacks to be a part of their community. As a result of segregation, Greenwood built its own thriving, sustainable community. That all changed in 1921.

On the night of Tuesday, May 31, 1921, a rumor spread through the black community in Tulsa that there was going to be a lynching. Dick Rowland, a nineteen-year-old African-American man, was arrested for having assaulted seventeen-year-old Sarah Page, who was

white. In reality, Rowland accidentally stepped on her foot in an elevator, and she slapped him. The black community of Greenwood grew more anxious as the evening wore on, and eventually about fifty Greenwood residents went down to the jail to see whether they could do something to stop the lynching.³⁸

Rumors circulated in the white community as well. Someone made a speech stating that black men were wandering around with high-powered pistols. When a group of whites confronted the blacks at the courthouse, there was a melee, and a gun went off. Then the shooting started in earnest. The police department's reaction to the fast-developing events was to deputize and arm hundreds of white men. The police commandeered a local gun shop and a pawnshop, stripping them of firearms. At about the same time, the mayor of Tulsa called in local elements of the National Guard. The guardsmen mounted a machine gun on the back of a truck in an attempt to flush out African-Americans from their defensive positions. Some reports indicate that the mob killed up to three hundred African-Americans, and many bodies were never recovered.³⁹

At 5:00 a.m. the next day, a whistle blew and "the invasion of Greenwood began."⁴⁰ The National Guard, called in to restore order, only succeeded in making things worse. At 6:30 a.m., it moved in to transport the Greenwood residents to the state fairgrounds and McNulty Ball Park on the outskirts of town and held them there in "protective custody."⁴¹ Then the white mob began burning the empty buildings. Over twelve hundred were destroyed, and the property damage was more than \$20 million in 2003 dollars.

In the immediate aftermath, the white citizens of Tulsa accepted that reparations for the riot were required. For example, in the June 15, 1921, issue of the *Nation*, the chair of the emergency committee stated, "Tulsa weeps at this unspeakable crime and will make good the damage, so far as it can be done, to the last penny."⁴² At about the same time, the mayor of Tulsa promised to compensate the victims of the riot for the losses they had suffered. He declared that a claims commission would be established to compensate the victims of the riot. Finally, the Tulsa Chamber of Commerce stated that as "quickly as possible rehabilitation will take place and reparation made. . . . Tulsa feels intensely

humiliated.”⁴³ Some eighty years later, a commission created by the Oklahoma state legislature to investigate and report on the riot, as well as to make recommendations for further action, reiterated, “Reparations are the right thing to do.”⁴⁴

Despite this compelling evidence that the black Tulsa residents were entitled to receive reparations for their loss of life and property, their claims were largely ignored. I was asked to meet with members of the Tulsa Reparations Coalition, a multiracial community group organized to fight for reparations for the Tulsa survivors. I listened to their pleas for help and decided that I couldn’t say no. I contacted a number of my friends and mentors in the legal profession, many of whom had not been involved with the Reparations Coordinating Committee, and made two requests: join the reparations lawsuit on behalf of the survivors of the 1921 Tulsa race riot, and, more important, agree to represent these clients, without charging them a fee. The second point, in my view, was critical.

All we needed now was clients. Surprisingly, they were not hard to find. The Tulsa Reparations Coalition, led by the remarkable Mrs. Eddie Faye Gates, had interviewed many of these survivors from the 1921 riot, and they were eagerly seeking lawyers to represent them. Gates and Mark Stodghill have been major figures in organizing the battle for reparations in Tulsa. Gates served on the Oklahoma Commission to Study the Race Riot of 1921 and was responsible for compiling the record of those riot survivors who were still alive and entitled to reparations. She managed to find in excess of 130 survivors and many more descendants. Quite remarkably, she set about collecting an oral history of every African-American who survived that riot, along with photographs of them. Finally, and most important for our purposes, she asked all of them whether they would consent to the filing of a lawsuit on their behalf. Over 60 survivors had signed a provisional agreement. By the time I arrived in Tulsa, she and Stodghill had tried and failed to persuade a number of attorneys to take the case. Both of them were waiting for me when I came to deliver my lecture.

Eric J. Miller, a former student of mine, and at that time the Charles Hamilton Houston Fellow at Harvard Law School, prepared a memorandum outlining potential strategies for reparations litigation, and

Michele Roberts, a former colleague from the Public Defender Service (PDS), reviewed the draft and agreed that Tulsa provided a compelling opportunity to advance the case for Jim Crow reparations.

Several of us prepared a draft complaint, which contained the essence of the lawsuit. Everyone was impressed with the case, and especially surprised to hear that over 130 clients were waiting for representation. The task was then to assemble the legal team to represent them.

The best known member of our Tulsa team was Johnnie Cochran. Although he rose to national prominence as lead counsel for the defense during the trial of O. J. Simpson, Cochran has enjoyed significant legal success for over twenty years in California. He has long been an advocate for civil rights, filing dozens of lawsuits and winning tens of millions of dollars to compensate the victims of police brutality in California.

On the team, too, was Adjoa Aiyetoro, legal counsel not only for NCOBRA but also for the National Conference of Black Lawyers and the International Association of Black Lawyers. She has obtained injunctive relief and damages from both the federal government and the states for prisoners suffering disgraceful and unconstitutional conditions of confinement.

Michele Roberts, whom *Washingtonian* magazine rated the best lawyer in all of Washington, D.C., for 2002, was widely recognized as one of the country's best litigators. Michele has also been on the team of lawyers and judges whom I invite to Harvard Law School every year to train my students in trial advocacy. She is like family to me.

Willie Gary, one of the country's most successful tort lawyers, became an integral member of the team. Based in Florida, Gary is general counsel to the Reverend Jesse Jackson, but is best known for record-setting victories in the areas of personal injury, product liability, wrongful death, and medical malpractice law. His firm recently won a \$240 million judgment against Walt Disney and in the 1990s won a \$500 million jury verdict against the Loewen Group.

Dennis Sweet, a prominent tort lawyer, was my colleague at the PDS before moving into private practice. We tried cases together as public defenders in D.C. and are like brothers. He has won a number of substantial judgments, including a \$400 million one against American Home Products for injuries sustained through use of its Fen-Phen diet pill.

We were also able to attract a highly regarded litigator, Michael Hausfeld, who successfully represented Holocaust victims in lawsuits against German, Austrian, and Swiss banks, and who brought to us his reparations litigation experience.

Rose Sanders and J. L. Chestnut, both from Selma, Alabama, have successfully litigated a number of voting rights and civil rights cases, including the “black farmers” litigation against the Department of Agriculture, which resulted in a \$2 billion settlement. They are also founders of the National Voting Rights Museum in Selma.

In addition to this great national team, we were joined by some excellent local lawyers. Jim Goodwin, who was also the publisher of the *Oklahoma Eagle*, the Tulsa black newspaper, and Leslie Mansfield, a wonderfully talented clinical instructor at University of Tulsa Law School, joined our team. Another expert on local affairs who was essential to ensuring the quality and accuracy of the complaint was Professor Alfred L. Brophy. A member of the Oklahoma Commission on the riot, he literally wrote the book on Oklahoma reparations, and his help was pivotal throughout the litigation.

We have also received strong support from the sociologists, historians, and politicians on the Reparations Coordinating Committee. Among the public officials who are members of the committee, the most prominent is Representative John Conyers, himself a lawyer and the ranking Democrat on the House Judiciary Committee. Representative Conyers, a supporter of the reparations movement for more than a decade, is the principal sponsor of H.R. 40, legislation designed to study the issue of reparations. One co-chair of our research committee is Manning Marable, professor of history and political science and founding director of the Institute for Research in African-American Studies at Columbia University. The other co-chair is Dr. Ronald Walters, director of the African-American Leadership Institute and Scholar Practitioner Program, Distinguished Leadership Scholar at the James MacGregor Burns Academy of Leadership, and professor in government and politics at the University of Maryland.

Serving with them on the Reparations Coordinating Committee are some distinguished academics. Cornel West, formerly professor of African-American studies and philosophy of religion at Harvard Uni-

versity, has championed racial justice for much of his life and is the author of the best-selling book *Race Matters*. Dr. Johnnetta B. Cole is the former president of Spelman College, which under her leadership became the first historically African-American college to receive a number-one ranking in *U.S. News and World Report's* annual college issue. Formerly the Presidential Distinguished Professor at Emory, she currently serves as president of Bennett College. Richard America, an economist, is a lecturer at the McDonough School of Business Administration at Georgetown University. He has published two books on reparations: *Paying the Social Debt: What White America Owes Black America* and *The Wealth of Races: The Present Value of Benefits from Past Injustices*. Finally, James P. Comer is the Maurice Falk Professor of Child Psychiatry at the Yale University School of Medicine's Child Study Center. He founded in 1968 the Comer School Development Program, which promotes the collaboration of parents, educators, and community to improve social, emotional, and academic outcomes for children, has served as a consultant to the Children's Television Workshop (which produces *Sesame Street* and *Electric Company*), and has been awarded thirty-nine honorary degrees and been widely hailed for his extensive work with disadvantaged children.

We had an outstanding team of lawyers, public officials, and scholars organized and ready to put the complaint together. The next step was to meet the clients, explain our case, and flesh out their claims through personal interviews. I arranged for Michele, Eric, Johnnie Cochran, Dennis Sweet, and myself to travel to Tulsa to meet with Leslie Mansfield, Eddie Faye Gates, Mark Stodghill, and as many of the clients as we could.

When we eventually met our prospective clients, we were overwhelmed. Every client was at least 87 years old, with the oldest 105. One of the clients, Otis Clark, turned 100 on February 13, 2003. Mr. Clark was 18 during the riot, and his mind is as sharp now as it was then. He described the events in great detail, including being sent to a holding camp at the fairgrounds for all blacks from Greenwood and later fleeing to California, where he worked as a chauffeur for Douglas Fairbanks and other celebrities in Hollywood. Remarkably, at 100, Mr. Clark still drives and visits California often. I told him that this case,

like all reparations cases, is exceedingly difficult. He looked me in the eye and said, "Professor, I have been through the Depression, two world wars, and Korea. I think that I can hold on to see this case through." His words were inspiring, as I looked at the confidence and pride of this centenarian.

We also intended to bring a claim on behalf of the descendants of victims who were no longer alive. There was one descendant who was not in the lawsuit, but I wanted to see whether he would consider joining it. I had earlier written Dr. John Hope Franklin about reparations; while mildly curious about the claim, he did not seem particularly interested. I discussed his father's role in representing the original clients in Greenwood in 1921, and how his father's law office was destroyed during the riots. Dr. Franklin clarified my report to him, by reminding me that his father had written an autobiography, completing it even though he was blind and seriously ill. Furthermore, Dr. Franklin informed me that he and his son finished his father's biography and had it published, as a tribute to his enormous contributions to the Tulsa race riot victims.

On February 27, 2003, I called Dr. Franklin, full of hope that he might join the lawsuit. After some conversation about the case, he agreed. I thanked God. I admired Dr. Franklin and was convinced that his joining the lawsuit would be nothing short of providential.

On February 28, 2003, we filed a 200-page complaint, on behalf of 150 survivors and nearly 200 descendants of the 1921 Tulsa race riot. Present at the filing were most members of the legal team. In the Oklahoma lawsuit, the complaint identifies four state actors: the governor of the state of Oklahoma; the city of Tulsa; the city of Tulsa Police Department; and the chief of Police for the City of Tulsa. The harms are ascertainable and ascertained in the body of the complaint.⁴⁵ So this style of Jim Crow lawsuit avoids the modern critique of reparations lawsuits.

Neither the state of Oklahoma, nor the city of Tulsa, nor the Tulsa Police Department has ever compensated any of the African-American victims of the Tulsa race riot for the injuries they suffered at the hands of state and municipal officers. There is ample evidence of state action in the instigation and execution of the riot, with members of both the local police and the National Guard among the rioting mob. More than that, the guardsmen and police were present as part of a state and

municipal policy decision to invade Greenwood and attack the citizens there.⁴⁶

The state and municipal action was plainly discriminatory. Greenwood was razed to the ground because its inhabitants were black. To that extent, the Tulsa riot was simply one of many “nigger drives” taking place around Oklahoma in the 1910s and 1920s, designed to force black people from desirable towns and valuable land.⁴⁷ Our goal in this lawsuit is to set a benchmark for claims by those still alive and their immediate descendants to enable them to receive compensation for the violent and discriminatory treatment meted out to them during Jim Crow.

The Tulsa riot marks not only a pivotal moment in America’s history of race relations but also a seminal case in African-American reparations litigation. Because the state’s and municipality’s acts were so violent and so plainly discriminatory, the merits of the case are stark: the state of Oklahoma and city of Tulsa participated in a race riot that outstrips even the 1923 massacre in Rosewood, Florida, in its ferocity. The Rosewood case involved fewer deaths and less destruction of property, and the Florida legislature, to its credit, did pay survivors reparations. The Tulsa case presents none of the problems traditionally associated with reparations lawsuits: a number of the victims are still alive and still uncompensated; the appropriate institutional defendants are clearly identifiable; and there is a manifest, constitutional basis for suit. As with other successful reparations litigation, the only real issue is the statute of limitations.⁴⁸ We are still litigating that part of the lawsuit.

The idea of raising reparations as a response to the failure to realize fully the promise of *Brown* is not one I arrived at easily. Like many who patiently believed that the problems of racial discrimination and disparity would be solved in the twentieth century, I now doubt that there is a commitment at the highest level of government, or in America’s neighborhoods, to accept and embrace black people as an integral part of America. No group has worked harder or is more deserving (other than, of course, Native Americans, to whom we all owe the greatest debt) than that which has traveled from slavery to freedom, but still faces discrimination, even when individual members succeed politically and economically. I conclude that reparations are necessary to address

the pervasive problems that are continually visited upon the African-American community. Over the past 385 years, African-Americans have contributed mightily to this country, yet still face barriers and burdens unlike those of any other group. Immigrants have received protections from our government, and rightly so, while the same fundamental rights were denied to blacks. Poor whites were allowed to vote and to live wherever they could afford to live, while blacks at every socioeconomic level were denied the same rights during the period of Jim Crow in America. Even today, wealthy African-Americans are victims of racial profiling, when they drive their cars, shop in upscale neighborhoods, or live in places where neighbors believe they don't belong. By the same token, a substantial segment of the black community did not receive the benefits of integration or affirmative action. They are still in those segregated neighborhoods, sending their children to second-rate schools and lingering in poverty. The reparations movement has momentum today because African-Americans have inadequate health care and are more susceptible to disease as a result. All too many are victims of redlining and predatory lending, even though both practices are illegal. Others are denied access to quality education and, as a result, cannot take advantage of opportunities for social mobility. In short, these circumstances have created a frustrated, exasperated, and increasingly angry community that, in ever-increasing numbers, is demanding reparations.

Notwithstanding this support for reparations, my personal view of what to do with this money may differ from that of others in the black community. I propose that the billions, or perhaps trillions, of dollars that come from a successful reparations lawsuit not be distributed in the form of a check to every African-American, even though such equitable distribution may be justified. Indeed, I firmly believe that people like myself who have benefited from *Brown* and affirmative action, and who have overcome the barriers of racism, should not receive reparations. My proposal is that all of the money be placed in a trust fund, administered perhaps through the churches or other reputable organizations in the community, and made available to the "bottom stuck," those African-American families that have not been able to realize the American Dream fully. Furthermore, the funds should be available in a manner similar to the way veterans' benefits are distributed, and their use

restricted to such plans to remedy the community's major problems, like health care, housing, employment, and education. This is a way to finally move beyond the idle promises of full integration and to invest in our communities in ways that will generate solutions that are transformative. This will be highly controversial in the black community, I'm sure, because we are telling our people how the money, to which they are entitled, ought to be used. It is a paternalistic approach, of course, but one that is entirely necessary to overcoming the problems we face. In my view, there are few additional ways to address them.