BLACK TO THE FUTURE

IN AN AMERICA STILL IN THE SHADOW OF ITS SHAMEFUL PAST
Introduction

Seeking Sankofa: Any Hope for a “Post-Racial” Future Resides in Facing Our Racial Reality

By Wilson Adam Schooley

The current political context presents us with a promising opportunity. That premise may seem remarkable, even ridiculous. But the fortuity is real. We are at a very American racial crossroads, yet again. This one is a major junction, one of those historical moments that feels uncomfortably near the edge of the chasm that was the Civil War and Reconstruction.

This reality is not difficult to see. It is proximate and painful. It requires neither a microscope nor a telescope. It is in the streets (Charlottesville, Virginia), in the workplace (General Motors), in the courts and jails (African Americans incarcerated at five times the rate of whites), in our holy houses (Charleston, South Carolina), and in our government. The raw, red paw of racial hate is being brandished out in the open again, unsheathed from the glove of pretense and propriety—reminding us that the deeper discrimination never went away.

So, how is this an opportunity? It is an opportunity because it gives us as a country a chance to recognize (1) the subtler, unseen racism sewn into our system; (2) that we are far from a “post-racial” society; and (3) just how far we still have to go.

My year as chair of the ABA Civil Rights and Social Justice Section, and also as editor of this issue of Human Rights magazine, is laser focused on what—incredibly, given its centrality in our history—is still an underexamined American sin: the African American experience, and how excruciatingly underestimated and misunderstood remain the daily burdens, struggles, obstacles, and oppression faced by black people in this country.

Standing at this American crossroads, we have to start by looking back in order to move forward. James Baldwin told us: “If you don’t know what happened behind you, you’ve no idea of what is happening around you.” Sankofa, a word from the Akan tribe in Ghana, symbolizes the Akans’ quest for knowledge based on critical examination, and intelligent, patient investigation, and teaches us that we must look back to go forward. What happened in 1619, exactly 400 years ago this year, and what has unfolded since, is key to what is happening around us right now. It is a history we do not tell. We have imparted instead, at best, a sanitized story of our sordid past.

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The Forgotten Story, Enduring Legacy, and Meaning of Slavery in America

By Artika R. Tyner
Key West is known for sunshine and being a vacation paradise. It is the most southern tip of the United States, 90 miles from Cuba. You can embark on an adventure through a trolley ride, visit President Harry Truman’s “Little Whitehouse,” walk the legendary trails of Ernest Hemingway, and eat countless slices of key lime pie. The warm weather, delicious food, and cultural diversity will have you book the next trip upon arrival. Our American Bar Association GPSolo Spring Meeting provided me with the opportunity to fully indulge in the Florida sunshine experience. When my tour guide mentioned the African Cemetery, I embarked upon a path of exploration and self-discovery.

A missing chapter of the Key West tourist experience is a memorial site that is nestled on the shores of Higgs Beach. It provides a glimpse into the horrific human degradation and deprivation of human dignity experienced during the Transatlantic slave trade.

During the period between the late 1600s and early 1800s, millions of Africans were enslaved and placed on slave ships headed to the United States, Brazil, and the Caribbean. This treacherous voyage from Africa to America could take from three weeks to three months. Many died at sea before reaching the distant land. Slaves were chained together and left to wade in pools of their own blood, urine, and feces. One eighteenth century ship observer wrote, “The floor of the rooms was so covered with blood and mucus which had proceeded from them in consequence of dysentery that it resembled a slaughter house.” Notably, you could smell a slave ship before it was even physically visible.

By 1820, transporting slaves across the ocean had been declared illegal. This did not end slavery in the United States but only restricted new Africans from being transported to the United States and Europe. In 1860, three American-owned ships headed to Cuba were captured in Key West, Florida, due to their contents—illegal cargo referred to as “slaves.” The three ships were the Bogota, Wildfire, and William. Almost 1,500 Africans were onboard when the ships were captured by the U.S. Navy. Two hundred ninety-five people died during the 85 days they were in Key West. The survivors were sent to Liberia for the possibility of resettlement. Many did not survive and died at sea before reaching Liberia.

The history of the African Cemetery was discovered in 1997 by historian Gail Swanson. The memorial site is located on the shores of Higgs Beach. The center of the memorial is a compass surrounded by a map of the world, which illustrates the route of the slave trade from the distant shores of Benin and the Congo to the United States. The backdrop is the clear blue still waters of the Atlantic Ocean. You are greeted by a gentle breeze with the sun beaming in your eyes.

The sayings alongside the memorial help to connect the past, present, and future. The sayings are beautifully engraved into each post. Some of them are featured below:

Nkonzonkonson reminds us that “we are linked by blood in life and death.” The symbol is a chain that connects the slave experience with a rich legacy of perseverance, tenacity, community, and faith.

Gye Nyame sets forth the omnipotent nature of God: “I fear nothing in the Universe, except God.” This reflects the African connection with a deep and unwavering faith in holding on to God’s unchanging hand.

Mate Masie challenges each of us to gain wisdom, knowledge, and prudence through the exploration of history.

Osram means “the moon does not hasten on its way around the world.” This is a symbol of steadiness, peace, and patience.

Nyame Birini Wo Soro is a symbol of hope and faith. “God, I know there is something in the heavens.” This saying also reflects the Brazilian proverb: “Don’t tell God that you have a great problem. Tell your problem that you have a great God.”

Wawa Aba compels us to look to the Wawa tree as inspiration for its hardiness, toughness, and endurance. This unwavering tenacity is reflected in the fact this passage typically was nearly six weeks in the most inhumane, unsanitary, grueling conditions.

Epa is reflected by handcuffs as a reminder that “you are the property of the one who handcuffs you were.” This is a symbol of justice and equality for all. It also acknowledges human dignity as the foundation of natural law.

Sankofa reflects the philosophy of “go back and fetch it.” It also means “we must return to the source.”
Sankofa marks both the beginning and the end of the memorial. As I passed the circle, I was challenged to retrieve and remember what was lost. Not cargo, not money, not slaves, but African men, women, and children. Someone’s mother, brother, aunt, or husband boarded these fleets at a point of no return. Two hundred ninety-five individuals with a name, story, culture, and heritage were laid to rest at this site. However, their stories live on as we challenge modern-day slavery in the form of mass incarceration, human trafficking, discrimination, bigotry, and hatred.

**Leadership for Social Justice**

As I walked to the end of the circle, I made a silent pledge to remember this lost chapter of American history by teaching my students about the African Cemetery and the legacy of slavery and challenging my students to leave the world a better place than how they found it. This is Sankofa. This is a call to Leadership for Social Justice. I could hear the words of Ossie Davis as I departed. When he delivered the eulogy of Malcolm X, he left a message for the ages:

> Consigning these mortal remains to earth, the common mother of all, secure in the knowledge that what we place in the ground is no more now a man—but a seed—which, after the winter of our discontent, will come forth again to meet us. And we will know him then for what he was and is—a Prince—our own black shining Prince!

My personal mission is to ensure that we do not forget this legacy through fostering learning experiences that focus on the strength and power of the African Diaspora. My scholarly research, books, and lectures seek to bridge the knowledge gap about Africa. Most Americans are unable to determine whether Africa is a country or continent. Further, many are unaware that Nigeria is projected to be the third most populous country in the world shortly before 2050, according to a United Nations (UN) report. Moreover, the fastest population growth trends are occurring on the continent coupled with an accelerated rate of entrepreneurs and innovative business solutions. A Marcus Garvey quote posted at the Cape Coast Castle in Ghana captures the true essence of Africa: “No one knows when the hour of Africa’s Redemption cometh. It is in the wind. It is coming. One day, like a storm, it will be here. When that day comes all Africa will stand together.” Despite the legacy of slavery, Africa is blooming with potential and success each and every day.

Each semester, I embark on a learning journey by creating educational opportunities for students with the goal of bridging the knowledge gap and dispelling myths about Africa. This begins with the knowledge of what slavery truly is. Through a culmination of years of research and collaboration with scholars like Professor Simone Gbolo (University of Minnesota), I developed study abroad coursework in Ghana. While visiting Cape Coast Castle, one of my students stated: “slavery was 400 years ago in an attempt to create distance from the enduring legacy of slavery.” This statement reflects the cognitive dissonance and historical amnesia of far too many Americans. Correctly stated, slavery in the United States dates back to 1619 (400 years ago).

For many African Americans like me, slavery is only a few generations away. The institution of slavery impacted a great-grandparent who experienced firsthand the horrors of slavery and their freedom evolved into a life of sharecropping and abject poverty in cities in the South and in the North (during the Great Migration). This became a moment of critical reflection (i.e., truth in the pursuit of reconciliation) for our students as we seek to explore the present-day effects of slavery. One such example is the economic inequality identified by the Corporation for Enterprise Development, which projects it would take almost 228 years to bridge the household wealth gaps between blacks and whites.

The emergence of mass incarceration and Prison Industrial Complex has been characterized as “slavery by another name” due to the nature of the Thirteenth Amendment’s exception clause. This Amendment abolished slavery and involuntary servitude, except as a punishment for a crime. According to the Equal Justice Initiative, “As the end of slavery left a void in the Southern labor market, the criminal justice system became one of the primary means of continuing the legalized involuntary servitude of African Americans.” This is still true in 2019, over 150 years since the ratification of the Thirteenth Amendment in 1865. Legal scholar and author Michelle Alexander’s research reveals there are more black men behind bars or impacted by the criminal justice system than who were enslaved during the 1800s.

These experiences of injustice are not just limited to African Americans but stretch across the African Diaspora. African nations have been robbed of both human capital and physical capital. The economies of many countries like the United States, Britain, and France have flourished due to the denigration and exploitation of the labor of enslaved Africans. With the opening of the new Senegal Museum of Black Civilizations, one is left to ponder when the artifacts stolen from Africa will return to their rightful abode. “The scale of artifacts in question is staggering. Up to 95 percent of Africa’s cultural heritage is held outside Africa by major museums. France alone holds 90,000 sub-Saharan African objects in its museums” (*The New York Times*, “Senegal’s Museum of Black Civilizations Welcomes Some Treasures Home”). These are just a few examples from an exhaustive list of the enduring legacy of slavery.

**Year of Return**

2019 marks the 400-year anniversary of the first enslaved Africans’ arrival in the United States in 1619. This is a time to pause, reflect, and act. Momentum is building nationally and globally. In 2013, the UN declared 2015–2024 the International Decade for People of African Descent to “promote respect, protection and fulfilment of all human rights and fundamental freedoms of people of African descent.” Furthermore, H.R.1242—400 continued on page 10
We are living in America’s era of mass incarceration. With just 5 percent of the world’s population, this nation holds 25 percent of the world’s prisoners—and many more people impacted by its crime policies. More than 2.1 million Americans are incarcerated in jails and prisons, up from less than 200,000 in 1972, while over 4.6 million more are on probation or parole. These numbers are not faceless. African Americans make up about 13 percent of the nation’s population, but constitute 28 percent of all arrests, 40 percent of the incarcerated, and 42 percent of those on death row. African Americans, Latinos, and Native Americans are all more likely to be arrested, jailed awaiting trial, and sentenced to jail or prison when compared to white Americans. Perhaps the starkest statistic, recent data predicted one of every three black boys, and one of six Latino boys, born in 2001 would go to jail or prison within their lifetimes if current trends continue.

In some ways, these statistics outline a contemporary problem—but the challenges they describe are legacies of systems much older and deeper. The
The experiences of African Americans murdered and terrorized by mob violence for generations between Emancipation and the struggle for civil rights, alongside the virtual inaction of local and federal law enforcement and lawmakers, lay the groundwork for the inequality and injustice we face today. Understanding the current system’s roots in racism and dehumanization is critical to extracting the problem and growing something better.

In the seventeenth and eighteenth centuries, 12 million African people were kidnapped, chained, and brought to the Americas after a torturous journey across the Atlantic Ocean. In the United States, the labor of enslaved black people fueled economic growth, while an ideology of white supremacy and racial difference was created to justify slavery as morally acceptable. In the nineteenth century, a thriving plantation economy and forcible taking of land from Native people increased demand for enslaved labor and, through the domestic slave trade, the South’s enslaved population rose dramatically.

After the South’s defeat in a bloody Civil War, the nation adopted the Thirteenth Amendment, abolishing slavery “except as punishment for crime,” while leaving intact a bitter resistance to racial equality. Continued support for white supremacy and racial hierarchy meant that slavery in America did not end—it evolved. The identities of many white Americans, especially in the South, were grounded in the belief that they were inherently superior to African Americans. Many white people reacted violently to the requirement to treat their former “human property” as equals and pay for their labor. In the first two years after the war, thousands of black people were murdered for asserting freedom or basic rights; cities like Memphis and New Orleans were sites of violent mob attacks on black communities.

Between 1868 and 1871, a wave of terror swept across the South, resulting in the deaths of thousands of African Americans—some killed merely for failing to obey a white person. Congressional efforts to provide federal protection and civil rights to formerly enslaved black people were undermined by the United States Supreme Court’s rulings in cases like The Slaughterhouse Cases, 83 U.S. 36 (1872); United States v. Reese, 92 U.S. 214 (1875); and United States v. Cruikshank, 92 U.S. 542 (1876). Soon, Northern politicians retreated from a commitment to protect black people and Reconstruction collapsed. In 1877, federal troops were removed from the region and white Southerners used their regained power to bar black people from voting; legalize racial segregation; and create an exploitative economic system of sharecropping and tenant farming that would keep African Americans indentured and poor for generations.

Convict leasing—a horrific system in which black people were convicted of crimes under discriminatory “Black Code” laws and then leased to private businesses to labor under inhuman conditions for state profit—created a new kind of bondage some scholars have described as “worse than slavery.” At the same time, Jim Crow and racial integrity laws prohibited social interactions between people of different races, especially black men and white women. Lynching soon emerged as a primary tool to enforce racial hierarchy and oppression while terrorizing black people into accepting abusive mistreatment and subordination. Federal, state, and local governments largely tolerated these terrorist acts.

Often committed in broad daylight and sometimes “on the courthouse lawn,” racial terrorlynchings were directly tied to the history of enslavement and the re-establishment of white supremacy after the Civil War. These lynchings were also distinct from hangings and mob violence committed against white people because they were intended to terrorize entire black communities and enforce racial hierarchy. Unlike frontier justice in the West, racial terror lynchings generally took place in communities with functioning criminal courts—viewed as too good for African Americans. Despite its lawlessness and terrifying unpredictability, lynching was sanctioned by law enforcement and elected officials, and the perpetrators acted boldly with impunity. Victims were sometimes publicly tortured for hours before their brutalized bodies were left out on display to traumatize other black people. Members of the mob frequently documented their atrocities by posing for photographs with a dangling, bloodied, or burnt corpse.

Most of the more than 4,400 documented victims of racial terrorlynching killed between 1877 and 1950 were killed in the 12 Southern states; Mississippi, Georgia, and Louisiana were among the deadliest. Several hundred additional victims were lynched in other regions, with the highest numbers in Oklahoma, Missouri, Illinois, and West Virginia. Many more victims were undocumented and remain unknown. This brutality continued into the twentieth century, and national leaders and mainstream media outlets quickly learned to use white supremacist views and pro-lynching rhetoric for political gain. In 1906, President Theodore Roosevelt declared, “the greatest existing cause of lynching is the perpetration, especially by black men, of the hideous crime of rape.” An editorial in the Memphis Avalanche Appeal advised, “Let [the black man] keep his hands off white women and lynching will soon die out.”

“If it requires lynching to protect women’s dearest possession from ravening, drunken human beasts,” white women’s rights activist Rebecca Felton wrote in the Atlanta Journal in 1898, “then I say lynching a thousand a week if necessary.”

Sexual violence became the most common justification for deadly vigilante violence targeting black men and terrorizing black communities. In fact, fewer than 25 percent of documented African American lynching victims were accused...
of sexual assault and less than 30 percent were accused of murder. Because African Americans were presumed guilty and dangerous, accusations lodged against them were rarely scrutinized; nearly all were lynched without an investigation, much less a trial. Shortly after Reuben Sims was lynched for assaulting a white woman in Baldwin County, Alabama, in 1904, the local sheriff admitted he was innocent but nonetheless refused to arrest any members of the Lynch mob.

When 17-year-old Henry Smith was accused of killing a white girl in Paris, Texas, in 1893, he was quickly captured and condemned without trial or investigation. On February 1, a mob of 10,000 people gathered from across the state to watch as Henry was paraded through town on a carnival float, forced onto a 10-foot-high platform at the county fairgrounds, brutally tortured for nearly an hour, and then burned alive. “Caucasian Vengeance for African Barbarity,” declared a Fort Worth Daily Gazette headline above an article describing the fate of the “Animal Form of Rapist-Murderer-Savage-Fiendish Negro, Henry Smith.”

In common but much-less-publicized incidents, lynching victims were targeted not for allegations of crime but for pursuing political and economic equality. Dozens of black sugar cane workers were lynched in Thibodaux, Louisiana, in 1887 for striking to protest low wages. In 1884, after Calvin Mike cast a vote in Calhoun County, Georgia, a white mob attacked and burned his home, killing his elderly mother and his two young daughters, Emma and Lillie.

Reverend T. A. Allen was lynched in Hernando, Mississippi, in 1935 for organizing local sharecroppers. According to press coverage, Rev. Allen—known to wear a button that read “Every Man a King”—was shot through the heart; his body was found chained and floating in the Coldwater River.

Others were lynched for refusing to address a white man as “sir” or demanding to be served at the counter in a segregated soda shop. William Brooks was lynched in Palestine, Arkansas, in 1894 for asking to marry his white employer’s daughter. In Labelle, Florida, in 1926, Henry Patterson was lynched for “attempting to assault” a white woman; soon after his death, news spread that his “offense” had actually been asking for a drink of water.

Hundreds more black people were lynched on allegations of arson, robbery, non-sexual assault, and vagrancy. Reporting on the lynching of a black man in Millersburg, Ohio, in 1892, an Indiana newspaper explained:

“He had lingered about people’s doorsteps and annoyed them in various ways. There are supposed to be no Negroes in Holmes County. Nothing is known of the victim’s history, not even his name. He was said to be the only Negro in the county.

In 1930, a 65-year-old black woman named Laura Wood was hanged with a plow chain in Barbé, North Carolina, for allegedly stealing a ham. After an overcoat went missing from a hotel in Tifton, Georgia, in 1900, police whipped two black men to death while “interrogating” them in the woods; newspapers did not report their names. In a strictly maintained racial caste system, white lives and white property held heightened value, while the lives of black people held little or none.

Efforts to pass federal anti-lynching legislation repeatedly failed, largely due to concerted opposition by Southern elected officials. Due to this federal inaction and local indifference, only 1 percent of lynchings committed after 1900 led to a criminal conviction.

Faced with a constant threat of attack, nearly 6 million black Americans fled the South between 1910 and 1970 as traumatized refugees, abandoning homes, families, and work in hopes of escaping racial terror. When parts of Georgia experienced a mass black exodus after gruesome lynchings in 1915 and 1916, the local planters “attributed the movement from their places to the fact that the lynching parties had terrorized their Negroes.” Lynching profoundly reshaped the American landscape and burdened already vulnerable communities with pain and disadvantage still with them today.

Importantly, these lynchings were not isolated hate crimes committed by rogue vigilantes; they were targeted racial violence perpetrated to uphold an unjust social order. Lynching was terrorism. This violence left thousands dead; significantly marginalized black people politically, financially, and socially; and inflicted deep trauma on the entire African American community. White people who witnessed, participated in, and socialized their children in a culture that tolerated gruesome lynchings also were psychologically damaged. State officials’ tolerance of lynching created enduring national and institutional wounds that survived to oppose the goals of the civil rights movement and modern calls for equality.

Many lynchings occurred in communities where African Americans remain marginalized, disproportionately poor, overrepresented in prisons and jails, and underrepresented as decision-makers in the criminal justice system. The racial terror epilogue to slavery grafted onto the racial hierarchy narrative a presumption of guilt and dangerousness, and entrenched white power structures soon adopted rhetoric defending racialized vigilante violence as necessary to protect white property, families, and the Southern way of life from black “criminals.”

The persistent presumption of guilt and dangerousness assigned to African Americans has made minority communities particularly susceptible to the unfair administration of criminal justice. Research demonstrates that implicit bias impacts
Research has also shown that racial prejudice is directly related to public support for "tough on crime" laws that lead to long sentences and mass incarceration. So deeply entrenched is the presumption that people of color are dangerous and guilty that, according to a 2014 study, informing white Americans about racial disparities in incarceration rates led to more fear of crime and more support for punitive criminal justice policies.

Perhaps the clearest intersection between the history of racial terror lynching and modern criminal law is seen in the death penalty. As lynching attracted national and international condemnation after the 1920s, capital punishment became a more acceptable means of achieving the same ends. Many defendants of the era learned that replacing a lynching with a death sentence did little to achieve a fair trial, a reliable conviction, or a just sentence.

In Sumterville, Florida, in 1902, after a black man named Henry Wilson was convicted of murder after a trial lasting just two hours and 40 minutes, the judge promised the mob of armed white men filling the courtroom that the ordered death sentence would be carried out by public hanging—though that violated state law. When the execution was set for a later date, the mob threatened vigilante action. In response, Florida officials quickly moved up the date, authorized Wilson to be hanged before a jeering mob, and congratulated themselves on the "avoided" lynching.

By 1915, court-ordered executions outpaced lynchings in the former slave states for the first time. Between 1910 and 1950, African Americans fell to just 22 percent of the South’s population but constituted 75 percent of those executed in the region. More than 80 percent of documented lynchings in America between 1889 and 1918 occurred in the South, and more than 80 percent of the nearly 1,400 legal executions carried out in this country since 1976 have also been in the South.

Modern death sentences are disproportionately meted out to African Americans accused of crimes against white victims; efforts to combat racial bias and create federal protection against racial bias in the administration of the death penalty remain thwarted by familiar appeals to the rhetoric of states’ rights; and regional data demonstrates that the modern death penalty in America mirrors racial violence of the past.

The bold and unpunished deaths of black men, women, and children deemed dangerous—like Trayvon Martin in Florida; Philando Castile in Minnesota; Tamir Rice and Samuel DuBose in Ohio; Alton Sterling in Louisiana; Sandra Bland in Texas; Freddie Gray in Baltimore, Maryland; and many, many more—continue to demonstrate the fatal consequences of a racialized presumption of guilt permitted to fester for more than a century. The trauma borne by Anthony Ray Hinton and countless more men and women condemned to death only to be exonerated many years later reveals the arrogance of a judicial system built on a history of injustice but still confident in its ability to fairly and justly judge who should live and who should die.

Chattel slavery in the United States required manufacturing a myth of racial difference to justify the brutal practice of buying and selling African men, women, and children as property. The inhumanity of slavery was largely intolerable unless there was a narrative that enslaved people were not really people. The military battles and legal developments that led to the abolition of slavery did nothing to undo that project of dehumanization, and those same ideas survived to justify racial terror lynching through the criminalization of black identity. Today, dehumanization and the fear of the “black criminal” remain at the core of our national acceptance of a prison system that cages and warehouses millions of people of all backgrounds. The impact of American mass incarceration is felt far beyond the black community, but the black community and its history illustrate the roots of this crisis—and potentially a path out.

After nearly 30 years advocating on behalf of the condemned and incarcerated in the Deep South, we at the Equal Justice Initiative believe that telling the truth of the slave trade, racial terror lynching, Jim Crow segregation, and mass incarceration can free us from the division and conflict that have grown out of centuries of euphemism and avoidance. We believe that bravely committing to this effort can set our community on the path to the honest reflection that will uproot and expose these poisons, and that this work cannot be relegated to the courtroom.

To that end, in April 2018, the Equal Justice Initiative opened two new sites in Montgomery, Alabama: The Legacy Museum: From Enslavement to Mass Incarceration, which presents an interactive and digital narrative exhibit linking the trauma of slavery to modern-day challenges in criminal justice; and the National Memorial for Peace and Justice, the nation’s first memorial to the victims of racial terror lynching. Together, these spaces challenge each one of us to confront a difficult history and commit to creating a more just and peaceful future. We encourage and welcome all to visit.

Anti-lynching crusader Ida B. Wells once wrote, “The way to right wrongs is to turn the light of truth upon them.” The museum and memorial strive to further the work of so many activists and advocates, past and present, striving to eradicate the roots of racism and inequality—and working to make that achievement lynching’s final legacy.

Jennifer Rae Taylor is a senior attorney at the Equal Justice Initiative.
Confederate Monuments That Remain
By Beth D. Jacob

When Amazon moves to its new second home in Crystal City, Virginia—part of the Washington, D.C., metro area and a stop on the D.C. metro—its address will be on or near Jefferson Davis Highway, one of the main Crystal City thoroughfares. While the fact that the leader of an armed insurrection against the United States is honored so near the nation’s capital may seem surprising to some, Jefferson Davis Highway is only one of almost 2,000 roads, schools, statues, and other monuments throughout the United States honoring the Confederacy (not counting cemeteries, battlefields, and thousands of historical markers that dot the Southern landscape). See “Whose Heritage: A Report on Public Symbols of the Confederacy” (www.splcenter.org/data-projects/whose-heritage). The largest monument is etched into Stone Mountain outside of Atlanta. Bigger than Mount Rushmore, the high-relief carving of Robert E. Lee, Jefferson Davis, and Stonewall Jackson dominates the landscape on the site of the 1915 revival of the Ku Klux Klan (www.splcenter.org/fighting-hate/intelligence-report/2018/stone-mountain-monumental-dilemma). While most Confederate symbols are found in states that were part of the Confederacy, some are in states like California or New York, and even in states such as Idaho, Arizona, and New Mexico, which were admitted to the Union after the 1865 end of the Civil War (www.splcenter.org/20180604/whose-heritage-public-symbols-confederacy#findings; www.infoplease.com/history-and-government/us-history/states-order-entry-union).

It is well accepted by historians that the Confederacy was established and fought primarily to preserve slavery. For example, in what is known as his “Cornerstone Speech,” Confederate Vice President Alexander H. Stephens declared in 1861: “Our new government is founded upon . . . the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.” Henry Cleveland, Alexander H. Stephens, in Public and Private: With Letters and Speeches, Before, During, and Since the War, at 721 (1866). The Confederate Constitution also enshrined this idea, providing that “the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected” in all Confederate territories. Confederate States Const. art. IV, § 3, cl. 3.

It is also well recognized, including by a unanimous United States Supreme Court, that public monuments reflect the opinions of the municipalities where they are found. “Permanent monuments displayed on public property typically represent government speech . . . . A monument, by definition, is a structure that is designed as a means of expression,” and this is also true for “privately financed and donated monuments that government accepts and displays.” Pleasant Grove City v. Summum, 555 U.S. 460, 470–471 (2009) (Alito, J.). Thus, the unacceptable message of Jefferson Davis Highway, Monument Avenue in Richmond, Virginia (a parade of Confederate leaders), Emancipation Park in Charlottesville, Virginia (Robert E. Lee), and the scores of schools named after Confederate icons (www.history.com/news/confederate-school-names-changing), is that those who fought to preserve slavery should be honored, and those whose ancestors were slaves are less respected or even inferior to other Americans. Portraits of Confederate generals are even found in courthouses, and statues honoring the Confederacy stand before courthouses across the South, sending the unpalatable message that some members of the community are less worthwhile—and less likely to receive impartial justice—than others.

This message is well understood. In an extreme example, Dylann Roof, the man who murdered nine black worshippers at the historic Emanuel A.M.E. Church in Charleston, South Carolina, in 2015 posted photographs of himself literally wrapped in a Confederate flag. See David Wren & Doug Pardue, Dylann Roof Had Outlined Racist Views on Website Prior to Church Shooting, Post & Courier (June 19, 2015), www.postandcourier.com/archives/dylann-roof-had-outlined-racist-views-on-website-prior-to/article_f4c732e5-9bee-5e99-830a-780176f4a0e7.html. The violent white supremacist, racist, and anti-Semitic “Unite the Right” rally in Charlottesville in August 2017 was organized around a protest against the proposed removal of the Robert E. Lee monument (www.nytimes.com/2017/08/13/us/charlottesville-rally-protest-statue.html).

Following the Charleston massacre, some monuments and other Confederate symbols were removed, perhaps most famously the battle flag from the South Carolina capitol building (www.washingtonpost.com/news/post-nation/wp/2015/06/22/south-carolina-officials-and-activists-call-for-removal-of-
Two Southern states hastily passed preservation laws that forbid the removal or even contextualizing of Confederate memorials, adding to a handful of existing similar statutes. Alabama enacted its law in 2017 and North Carolina in 2015, one month after the Charleston murders; Georgia, Mississippi, South Carolina, Tennessee, and Virginia already had laws on their books.

The argument that removal of signs of white supremacy would be tantamount to “erasing history” is easily debunked. Public monuments are not erected to study history; they are erected to express the values of the community. History is studied in schools and museums, and we are strong advocates that the history of the Civil War should be studied, and studied in depth—including the creation of the “Lost Cause” myth that ignores slavery.

In any event, the history of public Confederate symbology is not that of the Civil War, but of resistance to emancipation and civil rights. Many of the monuments were erected between 1895 and 1920, the time of the Jim Crow laws and a resurgence in public lynchings; between 1877 and 1950, over 4,000 African Americans were lynched in the United States. As Louis Nelson, professor of architectural history at the University of Virginia, says, “[t]hese are not Civil War monuments; these are Jim Crow monuments. . . . We need to understand and interpret them in this context. They were erected amid the apex of lynching in the American South.”


No one is erasing history by removing Confederate monuments. But by preserving them—and thereby reinforcing a false narrative of the “Lost Cause”—we’re erasing the history of oppression, the history of discrimination, and the history of the still-to-be-achieved American ideal, enshrined in our Constitution, of equality and justice for all.

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African Americans’ Pursuit of Equal Educational Opportunity in the United States

By Janel George

Education has long been recognized as a mechanism for upward social mobility and full citizenship in American society, which is in large part why Africans enslaved in America were denied access to education—particularly reading instruction—during the slave era of the eighteenth and nineteenth centuries. Many slave owners feared that if enslaved individuals learned to read, they would seek their freedom. Opposition to enslaved individuals obtaining literacy was enshrined in law in many states and enforced through violence, imprisonment, and fines. And those who taught enslaved individuals to read were likewise penalized. Despite the threat of punishment, many enslaved individuals covertly learned how to read, and others risked reprisal by seeking to educate enslaved individuals. They recognized the value of education, including the value of literacy, as intrinsic to self-determination and the full citizenship denied to them under slavery.

Chief Justice Earl Warren would later declare in the seminal case, Brown v. Board of Education (1954), that “education is the very foundation of good citizenship,” but many African Americans recognized the truth that education was elemental to full citizenship long before the legal victory in Brown would invalidate the “separate, but equal” doctrine that relegated them to second-class citizenship. Enslaved Africans’ pursuit of literacy was the first in many attempts by African Americans to pursue educational opportunities in America. These early pursuits would be followed by struggles for access to educational opportunity that changed the landscape of public education.

Recently, African American students in Detroit’s public schools filed a claim, Gary B. v. Snyder, asserting that the state of Michigan denied them access to literacy in violation of the U.S. Constitution. Their claim echoes the same aspirations of enslaved Africans in America in the not-too-distant past who simply sought the right to read as elemental to participation in society. Although the Detroit students’ claim was denied by the U.S. District Court for the Eastern District of Michigan, it underscores the persistence of educational inequities stemming from the original sin of slavery and its progeny that continue to impact the educational and life outcomes of African Americans.

Today, inequities impacting African
transforming high conversation on created a national York, Oct. 25, 2013. in Brooklyn, New School (P-TECH) Technology Early the Pathways in a classroom at Arne Duncan visit Education Secretary Obama and President Barack 2013.

make it to the all-black elementary school other elementary schools every morning to home. Sarah was forced to walk past five Roberts attempted to enroll his five- American students’ educational experiences at the k–12 level include school discipline disparities, persistent resource inequities, and the trend of resegregation of public schools. Although slavery has been abolished, these inequities are the remnants of inequality rooted in slavery and institutionalized in systems, policies, and practices that perpetuate disparate educational experiences and outcomes for many African Americans. Tracing the origins of these inequities to their roots in slavery is central to addressing and remedying them. One venue for seeking relief for educational inequity has been the legal system. At times, the legal system has served to deepen inequities, and, at other times, it has helped to dismantle them. In examining the roots and current manifestations of educational inequities impacting African Americans, it is vital to also examine the efficacy of the legal system as a tool to help eliminate discrimination and promote policies and practices that improve the educational experiences and outcomes of African American students.

One of the earliest legal battles for access to education predates Reconstruction. In 1850, free African American Benjamin F. Roberts attempted to enroll his five-year-old daughter Sarah in an all-white Boston elementary school near the Roberts’ home. Sarah was forced to walk past five other elementary schools every morning to make it to the all-black elementary school that she was forced to attend under the “separate, but equal” regime. Roberts attempted to enroll Sarah in a nearby elementary school, but she was forcibly removed and refused admission because of her race. Roberts’ subsequent legal challenge to Boston’s system of segregated schools filed on behalf of Sarah, Roberts v. the City of Boston, was unsuccessful and some of the case’s reasoning would be relied upon to uphold the “separate, but equal” doctrine in 1896’s Plessy v. Ferguson. While Roberts’ legal battle failed, his challenge to Massachusetts’ segregated schools led the Massachusetts State Legislature to pass a law banning school segregation in 1855, making it the first state to legislatively prohibit school segregation. It was an early victory for school desegregation efforts.

But the U.S. Supreme Court’s ruling in Plessy decades later was a setback. In the case, the U.S. Supreme Court denied African American Homer Plessy’s challenge to the “separate, but equal” doctrine and upheld the nation’s regime of racial apartheid. However, the plaintiff’s arguments in Plessy would lay the groundwork for the Brown victory over half a century later.

Following the Plessy ruling, “separate, but equal” was enforced and public schools were among the most salient demonstrations of racial separation, with African American students consigned to substandard segregated schools apart from their white counterparts who disproportionately attended better-resourced schools. Maintained in Southern states through Jim Crow laws, but also observed as de facto segregation in the North, the separation of the races characterized the public landscape of American public life. Years before legal action would be taken to challenge k–12 public school segregation, then-Howard University Law School dean, Charles Hamilton Houston, would take his star law student, Thurgood Marshall, on a tour of southern states to observe the deplorable conditions of the public schools that African American students were consigned to attend. The trip would prove life-changing for Houston’s protégé, who would later argue seminal civil rights cases before the U.S. Supreme Court that would help dismantle racial segregation in both k–12 and higher education.

The catalyst for the most significant case related to k–12 school segregation, Brown v. Board of Education, came from an unexpected source. Almost a century after Benjamin Roberts’ unsuccessful legal challenge to Boston’s segregated schools, Robert R. Moton High School sophomore Barbara Rose Johns staged a student walk-out in protest of the deplorable conditions at the segregated African American high school. The school had one microscope for its biology class and no cafeteria, gym, or lockers. Students often wore their coats all day due to the lack of heat. Some classes were held outside in temporary rooms with tar paper roofs, and some students were forced to take classes on school buses due to lack of classroom space. Johns and her classmates were discouraged by the deplorable school conditions.

But the impetus for Johns’ protest of the school conditions occurred when a used school bus (handed down to the African American segregated school after it had been used by the white school) broke down on railroad tracks and was struck by a train, killing five black students, including one of her friends. Johns’ walkout forced the hand of civil rights attorneys led by Houston who were carefully crafting their legal challenge to school segregation. The walkout resulted in the filing of the case Davis v. County School Board of Prince Edward County, which would later be consolidated with four other cases challenging school segregation to become the landmark Brown ruling.

The Brown ruling declared the “separate, but equal” doctrine unconstitutional, signaling the death knell for Jim Crow segregation. But while Brown invalidated de jure racial segregation, what was—and remains—much more difficult to eradicate is de facto segregation. The Brown ruling was complicated by the U.S. Supreme Court’s hesitancy to detail a remedy for the injury of racially segregated education. The years that followed the Brown ruling can be characterized as an era of massive resistance. Many states exploited the ambiguity of the ruling and took no proactive or timely measures to integrate public schools. Other states circumvented the ruling by opening private all-white “Christian” academies and abandoning public schools.

Resistance to orders to desegregate public schools necessitated 1955’s Brown II, in which the Court urged states to act...
“with all deliberate speed” to desegregate public schools. But many states flouted the ruling and refused to act with any urgency to desegregate public schools. Virginia’s Prince Edward County Public Schools, where Barbara Rose Johns staged her historic walkout, opted to close their schools for five years rather than comply with desegregation orders. Battles to enforce Brown continued to be waged in the court system, where civil rights lawyers met massive resistance with ongoing litigation, including 1958’s Cooper v. Aaron, 1968’s Green v. County School Board, and 1971’s Swann v. Charlotte-Mecklenberg—until the U.S. Supreme Court issued mandates requiring state action to eliminate all vestiges of segregation “root and branch.”

These legal victories were bolstered by passage of federal law that established federal civil rights oversight and enforcement mechanisms. While courts recognized the right to be free from discrimination based on race, color, or national origin as protected by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, federal levers were needed to ensure that states complied with court orders. The passage of the Civil Rights Act of 1964, particularly its Titles IV and VI, helped to clarify federal enforcement authority. Section 601 of Title VI of the law, which prohibits discrimination based on race, color, or national origin in covered programs and activities, specifies compliance requirements for recipients of federal funds and participants in federal programs. Section 602 of the law allows for federal enforcement of Section 601 through regulations. Passage the following year of the Elementary and Secondary Education Act, which expanded federal funding of public education, also delineated responsibilities for recipients of those funds to comply with federal civil rights law. The combination of federal law and court oversight and enforcement helped to advance school desegregation efforts. As a result, the racial makeup of schools began to change and Brown’s promise of equal educational opportunity began to take root. The percentage of African Americans attending integrated schools rose to rates as high as 90 percent in the 1970s.

But as integrated public education became a reality, another practice began to take shape that continues to impact educational opportunities for African American students. Many schools began to institute exclusionary discipline practices, like suspensions and expulsions, that take students out of the general classroom and disrupt their education. The Children’s Defense Fund conducted a study in 1975 highlighting data from the Department of Education’s Office for Civil Rights revealing higher rates of exclusionary discipline among African American students. Decades later, the Department of Education’s Office for Civil Rights’ Civil Rights Data Collection demonstrates the persistence of these inequities. Data show that African American students are suspended and expelled at rates that are disproportionately higher than those of their white peers. These discipline disparities begin as early as preschool for African American students and increase their likelihood of involvement with the juvenile justice system—a phenomenon known as the “school-to-prison pipeline.”

Removal from the classroom contributes to student disengagement—as well as feelings of stigmatization when students do return to the classroom—and high school dropout rates, as well as increased criminal activity—all of which result in compromised educational and life outcomes. These discipline disparities are not the result of higher rates of misbehavior by African American students. Research has established that African American students misbehave at the same rates as their white peers, yet they are penalized more harshly. Instead, experts attribute discipline disparities to implicit (as well as explicit) bias held by teachers and school administrators that manifests in disparate treatment of and imposition of sanctions against African American students. Such biases are institutionalized in discriminatory discipline policies and practices, such as school discipline codes that deem natural hair worn only by African American girls as a dress code violation.

The increased presence of police in schools—commonly referred to as “School Resource Officers”—has only amplified the likelihood of student involvement with the juvenile justice system. African American students also have higher rates of school-based arrests than their white peers. African American student interaction with law enforcement in schools often mirrors the over-policing that occurs in many African American communities. In the educational context, such negative interactions can have significant consequences, such as criminal involvement, decreased educational attainment, and compromised employment options.

In addition to discriminatory discipline practices, significant resource disparities also negatively impact the educational experiences of many African American students in today’s k–12 public schools. The school conditions described by Detroit’s African American students in the Gary B. case illustrates the reality that school resource inequities are not vestiges of the past—they are persistent and pernicious in today’s educational system. The Gary B. case describes the conditions of the overwhelmingly African American Detroit Public Schools, including lack of core curriculum offerings, deteriorated school facilities, extreme temperatures necessitating school closings and early dismissals, rodent infestations, and structurally unsafe and defective school facilities. Such resource inequities are all too common among schools serving high numbers of African American and low-income students.

But, legal efforts to secure equitable and adequate school resources have achieved mixed results. In the case of San Antonio Independent School District v. Rodriguez, the lead plaintiff, Demetrio Rodriguez, challenged the school funding scheme that resulted in resource inequities for schools on the west side of San Antonio, Texas, where students were disproportionately low-income and Mexican American. Rodriguez’s sons studied in a crumbling school building, lacking basic resources like books and certified teachers. Rodriguez observed that the wealthy district of Alamo Heights across town didn’t just have nicer buildings and more qualified instructors, but it also had a lower tax rate. In challenging the inequitable school funding scheme that disfavored low-income districts with low property tax bases, Rodriguez’s attorney, Arthur Gochman, argued that education is a fundamental right. Echoing arguments raised in the Brown case, Gochman asked the U.S. Supreme Court, “Are we going to have two classes of citizens? Minimum-opportunity citizens and first-class citizens?”
Despite the compelling case presented on behalf of Rodriguez and—in what is perhaps the most consequential ruling to date regarding school funding—the Supreme Court held that there is no fundamental right to education in the U.S. Constitution. The Rodriguez ruling effectively foreclosed a federal remedy for addressing school resource inequities, leaving many plaintiffs to seek redress in state courts, relying upon state constitutional guarantees of educational opportunity in their arguments for equitable and adequate school resources. Nationwide, litigation related to school funding has produced mixed results. According to Columbia University’s Teachers College, between 1973 and 2017, plaintiffs won 27 school funding cases; states won 22 cases, and 12 cases are still pending.

In addition to inequitable school resources, many public schools are experiencing a trend of resegregation that undermines the promise of Brown. Many African American students attend what are now classified as “hyper-segregated” schools—a term referring to schools segregated by both race and socioeconomic level. These schools also disproportionately lack the quality resources that students need to learn and thrive, such as credentialed and experienced educators, challenging curricular offerings, quality facilities, and access to technology. These segregated learning environments undermine opportunities to learn and negatively impact children of all races.

The social science research of the husband-wife psychologist team of Drs. Kenneth and Mamie Clark relied upon by the Court in Brown documented the harm that segregated learning environments inflicted upon both African American and white children. Students relegated to segregated learning environments lose out on benefits of integrated education, including development of cross-cultural understanding, increased civic participation, improved communication and critical thinking skills, and the ability to interact well with others of diverse backgrounds.

In a global economy, segregated learning environments are detrimental to the nation’s future global competitiveness. Yet, the phenomenon of hyper-segregated schools—fueled by residential segregation and withdrawal of court oversight over many desegregation orders—is spreading. And recent court rulings striking down district efforts to promote integration and racial diversity have discouraged districts from taking proactive action to ensure racially diverse learning environments out of fear of litigation.

The pervasiveness of racial disparities in school discipline practices and resources, as well as increasing resegregation of public schools, is undermining the promise of equal educational opportunity for African Americans. While many African American students succeed despite pervasive educational injustice, others experience compromised life outcomes, including limited opportunities to pursue higher education as well as diminished employment prospects and lifetime earnings. Too many African American students continue to confront very the educational injustices litigated in Brown. And polarizing political rhetoric that criminalizes and pathologizes African American students only diverts attention and resources away from the work of remediating disparities. Some argue that students should practice “grit” and achieve in spite of deplorable conditions. This argument discounts the import of resources, like qualified and experiences educators, on student outcomes.

The hope of Brown is the potential to eradicate a public education system that differentiates educational opportunity by race. Our nation’s public schools still hold the potential to realize Brown’s promise, but continued vigilance, including court oversight and enforcement of civil rights laws, and refusal to normalize inequality are necessary fulfill this promise to future generations.

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Introduction

continued from inside front cover

Americans are only two generations from slavery, a moral abomination that was really, in historical terms, only yesterday.

Slavery in what became our United States started when 20 Africans were stolen from their homes and taken to Jamestown, Virginia, in 1619. Twelve and a half million more Africans were kidnapped and enslaved in the Americas in the centuries that followed. And 10.7 million survived the Middle Passage. The horrors of American slavery are deep, dark, and legion. Just one example: Almost 30 percent of a slave ship’s cargo were children; the mortality rates of enslaved children were twice that of whites; few mothers were released from work and even during the last week before childbirth picked three-quarters the usual amount of cotton; half of all enslaved infants died in their first year; the average birthweight of those infants was less than 5.5 pounds, severely underweight; common maladies were blindness, abdominal swelling, bowed legs, skin lesions, convulsions, beriberi (caused by a deficiency of thiamine), pellagra (caused by a niacin deficiency), tetany (caused by deficiencies of calcium, magnesium, and vitamin D), rickets (also caused by a deficiency of vitamin D), and kwashiorkor (caused by severe protein deficiency).

Yet, though Congress banned the slave trade in 1808, the domestic slave trade flourished, and the enslaved population in the United States nearly tripled over the next 50 years. We went from being a country that accounted for 6 percent of slaves imported to the New World to one that in 1860 held more than 60 percent of the hemisphere’s slave population.

That is a horrifying history, and one we—like so many we enslaved—cannot escape. The generational manacles slavery left on African Americans are mirrored by the generational entitlements, and institutional wealth, it bestowed on whites.

As Edward Baptist points out in The Half That Has Never Been Told (2014, Basic Books), cotton was the most important raw material of the Industrial Revolution that created our modern world economy, and enslaved African Americans were its most efficient producers—the amount grown in the South increased almost every year.
from 1800 to 1860. “Cotton . . . drove U.S. expansion, enabling the young country to grow from a narrow coastal belt into a vast, powerful nation with the fastest growing economy in the world.” (Id., at 113)

The economic engine of this country was built, literally, on the backs of our black brethren and sistren. For a century, revisionist racism denying this reality entirely was patent on the pages of every American textbook, not to mention novels, advertising, speeches, and film scripts. But even after the civil rights and Black Power movements banished the stories of benign masters benefiting ignorant savages and of subsequent separate but equal equanimity, we as a country were still selling ourselves a false narrative.

As Baptist observes in The Half That Has Never Been Told, we are still entertaining at least three fundamentally incorrect assumptions about the history of slavery: First, that slavery was somehow economically separate from rather than central to the overall U.S. economy as it grew to global dominance; second, that slavery was “fundamentally in contradiction with the political and economic systems of the liberal republic” and so always certain to sunset; and third, that slavery was a denial of rights rectified by re-institution of those rights rather than the embodiment of the “massive and cruel engineering required to rip a million people from their homes, brutally drive them to new, disease-ridden places, and make them live in terror and hunger as they continually built and rebuilt a commodity-generating empire. . . .” (Id., at 21)

In fact, slavery was murder, domestic terrorism, and a massive mugging and robbery; and the work of those killed, robbed, and subjugated was integral to the U.S. economic growth that built the vast wealth of America.

Given the truth of this history, it is not surprising that even today—400 years after we dragged the first slaves from their African homes, 8,000 miles across the oceans in chains, 150 years since “emancipation,” 50 years after the civil rights movement and landmark legislation of the 1960s, and after progress we thought was made since Jim Crow—literally everywhere you look in this country, in every aspect of our lives, society, and culture, you still find eruptions of the pervasive underlying cancer of racism that is part and parcel of slavery and its loathsome legacy.

Race matters, everywhere, in everything. One hundred fifty years ago, 90 percent of African Americans were slaves. Today, black wealth in America is still only 5 percent of white wealth. Compared to whites, African Americans are twice as likely to be unemployed, and, when they are employed, earn nearly 25 percent less. Whites get 36 percent more callbacks on job applications than equally qualified black Americans.

Black drivers are 30 percent more likely than whites to be stopped by police. African Americans are incarcerated in prisons across the country at more than five times the rate of whites, and at least 10 times the rate in five states. Black citizens are 13 percent of the population but 40 percent of the prison population. If an African American and a white American each commit the same crime, the black person is far more likely to be arrested, 20 percent
more likely to be sentenced to jail time, and will face a sentence 20 percent longer than the white person. About one in three black men spends time behind bars in their lives, devastating their employment prospects on release. Black children in the criminal justice system are 18 times more likely than whites to be sentenced as adults.

Even when children grow up next to each other with parents who earn similar incomes, black boys fare worse than white boys in 99 percent of America. A 2012 study found that a majority of doctors have “unconscious racial biases” against black patients. After 1968 fair housing legislation following the civil rights movement, black home ownership increased for 30 years, but more gains have been erased since. Black home ownership is at an all-time low—below 42 percent compared to 72 percent for whites.

Then there are the institutional killings. African Americans make up about 13 percent of the population. But in 2015 they accounted for 26 percent of those killed by police; in 2016, 24 percent; and in 2017, 23 percent. In other words, black Americans were the victims of the lethal use of force by police at nearly twice the rate of the general population. In 2018, black Americans accounted for 38 percent of the unarmed citizens killed by police so far. That’s three times the percentage of black people in the U.S. population. This cannot be the result of random acts by rogue cops. It is a structural pattern of institutional lethal force against a particular race of people. But these are not merely statistics. They are people. Freddie Gray. Samuel DuBose. Philando Castile. Terence Crutcher. Alton Sterling. Jamar Clark. Gwendolyn McDonald. William Chapman II.

All of this is in stark contrast to the privileges of being white and wealthy. Paul Manafort has just become exhibit A of the leniency wealthy white criminals receive because they have money to defend themselves and many judges find them easy to empathize with. William Nettles, a former U.S. attorney in South Carolina, called Judge Ellis’s Manafort sentencing decision “sentencing disparity on steroids.” “How in the world can we make sense of the sentences that we have been handing down to the poor and to those people of color who didn’t have nearly the opportunities that Paul Manafort had to make an honest living?” asked Nettles. According to Scott Hechinger, a public defender in Brooklyn, “For context on Manafort’s 47 months in prison, my client yesterday was offered 36–72 months in prison for stealing $100 worth of quarters from a residential laundry room.”

In 1968, the Kerner Commission appointed by President Lyndon B. Johnson concluded America was moving toward two societies: One white. One black. Separate and unequal.

More than 50 years after the Kerner Commission report, a new analysis by the nonprofit Economic Policy Institute confirmed what is unsurprising to most African Americans: Those two separate and unequal societies persist.

American knows all too well, most white Americans either remain unaware of the issue or deny that it is an issue. Both prominent Republicans and Democrats have denied that the impacts of 400 years of racism and oppression still have lingering effects that require affirmative efforts to redress.

Indeed, we see in today’s discourse that politicians and people generally seem to indignantly assert, sometimes to the point of farce, that the real racial indignity in our country now is tarring white people with an unfair accusation of racism. Too often their corollary comment is trotting out a black friend, coworker, or relative in order to establish their unbiased bona fides. The common notion that one cannot be racist if one has a black friend only affirms our national bias blindness—our inability or unwillingness to see that we do not all beatifically coexist in a land of equality.

Facing racial reality in America is so long overdue. We have only done it, historically, in fits and starts, moments and movements of progression, followed by retrenchments. The Civil War and Reconstruction. The civil rights movement and white backlash. President Barack Obama’s election and the subsequent administration. African Americans know all too
well that race is the subtext for virtually everything in the United States. There is an abiding, urgent need for all of us in this country to empathetically engage with our national racial reality—to both understand intellectually and feel viscerally how elemental race has been historically, and how tangibly race continues to matter every day, in every way.

If we do not, we are indefensibly perpetuating institutional and social discrimination against an entire race of people who have already suffered far too much and too long in America—directly contrary to the promise of our founding creed and Charters of Freedom (the Declaration of Independence; Constitution; and Bill of Rights). We are also, white people take note, inviting what Malcolm X called the chickens coming home to roost. In 2010, whites were about 70 percent of the population. In 2045, whites will be in the minority.

Certainly, there are hopeful signs, indications that our system is working toward fairness as our Charters of Freedom contemplated. A second judge, who has previously made clear that being well-connected earns no favors before her, imposed a harsher sentence on Paul Manafort, nearly doubling his prison time. A Florida jury in March found a former police officer guilty of manslaughter in the fatal shooting of Corey Jones, a black stranded motorist with no criminal record who had been waiting for help on a highway after his car broke down. New York City’s Commission on Human Rights banned discrimination based on hairstyle, so the city is now one of the rare ones in the country where employers, landlords, schools, gyms, and other institutions that enact effectively racist rules about how African Americans can wear their hair will be subject to penalties and civil damages if they harass, threaten, fire, or deny admission to anyone based on grooming choices.

But what makes these instances most notable is they are in the minority. Too often, the news is either otherwise or not news at all. For example, also in March, the California attorney general announced his office would not bring criminal charges against two police officers who shot 20 times and killed Stephon Clark, an unarmed black man, in Sacramento last year; the Sacramento district attorney also declined to bring charges. Clark joins a long and ignoble list of deaths unredressed.

The ugly retches of racism we see today show that blatant racial hate remains resolute. It is our responsibility to seize upon these as windows into the ongoing suffering, and the souls, of African Americans; to apply to the twenty-first century what W.E.B. Du Bois wrote about the last century in the opening line of The Souls of Black Folk: “Herein lie buried many things which if read with patience may show the strange meaning of being Black here at the dawning of the Twentieth Century.”

The opportunity—for us all to divine the meaning of being black here at the dawn of the twenty-first century, and to recognize just how far we still are from the land of equal opportunity promised by our founding documents—is before us. For far too long, we have been telling ourselves a bucolic bedtime story about slavery and its supposed sunset. We have to wake up and bear witness to our national truth. One of the through lines of James Baldwin’s writing is bearing witness—distinguishing between falsehood and fact and testifying about the past in a way that can transform the future. America has never had a period or process of reconciling what we have done to African Americans. As a country, we have reaped vast rewards from their gifts and sweat many times over. It is long past time we both share in their suffering so it can cease, and share fully with them—Amercians so integral to our national identity and success—the rich rewards of that success.

Where do we start? Everywhere we can. Read all of the articles in this magazine. Read The Half That Has Never Been Told, Michelle Alexander’s The New Jim Crow, Ibram X. Kendi’s Stamped from the Beginning, Carol Anderson’s White Rage, Ta-Nehisi Coates’s Between the World and Me and The Case for Reparations, Du Bois’ The Souls of Black Folk, Baldwin’s The Fire Next Time, and all the books listed on the reading list in our Civil Rights and Social Justice Section’s current newsletter.

Prospect deeply for our real American history. Engage with truth in the present. Speak that truth to power. Work daily to right the right’s imbalance. The array of opportunities for awareness and activism ranges across the spectrum from reading to reparations, and beyond. Consider that even conservative columnist David Brooks has come around to making a case for reparations: “while there have been many types of discrimination in our history, the African American (and the Native American) experiences are unique. . . . Theirs are not immigrant experiences but involve a moral injury that simply isn’t there for other groups” (https://www.nytimes.com/2019/03/07/opinion/case-for-reparations.html).

And then consider Gabrielle Bruney’s thoughtful response that we should all be skeptical about what a centrist vision of restitution for slavery and structural racism might look like.

Centrist reparations would be worse than no reparations at all. They would be full of self-congratulatory praise for the power of gestures and discussion, and promises of gradual change. Worst of all, the benefits of a piecemeal or milquetoast model of reparations would be in danger of being washed away by the tides of racism that continue to buffet black America, and after its implementation, the right would be unwilling to tackle any racial disparities for at least a generation.

“When conservatives start advocating for reparations,” wrote novelist Kaitlyn Greenidge on Twitter, “it’s gonna end up with all of us getting 1 check, 6 yrs from now, for 39.95, only redeemable at certain gov’t sites that take 15 percent off to cash it, and conservatives get a ’WE PAID YOU WHY YOU STILL F*%ING UP’ card for life.”


So, wherever you start, start now and start strong. Don’t wait until tomorrow. Our country has already seen 400 too many years of tomorrows.

Wilson Adam Schooley is a reformed trial lawyer, current certified appellate specialist, actor, author, and law professor in San Diego. He is also chair of the ABA’s Section of Civil Rights and Social Justice as well as a delegate to the ABA House of Delegates, special advisor to the Book Publishing Board of the General Practice Division, and a member of the ABA Journal’s Board of Editors.
This interview is from the Youth/Police Project (Y/PP) of the investigative journalism organization Invisible Institute.

We spend years building relationships with high school students on the South Side of Chicago. The goal is to learn what discipline and policing feel like for young black people in Chicago. In order to join Y/PP, participants must commit to a minimum of five hours a week for an entire school year. This substantial investment of time leads to stable relationships with the kids, and leads to the trust necessary to kindly hold each other accountable.

In October 2018, I sat down with one of my high school students to talk.

Chaclyn: Who are you?
Keyonne: Who am I? I am Keyonne Barnes. I am a senior at a neighborhood Chicago public school located on the East Side of Chicago. But I grew up and was raised on the South Side of Chicago.

Chaclyn: What kind of feeling do you get from the police in your neighborhood?
Keyonne: I be scared. I know I shouldn’t feel like that, but I do. I be scared because the police supposed to serve and protect, but from the experience that I had with watching people encounters with the police. And me personally in an encounter with the police, instead of protecting I feel like they’re the ones to attack.

I’ve seen the police just jump out the car and push somebody up against the wall, and just start searching them for no apparent reason. I saw the police call people bad names and tell them that [there] is a very slight chance they are gonna make it in life. Just basically downgrade people.

The Chicago Police Department (CPD) created an Enhanced Foot Patrol Unit, known colloquially and notoriously as the “Jump Out Boys,” in 2003 to patrol high-crime neighborhoods. The official unit, composed primarily of new Probationary Patrol Officers, was closed soon after in 2004, but a similar “jump out” initiative was renewed in 2013 under CPD Superintendent Garry McCarthy’s Operation Impact (http://www.chicagocop.com/history/specialized-units/jump-out-boys).

In 2017, the U.S. Department of Justice (DOJ) published its investigation findings into the CPD stating that “jump outs” are common practice: Officers in plain clothes or unmarked cars will often drive suddenly near a group of pedestrians in a high-crime area, and then an officer is tasked to chase or “zero-in” on a fleeing person. The DOJ report states, “Some of the most problematic shootings occurred when that sole officer closed in on the subject, thus greatly increasing the risk of a serious or deadly force incident” (https://www.justice.gov/opa/file/925846/download).

Chaclyn: When [police] say there’s a good chance you’re not gonna make it, that doesn’t have anything to do with crime or what policing is meant to do in society. That’s about people as human beings.
Why do you think the police go that far?
Keyonne: This is society we live in, everything is based off statistics. It’s sad to say, [but] it’s kind of true now. It’s very rare a young black person, to be specific, a young black male, make it to their 18th or 21st birthday. But not everybody is like that. When you just automatically assume that because he’s African American, I just feel like it’s racist. It’s discrimination.

The Centers for Disease and Control Prevention (CDC) 2015 report on the leading causes of death in black males states that homicide accounts for 49.5 percent of deaths among black males ages 15–19, 49.7 percent among ages 20–24, and 35.5 percent among ages 25–34. Black males in these age groups are the only demographic with homicide as the leading cause of death (https://www.cdc.gov/healthequity/lcod/men/2015/native/index.htm).

Chaclyn: You get boxed in by the police, who they think you are. How does that make you feel?
Keyonne: It makes me feel less of a person. I grew up to be unique, to be...
different. But when I see the police, they make me think less of myself because of how they talk to us. They make me feel as if I’m just no one, I’m just like everybody else, when, in reality, I’m different. They try to put me in a category based off what other people have done in the past, just because I’m the same skin color.

**Chaclyn:** Do you feel the same way about the police? When you see the uniform, do you make assumptions about them?

**Keyonne:** No! Because I personally have experienced a good cop, and personally experienced a bad cop. I don’t just automatically assume that every cop is bad, but I have had personal experiences where the majority are.

Now, police in my school. I feel as if it just isn’t fair. Why is there policemen only in the black community schools? I went downtown to Jones College Prep, basically a selective enrollment school that is downtown. Being in that environment, of course they don’t have to walk through metal detectors. They don’t have police officers. I feel like everything is put out for the African Americans, as if we’re just bad.

**Chicago Public Schools (CPS) has a contract with the Chicago Police Department to provide more than 250 police officers to 75 primary and secondary schools. Officers complete no specialized training and have access to computer terminals within the school buildings to process arrested kids. Repeated public information requests for a comprehensive list of which officers are assigned to which schools have been denied because there are “no responsive documents” (http://www.csc.cps.k12.ils.us/purchasing/pdfs/contracts/2013_01/13-0123-PR12-1.pdf).

The most recent public data is from 2011, reported by WBEZ [a Chicago-based radio station], showing 3,500 misdemeanor arrests on CPS campuses. It is very difficult to access updated data; a CPD Freedom of Information Act officer told me that they report arrest rates over the phone to CPS administrative staff, leaving no written information to request (https://www.wbez.org/shows/wbez-news/how-many-chicago-juvenile-arrests-happen-at-school/f8922569-8713-4d83-aff0-8e12dfb46e6).

For more observations on students and police, see our article “They Have All the Power,” published in 2016 by the University of Chicago Law School (https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2022&context=public_law_and_legal_theory).

**Chaclyn:** You’ve used a word, “citizen.” What does that mean to you?

**Keyonne:** You’re a basic citizen because of where you live. This is your home. But what makes you a good citizen is when you can contribute and help out the communities. Try to put a solution to the problems. A citizen by itself, it’s just a matter of living in America.

The elders, they’ve seen all this, and see a problem with it. So they take more leadership roles to change it. Young people, they don’t really see the bigger problem. They don’t focus. Young people, we just want to have fun and live life until we are actually grown. In reality, it should start at a young age. When you make it to your adult years, you don’t know what’s going on, you don’t see the bigger picture because you wasn’t there at the root of the problem.

**Chaclyn:** How does seeing unconstitutional policing affect your feelings about being a citizen?

**Keyonne:** It just make me want to participate more. It make me want to stand up and help everybody else because I know that’s not right. That’s me personally, not everybody has the same mindset. Now, young men may get into their mind that every police is like that, that is the norm, the police work with the government so they have higher power. In reality, no person should be more important than another.

**Chaclyn:** My tax dollars, your parent’s tax dollars, are paying the police salaries. In some neighborhoods, police act constitutionally and everything is fine, no big deal. [People in those neighborhoods] don’t see the South Side police, they don’t see the unconstitutional policing. It’s hard, then, for them to ask for change. One reason we’re doing this interview is for those people to hear continued on page 23
Ms. L and her daughter S.S. entered the United States to apply for asylum in November 2017. The Catholic Church helped them flee persecution from their home country. They traveled through 10 countries over four months and requested asylum when they legally presented themselves at a port of entry near San Diego.

Ms. L entered California along with her seven-year-old daughter, S.S. Her seven-year-old child was separated from her and moved to a children’s facility in Chicago, Illinois, without her mother or anyone she knew. When the officers separated them, Ms. L could hear her daughter in the next room screaming for her. No one explained to Ms. L why they were taking her daughter away from her, where her daughter was going, or when she would next see her daughter. In February 2018, the American Civil Liberties Union filed a lawsuit, Ms. L. v. U.S. Immigration & Customs Enf’t, challenging the separation. 302 F. Supp. 3d 1149 (S.D. Cal. 2018). The lawsuit exposed egregious government conduct in separating young children from their parents.

Many people are unaware that Ms. L, the face of the family separation case, is an asylum seeker of African descent from the Democratic Republic of the Congo. Immigration and blackness are obscured in immigration debates. Only recently have conversations surrounding immigration and race surfaced when Immigration and Customs Enforcement detained rapper 21 Savage and when Black Lives Matter Activist Opal Tometi wrote a New York Times op-ed on blackness and immigration.

**Nuances of Immigration**

Ms. L’s case, 21 Savage, and Opal Tometi expose the nuances of immigration policy at the intersection of nationality and race that are often glossed over in media stories highlighting this administration’s contentious immigration policies. According to the U.S. Census, there are around 4.2 million black immigrants in the United States, and, of that number, around 600,000 are undocumented. Forty-nine percent of the foreign-born immigrant population of African descent is from the Caribbean. Statistics from the Department of Homeland Security demonstrate that at the intersection of immigration and race, immigrants of African descent are more likely to be detained and deported than other immigrants.

The increase in detention of immigrants of African descent is, in part, a result of racial profiling, which mirrors the overrepresentation of African Americans in the criminal justice system due to mass incarceration.

Failing to pay attention to the nuances of immigration law and policy and its impact on immigrants of African descent is dangerous in that it hinders a comprehensive understanding of how racism has operated in the U.S. legal system and how it continues to operate in many facets of immigration laws. This article examines the nuances at the intersection of race and immigration status. The goal is to examine the impact of recent immigration policies on immigrants of African descent in order to highlight where the law operates in furtherance of the goal preventing the blackening and browning of America.

When we examine the history of immigration and its impact on immigrants of African descent, we learn how the law can amplify social norms and create a system that perpetuates tiered personhood—and how permitting discriminatory anti-immigrant laws and policies reinforces dangerous and divisive systems of oppression.

**The History of the Civil Rights Movement and the Intersections with Immigration Law**

There is a long history of the intersection of immigration, race, and civil rights in America. Immigration laws have operated in a manner to maintain homogeneity to the exclusion of immigrants of color. Immigration laws throughout America’s history have traditionally utilized fear and exclusion to define what America should look like and have privileged some immigrant’s over others.
The Immigration Act of 1924 required a quota system for nationalities—in which Japanese immigrants were banned and only a small number of eastern and southern European immigrants were permitted to enter, whereas Irish, Germans, and British immigrants were permitted to enter the United States in large numbers. The 1924 Act privileged European immigrants’ migration to the United States.

At the height of the civil rights movement, the 1965 Immigration and Nationality Act (INA) was passed. In enacting the INA of 1965, Congress eliminated the quota system based on national origin. It was Congress’ intent to equalize immigration opportunities for groups previously subjected to discriminatory immigration laws and practices. In signing the Act, President Lyndon B. Johnson stated:

This system [referring to the quota system in place] violates the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit as a man. It has been un-American in the highest sense, because it has been untrue to the faith that brought thousands to these shores even before we were a country.


Taking cues from the civil rights movement, the 1965 Immigration and Nationality Act banned national quotas and shifted to an immigration system based on family unity and skilled laborers. As we examine the Trump administration’s immigration policies, it is important to keep in mind how America’s history of immigration policies has traditionally operated to the exclusion of immigrants of color.

Impact of Trump Administration’s Immigration Policies on Immigrants of African Descent

The Trump administration’s immigration policies are reminiscent of the pre-1964 race-based immigration policies that attempted to exclude immigrants of color. Since 2016, the Trump administration has followed through on its promise to make America great again by signing Executive Orders that restrict immigration from Africa, the Middle East, Central America, and Latin America. The ultimate goal is to shape what America looks like and prevent the blackening and browning of America. The administration’s policies have resulted in skyrocketing rates of deportations of immigrants from African countries.

The administration has promoted racist narratives, asking why migrants from “shithole countries” are coming to the United States. Senator Durbin stated that the president made these comments in a White House meeting with 23 members of Congress. He allegedly repeatedly referred to Haiti and African countries as “shitholes,” stating the United States should get more people from countries like Norway to migrate to the United States.

Haitian Immigrants

In National Association for the Advancement of Colored People (NAACP) v. U.S. Department of Homeland Security, the NAACP filed a lawsuit against the administration after it sought to cancel temporary protected status (TPS) for Haiti. 1:18-cv-00239-MJG (D. Md. Jan. 25, 2018). TPS is a temporary form of relief granted to immigrants who cannot return to their home country due to ongoing armed conflicts, environmental disasters, or epidemics. The NAACP, along with Haitian organizations, alleged that the Department of Homeland Security (DHS) violated the Fifth Amendment’s due process clause when it rescinded TPS for Haitians. In the recent trial that took place, the NAACP argued that “the termination of TPS for Haiti was based on President Donald Trump’s categorical and defamatory assertions about all Haitians, which the Haitian TPS recipients were given no opportunity to challenge.”

The lawsuit alleged that the president’s statements, coupled with the fact that the conditions in Haiti that gave rise to the original January 2010 TPS designation continue to exist, demonstrate a discriminatory motive.

Ramos, et al. v. Nielsen, also challenged the president’s motives in terminating TPS. 321 F. Supp. 3d 1083 (N.D. Cal. 2018). In October 2018, the U.S. District Court for the Northern District of California enjoined DHS from implementing and enforcing the decision to terminate TPS for Sudan, Nicaragua, Haiti, and El Salvador. The court ruled that:

the administration was guided by racism—not a sober consideration of the facts on the ground—when it canceled Temporary Protected Status designations for El Salvadoran, Haitian, Sudanese, and Nicaraguan escapees from political and natural disasters.

While the TPS injunction in the Northern District of California is a small step in challenging the president’s discriminatory motives and public declarations, the president, claiming sweeping authority over immigration, has invoked national security as a shield against any discriminatory public statements on immigration he makes. The decision in NAACP v. DHS is forthcoming. The forthcoming opinion will determine whether the same deference to immigration and national security that the U.S. Supreme Court upheld in Trump v. Hawaii, 138 S. Ct. 2392 (2018), will operate to uphold the president’s decision to rescind TPS.

Somali Immigrants Have Had the Highest Immigration Arrest Rate under the Trump Administration

The Pew Research Center found that even though there has been a drop in the overall numbers of removals, the
removal of African nationals from the United States increased in 2017. Somali, in addition to Libya, Chad, and Sudan, were African countries on the president’s travel ban list.

In 2017, Somali nationals experienced the highest rate of removal. Last year, a class action lawsuit *Ibrahim v. Acosta*, 326 F.R.D. 696 (S.D. Fla. 2018), was filed on behalf of 92 Somali men and women who were being subject to deportation. The *Miami New Times* euphemistically called their deportation flight “Deported by ICE on a Slave Ship.” Somalis say they were shackled and beaten for almost two days, including over 20 hours when the plane sat on the runway in Dakar, Senegal. The lawsuit cited U.S. asylum law and the Refugee 1952 Convention, which the United States ratified in 1980. The Convention forbids the removal of individuals to countries where they would face a likelihood of persecution or torture. Under the lawsuit, a preliminary injunction was granted staying the removal of the Somali nationals until they were provided an opportunity to apply for reopening of their deportation orders and relief under the Refugee Convention.

**Administration’s Migrant Protection Protocols’ Impact on Immigrants of African Descent in the “Migration Caravan”**

On January 28, 2019, the administration, through an Executive Order and emergency federal regulations, instituted a policy where asylum seekers must wait in Mexico to apply for asylum in the United States. Notice of Availability for Policy Guidance for Implementation of the Migrant Protection Protocols, by the Homeland Security Department on 01/28/2019, FR Doc. 2019-03541 Filed 2-27-19. The policy implements into law unwritten policies that this administration has been informally enforcing at the border.

This past December, two students from Vanderbilt Law School, where I direct the Immigration Practice Clinic, traveled with me to the Mexican border at Tijuana to volunteer to provide legal assistance to refugees. Refugees waiting to apply for asylum at the border included Central Americans as well as a significant number of Haitians and migrants from African countries. The last day I was there, I led a team of lawyers providing consultations to women and children asylum seekers at a shelter. In particular, we assisted a woman (whose identifying information has been omitted to preserve confidentiality) from a West African country.

This West African country is known for its political instability, which has caused forced migration due to unrest, torture, and abuse by security forces, including in military and unofficial detention facilities. The West African asylum seeker was raped by government security forces who were responding to unrest. She immediately researched visa-free countries to which she could apply, got on a flight to South America, and, through the generosity of many people, made her way to the U.S.-Mexico border. When she arrived at the U.S. border in November 2018, prior to the implementation of the administration’s Migrant Protection Protocols, she could not walk up to the border and apply for asylum. There was a list controlled by asylum seekers they were taking that day. She had a three-month wait in the women’s shelter before she could even approach the border.

As I counseled her about the process, what to expect when she approached the border, and to expect to be detained during her asylum application, she began to cry. She had experienced a triple trauma—in her country of origin, migrating to the United States, and the shock of not finding any protection when she reached the border.

This woman’s story demonstrates the direct impact of the Trump administration’s policies and the operation of once informalized structures now formalized through the Migrant Protection Protocols. The administration’s policies bypass the INA’s established protections that provide a right to apply for asylum and prevent the removal of individuals facing persecution in accordance with the Refugee Convention to which the United States is a signatory.

**Civil Rights and Immigration**

At different times and in differing degrees in the history of the United States, the law has functioned to perpetuate tiered personhood based on race or ethnicity. The concept of personhood is “a placeholder for deeper concepts that ground our [society’s] moral intuitions about human rights.” A “person” is defined as any being whom the law regards as capable of rights and duties. Thus, personhood rights are those rights granted regardless of citizenship status. While the Fourteenth Amendment provides that all persons are entitled to equality under the law, this constitutional requirement can be bypassed, essentially by defining certain immigrants as non-persons based on differences between the dominant and subordinate groups.

This administration’s statements coupled with its immigration policies operate as more than just a proscription on who can immigrate to the United States. The discriminatory statements and implementation of those statements have reinforced a tiered system of personhood.

We must be aware, as Martin Luther King Jr. stated, that we are all tied together in an “inescapable network of mutuality” that binds all of our stories together. In her dissent in the travel ban case, Justice Sonia Sotomayor made an analogy between the federally sanctioned internment of Japanese Americans in concentration camps in 1942 and cautioned:

> By blindly accepting the Government’s
misguided invitation to sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a superficial claim of national security, the Court redeployed the same dangerous logic underlying Korematsu and merely replaces one “gravely wrong” decision with another.

Our Constitution demands, and our country deserves, a Judiciary willing to hold the coordinate branches to account when they defy our most sacred legal commitments. Because the Court’s decision today has failed in that respect, with profound regret, I dissent.

Trump v. Hawaii, 138 S. Ct. 2392, 2448 (2018). In examining past and current immigration policies, we must pay attention to immigration at the intersection of race and how the law can act to subordinate multiple groups.

The present-day targeting of immigrants of color demonstrates a need to overhaul and rebuild immigration system so that individuals who contribute and participate in the United States daily can live here lawfully. This means examining how fear and exclusion have operated within the system to exclude immigrants of color and examining practices that are not aligned with our obligations as signatories to the Refugee Convention, the U.S. Constitution, or the Immigration and Nationality Act.

Karla McKanders is a clinical professor of law and the director of the Immigration Practice Clinic at Vanderbilt University, where she also teaches immigration and refugee law. McKanders was a law clerk for Judge Damon J. Keith with the United States Federal Court of Appeals for the Sixth Circuit.

Perceptions of Police continued from page 19

your perspective. What’s important for them to hear?

Keyonne: They have not see what I’ve seen. So instead of trying to tell them, I’ll try to show them. You can tell somebody anything, but that don’t mean they believe it until they see it. I have proof. So, I wouldn’t tell someone who’s never seen bad police anything, I’d actually just invite them to just show them. Come to this location and let me show you, let me prove to you that there is bad policemen out here.

Chaclyn: You know how police officers do ride-alongs? I wonder about doing ride-alongs with you guys, people come down and spend an hour. You walk them through your neighborhood, so they could get a sense of what you live every day.

Keyonne: See the difference, the proof. Yes.

This is a real invitation. Reach out: chaclyn@invisibleinstitute.com.

Chaclyn: Makes me think about body cameras—proof. If we only have reports to go on, the police fill those out themselves and can lie if they want to. Instead, we might have video. Take the video of the murder of Laquan McDonald, leading to the first on-duty officer charged with murder in 35 years. [Since the writing of this article, the officer has been convicted of murder.]

Keyonne: Body cameras are definitely necessary. It will bring out people’s true colors. Just like you said, everybody in that case lied on their paperwork, but then the video showed. Body cameras brought a positive ending. I’d rather you turn your body camera on when you’re searching my house. If anything comes up broken, it’s video footage. On the opposite side, when it come to privacy, certain people don’t want everybody to know what’s in they house. It’s still your true colors though, fair is fair.

Though body camera footage has led to unprecedented accountability, the American Civil Liberties Union recently updated their model legislation, adding protections against surveillance in response to concerns held by civil rights attorneys across the country (https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement).

Chaclyn: Obviously there’s not one reform, but give me an example of a policy you would like to see.

Keyonne: Communication works. Not everything has to end in violence. Let’s find a solution where your gun is the very last thing that comes to your mind. That’s what I want to reform, let’s make strategies on how not to end with violence. Not to start or bring the violence to the scene.

Keyonne told me her favorite answers, and I didn’t cut them. Our kids are co-creators in our work—they have veto power over everything we publish about them. Our project cares as much about our methods as we do about our output. In order to deeply understand unconstitutional policing, we turn to those who live each day with it. We have kids in the room while we work, often and consistently. They interrupt and argue and comment on our investigations. We love them, we take care of them, and they take care of us.

Keyonne Barnes is a senior at a neighborhood Chicago Public School. She is interested in media/broadcast technology, journalism, and law.

Chaclyn Hunt is a civil rights attorney and codirector of the Youth/Police Project with the Invisible Institute. The other codirector is Kahari Blackburn.

Maira Khwaja contributed to this article.
How White Right Can Fight Wrong

The Plight of White Male Privilege

By Marcus Sandifer

“Privilege for one person, by its very nature, comes at somebody else’s disadvantage, otherwise, it’s not a privilege.” —Unknown

When it comes to tackling the most critical diversity and inclusion (D&I) issues facing the legal profession, law firms and legal departments across the United States have enlisted some of the best-known and well-respected D&I consultants in the world. Unsurprisingly, these mandatory “check-the-box” trainings are frequently met with boilerplate hypotheticals, outdated language that describes certain minority groups, and participants who, quite frankly, would rather be working than forced to attend a presentation. Furthermore, sometimes the remedies offered to solve diversity challenges come with recommendations so carefully bubble-wrapped that the effort to address the problem is outweighed by the need to not offend the least vulnerable group in the workplace: the white male.

Remarkably, as the equity and inclusion movement is taking shape and form in a variety of professional settings, the legal profession is taking great pains to delicately dance around the very real existence of an equally impactful movement, commonly referred to as white male privilege. Countless studies and research on gender have occurred over the years that examine the advantages men gain as white male privilege. Countless studies and research on gender have occurred over the years that examine the advantages men gain as white male privilege. Countless studies and research on gender have occurred over the years that examine the advantages men gain as white male privilege. Countless studies and research on gender have occurred over the years that examine the advantages men gain as white male privilege.

Is White Male Privilege Really a Thing?

A few weeks ago, I was speaking with a female attorney who identifies as a person of color, who recalled a recent conversation she had with three white male colleagues at various law firms. She mentioned to them her long-term ambitions and the extraordinary steps she was taking to position herself for partnership. The conversation took a steep turn when the white male colleagues remarked that they just assumed they would automatically attain partnership, if that’s what they desired. She was astonished and bewildered by their display of confidence and entitlement due to the fact none of them had embarked on any business development activities or were staffed on any significant matters that set them apart from the other lawyers in their firm. One of the men even boasted about hanging out on the weekend at a partner’s home and yet another about a weekend trip to Miami with one of the partners.

While it would be truly praiseworthy if the female attorney could’ve pulled a comparable anecdote from her experiences at her firm, the harsh reality is that the opportunity for her to benefit from the same or similar experiences will rarely, if ever, happen. The harsh reality is that these extracurricular opportunities outside of the workplace, without any effort on the part of the junior lawyer, have the opportunity to position white males light-years ahead of their peers, without question.

Why Is This Happening?

This scenario should come as a surprise to no one, but it does because it forces people to confront their own successes and accept that, yes, maybe I have been given opportunities that have not been equally presented to my peers, and, maybe . . . it’s white privilege. Stony Brook University Distinguished Professor of Sociology and Gender Studies, Michael S. Kimmel, has stated that, “privilege is invisible to those who have it.” He has argued that privilege manifests itself in many ways, from race and gender to wealth and educational attainment. It is true that sometimes people with privilege are often blindsided by those inherited advantages, but those groups of people who identify as anything other than white male are constantly reminded of the fact that their experiences are different.

In the book White-Washing Race: The Myth of a Color-Blind Society, the authors make the argument that white Americans cannot see how society produces advantages for them because the benefits seem so natural that they are taken for granted and experienced as wholly legitimate. Simply put, “the last thing a fish notices is the water.” Just as fish take the water they swim in for granted, white males sometimes take their normal opportunities for coaching, development, mentorship, and advancement for granted.

What Can We Do to Effectively Address This?

Many people feel as though calling out white male privilege is the solution to reducing it or eventually ending it in the legal environment. But what happens when calling out what is perceived as white privilege in the workplace crosses the line into launching personal attacks against coworkers and employers?

In 2018, Tim Chevalier, a former Google employee who identified as transgender, queer, and disabled, was terminated when Google discovered he was posting controversial memes on the company’s intranet considered to be discriminatory against white men. The employee filed a wrongful termination lawsuit alleging he was released for calling out racism on Google’s internal forums. This
lawsuit is just one of several against Google, and there are similar lawsuits alleging discrimination against white men being filed all over the country.

Maybe the correct route isn’t to vilify while privilege, but to start a dialogue about the various systems of oppression and how they impact nondominant groups. This level of discussion can be invaluable to law firms and legal departments, but only when there is a solid foundation examining why white privilege exists and how detrimental the blanket use of the term “white privilege” can translate into “you’re a racist” or “you’re homophobic” and the avoidance of white males who may be interested in being allies.

It is easy to focus the discussion on the assumptions that all white men have exceptionally benefited from power systems that work against building understanding, alliances, and support from white males. However, it would be really beneficial if companies, law firms, and legal departments could look into investing authentic and real diversity conversations where participants of all races are able to have an open dialogue regarding white male privilege, along with providing tips and techniques that white males could use to become allies for diverse attorneys.

Diversity thought leader Paula Edgar of New York-based Inclusion Strategy Solutions, LLC has worked with countless firms and corporations to train and educate them on “getting uncomfortable” by understanding that, while many diversity issues exist, especially in regard to privilege, we are all better when organizations are intentional about confronting and investing in resources that face the issue head-on.

Why is it that the individuals asked to empower the vulnerable and promote the identity of the oppressed are the ones who, in some cases through unconscious bias, are seen as the oppressors? The ones who teach the topics tend to be the ones who contribute to the disparities or are unaware that the oppressors exist, or are unwilling to join in on the conversation. White males have to be more than a “silent partner,” meaning they need to be active allies, as in most cases their voices tend to carry more weight or produce faster results than their minority counterparts. They also need to be willing to have the uncomfortable conversations to foster change.

The opinions expressed are solely my own and do not represent or reflect the views or opinions of my employer.

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**Human Rights Heroes**

Fuller studied with Alois Alzheimer and in 1907 showed that Alzheimer’s was not due to senility, but rather an actual disease, a turning point in the disorder.

**Nella Larsen**, an author celebrated during the Harlem Renaissance but forgotten by midcentury. She was in a circle of intellectuals including W.E.B. Du Bois and Langston Hughes. After years of writing under a pseudonym, her first novel *Quicksand* was widely and positively reviewed.

**Rosetta Tharpe**, before Elvis Presley and Chuck Berry, played rock-and-roll guitar better than anyone, before anyone. A musical prodigy, she was one of the first gospel artists to perform in both churches and secular clubs, and she had a major impact on Presley and others.

**David Walker** wrote a powerfully influential 1829 pamphlet, *Appeal...to the Colored Citizens of the World*, that urged African Americans to fight for freedom and equality, which changed the abolition movement.

**Marsha P. Johnson**, an activist, prostitute, drag performer, and central figure in a gay liberation movement energized by the 1969 raid on the Stonewall Inn, though she battled mental illness, was usually destitute, and often effectively homeless. (“I may be crazy, but that don’t make me wrong.”)

**Ryan Speedo Green** grew up in low-income housing and was sent to juvenile detention after threatening to stab his mother. Inspired by a teacher at whom he threw his desk on his first day, who taught him the “I Have a Dream” speech and the mantra that he would be judged by the content of his character, in 2011 won the Metropolitan Opera’s National Council Auditions, and sings with the Vienna State Opera.

**Matthew Henson**, an explorer who accompanied Robert Peary on his expeditions to the Artic, including the 1909 expedition that discovered the North Pole, when Henson planted the American flag.

**Martin Delany** was an early civil rights activist, referred to as the “grandfather of black nationalism.” One of the first black students admitted to Harvard Medical School in the 1850s, he was asked to leave after a petition by white students, but helped treat patients during cholera epidemics after other doctors fled. He returned to journalism and started a newspaper to spread abolitionism.

**Buffalo Soldiers.** An 1866 Act of Congress created six regiments of exclusively black soldiers, who, despite racist maltreatment, fought from then through two world wars, becoming renowned for their bravery and helping the United States become a vast nation and world power.
To borrow vocabulary from the mighty Toni Morrison, it is past time to recall the disremembered and account for the unaccounted. Her novel Beloved coaxed us to face slavery’s atrocities and enduring effects. We can also, though, extrapolate from her concept of the disremembered a call to witness the glory of African American achievement. Our country has denied not only the extent of our four-century legacy of oppression, but also how profoundly we’ve profited—in every way, intellectually, financially, culturally, artistically, scientifically—from the people oppressed.

A countervailing tide arose in reaction to slavery: The utterly diverse population enslaved, sharing little more than a continent and skin color, managed to bridge the language and culture differences between them, come together emotionally and spiritually, forge deep bonds of interdependence, fight against overwhelming terrorism, and build a common culture and community so strong—in order to endure slavery and oppression—it in turn profoundly shaped (even, I would argue, almost swallowed whole) the culture of their oppressors. Wakanda’s Vibranium is right here in America, in the form of black Americans’ overwhelming contribution to what actually makes us great.

Every time America studies, reads, discovers, calculates, sings, or listens to its music, it is face to face with a story we haven’t wanted to hear for 400 years, and a vast panoply of African American heroes without whom we would not be America.

Who are they? Their number is countless and found in every field of endeavor. Yet many of their names are largely unknown. Here is just a tiny, scattershot sampling:

Dr. Rebecca Lee Crumpler, the first female African American physician, whose Book of Medical Discourses: In Two Parts from 1883 was one of the first medical texts by an African American author.

Billy Graham, a comic book artist, the only African American working on the first African American superhero comic book, and the only one with Marvel Comics.

Fred Jones invented a portable air-conditioning unit for trucks in 1938, which not only preserved perishable food but was invaluable in World War II to transport blood and medicine.

Sir William Arthur Lewis won the Nobel Prize for economics in 1979 for his pioneering research on developing nations, the first black person to win a Nobel aside from the peace prize.

Dr. Solomon Carter Fuller, a psychiatrist instrumental in the treatment of Alzheimer’s disease. Grandson of a slave,