

It's Your Choice: Diversity and Inclusion or Irrelevance and Extinction

Introduction

The prompt requires an answer to “why a diverse and inclusive Bar is essential for equality, justice, and the rule of law.”

There is an obvious and moral answer for this: it is the right thing to do. It is right to do the most just thing and to treat all equally. The law, and this country, purports to value equality and “justice for all.”¹

There is a more quantitative answer for those who need to be incentivized: it is more profitable. A McKinsey study from January 2015 shows that companies in the top quartile of ethnic diversity perform 35% better than those in the bottom quartile; companies in the top quartile of gender diversity perform 15% better than those in the bottom quartile; companies in the top quartile of gender and ethnic diversity perform 25% better than those in the bottom quartile.² At the end of the day, the legal field is a field of professionals who have clients. Law is a business.

Diversity is the initial recognition of at least some part of the value that an individual can contribute. But diversity is nothing without inclusion. Inclusion is the comprehensive and continued awareness of what an individual contributes. Inclusion means appropriately compensating the individual in order to retain them within the institution. Inclusion means enriching the individual at least as much as they enrich the institution. This enrichment is not only financial; this enrichment also accounts for an appreciative and welcoming culture, which will make the most of the potential that human capital has. Diversity and inclusion represent a multi-pronged approach. Diversity is the surface-level view of having the numbers that meet the

requirements that society approves of. Inclusion is a deeper understanding of what the numbers mean and how the individuals who make up those numbers will enrich the institution.

How can there be equality, justice, or the rule of law without diversity and inclusion? Without a thorough understanding, morally and quantitatively, of what each and every individual can contribute? How can rule of law exist if equality and justice are under question?

The rule of law is impotent when it does not recognize the whole individual, both in terms of the history of their ancestors who stand behind them and the potential they can contribute to the future. Without considering history and potential, there is no equality and justice. All individuals do not live equally in this country.

Law is a Business

Pamela Newkirk, a professor of journalism at New York University, writes in her book, *Diversity, Inc.: The Failed Promise of a Billion-Dollar Business*, that just under 4.5% of Fortune 500 CEOs are Black, Hispanic, or Asian.³ This book, published in October 2019, follows dismal data shared in a May 2018 article authored by Sophia A. Nelson and published in *The Daily Beast*: 6.4% (32) of Fortune 500 companies are headed by white women; three black men, one Latina, and no black women head these corporations.⁴ Nadia Owusu's January 2020 article, "Hiring a Chief Diversity Officer Won't Fix Your Racist Company Culture," brought attention to similarly troubling trends in the nonprofit world.⁵ Owusu referred to Edgar Villanueva's 2018 book, *Decolonizing Wealth: Indigenous Wisdom to Heal Divides and Restore Balance*, which found that 92 percent of foundation CEOs and 89 percent of foundation board members are white.⁶ When so few organizations today have diverse leadership, it may be difficult to understand why diversity and inclusion should become a priority in the legal field.

Law is, in part, a business. And it is a business that is in danger of lagging behind other professional fields that are working to improve their diversity and inclusion. The medical field, for instance, is taking bold steps towards addressing non-inclusive behavior. Stanford's Project Respect Initiative seeks to understand and study non-inclusive interactions in order to foster respectful and inclusive medical workplace dynamics.⁷ The initiative seeks to educate not just about blatant discrimination, but about microaggressions, which are "often a behavioral manifestation of the unconscious biases and prejudices that leak out as microcommunication...often unintentional and unconscious...[and] often voiced by well-intentioned individuals who may be unaware of the negative connotations and the potentially harmful impact."⁸ Efforts such as Stanford's Project Respect Initiative will advance medicine by creating more collaborative and respectful environments, while also providing more knowledgeable care. If doctors and hospitals take on more inclusive cultures as the years pass, they may become less likely to hire lawyers or firms that do not share their values. There may come a day when the law is not representative of the clients it wishes to attract.

Take another potential example of failing to attract or keep clients. RedThread Research and Mercer found that there are at least 105 vendors in the diversity and inclusion technology market alone.⁹ Perhaps more have joined the market since the report, which was published in February 2019. At the time, this market was estimated to be worth about \$100 million.¹⁰ If one of these companies needed to hire a lawyer at some point for a patent matter, it may be unlikely that they would hire solely based on success in patent matters. While success is extremely important, there is a human element to every client-attorney relationship that determines success. Some of these companies may not want to work with a lawyer or a firm that shows no understanding of

the innovativeness and importance of their work. The attorney and the firm would lose business they otherwise could have had.

Aleria, an organization that consults for companies seeking to improve their diversity and inclusion efforts, suggests that there are four pillars of performance: talent attraction, talent retention, operational efficiency, and market appeal.¹¹ Paul Gaudiano, Founder and CEO of Aleria, provides the following effective example during his TED Talk:

Large Silicon Valley company decides they want to diversify. What do they do? They hire a bunch of Black programmers. These programmers go in day one. They realize that nobody up in the leadership looks like them. Their manager does not know how to deal with them. They go to the cafeteria for lunch, and people get up and move to a different table. In six months, they leave. When they leave, what's going to happen? One, talent retention goes down. Two, operational efficiency goes down because now you have to rehire and retrain people and it costs money. Three, you get a bad reputation and that can make it harder for you to attract talent as well as to attract customers.¹²

That last point specifically correlates decreases in market appeal and talent attraction. And the whole example illustrates exactly how ineffective diversity and inclusion efforts affect bottom lines.

Generally, the diversity and inclusion industry has failed to move the needle over the last few decades, despite billions of dollars being invested into such efforts. A few examples help illustrate why.

Ernst & Young, one of the largest professional services firms in the world, hired a third-party vendor to conduct a training titled “Power-Presence-Purpose” for thirty female executives.¹³ The seminar was supposedly focused on leadership and empowerment, but instead instructed women on how to adapt to a man’s world in order to achieve success.¹⁴ While there were participants who found value in the program, the HuffPost reporting on the training uncovered the use of many alarming and outdated stereotypes.¹⁵ Initially, Ernst & Young

responded to the reporting with statements such as: “We are proud of our long-standing commitment to women and deeply committed to creating and fostering an environment of inclusivity and belonging at EY, anything that suggests the contrary is 100% false.”¹⁶ This initial response is pure defensiveness—not an uncommon reaction from a variety of institutions to external criticism about diversity and inclusion.

Within days of the initial report, Ernst & Young entered PR damage control mode. This meant, even from the most cynical standpoint, that a failure on diversity and inclusion had created extra costs on top of the widely-circulated bad press. Kelly Grier, U.S. Chair and managing partner of Ernst & Young, apologized on behalf of the firm and admitted that “mistakes had been made.”¹⁷ In what is perhaps an example of failed retention, a former Ernst & Young executive anonymously commented in response to Grier’s statement: “It’s about what I would expect them to say...It’s a focused response to what they’ve tried to minimize as a specific error with a specific program, while being seriously tone deaf on the larger cultural issue.”¹⁸ The HuffPost article concludes by noting that the numbers tell their own story, as just 25% of Ernst and Young’s partners and principals are women and only about 40% of Grier’s team are women.¹⁹

As a minor aside, it is interesting to note that Grier was chosen to apologize on behalf of the male-dominated firm, which raises the suspicion that the firm was exploiting her identity as a woman for the sake of optics. If Grier volunteered to be the face, as opposed to being obligated in her duties to the firm, it is then worth wondering if Grier demonstrated an all-too-common practice among minorities called “covering.” Covering is defined by Kenji Yoshino, the Chief Justice Earl Warren Professor of Constitutional Law at NYU School of Law and the Director of the Center for Diversity, Inclusion, and Belonging, as a practice where “the underlying identity is

neither altered nor hidden, but is downplayed.”²⁰ Minorities may feel pressure to engage in covering in the workplace to ensure career success: it would be a risk to come off as “too Black,” or “too gay,” or “too feminine.” A woman in upper management may cover by taking on the identity of a “strong” woman who has successfully shielded herself from what other women have experienced, making it easier for male managers to see her as part of their in-group. This requires downplaying any part of that woman executive’s identity shaped by experiences similar to those felt by some of the other women at the company. As such, the covering executive who becomes the face of the firm—but only when it needs good publicity—may also be an example of minorities who defend problematic cultures because they themselves have succeeded in such cultures.

Apple’s former Vice President of Inclusion and Diversity, Denise Young Smith, provides another example of a mistake that was made, one that led to questioning of her and Apple’s approach to diversity and inclusion. Young Smith, herself a Black woman who had been an employee at Apple for decades, later apologized for the following comment at the One Young World Summit in Bogotá, Colombia:

Aamna, you also asked me about my work at Apple, or in particular, who do I focus on? I focus on everyone. Diversity is the human experience. I get a little bit frustrated when diversity or the term diversity is tagged to the people of color or the women or the LGBT or whatever because that means they’re carrying that around...because that means that we are carrying that around on our foreheads. And I’ve often told people a story—there can be 12 white blue-eyed blonde men in a room and they are going to be diverse too because they’re going to bring a different life experience and life perspective to the conversation.²¹

On the surface, nothing seems especially wrong with saying that all people come from a diversity of experiences. But even if this were not her intention, Young Smith seems to give as much weight to diversity of thought as she would to race or gender. That is an entirely wrong way to view diversity and inclusion. Not all diversity is equal because not all people are treated

equally. A white man who holds unpopular views will still hold more power in most rooms than a white woman, a man of color, or a woman of color would. As evidenced by some of those who hold the highest offices in government, the platforms afforded to white men are not significantly decreased because of any unpopular beliefs they hold, especially when compared to how small the platforms are that are given to women and people of color, assuming similar socioeconomic backgrounds.

Young Smith, like Grier in a way, may indicate something about her former employer: even minorities in leadership roles may feel pressure to conform to the pre-existing culture of an organization. Apple, of course, is not the only company to take the following approach: to improve diversity and inclusion, companies may hire a Chief Diversity Officer. Often, these officers are people of minority identities. Nadia Owusu captures the pitfalls of such an approach in her article “Hiring a Chief Diversity Officer Won’t Fix Your Racist Company Culture.”²² Owusu reflects on her own frustrating experiences, as well as the experiences of some of her friends who have been in similar positions at other companies. Owusu describes instances where Chief Diversity Officers excitedly began their jobs with challenging and effective presentations, talks, and exercises that were meant to get to the core of diversity and inclusion issues. These efforts were met with resistance by white company leadership. When white company leadership was questioned, the Chief Diversity Officers were stifled or retaliated against in some form. If the Chief Diversity Officer did not quit, they would be fired and scapegoated for the company’s continued diversity and inclusion failures.

Owusu’s article makes several vital contributions to this conversation. Diversity and inclusion should not rest on the shoulders of a Chief Diversity Officer, or where there is not such a role, on the shoulders of minorities. The work behind diversity and inclusion efforts should not

only burden members of marginalized identities, simply because they are the most directly impacted by diversity and inclusion failures. Unfortunately, this happens all too often. People of marginalized identities who do not hold leadership roles are left feeling exploited by an expectation, implicit or explicit, that they perform this additional, uncompensated labor. The conditions Owusu discusses lead to failed retention and all else that follows from failed retention. As Owusu concludes, diversity and inclusion are a part of everyone's jobs. Leadership must be willing to engage with diversity and inclusion issues. Engagement requires the ability to listen, apologize when called for, and continually work on the necessary education to improve.

Owusu also brings attention to another critical failure of the current approach to diversity and inclusion. Diversity and inclusion efforts are often expected to prioritize comfort, specifically the comfort of white members in an organization. Owusu accurately identifies the problem that can be described as "white fragility."²³ Robin DiAngelo, author of the 2018 book *White Fragility: Why It's So Hard for White People to Talk About Racism*, defines the term as follows:

...a loss for how to respond in constructive ways...as [white people] have not had to build the cognitive or affective skills or develop the stamina that would allow for constructive engagement across racial divides...White Fragility is a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium.²⁴

When white fragility decides the markers for approved programming, white audiences may be met where they are at. But disappointed audiences of marginalized identities are asked to continue practicing patience or leave. It is easy to imagine that this approach, which does not prioritize those who are most acutely impacted by the failures of diversity and inclusion, will lead to failures with retention. It must also be said that diversity and inclusion training is crucial

in the law school environment for retention. Students of marginalized identities, such as myself, do not feel optimistic about the legal field when law school itself has a very uncomfortable climate.

The Ernst & Young example, as well as the Apple example, illustrate how bad press can be generated when diversity and inclusion is not approached as thoughtfully as possible. In the last few decades, companies have paid a high cost for not responsibly facing diversity and inclusion issues. *Roberts v. Texaco* led to a \$176 million settlement for discrimination²⁵ and a book by the lead plaintiff, Bari-Ellen Roberts, titled *Roberts v. Texaco: A True Story of Race and Corporate America*.²⁶ *Ingram v. The Coca-Cola Company* led to a \$192.5 million dollar settlement and years of bad press.²⁷ Though Coca-Cola made many efforts to improve in the years since, these lawsuits are cautionary tales for those who need to be incentivized when it comes to diversity and inclusion. These lawsuits are cautionary tales for those who want to keep their investors happy.²⁸

History Beyond Precedents

The law works in the world of statutes and precedents, strict definitions and legislative history, monied special interests and clever arguments. Rarely does the law take account of history beyond precedents.

America's history is integral to any conversation about diversity and inclusion. For instance, this country has not fully reckoned with the legacy of slavery and how Black Americans are impacted to this day by racism and discrimination that was sanctioned by the government and the courts.²⁹ H.R. 40, the Commission to Study Reparation Proposals for African Americans Act,³⁰ which was first introduced by Congressman John Conyers Jr. in 1989,

has not made it to the House floor despite being introduced at every session of Congress for decades.³¹ H.R. 40 is emblematic of every uncomfortable conversation about race, and more broadly, diversity and inclusion. One of the goals of H.R. 40 is to “recommend appropriate ways to educate the American public of the Commission’s findings.”³² Despite its importance, the conversation to at least study and better understand our country’s history and the legacy of slavery is casually ignored every time it is introduced. This study would be an extremely important and necessary step forward because there are existing institutions, public and private, including higher education and corporations, that have directly benefited from the legacy of slavery.³³ It is willfully ignorant to pretend that those who exist today are disconnected from past actors, especially when a significant population today benefits from the structures built by earlier generations.

And it is not just slavery. Practices such as redlining or exclusion of African Americans from the GI Bill diminished the chances of accumulating generational wealth.³⁴ The 1921 Tulsa Race Massacre is another example of the deprivation of opportunities for generational wealth. Despite five recommendations made by the Oklahoma Commission, which was formed in 1997 and had studied the severe losses that resulted from the Massacre,³⁵ the state and city only acknowledged the event, apologized, made some minor investments to community economic development, and gave medals to survivors who were still alive in 2001.³⁶ Even if the court in *Alexander v. State of Oklahoma* believed that the statute of limitations had run out by 2004,³⁷ survivors of the Tulsa Race Massacre were deprived of their property, never made whole, and unable to pass their former wealth onto their descendants. The Supreme Court denied a petition for review, which made Congress the next battleground.³⁸ When Charles Ogletree, Professor at Harvard Law School and lead counsel on the *Alexander* legal team, testified at a 2007 hearing

before the Committee on the Judiciary's Subcommittee on the Constitution, Civil Rights, and Civil Liberties,³⁹ the committee took no action.⁴⁰ The late Congressman Conyers repeatedly tried to continue the battle by introducing bills to address the Tulsa Race Massacre.⁴¹ Every effort was unsuccessful.⁴² After long excluding any mention from Oklahoma classrooms, 2020 is the year state leaders finally introduced an extensive curriculum around the 1921 Massacre.⁴³

In the present day, for one small example, boutique marijuana shops now profit from a substance that put many African Americans behind bars and branded them as felons, giving many a hard time when looking for employment in the outside world.⁴⁴ This unequal treatment, like the larger mass incarceration issue, is a descendant of slavery.⁴⁵ This unequal treatment also shares a common theme with the previously mentioned examples: exclusion.

What does diversity and inclusion have to do with history? History shapes the present day. The present day does not exist separately from past events. The Civil Rights Movement of the 1960s did not solve racism. This country is not colorblind. Putting aside rare exceptions, the circumstances most people live in are a result of the families, the ancestral line, that they were born into. A history of exclusion will bleed into the present day unless properly identified, studied, and addressed.

Recall H.R.40, which was not the first of its kind; it was modeled after PL 96-317,⁴⁶ which established the commission that led to the passage of H.R. 442 in 1988.⁴⁷ H.R. 442 succeeded in procuring an apology and \$20,000 in reparations for approximately 60,000 former Japanese-American internees.⁴⁸ Again, H.R. 40, which was first introduced in 1989, is simply a call to assemble a commission to study the issue of reparations for African Americans. And, again, H.R. 40 has not even made it to the House floor over the last three decades. Professor Derrick Bell, the late, revered professor and civil rights activist, speculated that the Japanese-

American case for reparations came out the way it did because it coincided with pro-Japan trade policies during the Reagan Administration.⁴⁹ By this analysis, the same political incentive has not existed and does not exist for African American reparations. A similar result would require that the countries on West Africa's coastline hold a similar economic stature as Japan in the 1980s.⁵⁰ The comparison of Japanese-American and African American reparation efforts perfectly show that not all people are treated equally in this country. An honest understanding of such inequalities is vital to effective diversity and inclusion efforts.

Proposals for Change

Personally, I have only learned about many of the aforementioned harms to the Black American community over the last few years; in some cases, only over the last few months. I have learned about most of these events and practices because of my own curiosity, not because of any classroom I have been in. Many people are not interested in independently learning about these events and practices, which can hardly be faulted in the age of information overload. But law school is an opportunity to expose future lawyers to an education that was not previously offered. Some of the cases mentioned in this paper could be used in law school classes to teach legal concepts. Even beyond law school, employers can require Continuing Legal Education classes that tie historical events to contemporary issues of diversity and inclusion. These classes should be offered even if they are initially challenging, frustrating, and likely to inspire defensive reactions from some in the legal field. Stanford's Project Respect Initiative also produced an effective teaching tool: the Initiative recorded 34 real-life microaggression scenarios along with 34 "non-toxic" versions for comparison.⁵¹ In the legal field, and law school specifically, one variation of this successful idea would be to solicit voluntary accounts from the real-life

experiences of marginalized students and create a fact pattern for all students to “issue spot,” as they would on an exam. No matter the approach, an honest and thorough discourse is necessary for diversity and inclusion initiatives to impact the listener.

Conclusion and a Warning

The above suggestions are not currently required. These suggestions are not a part of any standardized best practices. But they very well might be in 20 years. Paulo Gaudiano brought up an interesting parallel about views towards the internet approximately 20 years ago.⁵² A 1990s CEO might have asked: why care about the internet? In fact, in a notorious *Newsweek* article from 1995 entitled “Why the Web Won’t be Nirvana,” one scientist called the idea of future dependence on the internet “baloney.”⁵³ The digital revolution speaks for itself: evolving, diversifying marketing strategies have made some companies irrelevant and others dominant. Now consider this: digital advertising spending was \$106 billion in 2018 and annual payroll costs were \$6.4 trillion in 2016.⁵⁴ Efforts made towards literally diversifying how that \$6.4 trillion is spent can be revolutionary. It may one day be silly to ask why diversity and inclusion is important. To not take diversity and inclusion seriously may lead to irrelevance and extinction.

Endnotes:

¹ The Pledge of Allegiance to the Flag, 4 U.S.C. § 4 (2018).

² Vivian Hunt et al., *Why Diversity Matters*, MCKINSEY & COMPANY (January 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> (last visited Mar. 29, 2020).

³ Pamela Newkirk, *DIVERSITY, INC.: THE FAILED PROMISE OF A BILLION-DOLLAR BUSINESS 13* (Bold Type Books, 2019).

⁴ Sophia A. Nelson, *Corporate America Has a Big Blind Spot on Institutional Racism*, THE DAILY BEAST (May 30, 2018, 4:46 AM), <https://www.thedailybeast.com/corporate-america-has-a-big-blind-spot-on-institutional-racism?ref=scroll> (last visited Mar. 30, 2020).

⁵ Nadia Owusu, *Hiring a Chief Diversity Officer Won't Fix Your Racist Company Culture*, CATAPULT (Jan. 28, 2020), <https://catapult.co/stories/women-of-color-chief-diversity-officers-cannot-fix-racist-company-culture-nadia-owusu> (last visited Mar. 29, 2020).

⁶ *Id.*

⁷ See VJ Periyakoil, *A Gender Divide on Microaggressions in Medicine*, THE N.Y. TIMES (Oct. 31, 2019), <https://www.nytimes.com/2019/10/31/well/live/a-gender-divide-on-microaggressions-in-medicine.html> (last visited Mar. 29, 2020).

⁸ *About Project Respect*, STANFORD MEDICINE: PROJECT RESPECT, <https://respect.stanford.edu/about/> (last visited Mar. 30, 2020).

⁹ Stacia Sherman Garr, *Diversity & Inclusion Technology: The Rise of a Transformative Market 2*, REDTHREAD RESEARCH (February 2019), https://www.mercer.com/content/dam/mercer/attachments/private/gi-2019-mercer_di_report_digital.pdf (last visited Mar. 30, 2020).

¹⁰ *Id.* at 5.

¹¹ *The Four Pillars of Performance*, ALERIA, <https://aleria.tech/fourpillars> (last visited Mar. 29, 2020).

¹² Paolo Gaudiano, *Quantifying which practices bring diversity in the workplace*, TEDXFULTONSTREET (June 2018), https://www.ted.com/talks/paolo_gaudiano_quantifying_which_practices_bring_diversity_in_the_workplace/transcript?language=en (last visited Mar. 29, 2020).

¹³ Emily Peck, *Women At Ernst & Young Instructed On How To Dress, Act Nicely Around Men*, HUFFPOST BUSINESS (Oct. 21, 2019, 7:00 AM), https://www.huffpost.com/entry/women-ernst-young-how-to-dress-act-around-men_n_5da721eee4b002e33e78606a?guccounter=1 (last visited Mar. 29, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Emily Peck, *Ernst & Young Chair Responds To Sexist Training: 'Mistake Have Been Made'*, HUFFPOST BUSINESS (Oct. 23, 2019, 4:53 PM), https://www.huffpost.com/entry/ernst-young-chair-responds-sexist-training_n_5db0aa5ee4b0131fa998c522 (last visited Mar. 29, 2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002).

²¹ Matthew Panzarino, *Apple diversity head Denise Young Smith apologizes for controversial choice of words at summit*, TECHCRUNCH (Oct. 13, 2017, 10:55 PM), <https://techcrunch.com/2017/10/13/apple-diversity-head-denise-young-smith-apologizes-for-controversial-choice-of-words-at-summit/> (last visited Mar. 29, 2020).

²² Owusu, *supra* note 5.

²³ *Id.*

²⁴ *Publications*, ROBIN DIANGELO, PHD, <https://robindiangelo.com/publications/> (last visited Mar. 30, 2020).

²⁵ Newkirk, *supra* note 3, at 137-39.

²⁶ *Id.* at 149. See also Bari-Ellen Roberts, ROBERTS V. TEXACO: A TRUE STORY OF RACE AND CORPORATE AMERICA (Harper Perennial, 1999).

²⁷ Newkirk, *supra* note 3, at 149.

²⁸ See *id.* at 146 (describing how Warren Buffet and Herbert Allen Jr., members at the time of the Coca-Cola Board of Directors, personally flew to meet a CEO, who soon after resigned).

²⁹ See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (last visited Mar. 29, 2020).

³⁰ See Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R.40, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/40> (last visited Mar. 29, 2020).

³¹ See Coates, *supra* note 29.

³² H.R. 40 at §2(b)(7).

³³ See *id.* at §2(b)(6).

³⁴ See Coates, *supra* note 29.

³⁵ OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921, TULSA RACE RIOT ii (February 28, 2001), <https://www.okhistory.org/research/forms/freport.pdf> (last visited Mar. 30, 2020).

³⁶ See Denise Oliver Velez, *The white riot that burned Greenwood to the ground*, DAILY KOS (May 31, 2015, 9:00 AM), <https://www.dailykos.com/stories/2015/5/31/1387824/-The-white-riot-that-burned-Greenwood-to-the-ground> (last visited Mar. 30, 2020); see also Expat Okie, *The Tulsa Race Riot of 1921 – justice delayed, but the fight goes on*, DAILY KOS (June 30, 2012, 6:15 PM), <https://www.dailykos.com/stories/2012/6/30/1104681/-The-Tulsa-Race-Riot-of-1921-and-justice-delayed-but-the-fight-goes-on> (last visited Mar. 30, 2020); Peter Schmidt, *Oklahoma Scholarships Seek to Make Amends for 1921 Riot*, CHRON. HIGHER EDUC. (July 13, 2001),

<https://www.chronicle.com/article/Oklahoma-Scholarships-Seek-to/24600> (subscription required) (last visited Mar. 31, 2020).

³⁷ No. 03-C-133-E, 2004 U.S. Dist. LEXIS 5131 (N.D. Okla. 2004), *aff'd*, 2004 U.S. App. LEXIS 18957 (10th Cir. Okla. 2004).

³⁸ See Expat Okie, *supra* note 36.

³⁹ *Tulsa-Greenwood Race Riot Claims Accountability Act of 2007: Hearing on H.R. 1995 Before the Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the H. Comm. on the Judiciary*, 110th Cong. 35, <https://www.govinfo.gov/content/pkg/CHRG-110hrg34924/pdf/CHRG-110hrg34924.pdf> (statement of Charles J. Ogletree, Jr., lead counsel representing survivors of 1921 Tulsa Race Massacre) (last visited Mar. 30, 2020).

⁴⁰ See Expat Okie, *supra* note 36.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Oklahoma state leaders to roll out new curriculum on Tulsa Race Massacre*, KFOR-TV (Feb. 19, 2020, 5:17 PM) <https://kfor.com/hidden-history/oklahoma-state-leaders-to-roll-out-new-curriculum-on-tulsa-race-massacre/> (last visited Mar. 30, 2020).

⁴⁴ See Evanston, Ill., *Has A Reparations Plan*, NPR WEEKEND EDITION SUNDAY (Dec. 8, 2019, 8:01 AM), <https://www.npr.org/2019/12/08/786039759/evanston-ill-has-a-reparations-plan> (last visited Mar. 30, 2020). See also Jenni Avins, *In the age of luxury cannabis, it's time to talk about Drug War reparations*, QZ (Jan. 25, 2019), <https://qz.com/1482349/weed-and-reparations/> (Noting that bans on people with felony convictions working in the cannabis industry disproportionately impacts Black Americans because of “systematic biases built into the criminal justice system”) (last visited Mar. 30, 2020).

⁴⁵ See Avins, *supra* note 44.

⁴⁶ Rhonda V. Magee, *The Master's Tools, from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 877 (1993).

⁴⁷ Act of Aug. 10, 1988, Pub. L. No. 100–383, 102 Stat. 903 (implementing recommendations of the Commission on Wartime Relocation and Internment of Civilians).

⁴⁸ Irvin Molotsky, *Senate Votes to Compensate Japanese-American Internees*, N.Y. TIMES, Apr. 21, 1988, §A, at 1, <https://www.nytimes.com/1988/04/21/us/senate-votes-to-compensate-japanese-american-internees.html> (last visited Mar. 30, 2020).

⁴⁹ See Magee, *supra* note 46, at 909 (citing Derrick A. Bell, Jr., *Dissection of a Dream*, 9 HARV.C.R.-C.L.L.REV. 156, 165 (1974)).

⁵⁰ *Id.*

⁵¹ See Periyakoil, *supra* note 7.

⁵² Paolo Gaudiano, *If Diversity Is So Good, Why Have Homogeneous Companies Done So Well?*, FORBES (Feb. 25, 2019, 9:27 AM), <https://www.forbes.com/sites/paologaudiano/2019/02/25/the-dawn-of-the-inclusive-enterprise/#6019746569bd> (last visited Mar. 30, 2020).

⁵³ Clifford Stoll, *Why the Web Won't be Nirvana*, NEWSWEEK (Feb. 26, 1995, 7:00 PM), <https://www.newsweek.com/clifford-stoll-why-web-wont-be-nirvana-185306> (last visited Mar. 30, 2020).

⁵⁴ Gaudiano, *supra* note 52.