

TESTIMONY OF ADJOA A. AIYETORO

Before the
CALIFORNIA TASK FORCE TO STUDY and DEVELOP REPARATIONS PROPOSALS
FOR AFRICAN AMERICANS (AB3121)
February 23, 2022

Good afternoon. Thank you for inviting me to participate in this historic hearing.

My name is Adjoa Artis Aiyetoro. I have a Masters in Social Work from Washington University St. Louis George Warren Brown School of Social Work and a Juris Doctorate cum laude from St. Louis University School of Law. My resume is included in the materials I have provided. I would like to highlight my experience that directly relates to the Task Force's charge; although all my education and work experience as well as life experience have significant relevancy.

I worked at the United States Department of Justice, Civil Rights Division Special Litigation Section from 1978-1981. One day I saw a poster while walking back to my office that had a picture of Uncle Sam pointing out with the cryptic words "Black People Uncle Sam owes you \$___ Trillion Dollars!" I leave the amount blank because I no longer remember the number. My soul immediately responded YES! I have been an active participant in the Reparations Movement for African Descendants in the United States since that time.

I am a co-founding member of the National Coalition of Blacks for Reparations in America (N'COBRA) and I was co-chair of the National Conference of Black Lawyers (NCBL) in 1987-88, when N'COBRA organized. NCBL is a co-founding organization. After serving one term as founding co-chair of N'COBRA I became the chair of its Legal Strategies Commission. In that capacity I led a group of lawyers and activists in examining how litigation could be used to advance the demand for reparations.

At its founding, N'COBTA committed to taking the movement for reparations for African descendants into the mainstream Black community. It brought into the movement sororities such as Delta Sigma Theta, the National Bar Association (NBA) and the NAACP. All of which continue to advocate for reparations.

As a practicing attorney with the U.S. Department of Justice and the ACLU National Prison Project, I developed the skill of assessing the validity of claims made by prisoners and their supporters concerning conditions of confinement in state and federal prisons. I determined whether these claims, if true, violated the Constitution of the United States. I developed the skill of identifying what facts were needed to prove the constitutional violations that were asserted. As a law professor I taught, among other courses, Remedies at law and in equity. I taught students how to determine what relief is appropriate for any number of claims, including claims for redress for injuries caused by historic violations of rights.

The starting point for my charge on this panel on the history of reparations is to define the term: What are reparations?

Black's Law Dictionary defines reparations as "the redress of an injury; amends for a wrong inflicted." United Nations resolutions and reports identify it as a remedy for wrongs to and injuries inflicted on a group based on their group identity. Examples are reparations to victims of the Jewish Holocaust and the State of Israel; reparations to 15,000 former students of Canada's Indian Residential School System; reparations to the survivors of the of the British torture, including sexual abuse and castration of the Mau Mau; and, the internment of Japanese Americans in World War II by the United States.

"Reparations" used in ordinary legal parlance means to provide the remedy that puts the person in the place she would have been but for the injury. Money is only used when that is either what was taken or what was taken cannot be returned and its value is calculated.

The matter you are addressing is whether and what form reparations should take for slavery and the legacy of slavery in California. That question was addressed as well in United Nations resolutions and reports. I refer to these rather than documents of the United States because the United States has been consistent in resisting addressing the call for reparations and thus has no articulable doctrine on what it entails. Although, as I mention later, we can draw something from the Japanese American Restitution Act. The United Nations in the documents produced from the World Conference Against Racism, Xenophobia and Other Related Intolerances identified slavery as a crime against humanity and suggested remedies for the victims of crimes against humanity that included slavery.

“...slavery and the slave trade are a crime against humanity and should always have been so, especially the transatlantic slave trade...”

The 2019 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and racial intolerance addresses the human rights obligations of Member States in relation to reparations for racial discrimination rooted in slavery. Consistent with your charge under AB3121, the Special Rapporteur indicates that governments have “a basic reparative obligation to make full reparation for injury caused by wrongful act committed by that government, whether material or moral.” Her report also underscores the responsibility of governments “to wipe out all consequences of the act and re-establish the situation which would, in all probability, have existed if that act had not been committed, through the provision of one or more of the forms of reparations.” These forms are restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. The return of property taken either during slavery or based on processes that are the legacy of slavery is restitution, a form of reparations. Compensation for unpaid labor during slavery and the underpayment for labor that is a legacy of slavery is a form of reparations. The valuation of the return to Africa (the trip and establishing them in a country) for those who were kidnapped or their descendants is restitution, a form of reparations.

The N’COBRA Legal Strategy Commission studied slavery and its legacies and determined that there are five major injury areas: peoplehood; education;

health, including mental health; criminal punishment; and economics (wealth and poverty).

Peoplehood: The act of taking away the group's right to its language, family structure and right to speak as a group. In 2022, voter suppression based on race flows from the injury to peoplehood.

Education: The enslaved were denied the right to learn. In many states teaching an enslaved person to read was a crime. In other states the learning was restricted. After enslavement Black schools had poorer structural conditions and materials than those provided in "White" schools. There continue to be inequalities in education based on the legacy of slavery.

Health: The quality of health care during enslavement was based on the value the so-called "owner" placed on the enslaved person. Volumes abound that document the racial disparities in health that can be attributed to the structural racism in the conditions of life of Black people as well as discrimination in the provision of health care. These are legacies of slavery.

Criminal Punishment: The enslaved were at the mercy of whites who could punish them for any behavior they determined was offensive. Punishment was violence against the body generally. The foundation of the modern day police is the "slave-catchers." Law enforcement has a history of targeting Black people and treating them more harshly.

Wealth: The very nature of slavery was to force Africans to work for nothing. The exceptions to this, the rare occasions when an enslaved person received some payment for his or her work were largely at the discretion of the person who paid the enslaved person. Land that was rightfully owned was often taken. And the continuing legacies that flow from slavery including discrimination in education, employment, ability to buy property have created a lower economic base for Black people and is a continuing legacy of enslavement.

Who is to be repaired? The N'COBRA Legal Strategies Commission spent many hours discussing this question.

The class of recipients of reparations for slavery and its legacy should include descendants of enslaved Africans and those who are suffering the continuing harms from slavery's legacies because of being identified as Black, African American or African descendant. It is a misnomer, and legally erroneous to call enslaved Africans, enslaved African Americans. Enslaved Africans were not citizens of the United States until the passage of the 14th Amendment. This is not a preferential position; it is a legally accurate position.

What is the experience with litigation?

Litigation in seeking reparations has been largely unsuccessful. As Deadria Farmer-Paellman testimony illustrates, the efforts to obtain reparations for slavery and its legacy through litigation have been primarily unsuccessful. This is due to the “procedural hurdles” the legislatures and courts have adopted that the litigator must jump over in order to try the case on its merits., including standing and the statute of limitations. The courts have recognized the principle of providing relief for a continuing injury – one that traces back to the original harm - however, procedural hurdles must still be overcome.

The Legal Strategies Commission also considered reparations as critical to healing racial divide created by enslavement and its continuing legacies. I have published an article about reparations as essential to establishing a true democracy. The crime of slavery and its continuing legacy sit at the feet of government. Slavery and its continuing legacies have targeted a group because of its group identity as African, African descendant or Black. This targeting has caused significant injury. The murder of the many black people by the police throughout this United States, the differential treatment of Black people in virtually all dimensions of life in which government is involved is a legacy of slavery. In order to remediate – repair the injuries caused by slavery and its legacies the recommendations must embrace all forms of reparations, not simply compensation, and even more narrowly compensation to descendants of enslaved Africans.

Money reparations and only to descendants of Africans enslaved in the United States (California) is an insult to the enslaved Africans as it diminishes the magnitude of the injury caused by enslavement. It also constricts the recipients of even these money reparations to people who can somehow prove they are

descendants of enslaved Africans. What about people who look like me who cannot meet a standard of proof that they are descended from an enslaved African? Even more concerning, what about reparations for the legacy of slavery. Money reparations do not address a key charge of the legislation to address the legacy of slavery. And, in addressing the legacy, the recipient group to have any credibility must be larger than those who can demonstrate they are descendants of enslaved Africans. People who look like me, but are not descended from enslaved Africans, suffer the injuries of the legacies of slavery. That is the major crime of slavery and its legacies – it imprinted on people who look like me a presumption of inferiority, a presumption of criminality, a presumption of loose morals, a presumption that leads to being unable to obtain jobs and housing of the same caliber as whites. Money reparations to only those who meet a burden of proof of descending from an enslaved African leave those who are victimized by the legacy of slavery with an injury without a remedy.

Reparations must include systemic remedies – a blow to structural racism that is the child of slavery and the politics, practices and beliefs that supported the kidnap, chaining, dehumanization of a people simply because whites saw them as objects of commerce that would increase their wealth, simply because their skins were dark and their culture curious, simply because they were viewed as other, simply because. You have a challenge, an obligation to look at this in whole cloth; to not be a victim of perspectives that devalue and diminish the injury to the descendants of enslaved Africans and to African descendants more generally in California.

The Legal Strategies Commission grappled with the question of amount based on the concerns expressed to us that the check will too big – both individual checks to those descended from enslaved Africans and the check needed to correct, remedy structural racism that is slavery's legacy. The legacy of slavery - structural racism in the major institutions and infrastructure in California - continues to disadvantage Black people. I know you have embraced your duty to evaluate the injury fully first, as did the Legal Strategies Commission without tainting it with fears about how high the bill will be. Then you, along with others including reparations activists and civil rights activists, can review and develop your priorities: what must be done now; what can be done later, and what may never get done. You may follow the example of the Japanese Americans and some states like Maryland

and fund a historical piece to capture those things that cannot be structurally done. It's like your personal budget, those of us who have resources that allows for budgeting – some have so little it's what is screaming in their faces now that must be done – like food, rent). Those of us who are fortunate to have some resources - more than crumbs- can do a budget that identifies our needs/wants such as utilities, mortgage/rent, food, clothes, child care, insurances, home maintenance, health care, and transportation. We prioritize non-routine expenses such as in home maintenance fixing the roof, painting the house, vacations. Depending on the money available to you, you may not be able to do everything so you prioritize – can that roof last one more year; can we vacation near home, with relatives and for a shorter period of time this year and do the big deal next year.

It seems to me, a full accounting of the injury honors our ancestors and African descendants. Nkechi lifted up the names and therefore the spirits of those who are now ancestors who were leaders in the Movement for Reparations for African descendants. There are others who have boldly lifted up this demand for 30 years or more and there are those who have embraced it more recently. A decision on what will repair the injury cannot be made without the fullest record of the injury that you can amass. That is why N'COBRA's Legal Strategy Commission spent a couple of years reviewing, discussing and identifying the major injury areas. To us it would have been irresponsible to simply say give every African descendant a check for a certain amount. The compromise (what appears to be a compromise) in the Civil Liberties Act of 1988 provide redress for Japanese Americans who were interned and alive at the time the bill was passed received a token payment of \$20,000 each. This was not a calculation of injury individually bur a token payment to acknowledge the loss of property and livelihood, and the humiliation attendant to their treatment by the United States government.

Contrary to the testimony of Dean Erwin Chemerisky, it was designed to provide redress at a group for act by the United States based on their group identity. So, once you have completed amassing the injury information you can look at the definition of reparation and its forms provided both by U.N. Special Rapporteur on Race, as well as other scholars and advocates and determine what are the best forms of reparations to repair the injuries. We know in law that it is difficult to make people whole and that money is frequently the substitute when what has been

taken cannot be replaced. Yet, we also know that the institutions that are the children of slavery and continue its legacy can and must be part of the reparative remedy.

Remedying the legacies of slavery, the charge you have, requires you to consider the future African descendants and recommend reparations that will dismantle the structural racism that, as the esteemed Charles Ogletree said about the Criminal Punishment System, is an unbroken chain from slavery. A check alone does not even touch the repair of the legacies of slavery; it does nothing to repair, to eliminate the systems that have been put in place on the backs of slavery to continue to treat African descendants as other – to subordinate them. We all know that the legacy continues – the injury is a continuing one. We know you have the courage to identify and state clearly this injury and then to recommend ways to repair these injuries. Much has been written by social scientists, health professionals, criminal punishment system professionals/experts, economists and more. We want you to be bold, courageous and to continue to act with integrity. Our people deserve your full attention to this historic charge, as you are giving it. Not just Black people but all people in California regardless of their ancestry. You have an opportunity to be a voice that calls out the lie of White Supremacy spawned by the enslavement of African people that continues to this day and its counterpart, the lie of Black inferiority – the biggest legacy of U.S. slavery.

I am at your service as you embrace this task of making these horrors of slavery and its legacies be relegated to a museum and make it the story of the past, one which we learned from and for which reparations were made. Thank you for your time. Thank you for your service.

ADDENDUM

February 24, 2021

I inserted in this testimony after I gave it a rebuttal to Dean Chemerisky's point about the Japanese American restitution legislation not being about race and only about an act. He is incorrect. The Civil Liberties Act of 1988 specifically applied to Japanese Americans who were interned by the United States. It did not apply to anyone else who may have been interned. This is the same way that legislation can be designed for reparations for slavery and the legacy of slavery.

Secondly, he presented a model of acceding to the narrow, one could call racist, perspective of the U.S. Supreme Court now and the “possibility” it will get even more narrow and racist in a couple of years. His view, although cradled in his statement that he disagrees with this view, accommodate racism and is counter to the work our ancestors, and some of those still living, have done to end the “badge of slavery.” If they had acceded to this view, Dred Scott and Plessy v. Ferguson would still be the law of the land. We shouldn’t, however, wait another 165 to see a reversal. The push can begin now.

Thirdly, Dr. Brown made an excellent point about how a narrow eligibility decision based on the testimony of Dean Chemerisky, is a reply of the Willie Lynch doctrine. It furthers divisions and increases the power of the lie of White Supremacy. It is in fact a mirror of the practice so integral to the continuation of racism – to have those who should be standing together driven apart by a false sense of status.

Finally, Nkechi Taifa raised the point in her testimony that is you narrow the eligibility for reparations to those who are descendants of enslaved Africans that it My recommendation is that if you do conclude this as the eligible group, given that the government made the question of proof a difficult if not impossible task for so many, that the only way it should be capable of being rebutted if there is documentation that shows that the person’s ancestor came to the United States after slavery was abolished.

Again, thank you for your work.