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**LEGACY OF THE TRANS-ATLANTIC SLAVE TRADE**

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HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND CIVIL LIBERTIES OF THE COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS FIRST SESSION

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## C O N T E N T S

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DECEMBER 18, 2007

### OPENING STATEMENTS

The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Chairman, Committee on the Judiciary, and Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

The Honorable Trent Franks, a Representative in Congress from the State of Arizona, and Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

The Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Chairman, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

The Honorable Steve King, a Representative in Congress from the State of Iowa, and Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

The Honorable Steve Cohen, a Representative in Congress from the State of Tennessee, and Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

#### WITNESSES

Professor Charles Ogletree, Director of the Charles Hamilton Houston Institute for Race and Justice, Harvard Law School Oral Testimony.  
Prepared Statement.

Ms. Kibibi Tyechimba, National Co-Chair, National Coalition of Blacks for Reparations in America (N'COBRA)  
Oral Testimony.  
Prepared Statement.

Mr. Roger Clegg, President and General Counsel, Center for Equal Opportunity Oral Testimony.  
Prepared Statement.

Reverend M. Thomas Shaw, III, SSJE, Bishop of the Diocese of Massachusetts Oral Testimony.  
Prepared Statement.

The Honorable JoAnn Watson, Council Member, Detroit City Council Oral Testimony.  
Prepared Statement.

Mr. H. Thomas Wells, Jr., President-Elect, American Bar Association Oral Testimony.  
Prepared Statement.

Stephan Thernstrom, Winthrop Professor of History, Harvard University Oral Testimony.  
Prepared Statement.

Professor Eric J. Miller, Assistant Professor of Law, Saint Louis University School of Law  
Oral Testimony.  
Prepared Statement.

## APPENDIX

Material Submitted for the Hearing Record.

### LEGACY OF THE TRANS-ATLANTIC SLAVE TRADE

TUESDAY, DECEMBER 18, 2007

House of Representatives, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, Washington, DC.

The Subcommittee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee on the Judiciary) presiding. Present: Representatives Conyers, Nadler, Davis, Ellison, Scott, Watt, Cohen, Franks, Issa, King, and Jordan.

Also Present: Representatives Delahunt and Jackson Lee. Staff Present: Kanya Bennett, Majority Counsel; Keenan Keller, Majority Counsel; David Lachmann, Subcommittee Chief of Staff; Paul B. Taylor, Minority Counsel; Crystal Jezierski, Minority Chief Oversight Counsel; and Caroline Mays, Professional Staff Member. Mr. Conyers. Good morning. The Subcommittee will come to order.

I am delighted to call up H.R. 40, a commission to study reparation proposals for the African American Act, and this hearing is being conducted through the auspices of the Subcommittee on the Constitution. Its Chair, Chairman Jerry Nadler, has kindly agreed to let me move this forward. I am joined by the distinguished gentleman, Mr. Franks, who has agreed to be the Ranking Member, as usual, on the Committee. We will begin by some brief comments. I will put my full statement into the record.

Essentially, this is a first-time historical examination of the circumstances surrounding the enslavement trade of Africans in the colonies in the United States. The purpose of the measure before us, House Resolution 40, is to create a commission to examine the institution of slavery, its lingering effects, and to make a series of recommendations to the Congress. So we do that through a commission that would consider a number of questions, and we would have a seven-person commission--three members appointed by the President of the United States, three appointed by the Speaker of the House of Representatives and one member appointed by the President Pro Tempore of the Senate. These persons would be especially qualified to serve on the commission by virtue of their education, training or experience, particularly in the field of cultural relations, sociological considerations, African American Studies, and other things.

The interesting thing about the way this Committee is designed is that we do not limit it to merely the commissioner's testimony. We would have field hearings where Americans across the country would be able to give their impressions and their views and opinions. We are delighted that this effort has now gone beyond the discussion stage, introduced in 1989, and we come to this hearing about 13 days from the 200th anniversary of the moment when the abolition of the trans-Atlantic slave trade took place, where the government decided that the kidnapping, purchase and commercial export of Africans would be no more; but it would take 57 years later to end the institution of slavery in 1865, the 13th amendment, then the 14th amendment and, following, the 15th amendment, which were to serve guarantees to Africans and African Americans of their equal rights and opportunities and protections. So we are here to not examine what your view is on reparations in particular, but more as to whether we should have a study and whether that would be useful and purposeful.

Normally now, our studies are generally a way of sidestepping some immediate consideration. Most of us know the drill in the legislature. If you do not want to act on it, create a study, and that will take the heat off of it for a while.

This is one of the rare instances where there is resistance even to a study, and it seems to me that the relationship of that ugly period of the enslavement trade and how we dealt with it and how it fit into the very formation of this country is a very, very important one.

I noticed just in today's paper, on the front page of one of the big papers, that the incidence of police brutality has increased 25 percent this year. The dropout rate of African Americans is double that of anybody else. Schools are now more segregated than they were 40 years ago. The poverty rate of African Americans is double the national average; and of course, in this Committee the mandatory sentencing in the crack-cocaine minimums, and the disparity, has been revisited.

We have, I think, an optimistic situation developing in that regard. But one of the things that I would like to have looked at more--and I am only sorry that this Committee cannot do it--is to examine the relationship between the institution of slavery in this country and the present-day effects. What is the relationship?

This bill had been introduced 18 years ago, and we have had a number of legal developments. J.P. Morgan, a couple years back, established a \$5 million scholarship funded for Louisiana's African students. The next year, a Federal appeals court ruled that U.S. corporations can be found guilty of consumer fraud for failing to disclose their roles in slavery, which is being inquired into quite regularly. Four States have issued formal apologies for slavery. There have been documentaries and quite a bit of activity going on, but the efforts to officially examine the legacy of slavery have been disjointed and have failed to reach the heart of the issues.

So it seems to me that there ought to be an historical Federal role that deals with the subject matter. I hope this will begin a national dialogue. To do what? To heal. Not to divide, but to bring us together; not to heighten the division that, to me, is too prominent here.

So to have our witnesses--Professor Ogletree; our cochair of N'COBRA, Ms. Tyehimba; Professor Clegg; Reverend Father Shaw; Eric Miller, and others here, Councilwoman JoAnn Watson from Detroit--it is a great way to start this discussion.

I am happy now to turn to my colleague, the Ranking Member of this Committee, Mr. Franks, for any observations or comments.

Mr. Franks. Well, Mr. Chairman, thank you so much. As I have been sitting here listening to some of the things you have said, it is very compelling and it is very moving, some of the emotions that are evoked. So I want to start out by saying that I know that this--you know, when we deal with the core issue of enslaving our fellow human beings, God's children, it is an issue that moves us all to the core. It certainly moves me to the core. I believe with everything in me that, if I had been alive in those days, I would have been an abolitionist. It is ironic that the issue that brought me here to Congress was one that I hold in great parallel, and I know that it is not easy for me to make the comparison here this morning, but I feel compelled that I have to do it.

The Dred Scott decision, which is a little over 150 years old now, said that the black man was not a person in the Constitution. It quoted and said, ``A Negro whose ancestors were imported into this country and sold as slaves were not intended to be included under the word `citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States."

In retrospect, it is easy to see the sickness and evil of such a decision. Yet, I am concerned, Mr. Chairman, that in the effort to address this, that we may be trying to penalize those who did not do such a thing and help those who were not the ones who were wronged in the first place. But I understand the need to address the issue, especially as we consider the impact and the effects that it has had today.

The Chairman talked about the impact of today, on today, of slavery of the past, and I believe he is exactly right. I believe there has been tremendous effects on this society of what a terrible tragedy slavery was. It had run rampant throughout the world for 7,000 years. When it finally came to America, because we held these truths to be self-evident that all men were created equal, we had this discourse in our own souls, and we said this cannot stand. It took a little Civil War, a Constitutional Convention, as it were, to change that tragic Supreme Court decision of Dred Scott.

The reason I make that comparison, Mr. Chairman, knowing that it is difficult for me to do and perhaps for you to hear, is that I believe that the Roe v. Wade decision of today is so similar. It takes the unborn children and simply says that they are not persons under the Constitution. I think if we are going to address a past tragedy like abortion on demand that took the right to live of fellow human beings and desecrated who they were, their human dignity, that we must be very careful not to be doing the same thing today, because otherwise it robs us of our moral foundation in the first place. It seems like we are never quite so eloquent as when we decry the crimes of the past generation and never so staggeringly blind as when we consider the crimes against humanity in our own generation.

So, Mr. Chairman, I kind of went off on that, not to really relate it to my written opening statement. So let me just make a few formal comments.

Slavery in America was a moral outrage. It is difficult to imagine a more vile denial of the self-evident truth proclaimed in our own Declaration of Independence that all men are created equal, that they are endowed by their Creator with certain inalienable rights. Among these are life, liberty, and the pursuit of happiness.

Now, some have advocated the study of programs that would grant benefits to some today as compensation for the actions of others, long dead, who are responsible for creating the evil legacy of slavery. But I fear that path leads not off one cliff, but perhaps many. I am afraid such a program would aggravate racial tensions while being doomed to fail in its goal of achieving justice today, because it would inevitably require the government to measure drops of blood or shades of skin to determine who could qualify for such a program, leaving America a confusing quilt of alleged victims and victimizers.

Such a program, to avoid chaos, would have to ignore the jagged edges of history in which Black Africans and Arabs enslaved the ancestors of African Americans in which there were thousands of Black slave owners in the antebellum United States. Such a program would have to gloss over the role played by thousands of White Union soldiers who died fighting for the successful abolition of slavery in 1865, and their descendants. It would also have to gloss over the thousands of nonmilitary heroes who lost their lives for promoting abolition and for operating underground railroads. Such a program would have to factor in the last many decades in which job quotas, racial preferences and racially derived target goals have been in effect.

The legacy of slavery would also--and this is hard--have to encompass the actions of leaders in the Democrat Party who are the most ardent defenders of slavery and of the Jim Crow laws that followed and of the 1856 decision of Dred Scott that was handed down. That decision, one of this Nation's very most notorious and tragic examples of rank judicial activism, denied Congress the authority to ban slavery in the Federal territories.

But the Democrat Party defended that decision just as it defends the Roe v. Wade decision of today. In fact, it was the commitment in the heart of a group of people who said "slavery was evil" that gave birth, in a sense, to the Republican Party in the first place, and that commitment sustained them in the crucible of a horrible Civil War that saw the end to this tragic practice of 7,000 years.

With the stroke of a pen, seven Supreme Court justices, just as they wrote the unborn out of the Constitution, dehumanizing them, dehumanized slaves to only three-fifths of a person. Abortion on demand grew out of the Eugenics movement, a movement known for its racism and devaluing of human life, just as it was the founding movement of the Nazi Holocaust. Everywhere we find those who will decry the legacy of slavery and the atrocities of World War II. We find that everywhere, and that is right and good. But where are the defenders of the unborn today, who are the glaring example of repeating a past tragedy? There are many actors who played roles in the history of slavery. You would tear the Nation apart to even begin to try the impossible and to officially separate them once and for all.

What are the injustices suffered by Latinos and Asian Americans or Irish and Italian Americans who came here well after the ratification of the 13th amendment? The legacy of any reparation's regime would be marked as much for those it left out as for those it included. Author Shelby Steele expressed the following concerns regarding slavery reparations in *Newsweek*, not too long ago. Mr. Steele wrote, "When you do not know how to go forward, sometimes you find an excuse to go backward. You tell yourself if you can just get a little more justice for past suffering, that you will feel better about the challenges you face. So you make justice a condition of your going forward. But there is no justice, unfortunately, for past suffering, and sometimes to believe it only guarantees more suffering."

Now, Mr. Steele's comments do not reflect my own perspective completely, but he does make some powerful points. If we are really committed to making America be that place where human dignity is held in reverence, above all other things, then to do that we must first stop the tragedy of the desecration of innocent human life that takes place today. Before the sun sets today in America, not 150 years ago but today, 4,000 unborn children will die. Their mothers will never be the same; they will each be alone, and all of the gifts that they might have brought to humanity will be lost forever.

I just hope we will approach this hearing with the intent to move forward. With that, I look forward to hearing from all of our witnesses today and with sincere respect for the Chairman. Thank you.

Mr. Conyers. Well, thank you so much, Randy Forbes, from Virginia. I mean I am sorry--excuse me--Mr. Franks. Excuse me.

Mr. Franks. He would have said the same thing.

Mr. Conyers. Well, the question that you leave me with is maybe we should consider holding some hearings on the abortion question since you raised it so much. Guess who has jurisdiction over that? The Judiciary Committee.

Mr. Franks. Mr. Chairman, I would be delighted beyond measure to do that.

Mr. Conyers. All right. I have never linked them up, but you raise an important consideration that on its own merit ought to have a hearing. I thank you for your statement. Thank you very much.

Now I turn to the Chairman of the Constitution Subcommittee in the Judiciary, the gentleman from New York, Jerry Nadler.

Mr. Nadler. Thank you, Mr. Chairman.

Mr. Chairman, let me begin simply by saying that the examination of this whole question, which is way overdue, is not served by distortions of history such as we just heard in trying to blame slavery on current political parties. Our ancestors all played different roles in them.

Take a look at a good Democrat like Senator Lyman Trumbull of Illinois, who was a Democrat, an anti-slavery Democrat, who joined the Republican Party after defeating Lincoln for the Senate. He was the chief author of the 13th amendment. After reconstruction, he returned to the Democratic Party and was counsel to Samuel J. Tilden, and went on to become the chief defender of Eugene V. Debs in the Pullman Strike of 1894. He was a good Democrat. He took a detour into the Republican Party to oppose slavery. Then he returned to the Democratic Party. I do not think it serves a function in today's politics to talk about which political party was responsible in the antebellum past, 150 years ago.

Let me say that I want to begin by recognizing the Chairman's, Mr. Conyers', many years of work on this important issue.

Your leadership, Mr. Chairman, has helped move us closer to the day when this Nation may finally come to terms with its past and with the consequences of the slave trade that remain in our Nation today. As America strives to become a more perfect Union, we must never forget the stains that mark our past and that still mark our present.

My own city of New York was a major port city and operated as a hub for the slave trade. African slaves played a key role in the building of the city, and they directly contributed to New York's prosperity. Earlier this year, we dedicated the African burial ground national monument and gave those who were buried there the proper recognition--or the beginning, I should say, of the proper recognition and respect they deserve.

This hearing looks not just to the past but to the legacy of our own history of slavery as it continues to affect race relations, economics, equality and inequality in present-day America. It is our duty to ask the difficult questions and to face up to our responsibility to remedy the ongoing injustice of that legacy which remains a part of our society. As America continues to address the impact of slavery, we need to ensure that the promise of equality becomes a reality. This hearing is not simply a history lesson, but a careful and critical look at the society we have become, in part because of our history and because of our failure to come to terms with that history.

Mr. Chairman, we are now at the 400th anniversary of the founding of the first English settlement in America at Jamestown. For 250 of those 400 years, starting a mere 12 years later, we had chattel slavery of Africans in this country. For another 100 years after that, totaling 350 years of the 400, we had de jure segregation, Jim Crow laws and apartheid laws on the books of our country. It is only in the last 50 years of that 400-year period--one-eighth--that we have said as a society that that was wrong.

We have not fixed those problems. We have begun. We have made considerable progress. We still have a long way to go. It would indeed be very surprising, after chattel slavery and apartheid as a matter of law for a total of 350 of our 400-year history, if we were now free of the legacy and of the effects. Many of our great fortunes, many of our great corporations were built and remain standing today on foundations built by the labor of slaves.

We have as a Nation, Mr. Chairman, looked at our historic injustices in many other cases. As in the case of the internment of Americans of Japanese descent in World War II, not all that long ago, we have acted to recognize the wrong and to make amends to the extent that is in our power. It is not in our power to adequately make amends for slavery. It is certainly in our power to do what we can. Nations that fail to recognize their own pasts and that fail to overcome them never truly free themselves from their past.

Today, we begin the task of truly freeing America from its history of slavery, and I certainly endorse it. As you know, I have been the cosponsor ever since I have been here, I think of your bill to establish a commission to examine all of this with a view toward future action. I think it is imperative that the United States opens those pages of history further than they have been opened, that it examines all of this with a clear eye, that it examines not only our history but the effects today in our history, and what we can do about it to make our Nation freer and more just. I thank you for leading this effort.

I yield back the balance of my time.

Mr. Conyers. I thank you so much.

I turn now to the gentleman from Iowa, himself a Ranking Member of a Subcommittee on Judiciary. We are glad that Steve King is here with us this morning.

Mr. King. I thank you, Mr. Chairman.

I appreciate being recognized, and I understand that we have some witnesses who I am very much interested in listening to, so I will just compress my remarks if I can.

I appreciate the remarks that have been made here by the other Members of the Committee. Particularly, I focused on those of Mr. Franks, with whom I wish to associate myself in a lot of ways, and especially because of the remarks he has made this morning.

As I listen to the comments that are made, I think back through this course of our history, and I think of a time that--well, in my office, under a glass coffee table, is a leather-bound New Testament Bible that my great uncle, five times great, carried with him. It was presented to him--and it is written in there in pencil in his sister's hand--on the eve of his departure for the war, which was the Civil War. I would have to go back and look at the date, but it was 1862. He walked off to the war on that day. He walked home from the war and in the door 3 years to the day from the time he left. There are verses in there that are underlined in pencil. There are flyspecks on that Bible. It is an old, old document now, but it is a connection that my family has to the abolitionists within our history with the legacy of some responsibility that I have to continue on today.

My great grandfather was killed in the Civil War, and all of his artifacts were lost in the process. His father was a founder of the Republican Party, and they were instrumental in the nomination of Abraham Lincoln because they were abolitionists, and they paid a price. They paid the price of the loss of one of their sons, and I would not be here today if he had not fathered children before he went to the war.

So this is something that runs deeply within me, that has been part of our family legacy. I have grown up with the knowledge of this effort. I could go more into family trees. Six hundred thousand people died in the Civil War, that constitutional convention that was brought about in such a brutal fashion, approximately half on each side of that. All of those killed on the southern side were not killed because they were fighting to defend slavery, many of them were fighting to defend States rights, so we cannot presume that it was a half-and-half situation. I do not know what those numbers might be.

I do know that when I look at that Bible and I think about the legacy of my family and that that represents the legacy of thousands and thousands of families in this country, White and Black, I believe that reparations were paid for in blood more than a century ago. I believe that we need to pick up and move on.

I would point out also that if there is a legacy, there are also legacies left over from government programs that have affected the families, not just Black families but all families in America, that have been destructive to the family. I think Shelby Steele has written about that, who Mr. Franks had quoted. I know Thomas Sowell has, and I have great reverence for both of those very intellectual scholars.

I will point out also that if there is a legacy, then there are legacies for other experiences with slavery. I might direct your attention to a book written by a professor at Ohio State University. His last name is Professor Davis. The title of the book is "Christian Slaves, Muslim Masters." He studied the history of White slavery in the Mediterranean in the 1500's just before the legacy of Black slavery in America began. Through that period of time, that century of the 1500's from about 1507 or 1508 on until the end of the century, there were about 1\1/4\ million Christians who were pressed into slavery by the Barbary pirates. They were put down in the hulls of those ships, they pulled the oars, they were put into the construction business, and built the edifices along the Barbary Coast of the northern coast of Africa.

There is no genetic legacy for them. The men were pressed into slavery. They were never allowed to reproduce. They were worked to death or killed, and some of them were just simply buried at sea when they were worked to death on the oars of those boats. The women--and there were few of them--were pressed in as concubines. Occasionally, you will see some blue-eyed people on the northern coast of Africa. Some believe that is the legacy.

So my point is that slavery is not unique here to the United States. It is an abhorrent thing. I think it was worth the blood, I think it was worth the sacrifice. But I believe that we owe it to the people who gave their lives for this freedom. It is a fundamental belief that we have that Mr. Franks spoke to, and it is in our Declaration. It was a long time coming to honor the language that was there, but I think we owe it to them to pick it up and to move forward and to not be dragging this legacy.

I will be listening to the comments, and I know that it is heartfelt on the part of the Chairman. We disagree on whether we should go forward with this because I believe we ought to look forward to the future. I think we ought to let the legacy of the past inform our actions for the future, but I do not believe that any reparations that might come for Americans who are descended from slaves can possibly be a reparation that would be equivalent to the reparations that have been paid in the blood of people who gave their lives to free the slaves.

Thank you, Mr. Chairman. I yield back.

Mr. Conyers. Thank you, Steve King.

Before the witnesses begin, I am going to yield for a brief comment from Mr. Cohen, Steve Cohen of Memphis, Tennessee.

Mr. Cohen. Thank you, Mr. Chairman and Members of the Committee. I appreciate your recognition.

This is an issue that I feel pretty strongly about. I am a southerner. I was born in Memphis, Tennessee. In my young years, I witnessed Jim Crow laws. I witnessed African Americans being relegated to the worst seats at the sports arenas, their not being able to go to school, their not being able to get jobs, and their being discriminated against as second-class citizens.

I saw White and colored drinking fountains and restrooms and things that, when you think about it, should not have existed in a modern era, things that existed 100 years after the war that Mr. King talks about, the war that might have freed the slaves but that did not give them real economic and social freedom. They remained enslaved through the jury laws, known as "Jim Crow laws" in this Nation until 1964, and the ramifications of those laws and the slavery that we had in this country continue to this day.

I have read the remarks of some of the gentlemen who are going to testify, Mr. Chairman. Mr. Clegg writes in his presentation, "No one will dispute that slavery and Jim Crow were horrible and inhumane."

Remember that one of our Senators said Strom might have been right? That was just a year ago. A lot of people do not understand the connection, and they do not understand why this country is the way it is, and they do not want to apologize.

I have introduced House Resolution 64 that calls for our country to apologize for the institutions of slavery and for Jim Crow. Some say, well, this does not involve--nobody is around today who had slaves. The Senate apologized for lynching. Nobody is around today that did lynching, but it was our country that did it and our government that did it and our government that sanctioned it, and it is an original sin of this country that needs to be expiated. It can only be expiated by an official act of this Nation.

Four States have issued apologies: Virginia, Maryland, North Carolina, and Alabama. Others have considered it. For the United States of America not to issue an apology--Britain has done it. The Episcopal Church has done it. For the United States of America not to issue an apology--that sanctioned slavery, that permitted it, that fostered it, that benefited from it--would be wrong.

It is the beginning of a dialogue that can improve this Nation because the greatest problem this Nation still has today is racial conflict. It exists not just in Memphis, Tennessee, but it exists in New York City in Harlem, in Roxbury in Boston, on the South Side of Chicago, in East St. Louis. It exists throughout this country, and we need to deal with that issue.

The idea of a study of reparations that Mr. Conyers offers is a study, and it should be studied and what effects we can make to ameliorate conditions, economic and social, that have disadvantaged the minority population in our Nation.

I represent a district that is, by majority, African American. Some people in my hometown say that I am too Black in the way I think. Well, they have not looked at my State Senate record for the last 24 years or been aware of where I have been with felon voting rights, with Dr. King's birthday, with jobs programs, with public hospitals, and public education. I guess I have always been, quote/unquote, "too Black," but for people who think that, they are unaware of what is going on in America today.

We need to get our act together, and we need to accept the grievances. We need to look at the grievances of the past and apologize and have a dialogue and go on and try to have some effort to make our country better. Some of that deals with not just social justice that my fellow colleagues on the other side of this hall or aisle will talk about, but economic justice. And without economic justice, you cannot really have social justice. You cannot have it. The fact is we lived through Jim Crow laws, and those effects are here today. People who were in separate classrooms are teachers today. Can they teach equally? The classroom facilities are vestiges of a separate institution where African American children got used textbooks and did not get the new schoolrooms and opportunities. All of those things need to change.

I commend Chairman Conyers for his efforts over the years. I do not know that he has an exact thought of what his study would bring about, but a study is a good thing. Before you have a study, I would submit you need an apology because it begins a dialogue. And until this country faces the problems that we have and the conflicts that we have, which are great--and I think I am unique in having the opportunity to see them because I have been so involved in my community and have seen them--we need to find a way to start that dialogue and to bring this country together.

We do not have equal justice. There is disparity in wealth between wealthy Whites and poor Whites, but it is even greater among Whites and African Americans as this disparity in wealth grows and grows and grows, because we have difficulty in understanding that all men are created equal, and they ought to have equal opportunities to have life, liberty, and the pursuit of happiness.

The display of nooses in Louisiana, that is part of the vestige where people still have this idea of second-class citizens.

The idea that some people in the Senate can suggest that our resolution H. Res. 64 is too strong on what it says about what happened after the Civil War and during Jim Crow shows that some Members of the Senate need to get their history books out wake up and dust off their cause and become 21st century Americans. This is a problem. We have hidden from it. We have got our heads in the sand like ostriches, and we need to rise up with strong backbones, face the facts, apologize for history, move forward toward a better future. But apologies and studies go toward the future, and we need to do that.

Mr. Chairman, I thank you very much for this opportunity.

Mr. Conyers. I thank the gentleman for his presentation.

I turn to our first witness on the first panel, the Honorable Professor Charles Ogletree, who holds the Chair at Harvard University, Director of the Charles Hamilton Houston Institute for Race. He is a leading scholar before this Committee on an almost regular basis. The hearings that we had on the 1921 Tulsa riots, the Jena Six and other considerations have brought him before the Judiciary Committee. He has authored most recently, *All Deliberate Speed*, reflections on the first half century of *Brown v. Board of Education*. He edited *From Lynch Mobs to the Killing State, Race and the Death Penalty in America*.

We welcome you once more, Professor Ogletree. Your statement will be reproduced in its entirety, and we would like to hear from you at this point.

TESTIMONY OF PROFESSOR CHARLES OGLETREE, DIRECTOR OF THE  
CHARLES HAMILTON HOUSTON INSTITUTE FOR RACE AND JUSTICE,  
HARVARD LAW SCHOOL

Mr. Ogletree. Thank you very much, Congressman Conyers. I appreciate that my statement will be submitted for the record. I want to thank you, in particular, for having the courage over the last 19 years to raise H.R. 40.

I want to say a few things beyond which I have written in the statement. First, I want to respond to Congressman King. It was very important that he recognized his family's legacy and the treasures that he could identify dating back to the 1800's. I cannot, because I come from a people, I come from a place where that history was destroyed. It was severed. It was brutalized. So I cannot go back. I know "Ogletree" is not from West Africa, Ghana or Senegal. It is something that was given to my ancestors after their African heritage was destroyed. That is why the study is important, to get a sense of history.

I recall as well that my fifth grade social studies teacher, Mrs. Barry, had a sign on our class that said, "Those who fail to understand history are doomed to repeat it." I think it was her suggestion that we should do our work or we would be in trouble. But it was a broader reflection of the idea that knowing history is important in order to move forward.

Let me tell you about this issue of studying reparations and why it is so important. I think it is fair to say that sorting out the history, the structure, and the magnitude of slavery is not rocket science; it is harder than that. It requires an incredible amount of patience, caring, tolerance, a divisiveness, anger, frustration; but it requires us to look back in order to move forward. It is also important that we do it now because we have a history. Almost everything that has been said today has misrepresented some aspects of history.

Congressman Franks was talking about the three-fifths--he mentioned the Constitution that only treated African Americans in three-fifths. They were still slaves. They had no rights. They could not vote. They could not own property. They could not participate in democracy. They were not people. The three-fifths provision was simply not to help slaves; it was to help slave owners have power in a democracy. So we were written out of the Constitution from the very beginning, as if we did not exist, even though we made this country very profitable.

Some of the comments of my colleagues, whom I know well and with whom I have worked before, later will be talking about the fact that it is divisive, it is a waste of money, we cannot identify who should be beneficiaries, we have already addressed these issues. Those are all points to be made, but that is what a study is for: to look at these in greater depth. Here is why we have to study this issue now.

If you look back at our history, Congressman Conyers, in particular, there are people now who still deny that the Holocaust existed, that millions of citizens lost their lives to a tyrant in the 20th century, in the lifetimes of people in this room and of those watching this broadcast. There are people who thought that they were right in the 1940's to intern over 100,000 Japanese Americans as terrorists during the Second World War, but who had the courage to step forward? It was people like the Senator from the State of Kansas--a Republican by the name of Robert Dole--and the Democrat from the State of Hawaii by the name of Daniel Inouye. They were both veterans of the Second World War. They were both brutally injured in the Second World War, but they had the courage, more than decades after it happened, to say that we have to do something. That is why the Civil Liberties Act of 1988 was passed, and that was the impetus for Congressman Conyers to say let us look at the issue of slavery.

Let us look quickly, with the time I have, at the civil rights movement. In 1921, with the Tulsa race riot, there is no relief 86 years later. In 1954, we have *Brown v. Board of Education*. A year later, Emmet Till was lynched in Mississippi. Rosa Parks was arrested on the bus in Montgomery, Alabama.

In 1963, Dr. King gave the great march on Washington's speech about his dream, an aspiration for America. Three weeks later, 3 weeks later, four little girls lost their lives by terrorism in Alabama. We have come a long way. We have got a long way to go.

What are people afraid of? That we might find something out about our history and that we might be able to use it to change the way we think about it? At a minimum, if nothing else happens, I hope every Member of this Committee can at least apologize for slavery. It does not recall legislation. It just recalls a point of courage. That is not political, that is not partisan, but the idea to at least start the process of healing starts with recognizing that something wrong happened from the beginning.

Finally, I want to mention that there is a recent book by Doug Blackmun, a Wall Street Journal reporter, called *By Any Other Name: Looking at the Impact of Slavery and Post Slavery in the 19th and 20th Centuries*.

I hope that those who oppose this hearing and who oppose the idea of a study will understand from the writing of the Constitution to the adoption of the Bill of Rights and to every other step, we have cut people out. This is the time for inclusion and for every voice to be heard. I urge this Committee to pass H.R. 40 and to do so with great enthusiasm and with great commitment to making us one America so that we can all appreciate our great country and its great value.

Thank you, Congressman.

Mr. Conyers. Thank you so much.

[The prepared statement of Mr. Ogletree follows:]

Prepared Statement of Charles J. Ogletree, Jr.

Mr. Conyers. We now call on the National Cochair of the National Coalition of Blacks for Reparations in America. The acronym is N'COBRA. We have here Ms. Kibibi Tyehimba. She and her organization are longtime friends of many of the Members of the Committee. In her capacity as co-chair, she educates, organizes, mobilizes around freedom, justice, equality, and self-determination for the descendants of African slaves. N'COBRA has been active across the years in securing support and understanding for reparations and for the study of reparations. We are delighted to welcome her to the Committee at this time.

TESTIMONY OF KIBIBI TYEHIMBA, NATIONAL CO-CHAIR, NATIONAL COALITION OF BLACKS FOR REPARATIONS IN AMERICA (N'COBRA)

Ms. Tyehimba. Thank you, Congressman. Thank you very much to the entire Committee.

I am here to represent the grassroots perspective. Today, I would like to pay homage to my African ancestors and give them voice for the millions who perished during the so-called "trans-Atlantic Slave Trade" and who suffered untold atrocities during the American era of enslavement. Were it not for their sacrifices, were it not for their strength and perseverance, we would not be here today nor would Americans be able to enjoy the standard of living for which this country is known.

For 246 years, the U.S. Government and prior colonies participated in one of the greatest holocausts--and by "holocaust," I mean a monstrous loss of life--the greatest holocaust in American history, the holocaust of enslavement, for which a system of enslavement like no other in this world resulted in the loss of millions of African people who perished and of millions of others who endured every imaginable horror ever inflicted upon a group of people mainly because of their race. The U.S. and the prior colonies sanctioned this atrocity with its Constitution and enforced it with covert and overt violence, a genocidal process that has destroyed millions of Africans, and in many respects is still with us today.

Africans produced major consumer goods and services and provided the stimulus for shipbuilding, banking and insurance in both the United States and in England. Yet in 1865, the Federal Government freed 4 million Blacks--in January no less-- and that has kept African descendants locked in a vicious cycle of poverty that still exists with us.

We strongly believe that the establishment of a commission would address injury areas that were suffered by enslaved Africans, which include peoplehood and nationhood, which is a look at the destruction of African people's culture and the infringement of the larger culture on African people. It was also the denial of rights and the resources necessary to be self-determining.

Examples of that are the Black townships across this country that were destroyed, such as Greenwood, Oklahoma; Redwood, Florida; and Wilmington, North Carolina. These townships were destroyed because of the surrounding White communities' jealousy and need to suppress models that refuted their claims of White superiority. The injury included education. We were denied the right to be educated. Anyone who attempted to educate us was also punished, and we still see today that there are separate and still unequal systems that provide an inferior education to Black people.

In the area of crime and punishment, there are still dual systems that exist where Black people are penalized more harshly than Caucasians for the same conduct. We all know very well of the disparities in terms of wealth and poverty. I need not go into that. In the area of health, Blacks are still dying at higher rates than Whites for the same illnesses and when they exhibit similar symptoms. These are all things that must be considered.

In keeping with domestic and international law, reparation is about human freedom, human justice and the value that this society places on human life in the past as well as in the present and future. African life must be viewed equally as other life because other groups attain reparations both inside and outside the United States, and which the United States still supports, such as the Jewish victims of the Holocaust, the Japanese Americans who were interned during the Second World War, and Alaska natives for land, labor and resources that were taken. These are all examples of reparations that have been paid, and we should not focus on whether a check goes to African descendants, because reparations go much farther than that. If we consider changing the systems and institutions, as an example, that still remain with us and that keep these dual systems going, that in and of itself would address some of the issues that are our concern. As to Congressman Cohen, who is addressing the issue of apology, an apology, in and of itself, we view as an opportunity to sidestep the severity of the crimes that were committed, and if it does not come with an understanding that some reciprocity needs to be made, some way of paying the victims for the atrocities that have been inflicted upon them, then it is disingenuous. We agree that there is no amount of money that can be sufficient to cover the loss of lives, but we believe also that we have a solemn responsibility to say what is rightfully ours and to keep up this fight no matter what. We understand and we believe very strongly that there must be a multigenerational, equitable remedy that improves the lives of African Americans for future generations.

We firmly believe that the passage of H.R. 40 will facilitate this national dialogue that we have been discussing here today, and it will demonstrate slavery's link to current social, health, economic, and political issues that are pertinent to African descendants. We believe very strongly that it will acknowledge this mass of human suffering and the tragic plight of millions of African descendants--men, women and children who were lost. This is absolutely critical, because presently the average history book in our schools includes two paragraphs, no more than that, and usually ridiculous photographs of darkies appearing like they are enjoying themselves while they are enslaved. This has got to be addressed.

The passage of H.R. 40 and the establishment of the commission will also allow U.S. residents to make peace with a significant part of this country's shameful past and end the intergenerational trauma that it has caused. It will continue to come up until we address it thoroughly. This is about getting out the truth. This will also allow the United States to show that it is committed to peace and justice and the same human rights standards for which we attempt to hold other nations around the world accountable.

We firmly believe that H.R. 40 should be passed, and we urge the entire Committee to come on as cosponsors of this bill and assist us in doing whatever is possible to move this forward to a complete vote and acceptance.

Thank you.

Mr. Conyers. Thank you very much.

[The prepared statement of Ms. Tyehimba follows:]

Prepared Statement of Kibibi Tyehimba

### **Introduction**

I am Kibibi Tyehimba, Co-Chair of the National Coalition of Blacks for Reparations in America (N'COBRA). I appreciate the opportunity to testify before members of the Congress during its briefing on the Legacy of the Trans-Atlantic Slave Trade, as this hearing is critical to understanding the importance of House Resolution 40. Today I pay homage to my African ancestors, and give voice to the millions who perished during the so-called Trans-Atlantic slave trade, and who suffered untold atrocities during the American era of enslavement. Were it not for their strength, and perseverance we would not be here, nor would Americans be able to enjoy the standard of living for which this country is known.

At the request of Dr. Imari Obadele, the founding meeting for N'COBRA was convened on September 26, 1987 here in Washington, DC, for the purpose of broadening the base of support for the long-standing reparations movement. This meeting took place following the introduction of legislation seeking reparations for Japanese Americans interned during World War II.

“The mission of the National Coalition of Blacks for Reparations in America (N'COBRA) is to win full Reparations for Black African Descendants residing in the United States and its territories for the genocidal war against Africans that created the Trans-Atlantic Slave “Trade,” Chattel Slavery, Jim Crow and Chattel Slavery's continuing vestiges (the Maafa). To that end, N'COBRA shall organize and mobilize all strata of these Black communities into an effective mass-based reparations movement. N'COBRA shall also serve as a coordinating body for the reparations effort in the United States. Further, through its leadership role in the reparations movement within the United States and its territories, N'COBRA recognizes reparations is a just demand for all African peoples and shall join with others in building the international reparations movement.”

N'COBRA's primary objective, which it met, was to make reparations a household word and build support nationally and internationally. As a result, interest in the reparations debate has moved beyond the so-called "fringe" groups to the media, universities; city and state legislatures; church organizations of every denomination; and civic associations with members from various socio-economic, political, racial and ethnic backgrounds. We applaud local and national N'COBRA leaders and members too numerous to mention here today for their personal sacrifices made over these last 20 years.

## **Background**

For 246 years, the US government and the prior colonies, participated in one of the greatest holocausts of human history, the holocaust of enslavement, during which, millions of African people perished and millions more endured every imaginable and some unimaginable horrors ever inflicted upon a group of people solely because of their group identity and the greed of those who committed these crimes against humanity. The US and the prior colonies sanctioned with its Constitution and enforced with covert and overt violence, the genocidal process that destroyed millions of human lives, human cultures, and the human possibility inherent in African life and culture. Millions of Africans were kidnapped, torn from their homeland, Africa, and their rich cultural heritage. Innocent women, children, and men were brutally maimed, murdered, raped, terrorized and tortured during the middle passage voyage to America. Within American shores, they were denied the right to maintain their language, spiritual practices and normal family relations. New families created during enslavement were constantly under the threat of being torn apart at the whim of the "slave owner." Following the official end of slavery, racist repression continued, which further destroyed lives, and communities. However the US has yet to acknowledge this horrific destruction or to take steps to make amends for it. Following the official end of slavery, racist repression continued, which further destroyed lives, communities, and possibilities.

While slavery impoverished Africa, and particularly West Africa, it played a crucial role in the development of the modern world economy that is presently dominated by the US. The free labor of enslaved Africans produced major consumer goods and services, and provided the stimulus for shipbuilding, banking, and insurance in both the US and England. Yet after reaping the benefits of free labor, in 1865 the federal government freed 4 million Blacks in January, no less, to wander the countryside, one of the coldest months of the winter, without a dime, with no property, and largely illiterate, leaving few choices for the freed African peoples other than to exist in virtual slavery locked in place by Black Codes, convict lease, peonage, and cleverly crafted share cropping schemes. Jim Crow laws, followed by institutionalized racism, kept African descendants locked in vicious cycles of poverty that are still evident today.

Presently dual systems exist in almost every area of life including wealth, poverty, health care, education, employment, and criminal punishment. Hard-won gains, such as Affirmative Action, voting rights, the right to equal education, and equal protection under the law, are being rolled back, and the victims of generations' old racism and discrimination are being blamed for their own oppression.

### **The Injuries of Slavery Defined**

Informed, honest historians and social scientists acknowledge the ingering effects of slavery on present day African American life. Accordingly, in 1996 and 1997, the N'COBRA Legal Strategies Commission, chaired by Adjoa A. Aiyetoro, set out to develop an approach to reparations litigation. The commission's work led to the identification and documentation of five distinct injury areas suffered by African people during and after enslavement. The injury areas include:

Peoplehood/Nationhood--The destruction of African peoples' culture, and the infringement of the larger culture upon Black people of African descent in the United States and the prior colonies. Jim Crow and ongoing discrimination have resulted in a denial of our right to openly express our culture, appropriation of our culture, and denial of the right and resources necessary to be a self-determining people.

Throughout this country's history African Descendants' efforts to be self-determining have been met with violence and destruction, as evidenced by the untold numbers of Black townships, such as Greenwood, Oklahoma; Redwood, Florida; and Wilmington, North Carolina--townships ultimately destroyed because of the surrounding white community's jealousy and need to suppress models that refuted their claims of white superiority.

Education--The denial of our right to an education started in slavery with criminal sanctions imposed on our enslaved ancestors who learned, and anyone who taught them to read or write. Maintenance of dual, separate but unequal systems from slavery to the present provided an inferior education in schools with predominantly Black students of African ancestry. Federal funds were often provided schools despite this dual education system--one predominantly Caucasian and the other for predominantly Black students of African ancestry.

Criminal Punishment--The enslavement of African peoples necessitated the development of a dual punishment system that continues to exist in the U.S. This dual system punishes Black people of African descent more harshly than Caucasians for the same conduct. Examples of the dual system were found from the period of enslavement through the Jim Crow era.

The ongoing discrimination is most vividly evident with the continuation of disparate punishments for crack and powder cocaine (Black people of African ancestry are more frequently charged with possession of crack and certified to the federal system where a Caucasian person would have to possess 100 times more powder cocaine than crack cocaine to receive the same punishment. The result has been a disproportionately higher number of Black people of African descent being incarcerated for violation of the drug laws). In addition, Black people of African descent are subjected to racial profiling and the disparate imposition of the death penalty where Black men are more likely to be charged and convicted of a capital offense than a similarly situated Caucasian and particularly for killing a Caucasian.

Wealth/poverty--The wealth gap between Black people of African descent and Caucasians created during the enslavement of African peoples has been sustained; confiscation of land and other forms of wealth continue up to present day. Black people of African descent were forced into poverty through enslavement, Jim Crow and continuing discrimination in employment, housing and other economic areas.

### **Health--The Focus is on Physical and Mental Health.**

Health knowledge of enslaved Africans was appropriated and enslaved Africans functioned as non-paid health care providers for others; the use of Black people of African descent as subjects for tortuous health experiments (Tuskegee Syphilis Study) and the denial of quality health care during and post-slavery. The health injury area also includes the continuing discrimination in the provision of health care, including the disproportionately higher rate of closures of hospitals serving Black communities; lack of access to health insurance to provide affordable access to health care; the failure to validate health care protocols for Black people of African descent; and the failure to provide the appropriate medical treatment for critical health care symptoms which have resulted in higher rates of death for Black people of African descent compared to Caucasians exhibiting these symptoms. Finally, this injury area includes an examination of post-slavery stress syndrome, a developing area of investigation by Black mental health professionals of African descent.

## **Moral and Legal Justification for Reparations**

The struggle for reparations for the Holocaust of Enslavement of African people is about fundamental issues of human freedom, human justice and the value we place on human life in the past as well as in the present and future. After 246 years of enslavement--the greatest atrocity in American history; 100 years of Jim Crow; and the ongoing effects of racial discrimination, African descendants efforts to obtain reparations are morally just, as African life is equally of value, as are the lives of other groups that have obtained reparations both inside and outside the US and whose causes the US has supported and continues to support, including Jewish victims of the Nazi Holocaust, Japanese Americans interned in WWII US concentration camps, Alaska Natives for land, labor, and resources taken, Native Americans for violations of treaty rights, political dissenters and their descendants in Argentina, and to Colombia for excising the territory of Panama for the purpose of building the Panama Canal. With such precedents of reparations to primarily non-Black peoples, it would be sheer racism for the US to continue ignoring this brutal era in American history, and the African descendant morally just claim for Reparations.

In keeping with the principles of both international human rights law and domestic law, and with a clear understanding of the factual and moral justification for our claim, we seek remedy for damages from the US government, as the dehumanization and atrocities of slavery were not isolated occurrences. Rather they were mandated by formal laws codified and even enshrined within the U.S. Constitution. The role of the federal government in supporting the institution of slavery and subsequent discrimination directed against the descendants of formerly enslaved Africans must be formally acknowledged and redressed.

## **N'cobra Outreach to Gather and Report the Will of the People**

Passing H.R. 40 is an important first step that could lead to a substantive dialogue throughout the nation on chattel slavery in the U.S. and Jim Crow and the continuing harm suffered by Black people of African descent and ways to remedy it.

Since 1990, N'COBRA has hosted annual conferences around the country to provide an opportunity for African descendants to learn about the reparations movement, to voice their opinions about reparations and the components of an equitable reparations settlement:

While there is agreement that we can never place a price on our suffering and pain or wash away the blood of our ancestors shed at the hands of their enslavers, we have a solemn responsibility to seek what is rightfully due us, in keeping with domestic and international law, in order to heal, repair and restore our people.

There is agreement that reparations should be multi-generational, as the effects of 246 years of slavery and 100 years of Jim Crow cannot be erased in a generation.

Reparations should improve the lives of African descendants in the US for future generations to come; foster complete economic, social and political parity; and allow for full rights of self-determination.

There are mixed feelings about the significance of an apology. The recent wave of "statements of profound regret" which fall short of apology, are seen as an effort to sidestep the severity of the crimes committed and the responsibility of the perpetrators to make amends. A true apology cannot be conditional, e.g., "I regret the crime, but there can be no further discussion of reparations." Apology alone is disingenuous, as it requires full acknowledgement of the conduct that caused the injuries, and requires material reparations to compensate the injured parties.

Most agree that the evidence substantiating the African descendant claim for Reparations has already been sufficiently documented. However, there has generally been a willingness to support HR 40, though there are varying opinions about what should be included in an equitable remedy. African descendants continue to lobby for the passage of HR40, assuming it will set the stage for:

National Public Dialogue about the era of Enslavement in the U.S. and the prior colonies;

Public Admission of the crimes committed;

Public Apology for the commission of the crimes;

Public Recognition through institutionalization and education, i.e., national and local monuments, media programming and development of appropriate curriculum throughout public schools and university systems to remind and teach the meaning of this horrendous human loss and destruction not only to African people, but to the country and the world;

Compensation awarded in as many forms as necessary to equitably address the many forms of injury caused by chattel slavery and its continuing vestiges including changes in or elimination of laws and practices that allow African descendants to be treated differently than White people; monetary compensation, land, repatriation; release of political prisoners wrongfully incarcerated during the COINTELPRO era of the 60s and 70s, an end to racial profiling and discrimination in the provision of health care and access to affordable housing, providing scholarship and community development funds for Black people of African descent, and supporting processes of self-determination;

Establishment of structures and processes to prevent reoccurrence of such massive destruction of human life, human culture and human possibility.

## **HR 40 and the Legislative and Legal Work of N'cobra**

First of all, we acknowledge N'COBRA member Reparations Ray Jenkins of Detroit, MI who successfully lobbied Congressman John Conyers to introduce the H.R. 40 in 1989, and all our members who have lobbied for its passage.

N'COBRA has supported legislative strategies and initiatives, such as H.R. 40, the Reparations Study Bill at each congressional session since 1989. N'COBRA played a leading role in encouraging and supporting Congressman Conyers in developing and introducing H.R. 40. N'COBRA's Commission on Legislative Strategies was formed in 2000, under the leadership of Ms. Nkechi Taifa, who as Chair until 2005, trained activists to effectively lobby Members of the House of Representatives to sign on as co-sponsors of HR40. Of particular note are the N'COBRA ``A Year of Black Presence (AYBP) lobbyists, under the leadership of Philadelphia N'COBRA member Mr. Milton McGriff. In 2003 over 500 AYBP lobbyists from Pennsylvania, New York, New Jersey, Virginia, and Washington DC sought Congressional members' co-sponsorship of HR 40.

We acknowledge the 37 year history of QM Dorothy Benton Lewis for her consistent fight for reparations at the city, state, federal and international level, and her willingness to speak forcefully to this issue in any environment. We thank her for her leadership inside and outside of N'COBRA and for being and remaining on the battlefield when there were few in the room, until now when over 80% of African descendants support our claim for reparations. Her representation of this important discussion in the national media was critical to the forward flow of the Reparations movement. We also acknowledge the work of Reparations activists and supporters who circulated petitions and surveys informing and gauging levels of support; held forums and town hall meetings to keep H.R. 40 before the public; addressed groups of all sizes; and successfully lobbied for HR40 companion legislation in cities and states across the country. To date, 28 cities have adopted resolutions supporting passage of HR 40; 8 cities have adopted Slavery Disclosure Ordinances requiring corporations who participated in and profited from the enslavement of African peoples to disclose their or their predecessors' history in order to be eligible for that city's contracts; 4 states have issued statements of profound regret for their participation in the enslavement of African people; 2 states have adopted resolutions supporting passage of HR40, and one state, Florida, found the courage to admit to and pay reparations to the victims and descendants of the massacre of the Black township of Rosewood. Lobbying efforts also extended to community based, civic, and church organizations that in turn adopted resolutions supporting reparations and the passage of HR 40. More recent passage of Slavery Disclosure Ordinances is providing evidence that present day corporations' wealth is directly linked to the ``free labor" of enslaved Africans.

In light of the pivotal role of boycotts during the Anti-Apartheid movement, N'COBRA members and supporters are also organizing and participating in boycotts against Wachovia Corporation and Aetna Insurance for their participation in and profiting from the enslavement of African peoples in the US and prior colonies. We acknowledge the Philadelphia N'COBRA Wachovia Divestment Committee, under the leadership of Minister Ari Merretezon, and Ms. Pat Swailes, who lead the charge for Blacks in Government (BIG).

## **Recommendation**

N'COBRA strongly recommends passage of HR 40 to establish a commission to examine the institution of slavery, the impact of these forces on living African-Americans, and to make recommendations to the Congress on appropriate remedies. The passage of HR 40 will:

Facilitate a national dialog about an era in US history that has largely been ignored or down-played.

Demonstrate the link between chattel slavery and the current social, health, economic and political status of African descendants and therefore destroy the myth of White Supremacy.

Recognize the link between chattel slavery and present day race relations, and enable the amelioration of racial discrimination in America.

Acknowledge the massive human suffering and the tragic plight of millions of African descendant men, women and children during slavery to demonstrate the sacredness of African life, specifically, and all human life in general.

Allow United States' residents to make peace with a significant part of this country's shameful past, and end the intergenerational trauma of its current effects.

Demonstrate to the world, the United States' commitment to peace and justice, and the same human rights standards to which it seeks to hold other nations.

## **Conclusion**

On behalf of the National Coalition of Blacks for Reparations in America (N'COBRA) I thank the Chair of the Judiciary Committee, Congressman John Conyers, and the Chair of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Congressman Jerrold Nadler, and every Member present here today for this opportunity to provide the grassroots perspective. N'COBRA recognizes that the passage of this bill is important to obtaining reparations and remains committed to this process although Congress has not yet favorably acted upon it. N'COBRA strongly urges the committee to support passage of HR 40.

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Mr. Conyers. Our third witness, Attorney Roger Clegg, is no stranger to the Committee. He is president and general counsel of the Center for Equal Opportunity, which is the Nation's only conservative think tank devoted to issues of race and ethnicity, promoting a color-blind society. Mr. Clegg is the former Deputy Assistant Attorney General in two different administrations, and he holds the second highest position in both the Civil Rights Division and in the Environment and Natural Resources Division. He has testified before this Committee, and we are always happy to see him here.

Welcome.

TESTIMONY OF ROGER CLEGG, PRESIDENT AND GENERAL COUNSEL, CENTER FOR EQUAL OPPORTUNITY

Mr. Clegg. Thank you very much, Chairman Conyers, for that kind introduction. I am delighted to be here. The motto of the United States is "E pluribus unum"--out of many, one. And what I want to talk about today is that principle and why H.R. 40 is inconsistent with it.

America is increasingly a multi-racial, multi-ethnic society. And that is true not only in the aggregate, but also for individual Americans. More and more, Americans can trace their ancestry through a wide variety of racial and ethnic lines.

Just about every racial or ethnic group in the United States can point to hardships that it has undergone. Just about every individual in the United States can point to an ancestor or many ancestors who have endured great hardships. I don't think that it will heal or unite this country for one group to be singled out as deserving of special recompense because of the hardships that its ancestors faced. I don't mean to equate the inhumanity of slavery with the hardships that other groups underwent. Slavery, obviously, was unique. But on the other hand, what was suffered by Native Americans in this country was often quite brutal. The interning of Japanese Americans was quite brutal. Latinos have often undergone very similar discrimination to what was undergone by African Americans. Anti-Semitism in this country has existed. Discrimination against Italians and Irish and others have existed as well.

I don't believe that there is a reluctance on the part of the American people to acknowledge the horrors of slavery. I keep hearing that, but I don't understand what that statement is based on. I think that you read any textbook in the United States, you talk to any American, they acknowledge, as any sane person has to, the horrors of slavery. There is no shortage of historical scholarship on this. And that scholarship is going to continue.

To suggest that a commission made up of seven experts can be paid \$8 million and, in 1 year, come up with a definitive answer to the question of what slavery has meant to the United States, what it has done to African Americans, what the continuing effects are, is, I think, ludicrous. That is too short a time. It is too complicated an issue. It is very difficult to figure out, it is impossible to figure out, how much of the disparities that African Americans suffer today is traceable to slavery and how much is traceable to other factors.

I will just give one example. The principal hurdle facing African Americans today is the fact that seven out of 10 African Americans are born out of wedlock. Just about any social problem that you can name-- crime, drugs, dropping out of school, doing poorly in school and so forth-- has a strong correlation with growing up in a home without a father. And it is very hard to argue that this problem is traceable to slavery or to Jim Crow, since illegitimacy rates in the African American community began to skyrocket just at about the time that Jim Crow was starting to crumble.

Even if we could figure out what percentage of current inequities are traceable to slavery, I don't think that it would make any sense to pay compensation to individuals on that basis.

For starters, there are very difficult logistical problems in figuring out to whom a check is going to be paid. Are you going to require people to prove slave ancestry? How are you going to do that? If you just assume that anybody who is a particular color is eligible, that creates constitutional problems and will create other inequities. And of course, there are going to be problems with just taking people at their word if the Federal Government is writing out checks to anybody who says that they think they have a slave ancestor.

But more fundamentally, what does it matter whether poverty is traceable to a particular historical wrong when we are trying to decide what to do about it for an individual. In other words, suppose that you have two children. One could show somehow that the reason he was poor was because of the discrimination that ancestors in his family faced. The other child is poor for no reason except that his mother and father just immigrated to this country from a poverty-stricken homeland. Is the government supposed to say, well, we view the first child's poverty as a problem of Federal concern, but not the second child's? I don't think that that would make any sense. I don't think that anybody on this Committee would think that that would make sense. There is no reason why eligibility for a social program ought to hinge on whether a citizen can trace his need for the program to this or that historical cause.

If we were to make a social program available to those of one race and not to others, there would also be serious constitutional problems. And I think that that is something that this Committee in particular needs to address. Presumably, the justification for the program would be remedial, but the Supreme Court has rejected general claims of societal discrimination as not sufficiently compelling to justify racial classifications.

Finally, on the issue of an apology, here again, I don't understand the claim that an apology is going to help heal these wounds. I don't think frankly that that is the intent. I think that the focus of these apologies, the focus of this whole bill, is not to heal wounds, were you to keep those wounds open, to keep grievance alive, to keep some Americans on the hook so that they will be required to make amends for things that people in our past did who happen to be the same color as those Americans are today.

In conclusion, Mr. Chairman, a great strength of America and Americans is that we are a forward looking people. This is a very backwards-looking bill. I think that what Americans need to do is to look at the social problems that we have in this country--that may disproportionately affect those of certain racial and ethnic backgrounds but are not limited to them--and figure out what we can do to help individuals who face those social problems. But when we figure out what those steps are, those programs should be available to all Americans regardless of their skin color, regardless of their ancestry, regardless of what the historical cause might have been for why they find themselves in the needful situation that they are in.

It is this approach that is consistent with the principle of E pluribus unum, it is this approach that is required by the principle of nondiscrimination and equal protection. Thank you very much, Mr. Chairman.

Mr. Conyers. We appreciate your testimony.

[The prepared statement of Roger Clegg follows:]

#### Prepared Statement of Roger Clegg

Thank you very much, Mr. Chairman, for the opportunity to testify today. My name is Roger Clegg, and I am president and general counsel of the Center for Equal Opportunity, a nonprofit research and educational organization that is based in Falls Church, Virginia. Our chairman is Linda Chavez, and our focus is on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation. I should also note that I was a deputy in the U.S. Department of Justice's Civil Rights Division for four years, from 1987 to 1991.

#### **Overview**

The discussion today of the legacy of the trans-Atlantic slave trade is intended, I presume, to help lay the groundwork for favorable consideration of H.R. 40, the "Commission to Study Reparation Proposals for African-Americans Act." And the enterprise that H.R. 40 would have us embark on, in turn, is as follows: First, a commission would determine what effects slavery and post-slavery discrimination had on African Americans and what "lingering negative effects" it continues to have on them; and then, second, it would suggest possible remedies for those effects. The two remedies that are explicitly mentioned are an apology and some form of compensation.

There are any number of problems with this enterprise, and I would like briefly to discuss some of them in my testimony today. (Some of the points I will make are also expressed, often in more detail, in a dialogue I have written on this topic, a version of which was published in Engage magazine, and which I have included as an appendix to my testimony; I've also included an op-ed I wrote on a recent Chicago ordinance requiring city contractors to document any slavery-related business in the antebellum era.) this is an unnecessary and hopeless task for such a government commission.

First, this research project is ill-suited for a government commission. H.R. 40 says that "sufficient inquiry has not been made into the effects of the institution of slavery on living African-Americans and society in the United States." I am not sure what that statement is based on, and I am not a professional historian. But as a lay reader and a civil rights lawyer, it seems to me that there is no shortage of books and articles about slavery, and discrimination, and the problems facing the African American community today, and the way all these intersect. I am not declaring that there has been "sufficient inquiry"; just that there has been a great deal and that it continues--and that, given the intrinsic interest of these topics, especially among those in the academy, it will likely continue for the foreseeable future.

What I would declare, moreover, is that this inquiry will never end, and it will be a long time before anyone would presume to call the inquiry "sufficient." Few historical inquiries ever are: There is always some new angle to explore. Further, the conclusions that historians will draw will always be incomplete, imperfect, and challenged by contemporary and future historians. That is the nature of historical scholarship, especially for issues as complex as this one.

H.R. 40 suggests, on the other hand, that something like a definitive answer will be possible if the government takes \$8 million, hires seven "especially qualified" people, and gives them a year to figure it all out. This is, of course, absurd.

No one will dispute that slavery and Jim Crow were horrible and inhumane; no one will dispute that discrimination still exists, though only a delusional person would deny that America has made radical, dramatic, inspiring progress in the last 40 years--that its society has truly been transformed in an astonishingly short period of time. But it is impossible to say how much of the present is the result of one particular kind of event in the past. Only someone very arrogant or very foolish would make such a pronouncement.

Let me give just one example. The principal hurdle facing the African American community today is the fact that 7 out of 10 African Americans are born out of wedlock. Just about any social problem you can name--crime, drugs, dropping out of school, doing poorly in school, and so forth--has a strong correlation with growing up in a home without a father. And it is very hard to argue that this problem is traceable to slavery or Jim Crow, since illegitimacy rates started to skyrocket in the African American community just at the time that Jim Crow was starting to crumble.

Given that, how can anyone say with any confidence that such-and-such amount of such-and-such a social problem facing African Americans must be due to slavery? It cannot be done. Race-based compensation would be both illogical and unconstitutional.

But let's suppose that, nonetheless, the commission decides that it can be done. Let's suppose that this commission says, "Forty-six percent of the poverty in the African American community today can be traced to slavery and discrimination, forty-five percent is caused by illegitimacy, and the remaining nine percent is just bad luck," or some such silly thing. Or let's suppose that it says something less

silly, but so obvious that it does not take a government commission to figure it out--something like, "To some significant extent, the disproportionate amount of poverty facing the African American community today can be traced to slavery and the discrimination its members faced."

Would it follow that some sort of "compensation"--one of the two remedies H.R. 40 explicitly asks the commission to consider--ought to be paid to African Americans? No. It certainly wouldn't make sense to pay compensation to African Americans who are not living in poverty. It wouldn't make sense to pay compensation to African Americans who are living in poverty if that poverty was not caused by slavery and Jim Crow--to give an obvious example, to African Americans who just immigrated here. Yet requiring a particular person to prove his slave ancestry leads to many problems (as discussed in Appendix A); presuming slave ancestry because of a person's appearance raises many problems, too; and there are problems with simply taking people at their word as well.

Also, why should an African American who could trace his poverty to slavery be entitled to compensation over, say, a poor American Indian who could not but could trace it to some other historical wrong (in this case, say, a broken treaty)? Or a poor Latino or a poor Asian or even a poor white? Any of them might be able to trace his poverty to some historical wrong.

But most fundamentally, why does it matter whether the poverty is traceable to a historical wrong? Suppose you have two children. One could show somehow that the reason he was poor was because of the discrimination his family suffered. The other child is poor for no reason except his mother and father just immigrated to this country from a poverty-stricken homeland. Is the government supposed to say, "We view the first child's poverty as a problem of federal concern, but not the second child's"?

Of course not. There is no reason why eligibility for a social program ought to hinge on whether a citizen can trace his need for the program to this or that historical cause.

If we design social programs to help disadvantaged people, and if disadvantaged people are disproportionately African American because of the discrimination that they have disproportionately suffered, then African Americans disproportionately will be eligible for those programs. And, indeed, that is the case today. More than that makes no sense. And if the commission simply recommends more social programs that are not race-based, then it is even harder to see why its historical focus should be on one particular subset of one particular racial group.

If, finally, we were to make a social program available to those of one race and not to others, there would be serious constitutional problems. Presumably the justification for the program would be remedial, but the Supreme Court has--quite rightly--rejected general claims of societal discrimination as not sufficiently compelling to justify racial classifications.

An apology would make no sense either.

As for an apology, the second possible remedy listed by H.R. 40: The bill asks "Whether the Government of the United States should offer a formal apology on behalf of the people of the United States for the perpetuation of gross human rights violations on African slaves and their descendants."

This is, at best, an odd apology. What would really be appropriate, of course, is for the slave-traders and the slave-masters to apologize to the slaves--but all these folks have long since passed on to their just rewards.

So instead we have the U.S. government (which actually ended slavery, at the cost of much blood and treasure) apologizing on behalf of today's American people (none of whom ever owned slaves, and most of whom never had ancestors who did, either) to ... whom? The bill does not say. Maybe the idea is just to apologize to ourselves, but that seems rather strange. Presumably the idea is to apologize to living African Americans. But these African Americans are not slaves; many are descended from slaves, but many are not; many of the former--maybe most now--are descended from both slaves and slave-owners.

Mr. Chairman, I cannot resist pointing out that, if there is anyone in the United States today from whom an apology for slavery and Jim Crow would be appropriate, it would be, not the U.S. government, and certainly not the American people--but the Democratic Party. It, after all, was historically the party of slavery, secession, and segregation.

But let's be honest: Inevitably, such apologies are intended and interpreted as whites apologizing to blacks for slavery. (I wonder what Asians and Latinos, as well as American Indians, think of this theater?) But no white today is or ever was a slaveholder; no black today is or ever was a slave. What's the point of one apologizing to the other?

Everyone has an ancestor who was wronged by someone else's ancestor; there is no point in trying to find a thread for each present-day misfortune in an individual's life that can be followed back through the decades to a particular misdeed; and anyone's poverty today likely has many causes--some old, some recent, some other people's fault, some one's own. Nobody nowadays thinks slavery was anything but an abomination; nobody learns anything from this charade.

We are told that these apologies will help to bring closure, help enable us to move on. Nonsense--and that is not their intent, at least for many people. The idea is to reopen wounds, to keep grievance alive, to keep white people on the hook. An obsession with past wrongs, to the extent that present opportunity and future promise are ignored or slighted, is a bad thing.

A great strength of Americans is that we are forward looking. The trouble with slavery apologies is that they are designed to make whites feel guilty and to urge blacks to think of themselves as victims. Neither emotion is valid in these closing days of the year 2007; both are bad for race relations. In particular, the last thing an African American needs in 2007 is an excuse to fail. As individual white people will go about their business--and Latinos and Asians and Arab Americans and American Indians--individual black people will be left with the same choice they've had for years: embrace self-reliance and responsibility, or fail and blame it on others.

## **Conclusion**

All of this is true not just for the apology issue but also for the entire enterprise that H.R. 40 would embark on: That is, it would accomplish nothing and would cost much. And I don't mean monetary costs, but social costs: Specifically, the poisonous effect it would have a racial relations, and the pernicious message it would send, in particular, to those in the African American community, that their focus should be on what was done to them in the past, rather than the opportunities they have now.

Thank you again, Mr. Chairman, for the opportunity to testify today. I would be happy to try to answer any questions the Subcommittee may have for me.

Mr. Conyers. Bishop Thomas Shaw of the Episcopal Diocese of Massachusetts was born and raised in Middle Creek, Michigan, which I am quite proud, and he chairs the Episcopal church's standing commission on national and international concerns. And is also a member of the Advisory Council for Anglican Observer to the United Nations. In 2000, he served as an intern for our former colleague Representative Samuel Holten, who is well remembered. And we are so pleased that you could join us today, Bishop, and you are recognized at this time.

TESTIMONY OF REVEREND M. THOMAS SHAW, III, SSJE, BISHOP OF THE DIOCESE OF MASSACHUSETTS

Reverend Shaw. Thank you very much, Chairman Conyers. It is a pleasure to be back in Washington. And I am particularly pleased to be here today to speak to the oversight hearing on the abolition of the Trans-Atlantic slave trade. And I specifically ask that my full testimony be made part of the official record of this hearing.

Mr. Conyers. Without objection, so ordered.

Reverend Shaw. I should state at the outset that we as a church have asked God's forgiveness for our complicity in and injury done by the institution of slavery and its aftermath. I am ashamed to say that the Episcopal Church in the decades leading to the American Civil War did not formally address the problem of slavery. The post-Revolutionary War church wanted to avoid a schism within the church, which it was successful at doing, but avoiding that schism meant not addressing the issue of slavery in any official or collective way. With that painful background in our church, our 75th general convention meeting in 2006 looked to the upcoming bicentennial commemoration of the abolition of the slave trade as a time in which we could affirm or commitment to become a transformed anti-racism church and to work toward healing reconciliation and a restoration of the wholeness to the family of God.

We looked to what we could do as the Episcopal Church as individuals, as parishes and Dioceses and also what we could ask all of you, the Congress to do. Among other things, the Episcopal Church decided to apologize as a church for our complicity in and injury done by the institution of slavery and its aftermath. We repented of this sin and asked God's grace and forgiveness ever mindful that we did so far too late. We decided to call upon the Congress and the American people to support legislation initiating study of and dialogue about the history and legacy of slavery in the United States, and the proposals for monetary and nonmonetary reparations to the descendants to the victims of slavery.

We, therefore, as a church, fully support H.R. 40. We ask every Diocese in the Episcopal Church to collect and document detailed information in its community on A, the complicity of the Episcopal Church and the institution of slavery and in the subsequent history of segregation and discrimination; and B, the economic benefits the Episcopal Church derived from the institution of slavery.

A report on that work will be made to our 2009 general convention on how the church can be a repair of the breach, both materially and relationally, and achieve the spiritual healing and reconciliation that will lead us to a new life in Christ. We believe that work essential to determining the remedies that might be considered. Work is now underway in a number of our Diocese including Mississippi where research on slavery and its impact on building the city of Natchez is already disclosed that its oldest Episcopal Church was built by slaves.

The priest of St. Paul's Delray Beach in Southeast Florida is writing a history of the presence of and contributions of Blacks in the Episcopal Church in Florida. We are hopeful that what we learn will be helpful to the Commission that would be established under H.R. 40. We know that our exploration has just begun and that next year's release of the film, *Traces of the Trade*, will open the eyes of many to the legacy of slavery for both Black and White Americans and the role of the north and its perpetuation.

And finally, we have asked that a day of repentance--for a day of repentance, and that that day be a service of repentance at the Washington National Cathedral and each Diocese to hold a similar service. That event is scheduled for October 4, 2008. And we invite all of you to join us. The full text of each of these resolutions is included as an appendix to my testimony, as well as two pastoral letters in 1994 and 2006 from the House of Bishops on the sin of racism.

On December 30, 1799, the first Black priest in the Episcopal Church in the United States, Absalom Jones, and 70 fellow signatories petitioned the House of Representatives to protect those taken by slave traders. They concluded their petition with a prayer for the real happiness of every member of a community. Nine years later on January 1, 1808, Jones would celebrate the end of U.S. participation in the Trans-Atlantic slave trade with these words, the history of the world shows us that the deliverance of the children of Israel from their bondage is not the only instance in which it has pleased God to appear on behalf of oppressed and distressed nations as the delivery of the innocent and of those who call upon his name.

He is as unchangeable in his nature and character as he is in his wisdom and power. The great and blessed event which we have this day met to celebrate is a striking proof that the God of heaven and earth is the same yesterday and today and forever. We continue as a church to pray for what Absalom Jones called the real happiness of every member of the community, knowing that the blessed event of January 1, 1808 was an important step, not the final step in the emancipation of slaves. We are committed to becoming a transformed anti-racist church and to work toward healing reconciliation and restoration of wholeness to the family of God. We believe the work we are doing to research our church's complicity in the institution of the slave trade will help us, the Episcopal Church, to be transformed. We also believe that H.R. 40 will aid the Nation in its own continued healing. We look forward to the opportunity to continue this important and necessary work together. Thank you.

Mr. Conyers. Thanks so much, Bishop Shaw.

[The prepared statement of Reverend Shaw follows:]

Prepared Statement of Bishop M. Thomas Shaw, III

Thank you, Chairman Conyers. My name is Tom Shaw. I am the Episcopal Bishop of Massachusetts and I am honored to be here with this distinguished panel. As you may know, I was an intern in Representative Amo Houghton's office in 2000, so I am particularly pleased to be back in Washington for this important oversight hearing on the abolition of the trans-Atlantic slave trade.

I should state at the outset that we, as a church, have asked God's forgiveness for our complicity in and the injury done by the institution of slavery and its aftermath. Unlike the Quakers who were leaders in the abolitionist movement, too many Episcopalians did not raise their voices when God would have wished them to do so. Episcopalians were owners of slaves and of the ships that brought them to this land. Episcopalians lived in the north and in the south and, as a privileged church, we today recognize that our Church benefited materially from the slave trade.

The Episcopal Church in the decades leading to the American Civil War did not formally address the problem of slavery. The post-Revolutionary War church wanted to avoid a schism within the church, which it was successful at doing (unlike the divisions that had occurred to Presbyterian, Methodist, and Baptist churches during this period over the issue of slavery) but avoiding that schism meant not addressing the issue of slavery in any official or collective way. With that painful history as background, our 75th General Convention meeting in 2006 looked to the upcoming bicentennial commemoration of the abolition of the slave trade as a time in which we could affirm "our commitment to become a transformed, anti-racist church and to work toward healing, reconciliation, and a restoration of wholeness to the family of God."

As background I should explain that when our General Convention speaks it speaks for our whole church and only after careful discernment. The members of this committee would feel quite at home at our General Convention. It consists of a House of Deputies and a House of Bishops, and legislative committees that hold hearings such as this. Legislation must pass both Houses in the same form. So the voice of the General Convention is very much the voice of the Episcopal Church. And with that voice, we looked to what we could do as the Episcopal Church, as individuals, as parishes and dioceses--a diocese being a collection of churches in a single geographic area--and also what we could ask you, the Congress, to do. This is what the Episcopal Church decided:

\* We apologized as a Church for our complicity in, and the injury done by, the institution of slavery and its aftermath." We repented of this sin and asked God's grace and forgiveness, ever mindful that we did so far too late.

\* We recognized that slavery is a fundamental betrayal of the humanity of all persons and a "sin that continues to plague our common life in the Church and our culture." Furthermore we expressed "our most profound regret that (a) The Episcopal Church lent the institution of slavery its support and justification based on Scripture, and (b) after slavery was formally abolished, The Episcopal Church continued for at least a century to support de jure and de facto segregation and discrimination."

\* We called upon the "Congress and the American people to support legislation initiating study of and dialogue about the history and legacy of slavery in the United States and of proposals for monetary and non-monetary reparations to the descendants of the victims of slavery." We, therefore, fully support H.R. 40 which would establish a commission to examine those very issues and recommend appropriate remedies.

\* We asked every Diocese "to collect and document . . . detailed information in its community on (a) the complicity of The Episcopal Church in the institution of slavery and in the subsequent history of segregation and discrimination and (b) the economic benefits The Episcopal Church derived from the institution of slavery." A report on that work will be made to our 2009 General Convention on how the Church can be "the repairer of the breach" (Isaiah 58:12), both materially and relationally, and achieve the spiritual healing and reconciliation that will lead us to a new life in Christ." We believe that work essential to determining the remedies that might be considered.

Work is underway in a number of our dioceses, including Mississippi, where research on slavery and its impact on building the city of Natchez has already disclosed that its oldest Episcopal Church was built by slaves. The rector of St. Paul's Delray Beach in Southeast Florida is writing a history of the presence of, and contributions of blacks in the Episcopal Church in Florida. We are hopeful that what we learn will be helpful to the commission that would be established under H.R. 40. We know that our exploration has just begun and that next year's release of the film *Traces of the Trade*--a documentary being made by Katrina Brown, an Episcopalian from Rhode Island whose ancestors were involved in the slave trade--will open the eyes of many to the legacy of slavery for both black and white Americans, and the role of the North in its perpetuation.

\* Finally, we asked the elected leader of our church, the Presiding Bishop, to name a Day of Repentance and on that day to hold a Service of Repentance at the Washington National Cathedral, and each Diocese to hold a similar service. The Dioceses of New York, Newark, New Jersey and Long Island are joining in a service in commemoration of the abolition of the slave trade at the Cathedral of St. John the Divine in New York City on January 13, 2008. The National Cathedral event will be October 4, 2008 and we invite all of you to attend.

The full text of each of these resolutions is included as an appendix to my testimony as well as two pastoral letters, 1994 and 2006, from the House of Bishops on the sin of racism:

Each of these actions is important and together they represent our effort to be "repairers of the breach." We have much to overcome, and as the British Parliamentarian and crusader against slavery William Wilberforce told the House of Commons in 1789: "We are all guilty--we ought to all plead guilty, and not to exculpate ourselves by throwing blame on others." The history that we are researching is essential to understanding our Church's role in the institution of slavery and its perpetuation. With fuller knowledge will come true repentance that will then open us to reconciliation and remedies that we believe are yet to be revealed.

Ten years after Wilberforce's speech, on December 30, 1799, the first black priest in the Episcopal Church in the United States, Absalom Jones, and 70 fellow signatories petitioned the House of Representatives to protect those taken by slave traders. They concluded their petition with these words:

"In the Constitution, and the Fugitive bill, no mention is made of Black people or Slaves--therefore if the Bill of Rights, or the declaration of Congress are of any validity, we beseech that as we are men, we may be admitted to partake of the Liberties and unalienable Rights therein held forth--firmly believing that the extending of Justice and equity to all Classes, would be a means of drawing down the blessings of Heaven upon this Land, for the Peace and Prosperity of which, and the real happiness of every member of the Community, we fervently pray.

Nine years later, on January 1, 1808 Jones would celebrate the end of US participation in the transatlantic slave trade:

The history of the world shows us, that the deliverance of the children of Israel from their bondage, is not the only instance, in which it has pleased God to appear in behalf of oppressed and distressed nations, as the deliverer of the innocent, and of those who call upon his name. He is as unchangeable in his nature and character, as he is in his wisdom and power. The great and blessed event, which we have this day met to celebrate, is a striking proof, that the God of heaven and earth is the same, yesterday, and to-day, and forever. (January 1, 1808 St. Thomas Church, Philadelphia)

We continue to pray for Absalom Jones's "real happiness of every member of the Community," knowing that the "blessed event" of January 1, 1808 was an important step, not the final step, in the emancipation of slaves. As the Episcopal Church resolved in 2006, we are committed to becoming "a transformed, anti-racist church and to work toward healing, reconciliation, and a restoration of wholeness to the family of God." We believe the work we are doing to research our Church's complicity in the institution of the slave trade will help us, the Episcopal Church, to be transformed. We also believe that H.R. 40 will aid the nation in its own continued healing. We look forward to the opportunity to continue this important and necessary work together.

Mr. Conyers. We are being summoned to the floor for several votes. We will stand in recess. And we will have one of our staff members show you how you can get a very delicious lunch economically and make other perks available to you while we are gone. The Committee stands in recess.

[Recess.]

Mr. Conyers. The Committee will come to order. And the Chair recognizes the distinguished gentleman from Minnesota, Keith Ellison, for questions.

Mr. Ellison. Thank you, Mr. Chairman. And also, there are moments in life where you just have to thank God for being able to do what you do and being on this Committee today, you having called the Committee to address this critical subject. I certainly feel grateful and honored today. This is one of the high points of my service, to be able to address H.R. 40 and the Trans-Atlantic slave trade in the healing of our country. But I am not going to waste time talking, I am going get to some questions.

Professor Ogletree, many of the people who disagree with the H.R. 40 would submit that this slavery stuff happened a long time ago, why don't we just move on. Do you find that there are other aspects of American society and culture that really do focus on history all the time, like, for example, we celebrate 4th of July every year, I have never heard anybody say, well, that happened a long time ago so let us just drop it. What is your reaction to the folks who say or submit that it happened a long time ago, we need to be forward looking and stop looking in the past?

Mr. Ogletree. Congressman Ellison, that is a very good question and an excellent point. The reality is that the history is so important if we look at it carefully. Think about slavery and think about General Sherman's field order 15 during the Civil War when lots of lives were lost, Black and White, both from the confederate and from the union. Slaves and former slaves were told, we want you to fight for us for freedom and when you win this, we will give you reparation, it was very explicit, we will give you 40 acres. And that agreement was breached. We moved on.

In fact, we moved on with the slave owners getting much of their property back, but the slaves not getting any of that promise. When you think about a Constitution that still has the three-fifth clause written in it and you think about our Founding Fathers owning slaves, we can't move on, it is our history, it is very important that we address it. And I have to applaud Bishop Shaw because the church did sit back and allow these atrocities to happen from the holocaust through slavery. And they recognize that you can't move on, you can't move forward without repairing the past, which I think is very important. And the final thing is that we are a Nation of history.

And our children need to understand that we have overcome our past. We are not embarrassed by it, we are not disappointed alone that it happened, but we are prepared to move forward. And the reason we can't move on is because we have these sort of gotcha phrases when one of the witnesses talks about the reason we have this problem is because of the Democrats, make it party affiliated as if that matters. They were slave owners of every political persuasion and every part of our country, slave beneficiaries from New York, Rhode Island and Connecticut, all the way through the southern region.

So we can't move on until we look back to move forward. And I am glad that this study will do that, allow us to look back to move forward. Let me make one other final point. I mentioned my point that John Hope Franklin, who chaired President Clinton's one America initiative in 1998 said, well, we should move on from this issue of slavery. Well, John Hope Franklin then realized his father Buck Colbert Franklin was a victim of the same sort of domestic terrorism in Tulsa in 1921. And he became a plaintiff in that case. John Hope Franklin was 92 years old. How he felt when he was 50, 60, 70 or 80 is one thing.

How he feels now tells us that time has made him even more aware of our need to heal, but also to look back as a historian to create some of the errors of the 17th, 18th and 19th and 20th century as we move forward to the 21st Century.

Mr. Ellison. Thank you. I just want to commend you, Bishop Shaw. It is a tremendously courageous move by the Episcopal Church. Do you feel that by addressing this issue of slavery in a forthright honest manner that you are contributing to dividing and fracturing America or in your view is this a way for us to reconcile? And I just mention before I turn the mic to you, is that I recognize that we have recognized Japanese internment and done reparations, and yet, Japanese Americans are as authentically and thoroughly American today as they ever have been in the history of our country, perhaps even more so, we having addressed that terrible wrong committed. Do you think that by addressing this issue, we are contributing to the fracturing of America?

Reverend Shaw. No. Quite the opposite. I think that by addressing this issue in a straightforward way, we are really contributing to the healing, the spiritual healing and economic healing if that should take place of the people in the United States. And I think someone who is a member of our church, Archbishop Edmund Tutu has really shown that in South Africa, that this kind of transparency leads to healing and to reconciliation. And that is the kind of discussion that we want to have over the next few years.

Mr. Ellison. You are referring to the truth and reconciliation?

Reverend Shaw. Yes.

Mr. Ellison. And that commission is dealing with issues that happened really only 20 years ago if that, and a tremendous atrocity and yet we see South Africa, though far, far, far from where it wants to be slowly incrementally moving to our society, is that right?

Reverend Shaw. Yes.

Mr. Ellison. Mr. Clegg, can you help me understand, as Americans, do we still deal with and address historical phenomena that lingers in our present day to day? For example, I was talking to a friend of mine who is a professor of wills and trusts, and he told me that he was trying to help carry out the intent of an individual who wrote a will in 1862. He said it is not unusual to do these kind of things. I mean, talk to us for a moment, if you would, about how much recent events really impact the modern world that we are in?

Mr. Clegg. History is extremely important in understanding the world that we live in. As a conservative, I certainly believe that. I am somebody who believes that the meaning of a document, the U.S. Constitution, even though it was written a couple hundred years ago, still determines what it is lawful for this body to do.

Mr. Ellison. And yet, you seem to be so willing to say well, we need to look forward and just sort of, like, forget about slavery.

Mr. Clegg. No, I didn't say that. I don't think that we should forget about slavery. I think, though, that there are uses and abuses of history. And I think that dwelling on the past and looking to the past for reasons for current problems can become a distraction from addressing those problems and moving on.

Mr. Ellison. Mr. Clegg, I have got to reclaim my time now. But I am curious to know--I am just going to make a quick observation. Whenever I hear folks say that well, I believe in a colorblind America, and I am just for equality. And when they use that to sort of make an argument that we shouldn't address slavery, we shouldn't address historic inequality, and we just want to make everything equal now, I always wonder. I said I guess this person must have been a very active participant in the civil rights movement because clearly, the most glaring violation of the idea of equal protection in at least the 20th century was Jim Crow, so I could ensure that you would have a long history in fighting for sights for African Americans, Latino Americans to make our study truly colorblind when, in fact, our society was clearly violating those ideas of equal protection. I don't want to ask you to read your own resume, but I will be looking forward to see if you have been consistent over the years.

Mr. Clegg. I have been, I have been. I can tell you there has never been a time when I have supported discrimination of any kind. I was born in 1955, so I can't claim to have been there with Dr. King in 1963 or anything like that. However, the founder and chairman of our organization, Linda Chavez very much was a part of the civil rights movement.

Mr. Ellison. Thank you, Mr. Clegg. I am going to reclaim my time now because I want to ask--I am sorry, ma'am, I am having difficulty with your name. Forgive me for that. I do apologize.

Ms. Tyehimba. Ms. Tyehimba.

Mr. Ellison. Tyehimba. Ms. Tyehimba, I was a law student between 1987 and 1990 and we would study contracts and property. And when we would open up our contract books, we would talk about property cases that happened way back in England and stuff like that. And we would talk about modern contracting property cases. But the people--America's property between 1619 and 1865 was American slaves, and yet we never have any cases on that and we didn't have that many cases, we didn't really explore it that in depth while even after 1865.

I am just curious to know, do you agree that there is just an abundance of information and analysis and scholarship on American slavery and that there is really no need for a commission?

Ms. Tyehimba. There is certainly a lot of documentation there. This is about getting out the truth, Congressman Ellison. If we don't press the issue, then these things will not be elevated and be given the attention. They are buried right now. And it is as if having a documentary that gets shown once a year that never reaches our schools, where the issues are never addressed in our newspapers, whether our museums adequately address these issues, then no one really knows them. And that is the importance of this. The reparations movement at its heart is about getting out the truth.

Mr. Ellison. Professor----

Mr. Conyers. The gentleman's time is way over.

Mr. Ellison. Sorry. Forgive me, Mr. Chairman, I didn't realize.

Mr. Conyers. Well, neither did I. The Chair is very pleased to recognize Trent Franks, the gentleman from Arizona.

Mr. Franks. Well, thank you again, Mr. Chairman. Mr. Chairman, I, in listening to Mr. Ogletree's comments in the beginning here, I was just so compelled by the foundation of what he is motivated by. And I believe that that is something that I share in common with him. And I want to try to start out with the things that we believe in common. And I think you are correct beyond words that history is important.

I think if there is something good that can really come from this hearing, it is that we would honestly examine our history. You said that history repeats itself. There is a lot of variations to that.

Someone said that the only thing we learn from history is that we don't learn from history and history does, in fact, repeat itself, and each time it does, the price goes up. And as I say, I am just very compelled by that because I believe it is vital for any country like ours to clearly understand our past and our history. And so I want you to know there is a strong heartfelt resonance with that belief. And I guess the reason I think that that applies to some of the comments I have been making here today is that the reason, the reason slavery occurred, at least in my opinion, was because people in that day lost sight of the humanity of their fellow human beings.

We lost sight that all God's children are created in his image and therefore have inestimable internal and calculable value. And to desecrate another human being as slavery did to millions is unconscionable and beggars my ability to describe. And it occurs to me, because something was that dramatic that we must be very, very careful to examine the cause of slavery and to make sure that we don't see those things happen again. I am convinced that when we as human beings lose sight of our fellow human being's humanity; whether they be unborn children, Mr. Chairman, whether they be Black, Mr. Chairman, whether they be poor, whether they be Jews, whatever they are, if we lose sight of their humanity, I believe that we have a repeating dialogue in history where, to name three examples, the German high tribunal, their Supreme Court, as it were, said that the Jew was "untermensch," subhuman, not a human being in the fullest sense, to give their justices so-called credit in the fullest sense, they weren't human beings in the fullest sense. And when they did that, when they robbed them of their humanity, then it was easy to kill 6 million of them.

But we should not forget in this society, that the entire Nazi Holocaust started when the medical community, the intelligencia of Germany, decided that it was okay to kill one little retarded boy because he wasn't what everybody else thought he should be. And that is a recurring point. Not only did 6 million Jews die, 50 million died in this World War to try to change that. And atomic bombs fell on cities. Then came things like the Dred Scott decision, or actually before that, they said that the Black man was not a person in the fullest sense. And millions were enslaved and it was a tragedy that beggars description.

Not only were millions of God's children desecrated and raped of life and freedom, but the response to that on the rest of society's part, the Civil War, killed thousands more, more than any other war in our history. Then comes along Roe v. Wade. I believe that the reason I mention this is because the realities are so powerful and so connected and said that the unborn child is not a person in the fullest sense, and we have killed 50 million of them.

And I don't know if some panel someday will say maybe we should have reparation hearings on what we have done there or what the effects will be on 50 million dead children in America, what will be the impact of America's foundation being stained by the blood of its own children. I don't know.

But I will say to you that there is a recurring theme.

Whenever we debase any of God's children, no matter who they are, we step into the dark. And that is why we are here today. And I believe that there could be something that could come from this that would be very good. Maybe we need a new emancipation in America to where we consider the past tragedies and see when we start to step into these darkness areas where we fail to recognize the humanity of someone and then we begin to say, well, then it is all right to do these horrible things.

And Mr. Chairman, I want to apologize both to--well, I guess he is not here, Mr. Nadler and to Mr. Ogletree, regarding making comparisons with present day parties. That is really not what I meant to do. What I meant to say was that I don't blame--you know, I don't think Mr. Conyers here should apologize for slavery. I don't think it was his fault. I don't think it was the Democratic Party's fault of today. What I am saying is that we are facing a very similar situation today, and that there is a common thread among all of them.

I am not trying to elevate the unborn above any other humanity. I am saying that there is a common thread here and that today's parties have a major disagreement. And I would say to you in the most sincere way to the Democratic Party, they will never be the party of children, they will never be the party of civil rights, they will never be the party that addresses the desecration of U.S. humanity while they stand for killing 4,000 children a day. It can't happen.

If we want to truly address the past, then we have to address our situation today. Then we will have not only the courage but we will have the moral foundation to correct the past. And until we as a society say from now on we are going to recognize the humanity of all God's children, the dreams of our Founding Fathers of holding the self-evident truths to be that all men are created will never be realized. And Martin Luther King's dreams, all of those things will never be realized until we say the reason that these things were wrong in the first place is because they desecrated the life of one of God's children.

Now, I have one question and I am through. And I am sorry for getting a little dramatic here, but I am not sorry for what I have said. I would like to ask you, Mr. Clegg, and then pass it along to me, what do you think--I have already told you what I thought was the problem, what caused slavery, was that we lost sight of humanity of a fellow human being. What do you think was the fundamental societal cause of slavery and how can we apply that today so that we don't let things like that happen in the future in America.

Mr. Clegg. Well, I can't really, I think, add very much to what you have already so eloquently said. I think that in order to enslave someone, in order to treat them as less than fully human, you have to convince yourself first that that person is less than fully human. And I think that that is what happened. And as far as applying that to the present day, I agree with you on that, too. When you look at these very intelligent people back in the mid 1800's and the fact that so many of them seem to think that this was okay, it is very humbling because you then ask yourself: Well, gee, these were not stupid people, these were not immoral people, what are we missing today, what is it that people 100 years from now will be ashamed of in our history?

And I think that you are right, that the best candidate for that is the slaughter of the unborn. Beyond that, I think it is also critically important that we take away from the Civil War and the civil rights movement the importance of all Americans being judged, as Dr. King said, by the content of their character and not the color of their skin.

Mr. Franks. Mr. Chairman, I know my time is out. If there is anyone else you would allow to address the question, great. If not, I will yield back.

Mr. Conyers. Well, Professor Ogletree was originally asked to answer, so let us let him respond.

Mr. Ogletree. And I will be very brief, Congressman Franks. Your points are well taken. It is a little unsettling that with the passion you show for this unspeakable American dilemma of abortion that you choose the one and only occasion we have ever had a hearing on H.R. 40. And it is important that Members of Congress, that you bring your issues up when you can. But I think it seems a little odd that as passionate as you feel about those issues, that I am not hearing the same sense about the travesties that are centuries old.

The second point is this: You asked what is the, what can we connect this to, what's the cause. In one word, I would say silence. When we are silent, when we see tragedies and travesties, that is the greatest harm. We see it, we hear it, we observe it, but we are silent in reacting to it, whether it is the Holocaust, whether it is slavery, whatever it might be. And the silence, the reason this study is so important, the silence hasn't ended. We are talking about slavery as if it is a past issue. But in Darfur and Sudan on our watch, when we have power, at least moral persuasion, people are in slavery in the world today. And so that is why I think it is important that we study this, because both of our views are the same. If we fail to understand history, we are doomed to repeat it. And here is a classic example of where we are repeating history because we didn't understand it decades and centuries before.

Mr. Franks. Mr. Chairman, may I just say I agree with the gentleman strongly. I want him to know just for the record that the Chairman is probably aware that when it comes to the human rights in other areas, specifically Darfur, because that is the one that you mentioned, Mr. Chairman, I stayed up one night making sure that the genocide treaty got through the Senate when no one else was really trying. So I want you to know that my passion for this does go across the board. The reason that I bring this abortion on demand up is because it is happening right now. And I feel like until we deal with and put down the knives and deal with us stopping the killing today, then it is hard for us to address where we have been or where we are going. But I want you to know I do truly agree with you that that passion should not be singled out for just one area of humanity. Thank you, sir.

Ms. Tyehimba. Congressman Conyers, may I please respond very briefly. Congressman Franks, I appreciate your concern about unborn children. I would also like to ask that you have that same level of emotion when we address the mortality rate of African descendent children, particularly in this country. And I also would like to say that we need to reiterate that slavery took place, certainly because of silence, also because of greed, we used religion to support what we did. And one thing that we have to pay close attention to right now, and I hope that you will join in this fight as well, and that is to make sure that the media is not used to demonize the people.

Mr. Conyers. Could I point out to all here that I am beginning to think that this is the commission on reparations which we are determining whether we should have or not. I would like to--I have got some nominees to come before the Commission. Because this is precisely the discussion that has certainly not been held in the Congress.

And as I suggest, because of my continued support of this legislation, it hadn't been held officially in the government anywhere. There have been isolated speeches and there have been academic participation in this, but there has never been an official government study. So it is not whether you are for reparations or what kind of reparations you are for or whether you are against reparations, it is whether we have the discussion on reparations which we are having here.

This begins to suggest to me that we need more than one hearing. It suggests to me that this is a very healthy dialogue. We are not hurling accusations at one another or personalizing our particular philosophy and point of view. What we are doing is holding up for examination of everyone, not just in the country, believe me, this is an international question, what it is we should do about this, should it be nothing, should it be something, should it be something that no one has talked about. The selection of these views are what bring us here today to examine H.R. 40, which is not a reparations bill. It is a bill to create a commission to examine reparations. And so I am pleased of the tenor of this discussion. I turn now to the Chairman of the Crime Subcommittee on Judiciary, the Honorable Bobby Scott of Virginia.

Mr. Scott. Thank you, Mr. Chairman, and thank you for introducing your legislation. People have talked about history and the distractions about it. We are going to have some discussion about the history. And I want to focus the discussion on the present. Furthermore, I reiterate the point you have made, this is a study, not what to do. This doesn't require us to do anything other than the study. Then we can decide whether or not it is appropriate to do anything. But in my judgment, there are some present effects of the reality of state sanctioned slavery that are appropriate to be studied. Let me ask Professor Ogletree whether or not the known discrimination in mortgage rates where African Americans pay more for a mortgage today than others, is that, if you compound that additional payment over a lifetime, does that have a present effect on a person's wealth?

Mr. Ogletree. Congressman Scott, thank you. The answer is, of course, yes. And it reminds me of the comment that my dear friend, Roger Clegg, made that what brings us here is the phrase, e pluribus unum, out of many comes one. But my question is where are we one. If you look at education, health care, employment, housing, wealth, racial profiling, mortgage rates, credit, all those things tell us that we are not one. We are judged to a long extent by a legacy that started centuries ago and continues even today.

Mr. Scott. And that has a present effect?

Mr. Ogletree. Indeed.

Mr. Scott. You mentioned some others; insurance rates. Is there evidence that African Americans pay more for insurance, same insurance than others pay.

Mr. Ogletree. Yes.

Mr. Scott. Car prices?

Mr. Ogletree. Yes.

Mr. Scott. If you compound this over a lifetime, all these additional payments would that amount to much money.

Mr. Ogletree. Not millions, but beyond billions.

Mr. Scott. Housing discrimination, most of a person's household wealth is in the equity in their home. If African Americans find themselves in segregated housing opportunities, does that affect their ability to develop wealth today?

Mr. Ogletree. Yes.

Mr. Scott. And is that effect worth studying, not doing anything about it, yet but studying?

Mr. Ogletree. Absolutely.

Mr. Scott. Now, contracts. Notwithstanding the fact that there is legislation, some of which has pushed the envelope so far as to be found unconstitutional, trying to get minorities Federal contracts and other contracts, still it is virtually 100 percent for one-third of the population White males, women and racial minorities representing two-thirds of the population getting virtually nothing, those numbers cannot happen randomly, is that worth studying to ascertain whether or not that is a present effect of slavery?

Mr. Ogletree. Yes.

Mr. Scott. Education you mentioned. There is some areas in minority communities where the dropout rate is 50 percent. People are not getting an education. There were historically limited opportunities to go to college. Does this affect--I mean in some areas, you got it so bad people aren't going to college, you got what the Children's Defense Fund calls the cradle-to-prison pipeline, which shows where we are making our investment. Is that something that should be studied?

Mr. Ogletree. Yes.

Mr. Scott. Now, if we study this, will there be options available to us that the study might reveal that would be options other than cash to individuals?

Mr. Ogletree. A large range of options, public policy, issues of trying to ensure compliance. It is not all just a question of financial opportunities. And one of the biggest advantages is when people know more, they can be healthier, they can be wealthier, they can be educated, they can have housing, jobs. There are nonfinancial advantages to people having an equal opportunity.

Mr. Scott. And might some of the results of the study suggest that we ought to address poverty generally?

Mr. Ogletree. Indeed. It was 42 years ago when President Johnson spoke at Howard University commencement. And I would urge this Committee to put his speech in the record. He talked about the disparities in 1965, how bad things were and how far we have come. It is ironic from 1965 to 2007, the disparities have increased instead of diminished. So poverty that we thought we addressed in the 1960's is as pervasive in some respects now and even more pervasive in other respects than it was 42 years ago when it was a prime consideration of our government.

Mr. Scott. So if we can ascertain that some poverty today is directly linked to the lingering effects of slavery, we might want to address all poverty as Mr. Clegg has suggested, not just that poverty directly related to slavery, but all poverty would be addressed and education generally. Would that be a possibility without focusing just on educational disparities attributable to slavery, but we may find that addressing education generally might be a good idea?

Mr. Ogletree. If we look at Katrina 2005, if we look at coal miners in places like West Virginia today, we look at Appalachian communities and rural poverty, it is a universal concern. And I think that is something that can be accomplished that will serve all of America.

Mr. Clegg. Congressman Scott, I don't know if you wanted me to respond as well.

Mr. Scott. Let me ask one other question if I can. *Brown v. Board of Education* Professor Ogletree included the effects on people of state sanctioned segregation. Does that philosophy embodied in *Brown v. Board of Education*, is that still an effect worth studying?

Mr. Ogletree. Indeed. In fact, as much as we think about government roles, the reality is that much of Congress was resistant that goes around. And there is something called the southern manifesto in 17 southern States that resisted, including your home State of Virginia, which closed down the public schools to African Americans. So it is certainly worth studying, because the paper trail on how people were treated on race goes far beyond what happened in 1607 or 1619, it goes until the 1960's and it continues with measures that have been passed in 21st Century as well.

Mr. Scott. Thank you. Mr. Clegg.

Mr. Clegg. Congressman Scott, all of those disparities that you listed are already being studied. They are already being studied to an extremely thorough extent. They will continue to be studied.

And I am sure that, in terms of causation, one cause of them will be discrimination. There will be other causes as well. I have already talked about the impact of illegitimacy, out-of-wedlock births, on just about any social problem that you can name.

It will also be the case though, that whatever these studies conclude, that the solution, the remedy is not going to be more discrimination. It is not going to be to single out some people because of their skin color as deserving of preferences or special treatment that other people don't get.

I mean, let us fess up: The reason for this bill is not to do studies that aren't being done. I mean, \$8 million and seven additional experts is not very much. It is ridiculous to think that they are going to be able to make a dent in studying the very serious and widespread problems that you have listed. The reason for this bill is to lay the groundwork for reparations. That conclusion to award reparations, I think, has already been reached by a lot of people, and it is a wrong conclusion, a destructive one, a divisive one, a distraction, and one that we should not be wasting our time on.

Mr. Scott. Well, do you agree that some of the present social pathology is directly attributable to slavery?

Mr. Clegg. I think, yes, but I think that it is impossible to----

Mr. Scott. Well then, everybody does not agree to that.

That is why we need a study to convince them as you apparently are convinced.

Mr. Clegg. Look, you are not going to be able to convince people through this study that current disparities were or were not attributable in some way to slavery.

Mr. Conyers. Would the gentleman yield for just a moment?

Mr. Scott. I will yield the balance of my time to the Chairman.

Mr. Conyers. Well, you do not have any balance of time left, but that is a very generous effort on your part.

Mr. Clegg, that is what we want to find out.

Mr. Clegg. But you cannot find that out through this commission.

Mr. Conyers. Well, you cannot tell us that we cannot find it out and not do it. As a matter of fact, when you say let us 'fess up and we are laying the groundwork for reparations, I have no idea who is going to be on the commission. Unless you think that the study is going to lead to an increased support for reparations, I do not know how we can hold a hearing on whether we should hold a study or not. You say we do not need it, we already know. Well, all of those things that you mentioned----

Mr. Clegg. I did not say that we already know. I said that it is already being studied, and----

Mr. Conyers. All right. I will take that back then if it will make this conversation move more quickly.

The point here is that you said to Mr. Scott that all of those things that are already being studied are not being studied in relationship to the lingering effects of slavery. If they are, please send me the information right away, not that it would mean we do not need a study, but to say that these are all being studied so you do not need to have this study, I have a list of studies in the Congress, for which we are famous, about everything that goes into the atmosphere and more esoteric subjects than you or I would care to want to read into the record.

Here is a huge historical fact that Mr. Franks has made such a great emphasis on and that we all agree is important. Then you say but an \$8 million study for a year is not enough. Well, maybe we need a longer study and more money appropriated to it. I cannot tell you that we do or not, but you are giving me something to think about, and that is why we are holding the hearing.

Mr. Clegg. Well, Mr. Chairman, what I said was that all of these things are being studied all over the country by professors and think tanks and State governments and you name it, and there are a lot of lawyers out there who want to know to what extent these different disparities are caused by discrimination of one kind or another. Of course, this commission is not limited to studying the effects of slavery. It is going to cover all kinds of discrimination. Believe me-- and I think you know--there is no shortage of those kinds of studies. The problem is that it is interesting, but it is also, in a sense, almost impossible to look at something that is going on today and to say, "Can I trace this to something that happened 100 years ago?" Yes, you can do that, but there are multiple----

Mr. Conyers. Yes, you can. We cannot dismiss it. I cannot call a hearing and say it is impossible, and you know it. I do not know it. Besides, neither of us knows what the work product of this commission is going to be no matter if it runs for 1 year or 2 years.

The point is we did not come here to say this is a very important subject, but let us dismiss it because there are studies out there all the time. This Committee has been so busy that we have not been able to get to Mr. Franks' most passionate issue, and it is in the jurisdiction of this Committee. The Department of Justice every week gives us more work to do in terms of getting the Department of Justice straightened out. We have got questions now about the destruction of CIA film. We have issues dealing with the whole realm of the jurisdiction of the Committee. For me to say let us 'fess up and you know where this is all going and that there are studies out there does not persuade me to say, "Well, we had a hearing, and one of our regular witnesses said, look, guys, you can go find this yourselves."

We want to let somebody else do it. We do not have time to do this, sir, believe me. I would enjoy this Committee's studying this, but I would like now to move to Steve King if I can. Thank you very much.

Mr. King. Thank you, Mr. Chairman. I hope you will consider nominating me for the commission should we get to that point. I would be very interested in this subject matter as well.

Mr. Conyers. I would be happy, if I have any influence over who is going to be on the commission, to do that.

Mr. King. I would really identify you as the most influential individual when it comes to that, and I appreciate the consideration.

I want to maybe turn to a little bit of housekeeping over here and take care of it here with Mr. Ogletree, your statement that the Constitution still has a three-fifths clause in it. I turn to Article I, Section 2, and I read ``Representatives shall be apportioned according to their respective numbers which shall be determined by adding to the whole number of free persons, three-fifths of all other persons." Now, I have abbreviated that a little bit, but I think it reads in its continuity.

That would be the section to which you are referring?

Mr. Ogletree. Yes.

Mr. King. That statement still has the three-fifths clause in it, but when I turn then to Section 2 of the 14th amendment, it says, ``Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State."

Would you agree that that has been amended out and no longer is in the Constitution?

Mr. Ogletree. That was the purpose of the 13th, 14th and 15th amendments.

Mr. King. So the Constitution no longer really does contain in its text, as is its meaning today, three-fifths because that has been amended out by the 14th amendment, Section 2?

Mr. Ogletree. Right.

Mr. King. Okay. I raise this point, Mr. Ogletree, because it concerns me that--I hear that dialogue come up continually, and I believe there are people out there in America who believe what you said in your testimony that three-fifths is in the Constitution. Yes, it is in the text. It is in our history. I acknowledge it is in our history and that slavery is in our history, but we no longer have slavery in the amendment, in the 14th amendment. It is out.

So would you agree with me that it is inappropriate to continue that kind of dialogue?

Mr. Ogletree. Let me tell you what is inappropriate. The statement that you made was that slaves were considered only three-fifths of a person. The reality is that they were not considered persons at all. The three-fifths clause was there not for slaves to have any rights or power. It was there to have slave owners to have some proportional representation in Congress and other means, so the idea that----

Mr. King. I agree with that representation.

Mr. Ogletree. I was picking up on the good point that Congressman Franks made about Dred Scott, you know, the irony of what Chief Justice Roger Taney said in 1857. There were no rights at all. My point is that the three-fifths clause always reflected the power of White slave owners. It never reflected the power of a former slave or a slave to do anything, is my point.

Mr. King. I agree with your point, and I am glad you made that point, but I want you to agree with my point that three-fifths is no longer part of this Constitution.

Mr. Ogletree. That is exactly right. Thank God for the 13th, 14th and 15th amendments.

Mr. King. Thank you. I would appreciate it if it were not part of the dialogue that informs Americans that it is currently in there. I think you have given the proper historical analysis of it in your response to my question, and I very much appreciate that.

Mr. Ogletree. Right.

Mr. King. You also referenced the promise of 40 acres. I do not think I tuned in quite well enough. I have always heard it as 40 acres and a mule.

Mr. Ogletree. Forty acres of tillable land. This is General Sherman, Field Order No. 15, that was designed to encourage slaves and former slaves to fight in the Civil War on the side of the Union.

Mr. King. Now, this is a document that has been published?

Mr. Ogletree. Yes. Yes.

Mr. King. It has a signature on it, I presume.

Mr. Ogletree. I will give you the entire history. It is well-known, but I will submit that to the Committee as well as General Johnson's rejection of that after the war.

Mr. Conyers. Without objection, we will accept those documents.

Mr. King. I do appreciate that, and that is a piece of history that I need to sit down and read so that--I am not boring, am I, Mr. Ogletree? It is a piece of the history that I believe I need to have.

However, is it your position before this Committee that a Civil War general can bind then a promise that goes beyond the century and into the next century? I mean we are sitting here as a Congress that cannot bind the next Congress. I believe that you are making the statement that, as to that promise that was made, somehow we are obligated to follow through on that. I am wondering by what authority you would make that allegation.

Mr. Ogletree. Let me be clear as to what I said.

General Sherman issued Field Order No. 15 on January 16, 1865, targeting respectable Negroes, heads of families, et cetera, and promised that they would receive a plot of not more than 40 acres of tillable land, et cetera. That is what he promised. My point is that that promise was broken. That is why studying this history is important. It was never kept. You did not know this history. I know it because it is very important to me.

Mr. King. I knew pieces of it. I did not know the details.

Mr. Ogletree. It is very clear. Those who have been involved in this effort for decades have been very concerned about it, but the history is there, and there are other broken promises. So the study will allow us to have a record for the first time. Ah, we did not know that right after slavery and in the heart of slavery that there were some efforts to move forward. We did not know that promises were made and broken.

Mr. King. So those who stepped forward and fought would be the ones, you believe, whose descendants deserve reparations?

Mr. Ogletree. At least. They were promised that. In fact, the reality is that---

Mr. King. I mean, if we are going to use this as a guidepost, then we would also have to identify who the descendants are of the people who honorably stepped forward and defended.

Mr. Ogletree. We would like to. That is one of the problems of history, Congressman King. Again, you can point to your 1800 Bible. I cannot.

Mr. King. I did hear your remark on that.

Mr. Ogletree. Right.

Mr. King. I had them bring it over, so it is here and it is real.

Mr. Ogletree. I hope you treasure that.

Mr. King. Absolutely.

Mr. Ogletree. I wish I could identify with anything-- anything--in the 20th century or in the 19th century or in the 18th century. I do know that my family did not come from Arkansas and Alabama. They may have ended up there, but I know they came from much further than that.

So my point is that studying history helps us to appreciate this and to appreciate the fact that we still have a long way to go. Thank God, despite all of those barriers, I am here; I have a job; I have a reputation; I have a profession. But that does not address the millions of people who are suffering because they never received the benefits of---

Mr. King. And you also recollect that I stated that my grandfather's artifacts were lost because he was killed in the Civil War.

Mr. Ogletree. Right.

Mr. King. That would be the same kind of loss of history that you have expressed here.

Mr. Scott. Would the gentleman yield? Would the gentleman yield for just a quick question?

Mr. King. Depending on how much time I might have.

Mr. Conyers. The gentleman's time is nearly extinguished.

If he can finish up----

Mr. King. I would like to then just finish up, Mr. Chairman, and not yield because there is a question here that I think is really important philosophically before this Committee.

That is the issue of some people suffered under slavery and some people suffered mightily to end slavery. Sometimes it was the same people. Sometimes it was slaves who suffered mightily to end slavery. Sometimes it was abolitionists who came from the North who suffered mightily and who gave their lives to end slavery.

Maybe if I could compress this question down to John Brown and ask you as a panel: Do you believe, if reparations are to be paid, that they should be paid by the family of John Brown or that they should be paid to the descendants of John Brown?

I would like to start on the panel and hear the answer.

Reverend Shaw. I do not think we know the answer to the question. You know, I have been sitting here, trying to listen to this conversation and to translate it into language of faith. I think the word that I have come up with is "discernment" and that H.R. 40 is about the issue of discernment, the point being that every human being brings part of God to a discussion, and the discussion is always important if we are going to find God's way and God's truth. What this H.R. 40 is about is carrying on that process of discernment so that we can find out the truth of faith.

I think, to answer your question directly, we do not know, and I think that that is what Chairman Conyers is saying that this resolution will take care of.

Mr. King. Mr. Clegg.

Mr. Clegg. Well, I would say the answer is neither. The reason is that not only do we not know, but in a sense it is really unknowable whether the descendants of John Brown, "Deserve," reparations or not. It is impossible to tell in 2007 or to speak with any kind of moral authority about whether someone deserves more than they have because of events that happened 150 years ago. There is too much that has happened since then that also affects where an individual is.

Mr. King. Thank you.

The gentlelady.

Mr. Conyers. I thank the gentleman so much.

Ms. Tyehimba. Congressman, may I respond, please?

I think that what we need to look at in terms of religious doctrine is that they normally say that the enslaver, when they release the enslaved, has a responsibility to provide something so that that formerly enslaved person is capable of taking care of himself. That was never done. What we actually saw, however, was, particularly in the area in Washington, D.C., that the former slave owners received reparations, but those who were enslaved received nothing. So we have to get to that.

The reason for, I think, concern here when you discuss reparations is that it goes back to this discussion of a check, and it is not---

Mr. King. Can you answer to the family of John Brown, though, please?

Ms. Tyehimba. I am not going to respond to that. I think what we need to look at is the issue of religion and what it says should happen to formerly enslaved people.

Mr. King. Then I am burning up the Committee's time beyond where I have already expressed my limits.

I yield back to the Chairman. Thank you.

Mr. Conyers. Could we get Professor Ogletree?

Mr. King. I would be happy to do that.

Mr. Conyers. Good.

Mr. King. I just thought I had stretched your patience too far, Mr. Chairman.

Mr. Ogletree. I think the government should take the responsibility of responding. That is what we did with the Japanese Americans in the 1988 Civil Rights Act. That is what the world expected countries to do with the Holocaust survivors, not always finding individual people responsible, but to the extent that the government was complicit, the government would take some responsibility, whether that would be financial or some other means.

Mr. Conyers. I thank the gentleman.

I would point out we are now beginning to work up a conflict here because we have another hearing that was supposed to have begun in this Committee room, and we have another panel to go. The Chair will have to be a little bit more stringent in the generosity of the time that he has allowed thus far.

Mr. Scott. Will the gentleman yield?

Mr. Conyers. I recognize the gentleman briefly.

Mr. Scott. The hearing that was supposed to begin at 1 o'clock will be delayed until the end of this hearing. So we will just continue on with this hearing, and the Crime Subcommittee will begin at the end of this hearing.

Mr. Conyers. Well, that is very kind of the gentleman. I should be referring these things to him instead of making the decisions myself. I thank him very much for his generosity.

The Chair recognizes Steve Cohen of Memphis.

Mr. Cohen. Thank you, Mr. Chairman.

Does anybody on the panel feel like it was a mistake for the United States Senate to apologize for lynching?

Mr. Clegg, do you think it was a mistake to apologize for lynching when we did not know the lynchers or the lynchees, et cetera?

Mr. Clegg. Well, I am trying to remember the specific facts, Congressman Cohen, at the time. Now, of course, the Senate was apologizing on behalf of itself; is that correct?

Mr. Cohen. No. I think it was apologizing on behalf of the country. I do not think any Senators did much lynching.

Mr. Clegg. Well, I do have a problem with that then. I do have a problem with that then, yes.

Mr. Cohen. You do. Okay.

Do you have a problem with the United States----

Mr. Clegg. I think that in order to apologize, for me to apologize for something--it has to have been, in some sense, my fault. Otherwise----

Mr. Cohen. It was the Nation's fault. The Nation permitted it to go on. The Nation acts for all of us. It is the, you know, cumulative deal.

Mr. Clegg. See, to say that America now is going to apologize for things that individuals did some time ago----

Mr. Cohen. Permitted by the government.

Mr. Clegg. It could have been stopped, you say, had the Senate been more aggressive.

As I say in my testimony, I think that that kind of apology is understood, unfortunately, as being an apology by some individuals because of actions done by other individuals with whom they have nothing in common except for the color of their skin, and I think that that is inconsistent with the principles that I was talking about earlier.

Mr. Cohen. How about the apology that we ask the Japanese Government to give for having used comfort women in China? The House passed that unanimously. Was that a mistake?

Mr. Clegg. Again, I am not familiar with the specifics.

Mr. Cohen. All right. Let us stop it there. I have heard your response. We do have a limited amount of time.

Was it a mistake for us to apologize to the Japanese we interned in World War II?

Mr. Clegg. Well, now, there, again, it depends on whose behalf the apology was.

Mr. Cohen. The country as a Nation.

Mr. Clegg. The United States Government did the interning. So, for the United States Government to apologize, I think it would have been appropriate.

Mr. Cohen. All right. Enslavery. The United States Government permitted slavery. They made it legal. While Mr. King's relatives, whoever they were, might have lost their lives in the war--and God bless them for participating--for 100 years thereafter they made people unequal citizens. They could not get the same lawyer job as you got. They could not get the same business job as some White person got. For 100 years, we perpetrated, perpetuated that racism and that badge of slavery. It was a second class slavery, so to speak.

Mr. Clegg. When you say ``we"----

Mr. Cohen. We are a country.

Mr. Clegg. Well, again, I do not look at it that way, and I think that the way that the bill is drafted suggests that one of the things that this commission is supposed to think about is whether there should be an apology by the United States Government on behalf of the American people to ... and then it does not say to whom the apology is supposed to be made. I think that each step there raises a lot of questions. The United States Government now----

Mr. Cohen. Professor Clegg, we have got a limited amount of time. I am going to stop you because I know where you are going. We can get Ann Landers or somebody to help us with to whom the apologies should be made. Those are formalities.

Mr. Clegg. Well, I think it is pretty important.

Mr. Cohen. Let me ask the bishop a question.

Jesus was Jewish, was he not?

Reverend Shaw. He was.

Mr. Cohen. So he would have done Passover, would he not?

Reverend Shaw. He would have.

Mr. Cohen. At Passover, don't the Jews--and they still do it to this day--look back upon the time they were in bondage and reflect upon it and say, "we should always be against putting people in bondage," and have concerns about people who were in slavery?

Reverend Shaw. Yes, and I think it is a message that is repeated by the prophets and the Hebrew scripture over and over again.

Mr. Cohen. So it is kind of a tough thing to come up with. What do you think Jesus would think about slavery? Would he have thought somewhere in 1965, 1,865 years later, that somebody forgot about the Passover sater and the Passover lessons? How would he have dealt with that?

Reverend Shaw. Part of our baptismal covenant in the Episcopal Church is to respect the dignity of every human being, and that part of our covenant comes directly from the teachings of Jesus and Jesus' continual reminder to all of us that we should never forget, that always we should be calling from remembrance into reality.

Mr. Cohen. I, as a Jewish person, find the Passover service to be my favorite holiday. It has got great eats, and it has also got a great story. It has got the story of the Jews having been enslaved, and forever after remember, and never forget about other people who were enslaved. I think that is part of what this is about. You know, there are differences on this panel on the theory of abortion, but I find it very difficult as a Jewish person whose ancestors were killed and enslaved during the Holocaust and as a person who represents many, many, many African Americans who were enslaved and killed along the passage to America, in America as slaves and then continually through Jim Crow kept as second class citizens.

One thing is the issue about choice in *Roe v. Wade*, the freedom of a woman to make a decision concerning an embryo, and the other is the decision of a powerful government to kill and take freedom away. One gives freedom whether you think the person should have it or not. The other takes freedom and life away, and I think it is difficult to juxtaposition the two. You know, in the Jewish religion, life was not considered beginning until birth because so many children were aborted naturally, and it was to save the woman and the father from having the angst of the lost child that the child was not considered a child in being until birth.

Mr. Conyers. The gentleman's time has expired

Mr. Cohen. Thank you, sir. I appreciate it, Mr. Chairman.

Mr. Conyers. Finally, we turn to Darrell Issa and to Sheila Jackson Lee before we are summoned for another set of bells.

The gentleman from California is recognized.

Mr. Franks. Mr. Chairman, prior to that, I apologize to you, but at the request of the Ranking Member, I have to respectfully object to the participation of a noncommittee Subcommittee Member, as far as Ms. Jackson Lee, even though I say that in the greatest respect to the gentlelady.

Mr. Conyers. Well, let us cross that bridge when we get to it. Let us recognize Darrell Issa right now. He is a legitimate Member and is entitled.

Mr. Issa. Was I ever considered illegitimate?

Mr. Conyers. Well, some Members are and some Members are not.

Mr. Issa. Thank you, Mr. Chairman. Thanks for recognizing me. I am going to be brief, and will yield the remainder of the time to the Ranking Member. I just want to put out a perspective, to make an observation of today.

I am the founding chairman or co-chairman of the Philippine Caucus, and General MacArthur promised the Filipinos, who fought with us in World War II, who helped push back and most of whom died, that they would be treated as any other GI. Two years later, the U.S. Congress in the Rescission Act voted that promise away, and it has not been kept. That is a promise in which the people promised it. The actual people who fought--the rangers, the scouts--they are still alive. So, although I think this is certainly an interesting exercise in reparations talk, I will tell you the Filipino community is only asking for reparations to the people accountable to that promise.

I would hope that, if we go forward with the discussion of reparations, we are truly talking about reparations to the extent that somebody can be legitimately found to be the inheritor of that, remembering that the government takes 55 percent off the top of inheritance in each generation. I hope that discussion does go on if this bill goes forward and if the commission goes forward.

With that, I would yield the balance of my time to the Ranking Member.

Mr. Franks. Well, thank you, sir. Thank you, Mr. Chairman.

You know, Mr. Chairman, I guess I will just use the time here to try to respond to a few things that have been said.

First, if I could--and forgive me. The gentlelady at the--I guess everyone has had trouble with her name.

Mr. Conyers. Could you put your name tag in front of you, ma'am?

Ms. Tyehimba. Oh, it fell.

Mr. Conyers. Oh, that is what is giving us so much trouble.

Mr. Franks. Let me just say, ma'am, I was very, very--your comments to me, I think, were entirely accurate, and I agreed with every word. Now, I will have to sequester that particular part of your statement because there were some other things that I disagreed with you on, but what you said to me, I think, is exactly right.

One of the things you said is that this is about the value of human life, past and present, and I certainly do agree with that.

Related to Mr. Cohen's comments, I guess it is important that he understands. You know, when he mentioned about the Passover, I am very familiar with the entire history of the Jewish people, and I believe that that was something that is very appropriate. You know, they acknowledged what had happened to them, and they promised that not only were they grateful to God that they were delivered from the slavery in Egypt but that they would work hard to make sure that their descendants were never enslaved again. I mean I have been on the top of Mt. Masada where they say that, you know, Israel will never fall again, that Masada will never fall again. So I believe that it is entirely appropriate to go back in our history and to acknowledge some of the things that have happened.

I have to take Mr. Clegg's point of view related to the apology. The apology is something where you apologize that you have wronged another human being. You have done something wrong, and you are apologizing to them. I cannot apologize on behalf of Adolf Hitler. I can call him every name I can think of and say that he was a despicable excuse for a human being, but I cannot apologize for him. Only he can do that if he is anywhere where he can. So, I guess, the point is that I think that there might be at least something to think about.

I do not offer this as a proposal, Mr. Chairman, but as at least something to think about that perhaps there could be some common ground in all of our coming together and saying, you know, whether it was the Holocaust in Germany or whether it was slavery or whether it is what I believe to be a modern day holocaust, in every case, the people ask a question or they should have. "Was the Black man a human being?" our predecessors got that question very, very wrong, and it led to a tragedy that begs our description.

When the Germans, the intelligentsia of Germany, asked the question "Was the Jew a human being?" they got that question very wrong. I would suggest to you that there was an inherent bias and that they deliberately came to the conclusion that they did because they felt that there was a selfish--as Ms. Tyehimba mentioned, that there was a greed factor, that there was a self-serving factor in coming to that conclusion.

I think the same thing is true today related to abortion, that there is a self-serving factor here, and I do not mean that on the part of the woman. I would point to the abortion industry, which is now a Fortune 500 company, or would be if it were measured in those terms, in this country. I think there might be some advantage for us to come together and to say let us go back in our history and let us look at the examples and recognize the examples--acknowledge them, is the word--of where we failed to uphold the creed of this government that all men are created equal and endowed by their Creator, are given the gifts of God by their Creator of life.

That is the first one. The reason I emphasize that so much, Mr. Cohen, is that without the right to live none of the others have any meaning whatsoever--and if we could go back and say that this is a place where we failed our fellow human beings and that from now on we are going to go forward and that we are not going to do that anymore.

If we want to honor or repair the damage as best we can to those who suffered the holocaust of slavery--and I do believe it was a holocaust--if we want to repair that damage--I think if we could have them here on this panel today, what they would say more than anything else is do not let it happen to anybody else. It is too late. You cannot fix it for me, but you can make sure that it does not happen to my descendants. I think those might be some common ground things to follow.

Once again, in every case these tragedies were because we as a human family failed to recognize the human dignity of some particular group or members of that human family, and we continue to do it today. Unless we change where we are going now, we will continue down that darkening path to where the survival of the fittest prevails and darkness prevails over humanity.

So, Mr. Chairman, I yield back.

Mr. Conyers. I thank the gentleman.

I am pleased now to recognize the distinguished gentleman from Alabama, Mr. Artur Davis.

Mr. Davis. Thank you, Mr. Chairman.

I apologize to Ms. Jackson Lee for getting ahead of her since I am on the Subcommittee. Let me try to make a couple points because I do want Ms. Jackson Lee to have ample time today.

Mr. Clegg, I want to start with you.

I know a lot of the conversation, a lot of the hearing today has revolved around you, but something that you said kind of caught my attention.

In listening to you, you have had a lot to say today about de-linking the past from the present, and I thought about that a little bit in listening to you. Are you opposed to legacy admissions for colleges and universities?

Mr. Clegg. For public universities, yes.

Mr. Davis. Are you opposed to it for the Harvards and for the Yales of the world?

Mr. Clegg. Well, I think that should be left to the Harvards and the Yales of the world.

Mr. Davis. Are you morally opposed to it as a philosophical matter?

Mr. Clegg. No.

Mr. Davis. I am bothered by that.

Professor Ogletree, this may be something you would want to weigh in on.

Normally, sometimes you can grade people by consistency in their remarks, and sometimes people do not even bother to go through the charade of consistency. You have shown some effort to be consistent today.

Mr. Clegg. Thank you.

Mr. Davis. The problem with that is if you are consistent about wanting to separate the link between things that happened yesterday and today and if you are consistent about the proposition that what happened in another generation should not be binding or have relevance to us today, it would seem to me that a lot of your passion and a lot of your energy ought to be dedicated to the fact that you have an extra edge at getting in a Harvard or in a Yale or in a Princeton if your great granddad went there, particularly if your great granddad gave a lot of money. That strikes me, frankly, as being rather inconsistent with your point of view.

Mr. Ogletree, would you like to comment on that, on whether you see a tension between legacy admissions at Ivy League schools in Mr. Clegg's argument?

Mr. Ogletree. It is not just a philosophical but a personal question, and I will answer it from the personal point of view because, having gone to Stanford, which has a legacy plan and Harvard with that same sense of legacy, I just recount the story of my daughter who applied to Stanford and who got a letter saying, "Congratulations. You are a legacy because your mother and father are graduates of Stanford." She resented that. Her point was, you know, are you looking at me or are you looking at my parents.

Now, the irony is that and the reason that I am sort of unwilling to get rid of legacies is this: We have just arrived. We have just arrived in numbers where the first generation of African Americans, Latinos, Asian Americans, and Native Americans are graduating with children who are going to these institutions. I will bet you that, as affirmative action has disappeared, legacies will be next because guess who is at the door. Over 50 percent of Stanford's entering class are students of color.

So even though we are taking things away, are we taking away things that make some sense? Is it going to stop the Packards and Hewletts and the millions for Stanford or is going to impact more directly the first generation or the second generation of those going to these institutions? That is why I think the history is important.

Mr. Davis. Let me just make this observation.

Regardless of what happens in the future with legacy admissions, there had been a longstanding practice of legacy admissions way before Charles Ogletree's daughter was a possible candidate.

Mr. Ogletree. That is why history is important.

Mr. Davis. Right.

Mr. Ogletree. That is why we have to look back. It worked for everybody else.

Mr. Davis. Right.

Mr. Ogletree. We should not disconnect the past with the present.

Mr. Davis. It worked for everybody else in a way that did not, frankly, draw a significant amount of a program or in a way that did not draw the kind of philosophic critique that is attached to the kind of thing that Mr. Conyers is trying to do.

Mr. Ogletree. Right.

Mr. Davis. The second observation----

Mr. Clegg. Racial discrimination is quite different from any other kind of discrimination.

Mr. Davis. Well, the second observation I want to make----

Mr. Ogletree. Well, it is racial discrimination in the sense that the people who are legacies are largely not people who are African American, Native American, Latino or Asian American.

Mr. Davis. The second observation I want to make----

Mr. Clegg. As you say, though, that is not true now.

Go ahead.

Mr. Davis. The second observation that I want to make has to do with a line of questions Mr. King was pursuing with you, Professor Ogletree, that dealt with the question of language and the Constitution and the value of removing it. I want to relate that, for just my last seconds of time here, to my State of Alabama.

Twice in this decade, we have had a referendum in the State of Alabama that dealt with cleansing language from the Alabama Constitution. In 2000, there was a referendum on language in the Constitution that banned marriages between Black individuals and White individuals. In 2003--or 2004, rather-- there was a referendum that dealt with language that could have been interpreted as allowing segregation in the State schools. There was a very strong effort to remove the offensive language.

A lot of people on the other side of the argument sounded a little bit like Mr. King. Their argument was, well, interracial marriage bans have not been enforceable since *Loving v. Virginia*. School segregation has not been the law of the land since *Brown*. This argument advanced. Well, why go back and feel the need to cleanse out language when the language is no longer operative?

Frankly, the point that was made to them was if a document that purports to speak to all of us-- if a document that purports to speak to our sense of----

Mr. Conyers. The gentleman's time has expired.

Mr. Davis. May I finish my sentence, Mr. Chairman?

Mr. Conyers. Absolutely.

Mr. Davis. If a document that purports to speak to our sense of national community on its own terms debunks that notion and undercuts the idea of community, it is always worthy of being changed and cleansed. So while I did not hear the full benefit of Mr. King's argument, so that struck me as relevant information.

Mr. Conyers. I thank the gentleman.

All time has expired. This panel has been very, very contributive to the discussion. I thank each and every one of you.

I am going to now call the second panel, and I would like those persons to----

Ms. Jackson Lee. Mr. Chairman, is there any time I can be yielded? No?

Mr. Conyers. Well, of course not. There is nobody here to yield you the time. Their time has expired.

Ms. Jackson Lee. Okay. Thank you, Mr. Chairman.

Mr. Conyers. You are welcome.

All right. Will the witnesses quickly take their places? I thank the second panel.

The first witness is my dear friend of the family, JoAnn Watson, a University of Michigan graduate. I do not know how she figured in on the discussion about Harvard's and Princeton's having these prerogatives when their children go to school and apply there, but she serves with great distinction as member of the Detroit City Council, and she is presenting testimony not only on her own behalf but on that of Ray Jenkins, the gentleman who has pressed this Member into numerous discussions about a study bill on reparations for many years.

Ms. Watson, Councilwoman Watson, was a delegate to the United Nations World Conference on Racism in Durban, South Africa. She is President of the National Anti-Klan Network and the Center for Democratic Renewal. Prior to her service as a member of the city council, she served as public liaison for my office.

We welcome you, Councilmember JoAnn Watson. Your testimony, like everyone else's, will be recorded and reproduced in its entirety in the record. You may take time to summarize your statement or to make any other comments you choose.

#### TESTIMONY OF THE HONORABLE JOANN WATSON, COUNCIL MEMBER, DETROIT CITY COUNCIL

Ms. Watson. Thank you very much, Mr. Chairman. I want to thank you in a very special way and tell you how proud I am to be one of your constituents and to come from the City of Detroit, where you have represented us with such distinction for so many years, Mr. Chairman. I thank you for being the sponsor of H.R. 40 since 1989.

I am here today to represent "Reparations" Ray Jenkins, who is considered the Moses of the Reparations Movement in the City of Detroit, and some see him that way nationally. He has asked that I speak for him today, and he is hoping that, if the Chairman and the Committee--this august Committee--are determined to have multiple hearings, he is hopeful that there might be one in Detroit where he could speak personally to this august body.

Your role has been significant and substantive, and has given a great weight to the discussion that has taken place already today. I am also proud as a native Detroiter, nationalist, and Pan African, to acknowledge the legacy of ancestral Detroiters like Chris Alston, who first discovered our archival records, documenting the work of Mrs. Callie House and her courageous organizing and her advocacy for reparations, or pensions, as she founded the National Ex-slave Mutual Relief, Bounty and Pension Association. She was wrongfully indicted and imprisoned by this country with fraudulent claims of mail fraud, but the government's persecution did not stop her brave, African, warrior self from filing a class action lawsuit against the U.S. Government on behalf of Africans who had been immorally enslaved in this country.

It is important that we also note that another Detroit area ancestor, Reverend Milton Henry, along with his brother, Dr. Imari Obadele, formerly known as Richard Henry, was one of the founders of the Republic of New Afrika in Detroit, who was counsel to Malcolm X and who recorded Malcolm X's voice. He provided a sacred, spiritual sustenance regularly on the righteousness of reparations, using the Old Testament Numbers 5:5 as a scriptural basis for reparations.

To quote Reverend Milton Henry, ``When you have taken that which does not belong to you, God's law is that you return it plus a fifth thereof," unquote.

Certainly, there is the Honorable Elijah Muhammad, the founder of the Nation of Islam in Detroit; the significance of the Shrine of the Black Madonna founded by Jaramogi Abebe Agyeman in Detroit; and people like Queen Mother Rosa Parks, who spent more years in Detroit than she spent in Montgomery, Alabama. She was an active attendee of N'COBRA, and supported the Reparations Movement. In fact, she attended a national N'COBRA convention in Detroit. There is Kwame Atta, the late Kwame Atta, now an ancestor, a strong supporter and fundraiser along with ``Reparations" Ray Jenkins. All of these shoulders we stand on today.

As we address the topic of reparations in the U.S., it is constructive to use the Reconstruction as one of our backdrops. If we look specifically at George H. White, the last African American Reconstruction Congressman and the last African who had been enslaved to sit in the House, we note that Congressman White was born in Rosindale, North Carolina. He was a graduate of Howard University. He studied medicine, and then he studied law and passed the North Carolina Bar. He was elected in 1896, and was reelected in 1898. He was able to obtain back pay for lack Civil War veterans, but his colleagues refused even to hear a Federal anti-lynching bill.

During his last speech in January 1901, Congressman White said, ``This, Mr. Chairman, is perhaps our temporary farewell to the American Congress."

These parting words are on behalf of an outraged, heartbroken, bruised, and bleeding but God-fearing people full of potential force. It would be nearly 30 years before the next African American, Oscar de Priest of Chicago, would be elected to the United States House of Representatives in 1929.

If Congressman White or Callie House could offer testimony on the issue of reparations today, they would certainly attest to the fact that Africans never received 40 acres. On March 3rd, 1865, weeks before the end of the Civil War and almost a year prior to the ratification of the 13th amendment, the Freedmen's Bureau was created by an act of Congress. According to section 4 of the first Freedmen's Bureau Act, this agency ``shall have authority to set apart for use of loyal refugees and freedmen such tracts of land within the insurrectionary States as shall have been abandoned or to which the United States shall have acquired title by confiscation or sale or otherwise; and to every male citizen, whether refugee or freedman, as aforesaid, there shall be assigned not more than 40 acres of land." As has already been discussed, this was breached and violated by this country.

In January 1865, General William Tecumseh Sherman had previously issued orders to General Rufus Saxton to divide land into 40-acre tracts and to distribute them to freedmen after the creation of the Freedmen's Bureau in 1865. Just 2 months later, however, after the assassination of President Abraham Lincoln, President Andrew Johnson issued an Executive Order to eliminate support for the Freedmen's Bureau, and he reneged on the promises and on the commitments that had been negotiated by abolitionist statesman Frederick Douglas in discussions with President Lincoln.

Mr. Conyers. Could the gentlelady--I beg her continuing apology--conclude?

Ms. Watson. Yes, I will.

Mr. Conyers. Our time is going rapidly.

Ms. Watson. Yes, sir.

The Civil Rights Redress Act has already been addressed, which was passed in 1988. I have submitted written testimony about the legal precedence that has already been set for reparations paid to others. It should be noted that reparations for Africans has not only been an issue cited by Africans in America but also a significant point of discussion by Africans on the continent.

We support the passage of H.R. 40. When it is passed, we urge that the study will give consideration for the current day equivalent of the dollars paid to an examination of what was paid to the persons who lost the Civil War. There should be consideration of what was paid to those who lost the Civil War. They received compensation and land.

We ask that there be a special look at taxes, colleges, the release of African Americans who have been political prisoners. We ask that there be a special look at the significance of health care and at the significant role of Africans who have preserved the United States. In the United States, most of our schoolchildren and many people in this room may not be aware that it is African descendants who have maintained this U.S. as the U.S. The North was losing until the engagement of Africans in the Civil War. We support the immediate passage of H.R. 40.

We thank you very much, Mr. Chairman, for your kind consideration and to this Committee.

[The prepared statement of Ms. Watson follows:]

Prepared Statement of the Honorable JoAnn Watson

I am JoAnn Watson, City Councilwoman, Detroit City Council. I am pleased to be here today before the subcommittee to testify on Legacy of the Trans-Atlantic Slave Trade.

I would like to thank you, Mr. Chairman, for inviting us to testify today. I also want to thank you, Ms. Lofgren, Mr. Berman, and other members of the Committee for your leadership over the years on this important and vital humanitarian issue.

Our purpose in testifying today is to provide the perspective of the Trans-Atlantic Slave Trade."

As we address the topic of reparations in the United States, it is instructive to use the Reconstruction era as one of our backdrops. Let us look specifically at George H. White, the last African American Reconstruction congressman and the last African who had been enslaved to sit in the House. Congressman White was born in Rosindale, North Carolina, and was a graduate of Howard University. White studied law privately. He represented North Carolina's Second Congressional District and was elected in 1896 and reelected in 1898. Nor surprisingly, Congressman White found it difficult to make his mark in Congress. He was able to obtain back pay for Black Civil War veterans, for ample, but his colleagues refused even to hear his federal anti-lynching bill.

During his last speech, in January 1901, Congressman White said, "This, Mr. Chairman, is perhaps the Negro's temporary farewell to the American Congress. These parting words are on behalf of an outraged, heartbroken, bruised and bleeding, but God-fearing people . . . full of potential force." It would be more than twenty-five years before the next African American, Oscar De Priest, of Chicago, Illinois, was elected to the United States House of Representatives.

If Congressman White could offer testimony on the issue of reparations today, he would certainly attest to the fact that Blacks never received forty acres and a mule in the aftermath of the signing of the Emancipation Proclamation. On March 3, 1865, weeks before the end of the Civil War, and almost a year prior to the ratification of the Thirteenth Amendment, the Freedmen's Bureau was created by an act of Congress. According to Section 4 of the first Freedmen's Bureau Act, this agency "shall have authority to set apart for use of local refugees and Freedmen such tracts of land within the insurrectionary states as shall have been abandoned or to which the United States shall have acquired title by confiscation or sale, or otherwise; and to every male citizen, whether refugee or Freeman, as aforesaid there shall be assigned not more than forty acres of land." This portion of the Freedmen's Bureau Act (introduced by Congressman Thaddeus Stevens) was defeated by Congress on February 5, 1866, by a vote of 126 to 36 because many thought that it would disenfranchise white landowners who had been defeated in the Civil War. Land that had been distributed to Freedman was reclaimed by the federal government and routed to the enslavers (who had lost the Civil War, fought for the Confederacy, and had already benefited unjustly from the unpaid labor of Africans).

In January 1865, General William Tecumseh Sherman had previously issued orders to General Rufus Saxton to divide land into forty-acre tracts and distribute them to freedmen after the creation of the Freedmen's Bureau in 1865. Just two months later, after the assassination of President Abraham Lincoln, President Andrew Johnson revoked the executive office's support for the Freedmen's Bureau and reneged on promises and commitments that had been negotiated by abolitionist/statesmen Frederick Douglas in discussions with President Lincoln.

I believe that one of the best-kept secrets among Civil War historians is that the Union was losing to the Confederacy until enslaved Africans joined the Civil War to fight for the Union. As President Lincoln discussed the matter of introducing Africans who had been held in bondage to fight for the Union, Douglas strongly advocated on behalf of the Emancipation Proclamation, the Freedmen's Bureau, the provision of land to the newly freed Africans, and the adoption of the Thirteenth Amendment. Among the resources utilized to bring victory to the Union was Harriet Tubman, the renowned General of the Underground Railroad, who served as a scout during the Civil War conducting dangerous reconnaissance missions.

Upon learning that President Andrew Johnson had rescinded the order authorizing the Freedmen's Bureau Act and the distribution of land to freedmen, General Saxton wrote the following communique to the commissioner of the Freedmen's Bureau, Oliver O. Howard: "The lands which have been taken possession of by this bureau have been solemnly pledged to the Freedmen . . . it is of vital importance that our promises made to Freedmen should be faithfully kept . . . the Freedmen were promised the protection of the government, with the approval of the War Department . . . more than 40,000 Freedmen have been provided with homes under its promises... I cannot break faith with them now by recommending the restoration of any of these lands. In my opinion the order of General Sherman is as binding as a statute." Saxton's pleas were to no avail, however, as thousands of Freedmen were removed by force from land that had been granted by Congress and ordered by Sherman. This was done during the same period that witnessed the 1865 emergence of the Ku Klux Klan's unspeakable violent episodes targeting the newly freed Africans and President Johnson's removal of all federal protections guaranteeing the safety and protection of Africans in America.

The freedmen of the period included luminaries like Bishop Henry McNeal Turner, who had served as a chaplain in the Union Army. Bishop Turner was convinced that the U.S. federal government had betrayed African descendants. He was among many who publicly called for reparations, and he never forgave the nation for what he considered disgraceful ingratitude to Blacks who had built the wealth of the nation with unpaid labor and who had served the nation with courageous military valor during the Civil War. Years later, when he felt his last days were near, Bishop Turner transported himself to Canada, to assure that his remains would not be placed in American soil. (This was eerily prescient of W.E.B. Du Bois's decision, nearly a century later, to move to Accra, Ghana, and become a Ghanaian citizen, abandoning his life-long work to assure that the United States would honor its ideals and constitutional protections to its citizens of African descent.)

As the ranking Democrat on the House Judiciary Committee, as the dean of the Congressional Black Caucus, and as the longest-serving African American and the second-most senior member of the House of Representatives, I believe it is vitally important that we look toward legislative remedies as a vehicle for addressing the critical issue of reparations for African Americans, just as legislative remedies have been approved for the redress of others. The United Nations World Conference Against Racism, held in Durban, South Africa, in August and September of 2001 declared that the Transatlantic Slave Trade was a crime against humanity, and should always have been so; which sets the proper stage for the timely consideration of H.R. 40, the Reparations Study Bill, which I have introduced every year since 1989. The UN World Conference Against Racism was also another tragic reminder of the deep moral flaws that have been etched into the fabric of America as the United States formally walked out of this historic gathering days later walked into a terrorist attack on its own shores.

I believe it is vitally important that we look toward legislative remedies as a priority in the reparations movement not only to provide a level of redress for Africans who were enslaved but also to recognize the forces of legalized disparity that disenfranchised people of African descent, like Congressman White, after the signing of the Emancipation Proclamation and which continue to institutionalize racist policies and practices until this present day. We have gotten far too comfortable in accepting poverty, crime, and adolescent pregnancy as Black and their opposites as White. We have failed to trace the lineage of both of these economic conditions to slavery and its aftermath.

Why was a bill introduced to study reparations? H.R.40--the Reparations Study Bill--was introduced in 1989, first and foremost, because of the request that I do so by Reparations Ray Jenkins, who is one of my constituents, a self-employed businessman, precinct delegate, and longtime community activist. Reparations Ray had been an advocate and proponent of reparations for African Americans for many years, and had become a fixture in community-based meetings, assemblies, church gatherings, and NAACP functions as a person who has been singularly committed to the priority of reparations as an issue for people of African descent.

After the introduction of the Civil Rights Redress Act, which paved the way for reparations awarded to Japanese Americans who had been illegally and immorally detained during World War II for three years, it seemed to be an appropriate juncture for the introduction of legislation to study reparations for African Americans, to address possible remedies and redress related to those victimized by the pandemic horrors of the Transatlantic Slave Trade and the long-term residual impact of institutional racism that has persisted among African descendants through Jim Crow segregation, hate crime terrors of lynching and cross burning, and the disparate practices and policies of the prison industry, which in many ways has begun to re-enslave Africans, who are disproportionately incarcerated and performing slave labor under the oppressive structure of disparate sentences. Persons of African origin are 13 percent of America's population but account for more than 52 percent of America's 2 million prison population, notwithstanding the reality that Blacks are no more predisposed toward behavior than any other population.

One of the other important factors for the introduction of H.R.40 was the inescapable reality that legal precedence had long been established relative to the appropriateness of reparations by governmental entities in response to government-sanctioned human rights violations. For example, in 1990, the United States Congress and the President of the United States signed the Civil Rights Redress Act into Law, to lay the framework for \$1.2 billion (\$20,000 each) paid to Japanese Americans and a Letter of Apology as a federal redress to recognize the human, economic, and moral damage inflicted upon a class of people for a three-year period. Also in 1990, Austria paid \$25 million to Jewish Holocaust survivors for its role in the genocidal Nazi regime during World War II; in 1988, Canada gave \$230 million to Japanese Americans; in 1986, the United States paid \$32 million to honor the 1836 treaty with the Ottawas of Michigan; in 1985, the United States gave \$105 million to the Sioux of South Dakota; in 1980, the United States gave \$81 million to the Klamaths of Oregon; in 1971, the United States gave \$1 billion plus 44 million acres of land to honor the Alaska Natives land settlement; in 1952, Germany paid \$822 million to Jewish Holocaust survivors in the German Jewish Settlement--just to cite some historical backdrops of legal precedence that has been established.

Further, it should be noted that reparations for Africans has not only been an issue cited by Africans in America but also a significant point of discussion and action by Africans on the continent of Africa, James Dennis Akumu, former secretary-general of the Organization of African Trade Union Unity, states: "If you see the arguments the British are advancing in Zimbabwe and whites insisting on owning land and resources in Namibia, South Africa, and other parts of the continent, you can only come to the conclusion that in their minds, Africans should remain their slaves and should not own their own land and mineral resources." Akumu continues to press the point, "African labor and looted African wealth built these strong Western economies. Therefore, what we are claiming is what our people contributed to substantially, and is, therefore, rightfully ours."

Mr. Conyers. We thank the councilwoman.

When we return, we will hear from the American Bar Association President Elect, from the distinguished Winthrop Professor of History at Harvard University and from the Assistant Professor of law at St. Louis University School of Law.

We will stand in recess until we have completed our vote on the floor.

[Recess.]

Mr. Conyers. The Committee will come to order.

We are delighted to have Mr. Thomas Wells, Jr., a partner of Maynard, Cooper & Gale in Birmingham, Alabama. He served as the ABA's policymaking House of Delegates since the year 1991, and he was co-chair of the ABA's Special Committee on Disaster Response, which was commissioned after Hurricane Katrina.

As this Committee often looks to the ABA for guidance in advancing sound legal policy, we look forward to hearing from Mr. Wells on the issues that bring us here today. He is, of course, the President Elect of the American Bar Association, and we give him congratulations in that area as well. We will incorporate his full testimony into the record at this point and invite him to make his testimony. Welcome, sir.

#### TESTIMONY OF H. THOMAS WELLS, JR., PRESIDENT-ELECT, AMERICAN BAR ASSOCIATION

Mr. Wells. Thank you, Mr. Chairman.

My name is Tommy Wells. I am a partner and a founding member of the law firm of Maynard, Cooper & Gale in Birmingham, Alabama. I am currently serving as the President-Elect of the American Bar Association. As such, I will become the President of the ABA in August of 2008.

I am here today at the request of our current President, William Neukom, of Seattle, Washington, to present the news of the ABA. He sends his regrets that he was unable to attend this hearing.

Mr. Chairman, the ABA supports the principle of H.R. 40, authorizing the establishment of a federally funded commission to study the impact of slavery on the social, political and economic life of our Nation. The objectives of H.R. 40 are consistent with ABA policy, adopted in 2006 by our policymaking House of Delegates. We support the enactment of legislation to create and to appropriate funds for a commission to study and to make findings relating to the present day consequences of slavery and to the subsequent denial of equal justice under law for persons of African descent living in the United States.

More than 4 million Africans and their descendants were enslaved in the colonies that were to become the United States and, later, in the United States from 1619 to 1865. After the Civil War, the Nation ratified three constitutional amendments espousing principles of equality and full citizenship for all Americans, but the post-Reconstruction era marked by Jim Crow laws at the local level, all the way up to the Supreme Court in its Plessy v. Ferguson decision, demonstrated how racism and racial bias could manipulate the justice system to undermine these constitutional principles and could perpetuate widespread oppression.

By the early part of the 20th century, there came to be two Americas--one that could rely on the rule of law and one that could not. Particularly egregious was the scourge of lynching. Lynch mobs murdered nearly 5,000 African American men, women and children and caused thousands more African Americans to lose property, employment and any means of support for their families.

Though legally sanctioned racial discrimination has crumbled in the past 50 years, concerns remain regarding the effect today on the social, political and economic conditions for African Americans. As Justice Ginsburg stated in her concurring opinion in the 2003 U.S. Supreme Court decision in *Grutter v. Bollinger*, it is well-documented that conscious and unconscious race bias, even rank discrimination based on race, remain alive in our land, impeding the realization of our highest values and ideals.

President George W. Bush stated in his Katrina speech in New Orleans "Poverty has roots in a history of racial discrimination which cut off generations from the opportunity of America." We have a duty to confront this poverty with bold action. I suggest, Mr. Chairman, that the passage of H.R. 40 would be the bold action that President Bush was speaking of in September of 2005.

In a major address to the American Bar Association in 2004, Justice Kennedy stated, nationwide, more than 40 percent of the prison population consists of African American inmates. About 10 percent of African American men in their mid to late 20's are behind bars. In some cities, more than 50 percent of young African American men are under the supervision of the criminal justice system.

The causes of these and other disparities require greater understanding if we are to address them with viable solutions. The question is not whether we need a commission like the one proposed in H.R. 40. The question is why have we waited so long to establish one.

Like the country as a whole, the ABA also has had a painful past. When our association was established almost 130 years ago, African Americans were denied membership. In fact, in 1925, the National Bar Association was formed by 100 Black attorneys who had been denied ABA membership. We have, however, made strides to try to put our own house in order. We have created the ABA Center for Racial and Ethnic Diversity, which is empowered to make regular reports and recommendations to help guide the Association. This continuing process is having positive effects on the diversity and on the inclusiveness, not only of our Association but of the more than 400,000 attorneys and legal professionals and the legal profession as a whole.

In 2003, my friend, the Honorable Dennis Archer of Detroit, Michigan, became our first African American President. I was honored to serve with President Archer, as the Chair of the ABA House of Delegates, during his tenure as President of our Association. President Archer was immediately followed in 2004 by our second African American President, Robert Grey of Richmond, Virginia, another good friend of mine.

In summary, Mr. Chair, I want to reiterate the American Bar Association's support, in principle, for H.R. 40. Thank you for the opportunity to convey the American Bar Association's views on this important topic.

[The prepared statement of Mr. Wells follows:]

Prepared Statement of H. Thomas Wells, Jr.

Mr. Conyers. Thank you so much. I am glad you recall the rather amazing phenomena of the ABA's having two consecutive African American leaders of this distinguished legal organization. I appreciate your contribution and the continued relationship that this Committee has with the American Bar Association.

Professor Stephan Thernstrom is the Winthrop Professor of History at Harvard University. He recently coauthored with his wife *No Excuses: Closing the Racial Gap in Learning*. The professor received his undergraduate degree from Northwestern University, his Ph.D. from Harvard, and he has been with this Committee before. We welcome him back again and look forward to hearing from him today.

Your statement will be included in its entirety in the record.

TESTIMONY OF STEPHAN THERNSTROM, WINTHROP PROFESSOR OF HISTORY,  
HARVARD UNIVERSITY

Mr. Thernstrom. Thank you very much, Mr. Chairman and distinguished Committee Members, for giving me the opportunity to appear. I have filed written testimony, and will not try to rehash it here because a number of statements that have come to my attention since I wrote it, I think, merit some comment.

I will begin with a point I began with in that statement, though, which is that I would disagree with Professor Miller, who said in his written statement that reparations is now in the mainstream of American discourse about race. That probably is true in rarified academic precincts, but it certainly is not true among the general American public.

I cite as evidence the most recent poll I have seen sponsored by the NAACP, an organization which is not opposed to reparations, which found that over 90 percent of Whites, Latinos and Asians in the United States were, in the words of the language of the NAACP's report, "fervently opposed" to the idea of "paying money to African Americans whose ancestors were slaves." So even if the commission which is being proposed to study this matter issues a brilliantly persuasive report, I can say with great assurance that this will be an enormously controversial and divisive measure.

I share the views of my colleague Roger Clegg that it will not be a healing one, and indeed, if reparations were to be confined to people who could prove descent from former slaves, it might be bitterly divisive within the African American community, dividing those who receive these benefits from those who do not.

Second, I recognize this is only a proposal to study the matter, but I have a couple of observations about that.

First, there is no topic that has been more intensively studied in the social sciences over the past 50 years than the condition of the African American population. There is an enormous literature, it continues to grow by leaps and bounds, there continues to be great controversy, and I am sure the reigning views will be modified as new research accumulates. So I find it very hard to think that a commission of seven people who could not possibly have mastered all of this voluminous literature will arrive at some meaningful consensus that will alter public opinion to any great extent.

And, of course, I must be a little cynical here. The results of the commission will depend entirely on who is put upon it. Let me remind you that the Dred Scott decision, which was referred to earlier today, was the work of a commission of sorts, a permanent commission called the Supreme Court of the United States; and yet the result of its deliberations do not look very good today.

And if the composition of the commission were to mirror the composition of the witness list for this hearing, of course the outcome is foregone. There is very little doubt that a large-scale reparations program would be recommended, provoking, I think, great public outcry.

Now, as a historian, I have listened to the historical comments made in this hearing with interest and the historical material in the supporting documents; and I do find some serious flaws in them that I think one would have to consider in making judgments about these matters.

Ms. Tyehimba, for example, contends that the trans-Atlantic slaves trade was the beginning of a genocidal war against Africans. And this is a rather curious formulation. And, likewise, that Africans were "kidnapped." I believe the Chairman used that term today. Well, who did the kidnapping?

Who captured them, marched them to port and sold them to European slave traders? The answer is Africans, and the African governments of the parts of Africa in which the slave trade occurred. So there is plenty of moral culpability to go around here, and it is hardly confined to Europeans.

Then I want to mention some remarks that appeared in a memo prepared by the Committee, prepared by the Democratic staff, which refers to the Federal Government as, quote, "the entity that sanctioned the slave trade and slavery for over 200 years." And I thought, 200 years, hmm, 1865, so that gets us back to 1665. What Federal Government do the authors of this document have in mind? Even in 1765, I would say we had no Federal Government in the United States. We were a colony of Great Britain with no representation.

Mr. Conyers. I am sorry to tell you your time has considerably expired, Professor.

Mr. Thernstrom. I thought I had 5 minutes?

Mr. Conyers. You did, but you can make a concluding thought, if you choose.

Mr. Thernstrom. Well, I would simply say, in conclusion, that so much of the questioning today seems to involve issues of contemporary alleged discrimination which certainly is well within the powers of Congress to deal with. If there is discrimination in real estate lending or automobile sales or whatever it is, there is an abundant literature, much of it produced by the Federal Government, on every one of these things, and legislation to make that anti-discrimination protection more effective I would certainly welcome. That is a radically different thing than taking a whole sector of the population distinguished by race and saying this is all the result of slavery and we are going to make up for it somehow. We could pass good legislation that protects all Americans from discrimination without singling out African Americans as a special victim class.

Mr. Conyers. Thank you, sir. Thank you very much.

[The prepared statement of Mr. Thernstrom follows:]

#### Prepared Statement of Stephan Thernstrom

Mr. Chairman and distinguished Committee members, thank you for the opportunity to testify this morning.

My name is Stephan Thernstrom. I am the Winthrop Professor of History at Harvard University. I have been researching, writing, and teaching courses on the subject of race and ethnicity in the American past for almost my entire professional career.

Today you have solicited testimony concerning a "Commission to Study Reparation Proposals for African-Americans." The notion of paying reparations for the descendants of slaves is nothing new. What is new--and I think very unwise--is that the House of Representatives is now considering taking the first step towards implementing an actual reparations program.

I am rather surprised at this development, because the idea of reparations is far outside of the mainstream of American thinking. If you doubt that generalization, consider the findings of a 2005 National Opinion Research Center survey, sponsored, it should be noted, by the NAACP. Asked their opinion of "paying money to African Americans whose ancestors were slaves," over 90 percent of whites, Latinos, and Asians were "fervently" opposed. One third of the blacks in the sample rejected the idea as well, despite the fact that they had a powerful financial incentive to approve it. Other polls reveal the same overwhelming opposition. It is hard to imagine a more unpopular and divisive proposal than reparations for crimes committed by some of our ancestors in the very distant past.

The simple math suggests good reasons for opposing such reparations. Close to 40 million African Americans live in the United States today. If almost all of them are to be compensated, as the language of the bill implies, a grant of a hardly life-changing \$10,000 apiece works out to be a heady \$400 billion; a more generous \$100,000, which some advocates have proposed, gets you to a staggering \$4 trillion, about a third of the current annual Gross Domestic Product!

Of course, this bill does not call for an appropriation in the mega-billions. It only proposes to "study" the issue. But we all know that the composition of a commission determines the outcome. If the proposed commission has the same balance as today's slate of witnesses, it will obviously endorse a reparations program by a lopsided margin.

Devoting \$8 million of taxpayer money to "study" such a radical idea will surely attract a good deal of unfavorable public attention. In the absence of an astonishing reversal of public opinion, a future commission report recommending a large-scale compensatory transfer of wealth to members of one racial group will almost certainly provoke popular outrage.

No one doubts "the fundamental injustice, cruelty, brutality, and inhumanity" of slavery in the United States and everywhere else it existed--including, let us note, Africa, where slavery was widespread long before Europeans first reached its shores. Africans, it should be underscored, played a vital role in both the transatlantic and the equally large Mediterranean slave trades, which could not have existed without their active engagement.

But no nation in the world has a history free of what later came to be understood as inequities and injustices--the displacement of indigenous peoples, the denial of fundamental rights to women, and the use of child labor, for instance. The past, here and everywhere, is grossly imperfect by later standards. In democratic societies, when public opinion was aroused against practices that had come to be seen as morally offensive, they were eliminated.

In the case of African Americans, this nation fought an exceedingly bloody four-year civil war provoked by the election of a president committed to the "ultimate extinction" of slavery. A century later, the legal foundation of the South's Jim Crow system was destroyed by all three branches of the federal government. Virtually all of the specific demands made by groups like the Southern Christian Leadership Conference became the law of the land, and there was general consensus that this was a great moral advance.

Now, four decades later, the proponents of this bill declare that the Civil Rights Revolution and ongoing efforts to secure racial equality have not gone nearly far enough. The framers of this bill assume that African Americans continue to suffer from the ill effects of being remote descendants of people who were enslaved no more recently than 142 years ago, six or seven generations back. Like victims of drunk drivers or medical malpractice, they can only be "made whole" by a substantial cash award.

How are Americans today responsible for the evils of slavery long ago? The individuals who profited directly from slavery and might logically be expected to pay back their ill-gotten gains were the owners of slaves who sold the cotton they produced. Those slave-owners--who were a small minority of the population even in the South-- are all dead today, of course, and so too are all of their children and just about all of their grandchildren. We can't confiscate their riches to pay for reparations; much of that wealth in fact went up in smoke as a result of a great civil war over slavery.

Some proponents of reparations, though, attempt to link responsibility for the slavery of the past to present-day Americans by arguing that slavery was primarily responsible for the economic growth that led to our current high standard of living. We all gained economically from slavery, this claim goes, so we all owe restitution to its victims. Some even argue that the United States today would be a Third World nation economically but for slavery.

This is utter nonsense. The Industrial Revolution that began in the northern states in the second third of the nineteenth century launched the economic transformation that accounts for our riches today. Although slavery made many slave-owners wealthy in the antebellum years, it actually retarded our long-term economic growth. It was responsible for the backward, one-crop cotton economy that hung on in southern states for many decades after the Civil War and made the South by far the poorest region of the nation until after World War Two. The backward South was a serious drag on the national economy for close to a century; its initial dependence upon slavery put it into a developmental dead-end. We would likely enjoy a higher, not a lower, living standard today if the South had never developed a slave-based plantation economy. Americans today are not the beneficiaries of the exploitative labor system of the South in the antebellum years--nor, naturally, can they be considered responsible for it.

Most Americans today have no connection to the era of slavery. They have no ancestors who lived in the nation at the time, and yet they will be paying for reparations. All of my immigrant ancestors were still living in Sweden or Canada when the Thirteenth Amendment was passed and cannot be said to have endorsed slavery by settling in a nation in which it was once legal. As of 1990, according to one demographic study, one-third of the American population consisted of people who had no ancestor who arrived here before 1900. If we could add to that figure all of the immigrants who arrived between 1865 and 1900, as well as those who came after 1990, the descendants of post-Civil War immigrants would be a clear majority of the total population. Hardly any of today's Asian Americans, and very few Italians, Poles, Greeks, Jews, and Mexicans have ancestors who lived in a nation with slavery.

This bill assumes that the social problems that afflict African Americans today should be understood as having been caused by slavery. The case for reparations rests upon this premise, but supporting evidence is woefully lacking. Of course one can argue that African American culture was forged in slavery, and that everything that has happened to black Americans since Emancipation was shaped by that bitter experience. But attributing all of the problems of black people today to such ancient history is fatalistic, defeatist, and too vague a claim to prove.

The principal source of black poverty today, for example, is African American family structure. One-paycheck families (or zero-paycheck families who are dependent upon public assistance) are far more likely to fall into poverty than two-parent, two-paycheck families. Blaming African-American out-of-wedlock births and absent fathers upon an institution that disappeared 142 years ago makes little sense. This problem, after all, is much worse in 2007 than it was 1965, when Senator Daniel Patrick Moynihan wrote his controversial report on black family structure. The more we move back in time towards the days of slavery, the lower the rate of fatherless families among African Americans. If slavery were the explanation of this dysfunctional family pattern, we would see much higher rates a century ago than today.

Similarly, the average black seventeen-year-old has reading and math skills equal to those of whites and Asians in the 8th grade, a glaring disparity that is the single most important reason for persistent economic inequality. Over the past four decades, this disturbing achievement gap narrowed considerably, then widened enough to wipe out the previous gains, and then narrowed again. Slavery could certainly not be the cause; with the passage of each year its influence should be weaker.

Trying to find social science evidence to prove a causal link between slavery and the ills that influence the black community today is a hopelessly difficult task. How would the effects of slavery be transmitted to successive generations? Should we expect African Americans with only one ancestor who was a slave in 1865 to be better off than those whose pre-1865 ancestors were all slaves? The current black population includes large numbers of people born in the West Indies or Africa, whose ancestors never experienced slavery in the U.S. but who may have married persons whose ancestors had.

Do they get full or only partial reparations payments? What about the small but rapidly growing group of people with one white and one black parent? Would being of mixed race cut their claim by 50 percent? Eligibility for membership in some American Indian tribes today depends upon the "blood quantum" of Indian ancestry you can prove. If proving how much slave "blood" one has will determine the size of one's reparations, the likely result will be deep resentments among blacks who receive different awards.

The bill compounds the confusion here by throwing in references to having been subject to de jure or even de facto segregation as part of the rationale for reparations. If we cast the net widely enough to include Haitian or Nigerian immigrants who attended Fisk, Morehouse, or Howard in the 1980s--all racially identifiable institutions and thus "segregated" de facto, then all black people will be eligible, and the link to slavery in the United States will be attenuated to the vanishing point.

Finally, I would urge the members of this subcommittee and the House of Representatives as a whole to ponder carefully the message that will be conveyed by the passage of this bill. "When you are behind in a footrace," the Reverend Martin Luther King, Jr. said in 1963, "the only way to get ahead is to run faster than the man in front of you. So when your white roommate says he's tired and goes to sleep, you stay up and burn the midnight oil." Dr. King's words reflect an important tradition of self-reliance that has had eloquent advocates in the black community: Frederick Douglass, Booker T. Washington, and W.E.B. Du Bois, among others. All were saying, in their different ways, that black people were not the helpless pawns of history who could do nothing to better their lives until America owned up to its historical sins and offered them a generous financial settlement. Their point is as important today as ever.

This committee is now considering a measure that delivers quite a different message: "If you're having trouble with your homework, don't sweat it. It's not your fault. You had ancestors who toiled as slaves in Alabama before the Civil War, and what they experienced so long ago means that you naturally will find it hard to master differential equations and compound sentences. You have been damaged by American history, and are a victim. Why burn the midnight oil? You won't have a fair chance of getting ahead in life unless you are able to collect damages for the wrongs that were inflicted on your great, great grandparents." I can't think of a worse message to send to African American youths. The past is past, and nothing Congress or anyone else can do can change it.

This is not an argument for legislative inaction. Congress can properly deal with present-day problems. If racial discrimination remains a major problem today, as the framers of this bill assume, then we need to strengthen our formidable body of anti-discrimination law or do a better job of enforcing existing ones. That would be action precisely targeted to address demonstrable harms that have clearly identifiable causes and remedies, something completely different from what is being proposed here.

In sum, this proposed legislation seems to me profoundly misguided. The great Civil Rights Act of 1964 protected all Americans from discrimination on the basis of race, color, religion, sex, or national origin. It rested upon the powerful universal principle that every American is entitled to fair and equal treatment as an individual. The concept of reparations is a radical and regrettable departure from that sound principle.

Mr. Conyers. Our final witness is from St. Louis University Law School, Professor Eric Miller, who, before joining the faculty there, was a Fellow with the Harvard Criminal Justice Institute and the Harvard Civil Rights project, as well as professor at Western New England College School of Law. He specializes in historically significant race-based acts of violence such as lynching and riots.

Not too long ago, we both had the opportunity to present at the Thomas Jefferson School of Law in California, let us see, was it Sacra---

Mr. Miller. San Diego.

Mr. Conyers [continuing]. San Diego, California, on a discussion of this same subject.

We are very happy to welcome him here to the Judiciary Committee. And, without objection, your full statement will be recorded in the proceedings here; and you may begin.

TESTIMONY OF PROFESSOR ERIC J. MILLER, ASSISTANT PROFESSOR OF LAW,  
SAINT LOUIS UNIVERSITY SCHOOL OF LAW

Mr. Miller. Thank you, Chairman.

My name is Eric Miller, and I am an assistant professor of law at St. Louis University School of Law, and I am honored by the Committee's request that I testify at this very important hearing on the Legacy of the Transatlantic Slave Trade.

I would like to begin by saying that I think Professor Thernstrom's claim that the panel would come out a particular way is wrong, because I don't actually quite know where I would necessarily come out on reparations. In fact, my work has been cited in dismissing a slavery case in the Northern District of California by Judge Nagle, so I don't know that that claim is totally accurate.

In the short time available I want to make the following five points:

First, that there is still much about the history of slavery that remains to be discovered and talked about.

Second, that the national government is ceding the initiative and acknowledging accounting for and acting upon that history to a variety of State and municipal governments and a variety of public and private institutions.

Third, rather than adopting a confrontational posture seeking to apportion blame or deny responsibility, we need to refine our national discussion of race.

Fourth, the first stage of that process is now somewhat uncontroversial, as most Americans acknowledge the invidious nature of slavery and segregation and its pernicious effects.

But, fifth, we require to progress to the next stages, including accurately accounting for that history and exploring its impact upon the present with an open mind, one that respects both historical fact and competing claims to community and equality of consideration in the membership of the American polity.

Now, whether Professor Thernstrom likes it or not, reparations is part of the mainstream dialogue of America, although I acknowledge that large numbers of people don't like that. So one decides to discuss it on Fox TV, Chris Rock on the HBO show, and there was a great discussion of reparations in the major motion picture Friday--no, Barber Shop. So people are talking about it.

But a major impediment in our national debate upon race is a purely confrontational model that, on the one side, tends to focus solely on establishing and seeking financial redress from some duty or by Whites to Blacks for the wrong of slavery and, on the other side, seeks to blame African Americans for the lingering effects of racism or, in the words of Roger Clegg in the previous panel, claims that African Americans seek preferences or special treatments. That is echoing the majority opinion in Plessy v. Ferguson that African Americans seek to be the special favorites of the law.

Rather than perpetuate this confrontational model, we must adopt a broader understanding of the types of harms inflicted by slavery and segregation. These harms are not singular but plural, affecting a range of communities at different times and in different ways.

Recent State-sponsored commissions looking at slavery and segregation and studies by the Universities of Alabama and North Carolina, as well as, as we heard in the last panel by the Episcopal Church, have produced apologies for their ties to slavery. There have also--and I think Congressman Franks will be interested in this--been apologies from North Carolina, South Carolina, Oregon and Virginia for the eugenics programs that participated in the sterilization of African American women and some of these programs running into the mid-1980's.

The conversation stimulated by these initiatives invite a process of interrogating the basis of our shared community as Americans. We need to account for the ways in which the Federal, State and local governments have profited off or promoted slavery and segregation. These investigations seek to chart the ways in which national, State and local communities have consolidated their civic identities in response to acts of racial violence both during and after the era of slavery. At a minimum, they seek to explore the effects that slavery and segregation played in establishing the relative social inequality of African Americans as compared to other racial or ethnic groups.

To fail to acknowledge and account for America's history is to ignore and reject past and continuing experiences of a huge segment of the population. It is to perpetuate the treatment of African Americans as somehow less interesting or less worthy than other citizens.

Justice Kennedy in a last-term Supreme Court case, *Parents Involved in Community Schools versus Seattle School District*, recently suggested that an injury stemming from racial prejudice can hurt as much when the demeaning treatment based on race identity stems from bias masked deep within the social order as when it is imposed by law.

Congressman Conyers' efforts to raise awareness of this issue and to promote the study of this issue through H.R. 40 are rightly celebrated. It is time that Congress join the various states, municipalities, universities and private organizations investigating the invidious legacy of the slave trade so as to promote frank and open-minded discussions of the impact of slavery on race in America.

The question is not whether to look forward. That is indeed, as the last panel suggested, an American talent. But every nation, including the most forward-looking, still reveres its past. The real question is whether we as a Nation are to selectively confine a part of our shared history to the past or whether to move forward as one Nation indivisible under God.

Thank you, Congressman.

Mr. Conyers. Thank you so much, Mr. Miller. Good to see you again.

[The prepared statement of Mr. Miller follows:]  
Prepared Statement of Eric J. Miller

Mr. Conyers. We had some questions, Professor Thernstrom, about your comment about a Democratic staff memo, which I wanted you to know I take exception to it, and I will be able to contact you about it. I don't want to spend my little 5 minutes parsing over that.

And you said a Chairman made some comment about kidnapping. And I am not sure if that--was that me you were referring to?

Mr. Thernstrom. Yes. If I understand correctly, you used that term.

Mr. Conyers. Well, I take exception to that, too. And of course we have got a stenographer here, so we will clear all those kinds of questions up.

I would like to ask in the few minutes I have remaining, Councilwoman Watson, this almost begins to sound like what the commission would be doing. Now, everybody is telling me how much material is out there. It would take quite a--I mean, this Judiciary Committee is I think the most active full Committee in the Congress. We had legislation being reported on the floor today that I couldn't even get to. We had two hearings, one is backed up right now, and this is the way our work week goes. We have got a lot of work. There is a lot of people in the executive branch being examined. The Department of Justice is in shambles. It goes on and on and on and on.

What do you get out of this--and I thank you for coming. What do you get out of this today in terms of how we ought to be looking at how we might want to proceed?

Because there is a feeling that we are going to create more division by talking about this subject. I have never created division on the subject of race in my life. I mean, that is about the last thing I would like to do. And as one who has worked on race relations as about--spent as much investment of my time as anybody else, I think that we could go about this. I don't think the commissioners--and, besides, I don't know what they are going to produce. I may end up not in agreement with their work product myself.

It is hard to predict where we are going. But at least the discussion, this discussion, is invaluable. It will be the first time people are hearing it.

So I want to ask you and the ABA President elect to give me a comment or two before the lights go off.

Ms. Watson. Thank you, Mr. Chairman.

I appreciate your comments very much, and I agree with you in terms of the discussion. The discussion is rich; and, as one who has been actively involved in the movement for decades, I am still learning and my own research is unfolding new information every day.

I only found out 2 years ago that profits from the slave trade helped to finance the war of 1812, helped to provide the basis for this country to double its size with the Louisiana Purchase. I just found that out 2 years ago. That the money that Thomas Jefferson used, Thomas Jefferson who wrote that all men are created equal, was also a person that thought he had the right to own other persons. He was an enslaver and Thomas Jefferson negotiated the Louisiana Purchase with revenue that in part came from profits directly from the slave trade. And this is a matter of public record.

So when one considers all the information that really needs to be unearthed for all Americans-it is not something that is just valuable to people of African descent. The whole country needs the shade to go up. All Americans need to know the full history of this country. Because the truth is we are one family, one human family; and it is National Geographic, not the NAACP, not N'COBRA, that said that all human life started on the continent of Africa.

So if that is so, all of us are of African descent, all of us are God's children, so if we begin to see ourselves as one human family, then that takes us to another level. It gives us room to move forward as one family on behalf of the entire Nation to bring forth new information, Mr. Chairman.

Mr. Conyers. Could I yield to Trent Franks? Because I think we have a point of agreement here; and, after all, that is what the hearings are about.

Ms. Watson. Yes, sir.

Mr. Franks. Mr. Chairman, as far as all of us being one human family, is that the point that you are asking me to address?

Mr. Conyers. Well, no. I just noticed you and I shaking our head in affirmation. I don't know which points we were in agreement on.

Mr. Franks. I think the gentlelady's comment that we are all one human family and that we have great value in considering our history and what mistakes we have made in the past and how we have wronged each other in the past so that at least can prevent that from happening in the future, and that is something I agree. I may disagree with some of the conclusions or, you know, the remedies here, but I do desperately agree with some of the foundations that are being laid here.

Mr. Conyers. Thank you.

And, President-Elect of the Bar, would you give me a closing comment, please?

Mr. Wells. I will be glad to, Mr. Chairman.

You know, one question that comes up is what is the business of the Bar Association in taking a position on this issue? And I will tell you what the reason for the position is. The American Bar Association is vitally interested in the American justice system. We are vitally interested in the American criminal justice system. You have heard many statistics today indicating very clearly that disparities exist in our criminal justice system, the statement that I quoted from Justice Anthony Kennedy in his address to the American Bar Association in San Francisco which led the ABA to set up what we call the Kennedy Commission.

Mr. Conyers. I was there.

Mr. Wells. And the reason we support this is we need to know why there are those disparities, and one of the reasons may be the legacy of slavery and racial discrimination. If in fact that is one of the reasons for the disparities, then and only then can we begin to craft viable solutions to those disparities. So it is the business of American lawyers to make our justice system more just, and that is the reason we are here testifying today.

Mr. Conyers. Thank you.

Trent Franks.

Mr. Franks. Well, thank you, Mr. Chairman.

Mr. Chairman, this has been a very interesting discussion here, and I appreciate your forbearance that you have given me.

Because I just want to say here at the outset you try to find the places of common ground that you have and then I will talk about maybe some of the differences. But I have no doubt that some of the difficulties today within the African American community--there is no question in my mind that slavery had a lasting systemic effect on that community. I have no doubt about that. That is really, in my judgment, though, not what is at issue.

There is a lot of tragedies. My great-grandmother was a Cherokee Indian, and she went through a lot of tragedies due to some of the policies that were in place at that time.

But my concern here is the remedy. The apology here--I think maybe an acknowledgement would be in order. I think maybe some way to gain from the failures of the past so that we can fix what we can in the future. Because I think the only way we can truly honor those who were so desperately treated was to somehow make sure that their descendants are not treated the same way.

Now, let me, if I can, I want to make a--I think that is probably my central point here today. I believe that the tragedy of slavery was caused by a failure to recognize what Ms. Watson said, and that was that we are all one human family. That when we leave anyone out of that equation that we step into a terrible nightmare.

The reason that I have equated to a degree here slavery with abortion on demand and with the Holocaust in Germany is because I think they have a lot of things in common. In each case they are closely associated with a Supreme Court decision. The High Tribunal of Germany said the Jew was not human. The Supreme Court of the United States said the unborn child was not included in the word "person" in the Constitution. The Dred Scott decision said that the Black man was not a person under the Constitution. In every one of those cases, it perpetuated or instigated a great tragedy that cost millions of lives. And the response to that was also a commonality. In every case, there was a world war or a civil war. And I don't know what will happen in the future related to abortion on demand, but the commonality is unavoidable.

Now, I think the point here is that we must not be guilty of making the mistakes of our predecessors. What possessed them in retrospect to hold a Black man not a person is beyond me. What possessed the intelligentsia of Germany to hold the Jews not a person is beyond me. What possesses us today to hold a child not a person is beyond me.

I would respond to Mr. Cohen's--I wish he were here. He said, well, the difference is that one is a choice. But I remind him that, in the discussions between Abraham Lincoln and Justice Judge Douglas, Judge Douglas made the argument, he said, well, I am not pro slavery. I just want people to have that right.

There was a play many years ago where Justice Taney, who was a Supreme Court Justice under Abraham Lincoln, one of the players probably quoted him in a probably a pretty artistic license, but he said this. I remember the quote. He said, the abolitionist doesn't understand one thing. Slavery is not compulsory. If he has some moral dilemma with owning slaves, we suggest therefore that he not own them. But he should not impose his morality upon those of us who do or otherwise interfere with our right to choose.

Now, that could be yesterday's headline. It is a false argument. Because the little boy next to the mom said, well, what is wrong with that statement? He said, well, mommy, the slave is a human being. It is astonishing to me how God gives children the insight to see the obvious but withholds it from Supreme Court Justices sometimes.

Mr. Conyers. Could the gentleman yield for 1 second?

Mr. Franks. Certainly.

Mr. Conyers. How about racism being a reason for slavery?

Mr. Franks. Well, I absolutely believe that racism was a reason for slavery. But racism is saying to the person, because of the color of their skin, that you are not fully equal to me. That is racism. That is what it is. Absolutely. The gentleman is correct.

And I would just say to you--let me shift gears here. One of the reasons I keep talking about this issue is that 14 percent of child-bearing women today are Black, but yet they account for 31 percent of abortions. For every three Black children that are born, two are aborted. I find that to be a moral outrage beyond my ability to articulate here today. If there is anything that is an attack on the African American community, it has got to be that. There were 4 million slaves, and yet since *Roe v. Wade* 10 million unborn children that were African American, Black children, 10 million of them have been killed before they were born. They didn't get a chance to even be enslaved because they were killed before they even saw the light of day.

Mr. Conyers. Will the gentleman yield for just one moment?

Mr. Franks. Yes, sir.

Mr. Conyers. There were women on the slave ships that threw their children overboard rather than let them ever grow up----

Mr. Franks. The Chairman is exactly correct.

Mr. Conyers [continuing]. Adults under slavery. That is a choice that---- Mr. Franks. But it was still the wrong choice, and it is a choice that shouldn't be legal in a country that upholds the value of innocent human life.

So let me just close things up. One of the things that happened--in each of these cases, the country was divided. But one thing that happened in this country, as much as our government was responsible for allowing slavery, Mr. Chairman, we finally came to ourselves and we said we are not going to do it anymore and this government also changed that. And that is one of the reasons I think America is set apart. But we forget maybe why.

A lady by the name of Harriet Beecher Stowe wrote a book called *Uncle Tom's Cabin*. She said she had a dream about a slave that was being beaten, by his masters beating him to death, and he was praying for them as he was being beaten to death. And that story caused her to write this book that touched the conscience of America. And we ended this horrifying practice that has still--still is a crushing mark on America's history.

And I am just saying to you that I pray that somehow today we can come to the same conclusion, that we don't have to make the past mistakes again. Let us get together and let us say whatever it was, whether it was slavery, whether it was abortion on demand, whether it was attacking people because of their Irish ancestry, whatever it was, when we dehumanize another person, especially in the law, this society, this generation, this human family must stand up and change that so that we don't perpetuate the tragedies of the past.

Mr. Chairman, I yield back.

Mr. Conyers. I thank the gentleman very much.

Does any of the--Attorney Miller, Ms. Watson, briefly, your comments; and then we will turn to the gentleman from Minnesota for the final interrogation.

Mr. Miller. Thank you very much for giving me the opportunity to respond.

Can I just say how heartened I am to hear the passionate engagement in this discussion by Congressman Franks. And the terms in which he engages in this discussion, I think that is a deeply heartening development.

One point that is worth making is that many African American women weren't even given the right to choose whether to abort or not abort because of laws enforcing sterilization. So that many African American women, just by virtue of going to a hospital to get an operation, were given forced hysterectomies. And that is a history that does go back through the eugenics movement into slavery where the science of gynecology was developed in Alabama, actually--there is a little plaque on the wall of a building in Montgomery, Alabama--through practicing on slaves. So that is a relatively direct link.

So to the extent that Congressman Franks has suggested that it is worth acknowledging that history, I am deeply heartened; and to the extent that this Committee is drawing out the commonalities in the discussion across party lines and across philosophical lines, I find that deeply heartening and commend the Committee.

Mr. Conyers. Councilwoman Watson.

Ms. Watson. Thank you very much, Mr. Chairman.

I just want to say that, as a person who has been involved in multiple movements for a long time--I am very active in the women's movement, peace movement, et cetera, so I have had a lot of discussions and have been in the business of talking about pro and con and abortions, immigration, the crack cocaine disparity, gay marriages, et cetera.

But on the issue of the legacy of the trans-Atlantic slave trade and given that 246 years of Africans working, being lynched, tortured, drawn and quartered, African women having babies cut out of their stomach and having no one to appeal on their behalf, being killed if they dared to read and write when it was against the law for Africans to read and write during that period, given the wealth of this country that got built off the backs--including the U.S. Capitol being built by Africans who never got paid--it didn't just benefit the enslavers in the South. The entire Nation benefited.

This deserves a special discussion and review and commission without being forced to share the podium with another equally passionate issue for some. There has not been a hearing before the U.S. Congress on the issue of reparations and the crime against humanity. There was a trans-Atlantic slave trade as declared by the United Nations World Conference Against Racism in 2001 before today.

So I just want to say for the record I am going stay centered on the significance of this without passing any aspersion on other issues. This deserves a focal point because this was the purpose of today's hearing.

And I thank you very much, Mr. Chairman.

Mr. Conyers. Well, this is a hearing on whether we should have a study that would come before an examination of reparations. Because we don't know where the study is going to go. And, presumably, it would gather the large amount of evidence that is already out there, which we 30 some odd men and women aren't in any position to try to gather and pull together. And the thought was that it would be more efficiently done for the whole Congress if we had somebody do it for us, and it is no more complicated or simple than that.

I thank the gentelady and recognize Keith Ellison as the final Member.

Mr. Ellison. Thank you, Mr. Chairman.

Professor Thernstrom, thank you for your presentation. I want to thank all the panel members.

I think you and Mr. Clegg in the earlier panel pointed out that there have been a number of studies out there on various aspects of African American life in history. Could you identify for me--because I am very interested in reading it. Could you identify for me the study that has been issued by a government commission, Federal Government commission, that explored the trans-Atlantic slave trade and its impact on modern African American life? If you could just cite that study for me, maybe we don't need to do any of this. Could you do that for me, please?

Mr. Thernstrom. Well, Congressman, I would say there is no such study by the Federal Government.

Mr. Ellison. Thank you.

Mr. Thernstrom. I don't see how---

Mr. Ellison. I do have to reclaim my time.

Thank you, Professor Thernstrom; and I also want to thank you for your very direct answer. Because people sometimes filibuster. So I do thank you for your direct answer. There is no such study out there, and I think that kind of makes the case for me.

Let me ask you this, also, Professor Thernstrom. You have identified one of the potential harms of such a commission and study as it could be divisive. Have you found that the exploration and subsequent payment of even reparations, which this bill doesn't even ask for, it is just a study bill, but the study and subsequent payment of reparations to Japanese Americans has alienated them from American society?

Mr. Thernstrom. Well, no, I think there are grave differences.

Mr. Ellison. Okay. Thank you, sir.

What about--I think there have been other communities that received reparations around the world. Ms. Watson, have the studies--have the other cases on which reparations has actually been found to be due and owing and paid--of course this bill doesn't go that far, right--have they alienated those communities which have received reparations?

And why confine ourselves to America? I know that Germany paid reparations to Jews, and there have been other reparatory provisions around the world as a result of conflict between people. Have these heightened disputes between people or what has been the effect?

Ms. Watson. Mr. Chair?

The record includes \$25 million paid by Austria to Jewish Holocaust survivors. We know about the \$20,000 each to Japanese Americans and a letter of apology. The United States gave \$1 billion plus 44 million acres of land to honor the Alaska native land settlement in 1952. Germany paid \$82.2 million to Jewish Holocaust survivors in the Germany Jewish settlement. The Ottawas of Michigan in 1985 received \$105 million. The Sioux of South Dakota received the same. In 1980, the United States gave \$81 million to the Klamath of Oregon. And there is a long list.

Mr. Ellison. Have those payments worked to further alienate those recipients from American society? Are we now--I guess--to answer your question, I guess you are saying no, right? But I guess there is precedent. But I think there is concern that this is going to somehow harm America because digging up all this old stuff is just going to make us less interested in being part of America.

Ms. Watson. Some of the largest reparations aren't called reparations. The Homestead Act was reparations for White male property owners. So that is part of what the study would need to unearth.

Mr. Ellison. Are they alienated from the mainstream of American society?

Ms. Watson. White males?

Mr. Ellison. Yes.

Ms. Watson. I don't think so.

Mr. Ellison. They are doing okay?

Mr. Miller, what do you think about this question of dividing America by exploring reparations? Does that carry any water with you that looking into this issue is going to somehow fracture our country?

Mr. Miller. It depends how it is done. If it is done responsibly, the answer is no. I think there has been a drawing of battle lines around the concept of--around a misconception of what reparations might be about. And what part of my scholarship is doing and what the work of some of the other panelists has been is to get us past that toxic "he said, she said" style of debate and instead develop a more inclusive debate that points to people like Congressman King's grandfather or interrogates what is a role of John Brown in American history and honors everybody in the discussion, rather than prejudging what the outcome is going to be in terms of even whether there ought to be a payment, should it be education of whatever.

Mr. Ellison. I would just like to point this out, if I have any more time. Earlier this year, a fairly controversial bill came up about whether or not the U.S. Congress would find that somehow the Armenian people were the target of genocide in the precursor country to Turkey, which would have been the Ottoman Empire, a very controversial issue. And without going into what the final outcome would or should or could be--because, of course, we never had that vote--some people said, well, you know, it would harm Turkey to have this discussion.

But one Turkish person said to me, he said, it wouldn't harm us to find that our ancestors had done some things that we are not proud of. That is just a human condition. But what harms us is just not really facing it and acknowledging it and dealing with those harms. And we might find very well that there was some members of the Turkish community who behaved very admirably, and we may find that there may have been some people in the Armenian community that did some things that we are not too proud of either.

It is really not a "blame shame" thing. It really is about coming to grips with our own history and understanding that slavery is not something that happened to Black people, it is something that happened to all of Americans, everybody. And we all in one way or another--I even read some stories about African Americans who owned slaves in America.

And Professor Thernstrom's point about finding out--if we explore this subject we might find that Africans themselves were implicated in slave trade, I don't think that should stop us at all from going forward. They very well were likely to be involved, and I am sure the study would confirm your suspicion that some were. But I think that there is a tremendous value in exploring in a nation dedicated to freedom and justice and equality this state of unfreedom and anti-freedom that existed for so many years among us.

Mr. Conyers. This has been such a tremendous initial conversation. It is historic.

I thank Congressman Franks, Congressman Ellison who has been with me all morning and all of you who have been here. Councilwoman Watson, President Wells, Professor Thernstrom, Attorney Miller, you have our dedicated appreciation of us beginning this conversation.

I think we are going to examine each other's positions, and I think we are going to be moving forward in a way that will create a history that will make us proud of what we are attempting to do here. I have appreciated the inner changes, and this is how things happen or ought to happen in the Congress. They don't always happen this way, nor in the courts, as has been pointed out more than once.

I thank you all, and the Committee is adjourned.

[Whereupon, at 2:43 p.m., the Subcommittee was adjourned.]