**Outline for Part III of Final Report (February 28, 2023)**
**California Task Force to Study and Develop**
**Reparation Proposals for African Americans**

I. **PART III**: **International Reparations Framework and Examples of Other Reparations Schemes [Gov. Code, § 8301.1, subd. (b)(3)(A)]**
   a. Chapter 14: International Reparations Framework
      i. In the UN Principles on Reparation, the UNGA held that any full and effective reparations scheme must include the following five forms of reparations:
         1. Restitution
         2. Compensation
         3. Rehabilitation
         4. Satisfaction
         5. Guarantees of non-repetition
      ii. Who qualifies for reparations under the UN Principles on Reparation?
         1. According to the international legal framework laid out by the UN Principles on Reparation, victims of gross violations of international human rights law and serious violations of international humanitarian law should be provided with full and effective reparations.
         2. The UN Principles on Reparation defines victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law." Furthermore, "the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization." Additionally, "A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim."
      iii. What constitutes gross violations of international human rights law and serious violations of international humanitarian law under the UN Principles on Reparation?
         1. While the UN Principles on Reparation did not formally define either 'gross violations of international human rights law' or 'serious violations of international humanitarian law,' the International Commission of Jurists (ICJ) elucidated on what these terms could mean. Specifically, the ICJ defined 'gross violations' and 'serious violations' as the "types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person." The ICJ gave examples of these types of violations, which included "genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment

or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination." The ICJ also held that "harm should be presumed in cases of gross human rights violations"

iv. What are victims' rights to remedies under the UN Principles on Reparation?
    1. Victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to certain remedies under international law:
        a. "(a) Equal and effective access to justice;
        b. (b) Adequate, effective and prompt reparation for harm suffered;
        c. (c) Access to relevant information concerning violations and reparation mechanisms."
    2. According to the Human Rights Committee, "the right to an effective remedy necessarily entails the right to reparation." An effective remedy refers to procedural remedies whereas the right to reparation refers to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In short, descendants are entitled to have effective procedural remedies available to them, which will in turn help them receive the reparations they are entitled to.
    3. Regarding effective remedies, victims "shall have equal access to an effective judicial remedy as provided for under international law." This would require a State to "establish functioning courts of law or other tribunals presided over by independent, impartial and competent individuals exercising judicial functions as a prerequisite to ensuring that victims have access to an effective judicial remedy." This would also require the State to have "competent authorities to enforce the law and any such remedies that are granted by the courts and tribunals."

v. What must full and effective reparations include under the UN Principles on Reparation?
    1. Restitution
        a. "Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."
        b. According to the ICJ's interpretation of the UN Principles on Reparation, where the State can return a victim to the status quo, the state has "an obligation to ensure measures for its restoration." However, even though restitution is considered the primary form of reparation, the ICJ acknowledges that "in practice [restitution] is the least frequent, because it is mostly impossible to completely return [a victim] to the situation [they were in] before the violation, especially because of the moral

damage caused to victims and their relatives." So, the ICJ holds that where complete restitution is not possible, as will often be the case, the State must "take measures to achieve a status as approximate as possible." In situations where even this is not feasible, "the State has to provide compensation covering the damage arisen from the loss of the status quo ante."

2. Compensation
    a. "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:
        i. Physical or mental harm;
        ii. Lost opportunities, including employment, education and social benefits;
        iii. Material damages and loss of earnings, including loss of earning potential;
        iv. Moral damage;
        v. Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."
    b. According to the ICJ's interpretation of the UN Principles on Reparation, compensation is to be understood "as the specific form of reparation seeking to provide economic or monetary awards for certain losses, be they of material or immaterial, of pecuniary or non-pecuniary nature." The ICJ highlighted how compensation has previously been awarded by claims commissions for cases that had claims of "material and immaterial damage" and especially for cases that had claims of "wrongful death or deprivation of liberty." The United Nations has recognized a right to compensation "even where it is not explicitly mentioned" in a particular treaty and the Human Rights Committee "recommends, as a matter of practice, that States should award compensation." The basis for this recommendation comes from Article 2(3)(a) from the International Covenant on Civil and Political Rights. It is important to note that international jurisprudence divides compensation into "material damages" and "moral damages." Material damages include, among other things, loss of actual or future earnings, loss of movable and immovable property, and legal costs. Moral damages include physical and mental harm.
3. Rehabilitation
    a. "Rehabilitation should include medical and psychological care as well as legal and social services."

b. According to the ICJ's interpretation of the UN Principles on Reparation, "victims are entitled to rehabilitation of their dignity, their social situation and their legal situation, and their vocational situation." The ICJ also highlighted the Convention Against Torture's assessment on what constitutes rehabilitation. Accordingly, "rehabilitation must be specific to the victim, based on an independent, holistic and professional evaluation of the individual's needs, and ensure that the victim participates in the choice of service providers." Furthermore, "the obligation to provide the means for as full rehabilitation as possible may not be postponed and does not depend on the available resources of the State." Finally, rehabilitation "should include a wide range of inter-disciplinary services, such as medical and psychological care, as well as legal [rectification of criminal records or invalidation of unlawful convictions] and social services, community and family-oriented assistance and services; vocational training and education."

4. Satisfaction
    a. "Satisfaction should include, where applicable, any or all of the following:
        i. Effective measures aimed at the cessation of continuing violations;
        ii. Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
        iii. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
        iv. An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
        v. Public apology, including acknowledgement of the facts and acceptance of responsibility;
        vi. Judicial and administrative sanctions against persons liable for the violations;
        vii. Commemorations and tributes to the victims;
        viii. Inclusion of an accurate account of the violations that occurred in international human rights law and

international humanitarian law training and in educational material at all levels."

b. According to the ICJ's interpretation of the UN Principles on Reparation, satisfaction is a "non-financial form of reparation for moral damage or damage to the dignity or reputation" that has "been recognized by the International Court of Justice." Satisfaction can come in the form of a condemnatory judgment, the acknowledgement of truth, as well as the acknowledgement of responsibility and fault. The ICJ also held that satisfaction includes "the punishment of the authors of the violation." Furthermore, "the UN Updated Principles on Impunity recommend that the final report of truth commissions be made public in full." This is supported by the UN Human Rights Commission's resolution on impunity which recognizes that "for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including the accomplices, of these violations are essential steps towards rehabilitation and reconciliation." Another important factor when it comes to satisfaction is a "public apology" as well as a "public commemoration." The public apology is to help "in restoring the honour, reputation or dignity of a [victim]." The public commemoration "is particularly important in cases of violations of the rights of groups or a high number of persons, sometimes not individually identified, or in cases of violations that occurred a long time in the past." A public commemoration "in these cases has a symbolic value and constitutes a measure of reparation for current but also future generations."

5. Guarantees of non-repetition
    a. "Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:
        i. Ensuring effective civilian control of military and security forces;
        ii. Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
        iii. Strengthening the independence of the judiciary;
        iv. Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
        v. Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

vi. Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
vii. Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
viii. Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."

b. According to the ICJ's interpretation of the UN Principles on Reparation, the guarantee of non-repetition derives from general international law. A guarantee of non-repetition is an aspect of "restoration and repair of the legal relationship affected by the breach." According to the International Law Commission, "Assurances and guarantees are concerned with the restoration of confidence in a continuing relationship." It's important to note that a guarantee of non-repetition overlaps with international human rights law because "States have a duty to prevent human rights violations." A guarantee of non-repetition is "required expressly" as part of the "legal consequences of [a State's] decisions or judgments." This express requirement is supported by the UN Commission on Human Rights, the Human Rights Committee, the Inter-American Court and Commission on Human Rights, the Committee of Ministers and Parliamentary Assembly of the Council of Europe, and the African Commission on Human and Peoples' Rights. Another measure that falls under the guarantee of non-repetition is "the necessity to remove officials implicated in gross human rights violations from office." Finally, a guarantee of non-repetition can and often must involve "structural changes" that must be "achieved through legislative measures" to ensure that the violations cannot ever happen again.

vi. Statutes of Limitations
1. "Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law."

b. Chapter 15: Examples of International and Domestic Reparations and Racial Equity Schemes, with short explanation of why we are including certain schemes
i. International schemes (or International reparations and racial equity schemes)
1. Germany-Israel

a. The Luxemburg Agreements between Israel and the Federal Republic of Germany

In September 1952, representatives of the newly established State of Israel and the newly formed Federal Republic of Germany (FRG) met at Luxembourg and signed an agreement that required the FRG to pay reparations to the Israel for the material damage caused by the criminal acts perpetrated against the Jewish people. The 1952 Agreement consisted of three parts, two of which were protocols. The first part of the Agreement required the FRG to pay money to Israel The second part, Protocol 1, required the FRG to enact laws to compensate individuals. And the third part, Protocol 2, required the FRG to pay money to the Conference on Jewish Material Claims against Germany (Claims Conference).

b. Payments to Israel

1. The first part of Agreement required the FRG to pay Israel the first installment in two parts. The first part, a payment of DM60 million, was due on the day the Agreement was entered into force. The remaining DM140 million was due three months later. For 1953, the FRG was required to pay DM200 million. The remaining funds would be paid in nine annual installments of DM310 million plus a tenth installment of DM260 million.

2. After 1954, if the FRG determined that it could not comply with the obligation, it was required to give Israel notice in writing that there would be a reduction in the amount of the installments, but in no way could any of the installments be reduced below DM250 million.

3. Purpose of the DM3 billion payment

Help Israel meet the costs of resettling Jewish refugees who fled Nazi Germany and other territories that were formerly under Nazi Germany control. The funds provided the means for Israel "to expand opportunities for the settlement and rehabilitation" of Jewish refugees in Israel. Israel invested those funds into its industrial development by purchasing goods and services from the FRG to build and expand its infrastructure. In addition to providing Israel with funds to purchase goods and services, the Agreement required the FRG to ensure the delivery of goods and services to Israel. To ensure the participation of German suppliers, the Agreement provided incentives like tax refunds to suppliers "on deliveries of commodities in pursuance of the Agreement."

c. Protocol 1: Individual Compensation

1. The second part of the Agreement, Protocol 1, required the FRG to enact laws for payment of individual compensation to former German citizens, refugees, and stateless persons. The FRG enacted the first supplementary law for the compensation of victims in compliance with Protocol 1 in 1953.
2. The 1953 law listed categories of harm that were eligible for compensation. Those categories included the following:
    a. Compensation for Life
    b. Compensation for Health
    c. Compensation for Damages to Freedom: This category included claimants subjected to political or military jail, interrogation custody, correctional custody, concentration camp, ghetto, or punishment entity. It also included forced labor "insofar as the persecuted lived under jail-like conditions."
    d. Compensation for Property, Assets, and Discriminatory Taxes
    e. Compensation for Damages to Career or Economic Advancement
    f. Compensation for Loss of Life or Pension Insurance
3. The Compensation Law covered harms that occurred between January 30, 1933, and May 8, 1945. Claimants could pursue compensation for harm endured under each of the various categories simultaneously. Claimants were not limited to one category when filing claims.
4. There were some deficiencies in the 1953 Compensation Law, which Parliament tried to fix in the 1956 Federal Compensation Law. The 1953 Law excluded several categories of victims and made the claim process complex and cumbersome. The 1956 Law made several changes that were intended to make the claims process easier for the following types of claims:
    a. Compensation for Health
    b. Compensation for Damages to Freedom: This category was expanded to include claimants forced to wear the Star of David or live illegally in inhumane conditions.
    c. Compensation for Property, Assets, and Discriminatory Taxes
    d. Compensation for Damages to Career or Economic Advancement
    e. Compensation for Loss of Life or Pension Insurance
5. The 1956 Law still excluded those persecuted outside Germany, forced laborers, victims of forced sterilization, the "antisocial," Communists, Gypsies, and homosexuals. In 1965,

the FRG enacted the Federal Compensation Final Law. The Final Law made the following changes:

a. It created a hardship fund of DM1.2 billion to support refugees from Eastern Europe who were previously ineligible for compensation, primarily emigrants from 1953 to 1965

b. Compensation for Health: Eased burden on claimants to prove damages to their health were caused by their earlier persecution by including a presumption that if the claimant had been incarcerated for a year in a concentration camp, subsequent health problems could be causally linked to their persecution under the Nazi regime.

c. The category for loss of life was expanded to include deaths that occurred either during persecution or within eight months after.

d. The ceiling for education claims increased to DM10,000

e. Claims already adjudicated were to be revised based on the new law.

6. Although the Final Law still excluded the same groups as the prior versions of the compensation laws, it recognized slave or forced labor that occurred under "jail-like" conditions. Compensation for their work was not recognized as a claim category.

d. Protocol 2: Claims Conference

The third part of the Luxembourg Agreement, Protocol 2, required the FRG to pay the Claims Conference DM450 million for the "relief, rehabilitation (social and cultural), and resettlement of Jewish victims of Nazi persecution living outside of Israel." The money would be paid to Israel, and Israel would disburse the funds to the Claims Conference.

e. Enforcement of the Luxembourg Agreement

Four agencies were established to ensure that the Agreement between FRG and Israel would be carried out.

1. The Israeli Mission was the sole agency that could place orders with German suppliers on behalf of the Israeli Government. Jurisdiction was conferred on German courts to decide disputes arising out of performance of individual transactions involving individual German suppliers.

2. The second agency was the agency designated by the FRG to examine all orders placed by Israel to ensure that they conformed to the Agreement.

3. The third agency was the Mixed Commission, which was responsible for supervising the operation of the Agreement. Its

members were appointed by their respective governments. It had no adjudicative power.

4. The fourth agency, the Arbitral Commission had adjudicative power over disputes between Israel and the FRG, except for those disputes that involved individual German suppliers. Each contracting state appointed one arbitrator and the arbitrators, by mutual agreement, appointed an umpire who could not be a national of either contracting party. If the parties could not agree, the President of the International Court of Justice selected the umpire. The arbitrators served five years and were re-eligible to serve another term once their term expired.

f. Claims Process for Individual Claimants was difficult to navigate

1. Overall, the process for claimants was a little difficult to navigate. Although the claim process for property harms was simpler, the process for health and body damages was more complex and invasive.

2. After a claim was filed for damage to body or health, the claim was sent to another office for processing. If a claim was denied, the victim could file a case in court. The victim would have to hire a lawyer and be interviewed and examined by the court nominated experts. It was difficult for the bureaucratic process to evaluate the "subjective dimension of pain and suffering."

g. The History/Harms the Luxembourg Agreement Was Intended to Address

1. The reparations scheme was intended to address the harms inflicted on Jewish people who lived in Germany or in territories controlled by Germany during the Third Reich, the regime that ruled Germany from 1933 to 1945.

2. Beginning in 1933, the Third Reich implemented several reforms that were intended to control and limit the citizenship and freedom of its Jewish citizens. Initially the laws excluded Jewish citizens from certain positions, schools, and professions.

Eventually, these acts culminated in the final solution, which was the murder of Jewish citizens in concentration camps throughout Germany and territories controlled by Germany.

3. In addition to these atrocities, it is estimated that about $6 billion in property was stolen from the Jewish people living in Germany and the territories controlled by Germany. Those that survived suffered significant physical and psychological injuries.

4. Just two months after his election, Konrad Adenauer, the Chancellor of the newly formed FRG expressed a willingness

to address claims of reparations for the harms inflicted on the Jewish people by Nazi Germany.

a. His reparations initiative did not have the full support of German citizens. Germans considered themselves victims of the war.

b. Efforts to provide reparations to Holocaust survivors began with Allied Forces occupying parts of Germany. They implemented a reparations or restitution scheme that was designed to restore to Jewish citizens the property taken from them.

c. The discussions about reparations began in the Jewish community at the beginning of the war, however. By 1941, the idea gained support and was discussed at the War Emergency Conference organized by the World Jewish Congress in 1944.

d. In the Jewish community, both in the diaspora and in Israel, there was strong opposition to the idea of reparations, however. The opposition was so intense that the head of the Jewish World Congress had to have "clandestine discussions" with Chancellor Adenauer until they could produce an agreement that would be acceptable to both parties.

e. Underlying the opposition was the idea that the Jewish people should not accept money to absolve the German people of the harms they caused. The debt the Germans had incurred was a moral one that could not be paid off.

f. Pragmatism eventually won out. Reparations could help develop Israel so that the country would be stronger and could save Jews from all over the world quickly in another crisis. But it was understood that the moral debt Germany had acquired "would remain eternal."

h. <u>Conclusions about the Luxembourg Agreement</u>

1. The Agreement was unique in many ways. It was the first reparations agreement that required a country to compensate a country that was not the victor in a war. Further, it was the first reparations program where the perpetrator paid reparations "on its own volition in order to facilitate self-rehabilitation." And the Agreement was formed by two states that were "descendent entities of the perpetrators and victims."

2. The program was also the largest reparations program ever implemented. The German government received over 4.3 million claims for individual compensation, of which 2 million were approved. It is estimated that by 2000, Germany had paid more than DM82 billion in reparations or $38.6 billion.

3. Moreover, the Agreement had significant economic and political consequences for both Israel and the FRG. The treaty enabled a substantial trade relationship between the countries. During the period of enforcement for the treaty, they did not have political or diplomatic relations. When reparations payments ceased in 1965, Israel and the FRG gradually initiated political relations.

i. Post Luxembourg Agreement Measures

1. The 1953, 1956, and 1965 Compensation Laws excluded compensation for forced labor and slave labor. The process for compensating these harms began in the German parliament in 1998.

2. Efforts culminated in the enactment in July 2000 of the Forced and Slave Labor Compensation Law. Eight countries were involved: Germany, the United States, Russia, Israel, Poland, the Czech Republic, Belarus, and the Ukraine.

a. The compensation scheme implemented rough justice. Former slave laborers received DM15,000 or $7,500. Former forced laborers received DM5,000 or $2,500. Payments were limited to claimants only and not extended to descendants. However, heirs of anyone who died after February 1999, the date negotiations over compensation began, could file a claim. The fund contained DM8.1 billion to pay the claims.

b. The Law also allowed for compensation of all non-Jewish survivors living outside the five Eastern European countries. Claimants had to complete applications by December 31, 2001. By the deadline, The International Organization for Migration, which processed those claims, had received 306,000 claims. The Jewish survivors had been covered by the prior reparations scheme; therefore, the process for finding potential claimants was quicker for those claimants.

c. The process for submitting claims was tedious. Claimants had to provide details of previous claims made and provide a copy of their IDs. They were also required to declare whether they received slave labor compensation directly from a German company. They also had to identify a place where they were forced to perform slave or forced labor and waive their legal rights against the German government and in connection with Nazi-era activities against all German companies.

3. The primary issue with the implementing the Forced and Slave Labor reparations scheme was the inaccuracy of the estimated number of claims. There were incidents where the

claims were significantly underestimated and overestimated by hundreds of thousands. For example, the Claims Conference received 243,000 claims compared to an estimate of 136,000. Russia received 500,000, compared to an estimate of 382,000. And Ukraine received 558,000 compared to an estimate of 846,000.

4. There were other issues with the Law. Claimants complained about the process and the payment of claims. Some felt that the payments did not amount to justice for what they endured. Some Germans quietly complained about being victims of moral blackmail. Ultimately, however, when compared to other reparations schemes, the process was a relative success because there was recognition and an attempt at compensating a moral wrong that could never be compensated. Every check that was issued under the Forced and Slave Labor compensation law included an apology from the President of Germany:

> "This compensation comes too late for all those who lost their lives back then, just as it is for all those who died in the intervening years. It is now therefore even more important that all survivors receive, as soon as possible, the humanitarian agreement agreed today. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. I pay tribute to all those who were subjected to slave and forced labor under German rule, and in the name of the German people, beg forgiveness. We will not forget their suffering."

2. Chile
    a. History
        i. Under the 1973 to 1990 dictatorship of General Augusto Pinochet, the people of Chile were subjected to a systematic campaign of torture and state violence: an estimated 2,600 to 3,400 Chilean citizens were executed or "disappeared" while another estimated 30,000 to 100,000 were tortured.
        ii. In March 1990, Patricio Alywin was sworn in as President of the Republic of Chile and one month later, he created the National Truth and Reconciliation Commission. In February 1991, the Commission delivered its first report to the President, the Retting Report. President Alywin sent a draft bill on reparations for the victims to Congress using the recommended measures of reparations from the Retting Report. The bill was approved and signed into law (Law 19.123) on February 8, 1992.

b. Reparations Program
    i. Law 19.123 established the National Corporation for Reparation and Reconciliation with the purpose of coordinating, carrying out, and promoting actions needed to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission. As written in Law 19.123, the national corporation shall, but it not limited to:
    ii. Promote reparations for the moral injury caused to the victims referred to in Article 18 and provide the social and legal assistance needed by their families so that they can access the benefits provided for in this law.
    iii. Promote and assist in actions aimed at determine the whereabouts and circumstances surrounding the disappearance or death of the detained-dis-appeared persons and of those persons whose mortal remains have not been located, even though their death has been legally recognized. In pursuing this objective, the corporation should collect, analyze, and systematize all information useful for this purpose.
    iv. Serve as depository for the information collected by the National Truth and Reconciliation Commission and the National Corporation for Reparation and Reconciliation, and all information on cases and matters similar to those treated by it that may be compiled in the future. It may also request, collect, and process existing information in the possession of public institutions, as well as request it from private institutions, in relation to human rights violations or political violence referred to in the Report of the National Truth and Reconciliation Commission.
    v. Compile background information and perform the inquires necessary to rule on the cases that were brought before the National Truth and Reconciliation Commission, in which it was not possible to reach a well-founded conclusion as to whether the person detrimentally impacted was a victim of human rights violations or political violence, or with respect to cases of the same nature that were not brought before the commission in timely fashion, or, if they were, in which it did not reach a decision due to lack of sufficient information. In this regard, it shall proceed pursuant to the same rules established for said Commission in Supreme Decree 355, of the Ministry of Interior, of April 25, 1990, which established it.

vi. Enter into agreements with nonprofit institutions or corporations so that they may provide the professional assistance needed to carry out the aims of the Corporation, including medical benefits.
vii. Make proposals for consolidating a culture of respect for human rights in the country.

3. South Africa
   a. Secret Negotiations to End Apartheid
      Secret negotiations between the National Party and the African National Congress (ANC) to end apartheid began under president de Klerk. The bargain struck required the National Party, the ruling apartheid party, to give up power and allow free elections in exchange for amnesty. The negotiations culminated in the Interim Constitution, which was adopted in 1993. The Interim Constitution provided for elections in 1994, mandated that Parliament draft a final constitution, and set out a new framework for the new government of South Africa. The negotiations that brought about the end of apartheid rule in South Africa are notable because of their singular lack of attention to the question of reparations. Except for the Interim Constitution, none of the documents produced during the negotiations mentioned reparations; the documents were "concerned almost exclusively with amnesty and indemnity for those on either side of the conflict."
   b. Creation of the Truth and Reconciliation Commission (TRC)
      Nelson Mandela elected as the first democratically elected leader and first nonwhite leader of South Africa. After his election, the new Parliament passed the Promotion of National Unity and Reconciliation Act (The Act), which created the TRC. It also passed the Constitution.
      1. The Act identified the need for reparations as a primary concern, requiring the TRC "to provide for … the taking of measures aimed at the granting of reparations to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights." The Act did not codify the right to receive reparations, however. It codified the right to amnesty.
      2. The Act defined reparations as "any form of compensation, ex gratia payment, restitution, rehabilitation or recognition." The Act also drew a distinction between a longer-term reparations policy and an interim urgent reparations policy that would provide urgent reparations to "victims" not expected to outlive the term of the TRC.
      3. The Act defined a "victim" as a person who "suffered harm in the form of physical or mental injury, emotional suffering,

pecuniary loss or substantial impairment of human rights, (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted." "A gross violation of human rights is defined as (a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt , conspiracy, incitement, instigation, command or procurement to commit [killing, abduction, torture or severe ill-treatment.]"

4. The Act also provided for the creation of a President's Fund (Fund) that would hold and disburse funds for reparations. Creation of the Fund was optional.

c. Three Committees Formed under the TRC

The TRC operated through three committees: The Committee on Human Rights Violations (CHRV), which investigated human rights abuses, the Committee on Reparations and Rehabilitation (CRR), which was responsible for developing the final reparations policy to submit to Parliament, and the Amnesty Committee (AC), which was responsible for evaluating and approving requests for individual amnesty. Besides its fact-finding role, the TRC's power was limited to making recommendations and submitting a final reparations policy. It had no power to implement its reparations policy recommendations.

1. The Committee on Human Rights Violations (CHRV)

a. The CHRV was responsible for investigating human rights abuses. Its work was most publicized of the three committees. Could only investigate gross violations of human rights defined as killing, abduction, torture, and severe ill treatment that were politically motivated and which occurred during 1960 and 1994. Excluded from consideration were the violations that occurred between 1952, when the first white settlers arrive in South Africa, and 1960. This meant that forced removals, wholesale appropriation of land, oppressive labor conditions in mines and on farms, and all other racially-based abuses that occurred between 1952 and 1960 would not be investigated.

b. The CHRV dispatched specially trained statement takers to all parts of the nation to take statements of victims. From the thousands of statements they received, the CHRV chose several "individuals whose stories would shed light on the broader patterns of abuses" and invited those individuals to tell their stories during televised hearings held throughout the country during 1996 and 1997.

c. The Commission's investigative unit investigated the claims to determine whether there was enough to corroborate that the individual was a victim of gross human rights abuses. If the claim was corroborated, the victim received a letter confirming their status as a "victim" of human rights abuses. If the claim could not be corroborated, the person was also informed by letter and notified of their right to appeal the decision.

2. Amnesty Committee (AC)

a. Several clauses in the Act guaranteed amnesty, that is, immunity from criminal and civil liability, for perpetrators of gross human rights violations, including individuals and the State of South Africa. Perpetrators of human rights abuses and/or violations could apply for amnesty for acts associated with a political objective in the course of the conflicts of the past as long as they made a full disclosure of all relevant facts. They did not have to express regret, remorse, offer an apology, or request forgiveness to be granted amnesty.

b. Also, those previously prosecuted criminally for human rights violations would could apply for amnesty, and if granted, they would be released and the conviction would be expunged.

c. Six months after the TRC began its work, three widows of victims of the security forces and the Azanian People's Organization (AZAPO), challenged the constitutionality of the Act based on the amnesty provisions. The Constitutional Court held that the Act was constitutional despite the amnesty provisions because the amnesty provisions made it possible for "the truth of human rights violations to be known and the cause of reconciliation and reconstruction to be furthered." The State authorized "the Parliament to balance the rights of the victims against the broad reconstructive goals of the Constitution."

d. Unlike reparations, the right to amnesty for perpetrators of gross human rights violations was defined and secured in the Interim Constitution, the final Constitution, the Act, and the judicial opinion in the AZAPO case. Ultimately, the Commission granted amnesty to approximately 1,200 individuals, turning down 5,000.

3. The Committee on Reparations and Rehabilitation (CRR)

The CRR had three main functions.

a. Determine which individuals qualified as victims under the Act

One function was to determine which individuals qualified as victims under the Act's definition. To fulfill this function, it was required to take the referrals from both the CHRV and the Amnesty Commission (and the TRC) to determine whether an individual qualified as an "official" victim. After reviewing the evidence of a claim or report, the CRR would "make recommendations … in and endeavor to restore the human and civil dignity of such victim."

b. Design and implement the Urgent Interim Reparation (UIR) Program

The CRR's second main function was to make recommendations on an urgent interim and final reparations policy. Those recommendations were to be made as soon as possible during the life of the CRR. The UIR policy called for beneficiaries to receive information and referral to services and financial assistance to access services that were necessary to meet the needs of the beneficiaries the CRR deemed urgent. The needs that qualified as urgent needs included medical, emotional, educational, material, and symbolic needs.

i. The UIR payments were calculated based on need and the number of dependents the person supported, ranging from a maximum of R2900 (US $250) for a victim with no dependents to a maximum of R5705 (US $713) for beneficiaries with five or more dependents. Payments were delayed because the Parliament delayed passing the necessary regulations to implement the UIR for more than a year.

ii. The reactions of the people who received reparations under the UIR were mixed. None felt that the reparations were blood money used to buy their silence, which was an issue with other reparation programs. Some of the victims interpreted the funds as a symbolic gesture acknowledging their suffering. Others felt the compensation was inadequate to meet "the tangible needs of their daily suffering" they experienced because of apartheid. This group believed the UIR, even as a symbolic gesture, was inadequate.

c. Draft and Submit Final Reparations Policy Recommendations to the President

The third function of the CRR was to craft the final reparations policy recommendations to submit to the President, who would then review them and submit the recommendations, including his own, to the Parliament for debate. After a debate, the recommendations approved would take the form of a parliamentary resolution. Once the parliamentary resolution was passed, the President was required to "publish the appropriate regulations to enact this resolution."

i. The regulations determined the basis and conditions upon which reparations would be granted and the authority responsible for implementing them. The President had the power to revise, discontinue, or reduce reparations where the President deemed fit to ensure efficient application of the regulations.

ii. The CRR structured its reparations policies around five international reparations principles for addressing human rights violations: redress, restitutions, rehabilitation, restoration of dignity, and reassurance of non-recurrence.

iii. CRR's final reparations policy recommendations argued for reparations on the basis that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation." Reparations were "necessary to counterbalance amnesty" given the perpetrators.

iv. Referencing the international legal framework for compensating victims of human rights abuses, the CRR's recommendations emphasized that reparations was a moral requirement for the transition out of apartheid, and that moral obligation required substantial reparation grants to adequately compensate victims for the harms they suffered, not token awards. The CRR made the following recommendations:

(1) Individual Reparations Grants
The benchmark amount for the individual reparation grants recommendation was the median annual household income for a family of 5 in South Africa in 1997, which was R21,700 or $2,713 annually for six years. The highest grant would be

R23,023 ($2,878) and the smallest grant would be R17,029 ($2,129). The amount of the grant was not based on financial status of the severity of the harms experienced.

(2) Symbolic Reparations/Legal and Administrative Measures

These reparations fell into several categories:

Individual interventions
Community Interventions
Community Rehabilitation
National interventions
Institutional reform

v. CRR's Implementation Recommendations

CRR recommended implementation of reparations and rehabilitation proposals take place at the local, provincial, and national levels. CRR also recommended creation of a national implementing body located in the office of the President or Deputy President and headed by a National Director of Reparations and Rehabilitation.

CRR also recommended the creation of provincial reparations desks to monitor, evaluate, and document implementation of reparations at the provincial level.

vi. CRR's Funding Alternatives for Reparations

(1) Notwithstanding the President's Fund, the CRR included several alternative schemes for financing reparations in its recommendations, including a wealth tax. The CRR also made recommendations for broader restructuring of macroeconomic policies for the country

(2) One organization recommended that multinational corporations, which extracted roughly R3billion a year between 1985 and 1993 from South Africa, be required to return 1.5 percent of those profits for six years, which would pay for the individual reparation grants.

d. <u>South African Government Adopted Very Few of the CRR's Final Recommendations</u>

1. Most of the recommendations on reparations made by the TRC – including the yearly payment to survivors of R21,000 for six years and the collection of a 'wealth tax' to fund reparations from industries that benefited from apartheid -- were not implemented by the State. Instead the government established a reparations fund with money from the State and from donors.
2. In November 2003, five years after the CRR submitted its reparations policy recommendations, the government began paying victims a one-time payment of R30,000. A year later about 10 percent of victims had not received payment because there was difficulty in locating them or confirming bank account information. The total individual reparation grants paid to victims amounted to one-fifth of the CRR's original reparations payment recommendation.
3. The government also provided around R800,000 in reburial expenses to 47 families of disappeared persons whose remains were found and reburied. As of 2013, the President's Fund stands at around 1 Billion rand. The government has proposed to use part of this for medical and higher education assistance to the same TRC-registered victims that earlier received compensation. It has also proposed to fund 'community rehabilitation projects' in economically-distressed communities.
4. Victims and survivors have criticized both policies, and have argued that medical and higher education assistance should be given to 30,000 additional survivors who, for various reasons, were not able to register with the TRC. These organizations have asked that individual compensation get priority over community reparations and that the selection of communities for the latter program should be done in consultation with survivors organizations.
5. The 1948 Universal Declaration of Human Rights asserted that an effective remedy should be provided for violations of fundamental rights. Many victims and victims advocate groups believe South Africa has not provided an effective remedy. Although reparations were discussed, a reparations policy that entitled victims to reparations was never codified. In contrast, amnesty provisions, which entitled individuals and the former government to amnesty, were codified in the Interim Constitution, the final Constitution, and the Act. More important, the constitutionality of those amnesty provisions was affirmed by the Constitutional Court.

4. Canada
    a. <u>History Scheme Meant to Address</u>

The Indian Residential Schools Settlement Agreement acknowledged the damage Canada inflicted on its Indigenous peoples through the residential school system and established a multibillion-dollar fund to assist former students of residential schools in their recovery. The Canadian government established and expanded the residential school system to assimilate Indigenous peoples into settler society and to reduce Indigenous dependence on public assistance. First established by Roman Catholic and Protestant churches, and based on racial, cultural, and spiritual superiority, residential schools were an attempt to separate Indigenous children from their traditional cultures and convert them to Christianity. The passage of the Indian Act in 1876 formally gave the federal government the power to educate and assimilate Indigenous people in Canada, and the Act's further amendment in 1894 made attendance at residential schools mandatory. There were 130 residential schools in Canada between 1831 and 1996. During this time, more than 150,000 First Nations, Métis, and Inuit children were forced to attend these schools. Thousands of Indigenous children died at school or as a result of their experiences in school, while many remain missing. Children were forced to leave their homes, parents, and some of their siblings, as the schools were segregated based on gender. Their culture was disparaged from the moment they arrived at school, where children gave up their traditional clothes and had to wear new uniforms, the boys had their hair cut, and many were given new names. At some schools, children were banned from speaking their first language, even in letters home to their parents. The Christian missionary staff at these schools emphasized Christian traditions while they also simultaneously denigrated Indigenous spiritual traditions. Physical and sexual abuse were common. Many children were underfed, and malnutrition and poor living conditions led to preventable diseases such as tuberculosis and influenza. Indigenous communities struggled to heal the harm done by these residential schools, and starting in 1980, former students campaigned for the government and churches to acknowledge the abuses of this system and provide some compensation. A group of 27 former students filed a class action lawsuit, *Blackwater v. Plint*, against the Government of Canada and the United Church of Canada in 1996. *Blackwater* specifically pertained to the abuses perpetrated at Alberni Residential School on Vancouver Island in British Columbia. The lawsuit spanned nine years, with the Supreme Court of Canada finally concluding that churches were not immune from damage claims and shared blame with the federal government.

Thousands of other former students began to sue the federal government and churches for, *inter alia*, assault, negligence, breach of fiduciary duty, and vicarious liability. The sheer number of cases pending in the Canadian court system threatened to create a logjam, and the federal government in June 2001 "convened a series of dialogues on the subject of developing alternative dispute mechanisms between representatives from the church organizations, the federal government, and Aboriginal peoples, leaders, and healers."

b. Reparations Scheme

The federal government issued a Statement of Reconciliation in 1998 that recognized the abuses of the residential school system and established the Aboriginal Healing Foundation. In 2001, the federal government created the Office of Indian Residential Schools Resolution Canada to manage the abuse claims filed by former students through the alternative dispute resolution ("ADR") process. In 2003, the ADR process began to provide psychological support and calculate compensation. The Indian Residential Schools Settlement Agreement was signed on May 8, 2006, and it went into effect in September 2007. It is the largest class action settlement agreement to date in Canadian history. It has five main components: the Common Experience Payment; Independent Assessment Process; the Truth and Reconciliation Commission; Commemoration; and Health and Healing Services.

c. Intended Recipients, Financial Compensation, and Temporal Limitations

The Settlement Agreement allocated $1.9 billion to the Common Experience Payment for all former students of the residential schools. Every former student was given $10,000 for the first year at school and $3,000 for each additional year. By the end of 2012, 98 percent of the 80,000 eligible former students received payments. The Independent Assessment Process provided a mechanism to resolve sexual abuse as well as serious physical and psychological abuse claims. By the end of 2012, it provided more than $1.7 billion to former students. The Settlement Agreement allocated $60 million to the Truth and Reconciliation Commission for five years so that individuals, families, and communities could tell their stories, and the Commission held national events to bring public attention to this issue. The Commission issued a report in December 2015 entitled *Honouring the Truth, Reconciling for the Future* that documented the experiences of the 150,000 survivors. The Settlement Agreement also allocated $20 million for commemorative projects and $125 million for the Aboriginal Healing Foundation. It also established the Indian

Residential Schools Resolution Health Support Program, which provides former students with mental health resources provided by elders, Indigenous community health workers, psychologists, and social workers.

d. Issues with Implementation

The Settlement Agreement allowed attorneys to charge clients up to 15 percent for difficult cases seeking compensation before the Independent Assessment Process. Unfortunately, some unethical private attorneys charged 15 percent, in addition to further improper interest, fees, and penalties. Further, survivors had to detail at a hearing the abuse they faced, such as the duration, the abusers' identities, and medical and personal information. This often led to reopening of old wounds. For both the Common Experience Payment and Independent Assessment Process, rejections, inability to establish attendance at schools, failures of the process, and dismissal of claims led to re-traumatization of survivors and further harm. Residential schools continue to be in the news. In 2021, Indigenous communities reported they uncovered hundreds of unmarked graves of children who possibly died at residential schools due to disease or neglect, or who were possibly even killed. These discoveries have led to a federal investigation of similar schools in the United States. Additionally, despite the Settlement Agreement, litigation has not stopped. In October 2022, the Canadian Supreme Court dismissed an appeal from a group of survivors from St. Anne's residential school in northern Ontario, who have alleged the federal government breached the Settlement Agreement because "it withheld documentation of abuse when deciding upon their compensation." In 2014, the Ontario Superior Court ordered 12,300 pages of records (including transcripts of criminal trials, investigative reports from the Ontario Provincial Police, and civil proceedings about child abuse) be produced as a part of the compensation process. The documents were still heavily redacted and survivors claimed the redactions made it impossible to determine adequate compensation. The minister for Crown-Indigenous Relations has stated the office will still discuss the case with St. Anne's survivors and has pointed to a 2021 report that noted 11 compensation cases that could be eligible for further payments. In January 2023, Canada stated it had agreed to pay 2.8 billion Canadian dollars to settle a series of lawsuits seeking reparations. This settlement is a resolution of a class action lawsuit initially filed by 325 First Nations in 2012 seeking compensation for the destruction of their languages and culture. Under the terms of the settlement, the federal

government will establish a trust fund for Indigenous communities to use for educational, cultural, and language programs. The settlement must be approved by a court; the Federal Court of Canada is expected to hold a hearing in late February 2023 to approve it.

ii. Domestic schemes (or Domestic reparations and racial equity schemes)
    1. Federal
        a. U.S. Indian Claims Commission
            i. <u>History Scheme Meant to Address</u>
                1. Between the nation's founding and the inception of the ICC, Government transgressions against Native Americans were as diverse as they were devastating. They included not only a staggering dispossession of land, but also the widespread killing of Native Americans that many, including California Governor Gavin Newsom, have called a genocide.
                2. From the nation's founding through 1871, the United States government had obtained nearly two billion acres of native land through treaties, leaving just 140 million acres under native control.
                3. Although government leaders and many historians often claim these transactions were fair and equitable, they were in essence a means "to dismantle Native land ownership and codify its expropriation."
                4. The Committee on Indian Affairs stated that the bill was "primarily designed to right a continuing wrong to our Indian citizens for which no possible justification can be asserted."
                5. The majority of claims alleged that "the United States acquired valuable land for unconscionably low prices in bargains struck between unequals."
            ii. <u>Compensation Scheme</u>
                1. The United States Indian Claims Commission ("Commission" or "ICC") was established in 1946 through federal legislation.
                2. The ICC was charged with adjudicating tribal land claims, but it was limited to awarding monetary relief and thus did not have jurisdiction to restore title to land.
                3. The authorizing legislation permitted various claims, including those premised on "fraud,

duress, [and] unconscionable consideration" as well as "fair and honorable dealings."

4. The Commission acted as a "quasi-judicial branch of the legislature" that considered voluminous documentary and testimonial evidence, rendered rulings on motions, and presided over trials.
5. 370 petitions were submitted and later divided into more than 600 dockets.

iii. Rationale and Legal Considerations

1. Beginning in the early 19th century, native tribes began filing legal claims in the U.S. courts, but a succession of legal rulings and legislative enactments effectively precluded Native Americans from having their claims heard.
2. Some progress was made beginning in 1881 when the Choctaw tribe was granted access to the United States Court of Claims through a jurisdictional act of Congress. This theoretically made the legal process available to Native Americans, but in practice any tribe seeking legal redress first needed to obtain a jurisdictional act of Congress.
3. By 1946, almost 200 tribal claims had been filed in the Court of Claims, but only 29 received awards and most of the remainder had been dismissed due to jurisdictional technicalities.
4. "The Government, the Indians, and impartial researchers all deemed this process to be inadequate[,]" and the prevailing dissatisfaction eventually led to the creation of the Indian Claims Commission.
5. The Commission was established with the goal of efficiently, comprehensively, and conclusively resolving tribal claims against the United States government.
6. Much of the debate leading up to the enacting legislation centered on whether the entity should be adversarial or investigatory, and also on what role, if any, Congress should play in resolving individual claims.
7. It was ultimately decided that, though labeled a "commission," the ICC would be a quasi-judicial and adversarial forum, which was

believed to be a more efficient approach to resolving claims.

8. The Commission had jurisdiction to hear claims from "any identifiable group of Indian claimants residing in the United States or Alaska." The question of what constituted an "identifiable group" was heavily litigated in the early years of the Commission.

iv. Implementation Process

1. The Commission sent notice of the claims procedures to every recognized tribe within the United States.
2. Native American tribes secured counsel of their choice and the government was represented by the Attorney General.
3. Various expert witnesses, often historians and anthropologists, testified and submitted reports.
4. Adverse rulings could be appealed.
5. If a trial led to a financial award, the amount was certified and reported to Congress after all appeals were exhausted. The award was then automatically included in the next year's appropriation bill.
6. Final payment was deposited in the Treasury and Congress directed how it should be distributed.
7. During its tenure, the Commission adjudicated more than 500 claims and issued tribal awards in over 60% of matters.
8. In total, the Commission awarded approximately $800 million in compensation to tribal claimants.

v. Issues with Implementation

1. A primary critique of the Commission is that it did not go nearly far enough to truly atone for and remedy the centuries of displacement and oppression of Native Americans.
2. Yet many political leaders and historians pointed to the ICC as proof that the United States had acted benevolently and had fully righted its past transgressions.
3. Some have argued that the ICC was established out of the government's self-interest in cloaking itself with moral authority, especially in the context of establishing the post-World War II Nuremberg Trials.

4. The adversarial nature of the proceedings meant that government attorneys often aggressively fought against just and timely compensation for tribal claimants.
5. The Commission was not empowered to convey land back to tribes. The Commission did not address issues such as the suppression of native languages, religions, and forms of government.
6. The financial awards were whittled down by offsets for monies spent by the government on behalf of the tribes, even though those monies were often spent to promote governmental rather than tribal interests.
7. The financial benefit to tribes was further diminished by the cost of attorneys' fees for which they were responsible.
8. The Commission did not award interest on amounts owed.
9. Although the awards were often inadequate, they served to conclusively and forever bar any further claims.

b. Tuskegee Study of Untreated Syphilis in the Negro Male
    i. History Scheme Meant to Address
        1. The United States Public Health Service Syphilis Study also called the Tuskegee Study of Untreated Syphilis in the Negro Male, was a study conducted between 1932 and 1972 intended to observe the natural history of untreated syphilis in Black people. The men were enticed and enrolled in the study with incentives including: medical exams, rides to and from the clinics, meals on examination days, free treatment for minor ailments and guarantees that provisions would be made after their deaths in terms of burial stipends paid to their survivors. Although there were no proven treatments for syphilis when the study began, penicillin became the standard treatment for the disease in 1947, however the medicine was withheld from both groups enrolled in the study resulting in prolonged health issues and in some cases death.
    ii. Reparations Scheme
        1. Settled following a class action lawsuit. Pollard v. U. S. (M.D. Ala. 1974) 384 F.Supp. 304. Under the 1974 settlement in the Tuskegee

Syphilis Study case, 70 living syphilitic participants received $37,500 each. The 46 living men in the control group received $16,000 each. The 339 deceased syphilitic participants received $15,000 each. The deceased members of the control group received $5,000 each. Attorney also negotiated free healthcare for life for the participants who were still living, as well as healthcare for their infected wives, widows, and children.

iii. Policies- In 1974, Congress passed the National Research Act and created a commission to study and write regulations governing studies involving human participants.
iv. Within the United States Department of Health and Human Services, the Office for Human Research Protections (OHRP) was established to oversee clinical trials.
v. Institutional review boards (IRBs), including laypeople, are established in scientific research groups and hospitals to review study protocols, protect patient interests, and ensure that participants are fully informed.
vi. The Tuskegee Syphilis Study Legacy Committee issued a final report in May 1996 with two goals: (1) formal apology from President Clinton (2) strategy to redress the damages, specifically recommending the creation of a center at Tuskegee University for public education about the study, "training programs for health care providers", and a center for the study of ethics in scientific research.
vii. On May 16, 1997, Bill Clinton formally apologized and held a ceremony at the White House for surviving Tuskegee study participants.
viii. In June 2022, the Milbank Memorial Fund apologized to descendants of the study's victims for its role in the study.

c. Japanese American Internment
    i. <u>History Scheme Meant to Address</u>

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 interning Japanese-Americans and creating a zone “from which any or all persons may be excluded,” at the discretion of the Secretary of War or appropriate military commander, from the whole of California, the western halves of Washington State and Oregon, and the southern third of Arizona. By the fall of 1942, all Japanese-

Americans were evicted from California and sent to one of ten internment camps that were built to imprison them.

ii. Reparations Scheme

The Japanese American Evacuation Claims Act was signed by President Harry S. Truman in 1948 to provide a mechanism to compensate Japanese-Americans for losses incurred at the time of their official removal from the West Coast in 1942. In 1980 the Commission on the Wartime Internment and Relocation of Civilians was established to: (1) review the facts and circumstances surrounding the relocation and internment of thousands of American civilians during World War II under Executive Order Numbered 9066 and the impact of that Order on American citizens and resident aliens; (2) review directives of United States military forces requiring the relocation and internment of American citizens, including Aleut civilians and permanent resident aliens of the Aleutian and Pribilof Islands; and (3) recommend appropriate remedies It was not until the passage of the Civil Liberties Act of 1988 that a meaningful effort was made to redress the wrongdoing of Japanese-American internment via a presidential apology and financial compensation.

iii. Rationale & Legal Considerations

The U.S. Attorney General was charged with locating eligible individuals for the purpose of paying restitution in the amount of $20,000.00. The Civil Liberties Act of 1988 provided for notice requirements to eligible individuals, a right to refuse payment, a waiver of all claims if payment was accepted, payments to survivors of eligible individuals who were deceased, priority payments to the oldest eligible individuals, and tax treatment that excluded payments as income under the internal revenue laws. All documents, personal testimony, and other records created or received by the Commission on the Wartime Internment and Relocation of Civilians during its inquiry were kept and maintained by the Archivist of the United States who was directed to preserve such documents, testimony, and records in the National Archives of the United States and make it available to the public for research purposes

iv. Implementation & Distribution

To operationalize the Civil Liberties Act of 1988, the federal government established the Office of Redress Administration (ORA) located within the Civil Rights Division of the Department of Justice. The ORA initially worked to build trust in the community, working with Japanese-American organizations, including the Japanese American Citizen League and the National Coalition for Redress/Reparations. The ORA prioritized the oldest living recipients and organized redress

check ceremonies throughout the country and held workshops at which they could disseminate information on the redress program and meet community members. Cases that were initially denied were subsequently reviewed for reconsideration included cases of Japanese Latin Americans, children of "voluntary evacuees," minor children who had gone to Japan with their families, and those Japanese-Americans who lived in Hawai`i and were excluded from their homes, but not necessarily incarcerated.

v. Implementation Issues

The Civil Liberties Act of 1988 only authorized redress payments and did not itself appropriate funds, separate appropriations had to be secured from Congress, which in 1990 only gained the fund $20 million for redress payments, or about 1.6% of the amount authorized. This issue was later resolved when redress was turned into an entitlement program that did not require annual appropriations. Given that the ORA had 10 years to complete its work, the office was limited in its ability to attract federal employees, although the office eventually gained about 100 employees at its peak. In some cases, where written documentation did not exists for claims, the ORA was able to approve redress claims based on affidavits by contemporaneous witnesses. There were about thirty lawsuits filed by those who had been found ineligible for redress, and a settlement on a lawsuit filed by Japanese Latin Americans resulted in smaller $5,000 reparations payments in the last months of the ORA.

d. 9/11

i. History Scheme Meant to Address

The militant Islamist network al-Qaeda carried out four coordinated suicide terrorist attacks against the United States on September 11, 2001, commonly known as 9/11. Terrorists hijacked four commercial airliners and crashed two planes into the Twin Towers of the World Trade Center in New York City, one plane into the Pentagon in Arlington County, Virginia, and one plane in a field in Pennsylvania that was intended to hit a federal government building in Washington, D.C. Nearly 3,000 people died in the attacks.

The incineration of the Twin Towers and the crashed aircrafts on September 11, 2001, released clouds of noxious toxins in lower Manhattan. First responders, volunteers, and residents near Ground Zero inhaled harmful dust, smoke, toxic chemicals, and particle remnants. This toxics exposure subsequently caused

various illnesses including more than 60 types of cancer, respiratory conditions, and digestive disorders. Thousands of survivors and first survivors have been diagnosed and have died as a result of 9/11-related illnesses.

The compensation provided to 9/11 victims and their families or representatives addresses the damages from both the terrorist attacks and the clean-up efforts.

ii. Reparations Scheme

Almost immediately after the terrorist attacks on September 11, 2001, Congress passed the Air Transportation Safety and Stabilization Act, which enacted the September 11th Victim Compensation Fund (VCF). The VCF was designed to be a compensation scheme in lieu of tort litigation for the economic and noneconomic losses incurred by victims who were physically injured and families of victims whose lives were taken as a result of the terrorist attacks. Claimants who participated in this compensation scheme waived their right to sue for damages for injury or death as a result of the terrorist attacks.

On January 2, 2011, President Obama signed the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act). The Zadroga Act established or reauthorized the following three programs that help those directly affected by the September 11, 2001, attacks: The WTC Health Program, the VCF, and the WTC Health Registry. While the original 2001 VCF only served the victims (or their representatives) who were either killed or injured as a direct result of the 9/11 terrorist attacks, the Zadroga Act expanded the VCF to compensate victims for injury or death related to the debris removal process conducted in the aftermath of the terrorist attacks and exposure to the toxic air in lower Manhattan and the other attack sites during that time. The WTC Health Program provides medical monitoring and treatment for responders and survivors and conducts scientific research to better identify, diagnose, and treat physical and mental health conditions related to 9/11 exposures. The VCF does not compensate for mental health conditions.

iii. Intended Recipients

The VCF provides financial compensation to individuals (or a personal representative of a deceased individual) who were present at the World Trade Center, the surrounding New York City exposure zone,

the Pentagon crash site, and the Shanksville, Pennsylvania crash site, at some point between September 11, 2001, and May 30, 2002, and who have since been diagnosed with a 9/11-related illness. Compensation is available to first responders; those who worked or volunteered in construction, clean-up, and debris removal; and people who lived, worked, or went to school in the exposure zone.

iv. Financial Compensation and Temporal Limitations

To receive compensation, claimants must meet two deadlines: the registration deadline and the claim deadline. For both personal injury and deceased claims, a new or subsequent government determination that a condition or injury is 9/11-related triggers a two-year registration window; however, a 9/11-related diagnosis is not necessary for registration. Registering preserves the right to file a claim in the future. If registration is timely for any condition or injury, then all eligible conditions are considered for a claim.

Once registered, claims can be filed at any time prior to October 1, 2090. The signing of the "Never Forget the Heroes, James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act" in July 2019 fully funded the VCF and extended the claim filing deadline to that date. The original VCF paid an average death claim award of over $2 million and awarded anywhere from $500 to over $8.6 million in personal injury claims. Due to budgetary concerns, the reauthorization of the Zadroga Act in 2015 restricted victim compensation. It capped awards for non-economic loss from cancer conditions at $250,000, awards for non-economic loss from non-cancer conditions at $90,000, and awards for economic loss of annual income at $200,000.

v. Rationale for the Form of Reparations

A compensation fund was chosen as an alternative to potential class action toxic tort litigation because it is a more efficient and effective solution for compensating victims. It was enacted to relieve victims and their families from navigating through the legal system and possibly having their claims rejected under government immunity or other potential bars.

vi. Implementation Process

The VCF is administered by the U.S. Department of Justice. To be eligible for compensation from the VCF, claimants must have a physical injury or condition

caused by the 9/11 terrorist attacks or by the rescue, recovery, and debris removal efforts during the immediate aftermath of the terrorist attacks. Claimants must have at least one of the pre-determined WTC-Related Physical Health Conditions in order to be eligible. Claimants must demonstrate a diagnosis through a private physician process and/or a World Trade Center (WTC) Health Program.

After a diagnosis, claimants then fill out a claim form that includes eligibility and compensation information and attach certain supporting documents to demonstrate presence at a 9/11 crash site, debris-removal route, or within a exposure zone. Examples of acceptable documentation include sworn affidavits, medical records, lease or mortgage documents, and employer letters. The VCF first reviews the claim for eligibility and if approved, then reviews the losses claimed for compensation. At this stage, the VCF reviews non-economic loss, pain and suffering, based on the severity of the physical harm and economic loss based on past and future lost earnings. Once the total amount of compensation is calculated, then the claimant is informed of the outcome and has an option to appeal within 30 days. If no appeal is exercised, then the U.S. Treasury authorizes the payment and disburses it to the bank account designated in the claim application submitted to the VCF.

vii. Issues with Implementation

The most significant issues with implementation have been consistent the funding and authorization of the Fund. Over the past two decades, the Fund has struggled to meet rising medical costs and cancer rates. The original fund operated from 2001 until 2004. In 2011, the Zadroga Act reactivated the VCF and extended the claim deadline until 2016. The bill was reauthorized in 2015 and extended the VCF for another five years until 2020. But in February 2019, a Special Master determined that the funding was insufficient to pay the remaining pending and projected VCF claims and reduced awards were announced. In response to public outrage, the VCF was permanently authorized in July 2019, allocating over $10 billion to cover claims through the next 10 years. The VCF Permanent Authorization Act allows for the appropriation of funds as necessary to pay for all eligible claims filed before October 2090. It also compensates any victims who

received reduced awards due to budgetary restrictions with the full value of their award.

e. Sandy Hook
    i. History Scheme Meant to Address
    On December 14, 2012, Adam Lanza shot and murdered twenty students and six adult staff members at Sandy Hook Elementary School in Newton, Connecticut, after killing his mother. When police arrived at the school, Lanza killed himself. It is the deadliest mass shooting at an elementary school in U.S. history and the second deadliest school shooting overall. In late 2012, Connecticut Governor Dannel P. Malloy established the Sandy Hook Advisory Commission, to investigate facilities, public policy implementation and law enforcement recommendations. The Commission concluded that Lanza acted alone, but did not identify a motive.
    ii. Reparations Scheme
    On December 17, 2013, the DOJ granted $1.5 million to reimburse organizations and agencies that provided direct support to victims, first responders and the Newton community, granted by the Department of Justice's Office for Victims of Crime to the Connecticut Judicial Branch. The grant was for costs incurred by organizations that provided crisis intervention services, trauma-informed care, victim-related law enforcement support and costs incurred in moving students from Sandy Hook to a new school location.
    The DOJ fund was split between several groups. Newton Recovery & Resiliency Plan received $826,443: $618,000 went to hiring four fulltime staffers. The second group, Resiliency Center of Newton, received $501,000, with $408,000 used for hiring therapists. The United Way of Western Connecticut received around $131,355 from the DOJ, of which half was spent to hire a lobbying firm for public relations. The Sandy Hook Foundation used $122,00 of the DOJ money to hire an Executive Director.

Additionally, the town of Newton and the state received $2.5 million from the DOJ for police overtime costs.
School Emergency Response to Violence (SERV) Grants from the Department of Education totaled $6.4 million; $1.3 million

was earmarked for mental-health providers working with student survivors. The rest was used to hire teachers, security guards and other personnel.
In total, the federal government has given $17 million in additional aid for mental health services and school security.

iii. Stated Rationale

The reasons given for the grants was to strengthen the aid infrastructure and create programs that will aid in the recovery process for many years. Immediately after the shooting, there was an increase in crisis referrals for mental health assistance, an increase in chronic absenteeism and an increase in school nurse visits.

iv. Issues with Implementation

Parents and community members criticized the fund disbursement process, since most of the grants were for support services, and none of the federal money was designated for survivors or their families. Parents and community members have also criticized that the funds have gone towards hiring public relations and lobbying firms for groups, rather than going to direct aid.
The Sandy Hook Foundation, for example, raised $12 million for victims' families through private donations and distributed only $7.7 million, without accounting for the rest. The DOJ still granted the Foundation $173,830, most of which was used to pay the salary of the director.

f. Iranian Hostages
    i. History Scheme Meant to Address
    52 American military and diplomatic personnel were removed from the U.S. Embassy in Tehran and held hostage by Iranian students for up to 444 days from 1979-1981. The Algerian government brokered an agreement between the U.S. and Iran to end the crisis, the Algiers Accords. The Algiers Accords mandated the release of the hostages, the unfreezing of $7.9 billion of Iranian assets, termination of lawsuits Iran face in America and explicit immunization of the Iranian government from liability for damages incurred as a result of the hostage crisis. In the years after the hostage crisis, the former hostages and their family members filed several lawsuits seeking damages from the Iranian government; in each case, their claims were barred by the immunity provisions in the Algiers Accords.
    ii. Reparations Scheme

Congress established the United States Victims of State Sponsored Terrorism Fund (USVSST Fund) in 2015, through the Justice for United States Victims of State Sponsored Terrorism Act (JUSVSSTA), currently codified at 34 U.S.C. § 20144. At the time, 39 former hostages were still alive.

The fund was established to be shared among United States persons who received a judgement in U.S. courts against a foreign state that was designated a state sponsor terrorism, for damages arising from an act of terrorism, and for former hostages of the Iran Hostage Crisis and their spouses and children. The fund was initially intended to for "victims of state sponsors of terrorism," limited to Iran, North Korea, Syria and Cuba.

iii. Implementation Process

The fund was available to the former hostages and their spouses and children. A claimant submitted a request form, either through the USVSST website, by email, by postal mail, or by phone. The applications must have been sent in by October 12, 2016. Acceptable forms of verification for a former hostage were: employment records, correspondence from the State Department, an affirmation signed under penalty of perjury, or records of receipt of related benefits from the U.S. government, and be identified as a member of the proposed class in *Roeder v. Islamic Republic of Iran*. Spouses or children of former hostages were required to be identified as a member of the proposed class in *Roeder v. Islamic Republic of Iran*. *Roeder* was a class action brought by the former hostages and members of their families; because of the Algiers Accords, the D.C. District Court determined that they were barred from bringing claims. The class definition of *Roeder* was an individual who was "a hostage "the spouse or child of the hostage at the time the hostage was held at the U.S. Embassy in Tehran." Spouses were required to submit a copy of their marriage certification and an affirmation that their marriage continued through January 20, 1981; children were required to provide a copy of their birth certificate or adoption decree showing a date of birth or adoption prior to January 20, 1981. The fund is overseen by a Special Master, who had ultimate decision-making

power. A denied claimant could appeal, but the appeal was reviewed by the Special Master; no court had jurisdiction to review denied claims. Each former hostage was entitled to receive $10,000 for each day that they were held hostage, for a maximum of $4.44 million, and a lump sum of $600,000 for each spouse or child of a former hostage.

iv. Issues with Implementation

So far, only occasional payments have been disbursed to the former hostages and their families. In 2019, relatives of 9/11 victims gained access to the fund after winning judgements in U.S. courts against Iran for damages related to the attacks, even though the 9/11 Commission found no evidence or Iranian involvement. Once the families of 9/11 victims were granted access to the fund, the pro rata share for the former hostages and their families decreased. By September 2021, only around 24% of the funds dedicated to non-9/11 claims had been disbursed. Some family members were denied claims because the hostage was determined to be held outside of the U.S. Embassy in Tehran, and therefore, the family member was not a member of the *Roeder* class.

2. State and Local
    a. Rosewood, Fla.
        i. History Scheme Meant to Address

Rosewood, Florida, was a small, predominantly Black community with approximately 20 families, or 120 residents. Many families had wealth in the form of homes and businesses. White vigilantes violently destroyed the town in 1923, and the Black residents fled and never returned.

The decimation of Rosewood started on January 1, 1923, when a white woman named Fannie Taylor reported an attack by an unidentified black man in the town next to Rosewood. Hearing the report from Taylor, a white vigilante mob led by Levy County's Sheriff Robert Elias Walker descended upon Rosewood. They tortured and killed a black man named Sam Carter. For the next week, hundreds of white vigilantes, consisting of KKK members and other deputies from neighboring counties, arrived in Rosewood. They burned every home and building structure, such as churches and schools, and murdered 6

Black residents and wounded dozens more. Two white men also died in a shootout. News of the "race war" traveled quickly throughout the state and country, but the Florida Governor never sent in the National Guard to protect Black residents and end the violence. Many of Rosewood's Black residents fled to the nearby swamps and hid during the riots.

On February 12, 1923, a Grand Jury convened in Bronson, Florida, to investigate the Rosewood massacre. Four days later, the Grand Jury found "insufficient evidence" to prosecute. Black residents never returned to Rosewood.

ii. Reparations Scheme

The Rosewood reparations passed the Florida House of Representatives as a claim bill, sponsored by Representative Miguel DeGrady. A claim bill provides compensation to those injured by an act or omission of the state, its subdivisions, agencies, officers, or employees. The bill "recognized an equitable obligation to redress the injuries as a result of the destruction of Rosewood" and consisted of (1) a finding of facts; (2) a direction to the Florida Department of Law Enforcement to conduct a criminal investigation in and around the Rosewood incident; (3) $500,000 to be distributed from the General Revenue Fund to Black families from Rosewood to compensate for demonstrated property loss; (4) compensation up to $150,000 from the General Revenue Fund for each of the nine living survivors; (5) the establishment of a state scholarship fund for direct descendants of Rosewood families; (6) a direction to the State University System to continue researching the Rosewood incident and the history of race relations in Florida and develop educational materials about the destruction of Rosewood.

iii. Intended Recipients

To be eligible for a scholarship, applicants must be direct descendants who complete a Florida financial aid application; provide documentation of ancestry such as a birth certificate, marriage license, death certificate, church record, or obituary; and enroll in a state university, Florida College System institution, or career center authorized by law. Applicants are selected based on need.

iv. Financial Compensation and Temporal Considerations

The Rosewood Family Scholarship Program is codified in the State's Education Code and the Florida Department of Education promulgated the criteria to receive an award. The Rosewood Family Scholarship provides student financial assistance to a maximum of 50 students annually and currently pays up to $6,100 per student, per academic year.

v. Rationale for Form of Reparations

After weeks of sensation in the news following the violence in January, 1923, the story of the Rosewood massacre disappeared from public media, as survivors largely never spoke of the event. In 1982, investigative reporter Gary Moore from the *St. Petersburg Times* unraveled the history of Rosewood in a comprehensive article that later became a story on CBS *60 Minutes*. The media attention galvanized descendants who secured the pro bono counsel of Holland & Knight to help descendants and victims seek compensation from the state. With the firm's help, former Rosewood residents and their descendants were named in a claim bill, alleging physical and emotional suffering that resulted from results of acts or omissions of law enforcement and other county and state officials. Several iterations of this claims bill were introduced in 1993 but failed to pass. Nonetheless, coupled with public pressure, the failed bills paved the way for the commission of an academic report that substantiated the claims of Rosewood descendants.

The claim bill for reparations was then reintroduced in the 1994 session and passed. The flexibility of a claim bill was critical to the descendants' success in securing reparations. If the descendants had asked for reparations in a claims proceeding in a court of law, their case would have been barred by hearsay or statutes of limitations, but since a claim bill hearing is an equitable proceeding, the legislature was not bound by those rules of law. The bill likely didn't have standing in a court of law, so it instead became a moral issue for Florida. Additionally, advocates of the bill were careful not to use the word "reparations" during discussions seeking compensation, and the word cannot be found in the bill. This was done in order to build consensus across party lines. Attorneys at Holland & Knight focused on private property rights and the moral obligation Florida had to Rosewood victims and descendants.

vi. Implementation Process

The General Appropriations Act provides funding for the Scholarship program. The scholarship award is distributed before each semester's registration period on behalf of the student to the president of the university or Florida College System institution, or his or her representative, or to the director of the career center which the recipient is attending.

vii. Issues with Implementation
Since the bill's enactment, there have been no notable issues with implementation. Some recent scholarship recipients have noted the pressure of history looming over them on campus.

b. North Carolina Sterilization Compensation Program
   i. History Scheme Meant to Address
   ii. In 1919, North Carolina passed its first forced-sterilization law, which was amended in 1929 to allow the head of any penal or charitable institution that received even some state support to "have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof."
   iii. The North Carolina Supreme Court invalidated the law in 1933 because it failed to provide any notice or opportunity for appeal. In response, the North Carolina Legislature created the North Carolina Eugenics Board, to implement the new forced-sterilization law with very limited appeal rights.
   iv. The five members of the Board heard petitions brought by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians arguing that individuals should be sterilized due to being either epileptic, "feebleminded," or mentally diseased.
   v. The state ultimately sterilized around 7,600 persons, the third-largest number in the country. The program also sterilized non-institutionalized individuals, and the vast majority of sterilizations took place after World War II.
   vi. Reparations Scheme
   vii. *Formal Apology*: North Carolina only repealed its sterilization law in 2003, and as part of the repeal, Governor Easley issued a public apology.
   viii. *Financial Reparations*: Governor Bev Perdue established the N.C. Justice for Sterilization Victims Foundation as part of the N.C. Department of Administration in 2010 to function as a clearinghouse to help victims of the former N.C. Eugenics Board. This effort culminated in the State Legislature creating

the Eugenics Asexualization and Sterilization Compensation Program in 2013 through statute.

ix. Intended Recipients: The Statute set out a program to compensate individuals sterilized involuntarily under the authority of the Eugenics Board of North Carolina under the 1933 or 1937 version of the laws, it did not include those sterilized at the county level. A claimant must also have been alive on June 30, 2013 in order to receive compensation.

x. Financial Compensation and Temporal Limitations: The State Legislature allocated $10,000,000 to pay compensation claims, with the first payment made to those claimants deemed qualified by October 31, 2014. Any claimants determined to be qualified recipients after that date were to receive their initial payment within 60 days, and final payment checks splitting the remaining funds among qualified recipients were to be remitted within 90 days of the exhaustion of the last appeal. Applications needed to be received by September 23, 2014.

xi. Rationale for Form of Reparations:

xii. The financial reparations were specifically limited to those who were themselves directly harmed by the State Eugenics Board and still alive at the time the legislation was passed, in order to draw a strong distinction between the compensation here any argument for reparations for slavery.

xiii. The bill specifically stated that financial compensation would not be subject to several tax and other limitations: (1) Any payment should not be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any State or local program financed in whole or in part with State funds; and (2) the N.C. Department of Health and Human Services should disregard compensation money in the determination of public assistance or recovery of Medicaid-paid services.

xiv. Implementation Process

xv. The statute creating the compensation program formed the Office of Justice for Sterilization Victims in the North Carolina Department of Administration to administer claims. Applicants were able to submit claims to the Office between January 2013 and June 30, 2014.

xvi. Claims were first assessed by a deputy commissioner to determine eligibility. If not approved, a claimant

could submit additional documentation and request a redetermination by the deputy commissioner. A claimant whose claim was not approved at either previous stage had the right to request a hearing before the deputy commissioner. A claimant could then file a notice of appeal with the Commission within 30 days, and a claimant could appeal the decision of the full Commission to the Court of Appeals within 30 days.

xvii. If a claimant was determined to be a qualified recipient, the Commission gave notice to the Office of State Controller, which then made a payment. Compensation was intended to be in the form of two payments, with the first by October 31, 2014, (or 60 days after claimant determined qualified if determined after that date), and the second payment after the exhaustion of all appeals arising from denial of eligibility. Due to the time several court cases appealing denials took to work through the courts, the State ultimately sent three payments to victims between 2014 and 2018. Claimants ultimately received around $40,000.

xviii. Issues with Implementation: There were a series of cases challenging the way the statute was implemented with regards to those who had died prior to the passage of the statute, and those who were sterilized by authorities other than the State Eugenics Board. The state courts answered these questions over the course of several years, with litigation finally concluding in 2017.

c. Virginia (eugenics)
   i. History
   ii. In 1924, Virginia passed its Eugenical Sterilization Act, which authorized the sexual sterilization of inmates at state institutions. The Act provided that the superintendent of the Western, Eastern, Southwestern, or Central State Hospital or the State Colony for Epileptics and Feeble-Minded could impose sterilization when he had the opinion that it was for the best interest of the patients and of society that any inmate of the institution under his care should be sexually sterilized and the requirements of the Act were met. The Act responded to fifty years of scholarly debate over whether certain social problems, including shiftlessness, poverty, and prostitution, were inherited and ultimately could be eliminated through selective sterilization. The Act was passed alongside the Racial Integrity Act, which banned interracial marriage by requiring marriage applicants to identify their race as

"white," "colored," or "mixed" with "white" being defined as a person "who has no trace whatsoever of any blood other than Caucasian." The Racial Integrity Act was bolstered by the eugenics efforts like the Eugenic Sterilization Act, which saw non-White people as having inferior genes. One inmate, Carrie Buck, appealed her order of sterilization, but U.S. Supreme Court upheld the Virginia state law in *Buck v. Bell* (1927) by a vote of 8 to 1.

iii. The ruling was never overturned, but the law was repealed in 1974. Between 1927 and 1972, about 8,300 Virginians were sterilized.

iv. On May 2, 2002, 75 years after the *Buck v. Bell*, the Supreme Court decision that upheld Virginia's eugenics statute, Virginia Governor Mark R. Warner issued an apology for the state's embrace of eugenics and denounced the state's practice that involuntarily sterilized persons confined to state institutions from 1927 to 1979.

v. Reparations Program

vi. After prior legislative reparations attempts failed, an amendment was added to the 2015 House Budget Bill, HB 1500, to allocate $400,000 from the state general fund for compensation to individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015. As written in the budget, the funds were to be managed by the Department of Behavioral Health and Developmental Services and limited to $25,000 instead of the proposed $50,000. Furthermore, should the funding provided for compensation be exhausted prior to the end of fiscal year 2016, the department shall continue to collect applications. The department shall provide a report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on a quarterly basis on the number of additional individuals who have been applied. The Virginia House and Senate approved House Bill 1500, and the bill was signed by the Governor on March 26, 2015, establishing the Virginia Victims of Eugenics Sterilization Compensation Program (VESC).

d. Chicago PD

i. History

ii. Chicago's Jon Burge was a high ranking officer who, between 1972 and 1991 led a group of detectives and

officers to torture and abuse over 120 African American criminal suspects, that sometimes led to coerced confessions. Burge led operations of abuse that included physical and psychological abuse such as "trickery, deception, threats, intimidation, physical beatings, sexual humiliation, mock execution, and electroshock torture." Moreover, evidence suggested judges and some city officials were complicit in these abuses for many years. As a result, many African American victims ended up in prison due to coerced confessions and some were sentenced to the death penalty. There was an effort to hold Jon Burge specifically accountable for his actions, but the statute of limitations had expired on many of the alleged cases of torture and community members started to seek alternative methods to tackle this issue, which eventually led to the reparations ordinance.

iii. Reparations Program

iv. In May 2015, the Chicago City Council approved a municipal ordinance giving reparations to the torture survivors, and the $5.5 million package would award claimants $100,000 in financial payments along with other non-financial reparations such as psychological counseling and healthcare, and a memorial site.

v. The holistic reparation ordinance includes a formal apology, financial compensation, services and support for survivors, public education, and a memorial.

vi. First, there is a formal apology and acknowledgement that describes the police abuse and admits that the city and other players, were complicit in the abuse of over 100 African Americans.

vii. Second, there is financial reparations totaling $100,000 for each survivor with a credible claim of torture or abuse from Jon Burge or one of the officers under his command. The ordinance also created the "Chicago Police Torture Reparations Commission" to administer these financial reparations to the survivors.

viii. Third, the ordinance provides free tuition at the City Colleges of Chicago and free access to job training, certification programs, and access to City programs that offer formerly incarcerated individuals job placements as well as other support services and programs.

ix. Fourth, the ordinance provides psychological services to survivors and family members at a dedicated community center.

x. Finally, the City of Chicago promised to work with CTJM to "construct a permanent memorial to the Burge victims; and beginning in the 2015-2016 school year, the Chicago Public Schools started to incorporate into its existing U.S. history curriculum for eighth-grade and tenth-grade students a lesson about the Burge case and its legacy.

xi. The ordinance stated that CTJM would provide the City with a list of individuals it determined are eligible for the reparations, then both the City and CTJM would investigate the claim, and if both parties agree the victim has a credible claim, they will be entitled to the financial reparations from the fund. If there is disagreement between CTJM and the City on an individual's credibility, the person has an opportunity to present information and evidence to an independent arbitrator who will then make a final and binding decision.

e. Evanston

i. <u>History Scheme Meant to Address</u>
Redlining and other discriminatory practices in housing, zoning and lending created a wealth and opportunity gap between white and Black Evanstonians. Evanston enacted reparations to acknowledge the historical harm caused to Black Evanston residents by the discriminatory housing policies and practices by the City. These include enabling and supporting the practice of segregation by passing a zoning ordinance in 1921 that condoned implicit race-based housing segregation; the demolition of homes owned by Black families for economic development on the grounds that they were "unsanitary" or "overcrowded"; providing permits to Northwestern University to develop temporary, segregated housing for veterans after World War II; segregating post-World War II temporary housing for veterans; and failing to enact a fair housing ordinance to outlaw housing discrimination until the late 1960s.

ii. <u>Reparations Scheme</u>
There exists a wealth and opportunity gap between white and Black Evanstonians because of discriminatory and restrictive practices in housing, zoning, lending and other policies. Recognizing these disparities, the City Council of Evanston created the Equity and Empowerment Commission in 2018 to address systemic inequalities and adopted Resolution

58-R-19, “Commitment to End Structural Racism and Achieve Racial Equity.” In Resolution 58-R-19, the City Council of Evanston apologized for the damage caused by its history of racially-motivated policies and practices such as zoning laws that supported neighborhood redlining, municipal disinvestment in the black community, and a history of bias in government services; declared itself an anti-racist city; and denounced White Supremacy.

Shortly after the apology, former Alderman Robin Rue Simmons (5th Ward) led the charge for reparations in Evanston and sought a “solutions only” process with the support of the City’s Equity and Empowerment Commission to identify specific actions that the City could take to enact a reparations program.

First, the Equity and Empowerment Commission studied the discriminatory past of the City by enlisting the help of two Evanston-based historical organizations, the Shorefront Legacy Center and the Evanston History Center, to identify past harms inflicted against Black Evanstonians. They produced a draft report that provided historical and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregated and discriminatory practices. The Commission also held community meetings to gather public input and recommend actions to the City Council. Both the National Coalition of Blacks for Reparations in America (NCOBRA) and the National African American Reparations Commission (NAARC) provided advice regarding Evanston’s reparations process.

In November 2019, the Equity and Empowerment Commission created the City Reparations Fund, where tax revenues for reparations would be collected. The Resolution committed the first $10 million of the City’s Municipal Cannabis Retailers’ Occupation Tax (3 percent on gross sales of cannabis) to fund local reparations for housing and economic development programs for Black Evanston residents over the course of 10 years. Additional funding to the City Reparations Fund comes from individual residents, churches, and local businesses that make donations.

In June 2020, the Evanston Preservation Commission of City Council passed Resolution 54-R-20 to preserve and honor historical African-American sites in

Evanston's 5th Ward. In March 2021, a Restorative Housing Reparations Program was created as the first reparations program.

iii. Intended Recipients

The goal of the program is to increase Black homeownership in order to revitalize and preserve Black owner-occupied homes in Evanston. To be eligible, the home must be located in Evanston and be the applicant's primary residence. The program will eventually extend funds to all intended recipients: Evanston residents over the age of 18 years, of Black/African American ancestry, and, in order of priority, either (1) an Ancestor that experienced housing discrimination due to the City's polices/practices; (b) a Direct Descendant of an Ancestor (e.g., child, grandchild, great-grandchild, and so on); or (c) a Resident that does not qualify as an Ancestor or Direct Descendant, but experienced housing discrimination due to City ordinance, policy or practice after 1969. Ancestors is defined as an African American or Black individual, at least 18 years old at the time, who was an Evanston resident between 1919 and 1969 who may have children, grandchildren, great-grandchildren, or other defined as a "Direct Descendant."

iv. Financial Compensation and Temporal Considerations

Under the Restorative Housing Reparations Program, eligible Black Evanstonians are provided $25,000 to either purchase a home, conduct home improvements, or pay down their existing mortgage.

v. Rationale for Form of Reparations

The City of Evanston decided to institute a housing program as the first reparations initiative based on the needs stated during community feedback sessions hosted by the Equity and Empowerment Commission: community members identified affordable housing and economic development as their top priorities. Further, one of the strongest evidentiary case for reparations in Evanston is in housing, where there is ample documentation of discriminatory conduct by the city against Black residents.

Payments from the Restorative Housing Program are dispersed electronically or by check to the closing agent for disbursal when an applicant closes on a home purchase; to the contractor upon receipt of invoice; or to the lender for mortgage payment. This method of fund disbursement was selected due to IRS reporting

requirements: the City lacks the requisite authority to exempt direct payments from either state or federal income taxes. By distributing payments to the financial institution or vendor, instead of the Evanston resident, they become responsible for the tax liability.

vi. Implementation Process

First, interested applicants must provide proof of eligibility based on the sample list of documents cited in the program guidelines. To prove Ancestor eligibility, applicants must provide documentation of their age, race and residency. To prove Direct Descendent eligibility, applicants must provide documentation of age, race and relationship to Ancestor via birth certificate, marriage record, hospital record of birth or death, yearbook, or other means. To prove eligibility based on discrimination as a resident, applicants must show proof of age, residency and the City ordinance, policy, or procedure that served to discriminate against the Applicant in the area of housing.

Upon approval by the City Council, funds will be disbursed electronically or via check to the closing agent for disbursal when the Applicant closes on a home purchase; to the contractor upon receipt of invoice; or to the lender for mortgage payment. Contracts are paid in installments, half of the money arriving upfront, a quarter halfway through the job, and the final quarter upon completion.

Approved funds must be utilized within the year of approval. Funding can be layered with other housing assistance programs by the city, state or federal government.

vii. Issues with Implementation

There was some opposition to the Reparations Housing Program. One Black city council member voted "no." Their reasons for voting "no" were the denial of cash payments, a rushed voting process, and the lack of long-term, intentional thinking about the program including the lack of a feasibility study, lack of groundwork for future reparative options, and lack of economic rationale for the $25,000 funding amount. Project on Fair Representation and Judicial Watch, conservative political organizations, have threatened to challenge the constitutionality of the law but have not brought suit.

Most other implementation issues and complaints about the Restorative Housing Program focus on funding: the source, the restrictions, and the distribution method. First, the cannabis tax has not generated enough revenue. So far, only $400,000 is available, sufficient for 16 applicants to receive disbursement $25,000, despite a much larger number of eligible applicants. The City is currently trying to solicit and grant additional cannabis licenses and is looking for alternative sources of revenue to supplement the cannabis tax such as a graduated real estate tax. Additionally, funding is restricted to Ancestors who currently reside in Evanston, thus leaving out many Black homeowners who were victims of Evanston's discriminatory policies but moved away. Other residents complain that funding is too narrowly constrained to housing-based projects, ignoring other potential needs for reparations.

Another critique involves the disbursement process: many residents believe that the money should go directly into the hands of the eligible, and not to the banks who facilitated racial discrimination in the first place. To address this concern, the City hopes to provide a resource guide for grant recipients with a list of Black banks; banks with a history of fair lending; and a directory of Black contractors, realtors, real estate attorneys, appraisers, and surveyors that grant recipients can hire.

Finally, some experts critique the Evanston reparations program as being piecemeal and potentially distracting from the superseding priority of a comprehensive national program.

f. Asheville

i. <u>History Scheme Meant to Address</u>

The Asheville City Council unanimously passed Resolution 20-128 on July 14, 2020, which apologizes and seeks to make amends for: Asheville's participation in and sanctioning of the enslavement of Black people; Asheville's enforcement of segregation and accompanying discriminatory practices; and carrying out an urban renewal program that destroyed multiple successful Black communities.

ii. <u>Reparations Scheme</u>

Resolution 20-128 establishes a community reparations commission to make short-, medium-, and long-term recommendations "that will make significant progress

toward repairing the damage caused by public and private systemic racism." The resolution tasks the commission to issue a report so the City of Asheville and local community groups may incorporate it into their short- and long-term priorities and plans. The resolution states the "report and the resulting budgetary and programmatic priorities may include but not be limited to increasing minority homeownership and access to other affordable housing, increasing minority business ownership and career opportunities, strategies to grow equity and generational wealth, closing the gaps in health care, education, employment and pay, neighborhood safety and fairness within criminal justice." The city manager and city staff have recommended a three-phase process that includes: information sharing and truth-telling; formation of the reparations commission; and finalization and presentation of the report.

Phase One was three events in June 2021— namely, three information sharing and truth telling speaker series regarding past policies and practices, present trends and disparities, and future initiatives. Information from this speaker series was used to inform the development of the Reparations Commission and the Commission's scope of work.

Phase Two was formation of the Reparations Commission. The Commission members are serving on five Impact Focus Area ("IFA") workgroups — criminal justice, economic development, education, health and wellness, and housing. The Commission is in Phase Three, but according to documents from the January 9, 2023 Commission meeting, the priorities are no longer short-, medium-, and long-term recommendations but rather feasibility and community impact. The documents also reflect an updated timeline with ten different activities, the last six of which will occur this year — reaffirm resolution and commission role, develop IFA recommendations (by May 31), community engagement and input (by May 31), recommendation vetting and refinement (by July 31), present recommendations for commission voting (by August 30), and submit written report and close project (by October 31). The documents reflect a few draft recommendations, but no final recommendations have yet been presented.

On June 8, 2021, the Asheville City Council voted to allocate $2.1 million the city received in proceeds from the sale of city-owned land (a portion of which includes land the city purchased in the 1970s through urban renewal, a policy that "resulted in the displacement of vibrant Black communities and the removal of Black residents and homeowners, many into substandard public housing"). The city anticipates that of the $2.1 million, $200,000 will fund the Reparation Commission's planning and engagement process, leaving approximately $1.9 million in initial funding for reparations.

iii. Intended Recipients

The Reparations Commission is currently in the process of formulating its recommendations. As such, the Commission has not yet named any intended recipients.

iv. Financial Compensation, Temporal Limitations, Rationale, Implementation, and Issues with Implementation

The Reparations Commission has not yet voted on a form of reparations.

g. Providence

i. History Scheme Meant to Address

ii. The Providence Municipal Reparations Commission seeks to remedy the history of harm created by the institutions of slavery, the genocide of indigenous people, and the ongoing racialized discrimination from 1620 to 2020 in Providence, Rhode Island.

iii. Reparations Scheme

1. On July 15, 2020, the mayor of Providence, Rhode Island issued an Executive Order launching a three-phase Truth-Telling, Reconciliations, and Reparations process for "individuals of African heritage, Indigenous people, and other people of color within the City of Providence."
2. The Truth-telling phase began with research led by the Rhode Island Black Heritage Society, in collaboration with city and state historical institutions. They published a final report in March 2021, titled, "A Matter of Truth: The Struggle for African Heritage and Indigenous People Equal Rights in Providence, Rhode Island (1620-2020)."
3. In February 2022, the Providence Cultural Equity Initiative and Roger Williams University

published their Reconciliation report, which detailed their efforts to: (1) develop a set of guiding principles; (2) develop a questionnaire that surveyed 378 community members on their engagement with the Truth Report and their views on reconciliation and reparations; (3) summarize the results of their survey; and (4) develop and outline "a model and proof of concept to continue reconciliation in perpetuity," including the development of a multimedia initiative to connect more individuals with the Truth Report.

4. The third phase of the process—Reparations—involved the creation of the Providence Municipal Reparations Commission (Commission), consisting of 13 members from the local community, including nonprofit leaders, academics, and entrepreneurs. The Commission published a final reparations recommendations report, which did not recommend direct financial payments for reparations, but instead suggested that Providence adopt the following 11-point municipal reparations investment plan.
    a. Recognition of Harm
    b. Equity Building for African Heritage and Indigenous Communities
    c. Creation and Development of African Heritage and Indigenous Media, Technology and Communication Companies
    d. Creation of African Heritage and Indigenous Development Programs
    e. Review and Reformation of Laws and Policies that Harm African Heritage and Indigenous People and Communities
    f. Movement Towards a More Equitable Healthcare System for African Heritage and Indigenous People
    g. Creating of Neighborhood Incubator(s) Focused on African Heritage and Indigenous Communities
    h. Accelerate the Evolution of the African American Ambassadors Group (AAAG) Into an African Heritage Public Policy Institute Model

i. Creation of an "African Heritage and Indigenous Survivors and Descendants of Providence Urban Renewal Displacement" Fund
j. Expanded Representation of African Heritage and Indigenous People in Governing Bodies
k. Expansion of Cultural Engagement and Educational Opportunities for African Heritage and Indigenous Communities

iv. Justification for Reparations

In the Commission's public meetings, presenters discussed the international framework for reparations, and its five elements: satisfaction, guarantee of non-repetition, rehabilitation, restitution, and compensation.

1. In another presentation, the co-founder of the African American Redress Network detailed specific international documents that justify reparations, including:
    a. The Universal Declaration for Human Rights (1948);
    b. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965, which the U.S. ratified in 1994;
    c. Tthe Civil Rights Congress's petition to the United Nations for "Relief from Crimes Against Humanity by the United States Government" in We Charge Genocide (1951);
    d. The World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance's release of the Durban Declaration in 2001;
    e. The UN General Assembly's Resolution 68/237 proclaiming the International Decade for People of African descent (2015-2024);
    f. UNESCO's publication of Healing the Wounds of Slave Trade and Slavery in 2020; and
    g. The UN's creation of the Permanent Forum of People of African Descent, following the murder of George Floyd.

v. Implementation Process

1. Definitions and Eligibility

2. The Commission defined reparations as "closing the racial wealth and equity gap between Providence residents and neighborhoods[.]"To implement these reparations, the Commission adopted four eligibility categories: (1) indigenous people, (2) African heritage people, (3) qualified census tracts and neighborhoods, and (4) residents facing poverty. The latter two categories—qualified census tracts and residents facing poverty—include Providence residents of any race.
3. The Commission defined "African heritage people" as "[a]n ethnic group consisting of people with ancestry originating from sub-Saharan Africa," including, but not limited to, "African American, African, Bi-racial, Afro-Latino, Cape Verdean, and Afro-Caribbean." The Commission does not appear to discuss whether reparations should be limited solely to descendants of slavery; in the presentation by the co-founder of the African American Redress Network, she mentions that her organization focuses on historical injustice across the whole of United States history, and not just enslavement, stating that the entirety of racial discrimination—beyond enslavement—constitutes human rights violations under an international law framework.
4. The Commission defined "qualified census tracts and neighborhoods" as defined under a final U.S. Treasury ARPA rule, which allowed recipients of federal funding "to presume that families residing in Qualified Census Tracts (QCT) or receiving services provided by Tribal governments were disproportionately impacted by the pandemic."
5. Finally, the Commission defined residents facing poverty as residents or households earning less than 50 percent of the Area Median Income, with particular preference for those earning less than 30 percent of the Area Median Income. *Id.* Individuals qualified as Providence residents if: (1) they were born in Providence; (2) they are non-college students who have lived in Providence for at least three years; or (3) they moved to Providence to attend a college or

university, and three years have elapsed since their last date of enrollment.

6. The Truth report was written by the Rhode Island Black Heritage Society and 1696 Heritage Group, in conjunction with the African American Ambassador Group. The report was "paid for through private funding." Additionally, Providence received a $100,000 grant from the Nellie Mae Education Foundation for its Reconciliation phase.
7. In January 2022, the mayor of Providence proposed a spending plan for $124 million the city received through federal COVID-19 funding; the mayor's proposed plan included $10 million earmarked to be spent on reparations. This spending plan (and its allocation for reparations) was finalized in May 2022. The money was spent on several areas outlined in the proposals, including:
    a. Recognition of Harm;
    b. Equity Building, Creation & Development of Media;
    c. Creation of Survivors & Descendants of Urban Renewal Fund;
    d. Expansion of Cultural Engagement & Educational Opportunities;
    e. Movement Towards a More Equitable Healthcare System; and
    f. Accelerate The Evolution of AAAG Into a Policy Institute
    g. Within the reparations categories above, the largest budget items ($1 million or more) were: homeownership and financial literacy; workforce training; small businesses; grants for "business, cultural, and social support organizations," and a "United Way COVID-19 Equity Fund."
8. While Commission and community members expressed concern that $10 million would be insufficient to redress the harms identified in the Truth Report, others observed that the $10 million simply represented a start to the reparations program, not the end, and that once the programs were enacted, future funding could be drawn from other public and private sources.

9. Because the $10 million allocated for reparations came from federal funding from the American Rescue Plan Act (responding to the COVID-19 pandemic), the money was subject to limitations on how it could be spent. For example, Providence had to include race-neutral recipients for reparations, including residents of "Qualified Census Tracts" and residents facing poverty.

h. California Sterilization Compensation Program
   i. History Scheme Meant to Address
   ii. Starting in 1909, as part of the larger eugenics movement, California implemented the largest forced sterilization program in the United States. The program resulted in the sterilization of over 20,000 Californians before the eugenic sterilization law was repealed in 1979.
   iii. Though the law did not target specific racial or ethnic groups, in practice, "labels of 'mental deficiency' and 'feeblemindedness' were applied disproportionately to racial and ethnic minorities, people with actual and perceived disabilities, poor people, and women." For example, between 1919 and 1952, "women and girls were 14 percent more likely to be sterilized than men and boys," "male Latino patients were 23 percent more likely to be sterilized than non-Latino male patients, and female Latina patients were 59 percent more likely to be sterilized than non-Latina female patients.
   iv. After 1979, state-sponsored sterilization continued. A state audit revealed at least 144 people imprisoned in California's women's prisons were sterilized without proper consent during an eight-year period in the 2000s.
   v. Following this report, the Legislature prohibited the sterilization for the purpose of birth control any individual under the control of the California Department of Corrections and Rehabilitation (CDCR). There are an estimated 244 survivors of illegal prison sterilization.
   vi. Reparations Scheme
   vii. *Formal Apology*: In 2003 the State Legislature, Governor, and Attorney General all issued formal apologies for the 1909-1979 eugenic sterilization program. Specifically, the State Senate passed a resolution expressing "profound regret over the state's past role in the eugenics movement and the injustice done to thousands of California men and women . . . ."

In 2021, as part of the passage of AB 137, the State Legislature formally expressed regret for the sterilizations that took place after 1979.

viii. *Financial Reparations*: The California Legislature passed, and the Governor signed, AB 137 in the 2021-2022 legislative session. AB 137 created the California Forced or Involuntary Sterilization Compensation Program (FISCP or Program), which financially compensates survivors of state-sponsored sterilization. The California Victim Compensation Board (CalVCB) administers the Program.

ix. Intended Recipients: AB 137 sets out specific criteria for those who can apply for compensation from the Program: "(1) Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. (2) Any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979. The law also requires CalVCB to affirmatively identify and disclose coercive sterilizations that occurred in California prisons after 1979 so that individuals may then apply for compensation.

x. Financial Compensation and Temporal Limitations: AB 137 allocated $4.5 million for direct financial compensation to applicants who met the above eligibility criteria. Each approved applicant receives an initial payment of $15,000 within 60 days of notice of confirmed eligibility. After all applications are processed and all initial payments are made, any remaining program funds will be disbursed evenly to the qualified recipients by March 31, 2024. Applications to the program are accepted from January 1, 2022, through December 31, 2023.

xi. Rationale for Form of Reparations:

xii. Sponsor of the bill, California Latinas for Reproductive Justice, summarized the rationale for the apology and financial compensation: "California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). It will also become the first state to compensate survivors of involuntary sterilizations performed outside of formal eugenic laws. Enactment of this bill would send a powerful message around the country that forced

sterilizations will not be tolerated in carceral settings, including prisons, detention centers, and institutions."

xiii. The bill specifically stated that financial compensation would not be subject to several tax and other limitations: "Notwithstanding any other law, the payment made to a qualified recipient pursuant to this program shall not be considered any of the following: (1) Taxable income for state tax purposes; (2) Income or resources for purposes of determining the eligibility for, or amount of, any benefits or assistance under any state or local means-tested program; (3) Income or resources in determining the eligibility for, or the amount of, any federal public benefits as provided by the Treatment of Certain Payments in Eugenics Compensation Act (42 U.S.C. Sec. 18501); (4) Community property for the purpose of determining property rights under the Family Code and Probate Code.

xiv. <u>Implementation Process</u>

xv. The compensation program is administered by CalVCB. The bill gave CalVCB six months from passage to have applications ready for the public, and applications are accepted from January 1, 2022, through December 31, 2023.

xvi. The individual submitting the application will receive a letter from CalVCB either confirming a complete application or requesting additional information. Once the application is screened and deemed complete, the application will be considered for eligibility. The statute sets out eligibility criteria (discussed above) and the specific documents and document types CalVCB may use to determine eligibility. Upon completion of the eligibility review, a letter will be sent out with the determination.

xvii. If eligibility is verified, the claimant will receive a confirmation letter, and they shall receive an initial payment of $15,000 within 60 days of the board's determination. If eligibility is not verified, the application will be denied. Notification will be sent with the necessary appeal information. An individual may file an appeal to the board within 30 days. The Board has 30 days to rule on an appeal, and any successful appeals will receive compensation as above. After exhaustion of all appeals arising from the denial of an individual's application, but by no later than two years and nine months after the start date of the

program, the board shall send a final payment to all qualified recipients. This final payment shall be calculated by dividing the remaining unencumbered balance of funds for victim compensation payments by the total number of qualified recipients.

xviii. Issues with Implementation: According to CalVCB, as of December 20, 2022, the program has received 309 applications. Of those, 45 have been approved, 102 have been denied, three have been closed as incomplete, and 159 are being processed.

xix. Experts estimate there may be about 600 people alive today that qualify for compensation, and the CalVCB is undertaking several actions to try to spread the word about the program. This includes sending posters and fact sheets to 1,000 skilled nursing homes and 500 libraries, and distributing more than 900 posters to the state's 35 correctional institutions to post in common areas and housing units, in hopes of reaching more people. The state also signed a $280,000 contract in May with JP Marketing to launch a social media campaign that will run through the end of 2023. The biggest push began in December 2022, when the State will pay for TV and radio ads in Los Angeles, San Francisco and Sacramento that will run through October 2023. The hope is that victims' friends or relatives will see the ads and help their loved one apply for the program.

iii. Conclusion