

# **From Class Action to Reparative Philanthropy**

**The Norflet Progress Fund and the  
Future of *Cy Pres* Practice**

**Susan Eaton  
May 2021**



## **About this report**

This report was commissioned by class counsel in the class action lawsuit *Merle Norflet v. John Hancock Life Insurance Co.* with approval from the U.S. District Court for the District of Connecticut, which oversaw the litigation. Its goal is to provide a written memorialization of what was achieved by grants that had been made available from the lawsuit settlement's *cy pres* relief and awarded by the Norflet Progress Fund, and the positive impact that the grants have made in communities and for organizations. The report also seeks to outline lessons drawn from the settlement's *cy pres* component.

# Introduction: Class Action Litigation Documents a Historic Injustice

Like many adults with elderly parents, Merle and Pearl Norflet, two African American sisters in their late sixties, had long organized their mother Maggie's financial files. But quite unlike most work of this nature, the Norflet sisters' conscientious stewardship would spread benefits far beyond their family. Because of Merle and Pearl's care and keen attention, dozens of Black homeowners in the South would finally get the money owed to them for repairs following natural disasters, Black toddlers in New York City would be afforded an early education rich in African American history and culture, and teenagers in Washington, DC, would spend Saturdays cleaning local rivers, restoring nearby forests, and learning about environmental science. These benefits and dozens of others flowed directly from the resolution of a lawsuit filed due to the Norflet sisters' and their counsels' efforts.

■ *The Norflet sisters' conscientious stewardship would spread benefits far beyond their family.* ■

In the 1990s, just around the time that Merle and Pearl sat in Waterbury, Connecticut, organizing their mother's financial files, news reports began exposing the historic exclusion of African Americans from the full range of insurance options afforded white customers. From the 1940s through the 1960s, the media reports explained, Black customers were typically only offered burial life insurance, which traditionally lapsed 97 percent of the time without paying out. Reports indicated that African Americans were foreclosed from buying any other, and usually superior, policies.<sup>1</sup> After a number of class action lawsuits were filed against other insurers in the late 1990s over discriminatory practices in the sale and underwriting of burial policies, a *Wall Street Journal* article reported that John Hancock's life insurance unit had said that none of its Black policyholders are affected by the race-based underwriting challenged in the suits because, before 1960, it did not allow its agents to market to African Americans.<sup>2</sup>

But Merle and Pearl held in their hands three life insurance policies issued by John Hancock insuring their mother's and their lives. They suspected that their mother had been sold policies that were substandard compared with those that would have been sold to white people at the time. The sisters reached out with this information to two private law firms, Klafter Olsen and Lesser LLP, based in New York, and Mehri & Skalet

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1 Mary L. Heen, "Ending Jim Crow Life Insurance Rates," *Northwestern Journal of Law and Social Policy* 4, no. 2 (2009), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1041&context=njls>.

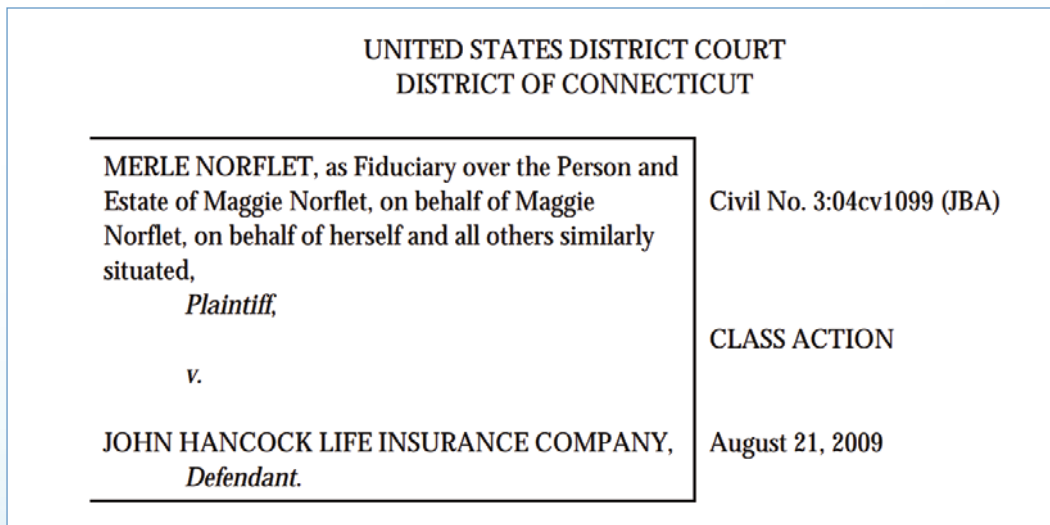
2 Scott J. Paltrow, "Life Insurers' Race Bias in the Past Affects Policyholders Even Now," *Wall Street Journal*, December 26, 2000. Also, Report of Henry M. McKiven, PhD, *Norflet v. John Hancock Financial Services Inc. and John Hancock Life Insurance Co.*, No. 04-1099 (D. Conn. Jan. 29, 2007).

PLLC, based in Washington, DC. Attorneys at the firms investigated and deemed the sisters' suspicions to be worthy of litigation.

With Merle Norflet as the named plaintiff, in 2004 the two firms filed *Merle Norflet v. John Hancock Life Insurance Co.* in federal court in Connecticut. The attorneys who worked on the case did so on a contingency basis, at no charge to Merle Norflet. The lead attorneys included Cyrus Mehri, Steve Skalet and Jeremy Duru of Mehri & Skalet based in Washington, D.C., and Seth Lesser and Fran Rudich of Klafter Olsen & Lesser based in New York.

The lawsuit claimed that John Hancock had marketed substandard life insurance policies disproportionately to African Americans up until 1959 and had "fraudulently concealed" its practices, preventing class members from seeking redress for past discrimination. The case proceeded through motions to dismiss, to class certification, and to denial of a motion for summary judgment.

■ *The lawsuit claimed that John Hancock had marketed substandard life insurance policies disproportionately to African Americans up until 1959 and had "fraudulently concealed" its practices, preventing class members from seeking redress for past discrimination.* ■



Courtesy of the United States District Court, District of Connecticut

In 2009, as the case was moving toward trial, John Hancock and class counsel agreed to resolve the litigation and Judge Janet Bond Arterton of the US District Court for the District of Connecticut approved a \$24.4 million settlement. John Hancock, while

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3 For more information on this lawsuit see Mehri & Skalet PLLC, <https://findjustice.com/cases/norflet-progress-fund-john-hancock-complaint/>.

agreeing to a settlement, expressly denied all liability with respect to all facts or claims alleged in the litigation, and maintained its belief that its defenses to the claims asserted in the action had substantial merit. In turn, the plaintiffs' attorneys maintained their belief that the discovery they had undertaken substantiated their claims that John Hancock had systematically discriminated against African Americans, only selling to them inferior quality policies. Since the case never went to trial, however, which side was correct was not adjudicated by the court and no finding of wrongdoing was ever made.

The class members—African Americans who purchased, were insured parties, owners, or beneficiaries of industrial or monthly debit life insurance policies issued by John Hancock prior to 1959—were, after the filing of a claim, entitled to up to \$1,200 per policy. A problem quickly emerged. Identifying and providing class members with notice of the settlement and their ability to file a claim would be challenging. Not only were these policies purchased half a century or longer ago, by the time of the settlement, most of the class policies had lapsed or been paid or terminated. The parties, thus, agreed to a comprehensive process of trying to discover class members. The attorneys sent direct mail notices about the settlement to nearly a half million African American policyholders. It was advertised in magazines, newspapers, online, including in online community chat boards, as well as in other places. Even with this outreach, finding enough claimants for this large settlement, as well as determining which claims were valid, posed difficulties.

To oversee the process, Judge Arterton appointed retired federal judge U. W. Clemon as a special master to serve as the claims gatekeeper. Judge Clemon, the first African American federal judge in Alabama, had served twenty-nine years on the federal bench. But even after the exhaustive notice procedures and Clemon's best efforts, at the end of the claims period more than \$15 million remained in the settlement fund.

■ *Anticipating that the settlement proceeds might not be exhausted, the two sides had negotiated that no funds would be returned to the defendant, as sometimes occurs in class action lawsuits. Instead, the money was to be used to the “next best” end—what is called cy pres in the law<sup>4</sup>—and be used to benefit the African American community.* ■

Anticipating that the settlement proceeds might not be exhausted, the two sides had agreed that no funds would be returned to the defendant, as sometimes occurs in class action lawsuits. Instead, the money was to be used to the “next best” end—what is called *cy pres* in the law<sup>4</sup>—and be used to benefit the African American community. Securing this feature early on in the settlement would turn out to be prescient.

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4 Translated loosely from the legal French, *cy pres* means “as close” or “as near as possible.” Such residual funds accumulate if and when members of an allegedly harmed class in the original lawsuit or their heirs cannot be identified or after all individual claims from class members have been paid. The “near as possible” refers to the awarding of money to nonprofit organizations that aim to remedy the type of harms alleged in or associated with the original lawsuit.

Judge Arterton carefully examined this *cy pres* proposal and called on class counsel to establish an outside committee to serve in the crucial role to solicit and obtain applications for groups who would put the funds to the best use, subject to court approval. This *Cy Pres* Advisory Committee, which operated as the Norflet Progress Fund, functioned effectively as a grant-making foundation.

Between 2009 and 2015, the fund, with the Court's approval, would allocate \$15,597,331 to 54 nonprofit organizations that served African Americans. This report highlights the positive impact that the grants have made in communities and for organizations, both large and small. It also explores the genesis, grant-making procedures, outcomes, and relevant lessons of the Norflet Progress Fund for *cy pres* practice.

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Recent discourse around *cy pres* has at times focused on problematic disbursements. For example, in some cases, residual funds were even returned to defendants, meaning the defendant retained the money that it had agreed should go to the class in some form. Disbursements of *cy pres* has sometimes reflected carelessness, with disbursements not even tangentially related to the alleged injustice at the heart of the original litigation, or being provided to pet charities of the plaintiffs' or defendants' choosing.<sup>5</sup> The Norflet Progress Fund, though, is a compelling counterexample to such outcomes, and demonstrates how *cy pres* can benefit the communities at the heart of the allegedly harmful conduct underlying a settled lawsuit or, alternatively, address the wrongs alleged in a lawsuit.

In this instance, by the time of the settlement, the conduct by John Hancock that the lawsuit alleged was racially discriminatory was not ongoing, having ceased 50 or more years prior to the cutoff date of the class definition. Given the passage of so many years, providing true redress to the allegedly harmed individuals would prove exceedingly challenging and, in many cases, nearly impossible. Thus, millions of dollars in disbursements were paid not directly to class members, but to a wide variety of organizations that benefited African American communities. As discussed in detail below, the amelioration of the specific alleged wrong in this case demonstrates the powerful role that *cy pres* can ultimately play in realizing justice. The approach taken by the lawyers and the court-approved Advisory Committee can inform future settlements of class cases and best practices for the future.

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5 Sylvia Stewart, "As Near as Possible? Applying Best Philanthropic Practice to Judicial Disbursement of Residual Funds in Class Action Lawsuits via the *Cy Pres* Doctrine," Sillerman Center for the Advancement of Philanthropy, 2018, p. 1, <https://heller.brandeis.edu/sillerman/pdfs/reports/cy-pres.pdf>.

To complete this report, the author conducted interviews with members of the Advisory Committee, conversed with class counsel, and interviewed representatives from eleven of the Norflet Progress Fund's nonprofit grantees. She also reviewed court documents, as well as all the interim reports submitted by Norflet Progress Fund grantees.<sup>6</sup>

Part 1 of this report discusses the mechanics whereby the fund was established and how it operated. Part 2 details the wide range of programs that were chosen as recipients of the fund's grants, all of which were, after input from John Hancock, proposed to and approved by US District Court Judge Arterton of Connecticut. Part 3 sets forth some conclusions and offers lessons relevant for legal professionals engaged in *cy pres* practice and for scholars and other commentators concerned with the nature and future of *cy pres*. Appendices include a timeline of events related to Norflet Progress Fund activity, biographical sketches of Advisory Committee members, and a full list of the Norflet Progress Fund's grantees.

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6 From 2006 to 2015, Susan Eaton, the author of this report, was research director at the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. This institute was founded and, at that time, was directed by Charles J. Ogletree Jr., to whom the author reported. Professor Ogletree was a member of the Norflet Progress Fund Advisory Committee. Also, in the interest of full disclosure, the author benefited indirectly from a grant made by the Norflet Progress Fund to the Poverty and Race Research Action Council (PRRAC). The author collaborated with PRRAC during her employment at the Houston Institute on a storytelling project, *One Nation Indivisible*, which was funded in part by the Norflet Progress Fund.

# 1. The Genesis, Purpose, and Mechanics of the Norflet Progress Fund

As the *Norflet* case settlement was being finalized, class counsel and John Hancock's counsel had agreed that, since the litigation alleged discrimination against African Americans, any *cy pres* component had to predominantly benefit African Americans. The idea arose of having the disbursements be informed by a committee of experts drawn from the African American legal community. Class counsel proposed to Judge Arterton that Washington, DC–based attorney and law professor John Brittain serve as chair of the Advisory Committee. Brittain has strong ties to Connecticut, where the *Norflet* lawsuit had originated. He had been a lead attorney in the landmark *Sheff v. O'Neill* case brought in state court and a longtime professor at the University of Connecticut School of Law in Hartford. (At this writing, he is a professor at the David A. Clarke School of Law at the University of the District of Columbia.) The high-profile *Sheff* case sought to redress the harms of racial segregation in the public schools of Greater Hartford. A team of local and national civil rights lawyers had won the case in 1996. The *Sheff* remedy enabled thousands of Hartford and suburban youth to attend integrated magnet schools and voluntarily transfer to schools outside the cities or towns where they lived.

Class counsel, in consultation with Brittain, then formed a proposed Advisory Committee for Judge Arterton's consideration. In many previous *cy pres* awards, attorneys or judges made disbursements independently, without an advisory committee or community input. This practice has contributed to controversy about the appropriateness of *cy pres*. Aware of this, and in view of the relatively large size of the award, class counsel worked collaboratively to ensure a well-informed, fair *cy pres* distribution through the use of the Advisory Committee.

After class counsel recommended prominent civil rights attorney Brittain as chair, and upon his approval by the court, a predominantly African American Advisory Committee was formed to recommend grantees. The Advisory Committee would seek input from class counsel members, attorneys Lesser, Mehri, Rudich, and Skalet, as well as John Hancock's attorneys, who strongly supported the *cy pres* effort.<sup>7</sup> In addition to Brittain, advisory members were:

- Deidra Ierardi, a nonprofit leader and human rights activist from Connecticut;
- Nathaniel Jones, a former federal judge from Ohio;
- Charles J. Ogletree Jr., Harvard Law School professor;

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<sup>7</sup> See appendix 3 for more information on Advisory Committee members.





Attorney John Brittain, chair of the Norflet Progress Fund Advisory Committee. Courtesy: David Clarke School of Law, the University of the District of Columbia.

- john powell,<sup>8</sup> an internationally known race scholar, civil rights attorney, and nonprofit leader;
- Theodore Shaw, law professor and former director-counsel of the NAACP Legal Defense and Educational Fund; and
- Geraldine Sumter, an experienced litigator and partner in a prestigious private civil-rights firm in North Carolina.

Mehri & Skalet's senior paralegal, Lee-Ann Foster, served as the part-time administrator of the Norflet Fund.

The Norflet Advisory Committee established criteria and a process for selecting grantees and expended enormous effort identifying those for whom the grants would have the greatest impact. The committee also created a subcommittee, including the chair John Brittain and members Geraldine Sumter and Deidra Ierardi, as well class counsel Seth Lesser and Cyrus Mehri, to analyze six-month interim reports from the grantees for purposes of transparency, accountability, and feedback.

Each of the civil rights lawyers counted accomplishments in high-profile civil rights litigation and in national agenda setting and advocacy on a range of complex social challenges that affect African American communities across the United States. The Connecticut-based member, Ierardi, possessed deep knowledge of the nonprofit landscape in the state and an understanding of financial and management best practices for nonprofit organizations.

The broad categories for grants had been established by class counsel and opposing counsel in the settlement. They included (a) systemic education issues affecting African American students in the Northeast and Mid-Atlantic regions of the United States; (b) health issues that disproportionately impact African Americans; (c) systemic problems

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<sup>8</sup> john powell does not capitalize his name.

stemming from the continuing adverse consequences of Hurricane Katrina that impact communities that are predominantly African American; and (d) other programs that benefit African American communities.

During numerous meetings, both in person and via conference call, Advisory Committee members and class counsel developed a budget and crafted guidelines. Among other details, they agreed on a range of grant amounts—from \$25,000 to \$750,000. Early on, Brittain and his fellow committee members acknowledged that racial bias might make it more likely for observers to question the grant-making process and the committee's recommendations.

"We were aware that a nearly all-Black committee giving money with the expressed purpose of benefiting African Americans could bring scrutiny," Brittain said. "This just made us all the more scrupulous, leading us to document everything, ensure transparency and a clear record."

Advisory Committee members invited the first applications for *cy pres* funds in two phases. The first phase commenced in February 2011, and the second in late summer the same year. The first phase followed an examination of the civil rights and related direct-service landscape to generate a full list of potential grantees, who would then be invited to send initial letters of inquiry.<sup>9</sup> Committee members also added organizations to the list by drawing on their own considerable networks of informants and their knowledge of nonprofit organizations that benefited African Americans.

After reviewing forty-nine letters of inquiry, the committee invited the first group of thirty-five organizations to submit full applications for *cy pres* grants. After reviewing the completed applications, the committee recommended that about \$4.5 million in grants go to ten organizations. In July 2011, Judge Arterton approved the committee's first recommendations. The committee members repeated these deliberations in subsequent rounds of grant recommendations, all of which received Judge Arterton's prompt approval.

At the end of the grant periods, the Advisory Committee asked each grantee to submit a report on the use of the awarded funds. Necessary for record-keeping purposes, these reports were also referred to by Advisory Committee members to help them make subsequent grant-making decisions.

"Our goal was to avoid being overly burdensome . . . to keep the questions straightforward, easy to answer but useful," Brittain said. "When organizations applied for more money [later], that information was certainly helpful to us and did affect our decisions."

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9 If organizations not on the list learned of the grant opportunity through word of mouth, the committee accepted those letters of inquiry as well.

## 2. The Outcome: A Holistic, Varied Grant Portfolio

The Norflet Progress Fund's grant portfolio is uncommon in its holistic nature and variety. The portfolio reflects the Advisory Committee members' expertise and their shared commitment to civil and human rights. The portfolio also reflects a collective understanding about the interdependent nature and equal value of grassroots organizing, on-the-ground community-centered services, national, high-profile advocacy and litigation, and public narratives that center African Americans and celebrate values of freedom, equity, and justice.

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The Advisory Committee made some relatively large grants to national agenda-setting advocacy organizations, policy-oriented think tanks, and long-standing civil rights organizations that engage in impact litigation and policy advocacy on social problems that affect African American communities. These included, for example, the NAACP Legal Defense and Educational Fund, the Advancement Project, and the National Coalition to Abolish the Death Penalty. The Center for Responsible Lending used its grant to research and advocate for fairer lending practices in African American communities across the United States. The Children's Defense Fund, another national-level grantee, used its grant to raise awareness about and advocate for federal welfare policy that might better serve African American children and other children of color. The Lawyers Committee for Civil Rights used its Norflet grant to expand its litigation and advocacy work that challenged racial discrimination within the criminal justice system. The Civil Rights Project at UCLA, also a grantee, conducts research on racial discrimination in school discipline and trends of segregation and concentrated poverty in the nation's public schools. The Civil Rights Project used the Norflet grant to research and raise awareness about racial disparities in school discipline and alternatives to punitive policies. The National Consumer Law Center used its grant to raise awareness of and work to abolish credit-related practices that harm low-income African Americans.

The Norflet Progress Fund also made grants to nonprofits that focus their work on particular states or regions. This included, for example, The Connecticut Fair Housing Center, which works to raise awareness about and advocate for laws and practices that reduce racial segregation and that enable people with low-incomes more access to stable housing across the state. The organization used the Norflet grant to expand its investigations into the ways that zoning exacerbates racial and economic segregation in the state. The Greater New Orleans Fair Housing Action Center used its grant to expand its work in ensuring that families of color, in particular, could get access to

stable housing and to federal housing-related assistance following natural disasters. Another regional grantee, the Southern Coalition for Social Justice, based in Durham, North Carolina expanded its youth advocacy work in which young people organize to ensure racial equity within public schools. The Connecticut-based Sheff Movement Coalition used its grant to host convenings of parents of color and white parents whose children attend racially integrated schools, to raise awareness about educational offerings in the state's integrated magnet schools and to advocate for state laws and policies that would create more opportunities for young people in Connecticut to attend high quality integrated schools.

Equally prominent in the portfolio were local and state-level organizations that provide direct services to predominantly African American communities. This included, for example, the Center for Children's Advocacy, based in Connecticut. The center used the Norflet grant to provide legal representation for children facing school expulsion. Another grantee, Camp Harbor View in Boston, has, since 2007, run a free summer camp for young people most likely to face violence in their communities. The camp used the Norflet funds to increase its enrollment and enhance its sports-related programs by hiring experienced instructors from Boston neighborhoods. Another grantee, Ramapo for Children, serves more than five hundred young people with special needs every summer in Rhinebeck, New York. The Norflet grant enabled Camp Ramapo to provide more scholarships for children who live in New York City. Based in Maryland, the nonprofit, Street Law, used its Norflet grant to bring its educational programs about young peoples' civil rights under law, to classrooms in predominantly African American schools.

Arts and cultural organizations were also represented in the portfolio. This includes Boston's African American History Museum, which used the Norflet grant to expand youth engagement programs and underwrite free admission for young people. The National Underground Railroad Freedom Center, an interactive museum in Cincinnati, used the Norflet grant to provide free public programming for public school teachers and students.

An in-depth look at seven of the fund's grantees follows. These grantees were selected for profiles because, together, their grants are reflective of the overall nature of the fund's portfolio and not because of any subjective judgment about the higher quality of these organizations' work or their impact relative to other grantees.



Photo: Twenty20.

## Equal Justice Works Washington, DC

In New Orleans, a young lawyer helps families finally clear titles on their homes so they can get federal aid to repair damage from floods and hurricanes. In North Carolina, a recent law school graduate uncovers vast inequities in basic city services for residents of long-segregated Black communities. And in Baltimore, a young lawyer helps people living with HIV to fight stigma and discrimination they face in family court proceedings.

All this work and much more was accomplished during two-year fellowships enabled by the Washington, DC, nonprofit organization Equal Justice Works (EJW). With a mission to “create a just society by mobilizing the next generation of lawyers committed to equal justice,” EJW places recent law school graduates at a wide variety of nonprofit host organizations across the United States. EJW staff receive about 450 fellowship applications each year from recent law school grads aspiring to be public interest lawyers. From that batch, about 100 fellows are chosen each year after EJW consultation with host organizations, former fellows, and sponsors. EJW received about \$1.2 million from the Norflet Progress Fund over four years. With this money, EJW supported twelve fellows at a wide range of organizations across the nation. An overview follows of the work accomplished by two of the Norflet-sponsored fellows.

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A graduate of Yale Law School, Stephanie Oluchukwu Akpa provided clients with direct representation as well as advocacy and community-based education, outreach, and training to ensure that African Americans living in poverty in Washington, DC, had access to high-quality health care. The Legal Aid Society of the District of Columbia hosted her fellowship. Washington, DC, has a strong health care system and a relatively low rate of uninsured people.<sup>10</sup> However, a highly disproportionate share of African Americans there are poor and also suffer from serious health conditions, including HIV/AIDS, breast cancer, prostate cancer, and colorectal cancer.<sup>11</sup> During her fellowship project, Akpa advised or provided service to more than seventy people with questions or concerns related to eligibility for public insurance, disability benefits, or coverage of specific medical services. She also represented about thirty people in cases challenging incorrect medical bills or denial of disability benefits or health care coverage and testified several times before the District of Columbia Council Committee on health care.



Jason Bailey

Following graduation from the University of Arkansas–Fayetteville, EJW fellow Jason Bailey worked in Arkansas, his home state, to address widespread housing discrimination. The Lawyers’ Committee for Civil Rights, a national organization, was the host organization for Bailey’s work, which was based in Little Rock but took him across the state. Tenants in Arkansas have relatively few enforcement mechanisms to exercise their fair housing rights,<sup>12</sup> as Bailey noted in his fellowship application. For example, Arkansas is one of only two states that lack a private fair housing program to provide tenants with legal representation in state or federal administrative hearings or in court proceedings.<sup>13</sup> During his fellowship, Bailey provided direct representation of tenants, developed training materials, and provided educational seminars in communities with a high prevalence of housing discrimination complaints. He also strengthened the relationship and collaboration capacity between the Lawyers’ Committee for Civil Rights and the Arkansas Fair Housing Commission and legal aid organizations in the state.

10 Adam McCann, “Best & Worst States for Health Care,” WalletHub, 2019, <https://wallethub.com/edu/states-with-best-health-care/23457/>; “DC Has the Second Lowest Uninsured Rate in the Nation,” DC Health Link, September 11, 2019, <https://dchealthlink.com/node/3311>.

11 “Health Equity Report: District of Columbia 2018, Social Determinants of Health in Washington DC,” Social and Structural Determinants of Health, Office of Health Equity, District of Columbia, Department of Health, <https://app.box.com/s/yspij8v81cxqyeb17gj3uifjumb7ufsw>.

12 See, for example, Carol Johnson, *Annual Report to Legislature, 2017*, Arkansas Fair Housing Commission, <https://www.fairhousing.arkansas.gov/wp-content/uploads/2020/05/2017-Annual-Report-to-the-Legislature.pdf>.

13 See, for example, Ron Wood, “Renters Have Few Rights under Arkansas Law,” *Arkansas Democrat Gazette*, May 7, 2017.



Photo: Twenty20.

## **The Land Loss Prevention Project Durham, North Carolina**

The story of Black landownership and Black farming in the American South is one of pride, backbreaking work, artistry, love, and resilience. It is also a story of dispossession, abuse, and racism.

Even as formal civil rights protections in such areas as housing and education have improved since the 1950s, Black landownership and farming in the South do not enjoy a trajectory of steady progress. In fact, Black landownership reached its peak around 1910, when about 210,000 Black Americans owned more than four million acres. At this time, property was typically used for farming, the principal occupation of African Americans in the South in the early twentieth century. In 1920, the 925,000 farms owned by African Americans accounted for nearly 14 percent of our nation's farmland



Savi Horne, Executive Director of the Land Loss Prevention Project. Courtesy of Savi Horne.

and were 4 percent of all farms in the United States.<sup>14</sup> Between 1940 and 1974, the number of African American farmers fell from 681,790 to just 45,594—a drop of 93 percent. In 2010, owing to continued land loss, less than 2 percent of the nation’s farmers were African American. This represents only 1 percent of rural landowners.<sup>15</sup>

For more than thirty years, the North Carolina–based Land Loss Prevention Project (LLPP) has used the law, community-based education, and old-fashioned relationship and trust building as counterforces to the structures, systems, and embedded biases that have long undermined Black landownership and Black farming in the South. For example, LLPP is actively fighting against the dispossession that arises from so-termed heirs property. This is a type of ownership created when a landowner dies without having made a will. All the landowner’s children, then, inherit the property with equal shares of ownership, but without a clear title. In such cases, a developer typically approaches one of these unwilled heirs, and then, by buying out just one share, the developer can force what is called a “partition sale,” thereby stripping the inheritors of their property. This can occur without the consent of other family members. Horne and

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14 Pete Daniel, *Dispossession: Discrimination against African American Farmers in the Age of Civil Rights* (Durham: University of North Carolina Press, 2013), 1.

15 Institutional racism was so apparent that in 1965, the US Commission on Civil Rights issued a scathing report that found widespread discrimination against Black farmers by the US Department of Agriculture (USDA). The report also found that the discrimination resulted in loss of farmland. In 1997, a civil rights action team outlined strategies the USDA could take to eliminate discrimination (Daniel, *Dispossession*, 1).



others estimate that this problem caused about half of all the loss of Black-owned farmland that has occurred since 1969. The US Department of Agriculture has called heirs property “the leading cause of Black involuntary land loss.”<sup>16</sup>

With a \$300,000 Norflet Progress Fund grant, LLPP was able to hire an additional attorney to expand its advocacy work at state and national levels. As a result, Horne and other LLPP attorneys, in collaboration with other nonprofit organizations, worked to get state laws passed in the South that restricted partition sales and provided protections to unwilling inheritors.<sup>17</sup>

“We know from history and we know from the present day that whoever controls the land controls your destiny,” said Savi Horne, LLPP’s executive director. “And in this fight, good lawyering is vitally important, because there is an entire industry waiting to take advantage of people who traditionally have not had good legal representation.”

The Norflet grant, Horne said, “came at a pivotal time for us. . . . I think the ancestors would have been proud.”

Supported by Norflet grant dollars, LLPP attorneys also traveled to Mississippi, Alabama, and South Carolina to deliver workshops and offer legal services to dozens of Black farmers and landowners and other “low-resource” farmers. The workshops covered such topics as wills and inheritances, estate planning, how to get access to US Department of Agriculture (USDA) resources and grants, and conservation laws that protect farmers from land developers. Services included helping Black landowners with their wills, initiating processes to gain conservation easements to prevent development that would harm farming practice, determining eligibility for USDA grant programs, and creating land trusts to protect assets.

“Decades of discrimination have sown deep mistrust of the legal system in African American communities, particularly in the South,” Horne said. “Part of what we are doing is building that back up again, connecting people to resources that will benefit them and help secure their wealth and livelihoods. It’s a process, often a very long process, as much about relationships as anything else.”

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16 Lizzie Presser, “How to Close Heirs’ Property Loopholes: What to Consider to Avoid Losing Land That Has Been Passed Down through Generations without a Will and Is Shared among Heirs,” ProPublica, July 15, 2019.

17 As of 2020, fourteen states have passed the Uniform Partition of Heirs Property Act. This expands heirs’ rights in partition. It also provides access for heirs’ property owners to benefit from an array of USDA programs. Also, as of 2020, North Carolina, Mississippi, Florida, Louisiana, and Tennessee had not passed the Uniform Heirs Property Act.



Photo: Twenty20.

## **The Mississippi Center for Justice Jackson, Biloxi, and Indianola, Mississippi**

In 2009, a young African American woman named Sulesia Sims received a letter from the South Delta Regional Housing Authority informing her that the rent on her small home would increase drastically in just thirty days.

“No explanation as to why,” Sims said of the rent increase. “It just went up more than double.”

This increase came in spite of severe termite damage and other structural problems in her home that the public housing agency had failed to adequately repair. Her little home was in such dire condition, Sims had told a lawyer from the Mississippi Center for Justice (MCJ), that she had even lost supervision of a beloved toddler she had been fostering for a year because her home failed state inspection.

Sims was not alone. Residents in public housing overseen by the South Delta Housing Authority in Bolivar, Washington, Sunflower, Sharkey, and Humphreys Counties also received letters about rent increases that year. For example, one-bedroom homes that

had rented for \$60 per month went up to \$240. Around the same time that the authority sent out announcements of the rent increases it also evicted more than fifty residents, including some who were elderly or disabled, or both.

As soon as lawyers at the Mississippi Center for Justice's Indianola offices learned about the rent increases, attorney Beth Orlansky began to more deeply explore tenants' problems. She met with residents, studied their rental agreements, and walked through the homes and land overseen by the South Delta Housing Authority. Orlansky found that foundations, roofs, and windows were typically in poor condition, with the "bare minimum" in maintenance accomplished.

After meeting with tenants and informing them of their options, MCJ lawyers, along with colleagues at a local pro bono partner law firm, filed a federal lawsuit alleging that the rent increases violated state law, the Federal Fair Housing Act, and the Americans with Disabilities Act. The lawsuit also alleged that the increases and evictions denied the constitutional right of due process and violated the terms of the rental contracts.

During the same period, the MCJ's Orlansky also met with local mayors and state legislators and congressional representatives to seek their support and to "try to get some leverage and get change done that way." Public protests from tenants also attracted media attention to the problems tenants were facing.

"When we started working with Mississippi Center for Justice we started getting more response from South Delta [Housing Authority]," Sims said. "They did start coming out to do some work. . . . Before we were not getting anything done."

The lawsuit and public attention encouraged a whistleblower to come forward to reveal the government-funded housing authority's unlawful financial practices. This resulted in federal charges being brought against the agency's director.<sup>18</sup> The authority then settled with MCJ's plaintiffs, resulting in lower rents and improved maintenance services.

The settlement that benefited public housing residents in the Delta is but one example of the positive impact that the Mississippi Center for Justice has had in a state with a long and notorious history of racial injustice and poverty. Defining itself as a "home-grown, nonprofit, public interest law firm,"<sup>19</sup> the seventeen-year-old MCJ advocates within the legal system, at the national, state, and local government levels and among the public at large on behalf of communities of color and people who earn low incomes.

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18 A federal jury convicted Ann Jefferson, executive director of the South Delta Regional Housing Authority (SDRHA), in Aberdeen, Mississippi, of two counts of embezzlement, two counts of obstruction of justice, and three counts of witness intimidation. Jefferson was found to have embezzled federal funds from several housing authority accounts for her own use and to have retaliated against several employees when she found out those employees were cooperating with federal investigators.

19 MCJ CEO Vangela Wade, interview with the author, March 19, 2020.

■ *Defining itself as a “home-grown, nonprofit, public interest law firm,”<sup>19</sup> the seventeen-year-old MCJ advocates within the legal system, at the national, state, and local government levels and among the public at large on behalf of communities of color and people who earn low incomes.* ■

MCJ operates within what is surely one of the most challenging political and social contexts for civil rights work in the nation. In 2019, US News & World Report ranked Mississippi fiftieth for access and quality of health care for its residents, and forty-eighth for economic stability and potential.<sup>20</sup> It was not until 2013 that the State of Mississippi would officially notify the federal government of its ratification of the Thirteenth Amendment, which abolished slavery. Three-fourths of states ratified the amendment at the end of the Civil War in 1865, but Mississippi did not officially adopt it until 1995. According to the Mississippi Access to Justice Commission, the state also ranks among the lowest in provision of state funding for civil legal services.<sup>21</sup>

“From the beginning, it was abundantly clear that our work was going to require a multi-pronged approach,” said MCJ president and CEO Vangela Wade, who grew up just outside of Tupelo, Mississippi. “That has always been core to our mission. We are centered on the law and legal remedies, but we understand that we need to change hearts and minds, we need to educate and be a constant presence not only before judges and in the courts, but in all the centers of power.”

In 2010, MCJ attorneys, with national partners, negotiated a \$132 million settlement, which later grew to \$212 million, with Mississippi and federal officials for the reconstruction and repair of more than five thousand homes that had been damaged by Hurricane Katrina. This benefited low-income residents in at least fifteen counties in south and southeastern Mississippi. This settlement followed a MCJ lawsuit charging that the State of Mississippi had diverted housing disaster funds for expansion of a state-owned port.

The Norflet Progress Fund made a \$750,000 grant to the MCJ. With the funds, the center was able to, among other activities, offer direct counseling and services to help homeowners on the Gulf Coast get access to the money made available to them as a result of the settlement. Attorneys also could continue the necessary monitoring of the state’s use of funds to ensure that people earning low incomes were actually getting access to the money. Also, MCJ was able to monitor and work in collaboration with

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20 “Mississippi: #48 in Overall Rankings,” Best States, *US News & World Report*, 2019, <https://www.usnews.com/news/best-states/mississippi>.

21 Tiffany M. Graves, “The Mississippi Access to Justice Commission: Closing the Civil Justice Gap,” Capital Area Bar Association, September 2015, <https://caba.ms/articles/features/ms-access-justice-commission>.

local advocacy groups to ensure that the state was abiding by rules to provide job opportunities to African Americans and low-income individuals as a result of the port expansion project.

“Because of the Norflet funding, we were able to finish what we started with the lawsuit,” said Reilly Morse, who had formerly been president and CEO of MCJ and is now its general counsel. “We know the challenge of getting funding for long legal efforts, and so this was a grant that was deeply appreciated and went a long way through four or five years to ensure fairness and transparency.”

The MCJ also engages in impact litigation, which refers to legal action designed to bring about broad social change. This includes class action lawsuits or high-profile cases that draw attention to a social problem and influence government policies. One example is the 2017 *Harness v. Hosemann* lawsuit filed by MCJ. This lawsuit, adjudicated in 2021, sought to invalidate a provision of the Mississippi Constitution of 1890 adopted to disenfranchise people convicted of particular offenses deemed “black crimes.” The lawsuit alleged that the framers of the state constitution believed that several of the crimes that disqualified people from voting were more likely to be committed by African Americans, and thus this was a deliberate mechanism by which to disenfranchise Black voters. In February, 2021, the Fifth Circuit Court of Appeals found in favor of the state, ruling that the state’s law that bars people who have been convicted of felonies cannot vote.

“Sometimes it seems that most folks think that this kind of overt discrimination no longer occurs, and people might think that nothing like this can happen in this century,” Wade said. “But we know that it does.”

# The Curtis D. Robinson Center for Health Equity

## St. Francis Hospital

### Hartford, Connecticut

In 2010, Curtis D. Robinson, a wealthy entrepreneur, philanthropist, and a son of Hartford, toured various facilities at St. Francis Hospital, located on the edge of the city's poorest African American neighborhoods. In the emergency room, he saw several Black men there for complications related to prostate cancer.

"They were literally dying," Robinson recalled. This confused and upset Robinson, who, as a prostate cancer survivor himself, knew that it was typically a treatable disease with high survival rates. Doctors explained that the lack of health insurance and a learned mistrust or discomfort with the health care system had contributed to this disparity in treatment, particularly for low-income Black men.

Robinson went home to talk with his wife about what he had learned at St. Francis. The doctors knew that community-based education and free screening and more access to care might shrink the racial and economic disparities they witnessed, but that the hospital didn't have the money to do this. He suggested that he and his wife could make a contribution for this purpose. He suggested \$50,000. His wife, Sheila, told him that was not nearly enough. How about \$100,000? Robinson suggested. Sheila still thought that sum was inadequate. Robinson agreed. He told his wife he would leave the precise amount up to her. A few days later, Robinson got a call from a St. Francis executive thanking him for his \$1 million gift. He was surprised.

"We need to help save these men's lives," Sheila Robinson told her husband that night, after acknowledging she had indeed written a check that big. And Robinson, grateful for his own cancer-free life, agreed she had made the right decision.

This marked the start of the Curtis D. Robinson Men's Health Center, which four years later, in 2014, would merge with the St. Francis Center for Health Equity. Today, the Curtis D. Robinson Center for Health Equity addresses racial and socioeconomic disparities in disease, access, and quality of health care in a variety of ways.

The Norflet Progress Fund made a \$500,000, three-year grant to the Curtis D. Robinson Center to focus on outreach and service to African American communities. The outreach and service accomplished under the Norflet grant included dozens of community-building events in the neighborhood, support groups related to diabetes and other chronic diseases, and numerous education sessions that informed residents in the hospital's African American neighborhood on topics ranging from prostate cancer to

■ *The Norflet Progress Fund made a \$500,000, three-year grant to the Curtis D. Robinson Center to focus on outreach and service to African American communities.* ■

nutrition to diabetes. It also helped pay for free screening and testing of more than fifteen hundred men for prostate cancer, for which forty-five of them have been diagnosed and treated.<sup>22</sup> The outreach under the Norflet grant remains one of just a few programs of its kind in the nation, in that it provides not only diagnosis and education, but treatment for prostate cancer.

A 2020 report from the nonprofit advocacy group Connecticut Voices for Children cites “enormous disparities in health and health care experienced by residents of color.” The review of data found that the state’s Black and Latino residents are more likely than white residents to lack health insurance and to die before becoming an adult. Black and Latino Connecticut residents also are more likely to report that they are in “poor” health.<sup>23</sup>

■ *A 2020 report from the nonprofit advocacy group Connecticut Voices for Children cites “enormous disparities in health and health care experienced by residents of color.” The review of data found that the state’s Black and Latino residents are more likely than white residents to lack health insurance and to die before becoming an adult.* ■

In response to these disparities, the Robinson Center also conducts research and focus groups to learn about the needs of residents and the barriers they face. The research is used to raise awareness and inform best practices for medical professionals. For example, the goal of the center’s Enhancing Services for Recently Incarcerated People and Their Families project was to help clinicians become more comfortable and skilled in assisting patients with incarceration histories.

Addressing racial and socioeconomic disparities in prostate cancer treatment and survival remains an important component of the center’s work. Studies repeatedly show continuing disparities based on race, with Black men nationally (and in Connecticut) twice as likely as white men to die from prostate cancer.<sup>24</sup>

Rev. Shirle Moon Childs oversees various community-education programs at the Robinson Center. She has seen trust grow over time between the center and people throughout the community.

“I find that you tell one, and that one tells another, and that one tells more people,” Moon Childs said. “If three go out, I see six come back.”

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22 “Curtis D. Robinson Center for Health Equity: History and Accomplishments,” 1999–2018,

23 See *Understanding Underlying Drivers, Barriers and Needs of the Uninsured in Connecticut: A Two-Part Research Study to Assess the Uninsured and Recently Insured Populations across the State*, Access Health CT, 2019, [https://agency.accesshealthct.com/wp-content/uploads/2019/10/Uninsured\\_Research\\_20191016.pdf](https://agency.accesshealthct.com/wp-content/uploads/2019/10/Uninsured_Research_20191016.pdf).

24 See, for example, “African American Men More Likely to Die from Low-Grade Prostate Cancer,” National Cancer Institute, 2019, <https://www.cancer.gov/news-events/cancer-currents-blog/2019/prostate-cancer-death-disparities-black-men>; Jordyn Imhoff, “Study Explores Why Prostate Cancer Mortality Is Higher in Black Men,” MHealth Lab, 2019, <https://labblog.uofmhealth.org/lab-report/study-explores-why-prostate-cancer-mortality-higher-black-men>; and Arielle Levin Becker, “Health Disparities in Connecticut: Causes, Effects, and What We Can Do,” Connecticut Health Foundation, 2020, <https://www.cthealth.org/wp-content/uploads/2020/01/Health-disparities-in-Connecticut.pdf>.



Courtesy of the Saturday Environmental Academy.

## Saturday Environmental Academy Washington, DC

A cluster of canoes filled with middle schoolers and their chaperones rocked and glided down the Potomac River one sunny spring Saturday afternoon. Near the front of the paddling pack was eighth-grader Shaniequa Berry, feeling sore in the arms but full of anticipation.

“We paddled and we paddled and we paddled,” remembered Shaniequa. “It felt like it was about twelve miles, and we got to this one small section where it was clean enough to wade in, and yeah, it was really beautiful. Really worth that long paddle.”

As members of the Saturday Environmental Academy (SEA), a free outdoor educational program for sixth, seventh, and eighth graders, Shaniequa and her fellow young paddlers had learned about the pollution harming the Anacostia and Potomac Rivers near their homes in and around Washington, DC. But they had also learned about and contributed themselves to myriad efforts to restore damaged ecosystems. They had helped clean up the Anacostia and Potomac Rivers and nurture nearby wetlands. The small tributary to the Potomac where Shaniequa and her friends had waded that day had been cleaned up by many volunteers and advocates who had also lobbied for the funds necessary to clean Washington’s famously dirty rivers.

“I was just having fun with my friends, but in the front of my mind the whole time was this idea that I was part of this bigger effort to protect the environment,” Shaniequa said. “That was a really fun day and a very meaningful day.”





Courtesy of the Saturday Environmental Academy.

A program of the Anacostia Watershed Society (AWS), the Saturday Environmental Academy provides a wide range of environmental and outdoor experiences for kids in and around the nation’s capital. The goal of the program, according to SEA program director Catherine Estes, is to help connect students to their local environment in hands-on, meaningful ways.

The Saturday Environmental Academy benefited from three grants from the Norflet Progress Fund, which according to Advisory Committee member Geraldine Sumter was “an indication of how highly we all thought of this program and the obvious positive impact it was having on young people.” Overall, SEA received about \$100,000 over three years. The program used the money as general operating support.

■ *The Saturday Environmental Academy benefited from three grants from the Norflet Progress Fund, which according to Advisory Committee member Geraldine Sumter was “an indication of how highly we all thought of this program and the obvious positive impact it was having on young people.”* ■

A recent SEA semester program focused on climate change. Students raised their awareness and understanding of the harms to the environment and, as Shaniequa said, learned about “the many proactive solutions and actions that people can and are taking” to improve their community and the environment more generally. Some students, including Shaniequa, continue on at SEA in ninth grade as student leaders, helping to supervise the younger students and create and deliver short educational presentations for them.

“I kind of see it as learning how to be a better human,” Shaniqua said. “And passing on that sense of responsibility to be a good human.”

Ronald Willis, a junior at Potomac High School in Maryland, originally signed up for SEA after hearing about the program from his landlord. He had just moved from Memphis, didn’t know anyone his age in the area, and decided to apply without knowing much about the program.

“I did make a lot of friends,” he said. “People from beyond just where I live, but all over this whole area, and that was just a good way to connect all of us.” Ronald’s favorite SEA-related activity was planting American bladdernut shrubs, which are native to the area and thus support animal and other plant life, which had been damaged by invasive species. For that project, SEA teamed up with Casey Trees, a nonprofit organization that plants trees across Washington, DC, and also provides educational programming on the environmental and health benefits of trees.

“I can remember looking at the group and everyone just working together, planting trees, and it just felt really good to help like that,” Ronald said. “We were all together and part of a positive kind of work.”

Like Shaniqua, Ronald also returned in his ninth-grade year to be a student leader at SEA. Math is his favorite subject, he said, but he added, “I can see myself applying that to environmental science now. Through [SEA] I did begin to be able to see that as a possible career. Without [SEA], I don’t think I would have known that this kind of career was out there.”

Over the last century, a variety of industries, including shipbuilding and coal gasification, contributed to the extreme pollution of the Anacostia River. In recent years, though, the river’s condition has improved and, according to AWS, is becoming healthier, owing to efforts to restore and clean it. In spite of the history of poorly regulated industry, development, and pollution, the watershed is a rich natural area. AWS notes that a recent inventory of species counted 522 “unique species,” including shad, otters, turtles, beavers, ospreys, bald eagles, and mussels.

The activities in which SEA students take part on Saturdays during the spring and fall include museum visits, and briefings and educational sessions with political leaders and experts in various science-related fields. The sessions also include hands-on activities such as surveys of vernal pools in the Anacostia watershed to learn about the harm of climate change on those ecosystems, visits and tours of environmentally sustainable buildings, and bike tours of local green spaces. Shaniqua and Ronald fondly recall visits to a meadow where they removed invasive plant species such as mugwort and porcelain berry, planted native Indian grass, and spread milkweed seeds to attract and nurture monarch butterflies.

Any student in the Washington, DC, region can apply to participate in SEA, but historically the program always aimed to serve and still mostly attracts and enrolls students from low-income families and students of color. There is no screening or prerequisites for participation in the program.



Courtesy of the Little Sun People Day Care Center

## Little Sun People Day Care Center Brooklyn, New York

Fela Barclift can still feel that “sense of being invisible” that the white-centered curriculum and the norms in her public schools forced upon her as a young Black girl in Brooklyn and Queens.

“As a child, the storybooks, the history lessons, the standards of what is beautiful, all of it, was sending messages that I was less than, that my people were less than. That we were on the margins,” Barclift recalls. “Even as we progressed in school, in high school, if we learned about African Americans it was all about enslavement, with nothing about contributions, about accomplishment, about resilience and perseverance, nothing about art, about music, about folklore, about richness of culture.”

Not only the trauma, but also the sense that “these messages were just wrong, just incorrect,” propelled the teenager Barclift on her own journey of discovery in which she learned the truth from African American elders in her community and from her own reading and research about African history, African American contributions, and the ways in which white supremacy had been baked not only into public school curriculum but into all facets of life in the nation. It was through reading and listening that she learned about a “long and glorious ancestry that goes back thousands and thousands of years and didn’t just start five hundred or six hundred years ago.”



Courtesy of the Little Sun People Day Care Center

Then, when Barclift's own daughter was about three years old, Barclift, still living in her beloved Bedford-Stuyvesant neighborhood, went searching for a preschool for her. Once again, she was dismayed at what she found.

"It was a lot of the same thing all over again," Barclift said. "I could not find anything that offered a high-quality program and that would encourage her to know her strength, her history, and instill a sense of pride, of confidence about being Black in this world." Barclift knew there must be other African American and Latino parents in the neighborhood who felt the same way. After conversations with other parents, she decided to transform one floor of her brownstone into a day care that would center its activities and lessons on the history and culture of people of color, but particularly the African American community, then the predominant racial group in her neighborhood.

"Our founding principle is love, it's love for ourselves, for our people, ourselves, and our community and for this world," Barclift said. "From here, we build community, and in that community, we teach our children agency, autonomy, and identity." Little Sun People (LSP) day care was immediately popular. Students and teachers began affectionately referring to Barclift as "Mama Fela."

■ *"Our founding principle is love, it's love for ourselves, for our people, ourselves, and our community and for this world," Barclift said. "From here, we build community, and in that community, we teach our children agency, autonomy, and identity."* ■

"This was the early 1980s. We brought in a Swahili teacher. We hung African American art and posters. We had drums, music, folklore, and all the right color crayons for drawing Black skin," Barclift recalled. "And at first I and the other teachers, we spent a

lot of time hunched over storybooks coloring those little white faces brown, drawing in that beautiful kinky hair.”

With the help of friends and community leaders, in 1985, Barclift and her teachers expanded the Little Sun People day care center and moved into the Bedford Stuyvesant Restoration Plaza on Fulton Street, where it remains today.

The Norflet Progress Fund provided \$68,000 to the Little Sun People day care center. This allowed Barclift to hire teachers to offer African drumming and French. Having received a national-level grant from Norflet, Barclift said, also helped encourage more local donors to make grants to the center. (Norflet Progress Fund provided another \$10,000 so LSP could evaluate the outcomes of its program.)

“We are a small but mighty operation, and this grant was hugely, hugely helpful for us. We wanted to try new things, keep our program fresh, and expose children to the breadth of Black culture,” Barclift said. “The grant permitted us the room to try this out.”

At Little Sun People, posters of Barack and Michelle Obama are interspersed with African sculptures and prints by Black artists. Trays and cups of crayons and markers are filled with hues of brown, taupe, and beige. Children learn French phrases, greetings, and sentences. On Fridays, the children and their teachers cook and then eat traditional African and Latino dishes. An accomplished professional singer teaches the children African American hymns and spirituals and exposes children to jazz and rhythm and blues. Another class sets the students dancing to African drumming, overseen by a percussionist from the Ivory Coast. Since LSP’s founding, Swahili, a lingua franca in East Africa with official status in many African nations, has been taught at Little Sun People day care.

LSP parent Kristen Johnson and her husband wanted their two sons to “get a well-rounded educational foundation” at preschool. An important piece of that, Johnson said, “was a school that fully took on the task of teaching Black history as a core piece of its curriculum.”

“We’re raising two Black boys in a world that over-polices Black bodies, minds, and spirits—including, and at times most invidiously, in educational spaces. So we wanted to be sure that we could entrust our children to a school that understood that context and could build our boys up with confidence and resolve to be whatever they want to be in a world with negative expectations for Black children.”

Every year, LSP puts on what Johnson characterized as an “extraordinary” Black History Month program. The 2020 theme was the National Museum of African American History and Culture in Washington, DC. (Teachers had visited the museum the previous year for a staff retreat.) For the history month program, each class was to “reflect” the essence of a different floor of the museum, which they had learned about online. One of Johnson’s son’s classes, the Zulu Fouriors, portrayed various African American athletes, entertainers, and artists. The class learned Nina Simone’s song “I Wish I Knew

How It Would Feel to Be Free.” Johnson said her son “loved practicing this song at school and at home.” After practicing one time, he told her, “Mom, I love this song. Nina Simone is speaking to me. I wish I could talk to her. I also wish I could talk to Martin Luther King Jr.”



Courtesy of the Little Sun People Day Care Center.

At LSP, Johnson said, her sons “love feeling connected to not only their peers, but also to the Black people who came before them. We couldn’t ask for anything more than that.”

Research affirms what Johnson and other parents know. In 2012, researchers Ming-Te Wang and James Huguley surveyed 630 Black adolescents and concluded that “racial socialization,” which they define as teaching young people about their culture and engaging them in activities that promote cultural connection and pride of their culture, provides an effective counterforce to the racial discrimination they face in society. The study, published in the peer-reviewed journal *Child Development*, found “racial pride” to be the strongest factor guarding against racial discrimination and to be strongly associated with high grades and reported cognitive engagement.<sup>25</sup> Other

rigorous studies have affirmed the positive effects of ethnic studies. These include psychological well-being, persistence toward graduation, and improved school performance.<sup>26</sup>

25 Ming-Te Wang and James P. Huguley, “Parental Racial Socialization as a Moderator of the Effects of Racial Discrimination on Educational Success among African American Adolescents,” *Child Development* 83, no. 5 (2012): 1716–31, [https://scholar.harvard.edu/files/huguley/files/2012\\_wang\\_huguley\\_racial\\_parenting.pdf](https://scholar.harvard.edu/files/huguley/files/2012_wang_huguley_racial_parenting.pdf).

26 Thomas Dee and Emily Penner, “The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum,” *American Educational Research Journal* 54, no. 1 (2017): 127–66; and Nolan L. Cabrera, Jeffrey Milem, Ozan Jaquette, and Ronald W. Marx, “Missing the (Student Achievement) Forest for All the (Political) Trees: Empiricism and the Mexican American Studies Controversy in Tucson,” *American Educational Research Journal* 51, no. 6 (2014): 1084–1118.

# Waterbury Opportunities Industrialization Center

## Waterbury, Connecticut

Back in 1974, in old North Square in Waterbury, Connecticut, local activist, prominent NAACP member, and beloved educator Kay Wyrick shouted out a greeting to twenty-one-year-old Reggie Beamon, an acquaintance who had just graduated from the University of Connecticut. During their conversation that day, Wyrick went on to recommend to Beamon a book she had read.

“Kay was a fountain of wisdom to all of Black Waterbury,” Beamon recalled. “You listened to her, did as she said, and am I ever grateful that I did, because that book changed my life.”

The book was the 1969 classic *Build Brother Build: From Poverty to Economic Power*, by Leon Sullivan, the pastor, human rights leader, and educator. In 1964, Sullivan had founded the nation’s first Opportunities and Industrialization Center (OIC) in North Philadelphia.<sup>27</sup> The nation’s thirty-three OIC affiliates, of which the Waterbury Opportunities and Industrialization Center is one, provide a wide variety of job training and educational programs and direct services for youth, formerly incarcerated people, and people who earn low incomes. The OICs focus on training for in-demand jobs, youth enrichment programs, housing counseling, and counseling and case management for formerly incarcerated adults, as well as direct social services such as helping people apply for health insurance and nutritional programs.



Not long after Beamon had finished reading Sullivan’s book, he got a call from a local civic leader named Joseph Jaynes, who asked if he would be willing to help him think about how to start an OIC affiliate in Waterbury. Beamon was thrilled by this “life-changing coincidence” and “leapt at the opportunity” to help create a fledgling organization in his beloved hometown. As a member of the OIC planning committee, Beamon helped Jaynes to set up Waterbury OIC’s first offices on Sperry Street. In its earliest days, the Waterbury OIC offered training for good-paying union jobs in the machine shops that were once plentiful in the region, for work as bank tellers, for jobs in all types of construction work, as well as training in office skills.

Beamon would win election to the state Legislature in 1986. In 2006, he retired from politics and became director of Waterbury OIC.

With a \$130,000 grant from the Norflet Progress Fund, Beamon and his small staff were able to upgrade “very old, out-of-date” computers for their classes. He also rehired a

27 In later years, Sullivan would create the widely applied “Sullivan principles,” a code of conduct for American companies doing business in South Africa. The principles have been applied in other African nations as well.

job developer who implemented a formal “job shadowing” program that enabled formerly incarcerated adults to learn about careers by spending time with professionals in a variety of workplace settings. He was also able to expand enrichment offerings for youth. Finally, some of the funds went to renovate a multipurpose room for community use. This room was dedicated to the Norflet sisters, Merle and Pearl, who were responsible for the class action litigation that carried their name and led to creation of the Norflet Progress Fund.

■ *With a \$130,000 grant from the Norflet Progress Fund, Beamon and his small staff were able to upgrade “very old, out-of-date” computers for their classes. He also rehired a job developer who implemented a formal “job shadowing” program that enabled formerly incarcerated adults to learn about careers by spending time with professionals in a variety of workplace settings. He was also able to expand enrichment offerings for youth.* ■

Beamon likes to talk about the numerous people and organizations in Waterbury, as well as the many volunteers, who donate time and skills to the center, all of which gives him hope and motivation. He also readily acknowledges the huge challenges the city faces. Factory jobs have dried up in Waterbury, as they have in much of the country, and the 2008 recession hit the city especially hard, with job losses and foreclosures. One out of every four residents in the city lives in poverty. This is more than twice the poverty rate in Connecticut.<sup>28</sup>

Waterbury OIC is a central gathering place for community events and an affordable and convenient location where support groups and other nonprofit organizations rent space and provide complementary services. For example, during a recent construction boom, Waterbury OIC offered job training and certification programs in construction and carpentry and also rented space to a contractor who ended up hiring new trainees. All of the nation’s OICs are located in historically under-resourced communities. Clients get free services at Waterbury OIC. These services range from computer training, English as a Second Language classes, and GED classes.

“We are surrounded by five halfway houses,” Beamon said. “And we love that. We are right where we should be. We can look right out and walk through this neighborhood and never, ever forget who we serve and why we exist.”

■ *“We are surrounded by five halfway houses,” Beamon said. “And we love that. We are right where we should be. We can look right out and walk through this neighborhood and never, ever forget who we serve and why we exist.”* ■

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28 “Waterbury City, Connecticut,” United States Census Bureau.



### 3. Conclusion: Lessons Learned from the Norflet Progress Fund

The purpose of this report is not only to memorialize the impact of the Norflet Progress Fund but also to demonstrate the positive effects of a well-considered and thoughtfully implemented *cy pres* disbursement resulting from unused funds from a class action settlement.

This case study of the fund's goals, processes, and outcomes reveals systematic distribution of about \$15 million, guided by a clear mission to benefit African American communities to redress the effects of systemic racial discrimination. As mentioned above, discourse around *cy pres* has at times focused disproportionately on problematic disbursements that returned money to defendants or were not even vaguely related to the alleged injustice at the heart of the original litigation.<sup>29</sup>

As a 2017 report from the Sillerman Center for the Advancement of Philanthropy points out, there are currently no uniform guidelines for *cy pres* disbursements. The report's author, Sylvia Stewart, states, "This raises a series of important questions. Have courts directed funds in ways that actually assist class members? Have the grants been aligned with solving the problems the cases sought to remedy? Do *cy pres* distributions promote improper incentives for agents of the court? These unresolved matters have forced a more fundamental question: Should *cy pres* be used at all in class action lawsuits?"<sup>30</sup> Stewart answers the final question with a conditional yes.

In response to contemporary criticisms of *cy pres*, the 2017 study recommends that *cy pres* disbursements be informed by best practice in social justice philanthropy. And although the specific legal issues and the legal debate implicated by *cy pres* disbursements are beyond the scope of this report, there can be no doubt that, as litigator Gerson Smoger demonstrates, "*cy pres* as a part of class action settlements has become ensconced in American jurisprudence."<sup>31</sup> In his law review article, Smoger notes some of the characteristics courts have looked to in determining the propriety of *cy pres* funds: "In determining whether a *cy pres* remedy is properly tailored to the class, a number of courts have generally and appropriately considered the following factors: (1) what the lawsuit is about and the interests of the absent class members; (2) when it is alleged that a statute was violated, the objectives of the statute; (3) the loss suffered by the class members; and (4) the geographic breadth of the class."<sup>32</sup> As the discussion above indicates, all these factors would have been met by the Norflet Progress Fund. But, particularly, there are aspects of the Norflet Progress Fund that

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29 Stewart, "As Near as Possible?," 1.

30 Stewart, 1.

31 Gerson Smoger, "The Importance of *Cy Pres* in Modern Class Action Jurisprudence and Myths concerning Its Use," *Lewis and Clark Law Review* 24, no. 2 (2020): 595–605.

32 Smoger, 606.

would suggest more issues that courts and counsel, as well as the actual parties to lawsuits, should consider. As shown, the Norflet Progress Fund succeeded because, first, it was closely supervised by an engaged federal judge, Janet Bond Arterton of the US District Court for the District of Connecticut, who had also presided over the original litigation. She had obtained deep knowledge about the alleged harms against African Americans that were at the heart of the class action lawsuit. While retaining full authority over the *cy pres* process, she approved all the recommendations of the Advisory Committee, making no effort to interject her opinions or assert her authority regarding the nature of disbursements.

Second, the fund succeeded because counsel and parties distanced themselves from the choice of the *cy pres* recipients. Rather than just deciding between themselves, they sought and obtained outside and independent input from individuals with subject matter expertise. In this instance, it was the seven-member Advisory Committee that included six African American members with vast experience in myriad aspects of social justice work. Working collaboratively, the Advisory Group members drew on personal experience, place-based knowledge, and their professional experience in litigation, nonprofit oversight, and operations during collaborative deliberations about disbursement, assisted by experienced civil rights class counsel.

■ *Working collaboratively, the Advisory Group members drew on personal experience, place-based knowledge, and their professional experience in litigation, nonprofit oversight, and operations during collaborative deliberations about disbursement, assisted by experienced civil rights class counsel.* ■

Third, the fund's grantees were diversified. Grantees included both small local and statewide nonprofit organizations and large national agenda-setting organizations that benefit African Americans across the United States. The portfolio reflected the committee's understanding of the interlocking relationships between national, local, and regional nonprofits. Not only were the grantees diversified, but direct services to African American communities were a central element of the grant portfolio. At the same time, the grant making was driven by the overarching goal of redressing historical harms that were well understood by committee members, resulting in a wide variety of grantees working in diverse sectors including health, finance, education, and arts and culture in a variety of locations.

■ *The portfolio reflected the committee's understanding of the interlocking relationships between national, local, and regional nonprofits.* ■

Fourth, reporting was required but was not so burdensome as to overwhelm grantees or detract from their missions. The fund’s grantees documented the impact of Norflet Fund dollars through interim reports and periodic conversations with the committee. Further, reports were periodically made to the court.

In sum, the fund was undertaken with a seriousness of purpose and effectuated through careful consideration and evaluation. Even though there have been larger *cy pres* disbursements in lawsuits,<sup>33</sup> it appears that, based on discussions with attorneys in this field, the approximately \$15 million distributed here represents a relatively large *cy pres*. Some *cy pres* awards are but a few hundred or few thousand dollars. Obviously, for such amounts, establishing a committee of multiple distinguished members who then seek grant applications would not be practical. Nevertheless, the core elements that characterized the establishment and effectuation of the Norflet Fund—considered choice, the seeking of outside input, and the requirement of progress report(s)—could be put to good effect in a great many cases.

Also, the Norflet Progress Fund’s creation, process, decision-making framework, and reparative orientation provide a vivid illustration of the recommendation, explored above, to align *cy pres* practice with best practices in social justice philanthropy. The California-based organization Justice Funders provides some of the most comprehensive guides to assist funders who aspire to social justice philanthropy. Justice Funders describes the analytical skills required of a social justice funder: they include “an ability to understand the forces and structures that contribute to injustice, the repercussions of oppression on broad classes of people, and how power is distributed.”<sup>34</sup> As highly accomplished civil rights litigators and nonprofit leaders operating in complex contexts, Norflet Progress Fund Advisory Committee members certainly possessed these analytical skills.

We hope this case study will inform development of uniform practice guidelines so that large *cy pres* disbursements actually do redress harms brought to light by class action lawsuits and in so doing contribute to a more just society. Going forward, further systematic study of other *cy pres* disbursement processes might illuminate other constructive processes and outcomes of *cy pres* disbursements and help inform the

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33 For example, the \$680 million settlement in the 2011 case *Keepseagle v. Vilsack* was the result of a nationwide class action to resolve claims that the US Department of Agriculture systematically discriminated against Native American farmers and ranchers. This settlement resulted in a \$380 million *cy pres* component. On July 19, 2018, Judge Emmet G. Sullivan of the US District Court for the District of Columbia approved \$38 million in *cy pres* awards to be immediately paid out to thirty-four nonprofit organizations serving Native American farmers and ranchers. The remaining money was placed into the Native American Agriculture Fund, a trust created as part of the settlement modification, which will fund Native American agricultural programs via nonprofit organizations over two decades. Perhaps the highest-profile settlement with a *cy pres* disbursement came a decade earlier in the case *Pigford v. Glickman*, which alleged that the US Department of Agriculture had discriminated against African American farmers in the allocation of loans and other forms of assistance between 1981 and 1996. It is considered the largest civil rights settlement in the United States, with more than \$1 billion awarded to claimants. (A second, similar case was filed in 2008 on behalf of black farmers after that year’s farm bill established a cause for late filers to refile for funds.) After claims were paid, about \$12 million in *cy pres* funds were distributed to nonprofits through a community-informed process.

34 “Competencies for Justice Funders: Definitions of Core Competencies for Effective Grantmaking,” Justice Funders, <http://justicefunders.org/choir-book/competencies-for-justice-funders/>.

development of guidelines. Ideally, research on the various grant-making processes in *cy pres* disbursements would contribute to establishment of clear guidance around best practices in this contested arena. A research agenda related to *cy pres* practice could be constructed collaboratively with input from experienced grant makers, lawyers, and judges engaged in class action litigation, as well as the small and thus easily identifiable group of scholars who have engaged questions related to *cy pres*.

■ *Going forward, further systematic study of other cy pres disbursement processes might illuminate other constructive processes and outcomes of cy pres disbursements and help inform the development of guidelines.* ■



Connecticut Center for Arts and Technology

## Appendix 1 Norflet Progress Fund Grantees

- |  |  |
|--|--|
| Action for Boston Community Development Inc.   | Civil Justice Inc.: Triad Community Justice Project (Maryland) |
| Advancement Project                            | Civil Rights Project @ UCLA                                    |
| Athletic Leadership Institute Inc.             | Coastal Women for Change                                       |
| Bessie Tart Wilson Initiative for Children     | Connecticut Center for Arts and Technology                     |
| Big Brother, Big Sister of Eastern Missouri    | Connecticut Fair Housing Center                                |
| Boston Scholar Athlete Program                 | Equal Justice Works  |
| Brownsville Community Development Corporation  | Freedom House (Boston)   |
| Camp Harbor View Foundation (Boston)           | Gamaliel Foundation (Chicago)                                  |
| Center for Children’s Advocacy                 | Greater New Orleans Fair Housing Action Center                 |
| Center for Responsible Lending                 | Howard University College of Medicine (Project Resilience)     |
| Center for Teen Empowerment (Boston)           | Intersect Fund   |
| Children’s Defense Fund                        | Just the Beginning Foundation (Chicago)                        |
| Christian Activity Center—Pathways (St. Louis) |  |

Lawyers' Committee for Civil Rights Under Law

ProBono Project (New Orleans)

Little Sun People

Mississippi Center for Justice

Museum of African American History (Boston)

NAACP Innovation and Opportunity Projects

NAACP Legal Defense and Educational Fund

National Coalition to Abolish the Death Penalty

National Collaborative for Health Equality

National Consumer Law Center (headquarters in Boston)

National Underground Railroad Freedom Center (Ohio)

New Opportunities Inc. (Fatherhood Initiative)

New York Mission Society (Operation Snug—Harlem)

North Carolina Association of Black Lawyers Land Loss Prevention Project

North Carolina Central University

Oliver White Hill Foundation (Hampton, VA)

Poverty and Race Research Action Council



Photo courtesy of the Camp Harbor View Foundation.

ProTex Network for a Progressive Texas DBA Texas Criminal Justice Coalition

Ramapo for Children

Saturday Environmental Academy (Anacostia Watershed)

Sheff Movement Coalition

Southern Coalition for Social Justice (Durham, NC)

Southern University and A&M College's Path to Financial Independence Project

St. Francis Hospital and Medical Center (Curtis D. Robinson / Men's Health Institute)

St. Mary's Center for Women and Children (Boston)—Women at Work Plus GRLZradio.org

Street Law (Silver Spring, MD)

UNC School of Law, Center for Civil Rights

Waterbury Opportunities Industrialization Center Inc.

West Harlem Environmental Action Inc.

# Appendix 2

## Norfleet Progress Fund Significant Dates

### Timeline of Activities

#### Settlement-Related

- July 7, 2004: Litigation commenced
- December 3, 2008: Material terms of the settlement agreed upon, through a memorandum of understanding
- February 5, 2009: Settlement agreement signed
- February 10, 2009: Court preliminarily approved the settlement
- February 27, 2009: Funds deposited by John Hancock
- March 23, 2009: Summary notice mailed to John Hancock policyholders; case-specific website became available; toll free number established with live operators
- May 11, 2009: Objections and requests for exclusion from the settlement due
- August 21, 2009: Final approval order of the settlement terms
- September 21, 2009: Official settlement date

#### Notices about the Fund

- Early April 2009: Notice and advertising began
- April 17, 2009: From this date forward, more than ten thousand organizations were sent outreach and informational materials
- March–May 2009 (approx.): Articles written and interviews conducted about the settlement
- February–July 2011: Seven announcements sent

#### Advisory Committee

- August 2009: John C. Brittain approved, through the court's Final Approval Order, as *cy pres* Advisory Committee chair
- December 2009: Request for court approval of the full committee
- December 2009: Court appoints the seven-person *cy pres* Advisory Committee

#### Disbursements

- July 2011: \$4,565,630
- December 2011: \$3,633,000
- March 2013: \$3,702,200
- March 2016: \$3,417,746
- May 2018: \$278,755

## Appendix 3

### Class Counsel Members

# Norflet Progress Fund Advisory Committee Members, Biographical Sketches and Narrative

In August 2009 the court approved the appointment of **John Brittain** as chair of the Norflet Progress Fund Advisory Committee.

Over more than five decades, Brittain has had distinguished tenures in academia, in national civil rights organizations, and as a litigator in Connecticut and Mississippi. Prior to joining the faculty at the University of the District of Columbia David A. Clarke School of Law, he was dean of the Thurgood Marshall School of Law at Texas Southern University in Houston, and before that a tenured law professor at the University of Connecticut School of Law for twenty-two years. He also has been chief counsel and senior deputy director of the Lawyers' Committee for Civil Rights Under Law in Washington, DC, a public interest law organization founded by President John F. Kennedy to enlist private lawyers in taking pro bono cases in civil rights. He had developed familiarity with grant making as a board member at the Hartford Foundation for Public Giving. The foundation makes grants to hundreds of nonprofit organizations in twenty-eight towns, with a total of 750,000 residents. Its resources come from more than twelve hundred different funds held by the foundation.

Together, the class counsel and Brittain immediately began creating a list of potential members. With class counsel's input, Brittain was ultimately tasked with recommending the Advisory Committee members to be submitted for approval by the court.

After Brittain, the other Norflet Progress Fund Advisory Committee members (listed alphabetically) approved by US District Court Judge for the District of Connecticut Janet Bond Arterton in the summer of 2009 were

- Deidra Ierardi, a nonprofit leader and human rights activist from Connecticut;
- Nathaniel Jones, a former federal judge from Ohio;
- Charles J. Ogletree Jr., Harvard Law School professor;
- john powell,<sup>35</sup> an internationally known race scholar, civil rights attorney, and nonprofit leader;
- Theodore Shaw, law professor and former director-counsel of the NAACP Legal Defense and Educational Fund; and
- Geraldine Sumter, an experienced litigator and partner in a prestigious private civil rights firm in North Carolina.

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35 john powell does not capitalize his name.



The careers, life experiences, and vantage points of each committee member are instructive, as this background provides explanatory context for the grant recommendations that the Advisory Committee ultimately came to make. Extended biographical sketches of each Advisory Committee member follow.

Early in her career, committee member **Deidra Ierardi** worked in an entry-level job at a stock brokerage firm. It was short-lived.

“I quickly discovered that money did not motivate me,” she said. She took a pay cut to be a teacher at a local Head Start preschool, a program that had only recently come into being in the 1960s. She has subsequently enjoyed a long career in the nonprofit sector, including teaching roles or directorships at other preschools and day care centers and as a key staff member and fund-raiser for antipoverty agencies in Connecticut. Much of Ierardi’s community work as a grant writer and staffer at antipoverty agencies was centered in the New Britain, Connecticut, area, where she sits on numerous boards and civic committees, including the Regional Coalition to End Hunger.

Connecticut, one of our nation’s wealthiest states, is also one of the most unequal in terms of income, wealth, and access to opportunity. A 2018 report from the Economic Policy Institute found that Connecticut was the third most unequal state in the nation as measured by income disparities. According to the report, the top 1 percent of earners made more than thirty-seven times the income of the other 99 percent of the state.<sup>36</sup> Ierardi was, in her words, “a firsthand, on-the-ground witness” to the harms caused by those disparities. She thrived on delivering direct services to people, many of whom were her neighbors and friends. These kinds of services ranged from affordable, high-quality child care, to basic food and shelter, to well-functioning, accessible, and welcoming libraries.

Advisory Committee member **Nathaniel Jones** died in January 2020, at the age of ninety-three. Jones had dedicated his career to eradicating the legacy of slavery and other injustices in the United States. In the 1970s, Jones was general counsel for the National Association for the Advancement of Colored People (NAACP). In that role, he took part in litigation and advocacy to fight against school segregation in northern cities, such as Detroit, and racial bias in the US military, in addition to many other injustices. In the 1980s, Jones protested apartheid in South Africa and was arrested there. In later years, he helped to draft South Africa’s new constitution, which ended apartheid, the legal system of racial segregation. He also advised other African nations on the design of their judiciaries.

In 1979, President Jimmy Carter named Jones to the United States Court of Appeals for the Sixth Circuit in Cincinnati. Jones served in that role for more than two decades

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36 From “The Unequal States of America: Income Inequality in Connecticut,” an interactive tool based on *The New Gilded Age: Income Inequality in the U.S. by State, Metropolitan Area, and County*, by Estelle Sommeiller and Mark Price, Economic Policy Institute, 2018, <https://www.epi.org/multimedia/unequal-states-of-america/#/Connecticut>.

before retiring from the bench in 2002 to return to a private law practice. In 2003 the federal courthouse in Youngstown, Ohio, located near Judge Jones's old neighborhood, was renamed in his honor. In 2016 the NAACP awarded Jones the Spingarn Medal, its highest honor. In the introduction to Jones's 2016 memoir, *Answering the Call*, Harvard historian Evelyn Brooks Higginbotham wrote of Jones, "Few persons in the twenty-first century can claim such a long, illustrious, and ongoing role in the struggle for civil rights."<sup>37</sup>

The internationally known legal theorist, attorney, and author **Charles J. Ogletree Jr.** was also an Advisory Committee member. At the time of his appointment, Ogletree was Jesse Climenko Professor of Law at Harvard Law School, where he was the founding and executive director of the school's Charles Hamilton Houston Institute for Race & Justice.<sup>38</sup> Ogletree began his career as a public defender representing indigent clients in Washington, DC. In the 1980s, he was moderator of the popular television series *Ethics in America*, where he debated leaders in business, law, and politics. He became well known in 1991 when he represented Anita Hill when she made sexual harassment claims against Supreme Court nominee Clarence Thomas during his confirmation hearings.

At a 2017 Harvard Law School gathering in Ogletree's honor, Hill, now a professor at Brandeis University, told the audience, "I know of no one who is more generous, more principled, more unpretentious, and more intelligent than Charles Ogletree."

In 2003, Ogletree, with attorney Johnnie Cochran, filed a federal lawsuit against the city of Tulsa, Oklahoma, on behalf of about one hundred survivors of the 1921 racial massacre in that city. Ogletree and Cochran alleged that city officials failed to protect Black citizens when white residents attacked hundreds of Black people and set fire to their homes and businesses. Ogletree argued that the survivors deserved financial reparations, but a federal judge dismissed the case, saying that too much time had passed since the riots occurred. Ogletree continued to champion the survivors' cause and spread knowledge about the Tulsa massacre in speeches, on talk shows, and in other venues.

In 2016 Ogletree announced that he had been diagnosed with Alzheimer's disease. Soon afterward, he stopped teaching and meeting with clients. In 2017, Harvard Law School named a professorship for him.

Advisory Committee member **john a. powell** is an internationally recognized expert in the areas of civil rights, civil liberties, structural racialization, racial identity, fair housing, poverty, and democracy. He is the Robert D. Haas Chancellor's Chair in Equity and

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37 Nathaniel R. Jones, *Answering the Call: A Memoir of the Modern Struggle to End Racial Discrimination in America* (New York: New Press, 2016).

38 In the interest of full disclosure, the report author was research director at the Charles Hamilton Houston Institute from 2006 to 2015.

Inclusion and professor of law, African American studies, and ethnic studies at the University of California at Berkeley. He is also founding director of UC Berkeley's Othering and Belonging Institute. The author of several books, including *Racing to Justice: Transforming Our Concepts of Self and Other to Build an Inclusive Society*,<sup>39</sup> powell has lectured and published extensively on some of our world's most vexing challenges.

Among the areas of powell's expertise are structural racism, racial justice, concentrated poverty and urban sprawl, opportunity-based housing, voting rights, affirmative action in the United States, South Africa, and Brazil, racial and ethnic identity, spirituality and social justice, and the needs of citizens in a democratic society. Before his appointment at UC Berkeley, powell was executive director of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, where he held the Gregory H. Williams Chair in Civil Rights and Civil Liberties at the Moritz College of Law. He also founded and directed the Institute on Race and Poverty at the University of Minnesota. powell has worked and lived in Africa, where he was a consultant to the governments of Mozambique and South Africa, and has also lived in India. He has taught at several law schools, including at Harvard and Columbia.

The longtime civil rights lawyer, activist, scholar, and professor **Theodore Shaw** was also on the Advisory Committee. Shaw began his career in the late 1970s, as a trial attorney in the Civil Rights Division of the US Department of Justice. In 1982 he joined the NAACP Legal Defense Fund (LDF) as an assistant counsel and the director of the organization's education docket. During this time, he litigated school desegregation cases across the nation, in addition to capital punishment and other civil rights cases. In 1987 he established LDF's Western Regional Office in Los Angeles and served as its western regional counsel. In 1990 he left the LDF to join the faculty of the University of Michigan Law School, where he taught constitutional law, civil procedure, and civil rights. In 1993, on a leave of absence from Michigan, he rejoined LDF as associate director-counsel.

During this period at LDF, Shaw was lead counsel in a coalition that represented African American and Latino student intervenors in what would become the Supreme Court affirmative action case *Gratz v. Bollinger*. From 2004 to 2008, Shaw was LDF's fifth director-counsel, a position first occupied by Supreme Court Justice Thurgood Marshall.

A frequent guest on television and radio shows, Shaw has published numerous scholarly and popular articles, lectured extensively across the globe, and testified before state legislatures and before the US Congress on numerous occasions. His human rights work has taken him to Africa, Asia, Europe, and South America. He serves on the boards of the American Constitution Society, the Equal Rights Trust in London, the New Press, the Poverty and Race Research Action Council, and many other organizations.

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39 Published in 2015 by Indiana University Press in Bloomington.



Geraldine Sumter. Photo courtesy of Geraldine Sumter.

The North Carolina–based civil rights attorney **Geraldine Sumter** was also an Advisory Committee member. In 1982 Sumter joined the law firm at which she would eventually become a partner and where she developed an expertise in employment law. Other areas of Sumter’s practice include workers’ compensation, small business law, nonprofit-related law, and extensive work in other civil rights–related areas, including voting rights and school desegregation. Earlier in her career, she was a staff attorney with the nonprofit Palmetto Legal Services in Lexington, South Carolina, where she concentrated in consumer law, domestic law, and landlord-related disputes.

Sumter grew up in Columbia, South Carolina, and was in tenth grade when her high school finally desegregated in 1971, more than fifteen years after the 1954 *Brown v. Board of Education* decision that outlawed intentionally segregated public schools. As a high school student, she worked with civil rights lawyers to try to keep her traditionally Black high school open after desegregation. That effort failed, but it was during this time that she knew she wanted to become a civil rights attorney.

In the 1980s, Sumter’s firm engaged in a legal battle that changed the way North Carolina’s Superior Court judges got elected and provided more opportunities for African Americans to win such elections. Historically, judges were nominated at the state level, but moving the nomination process to the local level brought forth more African American judges. When the change faced legal battles in the 1990s, Sumter, as president of the North Carolina Association of Black Lawyers, intervened to protect the election structure. Also in the 1990s, Sumter helped to train lawyers in South Africa. She continues to recruit lawyers to teach in South Africa through a program sponsored by the National Institute for Trial Advocacy and the Black Lawyers Association Legal Education Centre.<sup>40</sup>

The committee members not only had stellar credentials, major career accomplishments, and commitments to social justice in common. They also shared deep, cherished, and lasting connections to the communities where they were raised.

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40 For more information about Geraldine Sumter’s life and career see Susan Shackelford, “Soldier for Civil Rights: Geraldine Sumter Stays True to Her Mission,” *North Carolina Super Lawyers Magazine*, February 2009.

In John Brittain's case, it was a working-class neighborhood of Norwalk, Connecticut. For Nathaniel Jones, it was Ohio, where he grew up the son of a laborer in a steel mill and a seamstress and housemaid. For Charles Ogletree, his attachment was to the predominantly Latino farming community of Merced, California, where his father was a farmer and his mother an aide at a junior college. John Powell, meanwhile, had a long loyalty and love for Detroit, where he was raised. Also relevant is that Ogletree, Powell, Shaw, and Lerardi in particular had spent years on the grantee side of the philanthropic relationship, having raised money for their nonprofit organizations, academic centers, and institutes over decades. In various capacities, several Advisory Committee members had been formal or informal advisers to philanthropists or foundations. But none had been professional grant makers.

"We were amateurs, basically, though we all had familiarity of course with philanthropy, whether through boards or advisory roles," Brittain said. "One of the first things that I learned, and that I know all the members came to appreciate, because we talked about this at length, was just how hard it is to give away money. If you are committed to doing it effectively and fairly and transparently, it is a tremendous undertaking." Lerardi recalls being "thrilled" to be a part of the committee, especially after decades working to raise money for community-based education and antipoverty nonprofit organizations in cities in Connecticut.

"I think part of why I loved it so much was because I understood what a grant, even a small grant, can mean to an organization and to the community or the cause it is serving," Lerardi said. "Even a small grant can be transformational to organizations and help them begin to raise more money to assist more people. I have to say that especially at first, it was just fun to be on the other side of the grant-making equation."

The geographical scope of expertise among committee members was extensive. Though based in California, Powell also counted strong professional and personal connections to Detroit, Minneapolis, and New York City. Ogletree, based in Boston, had been born and raised in California's Central Valley and had begun his career as a public defender in Washington, DC. Brittain hailed from southeastern Connecticut and had worked there for many years, had lived and worked in Mississippi and in Houston, and was living for the second time in his life in Washington, DC. Meanwhile, Sumter, the daughter of a homemaker and a laborer in a food-processing plant in South Carolina, was a partner at one of the busiest and most respected law firms in Charlotte, North Carolina. Shaw, a native of the Bronx who had lived and worked in New York City for decades, had made North Carolina his longtime home. Finally, Judge Nathaniel Jones was dedicated to his home state of Ohio, and particularly his beloved Cincinnati.



## **About the Author**

**Susan Eaton** is professor of practice and director of the Sillerman Center for the Advancement of Philanthropy at Brandeis University's Heller School for Social Policy. She has written numerous books, reports, and articles about democratic philanthropic practice, civil rights, and public education and community-based responses to immigration and demographic change.

