

LITIGATION

CALIFORNIA
LAWYERS
ASSOCIATION

2023 Litigation & Appellate Summit

MAY 4-5 | SAN FRANCISCO, CA



Navigating Complex Diversity, Equity, and Inclusion Issues in a Rapidly Changing Environment

Friday, May 5, 2023

Moderator:

Terrance Evans

Speakers:

Kevin M. Benedicto

Jeff Kosbie

Laura C. Hurtado

Judge Suzanne Ramos Bolanos

MCLE: 1 Hour of MCLE

Conference Reference Materials

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CALIFORNIA LAWYERS ASSOCIATION

California Lawyers Association Litigation Appellate Summit – Implicit Bias Program

PRESENTED BY

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Written Materials Prepared by Terrance J. Evans, Esq.

May 5, 2023

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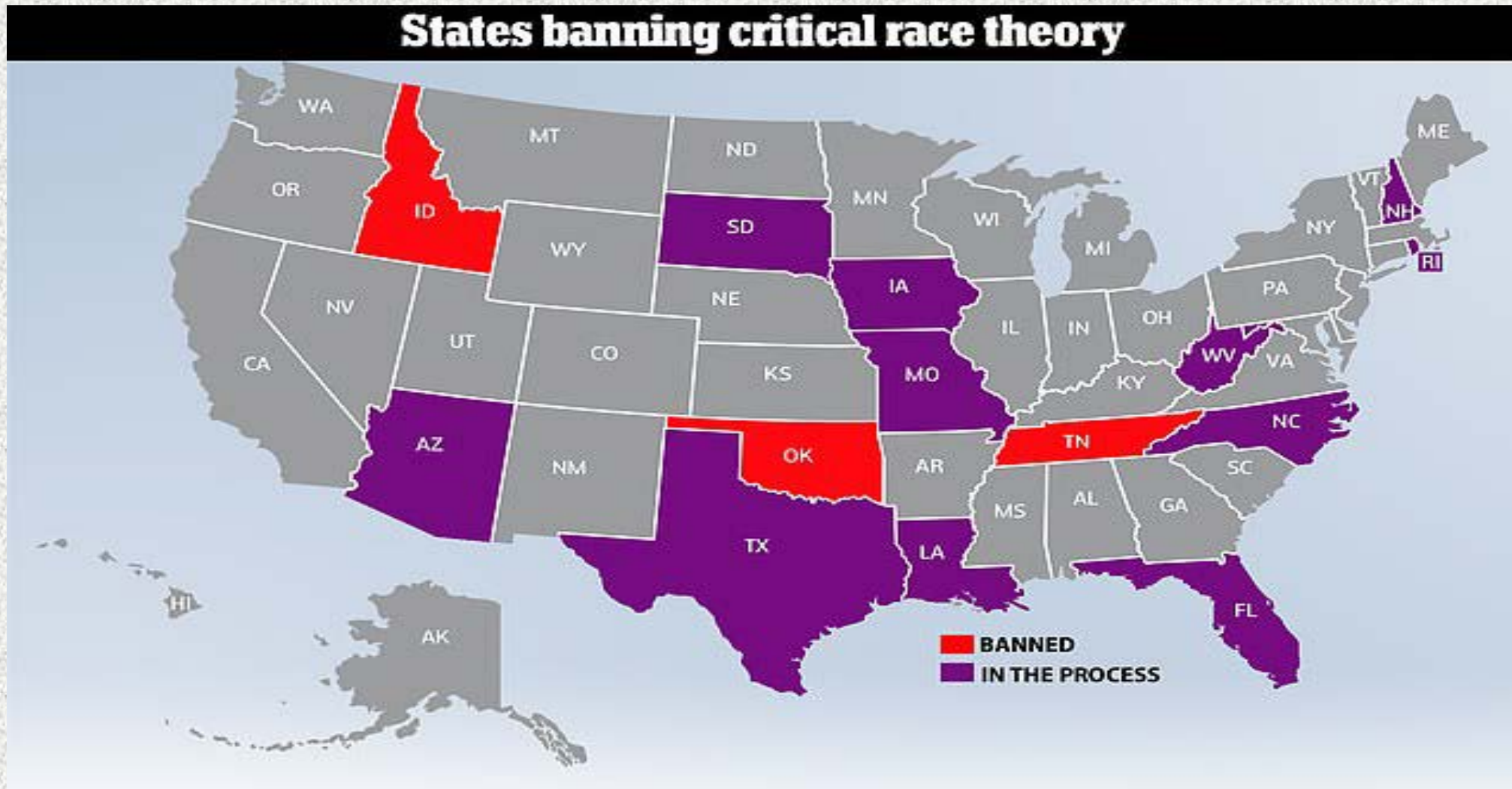
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GOALS FOR TODAY'S DIVERSITY PROGRAM

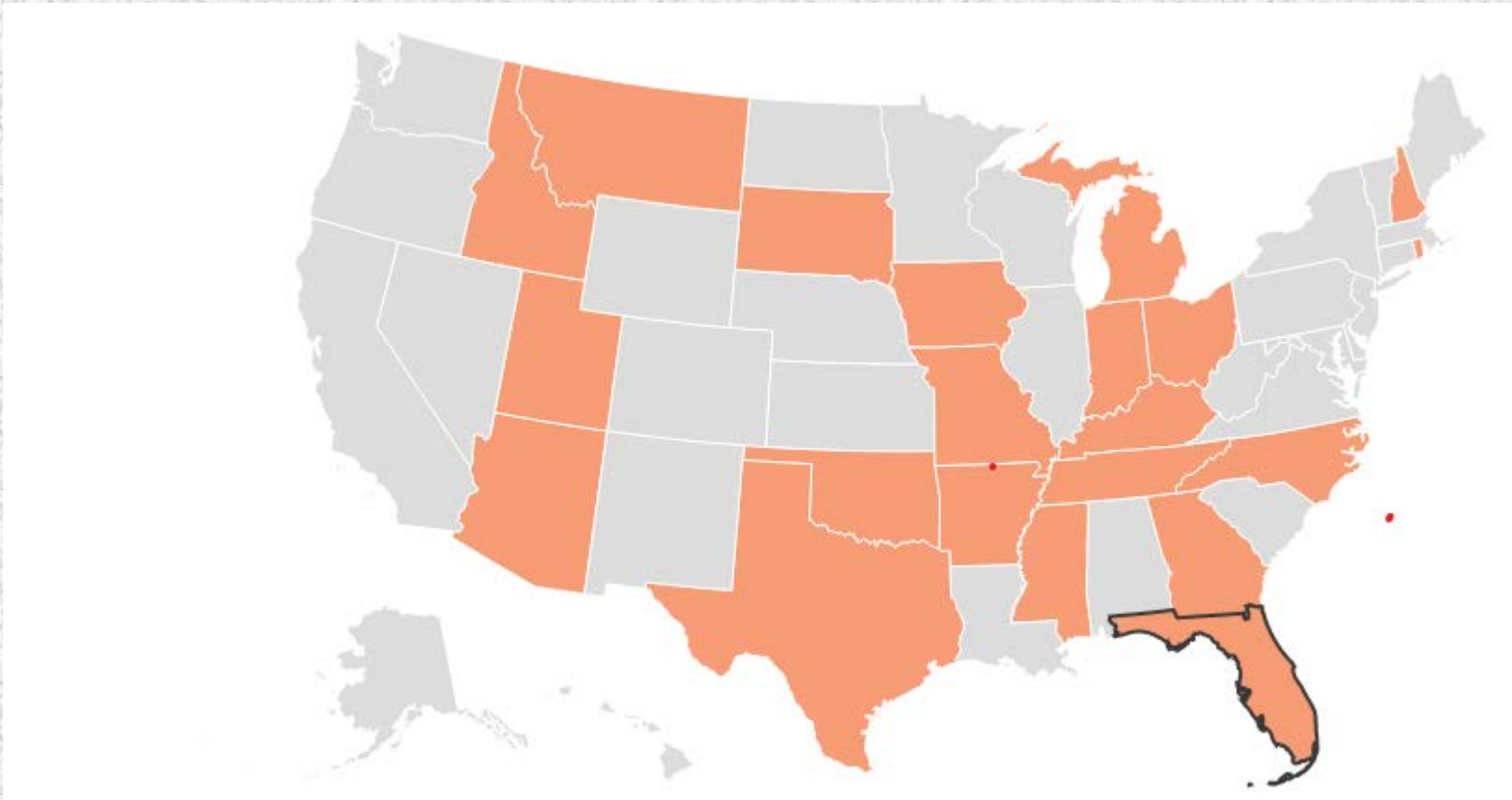
- This program will explore the history of implicit bias in the legal profession and California jurisprudence, and will provide attendees with real life examples of implicit bias related to race, gender, sexual orientation and gender identity. Additionally, attendees will be provided with strategies for recognizing and addressing implicit bias when it arises.

14 States that had Banned or Were in the Process of Banning Diversity & Inclusion/ Critical Race Theory as of May 13, 2021

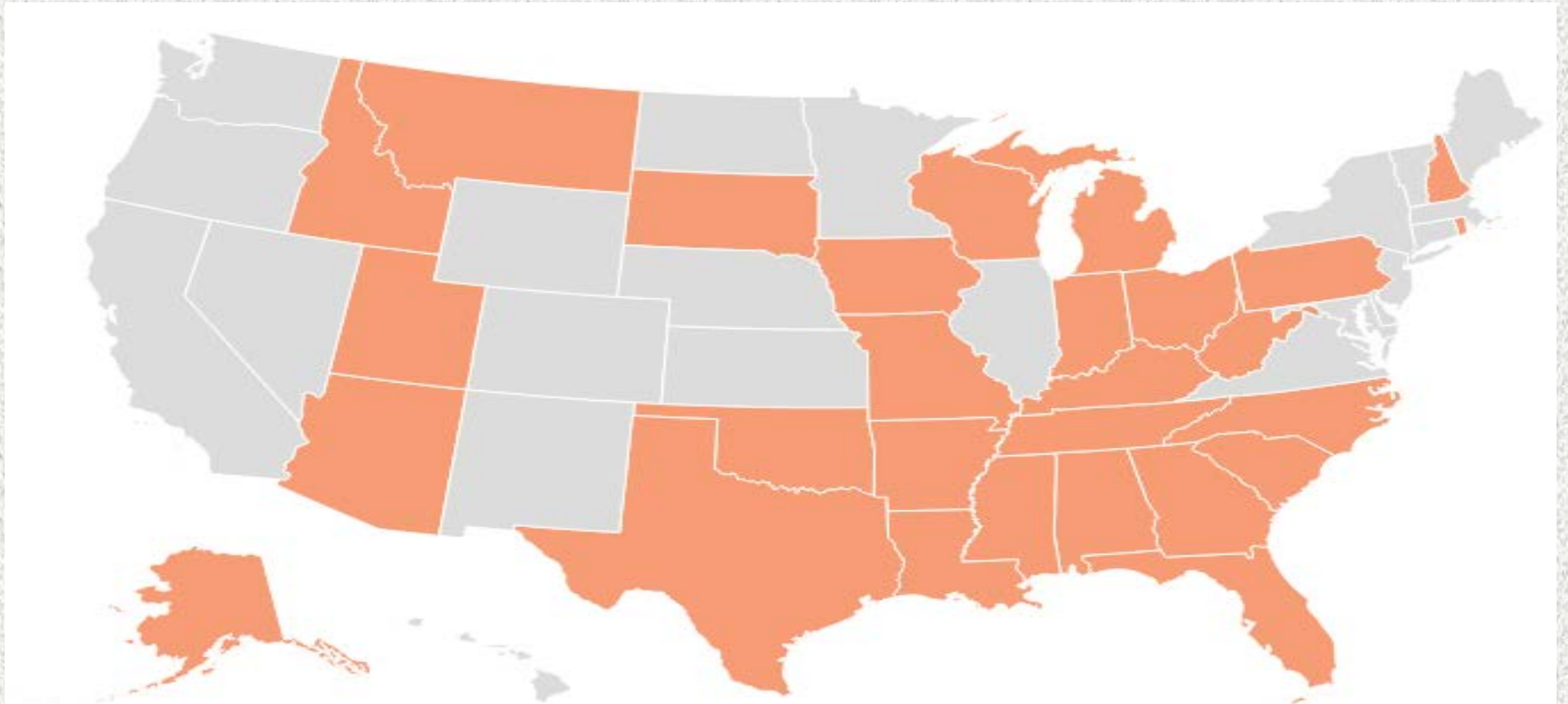
<https://www.dailymail.co.uk/news/article-9575039/Three-GOP-states-banned-critical-race-theory.html>



21 States that had Banned or Were in the Process of Banning Diversity & Inclusion/ Critical Race Theory as of June 14, 2021 <https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism>



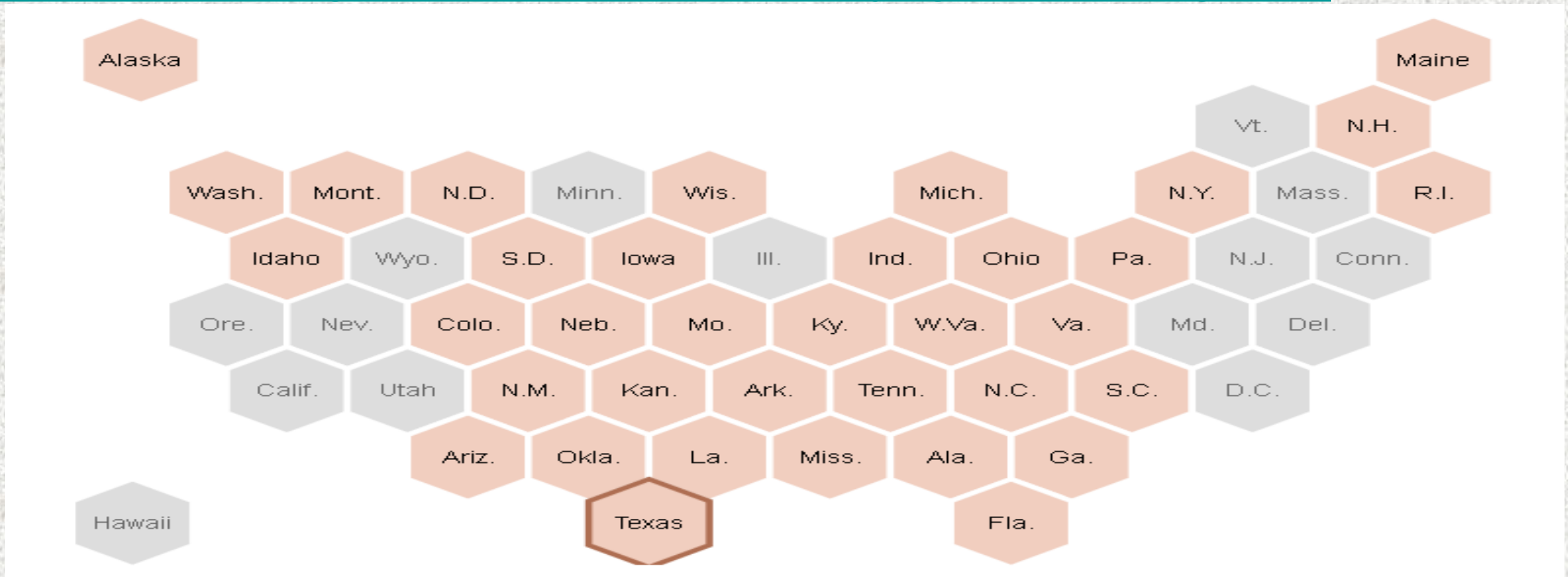
28 States Have Banned or Are in the Process of Banning Diversity & Inclusion/ Critical Race Theory as of October 22, 2021 <https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism>



Restrictions on Diversity and Inclusion Training as of May 5, 2023

The map below shows the 36 states where laws banning critical race theory and/or diversity and inclusion training have already passed or have been introduced in the state legislature. It is worth noting that many of these laws have been expanded dramatically to include any discussion of LGBTQ issues or any subject that would make a certain racial group uncomfortable.

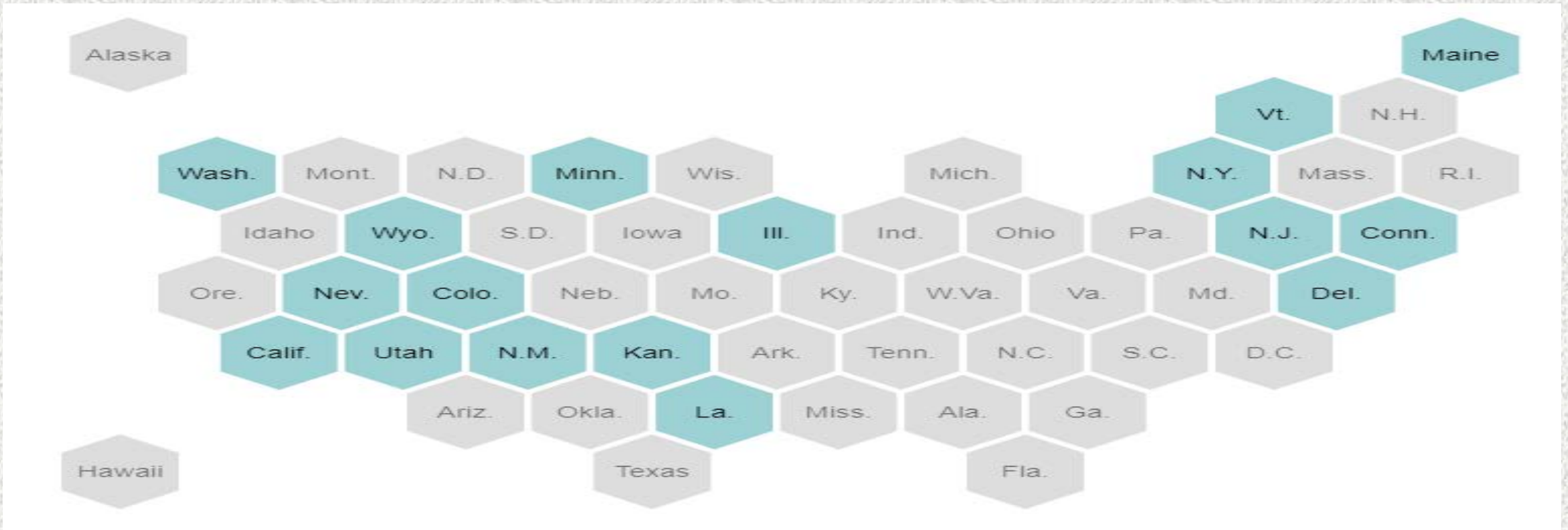
<https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism>



Restrictions on Diversity and Inclusion Training as of May 5, 2023

Efforts in 17 states to expand education on racism, bias, the contributions of specific racial or ethnic groups to U.S. history, or related topics.

<https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism>



Let's Talk About Systemic Racism

- The United States of America and the Great State of California Were Built on the Systemic Oppression, Exploitation, Enslavement, and Disenfranchisement of Black People and Other People of Color.
- This Is Not Hyperbole. It is a FACT.
- We Should NOT Run Away From or Hide Our History.
- Instead, we should learn from our history.
- Our history provides context for many of the challenges that we face today.

Enslavement of Black People In the United States

- Some historians cite 1619 as the beginning of slavery in what ultimately became the United States. However, this is incorrect.
- In 1539, slavery arrived in present-day Florida when the slave trader and Spanish explorer Hernando DeSoto attempted to establish a permanent settlement and claim more territory for Spain. <https://www.washingtonpost.com/outlook/2019/08/23/everyone-is-talking-about-thats-not-actually-when-slavery-america-started/>

The First Black Slaves Arrived in Florida in 1539

- We know very little about the Black slaves with DeSoto. [A letter from Spain's King Charles V](#) dated April 20, 1537, gave DeSoto permission to take 50 Africans, a third of them female, to Florida. According to [historian Jane Landers](#), DeSoto's slaves included both Moors from Northern Africa and sub-Saharan Africans. Many of them deserted him to live with the Native Americans in Florida. We know that DeSoto abandoned some Black slaves during his expeditions, including two with known names. One named Robles, who apparently was Christian, was left at Coosa, Ala., because he was too ill to walk. And another slave named Johan Biscayan was left at Ulibahali in present-day Georgia.

Black Slaves Helped Build Spanish Colonial Infrastructure

- Over the succeeding decades, Black slaves helped build the Spanish colonial infrastructure, including most notably St. Augustine, Fla., in 1565, the oldest city in the United States. As historian Edwin Williams reported in a 1949 article that uncovered this history, “Negro slavery was first introduced into what is now the United States . . . many years before the ‘first’ Negroes were landed at Jamestown, Virginia.”
- The history of slavery was shaped by the battle between Spanish authorities keen on exploiting African labor and African resistance, resulting in documented episodes of fleeing and arson like the ones noted above.

The British Brought Plantation Slavery to the USA

- Florida came under British rule thanks to [the treaty ending the French and Indian War](#). And it was then that the plantation slavery of the American colonial South began to take root. On the eve of the Revolutionary War, the population in Florida was roughly 1,000 white people and 3,000 Black slaves. Spanish rule returned over the period from 1784 to 1821 as the result of battles during the American Revolution that allowed Spain to [recapture territory](#).

When Florida Became A State – Half of Population Enslaved Black People

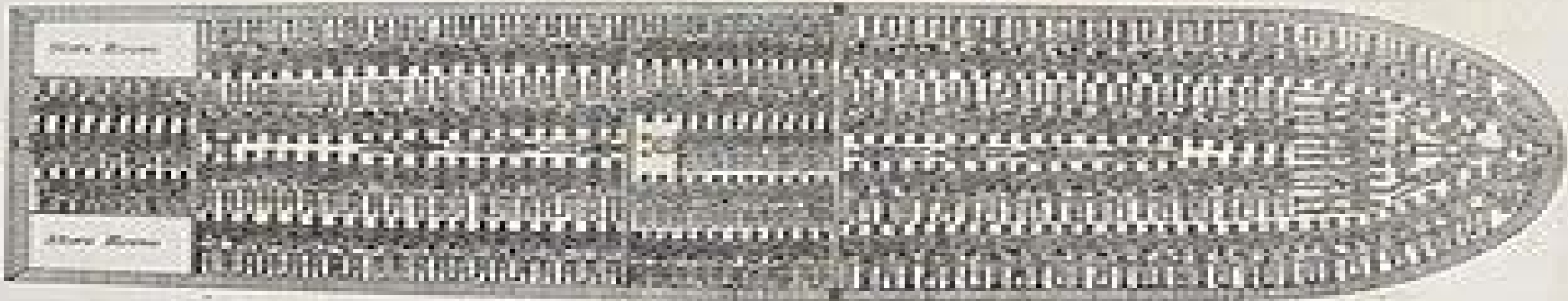
- The United States purchased Florida in 1821. By the time it became a state in 1845, roughly half its population was Black and enslaved, though there were a few hundred free Blacks as well. The 1845 Florida constitution ensured that emancipation would remain illegal, even giving the state the power to forbid the entrance of new free Blacks from other states.

How Black People Were Packed On Slave Ships

PLAN OF LOWER DECK WITH THE STORAGE OF THE SLAVES

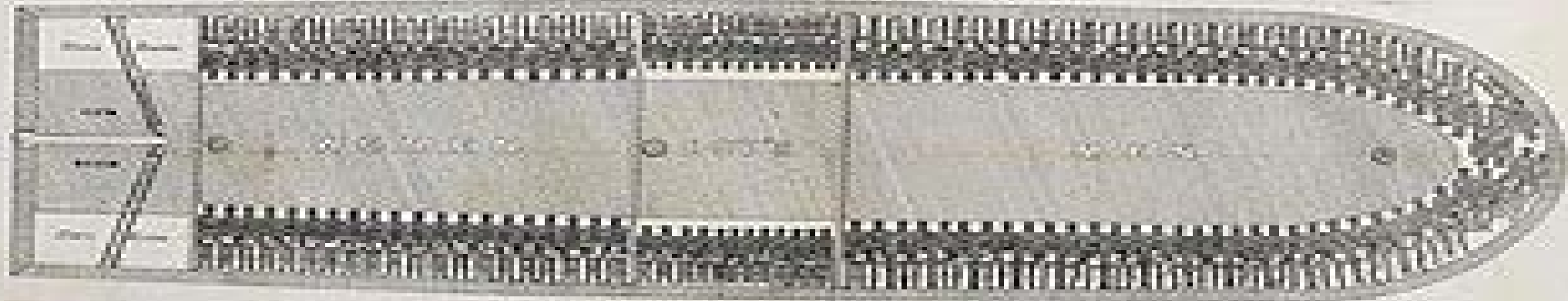
130 OF THESE BEING STORED UNDER THE BELLIES AS SHOWN IN FIGURE 2 ABOVE.

Fig 2



PLAN SHOWING THE STORAGE OF 100 ADDITIONAL SLAVES ALONG THE WALLS ON EACH OF THE LOWER DECK BY MEANS OF PLATFORMS OR BENCHES (IN THE MANNER OF GALLERIES IN A THEATRE.) THE SLAVES STORED ON THE BENCHES HAD ONLY FOUR INCHES ONLY A HEIGHT OF 2 FEET 2 INCHES BETWEEN THE BENCHS AND FELL IN UNDER THE BENCHS (Fig 3)

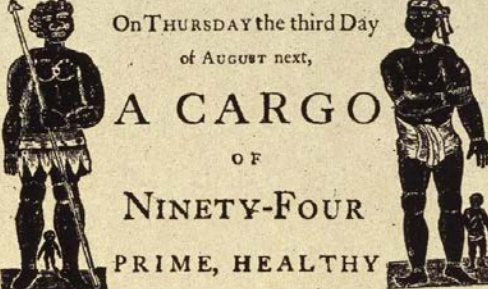
Fig 3



Advertisement for Sale of Black Slaves in the USA

Charlestown, July 24th, 1769.

TO BE SOLD,
On THURSDAY the third Day
of AUGUST next,
A CARGO
OF
NINETY-FOUR
PRIME, HEALTHY

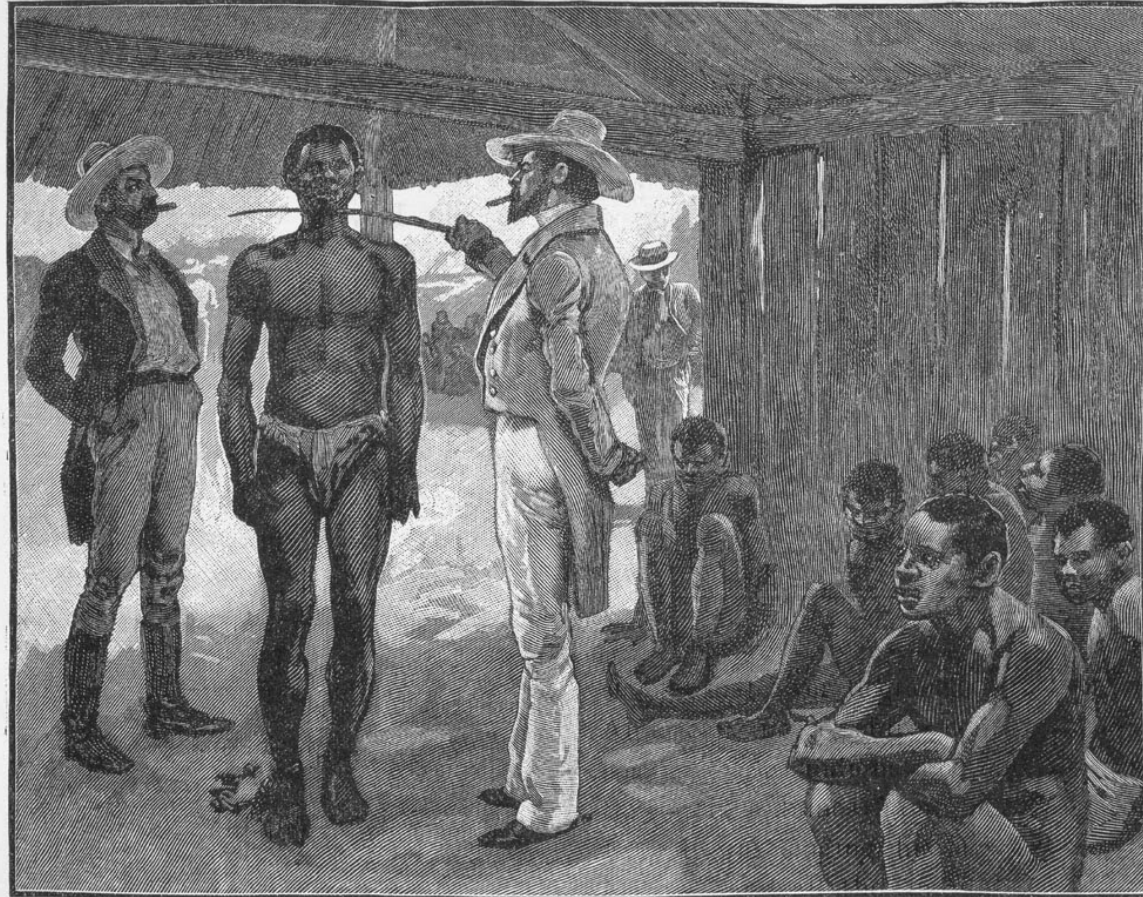


NEGROES,
CONSISTING OF
Thirty-nine MEN, Fifteen BOYS,
Twenty-four WOMEN, and
Sixteen GIRLS.
JUST ARRIVED,
In the Brigantine *DEMBIA*, *Francis Bare*, Master, from SIERRA-
LEON, by
DAVID & JOHN DEAS.

Mother and Daughter for Sale At Auction in USA



Slave Auction In The USA



THE ORIGINS OF MODERN DAY POLICING

- **SLAVE PATROLS**

- The origins of modern-day policing can be traced back to the "Slave Patrol." The earliest formal slave patrol was created in the Carolinas in the early 1700's with one mission: to establish a system of terror and squash slave uprisings with the capacity to pursue, apprehend, and return runaway slaves to their owners. Tactics included the use of excessive force to control and produce desired slave behavior.
- <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>

THE ORIGINS OF MODERN DAY POLICING

- **EXAMPLE OF SLAVE PATROL OATH**
- **"I [patroller's name], do swear, that I will as searcher for guns, swords, and other weapons among the slaves in my district, faithfully, and as privately as I can, discharge the trust reposed in me as the law directs, to the best of my power. So help me, God."**
- **North Carolina Slave Patrol Oath.**
- <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>

THE ORIGINS OF MODERN DAY POLICING

- Slave Patrols continued until the end of the Civil War and the passage of the 13th Amendment. Following the Civil War, during Reconstruction, slave patrols were replaced by militia-style groups who were empowered to control and deny access to equal rights to freed slaves. They relentlessly and systematically enforced Black Codes, strict local and state laws that regulated and restricted access to labor, wages, voting rights, and general freedoms for formerly enslaved people.
- <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>

THE ORIGINS OF MODERN DAY POLICING

BLACK CODES

- Could not own property or guns
- No voting rights
- If no job, could be arrested and forced to work for no pay



- <https://mwmblog.com/2020/06/19/black-codes/>

THE ORIGINS OF MODERN DAY POLICING

- Black Codes That Police Enforced Against Black Americans

1. Prohibited marriages between whites and freedmen.
2. Segregation in public facilities, cemeteries, schools, and any form of transportation.
3. Racial segregation in public cemeteries.
4. Freedmen over the age of 18 were required to have a job or could be fined and put in prison.
5. Freedmen could not assemble together without the presence of a white person.
6. Illegal to teach freedmen to read or write.
7. Freedmen could not own guns or any other forms of weapons.
8. Freedmen couldn't obtain certain jobs (shopkeeper, artisan, mechanic) unless they paid for a license.
9. Prohibited from voting.
10. Prohibited from owning property.

- <https://www.pinterest.com/pin/reconstruction-black-codes-activity--724235183835252483/>

THE ORIGINS OF MODERN DAY POLICING

- In 1868, ratification of the 14th Amendment of the U.S. Constitution technically granted equal protections to African Americans — essentially abolishing Black Codes. Jim Crow laws and state and local statutes that legalized racial segregation swiftly took their place.
- By the 1900's, local municipalities began to establish police departments to enforce local laws in the East and Midwest, including Jim Crow laws. Local municipalities leaned on police to enforce and exert excessive brutality on African Americans who violated any Jim Crow law. Jim Crow Laws continued through the end of the 1960's.
- <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>

THE ORIGINS OF MODERN DAY POLICING

- **A CONTINUING BIAS**
- The criminal justice system is heavily impacted by the bias of police mentality and outdated judicial precedents. The system is largely driven by racial disparities and the Black community continues to be a target. The results are brutal and long lasting.
- <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>

The Confiscation Act of 1862

- During the Civil War, the US Congress passed the Confiscation Act of 1862, which authorized Union troops to seize Confederate property, including Black slaves. The act also allowed the Union army to recruit Black soldiers. Months later, as the nation approached its third year of the Civil War, President Lincoln on January 1, 1863, would affirm the aims of the act by issuing the Emancipation Proclamation, which stated that “all persons held as slaves [...] are, and henceforth, shall be free.”

The Confiscation Act of 1862

- In 1863, the Emancipation Proclamation freed millions of Black slaves in Confederate states, but exempted those in the Union-loyal border states of Delaware, Maryland, Missouri, and Kentucky. These states held Confederate sympathies and could have seceded; Lincoln exempted them from the proclamation to prevent this. In April 1864, the Senate attempted to close this loophole by passing the 13th Amendment, prohibiting slavery and involuntary servitude in all states, Union and Confederate. But the amendment wasn't ratified until December 1865.

Formerly Enslaved People



Systemic Racism In California

- **Let's Talk About California's Long Racist History**

Downtown Downieville, where State Highway 49 meets Main and Commercial Streets. Jim Crow Road meets Highway 49 not too far from here.



California's Jim Crow Past

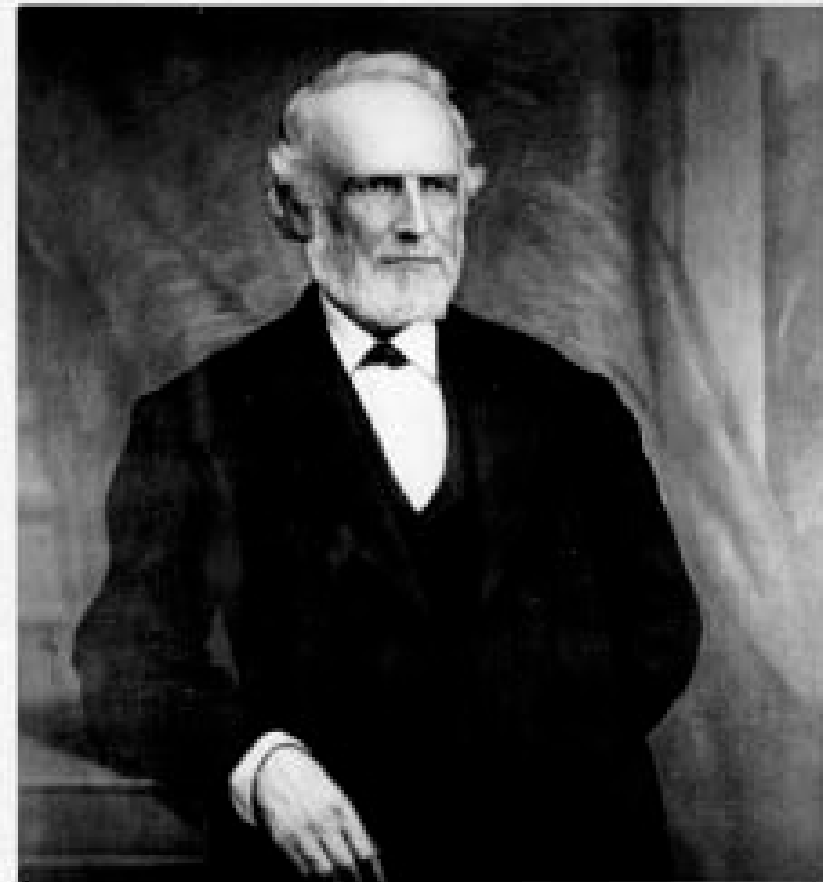


California Became the 31st State on September 9, 1850



Peter H. Burnett – First Governor of California

- Born in Tennessee and raised in Missouri
- Served in the Oregon Legislature where he helped pass Oregon's first laws excluding all Black people from the state.
- Relocated to California during the Gold Rush.
- Served as the first Governor of California from December 20, 1849, to January 9, 1851 when he resigned from office.
- During his tenure, he push aggressively for laws to ban African Americans from California.
- He also pushed for laws to limit the rights of Asians and Native Americans.
- Advocated exterminating Native Americans.
- Served as an Associate Justice on the CA Supreme Court from January 13, 1857 – October 12, 1857.
- Continued to push for Jim Crow laws until his death in 1895.



Peter H. Burnett
1849 Governor 1850

AB

Numerous CA Jim Crow Laws Enacted from 1850 to 1947

- Barred non-whites from testifying in any case where a white person was a party.
- Barred non-whites from serving on a jury
- Barred non-whites from voting
- Barred non-whites from holding elective office
- Barred non-whites from serving as judges
- Barred non-white attorneys from questioning white witnesses
- Barred non-whites from public schools

CA's Jim Crow Laws Enacted from 1850 to 1947 (cont.)

- Barred non-whites from buying/renting property
- Barred non-whites from being buried in certain cemeteries
- Barred non-whites from restaurants, hotels, theaters, pools, hospitals, and beaches
- Denied non-whites admission to bar associations
- Barred non-whites from public transportation
- Denied non-whites equal pay for equal work
- Prohibited whites from marrying non-whites (Miscegenation)

People v. Hall (1854) 4 Cal. 399

- The case involved a White man who had been convicted of murdering a Chinese man in California in the presence of multiple Chinese witnesses and sentenced to death. The issue was whether or not the Chinese witnesses were competent to give testimony against the White man based on the color of their skin.
- At issue was Section 394 of the Cal. Civil Practice Act, which provided: “No Indian or Negro shall be allowed to testify as a witness in any action in which a White person is a party.”

People v. Hall (1854) 4 Cal. 399

- The opinion was written by Hugh C. Murray, the youngest ever Chief Justice of the California Supreme Court. He became Chief Justice at the age of 27.



***People v. Hall* (1854) 4 Cal. 399**

- In using the words, “No Black, or Mulatto person, or Indian shall be allowed to give evidence for or against a White person,” the Legislature, if any intention can be ascribed to it, adopted the most comprehensive terms to embrace every known class or shade of color, as the apparent design was to protect the White person from the influence of all testimony other than that of persons of the same caste. The use of these terms must, by every sound rule of construction, exclude every one who is not of white blood.

People v. Hall (1854) 4 Cal. 399

- **Holding:** The words, Indian, Negro, Black and White, are generic terms, designating race. That, therefore, Chinese and all other people not white, are included in the prohibition from being witnesses against Whites.

Reaction to *People v. Hall* (1854) 4 Cal. 399

- **Strong response from the Asian Community opposing *People v. Hall*. Asian business leaders spoke out in protest.**
- **White allies also spoke out against the decision.**
- **California Governor John Bigler—who was the first CA Governor to win reelection—was very supportive of the *Hall* decision, and won reelection on an Anti-Asian platform.**
- **In 1863, the CA legislature codified the *Hall* decision and extended it to civil cases in addition to criminal cases.**
- *See, McClain, The Chinese Struggle For Civil Rights In Nineteenth Century America: The First Phase, 1850-1870, (1984) 72 Calif. L. Rev. 529, 548-553.*

People v. Elyea (1859) 14 Cal. 144

- This was a criminal case whereby a White criminal defendant was appealing a First Degree Murder conviction.
- The issue was whether a Turkish witness for the prosecution was competent to testify against the White criminal defendant under Section 394 of the Cal. Civil Practice Act, which provided: “No Indian or Negro shall be allowed to testify as a witness in any action in which a White person is a party.”
- The appellant argued that the Turkish witness had brown skin, and was thus not competent to testify against him.

People v. Elyea (1859) 14 Cal. 144

- The *indicium* of color cannot be relied upon as an infallible test of competency under the statute. It may be a sufficient test in many cases, but only when it is so decided as to leave no doubt of the particular race to which the witness belongs. If a negro should offer to be sworn, he could be rejected upon the sole evidence of his color. So with an Indian, and so with persons of mixed blood who are obviously within the rule of exclusion. But the color is a mere fact to be received in evidence as tending to establish the conclusion of competency or incompetency, and if alone it is sufficient for that purpose, nothing further is required.

People v. Elyea (1859) 14 Cal. 144

- The questions embraced in the decision of this Court in the case of *The People v. Hall* (4 Cal. 399), must be regarded as settled, but we cannot presume that all persons having tawny skins and dark complexions are within the principle of that decision.
- The statute itself, after declaring that no Black or mulatto person, or Indian, shall give evidence, etc. provides that persons having one eighth or more of negro blood, shall be deemed mulattoes, and persons having one half of Indian blood, shall be deemed Indians, thus rendering impossible the adoption of any rule of exclusion upon the basis of mere color. We have, in this case, the additional facts of the birthplace and parentage of the witness.

People v. Elyea (1859) 14 Cal. 144

- But these facts, if material at all, are rather against, than for, the defendant; for, although the population of Turkey is made up, in some degree, of several distinct types of the human race, the Caucasian largely predominates, and constitutes the controlling element.
- **Holding:** The California Supreme Court concluded that if a witness has dark skin but Caucasian features, they are competent to testify in an action where a White person is a party.

Incremental Efforts to Reverse Discrimination in CA

- **Discrimination against the Asian Community, Black Community Hispanic Community, and Native American Community in various forms California legislation and case law for more than 100 years following the *Hall* decision.**
- **Incremental Progress Was Made Following:**
 - **Passage of the 14th Amended on July 28, 1868, which many CA Courts Determined Only Applied to Black Citizens**
 - ***Perez v. Sharp*, 32 Cal. 2d 711, 198 P. 2d 17 (Cal. 1948) CA Interracial Marriage**
 - ***Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)**
 - **The Civil Rights Act of 1964**
 - **See, *Perez v. Lippold*, 32 Cal.2d 711, 712-763 (1948); *Don Wilson Builders v. Superior Court for Los Angeles County*, 220 Cal.App.2d 77, 48-104 (1963); *In re Chang*, 60 Cal.4th 1169, 11 70-1175 (2015).**

What Are Reparations?

- Reparations—a system of redress for egregious injustices.
- Reparations are not foreign to the United States. [Native Americans](#) have received land and billions of dollars for various benefits and programs for being forcibly exiled from their native lands. For Japanese Americans, \$1.5 billion was paid to those who were interned during [World War II](#). Additionally, the United States, via the [Marshall Plan](#), helped to ensure that Jews received reparations for the Holocaust, including making various investments over time. In 1952, West Germany agreed to pay 3.45 billion Deutsche Marks to Holocaust survivors.

Black Americans are the Only Group that has Not Received Reparations

- Black Americans are the only group that has not received reparations for state-sanctioned racial discrimination, while slavery afforded some white families the ability to accrue tremendous wealth. And, we must note that American slavery was particularly brutal. About 15 percent of the enslaved shipped from Western Africa died during transport. The enslaved were regularly beaten and lynched for frivolous infractions. Slavery also disrupted families as one in three marriages were split up and one in five children were separated from their parents. The case for reparations can be made on economic, social, and moral grounds. The United States had multiple opportunities to atone for slavery—each a missed chance to make the American Dream a reality—but has yet to undertake significant action.

Missed policy opportunities to atone for slavery with reparations

40 Acres and a Mule

- The first major opportunity that the United States had and where it should have atoned for slavery was right after the Civil War. Union leaders including General William Sherman concluded that each Black family should receive 40 acres. Sherman signed Field Order 15 and allocated 400,000 acres of confiscated Confederate land to Black families. Additionally, some families were to receive mules left over from the war, hence 40 acres and a mule.

Former Slave Owners Were Paid Reparations

- After President Abraham Lincoln's assassination, President Andrew Johnson reversed Field Order 15 and returned land back to former slave owners. **Instead of giving Blacks the means to support themselves, the federal government empowered former enslavers.** For example, in Washington D.C., slave owners were actually paid reparations for lost property—the formally enslaved. This practice was also common in nearby states.

Black Americans Forced to Work as Sharecroppers

- Many Black Americans with limited work options returned as sharecroppers to till the same land for the very slave owners to whom they were once enslaved. Slave owners not only made money off the chattel enslavement of Black Americans, but they then made money multiple times over off the land that the formerly enslaved had no choice but to work. There was no minimum wage for former slaves. **My grandparents were sharecroppers in Tennessee.**

The 1862 Homestead Act

- Was enacted during the Civil War.
- Promoted the settlement and development of the American West.
- The act, which took effect January 1, 1863, granted 160 acres (65 hectares) of unappropriated public lands to any White person who paid a small filing fee and agreed to work on the land and improve it, including by building a residence, over a five-year period.

The 1862 Homestead Act (continued)

- The Homestead Act proved one of the most important pieces of legislation in the history of the American West, as hundreds of thousands of White people moved to the Great Plains in an effort to take advantage of the free land.
- White people from Europe moved to the USA to take advantage of the Homestead Act and build intergenerational wealth for their families,
- Over 270 million acres of government land was distributed to homesteaders, more than 99% of whom were White.

The New Deal

- Two particular policies of the New Deal fell short in redressing American's racial wrongs—the G.I. Bill and Social Security. Though white and Black Americans fought in WWII, Black veterans could not redeem their post-war benefits like their white peers. While the G.I. Bill was mandated federally, it was implemented locally. The presence of racial housing covenants and redlining among local municipalities prohibited Blacks from utilizing federal benefits. White soldiers were afforded the opportunity to build wealth by sending themselves and their children to college and by obtaining housing and small business grants.

The New Deal – Black WW2 Vets Denied GI Benefits

- While the GI Bill's language did not specifically exclude African-American veterans from its benefits, it was structured in a way that ultimately shut doors for the 1.2 million Black veterans who had bravely served their country during World War II, in segregated ranks.
- It ushered into law sweeping benefits for veterans, including college tuition for veterans and their children, small business grants, low-cost home loans guaranteed by the U.S. Government, and unemployment insurance.

The New Deal & Social Security

- Regarding Social Security, two key professions that would have improved equity in America were excluded from the legislation—domestic and farm workers. These omissions effectively excluded 60 percent of Blacks across the U.S. and 75 percent in southern states who worked in these occupations. Roosevelt bargained these exclusionary provisions in the legislation on the backs of Black veterans and workers in order to propel mostly white America out of the Great Depression.

Massacres By Whites Against Successful Blacks

<https://www.washingtonpost.com/history/2021/06/01/tulsa-race-massacres-silence-schools/>



Massacres By Whites Against Successful Blacks (cont.)

- An additional way that many Whites built wealth in this country is by murdering or threatening successful Blacks and taking their wealth.
- There have been dozens of massacres by White people against Black people and other people of color in the USA, where white people took property and land owned by Blacks and other People of Color by force.
- Examples include:
 - Tulsa in 1921

Massacres By Whites Against Successful Blacks (cont.)

- Chicago in 1919
- Springfield in 1908
- East St. Louis in 1917
- Vicksburg in 1874
- Slocum in 1910
- Colfax in 1873
- Opelousas in 1868
- Thibodaux in 1887

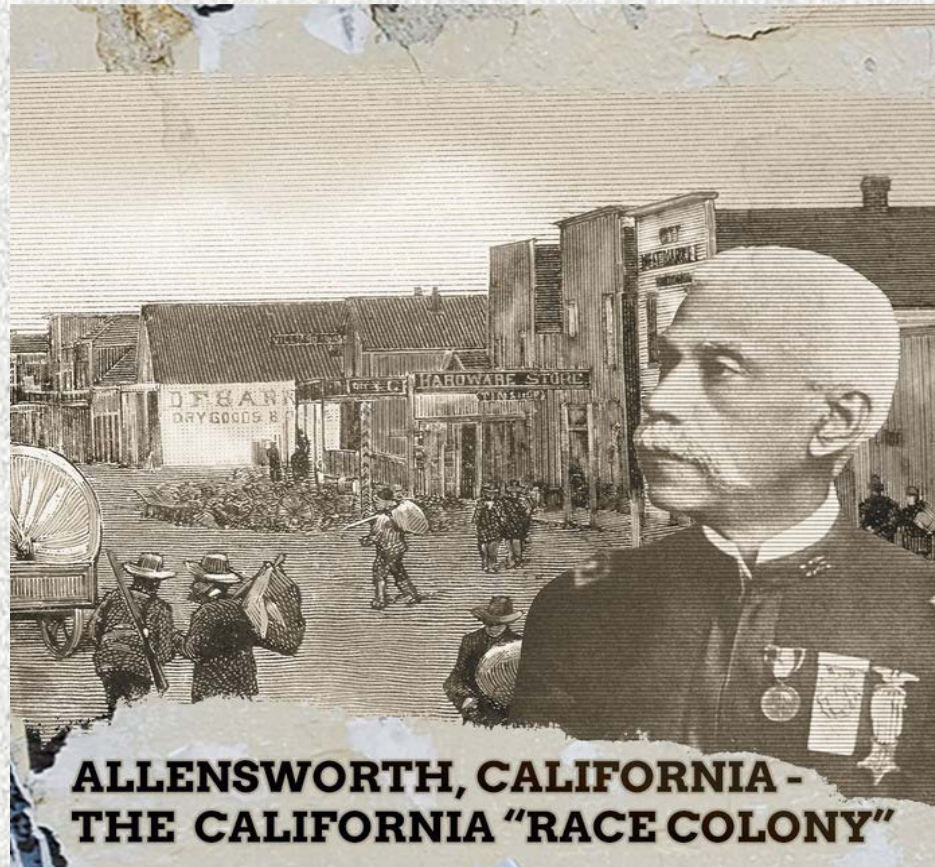
Massacres By Whites Against Successful Blacks (cont.)

- Memphis in 1866
- Elaine in 1919
- Clinton in 1875
- Rosewood in 1923
- St. Bernard Parish in 1868
- New Orleans in 1866
- Detroit in 1943
- Washington in 1919

Massacres By Whites Against Successful Blacks (cont.)

- Wilmington in 1898
- Atlanta in 1906
- New York in 1863
- Eufaula in 1874
- Camila in 1868
- Ocoee in 1920

The Downfall Of Allensworth: How Racism And Lies Destroyed A Black Town In California



<https://newsone.com/4337335/allensworth-california-black-town-destroyed-by-racism/>

The Downfall Of Allensworth: How Racism And Lies Destroyed A Black Town In California

- Located about 250 miles south of San Francisco sat Allensworth – California’s first Black town that racism ultimately destroyed.
- It was **founded** in 1908 by Lt. Col. Allen Allensworth and William Payne. Allensworth was a prominent leader at the time, as he was an educator and the U.S. Army’s chaplain to four Black regiments. He was born into slavery in Kentucky and later moved to California with his wife –Josephine Leavell Allensworth – after leaving the army.
- Payne graduated from Denison University in 1906 and was an educator. He met Col. Allensworth after he was denied a teaching license.
- At a time when the country was plagued by racist policies facilitated by Jim Crow laws, Allensworth was Nirvana for many Black Americans. The town grew quickly and thrived as Black residents started their own schools and businesses, and it was even home to a library, and a post office.
- <https://travelnoire.com/allensworth-californias-first-black-town>
- <https://newsone.com/4337335/allensworth-california-black-town-destroyed-by-racism/>

<https://newsone.com/4337335/allensworth-california-black-town-destroyed-by-racism/>

The Downfall Of Allensworth: How Racism And Lies Destroyed A Black Town In California

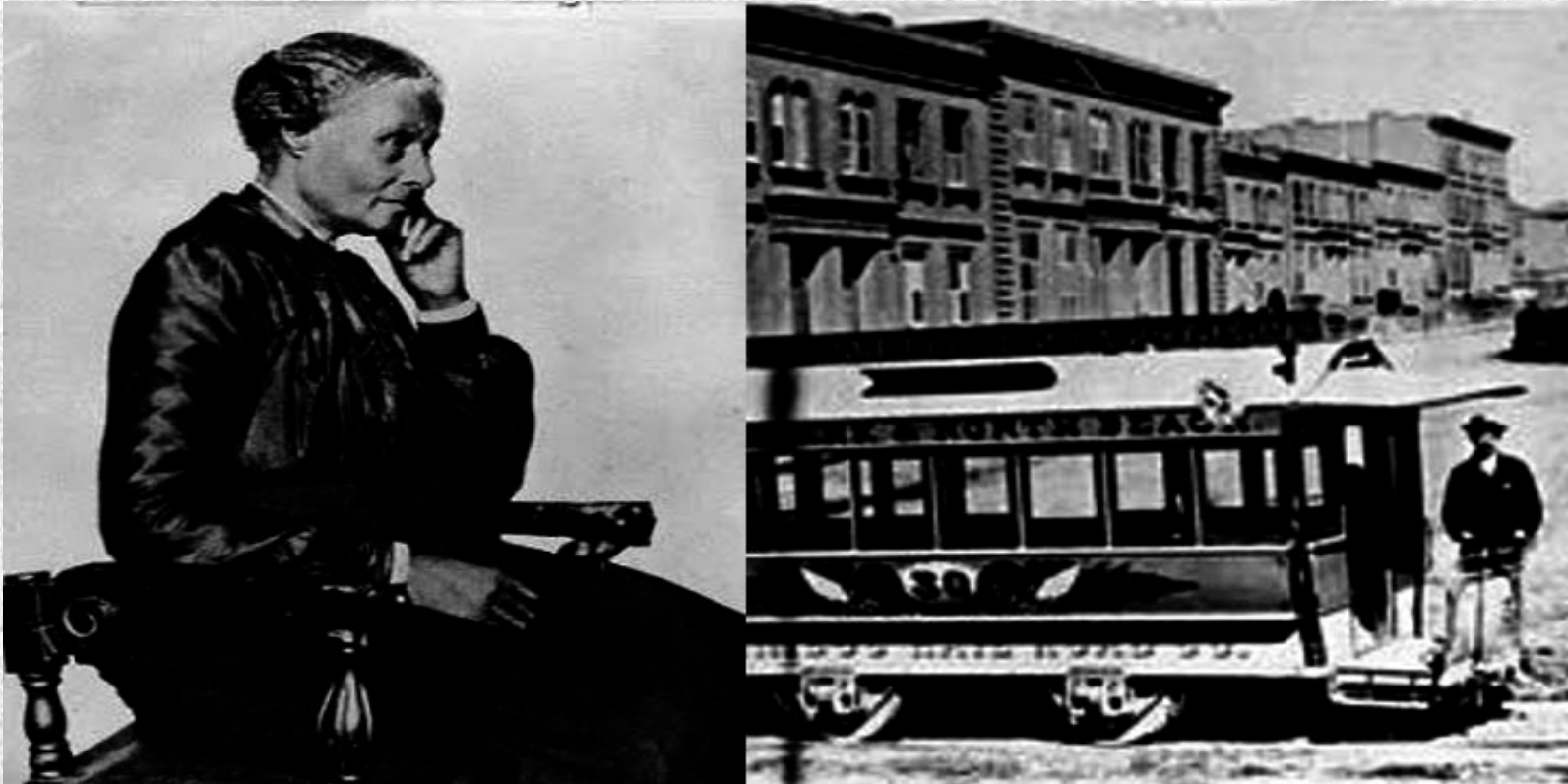
- 1912 through 1915 were the prime years for the town.
- Most of the land was dedicated to sugar, wheat, barley, and cotton crops, as well as poultry, which were goods many Black business owners used to supply neighboring towns along the railroad route.
- Despite its success, the thriving community of Allensworth started to decline. Many historians attribute this to racism amid a series of crises at the time.
- For starters, the Pacific Farming Company decided they would cut off the town's irrigation water supply. Shortly after, Santa Fe Railroad officials built a new railroad stop in the neighboring town of Alpaugh – ultimately halting service to Allensworth for reported “low water levels.”
- The move pulled the plug on the economic lifeline for many Black families who were forced to relocate.
- On May 14, 1976, the California State Parks Commission approved plans to develop the park following a decades-long battle to preserve the town's history. An initial dedication was celebrated on Oct. 9, 1976, and today, the area is known as Colonel Allensworth State Historic Park.
- <https://travelnoire.com/allensworth-californias-first-black-town>
- <https://newsone.com/4337335/allensworth-california-black-town-destroyed-by-racism/>

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The Downfall Of Allensworth: How Racism And Lies Destroyed A Black Town In California

- More than 100 years after it began, Allensworth is still being honored today, as its story parallels so many **other Black communities** in the 1900s that were destroyed by racism and white fragility.
- <https://travelnoire.com/allensworth-californias-first-black-town>
- <https://newsone.com/4337335/allensworth-california-black-town-destroyed-by-racism/>

Before Rosa Parks there was Charlotte L. Brown in 1863 San Francisco



<http://www.blackhistoryheroes.com/2015/12/before-rosa-parks-there-was-charlotte-l.html>

Before Rosa Parks there was Charlotte L. Brown in 1863

San Francisco

- A youthful Charlotte Brown was from a prominent African American family in San Francisco, California when she refused a conductor's demand that she remove herself from a streetcar because "colored persons were not allowed to ride." This was on April 17, 1863, nearly a hundred years before Rosa Parks challenged public streetcar segregation in Montgomery, Alabama in 1954.

In 1863, San Francisco had the largest Black population in the state of California. It was the era of the California Gold Rush that drew many entrepreneurs to its western shore. African Americans migrants to the region were faced with a social climate that included a prohibition against the public vote. They could not ride public transportation, nor could they use the public library. Like other African Americans across the nation, they could only attend segregated public schools.

- On April 17, 1863, Brown had a doctor's appointment that was the reason for her boarding the Omnibus Railroad streetcar. She walked onto the horse-drawn streetcar and took a seat midway in the car. The conductor walked down the aisle to collect passenger tickets. Brown wrote that she "handed him my ticket and he refused to take it. He said that colored persons were not allowed to ride." Instead of accepting the ticket, the conductor demanded that Brown remove herself from the streetcar. When Brown refused, she was forcibly removed by the streetcar attendant.
- Charlotte Brown's father, owner of a livery service, helped protect fugitive slaves seeking freedom in California. He encouraged her to fight this treatment in court. That same year, a law had been passed in the California legislature that allowed African Americans to testify in cases involving whites. Brown's father would bring a lawsuit on her behalf in a California court.

<http://www.blackhistoryheroes.com/2015/12/before-rosa-parks-there-was-charlotte-l.html>

Before Rosa Parks there was Charlotte L. Brown in 1863

San Francisco

- The Omnibus Railroad argued that its streetcar conductor was justified in his action because racial segregation was necessary to protect European American women and children who might be "fearful or repulsed" by sitting alongside an African American. This argument was unsuccessful. The judge sided with Brown, but the damage award was only 5 cent -- reimbursement of the cost of the streetcar fare.
- Only days after this court judgment, another Omnibus streetcar conductor forced Charlotte Brown and her father from a streetcar. Another lawsuit ensued. In 1864, Judge C. C. Pratt of the 12th District Court ruled that San Francisco streetcar segregation was illegal, stating in his opinion: "It has been already quite too long tolerated by the dominant race to see with indifference the Negro or mulatto treated as a brute, insulted, wronged, enslaved, made to wear a yoke, to tremble before white men, to serve him as a tool, to hold property and life at his will, to surrender to him his intellect and conscience, and to seal his lips and belie his thought through dread of the white man's power."

Brown was awarded \$500 from the jury in this second civil rights case. Without the support of the 14th Amendment -- which was not in existence at the time -- Charlotte Brown challenged racial discrimination. She took a stand against racial justice on the streets of San Francisco, fueling a long tradition of civil rights activism among African American women.

<http://www.blackhistoryheroes.com/2015/12/before-rosa-parks-there-was-charlotte-l.html>

The Battle Over Chavez Ravine & Dodger Stadium

<https://www.latinousa.org/2017/11/03/battle-chavez-ravine/>



*Featured Image:
Aurora Vargas
(daughter of Manuel
and Avrana Arechiga)
evicted from home in
Chavez Ravine, Los
Angeles, California.
(Los Angeles Times
Photographic Archive
UCLA Library.
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the University of
California, UCLA
Library)*

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

<https://laist.com/news/la-history/dodger-stadium-chavez-ravine-battle>



May 8, 1959: "Several Chavez Ravine residents fought eviction, including Aurora Vargas, who vowed that, 'they'll have to carry me [out].' L.A. County Sheriffs forcibly remove Vargas from her home. Bulldozers then knocked over the few remaining dwellings. Four months later, ground-breaking for Dodger Stadium began."

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This is panoramic view of Chavez Ravine before it was bulldozed to make way for Dodger Stadium. Thousands of mostly Latinx/Hispanic residents were forced from their homes against their will so that Dodger Stadium could be built. The residents were never fully compensated for the loss of their homes. This was a sad time in Los Angeles history.

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

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May 9, 1959: "Los Angeles County Sheriffs forcibly evict Mrs. Aurora Vargas, 36, from her home at 1771 Malvina Avenue in Chavez Ravine. Media representatives record the event. The family put up a fight and reported they had only received a written eviction notice, causing criticism of the government's methods."

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

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1951: "The Navarro family pose at their Chavez Ravine home before their relocation to the William Mead Homes Housing Project. Blasito Navarro (divorced) lived with her 3 children in this 5 room house, which rented for \$25 per month."

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

<https://laist.com/news/la-history/dodger-stadium-chavez-ravine-battle>



May 11, 1959: "Cruz Cabral, 39, ex-Marine war hero of World War II, gives moral support to relatives evicted from their house in Chavez Ravine. His aunt, Mrs. Abrana Arechiga, 72, shows his medals. He was wounded four times in South Pacific battles. She reared him on this site.

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

<https://laist.com/news/la-history/dodger-stadium-chavez-ravine-battle>



May 14, 1959: "Mrs. Abrana Arechiga (left) and her daughter, Mrs. Vicki Augustain, look at the ruins of one of their Chavez Ravine homes, which were destroyed by bulldozers during the controversial eviction last Friday, an action which now has erupted into a sensational city-wide furor. After eviction day, the Arechiga family lived in a tent and, later, in a loaned trailer. Now it is revealed they own 11 homes in the Los Angeles area."

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

<https://laist.com/news/la-history/dodger-stadium-chavez-ravine-battle>



February 16, 1961: Ramparts rise at top speed as work is ahead of schedule at Dodger Stadium, built on the site of Chavez Ravine.

Mostly Latinx/Hispanic Families In Chavez Ravine Were Forced From Their Home To Make Way For Dodger Stadium

<https://laist.com/news/la-history/dodger-stadium-chavez-ravine-battle>



The 56,000-seat Dodger Stadium opened on April 10, 1962, on a site that thousands of people had once called home.

Some Personal Experiences With Bias

- My Near Death Experience With Police In A Coffee Shop
- Detained at the Sonoma County Superior Court Before My Oral Argument In A High Exposure Case
- Client Representative Can't Stop Talking About My Race
- Driving While Black
- Interrupting Bias Against Women
- Creating Scholarships for Five Different Diverse Communities

Back to Our Discussion About Implicit Bias

- Let's Return to Our Discussion About Implicit Bias

Implicit Bias May Be A Factor In Underrepresentation & Attrition

- The concept of implicit or unconscious bias is widely misunderstood. People often become defensive when they are confronted with the notion that they could be implicitly biased against anyone.
- Researchers at the Kirwan Institute at the Ohio State University explain that **implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.** These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.

Implicit Bias May Be A Factor In Underrepresentation & Attrition

- The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, gender, age, perceived sexual orientation, and appearance. These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages. In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.

Implicit Bias May Be A Factor In Underrepresentation & Attrition

- Harvard University has thoroughly researched the concept of implicit bias through their program called “Project Implicit.” The Project Implicit program offers an online test that anyone can take to measure the extent to which they have implicit bias. The test is available at: <https://implicit.harvard.edu/implicit/takeatest.html> .

Implicit Bias May Be A Factor In Underrepresentation & Attrition

On a personal note, I took several of the implicit bias tests on the Project Implicit website out of curiosity, and I was shocked to discover that I have implicit bias against several groups including African Americans, even though I myself am African American. Research has shown that implicit bias is not exclusive to non-minorities. It is often the case that women, members of ethnic and racial minority groups, and members of the LGBT community demonstrate implicit bias against their own group as a result of internalized sexism, racism, and homophobia or transphobia.

Implicit Bias May Be A Factor In Underrepresentation & Attrition

I encourage everyone to visit the Harvard University “Project Implicit” page to self-evaluate the extent to which you may have implicit bias. It is nothing to be ashamed of. Everyone has some level of bias. The important thing is to acknowledge it, and to develop strategies address it. We should never allow implicit or unconscious bias to negatively impact our workplace or business relationships. We will now explore the concept of “confirmation bias.”

The Famous Nextions LLC Confirmation Bias Study

There have been several studies that have examined the concept of “**confirmation bias**” with respect to the legal profession. Researchers at Nextions LLC have defined “confirmation bias” as a mental shortcut – a bias – engaged by the brain that makes one actively seek information, interpretation and memory to only observe and absorb that which affirms established beliefs while missing data that contradicts established beliefs.

The Famous Nextions LLC Confirmation Bias Study

One of the most famous studies examining confirmation bias in the legal profession involved 60 different law firm partners (who had previously agreed to participate in a “writing analysis study” from 22 different law firms of whom 23 were women, 37 were men, 21 were racial/ethnic minorities, and 39 were Caucasian. While all of the partners received the same memo, half the partners received a memo that stated the associate was African American while the other half received a memo that stated the associate was Caucasian.



“Written in Black and White”

Nextions, LLC Study:

- 60 law firm partners reviewed identical fictitious legal memo
- Half of recipients were told memo was written by an African-American male associate
- Half of recipients were told memo was written by a Caucasian male associate

Name: Thomas Meyer	Name: Thomas Meyer
Seniority: 3rd Year Associate	Seniority: 3rd Year Associate
Alma Mater: NYU Law School	Alma Mater: NYU Law School
Race/Ethnicity: African American	Race/Ethnicity: Caucasian

“Written in Black and White”

Nextions, LLC Study:

- Some general findings:
 - average 3.2/5.0 rating for hypothetical “African American” Thomas Meyer
 - average 4.1/5.0 rating for hypothetical “Caucasian” Thomas Meyer

“Caucasian” Thomas Meyer	“African American” Thomas Meyer
<i>“generally good writer but needs to work on...”</i>	<i>“needs lots of work”</i>
<i>“has potential”</i>	<i>“can’t believe he went to NYU”</i>
<i>“good analytical skills”</i>	<i>“average at best”</i>

Source: Dr. Arin N. Reeves, *Nextions*, “Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills.”

The Famous Nextions LLC Confirmation Bias Study

The results of the study were shocking. The exact same memo for the hypothetical African American associate averaged a 3.2 rating. By comparison, the exact same memo for the hypothetical Caucasian associate average a 4.1 rating. Notably, the partners found three times as many errors in the hypothetical African American associate's memo. The comments on the African American associate's memo were also much harsher by comparison. For example, on the hypothetical Caucasian associate's memo, partners often wrote "has potential" and "good analytical skills." Whereas, on the hypothetical African American associate's memo, partners wrote comments like "needs lots of work" and "can't believe he went to NYU."

The Famous Nextions LLC Confirmation Bias Study

The Nextions LLC study illustrates that just by changing the perceived race of the individual, our view of that individual and the quality of their work can be altered dramatically. The same analysis applies to gender, sexual orientation, and disability. It is important that we all take inventory of ourselves and keep our biases in check. We cannot completely eliminate our biases, but we can take better control of them once we acknowledge that they are there.

Suggestions For Promoting Diversity And Inclusion Within The Judiciary And The Legal Profession

Now that we have come to terms with the possibility that everyone—even minorities—have some degree of implicit bias, we must look at possible solutions.

Suggestions For Promoting Diversity And Inclusion Within The Judiciary And The Legal Profession

Ignoring the issue will not make it go away. The underrepresentation of women, racial and ethnic minorities, and openly LGBTQ people in the judiciary and the legal profession will not fix itself. We must deal with this issue directly. By taking direct action to address diversity and inclusion we can build a more diverse judiciary and legal profession.

Suggestions For Identifying and Overcoming Implicit Bias

Here are some tips for identifying and overcoming implicit bias:

- Learn about the history of oppression and discrimination against underrepresented groups.
- Acknowledge that everyone has implicit bias, even members of underrepresented groups have implicit bias.
- Take affirmative steps to check your implicit bias.
- Invite input from underrepresented groups.
- Keep working at overcoming your implicit biases everyday. It is a lifelong commitment.

Affirmative Steps For Recognizing & Mitigating Bias

1. Don't Walk on Eggshells – provide feedback in a consistent fashion.
2. Colorblindness is not a solution – Saying “I don't see color” is not only disingenuous, it means you choose not to see the whole person.
3. Understand and appreciate other people's culture, differences, etc.
4. If you stumble...recover.
5. Be more deliberate in decision-making.
6. Before you make a decision, ask whether your bias is influencing you in any way.



Affirmative Steps For Recognizing & Mitigating Bias

7. Don't attribute the failings of one person to an entire group.
8. Cultivate cross-group relationships. Cross-group relationships change your attitudes about people from different groups.
9. Work to combat your own biases.
10. Be an ally, mentor, sponsor.



What If You Realize that You Said or Did Something that You Should Not Have?

- Don't:
 - Ask if anyone is offended
 - Apologize only to the person you think is most likely to be offended
- Do:
 - Indicate that it was not your intent to offend
 - Apologize to all for the effect
 - Consult with Human Resources

Recent Diversity & Inclusion Issue In The News

- **The Harvard and University of North Carolina Affirmative Action Cases Pending Before the U.S. Supreme Court.**
 - How should the Court rule on these cases? <https://www.diverseeducation.com/leadership-policy/article/15291988/affirmative-action-on-the-chopping-block>
 - Is there any danger to People of Color if Affirmative Action is declared unconstitutional by the U.S. Supreme Court? <https://lnkd.in/gNzuF4Pp>
- **The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization***
 - How does the *Dobbs* decision threaten other privacy rights? <https://www.wired.com/story/scotus-dobbs-roe-privacy-abortion/>
 - Should people in Blue States care about abortion access in Red States? Why? <https://www.axios.com/2022/05/10/blue-states-abortion-protection-roe-supreme-court>
- **Critical Race Theory Laws**
 - What is the danger in whitewashing American history? <https://www.usatoday.com/story/news/education/2021/06/11/florida-education-board-strict-guidelines-us-history-critical-race-theory/7652613002/>
 - How do we combat miseducation in public schools and society regarding systemic racism, sexism, homophobia, transphobia, etc.? <https://www.theguardian.com/us-news/2021/jul/01/aclu-fights-state-bans-teaching-critical-race-theory>

Recent Diversity & Inclusion Issue In The News

- **Moore v. Harper – North Carolina and the “Independent State Legislature Theory.”**
<https://www.npr.org/2022/06/30/1107648753/supreme-court-north-carolina-redistricting-independent-state-legislature-theory>
 - How could empowering state legislatures with the ability to nullify the popular votes in their states in federal elections undermine our democracy? <https://www.brennancenter.org/our-work/research-reports/moore-v-harper-explained>
 - Could this potentially be the most impactful or dangerous voting rights case in American history? <https://lawandcrime.com/supreme-court/election-law-experts-sound-the-alarm-about-extremely-dangerous-voting-rights-case-the-supreme-court-just-agreed-to-hear/>
- **Florida, Florida, Florida!**
 - Don’t Say Gay Law – <https://www.nbcnews.com/nbc-out/out-news/floridas-dont-say-gay-law-takes-effect-schools-roll-lgbtq-restrictions-rcna36143>
 - Gerrymandered Redistricting Targeting Black voters <https://floridaphoenix.com/2022/05/12/revised-complaint-desantis-congressional-redistricting-plan-targeted-black-voters/>
 - Florida Governor Removes State Attorney Who Refuses to Enforce Unconstitutional Laws <https://www.wesh.com/article/andrew-warren-desantis-suspension-response/40833106>
 - Florida passes the nation's first law restricting how employers talk about race at work <https://www.usatoday.com/story/money/2022/03/10/florida-law-diversity-crt-work/6991516001/>
 - Florida medical board moves to block gender affirming treatments <https://www.politico.com/news/2022/08/05/florida-gender-affirming-medical-treatment-ban-00050174>

Suggestions For Identifying and Overcoming Implicit Bias

Thank You!

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Any Questions?



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Co-Founder of the CLA Racial Justice Committee

Terrance J. Evans is a Partner in the San Francisco and Los Angeles offices of Duane Morris LLP, where he serves as the Co-Leader of the firm's [Banking and Financial Services](#) Practice. Mr. Evans is also the Co-Chair of the Duane Morris San Francisco Diversity and Inclusion Committee. His practice is focused on representing clients in federal and state trial and appellate courts across the United States including the United States Supreme Court. Mr. Evans also regularly counsels clients regarding racial justice and diversity and inclusion issues. He has led dozens of diversity trainings for judges, lawyers, law students, and members of the community around the United States.

Mr. Evans is the Immediate Past President of the Charles Houston Bar Association, the oldest Black Bar Association in California. He is the Co-Founder and Co-Chair of the CLA Racial Justice Committee; Immediate Past Chair of the Litigation Section of the California Lawyers Association; Co-Chair of the American Bar Association ICLC Diversity & Inclusion Committee, Member of the Bar Association of San Francisco Judicial & Finance Committees; Director of Region IX of the National Bar Association, and he is the first Black man elected to serve as a statewide representative on the Board of the California Lawyers Association. Mr. Evans has spoken at more than 180 diversity, equity, and inclusion programs and civil rights programs in partnership with more than 65 law schools, bar associations, colleges, universities, high schools, law firms, churches, and other organizations. Mr. Evans also frequently appears on national and local television and radio discussing issues ranging from the United States Supreme Court and California courts to important legislation and civil rights issues.

In 2016, Mr. Evans was honored by the National Bar Association as one of the top African American attorneys in the USA under age 40. In 2017, he was honored by the Charles Houston Bar Association for his work promoting diversity and inclusion in the legal profession. In 2018, Mr. Evans was honored by the Minority Bar Coalition for his contributions to promoting diversity and inclusion throughout California. In 2019, Mr. Evans was honored by New Dawn Vallejo for his work promoting diversity and inclusion and pro bono legal services. In 2020, Mr. Evans was recognized by Chambers for his efforts to promote diversity and inclusion throughout the United States. In 2021, Mr. Evans was honored by the Bar Association of San Francisco and Justice and Diversity Center for his diversity and inclusion work in Northern California and throughout the United States. In 2021, Mr. Evans was also honored by American Lawyer Magazine as a Trail Blazer.

In 2022, Mr. Evans was honored by the Los Angeles Times as being one of the foremost leaders on diversity, equity, and inclusion issues in the State of California. In 2022, Mr. Evans was also honored by the Minority Bar Coalition for a second time for his efforts to promote diversity, equity, and inclusion throughout the United States. During his legal career, Mr. Evans has raised more than \$500,000 for scholarships for underprivileged students. Mr. Evans has also created five annual scholarship that have provided tens of thousands of dollars to under privileged students in the Asian, Black, Hispanic, Native American, and LGBTQ Communities.

