



STUDENT
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Guess Who's Coming to Stanford:

The Battle for the Desegregation of an Elite Law School

The 1960s were a time of dramatic change for elite law schools. There still had not been much progress in racial diversity at the graduate school level after the *Brown* decision,¹ in part because of the time required for Black students to trickle through the educational system and attain the prerequisite credentials for graduate study. In fact, nearly 60 percent of students—of any race—did not even graduate from high school in 1960, and only roughly 11 percent of those who had graduated went on to college.² Indeed, only 3.5 percent of Black Americans held a bachelor's degree in 1960.³ In short, at that time, many students did not complete high school or college, and those who did were often white and/or wealthy.

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¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

² National Center for Education Statistics, "Rates of High School Completion and Bachelor's Degree Attainment among Persons Age 25 and Over, by Race/Ethnicity and Sex: Selected Years, 1910 through 2023," *Digest of Education Statistics*, Table 104.10.

³ National Center for Education Statistics, "Rates of High School Completion," Table 104.10.

However, the 1960s ushered in a period of major development, spurred by student protests of the Vietnam War and Martin Luther King Jr.'s assassination, which began the process of truly desegregating American law education. This article will examine how one law school in particular went about this process and the challenges it faced in the early years.

In 1962, approaching its seventieth birthday, Stanford Law School was still housed in the main quadrangle of campus with a faculty of twelve white men. Still viewed as a regional university at the time, Stanford was considered adequate, yet average, when compared to Ivy League schools such as Harvard and Yale. Downtown Palo Alto was nothing like the commercialized Silicon Valley town that we know today; only a single city block had been developed at that point, with miles of orchards covering the rest of the land down to San Jose. The law school would see significant growth during the early 1960s, with eight members added to the faculty who brought fresh ideas and new attitudes about the future of the school, paving the way for the integration of Black students.⁴

This article represents an initial attempt to create a cohesive narrative of desegregation at Stanford Law School.⁵ By weaving together disparate archival threads, I will demonstrate the complexity and difficulty of building a Black community at an elite institution—an institution that sought to structurally exclude Black students and faculty. I echo a question posed by Audre Lorde: “Can the master’s tools dismantle the master’s house?”⁶ Or, as Kenneth Mack puts it, “Can socially subordinated groups contest their subordination using the same social structures and ideologies that define those groups as inferior?”⁷ At Stanford Law, Black students and faculty simultaneously grappled both with and within the exclusionary power structures of academia. In doing so, they reconstructed the gaps in these power structures into channels not only for “contesting their subordination,” but also for the acquisition of their own power as Black lawyers and educators.⁸

⁴ Michael Wald, interview with author (May 16, 2024). Professor Wald has been a member of the Stanford Law faculty since 1967 and has had a distinguished career as an academic researcher, teacher, and public official.

⁵ Due to limits of space and time, as well as archival access restrictions, this narrative will not be exhaustive. Additionally, many documents were lost when the law school moved to its current location or were never created at all, due to fear of litigation and/or a drop in alumni support. Instead, the dean would give an in-person report to the faculty each year. This article will focus primarily on Black students at the law school, and additional forthcoming research will expand upon many of the issues raised here.

⁶ Audre Lorde, *Sister Outsider: Essays and Speeches* (Berkeley, CA: Crossing Press, 1984), 110. As paraphrased in Kenneth Walter Mack, “A Social History of Everyday Practice: Sadie T. M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925–1960,” *Cornell Law Review* 87, no. 6 (2002): 1472.

⁷ Mack, “A Social History of Everyday Practice,” 1472.

⁸ Mack, “A Social History of Everyday Practice,” 1411.

There is much to be learned from the story of integration at Stanford. This is a story that cannot be told neutrally; in constructing such a narrative, any author will reveal what Jerome Culp calls “mythic assumptions about race.”⁹ But for as long as this story goes untold, it is impossible to truly understand either the full history or the present state of Stanford Law School and its interactions with the American legal system.¹⁰ Chronicling the struggle of integration is a crucial step toward dismantling the socioeconomic structures that served to gatekeep universities like Stanford.

The Early Years: The Beginnings of Integration

Sallyanne Payton finished her undergraduate degree in English at Stanford in 1964 and spent the following year working as a social caseworker in her native Los Angeles.¹¹ Payton had plans to attend a master’s program at Harvard when she learned of a fellow Stanford English alumna, Brooksley Born. Born had just graduated from Stanford Law in 1964 after serving as editor of the *Stanford Law Review*.¹² Payton began considering law school for herself, and “[n]oting an increased susceptibility to the two occupational diseases of social workers—cirrhosis and cynicism—she returned to law school (the diseases are the same but the pay is better).”¹³

Back at Stanford, Payton excelled as the law school’s first Black graduate, despite her description of class as “infallibly soporific.”¹⁴ She, too, was selected for the *Stanford Law Review*, shocking many of her peers and mentors, many of whom viewed her abilities through a lens of racial prejudice.¹⁵ Payton later recalled: “You could hear the jaws drop all the way down the steps of the law school . . . My favorite professor said to me, ‘When I turned over the paper and found that you had written it, I nearly had a stroke.’ This was during the

⁹ Jerome McCristal Culp, Jr., “Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy,” *Virginia Law Review* 77 (1991): 545.

¹⁰ Jerome McCristal Culp Jr., “Toward a Black Legal Scholarship: Race and Original Understandings,” *Duke Law Journal* (1991): 76.

¹¹ Stanford University, *Stanford Law School Yearbook 1968* (Palo Alto, CA: Stanford University, 1968).

¹² Sharon Driscoll, “Sallyanne Payton: A Groundbreaking Legal Career,” *Stanford Lawyer* 102 (Spring 2020).

¹³ *Stanford Law School Yearbook 1968*.

¹⁴ *Stanford Law School Yearbook 1968*. There were earlier Black students at the law school, but Payton was Stanford Law’s first graduate. I have been unable to positively identify these earlier students.

¹⁵ *Stanford Law School Yearbook 1968*. Payton “protestingly toiled” in her work for the law review. At the time, law reviews were staffed based on grades, so any students on law review were necessarily at the top of the class.

time of ‘social Darwinism.’ And I didn’t fit the stereotype.”¹⁶ Yet despite the stereotype, Payton flourished.

In her second year, Payton was joined by other Black students at the law school. Leroy Bobbit, a native of Mississippi, came to Stanford from Michigan State University after working for two years with the Office of Economic Opportunity.¹⁷ Vaughn Williams arrived immediately after finishing his studies in American History and Literature at Harvard and eventually became the president of the *Stanford Law Review* for its twenty-first volume before going on to clerk for Judge McGowan at the D.C. Appeals Court.¹⁸

Many of these early students were unique, crossing the Mississippi for law school long before it was commonplace to do so. Many of them had been excellent students throughout their academic careers, granting them plenty of options for their legal education. They were well positioned to be competitive when it came to grades and the job market and accordingly, excelled at Stanford. This was especially clear for students like Vaughn and Sally, who served on the law review at a time when the selection was based solely on grades—only those students who ranked in the top twenty in the class were chosen for positions.¹⁹ They had both been first-rate students as undergraduates, had parents who had sat on the bench, and attended private schools.²⁰

Yet, the pool of students like Vaughn and Sally was small. This problem would persist for many years and was especially significant at law schools, where both admissions and hiring took a largely credentials-based approach.²¹ More than a decade after *Brown*, the number of Black students earning college degrees was growing, but still modest, and the number of those students who attended undergraduate institutions considered satisfactory for admission to Stanford was even smaller.

¹⁶ Driscoll, “Sallyanne Payton.” “Doomed by an unsought success, [Payton] . . . reluctantly abandoned her life goal of becoming a blues guitarist in favor of a less penurious future in the law.” *Stanford Law School Yearbook* 1968. After graduating with her LL.B. in 1968, Payton forged an illustrious career in Washington D.C., beginning at the firm of Covington & Burling; continuing as a member of the White House Domestic Council during the Nixon administration in 1971; serving as the chief counsel to the Urban Mass Transportation Administration in 1973; and ultimately becoming the first Black woman to join the faculty of the University of Michigan Law School in 1976, where she spent nearly forty years. She was elected to Stanford’s Board of Trustees not once, but twice—initially as a “young alumni under 35” in 1972. Driscoll, “Sallyanne Payton.” *See also* Sallyanne Payton, “Reflections on Being a Lawyer,” *Stanford Lawyer* 12, no. 1 (Spring 1977).

¹⁷ *Stanford Law School Yearbook* 1968.

¹⁸ *Stanford Law School Yearbook* 1968.

¹⁹ Wald interview, May 16, 2024.

²⁰ Wald interview, May 16, 2024.

²¹ Wald interview, May 16, 2024. Robert Gordon, interview with author, January 17, 2024.

The “pipeline problem” was particularly important at Stanford Law, where the administration was pushing for the school to improve its status nationally. Bayless Manning had been appointed dean in 1964 and had set his sights on transitioning from a regional law school, attended primarily by young men from wealthy West Coast families, to a top contender with Ivy League schools.²² He had been hired by President J. E. Wallace Sterling, who sought to build a “first-rate national university” in part by building out graduate programs like business, law, medicine, and engineering.²³ Seeking to compete with schools like Harvard, Yale, and Columbia, Sterling looked to the faculty of these schools to find new leadership for his own university. Indeed, Manning himself came to Stanford from Yale.²⁴ As dean, Manning pushed for the expansion of the faculty and new, independent buildings for the law school with a better library.²⁵ The emphasis on attaining prominence within the rankings of legal education meant an increased focus on admitting only the best students. However, this focus, combined with the “pipeline problem,” meant that the number of Black students at Stanford Law in the late 1960s remained quite small.

In the spring of Payton’s final year at Stanford, the political climate on campus became turbulent. Tensions peaked on April 3, 1968, when a group of students seized a university building in protest of the Vietnam War and the “imperialistic oppression of the peoples of the Third World.”²⁶ The following day, Martin Luther King Jr. was assassinated in Memphis, Tennessee.²⁷ As the news of his murder spread, riots broke out across the country.²⁸ Just one week later, the Academic Council of the Faculty Senate adopted a resolution intended to quell the unrest on campus. This resolution had several goals: (1) to double the enrollment of minority students within two years through “accelerated recruitment and financial aid programs”; (2) to double the employment of minority workers within one year; (3) to establish a pilot program in the upcoming academic year for ten minority students who would not otherwise be admitted; and (4) to create supplementary educational opportunities to ensure

²² Letter from Dean Manning to President Sterling, February 3, 1964, SC216, box A39, folder 10, Sterling (J. E. Wallace) Papers, Green Library Special Collections, Stanford University.

²³ Manning to Sterling, February 3, 1964.

²⁴ Manning to Sterling, February 3, 1964.

²⁵ Manning to Sterling, February 3, 1964.

²⁶ Unlabeled memo to Assistant Provost Simmons, n.d., SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University. Executive Committee of the Black Student Union, “BSU Statement,” *The Colonist* 1, no. 1 (1969): 2.

²⁷ *King Encyclopedia*, s.v., “Assassination of Martin Luther King, Jr.,” accessed June 25, 2023.

²⁸ *King Encyclopedia*, “Assassination of Martin Luther King, Jr.”

the pilot program's success.²⁹

A new committee was created to oversee the new admissions criteria for “disadvantaged youth” and to coordinate the tutoring programs.³⁰ The committee was also asked to consider the addition of Black history to the standard curriculum. A memo addressed to the Faculty Senate stated: “The activities of the last ten days concerned with racial problems at the University have mainly involved the students and the administration of the University. The result has been a commitment by the administration, endorsed by the faculty, to make a large increase in the minority group population at Stanford.”³¹ The provost, Richard Lyman, also sent a memo to the Senate’s Academic Council, in which he confirmed the school’s commitment to a “systematic and sustained effort” to address racial issues on campus, both through the creation of the new pilot program and by increasing recruitment efforts and financial aid opportunities for minority students.³² Lyman wrote:

We have had brought home to us the deep and bitter alienation of our black students from the University, as from society at large. It would have been easy to respond to the outward signs of that alienation with resentment and rigidity . . . We have much to learn from our black students and much to teach them. We face a challenge to the capacity for growth of each member of the University, young and old, black and white. We must find ways to move with the urgency required for these times. We must do so without impairing those values that are essential to the maintenance of a true university at any time. . . Stanford is entering a new era. It will not be easy. It will require extraordinary financial efforts and it will force all of us to reevaluate intellectual and educational positions we have long taken for granted. The one point on which I have complete confidence is that as we succeed we will be building an even greater University.

Enrollment of minority students did begin to increase, albeit slowly. By the end of the fall quarter of the following academic year, 1968–69, university-wide enrollment of Black and Mexican-American students had grown to 291 from 175 (nearly halfway to the goal set in the previous academic council resolution), and eleven students had been admitted to the pilot program—

²⁹ Resolution of the Academic Council, April 11, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

³⁰ Proposal for the Creation of a Committee of the Academic Council on Racial Problems, April 16, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

³¹ Proposal for the Creation of a Committee, April 16, 1968.

³² Letter from Provost Lyman to Members of Academic Council, April 17, 1968, SC0193, box 1, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

eight Black and three Latino.³³ Provost Lyman made it clear that the goal of increasing minority enrollment was to be pursued at both the undergraduate and graduate levels, and that each school or department should be proactive in recruiting students.³⁴ Accordingly, the law school established its own minority program, which allowed students to take four years (rather than the usual three) to earn their LL.B., and had already enrolled three students.³⁵ Leroy Bobbit was among the first to take part in the four-year program.

The university administration, including Lyman, was not—and could not—be a neutral actor. The university's leadership was comprised of white men who directly profited from the institution's reputation and prestige.³⁶ They relied on donations from alumni as well as respect from the academic and professional community for survival. But the political unrest and social tensions on campus also tarnished the school's reputational value. Realpolitik calculations of the 1960s, especially following the murder of Martin Luther King Jr., required a public realization of the homogeneity and gatekeeping that dominated educational institutions, especially elite ones. Otherwise, Stanford risked losing its standing as an enlightened and sophisticated university. Still, the proposal for increasing minority presence on campus proved inadequate. The small steps taken by the administration failed to appease the student body and calls for increased diversification continued.

In February 1969, at a noon rally in White Memorial Plaza with approximately six hundred “quiet, attentive” attendees, Lyman was presented with a list of demands made by the Black Student Union, which had been established two years prior in 1967.³⁷ The demands included increased admission of minority students—with Black students serving as admissions

³³ Stanford University News Service, December 3, 1968, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

³⁴ Letter from Provost Lyman to Members of the Stanford Faculty, January 27, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

³⁵ Lyman to Members of the Stanford Faculty, January 27, 1969. See more on the establishment of this program below.

³⁶ Deborah Rhode, *In Pursuit of Knowledge: Scholars, Status, and Academic Culture* (Redwood City, CA: Stanford University Press, 2006), 6. Rhode has explained why reputation is so important to administrators and faculty at elite institutions: “Desires for recognition shape much human behavior, but they are particularly pronounced in American academic settings. The nation’s competitive culture reinforces a preoccupation with rankings. And higher education attracts individuals with especially strong needs for achievement. Those who end up in faculty and administrative leadership positions are individuals who, by definition, have done well in competitive educational settings and who value the form of recognition that academic reward structures provide. By the same token, once these high achievers become academics, their status is in part derivative; their standing depends to some extent on the prestige of their employers. Almost nine out of ten surveyed faculty report that the reputation of their institution or department is ‘important’ or ‘very important to them personally.’ There are tangible as well as psychological reasons for that concern; faculty salaries are higher and teaching loads are lower in prestigious institutions. The vast majority of academics are understandably invested in their schools’ rankings, however imperfectly measured.”

³⁷ Stanford University News Service, February 5, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

coordinators for each graduate school—and the addition of Black history to the curricular offerings.³⁸ Students attended rallies off campus too. In nearby San Francisco, “Free Huey” rallies were being held by the Black Panther Party in support of their leader Huey Newton, who was serving a fifteen-year prison sentence after being convicted of voluntary manslaughter.³⁹

On April 4, 1969 (the first anniversary of Martin Luther King Jr.’s assassination), Provost Lyman offered his remarks to the community: “On this day last year, forces were set in motion which accelerated the movement of this University down a road along which it had barely begun to walk. . . . The progress Stanford has made in minority group relations brings tension in direct proportion to its success. In the short run, at least, it will be very hard to tell victory from defeat.”⁴⁰ Lyman would become the university’s president the following school year, in the fall of 1970.⁴¹

The Late 1960s: Thelton Henderson, the Minority Program, and the Manning Plan

It was 1968 when Thelton Henderson stepped into this situation, with the hope of increasing minority admissions nearly fourteen years after *Brown*.⁴² Henderson had moved west from Louisiana to attend the University of California at Berkeley, where he earned a degree in political science in 1956 and his LL.B. in 1962.⁴³ He had served as the head of the Legal Aid Office in East Palo Alto since 1966, where he employed Stanford students who spoke often of Sallyanne Payton.⁴⁴ Henderson was “aghast” after learning that Stanford Law had not graduated any Black students until 1968.⁴⁵ Henderson scheduled a meeting with Bayless Manning and Keith Mann (Associate Dean), respectively. Manning and Mann offered Henderson a position as an associate dean, with the intent of diversifying the student body. Dean Manning was under considerable pressure from white students to bring Black students and faculty to the law school; several of the students personally advocated for

³⁸ Ray Davis, “BSU’s Unanswered Demands,” *The Colonist* 2, no. 1 (1969): 2.

³⁹ *Encyclopedia Britannica*, s.v., “Huey P. Newton,” accessed June 25, 2023. Newton’s conviction was overturned in 1970. “Rally a Success,” *The Colonist* 1, no. 4 (1969): 1.

⁴⁰ Stanford University News Service, April 4, 1969, SC0193, box 7, folder 8, Academic Council Records, Green Library Special Collections, Stanford University.

⁴¹ “History of Stanford Presidents,” Office of the President, Stanford University, accessed June 25, 2023.

⁴² Thelton Henderson Interviews, 2012, SC0932, Stanford Historical Society Oral History Program, Green Library Special Collections, Stanford University.

⁴³ Henderson was one of only two Black students in his class at Berkeley Law.

⁴⁴ Henderson Interviews, 2012.

⁴⁵ Henderson Interviews, 2012.

Henderson to be hired.⁴⁶ Henderson accepted the offer, albeit on a half-time basis so that he might continue his work at Legal Aid.⁴⁷ Yet, Henderson quickly “realize[d] there’s no such thing as two half-time jobs, and [he] was sort of working, killing [him]self trying to do both jobs.”⁴⁸ After one year, he left his job at Legal Aid and came to Stanford full time.

Henderson’s duties as associate dean included implementing a recruiting program aimed at Black, Latino, and Native American students; he was also the Dean of Student Affairs, overseeing the budgets and activities of student organizations, and served on the Minority Employment Committee.⁴⁹ In addition to these duties, Henderson found time to do courtroom supervision for an eight-unit course on Juvenile Law, offer a seminar on the defense of the criminally insane, and teach civil procedure.⁵⁰

Henderson was officially responsible for the law school’s “legal education opportunity programs,” but played many roles on campus.⁵¹ When a Puerto Rican student from New York came to Henderson and said he was considering dropping out, Henderson “got him drunk and started loosening up, and took him home, and by that time, he was feeling a little better.”⁵² He wrote letters to prospective students, such as a note written to Miss Lilia Nolina, who had requested information about the school’s minority program: “Unfortunately we have no written information about our program for minority students, but if I can answer any specific questions, please feel free to contact me.”⁵³ According to one of his students, Tyrone Holt, Henderson “was the entire recruitment program. . . Thelton was responsible for me getting here.”⁵⁴ Henderson was a source of comfort for his students, a task he would later remember fondly: “I felt I’d been through some things that you younger people hadn’t, and wanted to share it, about how you deal with racism and feelings of alienation. And I loved sharing that with you, and I loved helping you get through those

⁴⁶ Wald interview, May 16, 2024.

⁴⁷ Henderson Interviews, 2012,

⁴⁸ Henderson Interviews, 2012.

⁴⁹ Henderson Interviews, 2012, Letter from Thelton Henderson to President Pitzer, May 16, 1969, SC0154, box 2, folder 28, Black Affairs Records, Green Library Special Collections, Stanford University.

⁵⁰ Henderson, Stanford Historical Society Oral History Program. Juvenile Law became the foundation of Stanford Law’s clinical program as it exists today, pioneering the eventual ubiquity of clinical education at law schools across the country. Henderson later served on the first board of the Community Law Clinic.

⁵¹ Stanford Law School Student Handbook (1968).

⁵² Henderson, Stanford Historical Society Oral History Program.

⁵³ Letter from Thelton Henderson to Lilia Nolina, August 12, 1970, SC0154, box 1, folder 29, Black Affairs Records, Green Library Special Collections, Stanford University.

⁵⁴ Henderson, Stanford Historical Society Oral History Program.

psychological motions and trying to do things to counteract it and trying to be creative about it. I'd never done it before, so I was learning as I went."⁵⁵

Because of Henderson's efforts, Stanford Law was, in many ways, more successful than other elite schools in building a Black community. Henderson went out of his way to take personal care of everyone and was, by far, the most integral player in the desegregation of Stanford Law. His students and colleagues alike remember him as soft spoken, but extremely persuasive and well respected.⁵⁶ He was empathetic and caring, and extremely supportive of every Black student, often interceding on their behalf with the financial aid office or a professor. One student recalled, "We always knew we always had a friend in Thelton . . . he treated us like family."⁵⁷ Henderson was also unusually effective, maneuvering with the faculty and Dean Manning to implement important changes, usually so smoothly that others were happy to go along with his plans.⁵⁸ Henderson had considerable support from several members of the law school faculty, especially those who had been appointed in the early to mid-1960s.

Having set his sights on increasing minority enrollment, Henderson faced several challenges: increasing the number of applicants, determining the proper admissions standards, convincing admitted students to enroll, and ultimately ensuring that those students succeeded once they got to Palo Alto. As a recruiter, Henderson used his contacts around the country to find candidates—a difficult task because "those who did come down the pipeline, especially if they were from the East, were also eligible to go to Harvard and Yale, and that was their preference."⁵⁹ Other students were reluctant to attend Stanford due to the lack of fellow minority classmates. Henderson would fly to various schools around the country to conduct interviews with potential Black admits "with the profile that [he] thought would allow them to succeed in a school like Stanford with its rigorous courses."⁶⁰ Henderson's "biggest recruiting ploy" was to invite students from the East Coast to visit Stanford's campus in April, when cities like New York, Boston, and Washington D.C. were still cold and snowy, and "walk them down Palm Drive with all the palm trees

⁵⁵ Henderson, Stanford Historical Society Oral History Program.

⁵⁶ Wald interview, May 16, 2024. Harold Boyd, interview with author, March 10, 2024. Dianne Millner, interview with author, April 30, 2024.

⁵⁷ Millner interview, April 30, 2024.

⁵⁸ Wald interview, May 16, 2024.

⁵⁹ Henderson, Stanford Historical Society Oral History Program.

⁶⁰ Henderson, Stanford Historical Society Oral History Program.

and sit out in the sun.”⁶¹ The substantial travel costs required for recruiting were funded by two law school alumni, Miles L. Rubin and Victor Palmieri, who gave roughly \$500,000 to support Henderson’s recruiting commitments in addition to a third-year student’s tutoring salary.⁶²

Henderson examined every application, considering people who could succeed in a variety of ways beyond grades and test scores. Looking for abilities such as leadership and adaptability, Henderson often weighed unusual criteria, such as community organizing or prior work experience. Manning had granted Henderson a great deal of latitude to build a more diverse class. However, Henderson was acutely aware that many of these students would face exams at Stanford Law School that would be different than anything they had ever encountered before. Accordingly, Henderson sought not only to get Black students into Stanford Law, but also to make sure that they thrived there. He knew that they would be competing with classmates who had attended elite undergraduate institutions and considered it part of his duties to make sure the Black students whom he admitted would be equipped to do so.⁶³

Thus, Henderson also played a critical role in the creation of the abovementioned four-year minority program, which he proposed to the dean and law faculty almost immediately after his arrival. Meant to offer “access to an increased number of minority students within the law profession,” the program provided “disadvantaged candidates” with an extra year of study and the chance to “avoid undue pressure” while completing their coursework.⁶⁴ The idea for the program came from Henderson’s own personal experience at Berkeley, where he had turned in a “disastrous” exam.⁶⁵ Henderson attributed his own failure to inadequate previous education at all-Black schools and a lack of academic support during his first year at college. He believed the four-year program would benefit Black law students “by breaking the first year into two years, slowing it down. . . They may not have [had] the background to get it immediately.”⁶⁶ During the first two years, students would receive tutoring and “get the hang of it,” with the opportunity to graduate in three years by

⁶¹ Henderson, Stanford Historical Society Oral History Program. This tactic is still quite successful today.

⁶² Henderson, Stanford Historical Society Oral History Program. The same two alumni gave a large donation to start the Spaeth fund (see below).

⁶³ Wald interview, May 16, 2024. Professor Wald worked closely with Thelton Henderson on these issues and had even worked with him in East Palo Alto prior to his hiring.

⁶⁴ Affirmative Action Program, n.d., SC0154, box 1, folder 9, Black Affairs Records, Green Library Special Collections, Stanford University.

⁶⁵ Henderson, Stanford Historical Society Oral History Program.

⁶⁶ Henderson, Stanford Historical Society Oral History Program.

attending summer school.⁶⁷ The program received national attention when it was introduced in 1968, and by September 1969, four students were enrolled in the minority program.⁶⁸

In the end, only three classes of students went through the law school's four-year program. Although Henderson believed the program did achieve its goals, "it was psychologically bad for the students. They didn't like it. We worked very hard to construct it in a way that they weren't identified and the people that went through it weren't personally identified, but within the minority community, they didn't like it. They felt second-class citizens. They resented it. They thought they didn't need it."⁶⁹ The social and psychological stigma attached to the program only reinforced the negative perception of minority students on campus and further disconnected them from the campus community.⁷⁰ The program had procedural disadvantages, too; students could be forced to drop classes halfway through the semester if their grades were not up to par, and could not opt out of the program in the first two years.⁷¹ Henderson anticipated that the students' "gratefulness for getting into Stanford would outweigh their resentment for getting in this way. That was our hope. It turned out not to be that balance that we hoped for."⁷² At the same time, minority recruitment was gaining momentum, "more students were coming through the undergraduate pipeline," and students were being admitted that did not require the transition period.⁷³ The four-year minority program was abolished in the spring of 1971.⁷⁴

Indeed, more minority students were coming to Stanford, with 152 Black students applying to Stanford Law for entry in the 1970–71 academic year.⁷⁵ Of these, thirty-two were admitted (a figure "based largely on budgetary considerations"); nineteen accepted enrollment; and eleven ultimately registered to attend.⁷⁶ At that time, the application did not have any questions about a student's race, so Henderson identified Latino students primarily by their names and Black students through their extracurriculars or undergraduate

⁶⁷ Henderson, Stanford Historical Society Oral History Program.

⁶⁸ Bob Johnston, "Ill-Fated Minority Program Abolished," *Stanford Law School Journal* 1, no. 10 (1971): 1, 9. "September 1969 Registration," *Stanford Lawyer* 5 (Spring 1970).

⁶⁹ Henderson, Stanford Historical Society Oral History Program.

⁷⁰ Johnston, "Ill-Fated Minority Program Abolished," 9.

⁷¹ Johnston, "Ill-Fated Minority Program Abolished," 9. The inability to opt out of the program was Henderson's idea.

⁷² Henderson, Stanford Historical Society Oral History Program.

⁷³ Henderson, Stanford Historical Society Oral History Program.

⁷⁴ Johnston, "Ill-Fated Minority Program Abolished," 9.

⁷⁵ Bob Johnston, "Minority Admissions," *Stanford Law School Journal* 1, no. 2 (1970): 1.

⁷⁶ Johnston, "Minority Admissions," 1.

institution.⁷⁷ The law school still had the least number of Black entering students of any graduate school at Stanford, compared with sixty-two students in the humanities and sciences, twenty-two at the business school, twenty each at the education and engineering schools, and fifteen at the medical school.⁷⁸ Nonetheless, graduate programs were accepting more minorities: “Black and [Latino] students are coming to Stanford in greater numbers for graduate work and have a lower ‘drop out’ rate from the University than whites.”⁷⁹

Henderson confessed that he “didn’t feel too good” about the number of minority students enrolled until he contacted other schools for comparison figures.⁸⁰ Chicago had admitted ten minority students total; Yale, twenty; and Harvard, sixty.⁸¹ The comparison did not assuage everyone; one student, Ed Hayes, proclaimed the number was “still deplorable” and “not significant enough to represent any commitment or particular interest on the part of the Administration in making legal education possible to non-white students.”⁸² By the end of the year, some students were threatening to leave the school and transfer elsewhere, citing inadequate admissions policies leading to only sixteen Black students in total enrolled in the 1971–72 school year.⁸³ Minority students demanded the administration establish a quota of at least thirty minority students in the entering class.⁸⁴

Although Dean Manning rejected the quota, he agreed to institute a new admissions policy whereby a minimum predicted GPA (PGPA) would be established. The PGPA concept had been first considered a decade earlier. In a 1958 memo from the previous dean, Carl Spaeth, to the law faculty, Spaeth had inquired whether it would be “feasible to develop probability tables, combining LSAT and [undergraduate] GPA figures which would furnish a basis for predicting law school success of a particular student from a particular

⁷⁷ Johnston, “Minority Admissions,” 8.

⁷⁸ Stanford University News Service, December 3, 1970, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University. Minority Graduate Enrollment, 1968–70, March 9, 1971, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

⁷⁹ Minority Graduate Enrollment, 1968–70, March 9, 1971, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

⁸⁰ R.P.J., “20 Minority Students to Enter,” *Stanford Law School Journal* 2, no. 1 (1971): 1.

⁸¹ R.P.J., “20 Minority Students to Enter,” 1. Harvard’s enrollment numbers were proportionally similar to Stanford’s.

⁸² R.P.J., “20 Minority Students to Enter,” 1.

⁸³ R.P.J., “20 Minority Students to Enter,” 1.

⁸⁴ “Minority Admission Problem Brewing a Long Time,” *Stanford Law School Journal* 2, no. 15 (1972): 2.

school.”⁸⁵ Dean Manning thereafter introduced a bar for admission based on the lowest PGPA of the previous year’s admits; any minority applicants above this minimum PGPA would be “substantially automatically” admitted. Significantly, he also removed the institutional limits placed on minority scholarships and financial aid.⁸⁶

The idea for this new policy was also Henderson’s (although it would later come to be known as the Manning plan). In a prior conversation with Dean Manning, who took the position that the law school didn’t discriminate against any candidate, but “welcome[d] any minority student, any student who has a 3.7 GPA and a 90-something percentile LSAT score,” Henderson asked to see the lowest scores and GPA of those students already admitted—suspecting that some “legacy” admits would have less than ideal figures.⁸⁷ In his later recollections, Henderson said, “I think their hearts were in the right place. They just didn’t know quite how it should be done. There weren’t any models out there to tell them.”⁸⁸ The Manning plan was adopted, deemed successful, and has remained in place for decades, albeit in varying forms.⁸⁹

Yet, the four-year minority program at the law school perpetuated prejudice against minority students as intellectually inept and academically inadequate. The program left its primary assumption unsaid: that minority candidates could not handle the “pressure” of law school like white students. The program vindicated those among the university’s administration who believed that Black students were unqualified or incompetent. Furthermore, the program’s procedural deficiencies put minorities at an even further disadvantage. Still, Henderson’s personal background was certainly a strong influence on the structure of the program and his experience may have resonated with some students.

But even if the program was intended to aid these students, in effect it isolated and discredited them. Henderson’s belief that the students would be so grateful for their admission to Stanford that they would not be insulted by the aftermath was not only shortsighted, but deeply misguided. Nonetheless, Henderson’s tireless efforts to increase diversity were critical to the integration of the law school. Like so many other Black educators at elite institutions, Henderson was overworked, functioning not only as “the entire recruiting

⁸⁵ Memo from Carl Spaeth to Law School Faculty, October 2, 1958, SC0770, box 2, folder 4, School of Law Faculty Minutes and Committee Records, Green Library Special Collections, Stanford University.

⁸⁶ Bob Johnston, “Minority Students Threaten to Leave School,” *Stanford Law School Journal* 1, no. 10 (1971): 1, 10.

⁸⁷ Henderson, Stanford Historical Society Oral History Program.

⁸⁸ Henderson, Stanford Historical Society Oral History Program.

⁸⁹ It is unclear if this policy is still used today.

program,” but also as a professor, administrator, negotiator, and confidant.⁹⁰ Dedicated as ever, Henderson continued to take on duties in his quest to provide adequate support for Black students.

The implementation of the Manning plan solidified the role of statistics in minority admissions at Stanford. The use of data points in the law school's admissions process allowed the administration to claim its policies were neutral and meritocratic, preserving Stanford's reputation as a first-rate institution.⁹¹ But in reality, the Manning plan allowed the university to quell tensions while comprising no more than necessary—that is, [more than it already had for the children of important donors and alumni. While “substantially automatic” admission was a device used only for minority students, the minimum PGPA mirrored the lowest qualifications seen among legacy admits, matching the law school's threshold for students deemed suitable for Stanford Law. The policy may have been facially meritocratic, but the university failed to acknowledge that its statistical approach could not divorce educational attainment from socioeconomic status. In a practice that persists to this day, Stanford admits students who test well and then boasts its “cosmetic diversity.” The Manning plan amounted to what Lani Guinier has described as an admission policy that “merely mimic[ked] elite-sponsored admissions practices that transform[ed] wealth into merit, encourage[d] over-reliance on pseudoscientific measures of excellence, and convert[ed] admission into an entitlement without social obligation.”⁹²

The Early 1970s: Affirmative Action and BLSA

As the Manning plan was introduced, a newly created university-wide affirmative action program sought to increase the number of minority faculty. An affirmative action report at the time identified several key areas for improvement: the racial composition of the workforce, the racial composition of applicant flow, the employment and selection process, promotion practices, termination and layoff procedures, apprenticeship and training programs, and

⁹⁰ Rhode, *In Pursuit of Knowledge*, 105. This phenomenon has been examined by many scholars, including the prolific Deborah Rhode: “[A] small proportion of faculty members perform the vast majority of service. Women and minorities are disproportionate among them. For commendable reasons, institutions want diversity of backgrounds on any important decision-making body. But in many fields, a shortage of diversity among those eligible to serve leaves women and minorities deluged with service obligations. These groups find it particularly difficult to evade the draft because they lack ready replacements and are sympathetic to the argument that decision-making bodies should not be all-white or all-male. But no good deed goes unpunished. . . . When such burdens are coupled with the disproportionate advising and mentoring obligations that fall to underrepresented groups, the price is often paid in scholarly productivity. Yet academic institutions seldom adjust teaching and research expectations for those who provide exceptional service.”

⁹¹ Rhode, *In Pursuit of Knowledge*, 9. Rhode argued that in a phenomenon known as “upward drift,” institutions with less prestige are under a great deal of pressure to achieve “legitimacy” and as a result, tend to “imitate rather than innovate and to replicate the priorities of more prestigious universities rather than to develop distinctive strengths.” Thus, Stanford's policies have the potential to impact not only students on its campus, but also at schools who look to these institutions for guidance.

⁹² Lani Guinier, *The Tyranny of the Meritocracy: Democratizing Higher Education in America* (Boston: Beacon Press, 2016), 23.

overall faculty representation.⁹³ The report admitted: “The data supplied on minority faculty can be summarized by saying that the numbers have grown but are still small. The prospect for the future is that the numbers will grow further, but slowly and unevenly, and that in the immediately foreseeable future they will remain small.”⁹⁴

At the law school, there was only a single Black professor out of thirty-eight total faculty; the only other Black employees were a technician, a clerical worker, and an office manager.⁹⁵ This small figure was attributed to a low number of eligible candidates “trained for university teaching,” a problem declared especially troublesome for “the relatively small number of colleges and universities at the apex of educational quality.”⁹⁶ Although the law school did submit a minority hiring plan in December 1970, claiming to be willing to “work in any way possible to meet affirmative action goals although no openings are anticipated due to budget conditions,” the hiring plan itself was left blank.⁹⁷

Nevertheless, the growing presence of Black students and faculty led to the creation of Black organizations. The Black Law Students Association (BLSA) was established in the 1970–71 academic year, “formed to meet the special needs of Blacks attending the Law School as well as the needs of the surrounding Black community. These needs inter-relate because, as it presently exists, the traditional white educational apparatus tends to overlook illiterate Blacks and to train literate Blacks to ignore the problems of their own people.”⁹⁸ James Ware became its first president.⁹⁹ Students on campus began to openly discuss the prejudice and homogenization they were experiencing. Willie Newberry, a graduate student in sociology and cochairman of the BSU, declared: “Stanford University is racist to the core.”¹⁰⁰ Another student wrote in the Black newspaper:

⁹³ Affirmative Action Program, n.d., Black Affairs Records.

⁹⁴ Affirmative Action Program, n.d.

⁹⁵ Work Sheet for Minority Hiring Plans, December 15, 1970, SC0154, box 1, folder 9, Black Affairs Records, Green Library Special Collections, Stanford University. I was unable to positively identify the name of this Black professor.

⁹⁶ Affirmative Action Program, n.d.

⁹⁷ Work Sheet for Minority Hiring Plans, December 15, 1970.

⁹⁸ Stanford University, Stanford Law School Student Handbook (1970).

⁹⁹ Stanford Law School Student Handbook (1970). That same year, James Ware won the moot court competition, which was judged by Justice Thurgood Marshall. “Jim Ware Sweeps Kirkwood Competition,” *Stanford Law School Journal* 1, no. 10 (1971): 1. In 1990, Ware was nominated by President George H. W. Bush to the bench for the Northern District of California, on which he served until 2012. His daughter, Carlie, is now a beloved member of the Criminal Defense Clinic at Stanford Law, where she works as a supervising attorney.

¹⁰⁰ Stanford University News Service, May 12, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

Stanford without question is an instrument of oppression. Hence, Black people at Stanford must recognize that this University will at every point of our stay attempt to reinforce the notion of individuality. It will in the same breath reinforce the denial of our peoplehood, our Blackness. Stanford supports the values and experiences of White America. It does not, nor can it, support the Experimental Communitarity of Blackness. . . . Make no mistake about it, part of Stanford's job is to get our Blackness. Also, recognize that, if the University believed it could not destroy the Experimental Communitarity supportive of our Blackness (a process they mistakenly call education), there wouldn't be a single Black here. What I'm trying to say is, if Stanford did not believe that it could control and reshape our minds to the point where we really believed that (evidenced by our presence here) we must be the smartest niggers in the country, i.e. the Black intellectual elite, which by the oppressor's psychology means we are "unique" and "different" from all those other Black people, we would not be here. Once we believe this, that is, once our Stanford education is accomplished, Stanford will have stolen our Blackness.¹⁰¹

The campus was, at times, physically unsafe for minority students as well. According to a newspaper that served as "The Organ of Black Students of Stanford University," in April 1970 the police arrested Black students on campus because the university "felt that its property was in danger and chose to defend it with guns, mace, and sticks."¹⁰² The Black student who authored the article warned: "Anyways bloods should watch out for these motherfuckers, they all have the same piggish mentality. They don't think we belong here and you never know what kind of humbug might go down with all these racist fools with guns running around this campus."¹⁰³ In 1971, William Shockley, a Stanford physics professor and Nobel laureate, openly advocated for the sterilization of illiterate Blacks.¹⁰⁴ Thus, BLSA became an important source of community for students who felt isolated or endangered at Stanford. Furthermore, BLSA was "dedicated to ending the isolation between Black law

¹⁰¹ Wade Nobles, "Stanford's Gonna Steal Your Blackness," *The Colonist* 2, no. 15 (1970): 4. Lani Guinier, Michelle Fine, and Jane Balin, *Becoming Gentlemen: Women, Law School, and Institutional Change* (Boston: Beacon Press, 1997), 100–1. Guinier spoke eloquently on this same concept and the importance of narrative in overcoming homogenization: "I began to comprehend once again what W. E. B. DuBois eloquently described at the dawn of this century as the twoness, the double identity of being black and American. For me, there was a threeness because I also was a woman. As an outsider 'within the veil,' I, like DuBois, saw myself revealed through the eyes of others. . . . Ours is a story about imprisoned and silenced by the status quo. Ours is a story of being admitted into Wonderland but only on condition that we for all practical purposes become something we are not. Our stories, though, are not monolithic. Nor are they monotone or monologue. Our stories help form a conversation in which we can define and redefine the world in terms that accommodate different perspectives and experiences Legal education is strengthened by including those who were once left out."

¹⁰² Cinque, "The Season of the Pigs," *The Colonist* 2, no. 17 (1970): 1.

¹⁰³ Cinque, "The Season of the Pigs," 1.

¹⁰⁴ Stanford University News Service, May 12, 1971, Academic Council Records.

students and Black ghetto residents.”¹⁰⁵ In February 1970, a Berkeley man was indicted for manslaughter after shooting a Black youth for “stepping on his lawn”; a San Francisco police station was bombed.¹⁰⁶ The general unrest in the Bay Area and across the country made community engagement a priority for Stanford Law students.

The university administration recognized the gravity of racial issues during this time; President Lyman proclaimed that “[r]ace remains America’s most important domestic problem,” and called it “dangerous and insidious” to equate the effort to diversify the student body with lower admissions standards.¹⁰⁷ He went on to add: “If we’re going to mean business about education for black [and other minority] people, we’re going to have to mean business at every level of education. . . . This kind of institution in particular should be concerned about postgraduate and professional education to enable disadvantaged minority people to get into the professions and get their fair share of the skills and equipment to deal with their problems.” Lyman blamed a lack of funding for minority students to account for the slow increase in minorities and pushed to continue limiting admissions to only those students who could be financially supported—a policy Lyman claimed was reflected by the high retention rates for minority students at Stanford.¹⁰⁸ Moreover, the president saw increased tensions on campus as a catalyst for improvement: “This is fourth consecutive academic year in which we have found ourselves in often angry discord over issues raised by minority members of the Stanford community. This discord may actually signify progress: as the number of minority students, staff, and faculty continues to grow, so does the number of persons who perceive the ways in which Stanford might do better.”¹⁰⁹

While Lyman claimed to “mean business,” his attempt to explain away the very real threats Black students faced as no more than productive dissent

¹⁰⁵ Stanford Law School Student Handbook (1970).

¹⁰⁶ The Tasmanian Devil, “Bulletin Board,” *The Colonist* 2, no. 13 (1970): 4.

¹⁰⁷ Stanford University News Service, January 6, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University. Not everyone saw race as a serious issue, however. A Board of Visitors survey sent to law school alumni in 1971 reported: “The typical graduate is male, married, white and Protestant. He grew up in California, probably in Los Angeles County. He is a Republican and considers himself moderately liberal. His father was either in one of the professions or in business management and sales.” Thirty-three percent of responding alumni said they would give no weight to ethnic or racial diversity in the admissions process; only 16 percent thought diversity merited considerable weight as a factor. When asked for the “single most responsible cause of student unrest,” less than 1 percent selected “racism in America.” Most respondents chose “students perceive actual defects in American society, not necessarily on the campus,” at 38 percent. Indeed, many at Stanford saw the campus as utopia, free from worldly, mundane issues like racial violence and discrimination. “Responses to the Board of Visitors Survey of the Stanford Law School Alumni,” *Stanford Lawyer* 11 (Spring 1972).

¹⁰⁸ Stanford University News Service, January 6, 1971.

¹⁰⁹ Stanford University News Service, July 8, 1971, SC0193, box 18, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

intentionally ignored the danger presented by their mere presence on campus. Furthermore, Lyman looked to Black people to bear the burdens of integration and suffer the costs of overcoming the university's discriminatory structures, including admissions practices that disproportionately benefited white and/or wealthy students, underrepresentation in faculty and leadership, and inadequate academic and social support systems. This challenge was intensified by the necessity of battling these larger systemic issues while simultaneously grappling with their day-to-day impacts, striving to effect change from within the system as they sought to transform it entirely. The administration turned to excuses that would become familiar—a lack of funding and a lack of candidates. The affirmative action report's allegation that the latter was especially problematic “at the apex of educational quality” revealed the underlying assumption that even those candidates who were qualified were often still inadequate for elite universities like Stanford. While the law school professed to be willing to “work in any way possible” to diversify, the blank squares of its minority hiring plan would become a perfect metaphor for the empty promises of Stanford's affirmative action program in the 1970s—pretensions of equality and opportunity that remained illusory and unsubstantiated. Organizations like BLSA must have been incredibly important to Black students during these times, offering fora for discussion and the support of a community in the face of mental, emotional, and physical violence. These organizations allowed Black people to look out for one another, on and off campus.

Despite many other changes in the university's administration, Dean Henderson stayed on at the law school. Henderson hoped to institutionalize his diversity efforts, which were finally beginning to succeed, and feared a potential drop in the admission and enrollment statistics if he were to leave.¹¹⁰ Henderson was still facing resistance from some of the law school faculty, too. When approached by a small group of professors and asked about the increasing percentage of minorities in the entering class, Henderson expected to be congratulated. Instead, they asked: “Well, don't you think that's enough? That's about there. . . Let's not keep going.”¹¹¹ While Henderson recognized that he may not be able to increase the proportion of minorities further (students of color in the class of 1975 comprised roughly 22 percent), he sought to prevent a backslide in admissions policies.¹¹²

¹¹⁰ This prediction would ultimately prove correct, with a backslide beginning when Henderson left his position.

¹¹¹ Henderson, Stanford Historical Society Oral History Program.

¹¹² Henderson, Stanford Historical Society Oral History Program. People of color make up approximately 44 percent of the author's class at Stanford Law (class of 2025).

In the spring of 1972, minority students demanded again that the administration establish a quota system. This time the students pressed for fifty minority students in the entering class, which would contain 160 students in total.¹¹³ This quota was to be comprised of twenty Black students, twenty Latinos, and ten Native Americans.¹¹⁴ The faculty again refused to establish a quota, instead favoring the continuation of the Manning plan—which guaranteed “substantially automatic” admission for any minority applicant with a PGPA above that of the lowest nonminority student admitted in the prior year.¹¹⁵ The faculty also rejected the students’ demands for an outside consultant to evaluate the utility of the PGPA statistic and increased financial aid for minority students. Instead, a special committee was appointed, chaired by Professor William Cohen, to study and oversee Henderson’s discretion in administering the admissions process.¹¹⁶ The students believed the faculty created the special committee because they feared too many minority students would be admitted.¹¹⁷

While the class of 1975 did substantially increase minority representation at the law school by 53 percent over the previous year’s class, and 164 percent from the class of 1973, no quota was established.¹¹⁸ Four hundred and seventy-eight minority students applied; sixty-one were admitted; and twenty-nine enrolled in the fall.¹¹⁹ Dean Henderson was very pleased with this peak in admissions data, citing an increased number of minority applicants (one hundred more than the previous year) and a more flexible admissions formula.¹²⁰ But students like LaDoris Cordell, who gave a statement on behalf of BLSA, were “extremely, extremely dissatisfied with the number.”¹²¹

And the university was still ill equipped to offer sufficient support to these minority students once they arrived. The responsibility of challenging and dismantling discriminatory power structures—such as admissions policies, racism and violence on campus, housing discrimination, a limited number of institutional advocates, and social exclusion—often fell to minority students. By transferring the burden of activism to students and colleagues of color, white

¹¹³ “Minority Admission Problem Brewing a Long Time,” *Stanford Law School Journal* 2, no. 15 (1972): 2.

¹¹⁴ “Minority Admission Problem,” 2.

¹¹⁵ “Minority Admission Problem,” 2. By this time, the PGPA was accompanied by another admissions statistic known as the LQI.

¹¹⁶ “Minority Admission Problem,” 2. Cohen was one of the most conservative members of the faculty at that time (see below).

¹¹⁷ “Minority Admission Problem,” 2.

¹¹⁸ R.P.J., “Minority Admissions Greater Than Past Years,” *Stanford Law School Journal* 3, no. 1 (1972): 1.

¹¹⁹ R.P.J., “Minority Admissions,” 1.

¹²⁰ R.P.J., “Minority Admissions,” 1.

¹²¹ R.P.J., “Minority Admissions,” 1.

men in power allowed themselves the privilege of a recess from the discomfort and difficulties of Stanford's racial strife. They could publicly announce their achievements, asking: "Well, don't you think that's enough?" while claiming there were "no pressing problems" at a place like Stanford.

The law school's dean at the time, Thomas Ehrlich, had witnessed the development of diversity on campus. Appointed to the faculty in 1965, Ehrlich had arrived the same year as Sallyanne Payton.¹²² After only three years, Ehrlich gained tenure, and after another three years, was selected to succeed Bayless Manning as dean.¹²³ He had served on the Faculty Senate since 1968 and experienced the chaotic and politicized environment of Stanford's campus in the late sixties and early seventies.¹²⁴ Ehrlich saw a pressing need to diversify not only the student body but also the faculty, which was still all-white and all-male when he became dean in the autumn of 1971.¹²⁵ He declared: "[the] first priority [was] that we had to have at least a woman faculty and an African-American faculty before we went further."¹²⁶

In May 1971, Ehrlich (at that time still dean-designate) met with the Committee on Minority Affairs to discuss the "restrictive nature of the screening processes used by law faculties when choosing new colleagues."¹²⁷ Ehrlich was joined by Professor John Barton, who brought a list of forty prospective Black candidates for faculty positions, but emphasized "the minuscule body of lawyers from minority communities, much less academic lawyers from minority communities."¹²⁸ Barton remarked that many of the best candidates had other opportunities that may have greater appeal.¹²⁹ Ehrlich and Barton advocated for the creation of a Minority Faculty Leverage Fund, which would offer funding for the hiring of more diverse faculty at the law school and elsewhere

¹²² Ehrlich, Stanford Historical Society Oral History Program. Dean Ehrlich had a fascinating life. After graduating law school, he clerked with Learned Hand. During his move to Stanford, "[he] camped in Yosemite next to a guy with a beard who was taking a lot of pictures and taught us how to make tacos, who turned out to be Ansel Adams." He went on to be the provost of the University of Pennsylvania and the president of Indiana University. He was also the first president of the Legal Services Corporation in Washington, D.C. He is author, coauthor, or editor of fourteen books and holds five honorary degrees. Bill Gould remembers Thomas Ehrlich as one of the best deans Stanford Law has ever had, along with Paul Brest.

¹²³ Ehrlich, Stanford Historical Society Oral History Program. Ehrlich recalled that Manning announced at a faculty meeting that he was divorcing his wife and leaving the Law School at the same time—before he told his wife, who "never forgave him for this, understandably." Manning "went off to be the head of the Council on Foreign Relations in New York, left his wife, took up with a student from Stanford."

¹²⁴ Ehrlich, Stanford Historical Society Oral History Program.

¹²⁵ Ehrlich, Stanford Historical Society Oral History Program.

¹²⁶ Ehrlich, Stanford Historical Society Oral History Program.

¹²⁷ Committee on Minority Affairs Minutes, May 3, 1971, SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University.

¹²⁸ Committee on Minority Affairs Minutes, May 3, 1971.

¹²⁹ Committee on Minority Affairs Minutes, May 3, 1971.

on campus, and discussed recruitment strategies.¹³⁰ The Fund was eventually created (furnished with \$75,000) once the university administration conceded that “increasing the number of minority and women faculty members is a virtual precondition for durable success in many of our educational and other institutional goals.”¹³¹

The Mid-1970s: William B. Gould IV and the Spaeth Fund

Such was the state of affairs when Professor William Gould was invited to join the law school faculty in 1972.¹³² He had been a visiting professor at Harvard during the year prior.¹³³ Gould was hired at the same time as Barbara Babcock, Stanford Law’s first woman professor; both had the full support of Dean Ehrlich, who described them as “just splendid, first rate, extraordinarily capable people.”¹³⁴

Professor Gould didn’t know anyone at Stanford when he received a call “out of the blue” inviting him to visit the campus and meet with Associate Dean Mann as well as an alum.¹³⁵ Gould was “put off. . . and surprised by [the] rough-cross examination” he experienced during his interview, although he was later told it was simply “par for the course.”¹³⁶ Furthermore, during a lunch with Dean Ehrlich and a tax law professor, there was a confrontation about an article Gould had written in 1962.¹³⁷ But his excellent reputation as a labor lawyer and extensive body of written work spoke for itself, and “very quickly thereafter” Gould received an offer from Dean Ehrlich to join the faculty as a fully tenured professor.¹³⁸ Gould later recalled that the law school administration was under a great deal of pressure to hire a Black professor and

¹³⁰ Committee on Minority Affairs Minutes, May 3, 1971.

¹³¹ Memo from William Miller to Deans of Schools, Directors of SLAC and the Food Research Institute, and the Dean of Undergraduate Studies, September 30, 1971, SC0154, box 1, folder 10, Black Affairs Records, Green Library Special Collections, Stanford University. This would be equivalent to approximately \$575,000 today. Bureau of Labor Statistics, CPI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl>.

¹³² “News of the School,” *Stanford Lawyer* 10 (Spring 1972).

¹³³ Bob Johnston, “School Names First Black and Woman Profs,” *Stanford Law School Journal* 2, no. 7 (1971): 1.

¹³⁴ Johnston, “School Names First Black and Woman Profs,” 1. Barbara Babcock was a renowned expert in the study of women in the legal profession and was the first woman appointed to the permanent faculty at Stanford Law School. Before joining the Stanford faculty, she served as the first director of the Public Defender Service in Washington, D.C. (where she worked with Professor Wald, who initially recruited her to teach at Stanford). She also served as assistant attorney general for the Civil Division in the U.S. Department of Justice during the Carter administration and played a critical role in the appointment of many women and minorities to the federal bench, most notably the late Ruth Bader Ginsburg. Professor Babcock was the Judge John Crown Professor of Law, emerita, until her death in April 2020.

¹³⁵ William Gould Interviews, 2018, SC0932, Stanford Historical Society Oral History Program, Green Library Special Collections, Stanford University. William Gould, phone call to author, April 20, 2023.

¹³⁶ Gould, Stanford Historical Society Oral History Program.

¹³⁷ Gould, phone call to author, April 20, 2023.

¹³⁸ Gould, Stanford Historical Society Oral History Program; Gould, phone call to author, April 20, 2023.

a woman professor in the fall of 1972.¹³⁹ In his view, Stanford Law was “late to racial desegregation—no doubt about it” and the lack of minority faculty made the law school “inhospitable for Black and Latino students.”¹⁴⁰

Gould was not unfamiliar with the isolation of being the only Black lawyer in his community, however. He was the only African American student while in law school at Cornell and had grown up in an all-white neighborhood.¹⁴¹ Professor Gould was “relatively light-skinned,” which sometimes led to comments that would not otherwise be made in his presence, and posed a quandary for those at Stanford who wanted to hire a professor that “looked Black.”¹⁴² Dean Henderson, who became close friends with Professor Gould, noted: “Bill had a little different problem, because I think the word had to get out that he was, in fact, black, because visually it wasn’t that clear. I think some of the students weren’t quite sure what that meant, but very, very quickly, they knew that Bill was the real deal.”¹⁴³

On one occasion, at a meeting with the Board of Visitors that Professor Gould and some other faculty attended, a law school alum began to discuss the “superiority of the Indo-European people” and “opined emphatically that he felt Blacks were an inferior race” over dinner.¹⁴⁴ Gould “went out after him,” and the two men had a “very emotional back and forth confrontation.”¹⁴⁵ Dean Ehrlich championed Gould’s position and declared that “he wouldn’t tolerate” such racist views.¹⁴⁶ Ehrlich called a meeting of the faculty where he made a public statement reprimanding the discriminatory remarks.¹⁴⁷

At other times, it was fellow faculty members who were hostile. Professor William Cohen, who had chaired the special committee overseeing Henderson’s

¹³⁹ Gould, phone call to author, April 20, 2023.

¹⁴⁰ Gould, phone call to author, April 20, 2023. Stanford hired its first Latino professor, Miguel Mendez, in 1977. Professor Mendez came to Stanford following a public interest litigation career as a public defender in Monterey County, deputy director of California Rural Legal Assistance Inc., and staff attorney for the Mexican American Legal Defense and Educational Fund. He played a crucial role as a trailblazer of clinical legal education, which began at Stanford in the 1970s (cf. note 48). He was well known as a leading authority on both the federal and California rules of evidence. After retiring in 2009, Professor Mendez joined the law faculty at the University of California, Davis, School of Law. He continued to serve as the Adelbert H. Sweet Professor of Law, emeritus, at Stanford until his death in May 2017.

¹⁴¹ Gould, phone call to author, April 20, 2023. Bob Johnston, Ed Firestone, Pete Shapiro, and Jim Tune, “William Gould: A Labor Lawyer, A Black, A Boston Red Sox Fan,” *Stanford Law School Journal* 3, no. 7 (1972): 5.

¹⁴² Gould, phone call to author, April 20, 2023.

¹⁴³ Henderson, Stanford Historical Society Oral History Program.

¹⁴⁴ Henderson, Stanford Historical Society Oral History Program. Gould, phone call to author, April 20, 2023. Professor Gould recalls the dinner occurring in 1973 or 1974.

¹⁴⁵ Gould, Stanford Historical Society Oral History Program. Gould, phone call to author, April 20, 2023.

¹⁴⁶ Gould, phone call to author, April 20, 2023.

¹⁴⁷ Gould, Stanford Historical Society Oral History Program.

admissions decisions, commented to Professor Gould that the administration “got [him] from a very special list.”¹⁴⁸ Other law professors “approached [Gould’s] appointment begrudgingly,” or “had backward views” in his opinion. For example, Gould remembers Charlie Meyers, whom he considered to be an antagonistic, right-wing Texan, as “backsliding in [his] attitudes about desegregation of the law school.”¹⁴⁹ And in some situations, Gould “felt [his] views were not taken into account as much as other professors would,” such as when he wanted to invite a South African graduate student to attend the law school.¹⁵⁰ It wasn’t until Gould had written letters to the *New York Times*, the diocese, and others that the student was admitted.¹⁵¹

And yet, Gould also had many positive experiences at Stanford. He enjoyed access to the school’s vast resources, especially the law library; he had many more opportunities to research his ideas on labor and civil rights issues, rather than being called from crisis to crisis; he taught the school’s first employment discrimination seminar to enthusiastic students; and he was able to pursue “pure litigation” and appellate work on a pro bono basis, funded by the American Civil Liberties Union of New York City, among others.¹⁵² Gould advocated for the administration to hire more diverse faculty members, and asserted that “[i]n order for most faculties to have black law professors, they are going to have to go out looking for them.”¹⁵³ Unfortunately, according to Gould, his proposal to revise—not lower—the hiring standards was met with an “unenthusiastic” response.¹⁵⁴

Professor Gould’s appointment as a fully tenured professor was warranted by his many achievements in practice and his record as a brilliant educator. But even more than that, Gould had what Stephen Carter calls “the right

¹⁴⁸ Gould, Stanford Historical Society Oral History Program. This was perhaps the same list Ehrlich took to the Committee on Minority Affairs in May 1971.

¹⁴⁹ Gould, phone call to author, April 20, 2023. Meyers would eventually become dean (see below).

¹⁵⁰ Gould, phone call to author, April 20, 2023.

¹⁵¹ Gould, phone call to author, April 20, 2023. This experience did push the administration to create a formal graduate program.

¹⁵² Gould, phone call to author, April 20, 2023.

¹⁵³ Johnston et al., “William Gould,” 5.

¹⁵⁴ Gould, phone call to author, April 20, 2023. Gould, Stanford Historical Society Oral History Program. Professor Gould had a long and distinguished global career as an academic and labor rights lawyer. A prolific scholar of labor and discrimination law, he is the critically acclaimed author of eleven books and more than sixty law review articles, as well as the recipient of five honorary doctorates. He has served as Secretary of the Labor and Employment Law Section of the American Bar Association, Chairman of the National Labor Rights Board during the Clinton administration, Chairman of the California Agricultural Labor Relations Board, and most recently as Independent Reviewer on Equal Employment Opportunity for the mayor of San Francisco. Professor Gould has been a member of the National Academy of Arbitrators since 1970. He has arbitrated and mediated hundreds of labor disputes and continues to do so as of this writing. He is currently the Charles A. Beardsley Professor of Law, emeritus, at Stanford Law School and a dear mentor to the author.

paper record.” In his memoir, Carter reflected: “One might have thought, and I suppose I thought it myself, that someone with my credentials would have no trouble landing a teaching job. But what people told me was that any school would be happy to have a black professor with my credentials.”¹⁵⁵ Stanford, like many of its fellow law schools, was under immense pressure to diversify not only its student body but also its faculty. Nevertheless, the unwillingness of Gould’s colleagues to reevaluate the criteria for faculty hiring clearly revealed their reluctance to fully commit to an increase in minority law professors.

Despite the dispassionate attitudes at the law school, the presence of minority professors and students continued to grow across the campus. In January 1973, a minority faculty report noted that “women and ethnic groups have accounted for more than a third of Stanford’s new appointments to professorial rank.”¹⁵⁶ Out of ninety appointments, nine Black professors joined the faculty, including one Black woman, bringing the total number of Black faculty to twenty (with four tenured).¹⁵⁷ Another report, sent to the Faculty’s Senate Academic Council that October, commented:

While these numbers represent no dramatic advance in the representation of blacks on our faculty, they should be viewed in the context of a representation of less than one percent by blacks in our national PhD pool. The numbers do make me believe that we can anticipate a steady flow of blacks to our faculty, with an acceleration when the large increase in black undergraduate and graduate students leads to a significant increase in the number of black PhDs.¹⁵⁸

A new subcommittee was established at the law school in the fall of 1973 with orders to create a similar report for the law faculty on minority admissions. The subcommittee’s report advocated for a “preferential admissions program” to “further the legitimate and desirable aim of ameliorating the inequality of legal representation” and “educationally enrich” the law school.¹⁵⁹ Six more years would pass before the faculty eventually rejected this proposal.

At the law school, a minority scholarship fund had been established in the same year that Professor Gould was hired, 1972. The fund honored Carl

¹⁵⁵ Stephen L. Carter, *Reflections of an Affirmative Action Baby* (New York: Basic Books, 1992), 58–59.

¹⁵⁶ Unlabeled news release, January 26, 1973, SC0193, box 27, folder 6, Academic Council Records, Green Library Special Collections, Stanford University.

¹⁵⁷ Unlabeled news release, January 26, 1973. Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, SC0193, box 39, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

¹⁵⁸ Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, Academic Council Records.

¹⁵⁹ Report from Law School Minority Admissions Subcommittee to Faculty, Fall 1973, SC0193, box 39, folder 2, Academic Council Records, Green Library Special Collections, Stanford University.

Spaeth, who had been dean of the law school from 1946 until 1962.¹⁶⁰ The project was spearheaded by two alumni, Victor Palmieri and Miles Rubin, who (again) made a generous donation of \$225,000 to establish the fund.¹⁶¹ The money was to be allocated as a grant on the basis of need, with a preference for minority students.¹⁶² Despite the issuance of several grants to students in its founding years, the fund continued to grow through pledges and contributions; by the summer of 1974, its coffers had increased by \$30,000.¹⁶³ In a sponsorship booklet (presumably meant for potential donors), Dean Ehrlich wrote that the fund “has been vital to Stanford’s ability to attract qualified students for careers in law. . . Without such funds, most qualified minority applicants cannot attend Stanford Law School. The School is eager to provide the best legal education to all qualified minority students.”¹⁶⁴ Ehrlich went on to declare: “Now that the initial barrier of attracting applicants has been overcome, there is no shortage of qualified minority applicants.”

The Late 1970s: Minority Enrollment Decline and LaDoris Cordell

Regardless of the growth in funding at Stanford, minority enrollment at the law school began to decline. The decline was accompanied by a change in administration in 1976, with Henderson leaving (after a year of only half-time duties) and Charlie Meyers succeeding Ehrlich as dean.¹⁶⁵ At the same time, “[s]harp cutbacks in federal funding” contributed to a nationwide decrease in enrollment of minority students.¹⁶⁶ In a vicious cycle, lower numbers of minorities at the law school led fewer students to apply and if admitted, enroll at Stanford.¹⁶⁷

¹⁶⁰ Spaeth Memorial Scholarship Fund Booklet, n.d., Crown Library Special Collections, Stanford University. “Spaeth Fund to Benefit Minorities,” *Stanford Law School Journal* 2, no. 15 (1972): 3.

¹⁶¹ “Spaeth Fund to Benefit Minorities,” 3. Palmieri and Rubin were the same two alumni who had given a large sum to support Henderson’s recruiting efforts.

¹⁶² Spaeth Memorial Scholarship Fund Booklet, 3.

¹⁶³ Spaeth Memorial Scholarship Fund Booklet. The fundraising effort for the Spaeth Fund paled in comparison to the money raised for the construction of the new law school buildings, which totaled \$11,900,000. “Crown Quadrangle,” *Stanford Lawyer* 10, no. 2 (Fall 1975).

¹⁶⁴ Spaeth Memorial Scholarship Fund Booklet.

¹⁶⁵ Henderson, Stanford Historical Society Oral History Program. Ehrlich, Stanford Historical Society Oral History Program. Judge Henderson went on to be the first black attorney in the Civil Rights Division of the U.S. Department of Justice and has served as a federal judge in the Northern District of California since 1980. During his time on the bench, he blocked enforcement of Proposition 209, although his decision was later overturned by the Ninth Circuit. Proposition 209 instituted a ban on discrimination or preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting, which remains in effect today and governs, among other things, admissions policies at public institutions in California, like U.C. Berkeley (Henderson’s alma mater).

¹⁶⁶ Report to the Senate of the Academic Council on Faculty Affirmative Action, October 2, 1973, Academic Council Records.

¹⁶⁷ Bob Laursen, “Women, Minorities Continue to Decline,” *Stanford Law School Journal* 8, no. 2 (1977): 1.

The Manning plan was still the law school's primary minority admissions policy, although by this time the minimum PGPA was calculated by averaging the five lowest nonminority LSAT scores and GPAs from the previous year.¹⁶⁸ Any minority candidate within fifty points of this minimum PGPA was "substantially automatically" accepted.¹⁶⁹ The fifty-point margin was meant to compensate for the LSAT's "cultural bias," and students outside of this range could still be considered under "exceptional circumstances."¹⁷⁰

Although Henderson was still technically in charge of the minority admissions program until his departure, the special committee (previously assigned to oversee Henderson's decisions) had assigned Assistant Dean William Keogh and Professor William Baxter to approve any candidate Henderson admitted.¹⁷¹ And Baxter and Keogh were giving "concurrence less and less" to students outside of the requisite point spread.¹⁷² This growing reluctance had a significant impact, considering that only half of the minority students admitted were within the "substantially automatic" range.¹⁷³ Any applications outside of this range were placed on hold until every other application had been reviewed; thus, admittances from this group were typically sent out late, with the unfortunate result that they reached the candidates after they had accepted offers at other schools.¹⁷⁴ Keogh remarked that he would approve only the "best intellectually-equipped minority" students, and Baxter admitted that he was not "looking for particular kinds of students except insofar as they have particular kinds of numbers."¹⁷⁵

Henderson still felt that the law school was "headed in the right direction, but it's slow as hell" and that "Stanford [was] very good about minority admission in comparison to other schools."¹⁷⁶ Henderson continued to devise plans for increased recruitment, including personalized letters to admitted students written by members of BLSA.¹⁷⁷ However, students felt the extra responsibility of recruiting would only put them at a further disadvantage, and

¹⁶⁸ Stephen Samuels, "Minority Admissions Faces Questions," *Stanford Law School Journal* 6, no. 10 (1976): 4.

¹⁶⁹ Samuels, "Minority Admissions Faces Questions," 4.

¹⁷⁰ Samuels, "Minority Admissions Faces Questions," 4.

¹⁷¹ Samuels, "Minority Admissions Faces Questions," 4.

¹⁷² Samuels, "Minority Admissions Faces Questions," 4.

¹⁷³ Samuels, "Minority Admissions Faces Questions," 4.

¹⁷⁴ Jan Chichester and John Lewis, "Minority Admissions Under Fire," *Stanford Law School Journal* 7, no. 5 (1976): 1.

¹⁷⁵ Samuels, "Minority Admissions Faces Questions," 4.

¹⁷⁶ Samuels, "Minority Admissions Faces Questions," 4. Yale enrolled 23 minority students in a class of 170; Harvard enrolled 64 among a class of 546.

¹⁷⁷ Samuels, "Minority Admissions Faces Questions," 4.

petitioned the administration to hire a full-time recruiter.¹⁷⁸

The number of minority students at the law school continued to drop after 1974: enrollment fell from twenty-eight students in 1974, to twenty in 1975, to fifteen in 1976, to thirteen in 1977 (18 percent, 12 percent, 8 percent, and 7 percent of the student body, respectively).¹⁷⁹ The percentage of minority admits who chose to accept offers of admission declined as well; while the figure was relatively high at 45 percent in 1975, it dropped to 37 percent in 1976 and fell again to 22 percent in 1977.¹⁸⁰ While Henderson believed this drop was at least partially due to a declining interest in the study of law, he admitted that it could also be attributed to “less initiative on his part.”¹⁸¹

After Henderson’s departure, Professor Baxter became the sole member of the law school’s admissions committee in 1977, and “was essentially responsible for the selection of the class of 1980,” which certainly played a role in the abysmal minority admission and enrollment rates.¹⁸² In response, Dean Meyers issued a statement in which he declared that he was “concerned about the number of minority persons—Blacks, Chicanos, and Native Americans—who enrolled in the first-year class in September 1976”; but he also said that there was a lack of “qualified applicants” and the number of admitted students had already reached the necessary “critical mass.”¹⁸³ Meyers justified the administration’s decision not to hire a replacement for Henderson because, in his view, “it would be irresponsible to appoint a full-time administrator of such a program. It would be unfair to the person appointed and it would be an unwise use of resources to make such an appointment while the decision in *Bakke* is pending.”¹⁸⁴

That was a reference to *Regents of the University of California v. Bakke*, 438 U.S. 265, ultimately decided by the U.S. Supreme Court in 1978. The *Bakke* decision was on the mind of the law faculty as well. Paul Brest, still a professor at the time, wrote an article in which he postulated that the use of “nonracial admissions standards” may be preferable to avoid the “dirty business” of racial inquiries and “blunt the psychological impact of being rejected—or

¹⁷⁸ Jan Chichester and John Lewis, “Minority Admissions Under Fire,” 1. This demand was never met.

¹⁷⁹ Samuels, “Minority Admissions Faces Questions,” 4. Chichester and Lewis, “Minority Admissions Under Fire,” 1. Laurenson, “Women, Minorities Continue to Decline,” 1. “The Class of 1978: A Statistical Profile,” *Stanford Lawyer* 10, no. 2 (Fall 1975). The class of 1978 was the largest entering class in the last five years, yet minority enrollment continued to decline.

¹⁸⁰ Laurenson, “Women, Minorities Continue to Decline,” 1.

¹⁸¹ Samuels, “Minority Admissions Faces Questions,” 4.

¹⁸² Laurenson, “Women, Minorities Continue to Decline,” 1.

¹⁸³ Chichester and Lewis, “Minority Admissions Under Fire,” 1.

¹⁸⁴ Chichester and Lewis, “Minority Admissions Under Fire,” 1.

accepted—under a racial criterion.”¹⁸⁵ Yet, Brest expressed doubt that any substantial minority enrollment would occur under such standards. He wrote:

Why should a minority’s claims to compensation for past discrimination be preferred to the claims of other persons—many of them white—whose present position results from past economic exploitation and other social injustices? . . . If preferential treatment based on race is not required, or is even disfavored, by principles of justice, should an institution nonetheless retain a preferential program to avoid erroneous perceptions of injustice and their harmful consequences? These difficult questions of policy and justice are as much the concern of Stanford as they are of the University of California.¹⁸⁶

By 1978, Meyers had acquiesced to the demand for Henderson’s replacement, and LaDoris Cordell—still a fairly recent graduate—was selected to fill the position.¹⁸⁷ After graduating from Stanford Law in 1974, Cordell had become the first person outside of the South to be awarded an Earl Warren Fellowship by the NAACP Legal Defense Fund, which granted her the funds to start her own practice.¹⁸⁸ Cordell used the money to start the first private legal practice in East Palo Alto, at the time a predominantly Black and Hispanic community.¹⁸⁹ Much like Henderson, Cordell shifted from East Palo Alto to campus after being appointed assistant dean; however, Cordell successfully maintained her private practice throughout her four-year tenure at Stanford.¹⁹⁰

Yet, in some ways Cordell found herself in more difficult circumstances than Henderson had been. On the one hand, she had the benefit of the strong foundation laid by Henderson in the early to mid-1970s. On the other hand, Henderson had operated with the support of several faculty members and a great deal of latitude from the dean. Cordell, on the other hand, faced the challenge of working with Meyers, as well as Baxter and later Cohen, some of the most conservative members of the faculty at the time.¹⁹¹ Nonetheless, Cordell successfully revived minority admissions and established Stanford Law as national leader in the enrollment of Black students.¹⁹² She brought a fresh set of skills and a great deal of tenacity to the job, succeeding even in this precarious context.

¹⁸⁵ Paul Brest, “Preferential Admissions After *Bakke*,” *Stanford Lawyer* 12, no. 1 (Spring 1977): 2–4. Brest wrote this article before the case reached the United States Supreme Court.

¹⁸⁶ Brest, “Preferential Admissions After *Bakke*,” 2–4.

¹⁸⁷ LaDoris Cordell, interview with author, March 8, 2024.

¹⁸⁸ Cordell interview, March 8, 2024.

¹⁸⁹ Cordell interview, March 8, 2024.

¹⁹⁰ Cordell interview, March 8, 2024.

¹⁹¹ Adrien Wing, interview with author, January 11, 2024.

¹⁹² Cordell interview, March 8, 2024.

In March 1979, Professor William Cohen took over as the “one man show” in admission.¹⁹³ Brest proposed to Cohen that he aimed to diversify the student body by adjusting the admissions standards, and Cohen agreed to do so—albeit only for a single year. As a result, the admission of minorities increased by 55 percent, with thirty-one students enrolled in the following year,¹⁹⁴ largely due to Cordell’s increased recruiting efforts. She recruited even more widely than Henderson had, traveling to historically Black colleges and universities in addition to the University of California system and the Ivy League schools.¹⁹⁵ In the fall of 1979, Cohen stepped down as the chair of admissions after “taking much heat,” and was replaced by Professor Jack Friedenthal.¹⁹⁶ Friedenthal supported increased diversity at the law school and was open to changes in the admissions formula:

I do feel strongly that we must maintain very high academic standards. But at the same time, within the broad range of good people out there who clearly qualify, there is flexibility. There is room for flexibility for trying to get a balance, an interesting group of people, based on what they have done and who they are and where they come from. That includes of course minorities. It’s certainly not the only criterion. I do believe in the critical mass theory. For recognized minority groups I think it is helpful to them to have enough people here so that they feel they have their own community available. I think it makes people more comfortable.¹⁹⁷

At the same time, an ad hoc committee on admissions policy was formed, comprised of Professors Paul Goldstein, William Baxter, Gerald Gunther, Brest, Friedenthal, and Gould. The committee met several times over the summer and interviewed students and organizations at Stanford as well as other law schools.¹⁹⁸ The committee recommended that the law school formally adopt an admissions policy evaluating students for diversity and not aptitude.¹⁹⁹ But when faculty took a vote in November 1979, they did not adopt the committee’s recommendation, favoring the continuation of the Manning plan.²⁰⁰ The vote was justified based on concerns that the program would not be meritocratic

¹⁹³ Julie Saulnier, “Committee Changes Admissions Policy,” *Stanford Law School Journal* 9, no. 6 (1979): 1.

¹⁹⁴ Saulnier, “Committee Changes Admissions Policy,” 1. Geoffrey L. Bryan, “Minority Enrollment Increases by Half,” *Stanford Law School Journal* 10, no. 1 (1979): 1. Cohen initially opposed the lower standard, “citing fear that minorities would form an identifiable bottom layer.”

¹⁹⁵ Cordell interview, March 8, 2024.

¹⁹⁶ Bryan, “Minority Enrollment Increases by Half,” 1.

¹⁹⁷ Bryan, “Minority Enrollment Increases by Half,” 1.

¹⁹⁸ Bryan, “Minority Enrollment Increases by Half,” 1.

¹⁹⁹ Bryan, “Minority Enrollment Increases by Half,” 1.

²⁰⁰ Janice Rhodes, “Faculty Rejects Admission Plan,” *Stanford Law School Journal* 10, no. 2 (1979): 1.

and its implementation would generate costs (especially in terms of the faculty's time).²⁰¹ Professor Baxter was the sole dissenter on the committee, and voted with the majority of the faculty based on similar considerations: "Thinking about diversity is not a change . . . The difference in this report is what we'd be willing to pay for diversity—even sacrificing intellectual horsepower."²⁰²

The faculty's vote revealed tacit assumptions about their "meritocratic" system. The Manning plan was understood as a fair and neutral method of determining which students deserved admission to Stanford. Scholars then and now have questioned whether a test, like the LSAT or a law school exam, is even capable of measuring "functional merit," or the ability to do the work of a lawyer.²⁰³ Yet, the faculty feared that abandoning the Manning plan would allow students to "cheat the meritocratic system," a criticism the late Lani Guinier criticized as problematic and circular: "It blames the canaries for the poisonous air in the defective mine we have built. In the defective, poisonous mine that is our current meritocracy, 'merit' is defined by a set of characteristics that primarily mirror wealth. And affirmative action adapts to and operates within this meritocracy without disturbing its fundamental assumptions."²⁰⁴ Henderson also recognized this issue as early as 1970. He believed that "while law schools generally didn't set out to discriminate against minorities, using the same criteria for judging minority and non-minority applications—especially the heavy emphasis on the LSAT—produced the same result."²⁰⁵

The late seventies were, in many ways, a troubling time for Black students at Stanford Law. The appointment of Dean Meyers and the power granted to Professor Baxter and Assistant Dean Keogh resulted in an initial sharp decline in the enrollment of minority students. The shift to a single-member admissions team, combined with the persistence of the Manning plan, resulted in a self-perpetuating cycle of decreasing diversity. Meyers's refusal to hire a full-time recruiter in the year after Henderson's departure also revealed a continuing reliance on student labor and an unwillingness to provide the necessary support

²⁰¹ Rhodes, "Faculty Rejects Admission Plan," 1.

²⁰² Rhodes, "Faculty Rejects Admission Plan," 1. Baxter was not a supporter of affirmative action programs.

²⁰³ Guinier, *The Tyranny of the Meritocracy*, 39.

²⁰⁴ Guinier, *The Tyranny of the Meritocracy*, 39–40. Ironically, Guinier herself came from an elite family. Lawrence Graham explains: "Guinier is one of those Brooklyn names that are heard at gatherings of socialites, businesspeople, educators, and old families." Guinier's mother, Doris, had "all the right credentials. . . but her credentials are Brooklyn ones—not Harlem ones. . . She was on the board of directors of the Y, she went to all the right schools, belonged to the right church, married the right husband, summered in the right place. She even had the right relatives." Her father attended Harvard (as its only Black student at the time) and later taught at both Harvard and Columbia. Lawrence O. Graham, *Our Kind of People: Inside America's Black Upper Class* (New York: Harper, 1999), 265–66. Guinier became the first woman of color to be tenured at Harvard Law School and remained on the faculty there until her death in 2021. Her son, Nikolas Bowie, is the Louis D. Brandeis Professor of Law at Harvard.

²⁰⁵ Johnston, "Minority Admissions," 1.

for diversity to flourish. Instead, the administration relied on its familiar excuses: lack of applicants, lack of funding, and Stanford's apparent superiority over other elite schools in affirmative action progress. The *Bakke* decision became a new rationalization for the stagnation of minority enrollment. Brest's rumination about the utility of a preferential program "to avoid erroneous perceptions of injustice and their harmful consequences" echoed the underlying message of the minority hiring plan left blank in 1970; both were proclamations merely intended to preserve the image and reputation of the institution, rather than functionally and practically improving the lives of its Black students. Indeed, if it were not for the work of LaDoris Cordell during these years, the presence of a Black community at Stanford Law would have been at best insignificant and at worst nonexistent. Her tireless efforts to recruit and support Black students, much like Henderson had before her, were instrumental during this difficult time and ensured that minority enrollment not only continued but flourished.²⁰⁶

Black Women on the Faculty: The Long Road to Diversity at Stanford

The efforts made throughout the 1970s to desegregate Stanford Law School represented significant progress toward a more diverse student body and faculty; yet, the inclusion of Black women on the faculty was particularly delayed. Twenty-five years after Sallyanne Payton started at the law school, Stanford appointed a Black woman to its permanent faculty for the first time: Kim Taylor Thompson was the first woman of color to be appointed to a tenure-track position at the law school in 1991.²⁰⁷ Two years later, Professor Taylor Thompson was joined by Linda Maybry.²⁰⁸

In October of 1998, Professor Tom Heller and Paul Brest (dean at the time) asked Maybry to meet with Coca-Cola representatives to secure a grant for a program in international business law, Maybry's specialty.²⁰⁹ Yet when the grant was secured, not only was Maybry not asked to be a part of the program, she wasn't even notified the grant had been awarded.²¹⁰ At the next faculty

²⁰⁶ In 1982, Cordell became the first Black woman to serve as a judge in Northern California. She spent nineteen years on the bench, and later served on the Palo Alto City Council following a grassroots campaign that accepted no monetary donations. She has long played an important role in local politics and has spent much of her career making real changes for the people in her community. She is a talented artist, musician, and cartoonist.

²⁰⁷ Kim A. Taylor Thompson, interview with Mary Murphy (Pembroke Center Archivist), Brown University, September 21, 2018. Professor Taylor Thompson's appointment came at the same time as the Anita Hill hearings and Clarence Thomas's nomination to the Supreme Court. She later reminisced: "It's funny, I'm now remembering that Anita had called me during the summer and was saying, you know, 'Are you ready? Are you feeling ready for teaching?' Because she was teaching then. And I said, 'Yeah I think so.' And she said, 'You know, I just really am envious of you beginning this thing that's new.'"

²⁰⁸ Linda Maybry, *Falling Up to Grace: A Memoir* (Palo Alto, CA: Faultline Press, 2012), 66. Taylor Thompson left Stanford shortly after Maybry's arrival. She is currently an emerita professor at New York University School of Law.

²⁰⁹ Maybry, *Falling Up to Grace*, 85–88.

²¹⁰ Maybry, *Falling Up to Grace*, 88.

meeting, Maybry gave the following statement:

I want this faculty to think about the history of faculty of color at the law school and what it says about how we have been treated—how we have been marginalized, excluded and demeaned. How we have been invisible. You know, it takes 250% of who we are to do this job well—and we don't all do it well. You can't ask someone to give that much and then treat them this way. Some of you have told me that what happened to me had nothing to do with my race or my gender—that some white men also have been marginalized and excluded. My position is that this should not happen to anyone on faculty. But it does. And it happens consistently to people of color. And when it happens to those of who are hanging on at margins by the skin of our teeth, the consequences are devastating.²¹¹

Maybry resigned two months later. Her resignation was followed by student protests and press interest.²¹²

Another three decades would pass before a Black woman would actually obtain tenure. In 2023, Professor Rabia Belt became the first Black woman to receive tenure as a law professor at Stanford. That such a development did not occur until now, fifty-five years after the law school's first promises of diversity, is both startling and concerning. And yet, it also inspires hope that as the world continues to evolve, so too will Stanford Law School.

I must acknowledge that the conclusion of this article is abrupt. Indeed, there is much more to be said about each of these women and the intervening years for which this article does not allow adequate space. In mentioning their stories, I intend to expose the gaps in both historical coverage and the deeper experiences of these women (in addition to others not included here). There is much more to explore about the journeys of Black students, as well as other minority students—at the law school, on the broader campus, and at other law schools across the country. These gaps merit further attention, and I look forward to expanding on the narratives introduced here (and those yet to be discovered) as this research progresses.



²¹¹ Maybry, *Falling Up to Grace*, 89.

²¹² Michael Moline, "Stanford Students Protest Professor's Departure—Officials Decline to Comment on the Resignation of Lone Black Woman," *Stanford Daily* (1999). Professor Maybry would later join a class-action complaint against Stanford for alleged discrimination, but the suit remained unresolved upon her death in 2007.

DOUGLAS C. SANGSTER*

The Codification of Independent Living in California State Law

I began with the Department of Rehab and it was my first job in a large bureaucracy. After about a month, I felt kind of like a bureaucrat. I thought “What’s happening?” What I really am is an “advocat,” half advocate and half bureaucrat. That’s what we need to be; we need to be advocates in every part of our systems. It works.

Ed Roberts, 1979¹

Lynn Thompson wanted to live independently. Living in the Sepulveda neighborhood of Los Angeles, California during the 1970s, Thompson experienced muscular dystrophy; the agony was so excruciating that she had her legs disconnected from her hips to alleviate some of the pain. She was classified by the Social Security Administration (SSA) as “totally disabled” and incapable of engaging in “substantial gainful activity.” She received welfare benefits that included Medi-Cal, attendant care, and Supplemental Security Income (SSI). After paying \$285 for rent she had very little spending money, and so she started working as a telephone dispatcher where she earned \$492 per month. In 1976, an individual could not earn more than \$230 per month

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¹ “Draft of Roberts’ Speech in Dallas, Texas,” April 25, 1979, p. 10, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1. Edward V. Roberts often referred to himself as “Ed,” as did his friends and family. I use the name “Ed” in this article as that was how he chose to self-identify.

and still receive benefits. She did not hide her employment—on the contrary, it was publicized in local newspapers—but she also did not report it to the SSA. Years passed and when the SSA finally did find out, it rescinded her benefits and mandated that Thompson pay back the money for those benefits, amounting to approximately \$10,000. Facing a crippling debt and a loss of independence, Thompson felt trapped. In February of 1977, seeing no way out, she killed herself.² In her recorded message before her suicide, Thompson explicitly blamed the SSA for her final fatal decision:

Give Social Security a message for me. Tell them thanks for being the straw that broke the camel's back . . . It would be great if I could work and support myself and still receive the full attendant's benefits and some kind of medical benefits . . . If I ever get to the point where I can make \$1,200 or \$1,500 a month, fine. They can keep their money and the medical insurance. I wouldn't need them then. But for \$492 of salary it's just not enough to pay these expenses.³

The plight of Lynn Thompson illustrates the centrality of a medical assessment when establishing a disability under the law. Disability can be understood through two lenses: (1) the internal view of the individual experiencing the condition, and (2) the external view of medical assessments and examinations by medical professionals and administrators.⁴ Activists have argued that the internal view should be prioritized over any external view, claiming that those experiencing a physical or medical condition are best equipped to assess it and prescribe solutions to mitigate the condition, such as benefits or accommodations.⁵ However, throughout American history and within contemporary legal understandings of disability, medical evaluations

² Douglas A. Martin, National Leader in Reforming Social Security and Medicare Disability Programs; ADA/504 Compliance Officer at UCLA; First Executive Director of the Westside Center for Independent Living, an oral history conducted by Lou Breslin in 2002 in *Shaping National Disability Policy: Transportation Access and Social Security Reforms*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 124–125; “Coalition Urges Moratorium,” *Paraplegia News*, April 1978, 27; Terry Brickley, “Handicapsules,” Column, *Santa Cruz Sentinel*, May 22, 1978, 4; Terry Brickley, “Handicapsules,” Column, *Santa Cruz Sentinel*, May 30, 1978, 13; Sonny Kleinfeld, “Declaring Independence in Berkeley,” *Psychology Today*, August 1979, in the Deborah Kaplan Papers at the Bancroft Library, University of California, Berkeley, BANC MSS 99/369, Carton 1; Social Security, Substantial Gainful Activity, <https://www.ssa.gov/oact/cola/sga.html>.

³ Terry Brickley, “Handicapsules,” Column, *Santa Cruz Sentinel*, May 30, 1978, 13.

⁴ I take this internal/external distinction from Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), 284–285.

⁵ Douglas Martin, oral history, Bancroft Library, 119; Judith Heumann, “Pioneering Disability Rights Advocate and Leader in Disabled in Action, New York: Center for Independent Living, Berkeley; World Institute on Disability; and the US Department of Education 1960s–2000,” an oral history conducted by Susan Brown, David Landes, and Jonathan Young in 1998–2001, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 60–61; Ed Roberts, oral history in *University of California's Cowell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley's Independent Living Movement*, Regional History Office, The Bancroft Library, 27–28; Michael Oliver, *Understanding Disability: From Theory to Practice*, 2nd ed. (New York: Palgrave Macmillan, 2009), 35, 171–172; Joseph P. Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (New York: Three Rivers Press, 1994), 51–52.

are often essential to establish a legal disability and dispositive in judicial opinions and administrative decisions determining disability.⁶ How Lynn Thompson experienced muscular dystrophy and what she felt she could do with it (the internal view), as opposed to how others in medical and administrative apparatuses viewed what she could do (the external view), is a tension present in many cases for those considered disabled. Thompson's plight reveals the stark and at times devastating relationship between ability and work when defining "disability" as a legal category. Here, what determined whether Thompson was disabled was her earning capacity—by earning more than \$230 she was deemed no longer disabled before the law. Nothing about her physical ability had changed; she still suffered from muscular dystrophy and required attendant care. However, her income came to define her as no longer disabled and hence no longer eligible to receive the benefits necessary to live and work as she had been doing.

Thompson's case emphasizes the connection between an individual's abilities and the environment around them—what is called the distinction between the medical and social models of disability. Many scholars have slightly different definitions of each model, but the main point is that the medical model seeks to change the person, while the social model seeks to change the environment.⁷ In this essay, I will explore the extent to which the shift from the medical model to the social model is manifested historically by analyzing the performance of important actors in this shift such as activists, state officials, state institutions, and private health care providers in California during the period from 1954 to 1980.

⁶ Oliver, *Understanding Disability*, 64; Deborah Stone, *The Disabled State* (Philadelphia, PA: Temple University Press, 1984), 68–89; Craig Konnoth, "Medicalization and the New Civil Rights," *Stanford Law Review* 72 (2020): 1165, 1172, 1175–1184; Deirdre M. Smith, "Who Says You're Disabled? The Role of Medical Evidence in the ADA Definition of Disability," *Tulane Law Review* 82 (2007): 1, 4–5; Frank S. Bloch, "Medical Proof, Social Policy, and Social Security's Medically Centered Definition of Disability," *Cornell Law Review* 92 (2007): 189; Keith Wiloo, *Pain: A Political History* (Baltimore, MD: Johns Hopkins University Press, 2014), 45.

⁷ Samuel R. Bagenstos, *Law & the Contradictions of the Disability Rights Movement* (New Haven, CT: Yale University Press, 2009), 18–20; Samuel R. Bagenstos, *Disability Rights Law: Cases and Materials*, 2nd ed. (St. Paul, MN: Foundation Press, 2014), 4; Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (New York: Cambridge University Press, 1987), 8–9; Eric Garcia, *We're Not Broken: Changing the Autism Conversation* (New York: Harvest, 2022) 44, 111; Paul K. Longmore and Lauri Umansky, "Introduction," in *The New Disability: American Perspectives*, ed. Paul K. Longmore and Lauri Umanski (New York: New York University Press, 2001), 12; Ruth O'Brien, "From a Doctor's to a Judge's Gaze: Epistemic Communities and the History of Disability Rights Policy in the Workplace," *Polity* 35 (April 2003): 329, 337; Oliver, *Understanding Disability*, 42–43; Larry M. Logue and Peter Blanck, *Race, Ethnicity, and Disability: Veterans and America in Post-Civil War America* (New York: Cambridge University Press, 2010), 1–2; Harlan Hahn, "The Politics of Physical Differences: Disability and Discrimination," *Journal of Social Issues* 44 (1988): 39–40; Sharon Barnartt, Kay Schriener, and Richard Scotch, "Advocacy and Political Action," in *Handbook of Disability Studies*, ed. Gary L. Albrecht, Katherine D. Seelman, and Michael Bury (Thousand Oaks, CA: Sage Publications, 2001), 430–431; Liz Moore, "I'm Tired of Chasing a Cure," in *Disability Visibility: First-Person Stories from the Twenty-First Century*, ed. Alice Wong (New York: Penguin Random House, 2020), 75.

This essay argues that disability as a legal concept shifted from an emphasis on work, welfare, and rehabilitation to a focus on engagement, inclusion, and assimilation in all aspects of life through the independent living movement. It does so by demonstrating how activists worked against and with state officials in state institutions to alter the conception of disability in California state law. These interactions between activists and state institutions show a sharp distinction between rehabilitative medical-based treatments of disability and alterations of social environments. University activism transformed into legislative advocacy and the passage of Assembly Bill 204 in 1979, codifying independent living in California state law. In 1950, Californian state institutions sought to alter the individual with the disability; after the 1960s and 1970s, those institutions such as the California Department of Rehabilitation (CADR) began to understand disability as a product of social environments. Disability theorists have argued over the extent to which disability should be attributed to medical conditions and social environments. Disability activists were having this debate in their daily lives, both among themselves and with the institutions and systems surrounding them.

Part I: Cowell Hospital and the Activist Origins of Independent Living

The creation of a residence for students with disabilities in Cowell Hospital at Berkeley in the early 1960s and the development of the Independent Living Movement in the late 1960s and early 1970s both expanded the autonomy of those considered disabled. An examination of the CADR, Cowell Hospital, and the Physically Disabled Students' Program (PDSP) contributes to a more nuanced understanding of the relationship between state institutions and people with disabilities. State officials could serve as both obstacles and conduits for access and opportunity depending on their choices. They often served as vital resources for people seeking to attend university who had been previously limited by those very same institutions. Disability activists who entered CADR in the 1970s would learn from their experience at university in the 1960s in creating opportunities for the disabled community in the last quarter of the twentieth century. The activism and advocacy of students with disabilities in California during the 1960s and 1970s offers insight into how social conceptions of disability could change, while at the same time showing the stark reality of a lived experience with a physical impairment that would not be altered along with that social conception of disability. Institutions and systems may be altered, but it often takes internal actors and external activists to shape those entities in ways that improve the lives of those with disabilities.

Rather than a simple state versus activists binary, the experience at UC Berkeley in Cowell Hospital and the Physically Disabled Students' Program during the 1960s and 1970s shows how state institutions and officials can also be important facilitators of change.

A. The California Department of Rehabilitation and Cowell Hospital

The relationship between CADR and disability activists in the 1960s was multifaceted. First, and arguably foremost, CADR played an important role in funding the higher education of those considered disabled. CADR provided books, tuition, and transportation for students considered disabled attending university. Budget allocation for these services would have a dramatic effect on the educational experience of students with disabilities. Furthermore, CADR was instrumental in providing the funding necessary to convert the third floor of Cowell Hospital into a residence for students with disabilities. In these ways, CADR was an essential entity in creating and expanding the possibilities for those with disabilities seeking higher education in the 1960s and 1970s. However, CADR would also place limits on autonomous decision-making of students residing at the hospital. Cowell was where the activists and state institutions would collide, challenging each other's conceptions of what it meant to be disabled and the role the state would play in providing resources and services.

Cowell Hospital was a facility under the umbrella of the Student Health Service at UC Berkeley (SHS). The SHS started in the first decade of the twentieth century after the 1906 earthquake and served as an impetus for a health care system at the university. During its first twenty years, the SHS was located in a small, brown-shingled house on College Avenue that was equipped with twenty beds. Alumnus Ernest V. Cowell died and left \$250,000 to UC Berkeley to build a hospital. In the late 1920s, the university hired Arthur Brown, Jr., who designed Coit Tower, to be the architect for Cowell Hospital. The hospital opened its doors to patients in 1930.⁸ It was in this hospital that students with disabilities would first arrive and live while attending UC Berkeley.

⁸ Dorothy S. Harvey "A Brief Summary of the Early Years of SHS," Medical Record Department, 1937-1972; Margaret Alter, "Memories of a Cowell Nurse," *California Monthly*, January 1954, 17-18, 31-33; "UC Hospital Busy Serving Student Body," *Berkeley Daily Gazette*, May 6, 1954; Robert T. Legge, "University of California Students' Health Center," reprint from *The Pacific Coast Journal of Nursing* 27, no. 1 (January 1931); Robert T. Legge, "A Quarter of a Century of Health Work in the University of California Health Service," reprint from *The Journal-Lancet* 60, no. 5 (May 1940): 236; Ruby Cunningham, "Cowell Memorial Hospital," *The Prytanean*, January 1932, Berkeley, California; "50 Years of Service: University Student Health History," *The Daily Californian*, February 1, 1957, 17; "50-Year Record of U.C. Hospital Hailed," *Oakland Tribune*, February 3, 1957; "Hospital Addition Dedicated," *University Bulletin* 9, no. 8, December 5, 1960; "The Way It Was: Images of Berkeley's Architectural Heritage," *Berkeley Voice*, June 29, 1989. All materials relating to the history of Cowell Memorial Hospital and the University of California, Berkeley Student Health Service, located in Bancroft Library, UC Berkeley, CU-527.

Dr. Bruyn had the idea of housing Ed Roberts in the Cowell Hospital as a makeshift dorm room that would allow him to attend school.⁹ For Bruyn, if a student was accepted based on academics, they could and should be able to attend UC Berkeley, and there was an entire wing going unused on the third floor of the hospital. CADR played an important role in establishing Cowell as a home for students with disabilities by assisting in recruitment and funding for refurbishing the wing to house students with disabilities. Ed Roberts would be the first student with a disability to live in Cowell Hospital and attend UC Berkeley, starting in 1962.¹⁰

Ed's acceptance at UC Berkeley and his residence at Cowell illustrates the double-sided nature of CADR and state institutions. Bruyn was a state official representing the public institution of the University of California and a medical expert who was crucial in helping Roberts receive a Berkeley education. When Ed and his mother, Zona, went to visit Berkeley and Cowell, Bruyn gave them hope that an education for Ed was possible, saying:

You people who were in the polio epidemic are getting to be of college age now, and you haven't had a chance to go to college, and you really should have that chance. It's getting to be time to do that. This is a student-supported health center, so it can't cost the students any money for you to go to school here, or to live in Cowell. So we'd have to figure out a way for this to be paid for, but I think you could live in Cowell Hospital.

That was a transformative position and experience, according to Zona. Reflecting on that time, she said, "Just those few words from Henry Bruyn opened up a whole door for us that had been seemingly closed. How we were going to do this, or how we were going to get there, I didn't know. But with those words from Henry Bruyn, things began to happen."¹¹ State institutions certainly created some obstacles for those with disabilities seeking opportunities, but they also opened doors.

Ed Roberts had been at Cowell for approximately six months when Bruyn received a call from a doctor in Martinez. The doctor said that he had a patient who would be a good candidate for the disability program in Berkeley. Bruyn said they did not have a disability program, but that there was a new student

⁹ Henry Bruyn, "Director, Student Health Services, 1959–1972," an oral history conducted in 1994–1995 by Susan O'Hara in UC Berkeley's Cowell Hospital Residence Program: Key Administrators and California Department of Rehabilitation Counselors, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 5–6; Roberts, oral history, 84–86; Timothy Pfaff, *California Monthly*, 1.

¹⁰ Henry Bruyn, oral history, 4–12; Henry Bruyn, "Disabled Students Live-In Program," memo as Director of Student Health Service, Cowell Memorial Hospital, no date, in Herbert Willmore Papers, The Bancroft Library, BANC MSS 99/249c.

¹¹ Edward V. Roberts, oral history, 6–10; Zona Roberts, oral history, 84–85.

with disabilities, and he was doing well at the university. The Martinez doctor asked Bruyn to come visit him in Contra Costa County Hospital.

When Bruyn arrived, the doctor took him into a room where there were four people with disabilities. Three were watching television, while the fourth was surrounded by books and listening to French broadcasts on the radio. Bruyn asked if that lone figure was Hessler, and the doctor confirmed that it was. Then and there, before Bruyn had even talked to Hessler, Bruyn told the doctor that Hessler was accepted based solely on that contrasting image—the singular individual surrounded by books and listening to French radio programs.¹²

Services provided at Cowell included a private room, three meals per day, custodial service, towels, maintenance of standard utilities, orderly and nursing care on a twenty-four hour basis, part-time services of a registered nurse, services of a social worker aide, and all staff had to knock before entering an individual's private room and receive permission to enter.¹³ Despite these services, students would still consider the hospital wing to be their dorm.

The shift from hospital ward to dormitory floor could be seen in the aesthetic of Cowell's third floor. When Ed Roberts moved into the hospital in 1962, it was a sterile hospital wing. By 1970, it had converted into a dormitory straight out of the 1960s. Incense and marijuana smoke filled the air, with candles placed around creatively draped tie-dyed sheets and Indian bedspreads. A pool table and large dining table surrounded by free-flowing psychedelic painting schemes served as gathering spots. Afghan blankets and bookshelves were added to the rooms of students. As more students began to live at Cowell, parties became common and added to tension with the hospital staff.¹⁴

CADR also funded the education of those considered disabled, but the extent to which this funding was conditional on CADR rules and standards was contested by those with disabilities receiving it. Lucile Withington was the CADR counselor at Cowell from 1969 to 1971 and represented the interests of the state institution providing the funding. Ed Roberts was the

¹² Henry Bruyn, oral history, 7–8.

¹³ "Cowell Rehabilitation Program," interdepartmental memo of Student Health Service, September 26, 1969, in Herbert Willmore Papers, The Bancroft Library, BANC.MSS.99/249c.

¹⁴ Edna Brean, "Nurse Coordinator, Cowell Residence Program, 1969–1975," an oral history conducted in 1994–1995 by Susan O'Hara in UC Berkeley's Cowell Hospital Residence Program: Key Administrators and California Department of Rehabilitation Counselors, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 40–42; Charles A. Grimes, "Attendant in the Cowell Residence Program, Wheelchair Technologist, and Participant/Observer of Berkeley's Disability Community, 1967–1990s," an oral history conducted in 1998 by David Landes, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 57–63.

main representative of the activists who argued that the funding should not be conditional on academic performance.

Roberts does not mince words when reflecting on his experience with Withington—he explicitly refers to her as “the villain,” and that even on her best day she “may not have been a very nice person.” He took issue with the rules and standards she set as prerequisites for funding. She demanded that students provide her with their grades at the end of every semester in order to continue to receive support from CADR. Roberts was frustrated by these new rules and the threatening nature with which Withington implemented them, as she would threaten to revoke money if they were late providing her with their grades or did not provide them at all. He explicitly states that his effort to reach out to the press was an attempt to pressure Withington and CADR through vilification. Roberts and his fellow activists succeeded; Withington was transferred.¹⁵

As one might expect, Withington’s recollection of this episode differs greatly from Roberts’s. For her, it was a matter of providing funds to those who would appreciate them and take advantage of the opportunity, rather than arbitrarily depriving certain students of an education. According to her, Don Lorence and Larry Biscamp were two students receiving funding from CADR and they were not attending class or earning a GPA high enough to deserve the help from CADR. She saw the funding and the beds at Cowell as a zero-sum situation: every person there was taking the place of another individual considered disabled and therefore should fully utilize the educational experience and opportunities they had been provided through CADR funding. If they were not going to attend class and earned a failing GPA, they should leave and make room for someone else who would better appreciate the opportunity.¹⁶

Ed Roberts appeared to attribute malice when perhaps there was a genuine concern from Withington to make the most of the funding from CADR. In turn, Withington was perhaps too strict in her implementation of rules and standards for students. If they were not expelled or punished by the university, why was it in her power to impose different standards on the students than their peers who did not receive the funding? This adversarial exchange was less about which side was right and more about the extent to which state funding was conditional. Roberts and Withington were fundamentally arguing over whether and how CADR funding should be allocated. The question at the

¹⁵ Edward V. Roberts, oral history, 35–39; Timothy Pfaff, *California Monthly*, 3.

¹⁶ Lucile Withington, “Department of Rehabilitation Counselor, Cowell Residence Program, 1969–1971,” an oral history conducted in 1994–1995 by Susan O’Hara in UC Berkeley’s Cowell Hospital Residence Program: Key Administrators and California Department of Rehabilitation Counselors, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 85–87.

heart of their struggle appears to be whether state funding for vocational education was a right or a privilege. Roberts argued that it was a right and that Withington's intervention violated that right. Withington argued that funding was a privilege earned through high standards and achievement.

This early conflict between Roberts and Withington demonstrates the shades of gray in the relationship between CADR and the people it sought to help. Although CADR provided funding, it could also impose restrictions to which others who were not considered disabled were not subject. CADR was assisting in expanding capabilities and opportunities of those with disabilities, but the activists argued that the services and resources were simply establishing an even playing field rather than special treatment.

For Dr. Henry Bruyn, CADR was vitally important in establishing Cowell through its funding for nurses, tuition, housing, and devices, as well as recruiting candidates for the program. However, he recognized the ambiguity of what exactly Cowell was: both a hospital and a residence. At an apartment or dorm, the residents can come and go as they please and have extensive autonomy over what they do and how they do it. If they wish to smoke, or invite people over, or arrive home late at night, that is their prerogative. A patient in a hospital does not have that same autonomy. While at the hospital, they are subject to the rules and control of medical professionals. These were college students who threw parties with alcohol and marijuana, and yet they were technically on the third floor of a hospital. Their attendants were also in the hospital wings of Cowell taking food from the kitchen upstairs to their clients, and the nurses took issue with scruffy tie-dye clothing—what Bruyn called “goodwill chic.”¹⁷ Here was a fundamental difference in how the medical and public professionals saw the residents on the third floor of Cowell and how the residents saw themselves. The medical professionals viewed them as patients in need of care, and subject to the rules of nurses and CADR counselors, while the residents themselves saw their situation as students in a dorm like any other Berkeley student.¹⁸ Bruyn saw the conflict between CADR and the students in the Withington-Roberts clash as an extension of this dynamic. Settling on an understanding of exactly what Cowell was and who had control of the third floor was a prolonged and difficult process. The compromise eventually worked out allowed the residents more autonomy than patients, although less than students.¹⁹

¹⁷ Henry Bruyn, oral history, 11–12.

¹⁸ Karen Topp Goodwyn, “Department of Rehabilitation Counselor in Berkeley, 1972–1983,” an oral history conducted in 1997–1998 by Mary Lou Breslin in UC Berkeley's Cowell Hospital Residence Program: Key Administrators and California Department of Rehabilitation Counselors, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 125.

¹⁹ Henry Bruyn, oral history, 23–24; Zona Roberts, oral history, 106–107, 127.

Cowell was not just a waystation in group consciousness,²⁰ it was a marked shift away from the medical model and toward the social model. The students with disabilities were advocating for accommodations that allowed them to pursue higher education within the same parameters as other students: in dorms, with autonomy over their living space, and academic standards left to the university to administer. CADR, as a California government institution, represented both the push and the pull the state had in this process by both providing the funding and facilities but then setting standards and conditions for those provisions.

Cowell was also where a sense of possibility developed through education and independence. Those with disabilities at this time saw education that was subsidized by state institutions like CADR as an opportunity to engage in their communities and live fulfilling lives with their disabilities. After becoming paralyzed in a car accident at the age of nineteen, Herbert Willmore realized that he would need to use his mind to make a living if he could not do so with his body, saying “I knew that I couldn’t make my living with my body any longer. So I thought, Well, this is an opportunity to use my brain.” Eleanor Smith, a medical expert and nurse who specialized in rehabilitation, made Willmore aware of the Cowell residence option, and a letter from Henry Bruyn started his process of enrollment at the university.²¹ The emphasis on education and mental capacity was often cited as an avenue forward for opportunity after experiencing a physical impairment.²²

²⁰ For a good analysis of the emergence of political activism and the development of the Rolling Quads, see Scot Danforth, “Becoming the Rolling Quads: Disability Politics at the University of California, Berkeley, in the 1960s,” *History of Education Quarterly* 58, no. 4 (November 2018): 506–536.

²¹ Herbert R. Willmore, “Student Resident at Cowell, 1969–1970, Business Enterprises Manager at the Center for Independent Living, 1975–1977,” an oral history conducted in 1996 and 1999 by Susan O’Hara in *University of California’s Covell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley’s Independent Living Movement*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 156–159; “Autobiographical Summary,” Herbert Willmore, no date, 1–3, in “Herbert Willmore Papers,” The Bancroft Library, BANC MSS 99/249c.

²² Lynn Kidder, “They Fought Disabilities and Won,” *Daily Ledger*, May 2, 1982, 11 (speaking of John Hessler’s resolve to get an education after his paralysis); Catherine Campisi, “Leader in Higher Education and Disabled Student Services; Deputy Director and Director, California Department of Rehabilitation,” an oral history conducted by Sharon Bonney in 2001, in *Rehabilitation, Higher Education, and Independent Living Services in California*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 45; Brenda Premo, “Founding Director, Dayle McIntosh Center in Orange County; Member, National Council on Disability; Director, California Department of Rehabilitation,” an oral history conducted by Kathy Cowan in 2001, in *Rehabilitation, Higher Education, and Independent Living Services in California*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 79; Ed Roberts, oral history, 4, 29; Judith Heumann, “Pioneering Disability Rights Advocate and Leader in Disabled in Action, New York: Center for Independent Living, Berkeley; World Institute on Disability; and the US Department of Education 1960s–2000,” an oral history conducted by Susan Brown, David Landes, and Jonathan Young in 1998–2001, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 49–50; Hale Zukas, “National Disability Activist: Architectural and Transit Accessibility, Personal Assistance Services,” an oral history conducted in 1997 by Sharon Bonney in *Builders and Sustainers of the Independent Living Movement in Berkeley, Volume III*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 100–101; Ed Roberts called education his “path to freedom,” in Timothy Pfaff, *California Monthly*, February 1985, retyped story by Minnesota’s Governor’s Council on Developmental Disabilities, 1.

The activism of students with disabilities within UC Berkeley was an explicit and direct origin of the Independent Living Movement. The students used the skills, knowledge, and cohesion they had learned to probe different avenues of developing organizations and institutions that would contribute to a wider impact on disability issues across the state and nation. John Hessler and Ed Roberts took their experience with the university administration and CADR at Cowell Hospital and used it to establish new organizations that would expand the services and accommodations developed while attending UC Berkeley. The first of these entities would be the Physically Disabled Students Program (PDSP) at the university.

B. The Physically Disabled Students Program

John Hessler founded the Physically Disabled Student Services at UC Berkeley during the 1960s. Services offered included financial aid, attendant referral and employment, and wheelchair maintenance. This expansion was possible due to federal funding through the Department of Education's Rehabilitation Services Administration.²³ Starting in 1969, Hessler led the movement to establish an organization that would implement the lessons of the Cowell experience.²⁴ The PDSP was set up in a building on Durant Avenue, a block away from the university campus above what was then and still now the local favorite Top Dog eatery. PDSP started primarily as an accommodating physical space where staff fixed devices, such as wheelchairs, and established an

²³ Hale Zukas, "National Disability Activist: Architectural and Transit Accessibility, Personal Assistance Services," an oral history conducted in 1997 by Sharon Bonney in *Builders and Sustainers of the Independent Living Movement in Berkeley, Volume III*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 118–119, 135–136; James Donald, Student Resident At Cowell, 1967–1968, Attorney and Deputy Director of The California Department Of Rehabilitation, 1975–1982," an oral history conducted in 1998 by Kathryn Cowan in *University of California's Cowell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley's Independent Living Movement*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 83; Cathrine Caulfield, "First Woman Student in the Cowell Program, 1968," an oral history conducted in 1996 by Susan O'Hara in *University of California's Cowell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley's Independent Living Movement*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 137; Judith Heumann, oral history, 249; Linda Perotti, "An Employee Perspective on the Early Days of the Cowell Residence Program, Physically Disabled Students' Program, and the Center for Independent Living," an oral history conducted by Kathy Cowan in 1998, Oral History Office, Bancroft Library, UC Berkeley, 2000, 121–125, 134; Ed Roberts, oral history, 45; Zona Roberts, oral history, 126; Betty H. Neely, "Recollections of the Director of Student Activities and Programs," an oral history conducted in 1984 by Herb Wiseman in *Disabled Persons' Independence Movement: The Formative Years, 1962–1977*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1987, 15.

²⁴ Lynn Kidder, "They Fought Disabilities and Won," *Daily Ledger*, May 2, 1982, 1, 10–12, in Herbert Willmore Papers, The Bancroft Library, BANC MSS 99/249c.

official attendant referral service for students with disabilities.²⁵ It was a place where individuals with disabilities could meet and converse. Like Cowell, the PDSP office was a place where peers could network and support one another. It was loosely structured with few rules and flexible services, which could be a strength when addressing individuals with unique and diverse impairments.²⁶

PDSP grew out of the Cowell experience and was needed for those who were seeking to leave the dormitory and navigate the university beyond the walls of the hospital. The political conflict with the university and the desire for more independence and autonomy led to its creation.²⁷ PDSP's main focus was centered on the individual with the disability and on infusing them with the autonomy and discretion over their own needs and capacity to integrate into the community. Hale Zukas, a Cowell resident and early disability rights activist, listed three primary functions for PDSP and what would later become tenets of the Independent Living Movement: First, "Those who know best the needs of disabled people and how to meet those needs are the disabled themselves." Second, "The needs of the disabled can be met most effectively by comprehensive programs which provide a variety of services." And third, "Disabled people should be integrated as fully as possible into their community."²⁸ After their experience at Cowell, Berkeley students wanted to implement a program that prioritized the individual. Herbert Willmore stated, "That's what Disabled Students' Program and the Center for Independent Living were all about: consumer input—the people that received the services actually having an effect over the design of the program and the evaluation of the program."²⁹

²⁵ Carol Fewell Billings, "Attendant and Observer in the Early Days of the Physically Disabled Students' Program and the Center for Independent Living, 1969–1977," an oral history conducted by Kathy Cowan in 1998, Oral History Office, Bancroft Library, UC Berkeley, 2000, 27; Cathrine Caulfield, oral history, 139; Karen Topp Goodwyn, oral history, 129, 136; Charles A. Grimes, an oral history, 72, 79; Linda Perotti, "An Employee Perspective on the Early Days of the Cowell Residence Program, Physically Disabled Students' Program, and the Center for Independent Living," an oral history conducted by Kathy Cowan in 1998, Oral History Office, Bancroft Library, UC Berkeley, 2000, 126–127, 131–132; Zona Roberts, oral history, 142. When Judith Heumann moved to Berkeley she would regularly have to go there for an accessible bathroom while on campus, see Judith Heumann, "Pioneering Disability Rights Advocate and Leader in Disabled in Action, New York: Center for Independent Living, Berkeley; World Institute on Disability; and the US Department of Education 1960s–2000," an oral history conducted by Susan Brown, David Landes, and Jonathan Young in 1998–2001, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2004, 89, 238; Proposal for Renewing Special Services' Grant, Fiscal Year 1971, no credited author but signed by John Hessler, in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, Carton 2, 5, 10–11.

²⁶ Karen Topp Goodwyn, oral history, 129–130; Charles Grimes, oral history, 87; Proposal for Renewing Special Services' Grant, Fiscal Year 1971, no credited author but signed by John Hessler, in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, Carton 2, 10.

²⁷ Herbert Willmore, "Autobiographical Summary," no date, in Herbert Willmore Papers, The Bancroft Library, BANC MSS 99/249c.

²⁸ Edward V. Roberts, "California," in *Independent Living: Emerging Issues in Rehabilitation*, ed. Susan Pflueger (Washington, DC: Institute for Research Utilization, 1977), 47, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

²⁹ Herbert Willmore, oral history, 182.

At the heart of all the services and accommodations provided by PDSP, student activists ultimately had one major goal: independent living.³⁰ Beyond attendant referrals, counseling, and wheelchair repair, PDSP had a philosophy of independence for its students with disabilities. A grant proposal in the early years of the program makes that clear; the proposal read:

The long term goals are many but they can be summed up in one word and that is—independence. All of our efforts lead to this goal. Academic success, physical stability, building self-confidence, encouraging students to handle their own financial affairs, hiring their own attendants, controlling their own lives, their own homes, all of these things that the program emphasizes have but one reason and that is to permit the disabled student to become an independent member of society . . . In the years to come it will no doubt be evaluated also by many members in the community who may for the first time realize that disabled individuals are human beings whose lives have value.³¹

PDSP was a shift from purely reactive development of accommodations and services by the university toward a clear concerted effort at providing a path to independence for students at UC Berkeley. During their time at Cowell, the students were responding to limitations and restrictions placed on them by hospital staff, the university, and CADR. At PDSP they were taking a more active and preemptive role in establishing methods and paths for independence.

Despite the clashes with government agencies and a push beyond paternal oversight, PDSP was still funded through federal grants and matching support from UC Berkeley. Both CADR and the federal Department of Health, Education, and Welfare provided vital funding for PDSP, and UC Berkeley worked closely with PDSP to create opportunities for students with disabilities. The relationship was not always adversarial; at times these state and federal entities were essential in promoting independence and opportunities for students with disabilities. Just as with the establishment of Cowell as a residency for students with disabilities, the state of California and the federal government would be instrumental in establishing the institutions that would help people

³⁰ Proposal for Renewing Special Services' Grant, Fiscal Year 1971, no credited author but signed by John Hessler, 14–16; "Revisions to the Physically Disabled Student's Programs' Proposal for Special Services Funding Fiscal 1971," no author, no date, no page number; both in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, Carton 2.

³¹ Proposal for Renewing Special Services' Grant, signed by John Hessler, quote on 14–15.

with disabilities.³²

Overall, the impact of PDSP was profound, even lifesaving. A report by UC Berkeley’s Disabled Students Program in February of 1987 surveyed former participants, and the testimonials describe just how powerful the Cowell Program and PDSP had been in transforming the lives of students. Since 1962,³³ 155 students had participated in programs meant to aid students with disabilities, whether the Cowell program or PDSP.³⁴ A small sample includes: “It saved me from being institutionalized.” “It was very valuable. You might say the Residence Program is what allowed me to live.” “It allowed me to develop independently from my family . . . which led to working, home ownership, and a more fulfilling life.” “I believe at the time, 1970, it was the most important single factor in changing my life to a more productive and meaningful one.” “The residence program was very important to my gaining independence. My mother had done everything for me. I had never done anything on my own. I probably would still be living at home and not working if the Program had not existed.” “Without it I would be dead.”

These messages of gratitude and appreciation for the program illustrate its effectiveness. But its impact had been limited to students at UC Berkeley. The graduating students wanted to do more, and to do so they started the Center for Independent Living (CIL) to address the needs of the large community—not just students. The CIL would start out of a corner of PDSP’s office on Durant Avenue.³⁵

Part II: “Advocrats” and the Passage of Assembly Bill 204

The passage of Assembly Bill 204 into California state law on July 2, 1979, codified the independent living ideas and concepts that had been developed at Cowell Hospital, the Physically Disabled Students’ Program, and the Center

³² Charles Grimes, oral history, 72, 81–84, 100; No author, no date, appears to be a draft of a grant proposal to the federal Department of Health, Education, and Welfare’s Special Services Project, in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, Carton 2, 5–6; many of the grant proposals in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, Carton 2 target federal funding. See also, Zona Roberts, oral history, 143–144; Michael Fuss, “Attendant for Cowell Residents, Assistant Director of the Physically Disabled Students Program, 1966–1972,” an oral history conducted by Kathy Cowan in 1997, Oral History Office, Bancroft Library, UC Berkeley, 2000, 62–63.

³³ The report seems to consider SHS’s creation of the Cowell Residence Program as the “beginning” of PDSP, which is a mistake; PDSP was officially started eight years later.

³⁴ “Report on Employment Survey, Physically Disabled Students’ Residence Program,” Disabled Students’ Program, UC Berkeley, report dated February 1987, in “Herbert Willmore Papers,” The Bancroft Library, BANC MSS 99/249c.

³⁵ Hale Zukas, oral history, 118–119; Carol Fewell Billings, “Attendant and Observer in the Early Days of the Physically Disabled Students’ Program and the Center for Independent Living, 1969–1977,” an oral history conducted by Kathy Cowan in 1998, Oral History Office, Bancroft Library, UC Berkeley, 2000, 12; Michael Fuss, oral history, 84–87.

for Independent Living into California state law.³⁶ It defined what independent living centers (ILCs) were in state law and it provided funding for them to operate and expand throughout the state. It was the union of state institutions and outside activism into a government funded nonprofit program that provided resources and services for those with disabilities.

Ed Roberts was appointed director of CADR on November 1, 1975, by Governor Jerry Brown Jr.³⁷ As director, he would help guide this statute through the legislature with the help of other Berkeley alumni and Cowell residents like John Hessler and Jim Donald, among others, while they worked with Roberts at the California Department of Rehabilitation. Yet AB 204 also had staunch allies in the legislature to author and advocate for the bill. Its legislative champion was Assemblyman Tom Bates. Disability activists would enter the halls of power and become agents of change within the system alongside important allies inside and outside of government. This process of codifying independent living in state law reveals the extent to which legal machinations are not abstract applications of words through agencies, but real flesh and blood people pushing and pulling through funding cuts, statutes dying in committees, expiring grants, and oppositional advocates to implement different conceptions of meaning—in this case the meaning of disability.

A. The Students Leave Campus: The Center for Independent Living

Scholars have discussed Berkeley and the independent living movement as a major component of the disability rights movement.³⁸ While these important contributions have analyzed the independent living movement broadly, none have explored the impact this movement had on the relationship between the activists and state officials that culminated in the establishment of ILCs and their funding through state law.

The Center for Independent Living in Berkeley (CIL) was a direct product

³⁶ Assembly Bill Final History, Volume 1, California Legislature at Sacramento, 1979–80 Regular Session, 196; Office of the Governor Press Release, Barbara Metzger, Press Secretary, July 2, 1979, in California State Archives, Department of Rehabilitation, R204.004:20 (Box 3).

³⁷ Letter from Leslie F. James of Portland State University to Ed Roberts, with remarks from a meeting attended together, April 25, 1977; Edward V. Roberts, “A Founder’s Perspective on Independent Living,” World Institute on Disability, no periodical info, draft, both in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1; Miriam Pawel, *The Browns of California: The Family Dynasty That Transformed a State and Shaped a Nation* (New York: Bloomsbury Publishing, 2018), 221.

³⁸ Bagenstos, *Contradictions*, 15–17; Colin Barnes and Geof Mercer, *Exploring Disability*, 2nd ed. (Cambridge: Polity Press, 2010), 165–166; Edward D. Berkowitz, *Disabled Policy: America’s Programs for the Handicapped* (New York: Cambridge University Press, 1987), 199–202; Shapiro, *No Pity*, 41–55; Doris Zames Fleischer and Frieda Zames, *The Disability Rights Movement: From Charity to Confrontation, Updated Edition* (Philadelphia, PA: Temple University Press, 2011), 37–45.

of the Cowell and PDSP experience.³⁹ CIL was founded by Cowell residents, and it was the third manifestation of independent living concepts that had started at the university hospital and evolved into PDSP. Although it was grounded in the same principles, it was founded to address the needs of the wider community beyond the university's borders and student population.⁴⁰

Hale Zukas was a Berkeley student who was considered to be one of the more extreme radical activists in the disability rights movement (DRM).⁴¹ He did not live in Cowell, but was active in protest movements, such as pouring asphalt to make unofficial curb ramps and he even insisted on being drafted during the Vietnam War despite his limited mobility in a wheelchair.⁴² Zukas was instrumental in both the founding of PDSP and CIL, and he writes about what he considered to be a profound shift in understanding disability through the creation of these two institutions:

The approach envisioned in the proposed Physically Disabled Students' Program (PDSP) was a radical departure from past practice in the medical and rehabilitation fields. In contrast to the fragmentation which characterized the existing services, the PDSP would take a holistic, integrated approach by providing a comprehensive array of services in recognition of the fact that disabled people are likely to have a variety of needs, and functional independence will be hard to achieve unless *all* those needs are met. Self-evident though this may seem in hindsight such an approach had, to our knowledge, never been tried before.⁴³

This is an additional layer to the original and creative breakthrough that was independent living. Both PDSP and CIL focused on the control of the organizations through a majority of board members with disabilities, and the autonomy of the individual by placing the individual's needs and discretion before that of the medical professional; but in addition to these concepts, CIL also provided comprehensive services. Rather than a piecemeal approach, independent living centers gave clients access to multiple different options at once, all in one place. It was an expansion of tangible assistance to live more fully and independently.

³⁹ Hale Zukas, "Part I: C.I.L. History," no date, 1, in Center for Independent Living Records, Bancroft Library at UC Berkeley, BANC MSS 2000/43c, Carton 5.

⁴⁰ Hale Zukas, "National Disability Activist: Architectural and Transit Accessibility, Personal Assistance Services," an oral history conducted in 1997 by Sharon Bonney in *Builders and Sustainers of the Independent Living Movement in Berkeley, Volume III*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 135–136.

⁴¹ Jim Donald, oral history in *University of California's Cowell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley's Independent Living Movement*, Regional History Office, The Bancroft Library, 85–86.

⁴² Hale Zukas, oral history, 109–110, 121–122.

⁴³ Hale Zukas, "Part I: C.I.L. History," 3, emphasis in original.

The first meeting to create CIL was on May 17, 1971, before it was even founded and incorporated. It featured eight disability advocates including John Hessler, Hale Zukas, and one of the students targeted by CADR counselor Lucile Withington in the attempt to pull funding at Cowell, Donald Lorence.⁴⁴ It essentially proclaimed the intent to create CIL, and the first board meeting would be later that same month on May 27, 1971. The proposed services it would provide were explicitly drawn from the PDSP proposal and the meeting itself would take place at PDSP offices.⁴⁵

Aspirations of the disabled community also continued to be a concern. Early CIL members were worried that community involvement would be difficult because, “As we all know, most people are convinced that there is nothing they can really do to improve their lot. They have dreams but rarely do they know how to act effectively to realize their dreams.”⁴⁶

Founders of CIL did not just want to provide tangible services, they wanted to galvanize the community and demonstrate that achievement of goals it thought were impossible were actually attainable. The articles of incorporation for CIL stated that the first and primary purposes of founding CIL were “to establish, maintain and operate non-profit community service centers relating to, and for the purpose of improving, the physical, social and financial condition of physically disabled individuals.”⁴⁷

From the beginning, funding was an issue. The main problem that plagued CIL was a lack of reliable resources to sustain the program and provide it with the requisite certainty of operations going forward. In its early days it mainly sought small-scale charity donations.⁴⁸ It was not until the federal Department of Health, Education, and Welfare’s Rehabilitation Services Administration provided a grant of \$50,311 on June 30, 1972, that CIL had actual substantial

⁴⁴ “First Meeting of the Potential Board of Directors,” Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10; Hale Zukas, “Part I: C.I.L. History,” 5; Hale Zukas, oral history, 118. Although Ed Roberts featured prominently in the DRM from Cowell to his directorship at CADR and beyond, he was not at these early meetings for CIL and John Hessler seemed to be the primary mover for both PDSP and CIL. Hale Zukas appears to disagree with the label of “co-founder of CIL” for Ed because of his absence from these first meetings. See Hale Zukas, oral history, 119. Ed would not get involved in CIL until approximately two years after its founding.

⁴⁵ “First Meeting of the Potential Board of Directors,” Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10. This appears to be an appendix to the first meeting.

⁴⁶ “First Meeting of the Potential Board of Directors,” Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10.

⁴⁷ “Articles of Incorporation of The Center for Independent Living, Inc.,” in Center for Independent Living Records, BANC MSS 2000/43c, Carton 18.

⁴⁸ “Minutes of the Meeting of the Board of Directors on Monday, September 13, 1971,” Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10; Hale Zukas, oral history, 119; Hale Zukas, “C.I.L. History,” 6.

funding.⁴⁹ When that grant expired a year later in June 1973, Ed Roberts and John Hessler sought \$15,000 in funding from both Vice Chancellor Robert Kerley of UC Berkeley and the City of Berkeley.⁵⁰ It was in 1973 that Ed Roberts would begin attending CIL board meetings.⁵¹ This funding would last until the end of the year. More was provided by the San Francisco Foundation in December 1973 and Alameda County in March 1974.⁵² On May 22, 1975, CIL would sign an agreement with CADR for funding of a new office on University Street in Berkeley and other expenditures. This would be CIL's first Innovation and Expansion grant, funded by the Rehabilitation Act of 1973, as amended in 1974 (the Rehabilitation Act hereafter). The act provided funding that was channeled through state agencies, in this case, CADR.⁵³

This funding pattern conveys two important aspects of disability activism and its capacity to meet the needs of the community. First, it again illustrates the importance of state support through officials providing the funding needed for the services, along with overhead and labor at the office itself. The federal Rehabilitation Services Administration, the public institution of UC Berkeley, and local government in the form of Alameda County and the City of Berkeley provided vital resources for the activists to implement their ideas and concepts of independent living. As with Dr. Henry Bruyn at Cowell Hospital, state representatives would be crucial in aiding activists with their advances in the disability rights movement.

However, a second and limiting aspect of this federal and local funding was that it was precarious and temporary. For CIL not only to expand but just operate on a steady basis, it would need a more reliable source of funds. It would not be until the passage of AB 204 that the state of California would become directly involved in funding independent living centers.

In order for the activists to establish dependable funding, they would need

⁴⁹ "Project Development Grant, Program Title: Planning for a Community Rehabilitation Services Facility," Department of Health, Education, and Welfare, Rehabilitation Services Administration, Edward Newman, Commissioner, June 30, 1972, in Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10; Hale Zukas, oral history, 119.

⁵⁰ "Minutes CIL Board Meeting," July 30, 1973; "Minutes Board Meeting," August 27, 1973, both in Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10[CHECKED] Hale Zukas, "C.I.L. History," 6–7.

⁵¹ "Minutes Board Meeting," August 27, 1973; "Meeting of the Board of Directors of CIL," November 26, 1973; both in Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10.

⁵² Hale Zukas, "C.I.L. History," 6–7.

⁵³ Agreement between the State of California Dept. of Rehabilitation and the Center for Independent Living, Inc., in Hale Zukas Papers, The Bancroft Library, University of California, Berkeley (accessed online), <https://oac.cdlib.org/view?docId=hb5w1004g3&brand=oac4&doc.view>. "Minutes, Regular Meeting of the CIL Board of Directors," March 28, 1977, in Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10. There are no minutes in the records for 1976, but this record of board minutes shows an agenda item as "renewing I&E grant," suggesting they started receiving this funding in 1976.

more state allies. One way of gaining support from state officials was to become state officials. Ed Roberts, John Hessler, and Jim Donald would all go to work at CADR when Ed Roberts was appointed director. But for them to achieve the goal of state legislative funding, they would need a state legislator to write the bill and introduce it to the floor. That legislator would be Tom Bates.

Tom Bates was also an alumnus of UC Berkeley before entering government.⁵⁴ He represented Berkeley and North Oakland on the Alameda County Board of Supervisors, and it was at this time he met Ed Roberts and became aware of the Center for Independent Living.⁵⁵ Bates would work with CIL to improve accessibility in county buildings.⁵⁶ Roberts went before the County Board to ask for grants that would fund CIL, so Bates started working to allocate county funds to the center as a supervisor. It was this initial connection that would lead to Roberts and Bates working together to pass AB 204 in 1979.⁵⁷

B. The Need for AB 204

Prior to AB 204's passage in 1979, ILCs were primarily funded through two means, one from above the state level and one from below: federal grants and local governments. Both these funding sources would be strained in the years and months leading up to July 1979. First, Proposition 13 reduced funding for local governments, and second, federal "Innovation and Expansion grants" (I&E grants) under the Rehabilitation Act were set to expire after three years.

Proposition 13's passage on June 6, 1978, caused funding reductions and threats to operations for ILCs. Proposition 13 was a citizen initiative that limited both the initial and annual increases to the property tax rate while also mandating that two-thirds of voters approve special taxes from local governments.⁵⁸ This was a major blow to ILCs at the local level. Thomas Church, Executive Director of an ILC, wrote that his center saw a 15 percent reduction in funding due to Proposition 13, and that continued reductions could cause a loss of services.⁵⁹

⁵⁴ Oral history interview with Tom Bates: California State Assemblyman, 1977–1996, Alameda County Supervisor, 1973–1976, interviewed by Leah McGarrigle, Regional Oral History Office, University of California, Berkeley, BANC MSS 2004/274c, 30–49.

⁵⁵ Tom Bates, oral history, 109–122, 179–180, 497–498.

⁵⁶ "Regular Board Meeting," February 25, 1974, in Center for Independent Living Records, Bancroft Library, UC Berkeley, BANC MSS 2000/43c, Carton 10.

⁵⁷ Tom Bates, oral history, 127–128, 179.

⁵⁸ Mark Baldassare, Dean Bonner, Alyssa Dykman, and Lunna Lopes, "Proposition 13: 40 Years Later," Public Policy Institute of California, June 2018, <https://www.ppic.org/publication/proposition-13-40-years-later/>.

⁵⁹ CADR Memorandum from Roger Chapman to Jan Dell, February 9, 1979; in California State Archives, Department of Rehabilitation, R204.004:20; Letter from Tom Bates to Pamela King, April 6, 1979; California State Archives, Tom Bates Papers, Bill Files, LP394:38; Letter from Thomas E. Church, Executive Director of Adult Independence Development Center, to Tom Bates, April 6, 1979, in California State Archives, Senate Health and Welfare Committee, Bill Files, LP207:67.

AB 204 was not the first attempt by Bates to pass legislation providing state funding to independent living centers in California. Just a year before, Bates had authored AB 3051 which would have provided funding from the state, but the passage of Proposition 13 caused a funding earthquake, and AB 3051 died in the Assembly Ways and Means Committee.⁶⁰ In a bill analysis opposing AB 3051, the State Finance Department summarized AB 3051 as a bill that “would provide for State funding of existing independent living centers for the disabled and the development of new centers to provide services to disabled individuals to assist them in achieving social and economic independence. The bill also would require the Department of Rehabilitation to evaluate centers funded by this bill and appropriates \$3,000,000 for the program.”⁶¹ Proposition 13 killed AB 3051 in committee in 1978, but that same proposition would be a major impetus and motivation for AB 204 a year later.

The second major effect on funding for ILCs leading up to the passage of AB 204 was the sunset of federal I&E grants under the Rehabilitation Act. These grants illustrate the push and pull of federal influence. The Rehabilitation Act had tremendous value in opening the door of civil rights to people with disabilities. Section 504 of this act began tying federal funding to accessibility and accommodations for people with disabilities.⁶² But in addition to that provision, it also authorized funding for states to provide nonprofits working to promote opportunities for those with disabilities. These grants were meant to “initiate or expand such services to individuals with the most severe handicaps, or of special programs . . . to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particularly handicapped individuals who are poor.” When Ed Roberts became

⁶⁰ Bill Analysis from Ed Roberts as Director of CADR, January 19, 1979; Bill Report from Ed Roberts as Director of CADR, May 31, 1979; Memorandum on AB 204 provided to Chairman of the Assembly Human Resources Committee Richard Alatorre, hearing date March 6, 1979 (also in Bates papers, see below); all located in California State Archives—Department of Rehabilitation, R204.004:20 (Box 3). See also, Draft of Letter to Assembly Colleagues from Tom Bates regarding Independent Living Centers (AB 204), January 4, 1979; Draft of Letter to Members of the Senate and Assembly from Tom Bates regarding Independent Living Centers (AB 204), January 4, 1979; Letter from Tom Bates to Leo Mouton, January 17, 1979; Senate Committee of Health and Welfare, Staff Analysis of Assembly Bill 204 (Bates) (As Amended May 3, 1979); Assembly Office of Research, “Unfinished Business: Concurrence Amendments,” no date (appears to be after Assembly vote on May 10, 1979 and before Senate vote on June 22, 1979); “Assembly Third Reading AB 204 (Bates) As Amended: May 3, 1979,” by Assembly Office of Research, May 10, 1979; all located in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

⁶¹ Bill Analysis, AB 3051, California State Department of Finance, no date, in California State Archives, Department of Rehabilitation, R204.004:20 (Box 3).

⁶² Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (New York: Cambridge University Press, 1987), 212–215; Robert L. Burgdorf, Jr., “Substantially Limited Protection from Disability Discrimination: The Special Treatment Model and Misconstructions of the Definition of Disability,” *Villanova Law Review* 42 (1997): 409, 414–417; Nielsen, *A Disability History of the United States*, 165–167; O’Brien, “From a Doctor’s to a Judge’s Gaze,” 328–329; Richard K. Scotch, *From Good Will to Civil Rights: Transforming Federal Disability Policy* (Philadelphia, PA: Temple University Press, 2001), *passim*.

Director of CADR, he used these grants to set up nine additional ILCs.⁶³

In February of 1979, thirteen ILCs in California received \$831,200 in federal funding from I&E grants; and at least eight of those centers were in their third and final year of funding. Many ILCs that received I&E grants through the Rehabilitation Act would lose that funding between June 30 and December 30 of 1979, and at least five would likely shut down after the I&E grants expired.⁶⁴ CADR recognized that this was an existential threat to ILCs throughout California toward the end of 1978, and began studying solutions to the reduction in funding, which included legislative action.⁶⁵

Local governments and the nonprofits themselves highlighted the gravity of reduced funding as I&E grants began to expire.⁶⁶ Douglas C. Broten, Director of the California Association of the Physically Handicapped Service Center in Fresno, wrote to Thomas Bates about AB 204, stating that their I&E grant would expire on November 14, 1979, and at the time of writing they had no funding beyond that date. He went on to state, “at the conclusion of the I&E Grant we might have to close our doors.”⁶⁷ From internal government memorandums to letters of nonprofit directors, it is clear that the looming reduction in federal funding through these grants was a major impetus for the passage of AB 204.

With two major sources of funding expiring, proponents of independent living needed a solution that would provide a firmer funding source for ILCs across the state. Activists at CIL and other ILCs wrote to state legislators and

⁶³ Ed Roberts Testimony on the Center for Independent Living, Subcommittee on House of Representatives, Subcommittee on Select Education Hearing, January 5, 1978, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1; 29 U.S.C. §§ 740 and 741 (Supp. IV, 1974) (quote from §741).

⁶⁴ “Comments on Your A.B. 204 Analysis,” CADR Memorandum from Jim Wigton to Jan Dell, January 18, 1979; Bill Analysis of AB 204 (Bates), Health and Welfare Agency, Department of Rehabilitation, Director Edward V. Roberts, January 19, 1979; “Back Up for AB 204 (Bates),” CADR Memorandum from Roger Chapman to Jan Dell, February 9, 1979; all in California State Archives, Department of Rehabilitation, R204.004:20 (Box 3). See also, Senate Committee on Health and Welfare, Staff Analysis of Assembly Bill 204 (Bates) (As Amended May 3, 1979); Assembly Office of Research, “Unfinished Business: Concurrence in Senate Amendments,” AB 204 (Bates); Legislative Analyst (no name), “Analysis of Assembly Bill No. 204 (Bates) As Amended in Senate May 31, 1979, 1979–1980 Session,” June, 1979; Bill Analysis of AB 204 (Bates), California Department of Finance, 1979; in California State Archives—Tom Bates Papers—Bill Files—LP394:38. Exact projections differed, but the sources agree that at least eight were in their last year of funding and at least five would likely fail without additional funding.

⁶⁵ CADR Memorandum from Robert W. Chapman to Resources Specialists, Subject: ILP Short-Term Survival, October 18, 1978; in Center for Independent Living Records, Bancroft Library at UC Berkeley, BANC MSS 2000/43c, Carton 5.

⁶⁶ Letter from Norman D. Boyer, Legislative Representative of the City Council of the City of Los Angeles, to Assemblyman Tom Bates, June 5, 1979; Letter from Douglas C. Broten, Director of The Fresno County Chapter of the California Association of the Physically Handicapped, to Tom Bates, March 30, 1979; in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

⁶⁷ Letter from Douglas C. Broten, Director of The Fresno County Chapter of the California Association of the Physically Handicapped, to Tom Bates, March 30, 1979, in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

advocated for state funding. With Roberts, Hessler, and Donald at CADR, and Bates in the state assembly, actors inside government were positioned to provide that funding through AB 204.

C. The Passage of AB 204

Proponents of AB 204 were bolstered by a letter-writing campaign from ILCs and other interested organizations throughout the state. During the first six months of 1979, impacted organizations wrote to state assembly members⁶⁸ and senators.⁶⁹ Beyond support and appreciation, they emphasized three major points. First, they argued that this was a cost-saving measure for the state by providing the means for individuals with disabilities to achieve employment and no longer use welfare payments. Douglas Martin, Executive Director of Westside Community for Independent Living, wrote, “enactment of [AB 204] would be highly cost-effective. By helping existing independent living programs and stimulating the development of new ilp’s [*sic*], tens of thousands of disabled people could continue to live in their communities, saving the state the expense of institutionalization.”⁷⁰ Mary Rodocker of UC San Francisco’s Department of Psychiatry made a similar point, writing, “The results of these services, if degrees of independence can be measured in dollars, are cost effective.”⁷¹ Framing AB 204 as a cost-saving mechanism was a crucial component of the advocacy for its passage.

Second, they pointed out that without this additional funding, their centers would either need to reduce services or shut down entirely. F. A. Caligiuri of the California Association of the Deaf wrote, “Without the funding provided by AB 204, over half of these [ILCs] in the State will close.”⁷² The ILCs were facing an existential funding threat in the wake of Proposition 13 and the sunset of I&E grants. AB 204 would not just boost services for those with disabilities, it was a lifeline after a dramatic reduction in funding.

Third, they put the passage of the bill in existential terms for those living with disabilities. It was a threat to their capacity to exist in communities and

⁶⁸ Letters found in California State Archives, Tom Bates Papers, Bill Files, LP394:38; and California State Archives, Department of Rehabilitation, R204.004:20 (Box 3).

⁶⁹ Letters found in California State Archives, Tom Bates Papers, Bill Files, LP394:38; and California State Archives, Senate Health and Welfare Committee, Bill Files, LP207:67.

⁷⁰ Letter from Douglas Martin, Executive Director of Westside Community for Independent Living, to Thomas Bates, March 2, 1979, in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

⁷¹ Letter from Mary M. Rodocker, Training Supervisor, Sex and Disability Training Project at UC San Francisco, to Thomas Bates, February 5, 1979, in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

⁷² Letter from F.A. Caligiuri, Executive Director of The California Association of the Deaf to state senators, June 20, 1979; in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

have meaningful lives. Phil Draper and Judy Heumann of CIL at Berkeley wrote letters to state senators and Governor Brown (the language was the same in each) stating, “Within the next few days you must make a very important decision. You must decide whether to enable persons with disabilities to live as independent, self-supporting, tax-paying citizens. You must decide whether de-institutionalization of disable [*sic*] individuals is a priority in California.” They included the story of a client who had been a post-polio quadriplegic since the age of three. His parents could no longer care for him after he reached the age of twelve, so he moved among various medical facilities, only seeing staff and his own immediate family. With CIL’s help, the client had been able to move into a college dormitory at the age of twenty-seven. He would be moving into his own apartment with continued assistance from CIL.⁷³

Support for AB 204 also came from inside state agencies and local government.⁷⁴ To no one’s surprise, arguably the fiercest advocate for the passage of AB 204 was CADR director Ed Roberts himself.⁷⁵ Roberts took the lessons from Cowell, PDSP, and CIL into California state government “advocracy” and devoted them to winning state funding for ILCs. While the exact date and time that the position of the “social model” became viable is unclear in the disability scholarship, it was definitely instrumentalized by Ed Roberts on May 2, 1977, in his efforts to establish ILCs as CADR director—the same year as Lynn Thompson’s suicide. In an internal CADR document, Roberts advanced social model concepts to justify the need for ILCs and the need for state funding. The exact language of his position is striking in its affirmation of the social model for independent living and is worth quoting at length. He writes,

We have all seen over and over again that the severity of the disability, whether it be mental, physical or addictive, is not the overwhelmingly critical factor that prevents an individual from functioning independently in society . . . We know now that it is not the severity of the disability

⁷³ Letter draft, Center for Independent Living, marked “This is going to everyone in the senate who hasn’t voted on the bill yet,” June 13, 1979; Letter from Phil Draper and Judy Heumann of Center for Independent Living to Governor Jerry Brown, June 26, 1979; both in California State Archives, Tom Bates Papers, Bill Files, LP394:38.

⁷⁴ Memorandum from Roger Chapman to Jan Dell promoting AB 204, January 10, 1979; Letter from Harry N. Greenblatt, Chief of Research Section of CADR, to Ted Lasher, Assembly Human Resources Committee, March 5, 1979; Memorandum from Richard B. Spohn, Director, and Steve Fishbein, Legislative Coordinator of the Legislative Office, to Diana Dooley, Legislative Secretary in the Governor’s Office, April 27, 1979; Memorandum “Bi-Weekly Report” from Jan Dell, Legislative Coordinator of CADR to James Donald, Deputy Director for Legal Affairs, CADR, May 4, 1979; Letter from Tom Bradley, Mayor of Los Angeles, to Leo McCarthy, Speaker of the Assembly, May 8, 1979; all in California State Archives, Department of Rehabilitation, R204.004:20 (Box 3).

⁷⁵ Letter from Ed Roberts to Richard Alatorre, Chairman of the Assembly Human Resources Committee, February 28, 1979 [date crossed out]; Letter from Ed Roberts to Chairman of the Assembly Human Resources Committee Richard Alatorre, March 6, 1979; in California State Archives, Department of Rehabilitation, R204.004:20 (Box 3).

that prevents an individual from integrating into society. The major factors are the attitudinal barriers shared by society and by disabled persons themselves, the feelings of devaluation, the isolation, the lack of social skills and the scarcity of role models. It is our system of institutionalization and our welfare programs that penalize those who try to find jobs or to live on their own. And finally, it is the lack of basic support services in the community and the existence of mobility barriers.⁷⁶

Roberts could have been writing explicitly about Lynn Thompson, especially in his reprobation of institutionalization and welfare programs that served as obstacles to independence. He explicitly placed the onus on environmental and attitudinal barriers as opposed to individual impairments. ILCs were a way of ameliorating these conditions to provide more opportunities for those with disabilities.

In December of 1977, Roberts characterized independent living as “the civil rights movement of millions of Americans with disabilities. It is the wave of protests against segregation and discrimination and an affirmation of the right and ability to share fully in the responsibilities and joys of our society.” He again used language of an early version of the social model of disability to advance an argument for independent living’s role in rehabilitation, writing that, “The problem we now face is how to make changes in our environment so that these persons can complete the rehabilitation process and become actively participating and valued members of our communities.”⁷⁷

If the first tenet of Roberts’s conception of independent living was the removal and destruction of barriers, a second tenet was the importance of individual agency. The centrality of individual choice was the “ability to actively participate in society—to work, have a home, raise a family, and generally share in the joys and responsibilities of community life. ‘Independent living’ means freedom from isolation or from the institution; it means the ability to choose where to live and how; it means the individual’s ability to carry out activities of daily living that non-disabled often take for granted.” Individual choice and

⁷⁶ Ed Roberts, Department of Rehabilitation Report, “The Case for Independent Living” May 2, 1977 (quote); he would express similar opprobrium against attitudinal barriers in Edward V. Roberts, “The Courage to Take Risks,” *The Unesco Courier*, January 1981; Edward V. Roberts, “Disabled Peoples’ International: A Symbol of Determination,” in *Rehabilitation/WORLD*, Summer/Fall 1982; in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

⁷⁷ Edward V. Roberts, “Foreword,” in *Independent Living: Emerging Issues in Rehabilitation*, ed. Susan Pflueger, for the Institute for Research Utilization, December 1977, ii, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

agency were of crucial importance.⁷⁸ In 1981, Roberts would write, “We are entering a new era and are finally recognizing that people with disabilities are not objects of charity. They are people with rights: specifically, the right to develop to their fullest potential, whatever that might be. A new philosophy is taking hold, one that acknowledges each person’s potential; we are realizing that we can’t write anyone off, and that we can’t define people’s limits for them. People have to define their own limits.”⁷⁹

A third major tenet in Roberts’s argument for ILCs was the importance of integration rather than segregation. He remarked, “It seems to me that segregation in and of itself has been one of the most devastating things that disabled people could have experienced. Not so much the fact that people have been pushed aside in our society, but the fact that people have been systematically segregated. It wasn’t done by evil people. I think it was done in a meaningful way.”⁸⁰ Segregation was a twofold impediment for individuals with disabilities. First, it prevented a proper socialization of the individual into their community through a deprivation of skills that could have been developed through social interaction. Second, it negatively impacted the perspectives of those in the wider population for people with disabilities, making them scarce and unseen in institutions rather than immersed in the community.⁸¹

For Roberts, independent living centers were products of a government-funded nonprofit program, but also the instantiation of a paradigm shift in thinking about disability. They altered the meaning of what it meant to be disabled and shifted the burden of responsibility for engagement and action. They were the manifestation of a move away from a pure individualistic medical model and toward the social model’s placement of responsibility on social remedies as opposed to individual ones.

The language of AB 204 drew heavily on the thoughts, ideas, and specific language developed at Cowell, PDSP, and CIL. Hale Zukas stated three basic

⁷⁸ Edward V. Roberts, Director, CADR, and Susan Stoddard, Senior Analyst, Berkeley Planning Associates, “Independent Living: Concept and Programs,” draft, prepared for *American Rehabilitation*, April 5, 1978, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

⁷⁹ Ed Roberts, “Statement by Ed Roberts, Director, California Department of Rehabilitation for the Geneva Committee for the International Year of the Disabled,” in *A New Look for New Perspectives*, July 8, 1981, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

⁸⁰ Letter from Leslie F. James of Portland State University to Ed Roberts, with remarks from a meeting attended together, April 25, 1977, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

⁸¹ Ed Roberts, speech draft, March 25, 1977, no exact location/context provided; Ed Roberts, speech draft, California Behavior Analysis Conference, March 30, 1977; in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1.

principles of PDSP and CIL. All three were embedded in the statute. The first principle was: “Those who know best the needs of disabled people and how to meet those needs are the disabled themselves.” The role of those with disabilities and the primacy of their agency can be found in §§ 19801(a) and 19801(b), with the requirement that the majority of board members must be disabled individuals and the staff “shall include as large a proportion as is practicable of disabled individuals.” The second principle was: “The needs of the disabled can be met most effectively by comprehensive programs which provide a variety of services.” The comprehensive scope of programs and services can be found in §§ 19801(c) and 19801(d), featuring the list ILCs were to provide according to the statute, which was almost word for word the same as those listed by PDSP and CIL. The third principle was “Disabled people should be integrated as fully as possible into their community.”⁸² The integration of individuals with disabilities into the community was addressed in §§ 19800 and 19801(d), which explicitly stated the legislature’s intent to “assist [disabled] individuals in their attempts to live fuller and freer lives outside institutions,” and also provided services such as transportation, mobility assistance, and communication assistance. The activists’ words and intent were inscribed in state law.

In 1972 Larry Biscamp, a Cowell Hospital resident who was one of the students Withington deprived of funding, and Herbert Willsmore, who had been president of the Rolling Quads,⁸³ had written a report with another undergraduate, Judy Taylor, explicitly defining PDSP as a counterbalance to CADR. These three founding members of CIL had argued in their college paper that organizations like PDSP would promote the agency and independence of individuals with disabilities.⁸⁴ That position from their college paper was now state law.

There are countless stories from every disability activist—from Hessler confined to a hospital listening to French tapes, to Zukas’s mother told by doctors that he should be institutionalized, to Roberts told by CADR that he would never work, to the conflicts at Cowell Hospital with Lucile Withington, to the early reports and studies by student activists on rehabilitation more broadly. Throughout there has been a constant struggle for the primacy of agency for those with disabilities. AB 204 codified that agency.

⁸² Susan Pflueger, “Independent Living: Emerging Issues in Rehabilitation” for the Institute for Research Utilization, in Edward V. Roberts Papers, 1975–1998, The Bancroft Library, UC Berkeley, BANC MSS 99/34, Carton 1; Chapter 191, *Statutes of California*, 420–421.

⁸³ Grimes, oral history, 42–45; “Autobiographical Summary,” Herbert Willsmore, no date, in Herbert Willsmore Papers, The Bancroft Library, BANC MSS 99/249c, 2; Lucile Withington, oral history, 85–87; “Proposal for Renewing Special Services’ Grant,” fiscal year 1971, signed by John Hessler, in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, 16.

⁸⁴ Larry Biscamp, Judy Taylor, and Herbert Willsmore, with Charles Cole, “An Evaluation of Rehabilitation Counselor Training Programs from the Perspective of Disabled Clients,” Working Paper, May 1972, Bancroft Library, pf HD7255.5.B5 1972, 4.

The language of the statute also followed PDSP's founding language with respect to services provided. Section 19801(c) stated that an ILC "shall provide, but not be limited to, the following services to disabled individuals: (1) Peer counseling, (2) Advocacy, (3) Attendant Referral, (4) Housing assistance and (5) Other referrals." Section 19801(d) would also provide "other services and referrals . . . such as transportation, job development, equipment maintenance and evaluation, training in independent living skills, mobility assistance, and communication assistance."⁸⁵ This language was derived straight from disability activists at Cowell Hospital and PDSP. Recall that when PDSP was founded, together with its non-university affiliated CIL, it was for attendant care, transportation, referrals, peer counseling, and wheelchair maintenance.⁸⁶

The explicit language of AB 204 reflected the concepts of independent living developed by these student activists turned bureaucrats. Their work at the university, nonprofits, and government offices culminated in a statute that provided funding for the ILCs they had created, in a way that recognized the agency of those with disabilities and provided the services that they themselves said they needed.

D. The Impact of AB 204

AB 204 funding was conditional on a report to the legislature and governor assessing different metrics of the ILCs funded by the statute.⁸⁷ Two reports on AB 204 and independent living in California were generated in March of 1980 to describe the impact of the legislation. The first was a report produced by the independent Berkeley Planning Associates (BPA) and sent to CADR on March 1, 1980 (the BPA Report).⁸⁸ It was a thorough analysis based on a methodology of sending a survey to a random sampling of center clients, as well as site visits to each center and interviews with providers, administrators, and CADR staff.⁸⁹ During the month of March, 1980, this report was condensed by CADR and its parent Health and Welfare Agency, and then sent to the state legislature on

⁸⁵ Chapter 191, *Statutes of California*, 420–421.

⁸⁶ Cathrine Caulfield, "First Woman Student in the Cowell Program, 1968," an oral history conducted in 1996 by Susan O'Hara in *University of California's Cowell Hospital Residence Program for Physically Disabled Students, 1962–1975: Catalyst for Berkeley's Independent Living Movement*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2000, 139–140; Linda Perotti, "An Employee Perspective on the Early Days of the Cowell Residence Program, Physically Disabled Students' Program, and the Center for Independent Living," an oral history conducted by Kathy Cowan in 1998, Oral History Office, Bancroft Library, UC Berkeley, 2000, 126–132, 138; "Proposal for Renewing Special Services' Grant," fiscal year 1971, signed by John Hessler, in Hale Zukas Papers, The Bancroft Library, UC Berkeley, BANC MSS 99/150c, 10–11.

⁸⁷ Chapter 191, *Statutes of California*, 421.

⁸⁸ "Evaluation Report on the State's Independent Living Centers Funded by AB 204 Final Report," submitted to CADR by Susan Stoddard, Project Director, Berkeley Planning Associates, March 1, 1980, in California State Archives, Department of Rehabilitation, R204.013:4 (hereafter, "Evaluation Report, BPA").

⁸⁹ Evaluation Report, BPA, ix.

March 30, 1980 (the CADR Report).⁹⁰ The CADR Report primarily focused on the highlights of the BPA Report (hereafter, I will use “the Reports” when referring to both).

The BPA Report stressed that the move to an independent setting provided psychological and symbolic value, as well as enabling clients to move beyond dependent behaviors. Movement to an independent setting was meant to allow the individual to be free to make decisions about day-to-day activities such as when to get up, eat, sleep, go outside, and so forth.⁹¹ Between first contact with a center and the time of the survey (approximately two years), 28 percent of the respondents changed their housing situation, and there was a 61 percent decrease in those living in an institution.⁹² The BPA Report also quoted feedback from clients about their new-won independence, with some clients saying: “My morale and outlook on life is much more positive. Thank you.” and “The center is making me independent.” Ultimately, 65 percent of clients surveyed reported that the centers “had a positive impact on their housing situation.”⁹³

It was more difficult for the BPA to assess the effect on family and community relationships. Most clients reported no impact on family and community participation. When there was an effect, however, it was positive. According to the BPA Report, “about one-third of the clients responding indicated a positive effect on social relationships with friends and in the community.” Direct feedback from clients helped to illustrate the nature of that positive impact. One client commented, “This center gave me an opportunity to meet other disabled persons, successfully living independently, and helped me put my own situation and disabilities into proper perspective. In other words, it gave me a realization of all the things I *am*, not what I *am not*. I feel more confident about myself and am much more vocal in what I believe in.” Another client said, “This center has helped me to get my self-respect. They have helped me to be useful. Helped me to be needed. They have helped me build up my self-image so much that I feel free to ask a woman out for a date. I have only started dating within the last four years.”⁹⁴ Despite the difficulty in assessing family and community engagement, such feedback suggested a strong positive impact from contact with the centers.

⁹⁰ “Special Report to the Legislature: Independent Living Centers Evaluation and Recommendations (Authorized by Assembly Bill 204, Chapter 191, Statutes of 1979),” State of California, Health and Welfare Agency Mario G. Obledo, Secretary, and Department of Rehabilitation, Edward V. Roberts, Director, March 30, 1980, in California State Archives, Department of Rehabilitation, R204.004:21 (hereafter, “Special Report, CADR”).

⁹¹ Evaluation Report, BPA, 25.

⁹² Evaluation Report, BPA, 27.

⁹³ Evaluation Report, BPA, 31–32.

⁹⁴ Evaluation Report, BPA, 62–63, emphasis in original.

The Reports were submitted less than a year after the governor signed the law. Although some of the metrics were difficult to analyze, and there were some rising costs in public funds, the feedback from clients and the increase in services suggest the centers were making a positive impact on the disabled population in California. This positive impact was made possible due to “advocates” such as Tom Bates, Ed Roberts, John Hessler, Jim Donald, and many others.

On the CADR website today, one can find a banner that reads “Employment and Independent Living for Californians with Disabilities since 1963.”⁹⁵ While the department has existed since 1963, independent living only became a part of its mission through the efforts of disability activists operating inside and outside of government in the two decades after students started living in Cowell Hospital while attending UC Berkeley.⁹⁶ Still, that mission continues to be a part of the department today. The department’s webpage states that:

The California Department of Rehabilitation (DOR) works in partnership with consumers and other stakeholders to provide services and advocacy resulting in employment, independent living, and equality for individuals with disabilities. DOR administers the largest vocational rehabilitation and independent living programs in the country . . . Independent living services may include peer support, skill development, systems advocacy, referrals, assistive technology services, transition services, housing assistance, and personal assistance services.⁹⁷

Resulting from AB 204 and the tenure of disability activists at CADR, the department continues to provide independent living services explicitly listed in PDSP’s founding documents by Cowell residents, such as peer support, housing assistance, and personal assistance services.

The decade had started with the rebellion against Withington at Cowell, and the founding of PDSP and CIL. It would end with the passage of AB 204 establishing independent living in California state law. It was not only the activists, but the counselors, legislators, hospital directors, and university administrators who worked with the activists that achieved these goals. Ed Roberts was not the only advocate. Although he may have been one of the more zealous and fervent of them, they existed on a spectrum. Henry Bruyn, Tom Bates, John Hessler, Jim Donald, Arleigh Williams, Edna Brean, Jean Worth, and Phil Morse were all advocates, too, and all worked to create opportunities for those with disabilities.

⁹⁵ <https://www.dor.ca.gov>.

⁹⁶ See various reports, no attributed author(s), in California State Archives—Department of Rehabilitation—F3934:1, F3934:4, F3934:7, F3934:8 in Administrative Files—Projects, Box 1.

⁹⁷ <https://www.dor.ca.gov/Home/DepartmentOverview>.

PDSP and CIL both still exist. PDSP is now the Disabled Students' Program (DSP)—dropping the “physically.” UC Berkeley instructors are sent emails from DSP in the weeks before every semester, with letters that state the needs and accommodations of every student with a disability. DSP continues to work with students to provide the best possible experience at the university. CIL in Berkeley also continues its operations. Anyone in need of its services can take BART to Ashby station. They would then leave through the exit from the BART station featuring a plaque recognizing Hale J. Zukas's outstanding leadership and service in making transportation more accessible to people with disabilities. After exiting, they can use the ramp and elevator to enter the Ed Roberts Campus, where people working at CIL are waiting to offer a list of services, first formulated by Cowell residents over fifty years ago.

Conclusion

I do not know if independent living centers could have helped Lynn Thompson, because I do not know what was going on in her life. There may have been more to her sadness and despair than the frustrations of disability law, with its restrictive benefits and deterrents to opportunity. But in her suicide note, she explicitly blamed the limitations of welfare benefits and their impact on a disabled person's capacity to work for her plight. Law was at the heart of this devastating impact. Amendments to federal statutes had created the benefits. The absence of California state laws and the limited promulgation of the few that were on the books limited her options. A statute that could have provided more funding for services to people struggling like Thompson was two years away. It is difficult to imagine that there would not have been some benefit for Thompson from the independent living movement and AB 204.

Independent living concepts developed through the lived experience of student activists at UC Berkeley in the 1960s. Surrounded by the Free Speech Movement and the Civil Rights Movement, students living at Cowell Hospital reframed their “medically disabled” condition as something else. It was not their own lack of mobility that was the issue, it was the discrimination from counselors and employers, as well as the physical environment that prevented them from achieving their social and professional goals. Working both with and against nurses, counselors, and administrators at UC Berkeley taught these students how they could implement change not only in their living conditions, but in the regulations and policies of the institution. They formulated concepts for a new framework of disability, one that focused on the agency of the individual with the disability, rather than the medical assessment of the doctor or CADR counselor. This was a profound shift away from the medical

evaluations used to assess a capacity for work and toward a fuller understanding of an individual's ability to exist in their community.

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CAROLINE LESTER*

Justice Denied and Forgotten:

*The Hidden History of Alaska's
World War II Internment Camps*

Introduction

The U.S. government's removal and internment of more than a hundred thousand ethnically Japanese people during World War II is widely known. Thanks to efforts by activists and educators, the existence of Japanese concentration camps is now taught in schools and recognized as one of the most shameful acts of U.S. history.¹ But a key part of that story remains largely unknown: the evacuation and internment of nearly nine hundred Alaska Natives from the Aleutian Island chain.

The Unangan internment camps were different, but no less brutal, than the Japanese camps in the continental United States. Ten percent of the villagers, mainly elders and young children, died.² When they were finally allowed to return to their homes, the islanders found villages wrecked

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¹ Japanese activists have largely coalesced around the phrase "concentration camps" as a descriptor for the prisons run by the War Relocation Authority. Alaska Native scholars still largely use the phrase "internment camps" when referring to the places used to house evacuated Unangan.

² Holly Miowak Guise, *Who is Doctor Bauer?: Rematriating a Censored Story on Internment, Wardship, and Sexual Violence in Wartime Alaska, 1941–1944*, 53 *W. HIST. Q.* 145, 151 (2022). With the death of the elders came the death of the culture, a lingering effect that has continued to reverberate through generations of Unangan.

by military occupation. Their churches were ransacked, their houses were ruined, and everywhere they looked, their landscape was littered with military trash.³ To this day, huge, half-sunken ships remain in the bays around the island. Musty bunkers, covered with graffiti, dot the low-lying hills near town.⁴ Hikers are still warned away from areas of tundra scattered with unexploded ordnance.⁵

Both the initial offense and the subsequent attempts at remedying the injuries from internment are widely unknown to those outside the Unangan diaspora. The descendants of interned Japanese Americans know very little, too. Although I grew up learning about Japanese internment, I never learned about the Alaska Native community that underwent similar hardships. Most *sansei* and *yonsei* I know are also unaware of the Unangan story,⁶ but the history of the two groups is intertwined.

In 1988, President Reagan signed into law the first and only reparations bill to ever make it through Congress. The Civil Liberties Act apologized for the U.S. government's role in the "grave injustice" and paid out \$20,000 to each Japanese American interned during World War II.⁷ Unangan internees were included under their own section of the bill with some markedly different remedies. First, the United States established a trust fund for the benefit of the six surviving Unangan villages that were removed: Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska.⁸ The government deposited \$4.7 million into the fund and distributed an additional \$12,000 to each surviving internee.⁹ But unlike in the Japanese portion of the bill, the United States never apologized for interning the Alaska Natives.

The Civil Liberties Act is primarily understood to be a triumph of a longstanding effort by Japanese American communities, but it was also the product of Unangan lobbying. The differences between what each group received from the Act reflect how the government viewed each group's experience.

³ COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 355–356 (1982) (citing Report on Unalaska Community (no date). NARS. RG 75 (CWRIC AL 6307–08)).

⁴ This information is based on my personal experience living in Unalaska, Alaska.

⁵ *Id.*

⁶ *Sansei*: third-generation Japanese Americans; *Yonsei*: fourth-generation Japanese Americans.

⁷ 50 U.S.C.A. § 4202; 50 U.S.C.A. § 4215.

⁸ 50 U.S.C.A. § 4235.

⁹ *Id.*; 50 U.S.C.A. § 4236. The fund still exists to this day: now, most of the money is primarily used for scholarships for Unangan students. Valentine Sherry, *Aleutian and Pribilof Islands Restitution Trust*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/926024502> (May 23, 2024); *The Aleut Foundation*, <https://thealeutfoundation.org/purpose/> (last visited May 28, 2024).

This is the first legal scholarship to compare the experiences of Japanese and Unangan internees, both during the war and after, as they sought and won redress. Most scholarly engagement has analogized between Japanese American internment and general dispossession of Native nations, without noting that the same thing happened to both groups (or at least, a subset of them) and with almost no mention of the Unangan people.¹⁰ Although other groups were also interned during World War II—notably Germans and Italians—only Japanese and Unangan internees received reparations. This difference is perhaps because, although wartime internment of any U.S. resident without justification is a violation of legal and human rights, the experiences of the Unangan and Japanese internees were both more egregious and violent.

The experience of European internees was markedly different from those of the Asian and Native populations. Although almost all internment camps included American citizens, the U.S. government interned ethnic Germans and Italians on an individual basis, examining each case file before determining whether they should be confined, rather than en masse, as they did to Japanese and Unangan populations. The scale of the internment was different, too. In 1940, more than six million people were either German-born or had two German-born parents living in the United States.¹¹ Imagine if the War Relocation Authority (WRA)—the federal agency that oversaw the detention of Japanese Americans—followed the same blood-quantum rules for Germans as they did for Japanese or Unangan. Under these rules, anyone who was 1/16th or 1/8th of each ethnic group, respectively, was eligible for removal,¹² meaning that tens of millions of people of German descent would have been interned during World War II. Instead, only approximately 11,500 German Americans and 3,000 Italian Americans were interned.

There was another significant but essential difference. Both German and Italian immigrants were eligible for citizenship, while Alaska Natives did not

¹⁰ See, e.g., Cynthia Wu, *A Comparative Analysis of Indigenous Displacement and the World War II Japanese American Internment*, 42 AMERASIA J. 1, 11–12 (2016); Karen J. Leong & Myla Vicenti Carpio, *Carceral Subjugations*, 42 AMERASIA J. 103, 114 (2016); see generally Kristen L. Michaud, *Japanese American Internment Centers on United States Indian Reservations: A Geographic Approach to the Relocation Centers in Arizona, 1942–1945* (Sept. 2008) (Master's thesis, University of Massachusetts, Amherst) (on file with the University of Massachusetts Library System). *But cf.* JULIANA HU PEGUES, *SPACE-TIME COLONIALISM: ALASKA'S INDIGENOUS AND ASIAN ENTANGLEMENTS* (2021) (a powerful work that explicitly compares the World War II internment experiences of both groups).

¹¹ Alan Rosenfeld, *German and Italian Detainees*, DENSHO PROJECT ENCYCLOPEDIA (July 29, 2015, 6:14 AM), https://encyclopedia.densho.org/German_and_Italian_detainees/.

¹² *A Brief History of Japanese American Relocation During World War II*, NAT'L PARK SERV., <https://www.nps.gov/articles/historyinternment.htm>; COMM'N ON WARTIME RELOCATION & INTERNMENT OF CIVILIANS, *supra* note 3, at 334.

receive formal citizenship until 1940, just two years before their evacuation.¹³ Moreover, *Issei* (Japanese immigrants to the United States) did not even qualify for citizenship until 1952, a decade after Japanese internment formally ended.¹⁴ Although the citizenship status of Japanese Americans and Alaska Natives did little to deter their incarceration, the delay of citizenship grants may be rooted in the same causes that led to the worse treatment and living conditions in those camps.

Perhaps because of these differences, the Civil Liberties Act does not mention Germans, Italians, or Japanese Latin Americans interned during World War II.¹⁵ Instead, it focuses solely on the experience of Japanese Americans and Alaska Natives. This choice reflects both the similarities in how the internment of each group was racialized and the differences in how that racialization was reflected in internment and reparations.

This paper has four parts. Part I gives the necessary historical background on the Unangan up to and during evacuation in World War II. Part II details the conditions of the camps in both Alaska and the continental United States, alongside the return home for both communities. (Most of Part II will be focused on the experience of the Unangan, given that lower-48 internment camp history is more widely known.¹⁶) Part III is a short history of the redress and reparations movement. Part IV explores why the two groups were interned during World War II and the differences in their reparations. Although Japanese American internment was justified as a kind of “security response” during the War, Unangan internment was supposedly for their own protection. But by looking at the orientalizing of both Unangan and Japanese Americans, each group’s control over valuable resources, and the difference in reparations, this paper identifies how these disparate groups were tied together by the federal government’s colonial, racist acts.

¹³ Although members of Native Nations were granted U.S. citizenship in 1924 under the Indian Citizenship Act, Alaska wasn’t admitted to statehood until 1958. Unangan only received formal citizenship under the Nationality Act of 1940. 8 U.S.C.A. § 1401.

¹⁴ When the Immigration Act of 1952 passed, more than 90 percent of aliens made eligible for U.S. citizenship were *Issei*. Jane Hong, *Immigration Act of 1952*, DENSHO PROJECT ENCYCLOPEDIA (July 7, 2020, 7:45 PM), https://encyclopedia.densho.org/Immigration_Act_of_1952/.

¹⁵ The United States interned approximately 1,800 Japanese Latin Americans in camps across the Southwest United States. Stephen Mak, *Japanese Latin Americans*, DENSHO PROJECT ENCYCLOPEDIA (Apr. 18, 2017, 9:06 p.m.), https://encyclopedia.densho.org/Japanese_Latin_Americans/. Japanese Latin Americans finally achieved some form of reparations and apology in the late 1990s, a decade after exclusion from the Civil Liberties Act. See *e.g.*, *Mochizuki v. United States*, 43 Fed. Cl. 97 (1999).

¹⁶ Lower-48 is a term used in Alaska to define the continental United States.

Part I: History

Unangan translates to “seasiders” or “the people.”¹⁷ The group lived along the Aleutian Island chain for more than nine thousand years—one of the longest “continuous existence as an identifiable people in one place.”¹⁸

The islands, comprised of low, treeless land made of volcanic ash and tundra, are not easy to live in. The chain forms a kind of frontier that divides the cold Bering Sea and the warm Pacific Ocean, resulting in fog, rain, and cyclonic winds.¹⁹ Despite Unangan excellence at hunting and fishing, food was scarce and highly dependent on the seasons and environment. Unangan Tunuu, their language, reflects this: *Qisaguniġ*, the word for the month of March, translates to “when they gnaw straps” or “month of hunger, gnawing thongs.”²⁰ April, or *Agaluuġiġ qisagunaġ*, means “the near hunger month” or “later famine.” And yet Unangan peoples not only lived but thrived. During the 1740s, their population was between 12,000 and 16,000—more than Philadelphia at the time.²¹ This was the height of Unangan culture: over the next hundred years, their population would plummet to 2,000—the consequence of conflict with the Russian Empire, disease, and forced labor.²²

The first recorded meeting between Russians and Unangan occurred in September 1741.²³ The Russians quickly discovered that Alaska was home to one of the most profitable resources in the world: sea otters. Called “soft gold,” sea otter pelt sold for twenty-five to forty times as much as Siberian sable, the next most valuable animal in the Russian fur trade.²⁴ But otters were nearly impossible to hunt, given that they spend their entire lives offshore: they hunt at sea, eat at sea, and sleep in the calmer coastal waters rather than ashore. As a result, they must be hunted at sea, too. And only the Unangan—who honed their craft for thousands of years—had the skills to do so.²⁵ To get to the soft gold, Russian traders needed Unangan labor.

¹⁷ *Glossary/Vocabulary*, ALEUTIAN PRIBILOF ISLANDS ASS’N, <https://www.apiai.org/community-services/traditional-foods-program/glossary-vocabulary/> (last visited Dec. 13, 2023); *Unangan Tunuu/Aleut*, UNIV. OF ALASKA, FAIRBANKS, <https://www.uaf.edu/anlc/languages-move/aleut.php> (last visited Dec. 13, 2023).

¹⁸ WILLIAM S. LAUGHLIN, ALEUTS, SURVIVORS OF THE BERING LAND BRIDGE 141 (1980).

¹⁹ When I lived there in 2020, the winter storms blew so strong that my entire house shook with each gust.

²⁰ DEAN KOHLHOFF, WHEN THE WIND WAS A RIVER: ALEUT EVACUATION IN WORLD WAR II 4 (1995).

²¹ *Id.*

²² PEGUES, *supra* note 10, at 144.

²³ FRANK ALFRED GOLDER, BERING’S VOYAGES: AN ACCOUNT OF THE EFFORTS OF THE RUSSIANS TO DETERMINE THE RELATION OF ASIA AND AMERICA 147 (1922).

²⁴ GWENN A. MILLER, KODIAK KREOL: COMMUNITIES OF EMPIRE IN EARLY RUSSIAN AMERICA 24 (2010).

²⁵ *Id.* at 25.

The baidars, or boats, of Oonalashka, are infinitely superior to those of any other island. If perfect symmetry, smoothness, and proportion constitute beauty, they are beautiful; to me they appeared so beyond anything that I ever beheld. I have seen some of them as transparent as oiled paper, through which you could trace every formation of the inside, and the manner of the native's sitting in it; whose light dress, painted and plumed bonnet, together with his perfect ease and activity, added infinitely to its elegance.²⁶

Notes from Commodore Joseph Billings Expedition, 1790

Russian traders began practicing “an economy of confiscation.”²⁷ They kidnapped the women and children of local leaders, extracting furs from Natives in exchange for the “protection” of the captives.²⁸ This continued through the eighteenth century until it was eventually outlawed by the Russian government.²⁹ At the same time, the Russian-American Company (RAC) began to dominate the Alaskan fur trade.³⁰ The RAC operated under a conscription system: the Unangan were still forced into labor, but instead of paying tributes, they were paid in provisions.³¹ All Unangan men between the ages of fifteen and fifty were required to work for the RAC.³²

Sea otters typically have only one pup per year. Their low rate of reproduction could not meet the Russians' rapacious demands, and populations crashed.³³ Each time this happened, the Russians moved to a new island, taking Unangan men with them and forcing them to hunt.³⁴ In 1788, Russians seized Unangan hunters from Unalaska and Atka and brought them three hundred miles north to the previously uninhabited Pribilof Islands.³⁵ There, the Unangan established communities on Saint Paul and Saint George, two low-lying, rocky islands that are home to the largest population of northern fur seals in the world.³⁶

²⁶ MARTIN SAUER & COMMODORE JOSEPH BILLINGS, AN ACCOUNT OF A GEOGRAPHICAL AND ASTRONOMICAL EXPEDITION TO THE NORTHERN PARTS OF RUSSIA 157 (1802). Sauer visited Unalaska in 1790.

²⁷ MILLER, *supra* note 25, at 12.

²⁸ *Id.*

²⁹ *Id.* at 69.

³⁰ The RAC was modeled off the East Indian Company: it was the first and only Russian joint stock company; theoretically, any Russian could purchase its shares. *Id.* at 105. In reality, only nobles and merchants did. *Id.*

³¹ *Id.* at 69–70.

³² *Id.*

³³ *Id.* at 26.

³⁴ *Id.* at 127 (“The hunting parties frequently got caught in storms out on the open seas where many died.”).

³⁵ PEGUES, *supra* note 10, at 148.

³⁶ *Id.*

Unlike other Unangan villages in the Aleutians, the Pribilof villages existed solely to harvest fur seals for Russia. The RAC maintained total control over the population and kept “islanders in a state of abject slavery.”³⁷ A change in the colonial regime did little to change life on the Pribilof Islands. In 1867, soon after the Alaska Purchase, the U.S. government ceded control over the Pribilof Islands to private businesses and formed a series of consecutive twenty-year leases with American firms.³⁸ In exchange for overseeing Unangan residents, the firms continued to demand that they harvest fur seals yearly. Within twenty years, the \$7.2 million spent on the Alaska Purchase was paid off entirely from Pribilof fur seal harvests.³⁹

Control of the islands shifted again when the federal government took over in 1911.⁴⁰ By the 1940s, the Fish and Wildlife Service—housed within the Department of the Interior—began overseeing the Pribilof Islands.⁴¹ This agency helped supervise the evacuation and internment of Unangan during World War II.⁴²

Life on the Pribilof Islands was more controlled than the rest of the Unangan communities. The Fish and Wildlife Service considered the Unangan “wards of the government” and refused to provide them voting rights.⁴³ The U.S. government continued to require all male Unangan to hunt fur seals and provided them with housing and food in exchange.

The community was in two parts. You had the Aleut labor force living there, working for the US government. And they were managed and controlled by government agents—a very small, non-native group. Everyone had a government-provided home. It was almost like a military base. They were provided homes, they were provided with food. The Aleuts typically ate their seal meats that they froze and stored from the summer harvest. But the small force that was there, the government managers, lived a different life. The government employees—we called them the white people—typically ate different foods. When you were male, and you turned 14, you started to work for the government. No choice. This was a captive audience. Contact with the outside world was very limited. This was, in

³⁷ MILLER, *supra* note 25, at 26.

³⁸ PEGUES, *supra* note 10, at 148.

³⁹ OFF. OF RESPONSE & RESTORATION, *Henry Wood Elliott: Defender of the Fur Seal*, NAT'L OCEANIC AND ATMOSPHERIC ADMIN. (Feb. 22, 2019 11:39 AM), <https://response.restoration.noaa.gov/multimedia/videos/henry-wood-elliott-defender-fur-seal.html>.

⁴⁰ PEGUES, *supra* note 10, at 148.

⁴¹ *Id.*

⁴² See COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 332, 338 (1997).

⁴³ PEGUES, *supra* note 10, at 149.

my view, a very happy community. And now, it sounds rather grim, rather weird, but this was a very controlled community.⁴⁴

General Jacob Lestenkof, Evacuee from St. George, b.1932

Unalaska—the largest village in the Aleutians—was also the site of a Russian settlement in 1772.⁴⁵ In 1825, the Russians built an Orthodox church, a beautiful building that remains to this day.⁴⁶ The village was predominantly Unangan until 1939 when the U.S. Navy built a weather station.⁴⁷ The U.S. military identified the Aleutians as a possible area of invasion by the Japanese, so within two years, the military had occupied the town.⁴⁸ The population ballooned from 300 (mostly Unangan) to as many as 70,000 people.⁴⁹ The landscape transformed as well: grasses, sedges, and tundra were replaced with bunkers, air hangers, warehouses, gun mounts, barracks, deep water harbors, fuel tanks, and military vessels.⁵⁰ Yet, when war finally arrived, American forces were caught almost entirely unaware.

The first attack occurred on June 3, 1942.⁵¹ Japanese planes bombed Dutch Harbor for two days and landed on Kiska Island, an island neighboring Unalaska, where they captured ten American soldiers.⁵² On June 6 and 7, twelve hundred Japanese soldiers invaded Attu Island, captured forty-two Unangan, and occupied the village.⁵³ War had finally arrived in the Aleutian Island chain.

Down south, forced evacuations had already been in effect for two months.⁵⁴ On March 29, 1942, General DeWitt—acting under the authority of Roosevelt’s executive order—announced a mass detention and deportation of

⁴⁴ Interview with General Jacob Lestenkof.

⁴⁵ Jennifer Sepez et al., 30 *Unalaska, Alaska: Memory and Denial in the Globalization of the Aleutian Landscape*, POLAR GEOGRAPHY 193–94 (2007).

⁴⁶ *Id.*

⁴⁷ *Id.* at 195.

⁴⁸ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 320.

⁴⁹ Sepez, *supra* note 46, at 195.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ KOHLHOFF, *supra* note 21, at 40.

⁵⁴ Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

Japanese residents, giving them only 48 hours' notice.⁵⁵ Japanese residents left their homes, businesses, and possessions behind. The rushed and inhumane removal tactics were repeated, thousands of miles north, in Alaska.

The Alaskan evacuation happened almost immediately, with “little preparation or planning.”⁵⁶ Atka was evacuated first.⁵⁷ The military ordered the eighty-three villagers out of their homes and told them to retreat to their summer camp sites.⁵⁸ One officer recalled the suddenness of the evacuation: “They were evacuated while eating breakfast, and the eggs were still on the table—coffee in the cups. A lot of their personal clothing and stuff was still hanging in the closets.”⁵⁹ That evening, the Navy dispatched a demolition crew to burn down the ancient village so occupying Japanese forces would not be able to use it.⁶⁰ By the next morning, everything had been reduced to ashes. A few days later, the Unangan were evacuated off the island.⁶¹

The Pribilof Islands were next. Islanders were given twelve hours to evacuate and were only allowed to carry one package of belongings each.⁶² The soldiers were ruthless, refusing to allow the villagers any more. One sailor seized a beautiful set of china from an elderly woman and threw it into the water.⁶³ “A look of mingled horror and misery came over the woman’s face; a faint moan could be heard coming through her sunken lips.”⁶⁴

Jacob Lestenkof’s grandfather oversaw the keeping of the livestock for the white Fish and Wildlife Service agents to eat on the island.⁶⁵ “We had cows, pigs, chickens,” he recalled.⁶⁶ “This was established for the benefit of the white people, so they could have beef instead of seal meat. So they could have milk, real milk from the cows. So they could have eggs from the chickens.”⁶⁷

⁵⁵ Brian Niiya, *John DeWitt*, DENSHO PROJECT ENCYCLOPEDIA (Dec. 19, 2023, 6:51 PM), https://encyclopedia.densho.org/John_DeWitt/#The_Road_to_Executive_Order_9066. My grandmother was one of the very few who escaped the order. She and her family left California in early March, the day before all Japanese Americans were restricted to their homes.

⁵⁶ KOHLHOFF, *supra* note 21, at 68.

⁵⁷ *Id.* at 70.

⁵⁸ *Id.* Summer camps are places and structures—far from the village—where Unangan base themselves during the summer months. These are more rustic homes set up exclusively for the warm months when hunting, fishing, and harvesting can take place.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 72.

⁶³ *Id.* at 71–72.

⁶⁴ *Id.* at 72.

⁶⁵ Interview with General Jacob Lestenkof, *supra* note 45.

⁶⁶ *Id.*

⁶⁷ *Id.*

Lestenkof realized the seriousness of the evacuation when his grandfather was told to slaughter all the animals before they boarded the ship.⁶⁸

By the time the *USS Delarof* left the islands, 560 Unangan men, women, and children were packed onto the ship, which only had a capacity for 376.⁶⁹ The ship left the Aleutians on June 18 for an “unknown destination.”⁷⁰ On June 24, the evacuees arrived at Funter Bay in Southeast Alaska’s Tongass National Forest.⁷¹ In an interview with me, one evacuee described the landing: “I remember my grandfather waking me up early in the morning. We were all in the hold, sleeping on cots. He woke me up and said, ‘Come up on deck and see the trees.’ I’d never seen trees before.”⁷²

Notably, the few white civilians on the islands were given the choice to stay. Only those who were one-eighth Unangan or more were required to leave.⁷³

Part II: Life in and After Camp

In July, the villages of Akutan, Biorka, Kashega, Makushin, Nikolski, and Unalaska were removed and evacuated.⁷⁴ All Unangan ended up in camps scattered across Southeast Alaska.⁷⁵ Those in Funter Bay moved into an abandoned cannery with no sewage system, laundry rooms, or bathing facilities.⁷⁶ They were greeted by two identical, rotting barracks named the China House and the Filipino House after the nationalities of the cannery workers from years ago.⁷⁷ Families crafted privacy for themselves by stringing blankets along lines to create partitions and everyone slept on mattresses on the floor.⁷⁸ The facilities were so dilapidated that some people remember “see[ing] through the roof.”⁷⁹ Evacuees were fed powdered eggs and clams—no fresh vegetables or meat.⁸⁰

If the U.S. government viewed Unangan people as their wards, a poor analogy that does a disservice to the independence and resiliency of the Alaska

⁶⁸ *Id.*

⁶⁹ KOHLHOFF, *supra* note 21, at 72.

⁷⁰ *Id.*

⁷¹ *Id.* at 77.

⁷² Interview with General Jacob Lestenkof, *supra* note 45.

⁷³ National Park Service, *Forced to Leave*, ALEUTIAN VOICES (2015), <https://www.nps.gov/aleu/learn/historyculture/upload/Aleutian-Voices-v2-508.pdf> [<https://perma.cc/C42M-PS7P>].

⁷⁴ KOHLHOFF, *supra* note 21, at 77.

⁷⁵ See COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 318.

⁷⁶ KOHLHOFF, *supra* note 21, at 89.

⁷⁷ *Id.*

⁷⁸ *Id.* at 92.

⁷⁹ *Id.*

⁸⁰ *Id.*

Native group, then its treatment of the Unangan people bordered on criminal. By the end of the internment, 10 percent of Unangan had died.⁸¹ Most of these Unangan were elders who were keepers of history and culture.⁸² When they died, part of the culture died with them. These deaths were felt twice over: through the loss of the individuals and the loss of traditional knowledge. The Unangan diaspora is still recovering today.

Many of the deaths were preventable as they had been caused by “severe medical neglect.”⁸³ The mistreatment started with the evacuation. All the villagers were placed in the hold of the ship.⁸⁴ There was only one bathroom.⁸⁵ Alice Petrevilli, a young girl from Atka, recalled that “there was not enough food, and no matter how you tried to keep clean it was just impossible.”⁸⁶ Although the *Delarof* had a doctor on the ship, he refused to minister to the Unangan, and—in the words of the wife of a FWS employee who was on the ship—“could not be coaxed into the disagreeable crowded hold.”⁸⁷ During the voyage, the first villagers experienced the first casualty of internment. A baby girl, three days old, died from bronchial pneumonia—likely contracted from a sick person in the hold.⁸⁸

The camps were no better. Although the *Delarof* was supplied with medical supplies for the internees, they were seized by the military hospital at Dutch Harbor.⁸⁹ The sanitary facilities at the Kilisnoo camp consisted of a total of three outdoor pit toilets and a bathtub.⁹⁰ One of the camps at Funter Bay was a mile from a water source, and the three outdoor toilets relied on tidal waters to clear the sewage.⁹¹ The camp doctor overseeing Funter Bay left for months, leaving more than three hundred women and children to fend for themselves.⁹² The nearest hospital in Juneau would not take Unangan patients

⁸¹ Guise, *supra* note 2, at 151.

⁸² COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 358.

⁸³ *Id.*

⁸⁴ Ryan Madden, *The Forgotten People: The Relocation and Internment of Aleuts During World War II*, 16 AM. INDIAN CULTURE & RES. J. 55, 61 (1992).

⁸⁵ *Id.* at 61.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* The mother of the infant girl was Haretina Kochutin of St. Paul. She was interned at Funter Bay, where another one of her infant children later died.

⁸⁹ *Id.* at 62.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 65.

without “advance notice.”⁹³ The only way anyone could leave the camps was by “chance encounter” with a sympathetic fisherman, who could volunteer to bring the sick to a doctor.⁹⁴ Tuberculosis, influenza, pneumonia, and measles ripped through the camps.⁹⁵ In 1943, twenty-five villagers in Funter Bay died from preventable disease.⁹⁶ In Killisnoo, only two out of seven babies born at the camp lived.⁹⁷ In Ward, twenty people died from tuberculosis.⁹⁸

History Professor Holly Miowak Guise recently uncovered evidence of sexual abuse by H. O. K. Bauer, the Bureau of Indian Affairs (BIA) doctor who oversaw medical care at Killisnoo, one of the camps in Southeast Alaska.⁹⁹ Bauer had been placed in Kotzebue—an Iñupiat community north of the Arctic Circle—before being transferred to the Southeast Alaskan camps.¹⁰⁰ Numerous letters, affidavits, and official documents show that the BIA was aware of Bauer’s abuse when it transferred him to the even more rural, isolated camps.¹⁰¹ Once there, he continued abusing Alaska Native women.¹⁰²

Throughout that time, the government continued to extract resources and labor from the Unangan. Every summer, the U.S. government forced men from St. Paul and St. George to leave their families, return to an active war zone, and continue harvesting seals.¹⁰³

The shock, isolation, and horror the Unangan felt at the conditions is difficult for those outside of the community to conceive. Most Unangan had never left the islands before they were evacuated.¹⁰⁴ After living in the vast horizons of the Aleutian Islands, some felt claustrophobic among the dense old-growth forest that surrounded them.¹⁰⁵ Still, despite their conditions, they survived.

Japanese camps in the lower-48 were markedly different. Technically, Unangan were free to leave and work in other communities, although they

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 65, 66, 67.

⁹⁶ *Id.* at 68.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Guise, *supra* note 2, at 156. Dr. Guise is the first historian to bring this abuse to light. It is a powerful work, exposing both the federal government’s institutional failures and Native women’s resiliency and struggle against colonial powers.

¹⁰⁰ *Id.* at 161.

¹⁰¹ *Id.* at 154, 157, 160, 161.

¹⁰² *Id.* at 163. He also medically abused Native children in other communities. Two Alutiq children from villages on Kodiak Island reported permanent speech defects, caused by Bauer’s botched tonsillectomies.

¹⁰³ *Id.* at 150.

¹⁰⁴ KOHLHOFF, *supra* note 21, at 68.

¹⁰⁵ *Id.*

needed permission to do so.¹⁰⁶ Additionally, the feasibility of leaving after being marooned in areas with no boats or roads was lower. On the other hand, WRA camps were fenced in, with armed guards and snipers ensconced in watchtowers being a daily presence.¹⁰⁷ In the beginning of the internment—before they requested rice, learned how to cook with government-provided ingredients, and built gardens in the camps—the incarcerated survived off moldy bread and hotdogs.¹⁰⁸

Some Native women who were married to Japanese men chose to “self-intern” along with them.¹⁰⁹ The WRA, which managed the internment of 110,000 people, viewed Japanese Americans as “racial children in need of democratic tutelage.”¹¹⁰ This infantilizing mirrored that of Native people, who were viewed by the U.S. government as “dependent wards not yet fit for democratic citizenship.”¹¹¹ Both groups were also repeatedly told that incarceration was to protect them: American officials warned of anti-Japanese sentiment flooding places like California and the dangers of more bombings in the Aleutian Island chain.¹¹²

When Japanese and Unangan internees returned home, they were both greeted with ruined homes and livelihoods. When the Unangan were allowed to return to their villages—three years after their initial removal—they found that their homes had been “vandalized and looted by occupying American military forces.”¹¹³ The entire village of Atka had been “burned to the ground by the Navy.”¹¹⁴ Military trash still litters the islands today.¹¹⁵ Huge numbers of animals on which the Unangan relied for subsistence living were also gone.¹¹⁶ Foxes, seals, and caribou were “slaughtered in great numbers . . . by bored

¹⁰⁶ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 341.

¹⁰⁷ *Immigration and Relocation in U.S. History, Behind the Wire*, LIBR. OF CONG.,

<https://www.loc.gov/classroom-materials/immigration/japanese/behind-the-wire/#:~:text=Life%20in%20the%20camps%20had,their%20daily%20business%20in%20public> [<https://perma.cc/E354-5QMX>].

¹⁰⁸ *Campū Episode Six: Food*, DENSHO PROJECT (June 2021) <https://den sho.org/campu/campu-food/> [<https://perma.cc/7D7K-XAVD>]; The Kitchen Sisters, *Weenie Royale: Food and the Japanese Internment*, NATIONAL PUBLIC RADIO (Dec. 20, 2007, 12:01 AM) <https://www.npr.org/2007/12/20/17335538/weenie-royale-food-and-the-japanese-internment> [<https://perma.cc/7T34-JPPS>].

¹⁰⁹ PEGUES, *supra* note 10.

¹¹⁰ MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 179 (2014).

¹¹¹ *Id.*

¹¹² COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 83, 318 (noting that the “poverty” of General DeWitt’s arguments that Japanese Americans posed a threat committed him to a “growing emphasis on the danger of vigilantism”) (“The evacuation of the Aleuts was a reasonable precaution to ensure their safety.”).

¹¹³ *Id.* at 355.

¹¹⁴ *Id.* at 356.

¹¹⁵ *Id.* at 356–57.

¹¹⁶ *Id.* at 359.

servicemen.”¹¹⁷ Lagoons that once served as spawning locations for herrings were filled in and tidal-harvest foods were “destroyed” by Navy oil spills.¹¹⁸

For the Japanese communities, returning to the continental Western states was also very difficult.¹¹⁹ Even after *Endo*, the Supreme Court case that led to the eventual closure of the camps, Japanese Americans remained apprehensive about returning home. Before Executive Order 9066, more than 90,000 Japanese Americans were living in California.¹²⁰ By March 1945, only 1,500 had returned to the state.¹²¹ Those who did found that “their homes and farms had been stolen, destroyed, or ill cared for.”¹²²

Part III: Redress

The Civil Liberties Act is the first and only reparations bill to pass through Congress. It is the result of decades of grassroots efforts from both Japanese and Unangan communities. The history of those movements deserves its own paper. This section is a highly truncated version of that history.

Both Japanese Americans and Unangan underwent a form of “social amnesia,” described as a kind of “group phenomenon marked by attempts to suppress feelings and memories of particular moments or extended periods[,] not a psychological pathology but a conscious effort to screen memories.”¹²³ In this way, the groups’ two divergent experiences became deeply connected.

The children of the internees—or those internees who were too young to remember—became active in the 1970s and began demanding redress.¹²⁴ For Japanese Americans, this movement came on the coattails of the “Yellow Power” movement of the 1970s, with the backing of the newly formed “pan-Asian” identity.¹²⁵ In the Aleutians, the Unangan also started lobbying for redress, also during a wider cultural moment. The “Red Power” movement

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ NGAI, *supra* note 93, at 188.

¹²⁰ *Japanese Americans in World War II*, FRESNO STATE LIBR. (July 19, 2022, 1:23 PM) <https://guides.library.fresnostate.edu/c.php?g=636720> [<https://perma.cc/KE8K-9MLJ>].

¹²¹ NGAI, *supra* note 93, at 188.

¹²² *Id.*

¹²³ Rie Makino, *Absent Presence as a Nonprotest Narrative: Internment, Interethnicity, and Christianity in Hisaye Yamamoto’s “The Eskimo Connection,”* 26 *THE JAPANESE J. OF AM. STUD.* 99, 104 (2015).

¹²⁴ *Id.*

¹²⁵ See ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG & FRANK H. WU, *RACE, RIGHTS, AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 279 (2013).



President Ronald Reagan signing the Civil Liberties Act of 1988, with (from left to right): Hawaii Sen. Spark Matsunaga, California Rep. Norman Mineta, Hawaii Rep. Pat Saiki, California Sen. Pete Wilson, Alaska Rep. Don Young, California Rep. Bob Matsui, California Rep. Bill Lowery, and Japanese American Citizens League President Harry Hajihara. This object is protected by copyright, but the rights holder has allowed us to make it available to you for this non-commercial, educational publication; Densho Digital Repository, <https://ddr.densho.org/ddr-densho-10-6>.

started in the late 1960s, shortly before the Unangan started their campaign.¹²⁶ Alice Pertivelli—an Atkan, internee of Killisnoo camp, and strong advocate for the Unangan people—reflected on the movement:

One positive effect that the evacuation had on the Aleut people as a whole was exposure to the political process. This helped the Aleut people become more self-determined about making decisions that affected their lives. It helped us achieve more independence from governmental agents who determined that we were incapable of planning our cultures and carrying out our goals concerning the way we wanted to live our lives. In spite of all that has happened to us we are still around, although gone are the secure Aleut lifestyles in which we were comfortable in our villages before World War II.¹²⁷

¹²⁶ VINE DELORIA JR., CUSTER DIED FOR YOUR SINS 182, 254 (1969).

¹²⁷ KOHLHOFF, *supra* note 21, at x.

Petrivelli first told her daughter about what happened to her and other Atkans during World War II during the redress movement. “Because it was not in the history books,” Petrivelli recalled, “she did not believe me.”¹²⁸ John Tateishi, one of the leaders of the JACL’s redress movement, recalled that the first and biggest hurdle was convincing everyone that internment actually happened.¹²⁹ In an effort to spread the history, Tateishi went on a media tour that included radio talk shows. “Even in the Bay, which is such a liberal area, people would call in and accuse me of lying,” he said.¹³⁰ “They’d say, ‘This never happened in this country. Otherwise, we would know about it.’”¹³¹

Japanese and Unangan activists lobbied to get a congressional hearing. As a result, a bipartisan federal commission was established in 1980 to review the circumstances surrounding World War II internment camps.¹³² Nine men—senators, congressmen, government officials, and even a judge—oversaw hearings all over the country and invited anyone who had been interned to testify. Over the course of six months in 1981, the Commission held twenty days of hearings and called more than 750 witnesses.¹³³ Three of those hearings occurred in Anchorage, Unalaska, and St. Paul. There, some Unangan people spoke about their experiences for the first time.

Part IV: Understanding

In 1988, the Civil Liberties Act finally passed. The election of Japanese Americans to national office after World War II was “crucial” to its passage.¹³⁴ So, too, were the political efforts by the Unangan; the Alaskan congressional representatives at the time—Don Young and Ted Stevens—had close ties to the Alaska Native community.¹³⁵ Yet despite these ties, the remedies for each group differed.

The unity that bound the Unangan and Japanese American activists was not reflected in the final version of the Civil Liberties Act. Congress split the

¹²⁸ *Id.* at xi.

¹²⁹ Interview with John Tateishi.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Sharon Yamato, *Commission on Wartime Relocation and Internment of Civilians*, DENSHO PROJECT ENCYC. (July 8, 2020, 8:26 PM), https://encyclopedia.densho.org/Commission_on_Wartime_Relocation_and_Internment_of_Civilians/ [<https://perma.cc/R2SA-A6L6>].

¹³³ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at xxvii.

¹³⁴ YAMAMOTO ET AL., *supra* note 108, at 280.

¹³⁵ Marie (Matsumo) Nash, ALASKA WOMEN’S HALL OF FAME, <https://www.alaskawomenshalloffame.org/alumnae/marie-nash/> [<https://perma.cc/CQ4M-6JWP>] (last visited Apr. 26, 2024) (Marie Matsumo Nash is half-Unangan and half-Japanese. She was born in Camp Minidoka and later served in Senator Stevens’ office for years. She is one of the many hidden voices who contributed to the passage of the bill. Both Unangan and Japanese descendants are indebted to her.).

bill into two parts: the first was dedicated to the Japanese Americans, and the second was dedicated to the Unangan. The Japanese portion of the bill began with a historic apology:¹³⁶

Congress recognizes that. . . a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. . . . [T]hese actions were . . . motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.¹³⁷

It also earmarked \$20,000 for each Japanese American interned during World War II and an additional \$1.65 billion for a public education fund to “to inform the public about the internment of [Japanese] individuals so as to prevent the recurrence of any similar event.”¹³⁸

The Unangan section of the bill differed significantly. The Japanese portion made sure to recognize the “individuals” who had been interned. But the Unangan portion included no recognition of individuality, or any identity apart from the large umbrella term “Aleuts.”¹³⁹ Unlike the section about Japanese internment, the Unangan internment had no apology.¹⁴⁰ Although the government recognized “the injustices suffered by the Aleuts during World War II,” the statement reads almost contractually.¹⁴¹ The government “failed to provide reasonable care” and to “protect Aleut personal and community property while such property was in its possession.”¹⁴² The only “remedy” for those losses was “appropriate compensation.”¹⁴³ To that end, the Unangan received \$4.7 million for a trust fund along with an additional \$12,000 for each surviving internee.¹⁴⁴ (Although they lacked an apology, they did receive more money per capita than the Japanese.) The trust could be used to benefit elders or disabled villagers, help “students in need of scholarship assistance,” preserve

¹³⁶ APOLOGY RESOLUTION, Pub. L. No. 103–150, 107 Stat. 1510 (1993) (This apology is one of just two that Congress passed. The second, known as the Apology Resolution, apologized to Native Hawaiians on behalf of the U.S. government for overthrowing the kingdom of Hawai‘i).

¹³⁷ 50 U.S.C.A. § 4202.

¹³⁸ 50 U.S.C.A. § 4215.

¹³⁹ 50 U.S.C.A. § 4202.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*; 50 U.S.C.A. § 4236.

Unangan “cultural heritage and historical records,” improve community centers,” and generally “improve the condition” of Unangan life.¹⁴⁵

The Japanese apology included an acknowledgement of the removal and internment of citizens—a nod to the violation of legal rights that occurred.¹⁴⁶ The Unangan section contained nothing like that. Although it opaquely acknowledged the cultural loss caused by the removal, internment, and death of many Unangan, there was no recognition of the Alaskan native group’s citizenship.

The differences between what each group received reflect the differences between how each group was racialized. Racism was used as a justification for both of their confinements (explored later in the article), but the differences in that racialization are evident in the text of the Act. Although the histories of Japanese Americans and Unangan differ greatly, they were sometimes racialized in similar ways: as “Oriental,” as other, as non-citizens (despite legal citizenship) who, importantly, had desirable resources. This combination of racial threat and economic asset led to both groups’ removal. However, the additional racialization of Unangan as government wards—thus lacking full citizenship rights, autonomy, and personhood—led to the absence of any apologies for what the Alaska Native group went through, and the contractual nature of their restitution.

Again, compare the contractual, impersonal nature of the Unangan section to the apology to every individual Japanese internee. The Civil Liberties Act may only have affected a relatively small portion of the U.S. population, but it represents something much larger: how the law—even one written to remedy historical injustices—reflects dominant assumptions about race.

A. Racialization

Issei, *Nisei*, and *Sansei* were all racialized as noncitizens, and therefore not worthy of citizenship’s attendant rights. The United States has a strong tradition of civic ostracization of Asians from the body politic.¹⁴⁷ Even Asian Americans with formal citizenship have, historically, experienced “racial extraterritorialization.”¹⁴⁸ Japanese concentration camps were the logical end to that excommunication. While most internees were formal citizens, “they were *excluded* from the category of American identity.”¹⁴⁹

¹⁴⁵ 50 U.S.C.A. § 4202; 50 U.S.C.A. § 4236.

¹⁴⁶ 50 U.S.C.A. § 4202 (“[A] grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II.”).

¹⁴⁷ Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *POL. & SOC’Y* 105, 107 (1999).

¹⁴⁸ Devon W. Carbado, *Racial Naturalization*, 57 *AM. Q.* 633, 638 (2005).

¹⁴⁹ *Id.*

The orientaling of the Unangan may have also contributed to their internment, both in tangible and intangible ways. By the late nineteenth century, it was generally believed that all indigenous coastal Alaskans came from Asia across the Bering Land bridge.¹⁵⁰ In 1867, Massachusetts senator Charles Sumner—during a three-hour speech in favor of ratifying the U.S.-Alaska purchase—classified “Aleutians” as “Mongolian in origin.”¹⁵¹ An ethnographer traveling through Alaska noted that “throughout British Columbia, there is the indisputable opinion that [Tlingit and Haida native people] are descendants of Japanese sailors.”¹⁵²

Political and anthropological discourses became preoccupied with the idea of distinguishing Alaska Native people from other indigenous groups in the continental United States, a distinction based “on perceived Asian origins.”¹⁵³ By separating indigenous Alaskans from Native Nations in the south, American politicians successfully avoided the thorny question of whether indigenous groups needed separate treaties (or contracts) in order to approve of the Alaska Purchase.¹⁵⁴ This separation continued up until World War II. Alaska Natives weren’t granted U.S. citizenship until 1940, nearly twenty years after indigenous people in the lower-48.¹⁵⁵ By racializing Alaska Natives—specifically Unangan—as Asian, the U.S. government was able to withhold corresponding rights.

Unangan were also racialized in more direct ways. The U.S. government’s stated rationale for the Alaskan internment was for protection against Japanese invasion.¹⁵⁶ This likely was a significant factor in the decision to corral the Unangan population: after the bombing of Dutch Harbor and the invasion of Attu, it was reasonable to believe that the Aleutian Islands were unsafe for civilians.¹⁵⁷ But there was another, darker possibility. To the U.S. military, an Unangan man and a Japanese soldier were physically indistinguishable.

Why were white civilians not interned? The evacuation was based on race. Anyone in the region who was one-eighth Unangan or more was required to

¹⁵⁰ FRANZ BOAS, *THE ETHNOGRAPHY OF FRANZ BOAS: LETTERS AND DIARIES OF FRANZ BOAS, WRITTEN ON THE NORTHWEST COAST FROM 1886–1931* 6 (ed. Ronald P. Rohner, 1969).

¹⁵¹ PEGUES, *supra* note 10, at 25.

¹⁵² BOAS, *supra* note 132, at 98.

¹⁵³ PEGUES, *supra* note 10, at 26.

¹⁵⁴ *But cf. id.* (that there was no need to orientalize Lower-48 Native Nations in order to seize their land).

¹⁵⁵ *See* 8 U.S.C.A. § 1401 (the delay may be attributable to the fact that Alaska was not granted statehood until the 1950s).

¹⁵⁶ Eve Tuck & K. Wayne Yang, *Decolonization is Not a Metaphor*, 1 *DECOLONIZATION: INDIGENITY, EDUC., AND SOC’Y* 1, 18 (2012).

¹⁵⁷ KOHLHOFF, *supra* note 21, at 43.

evacuate.¹⁵⁸ But white civilians were given the choice to evacuate or not. This may be because, in the eyes of the U.S. government, the indigenous people posed a greater risk: Unangan were “difficult to differentiate from potential Japanese spies.”¹⁵⁹ There were multiple incidents of the military detaining Unangan for being suspected Japanese soldiers.¹⁶⁰ In one incident, several Unangan men—out on a hike from the nearby Biorka village—were seized by the U.S. military and held for nearly two weeks.¹⁶¹ The Unangan themselves were not blind to this. Years after internment, John Tateishi, a JACL activist, recalled meeting redress lobbyists from the Aleutians.

I was over at the House, and all of a sudden these two men showed up, and they had come down from Alaska to testify. It was the first time I heard what that experience was like. One was Mike Zaharoff, and the other was Philemon Tutiakoff. You know, I met them, I looked at them and I said, “Shit. Except for your names, you could be Japanese.” And one of them says, “Why the hell do you think they put us into those damn prisons?”¹⁶²

John Tateishi, Redress Director of the Japanese American Citizens League

Finally, several of the military commanders in charge of the island wanted the Unangan out of the way. Any argument that evacuating Unangan was for their safety was a “subtext,” and nowhere was this more evident than the treatment of Unalaskans.¹⁶³ The villagers were evacuated after the bombing of Dutch Harbor—after the danger had subsided—while white civilians were allowed to stay. The commanding general of Fort Mears, an Army base just south of Dutch Harbor, called Unangan “degenerates” and saw their removal as a way to cleanse the area of social problems.¹⁶⁴ He feared that the Native people would “distract” military settlers through alcohol and sex.¹⁶⁵

¹⁵⁸ Levi J. Long, *WWII Internments Set Aleuts Adrift From Their Islands*, SEATTLE TIMES (Feb. 19, 2004), <https://archive.seattletimes.com/archive/?date=20040219&slug=aleut19m> [<https://perma.cc/5GPM-P8S9>]. Note the similarity to how race was legally defined. For example, Florida’s anti-miscegenation law from 1865 identified anyone with more than one-eighth “negro blood” as fitting the definition of “a person of color.” An Act to amend the Act entitled An Act Concerning Marriage Licenses, L. OF FLA., Chap. 1,468 §§ 1–3 (1865).

¹⁵⁹ Tuck & Yang, *supra* note 138.

¹⁶⁰ PEGUES, *supra* note 10, at 146.

¹⁶¹ *Id.*

¹⁶² Interview with John Tateishi, *supra* note 111.

¹⁶³ KOHLHOFF, *supra* note 21, at 69.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* Using promiscuity and alcoholism as a justification for excluding native people (instead of whites) is textbook racism, and part of a long-standing playbook deployed against indigenous people in both the Lower-48 and Alaska.

B. Land Grab

We're charged with wanting to get rid of the Japs for selfish reasons. We might as well be honest. We do. It's a question of whether the white man lives on the Pacific Coast or the brown man. They came into this valley to work, and they stayed to take over. . . . If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.¹⁶⁶

Austin Anson, Managing Secretary, Vegetable Grower-Shipper Association of Salinas (CA)

Before World War II, Japanese farmers produced more than a third of all commercial crops in California, despite owning less than 2 percent of the state's total farmland.¹⁶⁷ In 1940, the average cost per acre of West Coast farms was \$37.94, while the average cost of Japanese farms was \$279.96.¹⁶⁸ Pearl Harbor gave white, Western farmers an opportunity. Shortly after the attack, Austin Anson—a member of a farmer's union—was “dispatched” to Washington to lobby for the removal of all *Issei* and *Nisei* from the West Coast.¹⁶⁹ A DOJ official warned the President against removal of farmers “who were helping feed the civilian population and the military,” calling Anson's efforts “nonsense.”¹⁷⁰

The removal and internment of Japanese Americans was justified by (false claims of) national security.¹⁷¹ And yet, the DOJ official's argument—that Japanese farms helped feed the military amassing throughout the West Coast—was also a form of a national security argument. These justifications were a sham. But white farmers' attempted land grab held more water.

¹⁶⁶ Frank J. Taylor, *The People Nobody Wants*, THE SATURDAY EVENING POST (May 9, 1942), <https://www.saturdayeveningpost.com/2017/05/people-nobody-wants/> [<https://perma.cc/E3EB-4D5C>].

¹⁶⁷ *History: Before the War*, HEART MOUNTAIN, <https://www.heartmountain.org/history/before-the-war/> [<https://perma.cc/97F9-4UCR>].

¹⁶⁸ COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 122.

¹⁶⁹ Taylor, *supra* note 148.

¹⁷⁰ A.V. Krebs, Opinion, *Bitter Harvest: How Profiteers Forced the Nisei off Their Farms During WWII*, WASH. POST (Feb. 2, 1992), <https://www.washingtonpost.com/archive/opinions/1992/02/02/bitter-harvest/c8389b23-884d-43bd-ad34-bf7b11077135/> [<https://perma.cc/Q9KJ-TVQ7>].

¹⁷¹ See, e.g., *Korematsu v. United States*, 323 U.S. 214, 223 (1944) (“Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this.”).

There were similar justifications—both false and real—for the internment of Alaska Natives. The predominant justification for the removal of the Unangan was grounded in safety, too. Throughout June 1942, the Japanese army bombed and invaded several islands along the Aleutian Island chain.¹⁷² The evacuation was, supposedly, done for the personal safety of the Alaska Native peoples in the region.¹⁷³ And yet, it was undergirded by both racial animus (explained above) and—I argue—a desire for strategic land.

The Aleutian Island chain was strategically important given its position near most direct routes from northern Asia, the U.S. West Coast, Alaska, and the Hawaiian Islands, making them “most useful” to the U.S. military.¹⁷⁴ In 1935, one general told the U.S. Congress that “whoever holds Alaska will hold the world.”¹⁷⁵ But the Unangan were in the way. By removing the Unangan, the military was able to freely occupy the islands and the buildings left behind.

To understand why the U.S. military, which moved thousands of troops through the Aleutian Island chain, desired the comparatively few hundreds of buildings left behind by the Unangan, one must first understand the geography of the region. The Aleutian Islands are so rural that most Americans have trouble comprehending that level of isolation. Even in the modern era, it can take days for planes to reach the islands—sometimes upwards of a week.¹⁷⁶ In such remote locations, existing infrastructure is incredibly valuable, something that the U.S. government was acutely aware of.¹⁷⁷

C. *Civil Liberties Act*

Over the years, I have spoken to Senator Norman Mineta, John Kirtland (the lawyer who represented the Unangan during the reparations process), John Tateishi, and various other politicians and activists. None were able to explain why the two groups ended up with different allowances. Only one clue remains, buried deep in the legislative history: “The Aleuts’ case for compensation derives not from the relocation orders executed by military

¹⁷² COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 322.

¹⁷³ *Id.* at 69.

¹⁷⁴ W. L. Goldsborough, *The Aleutians—Their Strategic Importance*, 67 PROCEEDINGS 830, 832 (1941).

¹⁷⁵ FRANCIS PIKE, *HIROHITO’S WAR: THE PACIFIC WAR, 1941–1945* 1003 (2016).

¹⁷⁶ *See, e.g.*, Sofia Stuart-Rasi, *Volcanic Ash Clouds Disrupt Medical Air Travel in Aleutians*, KUCB (Nov. 3, 2023, 9:02 PM), <https://www.kucb.org/health/2023-11-03/volcanic-ash-clouds-disrupt-medical-air-travel-in-aleutians> [<https://perma.cc/ML6H-77YQ>] (volcanic eruptions limiting medical evacuations from Unalaska); Andy Lusk, *Military Delegation Visit to Unalaska Postponed*, KUCB (Oct. 31, 2023, 3:07 PM) <https://www.kucb.org/regional/2023-10-31/military-delegation-visit-to-unalaska-postponed> [<https://perma.cc/Q2VX-NDJD>] (inclement weather leading to the cancellation of U.S. Coast Guard flights, Army flights, and Space Force flights to Unalaska); Jim Wilson, *On Assignment: Ceiling Briefly Unlimited*, N.Y. TIMES (Nov. 25, 2009) <https://archive.nytimes.com/lens.blogs.nytimes.com/2009/11/25/assignment-16/> [<https://perma.cc/Y9S5-N5AR>] (weather forcing the grounding of a man flying from Unalaska to Nikolski for more than five days).

¹⁷⁷ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 69 (“If Aleuts were evacuated, their homes and lands would be open for military use.”).

commanders on the scene, but rather from the treatment suffered at the hands of the Government following the evacuation.”¹⁷⁸ These terms were proposed by the Aleutian/Pribilof Islands Association and the Aleut Corporation.¹⁷⁹

Although there are differences in how money was allocated between the two groups—larger individual awards for Japanese Americans, trusts with varying prohibitions on how the money could be used for Unangan—the most significant difference was the apology. Why?

The Commission on Wartime Relocation and Internment of Civilians released a final report that Congress adopted almost word for word.¹⁸⁰ An explicit apology was only recommended for the Japanese.¹⁸¹ By way of explanation, the Commission noted that it found “no persuasive showing that evacuation of the Aleuts was motivated by racism or that it was undertaken for any reason but their safety.”¹⁸² Other reports also insisted that the evacuation was “militarily justified.”¹⁸³ But, as shown above, race was an explicit factor in determining who should be evacuated.¹⁸⁴

The lack of apology may be rooted in the U.S. government’s colonial posture toward indigenous people: that Native peoples are “wards,” and in the Unangan case, wards who the U.S. government “failed to care for . . . properly.”¹⁸⁵ This understanding of the colonialist attitude goes both ways: Unangan had long complained of “Interior Department paternalism and condescension.”¹⁸⁶ Perhaps no fact can communicate that condescension more strongly than this: in the hundreds of pages of government documents, letters, and memorandums debating what to do about the Unanga, at no point is there any mention of anyone asking for their opinion.

¹⁷⁸ *Civil Liberties Act of 1985 and the Aleutian and Pribilof Islands Restitution Act: Hearings on H.R. 442 and H.R. 2415 Before the Subcomm. on Admin. L. & Gov. Rels. of the House Judiciary*, 99th Cong. 1601 (1986).

¹⁷⁹ *Id.* at 1622.

¹⁸⁰ See, e.g., COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 462 (“The Commission recommends that Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.”); cf. 50 U.S.C.A. § 4202 (“Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II.”).

¹⁸¹ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 462 (“The Commission recommends that Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.”).

¹⁸² *Id.* at 464.

¹⁸³ Dept. of Def. Appropriations Act of 1989, Pub. L. No. 100–463, 102 Stat. 2270 (1989).

¹⁸⁴ See COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3.

¹⁸⁵ PEGUES, *supra* note 10, at 151.

¹⁸⁶ COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *supra* note 3, at 69.

In a brief submitted to Congress and arguing for redress, the Unangan are careful to distinguish themselves from the Japanese: “The Aleut experience in World War II is unique in the annals of modern American history. These citizens were neither accused nor suspected of any disloyalty to the United States in time of war.”¹⁸⁷ The brief then referred to educational segregation and racial discrimination against Black Americans.¹⁸⁸ Perhaps it was this reference to the Civil Rights Movement, and specifically the reference to *Bolling v. Sharpe*,¹⁸⁹ that doomed the apology. If Congress apologized to the Unangan, then they might have to apologize for perpetuating the Jim Crow regime and, perhaps eventually, for slavery.

Congress was correct in making the connection between the treatment of Black and Unangan Americans, but deeply flawed in their rejection of it. One year after the Civil Liberties Act was signed into existence, Representative John Conyers introduced H.R. 40, *Commission to Study Reparation Proposals for African Americans Act*.¹⁹⁰ Rep. Conyers continued introducing the bill every session, for nearly thirty years, before he retired in 2017.¹⁹¹

Conclusion

Rie Makino—a literature professor who studied Japanese internment—wrote about the distinction between suppressing and forgetting. Suppression, as defined by Makino, is the act of concealing “emotional anger, grief, and protest arising from [the] trauma” of incarceration.¹⁹² This was illuminated by the different generational experiences of those who went through internment: the children of internees were “aggressively involved in the redress movement,” while their parents were reluctant to talk about it.¹⁹³

As I have researched these twin stories of internment, I have tracked another similarity, one that does not fit neatly into the bounds of an academic paper. (Or at least, this academic paper.) This is a generational pattern, one I have developed largely through anecdotal evidence. Those who were interned did their best to move on from the experience; their children demanded redress; and now their grandchildren attempt to preserve the history. Perhaps that

¹⁸⁷ *Civil Liberties Act of 1985 and Aleutian and Pribilof Islands Restitution Act*, *supra* note 144, at 1642.

¹⁸⁸ *Id.* at 1644.

¹⁸⁹ (1954) 347 US 497

¹⁹⁰ Sarah Hulett, *John Conyers, Detroit and Former Dean of House of Representatives, Dead at 90*, MICH. RADIO (Oct. 27, 2019, 4:31 PM), <https://www.michiganradio.org/news/2019-10-27/john-conyers-detroit-and-former-dean-of-house-of-representatives-dead-at-90> [<https://perma.cc/9YSP-GWYG>].

¹⁹¹ *Id.*

¹⁹² Makino, *supra* note 106, at 104.

¹⁹³ *Id.*

generational removal is what helps them engage with it. But our explorations rely on the generosity of our elders, who share their painful stories. In the words of Jacob Lesteknof: “People tended to hesitate to talk about that experience, including me. They seem very reluctant. The people who are interested in the experience are people like you, who were not born yet.”¹⁹⁴

I am grateful for General Jacob Lesteknof, Leo Mercurief, John Tateishi, Norman Mineta, Marie Matsuno Nash, and John Kirtland—all elders who took the time to speak with me personally. I am also grateful to the many, many people who spoke to historians to ensure that this painful history was not lost.



¹⁹⁴ Interview with Jacob Lesteknof.