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Robin Lenhardt

*Fordham University School of Law*, [rlenhardt@law.fordham.edu](mailto:rlenhardt@law.fordham.edu)

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# GRAVE BUILDING: A TRIBUTE TO CHARLES J. OGLETREE, JR., AND HIS EVOLVING LEGACY

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R. A. Lenhardt\*

## I. INTRODUCTION

When she was alive my grandmother, Mary Nell, would speak often of her father, Alexander Hartman. I never had the pleasure of meeting my great-grandfather. He died long before I was born. But I am told that he was a kind and affable man, intelligent and loving, especially with my grandmother, with whom he was very close. According to my grandmother, who was the fifth of his eight children, Great-grandfather Alexander worked for much of his adult life as a brick mason in a small town just outside of Little Rock, Arkansas, called Des Ark. My grandmother was born in that postage-stamp of a town, and lived there, too, until poverty and hunger led her, like so many other African Americans of her generation, to migrate north to New York City for work and the promise of a better life.

Now, as my grandmother told it, whenever work was available, Great-grandfather Alexander could be seen working hard at laying bricks for this or that building project in the area. But there was also many a time that he could be found at the cemetery, digging graves. Because of Jim Crow, and its rigid adherence to racial segregation in nearly every aspect of community life, black and white folks carried on separate lives in the Des Ark of the early 1900s.<sup>1</sup> But they had at least one thing in common. They all needed someone to dig their graves when they died, and Great-grandfather Alexander made himself available to do it. In fact, he dug so many graves that, over time, this aspect of his work apparently began to weigh heavily on his mind. The close proximity to death and its finality kept him focused, it seems, on endings and the quality of the choices people make while on this earth, so much so that he could often be heard won-

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\* Associate Professor of Law, Fordham University School of Law. L.L.M., Georgetown University Law Center, 2004; M.P.A., Harvard University John F. Kennedy School of Government; J.D., Harvard Law School, 1995; A.B., Brown University, 1989; law clerk to Justice Stephen G. Breyer, U.S. Supreme Court, 1996-97. I am grateful to Amy Licht and Gowri Krishna for their wonderful research assistance.

1. For more on the harshness of the Jim Crow system and its impact on African Americans, see, for example, C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 83-84 (3d rev. ed. 1974); see also R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 854, 857 (2004).

dering aloud about his own life and circumstances. "Who will build *my* grave?" he would ask anyone willing to listen. "Who will build *my* grave?"

I have often wondered about Great-grandfather Alexander and what he meant by this question. One could, of course, understand it to be very practical in nature. After all, if one is principally responsible for building graves for people in a particular area, it stands to reason that there might not be anyone around to prepare the ground for burial when you are ready to leave this world. This would be a very troubling possibility for anyone. But I have always thought that Great-grandfather Alexander was concerned about more than just where his body would be put upon death. Indeed, I do not think that he was concerned about his body at all. Whenever my grandmother would tell me this story—and perhaps this is what she intended all along in its telling—I always thought that Great-grandfather Alexander was really asking, "Who will remember me? Have I, a poor, black man from a small town in Arkansas, left a mark on this world of which someone will take note? What will *my* legacy be when I am gone?"

On September 15, 2005, hundreds of people, among them U.S. Supreme Court Justice Stephen G. Breyer, Dean Elena Kagan, the first woman to head Harvard Law School, and some of the best and brightest minds of twenty-first-century Black America—including Cornel West, Glenn Loury, William T. Coleman, Jr., Judge Constance Baker Motley, Judge Robert Carter, Professor Genna Rae McNeil, Professor Kenneth Mack, and John Payton, architect of the landmark Supreme Court victory in *Grutter v. Bollinger*<sup>2</sup>—gathered to honor the legacy of one the most important figures in African American history, civil rights leader Charles Hamilton Houston. As Professor Genna Rae McNeil notes in her important biography, the work Houston, the grandson of slaves, completed in the area of civil rights truly changed the world:

Charles Houston's entire career as a civil rights lawyer exemplified the belief that the law could be used to promote fundamental social change and that it was an instrument available to a minority even when that minority was without access to the ordinary weapons of democracy. His reputation is indelibly linked with the NAACP and its Legal Defense Fund . . . and with his initiation of the litigation campaign . . . against racial discrimination in education that ultimately led to the watershed public school segregation decisions of 1954, *Brown v. Board of Education* and *Bolling v. Sharpe*. His place of significance in history has been principally established by his role as either chief counsel and key strategist or adviser-strategist for precedent-setting cases in three areas of law: education, labor, and housing. As a constitutional lawyer and litigator . . . Charles Houston demonstrated that demands could be made on the system's courts with the result being changes in the common law. . . . Houston's work underscored that resort to the courts, while an insufficient remedy for fully combating and eliminating racism in the United

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2. 539 U.S. 306 (2003).

States, was an appropriate means for blacks to use in the struggle to alter the conditions under which they lived in America.<sup>3</sup>

Without Houston and the role that he played not only in masterminding the attack on legally sanctioned racial segregation, but also in training a cadre of skilled African American attorneys committed to ensuring that the democratic ideals and promise on which the United States rests be extended to all American citizens, the civil rights gains of the last fifty years would be nonexistent.<sup>4</sup> Indeed, it is almost certain that, had Charles Hamilton Houston never lived, large numbers of the African American attorneys—many of them who, like Houston, graduated from Harvard Law School—who gathered in Cambridge in September of 2005 would have been absent from the Race and Justice Institute's inaugural event, left to pursue careers less prestigious and potentially less change-producing in nature. It is most fitting, then, that we celebrated the opening of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School.<sup>5</sup>

As part of the festivities surrounding the Institute's creation, a number of people presented scholarly opinions on the implications of Charles Hamilton Houston's legacy—for the events of the fifty years that have elapsed since *Brown v. Board of Education*<sup>6</sup> was decided, but also for the future. Houston's life and career—which, among other things, involved developing the NAACP's legal strategy in 1930s and 1940s civil rights cases such as *Missouri ex rel. Gaines v. Canada*<sup>7</sup>—provide rich material for inquiries into race and the civil rights movement in America. I expect one day to turn my attention to that subject. But for now, I want to focus principally on the work and contributions of another great lawyer and African American graduate of Harvard Law School: Professor Charles J. Ogletree, Jr., the

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3. GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 218–19 (1983).

4. See *id.* at 3–4; see also *id.* at 3 (quoting a speech by former *Brown v. Board of Education* litigation team member and U.S. Supreme Court Justice Thurgood Marshall) (“You have a large number of people who never heard of Charlie Houston. But you’re going to hear about him, because he left us such important items. . . . When *Brown* against the Board of Education was being argued in the Supreme Court. . . . [t]here were some two dozen lawyers on the side of the Negroes fighting for their schools. . . . [O]f those . . . lawyers . . . only two hadn’t been touched by Charlie Houston. . . . [T]hat man was the engineer of all of it. . . . I can tell you this . . . if you do it legally, Charlie Houston made it possible. . . . This is what I think . . . Charlie Houston means to us.”). In noting this, I do not mean to suggest that the gains have been as expansive as they could have been. Indeed, persistent racial inequality in core areas such as education, housing, and employment remains a serious problem to this day. See Lenhardt, *supra* note 1, at 805–07 (discussing racial stigma and persistent racial inequality).

5. It is also quite significant that the Institute will be housed at Harvard Law School, the institution that both granted Houston his law degree and has struggled mightily over the years with addressing issues of race and racial discrimination. See, e.g., DERRICK A. BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994) (describing, *inter alia*, the author's protest during the 1990s over Harvard Law School's failure to hire an African American law professor).

6. 347 U.S. 483 (1954).

7. 305 U.S. 337, 352 (1939) (holding exclusion of Blacks from state law school unconstitutional where such excluded students were not provided with a comparable facility).

founder and first director of the Charles Hamilton Houston Institute for Race and Justice.

In addition to being the Houston Institute's first director, Professor Ogletree is the Jesse Climenko Professor of Law at Harvard and has previously served as Harvard's associate dean for clinical programs and director of the Criminal Justice Institute, among other things. Unlike Houston, who is remembered for his many past contributions—deeds that have won him recognition as one of the most important legal strategists and justice fighters of our time—Professor Ogletree, to borrow a line from my great-grandfather, is still busy "building his grave." Fortunately for all of us, he is still very much in the process of establishing what the nature and scope of his legacy will be. I focus on it in the pages that follow because, even at this very early stage, it is clear that, at the end of the day, this legacy will be vast and, in many ways, as significant as the one that was celebrated on September 15. A fighter for racial justice in the mold of Charles Hamilton Houston and his most famous protégé, former Supreme Court Justice Thurgood Marshall, Professor Ogletree has consistently built on the legacy of struggle, creativity, and commitment established by the black lawyers who went before him. And, in doing so, he has taken the fight for racial justice to new and necessary places—including Congress, the U.S. Supreme Court, the criminal justice system, affirmative action, and efforts to secure reparations for African Americans harmed by the brutality of nearly four hundred years of slavery and the violence and humiliation of Jim Crow.

This Article briefly maps out the contributions that Professor Ogletree has already made to civil rights and the legal profession along three separate axes: the creation of a cadre of attorneys for the new millennium that includes African Americans, but also encompasses young lawyers from other groups who are interested in social change; the production of revolutionary scholarship designed to advance the quest for racial equality in the United States; and the effort to develop a legal strategy capable of both addressing the racial harms of the past and remedying the racial inequalities that exist to this day. Further, the Article identifies those areas in which Professor Ogletree has both drawn on and expanded upon the example set by Charles Hamilton Houston. It is my small tribute to a great man.

## II. PREPARING (BLACK) LAWYERS FOR THE TWENTY-FIRST CENTURY

Before accepting the position as special counsel of the NAACP, Charles Hamilton Houston served as resident vice-dean of Howard Law School during the six years spanning from 1929 to 1935.<sup>8</sup> In his capacity as Dean, Houston endeavored to make Howard Law School, then a struggling institution, into a first-rate law school known for producing skilled, well-trained black lawyers capable of substantially advancing the cause for racial justice in the United States. As one scholar explained, Houston's idea was that Howard would provide "superior professional training and extraordinary motivation . . . to prepare the professional cadres needed to lead

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8. McNEIL, *supra* note 3, at 70, 117.

successful litigation against racism as practiced by government and sanctioned by law.<sup>9</sup> This social engineering agenda meant that Houston devoted considerable amounts of time and energy to teaching and mentoring his students, many of whom—like Thurgood Marshall and Oliver Hill—would later go on to be instrumental in the civil rights cases of the 1950s, 60s, and 70s.

Charles Ogletree has made a similar commitment to preparing African American law students for leadership in the legal profession and the fight for racial justice. In fact, one would be hard pressed to find a group of African American students at Harvard that he has not touched in some way. With the enthusiasm that marks all of his endeavors, Tree, as he is affectionately known, has both systematically tried to create opportunities for black Harvard Law students and to prepare those students for the rigors of a life in law. That he has accomplished this goal is evident in the broad range of tributes on Professor Ogletree's behalf being published in this volume of the *BlackLetter Law Journal*. Black lawyers counting themselves among Professor Ogletree's many mentees can be found in virtually every area of the law—e.g., academia, criminal defense and prosecution, legal aid, and private practice. They can all testify to the incredible support and special attention that Professor Ogletree somehow manages to afford each of his charges. For my own part, I will never forget nor cease to appreciate the encouragement and direction I received from him.<sup>10</sup>

Unfettered by formal segregation or the limited resources that challenged Houston as he pursued his goals, Professor Ogletree has used his considerable leadership skills, persuasive powers, and position to improve the experiences of hundreds of black law students. At Harvard—an institution that historically has not always been receptive to African Americans and other students of color—this manifests itself in programs such as Saturday School, which Professor Ogletree started and still directs.<sup>11</sup> While open to all students, this program, which brings luminaries in law and other related fields to campus to lecture and interact with students, has featured a variety of sessions on questions of justice, race, and equality particularly important to many students of color.<sup>12</sup> It has served

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9. *Id.* at 76.

10. Incidentally, my parents will not forget this support either. As I prepared to graduate from the Law School, I walked my parents around the halls to meet professors who had been important to me during my tenure there. Professor Ogletree was, of course, among those at the very top of the list. Although it was a busy weekend and I am sure that I was one of many who had stopped by to introduce him to family members, Ogletree impressed my parents with his kindness and astounding recollection of my pursuits—academic and non-academic—at the Law School. The time he took with us meant a great deal to them and to me.

11. *See, e.g.,* MCNEIL, *supra* note 3, at 51 (discussing Houston's own exclusion and feelings of racial alienation while enrolled as a Harvard student); SARAH LAWRENCE LIGHTFOOT, *I'VE KNOWN RIVERS: LIVES OF LOSS AND LIBERATION* 159–60, 162–63 (1994) (discussing the difficulties Ogletree himself faced at Harvard).

12. *See, e.g.,* The Saturday School Program—Harvard Law School, [http://www.law.harvard.edu/students/saturday\\_school/video\\_archive.shtml](http://www.law.harvard.edu/students/saturday_school/video_archive.shtml) (listing, *inter alia*, speakers who include the Reverend Jesse Jackson, Professor Jerry Kang, Professor Randall Kennedy, Professor Patricia Williams, Professor Derrick Bell, John Payton, Professor Glenn Loury, Professor Cornel West, Professor David Cole, Danny Glover, Johnnie Coch-

as an important supplement to a law school curriculum that has not always addressed issues of concern to this population and, in many instances, as a valuable networking tool for students, who are often invited to talk and sometimes share a meal with the legal luminaries whom Professor Ogletree has invited to participate in Saturday School programs over the years. I, for example, will never forget the invitation I received to join Professor Ogletree and others for a post-lecture dinner with Professor Anita Hill, whom he had represented during her testimony before the Senate Judiciary Committee considering Justice Clarence Thomas's nomination to the United States Supreme Court. That evening, and the opportunity to talk with someone who had so influenced the course of legal events, remains one of the highlights of my law school career.

Outside of the law school, Professor Ogletree's power-brokering on behalf of black students can be seen in the changes that have occurred at some of our most exclusive legal institutions. Long before the NAACP and others turned their attention to the representation of law clerks of color at the U.S. Supreme Court,<sup>13</sup> Ogletree concerned himself with expanding the number of opportunities for service in institutions such as the judicial system, the Justice Department, public interest organizations, and elite law schools available to law students of color. And the effects have been tremendous, inuring not only to the benefit of the students affected, but to the Law School and, ultimately, the legal system itself, whose legitimacy and influence is only enhanced by the existence of a broadly diverse group of skilled and talented attorneys in leadership positions.<sup>14</sup> This progress is significant at a time when the number of African Americans being enrolled in law schools has either stagnated or begun to decline.<sup>15</sup>

As important as Professor Ogletree's efforts on behalf of African American law students have been, however, it would be a mistake to ignore his teaching and mentoring on behalf of other students. For Professor Ogletree has accomplished something that Charles Hamilton Houston, because of the particular context in which he operated, could never even have hoped to do: enlist a broad range of capable students in the movement to achieve justice for those individuals who are disadvantaged in our society. Through vehicles such as the Criminal Justice Institute and the Trial Advocacy Program, and the unique platform Harvard provides, Professor Ogletree has endeavored "to teach students [of all walks of life] to become effective and committed advocates for the indigent" and justice overall.<sup>16</sup>

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ran, Kenneth Starr, the Reverend Al Sharpton, Professor Alan Dershowitz, Professor Anita Hill, and Supreme Court Justices Stephen G. Breyer and Sandra Day O'Connor).

13. See John Bacon, *NAACP Campaign to Protest High Court's Hiring Record*, USA TODAY, Nov. 25, 1998, at A3.

14. See *Grutter v. Bollinger*, 539 U.S. 306, 331-32 (2003).

15. See David B. Wilkins, *Doing Well By Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 Hous. L. Rev. 1, 85 (2004); see also ELIZABETH CHAMBLISS, MILES TO GO 2004: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 10 (2004).

16. LAWRENCE LIGHTFOOT, *supra* note 11, at 139.

Harvard Graduate School of Education professor Sarah Lawrence Lightfoot considered this agenda in her book *I've Known Rivers: Lives of Liberation and Loss*, which contains a stunningly poignant “portrait” of Professor Ogletree.<sup>17</sup> At one point, she explains: “Charles wants to teach his students to become effective and committed advocates for the indigent. The poor must receive the best possible defense—a free defense as strong and as persuasive as that which can be bought by the rich.”<sup>18</sup> Through the Trial Advocacy Program, in particular, which brings seasoned litigators into the classroom to help students hone their lawyering skills and expose them to the difficult ethical and strategic questions they will confront in representing clients, Professor Ogletree has more than achieved his purpose.<sup>19</sup> Scores of Harvard Law graduates cite their experience in this course as one of the most significant in their law school career and credit it for reinforcing their desire to achieve justice for their clients and in the justice system as a whole. It is evident that, through his leadership and innovative approach to the law and teaching, Professor Ogletree is changing not only Harvard Law School, but the legal profession as a whole.

### III. RACIAL JUSTICE SCHOLARSHIP

In 1935, Charles Hamilton Houston, the first African American ever to serve on the Harvard Law Review, published an article in the *Journal of Negro Education* entitled *The Need for Negro Lawyers*.<sup>20</sup> Drawing on research Houston had completed on “the status and activities of black lawyers,”<sup>21</sup> the article cast black lawyers as change agents or “social engineer[s],” and argued, among other things, that they had an obligation to engage themselves in the struggle for social justice and racial equality by taking and litigating cases calculated to undermine the racial hierarchy then in place.<sup>22</sup> Black law schools such as Howard, the article further maintained, had an obligation to make the production of such change agents a priority. If such institutions were to make a meaningful contribution to the black community, Houston contended, they would have to focus their attentions on training as many black lawyers as possible and then dispatching them to areas of the country where racial prejudices ran especially high.<sup>23</sup>

In publishing this article Houston articulated a vision that would later become an integral part of the NAACP’s efforts to eradicate racial segregation. He also provided an important scholarship blueprint for an entire generation of legal academics of color. Many of us now in the academy regularly struggle with how to produce scholarship that is both “scholarly” and that advances the cause for social change and justice.<sup>24</sup> The fear

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17. See *id.* at 111–90.

18. *Id.* at 139.

19. *Id.* at 119–20, 131–39 (providing more complete explanation of Trial Advocacy Program and its reception among students).

20. See McNEIL, *supra* note 3, at 122–23.

21. *Id.* at 123.

22. See *id.*

23. *Id.*

24. For more on the struggle many attorneys of color have with respect to their place in their academy and the need to produce work that remains relevant and useful in attempts to create social change, see LAWRENCE LIGHTFOOT, *supra* note 11, at 124 (dis-



is that one's work not be so specialized or removed from reality that it have absolutely no application whatsoever in the "real world." Conversely, another concern is that the scholarship not be such that it gets mistaken for a piece of pure advocacy. Houston's example suggests that one can find a happy balance amidst the sometimes competing goals of the academy and the fight for social justice.

Few people seem to understand this point better than Professor Ogletree. Over the course of his career in legal academia, he has published on a vastly diverse range of topics, but has managed always to keep issues of racial justice and social justice at the center of his work. In this sense, his work falls squarely within the efforts of scholars of color to produce scholarship that highlights misconceptions about the operation and function of race in our society, and seeks ultimately to undermine institutions and structures that subjugate and reinforce racial hierarchy and privilege.<sup>25</sup>

Professor Ogletree's most recent books discussing the impact of *Brown v. Board of Education* provide a helpful illustration of the balance alluded to above.<sup>26</sup> *All Deliberate Speed*, in particular, looks at how race has operated in Professor Ogletree's own life, tracing his path from his beginnings in a rural, impoverished area of California to Harvard Law School. It is, however, ultimately much more than a memoir or just a series of reflections. Together, the sections of the book, which focus on everything from the *Brown* decision to the contrasting orientations of Justices Thurgood Marshall and Clarence Thomas, return a stinging indictment of the Court for its failure to better confront the realities of race in the United States. They take the Supreme Court to task for not fully realizing the promise of *Brown*, but also map out alternative mechanisms for achieving racial justice.<sup>27</sup>

Professor Ogletree's other works have a similar focus on change and revolution. Whether the article considers the administration of the death penalty,<sup>28</sup> the operation of lower courts,<sup>29</sup> the work of public defenders,<sup>30</sup>

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cussing Professor Ogletree's own ambivalence about locating his work inside, rather than outside, of the classroom).

25. A great many of these scholars identify with the critical race theory (CRT) movement, which has its roots in student advocacy at Harvard. See Kimberlé Williams Crenshaw, *CRITICAL RACE STUDIES: The First Decade: Critical Reflections*, or "A Foot in the Closing Door," 49 *UCLA L. REV.* 1343, 1345-55 (2002). For a recent attempt to identify the core ideas of CRT, see Devon Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 *YALE L.J.* 1757, 1766-88 (2003).
26. See CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* (2004) [hereinafter *ALL DELIBERATE SPEED*]; DEBORAH L. RHODE, *BROWN AT 50: THE UNFINISHED LEGACY* (Deborah L. Rhode & Charles J. Ogletree, Jr., eds., 2005).
27. See *ALL DELIBERATE SPEED*, *supra* note 26, at 277, 286, 292 (discussing reparations suits and questions of remedy).
28. See Charles J. Ogletree, Jr., *Black Man's Burden: Race and the Death Penalty in America*, 81 *OR. L. REV.* 15 (2002) (discussing race and the death penalty).
29. See Charles J. Ogletree, Jr., *Judicial Activism or Judicial Necessity: The D.C. District Court's Criminal Justice Legacy*, 90 *Geo. L.J.* 685 (2002) (discussing D.C. District Court's impact on criminal justice system).
30. See Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 *HARV. L. REV.* 1239 (1993) (discussing methods to sustain motivation in public defender offices).

or the movement to obtain reparations for the children of slaves,<sup>31</sup> the goal of any Ogletree publication seems to be both to educate and advocate for reform in an area directly related to racial justice in the United States.

It makes sense, then, that Professor Ogletree would be the one to head what will surely emerge as an important institute on race in the United States and the American legal system. The Institute, whose mission is to “further the vision of racial justice and equality through research, policy analysis, litigation and scholarship,”<sup>32</sup> borrows from and endeavors to build upon Houston’s legacy in employing scholarship to advocate for a paradigm shift in the way we think about matters relating to race or the quest for justice. It will, however, no doubt extend that legacy to areas Houston probably never even dreamed of by engaging attorneys and scholars from a variety of areas in a multi-disciplinary effort to identify the root causes of racial stigma and persistent racial inequalities in the United States and to develop strategies—whether legal or policy-based—to remedy them.

#### IV. NEW CIVIL RIGHTS LAWYERING

In addition to his teaching and scholarship, Professor Ogletree has established an important racial justice legacy through his advocacy as a lawyer. Even before I had the opportunity to meet Professor Ogletree, I was aware of his great capacity for oral argument and client representation. Within weeks of my arrival on the Harvard Law School campus, Justice Thomas’s confirmation hearings occurred. I never heard Professor Ogletree speak as I sat listening to radio broadcasts of the hearings and Professor Anita Hill’s compelling testimony in my campus apartment. But, like all Harvard Law students, I was cognizant of Professor Ogletree’s powerful presence and unique role in representing Professor Hill during the proceedings. More than this, I was aware of the incredible and innovative lawyering role he had claimed for himself by agreeing to head the legal team supporting Professor Hill.<sup>33</sup>

The Hill-Thomas hearings did not mark the first time Professor Ogletree had assumed a unique role on behalf of a client. By that time, Professor Ogletree was a seasoned litigator. He already had many years of experience advocating in his capacity as an attorney with the D.C. Public Defender Service on behalf of clients who were indigent and often African American.<sup>34</sup>

Nor would the hearings mark the last time that he placed himself in a position to achieve justice for a client. As Professor Sarah Lawrence Lightfoot reported in her biographical sketch of Professor Ogletree, “Charles

31. See Charles J. Ogletree, Jr., *Reparations for the Children of Slaves: Litigating the Issues*, 33 U. MEM. L. REV. 245 (2003) [hereinafter *Reparations for the Children of Slaves*] (discussing recent litigation seeking reparation for racial harms of the past).

32. Charles Hamilton Houston Institute for Race & Justice—Mission Statement, <http://www.law.harvard.edu/programs/houstoninstitute/mission.html>.

33. That legal team also included Professor Emma Coleman Jordan of Georgetown University Law Center, among others. For more on the Hill-Thomas hearings, see *RACE, GENDER, AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS* (Anita Faye Hill & Emma Coleman Jordan eds., 1995).

34. See LAWRENCE LIGHTFOOT, *supra* note 11, at 121.

... feels privileged to be doing the kind of work where he can 'make a difference,' 'be of service,' do something about the fires burning inside."<sup>35</sup> Indeed, Professor Ogletree has explained that he "couldn't be here [at the Harvard Law School] if I didn't also have the chance to practice law, to save people . . . I'd be racked with guilt."<sup>36</sup>

In the years since the hearings, Professor Ogletree has thus involved himself in a number of important cases. He has, for example, represented numerous clients in criminal proceedings. In 1991, he successfully represented a client in a U.S. Supreme Court case challenging the exclusion of African Americans from the jury empanelled to hear his criminal case.<sup>37</sup> And, more recently, he has been engaged in an effort to launch a series of reparations lawsuits designed "to obtain restitution for the wrongs inflicted through slavery and segregation and persisting through the current landscape of racial discrimination in America."<sup>38</sup> These cases may, in the end, be the most important elements of Professor Ogletree's advocacy legacy.

Premised upon the notion that "those who have inflicted an injury must compensate those who have suffered the injury in an amount appropriate to the wrong inflicted," these lawsuits operate to shift the debate on race to questions of redistribution, fairness, and justice.<sup>39</sup> Questions of intentionality now central to constitutional jurisprudence applicable in race cases fall to the wayside, as do many of the issues that typically arise in discussions about the utility and lawfulness of affirmative action programs. Instead, these reparations lawsuits, at least as formulated by Professor Ogletree "[require] an active, forward-looking response to America's baleful history of slavery and racial intolerance."<sup>40</sup> They focus the discussion on the need to "ameliorate the [adverse] condition[s] [endured by] African Americans who continue to suffer because of discrimination present at the founding of our country and continuing today."<sup>41</sup>

Beyond this, two things are particularly noteworthy about the undertaking proposed by Professor Ogletree and the individuals he has enlisted to form a body referred to as the Reparations Coordinating Committee. First, the lawsuits being brought have as a goal focusing attention on "actual living victims and identifying the fact of racial repression as a present and continuing injustice."<sup>42</sup> One sees this purpose clearly in *Alexander v. Oklahoma*, a case brought in 2004 against the City of Tulsa and the State of Oklahoma to obtain reparations for the brutal Tulsa Race Riot of 1921.<sup>43</sup> The plaintiffs in that case were all survivors of the riots, which "left hundreds of African-Americans dead" at the hands of police and national

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35. *Id.* at 112.

36. *Id.*

37. *Ford v. Georgia*, 498 U.S. 411 (1991).

38. Charles J. Ogletree, Jr., *Tulsa Reparations: The Survivors' Story*, 24 B.C. THIRD WORLD L.J. 13, 22 (2004) [hereinafter *Tulsa Reparations*].

39. *Id.* at 22; see also *id.* at 16-17.

40. See *Reparations for the Children of Slaves*, *supra* note 31, at 245.

41. See *id.*; see also Lenhardt, *supra* note 3, at 803-14 (advocating for legal focus on continuing evidence of racial stigmatization and inequality).

42. *Tulsa Reparations*, *supra* note 38, at 9.

43. 382 F.3d 1206 (10th Cir. 2004).

guardsmen and more than forty-two square blocks of Tulsa's black neighborhood destroyed by fire.<sup>44</sup>

Second, the strategy being employed in these reparations suits is one devised by a committee of skilled lawyers, scholars, and activists familiar with the "psychological, emotional, and economic consequences of the legacy of slavery" and Jim Crow.<sup>45</sup> This Reparations Coordinating Committee ensures a considered, thoughtful, and social-science informed approach to documenting and seeking redress for the stigmatization and subjugation of African Americans across time that has been absent from other cases.<sup>46</sup> It is easily one of the more creative efforts that have been launched to address the disparities faced by African Americans in core areas such as employment, housing, and education.<sup>47</sup>

This is not, of course, to say that the work being accomplished through Professor Ogletree's leadership is not controversial. In fact, nothing could be farther from the truth. As Tree himself has acknowledged, people inside and outside of the African American community often bristle at the notion of African Americans somehow receiving cash pay-outs as the result of a successful lawsuit.<sup>48</sup> Indeed, there are some who would even balk at the much more expansive notion of remedy being advanced by Professor Ogletree and his team, one that would "make sure that resources from reparations reach those who are the poorest of the poor in the black community."<sup>49</sup>

Whether one ultimately agrees or disagrees with the notion of reparations, there is no denying that the lawsuits have the very positive effect of generating new conversations about race, just as the lawsuits first brought by Charles Hamilton Houston and his colleagues at the NAACP did. In legal academia, in particular, reparations matters are getting a serious look by scholars across the board. But their impact does not stop there. As Professor Ogletree clearly intended in initiating these cases, they have had the effect of focusing the attention of the entire nation on not only slavery and the period of segregation that followed it, but also on the persistent racial inequalities, most recently dramatized for all of America during the devastating and painful Hurricane Katrina coverage, which many African Americans endure on a daily basis. And they have accomplished this at a time when the case law on the books is not necessarily receptive to the claims they advance.

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44. Petition for Writ of Certiorari at 1, *Alexander*, WL 562193 (10th Cir. Mar. 9, 2005) (No. 04-1198).

45. See *Reparations for the Children of Slaves*, *supra* note 31, at 250.

46. For a similar reliance on social science in a recent civil rights case, see *Grutter v. Bollinger*, 539 U.S. 306 (2003). The introduction of social science research into that case was very much the brain-child of John Payton, with whom I worked on the case.

47. *Reparations for the Children of Slaves*, *supra* note 31, at 257.

48. *Id.* at 261. In many ways, these lawsuits draw inspiration from a controversial reparations-based initiative repeatedly introduced by Representative John Conyers in Congress since 1989. See *Tulsa Reparations*, *supra* note 38, at 25.

49. *Reparations for the Children of Slaves*, *supra* note 31, at 261.

## V. CONCLUSION

At its core, Charles Ogletree's career to date—his leadership in teaching, scholarship, and advocacy—has been concerned with the very difficult task of fostering “education and remembrance,”<sup>50</sup> and change. Above all, it has been about securing justice and, in many ways, recognition for the poor, discriminated against, and forgotten, people like my Great-grandfather Alexander, who understood at a very deep level how easy it might be for others to forget his “grave,” his struggle, and possibly even his very existence. The Charles Hamilton Houston Institute for Race and Justice is the embodiment of Professor Ogletree's deep commitment to justice and true racial equality. Its opening on September 15, 2005 is cause for celebration and, ultimately, hope. I applaud the Institute and those involved with it for what has already been accomplished and for the great things that we can expect in the future. Finally, I celebrate Tree for his leadership, vision, and spirit. And I look forward to watching the next phase of his important legacy—one inspired by figures such as Charles Hamilton Houston, but informed by generations of struggle and transcendence—unfold.

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50. *Tulsa Reparations*, *supra* note 38, at 14.