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# THE ANTI-WOKE AND THE BLACK AMERICAN (WAKING) DREAM

*Jamila Jefferson-Jones\**

*This essay, though not a direct transcript, is based largely upon the keynote address given by the author on February 24, 2023, at the “The American Dream Belongs to All of Us” Symposium sponsored by the Florida A&M University (FAMU) Law Review and the FAMU Hispanic American Law Student Association (HALSA) at FAMU College of Law. The author joyfully acknowledges that her remarks are likely impermissible under the so-called Stop-W.O.K.E. Act that is currently being challenged in court by members of the FAMU College of Law community.*

## I. INTRODUCTION: ROSEWOOD 1923

One hundred years ago – on January 1, 1923 – a white woman in Sumner, Florida, claimed that a Black<sup>1</sup> man had assaulted her in her home.<sup>2</sup> That allegation was the catalyst for a week-long reign of

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\* Earl B. Shurtz Research Professor and Associate Dean for Diversity, Equity, Inclusion and Belonging, University of Kansas School of Law. The author gratefully acknowledges the amazing research and editing assistance of Amanda McElfresh. Thanks is also due to Dr. Darrell Jackson and Prof. Kyle Velte who reviewed and commented upon early drafts of these remarks; Prof. Areto Imoukhuede and FAMU Law Review Editor-In-Chief Ankevia Taylor for their invitation to serve as the symposium keynote speaker; members of the FAMU Law Review, FAMU HALSA, and the FAMU Stonewall LGBTQ+ Law Association for their warm welcome to campus; and my other “original co-panelists” Profs. Atiba Ellis and Christian Sundquist for their unfailing support. As always, thank you to my family for their tolerance, grounding and love. Stay woke!

1. Throughout this essay, I capitalize the term “Black” when referring to people of African descent individually or collectively because “Black people, like Asians, Latinos, and other ‘minoritized communities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 n.6 (1991) (quoting Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988)). It follows then that “I do not capitalize ‘white,’ which is not a proper noun, since whites do not constitute a specific cultural group.” *Id.*

2. The claim of assault quickly grew to a rumor that the Sumner woman, Fannie Taylor, was raped. Taylor never named her assailant, but the Sumner deputy sheriff unilaterally decided the guilty party must be a Black man and that Black man was Jesse Hunter who had escaped from a chain gang the day before. Jessica Glenza, *Rosewood Massacre a Harrowing Tale of Racism and The Road Toward Reparations*, GUARDIAN (Jan., 3, 2016, 8:00 AM) <https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations>; Michael D’Orso LIKE JUDGMENT DAY: THE RUIN AND REDEMPTION OF A TOWN CALLED ROSEWOOD 2 (1996); “Survivors later recounted that Fannie

terror<sup>3</sup> that culminated with a white lynch mob reducing the neighboring all-Black town of Rosewood, Florida to ashes<sup>4</sup> after murdering a number of its residents<sup>5</sup> and forever dispersing the survivors<sup>6</sup> left among its previous approximately 300 citizens.<sup>7</sup> Those banished survivors whispered about the massacre to one another and passed Rosewood's history down through the generations but did not talk about the Rosewood Massacre openly.<sup>8</sup> Eventually, the story of the Rosewood Massacre was forgotten, as both the media that originally

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Taylor had made false accusations against Jesse Hunter to conceal her extramarital affair with a white man." *White Mob Destroys Black Community of Rosewood, Florida*, EQUAL JUSTICE INITIATIVE <https://calendar.eji.org/racial-injustice/jan/05> (last visited May 5, 2023); see also Maxine D. Jones et al., DOCUMENTED HISTORY OF THE INCIDENT WHICH OCCURRED AT ROSEWOOD, FLORIDA IN JANUARY 1923 3, 25 (1993) (this history was submitted to the Florida Board of Regents on December 22, 1993) [hereinafter DOCUMENTED HISTORY]; *id.* at 27 ("Some African Americans in the area contended privately at the time, even as black descendants contend publicly today, that the man who visited Fannie Taylor was her white lover.").

There exists in America a long and violent history couched in "white fear . . . created around a mythology of dangerous, hypersexual black men and vulnerable, precious white women in need of protection . . . [This mythology has] . . . held particularly dangerous meaning for black people in the south, where the mere interaction of black men or boys with white women was sometimes the cause for terror lynchings." Rose Hackman, *Swimming While Black: The Legacy of Segregated Public Pools Lives On*, GUARDIAN (Aug. 4, 2015, 12:41 PM), <https://www.theguardian.com/world/2015/aug/04/black-children-swimming-drownings-segregation> [<https://perma.cc/YAF5-AS33>]; see also DOCUMENTED HISTORY, *supra* note 2 at 16 ("Newspapers added to white fears by publishing a daily litany of alleged racial attacks and alleged rapes against white women. A day seldom went by during the period from 1917 to 1923 in which an incident of this kind was not reported in headlines on the front pages. Violent retribution was the accepted manner of response in the South, in particular, but also in the North for crimes against white women).

3. DOCUMENTED HISTORY, *supra* note 2 at 87 ("[T]he affair at Rosewood lasted virtually the entire first week of January 1923.").

4. *Id.* at 87; see also *id.* at 60 (Rosewood survivor Minnie Lee was quoted as saying "All of our houses [were destroyed] they burned every house in that town."); *id.* at 65 (Rosewood survivor Ruth Lee was quoted as saying "They [the white mob] killed everything in Rosewood. They didn't want anything living there. They killed everything.").

5. There were eight confirmed deaths as a result of the Rosewood Massacre – six Black residents of Rosewood and two members of the white mob. DOCUMENTED HISTORY, *supra* note 2 at 56, 87.

6. *Id.* at 87; see also *id.* at 45 ("Rosewood was depopulated as the terrorized African Americans left."); *id.* at 57 ("The black residents of Rosewood left the area never to return. Those who owned homes and land lost them."). The residents who survived the massacre fled first into the swampy woods around Rosewood and then, with the help of white allies, to Gainesville, Florida, via train. *id.* at 3-4, 16, 43, 60-61, 63-67; D'Orso, *supra* note 2 at 11-13; *White Mob Destroys Black Community of Rosewood, Florida*, *supra* note 2.

7. At the time of the massacre, Rosewood was estimated to have a population of anywhere from 100 to 300 residents. William Booth, *Rosewood*, WASH. POST (May 30, 1993) <https://www.washingtonpost.com/archive/lifestyle/1993/05/30/rosewood/7b3a45c0-0c20-42e8-9b41-ebf5b7552518/>; see also DOCUMENTED HISTORY, *supra* note 2 at 20 (noting that in 1920, the Rosewood voting precinct had 342 Black registrants).

8. Glenza, *supra* note 2 ("The oral history of Rosewood was a secret, passed through several families with each recipient sworn to silence, as black Americans endured decades of terror in Florida.").

reported<sup>9</sup> the massacre had moved on and the survivors suppressed their traumatic memories.<sup>10</sup>

Although it was founded in 1845 by groups of both Black and white settlers, by the 1920s, all the citizens of Rosewood were Black – except the owners of the general store.<sup>11</sup> The various Jim Crow Era prohibitions against race mixing had caused whites to move to nearby Sumner.<sup>12</sup> This state-mandated segregation allowed Rosewood to become a flourishing, autonomous Black enclave.

Rosewood became an embodiment of the American Dream for the Black Americans living there: it had a school, three churches, two stores (though one was white-owned), a Masonic Lodge, a train station, a turpentine mill, and a sugarcane mill.<sup>13</sup> In grand American fashion, it even had a baseball team.<sup>14</sup> Many of its residents owned their own homes.<sup>15</sup> Some even owned two-story homes with pianos and other trappings of middle-class prosperity.<sup>16</sup> Thus, as political scientist R. Thomas Dye<sup>17</sup> noted, “[t]he Rosewood incident provides an example of a fully functional and economically viable black community that was destroyed as a result of white anger.”<sup>18</sup>

More than a month after the destruction of Rosewood, Florida Governor Cary Hardee ordered a grand jury investigation of the massacre.<sup>19</sup> The grand jury was impaneled on February 12, 1923, with the examination of witnesses beginning the next day on February 13,

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9. There was extensive coverage of the Rosewood massacre by both the Black and white press in the North and South. DOCUMENTED HISTORY, *supra* note 2 at 67-83 (section entitled “News Coverage and Editorial Responses of Florida and Southern, Northern, and Black Newspapers”); *see also id.* at 91-92 (list of newspapers consulted as primary sources).

10. Nicquel T. Ellis, *Their Families Survived the Rosewood Massacre 100 Years Ago. Here Are Their Stories*, CNN (Jan. 12, 2023, 9:27 AM) <https://www.cnn.com/2023/01/11/us/rosewood-descendants-stories-reaj/index.html>. (“Robbed of a more prosperous future, survivors started new lives elsewhere, created new identities, and many did not talk of the carnage again . . . suffer[ing] in silence because of fear and distrust.”); Glenza, *supra* note 2 (noting that many survivors lived by the following code: “[D]on’t talk about Rosewood, ever, to anyone.”).

11. *Rosewood Massacre*, HISTORY (Jan. 10, 2023), <https://www.history.com/topics/early-20th-century-us/rosewood-massacre>.

12. *See id.* (“Though it was originally settled in 1845 by both Black and white people, [B]lack codes and Jim Crow laws in the years after the Civil War fostered segregation in Rosewood.”).

13. DOCUMENTED HISTORY, *supra* note 2 at 23; D’Orso, *supra* note 2 at 3; Bilal G. Morris, *The Haunting of Rosewood and the Ghost of Sylvester Carrier*, NEWSONE (Feb. 13, 2023), <https://newsone.com/4511413/the-haunting-of-rosewood-florida/>.

14. *Id.*; D’Orso, *supra* note 2, at 3, 76–77.

15. R. Thomas Dye, *Rosewood, Florida: The Destruction of an African American Community*, 58 HISTORIAN 605, 611 (1996).

16. D’Orso, *supra* note 2 at 7.

17. Professor R. Thomas Dye of Florida State University was a member of the Investigative Team that wrote the DOCUMENTED HISTORY, *supra* note 2.

18. Dye, *supra* note 15, at 605–06.

19. DOCUMENTED HISTORY, *supra* note 2 at 84.

1923.<sup>20</sup> The grand jury concluded witness examinations shortly before noon on February 14, 1923.<sup>21</sup> Twenty-five white and eight Black witnesses testified.<sup>22</sup> On February 16, 1923, the grand jury reported that they were unable to find any evidence upon which to base indictments.<sup>23</sup> Authorities, therefore, took no action against the white vigilantes who destroyed Rosewood. As the Investigative Team<sup>24</sup> from Florida State University, Florida Agricultural and Mechanical University, and the University of Florida noted in 1993, “Rosewood was a tragedy of American democracy and the American legal system.”<sup>25</sup>

The story of the violent destruction of Rosewood by a white mob lay dormant for nearly 60 years until a 1982 series in the *St. Petersburg Times* reported on its history.<sup>26</sup> The 1982 series went on to become a *60 Minutes* documentary and appear in other news outlets.<sup>27</sup> Despite its widespread reach, the series struggled to gain acceptance in both academic and political circles.<sup>28</sup> Even in 1993, after formal investigation into the massacre by the state of Florida, many individuals still continued to deny that the Rosewood massacre had occurred.<sup>29</sup>

In 1996, more than a decade after the *St. Petersburg Times* series, author and journalist Michael D’Orso wrote about the Rosewood massacre in his book *Like Judgment Day*.<sup>30</sup> A year after that, the late filmmaker John Singleton revived Rosewood’s history for a nation-wide audience in his 1997 film *Rosewood*.<sup>31</sup> But, the people who were young in 1997 – people like me – are middle-aged now. This and other stories of Black attainment of the American Dream – though often fleeting attainment – are at risk. What is more concerning is that the truth of the purposeful destruction of the American Dream when it was actually attained by Black Americans is being subjected to the violence of state-mandated erasure of Black history and memory. Florida and Rosewood are no exception. Indeed, Florida and Rosewood are emblematic of this erasure.

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20. *Id.* at 85-86.

21. *Id.* at 86.

22. *Id.*

23. *Id.*

24. In 1993, Florida investigated the Rosewood Massacre. This investigation was prompted by the efforts of survivors who began talking openly about their experiences “after Jim Crow laws lifted, and lynch mob justice was no longer a mortal threat.” Glenza, *supra* note 2. The actions taken as a result of the investigative report – DOCUMENTED HISTORY, *supra* note 2 – are discussed further in Part II of this essay.

25. DOCUMENTED HISTORY, *supra* note 2 at 87.

26. Gary Moore, *Rosewood Massacre*, ST. PETERSBURG TIMES (July 25, 1982), <https://www.documentcloud.org/documents/4496244-Rosewood1982.html>.

27. Glenza, *supra* note 2.

28. *Id.*

29. *Id.*

30. D’Orso, *supra* note 2.

31. ROSEWOOD (Warner Brothers, Peters Entertainment, New Deal Productions, Sprockets Music, 1997).

## II. SPACE, PLACE, AND THE BLACK AMERICAN WAKING DREAM

Before we delve into state-mandated historical erasure, I must make a small confession: I am obsessed with space and place.<sup>32</sup> I am tremendously curious about how we ascribe character and meaning to physical spaces and how we decide who belongs where.<sup>33</sup> So, I was particularly intrigued by the theme of this law review symposium: “The American Dream Belongs to All of Us.” The theme is written in the declarative, but my research, my lived experience, and the stories of places like Rosewood cause me to place a question mark on that phrase. After all, as Professor Imoukhuede has noted, this “title [is] loaded with inclusive possibility in the face of historic contradiction.”<sup>34</sup>

Many yardsticks have been used to measure the American Dream and the achievement of it: the accumulation of wealth, status, and educational credentials; personal social and economic class progress; even a family’s achievement of all these things from generation to generation.<sup>35</sup> I believe, however, that rather than focusing on the things and achievements of the American Dream, one should focus on the results of accumulating those things and achievements that are associated with the American Dream: “freedom, autonomy, and self-determination”<sup>36</sup> – exactly what had been achieved in Rosewood,

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32. As I have noted in my previous work, “In common parlance, the terms ‘place’ and ‘space’ are often used interchangeably.” However, scholars have noted that these terms are distinguishable from one another. . . . As [philosopher Michel de Certeau] . . . puts it, ‘in short, *space is a practiced place*,’ [thus as] De Certeau further elaborates . . . ‘the street geometrically defined by urban planning is transformed into a space by walkers.’ Jamila Jefferson-Jones, “*Driving While Black*” as “*Living While Black*,” 106 IOWA L. REV. 2281, 2292 (2021) (citations omitted). Additionally, some scholars use the term “S/p[l]ace” to indicate that which has both “space” and “place” characteristics. See, e.g., Amanda Reid, *Place, Meaning, and the Visual Argument of the Roadside Cross*, 2 SAVANNAH L. REV. 265, 276 n.85 (2015) (“The slash and bracket purposefully highlights the relatedness of [the] concepts [of space and place].”); see also Jamila Jefferson-Jones, *Using Historic Preservation Laws to Halt the Destruction of “Porch Culture” in the Lower Ninth Ward of New Orleans*, 2 SAVANNAH L. REV. 211, 216–17 (2015) (discussing porches in the American South, particularly those of Black residents in pre-Katrina New Orleans as “s/p[l]ace[s]”).

33. See, e.g., Taja-Nia Henderson and Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. 863 (2020) (examining the use of 911 calls and the threat of police violence by persons racialized as white to exclude from shared spaces persons racialized as Black).

34. Areto Imoukhuede, *Forward to the American Dream*, 17 FLA & M U L. REV. I (2023).

35. See generally Samantha Smith, *Most Say American Dream is Within Reach for Them*, PEW RESEARCH CENTER (Oct. 31, 2017) <https://www.pewresearch.org/fact-tank/2017/10/31/most-think-the-american-dream-is-within-reach-for-them/> (detailing the results of a study where Americans ranked the importance of seven attributes, or yardsticks, of the American Dream. The seven attributes included: “freedom of choice in how to live,” a good family life, comfortable retirement, valuable community contributions, a successful career, and becoming wealthy).

36. Nancy Leong, *The Open Road and the Traffic Stop: Narratives and Counter-Narratives of the American Dream*, 64 FLA. L. REV. 305, 307 (2012) (noting that the freedom of the “open road” is one of many symbols of the American Dream); see also, Jefferson-Jones, “*Driving While Black*” as “*Living While Black*,” *supra* note 32 at 2285.

Florida. This “freedom, autonomy and self-determination” conceptualization, however, brings me back to the question mark that I mentioned earlier: the theme of this symposium, my own work, and everything that I have known and experienced as a Black American have left me asking, “Does the American Dream Belong to Black people?” Those who are engaged in the project of state-mandated historical erasure do not want us to ask such questions or to critically examine American history or American law and its impediment of the American Dream for those who did not look like the Founding Fathers, nor were envisioned by them as citizens. They refer to such questions and concepts as “divisive”<sup>37</sup> and have twisted “woke” – a compliment in African-American Vernacular English (AAVE) – into an indictment.<sup>38</sup>

There are those who contend that the American Dream is a nightmare for Black Americans.<sup>39</sup> I disagree. Rather than a nightmare, I liken the Black American experience of the American Dream to a “waking dream” – something that exists in the haziness between sleep and wakefulness, or, if you will, “wokeness.”

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37. See Ga. Code Ann. § 20-1-11(a)(1) (West 2022) (prohibiting “advocating divisive concepts,” and defining “divisive concepts” as “[o]ne race is inherently superior to another race; The United States of America is fundamentally racist” among others); South Dakota Executive Order 2022-02 (Apr. 5, 2022) (Noem declares that “Critical Race Theory is a political and divisive ideology that teaches a distorted view of the United States of America and its institutions.”); and Virginia Executive Order 1-2022 (Youngkin declares that the Executive Order “ends[] the use of inherently divisive concepts, including critical race theory.”).

38. See, Clay Cane, *Opinion: The fight against ‘woke’ is really conservative gaslighting*, CNN (Apr. 5, 2023, 7:35 AM) *Opinion: The fight against ‘woke’ is really conservative gaslighting — CNN* (chronicling the GOP’s historic efforts to co-opt and weaponize Black vernacular).

On April 22, 2022, Florida Governor Ron DeSantis signed into law the “Stop W.O.K.E. Act” defining “W.O.K.E.” as “the Wrongs to our Kids and Employees Act.” See John Kennedy, *DeSantis Signs Into Law ‘Stop WOKE Act’ to Restrict Race Discussions in Florida*, TALLAHASSEE DEMOCRAT (Apr. 22, 2022, 6:11 PM) <https://www.tallahassee.com/story/news/politics/2022/04/22/florida-governor-desantis-stop-woke-act-race-bill-law-sign-discussions-republicans/7403239001/>. After signing this law, DeSantis took to the campaign trail for J.D. Vance, then candidate for Pennsylvania governor, announcing that “the state of Florida is where woke goes to die,” and urging attendees to “fight ‘the woke’ in our schools . . . businesses . . . and government agencies.” Ishena Robinson, *How Woke Went From “Black” to “Bad”*, NAACP LDF (Aug. 26, 2022) <https://www.naacpldf.org/woke-black-bad/>. DeSantis has now turned his focus to “suppress[] the influence of ‘woke capital’ and activist corporations . . . by ‘crippling’ the socially conscious investing movement known as ESG.” Kevin Breuniger, *DeSantis Calls for ‘Crippling the ESG Movement’ in New Book*, CNBC (Feb. 28, 2023, 3:03 PM) <https://www.cnbc.com/2023/02/28/ron-desantis-calls-for-crippling-the-esg-movement-in-new-book.html>.

39. See, e.g., Ibram X. Kendi, *The American Nightmare*, ATLANTIC (June 1, 2020), *The American Nightmare - The Atlantic* (chronicling Black thinkers who have contended that the Black American Experience amounts to an “American Nightmare.”); see also James Baldwin and William F. Buckley, Debate at the Cambridge University Union on the topic: *Has the American Dream Been Achieved at the Expense of the American Negro* (Oct. 26, 1965), <https://www.youtube.com/watch?v=VOCZOHQ7fCE> (Baldwin who argued that the exploitation of Black people helped to make America so powerful, is universally credited with having won the debate).

A waking dream is a hallucination. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (the DSM-V) states that “hallucinations are perception-like experiences that occur without an external stimulus.”<sup>40</sup> They are “vivid and clear, with the full force and impact of normal perceptions.”<sup>41</sup> At times, the American Dream has felt real to Black America. It has seemed vivid and clear, but it has mostly been without substance. It lacks a corpus that can be latched on to and built upon, as the Dream promises. This lack of substance is reflected in systems that have, among other things, contributed to the lack of Black generational wealth,<sup>42</sup> to Black poverty rates,<sup>43</sup> Black incarceration rates,<sup>44</sup> and the abominable Black maternal and fetal mortality rates.<sup>45</sup>

The DSM-V lists hallucinations as one of the key features that defines psychotic disorders,<sup>46</sup> including schizophrenia,<sup>47</sup> borderline personality disorder<sup>48</sup>, and also sleep disorders like narcolepsy.<sup>49</sup> But it must also be noted that hallucinations that occur while falling asleep (hypnagogic) or waking up (hypnopompic) are considered to be within the range of normal experience<sup>50</sup> – and, most certainly are part of the Black experience – one in which the promise of “life, liberty, and the

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40. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 87 (5th ed. 2013) [hereinafter DSM-V].

41. *Id.*

42. In 2016, the median wealth of Black families was \$17,600 compared to the median wealth of white families at \$171,000. Angela Hanks, Danyelle Solomon & Christian E. Weller, *Systemic Inequality*, CAP (Feb. 21, 2018) <https://www.americanprogress.org/article/systemic-inequality/> (identifying “key drivers in perpetuating the considerable wealth gap,” as “mortgage market discrimination” and “labor market discrimination.”).

43. “[O]ne in five Black Americans are experiencing poverty for the third generation in a row, compared to just one in a hundred white Americans.” Scott Winship, Christopher Pulliam, Ariel Gelrud Shiro, Richard V. Reeves & Santiago Deambrosi, *Long Shadows: The Black-White Gap in Multigenerational Poverty*, BROOKINGS (June 10, 2021) <https://www.brookings.edu/research/long-shadows-the-black-white-gap-in-multigenerational-poverty/> (identifying three generations of poverty as “uniquely a Black experience.”).

44. Our country’s mass incarceration system “particularly targets Black people, who [make up] 13 percent of the U.S. population but are 38 percent of the people in jails and prisons.” Mike Wessler, *Updated Charts Provide Insights on Racial Disparities, Correctional Control, Jail Suicides, and More*, PRISON POL’Y INITIATIVE (May 19, 2022) [https://www.prisonpolicy.org/blog/2022/05/19/updated\\_charts/](https://www.prisonpolicy.org/blog/2022/05/19/updated_charts/) (showing that Black people are incarcerated at a rate of 1,096 people per 100,000 people, a rate two times higher than any other group.).

45. “Black women are three times more likely to die from a pregnancy-related cause than [w]hite women.” *Working Together to Reduce Black Maternal Mortality*, CDC (Apr. 6, 2022) <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html> (identifying contributing factors to this racial disparity as “variation[s] in quality healthcare, underlying chronic conditions, structural racism, and implicit bias”).

46. DSM-V, *supra* note 40, at 87.

47. *Id.*

48. *Id.* at 665.

49. *Id.* at 373.

50. *Id.* at 87–88.

pursuit of happiness”<sup>51</sup> seems real, but is, in reality, hazy and, ultimately, out of reach.

### III. ROSEWOOD REVERIE, ROSEWOOD REDUX, AND THE ANTI-WOKE

This brings me back to Rosewood – a place where, for a while, the Black American Dream was flourishing: After the *St. Petersburg Times* published its series on Rosewood in 1982, the survivors of the Rosewood massacre and their descendants broke their trauma and fear-induced silence.<sup>52</sup> “So egregious were the stories of rape, murder, looting, arson and neglect by elected officials, that Florida investigated the claims in a 1993 report.”<sup>53</sup>

In breaking their silence, the survivors demanded restitution from Florida for the state’s complicity in the destruction of Rosewood.<sup>54</sup> Thereafter, the Florida legislature passed a bill awarding the victims \$2 million in “compensation”<sup>55</sup> and creating an educational fund for their descendants.<sup>56</sup> The bill also called for a task force to investigate the massacre and to institute other reparatory measures.<sup>57</sup> In addition to the monetary reparations paid, legislators required that the task force provide recommendations aimed at incorporating African-American history, including the Rosewood massacre into Florida’s K-12 curriculum.<sup>58</sup>

As a result of Rosewood survivors coming forward and telling their stories, Florida created a task force to help the Florida Commissioner of Education develop curricula and lesson plans that were inclusive of African American history.<sup>59</sup> Thus, as of 1994, Florida law requires the teaching of the following themes of African-American his-

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51. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

52. See D’Orso, *supra* note 2 at 142–50.

53. Glenza, *supra* note 2. The report commissioned is the DOCUMENTED HIST., *supra* note 2.

54. See D’Orso, *supra* note 2 at 205–13.

55. The word “reparations” was deliberately left out of the bill. This choice was made to “make [the bill] something legislators could find palatable in the deep south some-20-some years ago.” Glenza, *supra* note 2.

56. H.B. 591, 1994 Leg., Reg. Sess. (Fla. 1994). The fund supporting the Rosewood Family Scholarship – was eventually expanded to assist up to fifty students. See Fla. Stat. Ann. § 1009.55 Statutes & Constitution :View Statutes : Online Sunshine (state.fl.us), Although Rosewood descendants receive priority funding, other minority students in Florida are eligible to receive the scholarships. See *Rosewood Family Scholarship Fund*, ROSEWOOD HERITAGE FOUNDATION SCHOLARSHIPS - *Remembering Rosewood - The Most Thorough Site* (last visited May 5, 2023).

57. Fla. H. B. 591.

58. *Id.*; see also Mary Ellen Klas, *As DeSantis Alters Black History in Schools, Critics Say Key Chapters Are Lost*, TAMPA BAY TIMES (Feb. 9, 2023). <https://www.tampabay.com/news/florida-politics/2023/02/06/desantis-african-american-black-history-rosewood-reparations-indoctrination>.

59. Klas, *supra* note 58.

tory: African beginnings, the Middle Passage, slavery, Reconstruction, and the “contributions of African Americans to society.”<sup>60</sup>

Despite the important place that it holds in Florida history, the Rosewood massacre is not a broadly discussed topic in Florida Schools.<sup>61</sup> None of African-American history is broadly discussed in Florida schools.<sup>62</sup> Despite the legislative mandate, in February 2023, *The Tampa Bay Times* noted that, although “African American studies is considered part of the K-12 core curriculum only 11 of Florida’s 67 county school districts . . . have developed a plan for providing the course, trained teachers and integrated instruction in their required coursework, according to the Education Commissioner’s Task Force on African American Studies.”<sup>63</sup> Additionally, as noted by Florida A&M University English professor Bernadette Kelley-Brown, a member of the 1993 task force, “most school districts limit instruction on the topic of African American history to lessons in February Black History Month.”<sup>64</sup> Moreover, Black history in Florida has been further ghettoized in that the mandatory Florida history curriculum does not include a standard requiring the teaching of Florida’s African-American history.<sup>65</sup>

It is important to pause to ensure that we recognize the historical moment that we are in: it took 30 years to get 11 of Florida’s 67 school districts to provide the state-mandated coursework on African-American history. Now, in the space of less than a year, by legislative fiat and the stroke of the executive’s pen, Florida is seeking to destroy even that paltry progress. The vehicle that is being used is Florida House Bill 7 (“H.B. 7”) – the so-called “Stop-W.O.K.E. Act,”<sup>66</sup> which censors classroom discussion by preventing teachers from teaching and students from learning about many issues relating to race and gender, including those that may lead to examinations of systemic racism.<sup>67</sup>

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60. *Id.*

61. *See id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* (“And while the state’s current standards for fourth grade curriculum include a section on Florida history, there is no standard that requires that African American history be included, she said.”); The Florida standards require fourth grade students to “analyze primary and secondary resources to identify significant individuals and events throughout Florida history . . . , [s]ynthesize information related to Florida history through print and electronic media . . . , [u]tilize timelines to sequence key events in Florida history.” With the exception of a general lesson about the “contributions of various African Americans, Hispanics, Native Americans, veterans, and women,” as a second-grade requirement, African American history is largely left to upper-level studies beginning briefly in seventh grade. *See Fla. Dep’t of Educ., NEXT GENERATION SUNSHINE STATE STANDARDS — SOCIAL STUDIES 31* (2021) <https://www.fldoe.org/core/fileparse.php/19975/urlt/5-3.pdf>.

66. H.R. 7, 124th Leg. Reg. Sess. (Fla. 2022).

67. *Id.*; The Florida Governor’s office also created a PDF “one-sheet” to describe the main components of the “Stop W.O.K.E. Act” *see MyFlorida* (2023) <https://www.flgov.com/>

Moreover, the Act “prohibits school districts, colleges and universities from hiring *woke CRT* [critical race theory] *consultants*.”<sup>68</sup> The Act also prevents the teaching of topics that may make students – white students – feel guilt or anguish due to past racial wrongs.<sup>69</sup> Moreover, the Act prevents the teaching of that which the legislature and executive have deemed “political” – like reparations.<sup>70</sup>

This makes the teaching of history – like Rosewood – impossible. Anguish is a part of the story. Reparations – one of the remedies for racialized wrongs<sup>71</sup> – are a part of the story too. Florida has passed a law – “Stop-W.O.K.E.” – that makes it impossible to comply with its barely-met 30-year-old mandate to teach its own history properly and inclusively. This mandate was part of the reparatory work owed to Rosewood’s victims, and that was put in place not just to benefit Florida’s Black residents, but, ultimately, all its residents.<sup>72</sup>

The Stop-W.O.K.E Act, Florida’s critical race theory (CRT) ban<sup>73</sup> and the recent controversy in Florida regarding the adoption of the Advanced Placement (AP) African-American History course<sup>74</sup> are all a part of the same trend to politicize history in an effort to white-wash it, sanitize it, and revise it in a manner that silences truth and memory in the same way that the victims of Rosewood were initially silenced.

“Anti-woke” initiatives fetishize the American Dream – holding it out as perfect and attainable – without acknowledging that it is only a waking dream for Black people (and all others who were not originally envisioned as beneficiaries of the Dream). Conversely, the story of Rosewood’s brief transformation into a representation of the Black

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wp-content/uploads/2021/12/Stop-Woke-Handout.pdf. (the one-sheet defines W.O.K.E. as Wrongs to Our Kids and Employees).

68. H.R. 7, 124th Leg. Reg. Sess. (Fla. 2022) (emphasis added).

69. *Id.*

70. *Id.*

71. See Carlton Waterhouse, *Reparations: The Problem of Social Dominance*, 6 WORLD ENV’T AND ISLAND STUD. 11 (2016) (defining reparations in theory as “provid[ing] redress for past injustices . . . reflect[ing] political attempts to seek to balance the scales of justice in the wake of . . . tortious state action.”); see Justin Hansford, *International Human Rights Bodies Provide a Case for Reparations*, ACLU (Sept. 24, 2019), <https://www.aclu.org/news/racial-justice/international-human-rights-bodies-provide-case> (describing the various international reparations movements and its applicability to “descendants of African slaves in the United States.”); see also Adjoa Aiyetoro, *Achieving Reparations While Respecting Our Differences: A Model for Black Reparations*, 63 HOWARD L. J. 329, 331–37 (2020) (describing various types of reparations).

72. See Edward Gonzalez-Tennant, *Remembering the Rosewood Massacre*, JSTOR (Jan. 1, 2023) <https://daily.jstor.org/remembering-rosewood-massacre/>.

73. H.R. 7, 124th Leg. Reg. Sess. (Fla. 2022); see also Bobby Caina Calvan, *Florida Bans ‘Critical Race Theory’ From Its Classrooms*, ASSOC. PRESS (June 10, 2021) <https://apnews.com/article/florida-race-and-ethnicity-government-and-politics-education-74d0af6c52c0009ec3fa3ee9955b0a8d>.

74. See Juliana Kim, *Florida Says AP Class Teaches Critical Race Theory. Here’s What’s Really in the Course*, NPR (Jan. 22, 2023, 9:16 AM) <https://www.npr.org/2023/01/22/1150259944/florida-rejects-ap-class-african-american-studies>.

American Dream mirrors the larger Black American story of resilience despite the inaccessibility of the American Dream. When Jim Crow curtailed opportunities for Rosewood’s residents, they forged their own freedom and autonomy, as did countless Black Americans all over the country who created their own towns – like Eatonville, Florida<sup>75</sup> right up the street from the FAMU College of Law or thriving enclaves within majority towns – like the Greenwood district in Tulsa.<sup>76</sup>

It is impossible for me, during Black History Month, not to think of the words of the “Black National Anthem” – *Lift Every Voice and Sing*.<sup>77</sup> The second verse portrays the importance of history, resilience, and the hope of the American Dream – even if fleeting:<sup>78</sup>

It speaks of history and its anguish:

*Stony the road we trod  
Bitter the chastening rod  
Felt in the days when hope unborn had died*<sup>79</sup>

It speaks of resilience and the hope of dream fulfillment:

*Yet with a steady beat  
Have not our weary feet  
Come to the place for which our fathers sighed?*<sup>80</sup>

Again, it does not shy away from the harsh realities of the past:

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75. See Summer Knowles, *A Brief History of Eatonville: The Town That Freedom Built*, WESH (June 20, 2022, 11:01 PM) <https://www.wesh.com/article/a-brief-history-of-eatonville/40354228> (“[Eatonville] was the oldest Black town to be recognized by the United States government as a self-governing, self-determining Black community.”).

76. The Greenwood district, like Rosewood was destroyed by a white mob after rumors of an assault on a white woman by a Black Man. See *Black Wall Street in Tulsa, OK Destroyed on 6/1/1921*, LIBR. CONG. <https://guides.loc.gov/this-month-in-business-history/black-wall-street-destroyed> (June 2022) (“Greenwood was also known as ‘Black Wall Street,’ one of the wealthiest Black communities in the United States.”).

77. James W. Johnson & J. Rosamond Johnson, *Lift Every Voice And Sing* (New York: E.B. Marks Music Co., 1921) (notated music), <https://www.loc.gov/item/89751755/#:~:text=Chicago%20citation%20style%3A%20Johnson%2C%20J.%20Rosamond%2C%20and%20James,J.%20W.%20%281921%29%20Lift%20Every%20Voice%20and%20Sing> (last visited May 5, 2023). This song is colloquially known as the “Black National Anthem” or the “Negro National Anthem.” See, generally, IMANI PERRY, *MAY WE FOREVER STAND: A HISTORY OF THE BLACK NATIONAL ANTHEM* (2018). James Weldon Johnson, who wrote the lyrics of the song, referred to it at the “Negro National Hymn.” *LIFT EVERY VOICE AND SING: A CELEBRATION OF THE NEGRO NATIONAL ANTHEM, 100 YEARS, 100 VOICES* xvii (Julian Bond & Sondra Kathryn Wilson eds., 2000).

78. This second verse of the Black National Anthem was quoted by Dr. Martin Luther King in a speech that he delivered in 1967 at the Southern Christian Leadership Convention (SCLC) – the speech in which he firmly concludes, “Let us realize that the arc of the moral universe is long, but it bends toward justice.” That speech was based partly on his final manuscript, *Where Do We Go From Here?* Perry, *supra* note 77 at 168-170.

79. Johnson & Johnson, *supra* note 78.

80. *Id.*

*We have come over a way that with tears has been watered  
We have come, treading our path through the blood of the  
slaughtered*<sup>81</sup>

In fact, it calls the past what it has been:  
*Out from the gloomy past*<sup>82</sup>

Yet, again, the dream appears vividly to us:

*Till now we stand at last  
Where the white gleam of our bright star is cast*<sup>83</sup>

The story of Black America is one of resilience. It is also one of resistance. Heroes have emerged in the face of the Stop-W.O.K.E. Act and other assaults on historical truth-telling. Among them are FAMU College of Law Dean Emeritus Leroy Pernell, who is the named plaintiff in a lawsuit challenging the Stop-W.O.K.E. Act. The plaintiffs in *Pernell v. Florida Board of Governors*, “are asking the court to declare the law unconstitutional under the First and [Fourteenth] Amendments.”<sup>84</sup> The plaintiffs argue that the Stop W.O.K.E. Act violates the First Amendment because the “viewpoint-based restrictions” it requires of educators and students “are vague and discriminatory.”<sup>85</sup> The plaintiffs argue that the law violates the Equal Protection Clause of the Fourteenth Amendment because the legislature created the law “with a racially discriminatory purpose and [it] will have a disparate impact on Black educators and students.”<sup>86</sup>

The case is currently winding its way through the courts. The Eleventh Circuit recently upheld the District Court’s preliminary injunction preventing the Stop W.O.K.E. Act from taking effect.<sup>87</sup> While we wait for the Eleventh Circuit to decide the case on the merits, this ruling was “an important victory for educators’ and students’ rights to teach and learn free from censorship and discrimination.”<sup>88</sup>

#### CONCLUSION: THE KIDS ARE (AND WILL BE) OK

As someone who has made my home in Kansas for the last seven years, I think it appropriate to quote the great Kansas poet Langston Hughes (yes, he considered himself to be a Kansan fore-

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81. *Id.*

82. *Id.*

83. *Id.*

84. *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, No. 4:22CV304, 2022 WL 16985720 (N.D. Fla. Nov. 17, 2022).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Judge Blocks Florida’s “Stop W.O.K.E.” Censorship Bill From Taking Effect in Higher Education*, ACLU (Nov. 17, 2022, 12:00 PM) <https://www.aclu.org/press-releases/judge-blocks-floridas-stop-woke-censorship-bill-taking-effect-higher-education>.

most).<sup>89</sup> Hughes wrote *Dreams* – the first poem I ever memorized. I memorized it when I was in the fifth grade. I can still recite it by heart:

*Hold fast to dreams  
For if dreams die  
Life is a broken-winged bird  
That cannot fly.*

*Hold fast to dreams  
For when dreams go  
Life is a barren field  
Frozen with snow.*<sup>90</sup>

Hughes was not just writing about an individual dream. Rather, the poem also speaks to the collective dream: If my wing is broken, although you may not recognize it, yours is broken too. If there is no American Dream for all of us, then ultimately there is no American Dream for any of us.<sup>91</sup> The anti-woke movement is a movement against awareness and awakening, against critical examination of the past and its impact on the present. It is predicated on a fear that truth-telling and a critique of the efficacy of the American Dream will result in division.

The current political landscape may dishearten those of us who value truth-telling as a predicate to justice and racial reconciliation. But I urge this audience – especially the law students – to take heart. I recently read the stories of high school teachers who are participating in the pilot of the beleaguered AP African American History course. Their students are, of course, aware of what is going on in Florida. The teachers report that “[Florida Governor] DeSantis’s objections to the course have only made their students more engaged.”<sup>92</sup> One teacher has “turned the controversy into a teachable moment. He and his stu-

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89. It has been reported that Hughes once stated, “I sort of claim to be a Kansan because my whole childhood was spent here in Lawrence and Topeka, and sometimes in Kansas City.” *Langston Hughes*, KANSAS HIST. SOC’Y <https://www.kshs.org/kansapedia/langston-hughes/15506#:~:text=although%20he%20lived%20in%20several%20places%20throughout%20the,Lawrence%20and%20Topeka%2C%20and%20sometimes%20in%20Kansas%20City.%E2%80%9D> (Aug. 2018).

90. Langston Hughes, *THE COLLECTED POEMS OF LANGSTON HUGHES* 32 (Arnold Rampersad ed., & David Roessel associate ed., 1994).

91. This same sentiment is echoed by the great writer-activist James Baldwin in his essay *The American Dream and the American Negro*, NY TIMES (Mar. 7, 1965), *The American Dream and the American Negro* (nytimes.com) (“One of things the white world does not know, but I think I know, is that black people are just like everybody else. We are also mercenaries, dictators, murderers, liars. We are human, too. Unless we can establish some kind of dialogue between those people who enjoy the American dream and those people who have not achieved it, we will be in terrible trouble. . . . I am not an object of missionary charity, I am one of the people who built the country – until this moment comes there is scarcely any hope for the American dream.”).

92. Olivia B. Waxman, *AP African American Studies Teachers Face National Scrutiny*, TIME (Feb. 22, 2023, 6:03 PM), <https://time.com/6257576/ap-african-american-studies-louisiana-teacher-cameras/>.

dents discussed parallels between Florida’s decision to ban the course and lessons they had already covered, including material they previously covered, like Jim Crow laws, which legalized racial discrimination.”<sup>93</sup> The teacher described a dynamic classroom experience: “[s]tudents were throwing up their hands left and right, making connections to what we’ve learned so far, about the fight for equal educational opportunities for Black Americans.”<sup>94</sup>

These teachers and their young students are not discouraged. They are taking hold of this moment and using their knowledge to connect the past and present to influence the future. I urge you lawyers-in-training, to do the same and more. Not only are you older and more experienced than these highschoolers, but your training in the law will give you a unique perspective and tools to push back against the current anti-woke/anti-truth tide. Former Howard University School of Law Dean Charles Hamilton Houston<sup>95</sup> once likened lawyers to “social engineers.”<sup>96</sup> You young lawyers-to-be are poised to continue the fight to engineer a society that works for all of us, that makes the American Dream accessible to all of us. I urge you to gird yourselves and to continue the fight!

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93. *Id.*

94. *Id.*

95. Charles Hamilton Houston, a graduate of Harvard Law School, as the dean of Howard University Law School from 1930-1935. *Our History*, HOWARD UNIV. SCHOOL L. <http://law.howard.edu/node/193> (last visited Apr. 10, 2023). He left Howard to head up the Legal Defense Committee of the NAACP. *See A New Legal Team at The NAACP*, SMITHSONIAN NAT’L MUSEUM OF AM. HIST. <https://americanhistory.si.edu/brown/history/3-organized/naacp-legal-team.html> (last visited Apr. 10, 2023). He was a mentor to Thurgood Marshall, who would go on to be the first Black United States Supreme Court Justice. Liz Mineo, *The Civil Rights Lawyer Who Paved The Path*, HARVARD GAZETTE (May 16, 2018) <https://news.harvard.edu/gazette/story/2018/05/reflecting-on-charles-hamilton-houstons-battle-against-jim-crow/>. Marshall credited Houston as the architect of the legal struggle against segregation, saying “[w]e owe it all to Charlie.” *A New Legal Team at The NAACP supra.*

96. *See Our History, supra* note 95 (“A lawyer’s either a social engineer or . . . a parasite on society . . . A social engineer [is] a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the underprivileged citizens”).”; *see also Charles Hamilton Houston*, SMITHSONIAN NAT’L MUSEUM OF AM. HIST. <https://americanhistory.si.edu/brown/history/3-organized/charles-houston.html> (last visited Apr., 10, 2023).