

Martha Alvarez, MMC

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Subject: Apology agenda item

Mayor Napolitano and Council:

I apologize for the late delivery, but you may find the attached opinion piece that appeared last year in the Los Angeles Lawyer Magazine pertinent to tonight's agenda item.

Mike Jenkins

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by Michael Jenkins

Closing Argument

George Floyd's murder in 2020 sparked Black Lives Matter protests demanding reexamination of American justice. Among many revelations nationwide, the City of Manhattan Beach confronted anew an ugly incident in its history when in 1924 it exercised governmental power of eminent domain¹ to oust Willa and Charles Bruce from their oceanfront property, which served as a beach resort for Black Americans. Virtually all land then immediately to the north was undeveloped. Yet Manhattan Beach chose to take the Bruce's property but waited 32 years to create the park for which the property ostensibly was taken.²

In 1924, the California Constitution required that property taken through eminent domain must be put to a "public use." Further, statute provided that an involuntary take must be "necessary" for the public use.³

The facts are indisputable that the 1924 city government took the Bruce's property to eliminate use of its beach by Black families. Fair market value was paid, but Manhattan Beach lacked a legitimate public purpose to take the property. The take was racially motivated. Under today's Fourteenth Amendment jurisprudence, it would be unconstitutional.

In April 2021, the Manhattan Beach City Council refused to apologize to the

Bruce's Beach: A Lesson in How Far We Have Come, or Have We?

Bruce family and the families of other Black Americans whose properties were also taken without a legitimate public purpose. Instead, the City Council issued an anemic "acknowledgement" of the incident. In support of her vote against an apology, Mayor Suzanne Hadley explained that she feared an apology would generate liability for the city. Did the "risk" to the city really outweigh the benefit of a sincere apology?

The psychological and sociological value of formal governmental apologies to racial and ethnic groups that have suffered at the hands of government is well-documented: "When an apology is forthcoming, the symbolism of the gesture does make a difference to recipients; they often find it a balm for the injury. When an apology is withheld, especially after a specific request, wounds seem to fester."⁴ Apologies establish accountability and are a prerequisite to healing

and reconciliation.

There are many examples of governments' offering apologies for past wrongdoing: Antioch, California, for burning down its Chinatown 145 years ago; Glendale, California, for its history as a "sundown town;" Tampa, Florida, for its historic sanction of segregation and systemic discrimination against African Americans; the U.S. Government for its internment of Japanese Americans during World War II, for the institution of slavery, to native Hawaiians for the 1893 overthrow of the Kingdom of Hawaii, and for the Tuskegee syphilis experiments on Black men.

So, is there anything to the Manhattan Beach Mayor's concern for municipal liability? Sometimes, an apology can constitute an admission against interest admissible as a hearsay exception.⁵ Not here. Even assuming a plaintiff with standing to seek damages for the nearly 100-year-old injustice, the

statute of limitations would be an insurmountable bar, as would governmental immunity relating to any available state law claims.

Litigation has little to offer in the form of justice to the descendants of Willa and Charles Bruce. It was the moral demands of the Black Lives Matter activists that awakened the predominately white suburb of Manhattan Beach to reexamine the generational impacts of the racist act of its forbears. In the reckoning, it is clear that benefits of an apology outweigh the risk. By refusing to apologize, the Manhattan Beach City Council is missing an opportunity to move past the unconscionable acts of its predecessors, refusing to do the least that it could.

In 1924, creation of a park was the pretext for racism. Today, the fear of municipal liability is the pretext for the current City Council's refusal to issue a long overdue and much-needed apology. Manhattan Beach finds itself on the wrong side of the law and of history. Again. ■

¹ GOV'T. CODE §38000 *et seq.*

² City of Manhattan Beach, Bruce's Beach Task Force: History Subcommittee (Apr. 13, 2021), available at <https://www.manhattanbeach.gov/home/showpublisheddocument/46327/63753953956713587000>.

³ CODE CIV. PROC. §1241.

⁴ Robert Weyeneth, *History, Memory and Apology and the Process of Historical Reconciliation*, 23(3) THE PUBLIC HISTORIAN 9, 31 (Summer 2001).

⁵ EVID. CODE §§1200, 1220, 1160.

Michael Jenkins is Of Counsel with Best Best & Krieger. He was a member of the Bruce's Beach Task Force appointed by the Manhattan Beach City Council. Jenkins was assisted by Christi Hogin and Anne Branbam.