

2021 Law School Access to Justice Conference Fighting Systemic Racism: Law School and Community Partnerships

Keynote Address

Matthew Diller: Thank you, Helaine, and hello everyone. And thank you, Helaine, for your leadership. I also want to thank Barbara Mule and Rochelle Klempner for your outstanding work and the whole team at Columbia, and I want to thank the entire planning committee.

I am excited about this moment which holds the potential to challenge and dismantle systemic racism that is so central to our society and institutions and as Dean, I believe that law schools have an important role to play in this mission, both by looking inward to what we do and how we do it but also, by looking outward and making an impact on communities and institutions through partnerships with affected communities and those working in the field.

And today, we are fortunate to have a keynote speaker, who has done this work in innovative and pioneering ways for many years. Deborah Archer is a Professor of Clinical Law and co-faculty Director of the Center on Race, Inequality and the Law at NYU Law School.

Professor Archer is also the President of the American Civil Liberties Union and a leading expert in civil rights, civil liberties, and racial justice. She's an award-winning teacher and legal scholar, whose articles have appeared in leading law reviews. And her commentary has appeared in major media outlets, including MSNBC, NPR CBS, *The New York Times*, *The Atlantic*, and the list goes on and on.

Before joining the faculty at NYU in 2018, Professor Archer taught at New York Law School where she was the first Dean of Diversity and Inclusion and then Associate Dean for Academics and Student Engagement.

Professor Archer is a graduate of Yale Law School and Smith College and she previously worked as an attorney with the ACLU

and the NAACP Legal Defense and Education Fund where she litigated in the areas of voting rights, employment, discrimination, and school desegregation. She's a former Chair of the American Association of Law School section on Civil Rights and section on Minority Groups. And she has previously served as chair of New York City Civilian Complaint Review Board. Professor Archer also serves on the Board of the Legal Aid Society, the National Center for Law Economic Justice and the NYCLU.

She's been honored by numerous community organizations and law schools, too many to name here, and at this point, I am honored and delighted to introduce Professor Archer.

Deborah Archer: Thank you, thank you for the generous introduction and thank you all for inviting me to participate in this discussion about systemic racism and what we all can and must do to rise to this moment. This conference, and these conversations I think, are critically important to help us move from what so many of us are calling a racial reckoning to a time of reconciliation and justice. America is fundamentally an idea.

It's an ethos and a set of principles and demands that come together to tell the story of America and that story is, at its heart, a story of who belongs, who gets to benefit from the unprecedented wealth of this nation, who has access to the opportunities, the resources, and the potential that being in America offers, and who gets to live with safety and dignity, who gets to receive the equal protection of our laws.

And the story of America is also about who gets to decide who belongs, and also the tools that we provide them to enforce those decisions. And in America, you cannot tell either part of that story without understanding systemic racism.

Generation after generation, we strive to build an America where everyone can finally become full members of the American community. And what is so stunning about America, so heartbreaking, is how America resists, and how racism persists. It's powerful because it's evolving, because it's creative, because it adapts.

America ratified the 15th amendment and guaranteed black men the right to vote and then America responds with poll taxes and grandfather clauses and voter ID laws to disenfranchise black people and other people of color.

America makes Jim Crow and housing discrimination illegal, and then America responds with redlining and steering and racial terror and the underinvestment, destruction, and under development of communities of color. And America makes slavery illegal and then America responds with mass incarceration, police brutality, and more racial terror.

Broadly, my work focuses on how racism is able to persist in its power. I try to identify and challenge the fundamental architecture of racial inequality and explore the laws, the policies, the cultural norms, and structures through which racism continues to constrain the life outcomes of some and expand the life outcomes of others and how racism mutates and changes and continues to make clear to all of us who belongs, and who does not.

And what we see over centuries, is a thread that connects so many of America's systems, laws, our policies, and our structures, and that's the need to control, regulate, de-humanize and devalue black people and other people of color.

Slavery which is, of course, is America's original sin, is the first and clearest manifestation of the dehumanization of black people in the United States. Slavery was a system of theft, it was theft of life as people were stolen, enslaved, and brutalized. Slavery was theft of property and product through forced labor; it was theft of identity and home as people were repeatedly ripped from the community and culture that are central to human experience. It was the theft of happiness, dignity, and potential.

And codified into law, slavery became imprinted onto the DNA of the nation and serves as the foundation of racial inequality.

And long after the emancipation proclamation and 13th amendment put a formal end to the institution, the vestiges of its

brutality lived on through lynching and Jim Crow, through mass incarceration, the racial wealth gap, and police brutality.

And it's important in this moment to acknowledge that at each stage in this evolution, police have played a critical role in protecting power and enforcing racial hierarchy.

Modern policing has its roots in slave patrols that suppressed slave revolts and hunted down enslaved people who tried to escape to freedom.

And following emancipation, black people were pulled back into forced labor with shocking brutality through the criminal legal system and what was called convict leasing systems.

Communities created categories of crime as a pretext to arrest black people, or just arrested them without the pretense of having committed a crime at all, and court sentence them back into forced labor. And during Jim Crow, police brutally enforced segregation, and police officers often joined, supported, and protected lynch mobs. During the civil rights movement police beat protesters who marched for equality on national television. And when black people dared to move into historically white neighborhoods, police were enlisted to ward off racial residential integration and protected the people who terrorized black families.

Today, law enforcement still operates to control black people and people of color through a system characterized by deep seated and systemic racism, a failure to recognize the fundamental humanity and dignity of black people and the conflation of brown skin with dangerousness criminality and inhumanity.

And the result is a system in which black people are disproportionately killed by the police, stopped by the police, arrested by the police and more likely to experience physical and emotional harm from their everyday interactions with the police.

Following emancipation in *Dred Scott versus Sandford*, the United States Supreme Court proclaimed that black people possessed no

rights or privileges beyond what white men might choose to grant them.

This belief motivated what we saw at the Capitol on January 6. It is motivating the nationwide attack on voting rights and political participation that we're seeing right now, and we see this sentiment alive in our segregated schools, communities, and economic systems.

So, the question we have to ask is whether the work we are doing today to challenge racial discrimination will finally transform and challenge these systems.

And I fear that change will be limited in society, in our communities, in our institutions, in our law schools. We are still too often looking in the wrong places and asking the wrong questions which lead us to the wrong answers. We're focused on the specific acts of injustice before us thinking about how we can correct that wrong and prevent others from committing that same violation.

The actions of individual bad actors are not the full story of racism. For most black people and other people of color racism is not Bull Connor sticking his dogs on black children, seeking to integrate public schools while hurling racial slurs, or a police officer who murders a black person, or a restaurant refusing service to black customers at a lunch counter.

That understanding of racism, as the actions of individual racist people, really overlooks the centuries-long impact of race-based laws, policies and practices that have caused and perpetuate the racial inequality that we're living with today. It misses the racism of sending your children to an under resourced, heavily segregated public school which consistently underprepared students for college and life and puts them on track for involvement with the criminal legal system. Those definitions miss the racism of living an hour and a half away from decent jobs because your community is ill served by public transportation.

It ignores the racism of lacking access to supermarkets, providing affordable and healthy food while your children are sick, because

they're exposed to environmental stressors, but you can't access regular healthcare. It ignores the long term, compounded damage to black neighborhoods which were ripped apart through highway construction and systemic under development and the incalculable costs to black wealth like health and black community. It will be difficult, if not impossible, to find a single actor responsible for those harms.

And even less likely that there is explicit evidence that any current actor in any of those systems is predominantly motivated by racial animus. But the harm is done, the exclusion is manifest, and these are all faces of racism.

And this focus on explicit acts of racism by so called bad actors presumes that, by eliminating the aberrant behavior of a few bad apples, we're going to root out bias within our systems.

And that limited understanding of racism means that we're using tools that are too small and too narrow to be effective. And that means that we are not acting in a way that challenges the many ways that racism persists in its power to exclude and to destroy. So, what do we have to do?

We all must join the fight to unravel the racism that has woven itself into our systems and structure over time and which grow deeper and more complex every day. Systemic racism speaks to the fact that the systems on which our society functions: the economic system, the education system, our healthcare system, the criminal legal system, and our structures: physical, cultural, and social are all infused with and impacted by the racism, within which they were created and maintained. To effect change, not just for individual clients, but for the community and clients to come, we have to identify the systems that come together to drive inequality and to think about the role these larger structures play in creating and maintaining racial subordination of people and communities. And not only focusing on the law but challenging the ways in which systemic oppression encompasses oppressive structures at the interpersonal institutional levels and is embedded in our value system and the narratives that we tell.

We must also focus on the way multiple institutions and sets of norms are often at play in causing or maintaining an injustice, the multiplicity of harms resulting from the injustice and the multiple different communities that are impacted.

We have to think about how we can work with marginalized communities to advocate for systemic change and to build power.

To explore the broader intertwined legal and social issues that are connected and woven into and through the legal questions our clients bring to us.

It requires that we focus on systems and power and have a deeper understanding of the complexity of the problems faced by impacted communities to help envision an altered and more just future.

Yes, we need to tear down the legal and policy foundations of racial inequality.

We also need to work to reconcile the past: the scars that were created by hundreds of years of chattel slavery and racially discriminatory government policies are deep.

And they're going to require real resources and investments in communities that have been harmed. We need to work to extend empowerment to communities of color, building true political power and tearing down barriers that limit full participation in the democratic process.

We need to build prosperity. Gaps in wealth between people of color and white households expose accumulated inequality and discrimination, as well as differences in power and opportunity that can be traced back to this nation's inception.

Economic justice and racial justice are really two sides of the same coin. Economic justice work is critical, because it supports our ability to access and enjoy other civil rights and civil liberties and as Dr. King put it, "What does it profit a man to be able to eat at

an integrated lunch counter, if he doesn't have enough money to buy a hamburger?"

Racial justice requires stable jobs and income, affordable housing, the provision of basic financial services, and meaningful and equal access to the mainstays of an economically vibrant life. Racial justice requires economic justice, and we need to work to increase access.

In order to level the playing field so that every person can achieve their highest potential, we must assure access to the tools and opportunities necessary to thrive.

This means challenging segregation and other systems of exclusion. The systems this country has so effectively built to protect and maintain segregated communities and spaces have a tremendous negative impact on those left out.

And that's because you cannot separate the places people have access to from the opportunities people have access to. Our home, not only our physical residence, but also the community in which it's located, impacts our lives in numerous and interdependent ways. There really is nothing that place does not touch. Our access to education and jobs and healthcare, our physical safety and our health, our access to healthy food or social networks, the quality of the air we breathe, the number of times we come in contact with the police, and the nature of those contacts, are all deeply impacted by where we call home.

But as lawyers and advocates, we often ignore the related challenge of trying to support communities of color so that people can thrive and access opportunity in their own communities.

Our efforts disproportionately focus on how to get people of color access to white spaces and opportunities in those spaces -- which is incredibly important, but we spend less time guiding and shaping how we support residents in their own communities and build those communities to facilitate access to the tools they need for happiness and prosperity.

We must all rise to the moment and really take advantage of this window of opportunity to deepen and expand our work to challenge systemic racism.

America, I think, is at a tipping point on racial justice. It's an opportunity, a unique opportunity, and maybe our last opportunity for some time to tear down this architecture of inequality and to build the foundation for equality, challenging the systems and structures through which racism continues to constrain the life outcomes of some and expand the life outcomes of others. I'm grateful to be doing this work along all of you and to be partners in our work to challenge systemic inequality and build a system that's built on justice and equality, thank you for listening, thank you for inviting me to be a part of this important conversation.