



Year in Review

2017–18

THE CENTER ON RACE, INEQUALITY, AND THE LAW 2017–2018 YEAR IN REVIEW

Contents

- 1. LETTER FROM THE FACULTY DIRECTOR**
- 2. ABOUT THE CENTER ON RACE, INEQUALITY, AND THE LAW**
 - 2.1. Staff
 - 2.2. What is the Center on Race, Inequality, and the Law?
 - 2.3. How We Work
 - 2.4. Thematic Priorities in 2017–2018
- 3. RACE AND NARRATIVE—PUBLIC CONVERSATION SERIES**
 - 3.1. The Future of Race and Inequality in the United States
 - 3.2. A Conversation on Charlottesville
 - 3.3. Race, Inequality, and the Legal Profession
 - 3.4. Minding Race
 - 3.5. Truth and Reformation
- 4. RACE AND DISCRETION IN THE CRIMINAL LEGAL SYSTEM**
 - 4.1. Training Actors in the Criminal Legal System
 - 4.2. Research on Parole in New York State
 - 4.3. Amicus Submission on Race
 - 4.4. Convenings on Race and Technology
 - 4.5. The Use of Pretrial Risk Assessments: A Shared Statement of Civil Rights Concerns
 - 4.6. Supporting Advocacy Initiatives and Ongoing Research on Race and Technology
- 5. RACE IN LEGAL EDUCATION**
 - 5.1. Students at NYU School of Law
 - 5.2. Speaking with Students about Race and Inequality at 1L Orientation
 - 5.3. Student Fellowship, Employment, and Volunteer Opportunities
 - 5.4. Supporting Student Affinity Groups
 - 5.5. Faculty and Institutional Partnerships
 - 5.6. Training of Lawyering Faculty: Teaching Race and Inequality
 - 5.7. NYU Faculty and Institutional Partnerships

LETTER FROM THE FACULTY DIRECTOR

October 2018

We find ourselves in perilous times. We are witnessing a nation rapidly shedding the veneer of democratic values and unveiling and exacerbating simmering tensions of race and inequality that have long been part of America's DNA. The coarseness of the national dialogue and the challenges of deepening economic and racial disparities are the conditions that we, at the Center on Race, Inequality and the Law are committed to understanding and changing. We, at the Center, aim to provide education, training and research that will inform actors at all levels – from law students to practicing lawyers to legislators to judges – about the history of racism, its impact on the legal system, and the role that lawyers can and must play to ensure racial and economic justice.

I am proud to present to you our “Year in Review.” Our initial year has been transformative for our nation and the Law School. The Center recognizes that now, more than ever, it is time to rethink the ways that law schools prepare young people to become lawyers and leaders in our society. We need to continue to reflect on issues of race and inequality in America and beyond. Moreover, we need to be vigilant as we guard against efforts to reverse the progress that this country has made toward racial and economic justice. Our mission at the Center is both inward and outward facing.

We launched the Center in a time of great turmoil. Our initial public conversation hosted a record crowd of over 1500 people. In that conversation, I was pleased to engage Bryan Stevenson, Sherrilyn Ifill and former Attorney General Loretta Lynch in a far-reaching discussion about race and inequality and the future of America. The conversation occurred shortly after the national elections in 2016 and the audience in attendance was still reeling from the results and looking for some measure of understanding and hope. That conversation provided both. Each of our panelists emphasized the importance not only of using the legal system to hold the line on some of the gains that we have made, but also reminded us of the urgency of seizing and shaping the narrative around these issues. Consequently, we have preserved it in a book published by the The New Press, entitled *A Perilous Path*.

We have spent our first year engaged in a range of activities to tend to the nation's narrative on race and inequality. We launched our public conversations series, Race and Narrative, through which we have hosted a number of national figures in round-table discussions on the impact of race in media, the legal profession, criminal justice, and neuroscience. Our goal has been to inform the public discourse in these critical areas as well as to provide important educational opportunities for our students.

Externally, and beyond our public conversations, we have concentrated in this first year on the criminal legal system and the urgent need for reform. People from all sides of the political spectrum have recognized the profound inequality and racial disparities embedded in our national criminal justice landscape. Our work has highlighted the ways that race and bias operate at the various points of discretion in the criminal legal system. Therefore, we have launched trainings for criminal justice actors on issues of race and have hosted an unprecedented convening on race and technology in the criminal legal system. In just a short time, we have proudly become a leading resource on advocacy and research on race and technology. We have also been a constant source of commentary on the danger of bias in the use of risk assessments in criminal justice decision-making. And we have partnered and collaborated with other departments in the university to combine expertise on issues of economic and racial bias in the bail system and in the parole system.

Internally, we have become a permanent part of the Law School community. We have been active participants in the orientation for first year law students, leading vibrant discussions about race and leadership. We have engaged in training for our Lawyering Faculty on race and inequality to prepare them to address these issues through the research and writing program for first year students. Furthermore, the Center has worked to engage law students through films and forums on race and inequality, our student fellows program, our summer internship program, and directed research opportunities.

Our work has benefitted from a devoted team of staff, fellows and volunteers as well as foundations and individual donors who have supported the work of the Center. We believe that our work will continue to aid in the educational and social justice mission of the Law School and the University. In addition, we will remain steadfast in our efforts to confront inequality and advance racial justice nationwide.

Thank you for your continued support.

Sincerely,



Anthony C. Thompson



Anthony Thompson
Faculty Director

2. ABOUT THE CENTER ON RACE, INEQUALITY, AND THE LAW

2.1. Staff

Faculty Director: **Professor Anthony Thompson**

Executive Director: **Vincent M. Southerland**

Administrator: **Danisha Edwards**

Post-Graduate Research Fellow: **Sarah Hamilton-Jiang**

2017–2018 Student Fellows

Enoch Ajayi ('20)

James Blum ('20)

Megan Brattain ('19)

Nicolas Duque Franco ('18)

Brianna Hathaway ('19)

Nia O. Holston ('19)

Bobby Hunter ('18)

Tasleemah Lawal ('19)

Madhuri Swarna ('19)

Victoria (Tori) Wenger ('19)

Kione Wong ('19)

2.2. *What is the Center on Race, Inequality, and the Law?*

Four centuries of racism and systemic discrimination have left an indelible mark on the architecture of American society. Racism infects the way policies are developed and applied at all levels of government. It infiltrates our laws, institutions, and systems, resulting in enduring racial inequities. Nowhere is racism more clearly ingrained than in our criminal legal system—the United States incarcerates more people than any other country in the world, the vast majority of whom are people of color. For this reason, our primary area of focus is at the intersection of race and criminal legal system.

The Center on Race, Inequality, and the Law at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. We believe that the racism that permeates our present-day legal system has deep roots. By documenting the history of racism in America, elevating the stories of those affected by race-based inequality, and rigorously applying a racial lens to analyze unremitting disparities, we identify actionable, forward-looking solutions to address the injustices caused by racism.



The Center envisions a world in which laws, policies, and legal practices are applied fairly and equitably to all people. This will be achieved as:

- Communities of color transform racial narratives and are active contributors in the movement toward racial equity in the legal system;
- A fundamental component of legal education in the United States is understanding the law through the lens of race and inequality;
- Legal practitioners, policymakers, teachers, advocates, and the public are catalyzed to combat institutional racism and work to create a fair and equitable legal system; and
- Inequitable laws, policies, and practices are challenged and reformed or abolished as a result of legal action, advocacy, research, and training.

2.3. How We Work

The Center works in four key ways:

Driving the narrative

The Center leverages its expertise to produce content that addresses the historical, empirical, and pervasive character of racial bias in the legal system. We conduct research on the nuances that drive racial disparities in the law—from in-depth historical reporting, to rigorous legal examinations, to complex data analysis. We publish original materials to enrich the discourse and present actionable solutions for system actors and policymakers to draw upon. We provide space for communities of color to tell their stories that lie at the intersection of race and the law.

Challenging current policy and practice through research, litigation, and advocacy

We challenge institutions and systems that perpetuate racial injustice by taking legal action. As a key part of our strategy, we use our expertise, research, and advocacy to support legal actions that provide individual redress and build momentum for scalable reform.

Providing education and training

We provide education and training to actors at all levels—from law students to practicing attorneys—on the history of racism and its impact on the contemporary legal system. We infuse law school curricula with principles of racial justice, and work to ensure that legal education is informed by an understanding of the history of race and white supremacy in America. We produce original training materials to support the continuing education of practitioners, and actively support them to become leaders who will advance racial justice. We work with a robust network of partners in universities across the country to share lessons learned, collaborate on curriculum development, and host joint meetings.

Convening

We convene community and civic leaders, advocates, practicing attorneys, academics, formerly incarcerated people and their families, and the broader public to facilitate productive discourse about racial disparities in the law. We host roundtable discussions and community conversations to gather input and explore solutions that will reduce racial disparities and improve justice outcomes for all. We invite experts to speak about their emerging research, and host a variety of public events, such as film screenings and moderated conversations centered on urgent issues of racial justice.

2.4. Thematic Priorities in 2017–2018

The Center's launch in February 2017 was followed by the development of an expansive portfolio, focusing our thematic priorities in the following areas:

- Race and Narrative, through our public conversation series;
- Race and Discretion in the Criminal Legal System, with an emphasis on the intersection of race, decision-making, and technology; and
- Race in Legal Education.

3. RACE AND NARRATIVE—PUBLIC CONVERSATION SERIES

The Center hosts an annual public conversation series on a range of contemporary issues exploring the effects of racial narratives, inequality, and the law, and providing strategic solutions to address current societal concerns. The Center held five public conversations featuring experts, thought leaders, advocates, and scholars. The Center published one book and has another forthcoming to capture the content from our conversation on race and the legal profession. Each of these public conversations has been published digitally and is accessible on the Center’s website.

3.1. *The Future of Race and Inequality in the United States*

The Center’s public conversation series began with our inaugural launch event in February 2017, featuring a public conversation among the Center’s Faculty Director, Professor Anthony Thompson; Sherrilyn Ifill ’87, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc.; the Honorable Loretta Lynch, the 83rd United States Attorney General; and NYU Law Professor Bryan Stevenson, Founder and Executive Director of the Equal Justice Initiative. The inaugural conversation is now available as a book entitled *A Perilous Path: Talking Race, Inequality, and the Law*, which provides a thought-provoking discussion on race, law, and civil rights in the era of the Trump presidency. Thompson and Ifill undertook a national tour to share the book’s key highlights, which included the root causes of racial inequality in America and the opportunities to advance a progressive racial justice agenda aligned with the ideals of the Constitution.



Loretta Lynch, Bryan Stevenson, Sherrilyn Ifill, and Anthony Thompson. Photograph by Juliana Thomas.

“Racism is embedded in the DNA of America. But while people of color have disproportionately felt its effects, it’s an American problem. In fact, it is the American problem. And addressing it will require a collective strategy involving all Americans.”

–Professor Anthony Thompson

“Too many of us have taken advantage of the legal battles while leaving behind the narrative battle. And that for me is the great challenge that we face.”

–Professor Bryan Stevenson

“Politics is about more than who the president is. Law enforcement is about more than who the attorney general is. It’s so much more than that... We have to recognize that all politics is local, as one of our great leaders said. It all starts there. And if we want to rebuild to the point where we do have a federal government that is responsive to our needs, and that does listen to people, and is based on inclusion, not fear and exclusion, we have to populate it with people who hold those values dear, and we have to cultivate those people now.”

–Loretta Lynch

“[As lawyers] being able to see beyond the traditional case that’s right in front of you, like the voting rights case, the school board, and being able to make the connections to the way in which oppression works similarly across different boundaries, really can allow you to do your finest work. And it confuses the enemy. It really confuses the other side.”

–Sherrilyn Ifill

3.2. A Conversation on Charlottesville

In the wake of the 2017 white supremacist rally and tragic violence in Charlottesville, Virginia, the Center co-sponsored A Conversation on Charlottesville, which featured a panel discussion, moderated by NYU Law Dean Trevor Morrison, among Professors Burt Neuborne, Bryan Stevenson, Kim Taylor-Thompson, and Anthony Thompson. The panelists discussed the events against the backdrop of America’s troubled racial history rooted in white supremacy, and the implications for the legal system today. The shameless and brazen public march by Neo-Nazis and members of the Ku Klux Klan on August 11, 2017, was a harsh wake-up call for the nation. Professor Taylor-Thompson described it as taking “a Band-Aid off... a festering sore of racism in this country.” At bottom, the events were a horrific reminder that racism is alive and thriving today. Donald Trump’s failure to condemn race-based violence, and his statements drawing a false equivalence between white supremacists and anti-racist protestors, were among a number of deeply troubling aspects of the rally and its aftermath. Panelists stated that such tragic events continue to unfurl due to our inability to address race and white supremacy as a nation. They discussed the need for advocates to challenge policies and tend the narrative beyond the courtroom, actively participating in public discourse and engaging at the community level.

“Charlottesville is a symptom of a larger disease. The disease is that we are burdened in this country by a history of inequality. I really don’t even think we’re free in this country... Our history of racial inequality has created a kind of smog that we all breathe in. That creates conflict and tension, and we have moments where that tension is made dramatic, as it was in Charlottesville, but it’s always there.”

–Professor Bryan Stevenson

“Again, living this dehumanization. Reigniting this dehumanization. We’ve got to confront this, because if we don’t confront this, what ends up happening is that we pretend that race isn’t in play. We pretend that race isn’t a default line, and we continue to see the kinds of violent activities that we’re seeing. We have to confront it openly. It has to be salient. We have to be explicit.”

–Professor Kim Taylor-Thompson

“What Charlottesville teaches me is that you can eliminate the formal stereotypes, but that underlying pathology that exists in the minds and hearts of people has to be dealt with by some form of direct confrontation. I don’t mean violence, and I don’t mean imprisoning them, and I don’t mean shutting them up, but I do mean confronting them. Confronting the racism, and the sexism, and the anti-Semitism that continues to bubble under the surface. So, Charlottesville is a warning sign, but it’s not something new.”

–Professor Burt Neuborne

“You have to do inconvenient things, and uncomfortable things. Some of you are going to have to be the person who stands up when everybody else is saying sit down. Some of you are going to have to be the person who speaks when everybody else is saying, “Be quiet.” But when you do that, with some commitment to these changes, and these issues, that’s when things change.”

–Professor Bryan Stevenson

3.3. Race, Inequality, and the Legal Profession: A Public Conversation on Private Practice

On October 12, 2017, the Center hosted Race, Inequality, and the Legal Profession: A Public Conversation on Private Practice. The participants were Debo Adegbile '94, partner at WilmerHale; Lisa Davis '85, partner at Frankfurt Kurnit Klein & Selz; Damaris Hernández '07, partner at Cravath, Swaine & Moore; and Theodore Wells, partner at Paul, Weiss, Rifkind, Wharton & Garrison. The conversation detailed the challenges of diversity, inclusion, race, and inequality in the legal profession. Each panelist discussed how their race and gender shaped their professional experiences and the institutional and structural barriers to retention, advancement, and promotion of people of color in private law firm practice. The conversation is currently being published and will be available for purchase by early 2019.

"I get people to see that it is a possibility to be in a position of power at a big law firm as a person of color. But I also make sure that big law firms, like my firm, create a safe space for people to feel that they can come in, they can be supported, they can be, they can have opportunities, they can find mentors, and they can get promoted."

-Damaris Hernández

"You're going to need community mentors. People who are going to guide you through what role you can play in the community. I tell every Black and Latino lawyer I meet, if you want to participate in your communities because you have been lucky enough to get a law degree, you will be welcomed with open arms because every Latin[x] and African-American politician in this city, in this state, needs lawyers."

-Theodore Wells

"Leadership matters a lot in diversity, if you have firm leaders that are holding their firms to account for improving things... If you do have some firms and some firm leaders that are making an affirmative commitment to push, to move the dial, to change things, and to go boldly in that direction, perhaps to show what it looks like to lead, then folks will follow."

-Debo Adegbile

"[Y]ou have to stay true to your authentic self but...find the thing you have in common with the people that you work with. There's always going to be something."

-Lisa Davis



Anthony Thompson, Theodore Wells, Lisa Davis, Damaris Hernández, and Debo Adegbile. Photograph by Brooke Slezak

3.4. Minding Race

On February 20, 2018, the Center hosted Minding Race, which focused on the intersection of race, brain science, and social psychology. The conversation featured members of the MacArthur Foundation Research Network on Law and Neuroscience¹: Dr. BJ Casey, Department of Psychology, Yale University; Dr. Jennifer Richeson, Department of Psychology, Yale University; and Professor Kim Taylor-Thompson, NYU School of Law. The discussion centered on multi-disciplinary approaches to race, racism, and inequality in the law. The panelists identified three converging areas of study that reveal the importance of brain science and social psychology in our analysis and application of the law: implicit bias, youth of color in the criminal justice system, and current societal attitudes toward race in America. The panelists stressed the importance of recognizing implicit bias as a social issue and stressed the importance of being explicit about the role of racism in our society. Additionally, they emphasized the growing need to hold individuals accountable for decisions that are based on implicit biases. For actors in the legal system, the panelists discussed the importance of training and accountability, and called on legal actors to proactively check and consider their personal biases as they exercise discretion in the legal system.

“A lot of this bias is driving who we target in terms of who we arrest... If you’re a young, Black person and the police are targeting you, you’re under incredible threat and stress in those circumstances because you know it’s not like there’s a potential risk. There is a real threat that something bad can happen. We know under those circumstances that we tend to be more reactive.”

–Dr. BJ Casey

“One of the things that I would say is that whether it’s law following culture or culture following law, those of us who are lawyers in the room have to pay attention to the culture... How are we changing the culture and bringing voices together?”

–Professor Kim Taylor-Thompson

“We don’t have to build walls or actually sacrifice the values and principles of what it means to be American in order to maintain a White majority. That’s a choice that we can make, but we can also make a different choice. What we can do is try to understand and investigate how we can get people to shift and think about

¹ The MacArthur Foundation Research Network on Law and Neuroscience is an interdisciplinary collaborative initiative bringing together the nation’s top researchers with two main goals: “(1) to explore ways that neuroscientific insights can aid pursuit of a more fair, rational, and just criminal justice system; and (2) to help the legal system avoid misuse of neuroscientific evidence in criminal law contexts.” <http://www.lawneuro.org/>



Panelists and audience at Minding Race. Photograph by Brooke Slezak

the possibility of having a demographically diverse America that's also a democracy.”

–Dr. Jennifer Richeson

3.5. Truth and Reformation: A Conversation on Narrative, Identity, Race, and Rights

On March 1, 2018, the Center hosted Truth and Reformation: A Conversation on Narrative, Identity, Race, and Rights. Moderated by Professor Thompson, the featured panelists included Stephen Bright, Founder of the Southern Center for Human Rights and Visiting Lecturer in the Law at Yale Law School; Professor Paul Butler of Georgetown Law Center; Vanita Gupta, President and CEO of the Leadership Conference for Civil and Human Rights; and Professor Maya Wiley, Senior Vice President for Social Justice, The New School. The conversation explored the pivotal role of white supremacy in the formation and sustainability of narratives and identities around race and inequality, examining how they have been constructed in the past, the ways these narratives have been deployed to drive policy and undermine social progress, and the steps that advocates and activists can take to change that dynamic going forward. The panelists urged advocates and activists to challenge racial narratives, explaining that the transformation of racial narratives is the first step to dismantling racist systems in the United States.

“Telling narrative stories is one of the things that defines us as human beings. Sometimes it seems that we lose sight of the importance of narratives as lawyers.”

–Professor Anthony Thompson

“If we are indeed going to make America great, we aren’t going to do it looking backward for some illusionary nostalgic time that never was. We’re only going to do it by moving forward in the 21st century, recognizing that those who have benefited the most by the current unprecedented economic growth have done so with the assistance of race and class privilege.”

–Professor Anthony Thompson

“[T]here’s nothing like a crisis to focus the mind. I think there’s a way in which we have taken a lot of things for granted—namely even some of our democratic institutions—and that what we are seeing right now is the erosion of some of the most core principles and values... I think we have to put this in historical perspective to understand that while we may feel despair right now, this country has a long history of a lot of retrenchment, oppression, and aggression that folks have battled through and there’s nothing inevitable about our democracy. There’s nothing inevitable about equality or even the fight for equality.”

–Vanita Gupta



Anthony Thompson, Vanita Gupta, Stephen Bright, Maya Wiley, and Paul Butler. Photography by Juliana Thomas

“It’s not that we can’t crush white supremacy, it’s that we need to be imaginative, we need to be brave, and we need to be bold about how we do it.”

–Professor Paul Butler

“It has always taken men, women, and children pushing back, fighting in the courts, marching in the streets, being active and loud in the media, using whatever forum they have to fight for a more perfect union. So, I think this is actually a time to be deeply hopeful, but the responsibility is on all of us and all of you.”

–Vanita Gupta

“[W]e both have to look at local solutions, but we have to look at how our own communities, our own assets, our own values, our own organizing, and our own narratives can drive and reshape the conversation about where communities are, what’s happening in our communities. And what we can do about it.”

–Professor Maya Wiley

“I tend to look at the world much more from down in the trenches, right down all the way at the bottom, and I guess what I...hope that someday we’ll realize...that when some person, some human being is arrested by the police and slammed down...and whether charged with a misdemeanor or whether they’re charged with the death penalty, when they look on the other side of the block when they’re down in the jail, that they’ll see somebody there who’s going to do everything they possibly can for them. Somebody who’s going to lift them up and tell them that even though you’re poor, you’re going to be treated with the same amount of dignity, with the same amount of respect, and you’re going to get the same kind of treatment as if you were the richest person in the world. That’s what I’d like to see.”

–Professor Stephen Bright

4. RACE AND DISCRETION IN THE CRIMINAL LEGAL SYSTEM

Qualitative experience and quantitative data demonstrate that racial disparities persist at every stage of the criminal legal system. Those disparities are the product of biases—both implicit and explicit—in the exercise of discretion by actors in the system—police officers, prosecutors, judges, defense attorneys, and probation and parole officers. Bias manifests itself most often in the otherwise inexcusable treatment of people of color in the criminal legal system, driving excessively punitive criminal legal policies, mass incarceration, and other unjust criminal legal practices.

In addition, the use of technology at all stages of the criminal legal system has grown in recent years. Increasingly, risk assessments are being used by judges, relying on technology to guide their sentencing decisions. Parole boards are also using technology to determine who is worthy of release on parole. Algorithms are being used by police officers to predict the location of crimes and to determine who might be a risk to release following an arrest. Body-worn cameras are being used to hold police accountable, and electronic monitoring and other means of surveillance are being touted as alternatives to incarceration. The challenge is that this technology—and the algorithms it relies on—may end up replicating the same inequalities and biases that already infect our criminal “justice” system.

Accordingly, the Center has been working to address the challenges associated with the use of discretion in the criminal legal system, addressing the racial disparities that emanate from legal decision-makers, and the use of actuarial risk assessments and artificial intelligence. The Center has accomplished this primarily by working in collaborative partnerships, developing trainings, hosting convenings, and supporting advocacy, litigation, and ongoing research.

4.1. Training Actors in the Criminal Legal System

The Center values the importance of training as a means to help actors in the criminal legal system exercise their discretion in ways that confront and account for racial bias. Since its launch, the Center has provided direct training to legal actors and facilitated trainings in partnership with organizations working at the intersection of race and criminal justice. In that capacity, the Center provided direct training for prosecutors at the Institute for Innovation in Prosecution at John Jay College of Criminal Justice, co-hosted the Annual Symposium on Race and Ethnicity for Defense Lawyers, and hosted a training program conducted by JustLeadershipUSA² for formerly incarcerated men and women focused on leadership development. The Center’s Faculty Director and Executive Director have also provided technical assistance and training to defense attorneys, prosecutors, and other actors in the criminal legal system.

² “JustLeadership USA is dedicated to cutting the US correctional population in #halfby2030. JLUSA empowers people most affected by incarceration to drive policy reform.” <https://www.justleadershipusa.org/>

4.2. Research on Parole in New York State

The Center is working to reduce the racial disparities that pervade parole release decisions in New York State. Parole provides a particularly stubborn example of the ways in which discretion invites biased decision-making and drives mass incarceration. The Center is working to diagnose and address the causes of racial disparities in the parole hearing process, working with partners to research and analyze data. We aim to develop viable solutions that will address the racial disparities in the decision-making process and, ultimately, reduce the prison population in New York State. The Center's work on parole is in the early stages of development but will continue to be a pivotal part of our programming in the coming years.

4.3. Amicus Submission on Race

The Center served as a signatory to an amicus brief in *Singleton v. Cannizzaro*, a lawsuit filed by the ACLU Trone Center for Justice and Equality, ACLU of Louisiana, and Civil Rights Corps against District Attorney Leon Cannizzaro, his office in Orleans Parish, Louisiana, and several assistant district attorneys for systematically breaking the laws of Louisiana and of the U.S. Constitution. The suit challenged the Orleans Parish DA's practice of using fake subpoenas and intimidation to illegally coerce and wrongly jail crime victims and witnesses in over 150 cases. Every individual who was jailed was Black. The Center's brief explained that the defendant's motion to dismiss the civil rights lawsuit would directly contravene the purposes of the civil rights statute under which the lawsuit was filed—a statute that was enacted to vindicate the rights of Black Americans discriminated against by law enforcement following the Civil War.

4.4. Convenings on Race and Technology

4.4.1 What Does Fairness Look Like? A Conversation on Race, Risk Assessment Tools, and Pretrial Justice

In November 2017, the Center co-hosted a closed-door convening with the ACLU to address the intersection of race, fairness, and risk assessments in pretrial justice. The nationwide movement to eliminate cash bail has shifted the focus of many state pretrial systems to a concern over the risk an accused person presents to commit a new offense or fail to appear in court. That dynamic has led to a proliferation of pretrial risk assessment instruments.

Convening attendees included representatives from the civil rights community, racial justice advocates, those engaged in litigation and community organizing on pretrial justice, computer and data scientists, individuals responsible for implementing pretrial risk assessments as administrators of state pretrial systems, academics focused



on algorithmic decision-making, and the designers of pretrial risk assessments. The purpose of the gathering was to explore various debates around algorithmic fairness, engaging in robust discussions with interdisciplinary experts.

The convening demonstrated the need for further gatherings to cultivate insights, research, and discussion of race, technology, and risk assessments. Participants agreed that accountability and oversight of pretrial risk assessments were necessary; that they should be used to decarcerate; and that race and inequality were critically important. The gathering ultimately produced more questions than answers about what risks should be measured, how the tools should respond to the reality of racial disparity in the criminal legal system, and what role the tools should play in pretrial reform. A report recapping the proceedings is forthcoming.

4.4.2 Litigating Algorithms

In June 2018, the Center, along with AI Now³ and the Electronic Frontier Foundation,⁴ hosted a convening focused on litigation strategies relevant to algorithmic decision-making. The convening examined cases involving teacher promotion and evaluation; public disability benefits determinations; juvenile justice sanctions; and probabilistic DNA technology. The closed-door convening brought together lawyers, advocates, and technology experts actively engaged in litigation and those seeking to challenge the use of these tools in various forums. While the focus and scope of the event stretched beyond criminal justice, key takeaways were that litigation strategy, at least in the civil context, relied most heavily on bedrock legal principles, such as procedural due process. In the context of criminal cases, evidentiary rules were the most relevant lever for limiting the weight given to a risk assessment's outputs. The level of interest from attendees and our co-hosts has spurred conversation about turning this gathering into an annual event. A report recapping the proceedings was published in September 2018.

4.5. *The Use of Pretrial “Risk Assessment” Instruments: A Shared Statement of Civil Rights Concerns*

“Pretrial risk assessment instruments are not a panacea for racial bias or inequality. Nor are they race-neutral, because all predictive tools and algorithms operate within the framework of institutions, structures, and a society infected by bias. Those facts weigh heavily against their use. However, in those instances when jurisdictions commit to employing a risk assessment instrument as part of the pretrial ecosystem, doing so with an eye toward eliminating unwarranted racial disparities advances the cause of justice for all.”

–Principal 1 from *The Use of Pretrial “Risk Assessment” Instruments: A Shared Statement of Civil Rights Concerns*.

The Center took a leading role in developing a set of principles on the use of pretrial risk assessment instruments as a substitute for ending cash bail. Led by The Leadership Conference on Civil and Human Rights⁵, the document entitled *The Use of Pretrial “Risk Assessment” Instruments: A Shared Statement of Civil Rights Concerns* begins with the key concerns that risk assessment tools are not a panacea for reforming the broken bail system, and that, in fact, these tools can worsen racial disparities and increase incarceration rates. With that in mind, the statement provides six principles that, if implemented fully, would mitigate the detrimental impact of risk assessment instruments. The Center took primary responsibility for drafting the principle on race and provided substantial guidance in the development of the remaining principles. The statement was released in July 2018, and a coalition of nearly 200 civil rights, data science, and social justice organizations has now signed on to the statement, encouraging the timely application and implementation of the principles. The full statement is available on our website.

4.6. *Supporting Advocacy Initiatives and Ongoing Research on Race and Technology*

The Center is a member of several coalitions seeking to mitigate the harm of risk assessment tools in the criminal justice system. Further, Center staff have participated in several events to contribute to emerging advocacy and research on race, technology, and criminal justice:

³ An institute housed at NYU that “produces interdisciplinary research on the social implications of artificial intelligence and acts as a hub for the emerging field focused on these issues.” <https://ainowinstitute.org/>

⁴ “An international non-profit digital rights group based in San Francisco, California.” <https://www.eff.org/>

⁵ “A coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States.” <https://civilrights.org/>

- **Membership on a Research Advisory Council:** The Center's Executive Director, Vincent Southerland, is providing input, guidance, advice, and expertise to the City of New York's Criminal Justice Agency and the Mayor's Office of Criminal Justice as the city undertakes a re-design of its pretrial risk assessment instrument, the aim of which is to reduce the pretrial incarceratory population and reduce racial disparities in pretrial outcomes.
- **Membership on the New York City Automated Decision Systems Task Force:** Southerland is a member of a New York City task force aimed at developing a process for reviewing automated decision systems in New York through a lens of equity, fairness, and accountability. This is the first such task force of its kind in the United States, and is due to issue a report in December 2019 recommending procedures to review algorithmic decision-making and ensure accountability, with special attention to potential bias.
- **Membership on the MacArthur Foundation Pretrial Risk Management Project:** Southerland is taking part in the MacArthur Foundation Safety and Justice Challenge by addressing contentious issues that arise when quantitative risk assessment and management tools are incorporated into pretrial decision-making. The project is tasked with generating and disseminating a series of balanced and accessible "critical issue briefs" on key topics in pretrial risk assessment and management.
- **AI Now Criminal Justice Policy Lead:** Southerland serves as NYU's leading Criminal Justice Policy Advisor for AI Now, an institute housed at NYU that "produces interdisciplinary research on the social implications of artificial intelligence and acts as a hub for the emerging field focused on these issues."
- **Presentations by Vincent Southerland on Risk Assessment and Criminal Justice**
 - » **Rebellious Lawyering Conference**, Yale Law School— "largest student-run public interest conference in the US"
 - » **RightsCon**, Toronto— "world's leading conference on human rights in the digital age"
 - » **Afrotectopia**, New York— "a new media arts, culture and technology festival designed to recognize the contributions of Black artists, designers, technologists and activists"
 - » **6th Annual Public Policy Symposium on the Law & Economics of Privacy and Data Security**, George Mason Law School

"What these tools often do is help us tinker around the edges, but what we need is wholesale change. [The robust debate around algorithms] forces us all to ask and answer these really tough fundamental questions about the systems that we're working with and the ways in which they operate."

–Vincent Southerland, *"Bias detectives: the researchers striving to make algorithms fair"*

- Policy Advocacy on Risk Assessments
 - » The Center, in partnership with AI Now, submitted written objections to a plan by the Pennsylvania Sentencing Commission to implement a risk assessment tool at sentencing.⁶ Ultimately, the commission delayed its vote to reassess its decision in light of overwhelming opposition.
 - » The Center provided testimony to the National Association of Criminal Defense Lawyers as it develops a forthcoming report on predictive policing.
 - » The Center contributed to the ACLU's blog series *Will Artificial Intelligence Make Us Less Free?* with a piece entitled *With AI and Criminal Justice, the Devil is in the Data*, highlighting the problems of biased data leading to biased results, and has been cited in a piece in *Nature*, which surveyed the field on race and risk assessment. Additional blog entries are available on our website and on the Center's *Medium* site.

"No system or tool is perfect. But we should not add to the problems in the criminal justice system with mechanisms that exacerbate racism and inequity."

–Vincent Southerland, *"With AI and Criminal Justice, the Devil is in the Data"*

⁶ <https://slate.com/technology/2018/07/pennsylvania-commission-on-sentencing-is-trying-to-make-its-algorithm-transparent.html>

5. RACE IN LEGAL EDUCATION

Issues of race, inequality, identity, and difference are critical concerns to NYU School of Law. The Center on Race, Inequality, and the Law provides a resource to both students and faculty at NYU Law, supporting their capacity to respond to contemporary concerns pertaining to race and inequality.

5.1. Students at NYU School of Law

The Center engages students at NYU School of Law through forums and events on race and inequality, a student fellows program, a summer internship program, and directed research opportunities.

5.1.1 Speaking with Students about Race and Inequality at 1L Orientation

Orientation provides an opportunity to signal the values of an institution. The Center participates in Orientation, planning and facilitating student involvement in the Orientation program. At the outset of the 2017–18 academic year, the Center set the stage for discussions on race and inequality in the law school, as Faculty Director Anthony Thompson and Executive Director Vincent Southerland engaged in an open conversation in front of the incoming 1L class on the topics of race, inequality, the law school experience, and law practice. Dean Trevor Morrison joined Thompson and Southerland for a similar conversation at the outset of the 2018–2019 academic year. Both conversations provided an opportunity for incoming students to recognize the importance of incorporating issues of race and inequality in their law school experience and signaled NYU Law’s efforts to respond to and address racial inequality in the law.

5.1.2 Student Fellowship, Employment, and Volunteer Opportunities

The Center employs full-time student summer fellows and semester student fellows who engage in legal research and provide project support. During 2017–2018, the Center hosted six student fellows and five full-time student summer interns. In addition, the Center provides volunteer opportunities to undergraduate and graduate students who wish to deepen their understanding of race, inequality, and the law.

5.1.3 Supporting Student Affinity Groups

The Center works closely with student affinity groups, including the Black Allied Law Students Association (BALSA), the Prison Reform and Education Project (PREP), the All-ALSA Coalition (a coalition of race-based student associations), and the Coalition on Law & Representation (CoLR). The Center provides guidance and support on issues of race and inequality that fall within the scope of their organizational missions. In addition, the Center co-hosts events with student affinity groups. During 2017–2018, the Center collaborated with BALSAs to co-host a film screening of the 2017 documentary about author and civil rights advocate James Baldwin’s life and work entitled *I Am Not Your Negro*. After the screening, the Center facilitated a conversation on race in America with Lurie Daniel Favors ’05, General Counsel of the Center for Law and Social Justice at Medgar Evers College; Khary Lazarre-White, Executive Director and Co-Founder of The Brotherhood/Sister Sol; and Dr. Joshua Bennett, a critically acclaimed poet and scholar. This conversation examined the common themes addressed by Baldwin’s work—the constant, justifiable, and appropriate need to critique American racial politics—in the context of modern America’s hostile racial climate.

5.2. Faculty and Institutional Partnerships

5.2.1 Training of Lawyering Faculty: Teaching Race and Inequality

Conversations about race and difference in a classroom setting can be fraught with challenges. Anecdotes from several rising 2L students underscored the value of those conversations during the 1L year. Students are eager to talk about these concerns—especially because they correctly view race and inequality as informing the legal doctrine central to their law school education. Discussions with the NYU Lawyering Program faculty revealed their desire to have training and expertise to facilitate the type of healthy dialogue on race, identity, and difference sought by students. Toward that end, in the summer of 2017, the Center began an annual training with the Lawyering faculty to equip them with approaches and techniques to foster and manage these conversations in the classroom. The training focused on implicit bias, building an atmosphere of trust in the classroom, the use of silence and transparency to fa-



Theodore Shaw speaking at the 22nd Annual Derrick Bell Lecture. Photography by Sam Hollenshead

cilitate conversation, the infusion of race and inequality into lessons about legal principles and lawyering techniques, and how to teach those who are hostile to—or uninformed about—concerns of race and inequality. The Center has conducted two trainings and remains a resource for the Lawyering faculty throughout the year.

5.2.2 NYU Faculty and Institutional Partnerships

The Center works in collaboration with several institutions and centers throughout the Law School and has participated in events and provided presentations with NYU’s graduate and undergraduate community. During 2017–2018, the Center sponsored and co-hosted two events throughout the year that highlighted pivotal issues at the intersection of race and the law.

- ***The 22nd Annual Derrick Bell Lecture on Race in American Society: Race and Rights in a Time of Madness: What Would Derrick Do? (WWDD?)***

On November 1, 2017, the Center and the Office of Development and Alumni Relations presented the 22nd Annual Derrick Bell Lecture on Race in American Society, featuring Theodore Shaw, the Julius L. Chambers Distinguished Professor of Law and Director of the Center for Civil Rights at University of North Carolina School of Law at Chapel Hill. A portrait of Professor Bell, commissioned by the Center, was also unveiled at the post-lecture reception. That portrait now hangs in Vanderbilt Hall.

- ***The Science of Implicit Bias***

The Center sponsored an event with the Center for Diversity, Inclusion, and Belonging (CDIB) as part of CDIB’s 2017–2018 speaker series. The lecture featured renowned Harvard social psychologist Mahzarin Banaji, co-founder of the online Implicit Association Test and progenitor of implicit bias research. Banaji discussed the “blind spots” in our minds, the automatic associations and stereotypes of social groups, and the ways that implicit biases influence some of our most important decisions.

- ***Lecture to National BALSAs on Leadership***

In 2017, the Center provided a workshop on leadership to the National Black Allied Law Students Association (BALSAs). Over 75 people attended the workshop, which examined how law students can serve as leaders of student organizations, with an eye toward advancing progressive change.

- ***Participation in NYU Urban Research Day***

The Center’s Executive Director served as a panelist at the concluding session of NYU’s Urban Research Day, which featured short presentations from approximately 50 expert faculty members on their most recent urban research on topics such as health, transportation, sustainability, technology, infrastructure, and vulnerable populations. Southerland provided insights on the need to engage in urban research that focuses on race and inequality.

- *Participation in NYU's Scientist Action and Advocacy Network Event*
The Center's Executive Director served as a panelist for an event entitled Bridging the Gap: Neuroscience, Inequality, and Social Policy, which was hosted by an NYU-based network of scientists. Southerland discussed how social and economic inequality shaped brain development, as well as methods to confront racial bias and inequality through research on brain science.
- *Participation in the Latinx Rights Scholars Program*
The Center's Executive Director served as Co-Director of the Latinx Rights Scholars Program at NYU Law during the 2017–2018 academic year. In that capacity, and in partnership with the Public Interest Law Center at NYU Law, Southerland provided support and mentorship to five NYU Law students who were awarded scholarships through the program.

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