# CENTER ON RACE INEQUALITY THE LAV

# ANNUAL REVIEW 2018-2019





### THE CENTER ON RACE, INEQUALITY, AND THE LAW: 2018-2019 YEAR IN REVIEW

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October 2019

It is a pleasure to reach out to you two years into the life of the Center on Race, Inequality, and the Law. As I write, it is painfully clear that issues of race and inequality remain at the core of the nation's collective battle for its soul, and the Center has worked hard over the past two years to provide programs, host conversations, and to work to amplify often unheard voices on these critical topics.

I am pleased to invite you to examine our "Year in Review," the Center's annual report to the law school and our broader community. We have much to share. We have been proud of our reach during the first two years of the Center's operation. We have engaged and benefitted from the support of countless students, interns and volunteers from around the country. This has helped us deliver on our mission 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.

The Center's programming has continued to be a combination of inward-facing educational programming for the law school and broader community as well as externally-focused national efforts. Let me highlight a few examples from what has been a quite active year at the Center. We launched our Public Conversation Series this year with an in-depth analysis of the role of the media on issues of race, justice and inequality. We were fortunate to host a panel, *Media and the Movement*, that featured some of the most influential new voices in the national media: Jamelle Bouie, Jennifer Gonnerman, Josie Duffy Rice and Jake Sussman. The discussion examined the media's role in fostering and fighting racial discrimination in the criminal justice system and the role that media can play in exposing and addressing inequality.

We published our second book, "Raising the Bar," which grew out of a panel hosted by the Center featuring partners of color in leading law firms. The panel discussion was a no-holds-barred conversation about what it takes to make it in big law and offered advice to law students on how to navigate such environments. The book included those conversations and added concrete advice from Chief Diversity Officers in large law firms. What resulted is a primer that identifies what law firms, law schools, law partners and associates need to consider when thinking about diversity in the legal profession. It also offers insider advice to law students. The book has been well received since its publication. In our work on national issues of race and inequality, the Center's Executive Director, Vincent Southerland, has emerged as a significant national player in the burgeoning race and technology conversation. Vincent sits on a number of prominent committees and advisory groups nationwide. His leadership in the field has made him one of the most sought-after voices on this important issue.

But I have saved the best news for last. This year we were fortunate enough to have one of the national leaders in Clinical Legal Education join me as Co-Faculty Director of the Center. She is also the Director of the Civil Rights Clinic at NYU School of Law. Professor Deborah Archer has joined us from New York Law School. Professor Archer is currently a member of the Board of Directors and General Counsel to the Board of the American Civil Liberties Union. She is also the chair of the American Association of Law School's Section on Civil Rights and a former chair of the Section on Minority Groups. She previously worked as an attorney with the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund, Inc., where she litigated in the areas of voting rights, employment discrimination, and school desegregation. Deborah was recently recognized by the New York Law Journal as one of New York's Top Women in the Law. Most importantly for the Center, Deborah is a leader. She has come to NYU and immediately become a student favorite and has helped to bolster the Center's work in civil rights and inequality. We are fortunate to have her with us.

The Center continues to benefit from a devoted team of staff, fellows and volunteers as well as the support of both foundation and individual donors who have supported the work of the Center. We believe that the work of the Center will continue to aid in the educational and social justice mission of the Law School and the University. In addition, we will continue to advance our fundamental mission of advancing and educating around the issue of economic equality and racial justice.

We are excited about the work ahead. The coming year offers both opportunities and challenges. We will be engaging issues of race and inequality as they arise, particularly against the backdrop of the upcoming national elections. We look forward to seeing you and working in partnership with you to address these pressing issues.

Thank you for your continued support.

Sincerely,

Anthony C. Thompson



# 2. About the Center on Race, inequality and the Law

# 2.1. STAFF

Faculty Directors Professors Anthony C. Thompson and Deborah N. Archer

Executive Director Vincent M. Southerland

Administrator Danisha Edwards

Research Scholars Sarah L. Hamilton-Jiang and Steve Demarest

2018–2019 Law Student Fellows Teighlor Bonner ('19) Whitney Braunstein ('20) Ted Jack ('20) Jeffrey Kim ('21) Zachary T. Mason ('21) Clarence Okoh ('20)

2018–2019 Undergraduate Interns Gabrielle Buchanan ('20) Isha Mazumdar ('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, the vast majority of whom are people of color, than any other country in the world.

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 presentday 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 2018-2019

The Center's thematic priorities fall within the following areas:

- RACE AND NARRATIVE—through our public conversation series and events with local partners;
- RACE AND DISCRETION IN THE CRIMINAL LEGAL SYSTEM—with an emphasis on decision-making and technology;
- RACIAL SEGREGATION AND CIVIL RIGHTS; and
- RACE IN LEGAL EDUCATION.

# **3. Race and Narrative**

The Center's work in race and narratives focuses on hosting public events to generate discussions and shape the discourse on race in America. The Center hosts an annual public conversation series on a range of contemporary issues to explore the effects of racial narratives, inequality, and the law, and to provide strategic solutions to address current societal concerns. In 2018–2019, the Center held two public conversations featuring experts, thought leaders, advocates, and scholars. Both conversations have since been published digitally and are accessible on the Center's website. In addition, the Center published another book from our 2017 public conversation on race and the legal profession. Finally, the Center partnered with several organizations to co-host a series of events and convenings across sectors and disciplines throughout the year, enabling the Center to reach a wider audience.

# 3.1. THE PUBLIC CONVERSATION SERIES

# **3.1.1. Media and the Movement: Deconstructing** Journalism's Role in Race and Inequality

On October 2, 2018, the Center hosted *Media and the Movement: Deconstructing Journalism's Role in Race and Inequality.* The moderated conversation engaged nationally acclaimed journalists and advocates, including Jamelle Bouie, columnist for the *New York Times* and political analyst at CBS News; Jennifer Gonnerman, staff writer at the *New Yorker*; Josie Duffy Rice, senior strategist and senior reporter for the *Appeal* and host of the *Justice in America* podcast; Jake Sussman, managing director at the Justice Collaborative; and the Center's founding faculty director, Professor Anthony Thompson.

The participants examined the role of the media in either perpetuating or changing narratives of people of color and their interactions with the legal system. Specifically, the panelists discussed the media's role in fostering and combatting racial discrimination in the criminal legal system and the role that media can play in exposing and dismantling inequality.



Anthony Thompson



"I think to the point about alternative facts, part of what's hard is not getting too dogmatic to the point that you lose the fact that this stuff is complicated—that every defendant that you talk about has a very clean, nice story. There are a lot of defendants that don't have clean, nice stories, and are guilty. [Journalists must] still point out injustices when they happen to people that you might not like."

Josie Duffy Rice



"[T]here are incredible deficiencies, deeply racist policies, age-old rhetoric that has been disproven time and time again... Our frame should be on saying mass incarceration is real, there are ways to fix it, and there are people who are accountable—that's what we want the driving force of the journalism to focus on." Jake Sussman

"When it comes specifically to race, I don't think there's any way to cover racial inequality without grounding it in history. I don't think there's any way that you can communicate to readers the scope of the problem without walking them through in some way the history of the problem." Jamelle Bouie

"I follow dozens of public defenders on Twitter, every day they're basically reporters in the courthouse reporting what they're seeing, and stories that are never going to be told elsewhere...they're really holding, at least in New York City, prosecutors accountable... But it is one avenue in which social media can play a sort of important role." Jennifer Gonnerman



# 3.1.2. Perspectives on Abolition: Moving Past the Incarceration Paradigm

On April 16, 2019, the Center hosted a conversation on local efforts to drive criminal justice reform in New York State. In light of New York City's plan to close Rikers Island, the notorious detention complex that houses the vast majority of the city's detained population, conversations about how to effect that closure are fraught with competing ideas about the best path to achieve large-scale criminal justice reform. The conversation brought three legal advocates together to discuss the implications of current criminal justice reforms, including Deirdre von Dornum, attorney-in-charge at Federal Defenders of the Eastern District of New York; Nicole Triplett, policy counsel at the New York Civil Liberties Union; Kumar Rao, senior counsel at the Center for Popular Democracy; and the Center on Race, Inequality, and the Law's Executive Director, Vincent Southerland. The panelists discussed ways to overcome the challenges that come with re-entrenching detention-centric models of justice through reform, and the importance of strengthening communities to move past the incarceration paradigm.

"Right now in our country, prisons and jails are the primary vehicle for how we as a society are dealing with or addressing mental health in many communities and many places around this country... I think when we talk about abolition, really we need to define what the target is and also in that same conversation, begin to imagine and be real about the kind of society that we want to live in and one that doesn't need to rely on policing and prisons." *Kumar Rao* 

"We're going to have to face that question of why we're still relying on this system. It's going to force us to deal with 'what's public safety?'... I do think that's racism, I think that's empty fears, I think that's this empty concept of the way we have defined public safety, and I think it's the broad discretion we've given certain stakeholders to be able to operate on these ills." Nicole Triplett

"I'm still very motivated by the same thing that motivated me then, which is to give dignity to people who have been treated without dignity and to let people know they're being heard and respected and that someone is going to stand up for them." Deirdre von Dornum



# 3.1.3. Published Conversations: Raising the Bar: Diversifying Big Law

Following the success of the Center's first published book, A Perilous Path: Talking Race, Inequality, and the Law, the Center was pleased to publish a second book through the New Press. Released in August 2019, this publication, Raising the Bar: Diversifying Big Law, memorializes the Center's October 2017 public conversation between four law firm partners of color. The book features the honest reflections of Debo Adegbile, partner at WilmerHale; Lisa Davis, partner at Frankfurt Kurnit Klein & Selz; Damaris Hernández, partner at Cravath, Swaine & Moore; and Theodore Wells, partner at Paul, Weiss, Rifkind, Wharton & Garrison, about what it takes to make it in big law, using their own journeys to discuss how law firms can do a better job of attracting and holding onto a more diverse set of young attorneys. The book includes an introduction by Professor Thompson and concrete advice in the form of a playbook for law schools and law firms from diversity coordinators at several top law firms.

# 3.2. CO-SPONSORED EVENTS

The Center co-sponsored a wide range of events, and our staff and faculty co-directors were featured on a number of panels to share our expertise on broader issues of race, inequality, and the law.

# 3.2.1.

# From Anita Hill to Christine Blasey Ford: Looking Back and Looking Forward

On October 3, 2018, the Center, with NYU Law's Birnbaum Women's Leadership Network and NYU Law's Center for Diversity, Inclusion, and Belonging, co-sponsored From Anita Hill to Christine Blasey Ford: Looking Back and Looking Forward. The event occurred at the height of the hearings for then-US Supreme Court nominee Brett Kavanaugh, and Dr. Christine Blasey Ford's testimony in opposition to his nomination. The discussion featured NYU Law Professor Melissa Murray, who testified before the Senate Judiciary Committee in opposition to Justice Kavanaugh's confirmation, and Professor Kim Taylor-Thompson, who was a member of Anita Hill's legal team during Supreme Court Justice Clarence Thomas' confirmation hearing in 1991. Professors Murray and Taylor-Thompson shared their personal experiences in these confirmation proceedings and provided students and faculty with their reflections on the differences and similarities between the experiences of Anita Hill and Christine Blasey Ford, who testified at confirmation hearings 27 years apart before the Senate Judiciary Committee. Both professors noted the unwarranted challenges leveled at the credibility of both women, and the differential treatment of Anita Hill, as a woman of color. Finally, the professors discussed the implications of the hearings for the institutional standing of the Supreme Court.



"Race was in play here... And so [Anita Hill's] ability to not fit a stereotype and to be seen as somebody who was stoic, that was used against her. Imagine if she had been emotional or shown some level of vulnerability, then she would have been attacked for that." Kim Taylor-Thompson

"We have an administration that has gone about completely undermining and delegitimizing every institution that would serve as a bulwark against excessive state power, whether it's the media or opposition groups, and now the Court." Melissa Murray

# 3.2.2. Film Screening: We are Witnesses: Stories from the American Criminal Legal System

On October 3, 2018, the Center co-sponsored a film screening and discussion with NYU Law's Center for Human Rights and Global Justice, along with nonprofit news organization, The Marshall Project. *We are Witnesses* featured the intimate firstperson testimonies of individuals directly impacted by the American criminal legal system. The film was introduced by Neil Barsky, founder and chairman of The Marshall Project, and featured a panel discussion and an audience Q & A. The panelists included two featured witnesses: Francis Greenburger, father of an incarcerated son, and Eduardo Padró, retired New York Supreme Court judge. They were joined by Amanda

David, a federal public defender with the Eastern District office of the Federal Defenders of New York, and the Center's Executive Director, Vincent Southerland.

# 3.2.3. Film Screening: *Monsters and Men*

On November 5, 2018, the Center co-sponsored a film screening with NYU's McSilver Institute for Poverty Policy and Research, the New York City Civilian Complaint Review Board (CCRB), and NYU's Strategies to Reduce Inequality (SRI) initiative. Monsters and Men relayed the story of three individuals in the aftermath of a police shooting of an unarmed Black man. A panel discussion on the challenges of race, justice, and policing followed the film screening, featuring the film's director, Reinaldo Marcus Green; Dr. Michael A. Lindsey, Executive Director of the McSilver Institute; Jerika Richardson, senior advisor and secretary to the Board at the NYC



L-R: Dr. Michael A. Lindsey, Jerika Richardson, Vincent Southerland, and Harry Siegel.

Civilian Complaint Review Board; Harry Siegel, Senior Editor at the *Daily Beast*, columnist at the *New York Daily News*, and co-host of FAQ NYC; and the Center's Executive Director, Vincent Southerland. The panelists discussed the issues raised in the film and engaged in an audience Q & A that touched on New York City's Right to Know law involving police identifications in certain interactions; the revelation that there are no longer enough local reporters on the ground to pay attention to criminal justice; and a discussion of implicit bias training and its limits. "We need to bond together as a community. We have to make films, make art, talk about it. We have to fight back against it. And we have to engage the other side. It's the only way for us to move forward. I think we have to find ways to find common ground." <u>Reinaldo Marcus Green</u>

"Everyone plays a role, everyone in this community...Whether you're in law enforcement, a journalist, an advocate, or an everyday person. We all have a responsibility to put pressure on the system, to continue to bring reform to the system, and also to bring about a culture change." Jerika Richardson

# 3.2.4.

The 23rd Annual Derrick Bell Lecture on Race in American Society: The Tragedies of Emmett Till and Trayvon Martin: Illustrating Professor Derrick Bell's Lesson on How 'Racial Patterns Adapt in Ways That Maintain White Dominance'



The Center co-sponsored the annual Derrick Bell Lecture on Race in American Society, in partnership with NYU Law's Office of Development and Alumni Relations, on November 8, 2018. The 2018 lecture featured Angela Onwuachi-Willig, dean and professor of Law at Boston University School of Law. Onwuachi-Willig's lecture, titled "The Tragedies of Emmett Till and Trayvon Martin: Illustrating Professor Derrick Bell's Lesson on How 'Racial Patterns Adapt in Ways That Maintain White Dominance," illustrated Professor Derrick Bell's lesson on how "Racial Patterns Adapt in Ways That Maintain White Dominance'." Comparing the two racial tragedies, Dean Onwuachi-Willig detailed the importance of heeding Professor Bell's lessonon how racism adapts to perpetuate inequality and white supremacy. "Much like Professor Bell might have explained to us, the killing of Trayvon Martin and other police and quasi-police killings that have occurred in recent years are in many ways adaptive forms of racism that previously took the form of lynchings, like the killing of Emmett Till." Angela Onwuachi-Willig

# 3.2.5. The Black Experience in America

Curated by NYU's Liberal Studies department, the Center joined several partners to co-sponsor a university-wide celebration of Black History Month. The first of its kind, The Black Experience in America was a four-part series established to engage NYU and its surrounding communities in dialogues centering on how Black people navigate and make sense of their daily lives in the United States. The gatherings hosted authors, scholars, activists, and artists to discuss their work in unfolding and understanding the complexities of identity in the age of globalization. The center's founding faculty director, Professor Anthony Thompson, was featured as a panelist in the third event of the series, titled Social Justice and the Criminal Justice System. Together with Professors Fareed Hayat, Carla Shedd, and Rolanda West Spencer, Thompson discussed solutions on re-entry in the age of mass incarceration.

The Center was proud to co-sponsor the series together with NYU institutions that included the Arthur L. Carter Journalism Institute; Black Student Union NYU; Center for Multicultural Education and Programs; Center for the Study of Africa and the African Diaspora; Department of Spanish and Portuguese Languages and Literatures; Latinx Project; Liberal Studies Diversity, Equity, and Inclusion Committee; Liberal Studies Diversity, Equity, and Inclusion Student Advisory Board; and Starbucks.



# 3.2.6. Speak Up, Speak Out: A Youth Summit on Policing in New York City

On February 26, 2019, the Center co-sponsored the first-ever citywide Speak Up, Speak Out, A Youth Summit on Policing in New York City, in conjunction with the NYC Civilian Complaint Review Board (CCRB), and the McSilver Institute for Poverty Policy and Research at NYU. During the summit, more than 200 young New Yorkers between the ages of 10 and 24 shared their experiences with policing, identified problems in their communities, and recommended solutions to public safety and police oversight to practitioners and academics. Center staff also facilitated breakout sessions for youth, providing them with an opportunity to discuss the challenges as well as potential solutions to policing in New York City. Professor Anthony Thompson led a session on re-entry, and Vincent Southerland led a session on the challenges of the criminal legal system. The findings from the summit will inform a forthcoming report on youth and policing in New York City, authored by the CCRB.



Panelists and audience at A Youth Summit on Policing in New York City.

# 3.2.7. The Criminalization of Poverty

On March 14, 2019, the Center co-sponsored *The Criminalization of Poverty*, hosted by NYU's McSilver Institute for Poverty Policy and Research and NYU's Strategies to Reduce Inequality Initiative, hosted by the NYU McSilver Institute. The event featured a discussion between Professor Peter B. Edelman, faculty director of the Center on Poverty and Inequality at Georgetown Law, and Jennifer Jones Austin, CEO and executive director of the Federation of Protestant Welfare Agencies (FPWA). The conversation centered on how the criminal legal system disproportionately impacts low-income communities, highlighting the issues discussed in Professor Edelman's new book, *Not a Crime To Be Poor: The Criminalization of Poverty in America*.



# 3.2.8. The Role of Allies: Getting Beyond "Some of My Best Friends Are..."

On March 26, 2019, the Center co-sponsored an event for the NYU School of Law community on allyship. In collaboration with the Birnbaum Women's Leadership Network and the Center for Diversity, Inclusion, and Belonging, the event featured four panelists discussing the role of allyship in the Law School and in the legal profession. Panelists included David Glasgow, Executive Director of the Center for Diversity, Inclusion, and Belonging; Lindsay Kendrick, Assistant Dean for Diversity and Inclusion; the Center's Research Scholar, Sarah Hamilton-Jiang; and its Executive Director, Vincent Southerland. The event generated thought-provoking discussions and panelists provided tools and strategies for effective allyship in the workplace.

# 3.2.9. Inaugural Kenneth P. Thompson Lecture on Race and Criminal Justice Reform

The Center was pleased to honor the legacy of the late Kenneth P. Thompson by co-sponsoring, with NYU Law's Center on the Administration of Criminal Law, the inaugural lecture in his name. Thompson, Brooklyn's first Black district attorney, was instrumental in reexamining past cases and exonerating the wrongfully convicted. As such, the inaugural lecture featured a panel to discuss wrongful convictions. The panelists included Patricia Cummings, supervisor of the Conviction Integrity and Special Investigations Unit for the Office of the District Attorney in Philadelphia; Derrick Hamilton, a paralegal who was exonerated by the Brooklyn DA's Conviction Review Unit in 2015 of a wrongful murder conviction; Nina Morrison, senior staff attorney at the Innocence Project; and Professor Rachel Barkow, vice dean and Segal Family Professor of Regulatory Law and Policy.

"Ken Thompson led with a mandate—changing the way things are handled in Brooklyn... The key is to have somebody that's fair, somebody that is able to be fair to the courts and fair to the accused, and more than anything, someone who believes in transparency." Derrick Hamilton "There's this inherent tension between retrospective review of wrongful convictions and a system trying to acknowledge and own up to its own mistakes. But of the 20 or so people that I've represented so far, I think there's probably a third of them that would still be in prison today if not for one or more prosecutors...not just doing what they are supposed to do, or obligated to do, but going above and beyond."

Nina Morrison

# **3.2.10.** Race and Intellectual Property Conference

On April 5-6, 2019, the Center co-sponsored Race + IP: Exclusions, Engagements, Empowerment, the second biennial Race + IP conference hosted by NYU's Anthropology department. The multi-disciplinary conference explored how intellectual property reflects and reinforces inequalities along the lines of race, gender, sexual orientation, class, and disability. Drawing upon critical race theory and critical legal theory, the conference focused on integral questions about the hidden racialized categories that inform law, legal decision-making, and policymaking within the context of intellectual property law. The conference featured five plenary sessions, concurrent sessions with nationally renowned scholars across disciplines conducting multi-methodological research, and roundtable discussions on special topics related to race and intellectual property.

# 3.2.11. Captivating Technology Launch

On August 9, 2019, the Center co-sponsored a book launch and panel discussion in partnership with the NYU Program on Critical Race and Digital Studies; NYU School of Anthropology; Data & Society Research Institute; and the AI Now Institute. The book, titled *Captivating Technology: Race, Carceral Technoscience, and Liberation Imagination in Everyday Life*, features a selection of essays edited by Professor Ruha Benjamin, associate professor of African American Studies at Princeton University. The collection examines how carceral technologies are being deployed to classify and coerce specific populations, and whether these innovations can be resisted and reimagined for more liberatory ends.

### RUHA BENJAMIN EDITOR

# CAPTIVATING TECHNOLOGY

RACE, CARCERAL TECHNOSCIENCE, AND LIBERATORY IMAGINATION IN EVERYDAY LIFE



The Center's portfolio in race and discretion in the criminal legal system includes our work in parole and at the intersection of race and technology. In addition, the Center provides training and public education and engages in advocacy initiatives that contribute to the elimination of racial disparities in the criminal legal system.

# 4.1. PAROLE

The Center continues to work in the area of parole, developing a robust strategy to address the racial disparities in parole and the practices for administering fair parole hearings in New York State. In 2018–2019, the Center expanded its staff to advance its reform efforts and continued to work in coalition with local partners, including the Release Aging People in Prison Campaign and the Parole Preparation Project. While the Center applauded the New York state legislature for several criminal justice reforms that were signed into law, substantive reforms to the parole hearing process are still very much needed. Therefore, throughout the year, the Center worked with partners to support advocacy initiatives to push for parole reform. In addition, the Center engaged in the following projects:

- *Individual Parole Preparation*—The Center prepared an individual for a parole hearing before the parole board.
- *Testimony on Parole*—The Center provided written testimony to the New York Senate Democrats at a public hearing in November 2018. The Center's testimony discussed the challenges and unfairness of the current parole hearing process, as well as the opportunities for reform.
- Strengthening Partnerships and Crafting a Reform Agenda—The Center convened various executive branch officials, parole advocates, and funders concerned with the role of parole in reducing mass incarceration. The Center will move reform efforts forward in the coming year, collecting and analyzing data on the racial disparities in parole, and embarking on efforts to secure parole justice in partnership with a range of advocates.

# 4.2. 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.

# 4.2.1. Annual Symposium on Race and Ethnicity for Defense Lawyers

The Center once again co-hosted the 2018 Annual Symposium on Race and Ethnicity for Defense Lawyers for nearly 100 federal and state public defenders. The symposium invited insights on race and ethnicity from various disciplines and, through small group discussion, considered the application of those insights to criminal defense practice, litigation, and advocacy on behalf of clients. Panelists discussed implicit bias, talking about race, the importance of diverse defense teams, biased policing and sentencing, the intersection of intellectual disability and race, mental illness and race, microaggressions, other empirical studies of racial disparity, and sentencing advocacy. The Center was pleased to work with the following co-sponsors: the Administrative Office of the US Courts, Defender Services Office Training Division, the Federal Public and Community Defenders, the Federal Capital Trial and Post-Conviction Resource Projects, the NAACP Legal Defense and Educational Fund, and the Cornell Death Penalty Project at Cornell Law School.



# 4.2.2. Office of the Appellate Defender: Preservation Training

In February 2019, the Center hosted the Office of the Appellate Defender's (OAD) Preservation Training for Trial Lawyers. The training was led by OAD attorneys and focused on how trial lawyers can preserve errors to maximize full and complete appellate review, with an eye toward race-related concerns in the appellate process.

# 4.2.3. Dignity, Racial Justice, and Prosecution

The Center's Executive Director, Vincent Southerland, is participating in a joint initiative launched by the Vera Institute of Justice's Reshaping Prosecution Program and John Jay College's Institute for Innovative Prosecution and focused on developing a framework to guide prosecutors in ensuring that their work is informed by an unwavering commitment to racial equity, respect for the dignity of those entangled with the criminal legal system, and efforts to ensure thriving, healthy communities.

# 4.3. PUBLICATIONS

# 4.3.1.

# Report: What Does Fairness Look Like? Conversations on Race, Risk Assessment Tools, and Pretrial Justice (October 2018)

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. In October 2018, together with the ACLU, the Center released a report detailing the proceedings and findings from the convening. The report, titled *What Does Fairness Look Like? Conversations on Race, Risk Assessment Tools, and Pretrial Justice*, highlighted themes and concerns raised by practitioners and scholars across disciplines. Those themes included reducing the use of pretrial incarceration, eliminating racial disparities in pretrial detention, independent community oversight of the design and implementation of risk assessment tools, and the urgent need for transparency in the use of such tools.

# 4.3.2. Report: Litigating Algorithms (September 2018)

In June 2018, the Center worked in partnership with the AI Now Institute and the Electronic Frontier Foundation to convene the first *Litigating Algorithms* workshop. The report from the workshop contained a detailed analysis of the convening and was released in September 2018. The report captured the discussions of legal, scientific, and technical advocates focused on litigating algorithmic decision-making across various areas of the law, such as employment, education, public benefits, and criminal justice. The report focused on five areas of government where algorithmic decision-making is already prevalent: Medicaid and Government Benefits, Public Teacher Employment Evaluations, The Role of Social Science and Technical Experts, Criminal Risk Assessment, and Criminal DNA Analysis.

The report also included many takeaways from the convening, including focusing on how the needs of marginalized individuals and communities can be better incorporated into the design of algorithms, and how to elevate the voices of these communities within discussions of algorithmic technology. The report's takeaways highlighted the many unanswered questions remaining in this area and the importance of continued advocacy.

A second *Litigating Algorithms* workshop was held in June 2019 to continue these critical discussions. A report detailing the findings of the second workshop is forthcoming.



# 4.4. SUPPORTING ADVOCACY INITIATIVES ON RACE, DISCRETION, CRIMINAL JUSTICE, AND TECHNOLOGY

The Center participates in several coalitions seeking to mitigate the harm of risk assessment tools in the criminal legal system. Further, the Center has participated in a host of public-facing events to engage in public education, advocacy, and research on race, technology, and criminal justice.

# 4.4.1. Policy Advocacy and Public Comments

- Comments to Pennsylvania Sentencing Commission— Following written objections by the Center and AI Now to a plan by the Pennsylvania Sentencing Commission to implement a risk assessment tool at sentencing,<sup>1</sup> the Center provided testimony in November 2018 to challenge the implementation of such tools. The commission delayed its vote to reassess its decision in light of overwhelming opposition by Pennsylvania-based advocates and a collection of national partners.<sup>2</sup> When the Commission revisited this issue in August 2019, the Center, once again in partnership with AI Now, submitted comments opposing the use of a sentencing risk assessment tool and suggesting reforms to address the bias-related challenges presented by the tools.
- Bail Reform in California—Together with a number of partners,<sup>3</sup> in December 2018, the Center provided comments to the Judicial Council of California regarding the implementation of the proposed introduction of rules relating to the mandatory use of risk assessments in bail reform. The comments provided critical reflections on the deficiencies and lack of safeguards in California's bail reform legislation.

- *Bail Reform in Illinois*—Led by the Leadership Conference on Civil and Human Rights and a coalition of civil rights organizations, the Center submitted public comments to the Illinois Supreme Court Commission on Pretrial Practices. The comments urged the commission to consider the elimination of cash bail while encouraging the commission to recognize the potential dangers of risk assessment instruments.
- Principles on Risk Assessments—Following the completion of The Use of Pretrial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns led by the Leadership Conference on Civil and Human Rights in early 2018, the Center has continued to play a fundamental role in crafting a vision for pretrial justice, providing support and guidance to national organizations immersed in pretrial reform and weighing the use of risk assessment instruments.
- Comments to US Office of Personnel Management re Declaration for Federal Employment—The Center submitted a comment letter opposing the US Office of Personnel Management's proposed changes to the Declaration for Federal Employment Optional Form 306. The proposed changes sought to expand the criminal disclosure requirements for those applying for federal employment, to include individuals without criminal convictions. The Center strongly condemned this revision given the detrimental impact that it would have on individuals, particularly individuals of color.

"A criminal conviction has significant consequences for individuals navigating the many barriers to reentry. Meaningful employment is fundamental to successful reentry, by enabling individuals to support themselves and their families, while escaping the traps of poverty and recidivism... Reentry efforts should be focused upon supporting individuals, not creating punitive restrictions designed to thwart their success." —Center Comments to the US Office of Personnel Management



- *Membership on New York City and Philadelphia Research Advisory Councils*: 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 they redesign their release assessment instrument. In addition, Southerland is providing guidance to the Philadelphia Research Advisory Council on Risk Assessments as the city weighs whether to design and implement a pretrial risk assessment instrument as a path to improve the city's pretrial justice system and reduce racial disparities in pretrial outcomes.
- *Membership on the New York City Automated Decision Systems Task Force*: Vincent Southerland is a member of a New York City task force aimed at developing a process for reviewing automated decision systems in New York City 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 rooting out and remedying potential bias in automated decision systems.
- *Membership on the MacArthur Foundation Pretrial Risk Management Project*: Vincent 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.
- *Strategic Guidance to Institutions on the use of AI tools*: Vincent Southerland provided strategic guidance and support to various institutions on the use of automated tools and the role of racial bias.



# 4.5. PUBLIC EDUCATION

# 4.5.1

# Presentations by Vincent Southerland on Risk Assessment and Criminal Justice

- Panelist at The Atlantic Festival Race + Justice Summit—*The Role of Data in Criminal Justice*
- Moderator at the AI Now Institute 2018 Symposium—*Austerity, Inequality, and Automation*
- Panelist at McGill School of Law, Canada, McGill AI & Law—Discrimination, AI & the Criminal Justice System
- Moderator at Robert L. Bernstein Institute for Human Rights at NYU School of Law annual conference—Democratizing Data: Grassroots Strategies to Advance Human Rights, discussing Artificial Intelligence and Affected Communities
- With Faculty Director and Professor Deborah Archer, panelist at the 4th National People of Color Legal Scholarship Conference 2019: People of Color and the Future of Democracy—*The Widening Reach of the Criminal Justice System and the Impact on Communities of Color*

# 4.5.2. In the Media

- Podcasts—Vincent Southerland appeared on "Building a New America" to discuss race and technology, while Faculty Director Anthony Thompson appeared on *Black and Highly Dangerous* to discuss criminal justice reform.
- Articles on the legalization of marijuana—Vincent Southerland co-authored an op-ed in the *New York Times* and was quoted on NBC News and in articles, *New York Daily News, Quartz, Vox,* and *AP News.*
- Articles on race, criminal justice, and technology— Vincent Southerland was quoted in articles in *The Atlantic, Nature, International Journal of Science, ProPublica,* and The Marshall Project on race, criminal justice, and technology.

"As white people exploit the changing tide on marijuana, the racism that drove its prohibition is ignored... So are the consequences for Black communities, where the war on drugs is most heavily waged."

*Vincent Southerland in "Boehner Benefits From Weed. Blacks Are in Prison for Using It"* 

# 5.1. AMICUS SUBMISSIONS ON RACE

# 5.1.1. Department of Commerce v. New York

Together with NYU Law's Civil Rights Clinic, the Center co-authored and filed an amicus brief on behalf of the KIPP Foundation, Advocates for Children of New York, the New Jersey Institute for Social Justice, and UnidosUS to the United States Supreme Court in Department of Commerce v. New York. The case involved the highly publicized decision by the Trump administration to include a citizenship question in the 2020 census. The brief argued that the inclusion of a citizenship question would result in an undercount of predominately immigrant communities of color, which would in turn lead to misallocations of funds for education and related resources, particularly for children and students from those communities. Finally, the citizenship question sends a damaging message that immigrants are unworthy of full membership in American society, increasing anxiety and fear among immigrant populations.

"The citizenship question will silence and disenfranchise immigrant communities of color in a way that is antithetical to our ideals of representative democracy. This Court has repeatedly found it necessary to right wrongs that gave moral and legal authority to dangerous and painful stereotypes against populations of Americans pushed to society's margins. This case presents an opportunity to prevent outright the same species of stigmatic injury. It is an opportunity that the Court should seize." —Department of Commerce v. New York, at 5, Brief for the Kipp Foundation, Advocates for Children of New York, New Jersey Institute for Social Justice, UnidosUS, Center on Race, Inequality, and the Law as Amici Curiae Supporting Respondents.

# 5.1.2.

# Food Marketing Institute (FMI) v. Argus Leader Media

The Center joined several civil rights and technology organizations in serving as a signatory to an amicus brief in FMI v. Argus Leader Media, filed in the United States Supreme Court by the Civil Liberties and Transparency Clinic at the University at Buffalo School of Law. The Freedom of Information Act (FOIA)-focused case involved a dispute over whether companies engaged in business with the federal government can decide upon what information is confidential, or whether they must prove that releasing it would result in substantial competitive harm. The brief implored the court to adhere to the "competitive harm" standard and provide as much disclosure as possible. The brief described the importance of how the government uses artificial intelligence and decision-making algorithms, using examples of risk assessment tools in criminal sentencing, to emphasize the importance of full disclosure in technology.

"This degree of secrecy could pave the way toward an era of automated governmental decision-making that is largely inscrutable and unaccountable: errors will go unfixed, bias undetected, and individuals will be unable to understand or challenge the processes to which they are subject."—FMI v. Argus Leader Media, at 22; brief for AI Now Institute, American Civil Liberties Union, Electronic Frontier Foundation, Center On Race, Inequality, and The Law, And Knight First Amendment Institute As Amici Curiae



# 5.1.3. State v. Bennett and State v. Hobbs

Filed by the Center for Death Penalty Litigation, the Center joined a coalition of civil rights and criminal justice organizations as signatory to an amicus brief to the Supreme Court of North Carolina in *State v. Bennett* and *State v. Hobbs.* The cases involved racial discrimination in jury selection. The brief urged the court to adhere to *Batson v. Kentucky*, a 1986 United States Supreme Court case that established a legal framework to address claims of racial discrimination in the exercise of challenges by litigants to remove potential jurors from jury service. The brief also implored the court to look beyond *Batson* to address other forms of racial discrimination, such as implicit bias, in jury selection.

"Over the past thirty years, North Carolina courts have fallen woefully short of ensuring that jury selection is untainted by racial or ethnic bias. The Court, through decisive action, can put an end to this indefensible record." —State v. Bennett and State v. Hobbs, at 3; brief of Amici Curiae Coalition of State and National Criminal Justice and Civil Rights Advocates

# 5.1.4. Singleton v. Cannizzaro

The Center served as a signatory to an amicus brief filed in the 5th Circuit 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 US 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.

"Because prosecutors rarely face accountability for misconduct, extending absolute immunity when supported neither by history nor by precedent would only further insulate egregious bad acts from liability—to the detriment of the rule of law."—Singleton v. Cannizzaro, at 7; brief of Amici Curiae for the DKT Liberty Project, the Center on the Administration of Criminal Law, the Center on Race, Inequality, and the Law, the Cato Institute, former prosecutors, former public defenders, and legal academics

# 5.2. COMMENTS FURTHERING ADVOCACY INITIATIVES

- Comments to the New York Joint State Committee on Transportation: In partnership with NYU Law's Civil Rights Clinic, the Center submitted comments to the New York Joint State Committee on Transportation. The comments related to highway I-81 in Syracuse, New York. Constructed in the 1950s, the I-81 highway decimated the communities of Syracuse, displacing the city's Black population and resulting in widespread racial inequality. The highway has since fallen into disrepair and the New York Joint State Committee on Transportation is in the process of deciding how to replace the highway. The comments submitted by the Center and the clinic urged the committee to replace the highway with a community grid system and to provide all community members with robust opportunities to engage with the infrastructure development process, including those whose voices were marginalized and ignored when the highway was initially constructed.
- Comments to the Office of the Secretary of Housing and Urban Development: The Center submitted comments to the Office of the Secretary of Housing and Urban Development (HUD) regarding a proposed federal rule that would no longer grant financial assistance to persons other than United States citizens or certain categories of specified eligible noncitizens in HUD's public and specified assisted housing programs. The amendment includes the denial of public assistance to mixed-status families, and a requirement for United States citizens to provide proof of citizenship in order to obtain assistance. The Center's comment argued that the rule would cause significant harm to already marginalized groups, including children and low-income communities of color, violating their human right to housing and exacerbating racial discrimination and segregation.



# 6.1. NYU LAW JD ORIENTATION

The Center continued to play a prominent role during orientation for incoming 1L students. In 2018, Professor Anthony Thompson, Dean Trevor Morrison, and Vincent Southerland engaged in conversation, discussing the importance of engaging in legal analysis through the lens of race and inequality. "Our responsibility as lawyers and as leaders is to get together people of different perspectives and to understand each side of the debate." Anthony Thompson



# 6.2.

# LATHAM & WATKINS FORUM: DANGEROUS LEADERS: HOW & WHY LAWYERS MUST BE TAUGHT TO LEAD

On October 31, 2019, the Center participated in the Latham & Watkins Forum held at NYU School of Law. The forum centered on themes espoused in a new book by the Center's founding faculty director, Professor Anthony Thompson. In his book *Dangerous Leaders: How & Why Lawyers Must Be Taught to Lead*, Thompson explores the importance of training lawyers to serve as leaders and provides law schools, law students, and the legal profession with tools and models to build leadership acumen. Thompson was joined by panelists Professor Kim Taylor-Thompson and Nicholas Turner, president and director of the Vera Institute of Justice and former managing director of the Rockefeller Foundation.

"While all law schools pay lip service to their commitment to preparing law students to become the next generation of leaders...the disturbing reality is that law schools more often than not fail even to offer courses on leadership or to surface leadership concepts and dilemmas in the standard curriculum." Anthony Thompson

# 6.3. STUDENT OPPORTUNITIES

The Center continued to engage students at NYU School of Law through a student fellows program, a summer internship program, volunteers, and directed research opportunities. In 2018–2019, the Center hosted four student fellows, two full-time student summer interns, and a number of volunteers. Volunteer opportunities and support positions are available for undergraduate and graduate students who wish to deepen their understanding of the intersection of race, inequality, and the law. In 2019–2020, the Center will launch a student reading group open to all NYU Law students to continue to provide students with an opportunity to engage with the work of the Center.

# 6.4. CUNY LAW WORKSHOP ON NAVIGATING RACIAL OPPRESSION

The Center's Executive Director, Vincent Southerland, facilitated a workshop for law students at CUNY School of Law. The interactive workshop on Navigating Racial Oppression allowed students to analyze the historical origins of racial identity, the underpinnings of institutional racism, and the ways in which race and inequality shape the law and outcomes for individuals. The workshop also examined the opportunities, challenges, and potential strategies associated with advancing racial justice, with a particular emphasis on concerns related to mass incarceration and the criminal legal system.

# 6.5. LAW SCHOOL CENTER NETWORK ON RACE

The Center has established a cooperative national network of leading law school centers working at the intersection of race and the law. This network will be a resource to law school centers as they work in their various institutions to advance racial justice and equity in the law nationwide. The first convening of more than 15 law school centers will be held at NYU Law in October 2019.

# 6.6. NYU INSTITUTIONAL PARTNERSHIPS

The Center continued to work closely with the law school's student affinity groups, faculty, and staff to provide training, guidance, and thought partnership on issues of race and inequality. Toward that end, the Center continued its annual training with the Lawyering faculty to equip them with approaches and techniques to manage conversations about race and difference in the classroom. In addition, the Center's Executive Director served as an interim co-director of the Latinx Rights Scholars Program at NYU Law during the 2018–2019 academic year. In that capacity, and in partnership with the Public Interest Law Center at NYU Law, Southerland provided support and mentorship to six NYU Law students who were awarded scholarships through the program. Finally, as detailed throughout this report, the Center worked in partnership with entities at the law school, such as the Birnbaum Women's Leadership Network and the Center for Diversity, Inclusion, and Belonging, and the university, such as the AI Now Institute and the McSilver Institute for Poverty, Policy and Research, to host events, engage in advocacy, and confront the harms raised by the intersection of race, inequality, and the law.

# **ENDNOTES**

<sup>1</sup> https://slate.com/technology/2018/07/pennsylvania-commission-on-sentencing-is-trying-to-make-its-algo-rithm-transparent.html

2 http://www2.philly.com/news/risk-assessment-sentencing-pennsylvania--20181212.html

<sup>3</sup> The Leadership Conference on Civil and Human Rights, The Leadership Conference Education Fund, Upturn, The Color Of Change, Media Mobilizing Project, and the AI Now Institute.

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