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## Creating Dr. King's 'Beloved Community'

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2021]

## 2021 Martin Luther King Jr. Keynote Lecture

CELEBRATING THE LEGACY OF  
DR. MARTIN LUTHER KING JR., KEYNOTE LECTURE,  
*CREATING DR. KING'S 'BELOVED COMMUNITY'*\*

PRESENTED BY: DEBORAH N. ARCHER\*\*

PROFESSOR GILAT BACHAR, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Okay, so hello everyone. I'd like to welcome all of you to the Villanova University Charles Widger School of Law, Martin Luther King lecture. For almost twenty years, Villanova Law School has honored and celebrated the life and legacy of Dr. King with a lecture series featuring a host of exceptional speakers whose work really addresses the theme of Dr. King's heritage.

So with issues of racial injustice now receiving renewed attention this past year, we were excited to be able to honor this long-standing tradition through this new virtual format and despite the unprecedented challenges that our country and all of us have been facing. Throughout this time honored tradition, our annual lecture has been graciously sponsored by Pepper Hamilton—now Troutman Pepper—and we are incredibly grateful for their continued support, so it is now my pleasure to welcome Kassem Lucas, a partner at Pepper, to offer a few words on behalf of the firm.

KASSEM LUCAS, TROUTMAN PEPPER HAMILTON SANDERS LLP: Thank you very much. I appreciate it, and once again I'm very happy to be here—I guess, virtually here—for the annual lecture. For those who've been to prior lectures, you know, Pepper—now Troutman—has had this relationship with Villanova Law School since 2006. It started as an effort to increase diversity and inclusion both in general in the legal profession, but also at the law school. And in that we've been engaged in many different capacities, one of which is the lecture that's here today we've sponsored. But in addition, we have two scholarships named after—formerly Pepper—named after Troutman Pepper to diverse students every year at Villanova, which we're proud of, and we also have a summer internship for diverse Villanova students every year. In the Philadelphia office, we're

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\* The 2021 Martin Luther King Jr. Keynote Lecture took place virtually on February 17, 2021 at Villanova University Charles Widger School of Law. This transcript has been edited and excerpted.

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proud to continue that and proud to say we actually have lawyers now working at Pepper that were part of that program so, you know, we think of this as a pipeline program for us, but also a way to bring issues of diversity and inclusion in the legal profession to you all and beyond, and we're very thankful to continue to be able to address you here and to sponsor this program. For those who don't know, I mean, I know this is one of the better diversity and inclusion initiatives hitting straight hard at the issue of increasing the pipeline. And in fact, we're winners, because of this program we've been winners of the George B. Vashon Innovator Award presented by the Minority Corporate Counsel Association. So we're very proud of that, very proud of all you do at Villanova, and happy to sponsor the lecture today. So thank you very much, and looking forward to the speech today.

PROFESSOR BACHAR: Thank you so much, Mr. Lucas. And so next it's my honor to introduce Mark Alexander, the Arthur J. Kania Dean and Professor of Law at Villanova Law School. Dean Alexander, as most of you know, is an expert on constitutional law, election law, and criminal law and procedure, and his research focuses on the constitutional dimensions of election law and campaign reform. And though I've only known him for a short time, I've been incredibly impressed by his leadership which really allows Villanova Law School to continue to thrive even during these ever-challenging times. Personally, I've really appreciated his dedication to the Villanova Law community and his ability to bring us all together in the pop-up conversations that he's been initiating on the most charged issues that the nation has been facing. So I really appreciated those, especially as a new member of the community, and so I will now hand it over to Dean Alexander.

DEAN MARK ALEXANDER, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Well, thank you very much, Professor, that was a very kind introduction. And thank you also Kassem Lucas for your firm, for Troutman's support, of course, institutionally, but also for your continued dedication to us. It's always good to see you and know how much good work you are doing. And now I have the honor and pleasure to introduce our speaker Professor Deborah Archer, and I want to put it in context just for a moment. There have been references to why we have this speech, the importance of this every year and, and I say it all the time and I can't say it enough, we need to make sure we put values at the core of legal education. That is essential. If you don't have values at the core, it's meaningless. Now, we all have different values, we get them different ways, we express them in different ways. But we all need to tap into the things we think are important in the world and act in pursuit of those things. Now, that can mean a lot of different decisions for you and your professional life. But it means that there's more than just a study of torts or contracts or any individual subject. There's something more that I

think binds us together as a law community in this law school and as a legal community at large.

So when we talk about who we are as lawyers and we talk about who we are as a nation, I always want to think about values. And in that context, of course, Dr. Martin Luther King is an individual who very clearly led with his values and spoke to the nation, to all of us, about our values, asking us what is right in the world, how is it right for us to treat each other, how we can pursue a path that is guided by—frankly—by love, not by hate. And it's a challenge. He challenged all of us to ask those questions every single day, so I have this opportunity today to speak about Dr. King's legacy and how that fits within our greater sense of who we are as lawyers and the way we act on our values. I think today is just a perfect opportunity to remind us of those things that matter.

So in that context we're so fortunate to have Professor Deborah Archer, who is the Jacob K. Javits Professor at NYU and, most recently, just named the new President of the ACLU. It's so extraordinary. I guess it's not just good fortune, but it is extraordinarily good fortune for us to have Professor Archer here because she can speak to us from her perspective for decades, you know, having worked at the ACLU, having been on the faculty at NYU for fifteen plus years, working at a big firm—a career that spans lots of different jobs and different responsibilities. Certainly, she'll talk about what she thinks are the important values that guide her. She's somebody who has won countless awards for her brilliant writing and her scholarship. She has focused her teaching and her scholarship on civil rights, civil liberties, of course, the ACLU being the American Civil Liberties Union. She's focused heavily on clinical pedagogy. We're so proud here—as you know, Professor—we are so proud of our clinical programs because again they serve values; they speak to that and your leadership and clinical pedagogy is extraordinary. And today we have the opportunity to hear from Professor Deborah Archer, who, when she was named President of the ACLU, the Executive Director said, “There is no one better equipped to better personify, is more capable to helm, the future battles for civil rights, civil liberties, and systemic equality than Deborah Archer.” I think that is true in abundance to have somebody of her caliber, her stature, the respect she carries in the room when she walks in. It is truly my pleasure and our honor to have Professor Deborah Archer to speak today to give the 2021 Martin Luther King Jr. Villanova Law Keynote Address. So with that, Professor Archer, welcome to our Community.

PROFESSOR DEBORAH ARCHER, NEW YORK UNIVERSITY SCHOOL OF LAW: Thank you, thank you so much Dean Alexander for that incredibly kind and generous introduction. It's really an honor to be invited to speak and to have this opportunity really to reflect on Dr. King's legacy and his lessons.

One lesson I want to reflect on is the beloved community. Dr. King often spoke about the “*beloved community*.” He said, “The aftermath of

non-violence is the recreation of the beloved community, so when the battle is over, a new relationship comes into being, between the oppressed and the oppressor,” and the beloved community was Dr. King’s vision for a truly integrated America, where every person in every community had access to social and economic opportunity—not separate and equal, but a society where everyone could live lives of joy and dignity because everyone was invested in the well-being and dignity of their fellow human being. Dr. King believed that, in the beloved community, we would experience true justice and equality. Opportunity would not be parceled out to privileged individuals or groups, but instead would be the birthright of everyone.

Unfortunately, in many ways, American history is the history of American opposition to that ideal. And more than sixty years later, America remains profoundly segregated along racial lines. We live separately, we learn separately, we socialize separately. And the systems this country has so effectively built to protect and maintain segregated communities have a tremendous negative impact on those who are left out. This is not because Black people and other people of color would get some magical benefit from living closer to white people or sitting in a classroom with white people. It’s because you cannot separate the places that people have access to from the opportunities that people have access to—one’s home, not only the physical residence, but also the community in which it’s located impacts our lives in numerous and interdependent ways. There really is nothing that place does not touch—our access to education and jobs, our physical safety and our health, our access to healthy food, our social networks, even the quality of the air we breathe—are all deeply impacted by where we live. And what is remarkable about America’s opposition to the beloved community is both its persistence and its permeability. It is powerful because it’s evolving, because it’s creative, because it adapts. From legal slavery to Jim Crow, from pure brutality to more nuanced forms of oppression and separation. In so many ways the history of Black people in America is a history, not only of control, but of exclusion. And the legal and social limitations on how and where Black people live are central to that history and these exclusions have proven to be extraordinarily durable—outliving both chattel slavery and Jim Crow.

You can think of Sundown Towns where whole towns excluded Black people through a combination of discriminatory local laws, intimidation, and violence. The term comes from signs that were posted to let Black people know that they needed to leave the town by sundown. It was telling them that you can come here to work for us, to serve us, but under no circumstances can you make this town your home because you will never be a member of our community. You can think of federal mortgage programs that would only lend money to prospective Black homeowners if the property that they sought to buy was already in a segregated neighborhood. Or think of the federal interstate highway system. Highways were intentionally built through and around Black communities to physically

entrench racial inequality and protect white spaces and privilege. In some states, highways tore through Black communities and cut out the heart and soul as homes, churches, schools, and businesses were destroyed. In other states, the highway system was a tool of a segregationist agenda, erecting a wall that separated white and Black communities, protecting white people from Black migration, and creating physical, economic, and psychological barriers that really do persist to this day.

And you can think of the United States' long and complicated history of racial segregation and housing enforced through public policies, individual acts of discrimination, and mob violence. You can think of the countless acts of racial violence throughout the nineteenth and early twentieth centuries, white people driven by white supremacy and hatred for Black people used violence, intimidation, and the law to rid their communities of Black people, separate Black people from opportunity, and keep Black people in what they believed to be their place physically, socially, and economically.

Today, this country continues to use a dizzying array of tools of exclusion as a means to define the boundaries of citizenship and belonging. Given our long history of using the narrative myth of Black criminality as a justification for segregation and subjugation, it should be no surprise that central among the modern tools of racial exclusion are laws that are ostensibly motivated by the desire to keep certain communities safe.

One of the newest tools in this arsenal are what I refer to as policing-based housing policies. These housing policies take various forms, but all encourage or require property owners to exclude people with criminal legal system contacts. The adoption of these policing-based housing policies has really become entangled with societal assumptions about the criminality of Black people and the criminal legal systems' steady march towards mass criminalization. Despite a growing consensus about the harms caused by mass incarceration and many high-profile efforts to reverse America's a race driven overreliance on imprisonment, mass-criminalization has nonetheless seeped into virtually every aspect of our society. It is against this backdrop that the adoption of policing-based housing policies act as a system of essentially racialized agreements between community members to exclude people of color.

I want to focus in on one category of policing-based housing policies, and those are crime-free housing ordinances. Crime-free housing ordinances are local laws or policies that either encourage or require private landlords to evict tenants who have had varying levels of contact with the criminal legal system or to decline to rent to those tenants in the first place. These local ordinances have the purported goal of ending crime in rental housing, but they are far more effective at excluding racial minorities and promoting racial segregation than they are at ending crime. In their most problematic form, crime-free housing ordinances make even alleged criminal activity a violation of the rental agreement. They allow

police officers to decide whether a potential tenant's criminal history disqualifies them from rental housing in the community, whether a tenant must be evicted because of alleged criminal activity without any meaningful due process, and allow revocation of a private landlord's authorization to rent their property for failing to act on these police determinations. Significantly, a resident does not have to be convicted in order to be evicted. A common crime-free lease addendum provision explicitly states that proof of a violation shall not require a criminal conviction. This creates the possibility that a mere arrest or even a stop that results in neither arrest nor conviction might be sufficient to evict someone from their home.

It should not surprise you that crime-free housing ordinances have their roots in the law enforcement community and are historically police-sponsored programs. The first ordinances were created by the International Crime Free Association ("ICFA"), an organization that was founded in 1992 by a member of the Mesa Police Department in Mesa, Arizona. And the ICFA has successfully spread the adoption of crime-free housing ordinances across the United States. According to one study, over 2,000 municipalities across forty-four states have adopted crime-free housing ordinances or programs. In California, for example, almost one-third of local governments have a crime-free housing ordinance or program. In Orlando, Florida, a police officer described their program as designed to "squeeze out all of the people who just don't want to do right so good people can have a nice quiet place to live." The language in the Orlando lease addendum provides once a property owner or manager is notified that a tenant has been arrested, they can fill out an eviction form and give the accused resident just seven days to move out. Again, a resident does not have to be convicted in order to be evicted.

In a single five-year period, approximately 1,400 renters were evicted under Orlando's program and the overwhelming majority of those who were evicted are Black and Latinx. One of those people was Leroy Ebanks. When he was twenty-one years old, police suspected that Mr. Ebanks broke into a car. The police questioned him, and he denied any involvement in connection with his questioning. The police checked Mr. Banks' criminal history, which showed that he had two prior arrests, but no convictions. The officers turned that information over to the rental complex where he lived and then building management immediately started eviction proceedings against him. He was put out of his home within seven days.

It is no surprise that crime-free housing ordinances disproportionately exclude people of color. Involvement with the criminal legal system effectively functions as a racialized criterion for who can and cannot live in that community. This is because there are extreme racial disparities in who has contact with the criminal legal system.

The impact is heightened because of the breadth of crime-free ordinances. Exclusions are not only based on convictions, but by design and

implementation, on any contact with the criminal legal system—from convictions to arrests, to even stops and mere suspicion. The discretion these laws give to police officers and landlords is ripe for abuse. It is easy to see how bias in law enforcement and the racially disproportionate enforcement of criminal laws leads to a regime where people are excluded from housing in communities for reasons having nothing to do with safety and everything to do with racism. In Hesperia, California, a city that has a particularly onerous mandatory ordinance, the United States Department of Justice determined that Black residents were almost four times more likely than white residents to be evicted under the city's crime-free housing policy. Latinx residents were three times more likely than white tenants to face eviction. The Department of Justice also determined that nearly all evictions under the policy occurred in non-white neighborhoods within the city.

It is not just the potential for abuse that is problematic—there is evidence surrounding the adoption of many ordinances that racial segregation may be more than an unfortunate by-product. Crime-free housing ordinances are often adopted following burgeoning racial diversity, not increases in crime. For example, of the twenty California cities with the largest increase in Black population since 1990, eighty percent have a crime-free housing ordinance or policy. Of the twenty California cities with the largest increase in Latinx population since 1990, seventy-five percent have a crime-free ordinance or policy.

These ordinances ensnare people that have not engaged in activities that meet any reasonable notions of crime. The more we criminalize relatively innocuous behavior, the worse the problem gets. These policies exclude people who pose a little or no threat to the community—families banned because their children engaged in behavior that would be of little consequence in other communities, people fighting substance abuse disorders and searching for stable housing to support their recovery, people targeted by the over policing of Black communities, and victims of the weaponization of the police.

Consider the case of Thelma Jones, a Black woman who lives in Faribault, Minnesota. After living in Faribault for almost a decade and in her then-apartment for five years, Ms. Jones was informed by her landlord that she and her children had two weeks to move out. The landlord told Ms. Jones that the police had advised the landlord to evict Ms. Jones because the police had responded to complaints at her home two times and characterized Ms. Jones' home as a location of ongoing criminal activity. But, in fact, Ms. Jones and her children did not have any criminal convictions. However, the police had come to Ms. Jones' home repeatedly because of harassing calls to the police from her white neighbors. On one occasion, police responded to calls because Ms. Jones was hosting a family barbecue. On another occasion, police were called when Ms. Jones hosted a child's birthday party. Police even responded to calls when her children were

outside playing on their trampoline. Ms. Jones and her family were not evicted because they were engaged in criminal activity, but because she was a Black woman who was unwelcome by her predominantly white neighbors.

Although many policymakers point to crime as a primary motivation behind the proliferation of policing-based housing policies and the desire to exclude, the problem is not actual crime, but the myth of criminality. Racial bias permeates mass criminalization. Indeed, the narrative linking race and crime has endured for centuries. Today, Americans' fear of crime has morphed with America's fear of Black people, and in conversations ranging from criminal legal system reform to education to housing, this racialized narrative fuels a general state of anxiety and fear and brands Black people as dangerous and inhuman. Mass criminalization feeds the myth of criminality and invalidates these unwarranted fears. In turn, crime-free housing policies weaponize that fear.

Today, Americans are really having a long overdue conversation about the need to reimagine policing and public safety. But this conversation must be about more than a reexamination of traditional policing. We must also examine the expanding role and power of the police. Crime-free housing ordinances are a move in the wrong direction because they provide an already racist criminal legal system with a broader province of impact and influence. Race plays an undeniable role in policing in the United States. By utilizing the principles of policing in both design and implementation, crime-free ordinances import racially discriminatory policing practices into private housing markets and weave housing policy and the criminal legal system together, both ideologically and functionally. Ideologically, the normative values of the criminal legal system are infiltrating housing. Specifically, housing policy increasingly adopts the policing-based values of exclusion and punishment by treating housing applicants and tenants as suspects, blurring the line between housing determinations and policing. Functionally, crime-free housing policies give police officers outsized power to determine who can and cannot live in certain communities. These policies essentially allow police officers to pick and choose who may live in their community simply by making the practically unreviewable determination that an applicant or tenant engaged in illegal activity. Ultimately, the denial of housing is used to punish criminalized people, both those with criminal legal system contacts and those without. The consequences for those exiled are devastating. Given the close connection between law enforcement, the criminal legal system, and race, for many people of color, exile is almost fate.

Policing-based housing policies seek and perpetuate the opposite of the beloved community. Where the beloved community seeks to include, these ordinances exclude. Where everyone in the beloved community is treated with dignity, policing-based housing policies define their victims as unworthy, as less than. Where the beloved community abandons the doc-

trine of racism which, to quote Dr. King, "inflict[s] spiritual and physical homicide upon the out-group," crime-free housing ordinances and policing-based housing policies further entrench American racism.

If American history tells us anything, it is that policies that seek to exclude and to subjugate make us weaker. These policies expand the gap between the America that was promised and the America that is. To build the beloved community, we must continue to fight for a world where every part of this country is open to everyone. Fight to unravel the racism that has woven itself into our policies, systems, and structures over time and which grow deeper and more complex every day. Thank you and I look forward to your questions.

PROFESSOR BACHAR: Thank you so much, Professor Archer, for these fascinating remarks. And so, we'd like to now open it up to questions from the audience . . . .

[Question-and-answer portion omitted.]

PROFESSOR BACHAR: Thank you so much. And I'll now pass it on to a Professor Ravenell who will close us off.

PROFESSOR TERESSA RAVENELL, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Thanks so much, Professor Archer, for being here. Thank you so much, Professor Bachar, for your moderation of this event. It has really been just such an enlightening day. I really appreciate your emphasis on community. I think that it is so important that not only we continue to think about communities, how we define them, but however we do choose to define them that we truly engage with one another. And one of the things that I am so grateful for about this Martin Luther King lecture, that we have the privilege of enjoying every year, is that it allows us to come together as a community and really reflect on a lot of the ideals that he bestowed upon us, that he championed, and to think about how we can continue to carry that torch forward. I just want to say to you, Professor Archer, you have truly carried that torch forward and through so much of your work, and it is such a privilege to have you here today. I hope you know that you are not just a member of our community today, but having delivered this speech now, you are now an honorary member of our community always and you always are welcome here. There, there are no crime or instances or NYU ordinances or anything else, but you're always welcome here and we look forward to being able to truly welcome you into the building.

I missed seeing everybody in the room in which we gather when we hold this event, but I will truly say that, you know, I'm so glad that we were able to go forward with it anyway, and I truly am grateful that you were here to deliver this lecture, this keynote lecture this year. Yes, thank you for all of your work, thank you for your time today, and thank you for all of you who were able to join us. Thank you for being a part of this commu-

nity and I ask you to continue the good work that we've started here. And with that, I guess it's goodbye everybody. I hope to see you all soon in one form or another. Thanks so much. Thanks for being here.