

## Getting Curious with Jonathan Van Ness & Deborah N. Archer

**JVN** [00:00:01] Welcome to "Getting Curious" and Happy Black History Month. I'm Jonathan Van Ness and every week I sit down for a 40 minute conversation with a brilliant expert to learn all about something that makes me curious. On today's episode, I'm joined by Associate Professor of Clinical Law and director of the Civil Rights Clinic at NYU School of Law, Deborah Archer. Where I ask her, how does the legacy of slavery and Jim Crow laws still affect Americans today? Welcome to "Getting Curious". This is Jonathan Van Ness. I'm going to get straight into our guest this week. Welcome, Deborah Archer. You are a NYU professor of, I was just joking and saying a gajillion things, but you have, you do have very many jobs. So could you just tell everyone, like what is your scope of professorship?

**DEBORAH N. ARCHER** [00:00:49] Well, thank you for having me. I'm professor of law at New York University School of Law. And I teach in areas of civil rights and racial discrimination. I also helped run a center at NYU called the Center on Race Inequality and the Law. And outside of my full-time job, I have a bunch of other roles, including being a board member of the American Civil Liberties Union.

**JVN** [00:01:10] So it sounds like you have a ton of free time.

**DEBORAH N. ARCHER** [00:01:13] Yes. And in that free time, I squeeze in being a parent to two kids where I where I can.

**JVN** [00:01:18] Thank you so much for taking your time to come here and to talk to us. So February is a beautiful month for very many reasons, but it's also Black History Month, which we love, Black History Month. And I think, you know, as a white person and that I'm a white person in America, that there is too many people, too many white people who don't understand, who aren't curious to understand the ways that racism impact America now. And if they do start to get curious that it's like, well, honey, that was 300 years ago. That was 200 years ago. And I think that. I mean, I've heard that since I was like a four or five, six year old little kid in the middle of America. I know that that narrative is persistent and, you know, irritating to say the least, but it's a very persistent narrative. And so I just start to think about like when you think about the chronological nature of like, you know, how racism has happened in in in America over the years. And I know that it's also not just America 'cause one thing that we've learned on "Getting Curious" is that like Brazil had like a whole thing to do. I mean, there's like there's that whole triangle going on like in the 1600s and 1700s. So it's like not to vilify all of America because racism happens like everywhere. But I guess the question is, is like how did we get here and what is like the, what is like the legislative history of like Jim Crow here? I swear to God, I'm done talking now.

**DEBORAH N. ARCHER** [00:02:45] Ok. So you raised so many important questions. And first I wanted to respond to you saying that America is not alone in this. And that's true racism. Slavery has been a problem all around the world. The challenge that we have in America, that other countries have handled better is that we have never acknowledged what we did and the impact that what we did is continuing to have today. So my colleague Bryan Stevenson often talks about going to Germany. And when you walk around, you see markers to the Holocaust so that people there never forget what happened. And in the United States, we're very quick to say that happened in the past. That has nothing to do with today. I didn't own enslaved people. So I have

no responsibility to to make change. And I think unless we start to acknowledge the impact that history has today, we're never actually going to progressed beyond the challenges that we face. So you were asking Jim Crow and where did it all begin. I think it, you have to start to tell the story after emancipation. After emancipation, we had the 13th, 14th and 15th amendments, which helped to restore legal protections to, to black people who were formerly enslaved. And for a while there, we had some integration. We saw black people engaging in the political process of voting, holding office. And then in 1877, you had the election of Rutherford Hayes and it all ended. And people believe that that is the start of Jim Crow.

**JVN** [00:04:14] Ok wait, must slow down. Now you raise a bunch of question.

**DEBORAH N. ARCHER** [00:04:18] Ok.

**JVN** [00:04:18] So, ok. So emancipation is 1865?

**DEBORAH N. ARCHER** [00:04:23] Mmhmm.

**JVN** [00:04:23] Right? And, and I should know that so much more. You know, until like I question the last number. I threw my pen when I said that. Okay. So 1865, so 1865 to 1877 is kind of a period of like more, more, more in air quotes, integration and like good things are happening? Good things also in air quotes.

**DEBORAH N. ARCHER** [00:04:44] Let's say better things are happening, right?

**JVN** [00:04:45] Better things.

**DEBORAH N. ARCHER** [00:04:45] We started to move beyond the, move towards, there was some integration. It wasn't complete and total integration maybe was a little salt and pepper integration. It was some. We saw black people serving in in Congress. Participating in the political process, enforcing their legal rights, holding jobs, living side by side with white people, and that ended with it with the election of Rutherford Hayes. He pulled troops, union troops out of the south and black people lost to protect, their protection. And that began, I would say, a centuries long reign of racialized terror.

**JVN** [00:05:24] So basically, union troops, post the Civil War were still stationed in the South to basically just like just make sure that everything was more fair and like less fucked up? But not all the way.

**DEBORAH N. ARCHER** [00:05:36] Yeah, and I think some of it just, it signaled that the federal government wasn't going to be there to protect black people anymore. And it allowed states in the south and the border states to feel like they had the ability to start to reinforce white supremacy and the racial order that they had grown accustomed to.

**JVN** [00:05:55] We had this incredible guest earlier this year named Celeste Watkins-Hayes, who writes this incredible book called "Remaking a Life" that talks about black women living with HIV. And it taught, and we, our conversation kind of like went into this more like historical view on things. And one thing that she was saying was about like this narrative that like, you know, oh, like there was this border between north and south. And like everything in the north was like real nice

and like, you know, there wasn't like racism up there. And then in the south, it was like and she didn't say that. Like, I was like, that's just what people kind of think. And she was like in actuality, there was a whole bunch of stuff going on in the north that was not, that was just literally rac-, like, I mean, just as fucked up as the south.

**DEBORAH N. ARCHER** [00:06:38] A hundred percent. And so I think the South was a little bit more overt with their discrimination, a little bit more pronounced. And in the north it was subtle, but very, very much there. So you asked about Jim Crow and Jim Crow was predominantly in the south. And when people think of Jim Crow, they think about black codes, laws that required the legal separation of black people and white people. But it was more than that. It was also as a social system, a system of racial etiquette that impacted everyday life, that helped white people maintain their sense of privilege, to define and control white spaces, to continue to impose a system of white supremacy both legally and socially.

**JVN** [00:07:25] And it went like, I mean, it's church. Like its places of worship, it's school. It's, I mean, everything is segregated.

**DEBORAH N. ARCHER** [00:07:34] It is. And I think you can say that black codes impacted everyday life from birth to burial. There is really nothing in there where it was not regulated and it was where you can go to school, the hospitals that you could go to, where you could live, whether or not you could go see the movies. There were different doors for black people and white people, different waiting areas. Of course, we always see photos of black water fountains and white water fountains. And so legally, there was separation required again from birth to burial.

**JVN** [00:08:10] And did that exist in, and these laws, like also just to be clear, like existed in the north, like people like not all states, like there were some states in the north, and like states that like because like like Kansas, early Kansas and Missouri, like there was like Western states that were like inter-, like we're getting ready to become a union state or we're getting ready to become a state like in and around the civil war, but weren't yet states and remain like territories. And there was like a bunch of super fucked up stuff going on there, too.

**DEBORAH N. ARCHER** [00:08:36] Awful stuff going on all over the place. And when you talk about out in the west, moving out of the south, I think about sundown towns and those were towns that got their name because they literally had signs posted that said black people should not find themselves here after sundown, that you can come in and work here and serve me, but don't think you ever gonna make this your home and you need to leave. And so we have those types of laws all over the country. One thing I think is kind of unique to to the south was the full system of the racial etiquette and in the way that it just impacted everyday social interactions. So you had rules that black men cannot extend their hands to white men, because it would indicate that they were equal. Of course, black men could never touch a white woman in any way at all. White, black people would have to step off the sidewalk and move out of the way of white people who were passing. Blacks and whites couldn't eat together. Black people were never allowed to use a white person's first name. And so you think about the Jim Crow laws and there at least there were signs that indicated to you how to conduct yourself if you wanted to avoid the incredible punishments that came. But when you think about the racial etiquette system, it was really hard to navigate and it was just a daily terror for folks concerned that they would violate one of these unspoken, unwritten rules.

**JVN** [00:09:59] So what was someone's ability to, what was a-. Well, first of all, do I say like we we say a, if we're terrible, like in history, like like like what was a black person's ability like, is that like? Yes. An African-American person or black? We're gonna say black person.

**DEBORAH N. ARCHER** [00:10:17] I think black person. Yeah.

**JVN** [00:10:18] Yeah. So, like what we like, what are we going to-. What was a black person's ability to, like, get like have upward economic mobility? Or like a way to better their lives through-?

**DEBORAH N. ARCHER** [00:10:28] That's exactly right. Right? So we see that impact in Jim Crow today economically on the, in the lives of of black folks and other people of color. If you weren't allowed to own property. Property was taken from you or you were only allowed to own a home in the the least desirable neighborhoods. It has a compounding effect to today. If you weren't allowed to go to to colleges in your community, if you weren't allowed to have a full K-through-12 education, then go to college or go to professional school. It limited your economic opportunities. If you could be fired because of the color of your skin, it limited your economic opportunities.

**JVN** [00:11:11] So from 1877 to like 19-.

**DEBORAH N. ARCHER** [00:11:15] 60s.

**JVN** [00:11:16] Yeah. Cause like Lyndon Johnson or didn't the guy before-.

**DEBORAH N. ARCHER** [00:11:22] John F.

**JVN** [00:11:23] But wasn't there like-. The like the first like Civil Rights Act. It wasn't like in 1957 or something?

**DEBORAH N. ARCHER** [00:11:28] There are various civil rights acts. But I think when people talk about the Civil Rights Act, they're talking about the Civil Rights Act of 1964, which was passed when Johnson was president, after Kennedy was assassinated. And it, I think in the, starting with the Civil Rights Act of 1964, but then continuing to the Voting Rights Act of 1965 and the Fair Housing Act of 1968, that's when you started to to see the federal government intervene, to try to protect the ability of black folks to become members or full members of the society.

**JVN** [00:12:01] So like. Yeah, so like, I just had to I had to pull my timeline, honey. So it's like because like Harry Truman in 1948 in segregation in like the military. When you think about today, like how people could, you know, were like 'Murica people that you would think about like in the south would be like really big like thing for to make Trump's base people, like, really excited to talk about like troops. When you think about like the sacrifice that troops gave in the Revolutionary War, in the Civil War, and like every war that we've ever had up until 1948 and that there was still segregation was like permissible and like encouraged in that level of government. That's like all the like there couldn't be a bigger sense of disrespect to an American service member.

**DEBORAH N. ARCHER** [00:12:47] Yeah. And also just how recent that history is when you say those dates, that's not that far along.

**JVN** [00:12:51] Yeah.

**DEBORAH N. ARCHER** [00:12:52] Far, far in the past, people who lived through that are still alive today. And so we act like this happened 300 years ago and it was done. It's really incorrect.

**JVN** [00:13:04] And then 1954 is when the schools become-

**DEBORAH N. ARCHER** [00:13:07] Brown versus Board of Education.

**JVN** [00:13:09] Which was really like five cases rolled into one. But that's still like less than a hundred.

**DEBORAH N. ARCHER** [00:13:15] It really is.

**JVN** [00:13:16] Years.

**DEBORAH N. ARCHER** [00:13:17] It really is. And so. Progress has been slow. I think people believed that there was emancipation, slavery was over. There was a little bit of Jim Crow. But then Brown versus Board of Education solved it all. And we should all be good and everything is fine. But it's not true because even Brown vs. Board of Education, which you said was decided in 1954. Today, we're still fighting to implement the principles underlying Brown that that separate is not equal and we have to have integration education. We're still fighting those fights today. When you think about Plessy vs. Ferguson saying that it is the case in which they said separate was, separate could, could be equal. We're still fighting that principle today. You see the threads.

**JVN** [00:14:05] I want to talk about that more but we're going to take a really quick break. We'll be right back with more "Getting Curious" right after the break. Welcome back to "Getting Curious", this is Jonathan Van Ness. We're back with Deborah Archer. So basically you were just saying that, in the implementation of the deseg-, desegregation of schools, how was it ruled in 1954, but we're still fighting against or fighting to implement all of the tenants of that. So what were the tenants of that? And that's actually a lot of what you've written about, like in your works. So how are we still seeing like the ramifications of this now?

**DEBORAH N. ARCHER** [00:14:44] So even, Brown with the separate but equal, I think has a thread in it that reaches back to to Jim Crow to connect to what you were talking about earlier. And that thread is that Jim Crow in many ways was about defining and protecting white space and white privilege. And in Brown, it was a challenge to an attempt to define white schools, white space and white privilege. And Brown said, you can't do that. In in public education, separate is never equal. And Brown soon spread to other areas where we saw challenges to separate busing and separate pools and started to, Brown was a first step in dismantling our segregation regime. But what continues today is this notion that there are white spaces and that the law should protect white spaces and the, what white people view as their privilege to control those spaces. So we see that still in public education here in New York City, one of those segregated school systems in the country, and at the same time, one of the most integrated cities in the country, we have intense segregation in our public schools. You see that protecting white space. I think in the language and conversation around immigration, the fear that in a few years America will be majority people of color. And I think a lot of what we see is a reaction to to that and an attempt to protect America's a white space. I see that in the challenges to affirmative action programs at places like Harvard and the University of North Carolina, that that is an attempt to protect white spaces that are growing

increasingly diverse. So I think that's a thread that follows from Jim Crow through today. And another thread that I see through all of that is the myth of excessive black criminality, that after emancipation we started to spin this narrative that black people were so dangerous they couldn't control themselves. So we had to protect white women, we had to protect white children. And that was a justification for segregation, keep them in their own spaces and out of our spaces.

**JVN** [00:16:57] But don't you think that was also like or isn't that also like inciting fear? Isn't that also just a means to control? Like haven't we seen-

**DEBORAH N. ARCHER** [00:17:03] It is.

**JVN** [00:17:04] Governments like do that? I mean, I'm not justifying it, it's like super fucked up, but did you-? I, this may be an incorrect assumption, but did you see "The 13th"?

**DEBORAH N. ARCHER** [00:17:13] I did.

**JVN** [00:17:14] Those fucking films of them of how they would portray black people in those films.

**DEBORAH N. ARCHER** [00:17:21] Right.

**JVN** [00:17:21] It was and also it's like-. I was, did you see-? I just watch "Harriet" like literally last night in the plane on the way home. And I was really. So I started reading more about the Fugitive Slave Act, I just started like reading more about it. And it was really like Wisconsin, New Hampshire, Vermont, and I believe Pennsylvania were like four states were like that act was ba-, was basically unenforceable because like the state legislatures and the governors like weren't having it. And they like went to make state laws that basically nullified it. But I was thinking about like New York, Maine, Illinois, and like other states that were states at the time that like were in the north that like didn't make the list. Of like, you know, being more complicit in the things that were going on in the south, and I have another question, but another thing, they're just like trying to, like, get in my head straight, because if it took till 1964 to get to places of like, you know, education was 1954, but then like, you know, public spaces and, you know, transportation. But what about voting? 'Cause there's also such a like really fucked up, marginalized way that like, you know, first wasn't it that like black men were allowed to vote but didn't like no women voted until like 19, twen-

**DEBORAH N. ARCHER** [00:18:33] It's the one hundredth anniversary we're celebrating the 19th Amendment.

**JVN** [00:18:37] So that's like hundred years like black women specifically in America have been like even more further marginalized.

**DEBORAH N. ARCHER** [00:18:42] Always. In every way. In voting, in employment, in education. Black women have been more marginalized than than other groups. And you said so much that I think is so incredibly important. I want to pause to just acknowledge the power that films like "The 13th" and "Harriet" and "Selma" have had because they're providing this education to a much broader audience so that people can question what they see. People can get engaged and and involved. And I think that's incredibly important. And then you mentioned the narrative of black criminality as a as a means to control and incite fear. And it absolutely was, you are 100 percent

right. And it was a way that white folks were able to justify this this system of segregation, of white supremacy, and to make people afraid to be with black people and then to invoke the criminal justice system as a means of control. And we see that today. Look at the school to prison pipeline where, thinking of children as young as as pre-kindergarten and kindergarten, as violent and treating them as as criminals and calling in the police to address childhood or adolescent behavior.

**JVN** [00:19:56] Which is going on very much now. I mean-.

**DEBORAH N. ARCHER** [00:19:58] Absolutely.

**JVN** [00:19:58] We see those videos at least once a quarter. But I'm sure it happens more often.

**DEBORAH N. ARCHER** [00:20:01] Yes, all the time. And we see the videos and it certainly is a fragment and it's helping people acknowledge that it's happened. But for every video you see, there are 100 incidents that we that we don't see. And so we really need to understand what a tragedy this is. You talked about voting rights and voting rights was, as I said, something that black folks exercised following the adoption of the 13th, 14th and 15th amendments. And then that was eroded during Jim Crow. 1965 we had the Voting Rights Act and it was brilliant in the way that it was crafted because it it understood that that discrimination evolves and that white supremacy was going to adapt to black resistance. And so the Voting Rights Act of 1965 had measures that caught the new, the new twist on on discrimination. And so at first, you know, it might be poll taxes and then it might be literally, literacy tests. And then it was changing poll sites and now it's voter I.D. law. The problem is, is that the Supreme Court gutted the Voting Rights Act a few years ago in a case called Shelby County vs. Holder, where they eliminated Section 5, which was the preclearance requirement. So if Georgia wanted to make changes to voting, they had to go to the Department of Justice and say, we want to make this change and then prove that it wasn't going to discriminate against people of color. That's gone now. And so-.

**JVN** [00:21:28] When did that get overturned?

**DEBORAH N. ARCHER** [00:21:30] I cannot remember the year. Maybe we can Google it on our phone. But it was relatively recently. John Roberts was on the court and wrote that opinion gutting the Voting Rights Act immediately after, literally, the day after the decision, Texas adopted and implemented its voter I.D. law, which had been struck down both previously by that provision in the Voting Rights Act. And then we saw a proliferation of voter purges, voter I.D. laws. We saw in North Carolina elimination of early voting. And the court, court in North Carolina said that the North Carolina law targeted black people with surgical precision. For example, it eliminated. It didn't eliminate all early voting days, but it eliminated the Sunday before Election Day. And black people in the South often call that "Souls to the Polls", where after church, everyone as a congregation will go and vote. And they eliminated that day, but not other days. And so we see without the protection of the voting right, the full protection of the Voting Rights Act, that black folks, people of color, poor people and surprisingly, women, or not surprisingly, women are losing their their right to vote.

**JVN** [00:22:46] So I was just thinking a few things. So one thing that you said earlier that I feel like I thought was-. New York City has the most seg-, some of the most segregated schools in the country.

**DEBORAH N. ARCHER** [00:22:57] They do.

**JVN** [00:22:58] That's something you don't think about.

**DEBORAH N. ARCHER** [00:23:00] No.

**JVN** [00:23:00] How, like-.

**DEBORAH N. ARCHER** [00:23:02] How? Why?

**JVN** [00:23:02] Yeah.

**DEBORAH N. ARCHER** [00:23:03] I think a lot of people are asking how or why? Because some people would say that it's because of residential segregation and that we are residentially segregated here in New York City. But that is not the full story, because in high school, for example, in New York City, you can go to any high school in the city. If you live in Brooklyn, you can go to Bronx Science. The problem is, is that we have implemented a series of tests and screens for high schools that are not about ability. They are not about intelligence. They are not about the capacity for children to excel in high school. It is about access to money, access to resources and access to information, which, unfortunately, in New York City is divided along racial lines. So we have a test for some high schools that don't rely, don't actually test what you learn in middle school. And instead, people are having to go to test prep programs for a year before they apply to high school. And the test prep programs cost a, thousands of dollars and people-.

**JVN** [00:24:06] So automatically makes.

**DEBORAH N. ARCHER** [00:24:07] Right. So you're not going to be able to pass that test and not be able to get to those schools. And we also, just an incredible series of screens that New York City has implemented that keep children of color out of some of the the most elite public schools.

**JVN** [00:24:24] And how is. Isn't, is there not-? Is it because Betsy DeVos is like the head of education so like no one's like sussing these things out? Like I mean like who's supposed to oversee these things?

**DEBORAH N. ARCHER** [00:24:36] Well, the city has a lot of control over those things. There are, some of it is state controlled in New York. They have mandated a test for the specialized high schools, but some of it is New York City. And New York City has a, has allowed schools to develop their own admissions criteria that exclude people of color and poor people. So, for example, there are middle schools in New York City, there are public schools, but you have to take a special entrance exam or you have to have a portfolio or you have to show up for a test at four o'clock on Friday. And there's certain kids whose parents can't get them to the test at four o'clock on Friday. Or you have to go for various tours and during the week on a school day and people who have jobs that don't allow that flexibility can't get out of work to take their child to this tour. None of that should be required. None of that speaks to whether or not a child can perform, has the ability, has the intelligence. And we also do gifted and talented tests for, for kindergarten kids at four and five were testing children and deciding whether or not they're gifted. And based on that, they're funneled into different educational programs. So certainly the federal government can



have stronger oversight role. But New York City, there are things that could be done today to increase integration in public schools that aren't being done.

**JVN** [00:26:02] Yeah, I mean, because it, be, there are so many financial implications that just make that racist and classist. And it's so preventative like for just like for people. OK. I have another question.

**DEBORAH N. ARCHER** [00:26:13] OK.

**JVN** [00:26:14] Affirmative action.

**DEBORAH N. ARCHER** [00:26:15] Yes.

**JVN** [00:26:16] I was born in 1987. I think that that affirmative action is that, I think I know what it is. And I, you know, obviously like heard people talking about it a lot as like a child. I've like heard about it in my life. But like I know that there's a concerted effort for people to say like this is no longer needed. But I think that that's kind of been the case for the whole time of affirmative action. There's always been like a course of people, that were like, no, we don't need this. That's not whatever. I also think that in light of like the whole admissions scandal of like, you know, seeing all these like elitist people, you know, using their influence and power to gain access to schools, that almost speaks to like why affirmative action is even more needed, because you can use, rich people can like manipulate the system.

**DEBORAH N. ARCHER** [00:26:56] Right. It was a blessing in disguise to show that there is no such thing as merit, because we like to say that our systems are based on merit and the best people get in. And if you don't get in, it's because you weren't the best.

**JVN** [00:27:07] And we see that immigration, too.

**DEBORAH N. ARCHER** [00:27:09] Right.

**JVN** [00:27:09] 'Cause Trump wants to do this merit system, which is actually a money system.

**DEBORAH N. ARCHER** [00:27:11] Yes. And so it's not merit if you can buy your way into a school. It's not merit if you use tests and criteria that are more reflective of how much money your parents make than your, than your ability. It is not merit if a large portion of seats at an elite school go to children of alumnus or children of faculty, all of those things undermine the notion that this is a merit based system. And it's also important to recognize the role that the segregation in our K-through-12 education system plays in access to higher education. And as long as we have a deeply and profoundly segregated K-through-12 education system, you can't say that there's merit in determined, in determining who gets into colleges and universities.

**JVN** [00:28:05] 'Cause people didn't have a fair shake if-.

**DEBORAH N. ARCHER** [00:28:06] It's not equal access at all.

**JVN** [00:28:08] Yeah. So what is, so for the people that don't know, what is affirmative action?

**DEBORAH N. ARCHER** [00:28:13] So affirmative action is not giving someone a plus because they're, they're black or a plus because they're a woman. It really is about the ability to holistically assess individuals and allowing race to be one factor among many factors in a holistic evaluation of who a person is. And I, you know, I went to incredible college and law school, and I'd like to think that I wasn't there because I was black, but that my college and my law school acknowledged the role that being a black person in the United States played in my development. And in the challenges that I faced. And so people advocate for totally race blind system. In the Harvard case, one of the things that they were asking for. And people didn't really focus on is to remove every indication of race from someone's application so that you could never consider race. And really think about what that means. What that that kind of colorblindness means. That means if I was the president, the black student union at my high school, that doesn't count. I don't get to put that accomplishment down. It means that if I go to a church where it's clear that the, the community is black from the name of the church that wouldn't count. It means that you don't know so much about me and that my challenges and accomplishments mean nothing. And that's not fair. If it's only happening to children of color, that we're only viewing part of them, but everyone else gets a holistic evaluation.

**JVN** [00:29:44] Yeah. I mean. Oh, I forgot. She was holding up a sign to take a break, but I was so engrossed in everything that you were saying that I didn't take-, so we're going to take a really quick break. We'll be right back with more after this. Welcome back to "Getting Curious", this is Jonathan Van Ness. So when it comes to this colorblind system of like, and it's not like a plus or, it's, it does seem like schools and colleges like should. Like I would want to know if a college was like admitting like 99 percent white men, like, shouldn't people have to kind of like say like, it seems like it should be fair, like how people are admitted. Like first of all. Second of all. But I don't. Does affirmative action do that? Do they say ok, like, do we just need to see your numbers so that, like, we can make sure you're not being an asshole?

**DEBORAH N. ARCHER** [00:30:33] No, and in fact, the law doesn't allow people to do that. There can't be quotas. You can't say we want to enter, have a class that is 25 percent black, 25 percent LatinX. You can't do that. The law says you can't. There is still this this mythology out there that that's happening. Really, affirmative action is about allowing colleges and universities to look at the whole person. If you're going to look and take into account that this this person plays football.

**JVN** [00:30:58] Yeah.

**DEBORAH N. ARCHER** [00:30:58] And that this person plays the tuba. Or that you're from Iowa and we don't get a lot of applicants from Iowa. The fact that someone has worked to overcome racism in the United States, the fact that someone views their racial identity as important to who they are should be something that a college is allowed to consider. And no one, I think no one would say or most people would not say that's not true, that no one would say. But most people would say that that diversity is beneficial in your education. And people should not want to go to a college or university where there is not a rich array of folks in a robust exchange of ideas from one race to the other, from different genders, from different socioeconomic classes. I think that's that's important to education. It's important to business success. It's important to who we are. And when you have segregation, it not only harms children of color and it sends a message to them about who they are and where they belong in this society, their place in society-.

**JVN** [00:32:02] At their most impressionable age-.

**DEBORAH N. ARCHER** [00:32:03] At their most impressionable age, but also for white children, it gives them an unrealistic a sense of who they are in society. It is a tool to perpetuate white supremacist ideas for them to believe that they have earned a spot at Harvard and that people of color are, just don't work as hard and can't earn that spot as well. It sends horrible messages. And I think we really have to acknowledge the difference in resources that are funneled into predominately white institutions vs. institutions that are viewed as, as predominately people of color.

**JVN** [00:32:40] So this colorblindness, I feel like, is not only like wanted to or it's not, I don't mean to air quote it, because it is what it is. But 'cause I saw your eye go, but I like was it wasn't that.

**DEBORAH N. ARCHER** [00:32:49] No, no.

**JVN** [00:32:50] No, no. So because I feel like that's a lot of times where people want to have this colorblind sort, look, why don't see color like I see this and that. And, you know, I just want to see people for who they are. Like, I don't want to have to because sometimes people that is like an argument. They feel like I hear like coming out of like Trump people. And also on my explore page on Instagram, all of a sudden, for some reason, all these like Trump ass supporting like white fucking crazy, like climate change, like people who don't believe it, and like like guys, schools, person on like white privilege is like a whatever. Just like started popping up on my explorer page. I don't know why, but I think it's like why, it's, I'm like I just like want to, like, refute all ot it. So whatever, so but it's like to, for people to, you know, not want to take these things into account, is, and it's a whitewashing of history. It's like it's it's a saying like that these things didn't happen. And these things that have happened in history don't make an impact on now. And I think that a lot of times when when there has been, you know, a pain or an injustice inflicted on someone. Right? It's like I did something. I hurt. I did something fucked up to you so you apologize and you move on. Right? That's like if you like. I don't know. Take someone's spot in the yoga studio or like cut them off. You know, this is slavery, you know, and because of the things that are involved in slavery, such as free labor, like Elizabeth Warren was talking about this in this feature, it's like because like Wall Street was literally built on the backs of slaves. Like they're, like our economic foundations were built on people that didn't get paid. Like women couldn't vote in their own interests, like black women couldn't vote in their own interest like that is that was holding back people from that-. Like that's time owed. That's it-. That's it, that's reparations. Like it's like when I had a client that, like, you no showed me for a fucking haircut, I could have done someone else. Like and so but you take that for hundreds of years, like, you know, slower buses that didn't work as well because you had to be on the black bus that you couldn't get to a good, to a better interview or you couldn't even take this job because of the color of your skin. Like that's hundreds of years of lost wages, of lost opportunity.

**DEBORAH N. ARCHER** [00:34:58] Absolutely.

**JVN** [00:34:58] So to say that that didn't happen or whatever. And even if you were to compare this to getting cut off in traffic or whatever, you're still supposed to be like, I'm sorry. And like, if you fucking bumped their car or whatever, if you had a car accident, you had to pay for it.

**DEBORAH N. ARCHER** [00:35:12] Yes. And that is reparations, right?

**JVN** [00:35:14] Which has never happened.

**DEBORAH N. ARCHER** [00:35:15] And if we don't show up for your appointment, you owe me \$100.

**JVN** [00:35:17] Which, yes. Which leads us back to the German thing of like how, you know, after the Holocaust like this, it's like the way that that country has handled, like how fucked up, they, it's like this, we never have really come back to it.

**DEBORAH N. ARCHER** [00:35:29] No. Never.

**JVN** [00:35:29] And, and we also allowed the people to kind of pass laws like in Jim Crow and in, in, to kind of impose this further idea of like, well, the segregation in lieu of slavery. That we're still seeing, especially in mass incarceration and family separation, which isn't only at the border, it's like right here in America because of like the mass incarceration system. So, to not acknowledge it, though, so I guess it's like how can we, how can we get people to come on the other side and see things that they maybe don't want to see? Like the people on my explore Page.

**DEBORAH N. ARCHER** [00:36:03] So I. You said something interesting that people will say, I just don't see race. And I have friends who say that and believe that it is a positive thing. And to meet is not a positive thing. I don't want you not to see my race. My racial identity is important to who I am and my experience and how I navigate this world. And I don't want you to not see it. It's part of this American ideal. I think America calls ourselves the great melting pot. I've heard folks from Canada call themselves a mosaic, and I like the mosaic idea better because it allows everyone to remain to maintain their individual identity.

**JVN** [00:36:39] In that stain glass window. Yes.

**DEBORAH N. ARCHER** [00:36:39] And still come together. Yes. Come together for something more beautiful as opposed to this melting pot where I have to lose who I am to become one with you.

**JVN** [00:36:48] Some brown sludge? Like I don't want to be a fucking melting pot chili.

**DEBORAH N. ARCHER** [00:36:51] We want to be beautiful stained glass window mosaic.

**JVN** [00:36:54] Yes.

**DEBORAH N. ARCHER** [00:36:54] And so you talked about the legacy. And we have to examine every aspect of our communities and our lives to look at the legacy of slavery, to look at the legacy of Jim Crow, to look at the legacy, legacy of discrimination. You talked about buses and slow buses in a community. It made me think about our, our interstate highway system that was built in the 1950s and almost without fail, interstate highway system targeted black communities. It destroyed black communities, removed thousands and thousands of homes, took churches, took schools, separated children from their schools. It entrenched racial segregation. It, we had racial zoning laws and highways were often built right on that same line to make sure that it was difficult for black people to migrate into white communities.

**JVN** [00:37:46] So that's that that phrase of like "on the other side of the tracks".

**DEBORAH N. ARCHER** [00:37:49] Yes, the train tracks, also highways. All of those things were designed intentionally to separate. And now we look at those communities and say, you all chose to live here. You don't take care of your community. You don't invest in your community. When in fact, we were, it was destined to be this way. We we destroyed those communities, starved them for resources, starved them for opportunities, walled them off from opportunities. And now we say we can't do anything about it. It's too bad. That's just the way things are. So we really need to do is examine the way things are and trace it back. Follow that legacy and to understand why things are the way they are. Why do we have highways that go through the middle of black communities? Why are the communities around highways so resource starved, concentrated poverty, racial segregation? Why aren't there sufficient public transportation systems in in predominately black communities so they can get to the job, so they can get to the opportunities? To really examine, our, our environment. Even our physical environment to understand the ways that we are perpetuating inequality.

**JVN** [00:39:00] Is it because, no one wants to feel like a dick. Like no one likes to feel like an asshole. I certainly don't like to feel like an asshole.

**DEBORAH N. ARCHER** [00:39:10] Yeah.

**JVN** [00:39:10] But don't. Like how? What are we going to do?

**DEBORAH N. ARCHER** [00:39:13] Well, you don't. It's this, this sense that we have to-

**JVN** [00:39:15] Like we got to fucking get it together.

**DEBORAH N. ARCHER** [00:39:16] We don't have to point fingers. We don't have to assign blame. And so you could have not personally done anything wrong, but still benefit from what the wrong that was done. And to, you enjoy a privilege that comes at the expense of others. And so we have to get people to.

**JVN** [00:39:32] Acknowledge this.

**DEBORAH N. ARCHER** [00:39:32] Acknowledge that and not be afraid to engage. We're not saying that you have done something wrong, but we are saying that a wrong was done and that something needs to be done to correct it. And I. People often say equality is not a pie. And so the fact that if I get more, does it mean that you get less?

**JVN** [00:39:48] I love an abundant solution, not a scarcity one.

**DEBORAH N. ARCHER** [00:39:51] Yes.

**JVN** [00:39:51] So I guess I mean, it's. Yeah, I mean, I think it's also like one of those things or it's like your you know, I just want to get all of those people in my explore page videos that are these really scary kinda people-.

**DEBORAH N. ARCHER** [00:40:03] I don't know what that is. I'm so behind-.

**JVN** [00:40:05] Do you know what Ista-? You know Instagram?

**DEBORAH N. ARCHER** [00:40:05] I don't have Instagram.

**JVN** [00:40:06] Okay. Well on Instagram. Okay. So. Okay. It used to be that on my Instagram, it was like, so the explorer page is just like things like if you look up the hashtags like the Explorer page will bring you. So there's an Explorer page with this little like magnifying glass. Right? And as you can see, mine is all figure skaters.

**DEBORAH N. ARCHER** [00:40:24] Yeah.

**JVN** [00:40:24] Shirtless fitness people who I'm assuming are gay, you know, cute, like gorgeous people. Figure skating, gymnastics, fashion, hair. That's usually what there is. But all of a sudden, these like alt right ass videos started like populating my Instagram Explorer page. Like in the last like three months of like these scary white guys, that'll be like so and so school's climate change activist or, you know, so and so schools someone on on affirmative action. And it's these kind of alt right content on Instagram and Facebook that you know, these Trump supporting people will really look at. And it's, it doesn't seem like based off the metrics that I see on there, it doesn't seem like they're, you know, getting 10 views or it seems like there's kind of like a large breeding ground of this sort of like vitriolic, like, you know, white privilege thing. And I just really am like how, I think it's like people's unwillingness to get, there is like a psychological thing going on there where it's like a lack of like not being educated and then seeing something that makes them feel gross about their legacy and then they fucking like shit their pants.

**DEBORAH N. ARCHER** [00:41:41] And some of it is fear, fear that you are losing ground, fear that you are no longer necessary, fear that you're losing power. Feel that you, fear that you're losing privilege in, is how some folks respond to it. You know, fear that other people are making advances. That's why President Obama's election triggered so much, so quickly, so aggressively, because it was a symbol of something of a day they never wanted to see come.

**JVN** [00:42:06] That must seem, like really speaks something to my personal psyche, though, is that like that doesn't even occur to me like that. Like, you know, to be upset that, like, white people are losing power. It's like like we should be more upset that we had a legacy of being such dicks. Like, that's where my, that's where my fucking shame comes in.

**DEBORAH N. ARCHER** [00:42:23] But not evening losing power. Right? That would-.

**JVN** [00:42:26] Opportunity whatever.

**DEBORAH N. ARCHER** [00:42:26] Just becoming more equitable. Yeah. Right. We're just becoming more equitable.

**JVN** [00:42:29] I'm so let's-.

**DEBORAH N. ARCHER** [00:42:30] And that's a good thing. That's a good thing.

**JVN** [00:42:30] Let's do this thing. Let's do this equality.

**DEBORAH N. ARCHER** [00:42:33] Yes, equitable.

**JVN** [00:42:34] We love equal, we love equitable. So who do you think are like the kind of like, do you have any like young say, like younger like, like, I don't care about like young necessary. But who is like the fierce like civil rights leaders of like today that are like the new generation of people who you're like, oh, they got it together, honey. Like-

**DEBORAH N. ARCHER** [00:42:53] Yes. So we were talking about integration in New York City. And there is a group of teens. And this is generally true. If, if you are over 30 and you don't have someone in their 20s in your life who is a mentor to you, then you are missing out.

**JVN** [00:43:08] Guilty. I need one.

**DEBORAH N. ARCHER** [00:43:10] Well, I'm lucky I work in a law school so I have, you know, hundreds every year. In the civil rights movement, young people were leading the way, were at the forefront, really taking risks that other folks were not willing to take. And I think that that's true today. You talk a lot about, in the climate change sphere, but that's true in all areas, in particular, racial justice. Talking about school segregation in New York City. There is an organization called Teens Take Charge and they are fearless and they are impatient in the best possible way. They see what is going on and don't think that it's in, inevitable. Don't think it has to be that way. They're not interested, interested in incremental change. They want radical change. They want revolutionary change. And I think sometimes the best thing for us to do is stand back and follow their lead because they are thinking creatively and expansively and envisioning justice in a way that I think I cou-, had never envisioned. And so for me, I think we have to look at a lot of the youth led movements and take a page out of their book. You know, follow their lead.

**JVN** [00:44:19] What? Okay. Last question is, I know we need to start to wrap up, but what? In looking into into the next year, how can we? Or what do you think needs to happen in order for us to. Like, do you think that there's like a healing bomb that could happen in order for us to defeat Donald Trump? Like through like a unity gorgeousness 2020 moment? No?

**DEBORAH N. ARCHER** [00:44:47] I'm not one for the unity healing moment to solve our problems. I am one for the-

**JVN** [00:44:53] Kick him in the nuts?

**DEBORAH N. ARCHER** [00:44:54] Get out and vote.

**JVN** [00:44:55] Yes.

**DEBORAH N. ARCHER** [00:44:56] Right?

**JVN** [00:44:56] Yeah yeah.

**DEBORAH N. ARCHER** [00:44:56] Let your voice be heard. Take action. We saw what in the last election cycle. What can happen? Small changes if people get out and vote. We need to vote. We see what happened when we didn't vote. And if you care about your own rights, if you care about

your neighbors' rights. Vote like your rights are the ones at stake. If you are a white person, think about the people of color in your life and what's at stake for them and vote in a way to protect them. If you are a man, vote to think about how you can protect the women in your li-, vote to protect the rights of the women in your life. We need to get out and vote. So I don't want to think too far in the future. I want to think about November and what people need to do.

**JVN** [00:45:32] That's what I mean, yes.

**DEBORAH N. ARCHER** [00:45:32] Yeah. Let's not think about 2025.

**JVN** [00:45:34] No, I just mean 2020.

**DEBORAH N. ARCHER** [00:45:35] Yes. Let's just a few months from now. Everyone needs to go out to vote. We need to register to vote. And we need to make sure that everyone who wants to vote has the opportunity to. So we should be doing voter protection work. We should be voting, voter registration work. Right now. Not in October. Not in September. Right now.

**JVN** [00:45:54] And because so many state laws like prevent you from being able to do it kind of in the last minute.

**DEBORAH N. ARCHER** [00:45:57] Yes.

**JVN** [00:45:58] So then the last question, I swear to God. So because I mean, I would be remissed. You're, you're, you're, you're out of law school. You literally like are a lawyer. So there's a few major Supreme Court cases that are like coming like through the pipelines this year. Do you have your eye on any? Like is there just, is there something that you're watching specifically that like you think we all need to be watching? That's like a random question I didn't prep you for, I'm sorry, but is there, it doesn't even need to related to those cases, but is there just something that you're watching for that you wish that more people were kind of?

**DEBORAH N. ARCHER** [00:46:26] I think we should be paying attention to. And I think everyone is paying attention. So I'm I think I'm already speaking to the, preaching to the choir here. Paying attention to the Supreme Court decisions that are gonna be coming down on the the. Protections under Title 7 for gender identity and sexual orientation. Because I think not only is going to impact those folks directly, it will impact everyone the way that they interpret those laws. And it's important if we want to have a community where everyone feels welcome, where everyone has a right and ability to to succeed. We have to have the most expansive possible interpretations of our civil rights laws. And so that includes protections based on sexual orientation and gender identity. It includes protections based on race that acknowledge differences between black people and white people. So we're seeing lots of discrimination around black women's hair. And we want. And so the Supreme Court's opinion in how tightly they interpret Title 7 of the Civil Rights Act is going to have broad implications. And we should be paying attention.

**JVN** [00:47:27] You think could-. How do you think these rulings could impact, like women being able to wear their hair how they want?

**DEBORAH N. ARCHER** [00:47:37] So I think this may be too in the weeds for you. But par- part of the challenge with the law is that people made assumptions that sexual orientation or lots of courts



believe and argue that sexual orientation was covered under Title 7 because there was a case where a woman who was not stereotypically feminine was fired and she was protected. They said that the fact that you don't stereotypically act like they believe a woman should act, and they fire you because of that is a violation of Title 7. And so going back to the notion that there's some type of accepted way of expressing your, expressing gender or race or acting in the workplace is problematic. And we do have cases that say I just because I prohibit you from having dreadlocks doesn't mean that that's racial, because white people could have dreadlocks. And so that, one of the challenges we face are these purportedly neutral laws that have discriminatory application.

**JVN** [00:48:35] Yeah.

**DEBORAH N. ARCHER** [00:48:36] And that's and that's a challenge too.

**JVN** [00:48:38] Yeah. Just like let me wear my fucking gorgeous C-4 natural texture in a fucking lock. Fucker.

**DEBORAH N. ARCHER** [00:48:43] Yes. Right?

**JVN** [00:48:44] Get off my nuts.

**DEBORAH N. ARCHER** [00:48:45] Thank you

**JVN** [00:48:47] Note your textures.

**DEBORAH N. ARCHER** [00:48:47] Oh thank you.

**JVN** [00:48:47] I've been just like, it actually did distract me from two, beginning of two questions because I was like, I was like, did she twist it? Is that her natural ha-.

**DEBORAH N. ARCHER** [00:48:55] It is a twist out. That I do have an, an natural hair. Yes.

**JVN** [00:48:59] Literally tricep twirls so pretty.

**DEBORAH N. ARCHER** [00:49:00] Thank you.

**JVN** [00:49:01] Yes.

**DEBORAH N. ARCHER** [00:49:02] Thank you.

**JVN** [00:49:02] I'm really proud of myself for getting to the end of like a 50 minute conversation without comp, I'm like really trying to, like, stop complimenting women's hair right first out of the gate because it's just a natural. I can't help it. I love hair.

**DEBORAH N. ARCHER** [00:49:14] Yes, if it's in, and it's in your blood. It's in your blood.

**JVN** [00:49:16] It's in my blood, you know, but I realize that I. But I also just think I like women's hair. It's not really a sexist thing. I just prefer women's hair over men's hair. There's more to look at. You know?

**DEBORAH N. ARCHER** [00:49:25] We keep, we we feel like we can be a little more creative.

**JVN** [00:49:28] And I'm hetero for hair, only for hair, you know? Yeah, unless it's hair like mine. And then I'm just like more hair, whatever. I got really off topic for the end of the conversation.

**DEBORAH N. ARCHER** [00:49:37] And I just want to mention one more thing about this, about the Supreme Court, maybe a better answer to your question of what we should be we should be watching. With this election, we should be watching the makeup of the Supreme Court because it's going to, the next president will have the ability, I believe, to appoint another Supreme Court justice. And we really tip-.

**JVN** [00:49:56] Decades.

**DEBORAH N. ARCHER** [00:49:56] The court-. Generations.

**JVN** [00:49:58] Yep.

**DEBORAH N. ARCHER** [00:49:58] In the way that Trump has remade the federal courts. We'll have decades and decades of impact.

**JVN** [00:50:07] Thank you so much for your time.

**DEBORAH N. ARCHER** [00:50:08] No no. This was so much fun.

**JVN** [00:50:09] I really appreciate it.

**DEBORAH N. ARCHER** [00:50:10] Thank you.

**JVN** [00:50:11] You've been listening to "Getting Curious" with me, Jonathan Van Ness. My guest this week was Deborah N. Archer. You'll find links to her work in the episode description of wherever you're listening to the show on. Our theme music is "Freak" by Quin. Thank you so much to her for letting us use it. If you enjoyed our show, introduce a friend and show them how to subscribe. Follow us on Instagram and Twitter at CuriousWithJVN. Our socials are run and curated by Emily Bossak. "Getting Curious" is produced by me, Julie Carrillo, Rae Ellis, Chelsea Jacobson and Colin Anderson.