

# UW School of Law Transcript

## Gates Public Service Law Speaker Series: Michelle Alexander

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TUESDAY, APRIL 13, 2010

### Dean Kelly Testye:

Well, good afternoon, everyone. It's great to see you. I'm Kellye Testy, the Dean here at UW Law. Welcome. We love this wonderful series we have through our Gates Public Law Service program. As Washington's only public law school, we are deeply committed to public service and public interest, so we really enjoy bringing some of the best and the brightest voices in social justice here to the Law School to present.

And it's a particular great pleasure today to introduce to you Professor Michelle Alexander. I have admired her work so much, really been impressed by all that I've seen her do in her career. She joined the Ohio State University faculty in 2005 and holds a joint appointment with the College of Law and the Kirwan Institute for the Study of Race and Ethnicity. And prior to joining the faculty at Ohio State she was a member of the Stanford Law School faculty and there served as a director of the Civil Rights Clinic and did some amazing work through that clinic.

She has, as you would imagine a great deal of experience in the field of civil rights advocacy and in litigation, litigated many civil rights cases in private practice as well as engaged in a number of very innovative litigation advocacy efforts in the non-profit sector. She was also the Director of the Racial Justice Project for the ACLU of Northern California. And that organization during the time of her service spearheaded a national campaign against racial profiling by law enforcement.

I want to note, too, that Professor Alexander has also served in private practice with a firm working on plaintiff-side class action suits that alleged racial and gender discrimination.

She is a graduate of Stanford Law School, also of Vanderbilt University, and clerked after law school for Justice Harry Blackman on the United States Supreme Court. Before that, clerked for Judge Abner Mikva on the United States Court of Appeals for the DC circuit. A very impressive resume, but an even more impressive person, teacher, scholar and advocate, we welcome you to UW Law.

[applause]

Professor.

### Michelle Alexander:

Well, thank you so much for having me. I'm thrilled to be here in Seattle. It's a beautiful town and that makes me wonder what I'm doing in Columbus, Ohio. So I'm happy to come here and visit, and thank you for giving me the opportunity to share with you my

work and my passion in life, which is working to end the history of racial caste in America. Using a term like "racial caste" may seem odd today, given the election of Barack Obama. Conversations and debates about race are typically dismissed as yesterday's news not much relevant to the current era. We're frequently told by media pundits and politicians alike that we as a nation have finally moved beyond race. And not just in the United States, but around the world there is the sense that the United States has finally triumphed over race with the election of Barack Obama, and that his election represents kind of a final nail in the coffin of Jim Crow.

My book is a direct challenge to that racial narrative. It's intended as a wake up call. I argue that racial caste is not dead. It is alive and well in America. The mass incarceration of poor people of color in the United States operates like a racial caste system. The systematic targeting of people of color often at young ages, branding them as felons and then ushering them into a permanent second-class status, one that they occupy for life, functions now in our society much in the same way that Jim Crow once did.

I'm well aware that this kind of claim may strike some people as bordering on absurd. I mentioned in the introduction to my book that I myself dismissed the idea that something akin to a racial caste system could be operating in the United States many years ago. I describe in the introduction to my book that I first encountered the idea that a new racial caste system could exist in the United States when I was rushing to catch the bus and a bright orange poster caught my eye.

It was stapled to a telephone pole, and the poster kind of screamed in large bold print "The Drug War is the new Jim Crow." And I scanned the text of the flyer for a few minutes and I saw that a radical community group was holding a meeting in a small church a few blocks away. The church itself had maybe a seating capacity probably for no more than 50 or so people. And they were organizing to protest the new "Three Strikes" law in California, the expansion of the prison system, and police brutality.

I remember looking at the poster and thinking to myself, "Yes, the criminal justice system is racist in a lot of ways, but it doesn't help to make such absurd comparisons. People just think you're crazy." And I crossed the street, ran to catch the bus, hopped on the bus on my way to my new job as Director of the Racial Justice Project at the ACLU.

Now, when I started working at the ACLU, I assumed that the criminal justice system had problems of racial bias much in the same way that all institutions in our society today are infected to some degree with conscious and unconscious racial bias. Prior to joining the ACLU I had been working as a civil rights attorney, litigating large class action employment discrimination cases against companies like Home Depot and Publix Supermarkets in the South. And I understood well the ways in which racial stereotyping, gender stereotyping can infect subjective decision making of all kinds at all levels of an organization with disastrous consequences.

So I figured I'm just going to shift my attention from employment discrimination to criminal justice reform, use the same tools and strategies that I had used in the employment discrimination context to criminal justice reform and work with others to root out racial bias whenever and wherever it might rear its ugly head in the criminal justice system.

But by the time I left the ACLU I realized that I had been wrong about the criminal justice system. It's not just another institution in our society infected with racial bias but a

different beast entirely. The activists that posted that sign on the telephone pole, they weren't crazy. Nor were the smattering of lawyers and advocates around the country that were beginning to connect the dots between mass incarceration and earlier forms of racial control.

So quite belatedly, really only after years of working on racial profiling litigation, learning about the struggles of people who are incarcerated and released and struggling to find jobs and employment on the outside, only after years of working on these issues and having my own moments of personal awakening did I finally come to see that mass incarceration truly is a stunningly comprehensive and well-disguised form of racial control analogous to Jim Crow.

I state my basic thesis in the introduction to my book. I say, "What has changed since the collapse of Jim Crow has less to do with the basic structure of our society than the language we use to justify it. In the era of color blindness, it is no longer socially permissible to use race explicitly as a justification for discrimination, exclusion, and social contempt, so we don't. Rather than rely on race, we use our criminal justice system to label people of color criminals, and then engage in all the practices we supposedly left behind."

"Today, it is perfectly legal to discriminate against criminals in nearly all the ways it was once legal to discriminate against African Americans. Once you are labeled a felon, the old forms of discrimination: employment discrimination, housing discrimination, denial of the right to vote, exclusion from jury service, are all suddenly legal."

"As a criminal, you have scarcely more rights and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America, we have merely redesigned it."

Well, here are a few of the facts that I uncovered in the course of my research, and that I cite in my book. "More African Americans are under correctional control today, in prison or jail, on probation or parole, than were enslaved in 1850, a decade before the Civil War began."

In 2004, more African American men were disenfranchised, due to felon disenfranchisement laws then in 1870, the year the 15th Amendment was ratified, prohibiting laws that explicitly deny the right to vote on the basis of race.

In some major urban areas in the United States today, if you take into account prisoners, the majority of working age African American men have been branded criminals, and are thus subject to legalized discrimination for the rest of their lives.

In fact, in 2002, the Urban League released a report showing that in Chicago, the figure is nearly 80%, 80% of working age African American men branded criminals, have criminal records. They are permanently locked into an inferior second-class status.

"These men are part of a growing under caste, not class, caste. A group of people defined largely by race that can be discriminated against by law for the rest of their lives, much like their grandparents or great grandparents may have been under an explicitly racial system of control."

Now, I find that when I tell people that I think that mass incarceration amounts to some kind of new system of racial control, I am kind of usually met with shock, disbelief. People say, "How can you say that? Just look at Barack Obama. Look at Oprah Winfrey. Look at Colin Powell." The list goes on and on of highly visible African Americans in positions of leadership or power, or who have obtained great wealth.

These individuals are offered as proof that we can't possibly have a caste-like system operating in the United States today. I think that it is important to keep in mind that no caste system in the United States has ever governed all African Americans. There have always been free blacks and black success stories, even during slavery and Jim Crow.

During slavery, there were some black slave owners, not many, but some. During Jim Crow, there were some black lawyers and black doctors, not many, but some. The extraordinary nature of individual black achievement today in formally white domains, does indicate that the old Jim Crow system is dead, but it doesn't necessarily mean the end of racial caste.

If history is any guide, it may have just taken a different form. I think any honest observer of American racial history has to acknowledge that the rules and reasons that the legal system employs to enforce status relations of any kind, well they evolve, and they change as they are challenged.

The first chapter of my book is devoted to describing kind of these sick little rebirths of racial caste in America. After the collapse of slavery, a convicts leasing service emerged in the South to replace the institution of slavery. There is a fantastic book by Douglas Blackman called "Slavery by Another Name."

It talks about the practice at the end of the Civil War of African American men being rounded up in mass for minor crimes like loitering, arrested, sent to prisons, and then shipped out to plantations, leased out to plantations. The idea was that these folks had to kind of earn their freedom, but the catch was they could never earn enough to pay back the cost of their shelter and their food to their plantation owners. So, they were in perpetual slavery many years after the supposed collapse of slavery following the Civil War.

So a system like slavery emerged as a backlash to the Civil War, and of course then there was the emergence of Jim Crow as convict leasing began to fade away. Now, most historians imagine that although Jim Crow and convict leasing systems clearly emerged as a backlash to the collapse of slavery that no similar system has emerged following the collapse of Jim Crow.

However, I think if we take a closer look at the way mass incarceration actually operates in communities of color, we're forced to reach a different conclusion. The emergence of mass incarceration has been truly sudden and dramatic. In a period of less than 30 years, we went from having a prison population of about 300,000 to more than two million. Our nation's prison population quintupled, not doubled or tripled, quintupled in an exceptionally short period of time.

The United States now has the highest rate of incarceration in the world, dwarfing the rates of even highly repressive regimes like Russia or China, or Iran. In fact, if we as a nation were to return to the incarceration rates we had in the 1970's, a time when many civil rights activists actually thought that rates of incarceration were egregiously high.

But if we were just to go back to rates of incarceration we had in the 1970's, we would have to release four out of five people who are in prison today.

More than a million people employed by the criminal justice system would lose their jobs. That is how enormous and deeply entrenched kind of in the basic economic fabric of our society that mass incarceration has become in an incredibly short period of time.

In my view, it is the racial dimension of mass incarceration that is the most striking feature. No other country in the world imprisons such a large percentage of its racial and ethnic minorities. Several years ago it was estimated that in Washington, D.C., three out of four young black men and nearly all those who lived in the poorest neighborhoods could expect to serve time in prison.

Rates of incarceration nearly as shocking can be found in other urban areas across America. Now, most people assume that this explosion in our prison system can be explained by crime rates. And people say, yes, of course. Our prison population shot through the roof because of crime. Crime went up, so prison population went up.

Not so. Crime rates over the last 30 years have fluctuated, risen and fallen over the last 30 years, and today are at historical lows. But incarceration rates have consistently soared.

Most sociologists now agree that rates of incarceration have moved independently of crime rates. Whether crime rates are going up or down, incarceration rates have continued to soar. So if the prison population hasn't exploded because of crime rates, then what is it, then?

Well, it turns out that the activists who posted the sign on the telephone pole were right. The War on Drugs is the single most important cause of the prison boom in the United States, and the branding of millions of Americans as felons for life. About two-thirds of the increase in the federal system is due to drug convictions, and more than half of the increase in the state system is due to drug convictions.

Drug convictions have increased about 1,000 percent since the Drug War first began. And for those of you who might think the target in this war has been violent offenders or drug kingpins, that's not the case. In 2005 for example, four out of five drug arrests were for simple possession. Only one out of five were for sales. Most people in state prison for drug offenses today have no history of violence or significant selling activity.

And in the 1990's, the period of the greatest expansion of the Drug War, nearly 80 percent of the increase in drug arrests were for marijuana possession. You know, a drug that many scientists now believe is less harmful than alcohol or tobacco, and a drug that is equally as prevalent in middle-class white communities and on college campuses as it is in inner-city communities.

But the Drug War has been waged almost exclusively in poorer communities of color, resulting in astronomical increases in incarceration rates, particularly of black and brown men, but increasingly of women. In some states, 80 to 90 percent of all drug offenders sent to prison have been black/brown.

Now, the reality is that there are almost no differences in drug use or selling activity across racial groups. For decades now, surveys have consistently shown and studies have

consistently shown that contrary to popular belief, people of color are no more likely to use or sell illegal drugs than whites. Now, this defies our basic racial stereotypes about who drug dealers are. When we picture a drug dealer, we typically imagine a black kid standing on a street corner somewhere, maybe with his pants hanging down. Well, drug dealing happens in the ghetto, but it happens everywhere else in America as well.

A kid in rural Nebraska or rural Kansas, he doesn't drive to the 'hood to get his marijuana or his meth. No, he gets it from a friend, a classmate, co-worker, somebody down the road. It turns out that drug markets in the United States are relatively segregated by race and class, much like American society generally. Whites tend to sell to whites, blacks tend to sell to blacks. University students sell to each other.

So the concentration of the Drug War in poor communities of color cannot be justified by rates of drug crime, drug use, drug sales. So why is it being waged there? Well, the Drug War from the outset had never much to do with drug crime. It was about racial politics. Most people think the War on Drugs was launched in response to the emergence of crack cocaine in inner-city communities across America, or rising drug crime. Not true.

The current Drug War was officially announced by President Ronald Reagan in 1982 at a time when drug crime was actually declining. And a couple of years before crack first emerged in Los Angeles and later spread to inner-city communities of color across America, the War on Drugs was motivated by racial politics. It was part of the Republican Party's grand strategy, often referred to as the "Southern Strategy" of attempting to appeal to poor and working-class white voters who were resentful of, disaffected by many of the gains of the Civil Rights Movement, particularly busing, desegregation and affirmative action.

Now many of these folks had good reason to feel concerned about the changes wrought by the Civil Rights Movement. It wasn't rich white folks that had their worlds rocked by desegregation. They were able to send their kids to private schools. No, it was primarily poor and working-class white folks who were suddenly forced to compete on equal terms for scarce jobs with a group of people that they had long been taught to view as their inferiors. Their kids who were facing potential busing orders across time. And there was anxiety and fear wrought by the social upheaval brought by the Civil Rights Movement.

Well, Republican Party strategists and pollsters found that they could appeal to those poor and working-class white voters through racially coded political appeals on issues of crime and welfare. And through these racially coded political appeals, they could get white voters, particularly in the South who had long been members of the Democratic Party to defect from the Democratic "New Deal" kind of coalition to the Republican Party.

And so these racially coded political appeals and get tough campaigns and law and order rhetoric was part of that strategy of appealing to those voters. And when Ronald Reagan declared the War on Drugs at a time when drug use was actually declining, and people weren't that much worried about drug crime, it was an effort to make good on campaign promises to get tough on a group of people that had been defined in the political rhetoric and in the media imagery as black and brown.

Now the Reagan administration got lucky, and a couple of years after the war was officially declared, crack hit the streets in Los Angeles and spread to inner-city communities. And the Reagan administration seized on this development with glee,

hiring staff whose job it was to publicize images of crack babies, crack dealers, crack-related violence.

Staff whose job it was to feed stories about these folks and find examples of crack babies, crack whores in the inner-city to feed to mainstream media outlets. Their hope was that by publicizing and sensationalizing crack-related use, abuse and violence in inner-city communities that it could boost public support for the Drug War and turn the rhetorical war into a literal one.

And the plan worked like a charm. Almost overnight, television sets were saturated with images of black and brown drug dealers and users. Many of you in this room are too young to remember, but in the mid 1980's and early 1990's, it was nearly impossible to turn on the evening news without seeing images of black and brown men in handcuffs being paraded off to prison for drug-related offenses or sweeps being done of housing projects in ghetto communities.

It saturated the news and it forever changed our conceptions about who drug dealers and users are. And it's because of that media campaign conducted by the Republican administrations and the media imagery that followed, that in 1995 a national survey was conducted asking people, "Close your eyes for a minute and imagine a drug criminal." 95 percent of the respondents pictured someone who was African American. Only five percent pictured anyone of any other race.

So it's no surprise that in that political environment that the war would be waged almost exclusively in poor communities of color. And Democrats began competing with Republicans to prove that they could be even tougher "on them." Tougher on the racially defined "others" in the media imagery and in the news. And President Clinton outdid Ronald Reagan. He escalated the Drug War far beyond what his Republican predecessor had even imagined possible.

The greatest increase in incarceration rates in United States history happened during the Clinton administration, not during the Reagan administration. Because Clinton was so desperate to appeal to and try to woo that same block of voters that had proved so responsive to the racially charged get tough rhetoric on crime and welfare, and that's why Clinton pledged to end welfare as we know it and escalated the Drug War far beyond what his Republican counterparts had dreamed possible.

So here we are as a result, years after all the media fanfare and the get tough rhetoric. And we have people of all colors serving lengthy sentences, sentences unheard of in other Western democracies for often relatively minor non-violent drug related offenses. You know, if you go to places in Europe and tell people that here in the United States there are people doing life sentences for marijuana possession, they'll just look at you like you're crazy. It's absolutely unheard of.

Here in the United States, our Supreme Court upheld life imprisonment for a first time drug offense. Absolutely unheard of really in any other democracy in the world. And the fact that those that are trapped in the new under caste are not only black and brown but are also white is a reflection of a Drug War and a get tough movement that has spiraled out of control and caused harm to people of all colors.

Now, I want to spend just a couple minutes talking about some of the parallels between mass incarceration and Jim Crow segregation, and then I want to open it up for questions and have a discussion and a debate about this.

Jim Crow of course was a system of rules, laws, policies and customs that served to lock African Americans in a permanent second-class status for life. Consider whether some of the rules and laws that applied to those labeled felons, and ask yourself whether they remind you of a bygone era.

Well, first and most obviously is denial of the right to vote. You know, I'm thrilled that here in Washington State has now become one of the few states where prisoners as well as those who have been branded felons have the right to vote as a result of legislative action and the decision hopefully you're all familiar with by the 9th Circuit, ruling that the denial of the right to vote to people in prison is a violation of the Voting Rights Act.

Because the criminal justice system particularly, and drug law enforcement in Washington State is so rife with racial bias. The racial disparities can't be explained on race-neutral terms. In fact, the state made no attempt to explain them on race-neutral terms, but the denial of the right to vote to prisoners violates the Voting Rights Act.

Most other states in the United States, that's not the case. And the denial of the right to vote is routine in most states in the United States to people who are prisoners and even whence you've been released from prison. You can be denied the right to vote for a period of years or for your entire life.

Employment discrimination. Employment discrimination against those branded felons is perfectly legal. Job applications ranging from Burger King clerk to accountant all got that box on the employment application that you have to check if you're ever been convicted of a felony. Studies indicate that 70 percent of employers won't even consider hiring someone who's been convicted of a drug felony. Never mind that most Americans violate drug laws in their lifetime, but if you've been branded a felon, if you get caught with drugs, then the odds of you getting employment again are extremely slim if you check that box.

Housing discrimination. Housing discrimination is perfectly legal. During the Jim Crow era of course, that was the era of racially restrictive covenants. But today, housing discrimination is perfectly legal. Public housing projects as well as private landlords are not only authorized to discriminate, but in federal public housing, they're required to discriminate.

Public housing is off-limits to you for a minimum of five years once you've been released from prison. So imagine, here you are, released from prison. No money, no job, public housing is off-limits to you. Many homeless shelters today screen for criminal convictions. The 600,000 people released from prison every year, where are these folks expected to go? Many folks who are released from prison return to the communities from which they came, ghetto communities, and their relatives risk eviction if they allow you to stay with them.

And no job, nowhere to sleep, what are you expected to do? In most states you are expected to pay thousands of dollars in fees, fines, court costs. In some states you're expected to pay back the cost of your imprisonment. Paying back these fees, fines and court costs are often a condition of your parole. And in fact, in many states, up to 100



percent of your wages can be garnished to pay back the cost of your imprisonment, accumulated child support, fees, fines, court costs. What do we expect these folks to do?

Even if you're one of the lucky few who manage to land a job after checking the box, up to 100 percent of your wages can be garnished? And you're not even eligible for food stamps. By federal law, thanks to President Clinton, even food stamps are off-limits to people who've been branded drug felons. Pregnant women, people with HIV/Aids, you're hungry, sick? Can't even get food stamps.

Now what is the system designed to do? From all appearances it appears designed to send people right back to prison, which is what happens about 70 percent of the time. 70 percent of people released from prison return within three years. And the majority of those who return do so in a matter of months because the legal hurdles and the barriers to just surviving and making it in the mainstream society and a legal economy are so great.

But then we have "three strikes" laws. You know, here in Washington State there's someone serving a life sentence, a three-strike sentence for stealing \$50 worth of groceries as their third strike. People are then punished for the rest of their lives, locked up and the key is thrown away for struggling to survive once being branded a felon.

Now of course, there's also other forms of political discrimination analogous to Jim Crow, like exclusion from jury service. One hallmark of the Jim Crow era was the systematic exclusion of African Americans from juries and kind of the all-White juries particularly in the South. Well, in many areas, all-white juries have been making a roaring comeback. You know why? Because those branded felons are deemed automatically ineligible for jury service.

And then get this. Even if you haven't been branded a felon, if you've ever had a negative experience with law enforcement, well then, that can disqualify you for cause for a jury in a criminal case, because you're perceived to have experiences with law enforcement that would make it difficult if not impossible to be impartial in a criminal case.

So in many areas the all-white jury and the systematic exclusion of African Americans from jury service has come roaring back because of mass incarceration and the branding of millions of people as felons, frequently for non-violent and drug related offenses.

But of all of the kind of formal political forms of discrimination and exclusion that are in place today for those branded felons, in my experience those who've been branded felons will often say that these legal rules, these legal forms of discrimination are not the worst of it. The worst is actually the stigma and shame that you bear as being viewed as a criminal, as being branded a felon. It's not just the denial of the job, but the look that flashes across the employer's face when he sees that box has been checked.

It's not just the denial of public housing, but the humiliation and shame that you feel when you have to beg your grandma for a place to sleep at night because no one else will take you in. The shame and the stigma associated with criminality and the era of mass incarceration has real parallels to the shame of stigma of race in the Jim Crow era.

During Jim Crow, light-skinned blacks would often try to pass as white to avoid the shame and stigma associated with race. Well, today those branded felons often lie not just to employers and to housing officials, but also to their friends, family, and loved ones, trying to hide their criminal status or that of their family members due to shame.

You know, there was a fascinating study that was done in Washington, DC of an area hard-hit by mass incarceration. A neighborhood where every house or every other apartment had someone who had either recently been released from prison, or had a family member behind bars. And these were neighborhoods where you would think that mass incarceration was just completely normalized, where everyone would just talk about their own criminal history or that of their loved ones.

But instead, the ethnographers found that not a single person in this study had fully come out to their friends, neighbors, loved ones about their own criminal history or criminal status or that of their loved ones. That there is still such shame and stigma associated with it that people felt it'd be better not to mention it, to keep quiet.

So there's an eerie silence that has fallen over, even the communities hardest hit by mass incarceration. One rooted in shame for some and for others of us in denial. We are in deep denial as a nation about the existence of caste in America and experience of millions of people cycling in and out of the criminal justice system today.

Now, a big part of this denial is rooted in the fact that prisoners are literally erased from poverty statistics and unemployment statistics. Prisoners are just not even counted. If you read unemployment statistics for African Americans, standard unemployment statistics, as bad as they are today, you read that unemployment for African Americans is 15 percent or whatever the current number is? You can actually add 15, 20, up to 23 percentage points to that number to account for all of the African Americans behind bars.

So this illusion of great progress has been engineered in part by the removal of millions of people from our poverty rolls, from our unemployment statistics through mass incarceration. And affirmative action, the election of Barack Obama has helped to create kind of a happy face on America's racial reality. But if you take a close look at the data and include prisoners within it, you see that African Americans as a group are actually not better off than they were in 1968 when Martin Luther King, Jr. was assassinated and uprisings swept inner-city communities across America.

We are today much in the same place that we were when Martin Luther King, Jr. said we need to build a poor people's movement in the United States and join poor folks of all colors in a struggle for basic human rights. And that I believe is the work that is left unfinished and that we must go back to do. Not just to end mass incarceration, but to do the healing work and the movement-building work that is necessary to end the history of racial caste in America and build a society that genuinely recognizes and honors the human rights of all.

So, happy to take your questions and open it up for debate and comment.

[applause]

Yes?

**Man 1:**

Loved your talk. It's refreshing in Washington-if you stayed here long, you would find that people are rarely very negative about anything or talk about things of this impact. But I was curious if you write about the impact on communities as well as the impact on felons. Because in some ways it operates as a collective punishment.

**Michelle:**

Yes, absolutely. You know, there's been a fair amount of talk, particularly in black and ethnic media about the absence of black men as fathers from black homes. You often read articles, Ebony and Essence magazine and here on Black radio, "Where are all the black men? The black men are gone. Black women can't find people to marry."

Very rarely is there talk about the fact that the reason so many black men are missing from families and homes and are unable to contribute economically to support a family and get a decent job is because they've been imprisoned and branded felons and must check the box. And can't get housing that the disappearance of black men from homes has had a devastating impact on the family structure. The War on Drugs and the systematic incarceration of black men over the last couple of decades has had a devastating impact on the communities as a whole.

And I think there's also a failure to appreciate that one of the untold, unfortunate stories of mass incarceration is that it has been used as a vehicle for warehousing a group of people that are now viewed as unemployable. And back in the 1950s, as bad as things were in many communities of colors, the areas we know as the ghettos today were actually doing relatively well.

There was severe racial discrimination but at least people in those communities had jobs. And there were businesses in those communities. And a large part of the reason those communities were stable economically was because factories were located in urban areas in very close proximity to areas we now think of as the ghettos and they were located in an urban areas so that they would have cheap access, quick access to cheap labor.

Well, in a very short period of time, most of those factories have been closed down, those jobs have been shipped overseas and you know, in the early 1980s when the War on Drugs was kicking off, those communities were suffering from economic collapse because hundreds of thousands of jobs had vanished from these communities practically overnight in a 10 or 15 year period of time.

Now we could have responded to that crisis in inner city communities with job training and economic stimulus packages rushed in to provide help and aid particularly young people from suffering the transition from an industrial to a service economy but no. Instead, what do we do? We ended welfare as we knew it and we declared the War on Drugs.

And we know now, hundreds of thousands of people removed from those communities, people who might otherwise would have contributed economically helping to support families and helping to provide a stable community support and structure. So yes, the War on Drugs has punished and devastated entire communities, not just the individual offenders.

[Inaudible 46:51]

**Woman 1:**

[inaudible 46:58]

My question is, during this time, there was a settlement regarding charging juveniles as adults and I want to hear from you...

[Inaudible 47:15]

But at the same time how that also included younger and younger people...

[Inaudible 47:59]

**Michelle:**

Yes, thank you. The comment, for those of you who may not have been able to hear was black and brown women, African American and Latinos are affected now as much as men of color by the War on Drugs and mass incarceration. And that this "get tough" movement has resulted in younger and younger people being charged as adults and labeled felons at an earlier and earlier age as well. And both of those points are very well taken.

In fact, women are the fastest growing sector of the prison population today - African American women and Latinas are the ones who are kind of driving the greatest percentage of the increase today and their incarceration, I fear, will have even more drastic consequences for the community than the incarceration of black and brown men.

Why? Because these communities are already so fragile because of the absence of so many black men. These communities are barely holding it together as it is. To begin remove the women and mothers of these children who have historically been the primary care takers is to relegate generations of these kids to the foster care system and the data of what happens to kids once they're released from foster care is tragic and really sobering.

At least in California I'm not familiar with the data here in Washington State but in California a majority of kids who are released from foster care after the age of 18 wind up in prison in less than three years. So really you're sentencing those children when you incarcerate their mothers, you are sentencing those children to a lifetime of institutionalization. So I am deeply concerned about the trend of targeting women for relatively minor drug use and the consequence that has for families.

I want to share with you just one story. There's a woman named Susan Burton who I met just a few months ago who now runs a number of homes for women recently released from prison. Now Susan many years ago was standing in her front yard when she witnessed a police officer killing her son. Ran him over with a police car. The car was barreling down her street and her five-year old son was run over.

Now if she had been someone who had been relatively wealthy when she spiraled into deep depression and grief as anyone would. I have a five year old son and I can tell you the pain and suffering that she must have experienced is unthinkable. So she spiraled into deep depression and grief. I she had been wealthy she might have been able to get legal drugs to help her cope. She would have been able to get herself good health care coverage, she would have been able to get a psychiatrist give her good legal drugs.

Well that didn't happen and she became addicted to illegal drugs. And as a result she cycled in and out of prison six times. Unable to get work, unable to get clean, unable to get housing. Cycled in and out of prison six times as a result of her drug addiction.

Finally she was able to get into a drug treatment program in Santa Monica, got clean and committed herself to ensure that no other woman would suffer as she had as a result. So she one morning woke up and went down to skid row which is where they let prisoners get off.

They let prisoners off with one cardboard box with your belongings, get off the bus with nowhere to go, often with little money and she would meet women off the bus with nowhere to go and tell them just come home with me. Sleep on my dining room or on my couch and have a safe place. And she began doing that and now she is running five houses for women who often have children. And I toured these houses and there is bunk heads and kids' toys scattered around.

And here are these women struggling to make it on the outside for their families and to hold their families together. And if they slipped up, tiniest slip up they can find themselves right back in prison again. And their hopes of being able to raise their children are likely gone forever. So, yes, the plight of women trapped in the system is one that I'm deeply concerned about.

And as for younger people being branded felons and treated as adults, you are absolutely right that the get tough movement, the law and order kind of frenzy that over took the United States has resulted not only in the Drug War but the three strikes laws and the treating of youth as adults. It's been this punitive rather than a compassionate one.

And I would argue that this punitive impulse is largely due to the fact that when we think about criminals, and they think about folks of color. And it is our failure as a nation to have the same care, compassion and concern for kids in the ghetto as you might for suburban kids or kids in upper middle class communities are fair to care equally.

For black and brown kids as we do for white suburban kids that has resulted in this incredibly harsh approaches to dealing with problems of youth crime. And youth commit crime. That's part of being young in America to a large extent. I think there is very few folks in this room who did not violate the law in some way when they are young.

Drinking underage, experimenting with drugs, speeding on a free way. We are all criminals but only some of us get branded and only some of get relegated to a permanent second class status for life. And in America, it is primarily youth of color that suffered that fate.

**Man 2:**

So I have been thinking lately about the sort of expungement of race from our public discourse. I hooked up examples of this case that you wanted to work for has become involved with about a pregnant woman who was taking her kids to school when those and pulled out of the car [Inaudible 55:34] .

And when I first read the article about this incident. I kept thinking well, if you're black, [Inaudible 55:42] black. Of course she was black but the article already called him y that

right? I think this trend is more pronounced in the [Inaudible 56:00] year over. Since we supposedly looking at close racial society, we don't have thinks that race anymore.

The other example is pretty personal to my experience where I lobbied on the voting rights restoration bill that you talked about and go passed last year. And this is obviously a bill that's essentially about grace, prosperity and yet, in lobbying for the bill, I probably mentioned race to maybe five to six legislator. Those are five to six legislators to cover. [Inaudible 56:30] . For everybody else, I had to go with what worked for them because lower rates and [Inaudible 56:38]

We got to meet this people and [Inaudible 56:45] . So their disposition, their race is all around us. What matter is obviously what matters and you can't even talk about so, first think here [Inaudible 56:53] that the public discourse makes it even more difficult to change interests so...

### **Michelle:**

Yes, you are absolutely right that there are has been a trend towards the expungement of race from our national discourse, especially since the election of Barack Obama.

But, really the trend began long, long before. I actually spend a fair amount of time in the last chapter of my book talking about why I believe that color blind strategies to dismantle mass incarceration should not be pursued. Most civil rights lawyers and activists would disagree with me today on that point. Well, I don't know. I haven't taken a formal poll, but I know a lot would.

The reason is because color blind rhetoric is so much more successful with people who have either grown weary of hearing about race or feel uncomfortable with race even being mentioned. And so, they're more receptive to arguments that are made in color blind or race neutral terms.

But, it is my deep belief that we will never get beyond these cycles of racial caste and racial discrimination without reckoning with the reality of race and the fact that we would not have the system of mass incarceration as we know it today but for the racial politics that gave rise to it and the racial imagery of those thought of as criminals. But for race mass incarceration, as we know it, wouldn't exist today.

And so, attempts to dismantle it simply by appealing to people's concerns about costs now that states can't afford to be housing millions of offenders for lengthy periods of time. As you see, Governor Schwarzenegger and other governors beginning to say, "Oh, actually, it costs too much to warehouse people in prisons. We should channel that money into schools or health care." So, this is a new revelation that schools and health care are a better investment than prisons.

Well, those arguments about cost and efficiency may work well to some degree, but as I noted at the outset if we were to return to the rate of incarceration that we had in the 1970s, we'd have to release four out of five people who are in prison. Prisons across America would close. Almost a million people would lose their job.

It would require a fairly radical restructuring, not just of our criminal justice system but of local economies in many places. There are rural areas in American today that have

become dependent on prisons in much the way plantations were once the economic base of many rural areas.

So, merely appealing to kind of costs and efficacy without dealing with kind of the racial reality and stereotypes and sentiments that have given rise to mass incarceration and lead people unconsciously often to support get tough policies that don't make much financial, fiscal sense or utility.

I think it's ultimately misguided, even if we were to reduce the prison population by half which I think many criminal justice reformers would say would be a great leap for humankind. We would still have twice as many people in prison than we did in the 1970s at a time when many folks thought that rates of incarceration were egregiously high.

So, I think we're going to have to think bolder and be more courageous in our advocacy and be willing to talk about the very things that most Americans seem determined to avoid which is our persistent unconscious biases, the resentments and anxieties that we feel as a country as we struggle to be more multi-racial, multi-ethnic and accepting. And so, I hope that those who are committed to social justice will at every opportunity point out.

Actually, the woman who is arrested in that situation was African American and most likely would not have had the same experience if she was white and upper middle class. And to raise race, in a way that's not accusatory to those who maybe owe responsibility for this situation but as a way of constantly reminding and informing so that we cannot be lulled back to sleep about the relevance and reality of race of an African American.

### **Woman 2:**

In your book and in your presentation that you have, I think correctly is the drug pulse about which you speak. You identify the War on Drugs as the primary driving force for mass incarceration rates over the past four decades. And what I'm curious about is of one of the recommendations that you made on how we can accurately address these problems is legalizing marijuana. Perhaps legalizing other drugs. Essentially changing the laws that are perpetuating the War on Drugs.

But I have found that what we see now is that the marijuana legalization movement is dominated by white men. There are very few voices of color that are calling for those fundamental changes to the law.

Can you share what your experiences have been in your conversations with individuals of different colors in engaging them on this issue that is devastating their peers?

### **Michelle:**

Yeah, well you know a couple of things. Essentially, you're going to end up asking if the War on Drugs is as devastating as its been to communities of color, why is it that there aren't more leaders of color, civil rights groups calling for drug legalization or the end of the Drug War.

And you know, one of the reasons that I wrote this book is because of my own frustration over the fact that the War on Drugs and mass incarceration itself was not at the top of the agenda of many civil rights organizations in the United States and that African American

leadership in particular seemed not to be prioritizing the devastation caused by the War on Drugs.

And I am encouraged by the fact that the NAACP and our [Inaudible 1:04:08] who recently became the new head of the NAACP has indicated a commitment to mobilize an organizing around mass incarceration and I think that they do intend to devote more intention and resources to it in the years to come.

But I think that there is an important reason for the collective silence. And that is that throughout our nation's history, civil rights advocates, slave abolitionists have found that they can be most successful in civil rights campaigns and racial justice struggles when they hold up as examples of injustice those individuals of great civic and moral virtue to illustrate why the prevailing caste system is unfair and irrational and unjustified.

And so civil rights lawyers and activists, the primary search has always been to identify those individuals who defy racial stereotypes and lift them up as examples of why the system as a whole, is unjustified.

So hence Rosa Parks right, Rosa Parks is the perfect example of a woman who was well regarded as of exemplary moral virtue. Now there are two other potential plaintiffs that were considered and were rejected before Rosa Parks. There were two other women who were considered as potential plaintiffs and spokesperson. One of them was rejected by civil rights advocates because she became pregnant at a young age and was unmarried and didn't want any media attention to a young, unmarried black woman.

Another potential plaintiff was rejected because her father was an alcoholic and even that was deemed to be so problematic that they did not want her to be used as a plaintiff. So with mass incarceration, civil rights advocates are faced with a dilemma where the very folks that should be the subject of our most pressing concern are people who have criminal records and who are viewed by mainstream society and often within their own communities as unworthy of our collective concern.

And so, you know, I think it is going to take some work, really from the bottom up to press African American leaders and civil rights organizations as a whole to do what they have never done before, which is to make as a priority those folks who have been accused of crimes, convicted of crimes and allow their stories to be heard and to be organized around in a meaningful way.

I mean, even during Jim Crow segregation when African Americans were more likely to be lynched than receive a fair trial, NAACP lawyers would not represent them unless they were absolutely convinced of their innocence. The idea of representing someone who might actually be guilty, they feared, would just reinforce the Jim Crow system rather than undermine it.

So it's not just we collectively as a nation, do we have to learn to extend care, concern, compassion to the folks, you know, who are, quote/unquote "at the bottom of the well" but even civil rights organizations must learn to do the same.

Now as for drug legalization, I must say I don't argue for drug legalization in the book across the board. I don't know about drug legalization across the board. It's not something I've studied in any depth. I'm interested in learning more about it.



I do think that the legalization of marijuana is pretty close to a no-brainer given the research that's now available showing that it's less addictive, less harmful than, you know, alcohol and tobacco. And given that the Drug War has been driven to a great deal by convictions for marijuana possession in recent years.

It seems like just a, you know, unconscionable waste of resources and cause of human suffering to be putting people in cages for marijuana possession. But I do think that we can end the Drug War. We don't have to legalize all drugs to end the Drug War. We can end the Drug War and go back to what we used to do and that is a common practice in middle class communities - which is, to ignore for the most part, you know, relatively minor drug use, consumption and sales.

We don't have to round people up by the thousands for relatively minor drug crimes as we currently do. We don't have to stop and search kids as they're walking to the school bus, rifling through their backpacks and sweeping through the schools, you know, in a search for a small amount of drugs. We can end that without legalizing drugs and in the process of ending the War on Drugs, we will strike a major blow to the current caste system.

**Woman 2:**

OK. Thank you very much. Don't go anywhere.

[applause]

**Michelle Storms:**

Yeah, I hate to stop a really fabulous and such an important conversation but its not an end to our conversation because what Professor Alexander has done is put something out for all of us to read and to think about and to consider what our own activism around these issues might be.

So, my name is Michelle Storms and I direct the Gates' public service law program. And it has been such a great pleasure to have you come here and speak with us. And I want to thank you for doing what you're asking us to do which is to be bolder and more courageous about taking on issues that are so basic to the rights and fairness for all people in this country.

So please, you will have an opportunity to purchase the book. If you haven't already, she'll be signing some books. We'll have a reception down in Room 115 which is closer to the front door. I want to thank all of you for being here this afternoon and please join me again. Thank you, Professor Alexander.

[applause]