

***Talking Points***  
***Prepared by James Snell and Carrie Stewart for***  
***Marching in the Arc of Justice: Re-Visiting Selma 3/7/15***

**THE NEW JIM CROW: COLORBLINDNESS IN THE AGE OF MASS INCARCERATION**  
**by Michelle Alexander, 2011**

**INTRODUCTION**

As he eulogized the murdered UU minister, James Reeb, Dr. Martin Luther King, Jr. said:

"Naturally, we are compelled to ask the question, 'Who killed James Reeb?' The answer is simple and rather limited, when we think of the 'Who'. He was murdered by a few sick, demented, and misguided men who have the strange notion that you express dissent through murder."

But, King continued,

"There is another haunting, poignant, desperate question we are forced to ask . . . What killed James Reeb? When we move from the 'Who' to the 'What', the blame is wide and the responsibility grows.

James Reeb was murdered by the indifference of every minister of the gospel who has remained silent behind the safe security of stained glass windows. He was murdered by the irrelevancy of a church that will stand amid social evil and serve as a taillight rather than a headlight, an echo rather than a voice. He was murdered by the irresponsibility of every politician who has moved down the path of demagoguery, who has fed his constituents the stale bread of hatred and the spoiled meat of racism. He was murdered by the brutality of every sheriff and law enforcement agent who practices lawlessness in the name of law. He was murdered by the timidity of a federal government that can spend millions of dollars a day to keep troops in South Vietnam, yet cannot protect the lives of its own citizens seeking constitutional rights.

...So in his death, James Reeb says something to each of us . . . that we must substitute courage for caution, . . . that we must be concerned not merely about who murdered him, but about the system, the way of life, the philosophy which produced the murder. His death says to us that we must work passionately, unrelentingly, to make the American dream a reality, so he did not die in vain."

Couldn't a similar eulogy be given in memory of Trayvon Martin or Eric Garner or Michael Brown? Because, as the media and pundits on both sides of the fray invite us to join in characterizing the actors - the police officer or the victim - there is an avoidance of What led to these deaths.

Michele Alexander's book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* insightfully chronicles how The War on Drugs has been used to create a new caste system as policing and prosecuting resources are disproportionately aimed at Black men. Seen in a larger context, however, the mass incarceration she describes is simply a continuation of the subjugation of black people that dates to Colonial times and the creation of Slavery and the invention of Racism on this continent.

The most important take away from this session is so important we must state it plainly upfront. We UUs are good at beginning to fix the problems we see in front of us. So, we could read and study and discuss *The New Jim Crow*, and we could get to organizing to help transition those released from serving a drug sentence to society, or lobbying for shorter sentences, or creating

partnerships in communities between police and the policed, or campaigning for the legalization of drugs, or showing up for witness.

While we should do all these things, only doing those things would be sadly akin to asking Who Killed James Reeb, instead of What.

This is the main point of Ms. Alexander's book: We are dealing with Racism. A Racism that dates back to the colonization of this continent and has led from one form of subjugation to another. So, if we merely treat the symptoms of this cancer without rooting out its cause, the cancer will return, just in some other form.

## Ch. 1 THE REBIRTH OF THE CASTE

### ***Slavery – Jim Crow – Mass Incarceration***

- ✚ Slavery along racial lines was not imported from Europe. It was created in the Americas.
- ✚ White supremacy was used to suppress both Native Americans and Africans. Racism was a consequence of slavery, not its cause.
- ✚ Ultimately, the notion that black slaves were property was embedded in the laws, and in the Constitution of United States.
- ✚ Following the Civil War, Reconstruction sought to give rights to newly freed African-Americans and create institutions, such as public education. Even the right to vote was protected by the federal government. Unity developed among labor across racial lines.
- ✚ Reconstruction proved to be short lived, as there was a huge backlash in Southern Reformation. A resurgent Ku Klux Klan fought a terrorist campaign. Federal funding to enforce civil rights legislation was slashed.
- ✚ Laws were passed in the southern states aimed at incarcerating Blacks. Examples were vagrancy laws. In some states, convict labor looked a lot like slavery.
- ✚ Fear instilled in white people, especially working class and poor whites, also led to the stereotype of African-Americans as criminals, including the stereotype of black men as unruly predators: An angry mass of Black men might rise up and attack and rape white women!
- ✚ By the dawn of the 20th century, Jim Crow was firmly ensconced in the laws of the southern states and replaced slavery as a form of social control, as the methodology or perpetuating a second class, a caste of Black Americans.
- ✚ The death of Jim Crow began in WWII. A series of Supreme Court cases beginning in the 1940's and culminating in Brown v. Board of Education in 1954 required the desegregation of universities and public schools.
- ✚ As there had been with Reconstruction, there was a Southern backlash to the courts forcing integration that played out in race riots and the Civil Rights movement of the 1960's.

- ✚ From the beginnings of the Civil Rights Movement in the 1950's, "law and order" was a counter tactic. As the law made explicit racial discrimination illegal, law and order became the new political catch phrase for controlling Black activism. It became the new slavery, the new Jim Crow, the new caste system, a new form of social control.

- ✚ It also began the use of race-neutral language.

### ***The War on Drugs***

- ✚ After the passage of Civil Rights legislation, debate and legislative initiatives shifted from segregation to crime.

- ✚ Resistance to integration in the South and anger at the Democratic Party for going along with Civil Rights reform gave birth to the "Southern Strategy" by the Republican Party, which successfully co-opted Southern, conservative, former Democrats.

- ✚ The Southern Strategy moved full speed under Reagan, by encoding divisive issues in race-neutral terms about "welfare queens" and "criminal predators". His appeal to "states' rights" was aimed at those who resented integration.

- ✚ In October of 1982, Reagan officially announced the war on drugs. When he did so, drug crime was actually on the decline in the United States.

- ✚ The increases in spending for antidrug efforts at the federal level were staggering. From 1981 to 1991:

- ~ The department of defense antidrug allocations increased from \$33 million to \$1,042,000,000
- ~ DEA spending grew from \$86 million to more than \$1 billion
- ~ FBI antidrug allocations grew from \$38 million to \$181 million
- ~ All the while, spending for drug prevention and education was radically reduced

- ✚ At the same time that the war on drugs was growing, seismic changes in American industry - exporting jobs and computerization - hit Blacks hard.

- ~ Industrial employment of black men in metropolitan areas went from approximately 70% in 1970 to 28% by 1987.

- ✚ Crack hit the street in 1985. The Reagan administration successfully used crack cocaine as the centerpiece of its media blitz to enhance the war on drugs. New terms also Racialized the subject, but without using racial language. There were "crack whores," "crack babies," and "gangbangers."

- ✚ Anti-drug legislation passed in 1986, allocating \$2 billion to the antidrug crusade, requiring the participation of the military in narcotics control efforts, and allowing the death penalty for some drug-related crimes.

- ✚ More legislation in 1988. New criminal punishments, and even civil penalties. Additionally, drug convicts were banned from public housing and student loans.

- ✚ New minimum penalties for mere drug possession – five years for cocaine without evidence of intent to sell. Before 1988, the maximum sentence in the federal system for possession of any amount of any drug was one year!
- ✚ By 1989, a stunning 64% of Americans believed that drug use was the most serious problem facing the United States.
- ✚ By 1991, 25% of Black men were under the control of the criminal justice system.
- ✚ Getting tough on drug criminals was a bipartisan effort. Under Bill Clinton,
  - ~ A \$30 billion crime bill was passed
  - ~ Funding for public housing was slashed by \$17 billion – a reduction of 61%
  - ~ Funding for prisons was increased by \$19 billion, an increase of 171%
  - ~ People convicted of drug crimes were banned from public housing.
- ✚ The War on Drugs has *not* reduced drug use, or drug crime.
- ✚ In 2005, four out of five drug arrests were for possession, and only one out of five was for the sale of drugs.
- ✚ Most people in state prison for drug offenses have no history of violence or significant criminal activity.
- ✚ Marijuana possession accounted for nearly 80% of the growth in drug arrests in the 1990s.
- ✚ The shocking legacy of the War on Drugs is that the United States has the highest rate of incarceration in the world. The rate of incarceration *quadrupled* in the United States between 1960 and 1990, while it dropped in several European countries with higher crime rates. The Incarceration rate in the United States is now 6 to 10 times greater than that of other industrialized nations.
  - ~ US prison population exploded from 300,000 in the early 1980s to 2,000,000 by 2006. The majority of the increase is a result of drug convictions.
  - ~ All Americans should be shocked that politicians and governments would seize upon a non-existent problem to make this country, "The Land of the Free" the incarceration center of the universe.
  - ~ But what is more shocking and indefensible is who we are incarcerating. In some states, the rate at which Black men are admitted to prison on drug charges is 20 to 50 times greater than that of White men.
- ✚ Through the years of the War on Drugs, the imagery of the media has led us all to believe that the drug use, the drug criminal is, in fact, a Black man. But it is a patently false impression.
- ✚ The drug use rate is no different among Whites and Blacks. And, since Whites make up a larger percentage of the population, that means there are far more Whites using than Blacks.

## Ch. 2 THE LOCKDOWN

### ***The Destruction of Civil Rights - Innocent People Are Routinely Stopped and Searched***

- ✚ The Supreme Court's decision in *Terry v. Ohio* in 1968 created the "stop and frisk" rule. This allowed police to search a person if they had a reasonable articulable suspicion that someone was engaged in criminal activity and dangerous.
- ✚ In *Florida v. Bostick* in 1991, the Supreme Court approved suspicionless searches where consent is given on the basis that a reasonable person would feel free to refuse to answer the police questions *and* consent to a search.
- ✚ The consent search has been expanded to automobiles by the use of pretext stops for minor traffic violations. Even where the evidence is that the officers were motivated by searching for drugs, the Supreme Court has ruled that their motives are irrelevant.
- ✚ The Supreme Court has approved pretextual stops followed by consent searches. And, in *Ohio v. Robinette*, the Supreme Court ruled that police were not required to advise a stopped person that they have the right to refuse to consent to a search.
- ✚ Further, in *Atwater v. City of Lago Vista*, the Supreme Court held that a police officer may arrest a motorist for minor traffic violations if they refuse to consent to a search. And, the Supreme Court has held that the police may bring in a drug sniffing dog, which is not considered a search, but which can form the basis for probable cause.
- ✚ While the court cases tend to involve guilty people, the truth is that most people stopped and searched in the War on Drugs are innocent of any crime. But the police are playing the numbers. And it has been successful.
  - ~ The number of annual drug arrests more than tripled between 1980 and 2005.

### ***The Militarization of Local Police and Financial Incentives to Pursue the War***

- ✚ Early resistance by police departments to increasing arrests of nonviolent offenders was overcome by the influx of cash. Federal grant money has supplied state and local police departments with personnel and equipment.
- ✚ The Pentagon has contributed, as well. From 1997-1999, the Pentagon supplied more than 3.4 million pieces of military equipment to local police departments. The War on Drugs became a real war. SWAT teams are most often used for drug busts.
- ✚ There have been hundreds of botched raids and people killed in the process. The military's involvement is as a result of the 1981 Military Cooperation with Law Enforcement act passed under Pres. Reagan.

[Only in the wake of Ferguson is the federal government now questioning the continued supplying of military equipment to local and state police.]

- ✚ Federal funding provided to local police departments is tied directly to drug arrests.

- ✚ Amendments to the federal drug forfeiture laws also increased economic incentives for local police to go after drug crimes. In 1984 these changes allowed state and local police agencies to retain up to 80% of assets seized in drug arrests. The seizures include cash, cars and homes of suspected drug sellers. The only recourse for the seizures is a civil process, which many can't afford and don't pursue.
- ✚ Tens of thousands of poor people go to jail every year without ever talking to a lawyer. Programs providing lawyers for indigent defendants are woefully underfunded. Many defendants end up pleading guilty to crimes because of the stiff penalties they risk, and without any adequate legal advice.
- ✚ Most cases don't go to trial; they end in a plea bargain. With unchecked discretion, the prosecutors are the most powerful people in this process. Mandatory sentences and three strikes rules have made them even more powerful.
- ✚ Mandatory sentences also have limited opportunities for rehabilitation and treatment. The Supreme Court has consistently upheld extremely long sentences for drug crimes: 40 years for an attempt to sell 9 ounces of marijuana; life imprisonment for a defendant with no prior convictions who attempted to sell 23 ounces of crack cocaine.
- ✚ Then there are the three strikes rules. The Supreme Court has upheld sentences of 25 years without parole for stealing three golf clubs and 50 years without parole for stealing children's videotapes from a Kmart store.
- ✚ Both the mandatory sentences and the three strikes sentences are often meted out against nonviolent criminals, most often, against drug offenders. Three convictions for selling marijuana can result in life in prison. Many of the judges involved in the process have acknowledged the unfairness of it. Some have quit.
- ✚ These changes in sentencing policies, *not* increasing crime, are what has resulted in the explosion of prison populations.
- ✚ It is not just those in prison who are victims of the system. Once a person is labeled a felon, their lives are changed forever. They will face discrimination, stigma and exclusion.
- ✚ As of 2008, there were approximately 2.3 million people in prisons and jails, and 5.1 million people under community correctional supervision – probation or parole.
- ✚ The probation and parole systems are rife with opportunity to violate rules and face re-arrest. In 1980, only 1% of all prison admissions were parole violators. 20 years later, more than 35% of prison admissions resulted from parole violations. About as many people returned to prison for parole violations in 2000 as were admitted to prison in 1980 for all reasons!
- ✚ The stigma and disadvantages facing those who've been convicted of felonies and released from prison creates a cycle where they will inevitably return to drugs, crime and prison.

### Ch. 3 THE COLOR OF JUSTICE

- ✚ The War on Drugs is fought almost exclusively in poor neighborhoods, overwhelmingly against Black and Brown people.
- ✚ A 2000 report found that in 7 states, blacks constituted 80-90% of all drug offenders sent to prison.
- ✚ In 15 states, Black men are sent to prison on drug charges at 20-50 times the rate of white men.
- ✚ In 2000, 26 times more black Americans and 22 times more Latinos went to prison for drug offenses than in 1983.
- ✚ While the majority of illegal drug users and dealers nationwide are white, 75% of those imprisoned for drug offenses have been Black or Latino.
- ✚ These disparities are at odds with the plain facts: drug crimes occur at similar rates among the races.
- ✚ The most likely group to engage in illegal drug dealing is white youth.
- ✚ Cocaine, crack cocaine and heroin use is 7-8 times higher among white students than Black students, while marijuana use is about the same rate.
- ✚ White youth have about 3 times the number of drug-related emergency room visits as Black youths.
- ✚ Studies show that drugs tend to be purchased from people of the same race as the user. With far more drug users, it is not surprising, then, that there are, in fact, far more White drug dealers than Black drug dealers.
- ✚ The notion that most illegal drug use and dealing happens in the ghetto is pure fiction.
- ✚ In spite of the facts, the War on Drugs is the primary reason that 1 out of every 14 Black men was in prison in 2006, compared to 1 out of every 106 White men.
- ✚ The new caste system is only partially defined by prison statistics. For every person in prison, there are about 4 people under the control of the correctional system. In all, over 7 million people are either in prison or on probation or parole - primarily for non-violent offenses.
- ✚ The stigma of a felony conviction lasts forever. The felon will be denied jobs and public housing, and the right to vote.
- ✚ The Racism in the justice system and in the War on Drugs is not the overt kind. Rather, it is effected by the discretion given to law enforcement and prosecutors to decide who to stop, search, arrest and charge with crimes. As victimless crimes, drug use, possession and dealing are uniquely prone to selective enforcement and prosecution.

- ✚ From its beginning, the War on Drugs was painted as a black problem, to the point that most Americans believe that black people commit more drug crimes. Without using racial terms, speaking of crime and criminals is understood to be about Black people. In a 1995 study, at a time when blacks constituted about 15% of drug criminals, 95% of people pictured a drug criminal as black.
- ✚ Undoubtedly, law enforcement officers likely also picture the drug criminal as a black person. Whether the bias or racism is conscious or intentional, the numbers do not lie: there is outrageously extreme bias in the prosecution of the War on Drugs.
- ✚ Historically, the courts have been used to counterbalance racial discrimination. But cases brought to counteract discrimination in the application of the drug laws have failed.
- ✚ U.S. Supreme Court decisions:
  - ~ Allow minor traffic stops to be used as a fishing expedition to look for drugs. Notwithstanding the lack of probable cause, the police may seek consent to search the person and the vehicle.
  - ~ Racial bias claims cannot be brought under the Fourth Amendment.
  - ~ There is no private right of action for racial profiling.
  - ~ Notwithstanding statistical evidence, discrimination in sentencing cannot be brought under the Fourteenth Amendment absent evidence of intentional discrimination in a particular case.
    - This principle has allowed a 100 to 1 penalty disparity between possession of crack cocaine and powder cocaine, a penalty largely visited on black defendants.
    - The principle also led to upholding Georgia's 3-strike rules even though 98% of those receiving a life sentence for repeat drug offenses were black.
    - In fact, there has not been a single successful case of discrimination in sentencing anywhere in the country.
    - Prosecutorial discretion is so broad in discriminating that, in many jurisdictions, the drug laws are almost exclusively enforced against Black and Brown people.
    - White defendants are much more likely to escape prosecution or punishment at every step in the process. But the Supreme Court has foreclosed claims of discrimination through selective enforcement.
- ✚ The discrimination inherent in the enforcement and prosecution of the nation's drug laws is also present in the juvenile justice system. Black youth are many times more likely than their white counterparts to be prosecuted and sent to detention.
- ✚ While it is no longer legal to exclude Blacks from juries, in fact, they are poorly represented.
  - ~ 30% of Black men are excluded from jury service because of a felony conviction.
  - ~ Black people are stricken from juries by prosecutors on the thinnest of pretexts, with the Supreme Court allowing ANY race-neutral basis for striking them.
- ✚ Where the discrimination all begins is with policing. Many excuses have been offered to defend the fact that the drug laws have not been enforced where most of the drug



dealing and possession occurs - in affluent, predominantly white neighborhoods -, but, instead, in poor neighborhoods against mostly Blacks and Latinos.

- ~ No evidence supports any of the excuses. The best evidence is that law enforcement perceives the myth to be true - that drugs are a black and brown problem.
- ~ At the beginning point of the criminal justice system, studies dramatically show that even routine traffic enforcement is, in fact, tilted against Blacks. One study in New Jersey showed that, while 15% of the drivers on the NJ Turnpike were racial minorities, 42% of all stops, 77% of all consent searches and 73% of all arrests were of Black motorists. A study in Maryland produced similar results. Numerous studies in other parts of the country produce similar bias in policing. Remarkably, however, both the New Jersey and the Maryland studies found that whites were, in fact, more likely than black to be carrying illegal drugs.
- ~ The same policing bias translates to pedestrian stops. In 2007, the NYPD stopped over 500,000 people, half of whom were Black, in spite of the fact that earlier studies of NYPD stops showed that Blacks were less likely to have contraband than Whites who were stopped. But in 2008, the number of stops went up to 545,000 and 80% of those stopped were black.
- ~ As we have been become all too aware of, policing isn't just a benign arrest. The relentless sweep of Black neighborhoods and stopping of cars driven by Blacks, inevitably, leads to the use of violence.

[Eric Garner wasn't the first Black suspect killed by a chokehold. Michael Brown wasn't the first unarmed black suspect shot by police. Only the false perception that Black men are more likely to be criminals has made their death by police almost routine.]

## **Ch. 4 THE CRUEL HAND**

### ***Life After Incarceration***

Before she begins to describe the long shadow cast on the life of the convicted felon even after he has served his time, Michelle Alexander quotes Frederick Douglass in a statement made to the National Colored Convention held in Rochester, New York in 1853:

"A heavy and cruel hand has been laid upon us. . . . Our white countrymen do not know us. They are strangers to our character, ignorant of our capacity, oblivious to our history and progress, and are misinformed as to the principles and ideas that control and guide us as a people. The great mass of American citizens estimates us as being a characterless and purposeless people; and hence we hold up our heads, if at all, against the withering influence of a nation's scorn and contempt."

In many ways the relegation of black people in America to a second-class status that Douglass described has been perpetuated in many forms ever since, and, today, in the new caste system Alexander describes. The New Jim Crow begins with a stop, an arrest, a charge, a conviction and a sentence. But it is what happens after a sentence is served that places its victims permanently into a second class citizenship.

- ✚ Some 650,000 are released from prison each year, so what happens after incarceration affects millions of Americans - most of them poor, and most are black or brown.

- ✚ When drug defendants plead guilty to non-violent drug felonies, they are rarely informed that they will give up the most-fundamental rights of our democratic society:
  - ~ Most felons lose the right to vote until their term of parole or probation is completed; in some states, the loss is permanent. Even when the right to vote can technically be regained, several states have a maze of bureaucracy that must be navigated and fees and costs that must be paid. No other country disenfranchises those who have paid their debt for their crime in this way.
    - Most felons lose the right to serve on a jury for life.
    - Felons can't enlist in the military.
    - Felons can't possess a firearm.
- ✚ Indeed, the deprivations that follow a felony conviction mean that the debt to society is never paid and virtually insures the convicted felon will never fully integrate into society again.
- ✚ Many felons are excluded from many forms of employment. Nearly every state allows private employers to discriminate on the basis of past criminal convictions. Even employment applications in entry-level, minimum-wage jobs require "checking the box" regarding past criminal convictions. Many employers also routinely discriminate on the basis of arrests.
- ✚ Ironically, 40 out of 50 states require released felons to maintain gainful employment as a condition of parole or face being returned to prison.
- ✚ Additionally, felons may be excluded from:
  - ~ Public housing. Access to public housing can also be denied based on an arrest or even the suspicion of drug use. The exclusion from public housing can legally extend to innocent family members as well.
  - ~ Public assistance, including food stamps
  - ~ Rental agreements
  - ~ Loans for housing or education
  - ~ Schools – higher education
  - ~ Licenses - professional
- ✚ Other consequences follow from the inability to gain meaningful employment or housing, including the losing custody of children and homelessness.
- ✚ Defendants in the criminal justice system have been increasingly subjected to a wide variety of fees, which many find difficult to pay. This chipping away at the sustainability of a normal life continues during probation following release from prison where there are typically supervision fees in addition to the costs associated with keeping up with the restrictions of probation.
- ✚ The reality for the ex-con ripples out to his family and community, or what is left of it. Little wonder that many find themselves back in the criminal justice system. It may be more remarkable that any are able to escape the cycle.

## Ch. 5 THE NEW JIM CROW

- ✚ The result of the War on Drugs includes missing Black men and fathers - even President Obama has lectured the Black community *without acknowledging where many of them are: in jail and prison.*
- ✚ There are more African American adults incarcerated in the United States today than were slaves in 1850.
- ✚ More Blacks are disenfranchised today than were in 1870.
- ✚ Just as many Black men face discrimination in employment, public housing, public benefits and jury service as did during Jim Crow. And, as it was then, it's perfectly legal because they have felony records.
- ✚ Black men missing - locked away - has become "normal." Extraordinary, but taken for granted.
- ✚ Images in popular culture of Black men in handcuffs or engaged in criminal activity, along with segregation from the communities where those men end up if they are not in prison allows for the Denial. Out of sight, out of mind.
- ✚ On one level, we are all aware that there are a disproportionate number of Black people in the criminal justice system. But on another level, we are able to tune out - aided by the media and by segregation.
- ✚ And we are able to deny because, we can say that merely enforcing the laws is not racist.
- ✚ Alexander compares the many elements that have created the new caste system to the wires of a bird cage. Each wire can be defended in isolation if the whole is not seen:
  - \*There is the Roundup of drug suspects that occurs primarily in poor communities - often, predominantly Black communities.
  - \*There are the federal grants and the federal forfeiture laws that create the incentive for state and local law enforcement to pursue the War on Drugs.
  - \*There is the system of prosecution that disadvantages the poor defendant and leads to plea bargains without effective counsel.
  - \*There are the harsh sentences.
  - \*Then, there is the denial of civil rights when the felon is returned to society. And it is a cycle: The disadvantages the ex-con faces often leads him right back to prison.
- ✚ Historically, blacks faced a higher incidence of incarceration. But the War on Drugs has multiplied the effect. There are such large numbers of black men in the criminal justice system that entire communities are affected.
- ✚ Major communities, like Chicago. 90% of those imprisoned for drug offenses in Illinois are Black.

✚ Whites are rarely arrested; and, when they are, they are much more likely at every step in the process to avoid felony charges and prison.

✚ In Chicago, there was a 2000% increase in the incarceration of Black males from 1985 to 2005. 55% of the adult black male population of Chicago has a felony record; 80% of the Black men in the work force.

✚ Those with felony convictions find themselves precluded from many occupations. In Chicago, a black man is more likely to go to prison than to college; and there are more black men in prisons in Illinois than in college.

✚ There are parallels between Jim Crow and the War on Drugs:

\*Both have found popular support among poor and working class whites.

\*The War on Drugs campaigns stereotyped the target in racially-coded terms and images.

\*As with Jim Crow, the discrimination that has resulted from the War on Drugs is legal.

\*Mass incarceration has nullified the gains of the Civil Rights movement for a large number of Blacks.

\*Disenfranchisement of Black men with felony convictions has been more effective than Jim Crow laws at taking Black men out of the electorate. Nationally, 1 in 7 Black men have lost the right to vote by felony conviction; that number is higher in some cities.

\*Adding to the impact, an oddity: rural white communities with prisons have the prison population counted for political districting purposes. The communities from which the prisoners came lose the imprisoned for political districting purposes.

\*As during Jim Crow, blacks are systematically excluded from juries. Some are disqualified as felons. Others are subject to discretionary strikes.

\* As the Dred Scott decision did for Jim Crow, a series of Supreme Court decisions has closed the courts to claims of racial discrimination in the criminal justice system.

\*The New Jim Crow perpetuates racial segregation in 2 ways:

(1) large number of Black prisoners are sent away to prisons far removed from mainstream society; and

(2) released prisoners are forced to return to the poorest neighborhoods, which lack opportunity, are predominately minority, and are separated from the dominant culture.

\*As did Slavery and Jim Crow, the New Jim Crow defines what it means to be Black in America: to be seen as a criminal. That Whites use drugs at a similar rate - and, thus, in far greater numbers - underscores the racism in a system that disproportionately targets, prosecutes and imprisons Black people.

✚ The New Jim Crow - where Black men have been singled out for arrest, prosecution and incarceration, particularly for drug offenses, has insidiously defined the races. As Alexander points out: we can't imagine someone saying "We really need to do something about the problem of White crime."

- ✚ On the other hand, there is almost a presumption that a Black man is a criminal. This continues the cycle that begins with harassment by the police. Black men are also disadvantaged in the job market, even if they have no criminal record.
- ✚ For a young Black man, being stopped by the police because he is Black defines his relationship with the state and what it means to be Black from a very young age.
- ✚ The drug laws, like disenfranchisement laws under Jim Crow (e.g., poll taxes, literacy tests), are racially neutral. *But the drug laws are mostly enforced in communities where Blacks and Browns live, where poor people live, rather than in White neighborhoods or affluent neighborhoods.*
- ✚ The racial stigma associated with Jim Crow laws actually brought Black communities together. The racial stigma of criminality created by the War on Drugs divides communities, as Black people are also victims of drug activity in neighborhoods.
- ✚ It is not insignificant, however, that most Americans claim they are against racial discrimination. This lack of overt racial hostility must inform efforts to change the system.
- ✚ The greater problem is racial indifference - which allowed Slavery and Jim Crow laws to persist as well.
- ✚ There were some Whites who were injured by Jim Crow laws - the White person who wished to marry a Black person. But there are more Whites caught up in mass incarceration. The fact that Whites are also arrested, prosecuted and imprisoned in the War on Drugs, allows the overall policy to appear to be colorblind, even if 90% of those imprisoned are not White.
- ✚ Furthermore, mass incarceration could not exist but for the racialization of the drug war. There are two aspects of this truth: (1) the racial stereotyping of criminals creates resentment of, particularly, Black men as being at the center of crime; and (2) it is inconceivable that White men could be incarcerated at the rates of Black men; it is unlikely that such a situation could be dismissed with indifference.
- ✚ A comparison of the harm caused by drunk driving versus crack cocaine, and the penalties for each is telling:
  - ~ At the time that a ground-up movement to crack down on drunk driving (MADD) took off (late '80's), drunk driving accounted for 22,000 deaths annually - which is more deaths than all drug-related deaths, including from AIDS.
  - ~ Mandatory penalties were adopted by most states for DWI, but even for 2nd offenses, these penalties were just several days in jail.
  - ~ By contrast, possession of a small amount of crack cocaine carried a minimum sentence of 5 years in Federal prison. One possible reason for the disparity - 78% of DWI arrests were of White males.
- ✚ Early laws against marijuana were enacted when marijuana was perceived as a drug used by Blacks and Mexican Americans. After marijuana became associated with Whites, penalties for its possession were reduced. [Of course, we see today broad support for decriminalizing marijuana.] It's hard to imagine that the War on Drugs might have led to mass incarceration if the perceived enemy was White.

- ✚ Many Blacks support drug law enforcement, which distinguishes the problem from Jim Crow. Nevertheless, even though Blacks are more likely to be victims of crime, their support for harsh penalties is less than that of White people.
- ✚ While Blacks as well as Whites could be justifiably support going after violent drug kingpins, the fact is drug kingpins are not the target of the War on Drugs. *The vast majority of those charged with drug crimes is not charged with violent crimes, and have no history of violence.*
- ✚ The modern setting for the War on Drugs are, largely, urban centers that once were home to industrial jobs. Between the 1950s and the 1980s, unemployment of young Black men quadrupled - not because of their culture or character, but because of deindustrialization and globalization.

As a Nation, we did nothing to rectify the new reality. What we did do is launch the War on Drugs. What these communities needed was compassion, what they got was a backlash against the Civil Rights Movement and a get-tough policy on crime. We are reaping the results of the choices we have made as a Nation.

## Ch. 6 THE FIRE NEXT TIME

The final chapter of Michelle Alexander's book grapples with the failure of civil rights organizations to have seized upon the injustice of the War on Drugs and mass incarceration before now. The primary reason is that *the victims of the New Jim Crow have been labeled criminals.*

- ✚ Historically, the Civil Rights Movement went to great lengths to choose its faces from among those who were not easily attacked for some indiscretion or another. In this case, that's not possible. Criminals are the one group everyone feels free to scorn.
- ✚ Small changes won't dismantle the system.
- ✚ The criminal justice system is big business. In 2006, the U.S. spent \$185 billion for police, detention, judicial and legal activities - 3 times as much as in 1982.
- ✚ The system employs almost 2.5 million people. The prisons and jails, alone, employ 700,000 people, so, there is a built-in constituency against change. There is even a growing privatization of the prison system.
- ✚ To end the caste system, we must end the War on Drugs. But the War on Drugs cannot be ended by one act or one court case. The laws of all 50 states as well as the federal laws are involved.
- ✚ More fundamentally, we must change the image of people of color as criminals, not just in the eyes of the police, but among all of us. When as much as 95% of the population sees drugs as a black and brown problem, notwithstanding the facts, this is a real challenge.

✚ There is a long list of things that must be changed to dismantle the caste system:

- ~ Police culture must move from occupation to community policing
- ~ Selective enforcement of laws against people of color
- ~ Criminal justice legislation
- ~ Greater funding for public defenders
- ~ Rescind mandatory drug sentencing
- ~ Legalize marijuana and perhaps other drugs
- ~ Meaningful re-entry programs
- ~ Removal of barriers to re-entering society
- ~ Retrain prison workers
- ~ Expand drug treatment

✚ But doing all these things will not truly end the underlying condition that has made The New Jim Crow possible. *There must be a case made in the court of public opinion to change the way that we look at drug crime as a black and brown problem.* The prevailing consensus is contrary in the extreme to the facts. The reform movement must be built around changing the *false consensus view about who commits drug crime in this country.*

✚ Changing the consensus requires a **mass movement**. *Brown v. Board of Education* did not result in the integration of the nation's schools. In the first 10 years after the decision, hardly any schools were integrated in the South. Integrating the schools, like securing the right to vote, *took a movement*, public action.

✚ The guiding principles of **the reform movement** must be:

- ~ Mass incarceration must be discussed as a racial caste system, *not* a crime control system.
- ~ Race must be at the heart of the conversation. We must admit that it was our racial views that allowed us *to not care* what was happening to people of color as the caste system was constructed. These views are deeply ingrained in our history and collective psyche. That view is not so different today than the "nation's scorn and contempt" Frederick Douglass described 160 years ago.
- ~ We must not be colorblind. It is not a virtue. It is *blindness*, pure and simple. *Racial indifference and blindness are at the core of the caste system.*

✚ Affirmative Action is seen in a different light as the traditional approach to affirmative action:

- ~ has helped to render a new caste system largely invisible
- ~ has helped perpetuate the myth that anyone can make it if they try
- ~ has encouraged a trickle-down theory of racial justice
- ~ has greatly facilitated the divide-and-conquer tactics that gave rise to mass incarceration
- ~ has inspired so much polarization and media attention that the public wrongly thinks it is the main battlefield in race relations

✚ While more African Americans have entered elite universities, in many respects, most African Americans are no better off than when Martin Luther King, Jr. was alive.

- ~ The child poverty rate is actually higher.
- ~ Unemployment rates in black communities rival those of Third World countries.
- ✚ The emergence of blacks in positions of power - Condoleezza Rice, Colin Powell, Barack Obama - has created the appearance of great racial progress and strengthened the colorblind consensus. These examples of Black Exceptionalism underscores the argument. The ascendancy of a few has little if any benefit to the many living in poverty, unemployment or prison.
- ✚ Ironically, it makes a new caste system implausible. The consensus belief is that those who find themselves in control of the criminal justice system have freely chosen a life of crime.
- ✚ The presence of black police officers also legitimizes the War on Drugs. The presence of blacks in the power structure is cosmetic diversity that actually makes reform more difficult than if it were simply white police officers enforcing the laws disproportionately against people of color.

Alexander notes that Presidential candidates and Presidents have been answering for some time whether they smoked marijuana or took other illegal drugs. With increasing candor, many of our recent Presidents and candidates admit some experience. President Obama has been the most candid and freely admitted his marijuana use. Had Obama been caught and prosecuted for his illegal drug use in the past, he likely never would have attended Harvard Law School or become a Senator or President. Notwithstanding his admitted past, however, Obama has not championed drug law reform - at least not as of the publication of Alexander's book -, and has even continued or increased funding for federal programs that are part of the War on Drugs.

Alexander observes that the victories of the Civil Rights Movement may have been at the expense of poor whites. For example, in affirmative action, poor whites may see African Americans leapfrogging them to get into good schools or public sector employment such as police and fire departments. This fact has made it easy for poor whites to see race instead of economic circumstances as holding them back. She suggests that it may be time to rethink civil rights strategies to recognize that what many people of color and poor whites have a common interest in bettering their economic circumstances. "Us" must include all of us. This, Alexander says, was what MLK was working on through the Poor People's Movement at the time of his death in 1968. This requires a radical restructuring of our society, from the ground up.