

Alexandra Natipoff Episode 51 Transcript

Hello and welcome to Episode 51 of the decarceration nation podcast but radically reimagining workers criminal justice system.

I'm Josh Hoe, among other things, I'm formerly incarcerated a freelance writer, criminal justice reform advocate in the author of the book writing your own best story addiction and living hope. We'll get to my interview with Alexandra now to pop in just a second. But first, the news:

Very proud to be associated with cut 50 in general, but especially this week, my friend Lewis I read found a story in his local paper about a man Demetrius Anderson, who was because of a clerical error being forced back to prison after 11 years crime free in his community. Well, what happened? as near as I can tell, when the state of Connecticut was supposed to transfer Mr. Anderson to federal custody for 16 months upon completion of estate sentence, they released him instead of transferring him to federal custody. 11 years later, after an internal audit, the Federal Marshal service showed up at Mr. Anderson store informing me would likely be headed back to prison serve out the remainder of his term. Now remember, Demetrius Anderson, at this point, had been home for over a decade crime free, he had not gotten as much as a parking ticket he and rebuild his life had a good job was active in service to his community, and also very, very participating highly in his own church. In short, we dream of people coming back and reintegrating as well as Mr. Anderson did, he is the model for what we should be pushing for, and he was being threatened with going back to prison. Anyway, Lewis saw the story. He's the national organizer for cut 50 he called the person who wrote the article helped get who helped to get him in touch with Demetrius Anderson, he started to call members of the cut 50 teams soon everybody on the team from Erin Haney, Jessica Jackson, was working to fix this problem. Van Jones got the story on CNN, we started a social media campaign around the hashtag #KeepDemetriusFree. Well, to make a long story short, on Friday, we got the great news that the Department of Justice was not going to purchase sending Demetrius back to prison. In essence, they were giving him his time in community without causing any problems taught as time served. And so that's really great news. Congratulations, Demetrius Anderson. Deep thanks to Lewis read, and huge thanks to the rest of the cut 50 team. I love it when things work out exactly the way that they should.

Okay, one other thing I'm trying after advice from several friends to make the episodes a little shorter. So do not be surprised at the interview length and my takes up the end get a little more compact. Remember, I started doing this kind of as a do it yourself project and I'm kind of learning as I go. So I'm sorry if the episodes have been a little long. I do the best I can.

Don't forget to go to our website decarceration Nation. com and sign up for our newsletter every week. I've been writing a short article comes out on Wednesdays and if you comment and identify yourself as a subscriber on any episode page, I'll answer your questions in the next newsletter. And now let's get to my interview with Alexandra Natapoff.

Alexandra Natapoff has a dual appointment at the University of California Irvine as a Professor of criminology, law and society and as the CO director of the Center law, society and culture. Prior to joining the Academy, Professor naturopath served as an assistant Federal Public Defender in Baltimore, Maryland, and was the recipient of an Open Society Institute community fellowship, she clerked for the honor roll David s to tell and for the honorable Paul L. Friedman. She has authored books snitching criminal informants and the erosion of American justice. And the book will mostly be talking about today, punishment without crime, how our massive misdemeanor system traps the innocent and makes America more unequal Professor naturopath, welcome to the decarceration nation podcast.

Thanks so much for having me.

It's my pleasure, I always start at the same place trying to help us all kind of get to know you a little bit better. So how did you get from, you know, where you started, maybe going to college or whatever, doing the work that you're doing now.

I started out thinking that I would be a civil rights attorney. And when I moved to Baltimore, on the fellowship with the Open Society Institute that you mentioned, and I was working in Baltimore communities and working with organizations and young people, and all anyone wanted to talk about was the criminal system that really was the civil rights issue in their experience, it affected their lives, their everyday experiences, their understanding of the government, and so that, that really persuaded me to move in to criminal justice work. That's when I became a federal public defender. And then when I was fortunate enough to become become an academic and a scholar, I've kept writing about the issues that have intrigued me since then.

What what prompted you to move into the academy from working as a, as a defense public defender?

You know, this might sound a little funny, but for me, they're very similar. It's very similar work, I was very proud to be a public defender, I thought that I gave me an opportunity to represent people who often did not have people to stand up for them to engage the law and the Constitution and due process in ways that I thought could add meaningfully to make our system more adjust. And I still think I'm doing that. I think that I, again, I'm deeply a privileged to be able to write about issues that are often not appreciated ways in which our criminal system affects individuals that are not necessarily obvious or transparent from the outside, but can be very burdensome and painful and unfair when you're in the criminal system. I have the opportunity to talk about how our criminal justice principles and our constitution principles are often not honored on the ground. And to try to bring to shine the light and bring understanding to kind of the the shadow we areas of our criminal system that affects so many people, but but it might be you don't, you know, don't always get the kind of attention that they should.

And your book is about misdemeanors. What led you this topic? in particular? Your new book?

Yeah. So it's really that. That same theory, when I was a public defender, I became increasingly aware of just how important misdemeanors were, to my clients, to my neighbors, to the people who worked in and around the criminal system. Everybody had encountered the misdemeanor system in one way or another many young people expected in Baltimore. To get misdemeanors. It's kind of just a fact of life of being young and African American and disadvantaged in that city. And then wherever presenting my clients, many of them had met the criminal system, first through the misdemeanor system. And you know, they did not have that relatively poor opinion of, of the Justice and the evenhandedness and the law abiding this of the system from those experiences. So I came into the criminal system as a as a as an attorney and a public defender, I think, not appreciating the importance of these low level offenses. And I quickly came to appreciate just how powerful insanely and they were.

So your book, in a sense is about you know, what I call sometimes a legal fiction. And that's the idea that penalize the penalizing processes and outcomes of court are not always legally considered to be punishment. You make reference at one point to a book called The process is the punishment. Can you explain the premise a little bit? And how this thesis kind of undergird your book about misdemeanors?

Yeah, so when lawyers that say punishment, when courts talk about punishment, they mean something very specific. They mean, the thing and the court order that the judge issues upon conviction, and the classic aspects of punishment, our incarceration, that's the one, obviously, the United States is infamous for overusing. That's what we get to mass incarceration. But also probation, which is actually much more common find sometimes community service or community supervision. But those aspects of punishment and those those for the formal imposition of those forms of punishment are really only part of the story. In fact, people who encounter the criminal system and pass through the criminal system and survive the criminal system are burdened in a wide array of ways. ways that permeate their lives, their families, their experiences, their ability to earn a living, their ability to get an education in ways that are not captured by the stuff that is in that court order. In 1979, Malcolm Phillips sociologist wrote a very famous book called the processes the punishment, as you mentioned, and it was a study of the lower courts, the misdemeanor courts in New Haven. And the title of his book was a reference to his conclusion was that the punishment or the thing in the court order that that judges used to punish people really was not the point of the exercise at all, that the low level court process in in New Haven was really about sweeping up poor people the disadvantage, the disorderly, hauling them into court, and treating them in various summary and punitive ways in the court process itself, checking them, seeing what kinds of people they were, and managing them and keeping track of them in ways that didn't, that weren't reflected in whether, for example, they were sentenced to probation or a fine, that really the probation and the final sort of secondary to the idea that these folks were being punished just by being dragged into court and was a very important idea to kind of expand our understanding of really all the ways that people are functionally punished by a criminal justice encounter, even that, even when they those things don't actually count legally, as punishment. And so this book, punishment without crime, which which is in some ways a, you know, a hat tip to, to that to the famous title of Malcolm Phillips

book, extends that notion. And in some ways, it's more true now than it was in 1979. There are so many more burdensome and punitive things that happened to people, when they end up in the misdemeanor system, that that are not counted legally as punishment, people are losing their jobs, they're ruining their credit, there may be incarcerated pre trial, which legally speaking is not punishment, the Supreme Court has told us that pre trial, the tension is regulatory, not punitive, they may lose their ability to get to get financial aid to get licenses for certain kinds of certain kinds of jobs that may lose, of course, their drivers license, which prevents them from getting to work into to school. So there's a whole panoply of things that happened to people that don't legally count as punishment. But that happened to millions of people every year in the misdemeanor system. And so the title of the book, punishment without crime as a reference to the fact that we are punishing millions of people these ways, not in the formal sense of giving them jail or probation or, or a fine, but far beyond the reach of the legal imposition of a sentence.

And you mentioned the beginning that or near the beginning that one of the problems has been even studying this issue, that there's kind of a general lack of transparency, and also maybe a failure to create central record keeping across state and county systems. Is that fair?

That was I couldn't, you know, I could write a whole book about the struggle that I had just getting information about the misdemeanor system in order to write this book.

I wish I could say I don't hear that a lot in different contexts. But I do.

I'm sure. So in when I started writing this book, a few years ago, I realized that there was very little public information about misdemeanors available, it's in part because our misdemeanor system, indeed, our entire criminal system is profoundly local. There is no one misdemeanor system, it's really hundreds and thousands of offices and, and prosecutor offices and public defender offices and local courts and sheriff's departments. And some of them produce public information that they report to the central state authority, and some don't. And every state reports that information differently, you know, making it publicly available. So it's very difficult to know even how big the misdemeanor system is. And so in order to write the book I, I made an effort to collect and ask for more information from the states in order to get a better picture of it. So I sent a records request to every single one of the states, all 50 states and the District of Columbia asking their central state authority. How big is your misdemeanor docket? As far as I know, no one had ever tried to do that before. And I got a wide range of answers.

Including, you know, some states sent me spreadsheets, some states sent me polite emails, referring me to their website, which might or might not have the information. Oklahoma never called me back. And so but but I think part of the thing that we learned from studying the misdemeanor phenomenon, because it is so enormous, it does comprise such an enormous percentage of what it is that our criminal system does, that more information in in this sphere could be very, very helpful and very powerful.

So one thing that lept off the page to me because I had some recent experience with some friends on this, I've been very concerned with how the criminal justice system is being used kind of effectively silence protest. Just last year, several people in my church were charged in Detroit for a non violent protests in a pretty public area, and in a very respectful way. But what they found was that the costs were surprisingly steep. If they had not been people with some means they wouldn't have been able to afford to protest. Basically, you mentioned this in a book a little bit. But do you have thoughts about how misdemeanors are being used to kind of price a large segment of the population out or to set and protest?

That's a great point. The book focuses mostly on what what I would call sort of the traditional criminal function of misdemeanors order maintenance, public safety, disorderly conduct, loitering trespassing used in that sphere. But of course, the history of the misdemeanor system is much broader. And as you meant, I just I just touch on it in the book, but the misdemeanor system has long been used to control all kinds of conduct of public spaces, to to control the socially disadvantaged, the poor. The disfavored and of course, political dissent, that the the use of misdemeanors like disorderly conduct or trespassing or resisting arrest famously being used against protesters for decades. I think Dr. King was arrested 40 times. The Occupy movement, of course, that there's been a lot of literature on how many of those offenses were used to interfere with public protest in that regard. And if these low level offenses that are so malleable, that are, that are often quite vague, they turn out to be extremely powerful policing tools. And because they're so powerful, because they're so malleable, they can be used in all kinds of ways not just aimed at crime or disorder, but at dissent at keeping disfavored people out of spaces where businesses or or neighborhoods don't want them, and then also to control to control our public spaces. vagrancy law, for example, which the Supreme Court declared unconstitutional in the 1970s. But the law of vagrancy was an even broader law than the current order maintenance laws that we have basically criminalized being out of place, or, or looking like you were doing something you shouldn't be doing or not having a job, according to the police officer who saw you. vacancy laws were used to interfere with civil rights protest to round up African Americans to to punish the LGBT LGBT community when it was expressing itself or engaging in protest. So there's a long history, as you say, of silencing that that misdemeanor enforcement has been central to.

So, just a few days ago, the prison policy initiative put out their annual mass incarceration, the whole pie report, and one of the major conclusions was at 76% of people in local jails, never or are never convicted of a crime. And many are there simply because they can't afford money bail. I know you talked about this quite a bit in the book to do you want to talk about that a little bit.

So jail, it's worth distinguishing jail from prison. So mass incarceration tends to focus on prisoners, there's 1.2 million people in prison are serving felt typically serving felony sentences. That's the mass incarceration, the United States is infamous for. Jail serves a broader purpose. Sometimes people are in jail because they're serving a misdemeanor sentence. But as you point out, the vast majority of people in jail are, are there pre trial, meaning they haven't been

convicted of anything, and many of them are incarcerated because they cannot afford to pay financial bail and other the words the court sets bales as if you can put up \$10,000. Or if you can put up collateral, you can be released pending trial. And for those who can't afford that, that means they will remain incarcerated until their cases are resolved. So our jails are filled with presumptively innocent people, people who have not been convicted of anything and as you and many of them will not, will plead guilty, just in order to end their pre trial incarceration. It's one of the terrible dysfunctional incentives of the misdemeanor system, because the eventual punishment is seen as relatively light is kind of one of the ironies of misdemeanor punishment is that people don't necessarily understand how burdensome it will be for them for the rest of their lives to carry that misdemeanor conviction. But the prosecutor will offer, hey, it's just probation on a fine, you can go home tomorrow, and people will take that deal to get home to their children. So it's not to lose their jobs. And so we see, not only are the jails filled with presumptively innocent people who are their pre trial, but many of them will plead guilty just to get out even if they may, indeed be innocent.

Yeah, I think, you know, I've been saying for a long time that we focus a lot on prisons, which is appropriate, but jails are kind of in a lot of ways worse, and in some ways, kind of considered them an ongoing kind of it almost invisible human rights disaster. You know, so I think part of the reason why people probably, you know, sometimes play even when they're not guilty, is also because Britain jails can be a very violent place and very dangerous place. I mean, did you encounter in your research some of that as well or?

So, absolutely. jails, I think are only just starting to come into the public view. Sadly, as do many things in our criminal system because of tragedy, because when Sandra Bland, died in the jail in Texas, or when, when Khalif Browder, committed suicide after having been detained at Rikers, we have learned that jails can be as violent and oppressive as prisons. But they haven't. They haven't been in the public crosshairs, they haven't been public radar. In the same way, I wrote an op-ed about a month ago, arguing that we should understand misdemeanors as creating their own kind of version of mass incarceration. we incarcerate 1.2 million people in our prisons, but 11 million people go to jail, they pass through jail every year in this country, that its vast number of people who are forced to go through that experience, and many of them as you, as you mentioned, are there not because they did anything dangerous, not because that they're not because they're a threat to public safety, but because they can't afford otherwise.

You also mentioned what I've talked about with several people, most recently, last week with John Pfaff on here the problem of prosecutors, how does this play out uniquely with misdemeanors?

So in many ways, the prosecutor challenge and misdemeanors is similar to the challenge for felonies and entirely different so it's similar in the sense that misdemeanor prosecutors have that same vast, nearly unfettered power that, that they have, as felony prosecutors, they have the ability to pressure individuals into taking pleas, essentially cutting out the judicial and the adversarial process just by virtue of the kind of pressures that they can bring to bear. So in

many ways it's so the misdemeanor phenomenon, and the plea phenomenon in that sense is very similar, but it's very different, because because the misdemeanor system has been devalued in our in our criminal system. And, and the importance of these cases are typically devalued and not appreciated it even within the legal profession. So for example, misdemeanors are often seen as a training ground, both for public defenders, famously but also for prosecutors. I trained in misdemeanors when I was a Baltimore public defender, most public defenders and prosecutors begin in misdemeanor court. And so there are some dysfunctional incentives that that alter and distort the way that misdemeanor cases are handled, because the lawyers handling them are Junior so for example, in for young prosecutors who want to become Felony Attorneys they want to graduate to the felony divisions, it's they don't want to be seen as soft on crime. They don't want to dismiss too many cases, when there are misdemeanors, when they're manner attorneys, they also don't know they don't have the judgment necessarily as young attorneys to know the value or the difference or the equities of proceeding or not proceeding with the case. What there's a it, we see prosecutors telling us now in research and articles, when they become senior prosecutors, they look back at their tenure as Junior prosecutors and they say I didn't know, I one prosecutor relates that it was very difficult to push back against the police when they were Junior. They didn't have the words to go up against the police. We've been doing it for years. And you know, and they as attorneys had just arrived. So So what we see often is that prosecutors don't spend time screening misdemeanor cases in the same way that they spend time screening felony cases. And this is extraordinarily important. It means that all those arrests, those arrests that come in from the street from maintenance policing, from police decisions about sweeping people up into the misdemeanor net, they come into the prosecutor's office, and the prosecutors don't have enough time or resources or often experience to screen those cases cases and decide which ones should become full fledged criminal cases rather than merely an arrest. This is the moment that the technical term is declination, it's the prosecutor has the authority to decline the arrest to decline the case, in which case the person will have been arrested, but their case will not proceed. And because institutionally prosecutors offices are often not set up to screen rigorously true. Many arrests become criminal cases. It's an enormously important moment in that in the funnel and the net of sweeping people into the misdemeanor system that we have an adequately scrutinized.

And what about judges and courts? I think you make reference at 1.2 misdemeanor courts as or someone else does, as McJustice?

Yes, that that's not my term. I'm quoting another, another scholar. So Mr. me know courts, in some ways have you know, have been kind of infamous, for a long time the term of justice or assembly line justice, which is a term coined, in fact, by the US Supreme Court in 1972, to describe the kind of quick and dirty, informal process by which people are swept through misdemeanor courts quickly, without attention to rules without attention to evidence. If they have lawyers, the public defenders are often overwhelmed by their case loads, often people do not have lawyers at all. And so they're facing that prosecutor and the judge all on their own. And that same pressure to clear cases that prosecutors and public defenders experiences are often

also experienced by judges, judges are in a hurry to clear their dockets. So judges play a very important role also in maintaining that informal and often profoundly unfair culture, of misdemeanor case processing where people are defendant pen and individuals are swept through without attention to their rights without attention to the evidence and without attention to their individual dignity.

So you mentioned that many misdemeanors themselves are crimes of poverty, we've talked about the little bit. But you know, how, how, how to what is there more to the problem of money in the misdemeanor system? You know, if you talked about think about the Ferguson report as an example of this?

Yeah, so the, one of the central chapters in the book, as you saw is called money, that the three central chapters are called innocence, money and race. And I think it's because these three aspects of the misdemeanor system really go to the heart of why it deserves more attention, and why we should be so concerned about it. And you're right, the question of money exceeds the question of fines and fees that it finds, and these are certainly one important part of it. But you really can't understand the misdemeanor system without appreciating how profoundly issues of wealth and money and, and the distribution of resources affect its nature. So some crimes, as you say, are crimes of poverty. And that can be that mean a couple of things. Some crimes are crimes that only poor people commit, because they don't have enough money. So for example, homeless individuals who sleep on the sidewalk and are punished for that that's a crime of poverty. That rich people never encounter. In many ways, driving on a suspended license is coming to be recognized as a crime of poverty because most people have their licenses suspended because they can't afford to pay traffic fines. Once their license is suspended, and they drive to work or school or to the doctor's office, now they're charged with driving on a suspended license, because, again, because they aren't able to pay those fines and fees, again, a problem that the well resourced do not encounter. But many crimes in the misdemeanor system, our crime to poverty in an additional sense, which is that low income people in the disadvantaged are more likely to encounter the criminal system in the first place. When we over police poor communities of color, when we use the misdemeanor system to enforce gentrification boundaries, it means that poor people, the homeless, young people of color in those neighborhoods are going to meet the criminal system where off and over and over, they're going to be stopped and arrested more than their wealthier counterparts because of where they live, because of their physical proximity. And that also renders those offenses crimes of poverty because they're only going to happen to the poor.

Do you see any promise or momentum kind of building from say, the anti civil asset forfeiture movement and from Supreme Court cases like Timbs versus Indiana?

I think there's a lot of promise across the board for change in any number of misdemeanor arenas that the last chapter of the book is entitled change. Not some, it contains recommendations and suggestions for ways of thinking about change. But it's also a celebration

of all the things that are already happening. So as we've been talking about, there's an enormous push back now against cash bail, litigation, but also legislation and local reform. Timbs vs. Indiana is a Supreme Court case that was just decided recently, in which the Supreme Court incorporated the Eighth Amendment prohibition against excessive fines against the state. What that means is the Eighth Amendment is in the Bill of Rights in the Constitution. And the Supreme Court decided that it doesn't only apply to the federal government, it also applies to every single state, which means every single state is constitutionally prohibited from imposing excessive fines on individuals that includes forfeiture. So that individual in the Timbs case arose because he was charged with a drug offense. And they state you the forfeiture laws to take his truck. The most he could have been fined for the offense was \$10,000. His truck was worth \$40,000. He said you couldn't have found me \$40,000. Taking my truck is an excessive fine and the Supreme Court agreed with him. They said That's correct. They cannot take your truck, your boat, your home your cash in ways that are excessive, but they are but the state can also is now prohibited from imposing fines that are excessive in ways that we have seen in the debtors prison context for low income individuals are being saddled with enormous fines and fees for very low level conduct. And this is going to open the door to far more litigation and advocacy around this front. It's really very exciting.

So said many times on this podcast, so you'd have to be willfully blind to walk into a jail or prison the United States and not immediately see the racial disparity, I assume this is probably even more true in the context of misdemeanors?

So as I mentioned before, the three central chapters of this book are entitled innocence, money and race and the chapter on race. The reason why race is so central, I think, to the misdemeanor conversation, is because the misdemeanor system really has not gotten its fair share of blame for the role that it plays in skewing the entire American criminal justice system. And I think we've become a custom we have learned over the past decade or two in our conversations about mass incarceration, we learned that mass incarceration is what is a contributor to racial inequality in this country. It's one of the reasons that, that people of color have different experiences different political and economic experiences in the United States. But the process really starts to move long before anyone goes to prison. It starts with the misdemeanor system, the misdemeanor system is that net, that initial set of public policy decisions, mostly policing, but also legal decisions within the legal and judicial system that first sweep people of color into the criminal system, disproportionately, based on very minor, often harmless conduct that characterizes the characterized misdemeanors. So we have we see in and again, because the date because we don't have the kind of data that we would like to have on misdemeanor processing and misdemeanor arrests the data is, is not complete. But we know, for example, that for marijuana possession, which is one of the largest categories of criminal misdemeanor in this country, African Americans and whites use marijuana at the same rate, and yet nationally, African Americans are four times more likely to be arrested for marijuana possession than our whites. In some jurisdictions, they're 1020 in some places, 30 times more likely to be arrested for the very same offense that everybody is committing at equal

rates across the board. We see similar dynamics in low level offenses like disorderly conduct. jaywalking is, oddly enough a particular culprit. in many jurisdictions, we see African Americans are disproportionately likely to be stopped incited for jaywalking. And so the misdemeanor system has really flown under the radar as this engine of racialization is racialized in crime, and it's giving people of color, especially young African American men, that first encounter with the criminal system that first stop that first arrest that first criminal record. In many ways, it's the first time that this that the that public policy starts to build the stereotype the stereotype of linking African Americans with crimes affirmatively being created by the misdemeanor system itself.

Okay, so what would a better system start to look like? I know, that's a big question.

So it's, it's the best question. And the and the most direct answer is a smaller one, a smaller misdemeanor system would be better. And the reason I say that is that we, the misdemeanor system does important things. It for in it that low income neighborhoods and disorderly neighborhoods often tell us that they want a more they want safer communities, they want communities and where it's which where they feel like their children are safe to play outside and walk down the street or go to school. The misdemeanor system is includes many quite serious offenses Domestic Violence, DUI offenses that we want to be properly enforced and properly considered. But because we have swapped the misdemeanor system, with these low level, chump change offenses, Order, order, maintenance, disorderly conduct, and created these terrible incentives for courts and localities, to ramp up misdemeanor enforcement, not because of public safety, not because people are at risk, but to generate revenue, the misdemeanor system has become bloated, and therefore it can't do anything well. And so if we ratcheted back on a rest, if we if prosecutors screen those cases, more rigorously, as we discussed earlier, if we used incarceration last, if we backed off the pre trial incarceration bail model, if we backed off the debtors prison model, if we, if we brought the misdemeanor system down to a more manageable size, then we would have the then it would have the chance to operate in a more adjust and legal and fair manner in the ways that we needed to in the ways communities ask of it.

So do you think that that means that the system itself doesn't have features that need kind of intrinsic change it because it sounds like what you're saying is if we kept doing the same thing, but just to less people or people who are more deserving, that the outcomes would be okay, is that fair? Or?

No? I'm sorry? Not at all. Not at all. I do don't think it's one or the other to say, if we just did it to fewer people that would be okay. is actually to say we need to rethink what the misdemeanor system is for that right now that we use the misdemeanor system, to as a feature as an engine of social control, to enforce gentrification boundaries, to intervene and harsh and punitive ways and communities of color to impose criminal marks and control and controls on African Americans, particularly African American men. In many ways, that is what our misdemeanor system has become. That is what it's for. It has, it has a long and shameful history at the

misdemeanor system. In many places, it dates. Many of these features date back to the end of the Civil War in the south, where the southern states upon a man summit, upon emancipation, converted their misdemeanor machineries into vehicles for effectively enslaving African Americans. They started rounding up African Americans for disorderly conduct for a vacancy for Lord for loitering for gambling, the same offenses we see today. convicting them and imposing heavy fines and punishments that individuals could not pay. And then using that as a pretext as an excuse to essentially sell prisoners, the miss these misdemeanor prisoners to local industry to minds to factories to plantations. So and, and I think that we see shades of this in the modern debtors prison phenomena that we see poor people of color being rounded up and charged with misdemeanor zoom incarcerated to raise money and local jurisdiction. So to say that we should do it last is just say that we should rethink what it is that the misdemeanor system is for that, and what a criminal system and in a modern democracy should be permitted to do. And you suggested, we both have think talked about this, that there has been a lot of change that's happening. But still, it seems like we face kind of two major barriers, and one of them you just mentioned, which is that people have kind of a huge investment in maintaining the system as it is. Another one is that kind of the long standing problem of the willie horton politics of things, quote, unquote, because I don't like to reinforce that particular idea. So how do we change something that so many people have, and so many communities have an investment in a financial investment in? And also the problem of kind of the politics of it?

It says, so if I knew the answer to that question.

Well, I hope you're about to win your Nobel Prize right now.

So essentially, what you're asking is, how do we change the economically and racially in a gala Terry and aspects of American democracy? And the answer is you keep trying. And the end, you know, we could say it's half empty, or we could say, a tough call, we can say it's half empty in the sense that these are persistent structural inequalities, that that prevent meaningful change. Or we can look around and see the enormous pushback against bail, for example, or, again, status president against fines and fees, notwithstanding the fact that many powerful economic and governmental and private interests have enormous incentives and interest in maintaining those systems. We could say that, that racial politics are the great wound of a American democracy. And, and, and it's depressing to think about how difficult it is to heal. Or we could look at the incident in sure everyone remembers the incident in the Starbucks in Philadelphia, where the two African American men, one of them asked to use the bathroom and they hadn't put in their order for their coffee yet, and they were arrested for trespassing. And there was national outcry, white people thought it was apparent they they pointed out that they would never be treated that way they understood it through this lens that that not only would never have happened to them, but that our criminal system was imposing that kind of burden day after day and community after community on people of color in way that had not been visible before. And so I take that as a sign that the culture is changing that what used to be accepted double is becoming unacceptable that there are Coalition's and mutual understanding is being built across lines of race and class that are forward looking at not backward looking so I'm going to go with half full.

well that's probably the best way to look at it I suppose. I always ask the same last question
What did I mess up what questions should I have asked but did not

Oh, I don't know I

if there's not an answer that just means I'm doing great.

They were they were all great. I think the one thing I would add to is you know one of the things that I think is shocking to people about the misdemeanor system is just how disrespectful it is to the Constitution. At because it's disrespectful to so many things in so many ways. It's disrespectful to people of color. It's disrespectful to the poor. It's disrespectful to many ideas that we have about criminal justice. But I think that on top of all that it's worth appreciating just how often in these lower courts around the country. The constitutional right to counsel is flouted. There was a Senate Judiciary hearing a couple of years ago, led by Republicans about the unconstitutional deprivations have the right to counsel and misdemeanor courts. And you really did see this bipartisan horror at the idea that this provision of the Constitution was being so openly flouted. And the same is true of the equal protection clause. It is a violation of equal protection of the Constitution to incarcerate a person merely because they can't pay a fine. And yet that core provision of American constitutional law is constantly flooded across the country. And so I think that going forward, appreciating the importance of misdemeanors of how enormous the system is 80% of our criminal system is misdemeanors, and how deeply it deviates from basic principles of justice inequality and constitutionalism and, and, and racial equity. I think that appreciating that will help us understand the criminal justice system that we truly have.

Well, thank you so much for doing this. I really appreciate you taking the time.

Thank you. Again, thank you so much for having me.

And now my take, I generally talk about people with serious charges who have to do some serious prison time. But a huge part of my advocacy and call for change starts with county jails, which I believe should be considered a national embarrassment and ongoing human rights disaster. For those not in the know the difference between a jail in a prison is that prisons are generally run by the state and usually only hold people with sentences of over one year, while jails are run by counties and hold people pre trial and presenting people who are waiting to go to prison and people who have been sentenced to less than one year of incarceration. I saw more than enough terror in prison but prison was a cakewalk in many ways compared to jail. The conditions were abysmal, the services were nearly non-existent. And the jail I personally was held in had a kitchen that had been condemned for black mold. There was violence everywhere and often instigated by the officers themselves, even if you believe that it is just desserts, and I of course do not remember that the majority of people in jail have yet to be found guilty of any crime. Most of them are their pre trial or pre sentencing. I have shared the story many times but

I met several people in jail who are kept in solitary for over a year while they waited for a trial date as a form of mental health treatment. Almost all of the people that Alexander net a pop writes about in her book will do their time in these hellholes when I say that we should always make incarceration last instead of our first response to crime. This should certainly start at least pre trial. There are a million pieces of information and data that suggests that pre trial detention almost always has worse outcomes from the alternative. If we want to have good outcomes, which should be the goal of incarceration, we should be reducing as much incarceration as possible because it does not have good outcomes. So when I talk about us doing this as our last response, where only the absolute, you know, nightmare scenario is someone who ends up getting kept in pre trial. There's a big part of what I'm talking about. I'm not for incarceration period, I always think there's a better answer. But in this particular instance, as long as we're in the political situation we're in now, we should at least be trying to make sure that we are only putting the people that absolutely have to be in jail, pre trial pre trial and doing something to fix the entire notion of what our jails represent. Like I said, in my opinion, there's always a better answer than incarceration, or at least that incarceration is we currently practice it at the McComb county jail there been 19 death just since 2012. And that is in one jail in one county in one state in the entire United States. We need to stop believing that it is okay to house people in torture chambers. We need to start radically reimagining our criminal justice system.

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