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permanent second-class status by law. It operates primarily through the war on drugs, which targets people overwhelmingly on the basis of race for drug crimes that are committed with equal frequency by people of all colors, sweeps them into the criminal justice system by the police who conduct stop-and-frisk operations in poor communities of color, brands them criminals and felons and then releases them into a parallel social universe in which they're stripped of many of the basic rights won in the Civil Rights Movement, like the right to vote, the right to serve on juries, the right to be free from discrimination in employment, housing, access to education and public benefits. So many of the old forms of discrimination that characterized the old Jim Crow are suddenly legal again once you've been branded a criminal or a felon.

So I refer to the system of mass incarceration as the new Jim Crow, because I believe it is the moral equivalent of Jim Crow, but also because so many of the laws, policies and practices that were alive and well in the Jim Crow era are back.

**R.R.:** Now with the old Jim Crow: How did it happen? Did people come together and decide, "We're not going to allow them to vote, we're not going to allow them to come to this restaurant." Did people come up with a plan or [were there] incremental things that created the system?

**M.A.:** Well, interestingly, the old Jim Crow arose at a time when poor people of all colors were beginning to unite in a movement for economic justice.

**R.R.:** And when was this?

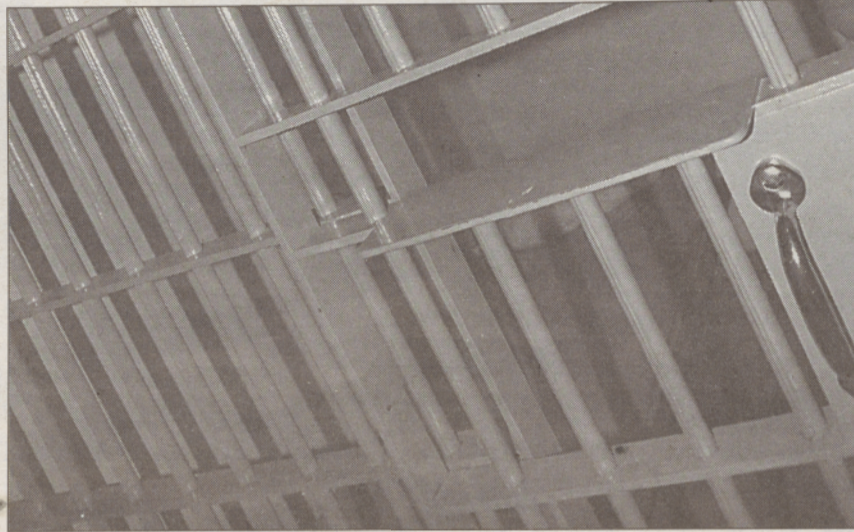
**M.A.:** This was during the Populist era. There was an agrarian depression in the late 1800s and there was also an enormous amount of abuse of people working for railroads and other corporations. These circumstances created an economic and political environment for poor whites to join together with former slaves and their descendants for the first time in a meaningful movement for economic justice. Plantation owners and the corporate elite felt incredibly threatened by this interracial alliance of poor people and proposed Jim Crow laws to decimate this alliance. They started out by proposing disenfranchisement laws that were aimed, initially, at black folks, but the implicit threat was that white folks too might be disenfranchised if they didn't get on board.

So when these laws were first proposed, Populist leaders resisted them on the grounds that this was an effort to drive a wedge between poor people of all colors. But soon, poor whites were persuaded to abandon their African-American allies and politicians began competing with each other to propose ever harsher and, in many cases, absurd forms of discrimination against African Americans. It set off a chain of events, which led to a complete collapse of political resistance to the emergence of Jim Crow in the South.

Interestingly, a very similar political dynamic gave rise to the war on drugs and the "Get Tough" movement. After formal, political civil rights had been won, Martin Luther King and other civil rights leaders were beginning to turn their focus to economic rights and economic justice and were developing the Poor People's Campaign, seeking to unite poor people of all colors. Pollsters and political strategists found that by using "Get Tough" rhetoric on issues of crime and welfare, they could appeal to poor and working class whites who were feeling threatened by and anxious about the gains of African Americans and persuade them to defect from the Democratic New Deal coalition and join the Republican party in droves. It was part of what was known as the "Southern strategy," attempting to flip the South from blue to red. In the words of H.R. Haldeman, President Richard Nixon's former chief of staff, "The whole problem is really the

blacks. The key is to devise a system that recognizes this while not appearing to." It's a direct quote from him about what they were up to and the plan worked like a charm.

So when President Reagan declared the "War on Drugs" in 1982, he did so at a time when drug crime was actually on the decline. It was a couple of years before crack became a big issue in the media and was sweeping inner cities. He declared the drug war in an attempt to make good on campaign promises and they got lucky though, because crack hit the streets. A few years later the Reagan administration seized on the development by hiring staff to feed stories to the media about crack babies that helped to fuel public hysteria, and that wave



**"If we were to just go back to the rates of incarceration we had in the 1970s, before the 'Get Tough' movement, we'd have to release four out of five people who are in prison. Four out of five. A million people employed by the criminal justice system would lose their jobs. Prisons across America would have to close down. Private prison companies would have to watch their earnings vanish. I mean, this system isn't just going to go away without a major fight."**

of punitiveness then swept the United States. Soon Democrats were starting to compete to win back those white swing voters — those Reagan Democrats — who had defected from the Democratic Party in droves. Bill Clinton escalated the drug war far beyond what Reagan had done, and championed laws banning offenders from food stamps, from public housing, from federal financial aid for education: All those forms of discrimination formed the basic architecture of this new caste system. Within a few short decades, this vast, new under-caste emerged that swept millions of folks for primarily non-violent and drug-related offenses, the same types of crimes that occur with roughly equal frequency in middle class communities, on college campuses and universities that get ignored. Millions of folks.

**R.R.:** You're breaking my heart. So when did you realize this? Was there something that you recognized?

**M.A.:** You know, even though I was a civil rights lawyer, and I felt like I was working for racial justice and all that, I believed many of the myths of the drug war and our criminal justice system. There was one incident that kind of woke me up.

I was interviewing a bunch of young black men as potential plaintiffs in a racial profiling suit [the ACLU was] planning to file against the Oakland Police Department. This one kid came in — he was probably 18 or 19 — and he had this stack of papers with him and had documented his series of stops and searches over a nine-month period in his neighborhood. He had names, dates, witnesses, names of officers, badge numbers: just an incredible amount of detail and documentation. The kid was bright, well-spoken, charismatic. And I just thought, "He is our dream plaintiff." He was talking to me and he said something that made me think, "Wait. Are you a drug felon?"

Our staff — I was directing the ACLU's Racial Justice project at the time — we were screening people for drug penalties, because we felt we couldn't have a main plaintiff who had a criminal history. And I said, "Did you say you had a drug felony?" And he just gets quiet and he's, like, "Yeah, I have a drug felony, but I was framed. The police planted drugs on me and beat up my friends." He starts telling me this whole, long story about how he was set up by the police and all this. And I was, "I am so sorry, we cannot represent you if you have a drug felony. The media will be all over you."

And he just keeps telling me about how he was framed and telling me this story about the officer and I just keep apologizing and trying to shut him down and really just

some questions about my own biases and assumptions. That was the beginning of my journey of listening more carefully, doing a ton of research, trying to get to the bottom of what was really going on and what I learned just really blew my mind. The more I dug and the more I listened, the more that I just came to see that those folks who are claiming mass incarceration is the new slavery, the new Jim Crow, they weren't crazy. There was something going on here that people like me had been willing to just dismiss.

**R.R.:** Wow. How have people responded to your book?

**M.A.:** There's been a wide range of responses, for sure. But I have to say I've been really pleasantly surprised. A lot of people who were my mentors told me don't write it, people aren't going to want to hear it, you're going to ruin your career. You know: Don't go there. I just felt like this is what I had to say. So I didn't really know what to expect. But there's been just a tremendous amount of support. People are more ready to hear this message today than they have been in the past.

That's not to say everybody's been happy with it [laughs]. And interestingly, while there have been lots of churches that have invited me to come speak, some of my most difficult moments have come from some black church leaders, who have argued real strenuously that these black men are just failing our communities, they've got to get their act together, you can't be making excuses for them. Some black ministers, sometimes in poor communities, say, "We brought this all on ourselves." It's just not the case. So we have our work cut out for us.

**R.R.:** So what do we do? It's heartbreaking to hear that we had this coalition of poor people of all races that was broken not once, but twice.

**M.A.:** I think therein lies the answer. We have got to get serious about building a movement that bridges the gaps between poor people of all colors. There's just no way around it. Even if mass incarceration fades away or recedes, something new will come along. Forty years ago, nobody — I mean nobody — was predicting mass incarceration. Most criminologists thought prisons, as a system of control, were going to fade away. The overwhelming evidence was that prisons created more crime than they prevented or solved. So I think even if mass incarceration begins to fade away, nobody can predict what new systems might emerge if we fail to deal with these racial divisions that give rise to these systems of control. So nothing short of a major social movement has any hope.

If we were to just go back to the rates of incarceration we had in the 1970s, before the "Get Tough" movement, we'd have to release four out of five people who are in prison. Four out of five. A million people employed by the criminal justice system would lose their jobs. Prisons across America would have to close down. Private prison companies would have to watch their earnings vanish. I mean, this system isn't just going to go away without a major fight. And so all of these policy reform groups and civil rights organizations that are tinkering around, arguing about whether sentences should be 10 years or 25: We are going to have to do more than tinker. It's going to take a major shift in our public consciousness, an upheaval, even to get back to those rates of incarceration that we had in the 1970s that people then were complaining about being too high.

So that's the thing: I want this book to be a wake-up call to folks. I had my awakening. I want other people to wake up and say, "This enormous system, which is rooted in our racial divisions and anxieties, is not going away. It's not going away unless we get organized and develop a real critical, political consciousness in the communities most affected."

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move him along. And he becomes enraged, just enraged. And he starts yelling at me, "You are no better than the police. The minute I tell you I'm a felon, you just stop listening. You can't even hear what I have to say." He goes, "What am I supposed to do? I can't get a job now, I can't get housing, I'm living in my grandmother's basement, I can't even get food stamps, I can't take care of myself as a man. What's to become of me? What's to become of me?" And he is yelling at me and he snatches all those papers out of my hand and he starts ripping them up, throwing them around the room, turns around, takes off.

Months later, I'm doing this public access television show in his neighborhood, trying to organize thousands of people to go to the state capitol to protest the governor's racial profiling legislation. As soon as the show is over, he comes bursting in, carrying this dirty potted plant, thrusting it in my arm, all emotional. He says, "I'm here to apologize for treating you that way. I would have bought you some flowers, but I'm still living in my grandmother's house. I snatched this plant off her front porch. I just want to give you something to say I'm sorry." I'm, like, "It's okay." He turns around, I'm chasing after him, he takes off in this broke down car.

Several months after that, I'm in my office, open up the newspaper. What's on the front page? Gang of officers, otherwise known as a drug task force, planting drugs on people, beating suspects. And who's identified as the ring leader? The officer he had identified to me as having planted drugs on him and beat his friend up. And the light bulb went on: "Wow, he's right about me. I'm no better than the police." I just started questioning myself: "How am I as a civil rights lawyer, just replicating all the same forms of discrimination I say I'm out here fighting against?"

That's when I really started asking myself