**LAW 234.21 – DISMANTLING MASS INCARCERATION**

**U.C. Berkeley School of Law**

**Spring, 2023 (1 Unit)**

Thursdays, 6:25p to 8:15p

January 12, 2023 to February 23, 2023

Law Building Room 115

Zoom link: <https://berkeley.zoom.us/my/tcheng>

bCourses link: <https://bcourses.berkeley.edu/courses/1520808>

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# INTRODUCTON

Despite substantial empirical evidence that large-scale incarceration is an ineffective means of protecting public safety, widespread changes in criminal law and policy over the past several decades have been largely responsible for a 500% increase in the number of people incarcerated in the United States over the last forty years. As a result of these trends, the United States now incarcerates a larger share of its population than any other country in the world. Further, at 2.3 million people, the United States also houses the world’s largest overall incarcerated population, despite only having just over 4% of the world’s total population.

This one-unit seminar will provide students a broad survey of both the underlying causes and invidious effects of the exploding prison and jail population in the United States, as well as the opportunity to study and debate potential reforms targeted at this crisis. From the war on drugs to the Balkanization of criminal justice reform, students will study how well-intentioned but misguided efforts undertaken in the name of public safety have resulted in widespread unintended social consequences, as well as the creation of a growing and pervasive underclass, comprised disproportionally people of color, ensnared by the direct and collateral consequences of the criminal justice system.

# II. COURSE MATERIALS

Students will not be required to purchase any materials for this course; all assigned readings will be available either online and/or uploaded to bCourses.

# III. CLASS MEETINGS

Although classes will meet in person (subject to university guidelines for in-person instruction), efforts will be made to record classes for later review on bCourses. For technical support with Zoom, bCourses and/or internet access, please feel free to contact [student computing@law.berkeley.edu](mailto:student%20computing@law.berkeley.edu). In addition, information, links, and instructions for many common computer/technical questions can be found in the law library’s [online computing guide](http://libguides.law.berkeley.edu/computing/home).

We are all responsible for creating a learning environment that is welcoming, inclusive, equitable, and respectful. If you feel that these expectations are not being met, please let me know immediately. In addition, you may also choose to seek assistance from campus resources (see the [Academic Accommodations website](https://evcp.berkeley.edu/programs-resources/academic-accommodations-hub#accommodations)).

# IV. LEARNING OUTCOMES

Per ABA requirements, as well as Berkeley Law guidelines, students will be expected to achieve the following learning outcomes for this course:

1. Exercise of proper professional and ethical responsibilities to clients and the legal system;
2. Other professional skills needed for competent and ethical participation as a member of the legal profession; and
3. Using the law to solve real-world problems and to create a more just society.

# V. STUDENT ASSIGNMENTS

*Reading*. Assigned reading materials will challenge students to think critically about the myriad of factors that contribute to the racial disparities in policing, charging and sentencing, inherent in mass incarceration and will prepare students to analyze the confluence of societal, economic and political trends underlying recent efforts at reform. In addition to selected chapters of the books listed at the end of this syllabus, students will be assigned additional materials to read, including essays, news articles and reports. (Note that all assigned readings will be available either online and/or uploaded to bCourses; students will not be required to purchase any reading materials for this seminar.)

*Court watch.* In preparation for in-class discussion, students will spend at least three hours observing criminal court prior to the fourth class session.

Students may choose to listen to court proceedings occurring at the Rene C. Davidson (“RCD”) Courthouse in Oakland, the Wiley W. Manuel (“WWM”) Courthouse in Oakland and/or the East County Hall of Justice (ECHOJ) Courthouse in Dublin. Students will spend at least two hours listening to general criminal calendar matters in Department 11 at the RCD Courthouse (Judge Kevin Murphy), Department 112 at the WWM Courthouse (Judge Colin Bowen), and/or Department 701 at the ECHOJ Courthouse (Judge Michael Gaffey).

Morning calendars run from approximately 9 a.m. to noon; in addition, Departments 112 and 701 generally have a regular afternoon calendar that runs from approximately 2 p.m. to 4 p.m. (Department 11 generally does not have a regular afternoon calendar, but when it does hear cases in the afternoon, there are usually only a few scheduled.)

In addition to observing general criminal calendar matters for at least two hours, students are welcome to spend their third hour (or more) of court watch listening to any other criminal proceedings taking place in other departments. Depending on the day and the department, students may see a sentencing hearing, a preliminary examination, a jury trial or some other criminal proceeding. Daily calendars can be viewed using the Criminal Calendar Report link at [http://www.alameda.courts.ca.gov/Resources/Documents/CriminalCalendar/ Criminal%20Calendar%20Summary.pdf](http://www.alameda.courts.ca.gov/Resources/Documents/CriminalCalendar/Criminal%20Calendar%20Summary.pdf).

*Final Paper.* By the last class session, students will submit a short op-ed piece (500-word minimum) about some aspect of criminal justice reform. The specific topic and perspective of the article will be of the student’s choice, but should be generally related to the subject of reducing or eliminating systemic mass incarceration in the United States.

*Grading.* This course is being offered only on a credit (CR)/no pass (NP) basis and will not be graded.

# VI. CLASS SCHEDULE *(subject to change)*

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| **CLASS** | **DATE** | **TOPIC** | **READING ASSIGNMENT** |
| **1** | 1/12/23 | *Designed to Fail:* The Foundation of Mass  Incarceration | Tony Cheng, *Politicians Must Not Act Based on Sensationalized Cases*, The Daily Californian (Nov. 30, 2018) (<https://www.dailycal.org/> [2018/11/30/ politicians-must-not-act](https://www.dailycal.org/%202018/11/30/politicians-must-not-act-based-on-sensationalized-cases/)-[based-on-sensationalized-cases/)](https://www.dailycal.org/%202018/11/30/politicians-must-not-act-based-on-sensationalized-cases/)    Tony Cheng, *When the Cure is Worse Than the Disease*, California Law Review Blog (Sep. 2020) ([https://www.californialawreview. org/when-cure-is-worse-than-disease/](https://www.californialawreview.org/when-cure-is-worse-than-disease/)) |
| **2** | 1/19/23 | *Politics, Economics and the Prison-Industrial Complex:* Structural Barriers to Dismantling Mass  Incarceration | Nell Bernstein, *Burning Down the House: The End of Juvenile Prison* (The New Press, 2014), Chapter15, *Against Reform: Beyond the Juvenile Prison*  Rachel Elise Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (The Belknap Press  of Harvard University Press, 2019), Chapter 7, *Institutional Intransigence*  Mark Liptak, *Illegal Globally, Bail for Profit Remains in U.S.*, The New YorkTimes (Jan. 29, 2008) ([https://www.nytimes.com/ 2008/01/29/us/ 29bail.html)](https://www.nytimes.com/%202008/01/29/us/29bail.html)  Rachel Uranga, Irfan Khan, Richard Winton, *Rail Thefts Leave Tracks* *Littered with Pilfered Packages,* Los Angeles Times(Jan. 16, 2022) ([https://www. latimes.com/california /story/2022-01-16/rail-theft-soars-los-angeles-pilfered-packages-littering-tracks](https://www.latimes.com/california%20/story/2022-01-16/rail-theft-soars-los-angeles-pilfered-packages-littering-tracks))  Cleve R. Wootson, Jr., *The White DA, the Black Ex-Mayor and a Harsh Debate on Crime*, The WashingtonPost(Dec. 8, 2021) ([https://www. washingtonpost.com/politics/2021/ 12/28/krasner-nutter-philadelphia-crime/](https://www.washingtonpost.com/politics/2021/12/28/krasner-nutter-philadelphia-crime/)) |
| **3** | 1/26/22 | *The Elephant in the Room:* Mass Incarceration as the Result of Institutionalized  Racism | Michelle Alexander, *The New Jim Crow* (Revised Edition, The NewPress, 2012), Chapter 1, *The Rebirth of Caste*  James Forman Jr., *Locking up Our Own: Crime and Punishment in Black America* (Farrar, Straus and Giroux, 2017), Chapter 2, *Black Lives Matter: Gun Control, 1975*  Victor Rios, *Punished: Policing the Lives of Black and Latino Boys* (NewYork University Press, 2011),  Chapter 3, *The Labeling Hype*  Mike Moffitt, *Weighing August Vollmer’s Tarnished Legacy*, [www.sfgate.com](http://www.sfgate.com) (updated Sep. 28, 2020) ([https://www.sfgate.com/ bayarea/article/ Berkeley-Vollmer-Peak-police-chief-eugenics-15597927.php](https://www.sfgate.com/bayarea/article/Berkeley-Vollmer-Peak-police-chief-eugenics-15597927.php)) |
| **4** | 2/2/23 | *A Deal with the Devil:* The Perils of Plea Bargaining | Michelle Alexander, *The New Jim Crow* (Revised Edition, The NewPress, 2012), Chapter 2, *The Lockdown*  Emily Yoffe, *Innocence is Irrelevant,* The Atlantic (September, 2017)[(](https://www.theatlantic.com/magazine/%20archive/2017/09/innocence-is-irrelevant/%20534171/)https://www.theatlantic. com/magazine/[archive/2017/09/innocence-is-irrelevant/534171/)](https://www.theatlantic.com/magazine/%20archive/2017/09/innocence-is-irrelevant/%20534171/)  Rachel Elise Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (The Belknap Press of Harvard University Press, 2019), Chapter 7, *Institutional Intransigence* |
| **5** | 2/9/23 | *Sex, Drugs and Rock ‘n Roll:* The Societal Costs of Mass Incarceration | Nell Bernstein, *Burning Down the House: The End of Juvenile Prison* (The New Press, 2014), Chapter  8, *“Hurt People Hurt People”: Trauma and Incarceration*  Bryan Stevenson, *Just Mercy* (Spiegel & Grau, 2015), Chapter 10, *Mitigation*  James Forman Jr., *Locking up Our Own: Crime and Punishment in Black America* (Farrar, Straus and Giroux, 2017), Chapter 5, *“The Worst Thing to Hit Us Since Slavery”: Crack and the Advent of Warrior Policing, 1988-92* |
| **6** | 2/16/23 | *Rethinking Incarceration*: What is “Justice?” | Nell Bernstein, *Burning Down the House: The End of Juvenile Prison* (The New Press, 2014), Chapter  11, *A Better Mousetrap: The Therapeutic Prison*  Max Fisher, *A Different Justice: Why Anders Breivik Only Got 21 Years for Killing 77 People*, *The Atlantic* (Aug. 24, 2012) (https://www.theatlantic.com/ international/archive/2012/08/a-different-justice-why-anders-breivik-only-got-21-years-for-killing-77-people/261532/)  Mark Lewis, *Norway Killer Breivik Tests Limits of Lenient Justice System,* Associated Press(Jan. 21, 2022) (<https://news.yahoo.com/norway-mass-killer-tests-limits-103553052.html>)  Laura Paddison, *How Norway Is Teaching America to Make Its Prisons More Humane*, www. HuffPost.com (updated Aug. 22, 2019) (https://www.huffpost.com/entry/[norway-american-prison-system](https://www.huffpost.com/entry/%20norway-american-prison-system-reform_%20n_5d5ab979e4b0eb875f270db1)-[reform\_n\_5d5ab979 e4b0eb875f270db1)](https://www.huffpost.com/entry/%20norway-american-prison-system-reform_%20n_5d5ab979e4b0eb875f270db1) |
|  |  |  | Natalie Gordon, *Understanding What Restorative Justice Is and Isn’t*, [www.law360](http://www.law360).com (Jan. 5, 2020) ([https://www.law360. com/articles /1228012/ understanding-whatrestorative-justice-is-and-isn-t)](https://www.law360.com/articles/1228012/understanding-what-restorative-justice-is-and-isn-t)  Rebecca Clarren, *Judge Abby Abinanti Is Fighting for Her Tribe*, The Nation (Nov. 30, 2017) ([https://www. thenation.com/article/archive/ judge-abby-abinanti-is-fighting-for-her-tribe-and-for-a-better-justice-system/))](https://www.thenation.com/article/archive/judge-abby-abinanti-is-fighting-for-her-tribe-and-for-a-better-justice-system/) |
| **7** | 2/23/23 | *Case Study*: Juvenile Justice Reform in California | Evan Sernoffsky and Joaquin Palomino, *Locked Up, Left Behind*, San Francisco Chronicle (Oct. 3, 2019) ([https://www.sfchronicle. com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php](https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php))  Joaquin Palomino and Jill Tucker, *Amid Historic Shifts in Juvenile Justice, Some Counties Lock Up Kids for Treatment*,San Francisco Chronicle (Feb. 24, 2020)(https://www.sfchronicle.com/bayarea/ article/Amid-historic-shifts-in-juvenile-justice-some-14934998.php)  Linda Jiang, *Juvenile Offenders to Be Housed in Residential Neighborhoods, LA Residents Express Concern*, The Epoch Times (Dec. 14, 2021)  (<https://www.theepochtimes.com/juvenile-offenders-to-be-housed-in-residential-neighborhoods-la-residents-express-concern_4149568.html?welcomeuser=1>)  Betty Marquez Rosales, *Changes to California’s Youth Prison System Prove Difficult to Implement*, EdSource.com (Oct. 7, 2021) ([https://edsource .org/2021/changes-to-californias-youth-prison-system-prove-difficult-to implement/661967? amp=1](https://edsource.org/2021/changes-to-californias-youth-prison-system-prove-difficult-to-implement/661967?amp=1))  David Harvey and Michael D. Tanner, *Progress on Juvenile Justice Reform in California*, Cato Institute (Dec. 22, 2021) ([https://www.cato.org/blog/ progress-juvenile-justice-reform-california](https://www.cato.org/blog/progress-juvenile-justice-reform-california)) |

# VII. GENERAL BERKELEY LAW POLICIES

(1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including (a) classroom time; (b) time spent preparing for class; (c) time spent studying for, and taking, final exams; (d) time spent researching, writing, and revising papers and other written work; and (e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

(2) Students who need accommodations for disability or pregnancy or who wish to discuss implementation of their accommodations, including accommodated exams, should contact Kyle Valenti, Senior Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) or Kyle Kate Dudley, Assistant Director of Student Services, Accessible Education ([kylekatedudley@law. berkeley.edu](mailto:kylekatedudley@law.berkeley.edu)) as soon as possible.

The purpose of academic accommodations is to ensure that all students have a fair chance at academic success. Disability, or hardships such as basic needs insecurity, uncertain documentation and immigration status, medical and mental health concerns, pregnancy and parenting, significant familial distress, and experiencing sexual violence or harassment, can affect a student’s ability to satisfy particular course requirements. Students have the right to reasonable academic accommodations, without having to disclose personal information to instructors. For more information about accommodations, scheduling conflicts related to religious creed or extracurricular activities, please see the Academic Accommodations hub website: <https://evcp.berkeley.edu/programs-resources/academic-accommodations-hub#accommodations>. This website also provides a range of helpful campus resources.

(3) The [Academic Honor Code](https://www.law.berkeley.edu/academics/registrar/academic-rules/academic-honor-code/) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. Students are expected to scrupulously adhere to this code. If you have any question about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

(4) During emergencies and disasters, class recordings may be created and provided to students to allow asynchronous attendance. Recordings may also be made available under other circumstances to augment instruction. Students shall not distribute video or audio recordings or screenshots for any reason unless authorized in connection with a disability accommodation.

(5) If you are in need of economic, food, or housing support, you can find basic needs information [here](https://basicneeds.berkeley.edu/). You may be eligible for money to buy groceries via [CalFresh](http://calfresh.berkeley.edu/) or the Food Assistance Program. If you need food immediately, please visit the [UC Berkeley Food Pantry](https://pantry.berkeley.edu/).

(6) The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance and procedures, please access the  [Sexual Violence and Sexual Harassment Policy](https://policy.ucop.edu/doc/4000385/SVSH).

If you have questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination at (510) 643-7985 or [ask\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu).

[Path to Care Center](http://sa.berkeley.edu/dean/confidential-care-advocate). Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including: sexual harassment, emotional abuse, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone at (510) 642-1988.

# VIII. SELECTED BILBLIOGRAPHY

Michelle Alexander, *The New Jim Crow* (Revised Edition, The New Press, 2012)

Rachel Elise Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (The Belknap Press of Harvard University Press, 2019)

Nell Bernstein, *Burning Down the House: The End of Juvenile Prison* (The New Press, 2014)

James Forman Jr., *Locking up Our Own: Crime and Punishment in Black America* (Farrar, Straus and Giroux, 2017)

Bryan Stevenson, *Just Mercy* (Spiegel & Grau, 2015)

(Revised 1/5/23)