

**SESSION THREE:
BOOKS NOT BARS:
CONFRONTING CRIMINAL JUSTICE ISSUES
THROUGH MULTIRACIAL ACTION**

INTRODUCTION

TRICIA ROSE* (MODERATOR): It's been an incredible morning. Before we get started with the fabulous presentations that we have, it occurred to me that maybe a brief discussion of what "political race" means would be useful for those of you who haven't yet had the luxury of having *The Miner's Canary* in your possession, especially since what we're going to do on this panel really requires a sense of what that is.

What's important about political race is that it's a concept that captures the association between those who are raced in society and connects it to a democratic social movement aimed at bringing about structural change within the larger community in the U.S. Political race is not a category limited to multi-racial organizing on the margins, but to ultimately transforming conceptions of whiteness as well. It's important when we think about political race that we imagine whiteness as a part of this political race project. "Political" in the political race phrase means collective interaction and action at the individual, group, and institutional levels. In that sense, it links race to power—not just individual power, but the distribution of resources and the ways in which the distribution of resources are so clearly racialized in an unequal way. Resources are distributed in extremely racist ways and in understanding political race, we are able to see that distribution more clearly. The normalization of racial hierarchy is made unstable in the political race project.

Now the important distinction, that potentially can be misunderstood, is that political race is not identity politics in the traditional sense. Political race affirms individual choices of affiliation, which is where people might lead down

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the false path of identity politics, but it is about doing, not about being. It's not that you name a racial identity, and then you just get to live in it and be in it—although that can be fun too under the right circumstances. Political race illuminates the central fact that we are raced in society, that racing is an active process that has enormous political repercussions. By seeing this process, we potentially can realign the political distributions that are the most devastating.

An example of this might help us see what's important about it. What we're going to talk about here this afternoon speaks to the intersection between the criminal justice system and the educational system, and the ways in which these two supposedly different institutions are, in fact, quite fundamentally connected, particularly by a language and politics of race. For example, the tax dollars of working-class whites are basically funding both wealthy and upper-middle-class whites' access to education and working-class and poor black and brown men's incarceration in the prison industrial complex. A political race idea, a political race conception of the self, as well as one's active association in society, makes this visible. For a white working-class person who doesn't actually think about race with this twist, you will only imagine yourself as a member of some sort of amorphous white group in this very important political black-white binary, and therefore see yourself as somehow reaping the benefits of being white when in fact, as a white, working-class person, you would not be reaping those benefits. Political race illuminates the way in which these instruments are working, and disrupts the black-white binary at the same time as it ultimately works against it.

With the educational system as it stands now and the enormous growth in prisons, incarceration, and the logic of criminalization, it's very important that we see these links. We have incredible, really powerful, brilliant people to help us with this today.

STOPPING THE “SUPER JAIL” FOR YOUTH:
YOUTH OF COLOR WITH A POWER-BUILDING
AGENDA TRANSFORM
LOCAL INCARCERATION POLITICS

LENORE ANDERSON*

On May 17, 2001, more than seventy-five youth of color and their allies descended upon a California Board of Corrections (BOC) meeting in San Diego to oppose BOC plans to sink millions of dollars into yet another youth jail expansion. Through passionate advocacy, poetry, testimonials, boisterous chanting, and song, these youth convinced the BOC that Oakland’s Alameda County did not need money to double the size of its already massive juvenile hall. The BOC voted 10-2 to deny Alameda County’s request for \$2.3 million to expand its juvenile hall, and a new day dawned in the youth-led struggle against California’s prison industry.

Ever since California’s pro-incarceration forces placed Proposition 21—a piece of harsh legislation designed to house more youth in adult prisons—on the state ballot a year before the BOC meeting, San Francisco Bay Area youth of color and their allies have been organizing to stop unchecked prison expansion. Although the battle against Proposition 21 was lost when the measure passed at the polls, the young activists leading the charge have continued to organize, calling for an end to mass incarceration and advocating for a redistribution of resources away from jails and toward the schools, programs, and services that youth deserve. In early 2001, when they uncovered Alameda County’s plans to dramatically expand its juvenile hall, these organizers set in motion a massive local campaign and sent a message across the nation: Young people of color are a powerful new force against the prison industry that cannot be ignored.

The campaign to stop Alameda County officials from building a “Super Jail” for youth serves as an unprecedented example of the transformative impact organizing led by young people of color can have on local incarceration politics. For the past several years, Alameda County has been developing plans to expand its dilapidated 299-bed juvenile hall to 540 beds and move it to a remote location twice as far from Oakland as the current hall. With 299 beds, Alameda County already has one of the highest pre-trial youth incarceration rates in the nation,

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despite decreasing youth crime. If Alameda County's intentions to expand to 540 beds had been realized, its juvenile hall size would have rivaled the hall sizes of counties with four to five times Alameda County's population. The County's youth of color are hit hardest by incarceration—for example, although African American youth account for only seventeen percent of Alameda County's total youth population, they make up an astounding fifty-nine percent of the youth in the County's juvenile hall.

Until youth began organizing, officials were pushing the expansion plan through the County bureaucracy without dissent from any public representative. The five-member Alameda County Board of Supervisors unanimously approved plans to apply for BOC expansion funding, and the project received little or no media attention. However, with Bay Area youth recently galvanized from the fight against Proposition 21, the official silence did not last. The Ella Baker Center for Human Rights' newly-formed Books Not Bars campaign joined forces with Oakland's Youth Empowerment Center and the Youth Force Coalition to give voice to youth opposition and demand that the County halt the expansion plan immediately.

After Books Not Bars and Youth Force successfully blocked Alameda County's attempt to secure state BOC funding, the groups geared up to change the minds of County officials as well. Although County officials were stunned by the BOC's decision to withhold the \$2.3 million, their juvenile hall expansion plans remained intact. Youth organizers and their allies organized large-scale hip-hop cultural events to spread information about the Super Jail to youth, built alliances with local labor, environmental, and social justice organizations, obtained extensive information on the County's flawed plan from insiders and juvenile justice policy experts, developed relationships with local media outlets, and, at every opportunity, publicly pressured local officials to reassess the wisdom of devoting precious County resources to building more youth cell blocks.

As pressure and press attention mounted, two members of the Board of Supervisors expressed opposition to the plan and vowed to bring the issue up with the full board. At a rowdy Board of Supervisors meeting in late July, scores of youth and allies demanded that the County reexamine the need for expansion by conducting a "detention utilization" study. When the Board voted 3-2 against the study, attendees reacted with outrage. Nine people were arrested for conducting a sit-in protest against the decision. Local media responded with wide coverage of the sit-in and the surrounding issue. Thereafter, the County voted to scale back the expansion from 540 to 450 beds, and later to 420 beds, thereby halving the proposed addition of new beds.

The actions of Books Not Bars and Youth Force have reverberated throughout the County's governing bureaucracy. Youth incarceration is gaining a level of attention from County power-brokers previously thought unattainable. Probation Department officials are finally addressing the long-standing problem

of the months-long detainment at juvenile halls of youth simply awaiting placement to group homes. County officials are investigating ways to provide travel subsidies to families who will visit their children in new juvenile hall. County officials have commissioned a study on efficiency in all stages of the juvenile justice system. Now, months before local elections, candidates are voicing their positions on the “Super Jail” issue, and a coalition of youth, community, environmental, and labor organizations is forming to continue the fight for a smaller juvenile hall and a more humane juvenile justice system.

The campaign to stop the “Super Jail” for youth in Alameda County exemplifies the kind of “new social movement”—one that uses creative and “experimental space” to garner support for progressive social change—that Lani Guinier and Gerald Torres describe. Through hip-hop and spoken word, smart media advocacy, art, traditional street outreach, student activism, multiracial alliances, and creative coalition building, young people of color in the Bay Area are leading the charge for a new urban social policy: education, not incarceration.

As a white adult working in support of this campaign, my experiences lead me to believe that the Bay Area youth movement against the prison industry can teach social justice activists far more than simply how to disrupt a local bureaucracy’s plan to expand its youth jail capacity. The movement demonstrates the sophisticated strategies that young activists of color have developed to use power-building as a means of winning transformative social change. Beyond simply providing information on the incarceration atmosphere that urban youth face and asking for help, the new youth movement seeks to use youth-led activism, media advocacy, and creative organizing to build a community base strong enough to thwart the social and political control of its pro-incarceration opposition.

The Bay Area youth movement is multiracial and prioritizes developing young people of color as leaders. It rejects colorblindness and recognizes the centrality of race in its indictment of institutional oppression in the criminal justice system. With varying degrees of success, the movement experiments with popular education and participatory democracy, and it provides space for white and adult allies to participate and take on leadership roles. However, these strategies constitute the means, not the end. The guiding principle of the work is that young people of color, the primary targets of mass incarceration policies, should be at the center of a movement that not only reigns in the prison industry but also realigns the balance of power across society. Leaders of this burgeoning Bay Area movement recognize that mass incarceration policies and practices targeting young people of color are part of the broader problem: Too few people control too many resources and their distribution. In order to transform this imbalance, working-class communities of color need to be at the center of a resistance struggle that builds enough power to tip the scale. This struggle should seek both an end to mass incarceration and a redistribution of resources—specifically education, housing, employment, health care—and the creation of

clean environments and safe communities that will enable disenfranchised people to survive and thrive.

This power-building premise is an important starting point because it informs the strategies that social justice leaders should prioritize. If the conditions inside the “mines” result from the ability of those in power to develop propaganda, gather money and support, and build strategic alliances to pass social policies to their own benefit, then attempts to organize in opposition to “mine” toxicity require the same level of strategic analysis and planning on the part of those in resistance.

Building this kind of strategic movement to shift power and transform “mine” conditions will take more than symbolism or imagery. Social justice leaders should study and understand the successes and failures of past movements and how oppositional forces build and maintain power. Instead of metaphor, the experience of actual social justice struggles can better shed light on new directions for movement building.

The history of the struggle for social change is partially one of shifting conceptual frameworks within which to organize—i.e. colorblindness versus political race. However, the history is also one of power struggles and these shifts in conceptual frameworks are linked to historical shifts in power. The popularity of concepts like colorblindness reflects the changing balance of power between forces interested in maintaining the status quo and advocates calling for greater equality and changes in resource distribution. While many of the progressive forces coming out of the Civil Rights movement suffered state persecution, co-optation, fracturing, disunity of direction, and financial travails, those in opposition were consolidating to strike back. Conservative forces successfully harnessed money, members, influence, and developed effective propaganda. During this period of conservative power consolidation, individualized race-neutral notions of poverty and upliftment swelled. This relationship between power and the popularity of a concept is important: If past struggles succeeded in shifting the balance of power, leaders in these struggles could have set the terms of policy debates and popularized concepts in agreement with the movement’s agenda. Thus the failure of past strategies to build power is perhaps more determinative of current conditions than the failure of past conceptual frameworks.

Likewise, the historical role of allies is critical to understanding what roles allies should play today. To the extent that whites have historically co-opted and undermined the leadership of people of color in struggle, alliances today must be clear about how to avoid repeating that dynamic. From a power-building perspective, white allies can be important not only because whites are ultimately harmed by racist forms of resource control, but also, and perhaps more importantly, because unorganized whites can stand in the way of a movement’s success. Whites can act against power-building for transformative social change or develop a methodology for relating to movements led by people of color that

increases the capacity of these movements to win. In addition to unlearning racism, respecting the leadership of people of color, and understanding when to step forward and when to step back, whites must recognize power balances and realize the role whites play, both individually and as a group, in maintaining or disrupting the balance.

To answer questions about how and with whom to engage in struggle, the emphasis should be on what poor communities of color at the center of the movement need to maximize their ability to change the system. Developing a lens through which current conditions can be understood and explained is a helpful strategy for reframing public policy debate. Building alliances with whites can be a helpful strategy to defuse potential opposition forces and unite conscious supporters. Participatory democracy also is a key strategic tool for maximizing the opportunity for people from oppressed communities to act as leading agents in movement building. Without building power, however, none of these strategies on its own is comprehensive enough to win changes in the conditions in people's lives. The Bay Area youth movement against the prison industry and the campaign to stop the "Super Jail" for youth is one story of a burgeoning struggle focused on building power and demonstrating impressive potential to lead a movement out of mass incarceration and into transformation.

INCARCERATION AND EDUCATION

LIBERO DELLA PIANA*

Chapter eight of *The Miner's Canary*, "Watching the Canary," outlines two key institutions that jeopardize young people of color in the United States: the educational system and the prison system. The authors highlight, as other scholars and practitioners have, that there is a strong inverse relationship between the increased funding of prisons and police and diminished spending on higher education. Yet the American educational system and the incarceration system are not connected simply because of the displacement of funds from one system to the other.

Primary and secondary education in America have become increasingly modeled on the incarceration system, with schools acting as training grounds for prison. In fact, the policy parlance of the prison industrial complex, to a large extent, has been transposed onto the educational system. "Zero Tolerance," "Three Strikes, You're Out," and "Mandatory Sentencing" have all made their way into the arsenal of school "discipline," and like their counterparts in the prison system, these policies are inherently racist.

Where schools once took care of their own discipline, security, and truancy enforcement, today they are increasingly contracting these functions out to police agencies or creating their own internal police departments. Because there is often overlap in both personnel and function, young people are often harassed outside of school by a police officer who serves concurrently as the security guard at school. Forgotten is the fact that most in-school "offenses" are not crimes at all but simply violations of school rules. These rule violations, largely regarded as part of growing up or part of the natural process of young rebellion when committed by white students, are seen as the beginning of an inescapable road toward social decline and crime when committed by students of color.

There also exists a widely-held myth that the increasing school violence in America and crime are inextricably related. The high-profile shootings at Columbine and elsewhere notwithstanding—though it should be noted that none of these incidents involved students of color as perpetrators—school violence has not increased over the past few decades. Oakland, California, the city with which I am personally most familiar, is a case in point. The large number of students in Oakland who are suspended for subjective "offenses" such as "talking back" or demonstrating a "bad attitude" is striking. Much like racial profiling by police agencies, racial profiling persists in the classrooms and halls of the nation's schools, where Black and Latino youth are expected to be violent

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criminals and find their behaviors judged by different standards than white students. In the words of one parent, "young people of color are leaving schools with police records instead of college diplomas."

In my view, the secondary education system is increasingly being divided into multiple tracks to accommodate the differing, race-based expectations of our society. There are high-quality public schools that are largely attended by affluent white students, schools which prepare those students for excellent colleges and universities and eventually high-paying careers. There is a much larger set of schools that teach the bare minimum with limited budgets to a mixed but largely white student population. These students may go to colleges or at least find low-skilled jobs. Finally, there are (far too many) schools attended only by students of color, schools which act as warehouses for students that society has no hope for except prison or permanent unemployment.

This structure of education is an important part of the background for the testing debate. Even with the most judicious use, for students receiving an inadequate education, tests only reflect a student's performance after that education, but do little to target resources before a student experiences problems. To a large extent, tests measure not the performance of individual students, but the failure of the educational system. Why blame and punish students for what they never learned in school? Compounding the problems of the tests themselves are the high-stakes purposes for which they are used. Tests for graduation, college entrance, class placement and the like often measure aggregate performance and are used to determine—or all too often, to limit—a student's educational future.

I share the authors' desire to build a multiracial movement with the potential to change these systems that have such a dramatic impact on the lives of people of color. I also believe that vocal and explicit demands for racial justice are the key to building that movement. It is short-sighted and ineffective to attempt build a movement based on racial issues without being anti-racist. For example, it is insufficient to simply say that we will all fight for open admissions in state universities. Although this is obviously an important demand and a great place to start, if that movement does not begin with a common understanding of the racial underpinnings of inequality and a political understanding of racism, it will fall apart when things get difficult. Basing action of self-interest alone means that constituencies may cut and run when given an offer from the target of the demands instead of holding out for the political goals of the whole coalition.

Coalitions that have a long-term goal of completely rebuilding public education and completely dismantling the prison industrial complex must be multiracial, take political risks, be explicitly anti-racist and self-critical, and also must be based on demands that speak to the interests of society as a whole. To me, there are some great movements in the U.S. today doing just this. Californians for Justice, the state-wide movement which set out to build a different kind of grassroots electoral campaign to defeat Proposition 209,

succeeded in building a new model of multiracial organizing based on a political commitment to anti-racism. We need many more innovations like CFJ to help draw attention to successes in the arena of racial justice where it seems we have had so few.

WALKING WHILE TRANS

ELIZABETH LOEB*

In speeches, activist and scholar Leslie Feinberg often cites the words of African American poet June Jordan: “We are the ones we have been waiting for.”¹ For me, this quotation provides an entrance point into one of the central tensions in *The Miner’s Canary*: The tension between the “we” and the “ones,” between group membership and individualized subjectivity, between the imagined, unmarked universal subject/citizen of a national collective and the marked subject of a differentiated group within that collective.

Within the political theory and practice of citizenship in the U.S., difference almost always means difference from a universalized, abstract Citizen. A recognition or construction of difference based on group membership or characteristics must not be conflated with individual difference. Group members are particularized—that is, thought to be different from the universalized collective of citizenship—only insofar as they are the same as others within their particularized group, whereas individual difference does not require this simultaneous positing and construction of sameness with others.

I asked many questions while reading *The Miner’s Canary*: Why should we continue to respect particularity after the failures and lessons of identity politics in the 1990s? Can we respect that particularity without falling into the deep flaws of identity politics? Why must we, and how can we, celebrate and allow group particularity within broad movements aimed at changing structural relationships of power? In reading *The Miner’s Canary*, I developed a growing concern over how Torres and Guinier approach these questions. I specifically was troubled by the ways that “functional blackness” and indeed the term “black” itself are used within *The Miner’s Canary*. The banner of Torres and Guinier’s “black” hides and pushes toward erasure the particularity of distinct social and cultural groups. To me, this hiding space is a painful and untenable one. Although I acknowledge that the Torres and Guinier use of “black” produces an important and urgent focus on the structural similarities of groups in relation to power, I believe that this focus cannot come at the expense of the visibility of particularity. Within broader society, particularity remains visible, and often is given a negative valence by those who do not share the particularity in question. In order to do the necessary work of making that visibility a

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1. LESLIE FEINBERG, *TRANSLIBERATION* 62 (1998).

positive rather than a negative one, we must strive to create positive visibilities, not a melting, obscuring invisibility within “functionally black.”

If we accept Torres and Guinier’s magical realist-based movement, we must be careful with language, for our words create our possible realities. Although there are important and compelling arguments for the Torres and Guinier use of “black,” it also swallows and simplifies the possible real spaces for the social/cultural/political recognition and valuing of infinite particularity. My critique of “functional blackness” rests on the idea that the self-descriptive language of social and political movements has a constructive force.

Torres and Guinier call political race a “distinctly American challenge.”² They hope that “[a]ll people will regain some of what they have lost in the name of liberal individualism if they link their fate with others.”³ The political theory of liberal individualism, though consolidated through multiple paths, has a conceptual starting point in the work of John Locke. In the United States, the myth of citizenship speaks and enacts itself less through the liberal individualism of Locke and more through the collectivist concerns and political theory of John-Jacques Rousseau. While Locke believes that we engage in political formation as already completed individuals with already formed wills and agencies that remain in tact after political formation, Rousseau argues that political subjectivity is formed and created through the merging of individuals into a collectivity. Although in the U.S., citizens are taught to believe that they are like Locke’s pre-political and fully agent individuals, I propose that the founding texts of citizenship, such as the Constitution and the Declaration of Independence, invest in the formation of a universalized, unmarked, and undifferentiated collective rather than the formation of a normative universalized, unmarked individual.

Take, for example, “We the People.” What does “We the People” mean for groups of people that historically have come to be understood, read, and coded as different from the “People”? When we say that a person is black, we posit that blackness simultaneously “describes”⁴ how alike all people coded as black are, and how different these people are from the People of the citizen myth. Torres and Guinier state in chapter one that they want to move past a focus on anti-discrimination. I would argue that anti-discrimination work remains unsatisfactory, though practically necessary, because it requires that groups ask to be included in the rights granted to the universalized People collective, to be considered as “equal” to all other people, on the basis of a visible and recognizable difference from those people, a difference such as skin color. This

2. LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11 (2002).

3. *Id.* at 293.

4. I would argue that calling someone black participates in the creation and constitution of such a reality rather than in the neutral description of a pre-existing reality. While certainly history has sedimented and consolidated a reality to blackness, that reality is recreated, reinforced, and slightly shifted with each speaking of the reality as such.

difference then supposedly vanishes through the magical operation of law and the equality it tells us it brings. Once “equality” is granted through rights, difference supposedly disappears politically, even if it is maintained socially or culturally. The act of the granting of rights by law supposedly makes us into People. Hence, in petitioning for equal protection, we strengthen the power structure of People. Political race seems to desire to resist this erasure of difference while still claiming the full respect of citizenship.

What does it mean, then, for Torres and Guinier to use race, and specifically blackness, as a banner under which others will gather and a term through which all others will speak and describe themselves? As the authors write “We use the term political race to describe several kinds of functionally black allies Political race helps us understand who is functionally black, whether that person identifies with blackness or not.”⁵ This use of “functionally black” makes visible the ways in which we are all constrained within a similar power structure, and the need for solidarity. Yet solidarity can function and work without limiting the ability of groups to keep visible their own particularity. Using “black” as the only word for all differences linked in a political project of solidarity conflates and subsumes these particularities under one sign of difference, that is, under blackness. Like the People of “We the People,” “black” becomes the only language through which particularity, through which different differences can speak themselves. The Torres and Guinier concept of “black” and “functionally black” weakens our ability to respect and insist on all our various group and individual particularities even as we act and work in solidarity, and threatens to erase the very things that political race offers to make visible.

“Black” prevents the positive visibility of other particularities, and thus, also obstructs the urgent political work of changing whether the visibility of particular differences are identified as positive or negative. That is, the power structure of difference and its implications for citizenship gives some differences a negative valence, while making other differences invisible and positive, melting them into a vision of that mythic, unmarked, universalized, subject—the particular straight, white, Anglo, Christian, middle-class, normatively masculine male (etc., etc., etc.) who seamlessly lays claim to membership in the People. For political race to be a banner under which we all can gather, it must give difference a positive valence.

In order to probe the question of whether the use of “black” as a privileged descriptive word for all who are not People can indeed activate a project of social change that galvanizes national energy, I offer the following situation of particularity. Though this situation allies with the examples of political race offered in *The Miner’s Canary*, it requires specific work crafted to the specific terms of the local situation itself. The experience of visibly transsexual/

5. GUINIER & TORRES, *supra* note 2, at 283, 300.

transgendered women in New York City's West Village, and the frequency with which these women are arrested on suspicion of prostitution is the situation to which I refer.⁶

The sixth precinct of the New York City Police Department patrols the West Village and the Meatpacking district, an area known for its high concentration of transsexual and transgendered (henceforth "trans") women working as prostitutes. Many of these women are of color; many had to leave home and school due to their gender expression and identity; many cannot obtain jobs or housing because they look like "freaks," because the visibility of their difference, both from other People and from what People assume to be their medically-assigned birth sex, has a negative valence.

In the summer of 2001, community pressure lead the sixth precinct to conduct a moral sweep of the West Village and Meatpacking district, with an explicit focus on trans prostitutes. West Village community organizations serving LGBT people were inundated with complaints and stories from trans women about police harassment, about the increased danger of walking while trans. Most felt as if they could not even walk outside in the neighborhood without being hassled and arrested on suspicion of prostitution based solely on the fact that they were visibly trans. Trans women working at the LGBT Community Center were harassed and arrested on their way to and from work. Police stood at the 14th Street A/C/E stop, and arrested or detained anyone they believe to be a trans woman, subjecting the women they arrested to severe abuse in some cases and placing the women in an all male jail cell in almost all cases.

These arrests stem from how the police understand trans-ness, from their negative reaction to trans visibility within a local context. Teaching the sixth precinct more positive reactions to trans visibility requires a deep and specific engagement with the police's own culture, terms, and concerns. Although the examples in *The Miner's Canary* exhibit an attention to local context, the self-descriptive language of the movement does not. I do not find an argument in *The Miner's Canary* showing how a local commitment can maintain itself when that commitment is betrayed by the movement's own categories of recognition.

The trans women on the street in the West Village call themselves "girls." They hold this word close, using it as often and defiantly as they can. They call it out in public spaces, they repeat it to the social service workers who mark them on a form as "a transgender." Most of these women are proud to be recognized as trans, proud of having earned the visibility of their difference, proud of being girls. They have developed a rich culture of their own and a

6. The experiences relayed here are gleaned from my experiences working with the transgender population in the West Village, and through my work as a board member of NYAGRA (New York Association for Gender rights Advocacy), SACRD (Sex Workers and Advocates Coalition for Rights and Decriminalization), Manhattan Community Board #2, and as a legal intern with Housing Works, Inc. I have conducted numerous intakes and interviews of the transgender population in the West Village, and have numerous conversations with community leaders and activists regarding the situation I describe.

community of support and visibility. Yet it remains a constant challenge and at times, an impossibility for these women to live and work without being punished for their difference. What they put their lives on the line for is the right to call themselves “girls,” not “functionally black.”

In chapter eight, Torres and Guinier critique the U.S. education system through SATs and admissions criteria, focusing on these issues as a cornerstone of political race. The girls I speak of need more than a critique of the SATs and school admissions criteria, they need a culture backed by law that trains teachers and administrators in schools how to create an environment where kids who are obviously different also are safe. For many queer and especially gender queer youth, the issue is not getting into school but staying there without the fear and experience of violence from their peers.

Torres and Guinier write that: “Culture does not do the work of politics.”⁷ However, political race must engage with the cultural work of changing what visible difference means, of changing which differences are rewarded and which are not. This work cannot be done unless it is attached and crafted to the particularity of the problem. It can address both gender and race as intertwined, but it cannot conflate them as the same thing. We experience the harm of negative difference in and through culture, we experience it in the basic cultural information of mass media, in the basic social interaction required by walking down a city street. In order to change the harm difference causes, we must change the understanding and valuations of particular differences by all of us who participate in the harm, not only on a structural and political level, but on an ordinary and daily level. We must insist on safe passage for the freak in all of us. We must allow each person the chance to have their own special freak visible without the risk of harm. While we work in solidarity to change structures and relationships of power, we must also shout and sing and wave the signs of our difference, not erase them behind a universalized label, whether that label be black or white or People.

7. GUINIER & TORRES, *supra* note 2, at 20.

WHAT WOULD IT TAKE TO FEEL SAFE?

MARI MATSUDA*

What would it take for people to feel safe? This question haunts me as I listen to the discussions here today, and consider events of these times. As *The Miner's Canary* points out, political race is deployed by the right to exploit people's fear of crime, to racialize that fear, and to push through a prison-industrial complex in response to it. Start there, and consider the fear people live with in contemporary contexts.

At a recent law professors' conference, some of us wanted to organize around the question of peace. This question carries urgency for me.⁸ I want to live a long life, and I want my children to live long lives, and I want to share that long life with all of you here. I feel a peace imperative and I also feel a huge force out there forbidding talk of peace, rendering peace-talk unsafe. What would it take to feel safe to talk about peace? It requires a listening space.

So at this conference of law professors, we made that space, and wondered if anyone would come. People came. One of the young law professors of color raised this question: "When I try to speak against the war, people ask how we will stop terrorists if we don't bomb. I feel we really need an answer to that question." After so many weary and fearful weeks, I responded too sharply. "Why is it our responsibility to answer that question? The answer carries two hundred years of history with it and two hundred years of work we need to do to solve the problems that have gotten us into this mess. Rumsfeld doesn't have the answers. They dropped the bombs without telling us how this was going to make us safe, how this was going to stop terrorism. If you tell me I have to have all the answers before I can say 'you may not kill children in my name,' we can't have a peace movement." This is what I said to my smart, committed, sincere young colleague.

We did not have the time in that meeting to take his question any further, but it has haunted me since because it was a good question. What *would* it take to make people feel safe? What message will those who would wage peace offer to this beleaguered planet? There is indeed a threat. I will call that threat terrorist fascism because that is what it is. It thwarts human beings in pursuit of the most basic need identified by psychologists: The need to feel their bodies are safe. This threat is horrible indeed, and the road to ending it is long and hard. I do not know all we need to do to end terrorist fascism, but what I know of history tells me that militarism is less the answer to, than the fellow traveler

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8. See, e.g., Mari Matsuda, *Among the Mourners Who Mourn Why Should I Among Them Be?*, 28 *SIGNS* 1 (2002); Mari Matsuda, *Asian Americans and the Peace Imperative*, 27 *AMERASIA* 3 (2002).

of, fascists. Nothing will make us safe other than what democracy commands: Ask hard questions, consider all voices as we face this current threat. I often wonder, “Could we do a better job in fighting terrorism if we had Arabic-speaking Muslim citizens in the FBI? If we knew more about Arab Americans, could we come up with more effective tactics than racial profiling and mass detentions to get the information we need to make us safe?”

As contradictions unfolded, I read *The Miner’s Canary* and was personally challenged even as I was completely convinced that we have got to put books before prisons, that the drug war is crazy and racist. Where I am politically is that I believe it is genocidal to have all of these young black and brown men in prison. Now let me tell you where I live.

I live in a city with a drug problem. Before the first day of school, I went to the local elementary school yard and picked up used condoms, heroin cookers, broken malt liquor bottles with unfamiliar brand names. They don’t advertise these brands during the Super Bowl; they are target-marketed to the urban poor. The children were coming back to school the next day. My immediate reaction as a member of this community was, “This is unacceptable, you must get this stuff out of our school.” And I called the police. The police responded in a quite receptive way. The neighborhood beat officer sent an email saying he patrolled the school that very night and hassled some people who were hanging out there.

I am a member of the ACLU. When I went to law school, I was appalled to find out that *Terry*-stops are constitutional.⁹ A *Terry*-stop, for those of you who are not lawyers, is when the police do not like the way a person looks, so they stop and search that person, which leads to a lot of race and class bias, and in the worst cases, a dead suspect. Why is this ACLU member calling the police and encouraging *Terry*-stops in my neighborhood?

One morning after school started, I was driving away and—“boom, boom, boom”—someone was pounding on my trunk. I looked back and there was a woman trying to make friends with my dog who was sitting in the back seat. She was thumping my trunk and socializing with my dog. I was stopped at a red light. Then she continued crossing the street and stopped to chat up the drug sellers sitting on the steps of a nearby church. She exchanged cash for a small zip-top plastic bag. They all watched me watching them until the light turned green and I drove away.

There was something about the normalcy of it: Just another day in the neighborhood, the drug buyers, the drug sellers, the moms who drop their kids off at school. The sellers were dressed as they would for a long, cold day at work outdoors: parkas, work gloves, knit caps. They were already on the job while I was just starting my day.

I understand the economic structures that have led to this place, where middle-aged men get up, get dressed, and go to work selling drugs from earliest

9. See *Terry v. Ohio*, 392 U.S. 1 (1968).

light, but as a resident of that neighborhood, as an advocate trying to get more neighborhood families to use the public school, I cannot accept drug selling three blocks from the school yard. It is intolerable, and right now the only ally I have in fighting it is the police. And for what? What justice is there if my neighbors are able to get the police to make more arrests and shift the drug selling to neighborhoods where there aren't enough middle-class residents who are heard when they complain?

I tell these stories because in our conversations about the prison industrial complex and political race, we cannot discount the need people have to feel safe. *The Miner's Canary* impliedly recognizes the human right to basic personal safety—the right children have to go to schools that are not physically dilapidated, where they don't find hypodermic needles and used condoms in the schoolyard. There is a connection between drugs and crime and the fact that we send a message to some children that we value their enterprise of learning so little that we would allow them to go to a school where the roof leaks and the bathroom sink has fallen off the wall.

I have two lives. One as a critical race theorist/political activist and one as a neighbor who writes letter after letter trying to get the bathroom repaired at the local public school. That second type of work is actually harder and more frustrating, as hard as it is to do progressive intellectual work in a racist, sexist academy. We cannot avoid the big questions: How did we get here, in this city, to an economy that offers drug selling as a reasonable choice of employment? I also want to look at the little questions: What do we need to do in this neighborhood, today, to make it safe for children to walk to the library by themselves? How are they going to *not* be the next round of people for whom gainful employment is selling drugs if they can't walk to the library, if it is not safe for them to do that? I want to pay attention to the human need to feel safe.

I think at the local level we push as hard as we can. We must say to the police, "You have to make our neighborhood as safe as the white neighborhood." I don't think we have any choice about that. At the same time we must keep demanding community control of the police, an end to police brutality, the closing of prisons, and options other than prisons.

The Miner's Canary lays out the stark reality that we have taken money from education, from universities, from urban public schools, to fund prisons. We get poor results from prisons. People typically come out of prisons more dangerous and less employable than when they went in. We get better results from prevention. For those of you who like numbers, there are many replicated studies out there that show that when we use early intervention in the most desperate of circumstances, in the poorest and most disrupted communities that you can show me in this country, we get results. Basic public health care, prenatal care, social services, early childhood education, community-based mental health services, these are the interventions that make a real and lasting difference in giving a child a fighting chance to stay away from crime, away

from drugs, in school, ready for real employment. Early intervention works. We have the statistics to prove it, and we can identify the kinds of programs that work. The fact that we don't make the intervention is a political choice. It is also, in my moral view, evil.

The last message I want to leave you with is that if you are one of the people who sees what this book is trying to make us see—that we have made a choice to take money from children, to take money from poor and working people to line the pockets of executives in places like Enron—if you are one of the people who sees this, there is an apparatus at work in the world of knowledge that is attempting to make you feel as though you are the only one. When we put out a call for law professors for peace, we were worried no one would come. Why did we believe no one in a community of thinking people concerned about issues of justice would come to talk about peace? If you are for peace, there is an apparatus at work making you think you are the only one.

It is a lie that we are alone. If you feel there is another way than what is presently going on in the Middle East, you are not the only one. Everywhere people are taking to the streets to ask the kinds of questions that we are asking at this conference. You will never hear about it on the front page of the *New York Times*. Last week I stood outside the Federal Office Building, which was as close as they would let us get to the White House, with hundreds of people shouting to our government, "Money for books, not for bombs." That was never reported in the *Times*. It's as though all those people who came out on a rainy day—people of all races and different class backgrounds—it's as if we did not exist. But we do. This book is presenting ideas for which there is a vast audience of good citizens who love this country and who are ready to say our children deserve better than we are giving them.

QUESTIONS FROM THE AUDIENCE

Q: I've seen some things you all talk about in your lectures. One of the things I see is cultural deprivation. If we're teaching culture and where they come from to people that are behind bars, or people we're trying to keep from getting behind bars with these programs, then they'll be too proud saying who they are to even bow down to something as small as petty larceny. That is what is going to change. Let's not try to get these books, give them to them, and have them read them—that is going to tell them what society has already been telling them: that they're nothing. People of color and people of culture, we have been subjugated, we have been pushed down in these histories and textbooks and if we keep pushing those books, we'll be just be like the educational system, pushing the prisoners. What I want to know is if the books that you get for the Books Not Bars campaign are culturally directed toward the people that are being affected by these programs? Or are they regular books that are already telling us what society is telling us?

LENORE ANDERSON: With specific respect to the Books Not Bars campaign that I work on, we're focusing right now on trying to get Alemeida County to not build a bigger jail, and haven't got to the books part yet. At this point, we're just "Not Bars." (Laughter.)

Q: I just wanted to expand a little bit on the conversation that we're having about the need for communities to feel safe, and the hypocrisy in law enforcement. I do public policy and outreach work at an organization called Drug Policy Alliance. Our basic objective is to try to shift public dialogue and policy from a model of dealing with the war on drugs that focuses on criminalization and dealing with solutions that are in the criminal justice system to approaching drug issues as a public health problem. We want to focus on the health concerns associated with drug use and minimize the harms of the drug war, unequal law enforcement, the incredibly racist disparate impact of incarceration and the reality of drug abuse on communities of color, and treat that as a holistic process rather than a criminalizing process.

We try to expand this dialogue, to communicate to communities, to help people to understand how you can use alternative models that allow people to feel safe by empowering communities to respond in a way that is actually proactive and productive rather than destructive, in response to drug trade and drug use.

Often when I'm talking to people about issues of race and inequalities within the war on drugs, I speak anecdotally about my own experiences growing up in New York, in Jamaica, Queens, and being with my relatives in Detroit and seeing the reality of the drug trade and the violence that is largely propelled by the profit incentive. The violence really has more to do with the incredible profit

inflation of the drug prohibition than the realities of the substance itself, the pharmacological effects of the drug itself. Drugs have incredible profits because they're illegal. And I compare those experiences with my experiences going on to universities and privileged academic environments where I saw more drug use than I had ever seen growing up in my own community.

The difference in the response, and the difference in the reality, and the difference in the penalties and how people are treated has a lot to do with communities having empowerment over how they deal with those issues. You have the privilege when you're white and you have a lot of money to deal with this internally. Your child has a drug problem and you deal with it internally. You have the privilege of the Bushes, and others, who are not subject to the criminal justice system in the same way.

The question is: How do we communicate to our own communities that we have an option, that we don't have to follow this drug war model? We can empower ourselves and be able to adapt and develop new methods that deal with the actual realities of the harms, by minimizing the harms of drug abuse as well as the drug war itself.

MS. ANDERSON: What you bring up is really important. From the perspective of the leaders of youth organizations and Books Not Bars, the real question is how to build power to really transform society, so that we get beyond saying, "We want to stop incarceration." We actually want to determine the conditions communities live in.

I want to share with you one of the ways Books Not Bars is conceptualizing that. The broad-based principles that we operate under, the long-term campaign strategy of Books Not Bars, is what we're calling the new three-Rs: that is, not just to reallocate public resources away from incarceration toward education, but also to remove the profit motive from the prison industry—corporations should not be making money locking people up—and lastly, community restoration and rehabilitation. We believe the criminal justice system should not be about punishment; it should be about how to deal with community problems from the perspective of what is going to restore the community and rehabilitate the individual.

LIBERO DELLA PIANA: There has been a huge explosion in the youth movement of cultural politics, of cultural struggle, of poetry slams and art and all of these things, and that's part of what's made this upsurge so exciting and has created a space for folks to engage in politics who come in through cultural creation. One of the reasons why that's true is it's seen as the only place where there's space to contest power. In the electoral sphere you get smashed. All these propositions come down, you just lose. The politicians—you get good ones in and they screw you too. In the economic sphere, you can't get a break.

In the cultural sphere, you can create this thing, and it's there—I can get up and do my poem and I have an impact, and it's a positive thing.

But it's also a negative thing because culture is so easily co-opted. One example is school curricula. In Oakland, where I was many years ago, there was a fight for a multicultural curricula, a curricula that embraced the students, and the community, and the history of the people in the school and in the community. But in the end, a lot of these alternative curricula ended up getting swallowed up by big publishers. So you are sitting there with Macmillan and Houghton-Mifflin—the guys who wrote the old glorious California and all those “unbiased” textbooks—and they come in with the “rainbow California.” In the same way, it's very easy to take some kid's poem about how messed up the system is and pop it on the label and sell two million copies and get your cut.

In some ways, that's the brilliance of the system—it is very dynamic, it can take culture and make it a taco commercial and it's cool with that. I think culture is very important, but it has to be paired up with. . . it comes back to movement, it can't just be that we're going to engage culturally; we need to ask how that cultural struggle connects to the grassroots struggle, connects to the electoral reform and all those other struggles.

ELIZABETH LOEB: I'd also like to quickly add that what makes good experiences available to people contesting the seemingly overwhelming set of systems is family structures and the space for alternative and chosen family structures that are not allowed by law right now. I was sitting at a table at a community board meeting the other week with transgendered youth, and we asked, “What works for you? What gets you out of sex work, if getting out of sex work is what you want?” And a lot of the kids were saying, “We found our families. We found collective housing options where we've adopted a mother, and we've adopted a father, and we've adopted siblings who are also in this community. We found a community that recognizes how we want to express ourselves and doesn't make us feel afraid of that, and it provides the basic needs of having a home, having food, and having an income on a collective scale.” If you try to make those relationships real in the law, they often don't hold up. Yet those are some of the most empowering, in the traditional sense, relationships for the kids that I'm working with right now.

MARI MATSUDA: I want to respond to that question as well. I hear two questions in that question: One is the “What do we do?” question, the other is, “How do we get to the place where communities feel empowered to do it?”

First, I think we have to get rid of the myth that we don't know what to do. Any social problem that we can name—drugs, bad schools, unemployment—comes with a list of solutions that can work. If drugs are a problem, there are drug addiction treatment strategies. Drug rehab is a hard thing to do, but there are good programs and we don't provide enough of them. There is not one

urban area in the country that has adequate drug rehab services for all the people who are addicted to drugs who have the will and the desire to get off. There is nobody holding out a hand to them. We also know about the success of early intervention. If we fully funded Head Start, if we provided effective community mental health services, we would cut into drug use in this country. There is replicated evidence that shows if you give a kid an early start in education, they will be less likely to become drug addicted. Public health services, which we also don't provide in this country, are known to make the same difference.

So it's not that we don't know what to do. The question is: How do we form political will and how do we get communities involved to change the way things are? It's one of the challenges *The Miner's Canary* points out. The way to push change is not a mystery. People who are doing community organizing have been telling us for a long time how you do it. You get people where they are with the problems that are facing them and, from that place, people can learn that if they get together, they can force changes. Once you learn that, you don't unlearn it. That is, once you really have that taste of the power that people actually have when they're organized, that is something you retain.

There are many of us who grew up in a period when that notion of membership as an organized resistance was a widely shared feeling. When I was in law school, I went to a job interview and the interviewer looked at me across the table and said, "Don't I know you from the movement?" (Laughter.) That was like a pick-up line, it was such a cliché. But there was this idea that there was a generation of people that belonged to something and belonging to it meant that you subscribed to a set of principles, including the most basic principle that the rich didn't get rich because they deserved it, because they're smarter, or because they're better, they got it because of a system of theft and greed and manufactured inequality. If you were a part of the movement, you believed that justice required an end to this system. That belief can sustain you through a lifetime of the whole world of public discourse telling you, "No, that's not true. It's the other way around—the rich are supposed to be rich and everybody else is supposed to be where they are." Once you learn the counter story, you don't unlearn it.

But you have to put people in situations where they *can* learn it. There are people everywhere, there are people in the labor movement, for example, that do this work every day. They take people who are not supposed to stand up for themselves, undocumented workers, and get them to a place where they can stand up for themselves. More of us just have to have the courage to push whatever institutions we're a part of—whether it's a university, or the Democratic party, or you name it—to create a space for these people.

Q: I personally have been a victim of the scenario that you describe. I was sitting over there almost in tears. After four years of college and seven years in

this country's Navy, I was in a neighborhood with some friends from high school, and I was labeled part of a drug ring and sentenced to nine years, suspended after five, with no tangible evidence. Nothing tangible. Basically, my lawyer told me, "Please, just cop out to this because if we go to trial, it's going to be your word against two police officers that are trying to get numbers." I wasn't victimized, I was statisticized! But becoming a statistic victimized my life because I have a stigma now attached to me.

I went into prison with a college education. And corrections officers were basically intimidated by me—"Oh, so you're a smart ass." In the state of Connecticut, you can't get books in prison. I worked in a prison library, I worked in a prison newspaper. My boss used to say, "Now this is too radical, we just can't have stuff like this coming in. Send it back to the publisher." Your family can't send you books. In order for a prisoner to buy a book, he has to pay for it with his prison funds, and then he has to order it through the library and through a publisher and go through the whole long process of getting the book. Just to get a book to educate yourself. And the books that are provided for you are so outdated—what do I need an '81 Windows book for when we're dealing with XP now? But they're telling me that the prison library is adequate. I had to fight, I had to fight to get books. I was threatened with going to segregation just because I had too many books in my cubicle. This is a reality.

When I was in prison, the mayor of Hartford at the time, Ms. Perry, would say, "We're tired of rehabilitation, we're here to incarcerate you now. If you want rehabilitation, rehabilitate yourself." So basically that's what it boils down to.

Times now are urgent times, and our youth are being educated as cultural diversity has come along, with poetry and all that. But the people that are in power are of the mindset that we need to change now. What are we going to do to save our youths now? We're saving generations, because you have people like me, and everyone here, and we're saving the young children that are coming up. But what about the fourteen-year-old brothers, the sixteen-year-old brothers, the eighteen-year-old brothers, those who have already been put into prison?

The schools are setting young brothers up for prison in the urban areas, because they're not teaching them about fulfilling a dream. The only way to do it is through poetry, through drama or hip-hop. They're not teaching them that N.Y.U. Law is a reality. They're not saying, "Hey, Columbia Business School, for you, is a reality." That's not being taught in the urban schools. I want to know what we are going to do to address that issue now. Tomorrow's going to bring tomorrow. Tomorrow is going to bring change, but we've got to set that in motion now by pulling out the surgical tools. These old boys in politics, they have got to go. Because we're fighting with a grassroots movement, and we're fighting against them. (Applause.)

MS. ANDERSON: I think you are touching on one of the most critical issues that those of us who are organizing against the prison industry face: What to do about the reality inside the prisons right now? It's a huge struggle. The kind of repression that happens inside the prisons right now is not just about providing books, but punishing prisoners who try to speak out and organize inside the prisons. I fully agree that it's actually much easier to talk about organizing on the outside. Organizing on the inside is a whole other question that I think those of use concerned about this are really struggling with and I look forward to learning how to deal with this in the best way.

Q: I'm a 2L student here. I've been struggling with the criminal justice system being so racially divided—having so many black and brown people going into prison—and, as Lenore mentioned, so many white Americans not only perceiving benefits in this system but actually getting benefits without recognizing the detriments of the system. So I've been thinking about trying to build a multicultural coalition. My question to you all is: How do we connect people who see themselves as a separate group from those who are being targeted, and those who are imprisoned? How do we connect them to this movement without diluting it in the sense of not making it really address the racial issues that are involved in the criminal justice system? How do we make them feel that they are part of this problem and part of what needs to be in the solution, that it affects them in negative ways that they don't see?

LANI GUINIER: My quick answer is that's what political race is trying to get at as a concept. We have to figure out a way to phrase this history in such a way that folks see the collective investment. We need to use race not to hide this history, but to illuminate the many ways in which we are extremely connected—we're not just one category. As Liz pointed out, these transgendered young people are primarily black and brown, and they're being harassed on the street not only because they're transgendered but also because it's easy to target them since they're black and brown. That's a way we can begin to see across notions of single groups or fixed categories. Both potential "constituencies" can perhaps begin to see each other's places and learn through these intersections. I think if we take political race seriously, it's possible to do that. That's one of the lessons of this symposium.

Q: Hi. I'm a former Legal Services attorney and now I work with a school in the Bronx called the Bronx Leadership Academy. The tenor of this panel has been somewhat disappointing to me because what we've been talking about is black movements and white coalition-building within those movements. For me, that's not what a multiracial social justice movement is about. I hate to do this because I think that all of you spoke on really important issues, but: There's a black man talking about black youth, and there's two white women, one of

whom is talking about white coalition building with black youth, one of whom is talking about transgender anarchist movements which are seen as primarily white movements, although they're not, and probably most disappointing for me, the panel ended with an Asian speaker talking about being positioned in the middle, in between the ideas that you have about crime and how youth are criminalized, and focusing on a real problem with schools in your neighborhood. I'm Asian American, and when I read your article about the positioning of Asian Americans in between black and brown people and white people, I found it extremely problematic. No one actually talked about a multiracial social justice movement and that's what I want to hear about.

MS. ROSE: That's an important point. I didn't hear it nearly as polarized as you did. But unfortunately our time is up right now. There will be opportunities to comment on this during the roundtable later. Sorry to break up a wonderful panel. Let's thank our panelists. (Applause.)