

Probable Causation: Bonus Episode 3: Alexandra Natapoff

David [00:00:06] Hello and welcome to Probable Causation, the show about law, crime and economics. I'm your host, David Eil and my guest today is Professor Alexandra Natapoff, professor of law at the University of California at Irvine. Professor Natapoff, is a 2016 Guggenheim Fellow, a member of the American Law Institute and most relevant for our interview today, the author of "Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal" available wherever you buy books, Professor, Natapoff thank you so much for coming on the show.

Alexandra [00:00:40] Oh, thanks so much for having me.

David [00:00:42] So let's start off with asking you, what is a misdemeanor? I think, you know, people have an idea that, you know, it's kind of a less serious crime, but can you be more specific than that?

Alexandra [00:00:55] So technically, in lawyerly terms, misdemeanors, just a minor offense. Usually it's defined as a crime for which a person can serve no more than one year incarceration. Although definitions differ from state to state, from jurisdiction to jurisdiction, we give them a different name. Sometimes you call them petty offenses or violations or notices, but but the role of misdemeanors and I think the takeaway from thinking about misdemeanors is to understand that we are running an enormous, low level criminal system in which people are being arrested and charged and convicted for low level conduct, in which many, many people, if not everyone, engages. These are not the homicides and the, you know, aggravated assaults of the world of felonies and prisons. This is often harmless or very or minor conduct in which millions of people engage. And we have turned over the majority of our criminal system to regulating this conduct. And that's really what the misdemeanor world is about.

David [00:02:05] And how did you get interested in and studying this world?

Alexandra [00:02:10] Years ago, before I was a law professor, I was a federal public defender, living and working in Baltimore. And Baltimore taught me that misdemeanors are important. My clients taught me. Many of them had encountered the criminal system before through misdemeanor charges in the state and local system. They they did not expect much justice. They didn't expect much representation. They didn't expect much law as a result of those experiences. And and the communities in Baltimore were deeply affected by the misdemeanor system. People expected to get a misdemeanor system. They a misdemeanor charge, they expected to be arrested, they expected to be charged, they expected to have that dogging their records, interfering with their ability to get jobs and and credit and apartments for their entire lives. So I living there and working there, I realized that there was this sort of low level, low status world of criminal law that I really hadn't appreciated just how pervasive and powerful it was.

David [00:03:17] Many people might think, you know, since these are not very serious offenses that probably, you know, the repercussions of being convicted of minors is not that serious. But you write in the book that the misdemeanor system, quote, "Belongs in the pantheon of social institutions that shaped the basic contours of organized society," unquote. And, you know, that sounds like it's something that really has large effects. What what about it makes it so important?

David [00:03:45] So so you talked about the repercussions of encountering the misdemeanor system. And and I really want to emphasize two different parts of why the misdemeanor system is so influential and so important and really doesn't deserve the term sort of minor and petty that we often, often give to it.

David [00:04:06] One is the repercussions for the individual person who encounters the misdemeanor system, whether it's arrest or a charge or or a conviction. The repercussions are so widespread. These are criminal convictions they they attach to people for lives. Those records will affect their ability in perpetuity to get a job to get housing. It can ruin their credit. They can be saddled with enormous fines and fees that can undermine their their families and their their own personal ability to thrive. A misdemeanor charge can affect a person's immigration status, their ability to work in various professions. It famously often deprives people of their driver's licenses. In other words, it's just it's it's wide spread consequences of encountering the misdemeanor system. I mean, that that while we call these offenses petty and minor, there is really nothing petty or minor about the experience of being punished in the misdemeanor world.

Alexandra [00:05:11] That the broader point is that the misdemeanor system is not just a criminal system as a result of the fact that it interferes in people's lives in these ways and in people's families and communities and in the economy, it's better understood as a social institution, not just a criminal justice institution. It's it it affects the economy in terms of millions of people who are now disabled from or impeded from getting jobs. It by distributing these criminal records and these criminal burdens, it's changing the face of of the working population. It changes people's access to housing, to education. It has enormous racial repercussions because we police misdemeanors in racially disparate ways. It's so in effect, it is an institution like like the welfare state itself, like housing, like the tax system, like education. It's it's affecting how people operate in the economy, how they have access to personal and and social resources. Its reach is far broader than the name of the crime that people happen to be charged with.

David [00:06:30] Given the just the the breadth of the impact of this system has on our society. As you say, I was surprised that there hasn't been more work on it previously in your book, as you know, one of the few that I know of and certainly the most exhaustive that studies it, why has there been so little attention paid to it previously?

Alexandra [00:06:51] I think. They're sort of a constellation of reasons why we haven't paid enough attention to misdemeanors. One is we write them off as petty and minor. It's an invitation to ignore them, to to to label them and to misunderstand them that way. They're low status. The crimes, as you know, as you have repeatedly said, they're not very serious. They're low level that people tend to to not think much about offenses that we write off as minor and low level, especially in this era of mass incarceration. And I think misdemeanors are really competing with what some very high level, highly visible, profoundly harsh and unjust dynamics in our criminal system.

Alexandra [00:07:42] So if you're worried about 30 year drug sentences and solitary confinement and and the death penalty and the racial skew of the American prison population, you know, you might you might not turn around and also worry about loitering and disorderly conduct and and driver's license suspensions. But but the argument of the book is really this is of a whole this is of a piece that that that misdemeanors are in some sense, the first step in the creation of the mass incarceration system that now that we have now become familiar with. The other thing to say is, you know, our criminal system is cyclical.

Alexandra [00:08:24] People did worry about misdemeanors in the 1970s. You know, Malcolm Feeley wrote his famous book, "The Processes The Punishment" in the early eighties, there was a time when there was more attention paid to these offenses and and these problems and that that sort of ebbed as other criminal justice issues came to the fore. And now I think we're reappreciating just how important this aspect of the system really is.

David [00:08:53] It also seems like there's just a real dearth of data that's kept on on the system. I mean, it seems like you had to go to great lengths to to get the information that you did for the book.

Alexandra [00:09:08] In part because the misdemeanor system, I think, is it is low status, it is underappreciated. It is also under documented. We don't demand of our misdemeanor institutions the kinds of transparency and data collection that. At least we are starting to demand from from our from our felony institutions that are more higher our more high visible criminal institutions certainly nowhere near the kind of data and transparency we get from the federal system, which tends to get the lion's share of attention. I when I decided to write this book a number of years ago, I realized how little data there was on the public record and I set out to collect to collect what I could find. And it was it was extremely challenging to get misdemeanor docket data from all 50 states and the District of Columbia.

Alexandra [00:10:01] I asked every administrative office of the court in every state for that data, and they all responded somewhat differently. One of my hopes is that by putting together all the data that I did find, all the responses from all these states, everything I could find from annual reports and research in these various areas by by bringing them together in one place in this book, that future researchers will will not have to start from scratch, that that it will seem less daunting to write rigorously about this aspect of the criminal system, because because at least some of that data is now collected in public.

David [00:10:42] Yeah, I think just that contribution alone of the book is, you know, represents a huge public good. So talk about the, you know, the process for misdemeanors. I think probably most Americans think of our criminal justice system as offering, you know, a lot of protections to criminal defendants. And, you know, you get a lawyer if you're accused of something and you can get a trial where you can present your case and things like that. Misdemeanor worlds sounds a lot different than that. Could you talk about that a little bit?

Alexandra [00:11:17] It's it's one of the ironies of our criminal process that on paper, our Bill of Rights and our criminal system provides some of the best protections for criminal defendants on the planet. Many, many nations have imitated our Bill of Rights and our commitments to the right to counsel on the theory that this is really kind of the gold standard. Unfortunately, it is all too often just on paper. And and nowhere is the gap between theory and practice greater than in the misdemeanor world. You know, it bears noting that often the felony world also devalues those commitments. We see. We see sloppy, rushed lawyering. We see in attention to the rule of law. We see all kinds of unfairness in our most serious cases, including all the way up and into our into the capital, into the capital arena. But there's something uniquely cavalier about the misdemeanor process. All too often, getting a misdemeanor getting a misdemeanor conviction involves being arrested for a low level of offense, maybe an order maintenance offense, or like loitering or trespassing or disorderly conduct, going to jail, not being able to make bail in

these low level cases. Often bail is set by schedule, not by not based on whether the individual has any ability to pay.

Alexandra [00:12:49] So people languish in jail on these low level cases. Lawyers, both prosecutors and public defenders alike, tend to be rushed with those with enormous misdemeanor dockets. And so there's a lot of pressure on defendants to plead guilty just to get the process over with, to get out of jail, that that the resources are scant in the courtroom and in the legal system for addressing these cases. So we often see these cases rushed through. And so now a person is walking out of a courtroom with a criminal conviction that will follow them for life, maybe with burdensome fines and fees that will will interfere with their economic well-being for months, maybe years. And it all takes place very quickly. There are some courts in which people who have the right to counsel who who are entitled to a public defender don't get it. There are all kinds of studies of local jurisdictions where courts are just blatantly ignoring the constitutional right to counsel. People are being incarcerated when they can't afford bail, often in violation, also in violation of the Constitution.

Alexandra [00:13:57] There's a lot of lawlessness down here. So as I said before, although on paper, we really we we have a rigorous and thoughtful set of rules to to try to accord justice in individual criminal cases. In the misdemeanor world, we also we often see those rules fall by the wayside for lack of resources or really more profoundly because people don't care enough to to make the process look the way it should.

David [00:14:31] I might think that one response could be, you know, say I'm a public defender and I'm in charge of some misdemeanor cases. And there are a lot of really dedicated public defenders out there who care about this a lot and you you document that in the Bronx. The Bronx Defenders put together, you know, a group of cases that they thought, you know, were good cases and they were going to use these as kind of a demonstration of demanding the rights the defendants should have on paper in a series of cases, and hoping that that could be the start of something bigger. What what happened when they tried to do that in the Bronx?

Alexandra [00:15:18] That's it's such a revealing example. So The Bronx Defenders is one of the top elite public defender offices in the country. They have wonderful lawyers and and wonderful commitment, really. You know, some of the best lawyers in town, as it were. And they decided to press a number of cases. They called them the "fighter" cases where defendants wanted to fight they most. These were mostly low level marijuana cases where defendants had viable legal issues. They were innocent or the police had acted unconstitutionally. And these were cases that could be litigated. And they took these cases as far as they could go.

Alexandra [00:16:02] And what was just shocking and eye opening about about the process and they they published a study about it is how many defendants were worn down just by the burdens of the process. It took months, average nine months to get a hearing or a trial to resolve these cases. People had to come back to court week after week, month after month, using up their vacation use, taking time off from childcare, from work or from school. The process itself was grueling and and itself a barrier to people being able to get their day in court. And at the end at the end of the process, almost no one was was able to actually litigate the constitutional issues or the issues of guilt in the cases.

Alexandra [00:16:51] People took deals and these people took deals represented by some of the best lawyers in the country. And so what that tells us is that the misdemeanor

system in many ways is not designed to provide due process. It's not designed to evaluate guilt and innocence as we think it is. Instead, it is itself a barrier to justice.

David [00:17:15] And these are people these defendants, if I understand correctly, are for the most part not saying pretrial. So it's not just that, you know, bail being too high is what's driving them down. It's the other aspects of the system even, you know, if you've been released pretrial, that they get them to end up taking a deal.

Alexandra [00:17:37] Yeah, that's a great point because I think we have started to pay attention, as we should, to the plea inducing quality of our bail system. In other words, people who can't afford bail, who are incarcerated pending trial, tend to accept convictions for obvious, rational reasons more often than their counterparts, even even when they're not guilty, so that they can go home, so they can take care of their children so that they don't lose their jobs, so they aren't evicted. But even these defendants in the Bronx, represented by these wonderful attorneys. They were not incarcerated pretrial. They were out on release and even they could not manage to get an adjudication of their cases.

Alexandra [00:18:22] They all took deals as well. And so so part of appreciating the misdemeanor system is taking a broad view of just how many barriers it erects to litigating cases to evaluate and guilt and innocence to providing due process. It's not it's not just one problem. It's not just bail, although bail is a problem. It's not just fines and fees, although fines and fees are a problem. It's not just overwhelmed public defenders, although that is also a problem. It's an enormous constellation that shifts the normative value, the normative commitments of the entire institution.

David [00:19:03] Does it surprise you that there weren't, at least in some of those cases, prosecutors who just saw that the defense was eager to litigate this one and decided earlier on, I guess maybe this is not worth it for us to to move forward with.

Alexandra [00:19:20] You know, so so that's that study was in New York. And one of the things to remember about the misdemeanor system is it isn't really a system at all. It's thousands of mini systems. Every state is different. Jurisdictions within states are different. You know, New York City has very little in common, you know, with the small village courts, municipal courts in upstate New York, which are very different, again, from, you know, magistrate courts in Mississippi. So so we need to be careful. And I have tried to acknowledge that, you know, talking about the misdemeanor system is really a metaphor for an enormous constellation with enormous variety. That said, the prosecutorial function, I don't think we have fully thought through how we should handle the misdemeanor prosecutorial function, because as long as we tell prosecutors that it is their job to move cases that can that convictions and these low level cases are valuable to them professionally.

Alexandra [00:20:32] Many, many misdemeanor prosecutors are actually the most junior prosecutors in the office. They're they're learning, they're practicing, they're trying to advance. And so we're sending the wrong messages were creating dysfunctional incentives. If what we want are prosecutors to make decisions on the merits, you know, this this offense isn't really worth prosecuting or this case isn't really worth fighting, or this person doesn't really deserve a life long criminal record on the basis of this this low level conduct.

Alexandra [00:21:06] And instead, the adversarial system and the professional adversarial system is creating a lot of dysfunctional incentives. And I think that's what we were seeing in New York, that the prosecutors kept going, even though there were good reasons to stop.

David [00:21:21] So you've talked about the process in court and some about the prosecutors decision to have to move forward with the case. Is that it? Like if we solve those problems, then the the system would reach a better state? Or are there other issues as well?

Alexandra [00:21:40] Yeah. So this goes back to the the broad picture and of the misdemeanor process generally and realizing that that there are these are multiple institutions that are intersecting often in dysfunctional ways. It's not enough to fix one. It's not a it wouldn't be enough to fully fund, for example, the public defense bar, although that would go a long way. Likewise, it isn't enough just to fix prosecutorial incentives in decision making, although that would go a long way. But there are some points in the process that are that are particularly powerful. And the prosecutorial decision about whether to go forward on a case is one of those moments of of all the decisions that the prosecutor makes.

Alexandra [00:22:28] That's the one that that in many ways determines the size of our misdemeanor system. So when police arrest an individual, that person does not become a defendant. And typically until the prosecutor decides they are. And that moment of of going from being nearly arrested to take nothing away from the the burdens and fears and costs of being arrested, but going from being arrested to becoming a criminal defendant is a major a major moment in the process. It is largely controlled by prosecutors. And we haven't really invested enough time and effort in thinking through what that moment should look like.

Alexandra [00:23:09] That, I think, is starting to change. There are prosecutors around the country, newly elected prosecutors, sometimes referred to as sort of the new progressive prosecutorial wave. And they are taking a different approach to that moment. It's called declination at the moment of deciding whether to decline a case or whether to go forward. Rachel Rollins, who's the first woman of color to become the the the prosecutor in Boston and in Suffolk County. She ran on a platform of misdemeanor declination. She said, if you elect me as prosecutor, which that the people of Boston did, I will routinely decline this list of 15 misdemeanors, disorderly conduct, loitering, trespassing, because as a matter of policy, we think that we should be using our prosecutorial resources differently.

Alexandra [00:24:04] Larry Krasner in Philadelphia has made similar policy commitments. So we're starting to see just the beginning, I think, of an appreciation of just how important that moment is. That said. Important as it is, it will it cannot fix the misdemeanor system by itself.

David [00:24:23] How do how do police departments usually respond when prosecutors make announcements like that? Do they say, oh, I guess if you're not going to prosecute these kinds of charges, then we just won't bring them to you. I mean, legislators, for that matter to do, they say, oh, okay, I guess if your policy view is we shouldn't prosecute these, then I guess it's it doesn't matter that we, you know, named this made the statute. It's okay if you're not going to enforce it. Or is there a lot of pushback and kind of other parts of the of the government?

Alexandra [00:24:57] So you asked me what usually happens and there is no usually it's a little bit of a brave new world right now. So we're seeing different kinds of responses.

Alexandra [00:25:06] In Boston, the police union has been very resistant to the Rollins new policies, whereas in some jurisdictions we've seen legislatures intentionally engage in decriminalization. In other words, to take some of those options off of the prosecutorial menu by decriminalizing low level marijuana possession, for example, or or traffic charges or disorderly conduct and and and matters like that. So we see a whole range of possible responses. I think that if we engaged in a broad, a broader public conversation about the costs and dysfunctions of the misdemeanor system, we could change some of the culture around those arguments. We could understand that just like mass incarceration, there are things that we can do collectively prosecutors and defense attorneys and legislators and judges together to preserve the resources that we have for this very important function and let go of some of the cases that may not be doing the work that that we all want them to be doing. But I really think we're really at the very beginning of that conversation right now.

David [00:26:17] So we've talked some about how much these systems vary across states and, you know, within states. And one of the things you document in the book that I found just striking is how much the filing rate for misdemeanors varies across states. So, for example, the filing rate for Delaware, the top state, is 20 times that of Kansas, the lowest state. And just kind of glancing at the list, I didn't seem there didn't seem to be any particular pattern. It wasn't like the really high incarceration states were also the really high filing rate states did seem to me. But did you notice any pattern in what predicts that variation?

Alexandra [00:27:02] Yeah. I don't know why different states vary so much.

Alexandra [00:27:07] I think we would need better data across the board about our misdemeanor systems in order to be to draw any rigorous conclusions. There is a vast differential in the number and the rate of misdemeanor filings across states, but it could mean different things. It could be a form of overcriminalization that the state is overusing the misdemeanor system to, for example, to raise revenue, to raise fines and fees, you know, through local courts. Or as in California, for example, it could reflect a shift from felonies down to misdemeanors. It could be a kind of a decriminalization move, the idea that our felony system is too harsh and that we should use misdemeanors to be more flexible about the ways that we the ways that we criminalize and punish and incarcerate.

Alexandra [00:28:02] So without digging deeper into the data in each state, I don't think we can know what those differences mean. One of my hopes, again, for this project is that by bringing that data together, by offering up those comparisons that researchers and empiricists and people interested in criminal justice will will have some more tools to take a closer look.

David [00:28:27] So we've talked about this some already a bit, too, but let's get into fines and fees a little bit more. So you said to say in the book that, you know, often fines are kind of a more lenient alternative to imprisonment. I mean, I think most people would probably rather be charged a fine than be imprisoned. But fines themselves, of course, present their own problems. What are some of those problems?

Alexandra [00:28:53] Yeah fines and fees are one of the large new, you know, vistas of conversation in our criminal system. And it was really instigated, I think, by Ferguson, by the Department of Justice's 2015 report on the the city of Ferguson and its courts and the

ways that Ferguson uses misdemeanor offenses to raise revenue, to run the city, to run the court system, to run their criminal system and and really the entire city.

Alexandra [00:29:30] And it opened people's eyes to the fact that in many ways, these low level criminal processes are running a kind of covert, regressive taxation system. They're using these they're sweeping people into the system and using fines and fees to fund themselves. So once we understand that, then also noticing that fines and fees are more lenient than jail creates a conundrum because on the one hand, we obviously want to preserve the criminal system's ability to move away from incarceration. If mass incarceration has taught us nothing else, it has taught us that we use we overuse incarceration for too many things, including in these low level offenses where millions of people are passing through jail day every year as a result not of serious felony offenses, but, but because of misdemeanors.

Alexandra [00:30:24] At the same time relying on finds has these triggers, these dysfunctional incentives on the part of local governments to rely on that revenue stream, which the various judicial organizations have complained about this. We're not supposed to be tax collectors. You're undermining the judicial function by putting us in this position. And of course, it's profoundly regressive. Fines and fees are more burdensome for poor and working individuals and defendants than they are for the wealthy. And so built in to this notion of leniency is a profoundly regressive dynamic. And I don't see any way around that attention other than to be open and honest and to grapple with it and try to address the regressive qualities of fines and fees as, as as jurisdictions are now just beginning to do around the country.

David [00:31:25] Yeah, I think it's important to focus on kind of both of those parts of the fines and fees structure, one that just the effect ends up being very regressive and then the other, which is kind of separate of worrying about the conflict of interests between the people imposing the fines and fees and the people who get the revenue from it. So I think there have been some litigation around whether that creates the conflicts of interests for judges, for instance. But I think even resolving that second problem is not going to completely resolve the first problem.

Alexandra [00:32:01] Yeah. And and let's add to that list the problem of debtor's prison. So one of the ironies of relying on fines and fees and thinking of it as a lenient move is that all too often when people cannot afford to pay those fines and fees, they end up incarcerated anyway. I often, as a function of being held in contempt of court for having failed to pay the fines and fees. So for the for the poor, for the homeless, for the working, the imposition of a fine is not so much avoiding incarceration as far as postponing it.

David [00:32:42] So suppose somebody, you know, is is worried about all of these these facts of the misdemeanor system, but also feels that at least for a lot of the misdemeanors even the kind of ones that just enforce public order and they like to have them as crimes. You know, they value public order. And, you know, they worry that they want to be able to get somebody off the corner of the of the street near their apartment because both for their own enjoyment and also the value of their property or whatever is there. A way to kind of get after both goals or are they just is there necessarily a tension between trying to ensure public order through policing of misdemeanors and all of this impact on the community?

Alexandra [00:33:41] I think one of the things that the costs of our enormous misdemeanor system is that it has taught us to think that public order needs to be addressed as a criminal matter, that we've just gotten so used to it that it doesn't seem odd

to us to lock people up for standing around and we need to think about it that way, even if someone would like them not to be standing around. We have so many social tools at our disposal. There's very interesting work on, you know, urban planning and economic incentives to think about how we might create and maintain public order that does not involve labeling people and burdening them as criminals in many ways.

Alexandra [00:34:30] That's one of the caustic legacies of the broken windows era, which is it taught us it taught us to equate public order with crime or public disorder with crime. And of course, public disorder comes in many, many forms and many forms that we don't treat as criminal at all. But street policing has come to be equated, you know, with the question of order. And we and we need not think about it that way.

Alexandra [00:34:59] I think it is also part of the legacy of mass incarceration that, again, if we've learned anything from from grappling with with mass incarceration and its costs over the past decade, it's it's to recognize that we over rely on the criminal system to do all kinds of social work, to do economic work, to do labeling work, to do to do the work of public order. And it's really that that needs to be rethought in the misdemeanor system. There really is no and we have so much more room in the misdemeanor system to rethink it than we do in many ways in the in the felony system that we do, which there's no argument that, you know, that homicide shouldn't be handled through the criminal system.

Alexandra [00:35:48] Indeed, we get upset at our criminal system when it doesn't handle it, when we see low homicide clearance rates, for example, in low income communities of color. But we don't have to handle what happens on a street corner, the order, the noise or the people standing around on the street corner through the criminal system. We have more leeway there. And I think. Understanding the costs of misdemeanor criminalization will help us be more creative and get out of the habit of thinking that it is policing and arrests and convictions that are going to solve that problem for us.

David [00:36:26] I think one of the most important parts of the book, at least for me, was your where you write about the relationship between the misdemeanor system and the health of American democracy. So, I mean, I think some people might might think, well, you know, this system is one that we have chosen democratically, if through no other mechanism, at least by not electing public officials who have chosen to do something else. And so, you know, it's actually of a product of American democracy, and it shows that we can get what we want through our government. But your your view of that is of the relationship between misdemeanor system and American democracy is very different.

Alexandra [00:37:16] So there are a number of profoundly important ways that the misdemeanor system affects and intersects with what we might think of as our democracy. One goes back to the conversation we've been having all along, which is just how debilitating it is for the people swept up in the misdemeanor system far beyond the labels of petty and minor, that people are being disabled as economic actors, as as people able to get education or immigration status or to join certain professions that that were using misdemeanors, often unintentionally, I think, to engage in resource distribution, the redistribution of wealth and social stratification that we are that part of being disadvantaged, socially disadvantaged in this country is that you are more likely to encounter the misdemeanor system and it is more likely to make you more disadvantaged.

Alexandra [00:38:18] And we haven't really, I think, held the misdemeanor system accountable for its role in social stratification in that way. And that obviously has profound democratic implications. And and more broadly to, you know, to your point about, well, you

know, maybe this is Democratic because because this is what we have. You know, you could say the same thing about social disadvantage more generally. You could say, well, it must be democratic to have racial segregation because this is what American cities look like. It must be democratic to have segregated public schools because this is what our schools look like. It must be democratic to have a criminal system that over incarcerates people of color.

Alexandra [00:39:00] And I think that that misses the the promise that when we say democratic, we just we don't mean some in some kind of positive, positive a sense that this is what our society has produced. But our aspirations to be a more egalitarian democracy, to be to have a fair criminal system that works in ways that we can be proud of, to have a criminal system that does not exacerbate racial and economic inequality in the ways that we struggle in, you know, in these other arenas, in education and welfare and taxation and housing, to to remedy. So to say that it has Democrat Democratic implications is in many ways a challenge to appreciate the possibilities of change and improvement through the misdemeanor system itself.

David [00:39:51] Do you think that that reform, the reform of the system has to come through democratic channels and through electing progressive prosecutors, electing more progressive judges, police chiefs, mayors, etc.? Or is it has have we kind of used up our chances with those kind of democratic channels and shown them shown ourselves unable to achieve these goals that way and that we need some kind of, you know, more politically removed expert oversight or something of some of these issues.

Alexandra [00:40:34] Yeah. So, so many ways to answer that question. So one is, I don't think that our democracy is used up at all. I don't think that we have used up the possibilities of the electoral process of electing more progressive prosecutors, of electing new judges who see things differently. And we're seeing it's actually really inspiring all over the country. We're starting to see this kind of change occur in the wake of social agitation and litigation and public information. There was a very influential civil rights lawsuit filed in Harris County around the jail in Houston, which is one of the I think it's the third largest jail in the country, challenging the constitutionality of the bail out, the bail system that was that was effectively locking poor people up merely because they couldn't pay and that litigation led to had an enormous ripple effect throughout the political landscape of Harris County.

Alexandra [00:41:39] It's in the next elections. Republican judges who had been part of that bail system were swept off the bench. They were replaced across the board by Democrats. There was an enormous influx of new judges. 19 African-American women were elected to the bench. Really historic moment in Harris County all around these these issues of low level justice, of bail of debtors, prison, of misdemeanors in ways that were really ground breaking and will have ripple effects throughout the criminal system in in you know, in that jurisdiction. And we're seeing that kind of local ripple effect, like I said, in jurisdictions all over the place. So we have absolutely not used our democratic opportunities. I think actually think they're very exciting.

Alexandra [00:42:34] But I also think that changing the criminal system is not you know, it's beyond law. That law, it pushing the legal button is not the only way that we change the system we change our minds. We change our minds about the kind of criminal system that we're willing to have. Again, I think Ferguson, the events around Ferguson, people's recognition of just how racially unfair and violent and disproportionate our criminal system can be are changing people's minds about the kinds of criminal systems that we want to have. And that cultural change moves into the law. And so it's a two way street. The law

changes society and society changes the law. And I think all of that is part of the democratic process.

David [00:43:23] What are the most important questions about misdemeanors that still remain unanswered?

Alexandra [00:43:28] Be great to know how many there are. There's so many empirical questions, you know, that we haven't answered. I'm hopeful that this dialog and the book is contributing to a dialog that will push the system to cough up more data about itself, that it'll become more transparent and accountable in that way. I don't think we fully appreciate just how influential these low level misdemeanor institutions are that the I think the conversation has really just begun. It's not it's not one thing. It's not that we it's not just bail, it's not just council, it's not just resources. It's not just fines and fees. It's that. I think it's time to move this lowest echelon of our criminal system into this enormous bottom of the pyramid, if you will, if you will, into the center stage of our conversation about criminal about criminal justice. And then we will start to see how it really works.

David [00:44:38] Professor Natapoff this has been wonderful. Thank you so much. I want to remind listeners to go and buy your book. It's called "Punishment Without Crime: How our Mass Massive Misdemeanor System Traps the Innocent and Makes America More Unequal."

David [00:44:51] Thank you again.

Alexandra [00:44:52] Thanks so much.

David [00:44:59] You can find links to the research we discussed today on our website probablecausation.com. You can also subscribe to the show there or wherever you get your podcasts to make sure you don't miss a single episode. Big thanks to Emergent Ventures for supporting the show and thanks to our Patreon subscribers. This show is listener supported, so if you enjoy the podcast, please consider contributing via Patreon. You can find a link on our website. Our sound engineer is Carolyn Hockenberry with production assistance from Elizabeth Panchayati. Our music is by Werner and our logo is designed by Carrie Throckmorton. Thanks for listening.