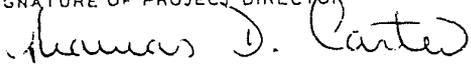


 U. S. DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION		CATEGORICAL GRANT PROGRESS REPORT	
GRANTEE National Association of Blacks in Criminal Justice 8121 Georgia Ave., Suite 608 S.S., Md. 20911		LEAA GRANT NO. 81-CJ-AX-0004	DATE OF REPORT July, 1982
IMPLEMENTING SUBGRANTEE		REPORT NO. 3	
TYPE OF REPORT		<input type="checkbox"/> REGULAR <input type="checkbox"/> SPECIAL REQUEST <input checked="" type="checkbox"/> FINAL REPORT	
SHORT TITLE OF PROJECT Technical Information and Assistance Center for Minorities in Corrections.		GRANT AMOUNT \$142,676	
REPORT IS SUBMITTED FOR THE PERIOD November 11, 1981		THROUGH May 31, 1982	
SIGNATURE OF PROJECT DIRECTOR 		TYPED NAME & TITLE OF PROJECT DIRECTOR Mr. Thomas D. Carter Project Director	

COMMENCE REPORT HERE (Add continuation pages as required.)

The following table of contents lists the tasks which form the body of this report. This report covers the 3rd and 4th quarter of the project (November 11, 1981 through April 30, 1982). A thirty day extension was sought and approved. The termination date of the project was extended through May 31, 1982. A copy of the grant adjustment notice granting the 30 day extension signed by Mr. Nicholas Demos, Project Monitor, is enclosed as part of this report.

- I. Disseminate information to minorities in corrections
 - A. Compile and publish Newsletter
 - B. Review Drafts (issue papers)
 - C. Distribute final drafts
- II. Profile of minority recruitment, training, etc., in four selected states
 - A. Schedule and conduct field interviews
 - B. Analyze data from mailed instrument
 - data from field interviews
 - report of findings
 - implement stress management training for 250 minority persons in
 - stress workshops
 - stress workshops
 - evaluations

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DATE PLANNING AGENCY (Office)

This report is submitted in compliance with the reporting requirements set-out in the OJARS Guideline Manual (M 7100.13), dated October 20, 1980. The report will proceed from the statement of goals and objectives as proposed in Section X (Timetable for Accomplishment of Tasks) of the grant application. This report covers a seven month period from November 11, 1981 through May 31, 1982 and, as such, includes the thirty day extension granted by OJARS (see: Attachment #1).

I. Disseminate information to minorities in corrections

- A. Compile and publish Newsletter - The third, fourth, and final issues of the Newsletter are attached (Attachment #2). The third issue was released in January of 1982; the fourth issue was released during the NABCJ Annual Conference in Richmond, Virginia in March of 1982; and the final was released during May of this year.

There were a few minor changes from the goals as originally stated in the grant proposal Section VII A(1), page 10. The Newsletter was published five times rather than six, as was originally proposed. This change became necessary as printing costs changed and as the flow of critical state-of-the-art information of interest to the readership tended to ebb. The Newsletter generally consisted of a feature article which focused on interviews conducted by the project director and the project consultant. These interviews were with prominent Black professionals in the corrections area. In addition, the Newsletter continued to contain up-to-date information on: 1) legislative developments; 2) policy initiatives; 3) training and educational opportunities, publications (books, periodicals, journals, articles, etc.,) which focused on the issue of Blacks and other minorities in the criminal justice system with special emphasis on the area of corrections. The Newsletter was distributed to all fifty state corrections agencies, inclusive of probation and parole authorities. Two thousand copies were distributed at bulk rate by the United States postal service. Other recipients of the Newsletter included the NABCJ membership, minority membership of the American Corrections Association, Black colleges and universities with criminal justice programs, etc.

The Newsletter has been well received. The information provided tended to focus current literature and events of interest to Blacks and other minorities involved in criminal justice matters, particularly those who are focused on state correctional issues.

- B. Review Drafts (issue papers) - The preliminary and final drafts of the four issue papers were received in a timely fashion. A copy of all four preliminary drafts were forwarded to OJARS. Copies of the final papers are attached (attachment #3). A list of the authors and final titles of their papers are:

- 1. L. Alex Swan
"Incarceration Rates: Blacker Than White"
- 2. Scott Christianson
"Disproportionate Imprisonment of Blacks in the United States: Policy, Practice, Impact, and Change"

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3. Paul Takagi and Tony Platt
"Racism and Imprisonment in the United States in the 1908's: A Policy Analysis"
4. Alfreda P. Iglehart
"Prisonization: The American Way?"

The project's Advisory Committee was actively involved in reviewing and responding to the formal outlines, preliminary drafts, and final drafts of the papers. The major agenda item for the March 1982 meeting centered around the Committee's response to the preliminary drafts. The concerns and reactions fo the Committee were shared with the authors for consideration in their preparation of the final drafts.

- C. Distribute final drafts - The preliminary drafts of the issue papers were widely circulated at NABCJ's Ninth Annual Conference in Richmond, Virginia. Additional copies of the drafts were distributed to criminal justice scholars and practioners. The reactions and constructive criticisms received in reaction to the papers were shared with the authors. The final papers reflected these responses. A follow-up objective for distributing the papers is that of providing a forum for further discussion and amplification of the issues and the response options developed in the issue papers. NABCJ is currently planning to provide such a forum prior to its Tenth Annual Conference.

Finally, it should be noted that the issue papers, accompanied by an introduction and preface have been edited for publication in book form. The final costs of publication and distribution will be born by NABCJ. It is expected that this publication will be scheduled for release in September of this year.

II. Profile of minority recruitment, training, etc. in four selected states

- A. Schedule and conduct field interviews - The necessary approvals from the four states Commissioners of Corrections were secured and the following schedule of visits were carried out by the Project Director and project consultant, with the field survey instrument being administered as well:
 1. January, 1982 New York State Department of Correctional Services
Albany, New York
Fishkill Correctional Center
Fishkill New York
 2. January, 1982 South Carolina Department of Corrections
Columbia, South Carolina
South Carolina Central Correctional Institution
Columbia, South Carolina

3. March, 1982 California Department of Corrections
Sacramento, California
California Institution for Men
Chino, California
4. April, 1982 Illinois Department of Corrections
Springfield, Illinois
Stateville Correctional Center
Joliet, Illinois

The survey data collection phase could not commence until extensive discussions were conducted and completed with the host Departments of Corrections. As a consequence, the major portions of this effort could not be scheduled until during the fourth quarter of the grant period. The data processing and analysis for this phase of the project has thus been unavoidably delayed.

- B. Analyze data from mailed system-wide survey instrument - In an effort to develop state-wide profiles of minority correctional employees in each of the four selected study sites, a twenty-seven item field survey instrument was developed. The instrument was constructed with the expectation that all of the data needed to complete it would be available as part of the information which is routinely collected by the Department of Corrections in each of the four states. The instrument was extensively reviewed by the project's Advisory Committee and was pretested prior to submission in each of the four study states.

Again, it is important to note that the survey called for data in such rather routine areas as: total number of authorized full- and part-time positions; total number of minority personnel actually employed by each of the departments (as of September, 1981); additional demographic information on correctional staffs such as age, education, salary ranges were also requested; and finally, basic questions were raised regarding policies relating to minority recruitment, training, and career mobility.

Despite the relatively routine nature of the survey items, little success was met in getting the survey instruments completed and returned. Careful attention was paid to protocol to assure that the instruments were received and reviewed by the appropriate authorities in each state. Despite repeat follow-up efforts, partial information was received from only two of the four states: New York and Illinois. To this date, the other two states, California and South Carolina have yet to respond to our repeated efforts to get the requested information. Even the partial information received from the two states is not nearly sufficient to generate even a beginning statewide profile of their minority correctional employees. Hence, the major conclusion of this aspect of the study will be that, for the most part, systematic statewide data on minority correctional employees in the four study states were either: (1) non-existent; or (2) simply not available.

- C. Analyze data from field interviews - A thirty-seven item survey instrument was constructed, pretested, and administered to all minority correctional employees at four institutions in the study states. In addition, a comparison sample of 10 percent of the non-minority correctional staff at each of the four institutions was also surveyed. A total of 1230 surveys were administered with a total of 837 of these completed and returned. At this point, all of the returned instruments have been coded, reliability, and consistency checks have been run; the data have been converted into machine readable form; and much of the final data analysis has already been completed.
- D. Prepare report of findings - The report of the findings from this aspect of the project will have three major components. The first, will utilize the small amount of information obtained from two of the four study states, along with data from other sources, to present a systemwide view of what the minority correctional employee picture appears to be. The second part of the report focuses on developing a profile of minority recruitment, training, and career mobility patterns in the four states based on the data obtained in the locally administered surveys. Since the surveys were administered to employees at a single institution within each of the four states, much of this part of the report will serve as the basis for drawing conclusions and inferences about the four institutions only. While some of the findings are generalizable to the entire state or even to the national context for minorities in corrections, the overall focus will be on the four institutions visited. The final study report is now being prepared with that process expected to be completed around the end of August of this year.

III. Design and implement stress management training for 250 minority persons in corrections

- A. Design stress workshops - Stress management training sessions were conducted at the Ninth Annual Conference in Richmond, Virginia in March of 1982. The training sessions were planned, developed, and conducted by Mr. Frederick Phillips, Psy. D., Associate Director of the Institute for Life Enrichment, Washington, D. C. Dr. Phillips has had considerable experience in providing stress management training to minority persons with a particular emphasis on persons employed in the helping professions as well as to those in government service.

In addition to conducting the sessions, Dr. Phillips provided NABCJ with a formal academic paper entitled: "Stress, Black Stress, and Techniques for Life Enrichment." The paper essentially served as the foundation for Dr. Phillips's presentation in the workshops. Two other trainers were involved in the workshops as well. They were: Mr. Victor Bibbins, Ph.D., Director of the Employee Assistance Program of the Metropolitan Police Department for the District of Columbia and Ms. Chryl Berlack, M.S. Staff Associate with the Institute For Life Enrichment, Washington, D. C.

- B. Conduct stress workshops - As noted above, the stress workshops were conducted at the Richmond Conference. The sessions were conducted on March 23, 24, and 25, 1982. The workshops were well attended and were received well by the participants as is attested to by the attached workshop evaluations. The final attendance figure was

approximately 300.

It should be noted that stress management training was not provided as was proposed in Report Number Two. It became impossible for the host agency in California to identify and deliver a training population with the time constraints of the grant period. As this was a modification of the original plan, there was no change in planning with regard to providing training at the Richmond Conference.

- C. Perform evaluations - The stress workshops proved to be the highlight of the NABCJ Richmond Conference with regard to training. The trainer provided additional workshop sessions based on the number of requests for participation by the conferees. Attached is a sample of the evaluations of the workshops by the participants. (See: Attachment #5).

In summary, all major goals and objectives of the project have been accomplished. The Newsletters were published and distributed and will continue to be published by NABCJ. The major issue papers have been written and disseminated and will become the focus of a National Forum sponsored by NABCJ in the near future. The issue papers will be published in book form to insure their continued availability. The four state survey of minority correctional personnel was conducted with the final reports of the findings now being prepared. Stress management training was conducted and a major academic paper developed on the subject. Finally, it should be noted that a performance audit based on LEAA audit standards is in process and the results will be forwarded as soon as it is completed. The audit is being performed by F. Howard Cook, C.P.A., Landover, Maryland.

All further inquiries with regard to this grant, its reports, products, or staff should be directed to the Chairman of NABCJ at P. O. Box 28369 Washington, D. C., telephone (202)829-8860.

ATTACHMENT NUMBER ONE

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(5/12/82)

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GRANT ADJUSTMENT NOTICE

PAGE 1 OF 1

1. GRANTEE NAME AND ADDRESS - Including Zip Code National Association of Blacks in Criminal Justice (NABCJ) 8121 Georgia Avenue Silver Spring, Maryland 20910		3. GRANT NUMBER 81-CJ-AX-0004
1a. GRANTEE IRS VENDOR NUMBER 521164624		4. ADJUSTMENT NUMBER 6
2. PROJECT TITLE Technical Information and Assistance for Center for Minorities in Corrections		5. DATE May 3, 1982
		6. GRANT MANAGER Nicholas Demos

SECTION I. DEOBLIGATIONS & REOBLIGATIONS

7. ACCOUNTING CLASSIFICATION CODE FISCAL YEAR FUND CODE BUD. ACT. OFC. DIV. REG. SUB. ABC	1. PREVIOUS GRANT AWARD AMOUNT \$ 142,676
	2. DEOBLIGATION OR REOBLIGATION AMT. \$ _____
8. DOCUMENT CONTROL NUMBER	3. ADJUSTED AWARD AMOUNT \$ 142,676

SECTION II. CHANGES

12. CHANGE GRANT MANAGER FROM _____ TO _____
13. CHANGE GRANT PERIOD: FROM <u>11/1/80 - 4/30/82</u> TO <u>11/1/80 - 5/31/82</u>

SECTION III. OTHER ADJUSTMENTS & INFORMATION

14.
In accordance with grantee's letter dated April 16, 1982, project is extended for 30 days to allow for the completion of project objectives.

No further extensions will be authorized for this grant.

15. TYPED NAME AND TITLE OF AUTHORIZED OFFICIAL James C. Swain, Chief Adjudication/Corrections Section, PSD/DC	16. SIGNATURE OF AUTHORIZED OFFICIAL
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ATTACHMENT NUMBER THREE

RACISM AND IMPRISONMENT IN THE UNITED STATES IN THE 1980s;

A POLICY ANALYSIS*

Paul Takagi and Tony Platt

*This report was prepared for the National Association of Blacks in Criminal Justice in May, 1982. The research for this Report was conducted at and with the help of the Institute for the Study of Labor & Economic Crisis, San Francisco. The opinions expressed in this Report are those of the authors.

INTRODUCTION

ACQUISITIONS

The purpose of this paper is to address the specific issues of the increased use of mandatory sentences, elimination of indeterminate sentences, abolition of parole authority, preventive detention, and the more general aspects of recommendations of the Attorney General's Task Force on Violent Crime having to do with the establishment of a National Corrections Academy, the appropriation of massive federal funding for the construction of state penal facilities, model guidelines for types of prisons, regional facilities, private sector involvement in prison management, the use of appropriate federal property as construction sites for local penal facilities, and to amend the Vocational Education Act and other statutes for the establishment of educational programs in correctional institutions. In addition, the paper seeks to address the prospects of local and national budgeting of correctional matters in a period of fiscal constraint.

All of these issues are not readily susceptible to scientific investigation nor is there research literature that could be considered a cumulated body of knowledge. Hence, we have approached the topical issues in an indirect fashion. The paper is organized into five parts: In Part I, "**Racist Justice: An Overview**," we describe recent trends in incarceration whereby blacks and other minorities are disproportionately sentenced to prison. We introduce fragmentary evidence from other English speaking countries to show that the high rate of imprisonment of minorities is a global phenomena. In Parts II and III^{1/2}, we separately

Introduction

describe and analyze Racism and Imprisonment for adult males and for youth and women. We describe and highlight empirical findings from 44 studies, most of which were conducted in the 1970s and 80s, to tease out relationships and trends that bear upon the issues to be addressed. Based upon our review of the literature in Parts II and III, certain facts begin to emerge and in Part IV of this paper, we turn to a different kind of analysis in order to understand and comprehend the imprisonment of minorities and the poor at this historical moment. In part V, we offer a set of recommendations for policy consideration.

I. RACIST JUSTICE: AN OVERVIEW

Racism is a Central Component of the Criminal Justice System

Christianson and Dehais (1980) correctly observed that among the clearest trends in criminal justice matters in the United States in the 1970 decade and into the 1980s is the massive increase in the number of persons imprisoned in state penitentiaries. From December 1971 to December 1978, the state prison populations increased from about 177,000 to almost 280,000, or an increase of 64 percent. Since December, 1978, to December, 1981, the state prison population increased to well over 350,000. It is well known that the United States is locking up people at an unprecedented rate and that the national incarceration rate of 250 per 100,000 is more than twice that of Canada, three times that of Britain and four times that of West Germany. What is not common knowledge is the changing face of the penal population.

It is an inescapable fact that racism is a central component of the criminal justice system in the United States today. The statistical evidence is overwhelming with respect to the disproportionate arrest, sentencing and imprisonment of blacks and other minorities. For example, in 1978, blacks constituted 26.4 percent of all arrests; 28.5 percent of all arrests in cities; 33.9 percent of all serious felony arrests; 36 percent of all serious felony arrests in cities; and 49.7 percent of all arrests for violent crimes in cities (Hindelang, Gottfredson and Flanagan, 1981: 345-353). Of 646 prisoners under sentence of death on June 20, 1980, 263 were black and 31 other minorities (Ibid.: 524).

The astounding concentration of racial and national minorities in the penal system appears to confirm the official lie that black and brown people represent the most lawless elements in the United States. By the end of 1979, blacks comprised 46 percent of all prisoners in state and federal institutions (U.S. Department of Justice, 1981:5). According to a recent study (U.S. Department of Justice, January 1982:1), blacks made up 12 percent of the total U.S. population and 48 percent of the state prison population in 1979. In many states, however, the proportion of black prisoners is much higher than 48 percent; in Delaware, it is 60 percent; in New Jersey, 62 percent; in Mississippi, 64 percent; in Louisiana; 71 percent; in Maryland, 77 percent; and in the District of Columbia, 97 percent; (U.S. Department of Justice, 1981: 4-5). In Illinois, at the maximum security Stateville and Pontiac prisons, the prison population is approximately 83 percent black and 7 percent Latino (Thomas et al, 1981: 50-51). In New Mexico, 55 percent of the prisoners are Chicanos and in many other states (especially Colorado, California, New York and Texas), Puerto Ricans, Chicanos and Latinos are disproportionately represented in the penal population (U.S. Department of Justice, 1981:5).

Finally, it is important to recognize that institutionalized racism in the penal system is by no means limited to the United States. In New Zealand, the Maoris now constitute over 40 percent of the prison population (Williams, 1981). In Australia, Aborigines, who comprise just over 1 percent of the general population, are an estimated 20 to 30 percent of the penal population (Taft, 1981). And in England, the government has whipped up a "moral panic" which is selectively aimed

at immigrants from Asia and the West Indies, resulting in disproportionate rates of arrest and imprisonment (Hall et al., 1978).

Racism in the Penal System is on the Increase

Given the concentration of racial and national minorities in the underclass of the reserve army of labor, it is not surprising that blacks, Chicanos, Puerto Ricans and Native Americans are overrepresented in the penal system. In the United States, the prison population has always contained disproportionate number of immigrants and foreign-born persons (until the 1920s) or racial and national minorities. "Since 1850," writes Margaret Cahalan (1979:39) in her authoritative study of trends in incarceration, "when the first reports were published, the combined percentage of foreign-born persons, blacks and other minority groups incarcerated by the criminal justice system has ranged between 40 and 50 percent of all inmates present. As the percentage of foreign born in our jails and prisons has declined, the proportion of blacks and Spanish-speaking inmates has increased."

The racism of the penal system is most evident with respect to blacks. The rate of imprisonment of blacks is decisively higher than that of whites (Unitarian Universalist Service Committee, 1979). Recent evidence suggests that in the 1980s, it is not simply racist business as usual. Minorities now constitute a higher percentage of the prison population; minorities now have a higher rate of imprisonment; and there has been a significant deterioration in penal conditions.

Analysis of national prison statistics for 1973 and 1979 reveals

that the number of blacks in state penitentiaries increased from about 83,000 to about 132,000, and that the black proportion of the penal population has been steadily increasing -- from 46.4 percent in 1973 to 47.8 percent in 1979. Blacks comprised about 22.6 million (or about 11.1 percent) of the total U.S. population (203 million) in 1970, but they accounted for 83,000 (or about 46 percent) of the state prison population in 1973.

These statistics, however, reveal only the tip of the iceberg. When one considers that about 96 percent of all prisoners in state facilities are males, even though males represent about 48.5 percent of the general population, the data for black males are quite astonishing. Black males account for about 4.4 percent of the general population, but for about 45.7 percent of the prisoners in state institutions (Christianson, 1981). Thus, George Jackson (1970:9) was not being rhetorical when he observed in 1970 the "black men born in the U.S. and fortunate enough to live past the age of eighteen are conditioned to accept the inevitability of prison. For most of us, it simply looms as the next phase in a sequence of humiliations."

Earlier, we cited the U.S. national incarceration rate of 250 per 100,000 general population. While the incarceration rate varies across the 51 states in the union, the white incarceration rate in 1979 was highest in Nevada with a rate of 191.7 and low of 28 for Hawaii, 43 of the 51 states had an incarceration rate for whites of 98.8 or lower in 1979. In contrast, the black incarceration rate for the same year was a high of 1,341.8 for the state of Washington, and fifty of the

fifty-one states had an incarceration rate of 150 or higher. Put differently, every state in the union with the exception of nine states (Illinois, Kentucky, Montana, Arkansas, Hawaii, Mississippi, Alabama, New Hampshire, and North Dakota) have a black incarceration rate higher than the rate for South Africa.

According to Scott Christianson's recent study (1981:365), "whereas the incarceration rate for whites increased from about 46.3 per 100,000 to about 65.1 from 1973 to 1979, the black incarceration rate rose from about 368 to 544.1 per 100,000 during that period." In sum, the gap between white and black incarceration rates has been growing substantially during the last decade. Moreover, a recent government study (U.S. Department of Justice, January 1982:1) reported that the number of Hispanic prisoners in state prisons doubled between 1974 and 1979, now accounting for 9% of all state prisoners.

The disproportionate imprisonment of minorities is by no means limited to the South, though the number of blacks in prison is highest in the Southern states. Christianson and Dehais (1980) ranked the states by the difference between black and white incarceration rates for 1979. We calculated the ratio of difference and, contrary to the stereotype, found that the rate of imprisonment of blacks is lowest in the South; Wisconsin imprisoned 22.7 blacks for every white person; Nebraska 19.7 to one; Iowa, 19 to one; Utah, 17.3 to one; Massachusetts, 16.8 to one; Minnesota, 16.4 to one; South Dakota, 16.1 to one; New Mexico, 15.8 to one; Arizona, 15.6 to one; New Jersey, 15.5 to one; Washington, 14.2 to one; New York,

14 to one; Pennsylvania, 12.2 to one; Maryland, 12.3 to one; and Connecticut, 12.9 to one.

This finding is confirmed by a government study (U.S. Department of Justice, 1981:5): "the proportion of blacks among prisoners in Southern States was only three times the proportion of blacks in the general population, whereas the corresponding proportion was five times as great in each of the other three regions. In other words, the overrepresentation of blacks in prison was higher in the Northeast, the North Central region, and the West than in the South." Another study (Unitarian Universalist Service Committee, 1979) similarly reported the rate of black imprisonment was higher, for example, in Massachusetts and Oregon than Alabama and Mississippi.

The increasing racism of the penal system has to be understood in the more general context of the tendency of the U.S. to rely more and more upon incarceration as the preferred mode of punishment. "International comparisons indicate that the United States incarcerates more persons than does any other industrialized nation on which information is available. Even with the decrease in rates reported in 1970, the United States did not relinquish its topmost position" (Cahalan, 1979:21). While there was a slight decline in the total incarcerated population between 1960 and 1972 (no doubt related to the military and labor demands of the Vietnam War), this trend was short-lived. During the last decade, there has been an unprecedented increase in the penal population. Between 1975 and 1981, the prison population in the United States increased by 42 percent or by almost 100,000, and in the first six months of 1981 grew by more than another 20,000 to a total of nearly 350,000 on June 30, 1981

(Platt and Takagi, 1980a;1; U.S. Department of Justice, 1981, 1981a). This trend holds true for juveniles as well as adults (Platt, 1977; 189-190; Cahalan, 1979;16).

To put it another way, there has been a general increase in the use of imprisonment in the U.S. in the last decade. Minorities, who for many decades have constituted a disproportionate percentage of those imprisoned, have been subjected to an even higher rate of imprisonment in this period. Thus we are witnessing an intensification of institutionalized racism in the penal system. Moreover, conditions inside prison have also deteriorated and the racism of arrest and sentencing practices is aggravated by racist relations within the prison.

Racism Inside Prisons is on the Increase

During the last few years, there has been a rapid and alarming deterioration of social conditions within prisons. A nationwide study, sponsored by the National Institute of Justice (1981), reported that 60 percent of prisoners are forced to share their cells due to serious overcrowding. According to a recent report by the U.S. Department of Justice (1981a:1), "to cope with expanding populations, State correctional authorities employed a wide range of measures including tents, prefabricated buildings, double bunking, and early release. Facilities in some States housed almost twice their rated capacities and other States were relying heavily on space in local jails. These increases were felt in almost every State."

The deterioration in penal conditions is apparent everywhere and is affecting all prisoners. Since the horrifying prison riot in

New Mexico, there have been other violent, generally spontaneous outbreaks, as well as an increase in suicides and suicide attempts, in prisons throughout the country (Platt and Takagi, 1980a; Charles, 1981). This is partly the result of serious overcrowding which, in the present fiscal crisis, is aggravated by cutbacks in the public sector and the elimination of what were very minimal programs of "rehabilitation." Despite President Reagan's hardline commitment to "law and order," and the recommendation of his hand-picked Task Force on Violent Crime that state prison construction be accelerated by a \$2 billion federal subsidy, there appears to be little support in either Congress or the White House for this kind of spending (Corrections Digest, 1981). We can expect that prisons will become even more overcrowded in the 1980s.

But it is not only the overcrowding and lack of support for minimal standards of human decency that has generated considerable despair and reactionary violence in prison. In addition, the systematic repression by penal authorities and the state of progressive political and cultural organizations in prison has enabled violent cliques and gangs to rise to power, to control by intimidation the pathetically few spoils and privileges of prison life. The progressive movement of the late 1960s and early 1970s, which was primarily led by black prisoners, was brought to a sharp halt by the assassination of George Jackson in San Quentin and Rockefeller's massacre at Attica in 1971. This movement was actively involved in educating prisoners about racism and in organizing prisoners across racial

lines (Platt and Takagi, 1980: 144-183). As one prison organizer (Irwin, 1980: 151) has observed, "the administrators stopped the development of alternative group structures that could have prevented the rise of hoodlum gangs involved in rackets, formed on racial lines, and engaged in extreme forms of prisoner-to-prisoner violence." With a varied repertoire of repressive techniques -- tear gas, beatings, segregation, solitary confinement, "adjustment centers," drugs, bribery, cooptation and, when all else failed, assassinations -- the state moved against the prisoners' movement and, protected by the law and hidden from public accountability, did so with impunity.

II. RACISM AND IMPRISONMENT: ADULT MEN

It is frequently argued that incarceration rates are simply responses to crime rates and that the recent increase in imprisonment reflects a significant increase in the more serious, violent crimes. Several studies have been conducted to determine those empirical factors associated with the high imprisonment rate of blacks and we turn next to a systematic review of that body of literature.

The literature on the effects of race on sentencing go back to the 1930s, but we have decided to focus on more recent studies that we consider important based upon the frequency of citation. We include studies that have been criticized for their methodological inadequacies, as well as those studies that are, in our judgment, the most methodologically sophisticated. Of the two or three dozen works that have been published, McNeely and Pope (1981), Jankovic (1977),

Reasons and Kuykendall (1972), Swigert and Farrell (1976), and Box and Hale (1982) contain excellent bibliographies.

We should state at the outset that all of the more recent studies on race and sentencing reveal findings that blacks and other minorities do receive more severe sentences. The nature of the offense, prior record, socio-economic status, age, and gender also have been found to be related to sentencing severity.

Green (1964) was among the first to question the existence of race discrimination in criminal sentencing. He examined 1,437 consecutive cases disposed of by conviction in a criminal court of Philadelphia. The research sample was limited to 118 cases of robbery and 291 cases of burglary, including auto theft. Since previous studies had shown that the race of the offender and the victim makes a difference -- that is, a black offender and a white victim dyad would be more likely to receive a more severe sentence -- Green examined the length of sentences for the crimes of robbery and burglary across these dyads, controlling for type of offense, e.g., armed or unarmed robbery, and prior record. Green reported that while it is true that blacks do receive longer sentences, it is also true that blacks are more likely to be armed, thus necessitating longer sentences under Pennsylvania laws.

Green's findings cannot be taken seriously primarily because of the small number of cases in each of the cells (see his Tables 3 and 6). In Table 3, he examines the mean number of months of sentences for the conviction of robbery. In the first row, where Green looks

at armed robbery with 2 or more counts (indictments), he is forced to compare 9 cases of black offender-white victim and 2 cases of white offender-white victim. When we look at the second row where the Ns are slightly larger, 19 vs. 9 respectively, we see that blacks receive longer sentences. Similarly in his Table 6, which reports the mean number of months of sentences for the conviction of burglary, we find the same flip-flopping, depending upon the number of cases in each cell. In row 3, where Green compares the dyads among offenders with no prior record, blacks again receive longer sentences than whites.

Chiricos and Waldo (1975) are most frequently cited by those who have conducted studies on criminal sentencing. The intent of the study was to examine the relevance of socio-economic status to penal commitments; it has been sharply criticized for its methodological unsophistication (Greenberg, 1977; Hopkins, 1977; Reasons, 1977; Jankovic, 1978; Clelland and Carter, 1980; and H. and J. Schwendinger, 1982). Chiricos and Waldo examined 10,488 adult felons (gender is not specified) committed to penitentiaries in the states of North Carolina, South Carolina, and Florida for the years 1969 through 1973. We agree with the criticisms that one cannot study "severity of sentences" by examining a sample that has been sentenced to a penal facility. The real world imposes different kinds of sanctions - a fine is considered milder than jail, prison more severe than jail, probation is milder than jail or prison, and so on. Hence, severity of sentences can only be studied at the point where pleas are

negotiated, charges are dropped or lowered, and when the court selects from among a range of sentences -- one that is more or less severe than another. And even then, the court still has the option of concurrent or consecutive sentences and what has come to be called "enhancements" under the new determinate sentence laws; that is, the court has the option of enhancing a basic sentence for a given offense by adding additional months and years for priors, weapons, and so on.

Despite the methodological flaws in the study by Chiricos and Waldo, the investigators found race to be a significant variable for second degree murderers where blacks received longer sentences than whites.

The sharp criticisms of Chiricos and Waldo and the ensuing controversy alerted future investigators to employ more sophisticated methodologies, and to conceptualize the study so as to take into account the sentencing process rather than studying those subjects already sentenced to prison. As a result, the post-Chiricos and Waldo investigations all show race to be a significant factor. Race, however, is highly correlated with socio-economic status and to related measures of "life chances." In the studies reviewed below, we identify the geographic location of each study, since there is enormous variation in the incarceration rates and we need to identify those factors that may account for the variation. Our purpose is to prepare an inventory of empirical generalizations that lend support to our later theoretical discussion and policy recommendations.

Before we review the more "scholarly" efforts, we need to look at a study that is somewhat marred by its failure to employ statistical controls, but produces findings that are confirmed by later investigations. Every now and then an important study is published which fails to meet the standards of methodological rigor. Such a study was published by William Nagel (1977). Nagel is a former correctional administrator, now retired, but a vigorous spokesperson for the moratorium on prison construction. His views on the topic are backed by empirical findings, as we shall see in a moment; he is an important figure on the national scene, having served on almost every federal commission on corrections.

In the 1977 article, Nagel seeks to unravel those factors that are said to be associated with incarceration rates in the United States. Similar to Christianson and Dehais (1980), Nagel collected national data and examined the incarceration rates for each of the states. Nagel looked at the 1975 commitment data and rank ordered the states from high to low. Nagel then correlated this with the ranking of the states on crime rates, the proportion of blacks in the state population, poverty income, per capita income, unemployment rate, prison bed space, and so on. The findings were indeed surprising:

1. The incarceration rate is not related to the crime rate; the incarceration rate is also not related to the violent crime rate.

2. States with a high incidence of persons living below the poverty level tend to have a lower crime rate but a higher incarceration rate.
3. There is a strong positive correlation between unemployment rate and crime rate.
4. There is no significant correlation between a state's racial composition and its crime rate but there is a very great positive relationship between its racial composition and its incarceration rate.
5. The larger the prison bed space capacity of a state, the higher the incarceration rate of that state.

That poor people and people of color end up in prison comes as no surprise; we now turn to studies that offer insights into how the criminal justice system discriminates against the poor and racial minorities.

Discrimination in the Criminal Justice System

The complexities of studying the effects of race on severity of sentencing are illustrated in a study by Burke and Turk (1975). Here, the researchers were unable to untangle the close association between race and social class: for example, blacks are more likely to have a prior record and young blacks, as will be shown in another

study, are more likely to be treated harshly by the courts. Burke and Turk took a 20 percent random sample of adults arrested in Indianapolis in 1964. They examined age, race, occupational status, offense, and prior record. They wanted to examine how these factors are related to the range of dispositions available to the court from dismissal to a prison sentence. While their interpretations of the findings are post hoc, the findings are their interpretations are strengthened in the light of subsequent studies:

1. Men who are ex-convicts are significantly more likely to be brought to court, to be convicted and to be given a prison sentence. Burke and Turk suggest that ex-convicts are more vulnerable to the biases of legal control agents but do not indicate how those biases operate.
2. Young male offenders are more likely to receive a "break" by the court, but those who are brought to trial are more likely to receive prison sentences. Burke and Turk argue that this is largely a function of the offense, i.e., young males are more likely to have been charged with relatively serious offenses. Those who commit less serious offenses are treated more "mildly" by the court.
3. In general, the lower the occupational status of an offender, the more severe the disposition. Burke and Turk recognize the confounding factors that a prior record, race, and social class are highly inter-correlated with

occupational status. Hence, without further analysis, the relationship between occupational status and disposition is not as straightforward as it seems.

4. With respect to race, Burke and Turk were not able to find its effect on disposition. They are, however cautious about making any conclusions because the effect of race is masked by its complex relations to other factors, such as age, prior record, and occupational status. They recognize the limitations of their study, as they were not able to study the possibilities that blacks are more likely to be arrested, convicted, and sentenced to prison than whites.

The classic study of severity of sentencing for homicides was conducted by Garfinkle (1949) in which he showed blacks killing whites are more likely to end up on death row than whites killing whites. Since then, studies of homicides have proliferated, mainly however in deterrence research where proponents and opponents of the death penalty have attempted to document the effects of the ultimate sanction. One of the more recent studies that attempts to unravel the social factors associated with homicides is by Swigert and Farrell (1976). They do not identify the geographic location from which their sample is drawn, but based upon their description of a diagnostic and evaluation center of offenders, the location appears to be Boston, Massachusetts. The investigators drew a 50 percent random

sample of all persons arrested for murder, covering the period 1955 to 1973. The sample consisted of 454 cases. Since the cases were drawn from the diagnostic and evaluation center, the social data they collected were unusually rich. While there are many interesting side findings -- such as only 20 percent of the offenders were arrested for the slaying of strangers, that defendants and victims were frequently of the same age, race, and sex, and that some social interaction occurred prior to the murder in virtually all cases -- the empirical findings on disposition will be highlighted:

1. Males and individuals of lower occupational prestige are convicted of the most serious charge (within the gradation of homicide). Women are convicted of lesser included offense as compared to males.
2. A defendant's prior record influences the final disposition. Even though a decision involving guilt or innocence is officially supposed to be without reference to prior criminal involvement, such information enters into the adjudication process in blatant ways. It influences the willingness of the prosecutor to reduce or not reduce the charges; the criminal history of a defendant is a factor in weighing the evidence; and sometimes the use of a prior record is employed to impeach the credibility of a defendant.
3. The findings, in general, indicate that access to legal resources - the award of bail, a trial by jury,

and use of private counsel - produces the less severe convictions and, in turn, sentencing outcomes. It is the poor and minorities who are least likely to have access to these legal resources.

4. Swigert and Farrell discovered in clinical reports in a homicide case the use of what they call the "Normal Primitive." The "Normal Primitive" is a criminal stereotype that has become a standard diagnostic category for the court (see also Pfohl, 1980). It refers to a group of people, mostly blacks and the poor, whose behavior, within their "subcultural" setting, is described as normal. Their behavior is "primitive" because their occupational achievements center around unskilled, menial labor, and work careers are frequently sporadic. Their personalities are considered to be childlike or juvenile and they are especially sensitive about their masculinity. Their social interaction often occurs in bars where arguments and aggressive encounters are frequent. They carry weapons as a demonstration of masculinity. They are sexually promiscuous. Their goals are sensuous and immediate - satisfying sexual needs without inhibition, extending hardly beyond the filling of their stomachs and the next pay day or relief check. Swigert and Farrell report that a defendant who by dress and appearance fits the description of a "Normal Primitive"

is most likely to be convicted of the most serious charge and to receive the most severe sentence.

The previous studies focused on convictions and dispositions. A pioneering study on defendants charged with felonies but whose cases were dismissed by the court is by Bernstein, Kelly, and Doyle (1977). Bernstein et. al. drew their sample of 1213 adult males from an identified city in New York State, probably New York City as they describe the court sample as primarily "persons of the lower classes who predominate the catchment area served by this court" (*ibid.*, 751). The quantitative analysis was supplemented by four months of court observations, plus interviews with judges, prosecutors, defense attorneys and auxiliary court personnel. Thus, there is a richness and depth to the study that is not otherwise present in most statistical studies:

1. Defendants charged with burglary were found to be more likely to be dismissed primarily because, as Bernstein, et. al. argue, there were problems in evidence. Typically, there are no eye witnesses, thus reducing the strength of the evidence.
2. Assault charges are also likely to be dismissed because there is a tendency among judges to place lesser value on violence when it occurs among minority groups.
3. Perhaps the most significant finding is that a defendant detained in custody pending trial increases

the likelihood of dismissal. Bernstein, et. al. report that 39 percent of those detained in jail awaiting their disposition are ultimately dismissed. They go on to state that court agents (prosecutors and judges) frequently use the court process as sanctions. More often than not, the detention is employed against the economically disadvantaged. As they write: "If the defendant was detained because he couldn't post bail and his subsequent dismissal reflected a presumption of innocence, his inability to post bail would have caused him to be severely sanctioned" (ibid., 751).

Three recent studies on convictions and sentencing (Jankovic, 1978; Rubinstein, et. al., 1978, and LaFree, 1980) generally support the empirical findings of the studies reviewed above. Jankovic looked at 2,250 cases processed through an unidentified southern California court. Jankovic reports a strong relationship between severity of sentences and minority status, even for misdemeanor offenses. LaFree examined 881 cases charged with "forcible sex offenses" in an unidentified large, midwestern city. Controlling for race of the offender and victim, LaFree reports that the legal processing decisions are affected by the racial composition of the victim-offender dyad, and that the cumulative effect of the race composition is substantial; that is, black offenders accused of sexually assaulting white women receive more serious sanctions than other sexual assault suspects.

Rubinstein, et. al. studied the effect of the abolition of plea

bargaining in Alaska. Plea bargaining was officially abolished in August, 1975, and the study was conducted to evaluate the impact upon the workload of the court on the one hand, and on the disposition of felony cases on the other. While the abolishment of plea bargaining, a procedure that is considered by many to be an indispensable procedure to lighten the workload of the criminal courts, is an interesting topic in itself, we will focus on the disposition of felony cases for all of the courts in Alaska for the year 1975-76. The research, sponsored by LEAA funds, came to the attention of the Alaska newspapers, resulting in headlines that Alaskan judges are racists. One of the authors of this report (Takagi) was retained as a consultant to an unusual event where all of the judges in Alaska, including the Alaska Supreme Court Chief Justice Jay Rabinowitz, were in attendance. The event was again headlined in the Anchorage Daily News as "Judges Confront Racial Prejudices" (June 13, 1979).

Rubinstein, et. al. examined court dispositions of felony convictions and severity of sentences and found that blacks and native Americans (Indians, Eskimos, and Aleuts) were systematically sentenced to longer terms. Most, of not the majority, of the judges in Alaska are white males who had gone to Alaska from other states primarily to seek rapid advancement in legal careers. The judges as a whole are not openly racist; indeed, they are individually reasonable people. Despite their residence in the state, they are "strangers," similar to colonists imposing a

foreign system of beliefs and values upon natives who have lived there for thousands of years. What is striking about the Bernstein, et. al. study is that, along with natives, blacks, who are relative newcomers to the state and represent a very small proportion of the total population, are similarly sanctioned severely by the courts. In the two-day training session of the judges, it became clear that there is no model sentencing guideline -- that is, within the upper and lower limits of sentences for a given offense -- and the judges employ moral judgments of irrelevant criteria to arrive at a sentence: has the defendant maintained steady employment; has the defendant supported his spouse and dependent children; and is the defendant a "stable" member of the community.

There is among some of the judges a phenomenon that psychologists might call "burnout" or psychological fatigue. It is not "burnout" because otherwise the judges would have sanctioned all defendants more severely than they have in the past. The data do not support that hypothesis. Instead, what seems to be occurring is what we might call the "creeping crud" hypothesis. As one young judge asked: "What do you want us to do with a guy who steals a car, gets convicted, gets out and does the same thing over and over again?" The question by the young judge is revealing as he sees the same faces over and over again in his court, where individual faces eventually become a blur. There develops a cynicism that there is little the criminal justice system can do to control what appears to be a "creeping crud" other than to imprison

them. As another judge commented, if a native would promise to return to the reservation, he would not sentence him to jail!

The judges in Alaska apparently believe that crime is inevitable and whites who break the law are punished accordingly. But blacks and natives, particularly if their record of employment is spotty, are viewed differently, and the sentencing powers of the court are employed as instruments to rid the urban areas (primarily Anchorage, Fairbanks, and Juneau) of the underclass by exporting them out of view onto reservations, and if that is not appropriate, then to jails and prisons within the limits of the law. We are not suggesting an overly simplified social control function of the courts. It is much more complex. It has to do with greed, the accumulation of private property, and the exploitation of the magnificent resources of Alaska. In the more informal discussions with individual judges, they speak of the old days (meaning just a few years ago) when the grand beauty of Alaska was all theirs. They complain that natives, who rely on subsistence economy, are now over-hunting and fishing, and the cities are over-populated. The judges who say these things do not see that what they complain about is the consequence of how capitalism rapidly changes the relations of men, and the iron law, "the worker becomes all the poorer the more wealth he produces" (Marx, 1974). The successive development of industries, initially fishing, then lumbering and finally petroleum, led to the recruitment of thousands of laborers, including natives, but each

of the industries is necessarily seasonal or temporal, as in the case of the petroleum project which has a completion date, and casts aside the laborers as so much surplus. Many laborers leave Alaska to seek work, but some elect to remain. In the case of Natives, Alaska is the homeland, but new needs have been created, and the inability to satisfy the newly acquired needs impoverishes them. Their migration to the city to seek work reflects the changing social relations, but their presence is viewed as polluting the white man's city. It is in this context that we begin to understand the orientation of judges in determining sentences based upon race.

Relevant and Irrelevant Factors in Sentencing

As we have uncovered in our review of the literature, the factor of race is found to have strong independent effects on sentencing in some studies, but in others, it operates in subtle ways because of its high correlation with other variables, such as prior record, employment status, and even offense. We need to examine six additional studies on sentencing, three of which found race to have no significant independent effects when other legal and non-legal variables are introduced in the analysis, and three recent studies (Unnever, et. al., 1980; Lizotte, 1978; Box and Hale, 1982) that found gross discrimination on the basis of race and unemployment.

We describe first Unnever et. al. (1980) and Lizotte (1978) and then the three studies that found no racial effects. The Box

and Hale study (1982) will be examined last, not only because it is the most recent study conducted on the subject matter, but because surprisingly as it may seem, it is the only theoretically oriented study on the effects of race on sentencing.

Unnever et. al (1980) examined 229 pre-sentence reports from an unidentified six-county judicial district in Florida that served both a central urban area and rural community. The examination of pre-sentence reports means that the subjects of study have already been convicted. The investigators are interested in studying two outcomes - probation or incarceration. In general, the investigators found race to be a significant factor in receiving a jail sentence. In addition, age, employment status, and prior arrest record are also significant factors:

1. When controlling for important legal and other non-legal variables, race has a direct independent effect on outcome. Whites have an 18 percent greater chance of receiving probation than blacks when all other things are equal.
2. The findings suggest that race bias enters the criminal justice process early and is passed on in the form of sentencing recommendations in the pre-sentence report.

Lizotte (1978) studied 816 criminal cases processed by the Chicago trial courts in 1971. He examined both legal and non-legal

factors and found gross inequality in sentencing due to race and occupation. As revealed in the other studies reviewed here, sentencing disparity was found to be associated with the fact that blacks are less likely to make bail, less likely to retain counsel who can successfully negotiate a sentence, and outright biases in sentencing.

Clarke and Koch (1976) carefully review selected studies on sentencing that include some of the studies reviewed here. They note, as we have noted, the contradictory findings on the effects of both socio-economic status and race on severity of sentences and they examine these effects on the probability of getting convicted and of receiving an active prison sentence. The study site was Mecklenburg County, North Carolina, that contains the city of Charlotte. They limit their study to those arrested for burglary, excluding car thefts. The sample totalled 798 defendants:

1. Of the 798 defendants, 363 were convicted, 40 percent of whom received prison sentences.
2. Bail status and attorney representation, both factors that are highly correlated with income, have a strong association with prison outcome; that is, the lower the income the greater the probability of receiving a prison sentence.
3. Non-residential burglaries is associated with the likelihood of receiving a prison sentence.

4. Those with prior arrests were twice as likely to receive a prison term compared to those with no priors.

5. Both race and income have a substantial first order relationship to whether a person goes to prison, but the effect of age, race, and employment status disappear in their analysis to determine which variables are the most important in receiving a prison sentence. Put differently, the investigators found offense (the type of burglary), income (which is related to bail status and retention of a private attorney), and prior arrest record, are of major importance.

Lotz and Hewitt (1976) base their study on a random sample of 504 individuals convicted of a felony in 1973 in King County, Washington, probably the city of Seattle and its surrounding area. The data for analysis were obtained from the prosecutor's office and included pre-sentence reports. The sentencing outcomes were "deferred," "suspended," "jailed," and "imprisoned":

1. Race and occupation have little effect on sentencing and what effect they do have is indirect.
2. Aside from gender, the extra-legal variables most strongly related to sentencing outcome are

work history and economic dependency.

Just about all of the studies reviewed here have shown prior offense record to be an important variable. Farrell and Swigert (1978) in their review of the literature also note the importance of that factor and proceed to develop a more sophisticated formulation of prior record than simply looking at it dichotomously -- that is, prior vs. no prior. They do this by attaching numerical values to prior convictions based on the theoretically possible maximum sentence for a conviction. For example, a robbery might carry a maximum sentence of 20 years although in reality the person may serve a term less than that. In this way, they derived scores that ranged from zero for a person with no prior convictions to a score of 219.25 for a person with multiple convictions. The investigators do not tell us the source of their data other than to indicate that "the court clinic from which the records were obtained is charged with the evaluation of all persons arrested for homicide" (*ibid.*, 440). Since these same authors published a study of homicides that was reviewed earlier, the location appears to be Boston, Massachusetts. Their study findings are summarized below:

1. Males and older defendants are more likely to have severe conviction records.
2. Occupational prestige also influences the development of a prior offense record; that is,

defendants of lower status receive more severe sanctions even when prior record is taken into account.

3. While race (blacks) was found to have no independent effect on either prior record or disposition, race operates in the legal process through its association with occupational prestige. Put differently, blacks tend to have lower occupational prestige and thus to have acquired more extensive prior convictions and to receive more severe dispositions.
4. Prior record is associated with the type of counsel retained, bail status, and the mode of adjudication (jury or no jury trial).
 - a. Defendants with resources to retain private counsel receive less severe sentences.
 - b. Defendants jailed before trial are more often convicted than those released on bail or on their own recognizance.
 - c. More than 90 percent of homicide cases involve the negotiation of both a plea and/or sentence bargaining, resulting in a lighter sentence. The ability to negotiate a lighter sentence is in turn related to having access to a private attorney,

which in turn is related to occupational prestige, race, and a prior record.

We stated earlier that the study by Box and Hale (1982) is the only theoretically oriented study on race and sentencing. The study is also superior to all of the studies that have been conducted on the subject matter because they take into account the fact that sentencing patterns and, therefore incarceration rates, vary over time. As Christianson and Dehais (1980) have shown, more people are locked-up in prison today than they were five years ago. But 15 years ago, the incarceration rate in the United States was in the process of decline. This is not to say that the studies that we have reviewed are not of value. They are, as the findings have important policy implications. But the studies are faulty as they do not take into account the changing patterns of incarceration, the changing volume of prisoners and, most importantly, they do not elevate their empirical generalizations to the level of theory -- that is, to explain why more people are being sentenced to prison and especially why blacks make up the overwhelming majority of the penal population. Box and Hale (1982) make a preliminary effort to address these problems.

Their study site is England and Wales where blacks, especially young blacks, have been receiving severe sentences. The data they examine are for the years 1949 through 1979, including

receptions into prison, the average daily prison population, unemployment rates for each of the years, the number of people in the general population, the number found guilty of indictable offenses, and the crime rate (or the indictable offenses recorded by the police). The study by Box and Hale is similar in many ways to the study by William Nagel (1977) which we observed was marred by certain methodological weaknesses. But it is superior to Nagel's study as Box and Hale study a 30 year period, as contrasted to Nagel's study that was limited to one year. Moreover, Box and Hale employ statistical procedures that are methodologically rigorous.

As we will discuss in greater detail in another section of this Report, the condition of the lowest stratum in the labor force, operationally measured by the rate of unemployment, is the single most important indicator of incarceration rates. Box and Hale report the following findings:

1. After controlling for other relevant factors, the unemployment rate is significantly correlated with the rate of incarceration.
2. Males are more likely to experience unemployment, being four times as large as the female population.
3. The rate of unemployment among young males is related to the incarceration rate.

4. Examining indictable offenses that have fluctuated over the study period, (that is, the common sense notion that more violent crimes result in higher incarceration rates), Box and Hale found that fluctuations in the crime rate and violent crime rates do ^{NOT} alter the fundamental relations between unemployment and incarceration.

5. Irrespective of crime rate and the nature of crimes, the judiciary has been increasing the rate of imprisonment. For example, from 1970 to 1979, the rate of imprisonment increased 62 percent for theft, 40 percent for burglary, 25 percent for sexual offenses, and 17 percent for robbery.

Box and Hale's theoretical discussion focuses on the class position of judges, their role in the face of unprecedented levels of unemployment, particularly among young blacks, in disciplining and regulating what they perceived to be an exaggerated danger, given the "law and order" climate promoted by Thatcherism. Young blacks are especially vulnerable to the moral panic that grips England today. This theoretical discussion will be developed more fully in the second half of this Report.

III RACISM AND IMPRISONMENT: YOUTH AND WOMEN

An equally large number of empirical studies have been conducted on juveniles, examining sentencing severity and legal and non-legal factors that bear upon outcomes at the several decision points in the juvenile justice process. The findings on race and unfavorable outcome are also contradictory, but less so than the study findings on adults. Rather than a systematic review, because the findings generally tend to support the findings on adults, we will group the studies initially by those published during the period 1971-75 and ^{for} the period 1977-80 we will re-combine those that found race to be a significant variable and those that report race to be essentially irrelevant.

For the first group of studies published during the early 1970s, we will describe each of the studies chronologically. Scarpitti and Stephenson (1971) examined both legal and non-legal factors that entered into an unidentified Eastern juvenile court's dispositions of 1,210 delinquents into four outcomes with probation being the least restrictive and imprisonment in a youth institution the most restrictive. While psychological and other data on personality traits were collected and analyzed, for our purposes we only need to note that boys who received the severest sentence (imprisonment) were blacks, those in the lowest stratum of socio-economic status, and those who terminated their education before high school graduation. The second study also published in 1971 (Arnold) specifically examined race relative to other factors with respect to juvenile court disposition. Arnold states the study site was in the South, but not the deep South. The findings indicate that race influenced

being brought to court and being committed to a youth prison. Thornberry (1973) examined youth cohort data from arrest to disposition in Philadelphia. He found blacks and subjects of low socio-economic status to receive more severe dispositions than whites, irrespective of other legal and non-legal variables. Thomas and Sieverdes (1975), in a study of a sample of juvenile court cases from an unidentified southeastern city, found the instant offense to be the most powerful predictor of outcome when combined with race, low SES background, broken home, a codefendant, and ages between 16 to 17.

In sum, all of the studies published in the early 1970s found race to be either directly or indirectly a predictor of severity of sentences, young blacks typically being sentenced to the most restrictive alternative the prison.

Cohen and Kluegel (1978, 1979) first published a study of juvenile court disposition in two cities, Denver and Memphis, and then a study of detention decisions in the same two cities. Cohen and Kluegel found no racial bias in either disposition or detention practices. During the same period, 1977-80, Thomas and Cage (1977) in a study of an unidentified southeastern metropolitan area, Thornberry (1979), in a reanalysis of the study he published in 1973, and Carter and McClelland in a sample drawn from an unidentified southeastern city, all found race (blacks) to be a significant factor in both convictions and sentencing severity.

As Table 1 shows, over 50 percent of the resident population of women in prison and jails are black. From other sources (U.S. Department of Justice, 1980; U.S. Department of Justice, 1979), black women and

other minority women represent well over 60 percent of those incarcerated in penal facilities. Table 1 also shows that in some states over 60 percent of the prisoners are black. Since women in prison have not received the systematic inquiry that male prisoners have, we are not in a position to identify factors associated with the high proportion of blacks incarcerated in the nation's prisons and jails. Foley and Rasche (1979) report that black women, compared to white women offenders, serve significantly longer terms in prison for comparable offenses and are less likely to be released on parole. Spencer and Berecochea (1979) similarly report the same findings in their study of California prisoners. They report further that black women are more likely to be returned to prison for parole violations and to serve longer terms than white women for comparable violations.

The studies that have been conducted, mostly surveys, show that black women are 64 percent of all women held for crimes such as homicide and aggravated assault (U.S. Department of Justice, 1977); survey studies of North Carolina and Florida prisons also found that black women are more likely to be confined for violent crimes such as homicide and robbery, while white women are more often sentenced to prison for property offenses (French, 1977; Glick and Neto, 1977). These survey findings would support the interpretation that of those women incarcerated, the majority are black women, as they have been convicted of offenses that call for longer sentences. A couple of studies cited above have shown that controlling for offense, black women serve longer sentences. We were not able to identify studies focusing on the point of sentencing--that is, given

Table 1

Female Prisoners in State and Local Facilities, by Race/Ethnicity, in
14 Selected States, 1975 (in percent)

State	Black	White	Hispanic	Indian	Other	No Information	N
California	42.6	37.0	15.7	2.7	1.2	.8	2,001
New York	61.8	22.8	10.2	.9	1.1	1.1	861
Texas	46.6	37.4	13.9	.8	.0	1.2	983
Illinois	66.0	27.7	.0	1.9	3.1	1.3	159
Michigan	63.6	29.0	.9	2.8	1.9	.9	107
Florida	60.0	33.2	1.2	4.8	.9	.0	816
Massachusetts	45.5	44.4	4.4	4.4	1.1	.0	90
Indiana	49.2	42.2	2.3	2.3	3.9	.0	128
North Carolina	62.9	32.1	1.6	3.0	.2	.2	439
Georgia	53.5	39.7	2.0	4.8	.0	.0	458
Minnesota	17.7	63.2	1.5	14.7	.0	3.0	68
Washington	26.3	63.6	.0	8.2	1.8	.0	217
Colorado	37.3	30.7	12.0	17.3	2.7	.0	75
Nebraska	32.8	50.0	1.6	15.6	.0	.0	64
Total	50.2	35.7	9.1	3.2	1.2	.7	6,466

Note: Based on a random sample of females in prisons and jails in these states.

Source: Sheldon, 1982:348

the range of sentencing alternatives, whether black women are more likely to be sentenced more severely for the same offense as compared to white women.

Summary

The significance of race from arrest to disposition in both juvenile and adult criminal justice systems is overwhelmingly supported by studies published in the 1970s and 1980s. With a few exceptions, the empirical literature confirms that institutionalized racism permeates the criminal justice system in every region of the United States, in both urban and rural settings. Though researchers have neglected the impact of racism on female offenders, we have little doubt that future research will confirm what we already know concerning adult men and youth. Many studies show that there is a complex interrelationship between race and class, that socio-economic status (measured in various ways) is related along with race either directly or indirectly to the severity of punishment. Given the disproportionate concentration of minorities in the poorest and most exploited sectors of the working class, we would expect to find this overlap of class and race discrimination.

As we have mentioned, all of the studies that we have reviewed, with the exception of Box and Hale (1982), are ahistorical and atheoretical. They are primarily descriptive and do not attempt to elevate their findings to a higher level of theoretical analysis. The prison data clearly suggest that blacks and other minorities are disproportionately imprisoned and that the situation is getting increasingly worse. The scholarly literature on race and sentencing clearly indicates a pattern of institutionalized

racism and class discrimination. In the following section of this Report, we will attempt to put these findings in an analytical context. To do this, we will draw upon a body of theoretical literature, notably the historical perspective of Georg Rusche, to explain the political-economic roots of racism in the penal system.

IV. RACISM AND THE PENAL SYSTEM; AN ANALYSIS

The Prison Has Always Been an Instrument of Class Justice

Before addressing the dynamics of racism in the current penal system, it is useful to put the prison in a historical perspective. The prison has always been an instrument of class justice, though its forms of penal discipline have varied considerably over time. The early "houses of correction" in mercantile Europe and the massive "penitentiaries" of nineteenth-century industrial capitalism stood at the center of the process of capitalist development and were direct, unmediated instruments of economic and political power (Platt and Takagi, 1980). Prior to the twentieth century, the prison played a decisive role in establishing the economic, political and ideological supremacy of the capitalist mode of production. Prisons were generally places of forced labor, often directly organized and managed by business interests. Whether one follows the theoretical insights of Georg Rusche (1980) or Michel Foucault (1977), it is generally agreed that the "penitentiary" directly benefited the most powerful economic and political interests of capitalist society.

With the development of monopoly capitalism, however, important changes took place in both the organization and functions of the prison. The prison develops a relatively autonomous character and appears to

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exist above and apart from the direct interests of any particular class, thus representing the general interests of society. This mystification is supported by the fact that the prison is now administered by seemingly neutral and independent professionals. With the elaboration of the state and growth of new modes of regulation and control (police, education, welfare, etc.), extraordinary reliance on the penal system as an instrument of power declines; and with the growth of a worldwide reserve army of labor and the organization of production, marketing and distribution on a global scale, the economic exploitation of convict labor becomes both unnecessary and inefficient. Thus, the twentieth century prison is almost uniformly characterized by economic obsolescence, architectural decay, severe overcrowding (occasionally alleviated by the demand for military manpower), and chronic unemployment (notwithstanding the overassignment of prisoners to prison maintenance and make-work projects or the designation of convicts as psychologically disturbed "patients").

Ironically, it is precisely when the prison is apparently constituted on behalf of the whole society in the "war against crime" that it becomes the almost exclusive domain of the "wretched of the earth." For the last hundred years, immigrants, foreign-born persons, the unemployed and uneducated, and racial and national minorities have constituted the overwhelming majority of the penal population (Cahalan, 1979). How is it that the penal system appears to be constituted for the whole of society, yet only working class "criminals" find their way into its cells? First, the concentration and deployment of the police in the most impoverished communities generate a higher rate of arrest, and therefore imprisonment,

for the working and unemployed poor (Center for Research on Criminal Justice, 1977). Second, most business and corporate crime is either handled as a civil matter or, when rarely subjected to criminal prosecution, punished by fines rather than imprisonment (Sutherland, 1949). Third, the leading functionaries in the criminal justice system (judges, prosecutors, wardens, etc.) occupy positions of middle-class privilege and, as a result of both socialization and economic self-interest, generally express punitive attitudes to working class crime (Miliband, 1969; Box and Hale, 1982). Finally, the legal definition of crime in capitalist society is inherently and structurally class biased, thus guaranteeing the routine exemption of selective social harms (rent gouging, price-fixing, false advertising, tax-dodging, etc.) from penal sanction (Schwendinger & Schwendinger, 1970).

Given the above perspective, then, it is not surprising that racial and national minorities today occupy a central place in the penal system. Minorities are particularly vulnerable to imprisonment because they constitute such a large part of the unemployed poor or reserve army of labor. Minorities who are able to climb into the more secure sectors of the working class or middle class, such as the Japanese in California, are much less vulnerable to arrest and imprisonment. But for Blacks, Hispanics and Native Americans, the unemployment line often leads to a prison cell.

Imprisonment is Related to Economic Conditions, especially unemployment

The dramatic increase in the prison population in recent years cannot be explained by reference to fluctuations in the crime rate. In fact,

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the crime rate, though high and serious, has remained quite stable during the last decade (Platt, 1978; U.S. Department of Justice, 1981b). Several studies, however, suggest that punishment generally increases in severity in times of economic crisis and high unemployment, independent of any changes in the level of criminal behavior. The most definitive study on the effects of unemployment was conducted by Brenner (1976). He studied the long term effects of unemployment at the macroscopic level, examining the lag effects over a thirty year period when the unemployment rate increases a mere one percent and is sustained for a period of six years. Put differently, national unemployment rates also vary over time. Brenner is interested in examining the effects of unemployment, let us say, from 6.0 percent to 7.0 percent where the increase of one percent is sustained for a period of six years. He found that when unemployment is chronic, it is related not only to increases in penal commitments, but also to a whole ensemble of human problems, specifically, increases in cardiovascular diseases, cirrhosis of the liver (alcoholism), mental hospital commitments, suicides, and homicides. That blacks suffer all of these human problems at very high rates is a matter of record.

Jankovic (1977), Greenberg (1977), and Yeager (1979) all studied the effects of unemployment over time on incarceration rates. Their findings are consistent with the findings reported by Box and Hale (1982) for England, and by Nagel (1977) for the United States. Jankovic (1977) studied unemployment and incarceration rates for the period 1926 to 1974; Yeager (1979) studied the period 1961 to 1977; and Greenberg (1977) studied

the period 1945 to 1960 for Canada. All three studies showed when unemployment rates go down, imprisonment rates go down, so also do the numbers confined in a prison. And the obverse is true when the unemployment rates go up.

It is clear that the relationship between the prison and the labor market is mediated by a variety of intervening forces -- welfare, education, immigration, etc. -- and that it is reductionist to view the prison as simply a substitute for unemployment insurance or welfare. Nevertheless, there is compelling evidence that when unemployment is high and the standard of living for the working class is under attack, then imprisonment increases and prisons tend to be overcrowded and more punitive (Platt and Takagi, 1980; 1-3; Rusche, 1980). Under monopoly capitalism, the prison system is almost exclusively concerned with regulating the reserve army of labor, of which racial and national minorities comprise such a high proportion.

As economic conditions in the United States have deteriorated in recent years, there has been a corresponding increase in the penal population and in the severity of penal discipline. The roots of this current penal crisis can be traced to the beginning of the twentieth century when the prison was no longer used as an instrument of productive labor. But this long-term crisis, until the 1980s, was diverted, concealed and postponed in various ways. Military mobilizations (World War I, World War II, Korea and Vietnam) reduced the prison population from time to time, recruiting potential prisoners into the armed forces and releasing prisoners early into a depleted labor force. After World War II,

the expansion and growth of the economy kept unemployment in check. Moreover, the relative economic prosperity of the 1950s and early 1960s generated a large tax base which enabled the government to develop social programs, expand the public sector and experiment with community-based corrections and crime prevention.

But the economic and political conditions of the United States are very different in the 1980s. It is now nine years since the end of the Vietnam War and so far military mobilization has not been used to artificially lower the rate of unemployment. With over ten million people officially unemployed, the standard of living of the working class is under severe attack. Unlike the period following World War II, the U.S. no longer occupies a position of unchallenged economic supremacy in the world. The economic crisis in the United States has to be understood in the context of a crisis in the global capitalist economy (Dixon, 1982; Frank 1980, 1982; Wallerstein, 1982). This crisis is rooted in a crisis of capitalist accumulation (specifically, overproduction), in inter-capitalist rivalries, and in the subsequent imposition of austerity policies and demise of Keynesian liberalism. In the United States, the burden of stagnation, inflation and declining productivity is being placed on the backs of the working class in the form of drastic cuts in social programs, deregulation of business, increased subsidies for the giant corporations (transnational, multinational and national) and the military-industrial complex, and the gutting of regulatory agencies. In sum, the systematic destruction of liberal policies associated with the New Deal and the relative prosperity of the 1950s.

Under Reagan (but also in most of the core capitalist nations), the proposed solution to the current economic crisis entails a systematic economic, political and ideological attack on the material gains and hard-won rights which the working class has won in the last fifty years. The burden of this attack falls hardest on those least able to resist -- racial and national minorities, women, the elderly and youth. We are witnessing a mobilization of conservative economic and political power, a "reactionary counteroffensive," according to Andre Gunder Frank (1980, 176), which, "like the growth and spread of fascism during the Great Depression in the 1930s, has its roots and raison d'etre in the deepening economic, social, political and ideological crisis of the world capitalist economy,"

Minorities are Special Targets in Current Crisis

In the previous section, we discussed how imprisonment is related to unemployment and how the deterioration in penal conditions reflect a more general deterioration in the economic conditions of the working class. While we believe that there is a structural relationship between the dynamics of the labor market and rates and conditions of imprisonment, it is also important to understand the role of politics and ideology. The prison system is not simply responding to the economic crisis. The increase in the penal population and in the severity of penal discipline are very much the result of an active and purposeful political campaign to lengthen prison sentences, to destroy social service alternatives to prison, to widen the net of criminalization, and to maximize the severity of punishment.

The current penal crisis is clearly related to the imposition of longer prison sentences; legislative restrictions on judicial discretion to substitute probation for imprisonment; the abolition in many states of indeterminate sentencing (under which prison authorities have the option to release prisoners before their sentences are completed); the legislation of new categories of criminal behavior; and political pressure on the police to increase their rate of arrests and on the judiciary to increase their rate of convictions (Platt and Takagi, 1980a; U.S. Department of Justice, 1981).

This concerted "law and order" campaign is not simply a response to public concerns about "street" crime nor the result of successful lobbying by conservative interest groups (for example, The Moral Majority). Repressive policies of "law and order", which not too long ago appeared to be monopolized by right-wing political organizations, have rapidly become the orthodox wisdom of the White House, Congress, state legislatures, and influential sectors of the middle class. Thus, "Reaganism" is in Marlene Dixon's words (1981:3), a "very deliberate policy of the conservative right-wing minority of the ruling class," necessitated by the economic policies of the transnational and national corporations, facilitated by the enthusiastic cooperation of state functionaries, and actively supported by conservative, middle-class political organizations.

At the heart of this "reactionary counteroffensive" is the repressive targeting and scapegoating of racial and national minorities. We see this in (1) economic policies which increase the misery and despair of minority communities; (2) the attack on affirmative action and civil rights; (3) the government's covert complicity with and benign neglect

of right-wing racist organizations like the Ku Klux Klan and neo-Nazis; (4) the "unshackling" of the FBI and CIA; (5) the revival of political witchhunting and proposed restrictions on labor and progressive political organizations; and (6) increasing arrests and imprisonment of minorities.

Racism in Penal System Must be Addressed in Larger Context

The evidence clearly indicates that, with respect to the penal system in the 1980s, it is not business as usual. There is an important, qualitative shift taking place--a significant growth in the penal population, a significant deterioration in penal conditions, a significant growth in the proportion of racial and national minorities in prison, and a significant increase in "law and order" policies. These developments suggest that we are only at the beginning stages of the penal crisis.

It is not by accident that minorities are bearing the brunt of this crisis. It is minorities who are hardest hit by both austerity policies and state repression. Economically, they are the first to feel the impact of high unemployment, public sector cutbacks, inflation and crime. Politically, they are currently targeted for repression and scapegoating by the growing right-wing movement (from the White House to the Moral Majority), partly in order to make minorities literally pay their unfair share of the economic crisis, and partly in order to promote an ideology which attributes the responsibility for current global capitalist crisis to its most exploited and persecuted victims.

Given the above analysis and framework, it is clear that the long-term solutions to racism in the penal system must be located in profound changes in the political economic structure of our society. In the

concluding section, we will address this issue.

V. POLICY RECOMMENDATIONS

In this final section of our Report, we propose a variety of policy recommendations which flow from our assessment and analysis of racism and imprisonment in the United States. Some of these proposals are short-term and could, with government support, be implemented immediately. Others are long-term proposals and structural reforms which will require fundamental changes in the political economy. Though we do not address the implementation of our proposals, it should be noted that, given the current climate in the White House and Congress, we think that even the most modest reforms will meet political resistance; that it will be necessary to mobilize and organize popular support if we are to bring social justice to the criminal justice system.

(1) BRING EQUAL JUSTICE TO BAIL SYSTEM

Our review of the literature reveals that there is systematic discrimination against the poor and minorities who are denied equal access to legal resources, i.e., bail, release on one's own recognizance, private attorney, and a trial by jury. The inability to post bail and not having access to legal resources produce more serious convictions and sentencing outcomes (Swigert and Farrell, 1976; Bernstein, et. al., 1977).

- a. The setting of bail is assumed to be related to the type of offense charged and to guarantee the defendant's appearance in court. In reality, the bail system and the system of "O.R." operate to benefit the privileged and discriminates

against the poor. Legislative and constitutional changes are required in order to make the bail system more equitable, namely, on the basis of an individual's income.

b. Bernstein, et. al. (1977) report that judges and prosecutors employ bail, by setting a high amount, to sanction the poor and black. About 40 percent of those detained in jail unable to post bond are ultimately dismissed by the court. The setting of high bail performs the same function for the poor as does the concept of preventive detention. As Pfohl (1980) reports, "dangerousness" and "violence" cannot be predicted even by the best psychiatrists, let alone by judges and paroling authorities. Both of these procedures are frequently employed by court personnel on the basis of racist and class stereotypes (Swigert and Farrell, 1976). Similar to the "tissue committee" in hospitals that monitors unnecessary or over-surgery, it is recommended that the state judiciary immediately establish in each local jurisdiction a representative committee to monitor judicial excesses in the area of bail, preventive detention, the denial of private counsel, and so on.

The adoption of these recommendations will immediately impact the congested conditions of local jails whereby the construction of larger local facilities will not be necessary.

(2) ABOLISH MANDATORY SENTENCES

Many offenses, especially those defined as violent crimes, presently call for mandatory prison sentences. Violence is a relative term used in

selective ways to create public alarm. The reality of violence, when measured in terms of mangled bodies and death, is most serious for the victims of corporate fraud and deception, such as unsafe products and dangerous commodities, e.g., improperly tested drugs that are pushed on the public. Unsafe working conditions and chemical pollution also produce their share of injuries and death. Thus, crimes such as homicides that engender strong societal reaction, are punished with the longest terms in prison, but corporate officials are very rarely criminally indicted for their killings.

All mandatory sentences should be abolished. As our review of the literature shows, incarceration rates are not statistically correlated to the rise in violent crime rates; that is, the present high incarceration rates are not responses to a shift towards more serious, violent crimes. It is this misconception of crime and punishment and the prevailing myth that have stampeded both criminal justice officials and legislators to call for harsher and mandatory penal sentences.

(3) RESTORE INDETERMINATE SENTENCES

Offense and prior record are the major determinants of a prison sentence, and in some states, the basic sentence is enhanced by the circumstances of the offense, such as the use of a weapon, injury to victim, and so on. Legislative guidelines are specific in most instances, but there are loopholes that permit the introduction of non-legal factors, such as the defendant's employment record, age, race, socio-economic status, and clinical reports--such as a psychiatric evaluation, probation report, and similar

evaluations of a person's moral character. There is no science in sentencing or paroling. Instead, there is a tendency to make moral judgments of the poor and minorities. If specific legislation can be enacted to control these tendencies, the indeterminate sentence and the concept of a paroling authority are far superior mechanisms than the current trend toward determinate and mandatory sentences.

a. Legislation should be enacted to permit paroling authorities to release an offender immediately from prison either on parole or to a community-based facility. This authority is needed as a corrective to practices by some courts that unnecessarily sentence offenders to prison.

b. Studies have shown that judges rely on non-legal factors in selecting a sentence from among the range of alternatives. The poor and blacks tend to receive the more severe sentence. Given this reality, legislation is needed to set precise lower and upper limits for specific offenses, including misdemeanors. Punishment guidelines that specify "up to a \$500 fine or six months in jail" result in the poor and blacks ending up in jail for the maximum term.

c. All indeterminate sentences should be fixed within a narrow range, that is, the indeterminate sentence should not have a broad range such as one year to life. The lower limit of an indeterminate sentence should always be at zero.

(4) COMBAT RACISM IN CRIMINAL JUSTICE PROFESSIONALS

The very large proportion of both black males and females in the

nation's penal facilities is accounted for by institutionalized racism, specifically the systematic discrimination against the poor and minorities at every step in the criminal justice process--concentration of police in the most oppressed communities, selective prosecution, inequitable use of bail and legal resources, punitive sentencing, etc. These discriminatory practices are even more aggravated during the current long-term economic crisis in which a right-wing "law and order" climate promotes the scapegoating of minorities. Judges and other criminal justice officials are currently under tremendous pressure to impose tougher sentences, to articulate and act upon racist stereotypes concerning the criminality of minorities.

a. Judges and other criminal justice officials need to be informed that crime rates and more specifically, violent crime rates, have no relationship to incarceration rates (Nagel, 1977; Thornberry, 1979; Box and Hale, 1982). A concerted effort to re-educate criminal justice officials is especially critical in states where blacks are disproportionately imprisoned compared to whites, namely, Wisconsin, Nebraska, Iowa, Massachusetts, etc.

b. It is recommended that National Institute of Justice funds be earmarked for the continuing re-education of criminal justice officials to address the specific processes of discrimination.

(5) PROSECUTE CORPORATE CRIME AND RACIST VIOLENCE

Crime is a very serious problem in minority communities,

Well over 41 million people are victimized annually by serious "street" crime. Blacks, especially those who are unemployed and poor, have the highest rates of criminal victimization (Platt, 1978). While this high level of crime is clearly linked to economic conditions, it is also a reflection of the demoralizing social relations and individualistic ideology that permeate capitalist society. Since most "street" crime is a form of "penny capitalism" that seeks to emulate the predatory practices of big business, we call for vigorous prosecution of corporate and government crime. This is not only a matter of equal justice. Such prosecution is necessary in order to demonstrate that crime does not pay. So long as corporate and government crimes go unpunished, we can not expect the selective punishment of working class crime to be an effective deterrent.

Similarly, we call for vigorous prosecution of illegal acts of racist violence and terrorism by such organizations as the Ku Klux Klan. The government's current policy can best be described as one of "benign neglect" or, as in the case of the Communist Workers Party in North Carolina, covert complicity. We cannot demand a reduction in crime within minority communities so long as such communities are victimized by unregulated business crime and by racist violence.

(6) INCREASE EMPLOYMENT TO LOWER INCARCERATION RATE

Since unemployment and incarceration rates are tightly linked together, a major solution to the burgeoning penal population is to ameliorate the conditions of unemployment. The appropriation of 2 billion dollars in federal assistance toward construction of state

penal facilities should be redirected toward providing needed material and social services for the unemployed. Historical evidence shows that nations that provided benefits for the unemployed during the Great Depression had a much lower penal population than nations that provided minimal benefits (Rusche, 1980).

From the findings on the relationship between unemployment and incarceration rates, it follows that blacks have historically suffered the ravages of unemployment, thereby accounting for their very large proportion in the prison population. Immediate and substantial material and social services need to be provided to the black community, including the redirection of a substantial portion of funds authorized under the Vocational Education Act toward an educational program for Black youth.

(7) RESTORE FUNDING FOR COMMUNITY ALTERNATIVES TO IMPRISONMENT

According to the U.S. Department of Justice, criminal justice expenditures in the U.S. in 1978 totalled over \$24 billion, representing an increase of 129 percent from 1971 to 1978. Until recently, there was an effort to use some of this money to provide community-based programs, such as half-way houses, social services and other resources. Though these programs had limited success and were not without problems, they nevertheless provide a more humane alternative to prison and also provide some minimum employment opportunities to local communities.

We know from an important study, conducted by Fredric Solomon and his colleagues in the 1960s, that community organization and political mobilization can be very successful in reducing black on black crime;

"as a result of the need for unity, people begin to know their neighbors and their neighbors' problems. A spirit of common concern pervades the community and serves to discourage crimes of violence" (Solomon et al., 1980: 34).

Consequently, we recommend the substantial allocation of criminal justice funds to local community organizations, which are representative and accountable, involved in crime-control programs and other related social services. Citizen patrols, block organizations, community-based half-way houses and other such social services should be supported.

(8) SUPPORT PRISONERS' HUMAN RIGHTS

We oppose inhuman conditions in the prisons. We call for an end to overcrowding, to antiquated facilities, and we call for protection against rape and all forms of sexual abuse. Prisoners should have the right to conjugal visits. Prisoners have a basic human right to work for a decent wage, to have an education, to be given proper nutrition and medical care, to be protected from physical and psychological abuse, and to practice constitutionally protected freedoms (speech, religion, etc.).

While the above basic rights can be won through the legislature and legal system, history teaches us that state officials and professional organizations have been either unwilling or unsuccessful in doing so. Therefore, we believe that the key to winning such rights lies in the political organization of prisoners. We support the right of prisoners to form and belong

to prisoner unions and political organizations.

Given the history of repressive practices against politically active prisoners (for example, George Jackson) and against prisoner unions, we also oppose arbitrary and unlawful practices (informers, provocateurs, lockups, beatings, etc.) by prison authorities.

In order to successfully oppose such practices, we must fight for the right of working class and progressive political organizations to freely support and cooperate with prisoners' organizations. This is currently restricted by mail censorship, literature censorship, and visiting restrictions.

Once these basic political rights have been achieved, it would then be possible to agitate for a variety of reforms, such as decent rehabilitation programs, job training, wages for work, grievance procedures, and political and religious freedom.

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Incarceration Rates: Blacker Than White

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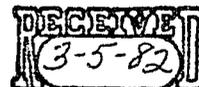
ACCOUNTING

By

L. Alex Swan, Ph.D., LL.B.
Professor and Chair
Department of Sociology
Texas Southern University
Houston, Texas 77004

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Criminal Justice. Program Office, 8121 Georgia Avenue, Suite 608,
Spring, Md. 20910 - (301) 565-9036



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Incarceration Rates: Blacker Than White

Introduction

For the most part, sociologists and criminologists have attempted to investigate, analyze, understand, and recommend solutions to the problem of crime and other social problems independent of an understanding of the nature and character of the social order, and the political-economic problems or setting which provide the social context out of which crime and other social problems emerge. The political and economic systems of the American Social Order are the means through which the physical and social necessities of life are produced and distributed, and are structured by class and race relations of power, control, and domination. Any behavior that threatens the maintenance of the social order in general, and the capitalist social order in particular is met with certain sanctions defined by and enforced on behalf of the capitalist ruling class. As long as the behavior, defined as criminal, is apparently confined to the neighborhoods of the oppressed and powerless, it is not considered an immediate threat to the moral fabric of the society. However, when it becomes evident that the behavior or activity might spread to the communities of the upper and middle-classes, the ruling class becomes concerned because it is from this group that the future leaders and maintainers of the status quo come. For the upper-and middle-classes the punitive consequences are minimized and the oppressed and powerless continue to experience differential application of law enforcement. Whether

the criminal act is symbolic or an actual threat to the ruling class, or to the climate for the maintenance of the social order, control to repress such activities are established and enforced.

It is the position of this paper that crime in America is a result of a political and economic set of arrangements that are grounded in the maximum utilization of persons for the purpose of making and increasing profits, wealth, and privilege of a capitalist ruling class who happen to be white. This situation is maintained by other complimenting arrangements that together constitute the nature and character of the American social order.

The American system is established and maintained by its legal, political, economic, educational and socio-cultural arrangements. These arrangements define the nature of the social order, and the policies and practices of these arrangements define its character. For many years, Black organizations struggled against the policies and practices that were established on the consideration of race for the purpose of political and economic domination and control by one racial group over another or other racial groups. There is claim to success in changing racist policies, but racist practices continue. For example, in 1976, The Council of Economic Advisors noted that an estimate of \$13 billion more would have been placed in the hands of blacks had there not been any racial discrimination in employment. Although these practices were established and legitimized initially by laws and reinforced by explicit acts, they have now become autonomous entities propelled by their own

internal dynamics.

We are all aware that there are ordinances, statutes, and laws against racial discrimination, nonetheless, the practice continues. Moreover, these racist practices, which were once supported and maintained by racist policies, adversely impact Blacks in racial and economic terms. The political and economic status of Blacks is determined by the arrangements of the social order and certain institutions are established, including the criminal justice system, to maintain control, dominate and subordinate them. Blacks are not only affected by racial policies and practices that control and dominate them, but economic and political policies and practices have the same affect. These policies and practices that are institutionalized in a racist-capitalist system breed a situation wherein political and economic domination gives rise to racial domination which in turn reinforces political and economic domination. It is within this political, economic and racial context of domination and control within the American social order that a proper or an adequate understanding of the presence of Blacks and the oppressed poor, who make up the population of prisons, can be achieved.

The subjugation, control, and exploitation of Blacks and their community have always been an integral part of the institutional infrastructure of the American social order. Within the context of control, the community has been made the target for administration of policemen and other public service agencies and sub-systems of the criminal justice system.

Labor and Prisons

A systematic and organized attempt to confine Blacks in

prisons came soon after 1863 when Blacks were assured, resulting from the Lincoln gesture, that they were free to leave the plantation under a forced labor system. Capitalism had created the need for free labor to which Blacks were subjected. The enactment of vagrancy laws continued the system of enslavement and forced cheap labor (Swan, 1981). In 1349 England enacted vagrancy laws, and "there is little question that these statutes were designed for one express purpose: to force laborers to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he could afford to pay" (Chambliss, 1964). "These laws were a legislative innovation which reflected the socially perceived necessity of providing an abundance of cheap labor to landowners during a period when serfdom was breaking down and when the pool of available labor was depleted" (Chambliss, 1964; Rusche and Kirchheimer, 1939).

Vagrancy statutes adopted in America to control the labor of recently freed slaves provided for the arrest of persons with no apparent means of support. The landowners were assured of cheap labor after the former slaves were arrested, imprisoned, and then hired out to plantation owners.

"The extension of vagrancy laws to criminal behavior did not mean an end to the problem of controlling the labor force. Capitalist production required the existence of a mass of workers who had to work for a wage in order to survive. The creation of a work force under the direction of capitalist entrepreneurs did not occur by a "contract of free choice" between a capitalist and a worker, but was the culmination of a long historical process whereby

the serfs were forcibly expelled from the land, denied their customary rights to work the lord's estate, and separated from any alternative means of survival

(Balkan, Berger, and Schmidt, 1980).

The political and economic systems of the American social order operate in such a way to create surplus labor and surplus population whose labor is not required in the regular economy, but needed in the prison system to supply several needs of the state.

Sentencing Disparity in America

Criminological investigations continue to support the racial and class bias of criminal justice in sentencing. It has been found, that "even when the seriousness of the offense is held constant, blacks are more likely than whites to receive a more serious disposition from the courts "(Quinney, 1975; Chiricos, Jackson, and Waldo, 1972; Scarpitti and Slephenson, 1971). Further, juveniles of the working-class were found to be less likely to receive probation and more likely to be institutionalized than juvenile delinquents from middle and upper classes. The same is true for adults. In spite of the offense, working-class, blacks and the poor, are more likely to be sentenced to prison, and receive more severe dispositions than upper and middle class who have a greater degree of political and economic power to evoke when they come in contact with the criminal justice system (Burns, 1971; and Blackburn, 1971).

The move in California and in several other states to restrict the discretion of judges in sentencing has resulted in

replacing the indeterminate sentencing practice with that of the determinate sentence. This move has been supported by racist conservatives, liberal functionaries, and by a large number of inmates for a variety of reasons, including uncertainty as to release, abusive use by prison officials, equitable sentencing for all, and the anxiety, frustration, bitterness and even violence that were associated with the practice of the indeterminate sentence. However, this reform in sentencing that was designed to regulate the discretion and choice of the sentencing judge where the range of sentences are so narrow that gross disparities are thought to be impossible has not checked the disparity in sentencing, and blacks, now more than ever before, make up a disproportionate number of those who are sentenced and imprisoned. However, investigations of reports on trends in incarceration in the United States since 1880 reveal that the rate of incarceration in federal, state, local and juvenile correctional institutions has steadily increased, and that in the nineteenth as well as twentieth century blacks, members of other oppressed racial groups, non-English speaking persons, and persons born abroad constituted a majority percentage of those incarcerated in the prisons of America. Over the years the rate of foreign born incarceration has declined, but the rate of blacks and Spanish-speaking inmates has steadily increased (Cahalan, 1979). Cahalan has concluded that:

Since 1880, the distribution of offenses as reported in government documents has shifted only slightly toward the "violent" offense categories, primarily because of increases in the percentage of robbery prisoners rather

than increases in the crimes of homicide, rape, or assault. Morals-related offenses have been redefined in some cases, but the overall percentage of the total has changed little. In recent years surveyed, correction has remained focused on economic crimes of individuals poor in resources - in contrast to the great volume of criminal legislation passed during this period (p. 37).

Cahalan further concludes that:

While economics crimes have remained paramount, there has been no relationship between the amount of economic loss incurred and frequency of representation in prison. In 1965, the crimes of embezzlement, forgery, and fraud - the property offenses committed largely by white collar workers - were least represented in correctional institutions, yet they involved an economic loss three times that incurred from robbery, burglary, auto theft, and larceny over \$50, combined. In 1975, robbery, the crime most represented in prisons, involved the least economic loss of any property offense (Wright, p. 28; UCR, pp. 3, 26; Cahalan, p. 38).

We can conclude that convictions of persons for robbery are not related to the actual economic loss, nor to the nature of its danger since robbery is represented in prison much more frequently than assault offenses. Rather, such convictions and ultimate incarcerations of persons for robbery are related to the definition of private property as an operative concept in the American social order, and the characteristics of those

who are charged and processed for crimes of robbery through the criminal justice system.

In a study by Conklin of all reported robberies in Boston in 1964 and 1967, it was found that only 5 percent involved a cut, stab or gunshot wound. The majority (75%) involved no injury at all. Only one homicide in 1964 and two in 1968 were found to be robbery related. Where resistance was minimal and where the robber carried a gun, injuries were less likely to occur (Swan, 1981; Conklin, 1972).

In 1974, FBI reports showed that 62 percent of those arrested for robbery were blacks. Robbery was the primary crime for which blacks were arrested, convicted and incarcerated. (UCR, 1975) "The rise in robbery commitments observed in the prison offense distribution parallels increases in the percentage of the total prison population occupied by blacks." (Cahalan, p. 39).

Prison Population

In 1970, 160,863 persons were reported to be incarcerated in state correctional facilities in America. Between 1970 and 1979, the number had increased to 277,772, an increase of 116,909, a 58 percent jump in nine years.

Blacks have consistently represented between 11 and 12 percent of the American population. While they accounted for about 22.6 million or 11.1 percent of the population in 1973, they accounted for 46.4 percent of the prison population

Table 1

U.S. State Prison Population by Race and Region - 1973

<u>Region</u>	<u>#</u>	<u>White</u>	<u>%</u>	<u>#</u>	<u>Black</u>	<u>%</u>
Northeast	10,246		5.7	14,785		8.3
North Central	18,110		10.1	16,701		9.3
South	33,562		18.8	43,933		24.6
West	20,400		11.4	7,669		4.3
TOTAL	<u>82,318</u>		<u>46.0</u>	<u>83,088</u>		<u>46.4</u>

SOURCE: U.S. Department of Justice, Census of Prisoners in State Correctional Facilities, 1973

(178,914). Whites represented 82,318, or 46 percent of the prison population while making up 79 percent of the national population. For both whites and Blacks the numbers and percentages were greatest in the southern region. However, percentage was greater for Blacks with 24 percent, than for whites with 18.8 percent. One can argue that this is the case because a greater number of Blacks live in the southern region than those who live in other regions. However, Blacks are greatly overrepresented among prison populations in every region of the United States, and this has been the case since the 1830's.

By 1979, the prison population had increased to 277,772. Of this number, Blacks made up 132,194, or 47.8 percent, a significant increase over the 1973 figures, and whites represented 44.2 percent, or 122,304. Again the southern region registered the highest number of Blacks (71,417) and white (54,805) incarcerated. Again the numbers for Blacks exceeded

Table 2

U.S. State Prison Population by Race and Region - 1979

Region	#	White	%	#	Black	%
Northeast	16,054		5.8	21,667		7.8
North Central	30,674		11.1	29,199		10.5
South	54,805		19.8	71,417		25.8
West	20,771		7.5	9,911		3.6
TOTAL	122,304		44.2	132,194		47.8

SOURCE: National Institute of Correction Survey, 1979.

that of whites by 16,612. In 1973 as well as in 1979, the North Central and the Western regions showed fewer Blacks than whites incarcerated. In proportion to the respective populations in these regions however, Blacks were overrepresented in the prison population. In terms of real numbers and percentages the difference does not seem significant, especially when we argue that the whites and blacks that represent the prison population are, for the most part, of the working-class. However, what is interesting about the data is what it reveals when incarceration rates by region and race are computed. Data produced by the Center on Minorities and Criminal Justice show striking differences in incarceration rates when computed per 100,000 civilian population. It is shown that "for the entire United States, (1973) 46.3 per 100,000 whites were found to be in prison, whereas the figure for blacks was 368.0, or about eight times greater (Christianson & DeLais 1980). For 1979, 65.1

Table 3

Incarceration Rates in the United States by Race and Region

	1973			1979		
	Black	White	All Races	Black	White	All Races
Northeast	340.3	23.1	60.5	484.1	36.7	88.7
N. Central	365.3	35.1	64.9	580.4	59.5	108.5
South	367.0	66.6	131.5	558.1	100.5	194.9
West	452.5	65.0	86.1	497.5	61.6	106.5
U.S.	368.0	46.3	88.0	544.1	65.1	131.3

SOURCE: U.S. Bureau of the Census, 1976.
 U.S. Department of Justice, 1973.
 National Institute of Correction Survey, 1979.

per 100,000 whites were found to be in prison compared to the 544.1 for blacks, over eight times greater. In 1973, the Black incarcerated rate ranged from 340.3 in the Northeast to 452.5 in the West. By 1979, the range was 484.1 in the Northeast to 580.4 in the North Central. The national average was 368.0 in 1973, and 544.1 in 1979 per 100,000 blacks.

The percentage increased in the incarceration rates by race and region for 1973 through 1979 are shown in Table 4. It is obvious that the black rate rose by 47.9 percent white the white rate rose by 40.6 percent. The percentage increase for all races was 49.2. The North Central region registered the highest percentage with 58.9 for blacks, 69.5 for whites, and 67.2 for all races.

The West recorded the smallest percentage with 9.9 for blacks, 5.2 for whites and 23.7 for all races. A greater

Table 4

Percentage Increase in Incarceration Rates by
Race and Region, 1973-1979

	Black	White	All Races
Northeast	42.5	58.9	46.6
North Central	58.9	69.5	67.2
South	52.1	50.9	48.2
West	9.9	5.2	23.7
U.S.	47.9	40.6	49.2

percentage increase is shown for whites in North Central and Northeast, and a greater percentage increase is shown for blacks in the South and West.

When the change in disparity is examined between black and white incarceration rates, the North Central region again recorded the greatest increase with 190.7 persons per 100,000. The West recorded the smallest increase in disparity with 48.4. The difference between black and white incarceration rates from 1973 to 1977, increased by 157.3 persons per 100,000. This figure is an indication that the presence of blacks in prisons between 1973 and 1979 increased substantially.

Table 5

Change in Disparity Between Black and White
Incarceration Rates by Region 1973-1979

	1973	1979	Change in Disparity
Northeast	317.2	447.4	130.2
North Central	330.2	520.9	190.7
South	300.4	457.6	157.2
West	387.5	435.9	48.4
U.S.	321.7	479.0	157.3

The North Central region shows the highest increase in the change in disparity with 190.7, followed by the South. When the incarceration rates for blacks and whites are ranked by jurisdiction, the black incarceration rates for 1973 ranged from 825.3 in Iowa, to 39.9 in New Hampshire. For whites the range was from 110.8 in North Carolina to 13.5 in Connecticut. For 1979, the range for blacks was from 1341.8 in the State of Washington to 50.0 in North Dakota. Of the top thirteen

Table 6
Black and White Incarceration Rates Ranked By
Jurisdiction - 1973

	Black	White		Black	White
Iowa	825.3	40.0	New Jersey	365.8	25.4
Oregon	805.8	60.9	Maine	357.1	49.1
Utah	710.3	43.6	Virginia	346.8	54.3
Washington	701.2	65.3	Pennsylvania	342.2	20.9
Arizona	699.2	58.3	Kentucky	339.3	70.6
Nebraska	691.5	40.3	Missouri	339.0	41.1
Minnesota	653.9	28.0	New York	337.7	21.7
Maryland	553.1	42.3	Alaska	314.2	39.7
Wisconsin	543.6	29.2	S. Dakota	307.3	27.0
Colorado	543.6	61.1	Alabama	270.8	59.4
Nevada	525.9	106.9	Montana	250.6	34.8
Oklahoma	505.5	96.4	S. Carolina	250.3	77.7
Texas	505.4	65.1	Louisiana	236.7	40.7
Florida	485.1	69.1	Arkansas	235.5	58.3
Michigan	479.0	42.4	Illinois	226.4	24.7
N. Carolina	474.1	110.8*	W. Virginia	222.7	49.6
Wyoming	467.3	69.3	Tennessee	216.8	50.2
Kansas	458.0	47.1	Delaware	212.1	23.6
Georgia	442.2	88.8	Connecticut	206.4	13.5*
California	421.0	69.3	Idaho	187.8	51.9
New Mexico	414.2	65.3	Mississippi	153.4	52.3
Indiana	399.2	41.2	Vermont	131.4	41.6
Massachusetts	387.9	25.2	N. Dakota	120.3	22.4
Ohio	381.6	35.6	Hawaii	79.2	19.5
Rhode Island	378.9	31.9	New Hampshire	39.9	33.0
District of Columbia	366.9	41.6			

SOURCE: U.S. Department of Justice, Census of Prisoners in State Correctional Facilities, 1973.

Table 7
Black and White Incarceration Rates Ranked By
Jurisdiction - 1979

	Black	White		Black	White
Washington	1,341.8	94.7	Georgia	552.8	141.2
Oregon	1,270.0	118.2	Oklahoma	534.1	92.2
Nevada	1,173.7	191.7*	Wyoming	533.3	92.6
Iowa	1,157.1	60.8	Alaska	526.7	177.7
Arizona	1,112.1	71.2	Colorado	522.5	46.1
Idaho	1,079.8	93.5	Rhode Island	516.0	51.8
S. Dakota	1,000.0	62.1	S. Carolina	508.1	180.3
Utah	987.5	57.0	New York	500.7	35.8
Delaware	985.7	98.8	Massachusetts	476.0	28.4
Wisconsin	949.7	41.8	New Jersey	461.8	29.8
District of			Missouri	460.0	67.5
Columbia	900.4	103.9	Louisiana	457.0	70.8
Michigan	853.7	72.2	Pennsylvania	419.1	34.3
New Mexico	825.0	52.0	Indiana	409.6	71.3
Texas	752.8	89.7	California	405.6	42.6
Florida	739.0	138.1	Tennessee	403.8	90.5
Connecticut	717.4	55.5	Illinois	369.3	48.7
Nebraska	710.6	36.1	Kentucky	354.7	82.4
Ohio	697.6	68.5	Montana	333.1	83.9
W. Virginia	697.3	77.2	Arkansas	333.1	66.1
Minnesota	666.7	40.6	Hawaii	316.7	28.0*
Maryland	656.7	53.4	Mississippi	258.6	74.3
N. Carolina	642.0	158.5	Alabama	254.8	56.8
Kansas	634.4	67.8	New Hampshire	150.0	36.2
Virginia	618.5	79.1	N. Dakota	50.0	29.3
Maine	600.0	76.1			
Vermont	600.0	80.5			

jurisdictions (1973), very few are located in the South. This information reveals that the highest rate of black incarceration takes place in jurisdictions which have fewer blacks among their populations compared to jurisdictions with greater numbers of blacks in their populations. The same thing is true for the figures in 1979, very few of the top jurisdictions with the highest incarceration rates are located in the South. The white incarcerated rates for 1979 ranged from 191.7 for Nevada to 28.0 for Hawaii. Only two of the jurisdictions in 1973

(Hawaii 79.2, and New Hampshire 39.9) registered lower incarceration rates for blacks than the highest for whites (North Carolina 110.8). This means that the highest rate for whites was lower than the rates for blacks in 49 jurisdictions. It is evident that blacks are not overrepresented in one or two jurisdictions in the United States prison population, but that this situation is the case for all jurisdictions. Moreover, this problem of overrepresentation is evident in jurisdictions where there are relatively fewer blacks among the general population.

For both 1973 and 1979, all regions show striking differences between black and white incarceration rates. The disparity in 1973 ranged from a low in the South of 300.4 persons per 100,000 population to the West with 387.5. In 1979 the disparity ranged from a high of 520.9 for the North Central region to a low of 435.9 persons per 100,000 population in the West.

Table 8
Differences Between Black and White
Incarceration Rates by Region, 1973 and 1979

	1973	1979
Northeast	317.2	447.4
North Central	330.2	520.9
South	300.4	457.6
West	387.5	435.9
U.S.	321.7	479.0

Throughout the years from 1973 to 1979, there is evidence that prisons of every jurisdiction and region showed significant differences in the extent and rate at which blacks are imprisoned when compared to whites.

Table 9
Ratio of Black to White Incarceration
Rates of Region, 1973, 1979

	1973	1979
Northeast	14.7	13.2
North Central	10.4	9.8
South	5.5	5.8
West	7.0	8.1
U.S.	7.9	8.4

In Tables 10 and 11 the ratio of black to white incarceration rates by regions for 1973 and 1979 are presented. In the Northeast the black rate is 14.7 times higher than the white incarceration rate. In the South the black rate is only 5.5 times higher. In 1979, the rate for the Northeast is 13.2 times greater for blacks, and the South is 5.8 times greater for blacks than for whites. While the black incarceration rate was 7.9 times higher than the white incarceration rate in 1973, it was 8.4 times higher in 1979.

A more detailed examination and analysis of the data would reveal that variations in regions and jurisdictions relative to the differences between black and white incarceration rates are consistent and in a majority of cases substantial. When the jurisdictions were ranked by the ratio of black to

white incarceration rates for 1973 and 1979 (Tables 10 & 11) the black imprisonment rate for Minnesota was 23.4 times higher than the white rate and only 1.2 times higher in New Hampshire (1973). For 1979, Wisconsin imprisonment rate for blacks was 22.7 times higher than the white rate, and for North Dakota it was 1.7 times greater. In the majority of jurisdictions for 1973 and 1979, the black incarcerated rates were much

Table 10

Jurisdictions Ranked by the Ratio of Black to
White Incarceration Rates, 1973

Minnesota	23.4	Texas	7.8
Iowa	20.6	Maine	7.3
Wisconsin	18.6	Montana	7.2
Nebraska	17.2	Florida	7.0
Pennsylvania	16.4	Wyoming	6.7
Utah	16.3	Virginia	6.4
New York	15.6	New Mexico	6.3
Massachusetts	15.4	California	6.1
Connecticut	15.3	Louisiana	5.8
New Jersey	14.4	North Dakota	5.4
Oregon	13.2	Oklahoma	5.2
Maryland	13.1	Georgia	5.0
Arizona	12.0	Nevada	4.9
Rhode Island	11.9	Kentucky	4.8
South Dakota	11.4	Alabama	4.6
Michigan	11.3	West Virginia	4.5
Washington	10.7	Tennessee	4.3
Ohio	10.7	North Carolina	4.3
Kansas	9.7	Hawaii	4.1
Indiana	9.7	Arkansas	4.0
Illinois	9.2	Idaho	3.6
Delaware	9.0	South Carolina	3.2
Colorado	8.9	Vermont	2.2
Dist. of Columbia	8.8	Mississippi	2.9
Missouri	8.2	New Hampshire	1.2
Alaska	7.9		

Table 11

Jurisdictions Ranked by the Ratio of Black
to White Incarceration Rates, 1979

Wisconsin	22.7	District of Columbia	8.7
Nebraska	19.7	Texas	8.4
Iowa	19.0	Maine	7.9
Utah	17.3	Virginia	7.8
Massachusetts	16.8	Illinois	7.6
Minnesota	16.4	Vermont	7.5
South Dakota	16.1	Missouri	6.8
New Mexico	15.9	Louisiana	6.5
Arizona	15.6	Nevada	6.1
New Jersey	15.5	Oklahoma	5.8
Washington	14.2	Wyoming	5.8
New York	14.0	Indiana	5.7
Connecticut	12.9	Florida	5.4
Maryland	12.3	Arkansas	5.0
Pennsylvania	12.2	Alabama	4.5
Michigan	11.8	Tennessee	4.5
Idaho	11.6	Kentucky	4.3
Colorado	11.3	New Hampshire	4.1
Hawaii	11.3	North Carolina	4.1
Oregon	10.7	Montana	4.0
Ohio	10.2	Georgia	3.9
Delaware	10.0	Mississippi	3.5
Rhode Island	10.0	Alaska	3.0
California	9.5	South Carolina	2.8
Kansas	9.4	North Dakota	1.7
West Virginia	9.0		

higher than that for whites.

The disparity between black and white incarceration rates reveal a gap that is widening. This increase in disparity is revealed for at least forty-seven jurisdictions. There is no doubt that blacks are overrepresented among the United States prison population. Moreover, blacks are experiencing a higher rate of incarceration than whites not only in the Southern region, but also in regions where their numbers are fewer than whites in the general population. When the situation is examined

for black males, it seems more oppressive. About 48.5 percent of the U.S. population is male, but based on the latest available data (1978) approximately 96 percent of the prison population is male. Black males represent 5.4 percent of the U.S. population, but account for 45.7 percent of the prison population.

There are a number of arguments and various explanations that attempt to clarify this issue of overrepresentation and disproportionality. The explanations range from overrepresentation in criminal behavior and arrest, to racial discrimination in the criminal justice system. Only when we have appropriate and grounded explanations can we fully understand the high incarceration rates of blacks, its impact on the black community and its people, and what must be done to change the entire situation.

Explanatory Positions

Perception of Blacks and the Definition of Blackness

There are debates today regarding the nature and extent of arrest data relative to the amount and extent of crime, and the degree to which various racial and ethnic groups are involved in criminal activity. On the one hand, there are those who have been resistant to the idea that arrest data are indicative of proportionate involvement in crime, especially with respect to offenders' demographic characteristics such as sex, race, and class. A significant number of scholars have attributed large proportions of such demographic differentials in arrest rates to discriminatory and racist law enforcement rather than to real differences in involvement in criminal activities (Chapman, 1968; Chambliss, 1969; Quinney, 1970; Chambliss and Seidman, 1971; Cloward and Ohlin, 1960; Wolfgang and Ferracuti, 1967; Curtis, 1974).

On the other hand, there are a few scholars, and increasing, who question the notion that discrimination and racism explain arrest data. Hindelang (1978) for example, has used victimization surveys in an attempt to avoid many of the biases possible in official records and self-reports. According to the National Crime Panel data, whereas 11% of the American

population are black 39% of rape victims in the survey reported their assailant to be black. The percentage of rapist, however, according to police figures is 48% black. This shows that the official statistics tend to exaggerate the proportion of rapes committed by blacks. The conclusion can be drawn that the rape rate for blacks is several times higher than that for white men. All of this is based on the assumption that the truth is being reported, and that the methodological approaches are sound, valid, and reliable. Hindelang also provides data which show that 62% of robbery, 30% of aggravated assault and 29% of simple assault victims report that their assailant was black. The question is not whether blacks are more involved in criminal activity than whites in terms of numbers and percentage. If the data is not limited to street crimes, or survival crimes, and include white-collar, organized and governmental crimes; and crimes resulting from racism, sexism, oppression, and exploitation, the number and percentage are greater for whites than blacks. The question is: How are blacks perceived in terms of criminal activity in America relative to whites, and how has this image been promoted by the focus of data on street crimes, and contacts with law enforcement and the courts?

It is not in itself debatable that statistics tend to show a disproportionately higher incidence of crime among Blacks in America. Ample statistical and empirical support is compiled to justify the anti-Black and racist position that "if one is born black, somehow he is born with certain criminal tendencies." In a review of some of the theories dealing with black crime, Greshaw (1959) observed that the rates can be predicted to be higher irregardless of age or specific types of crimes. He asserts that: "Authorities may disagree on arrest-convictions ratios, or on the interpretation of various indices, but the fact remains that convictions and incarcerations are higher for the Black population." Social scientists critical of statistical records of police departments, courts and prisons argue that it

is the inadequacy of available criminal statistics that creates the problem. The attacks up the validity of criminal statistics have been consistent since the 1940's. Johnson (1941) pointed out that "racial discrimination in law enforcement exaggerates the official record of black crime by artificially inflating black rates of arrest and conviction." More recently, another argument has developed. Our perception of the nature and extent of crime and the criminal is shaped by the Uniform Crime Reports published annually by the Federal Bureau of Investigation. However, the report is limited in that it provides statistics on only seven criminal offenses and fails to present an accurate picture of the extent of real crime. The crimes that are reported are those that are committed primarily by the oppressed and poor, or those for which these persons are arrested. The reports exclude statistics on organized crime, which yields billions of dollars in profit each year. White-collar crimes, committed by business and professional people in the course of their occupations, are also usually not included. This means that certain groups, because of their class position, are not counted in the official picture. The implications of these selective statistics are discussed by Hartjen:

The middle-class executive, for example, is not likely to commit burglary. He doesn't need to. But price fixing is within his realm of possibility. Laws restricting this kind of conduct exist--true. They are, however, loosely formulated and

seldom enforced--not only because it is difficult to do so. The frequency of this conduct may actually be much higher than that of burglary or other forms of conduct typical of the powerless classes. But it is rarely noticed or counted. One can wonder why. Indeed, one can only imagine what patterns would appear in crime rates were the powerless able to determine what is to be recorded. But they would no longer be powerless (Hartjen 1975).

The picture thus presented is distorted; by deffecting attention away from organized and white-collar crime, it focuses our attention on personal crimes of violence.

George Napper argues:

By omitting categories of crime that are overwhelmingly dominated by white participants and singling out categories disproportionately shared by blacks, we have an official picture that does three things: (1) it makes it difficult to keep images of black people from coming to one's mind when the issue of crime is raised; (2) makes blackness synonymous with criminality by definition; and (3) sets the stage for a quality of response to crime that is based on a division of people into two classes, the good and the bad. This unrealistic image has the effect of reinforcing the myth that only evil, bad, and crazy people commit crimes (Napper 1977).

Benjamin Quarles observed:

When we pick up a social science book, we look in the index under "Negro": it will read, "see Slavery"; "see crime"; "see juvenile delinquency": perhaps "see Commission on Civil Disorders": perhaps see anything except the Negro. So when we try to get a perceptive on the Negro, we get a distorted perspective (1967).

These observations suggest that there has been a national intent to create a negative image of blacks, and to make the correlation of crime and race so strong that a racial stigma is attached to criminality (Feagin, 1982:298-304). Given this situation and the powerless, oppressed, and exploited position of blacks, it is conceivable that the prison population will continue to comprise,

primarily, the oppressed and poor, especially browns, black, reds and yellows. A permanent identifiable group by race and class has been required to promote the racial stigma associated with criminality in America. This group has come to make up the labor force of the prison population who work primarily for the state, and according to Chief Justice Warren Burger, "making automobile-license plates - jobs that benefit states but do little to help convicts get work upon their release"(1981).

Police and Blacks: A Parasitical Relationship

Another explanatory position includes the posture of policing in America and the perceptions of the police of the poor and oppressed.

Persons who are arrested, tried, and convicted for threatening the State and its existing order are sent to a penal institution to serve a sentence. Therefore, the possibility of a criminal sentence for every citizen who violates the criminal law of the State does exist. However, we know that everyone who violates the criminal law does not end up in prison serving a sentence. A primary purpose of the sentence is to warn the general public that any threat to the existing order of the State by violating its laws will lead to punishment and deprivation in one form or another. In other words, the State has established a system to retaliate against those who fail to conform to its established order. Consequently, in punishing violators of this order, the State attempts to preserve its rules of order.

The prison system is only one part of the subsystems that make up the criminal justice system; and it is the last one at that. This system operates as an agent of social control

for the State. The other sub-systems that feed persons into the prison system are the police system, the attorney system and the court system. These sub-systems work together to punish those who challenge or threaten the established order.

A careful examination of the subsystems of the criminal justice system will reveal that their relationships are parasitical, they all depend on each other for their function, and they all feed upon the police power to arrest to put into operation their sub-systems. Within the context and process of this parasitical relationship, is the reason for the high and disproportionate numbers of black people who find themselves in penal institutions.

Blacks and their communities are and under the present oppressive and racist circumstances, will remain police targets. Whether or not they are actively seeking change, blacks in America, because of their history of oppression, racism, and exploitation, and what blackness has come to mean, especially within the criminal justice system, are viewed as people seeking to change those arrangements of the power structure which have held them in bondage, or people seeking and using "illegitimate means" to achieve political and economic ends. The job of the police, on the other hand, is to maintain law and order. As a law and order group, they are to keep things the way they are. Therefore, any change or attempt at change is threatening to them because it gives the appearance that they are not performing their duties. Many blacks have had to serve sentences for violations, that were associated with an initial violation, created by the police even after the initial change(s) was dropped. The added

advantage of the police is the ambiguity of many laws that allow for a variety of interpretations favorable to the legitimation of arrest. In the event that their initial definitions of the behavior or non-behavior are inadequate, the police have the option of alternative definitions and interpretations. Because the black community lacks, or has not organized, the political and economic influence and power necessary to effectively deal with police abuse of power, police are more likely to arrest black than whites. Consequently, black people are more exposed to the misuse of police power and discretion than white people. The poor and working-class whites are just as likely to be victims of the misuse of police power, but less so than poor and working-class black whose blackness and what it has come to mean within the context of the arrangements of the American social order adds another dimension to the problems of blacks.

Because it is impossible to enforce every law which exist, or in many cases it is undesirable to do so, the legal arrangements have allowed for the operation of police discretion. If the police were to enforce the laws equally, not only would this necessitate a much larger police force, but every citizen would come into contact for violation for one reason or the other; and there would exist a need for a greater number of prosecuting attorneys and judges to speed up the process of adjudication, resulting in additional court and correctional resources. The exercise of police discretion does not allow this to occur. Nonetheless, the courts are filled with defendants who are prosecuted as a result of the selective

identification by the police of politically oppressed, economically exploited, and racially powerless people who find themselves in a disadvantaged position in terms of adequate legal defense. The number and kind of defendants who pass through the courts are the direct function of the discretion of the police to arrest certain apparently powerless persons for processing through the criminal justice system not primarily because of their offenses but because of the political nature and operation of police discretion relative to the race and class position of those with whom they come in contact. The police behavior in America is right wing. They are the right arm of those in power. Moreover, just as social workers need poverty, and medical doctors need ill health in order to be legitimate and functional, so also police need violations. In the event that violations are not forthcoming, they create them by finding people and their communities most vulnerable to police misuse of power and discretion. In this sense, the police need the exploited and oppressed races and classes, especially those of the black community whose definition has historically been distorted and negatively associated with criminality and deviance. This group have no political and economic power to invoke upon contact with the police and the other subsystems of the criminal justice system. Because the possibility of reprisals are low in the communities of the poor and oppressed, the probability that the police can make their charges stick against this group is very high. The end result is that given the powerless socio-economic and political positions of these defendants, they are

vulnerable to plea bargaining at the hands of public defenders and other defense attorneys who are too busy or unwilling, for a variety of reasons (mainly political interests), to adequately research cases to provide adequate and effective defense for their clients.

It has been revealed (LaFave, 1965) that of all the criminal suspects, 90 percent plead guilty to a lesser charge. Therefore, they do not stand trial. This means that a good number of poor people are forced to plea bargain which is a functional scheme in the system to keep penal institutions operating. What is wrong with this bureaucratic model of plea bargaining is that it is based on the assumption of guilt. It forces the defendant to compromise the assumption of innocence, especially if the defendant is in fact innocent and could be so shown beyond the shadow of any reasonable doubt. Although judges routinely question defendants to determine whether or not they were promised any consideration in return for their guilty pleas, no matter how vigorous the denial on the part of the accused, the judge knows the truth: that the pleas are the result of deals between the lawyers on both sides within the context of the powerlessness of the defendants. Judges usually close their eyes to the obvious and permit the process to go on because they feel that they must clear up the backlog of cases awaiting trial. Many judges tend to accept prosecutors recommendations and associate covertly, and perhaps unconsciously with the prosecution in criminal cases. This is because they see themselves as defenders of the state, and accountable to the state and not to the accused. Once the judges see themselves

as allies of the prosecutor, it is easy for them to reject the adversary model and accept the bureaucratic model. They lose their mediator role and become an opponent of the defendant. The judicial process conforms to a bureaucratic system rather than to an adversary system. If blacks cannot be guaranteed justice in an adversary system, it is foolish to believe that they can receive justice in a bureaucratic system. So the police, the attorney system and the courts work together to provide the state with a cheap labor force. This labor is used to produce a significant number of goods and services for the state.

Convict Labor and the Prison Business

The final explanatory position which explains the presence of the poor, oppressed and exploited classes and races in the prison, has to do with the class and racial position of the convicted in relation to the business of prisons.

We have argued and shown above that the racial and class bias in sentencing, as in other stages in the criminal justice process is supported by criminological investigations, and that discretion exercised by the police in arrest and that in sentencing goes along with awareness of the offender's characteristics, not the offense. Sentencing statistics indicate that blacks, other third-world people, and the poor and oppressed are more likely to be arrested, sentenced and committed to prison longer than whites for the same offenses (Zimiring, Eigen and O'Malley, 1976; Hagan, 1974, Gaylin, 1974, and Thornberry, 1973).

It is estimated that approximately 1.3 million prisoners are processed through the American Correctional System on an average day. Three-fourths of these are between the ages of 25 and 34 (Orland, 1975: 55). These persons are viewed as the dangerous class, and the prison sentence, which isolates these persons whose acts threaten dominant social relations, is the attempt of the state to preserve law and order.

When we examine the development of prisons and their relationship to the larger political-economic structures of society, we see them as institutions of control whose most important functions have been retribution, and revenge by denying inmates basic human rights. From a political-economic perspective Rusche and Kirchheimer analyzed the situation in this manner:

Every system of production tends to discover punishment which corresponds to its productive relationships. It is thus necessary to investigate the origin and fate of penal systems, the use or avoidance of specific punishments, and the intensity of penal practices as they are determined by social forces, above all by economic and then fiscal forces (1939: 5).

It is also argued that "as the marginal surplus population increases, there is less need for labor, and punishment becomes more retributive. When there is a labor shortage, punishment takes the form of correction by using convict labor in a socially useful manner" (Balkan, Berger, and Schmidt, p. 121).

Brenner (1976) and Jankovic (1977: 21,27), have conducted studies which support the essential position of Rusche and Kerchheimer. In advanced capitalist societies, they argue, punishment is more severe at times of labor surpluses. There

is:

a direct positive and statistically significant relationship between the extent of unemployment and imprisonment, regardless of the volume of crime. Thus, forms and severity of punishment are determined not by forms and magnitude of crime, but rather by the conditions of the larger political economy. The call for harsher punishment in the 1970's can be understood in the context of that period's high unemployment rate, inflation, and economic stagnation.

Prisoners are the surplus population that is not needed in the larger society for capitalist production, but become a part of the capitalist production of the prison system in satisfying certain production needs of the state.

Erik Wright notes that:

Forty-one percent of the general labor force fall into white-collar employment categories (clerical and sales, managers and owners, and professional and technical workers), compared to only 14 percent of the prison population. At the other extreme, 43 percent of the prisoners are manual or service workers, compared to only 17 percent of the total labor force. The same pattern is found for education: 53 percent of the prisoners have an elementary school education or less, compared to only 34 percent of the general population are high school graduates compared to only 18 percent of the prison population (1973: 26).

Wright further notes that one in every 20 black men between the ages of 25 and 34 is either in jail or prison on any day compared to one of every 163 white men in the same age group.

Even though there has recently been some question relative to the cost of operating prisons, Burkhart (1973:283) has discovered that less than 4 cents of every tax dollar are spent directly on the inmate. However, the effective utilization of cheap convict labor has historically complimented the

capitalist mode of production in prisons to extract profits. The capital outlay by the states to establish prisons took into consideration their profitability. The managers were expected to operate an economically productive prison program utilizing the factories industries, and farms. Beaumont and Tocqueville agreed in their observation that to "make the labor of the convicts as productive as possible was quite correct in that country where the price of labor was high and where there was no danger that the establishment of prison manufactories would injure the free workers."

(Rusche and Kirchheimer, 1939: 111; Balkin, Berger & Schmidt, 1980). So prison production has historically played a significant role in the states' economic resources.

In the late nineteenth century, prison profits were very competitive with private enterprises, to the extent that they threatened the continued production of private enterprises that were producing similar commodities. Effective management by prison officials increased the efficiency of prison production and challenged factories in the free market (Miller, 1974: 102). Efforts to control this challenge came both from management and labor who argued that convict labor was responsible for the unemployment of "free" workers in the private economy. Legislation resulted which limited the number of prisoners who could be employed, regulating the production of commodities and the sales to other state agencies. Prisons continued to be productive profit-making institutions with the limits of the respective state, and the private economy was not severely hindered in its profit-making

activities. Most prisons, nonetheless, have been self-supportive and profit-making for the state because of the effective use of the labor of inmates. According to Mitford (1974: 210-215), the most profitable line of business in America is the Federal Prison Industries. In 1970, its profits on sales were 17 percent compared to 4.5 percent for private industries. Between 1935, the year of the inception of the Federal Prison Industries, Inc., and 1972, 82 million dollars have been donated to the U.S. Treasury. The FPI is a government corporation that coordinates all federal prison business. The labor of inmates is essential to the profitability of the prison business. Inmate workers are paid from 19¢ to 47¢ per hour in the federal industries and much less, about 6¢ to 25¢, in state prison industries. During the 70's and early 80's the Federal Prison Industries produced canned goods, dairy products, clothing, license plates, furniture, electric cable, printing ink, and military items (Knox, 1975: 32; Mitford 1974: 211). The Arizona State Prison superintendent confessed, referring to the prison business: "This is a big industry we have here. We sell to the State institutions and to the children's colony and university. Yes, this is a big business.....(Burkhart 1973: 286). Further, the state prison of Arizona did all of the legislative reports, printing of documents for the state, picked and processed the cotton, and made state garments with the cloth, did all repairs and upkeep of prison facilities, had their own prison drafting and construction crews, build prison residents on the grounds, and construct large apartment housing projects for correctional officers and personnel. Again

convict labor is significant in the profitability of prison business. At the Arizona State Prison only about 107 of the over 1,300 inmates are paid 20¢ per hour for their labor. The rest that work, do so for time off their sentence which has come to be a great incentive to produce. Even though the Slave Emancipation Act of 1865 abolished slavery and involuntary servitude, this gesture does not seem to apply to convicted inmates, and officials often rationalize their use of inmates labor as treatment without evidence to substantiate its treatment value. If it means gaining freedom from prison, inmates would cooperate with the prison business system to do so (Mintz 1976: 44). It has been found that one of the reasons that recidivism is so high is that parole status is revoked more often during and immediately prior to those months when the prison business system needs labor (Swan, 1975).

In Texas the prison system is more oppressive than most systems, and agricultural and industrial labor is central to the inmates presence. Inmates are required to work to defray the cost to the state for their confinement. The prison system has twenty-one industries that produced over \$8.5 million in outside sales realizing \$900,000 in profits in 1976. There is no question that the Texas prison system is slavery in modern times, but it is argued by the officials that what others define as cruel and humiliating conditions to which inmates are subject within the prison work program are necessary to teach inmates discipline and respect for authority so that they might develop good work habits in a productive situation. If upon their return to similar

working conditions outside the prison, the inmates do not prove successful, it is expected that they will return (Krajick, 1978: 14).

There are various penalties meted out to those who do not work. Some inmates are sent to solitary confinement for several weeks; others are beaten; sent to the "hole" for months; forced to stand in the hallway of their cellblock for long periods of time; denied food and not allowed to sleep. Not working as hard as officials think one should gets mild punishment, and those who work get two days good time credit for every day worked. From these examples of how prisoners use convict labor, it is evident that the labor is directly related to the profitability of prison factories and industries. Prisoners labor is managed and controlled for the express purpose of production and profit. Again, the incarcerated is the lumpenproletariat who are disciplined, organized and exploited by the prison system which uses the labor of prisoners to produce and create profits on behalf of the state. There has been little success in changing this relationship and the way in which prisoners are easily exploited (Knox, 1975: 32; Mintz, 1976), even though there has been talk about legislative and legal action which tend to foster meanwhile chances.

Conclusion

Blacks and other racially and economically exploited and oppressed groups are the prime targets of the criminal justice system to legitimize and validate itself and its process. This is the case primarily because of the definition

of race and class in the American social order, and the operation of that definition in the political economy which renders these racially and economically exploited groups politically and economically powerless when they come in contact with the police and the courts. Moreover, these groups that have come to be viewed as the criminals of the American society, and are processed in disproportionate numbers are the exploited laborers of the prison business which produce large profits for the state. This situation will continue as long as the larger society and its arrangements remain racist in policies and practices, and oppressive in economic and political terms. The prison sentence and incarceration are economic benefits to the state because they create a labor force for the prison industries and factories that realize large sums of profits for the state.

Policy Implications and Change

In the last seven years we have witnessed a growing concern to restrict the discretion of the courts in imposing sentences. No such development is seen to do the same with regards to the police who are the first contacts with the citizens. Programs have been established to improve the relationships between the police and the community, but they have not proved beneficial in eliminating the oppressive and parasitical relationships. Policies that would affect the high rate of plea-bargaining that directly impacts blacks, the poor, and the oppressed who are arrested and have no political and economic power to invoke upon contact with the police and the attorney systems have not been

seriously addressed.

Social policy and change have been directed at inmates and the internal structure of prisons rather than on the relationship between prisons and the political-economic context of the larger society. It is only as this relationship is examined and change, blacks and other poor persons will increasingly become the permanent occupants of the prison system. Consequently, the exploitation of the oppressed within the criminal justice system might come only as the nature and character of the social, political and economic arrangements of the American social order change. In the absence of restructuring of the racist-capitalist order black and other poor, oppressed and exploited individuals will continue to be overrepresented in criminal statistics based on their racial and class position in the society for the purpose of maintaining prison industries and factories, and generating profits. This situation is facilitated by the parasitical relationship between these individuals and the police who seek legitimation.

It is clear that jobs are designed to maintain the institutions which could not function without inmate labor. Within this context, prisons perform a service for the American capitalist-colonial system by excluding and eliminating particular classes and races who are defined as dangerous and threatening to the system (Spitzer, 1975).

Foucault argues that:

Prison is the physical elimination of people who come out of it, who die of it sometimes directly, and almost always indirectly insofar as they can no longer find a trade, don't have

anything to live on, cannot reconstitute a family any more, etc., and finally, passing from one prison to another or from one crime to another end up by actually being physically eliminated (1974: 158).

Because most efforts to bring about change in the arrangements of the American social order have failed, we have come to accept the position that political and economic changes are impossible, and that racism, oppression, and exploitation are simply inevitable features of a capitalist-colonial system. This position has led many progressive activists to seek meanwhile changes, such as control of police and court discretion in arrest and sentencing; training of inmates for designated and valued places in the society upon release; providing education as a fundamental basis for a better life, and increase pay for convict labor that can be used to support the inmates families. While these measures are important and significant in the day-to-day activities of those usually caught up in the system, they will not change the power relations within the political economy of America that feed on the powerless position of the oppressed and exploited that are processed through the criminal justice system ending up in the prisons to be further exploited for purposes of capital production and large profits.

The criminal justice system, especially the police and the court, is a bureaucratic arm of the state apparatus and reflects the relations between the rulers and the

ruled, the dominant and the dominated, the exploited and the exploiter, and the oppressed and the oppressor. This relationship must be changed if the oppressive, exploitative and racist presence and use of blacks in the prisons are to be changed.

Note: The source for tables 4,5,7,8,9,10 and 11 is The Black Incarceration Rate in the United States: A Nationwide Problem by Scott Christianson and Richard Dehais, Training Program in Criminal Justice Education, Graduate School of Criminal Justice, State University of New York at Albany, Albany, N.Y., 1980.

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PRISONIZATION: THE AMERICAN WAY?

By Alfreda P. Iglehart, Ph.D.

Assistant Professor
The University of Michigan
School of Social Work
Ann Arbor, Michigan

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Prepared for:
NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL JUSTICE
8121 Georgia Avenue Suite 608
Silver Spring, Maryland 20910
(Thomas D. Carter, Project Director)

Prisonization: The American Way?

Introduction and Overview

On April 10, 1981, Attorney William F. Smith appointed eight people to serve on the Attorney General's Task Force on Violent Crime. These individuals were selected because of their criminal justice-related experiences at the various levels of government. The Task Force was charged "to make specific recommendations to the Attorney General on ways in which the federal government could do more to combat violent crime" (U.S. Department of Justice, 1981: v). A final report was issued August 17, 1981, which included some sixty-four recommendations for the Attorney General to consider in the war against violent crime in the United States.

Few people would dispute the seriousness of the crime problem in this country. The Federal Bureau of Investigation's Uniform Crime Reports and other official statistics purport to document this seriousness. As official statistics may reflect either the artifacts of discretionary recording systems or the reality of crime, the accurateness of the numbers is often debated. The Task Force apparently accepted the current documentation on crime as valid and reflective of real world phenomena by stating, "The wave of serious violent crime we are now experiencing reflects a breakdown..." [emphasis added] (U.S. Department of Justice, 1981: 1).

In addition to official statistics, incarceration rates are frequently cited as indication of the enormity of the crime problem. The January 1, 1981, prison count showed that 320,583 adults were in state and federal correctional facilities, which represents a four percent (13,376) increase over January 1, 1980 (Krajick, 1981: 16). Soaring incarceration rates have been interpreted to be associated with soaring crime rates. Some researchers assert that such an interpretation obfuscates the spurious relationship that exists between the two rates. The Task Force, however, implicitly accepted a positive relationship between the two phenomena:

We think that the provision of more and higher quality correctional facilities will ease the problem faced now by almost all states of dealing swiftly, certainly, and fairly with convicted offenders...(U.S. Department of Justice, 1981: 2).

Some have claimed that incarceration rates mirror changes in the way individuals are processed through the criminal justice system. Krajick (1981: 17), for example, notes that the boom in the prison population may be due, in part, to harsh mandatory sentencing and conservative parole practices. The Task Force explicitly rejects this notion by declaring that the current wave of violent crime "reflects a breakdown of the social order, not of the legal order" (U.S. Department of Justice, 1981: 1).

Finally, it is difficult to speak of prisons in a non-ideological manner. The purpose of prisons has long been debated and challenged. Punishment, deterrence, and rehabilitation have all been held as the

raison d'être for American correctional institutions. The Task Force clearly revealed its ideological base by asserting that more prisons "will help deter some would-be offenders and incapacitate other known offenders" (U.S. Department of Justice, 1981: 2).

The assumptions made by the Task Force are reviewed here to provide a frame-of-reference for the premise that prisonization is gaining support in America today. A frame-of-reference delimits a field of vision and conveys, either implicitly or explicitly, a set of assumptions necessary for determining the orientation taken toward the subject matter under study (see Larson, 1973: 17). The Task Force took specific positions in a number of controversial areas that reinforced the growing pro-prison movement. More prisons are advocated by the Task Force because (1) violent crimes are increasing; (2) more convicted offenders require more facilities; (3) the American social order is breaking down; and (4) prisons serve as a means of punishment and deterrence. Perhaps these positions were taken because the Task Force members were deeply enmeshed in the criminal justice system. The role of insider often suggests a certain degree of cooptation when individuals take on the perspectives endorsed by the system they represent. Perhaps, as members of various criminal justice departments, the Task Force members had a vested interest in exonerating the criminal justice arena of any responsibility in contributing to the current "crime wave."

A plausible explanation must be somewhere in the offering. Some explanation must exist as to how and why the Attorney General's Task Force on Violent Crime could take a stand and make over sixty recommendations

without directly addressing one of the most obvious and unique features of American prisons. Prisonization is primarily a black phenomenon. From 1973 to 1979 the incarceration rate for whites rose from 46.3 to 65.1 per 100,000 while the rate for blacks rose from 368. to 544.1 per 100,000 (Christianson, 1981: 365). The Task Force's assumptions and recommendations should be analyzed in relation to the growing blackness of American prisons. Such an analysis follows here.

Blacks and Criminal Justice

Generally, blacks have had a very limited role in the formulation and implementation of the social policies affecting their lives. Policies governing citizenship, voting, housing, employment, pay, and education are examples of areas in which blacks have had to rely on the benevolence of the dominant society for equitable treatment. In all too many instances, benign neglect or deliberate intent rendered results that were far less than equitable. Black Americans' precarious relationship with social policy has resulted in a history of distrust.

More recent years have witnessed the emergence of ameliorative policies to address discriminatory practices in America. In too many cases, such policies lacked the needed enforcement arm for successful implementation. The Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972 can be offered as examples of policies without teeth. For the most part, these acts were "good intentions" declaration because adequate means were not provided for long-term, effective enforcement and monitoring. Hence, these policies represented a partial mouth —

the tongue was there but the teeth were missing (For more detailed discussion of these policies, see Champagne and Lerner, 1973).

Other policies have been drafted with a surface intent of providing needed supports and strengths to black families and communities. In practice, many of these policies have had devastating effects on black family life. The organization of social welfare in the United States has often been criticized for promoting dependency and for breaking up families. While these effects may have been latent and unintended, they do indicate that an in-depth analysis of the structural and long-term influences of many policies on black life often goes unattended.

Criminal justice policies represent an exacerbation of black distrust. Whereas other policies may have had some limited redeeming value, a schism has existed historically between blacks and the criminal justice system. Blacks have always been more easily absorbed into the criminal justice system than whites during each of the processing stages (Owens, 1980: 4). This "easy absorption" has generated conflicting views that support either differential involvement or differential processing as explanatory factors (see, for example, Hindelang, 1979: 93-96). On one hand, blacks may be disproportionately involved in offending behavior. On the other hand, they may be victims of criminal justice system selection biases. While both camps can muster ample support, historical data on blacks and the criminal justice system provide some compelling evidence.

Owens (1980: 4) asserts that early slave codes outlined the inferior position of blacks to the legal system and provided the center of gravity

for the arbitrary justice that has followed blacks. Many of these codes prevented blacks from having rights in courts. Christianson (1981: 373) adds that the state prison as it is known today arose in part as a replacement for slavery in order to control newly freed blacks. He offers the State of New York as an example because both the emancipation of slaves and the creation of the first state prison occurred on the same date in that state in 1796.

These observations lend support to the criminal justice system as an instrument for the social control of blacks. The system thus may function to dominate blacks through the manipulation and coordination of the processing mechanisms. In this perspective, police officers' discretion to arrest results in more black arrests; prosecutorial discretion results in more blacks being brought to trial for more serious offenses; judicial discretion and other court-related events result in more convictions and prison sentences for blacks; in prison, write-ups for more black infractions result in harsher treatment; and parole decision-making results in more judgments against blacks. The criminal justice system, according to the social control position, acts as an extension of the dominant society — a dominant society that has been ambivalent in its dealings with blacks.

The dilemma of the American dream has already been well captured by Gunnar Myrdal (1944). A society that professes equality for all has had difficulty bringing blacks into the melting pot. Unmelted and unassimilated, blacks have remained on the periphery of the American dream. The criminal justice system's alleged differential processing could serve to reinforce

the unassimilative nature of blacks. Alarming high incarceration rates for blacks encourage racial alienation by isolating thousands of blacks in institutions that are beyond the boundaries of society. The removal of blacks from the mainstream may provide concrete proof to the larger society that blacks are "unworthy" of societal integration.

Numerous scholars have devoted tremendous dedication to outlining, describing, and revealing the oppressive structures of society that impede black progress. It is not the goal of this paper to review or repeat those discussions here. Rather, it is the intent of this section to stress the splintered relationship between criminal justice-related policy and the black community. This splintered relationship, coupled with the growing blackness of American prisons, should help define an appropriate frame-of-reference for articulating contemporary criminal justice policy. The Attorney General's Task Force on Violent Crime, however, chose to ignore these realities by accepting a frame-of-reference that defines the criminal justice system as objective, fair, and bias-free. For black Americans, this assumption of fairness is laughable and filled with duplicity that is only surpassed by hypocrisy. The Task Force is to be emphatically criticized for its omission of the race factor for such an omission strongly undermines the credibility of the group's report.

Incarceration and the Black Population

The Task Force accepted a relationship between crime rates and incarceration rates. Indeed, Biles (1979) argues that there is, in fact, a positive relationship between crime and the use of prisons. Intuitively,

this line of reasoning is alluring. More crime activity should lead to more police and court activity. Detection and punishment seem to be logical extensions of increased law-breaking behavior. Bowker (1981), however, has countered with a time series analysis of crime and the use of prisons looking at two time periods, 1941-57 and 1958-78. He concludes that crime index rates and incarceration rates are not statistically significant. He also suggests that the rates may be affected by different sets of causal variables. One of his findings corroborates the work of others in the area: incarceration is linked significantly with the percent black in the population (Bowker, 1981: 211). That is, as the percent black in a given geographical area (region, state, county) increases, the incarceration rate for that area is also likely to increase. Evidence for prisonization as a social control mechanism again surfaces.

Sociologist Edward A. Ross identified several kinds of social control: law, public opinion, ideals, beliefs (Vine, 1969: 171). Many of these opinions, ideals, and beliefs form an ideology and this ideology itself becomes a powerful force for exerting social control. Gummer (1979: 218) defines ideology as a body of systematically related beliefs that provide a problem etiology and prescriptions for appropriate action. Miller (1978: 6) states that an ideology is a set of general and abstract beliefs or assumptions about the correct or proper state of things. Hasenfeld (1982) notes that an ideology provides a normative base for justifying and rationalizing service delivery practices. Ideologies have strong emotional content and may not be based on empirical data.

According to Miller (1978: 7), ideology and its consequences exert a powerful influence on the policies and procedures of those who conduct the enterprise of criminal justice. There is an ideology surrounding blacks that has influenced the manner in which blacks are treated throughout the criminal justice system. While racism refers to individual level attitudes and beliefs, ideology refers to belief systems that are pervasive throughout a profession, a service delivery field, or society itself. Ideologies may contain traces of racism but they have become so institutionalized that their questionable features are not readily obvious.

The ideological base of crime in the United States is tied largely to crime as reflected in lower class criminality. Poveda (1970: 59) observes that the problems of crime are seen to be closely linked to lower socioeconomic status, poverty, and blacks. The ideology has a heavy foundation in stereotypic, impressionistic views. Swigert and Farrell (1977: 17) state that stereotypes not only shape public attitudes and behavior toward deviants, but guide the very choice of individuals who are to be so defined and processed. These authors assert that these stereotypes help foster beliefs that certain groups are inherently criminal and require rough treatment. Specific stereotypes, therefore, help define the service ideology operative in criminal justice agencies -- a service ideology that depicts young black males as being more criminal and requiring more severe punishment.

The ideology related to blacks reflective in public attitudes and in the criminal justice system can help explain the link between percent

black in a population and incarceration rates. As the image of the common criminal is associated with black males, an increase of persons with these characteristics in the population may trigger increased criminal justice activity. The system is thereby reacting, not to real crime activity, but to a predetermined ideology of those who are thought to be more criminal. In this manner, ideology serves to control the black population by defining the treatment due blacks. Consequently, the criminal label and imprisonment are more likely to be applied to blacks because the service ideology depicts them as more criminal.

The ideology also influences the type of punishment meted out to lawbreakers. For a white, middle-class youth from an established family, probation or community service may be identified as appropriate punishment. This youth may be seen as a good risk, a good candidate for success and the court experience may be viewed as the ultimate in humiliation for the family. According to Swigert and Farrell (1977: 27), the higher status person simply as a result of arrest is said to have suffered enough.

For a black, lower class youth, probation or community service may not be viewed as enough punishment. Swigert and Farrell (1977: 27) maintain, "The lower class defendant, with minimal status in his community, little occupational prestige and a personal life most frequently described as disorganized, comes to the court with little to lose except freedom from incarceration." Negative sanctions are applied in the context of an ideology that is widely supported. This institutionalized ideology provides an arena in which criminal justice agents are free to operate.

The media often play an important role in perpetuating existing ideologies. In a content analysis of crime coverage in the New York Post, Humphries (1981: 204) found that, for the writers, violence was correlated with youth, male, and minority status. He also noted that language and mode of explanation were key to the coverage rather than the frequency of reporting of specific crimes. These explanations and language often subtly reinforce the popular image of the criminal and the use of harsh punishment for those who conform to the image. Such coverage heightens the public's fear of the "criminal" and, as the "criminal" elements of the population increase, cries of "clean up the streets!" echo throughout communities. Public fear is thus often manipulated through media reporting practices and styles.

The ideology of crime in the United States rests heavily on street crime and involves images of the criminal as a poor minority male with nothing to lose but his freedom. This ideological base is said to be operative in the criminal justice system. Because the ideology has wide popular support, the criminal justice system is free to act on it. Hence, social control of the black population can be maintained through existing ideologies that define blacks as inherently more criminal.

Existing ideologies found support in the Task Force's recommendation on prison construction.

Multiplying the Walls: A Scapegoat?

The Attorney General's Task Force on Violent Crime made a recommendation, which states in part:

The Attorney General should seek legislation calling for \$2 billion over 4 years to be made available to the states for construction of correctional facilities (U.S. Department of Justice, 1981: xiii).

This recommendation (Recommendation 54) attempts to address prison overcrowding. The Task Force thought that space limitations may inhibit the sentencing of offenders to prison. Without needed beds, judges may be forced to release lawbreakers, thereby endangering public safety. The Task Force wrote, "Clearly, judges must feel free to use incarceration as a sentencing option" (U.S. Department of Justice, 1981: 76). More prisons were seen as the preferred way of dealing with the mushrooming prison population.

Few would argue the problem of overcrowding. Walker and Gordon (1980) look at the ways high density confinement affect inmates' health. Nacci (1977) looks at the relationship between population density and misconduct reports. Lack of privacy and inability to leave the environment have tremendous effects on the physical and emotional well-being of inmates. Overcrowded prisons may turn into time bombs that are slowly ticking toward the hour of detonation.

The controversy emerges around the most appropriate way(s) of responding to the overcrowding situation. Building more prisons may be a stopgap measure akin to placing a bandaid on a large, gaping wound that requires major surgery. How long will it take for the newly constructed facilities to burst at the seams with too many inmates? What is the next step after this occurs? Krajick (1981: 18), for example, noted that Louisiana recently opened two new facilities and they were immediately

filled. Other states are, no doubt, experiencing similar happenings. Prison construction represents only one very limited response to the problem of overcrowding.

The Task Force obviously approached corrections as a closed system; that is, the major concern was on the internal dynamics of prisons or with "behind the wall" factors. This closed system perspective is one of limited utility when one considers that corrections is a subsystem of the complex criminal justice system. Organizational analysis dictates that the open system perspective is more appropriate for looking at the overcrowding dilemma of many correctional facilities.

The closed system model of corrections ignores the role of external factors in shaping the flow of inmates through prisons. The interaction between courts, corrections, and parole boards is ignored as emphasis is placed on correctional facilities as depositories for court sentencing. An exclusive focus on corrections as independent of law enforcement, courts, and parole denies the system aspect of the criminal justice area.

Systems are characterized by their interdependency, that is, there is a relatedness or connectedness among system parts (Katz and Kahn, 1966). A change in one part of the system affects the other parts of the system. Clearly, the high incarceration rates reflect increased detection on the part of police and increased sentencing on the part of courts. If defendants are given longer terms and parole boards grant fewer paroles, a larger prison population results. Consequently, crowded prisons could reflect system feedback from changes in other aspects of the system.

Had the Task Force accepted an open system perspective of corrections, intervention may have been identified elsewhere. For example, questions could have been raised about the structure of sentencing or the actions of parole boards. The Task Force assumes a fairness is inherent in the criminal justice system and does not ask, "Does everyone in prison need to be in prison?" Such a question would challenge the "justice" part of the criminal justice system and may have cast the Task Force in an unpopular light. Here, again, the frame-of-reference emerges as a critical factor directing the recommendations.

The open system perspective could have led the Task Force into so many untouched areas. Can the incarceration rates be decreased? What are the consequences of early parole? What are viable alternative sentencing structures? What can be done to control the inmate population without building more prisons? The Task Force instead opted to preserve the status quo by making a rather predictable, traditional, unimaginative response.

Increasing prisons becomes an easy out for it avoids the debates surrounding incarceration alternatives. Penology is a science that has been widely practiced for decades. Custody and security are activities in which corrections officers are quite skilled. The strengths of the corrections subsystem are further strengthened with the building of more prisons.

A more innovative response could have been to recommend resources for alternatives to incarceration. Many people argue that community-based corrections and restitution programs can relieve prisons of a segment of their populations. Yet, these areas represent shades of gray; the unknown

for many criminal justice systems. Many states do not speak the language of community-based corrections. Few incentives exist to encourage states to develop sound programs for dealing with offenders outside the prison walls. Frank (1979: 8) stresses, "Financial and personnel resources used to construct and maintain custodial institutions could be allocated to the development of a diversified network of alternatives to imprisonment." This view represents a radical departure for the modus operandi of corrections. Prison construction represents one way of avoiding a serious questioning of the contemporary use of prisons in this society. By not mentioning the place of correctional alternatives in the criminal justice system, the Task Force further supports prisonization as the appropriate response to crime. Consequently, prisons remain the heart of current American penal policy.

Approaches to the treatment of offenders have taken on a closed system perspective in another way. Prisons remain virtually isolated from existing services and programs on-going in the community. According to Weiner (1981: 36):

There is no empirical evidence available to explain why rehabilitation became a closed system enterprise in the first place; that is, why correctional facilities imported programs and established specialties within their boundaries; rather than relying upon the expertise of the existing network of public and private community agencies to provide a full range of restorative services to offenders.

Interagency cooperation in corrections opens corrections to new inputs, new personnel, and new ideas. Professionals from the community are not hampered by correctional cooptation and can bring new approaches to dealing

with current issues. Again, incentives are needed to encourage correctional administrators to reach beyond their boundaries for creative solutions to major problems. A concentration on prison construction ignores creative alternatives by endorsing the status quo.

Consequently, the building of more correctional facilities is an easy out for dealing with the complex issue of rising incarceration rates and prison overcrowding. Organizations typically resist change and the criminal justice system has managed to remain relatively unchanged in its dependency on prisons. Current policies serve only to further solidify the prison's place in the criminal justice system and in the United States.

More Prisons: Some Considerations

Goals. Richard Hall (1982: 298) observes that organizations often have multiple and conflicting goals. This is certainly true for correctional facilities. Prisons were initially mandated to protect the public from the criminal elements of society, to punish the known law violators, and to serve as a deterrence for would-be violators. Eventually, the goals were expanded to include non-custody and security areas. Rehabilitation of the prisoner as a primary purpose of incarceration became national policy in 1929 when the U.S. Congress authorized the creation of the Federal Bureau of Prisons (Frank, 1979: 5).

The technology associated with custody and security is stable and routine. Control and management of institutionalized population can be rendered in a systematic, defined manner. Specific data needed to maintain the population are readily obtainable (i.e., inmate/officer ratio,

population size, persons per cell). Operating procedures required for managing captive groups are also well known and well practiced (i.e., scheduling, counts, write-ups for infractions, punishment for infractions, rewards for good behavior). A predictable work flow with relatively few uncertainties characterizes the technology of custody.

Routine technologies are marked by centralized decision-making, specified job activities, less professionally trained staff, and an emphasis on efficiency and quantity of clients (Hage and Aiken, 1974). All of these are visible in the correctional institution. The military-like employee structure conforms to the pyramid hierarchies of traditional bureaucracies. While entry-level requirements for correctional officers no doubt vary from state to state, this job has very limited professional status. In addition, efficiency is a commonly accepted correctional objective.

The technology associated with rehabilitation, on the other hand, is nonroutine and unstable. Human service professionals are still grappling with the question, "How does one change or rehabilitate individuals?" The search for answers has covered years and has included numerous interventive strategies. Treatment professionals perform in a state of uncertainty without knowing which specific techniques to employ or whether those techniques produce the desired outcome (Hasenfeld and English, 1974). Cause and effect relationships have been difficult to establish in treatment, in part because treatment practitioners make up only a small aspect of the client's world with other influences coming from a myriad of sources. The variedness and complexity of human beings only add to the difficulty of identifying effective change technologies.

Custody and security technology also differs from treatment technology on the effectiveness dimension. Number of escapes and number of officer injuries from inmate attacks can easily be used as feedback for a facility's effectiveness as a secure institution. Rehabilitation technologies have no such clear indicators of success. Goal achievement becomes ambiguously and globally defined. Assessment questions have no definite, concrete answers. What factors contribute to rehabilitation? Is recidivism a valid measure of rehabilitation? How long does the rehabilitation process take? What supports are needed to maintain the positive effects of treatment? No consensus exists around the desirable, appropriate answers to these queries. Rehabilitation has thus taken a back seat to the custody and security functions of correctional facilities. Indeed, Frank (1979: 5) argues that the growing consensus among policymakers concerned with the administration of criminal justice is the sending criminals to prison to be rehabilitated has failed as an anti-crime measure. Such sentiments support a less significant place for rehabilitation as a correctional goal.

The Task Force's recommendation for more resources to be allocated to prison construction reinforces custody and security as priority activities. If rehabilitation has failed, its failure can be attributed to blatant negligence within the administration of corrections. Historically, prisons have been about the business of developing techniques for keeping secure populations secure. Rehabilitation appears as an afterthought and receives mouse-like resources to do an elephant-size job. The web of uncertainties

surrounding rehabilitation command intense efforts and sizable resources for resolution. With shoestring budgets, token commitments, ideals masquerading as goals, and the skepticism of many, rehabilitation units face formidable odds of success. Verbal support of rehabilitation by criminal justice policymakers are transparent, ineffectively hiding their cavalier attitude. True commitment is reflected in budget and staff allocations. With the Task Force's recommendation, custody and security will continue to reign as the undisputed monarchs of corrections.

To those familiar with the Task Force report, the above arguments may appear to ignore Recommendation 57. This recommendation states:

The Attorney General should support or propose legislation to amend the Vocational Education Act and other applicable statutes to facilitate state and local correctional agencies' ability to gain access to existing funds for the establishment of vocational and educational programs within correctional institutions (U.S. Department of Justice, 1981: xiii).

Here, the Task Force appears supportive of potentially rehabilitative programs within correctional facilities. Their endorsement of these programs, however, provides only the suggestion of the Attorney General's involvement through supporting or proposing legislation. In the area of prison construction, the Task Force recommended direct federal support through the allocation of dollars for prison construction. This area is thought to be of a more immediate nature whereas programs seem not to be so urgent. Again, the ideological premises of the report are very apparent.

The "existing funds" that the Task Force speaks of may have a bleak prognosis for survival in light of severe program cuts at the federal level currently underway. The optimism of the recommendation is baffling because

the Task Force members are believed to be politically astute. Surely they could read the economic climate and make less naive proposals. While dollars are urged to be earmarked specifically for prison construction, no such arrangement is advocated for programs. Without strong, direct advocacy, prison treatment programs will continue to be stepchildren in the newly constructed, modern correctional facilities that are only a breath away from experiencing overcrowding within their architecturally designed walls.

Sunk Costs. Prison construction creates pressure for the utilization of the new facilities. This pressure stems from several factors and some of them will be covered briefly here.

Reliance on prisons as the core part of penology suggests that the status quo is maintained by new construction. Existing methods then serve as a guide for directing and planning current and future policy. Policy may be closely tied to the generation of new facilities because prisons represent sunk costs. According to Hasenfeld (1982), sunk costs are investments of resources that cannot be readily recovered and converted to other purposes. Hasenfeld (1982) goes on to write, "A correctional program with a big facility and large custodial staff will have difficulty shifting to a community-based group home program because it cannot readily dispose of its facility or retrain, dismiss custodial staff." Had the Task Force recommended direct federal aid for alternative programs, the legitimacy of many prisons would have been questioned. A move to deinstitutionalize segments of the incarcerated masses may yield abandoned buildings rotting

in the sun and thousands of laid-off correctional officers. Clearly, sunk costs are barriers to innovative correctional planning.

The pressures of new facilities encourage the sentencing of more offenders to prison. As was noted earlier, the Task Force believed that prison crowding would inhibit judges from sentencing individuals to prison. Bowker (1981: 212) echoes this view by observing that judges may be less likely to sentence prisoners to institutions if they know that the institutions are already severely overcrowded. Unfortunately, the Task Force does not address the reverse of this situation. Is it not, therefore, likely that available beds will encourage judges to sentence prisoners to institutions? The court, as a processing organization, relies on the correctional departments to receive the criminals they sentence. This dependency indicates that courts are sensitive to the constraints and contingencies imposed by fluxes in prison populations. (For a more detailed discussion of people-processing organizations, see Hasenfeld, 1974).

These pressures lead to the conclusion that the incarceration rate will continue to rise. Policymakers and correctional administrators are gearing themselves and facilities for the growing number of offenders who will be sentenced to serve a prison term. Prison construction strongly indicates that the incarceration rate will not drastically drop. Organizational responses are thus serving to fulfill a prophecy: Incarceration rates rise; more prisons are constructed; the rates, therefore, continue to escalate. The service ideology of the criminal justice system reveals that blacks will continue to be disproportionately represented among the growing prison population in the United States.

Training Priorities. The Task Force did address the training needs of correctional staff. With all of the ambiguities related to rehabilitation, a knowledge base for effective intervention needed to alter criminal patterns is sorely needed. Training related to rehabilitation (i.e., program planning and implementation) could have been highlighted. Training is also needed for the establishment of alternatives to incarceration. The administration of community-based programs requires a thorough understanding of the factors facilitating successful transition to a crime-free life. In this area, in-service training is a necessity for the successful administration and execution of alternative programs. Inter-agency cooperation is also a domain that requires skills and knowledge not commonly held by corrections. The use of existing community resources for the provision of programs and services calls for additional training. In-service training for facilitating inter-agency cooperation could fill an educational void now experienced by corrections staff. Weiner (1981: 38) noted that the skills and knowledge base required for corrections workers must shift significantly from primary control. The needs cited above support Weiner's assertion by identifying training needs not related to the custody and security functions of prisons. Certainly corrections staff should become competent in the areas of treatment and rehabilitation.

The Attorney General's Task Force proposed the following recommendation for training:

The Attorney General should ensure that the soon-to-be established National Corrections Academy will have adequate resources to enable state and local correctional personnel to receive training necessary to accommodate the demands on their agencies for managing and supervising increased populations of serious offenders (U.S. Department of Justice, 1981: 63).

The Task Force was concerned with the manner in which "poor training and inadequate supervision" contribute to the "outbreak of serious disturbances or riots." Emphasis is placed on the maintenance of a secure population.

Responses to this recommendation can already be seen. The federal prison system and the National Institute of Corrections are cooperating in a plan to provide training in areas related to institutional violence for state and local corrections personnel (Sabanosh, 1982: 36). Training will be offered in disturbance control and self-defense. Training with these focal areas also serve to highlight and reinforce the custody and security aspects of corrections.

Cohn (1980: 52) emphasizes, "Training content which leaves the daily routine and the organization structure of the service almost unaffected may not be a worthwhile and job-related training experience from the outset." Training for riot control does not visibly affect the ongoing, daily routine activities of correctional facilities. This training would be invoked as a response to a crisis. This type of training does not encourage the development and application of practices that will have organization-wide effect. Such an orientation also serves to maintain the status quo of correctional facilities.

The limited utility and validity of riot control training itself are not being argued. The point here is that, of all the knowledge voids currently experienced by correctional staff, the singling out of riot control as virtually the only area for staff training is both absurd and

lamentable. The priority of the custody and security goals is again visible while treatment and rehabilitation fall further from sight.

The Blob. Two additional recommendations made by the Task Force are worthy of mention here because they mirror an increasing reliance on prisonization as a way of coping with crime in American society. Recommendation 55 reads, in part:

...In addition, over the 4-year period, NIC would complete studies pertaining to the possible establishment of regional prisons, the feasibility of private sector involvement in prison management, and the funding needs of local jails... (U.S. Department of Justice, 1981: xiii).

Recommendation 56 partly reads:

The Attorney General should support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to (1) permit the conveyance or lease at no cost of appropriate surplus federal property to state and local governments for correctional purposes... (U.S. Department of Justice, 1981: xiii).

The Task Force wrote, "Under a regional concept, a facility could be built to house violent, severely mentally ill or retarded, or otherwise difficult, serious offenders." Some concern about the consequences of regional facilities was mentioned. Restricted visitation by family and friends and limited access to counsel could result because of the regional facility being located in another state. The Task Force did, however, go on to encourage the study of this regional facility concept.

The earlier discussion of the ideological base of the criminal justice system regarding beliefs about the "typical" criminal and beliefs about those individual requiring harsh treatment is worthy of recall here.

The existing ideological underpinnings of the system and the dominant society lead to the prediction that, if constructed, regional facilities will house a disproportionate percentage of blacks. Regional facilities not only epitomize the increased isolation of blacks from mainstream society but add the dimension of isolation from families and friends. The regional facility approach parallels exile to a deserted island. While the Task Force may have been ignorant of the racial implication of regional facilities, this ignorance provides little justification for the proposing of such a devastating recommendation.

Perhaps the recommendation's devastating effects were masked by the Task Force's concern for the efficient management and administration of prisons. It is not altogether clear the manner in which prison efficiency is enhanced by increasing corrections to include another stratum of prisons at the regional level. Often bureaucratic expansion has been confused with effectiveness and efficiency. In essence, however, expansion only serves to justify an organization's existence. Growth is often considered a sign of health and success (see Thompson, 1967: 89). Increasing the bureaucratic structure of corrections asserts the legitimacy of prisons as the core feature of corrections. Corrections, as an organizational system, is thus experiencing rapid, widespread growth and the advocacy of regional correctional centers attests to this growth.

Another example of the health of corrections can be seen in the recommending of surplus federal land to be put to corrections use at no cost. Free land for prison construction paves a smooth road to American

prisonization. This enticing incentive cannot be overlooked by correctional administrators. Institutional support such as this for prison construction only services to accelerate the prisonization process.

The blob-like arm of corrections is reaching out to amass more federal dollars, more personnel, more facilities, more land, more bureaucratic structures, more legislative support, more public support, and more of the black population.

Some Human Costs

Numerous human costs are involved in the prisonization of American society. All too often, the ugly side of this process is casually hidden under the rug of benign neglect. Too many times individual pathology explanations are called upon to rationalize nonchalant attitudes. Worn cliches and overworked phrases are heard when the dire effects of incarceration are raised: "They should have thought about that before they broke the law." "They got what they deserve." "We should be more concerned about the victims of crime." But the human costs of incarceration spread to include implications for the larger society.

The Task Force noted, "...there is a responsibility to provide practical experiences for inmates that will result in their being productive both while incarcerated and upon leaving the institution and returning to society (U.S. Department of Justice, 1981: 79)." Rehabilitative programs are in vogue during times of economic prosperity. As federal support for programs dwindle, these programs lose favor and dwindle in importance.

Consequently, individuals stockpiled in prisons will have an abundance of time to do absolutely nothing. These wasted days and wasted nights will yield very few rehabilitated prisoners. Productivity in the society is also severely hampered by the lack of treatment programs. Consequences of this idle time include: increased recidivism; increased alienation; increased economic dependency; increased public fear of former prisoners; more conservatism on the part of parole boards; and a growing prison population.

Absence of support for community reintegration means that the released offender has to sink or swim on his/her own. The transition from prison to community can be painful for people with few resources (education, job skills) for coping with the stresses of life. Old behaviors, old friends, old haunts are too easily accessible for people with little chance of survival. Street life may be the only life individuals have on which to depend. Increased prisonization and the absence of the rehabilitation produce crime-prison cycles that will disproportionately affect larger numbers of the black population.

Prisons will become a part of more families. Incarceration disrupts families and often takes the primary earner from the family. Families must then rely on relatives, friends, or government assistance for survival. More and more families will be faced with this type of stress as prisonization continues. In addition, trips to facilities for visitation purposes will expose more people to the prison setting. The church as a dominant institution in the lives of black people could be usurped by the prison.

Black people do not generally interpret incarceration merely as punishment for wrong-doing. Rather, prisons represent society's attempt to perpetuate the enslavement of black people. Fairness and justice in the criminal justice system are viewed as alien to the black experience. Consequently, many black communities will be even more alienated from society by overpowering incarceration rates. These rates communicate stepped-up efforts to control the black population and to render more black men as ineffective and powerless. The hypocrisy of equality is thus self-evident.

Concluding Comments

The mechanisms are being put into place for the increased prisonization of the American society. Prison expansion enjoys an ideological base that accepts incarceration as the most appropriate way of dealing with the "criminal." This individual is expected to be lower class, male, and black. Some argue that the criminal justice system is geared for the differential processing of people with these characteristics. Hence, prison construction means that more blacks will be housed behind the walls.

The criminal justice system has multiple and conflicting external and internal constituencies (Hall, 1982). Unfortunately, policy is being drafted based on the views of only a portion of those constituencies. Black communities are also affected by the system and, therefore, represent a legitimate constituency. The anti-prison construction voice needs to be more vocal and needs to gain more support. Individuals, communities,

organizations, and groups can advocate to state and federal legislatures their position on the issue. Power may not be power until it is used. The power of an alternative view may be latent because it has not been evoked. While blacks may be the victims, they need not adopt a victim mentality that inhibits struggle. A fight to combat prisonization is the order of the day.

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TOPIC I:

Differential Incarceration Rates
for Black Offenders

NCJRS

SEP 8 1982

ACQUISITIONS

DISPROPORTIONATE IMPRISONMENT OF BLACKS

IN THE UNITED STATES:

POLICY, PRACTICE, IMPACT & CHANGE

by Scott Christianson, Ph.D.

Director
Center on Minorities & Criminal Justice
State University of New York at Albany

March 1982

*Final per Final
Progress report from
Thomas D. Carter.
11/11/81*

Prepared for
NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL JUSTICE
8121 Georgia Avenue Suite 608
Silver Spring, MD 20910
(Thomas D. Carter, Project Director)

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INTRODUCTION

The large and growing extent to which minorities - especially young, black, urban males - are singled out from society and imprisoned in the name of Justice exposes some of the most fundamental and complex problems confronting the United States.

The conditions and practices which contribute to the phenomenon of racially differential imprisonment are many, varied, deep-rooted, and dynamic. Some are more difficult than others to detect and measure, and their causes and nature are the subject of intense dispute. Some aspects are evident to everyone, methodically counted and weighed, but never altered.

Meanwhile, the impact of this policy upon the individual, the family, and society remains almost totally ignored. In these times, there are few calls for reform and even fewer constructive plans to supplant the dominant mind-set that produced, maintains, and continues to expand our present crisis.

This report seeks to promote a better understanding of the problem of racially differential imprisonment and attempts to offer some specific goals and strategies for reducing racial disparities in American criminal justice.

I am grateful to the National Association of Blacks and Criminal Justice, and particularly to Thomas D. Carter, for being given this opportunity to prepare this work. I also wish to acknowledge the assistance provided by Richard Dehais, who has served as my research associate on this topic for the last two years. Some of the findings presented would not have been possible without the support of several other agencies, organizations and individuals, who have provided assistance and support for my research. They include the Center on Minorities and Criminal Justice of the School of Criminal Justice, State University of New York at Albany; the editors of Corrections Magazine and the Criminal Law Bulletin; the National Council on Crime & Delinquency; the National Prison Project of the American Civil Liberties Union; New York State Council of Churches; Office of Criminal Justice Education and Training, U.S. Department of Justice; Rochester Judicial Process Commission; and the University of Arizona Law School, among others.

KSC, Albany, NY, 5 March 1982

I. DIFFERENTIAL IMPRISONMENT

We seldom think of black slavery as a penal institution. Yet throughout history enslavement has been used as a form of punishment, while some penal systems have acquired many of the characteristics of chattel slavery.

- DAVID BRION DAVIS (1980:14)

Historical Antecedents

Since 1619, when the first Africans stepped onto American soil—sold by the Dutch into English hands at Point Comfort, Virginia - black people in this country have suffered some form of imprisonment to a greater extent than white people. For nearly two centuries afterward a thriving international slave trade uprooted an estimated five million blacks from their homeland by kidnapping and other means, held them captive, and transported them by ship to the New World. Those who survived were sold as slaves, and the children they bore were born and died as slaves. Even after the American Revolution, they remained a captive people.

Although the reason for this enslavement was economic, the white culture which exploited their labor gradually developed other justifications for their policy. One explanation was punitive and moral: blacks, it was said, deserved to be punished for original sin that had been committed before they were born. Another was reformative and moral: blacks had to be stripped of their evil ways. And finally, the more paternalistic of the

moralists explained that the Africans were being done a good turn. The blacks were being rescued from their jungle misery as a beneficent gesture, intended for their own good.

After the Revolution, some Northern states freed their slaves according to a gradual process by which the blacks themselves bore most of the expense. Simultaneously, these states gradually erected a system of state prisons, in part for the purpose of controlling some of those they had emancipated. Eventually, a regime of penal slavery was instituted in the prisons, and all convicts, regardless of color, were exploited as a source of labor and service to the state.

Following their visit to the United States in 1831, Gustave de Beaumont and Alexis de Tocqueville reported that the great majority of blacks in the South were living in slavery, while "in those states in which there exists one Negro to thirty whites, the prisons contain one Negro to four white persons."

With the close of the Civil War and the abolition of slavery in all of the states, Southern prisons grew black almost overnight as the old plantation economy gave way to convict leasing, chain gangs, and penal servitude. By virtue of the Thirteenth Amendment to the federal Constitution:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any of its jurisdictions.

Disproportionate imprisonment of blacks continued, in greater or less degree, throughout the U.S. By 1926 a Detroit study reported that twice as many blacks as whites were being

sentenced to prison for roughly the same kinds of offenses. About the same time a survey at Pennsylvania's Western Penitentiary found that blacks were being held at a rate nearly 14 times greater than whites. The Bureau of the Census noted that Negroes comprised only 9.3 percent of the adult population, but 31.3 percent of the prisoners. Hans von Hentig wrote in 1940 that black incarceration rates for the period 1930-36 were about three times greater than those for whites. He also remarked upon an interesting fact: the white imprisonment rate had actually decreased during the Great Depression, but for blacks imprisonment had risen substantially.

Since the end of World War 2 the white share of the American prisoner population has continued to shrink in relation to blacks, Native Americans, and Hispanics. In my own home state of New York, the white majority constitutes less than one quarter of those in prison, and that fraction is shrinking fast. Most experts expect this trend to continue into the next century. According to one projection (in Pennsylvania):

As a consequence of consistently higher birth rates among minorities in the 1970's, a new wave of non-white youth will move into the crime prone ages about 1985. Projections indicate that the minority percentage of total arrests will increase from 32% in 1976 to 38% by the year 2000. Given that the probability of imprisonment after conviction decreases with age, this difference in projected arrests will increase the minority proportion of the prison population by 7% to 55% by 2000.

A large and increasing share of proposed new prison construction is intended to accommodate the coming waves of blacks and browns.

TODAY'S IMPRISONMENT IN BLACK & WHITE

The latest and most reliable sources for determining whether there is racially differential imprisonment of blacks and whites in the U.S. are the survey of prisoners in state and federal institutions on December 31, 1979, and the 1980 federal Census of the U.S. population. Tables showing the black/white breakdowns of both populations are shown below.

Race	Number	Percent
Black	26,488,218	11.7
White	188,340,790	83.1
All Races	226,504,825	100.0

Race	Federal Prisons	State Prisons	State & Federal Prisons
Black	9,543 (36.2%)	135,840 (47.2%)	145,383 (46.3%)
White	15,386 (58.3%)	146,256 (50.8%)	161,642 (51.5%)
All	26,371 (100.0%)	287,635 (100.0%)	314,006 (100.0%)

FIGURE 1
DISPROPORTIONAL IMPRISONMENT, YEAREND 1979



TABLE 3

PRISONERS UNDER STATE & FEDERAL JURISDICTION, BY RACE,
ON DECEMBER 31, 1979

(Excludes military prisoners, prisoners in local jails &
lockups, and prisoners in youth facilities & mental
hospitals)

Region and State	Total	White	Black	American Indian or Alaskan Native	Asian or Pacific Islander	Not known
United States, Total	314,006	161,642	145,383	2,928	749	3,304
Federal institutions, Total	26,371	15,386	9,543	477	79	886
State institutions, Total	287,635	146,256	135,840	2,451	670	2,418
Northeast	44,142	21,805	22,176	16	6	139
Maine	776	756	8	12	0	0
New Hampshire	316	309	6	1	0	0
Vermont	431	426	4	1	0	0
Massachusetts	2,924	1,854	1,068	1	1	0
Rhode Island	745	546	199	0	0	0
Connecticut	4,061	2,317	1,736	0	0	8
New York	21,158	9,806	11,221	0	0	131
New Jersey	5,852	2,210	3,642	0	0	0
Pennsylvania	7,879	3,581	4,292	1	5	0
North Central	62,851	31,539	29,194	638	41	1,439
Ohio	13,360	6,592	6,768	0	0	0
Indiana	5,667	4,108	1,553	5	1	0
Illinois	11,361	4,659	6,643	29	30	0
Michigan	15,002	5,452	8,743	50	2	1,345
Wisconsin	3,434	1,985	1,346	103	0	0
Minnesota	2,094	1,528	364	174	0	28
Iowa	2,099	1,653	349	33	3	61
Missouri	5,555	2,721	2,834	0	0	0
North Dakota	186	149	2	30	0	5
South Dakota	562	425	12	125	0	0
Nebraska	1,241	804	390	46	1	0
Kansas	2,290	1,463	790	33	4	0
South	136,553	62,434	73,301	604	9	205
Delaware	1,419	560	858	1	0	0
Maryland	7,860	1,808	6,026	14	0	12
District of Columbia	2,973	90	2,883	0	0	0
Virginia	8,449	3,430	4,977	0	0	42
West Virginia	1,251	1,011	239	1	0	0
North Carolina	14,253	6,207	7,682	318	2	44
South Carolina	7,643	3,292	4,344	7	0	0
Georgia	12,098	4,927	7,165	2	0	4
Florida	20,133	10,050	10,077	0	6	0
Kentucky	3,691	2,622	1,069	0	0	0
Tennessee	6,629	3,503	3,126	0	0	0
Alabama	5,343	2,302	3,041	0	0	0
Mississippi	3,458	1,176	2,217	5	1	59
Arkansas	2,963	1,370	1,593	0	0	0
Louisiana	7,618	2,223	5,395	0	0	0
Oklahoma	4,250	2,757	1,193	256	0	44
Texas	26,522	15,106	11,416	0	0	0
West	44,089	30,478	11,169	1,193	614	635
Montana	768	630	12	126	0	0
Idaho	830	791	20	17	2	0
Wyoming	477	411	17	48	1	0
Colorado	2,528	1,941	559	18	10	0
New Mexico	1,547	1,346	170	31	0	0
Arizona	3,490	2,635	720	112	8	15
Utah	960	857	82	14	7	0
Nevada	1,566	1,081	447	29	8	1
Washington	4,512	3,357	918	177	41	19
Oregon	3,182	2,545	371	142	4	120
California	22,632	14,385	7,746	239	157	105
Alaska	760	407	88	240	0	25
Hawaii	837	92	19	0	376	350

SOURCE: Table 6, U.S. Dept. of Justice, Bureau
of Justice Statistics, Prisoners in State and
Federal Jurisdiction on December 31, 1979, p. 16.

Comparing the racial breakdowns of the total U.S. population and the prison population, the following disproportions emerge:

Race	Total Pop.	Prison Pop.	Difference
Black	11.7	46.3	+ 34.6
White	83.1	51.5	- 31.6

In other words, blacks are overrepresented and whites are underrepresented in prison relative to their size in the U.S. population.

INCARCERATION RATES (hereafter all prison data is for state prisons only, unless otherwise noted)

The extent of this racial disparity is better understood when rates of imprisonment are calculated by race. At yearend 1979 the following rates per 100,000 were evident:

Race	Rate per 100,000
Black	512.8
White	77.6
All Races	138.6

This means there was a disparity, or difference, in imprisonment rates for whites and blacks which amounted to 435.2 persons per 100,000. Blacks were about 6.6 times more likely than whites to be in prison on December 31, 1979.

REGIONAL DIFFERENCES

Without taking race into account, the federal government has noted some significant regional differences in imprisonment

rates in 1979. Justice Department researchers have offered the following regional breakdowns:

TABLE 6 RATES OF INCARCERATION IN U.S., ALL RACES, YEAREND 1979	
Region	Rates per 100,000
South	196
North Central	105
West	101
Northeast	84

Therefore, without computing rates of imprisonment by race for each region, one might expect to find the South with the highest black incarceration rate. Moreover, based on prevalent beliefs about the treatment of blacks in the South, and widely held notions that penal severity is greater in that region (as evident, for example, in the concentration of death row prisoners there), it might be assumed that differential incarceration would be greatest in that region - or at least, that the black imprisonment rate would be highest there.

However, the following table indicates a different picture:

TABLE 7 DIFFERENTIAL INCARCERATION RATES, BY REGION YEAREND 1979			
Region	White Incar. Rate	Black Incar. Rate	B - W Difference per 100,000
North Central	60.4	547.1	486.6
South	105.9	522.0	416.1
West	87.4	493.9	406.5
Northeast	51.5	457.4	405.8
TOTAL U.S.	77.7	512.8	435.1

Thus, it is apparent that racially differential imprisonment exists in every region of the U.S., and that this disparity is nationwide in scope and serious in degree.

JURISDICTIONAL DIFFERENCES

Table 8 depicts the rates by state. It indicates that differential imprisonment is the case in every jurisdiction, and that racial disparities are not confined to a few states.

Analysis of these state rankings reveals a significant phenomenon:

The jurisdictions with the greatest black incarceration rates tend to be states with relatively few blacks in the general population, while those states with the highest proportion of black residents tend to have among the lowest rates of black imprisonment.

Several possible explanations might be offered for this phenomenon. For example:

1. Some social scientists point to statistical factors, contending that a tiny black population base, even if it produced a relatively small number of black prisoners compared to other states, might tend to distort the real extent of the problem in some jurisdictions.
2. A high black incarceration rate may be a function of high urban concentration of blacks, so that even if a state has relatively few blacks, their clustering in cities (which traditionally are high-crime areas) could also contribute to the high black imprisonment rate there.
3. Proponents of sociological labeling theory might suggest that a relatively small black minority is more visible to the majority in power and more vulnerable to being labeled as deviant or criminal; thus, they might experience a higher rate of imprisonment.
4. Demographic factors, such as the proportion of young black males, might be involved; or if the jurisdiction is undergoing changes in racial composition or distribution, it may be triggering a defensive response on the part of the white majority.
5. Economic factors, such as unemployment, may be affecting the races differentially to a greater degree in some jurisdictions.

Unfortunately, most of these hypotheses remain untested, and other factors may be responsible.

TABLE 8
DIFFERENTIAL IMPRISONMENT, BY JURISDICTION, 1979

REGION	STATE	WHITE RATE	RANK	BLACK RATE	RANK	B - W DIFF.	RANK	B/W RATIO	RANK
Northeast		51.5		457.4		405.8		8.9	
	Maine	68.1	32	255.8	47	187.6	47	3.8	48
	New Hamp.	34.0	48	150.4	49	116.4	49	4.4	42
	Vermont	84.1	18	352.4	45	268.4	45	4.2	43
	Mass.	34.6	47	482.6	32	448.1	28	14.0	6
	Rhode Is.	60.9	37	721.4	13	660.5	11	11.8	9
	Conn.	82.8	19	798.4	9	715.6	9	9.6	15
	New York	70.2	29	467.2	33	397.0	33	6.7	27
	New Jer.	36.1	46	393.8	42	357.8	36	10.9	11
Penn.	33.6	49	409.7	40	376.1	32	12.2	8	
North Central		60.4		547.1		486.6		9.1	
	Ohio	68.7	31	628.6	22	559.9	20	9.2	17
	Ind.	82.1	20	374.5	43	292.4	44	4.6	41
	Ill.	50.5	43	396.5	41	346.0	38	7.9	23
	Mich.	69.3	30	679.3	16	609.9	15	9.8	12
	Wis.	44.7	44	737.1	11	692.5	10	16.5	2
	Minn.	38.8	45	682.4	15	643.6	13	17.6	1
	Iowa	58.2	38	836.9	7	778.7	6	14.4	4
	Mo.	62.6	35	551.1	27	488.6	25	8.8	18
	N. Dak.	23.8	51	77.9	51	54.1	51	3.3	19
	S. Dak.	66.5	34	559.7	26	493.2	24	8.4	51
	Neb.	53.9	40	806.0	8	752.0	7	14.9	3
Kan.	67.5	33	626.4	23	558.9	21	9.3	16	
South		105.9		522.0		416.1		4.9	
	Del.	114.6	10	894.0	3	779.4	5	7.8	24
	Md.	57.2	39	629.0	21	571.7	18	11.0	10
	D.C.	52.4	42	643.2	20	590.8	16	12.3	7
	Virg.	81.1	21	493.6	30	412.5	31	6.1	29
	W. Virg.	53.9	41	367.4	44	313.5	42	6.8	26
	N. Car.	139.4	3	583.7	24	444.3	29	4.2	44
	S. Car.	153.5	2	458.2	34	304.7	43	3.0	51
	Georgia	124.8	7	488.9	31	364.1	34	3.9	45
	Fla.	122.9	8	750.6	10	627.7	14	6.1	28
	Kent.	77.6	24	412.0	39	334.4	41	5.3	36
	Tenn.	91.3	14	430.6	36	339.3	40	4.7	40
	Alab.	80.2	22	305.4	46	225.2	46	3.8	46
	Miss.	72.8	27	249.9	48	177.1	48	3.4	49
	Ark.	72.5	28	426.9	37	354.4	37	5.9	30
	La.	76.4	25	436.0	35	359.7	35	5.7	31
	Okla.	106.1	11	582.9	25	476.8	26	5.5	34
Texas	134.9	5	667.5	18	532.6	22	4.9	38	

- continued -

TABLE 8
DIFFERENTIAL IMPRISONMENT, BY JURISDICTION, 1979 (contd.)

REGION	STATE	WHITE RATE	RANK	BLACK RATE	RANK	B - W DIFF.	RANK	B/W RATIO	RANK
West		87.4		493.9		406.5		5.7	
	Mont.	85.1	17	671.9	17	586.8	17	7.9	22
	Idaho	87.7	16	736.4	12	648.6	12	8.4	20
	Wyo.	91.8	13	505.4	29	413.6	30	5.5	33
	Colo.	75.5	26	549.6	28	474.1	27	7.3	25
	N. Mex.	137.8	4	707.1	14	569.3	19	5.1	37
	Ariz.	117.6	9	959.6	2	841.9	2	8.2	21
	Utah	62.0	36	388.9	4	826.9	3	14.3	5
	Nev.	154.6	1	880.1	5	725.5	8	5.7	32
	Wash.	88.9	15	869.8	6	780.9	4	9.8	14
	Ore.	102.2	12	1001.1	1	898.9	1	9.8	13
	Calif.	79.8	23	425.8	38	346.0	39	5.3	35
Alaska	131.9	6	646.2	19	514.2	23	4.9	39	
Hawaii	28.9	50	109.5	50	80.6	50	3.8	47	
UNITED STATES		77.7		512.8		435.2		6.6	

SOURCE: U.S. Dept. of Justice, Bureau of Justice Statistics, Prisoners in State and Federal Institutions on December 31, 1979. National Prisoner Statistics Bulletin No. NPS-PSF-7 (Washington, D.C.: U.S. Dept. of Justice, 1981), p. 16; and U.S. Department of Commerce, Bureau of the Census. 1980 Census of Population and Housing. Advance Report No. PHC80-V-1, United States Summary: Final Population and Housing Counts. (Washington, D.C.: U.S. Department of Commerce, 1981). The author wishes to thank Richard Dehais for assistance in computing this data.

SEX DIFFERENCES

One of the most significant factors related to imprisonment generally, and to racially differential imprisonment specifically, is sex. About 96 percent of all prisoners are male and only about 4 percent are female. At this writing, sex breakdowns were not yet available from the Census, so the author can only offer estimates based on 1978 projections.

These statistics underscore the extraordinary extent to which black males are imprisoned, compared to any other group. For although black males accounted for only about 5.4 percent of

the U.S. population, black males comprised a staggering 45.7 percent of the U.S. prison population.

By region, the following imprisonment rates for black males were estimated for 1978:

Region	Imprisonment Rate per 100,000 BM's
Northeast	1031.7
West	1032.7
South	1108.0
Northcentral	1192.4
TOTAL U.S.	1105.7

By state, the imprisonment rates for black males were as follows:

1. Washington	2408.6	27. Minnesota	1114.8
2. Arizona	2210.3	28. Massachusetts	1107.7
3. Alaska	2200.0	29. New York	1076.5
4. Iowa	1972.2	30. Georgia	1039.7
5. Nevada	1963.2	31. New Jersey	1006.3
6. Delaware	1961.1	32. South Dakota ^a	1006.0
7. Nebraska	1834.8	33. Missouri	1002.9
8. Utah	1775.0	34. Louisiana	975.0
9. Michigan	1734.7	35. South Carolina	954.5
10. Wisconsin	1734.2	36. Pennsylvania	879.2
11. New Mexico	1720.0	37. California	870.1
12. Florida	1577.0	38. Tennessee	845.7
13. Oregon	1520.0	39. Indiana	819.0
14. Maryland	1509.8	40. Illinois	810.3
15. Texas	1438.9	41. Maine	800.0
16. Ohio	1399.6	42. Arkansas	736.7
17. Connecticut	1378.6	43. Alabama	661.6
18. Oklahoma	1372.3	44. Kentucky	644.2
19. Idaho ^a	1301.7	45. New Hampshire	600.0
20. Rhode Island	1266.7	46. Montana	500.0
21. North Carolina	1246.5	47. Mississippi	463.8
22. Virginia	1233.1	48. North Dakota	400.0
23. Colorado	1211.4	49. Hawaii	350.0
24. Kansas	1208.2	50. Vermont ^a	225.7
25. West Virginia	1200.0	51. Wyoming	0.0
26. District of Columbia	1118.0		

^aNo estimates for the number of black males in the civilian population of these states were available for 1976. Therefore, these rates were computed from 1970 census figures. In all other cases, the source for general population statistics was Bureau of the Census, "Demographic, Social and Economic Profile of States: Spring 1976," *Current Population Reports* (Washington, D.C.: Govt. Printing Office, 1979). Series P-20, No. 334, pp. 10-18.

For the entire U.S. this means that about 1.1 per 100 black males were in prison at the end of 1978, and in some states the figure exceeded 1 in 50. The imprisonment rate for white males was about 151.4 per 100,000, which means that .151 per 100, or about 1 in every 660 white males were in prison at yearend 1978.

Table 11 indicates that the number of black males in state prisons increased by about 45.2% from 1974-78 alone, which was 1.15 percent greater than the increase by white male prisoners during that period.

TABLE 11 CHANGING SIZE OF MALE STATE PRISON POPULATION, 1974-78			
	1974	1978	Change (%)
Black Males	87,070	126,469	39,399 (+ 45.2%)
White Males	93,978	135,423	41,445 (+ 44.1%)
SOURCE: U.S. Dept. of Justice, <u>Profile of State Prison Inmates: Sociodemographic Findings from the 1974 Survey of Inmates of State Correctional Facilities</u> , pp. 38-39; U.S. Department of Justice, <u>Prisoners in State and Federal Institutions on December 31, 1978.</u>			

Likewise, for female prisoners, the black increase outstripped the white increase by about 25.8 percent.

TABLE 12 CHANGING SIZE OF FEMALE STATE PRISON POPULATION, 1974-78			
	1974	1978	Change (%)
Black Females	2,678	5,509	2,831 (+ 51.4)
White Females	3,681	4,947	1,266 (+ 25.6)
SOURCE: <u>Ibid.</u>			

AGE DIFFERENCES

Black males born in the U.S.
and fortunate to live past the age of 18
are conditioned to accept the inevitability
of prison. For most of us,
it simply looms as the next phase
in a sequence of humiliations.

- GEORGE JACKSON (1970: 9)

Age is another important factor in differential imprisonment in general, because most people in prison are relatively young. Current statistics are not yet available showing the age distribution of prisoners by race, so we shall consider the findings of the 1974 federal survey. Table 13 indicates that the median age of black prisoners was lower than that of white prisoners, for males as well as females. The median age for black males in prison was 26.4 years old, compared to 28.0 for whites.

TABLE 13 INMATES BY AGE & RACE, 1974 (STATE PRISONS ONLY)			
Age	% White	% Black	W-B Diff.
Under 20	7.6	9.1	- 1.5
20	4.9	4.8	+ .1
21	5.6	6.6	- 1.0
22	5.8	6.5	- 0.7
23	6.2	7.2	- 1.0
24	5.5	6.7	- 1.2
25	4.9	6.8	- 1.9
26	5.3	5.7	- .4
27	4.0	4.7	- .7
28	3.5	4.0	- .5
29	4.4	3.5	+ .9
30-34	14.8	13.4	+ 1.4
35-39	9.6	7.2	+ 2.4
40-44	6.8	5.2	+ 1.6
45-49	4.5	4.0	+ .5
50 & over	6.4	4.5	+ 1.9
Not reported	.002	.002	0
TOTAL	100.0	100.0	NA
Median Age	28.0 years	26.4 years	

SOURCE: 1974 survey, p. 38.

The 1974 survey also reported data on the number of sentences ever served, by race and age (see Table 14), which indicated that

TABLE 14
INMATES BY RACE, AGE, AND NUMBER OF SENTENCES EVER SERVED, 1974

Race and age	Number of sentences ever served						
	Total	None	One	Two	Three	Four	Five or more
All races ¹	191,367	494	55,772	43,907	36,060	23,773	31,360
Under 20	15,817	138	6,511	4,193	2,824	1,227	924
20	9,275	19	3,515	2,309	1,848	963	621
21	11,677	0	4,303	2,835	2,123	1,225	1,191
22	11,733	22	4,058	3,009	2,277	1,122	1,245
23	12,842	61	4,103	3,563	2,477	1,329	1,308
24	11,654	19	3,820	2,732	2,554	1,335	1,194
25	11,246	87	3,360	3,013	1,905	1,438	1,443
26	10,498	21	3,095	2,628	2,022	1,269	1,464
27	8,326	21	2,455	1,794	1,472	1,091	1,493
28	7,226	0	2,076	1,544	1,304	962	1,341
29	7,600	0	1,823	1,668	1,468	1,037	1,604
30-34	27,128	0	5,734	5,648	5,384	4,388	5,975
35-39	16,280	20	3,478	3,102	3,250	2,396	4,033
40-44	11,486	20	2,442	2,522	2,148	1,446	2,907
45-49	8,096	22	2,136	1,334	1,381	1,092	2,131
50 and over	10,440	42	2,841	2,014	1,603	1,454	2,488
Not reported	43	0	21	0	22	0	0
Median age	27.1	24.3	25.5	26.1	27.0	28.9	31.6
White	97,658	305	27,133	21,325	18,572	11,837	18,485
Under 20	7,413	59	2,956	1,997	1,272	636	492
20	4,762	19	1,810	1,201	931	449	352
21	5,044	0	1,977	1,220	1,168	458	682
22	5,657	0	1,667	1,402	1,116	659	813
23	6,057	61	1,778	1,620	1,228	632	738
24	5,408	19	1,405	1,236	1,347	689	711
25	4,876	42	1,219	1,220	853	729	813
26	5,199	21	1,396	1,194	1,070	652	866
27	3,934	21	1,210	707	811	515	670
28	3,431	0	937	665	435	517	877
29	4,301	0	1,158	946	802	506	888
30-34	14,471	0	2,994	2,965	2,988	2,017	3,507
35-39	9,372	20	2,047	1,622	1,807	1,270	2,606
40-44	6,620	20	1,553	1,505	1,109	804	1,629
45-49	4,419	0	1,316	722	673	402	1,305
50 and over	6,213	20	1,710	1,104	939	904	1,535
Not reported	22	0	0	0	22	0	0
Median age	28.0	24.7	26.5	26.6	27.4	29.0	31.9
Black	89,747	149	27,894	21,712	16,728	11,172	12,093
Under 20	8,139	39	3,433	2,156	1,532	548	431
20	4,323	0	1,705	1,086	827	476	229
21	5,945	0	2,306	1,574	892	704	469
22	5,816	22	2,330	1,567	1,085	442	371
23	6,494	0	2,284	1,857	1,228	636	489
24	5,984	0	2,357	1,413	1,147	624	443
25	6,093	45	2,037	1,684	1,009	709	609
26	5,169	0	1,656	1,434	887	617	575
27	4,259	0	1,245	1,045	615	532	823
28	3,575	0	1,119	770	845	423	418
29	3,152	0	642	721	622	470	696
30-34	12,056	0	2,699	2,552	2,333	2,156	2,316
35-39	6,470	0	1,366	1,392	1,379	1,059	1,273
40-44	4,638	0	871	998	995	580	1,194
45-49	3,573	22	777	571	708	669	826
50 and over	4,041	21	1,046	891	623	527	933
Not reported	21	0	21	0	0	0	0
Median age	26.4	25.3	24.8	25.7	26.7	28.7	31.1

NOTE: Detail may not add to total shown because of rounding. Values under 300 are based on too few sample cases to be statistically reliable.

¹Includes inmates of races other than white or black, as well as those whose race was not reported.

SOURCE: *Ibid.*, p. 41.

for every age group, blacks tended to have served more sentences than whites, which means that blacks had been imprisoned more times than their white cohorts. Likewise, Table 15 shows that black prisoners were younger than their white cohorts, for all offenses except drug crimes.

TABLE 15
SENTENCED INMATES, BY RACE, OFFENSE, AND AGE AT ADMISSION,
1974

Race and offense	Age at admission											Not reported	Median age
	Total	Under 20	20	21	22	23	24	25-29	30-34	35-39	40 and over		
White	95,000	15,133	6,924	6,449	6,250	5,787	4,937	18,556	11,024	7,460	11,710	770	25.3
Violent offenses	40,916	5,562	2,882	2,410	2,468	2,401	2,210	8,682	5,323	3,863	4,757	353	26.1
Murder or attempted murder	11,583	1,624	494	572	601	572	671	2,063	1,388	1,172	2,297	129	27.4
Manslaughter	3,125	267	160	63	190	83	145	836	412	312	633	23	29.1
Rape	4,091	428	386	341	166	165	168	1,239	602	322	274	0	26.0
Robbery	15,428	2,478	1,385	1,104	968	1,054	931	3,036	2,014	1,425	896	139	24.7
Assault	4,437	580	314	289	460	423	166	860	557	389	357	42	24.8
Other	2,252	185	142	42	83	103	129	647	351	249	300	21	28.2
Property offenses	36,976	7,620	2,891	2,694	2,289	2,141	1,755	6,558	3,691	2,736	4,279	323	24.4
Burglary	20,261	4,353	1,857	1,654	1,437	1,354	1,076	3,503	1,751	1,305	1,690	281	23.5
Larceny or auto theft	9,198	2,514	641	619	433	371	401	1,406	954	658	1,180	20	24.0
Other	7,517	753	393	421	419	416	277	1,649	986	774	1,407	22	27.9
Drug or public order offenses	17,107	1,951	1,152	1,345	1,493	1,245	972	3,316	2,010	855	2,674	94	25.4
Drug	10,992	1,104	989	1,201	1,241	887	710	2,302	1,124	405	944	55	24.1
Public order	6,116	847	163	144	251	357	232	1,015	886	451	1,730	39	30.2
Black	88,628	17,906	7,373	5,780	6,704	6,096	4,952	16,960	8,961	5,020	8,182	695	24.0
Violent offenses	54,526	11,362	4,769	3,774	4,328	3,742	3,153	10,225	5,100	2,761	4,873	440	23.8
Murder or attempted murder	13,691	2,359	896	816	873	711	809	2,499	1,538	878	2,144	167	25.4
Manslaughter	4,833	556	273	213	211	234	189	848	542	463	1,261	42	28.8
Rape	4,900	1,177	411	329	287	473	273	850	439	334	326	0	23.5
Robbery	26,181	6,373	2,747	2,123	2,625	2,086	1,620	4,951	2,108	767	571	210	22.7
Assault	4,200	810	360	210	271	218	201	952	410	280	467	20	25.1
Other	720	86	82	82	61	19	61	124	62	39	104	0	24.5
Property offenses	23,280	5,352	2,116	1,522	1,931	1,592	1,112	4,592	2,184	1,159	1,498	193	23.4
Burglary	13,129	3,319	1,092	931	1,145	852	556	2,334	1,404	603	809	85	23.0
Larceny or auto theft	6,628	1,610	768	399	573	526	360	1,150	343	294	498	108	22.8
Other	3,523	423	257	193	212	214	226	1,107	437	262	193	0	25.7
Drug or public order offenses	10,822	1,192	487	484	446	762	657	2,144	1,677	1,100	1,810	62	28.0
Drug	7,605	620	361	381	334	481	512	1,652	1,296	865	1,103	0	27.9
Public order	3,217	572	126	103	112	281	145	491	381	235	708	62	28.2

One of the implications of this finding is that blacks' chances of being imprisoned at some point in their lives is much greater than whites' - how much greater was recently suggested in a study conducted by Lawrence A. Greenfield of the National Institute of Justice.

Greenfield examined the cumulative prevalence of correctional confinement for males by age and race, using data from a federal survey taken in 1974. He found that by age 65, an astonishing 14.3 percent of all black males had been incarcerated in a state prison or local jail; 11.7 percent had been confined at least twice; 10 percent three times; and 6.6 percent four times;

for white males the corresponding figures were 1.69, 1.44, 1.27, and .90. The following table lists the percent of black males who had been confined in a correctional facility, by age and frequency, compared to the respective percent of white males.

TABLE 16 CONFINEMENT IN A CORRECTIONAL INSTITUTION, BY RACE, AGE AND FREQUENCY, 1974 (in %)									
AGE OF MALE IN PRISON	% IMPRISONED AT LEAST ONCE		% IMPRISONED AT LEAST 2		% IMPRISONED AT LEAST 3		% IMPRISONED AT LEAST 4		
	Blk	White	Blk	White	Blk	White	Blk	White	
18-21	2.6	.3	1.6	.2	1.1	.2	.6	.1	
22-24	5.5	.6	3.7	.4	2.6	.4	1.3	.2	
25-34	11.0	1.2	8.5	.9	6.3	.9	4.2	.5	
35-44	12.7	1.5	10.3	1.2	8.1	1.1	5.4	.7	
45-64	14.3	1.7	11.7	1.4	10.1	1.3	6.6	.9	

SOURCE: Greenfeld

URBAN/RURAL DIFFERENCES

National statistics are not available to show the percent of prisoners who were sent there from metropolitan areas, but it is known that the overwhelming majority of inmates are committed for crimes in cities. Likewise, it is also known, but not easily documented at the national level, that the bulk of black males imprisoned are from the city.

One should not necessarily conclude that blacks are imprisoned at a higher rate than whites simply because they tend to be concentrated more in urban areas than whites. For example, the Illinois Department of Corrections recently reported data on prison admissions, by age, sex and race, for each county in Illinois. Nearly 58 percent of all prison commitments occurred in Cook County (Chicago metropolitan area), which is the state's most urban and blackest county. Yet blacks in Cook County were committed to prison at a rate far exceeding that of whites. It appears that in every geographical location, blacks are imprisoned

more than whites. In terms of volume, though, the cities are the primary contributor to black imprisonment; suburban and rural areas do not send such a large quantity of blacks to prison.

OFFENSE

Offenses differ in the extent to which they result in imprisonment. Generally speaking, the number and percent of persons held for "violent crimes" (as defined by the FBI) have been increasing, as illustrated by the following offense characteristics of state inmates in 1974 and 1979.

Offense Type	1974	1979	Change
Robbery	23	25	+ 2
Murder & nonnegligent manslaughter	18	18	0
Burglary	18	18	0
Drugs	10	7	- 3
Assault	5	6	+ 1
Larceny	6	5	- 1
All Others	20	21	+ 1
TOTAL	100	100	

One of the questions raised by these offense characteristics data is whether blacks higher rate of imprisonment is explained by a greater involvement in crime, especially in the "serious" crimes resulting in imprisonment, and to a corresponding degree. This question will be addressed in a later section. However it should be noted that current statistics do not exist at the national level which are specific to race and offense of prisoners, so that we shall rely on 1974 data. Table 18 offers only the

TABLE 18
SENTENCED INMATES, BY OFFENSE AND RACE, 1974

Offense	All races ¹	White	Black	Other
Total	187,487	95,000	88,628	3,272
Violent offenses	97,523	40,916	54,526	1,728
Homicide	33,958	14,708	18,524	584
Murder or attempted murder	25,841	11,583	13,691	444
Murder	21,400	9,836	11,124	338
Attempted murder	4,441	1,747	2,567	107
Manslaughter	8,117	3,125	4,833	140
Kidnaping	2,315	1,640	614	41
Sexual assault	9,870	4,702	5,006	142
Rape	8,514	3,708	4,664	142
Statutory rape	619	383	236	0
Lewd act with child	529	489	40	0
Other	208	122	65	0
Robbery	42,294	15,428	26,181	513
Armed robbery	28,746	10,878	17,390	348
Unarmed robbery	5,904	1,908	3,894	103
Undetermined	7,644	2,642	4,898	63
Assault	9,084	4,437	4,200	447
Aggravated assault	5,723	2,794	2,718	212
Simple assault	1,691	783	735	173
Undetermined	1,670	860	747	62
Property offenses	61,489	36,976	23,280	1,082
Burglary	34,025	20,261	13,129	554
Larceny or auto theft	16,252	9,198	6,628	403
Larceny	12,316	6,509	5,486	321
Auto theft	3,935	2,689	1,142	81
Other	11,213	7,517	3,523	125
Forgery, fraud, or embezzlement	8,167	5,549	2,555	41
Arson	1,017	717	277	22
Stolen property offense	1,950	1,192	670	62
Property damage	80	59	21	0
Drug offenses	18,807	10,992	7,605	148
Major (all offenses except possession and marijuana)	8,131	4,919	3,147	63
Heroin	2,773	1,263	1,509	0
Other drug except marijuana	5,358	3,656	1,638	63
Minor (possession and all marijuana offenses)	10,676	6,072	4,457	85
Marijuana except possession	1,861	1,538	302	0
Heroin possession	2,651	1,233	1,377	20
Other drug possession	1,159	793	345	21
Unknown drug possession	2,050	1,050	980	20
Marijuana possession	1,142	792	327	23
Activity unknown	1,813	666	1,126	0
Public order offenses	9,669	6,116	3,217	314
Weapons offense	1,857	647	1,165	46
Other sex offense	2,117	1,720	376	21
Drunk driving	1,130	735	325	70
Flight or escape	984	791	105	88
Habitual criminal	146	106	40	0
Jail offense	3,413	2,094	1,208	89
Other	22	22	0	0

NOTE: Detail may not add to total shown because of rounding. Values under 300 are based on too few sample cases to be statistically reliable.

¹Includes inmates whose race was not reported.

SOURCE: 1974 survey, p. 45

numbers of white and black inmates who were in custody in 1974, according to their offense. In the next table, offense characteristics by race are provided in percent, indicating what portion of each race was imprisoned for each crime.

Generally speaking, the picture that emerges from this

TABLE 19			
SENTENCED INMATES, BY OFFENSE & RACE, 1974 (in %)			
Offense	White	Black	Difference
VIOLENT OFFENSES	43.1	61.5	+18.4
Homicide	15.5	20.9	+ 5.4
Kidnaping	1.7	.6	- 1.1
Sexual Assault	4.9	5.6	+ .7
Robbery	16.2	29.5	+13.3
Assault	4.7	4.7	0
PROPERTY OFFENSES	38.9	26.3	-12.6
Burglary	21.3	14.8	- 6.5
Larceny or auto theft	9.7	7.5	- 2.2
Other property offenses	7.9	3.9	- 4.0
DRUG OFFENSES	11.6	8.6	- 3.0
PUBLIC ORDER OFFENSES	6.4	6.9	+ .5
TOTAL	100.0	100.0	

method is one of blacks being in prison more for violent crimes and less for property crimes compared to whites. The profile of the black prisoners indicates that the modal offense is robbery, followed in frequency by homicide, burglary, drug offenses, larceny or auto theft, and public order offenses. Whites, on the other hand, are most likely to be imprisoned for burglary, robbery, homicide, drug offenses, or larceny/auto theft.

CRIMINAL HISTORY

Differential imprisonment is also affected by the prior criminal history of the offender. Prior criminal history can be measured in several ways, including the number of prior arrests, the number of prior convictions (especially felony convictions), and the number of prior imprisonments. As we have been seen, black prisoners tend to have more prior imprisonments than whites; however, it is difficult to obtain

race-specific data as measured by prior arrests and prior criminal convictions.

II. IMPACT OF DIFFERENTIAL IMPRISONMENT

DIFFERENTIAL IMPACT

Prison conditions vary over time and institution, and even different blocks within the same institution can present some significant environmental differences to those who must live in them. Individual prisoners can also experience imprisonment differently, depending upon their own personal situation. Over time, a prisoner's perspectives and methods of coping with his situation can drastically change, just as people in the outside world undergo changes in their "free" lives.

Generally speaking, however, it is usually recognized that all prisons have deleterious effects upon everyone who lives in them, and some writers are beginning to examine the harmful impact of imprisonment on others beside the inmate, such as his family, his friends, and perhaps others as well. Since blacks are differentially imprisoned compared to whites, it follows that the impact of imprisonment is greater upon blacks than it is upon whites. Indeed, black imprisonment is so extensive and deeply ingrained in the American black experience that it may be viewed as a modern equivalent of slavery. It is also possible that prison may represent a profound influence upon black culture, black identity, black social and political status, the black family, and race relations.

INDIVIDUAL IMPACT

Countless writers have sought to identify and measure prison's impact on the prisoner. Sykes, for example, has described several "pains of imprisonment," including:

1. deprivation of goods and services;
2. denial of heterosexual relationships;
3. loss of autonomy;
4. compromised security and a feeling of well-being; and
5. suspended liberty.

Guenther has added to the list:

6. routinization;
7. debasement;
8. mortification;
9. dehumanization;
10. disruption of contact with the home world; and
11. alteration of the prisoner's sense of time.

Clemmer's concept of "prisonization," which he defined as "the taking on in greater or less degree of the folkways, mores, customs and general culture of the penitentiary," asserted that imprisonment could drastically influence the socialization of prisoners, in several ways. For example, it might

12. promote anti-social behavior;
13. strengthen ties to criminals;
14. inculcate a criminal code;
15. reinforce criminal orientation and criminal skills; and
16. discourage relationships with non-criminal persons.

Jones has documented some of the ways in which prison

17. injures inmate physical health;
18. reduces life expectancy;
19. impairs psychological well-being; and
20. impairs the individual's ability to function in a non-dependent state of freedom.

Others have noted that prison may also

21. inflict a higher rate of criminal victimization;
22. attach criminal disabilities; and
23. attach civil disabilities.

This is only a partial list, but it does suggest some of the ways that prison can affect the individual.

At this point, one can only speculate about differential impact of prison upon black individuals compared to whites. If, for example, prison itself often serves as a source of criminality, then it is possible that blacks' greater exposure to imprisonment may be a contributing factor to the incidence and seriousness of black criminality.

FAMILY IMPACT

Virtually all prisoners are members of families, and the incarceration of a husband, wife, brother, son, daughter, sister, cousin, nephew or niece can affect relatives as well as the individual who is imprisoned. One writer, for example, has concluded that prison can severely affect the family in several ways. For example:

24. pre-prison friendships deteriorate;
25. the family becomes stigmatized;
26. finances suffer;
27. spouses experience emotional and sexual frustration;
28. management of children becomes more difficult; and
29. the child's socialization is inevitably worsened.

Table 20, from the 1974 survey of state prison inmates, examines change in marital status, by race, for 183,628 whites and blacks. About 27 percent of the blacks, and 33 percent of the whites, were reported as married at admission. Of those, about 16 percent of the whites and 22 percent of the blacks had experienced a change in their marital status since their admission. Sentenced black inmates were more likely than their white counterparts to have never been married.

The survey also determined that about 60 percent of all inmates who had been self-supporting had at least one dependent in addition to themselves. Self-supporting blacks were somewhat more likely than their white counterparts to have been supporting

one or more dependents.

However, the full extent of the difference in impact of imprisonment upon black and white family structure is difficult to measure. I have already made the following comment in this regard:

Historians and sociologists still write in great volumes about the legacy of slavery, an institution that was officially abolished over a century ago - some of them arguing, for example, for or against Daniel Patrick Moynihan's controversial thesis that enslavement wrecked the structure of black families and left a "tangle of pathology" that has persisted well into the twentieth century. Many writers of various colors and persuasions have depicted welfare programs as a modern equivalent of slavery (or Reconstruction). Yet, surprisingly, no one has examined imprisonment in similar terms.

TABLE 20
SENTENCED INMATES, BY RACE, MARITAL STATUS AT
ADMISSION, AND CHANGE IN MARITAL STATUS, 1974

Race and marital status at admission	Total	Changed					Not changed	Not reported
		Total	Married	Widowed	Divorced	Separated		
All races ¹	187,487	23,733	4,032	1,199	13,403	5,099	162,119	1,635
Married	56,670	16,369	0	867	10,944	4,559	40,236	66
Widowed	5,022	398	126	0	209	63	4,623	0
Divorced	19,244	767	642	41	0	84	18,454	23
Separated	12,706	2,744	944	186	1,613	0	9,941	21
Never married	92,532	3,455	2,320	105	637	393	88,864	213
Not reported	1,312	0	0	0	0	0	0	1,312
White	95,000	14,972	2,200	604	9,716	2,451	79,466	562
Married	31,800	10,621	0	440	7,998	2,183	21,135	44
Widowed	2,786	183	61	0	122	0	2,603	0
Divorced	15,148	620	537	41	0	42	14,505	23
Separated	5,541	1,620	453	82	1,085	0	3,899	21
Never married	39,381	1,928	1,148	41	512	227	37,324	129
Not reported	345	0	0	0	0	0	0	345
Black	88,622	8,164	1,740	552	3,303	2,568	79,520	945
Married	23,780	5,308	0	404	2,607	2,297	18,451	22
Widowed	2,045	192	65	0	63	63	1,854	0
Divorced	3,820	147	105	0	0	42	3,672	0
Separated	6,980	1,103	491	84	529	0	5,877	0
Never married	51,141	1,413	1,080	64	104	166	49,666	62
Not reported	861	0	0	0	0	0	0	861

NOTE: Detail may not add to total shown because of rounding. Values under 300 are based on too few sample cases to be statistically reliable.

¹Includes inmates of races other than white or black, as well as those whose race was not reported.

SOURCE: 1974 survey, p. 52.

TABLE 21
SENTENCED INMATES, BY RACE, AGE, AND CHANGE IN
MARITAL STATUS, 1974

Race and age	Total	Changed					Not changed	Not reported
		Total	Married	Widowed	Divorced	Separated		
All races ¹	187,487	23,733	4,032	1,199	13,403	5,099	162,119	1,635
Under 20	15,491	209	42	0	45	122	15,226	56
20-24	55,923	3,771	894	86	2,023	769	51,712	440
25-29	44,036	6,630	1,203	119	3,702	1,576	37,045	361
30-34	26,612	4,891	764	104	2,961	1,062	21,467	254
35-39	15,961	2,958	333	170	1,907	548	12,762	241
40-44	11,217	2,034	292	168	1,158	417	9,100	84
45-49	7,927	1,482	231	166	775	310	6,398	48
50 and over	10,277	1,760	274	357	833	296	8,367	151
Not reported	43	0	0	0	0	0	43	0
Median age	27.1	31.3	29.3	42.7	31.6	30.4	26.6	28.6
White	95,000	14,972	2,200	604	9,716	2,451	79,466	562
Under 20	7,268	148	42	0	45	61	7,083	37
20-24	26,463	2,684	538	43	1,604	499	23,648	131
25-29	21,137	4,106	611	149	2,656	690	16,990	41
30-34	14,150	3,076	458	61	2,155	401	10,927	148
35-39	9,077	1,861	133	62	1,412	253	7,101	116
40-44	6,394	1,378	185	124	818	251	4,995	21
45-49	4,356	799	85	38	486	189	3,532	25
50 and over	6,133	922	147	126	541	108	5,168	43
Not reported	22	0	0	0	0	0	22	0
Median age	28.1	30.9	28.3	38.9	31.3	29.7	27.4	32.4
Black	88,628	8,164	1,740	552	3,303	2,568	79,520	945
Under 20	8,018	61	0	0	0	61	7,938	19
20-24	28,250	942	335	42	313	252	27,017	291
25-29	22,014	2,377	570	0	961	846	19,361	275
30-34	11,860	1,684	282	21	721	660	10,090	86
35-39	6,445	985	174	107	430	273	5,357	103
40-44	4,596	635	106	44	320	166	3,920	41
45-49	3,466	683	146	128	289	121	2,761	22
50 and over	3,957	795	127	210	269	188	3,055	108
Not reported	21	0	0	0	0	0	21	0
Median age	26.4	32.1	29.7	47.4	32.6	30.9	25.9	27.0

NOTE: Detail may not add to total shown because of rounding. Values under 300 are based on too few sample cases to be statistically reliable.

¹Includes inmates of races other than white or black, as well as those whose race was not reported.

SOURCE: 1974 survey, p. 53

TABLE 22
SENTENCED INMATES, BY RACE, SENTENCE LENGTH, AND CHANGE
IN MARITAL STATUS, 1974

Race and sentence length	Total	Changed					Not changed	Not reported
		Total	Married	Widowed	Divorced	Separated		
All races ¹	187,487	23,733	4,032	1,199	13,403	5,099	162,119	1,635
Less than 2 years	10,295	754	175	0	352	237	9,472	59
2-2.9 years	8,774	571	126	44	208	193	8,141	62
3-3.9 years	16,019	1,548	293	22	824	509	14,158	214
4-4.9 years	10,858	992	228	20	507	236	9,845	21
5-5.9 years	25,824	2,752	696	104	1,389	592	22,915	127
6-9.9 years	20,238	2,172	322	88	1,161	601	17,852	214
10-97.9 years	69,729	10,420	1,522	676	6,092	2,131	58,723	586
98 years or more, life or death	23,280	3,954	521	216	2,682	515	19,092	224
Not reported	2,470	421	150	0	187	84	1,921	128
Median number of years ²	7.8	10.2	8.0	12.9	10.5	9.2	7.3	9.0
White	95,000	14,972	2,200	604	9,716	2,451	79,466	562
Less than 2 years	5,144	502	83	0	311	108	4,642	0
2-2.9 years	5,019	364	66	44	166	88	4,655	0
3-3.9 years	8,530	951	144	22	615	169	7,453	127
4-4.9 years	5,127	649	144	82	398	108	4,478	0
5-5.9 years	13,577	1,932	433	80	1,103	314	11,624	22
6-9.9 years	10,202	1,431	192	66	886	286	8,683	88
10-97.9 years	33,100	6,207	743	271	4,247	946	26,643	249
98 years or more, life or death	12,857	2,580	245	120	1,845	370	10,202	75
Not reported	1,444	356	150	0	145	62	1,088	0
Median number of years ²	7.2	10.1	6.7	10.3	10.3	9.1	6.6	10.1
Black	88,628	8,164	1,740	552	3,303	2,568	79,520	945
Less than 2 years	4,906	262	92	0	42	129	4,585	59
2-2.9 years	3,569	207	60	0	42	105	3,299	62
3-3.9 years	7,070	633	149	0	145	339	6,350	87
4-4.9 years	5,564	342	85	20	110	128	5,201	21
5-5.9 years	11,875	766	243	22	243	258	11,004	105
6-9.9 years	9,797	718	130	22	251	315	8,954	125
10-97.9 years	34,945	3,890	730	383	1,632	1,146	30,803	252
98 years or more, life or death	9,980	1,280	253	106	796	126	8,573	127
Not reported	922	65	0	0	42	22	750	107
Median number of years ²	8.4	10.5	9.6	20.5	10.9	9.2	8.1	6.7

NOTE: Detail may not add to total shown because of rounding. Values under 300 are based on too few sample cases to be statistically reliable.

¹Includes inmates of races other than white or black, as well as those whose race was not reported.

²Medians based on sentences of less than 98 years.

SOURCE: 1974 survey, p. 54.

IMPACT ON PRISONS

There are also indications that differential imprisonment significantly impacts the institutions themselves. Professor James B. Jacobs of Cornell University recently asserted that, since 1970, race has become generally recognized as "the most important factor in the prison subculture, determining more than anything else now one 'did time' in most of the nation's major prisons." He added that race is often an important factor in institution, cell, and job assignments, in deciding one's place in the prison society, and in determining an inmate's opportunity for illegal dealings and vulnerability to assault by other prisoners. He might have added that racial differences have often been used for control purposes by prison staff, who have tended to play one side against the other as a means of diminishing prisoner solidarity.

Jacobs depicts prisons as being riddled with racial conflict, racially predatory behavior (which, unfortunately, he only attributes to the prisoners), and extreme racial violence. In order to diminish these problems - in a prison system which is becoming predominantly black - he goes so far as to urge a rethinking of racial segregation of prisoners, and actually argues in favor of segregation.

Most prisoners' rights advocates strongly oppose racial segregation of prisoners, however, and some contend that the underlying reason why some (white) prison commentators and administrators are expressing more concern about protecting "minority" inmates is because the minority in many institutions is white. Alvin J. Bronstein, executive director of the

National Prison Project of the American Civil Liberties Union, is among those who believes that the unprecedented coverage given to the Attica Prison uprising of 1971 was instrumental in showing the American public - really for the first time - the extent to which prisons had come to embody racial conflict. "Unfortunately," Bronstein has remarked, "the public's perception of who is in prison became one of some 'horrible black person.'"

Commissioner Theodore Kirkland of the New York State Board of Parole, who is black, adds that "Attica made everybody aware that the people inside were predominantly black. And lo and behold, once that had been realized, it didn't take corrections long to experience the death of rehabilitation." Other blacks have come to the same conclusion. Prof. Julius Debro of Atlanta University has suggested that the present trend away from programs and toward prison warehousing has occurred because the institutions themselves have become strongly associated with black people.

III. CRIME & IMPRISONMENT

RACE & CRIME

The dominant explanation as to why blacks are imprisoned more than whites is that blacks commit more crime than whites, especially, that they commit more of the "serious" ("violent") crimes that lead to imprisonment.

This notion is not new. Historian Douglas Greenberg has discovered that the belief that blacks were more criminal than

whites was prevalent in 17-century New York - before it was supported by official data. By the 19th century it was supported by official statistics, and Beaumont and Tocqueville ascribed the overrepresentation of blacks in American penitentiaries to the "degraded nature of the colored population."

Early in this century, Cesare Lombroso, the "father of positivist criminology," declared that even if the black man "is dressed in the European way and has accepted the customs of modern culture, all too often there remains in him the lack of respect for the life of his fellow man, the disregard for life which all wild people have in common."

Explanations for blacks' greater criminality according to official statistics have varied over the years. Some of the more prevalent theories have focused on the following:

- poverty (blacks are poorer than whites, and their lower socio-economic status affects both the incidence and the type of crimes they commit;
- unemployment (blacks experience a higher unemployment rate than whites, and young black urban males suffer the highest rate of unemployment, which causes them to resort more to crime, and thus results in greater imprisonment;
- intelligence (blacks are less intelligent than whites, which may put them at a serious disadvantage in post-industrial society and also result in more being caught and later imprisoned for crime);
- alcohol (blacks abuse alcohol more than whites more than whites, and since alcohol often leads to crime it may make blacks more criminal);
- narcotics (other drug abuse, especially for heroin and other dangerous drugs, may be greater among blacks than among whites, causing more blacks to resort to drug-related crimes to support their habits);
- body type and other biological theories (some

criminologists have suggested that biological differences may be responsible):

- compulsive masculinity (some psychological theories, such as the notion that blacks tend to be more compulsively physical or violent - perhaps to the extent that they constitute what some sociologists have called a "subculture of violence" - have suggested that cultural factors are responsible for the incidence and nature of black crime):
- family disorganization (as noted earlier, some social scientists have examined prison's impact on the family and found that imprisonment increases family disorganization, leading them to the conclusion that since family disorganization is a contributing factor to crime, then differential imprisonment may be resulting in a still greater black crime rate);
- demographics (numerous studies have asserted that crime rates can be a function of sex, age, and other demographic factors, and thus blacks may experience a higher crime rate because of their demographic characteristics).

All of these theories are subject to challenge, however, and none is universally accepted as the cause greater black involvement in crime. Indeed, as we will later examine, the assumption that blacks are more criminal than whites is itself suspect, according to some theorists.

MEASURING CRIME

Since the 1960's, the measurement of crime has undergone a veritable revolution in criminology, and criminologists have become much more sophisticated in their assessments of it.

In general, several methods have been devised to measure the nature of crime in American society. They include:

- (1) crime rates;
- (2) arrest rates;
- (3) self-report surveys; and
- (4) victimization surveys.

Crime rates are usually considered to represent the number of so-called "Index offenses" per 100,000 residents which have been

reported to the police. Index offenses are selected crimes, as defined by the Federal Bureau of Investigation, reported to the FBI by local law enforcement agencies, and published yearly by the federal government in the form of the Uniform Crime Reports (UCR). Today this list includes eight offenses: murder and nonnegligent manslaughter, forcible rape, robbery, assault, burglary, larceny-theft, motor vehicle theft, and arson.

Arrest rates, on the other hand, reflect the rate of police arrest of suspects for crime, and thus, they do not include as many offenses (or perpetrators) as crimes reported to the police. Arrest rates, by race, are examined in detail later.

Self-report studies represent a newer, unofficial measure of crime. This modern survey technique is designed to measure crime by asking respondents if they have committed crimes in a specific period. Although their validity has been questioned as being somewhat suspect, even with firm pledges of confidentiality, some of these surveys have revealed that a very high percentage of the population - over 90 percent - admits committing an act which society has defined as criminal. One of the most significant findings of many self-report studies has been that they have appeared to depict far less racial variation in criminality as compared to official measures. Thus, they have raised serious questions about the nature of criminal justice processing, and perhaps suggested that racial discrimination or bias may somehow be affecting the way American society deals with crime.

Victimization surveys try to elicit information about crime by asking respondents if they have been the victim of

crime in a specific period, and thus they may include many persons who were victimized but who never reported their victimization to the police. The reliability of victimization approaches is also subject to some dispute, and debate continues as to whether this measure of crime presents a different racial picture than official measures or self-reports. The latest federal assessment of Issues in the Measurement of Victimization offers several cautions about apparent racial distortions in the national victimization survey.

OFFICIAL CRIME & RACE

Because crimes reported to the police do not include information on race of the offender, the only official measure of crime which offers race-specific data are arrest statistics. The most commonly used arrest statistics for the U.S. are those contained in the annual UCR.

In the 1980 UCR a total of 12,042 law enforcement agencies reported a total of 9,686,940 criminal arrests for a population of 208,194,225. Race-specific arrest data was reported by 12,013 agencies, for a total of 9,683,673 criminal arrests, and the population covered by those agencies was estimated to amount to about 207,907,704. This means that race-specific arrest data was not available for about 19 million persons of the U.S. population in 1980.

It should also be noted that the UCR estimated a U.S. population of 225,349,264, which was 1 percent lower than the actual population accounted by the 1980 Census. Thus, the FBI crime rates and arrest rates were inflated. Moreover, most of the agencies not reporting race-specific arrest data were located

in rural and suburban areas - areas which are predominantly white - so that the UCR presented a slightly distorted picture of race and arrest for 1980.

What the UCR does present are arrest statistics for 29 classes of offenses, ranging from murder and nonnegligent manslaughter to vagrancy and (juvenile) runaways, as well as totals for "Violent crime" (including murder, forcible rape, robbery, and aggravated assault), "Property crime" (including burglary, larceny-theft, motor vehicle theft, and arson), and the "Crime Index total" (including murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson).

Here again, some questions might be raised about both the selection and the ranking of offenses by the FBI. For example, so-called "robbery" in the UCR is considered as a "violent" crime, even though it may not have included the use of physical violence, or even though it may not have resulted in any physical injury to the victim. On the other hand, certain other violent offenses are not considered as such by the UCR. For example, chemical pollution that results in the death or serious physical injury of large segments of the population; suicide; child abuse; and the manufacture of unsafe automobiles or other machinery which may result in, or contribute to, a high level of violence in the society, are not listed as "violent" offenses. Yet, what the FBI defines as "robbery" is considered a violent offense, even though most people would agree that the motive of robbery is economic, and most of the "robberies" for which persons are arrested did not involve

serious physical injury. In racial terms, the distinction is important, because the "robbery" which the UCR reports shows the greatest involvement of blacks of any "violent" crime.

As indicated in Figure 2, so-called "violent crime" as defined by the FBI depicts blacks as being disproportionately overrepresented and whites as underrepresented. Blacks in 1980 were arrested for 44.1 percent of the crimes of violence and whites were arrested for 54.4 percent.

For so-called "property crime," the racial imbalance was not as great - blacks accounted for 29.9 percent and whites for 68.3 percent of the arrests. When all offenses recorded in the FBI's UCR were considered, blacks were arrested for an even lower percentage - 24.5 - compared to 73.8 percent for whites.

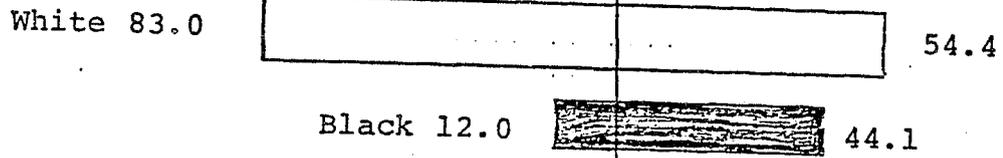
Among the other offenses listed in the UCR, two classes of crime - liquor law violations and driving under the influence - actually showed blacks as being disproportionately underrepresented among those arrested. For five others (vandalism, sex offenses other than rape or prostitution, drunkenness, curfew and loitering law violations, and running away) blacks accounted for less than 20 percent of the total arrests.

Thus, according to the FBI's ordering of "serious" offenses (Index crimes), blacks were significantly overrepresented in relation to their frequency in the general population. In order to determine just how much they were overrepresented, many researchers have introduced the measurement of the arrest rate. In 1980 blacks showed an arrest rate of about 2,722.1 per 100,000 blacks, for the eight Index offenses. The white arrest rate was 763.5 for those offenses.

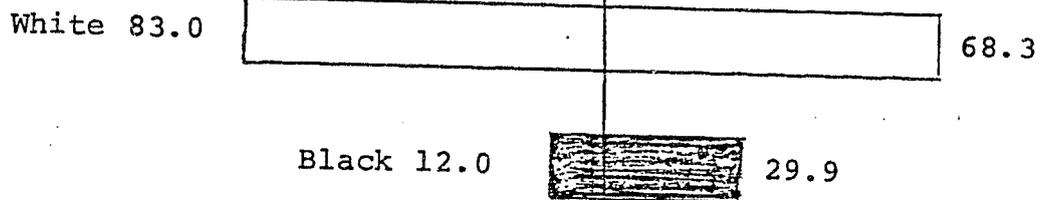
FIGURE 2
BLACK & WHITE ARREST PERCENTAGES IN 1980
ACCORDING TO THE UNIFORM CRIME REPORTS

U.S. POPULATION

VIOLENT CRIME



PROPERTY CRIME



ALL OFFENSES

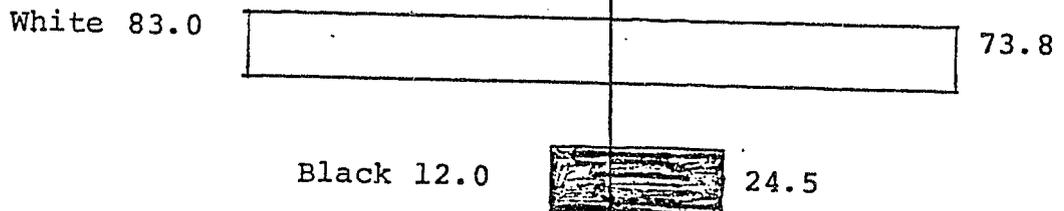
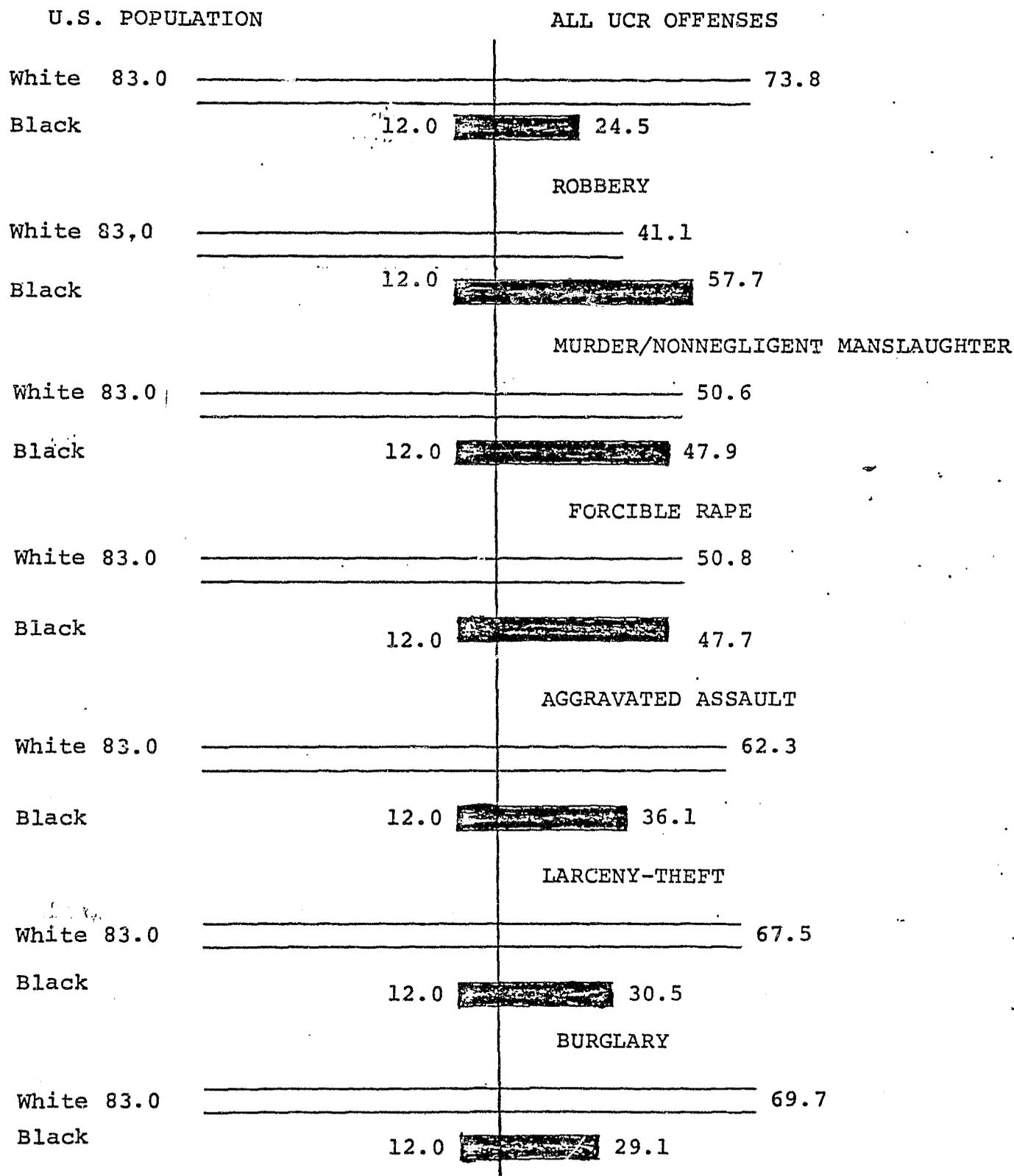


FIGURE 3
BLACK & WHITE ARREST PERCENTAGES, 1980



Blacks were arrested relatively more frequently than whites -
 how many times more is indicated in the following Table.

TABLE 23	
ARREST DIFFERENTIALS, BY RACE, 1980	
Robbery	10.0 times
Murder & nonnegligent manslaughter ...	6.8 times
Forcible rape.....	6.7 times
Aggravated assault.....	4.1 times
Larceny-theft.....	3.2 times
Burglary	3.0 times
Motor vehicle theft.....	3.0 times
Arson.....	1.8 times

The disproportionate arrest of blacks is not a recent phenomenon; it has existed for generations, perhaps for centuries. However, rate differentials have been increasing, especially for Index crimes, and some criminologists contend that the increases have been largely responsible for the growing racial differential in the use of imprisonment.

Tables 24 and 25, for example, depict black and white arrest rates for 1969 and 1980. The change in black arrest rates during that period is presented in Table 26. By 1980 the black arrest rate for Index offenses had risen to 8,967.0 persons per 100,000, up 2,063.9 from 1969. White arrest rates, on the other hand, rose by 1,624.2 persons, to 3,794.1 per 100,000 in 1980 (see Table 27). The change in the difference between black and white arrest rates went up by 439.7 persons (Table 28).

TABLE 24

ARREST RATES PER 100,000 POPULATION FOR UCR CRIMES, BY RACE, IN 1969

Offense Charged	W H I T E S		B L A C K S	
	Number	Rate	Number	Rate
TOTAL	3,842,895	2161.9	1,558,740	6903.1
Murder & nonnegligent man- slaughter	3,743	2.1	6,444	28.5
Forcible rape	2,192	1.2	805	3.6
Robbery	21,127	11.9	42,980	190.3
Aggravated assault	49,443	27.8	49,631	219.8
Burglary	153,496	86.4	82,938	367.7
Larceny-theft	316,592	178.1	156,111	691.4
Motor vehicle theft	71,210	91.6	42,809	189.6
Arson	5,553	7.1	2,287	10.1
Violent crime	80,720	103.8	105,781	468.5
Property crime	541,298	304.5	281,858	1248.2

SOURCE: Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports- 1969 (Washington, D.C. : U.S. Government Printing Office, 1970), p. 118; and base population statistics from U.S. Bureau of the Census, 1970 Census of Population, Vol. I, Part 1, Sect. 1 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 294.

TABLE 25

ARREST RATES PER 100,000 POPULATION FOR UCR CRIMES, BY RACE, 1980

Offense Charged	W H I T E S		B L A C K S	
	Number	Rate	Number	Rate
TOTAL	7,145,763	3794.1	2,375,204	8967.0
Murder & nonnegligent man- slaughter	9,480	5.0	8,968	33.9
Forcible rape	14,925	7.9	14,036	52.9
Robbery	57,308	30.4	80,494	303.9
Aggravated assault	160,959	85.5	93,312	352.3
Burglary	333,716	177.2	139,384	526.2
Larceny-theft	758,245	402.6	342,633	1293.5
Motor vehicle theft	88,971	47.2	38,143	143.9
Arson	14,494	7.7	3,769	14.2
Violent Crime	242,672	128.8	196,810	743.0
Property Crime	1,195,426	634.7	523,929	1977.9

SOURCE: Federal Bureau of Investigation, Uniform Crime Reports for the United States - 1980 (Washington, D.C.: U.S. Government Printing Office, 1981), p. 204; and base population statistics from the U.S. Bureau of the Census, 1980 Census of Population,

TABLE 26

CHANGE IN BLACK ARREST RATES FOR SELECTED UCR CRIMES, PER 100,000 POPULATION, 1969-80

Offense Charged	1969 Rate	1980 Rate	Rate Change
TOTAL	6,903.1	8,967.0	+ 2,063.9
Murder & nonegligent manslaughter	28.5	33.9	+ 5.4
Forcible Rape	3.6	52.9	+ 49.3
Robbery	190.3	303.9	+ 113.6
Aggravated assault	219.8	352.3	+ 132.5
Burglary	367.7	526.2	+ 158.5
Larceny-theft	691.4	1,293.5	+ 602.1
Motor vehicle theft	189.6	143.9	- 45.7
Arson	10.1	14.2	+ 4.1
Violent crime	468.5	743.0	+ 274.5
Property crime	1,248.2	1,977.9	+ 729.7

TABLE 27
CHANGE IN WHITE ARREST RATES FOR SELECTED UCR CRIMES, PER 100,000 POPULATION, 1969-80

Offense Charged	1969 Rate	1980 Rate	Rate Change
TOTAL	2,169.9	3,794.1	+ 1,624.2
Murder & nonnegligent manslaughter	2.1	5.0	+ 2.9
Forcible rape	1.2	7.9	+ 6.7
Robbery	11.9	30.4	+ 18.5
Aggravated assault	27.8	85.5	+ 57.7
Burglary	86.4	177.2	+ 90.8
Larceny-theft	178.1	402.6	+ 224.5
Motor vehicle theft	91.6	47.2	- 44.4
Arson	7.1	7.7	+ .6
Violent Crime	103.8	128.8	+ 25.0
Property crime	304.5	634.7	+ 330.2

TABLE 28

COMPARISON OF CHANGE IN DIFFERENCE BETWEEN BLACK/WHITE ARREST RATES, 1969-80

Offense Charged	Change in Black Overrepresentation
TOTAL	439.7
Murder & nonnegligent manslaughter	2.5
Forcible rape	42.6
Robbery	95.1
Aggravated assault	74.8
Burglary	67.7
Larceny-theft	377.6
Motor vehicle theft	- 1.3
Arson	3.5
Violent crime	249.5
Property crime	399.5

CHANGE IN BLACK/WHITE ARREST PERCENTAGES

Black arrest rates have increased, but the black percentage of arrests in relation in whites has actually decreased since 1969.

Although the black arrest rate has increased significantly, UCR data also show that the black share of those arrested actually decreased from 1969-80. For all offenses, the percentage of black arrests dropped by 3.5 percent, and for property crime the decrease amounted to 3.6 percent. Probably the most surprising fact for most observers is that the percentage of blacks among those arrested for violent crime declined by 11.6%, whereas the percentage of arrests involving whites increased by 11.9 percent. (See Table 29.) In fact, the only Index offenses for which the black share of arrests increased were forcible rape (up 21.5 percent) and robbery (up 7.5 percent). For the other high-imprisonment offenses of murder and non-negligent manslaughter and burglary, the black share decreased by 14.0 percent and 5.3 percent respectively.

What is more, a similar pattern was evident for arrests of persons 18 years old or younger. For this group, the percentage of arrests involving blacks decreased by 5.7 percent for property crimes and by 12.9 percent for violent crimes. Among those arrested for the most serious offense (murder and nonnegligent manslaughter) the black share decreased by 29.3 percent, whereas the white share increased by 30.9 percent - a staggering development. (See Table 30.)

This phenomenon is extremely significant, for it indicates that whites are accounting for an increasing proportion of arrests - for violent crimes as well as for property offenses. Indeed, when the Index offenses are ranked in descending order

TABLE 29. TOTAL ARRESTS IN THE U.S., 1969 and 1980, ACCORDING TO UCR					
Offense Charged	---- 1969 ----		-----1980-----		Blacks' Percent Change
	% White	% Black	% White	% Black	
TOTAL	68.9	28.0	73.8	24.5	- 3.5
Murder and nonnegligent man- slaughter	35.9	61.9	50.6	47.9	- 14.0
Forcible rape	71.3	26.2	50.8	47.7	+ 21.5
Robbery	47.8	50.2	41.1	57.7	+ 7.5
Aggravated assault	49.0	49.2	62.3	36.1	- 13.1
Burglary	63.7	34.4	69.7	29.1	- 5.3
Larceny-theft	65.6	32.4	67.5	30.5	- 1.9
Motor vehicle theft	60.8	36.5	68.6	29.4	- 7.1
Arson	69.9	28.8	78.7	20.5	- 8.3
Violent Crime	42.5	55.7	54.4	44.1	- 11.6
Property Crime	64.4	33.5	68.3	29.9	- 3.6

SOURCE: Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports - 1969 (Washington, D.C.: U.S. Government Printing Office, 1970), p. 118; and Federal Bureau of Investigation, Uniform Crime Reports for the United States - 1980 (Washington, D.C.: U.S. Government Printing Office, 1981), p. 204.

TABLE 30. ARRESTS OF PERSONS 18 YEARS OLD AND YOUNGER, BY RACE, IN 1969 and 1980, ACCORDING TO UCR

Offense Charged	----1969-----		-----1980-----		Blacks' Percent Change
	% White	% Black	% White	% Black	
TOTAL	72.2	25.8	76.7	21.7	+ 4.5
Murder and nonnegligent man- slaughter	23.5	73.4	54.4	44.1	-29.3
Forcible rape	38.1	60.2	43.2	55.3	- 4.9
Robbery	24.3	74.0	33.4	65.5	- 8.5
Aggravated assault	46.7	51.4	63.4	35.2	-16.2
Burglary	64.6	33.6	72.9	25.7	- 7.9
Larceny-theft	66.8	31.3	70.3	27.6	- 3.7
Motor vehicle theft	63.4	33.8	73.2	24.6	- 9.2
Arson	72.6	26.4	84.4	14.7	-11.7
Violent Crime	34.0	64.1	47.6	51.2	-12.9
Property Crime	65.6	32.3	71.5	26.6	- 5.7

SOURCE: Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports - 1969 (Washington, D.C.: U.S. Government Printing Office, 1970), p. 119; and Federal Bureau of Investigation, Uniform Crime Reports for the United States - 1980 (Washington, D.C.: U.S. Government Printing Office, 1981), p. 205.

by the number of arrests, we see that from 1969-80 the percentages of arrests involving blacks underwent the following changes:

TABLE 31 CHANGE IN BLACK PERCENTAGE OF ARRESTS, 1969-80	
Offense	Change in %
Larceny-theft	DOWN 1.9
Burglary	DOWN 5.3
Aggravated assault	DOWN 13.1
Robbery	Up 7.5
Motor vehicle theft	DOWN 7.1
Forcible rape	Up 21.5
Murder & nonnegligent man- slaughter	DOWN 14.0
Arson	DOWN 8.3

This finding may have several important implications:

- (1) Contrary to popular and professional perception, since the late 1960's, black arrests have not been increasing as much as white arrests.
- (2) From 1969-80 the percentage of white arrestees increased, and the percentage of black arrestees declined, for violent crimes and for property crimes, with only a few exceptions.
- (3) This trend was evident for juveniles as well as for adults.
- (4) The reasons for the change are unclear, however it may be possible that the civil rights movement and the dramatic growth of affirmative action in policing which occurred over this period may have resulted in a change in the way the police deal with blacks.
- (5) Likewise, it is possible that some of the social programs of the late 1960's and 1970's - i.e., the "war on poverty" - may have slightly reduced the arrest vulnerability of blacks in relation to whites.
- (6) Finally, such changes may reflect changing economic conditions during this period. For example, it may be possible that as the recession and high unemployment have spread to include more whites as well as blacks, this deteriorating economy has resulted in more whites being arrested in relation to blacks than was the case during the high-prosperity (for whites) days of the late 1960's.

CRIME & IMPRISONMENT

It is widely assumed that the imprisonment rate simply reflects the crime rate, and thus, that the reason why the U.S. has recently experienced such a dramatic growth in its use of imprisonment is due to the dramatic growth of crime which preceded it.

In fact, however, some penologists contend that there is no relationship between a state's crime rate and its incarceration rate. This was the conclusion drawn by William G. Nagel after he had examined statistics for the period 1955-75. Nagel also concluded that crime depends on poverty, unemployment, and urbanization. Imprisonment policies do not respond to crime, but to states' political climates and to the relative sizes of their black populations.

Nagel's son, Jack H. Nagel, associate professor of political science and public policy at the University of Pennsylvania, tested William Nagel's hypotheses using more refined statistical methods. He concluded that

the central point that heavy reliance on imprisonment fails to reduce crime is strongly upheld. The effect of incarceration on crime is so weak that it should be disregarded. Moreover, its direction is the opposite of that predicted by prison advocates; to the extent there is any connection, imprisonment seems to foster crime... Our results also support Nagel's second major finding that prison construction and utilization are unaffected across states by relative crime rates. The regression detects no influence at all of crime on incarceration. As Nagel reported, however, racial composition does strongly affect imprisonment rates. Although per cent black has no effect on crime rates, for each 10% increment in black population percentage, states tend to add 37.6 prisoners per 100,000 population... Indeed, racial composition is the only important cause of incarceration rates in our analysis.

In another study, Garofalo found a correlation between

racial composition and rate of imprisonment that was too strong to be accounted for by indirect relationships through violent and property crimes.

More recently, a major study by Abt Associates reported that the "links between crime and punishment are commonly assumed to be rigid, but our data show them to be strongly conditioned by local normative policy. Offenses which can cause imprisonment in one state may be treated with fines or probation in another, and may not be criminal at all in a third." The study added that "when we speak of black or white criminality as potentially explaining black or white incarceration rates, we must recall that only specific kinds of criminality contribute to incarceration." It concluded there exists no simple linear relation between aggregate offenses reported to the police (UCR Part I crimes) and imprisonment.

ARREST & IMPRISONMENT

Despite these findings, some social scientists and criminal justice policymakers have continued to deny that the large and growing extent of racially differential imprisonment necessarily is due to racial discrimination within the criminal justice system. Prof. Alfred Blumstein of Carnegie-Mellon University has stated that the disproportionate representation of blacks in prison is "not a consequence of 'flagrant racism' within the criminal justice system, but is predomominantly a reflection of racial differences in participation in criminal activity." While he concedes that there is "clearly a severe differential in incarceration rates for blacks compared to whites," and agrees that some of it may be attributable to racial discrimination,

Blumstein nevertheless contends that most of the discrepancy is due to "differential arrest rates, which probably reflect differential involvement in crime - especially in the more serious crimes that lead to imprisonment."

Blumstein's Test

To support his contention, Blumstein has offered some preliminary calculations that examine the black/white racial mix of arrestees for the different "major crime types" * and then applied them in the proportion by which individuals convicted of those offenses are represented in prison. This comparison, he says, would test the hypothesis that the differential incarceration of black offenders was (or was not) predominantly a reflection of disproportionately high black involvement in serious crime.

Blumstein's methodology for making this comparison is somewhat complicated. We will also argue that it is somewhat mistaken.

One of the most difficult - and perhaps one of the most problematic - aspects of this approach involved the way he viewed who was in prison. Absent more recent data, Blumstein used the 1974 Survey of Inmates of State Correctional Facilities to obtain a profile of state prisoners, according to their "most serious offense" (See Table 32).

* Blumstein considers the "major crime types" to be robbery, homicide, burglary, assault, drugs, larceny, and all others resulting in imprisonment.

TABLE 32 DISTRIBUTION OF STATE INMATES BY "MOST SERIOUS OFFENSE," 1974	
Offense	Distribution (in %)
Robbery	23
Homicide	18
Burglary	18
Drugs	10
Assault	5
Larceny	6
All others	20
TOTAL	100
Blumstein to Breed, Dec. 20, 1979, p. 2	

Blumstein then developed a table (See Table 33) to indicate for each of the seven "major crime types" the number of white arrests, the black arrests, their sum (the total arrests), and the percent black (number of black arrests over the total arrests), using the 1974 UCR. According to Blumstein, if by this method "there were no other sources of differential treatment after arrest by race within the criminal justice system, the proportion of total prisoners who are black and are imprisoned for each of these seven crime types is obtained by multiplying the black arrest fraction for that crime by the fraction of the prison population associated with that crime type."

Blumstein's Finding

Using this method, Blumstein obtained the estimate that 43.4 percent of the white/black mix of prisoners* were expected to be black, simply as a result of racial differences in arrest propensity. Actually, 47.8 percent of this black/white mix were black - a discrepancy of 4.4 percentage points.

Blumstein's Conclusion

* Note that Blumstein ignored prisoners of other races.

Blumstein concluded that even if the remaining difference of 4.4 percent between what was expected and what occurred was "real rather than the result of the approximations of my calculations, it might be accounted for by legitimate race-related variation in processing through the criminal justice system." In his view the results "strongly lead me to the

TABLE 33
EXPECTED WHITE/BLACK COMPOSITION OF STATE PRISONS, 1974¹

	(1)	(2)	(3) = (1) + (2)	(4) = (2) / (3)	(5)	(6) = (4) X (5)
Crime Type	White ² Arrests (000)	Black ² Arrests (000)	Total Arrests (000)	Black Arrest Fraction	Crime Type Fraction in Prison	Expected Fract. of Prisoners (by crime type) That Are Black ⁵
Murder	5.9	6.8	12.7	.535	.18	.0963 ⁵
Robbery	23	37	60	.617	.23	.1419
Burglary	94	49	143	.343	.18	.0617
Drugs	240	75	315	.238	.10	.0238
Aggrav. Assault	62	45	107	.421	.05	.0211
Larceny	226	119	345	.345	.06	.0207
All Others ⁴	903	469	1372	.342	.20	.0684
Total	1554	801	2355		1.00	.4339 ⁶

- ¹ Calculations based on: 1) adult arrests proportional to rate of offending;
2) no race-related processing by the criminal justice system;
3) other "races" ignored

² Source: 1974 UCR, p. 193 (Arrests for 18 and over).

³ Source: 1974 Survey of Inmates of State Correctional Facilities, p. 28.

⁴ Calculated as: Total arrests - (Arrests for Driving Under the Influence, Drunkenness, and Disorderly Conduct) - (Arrests for the Above 6 Offenses).

⁵ E.g., 9.63% of U.S. prisoners are expected to be black & convicted of murder

⁶ In 1974 the actual fraction of U.S. prisoners who were black was .478.

conclusion that the disparity in racial prevalence in U.S. prisons is not a consequence of 'flagrant racism' within the criminal justice system- but is predominantly a reflection of racial differences in participation in criminal activity."

Criticisms of Blumstein's Test

In all fairness to Professor Blumstein, his initial comments were made in the form of a letter, the contents of which he subsequently repeated in several speaking engagements and interviews; thus far, he has not published his calculations. Nevertheless his letter has been widely distributed and probably represents one of the most influential explanations of racially differential incarceration yet made in any form. Therefore, I am taking the liberty of examining his methods and his conclusions rather closely.

Among my criticisms are these:

- (1) Blumstein's failure to consider arrestees who were neither white nor black, and whose "race" was reported to the FBI as being either "Indian," "Chinese" or "Japanese," ignored 95,585 persons from his "total arrest" column. Some of these arrestees might be expected to have been imprisoned for their offenses, and the fact that they were not included in the total arrest pool results in an overestimation of the black fraction of total arrests.
- (2) Blumstein's analysis is based on UCR arrests of persons 18 years old and over. This method ignores about 27 percent of all arrests, and about 45 percent of the total arrests for Index crimes. Of these 614,849 arrests of persons under 18 for Index crimes, about 67.5 percent were white and 30.3 percent were black - a significantly different picture than that depicted by the arrest data for those 18 years old and over, which were 60.0 percent white and 37.5 percent black. Moreover, for all offenses listed by the FBI (most of which Blumstein includes in his analysis), only 22.5 percent of those under 18 who were arrested were black, whereas whites accounted for 75.3 percent of those arrested.

Adjusted Finding 1974

When Blumstein's test is refined in these ways, a slightly different result is produced in expected versus actual differential imprisonment. Instead of finding 43.4 percent of the prisoners who are expected to be black in 1974, the improved method produces an estimate of 43.2 percent - a difference of 0.2 percentage points. This means that the discrepancy between what would have been expected and what occurred amounted to 4.6 percentage points rather than 4.4. (See the following table.)

Crime Type	White Arrests (000)	Black Arrests (000)	Total Arrests (000)	Black Arrest Fract.	Crime Type Fract. in Prison	Expected Fract. of Prisoners who are Black
Homicide	5.9	6.8	12.9	.527	.18	.0949
Robbery	23	37	60.4	.612	.23	.1408
Burglary	94	49	144.1	.340	.18	.0612
Drugs	240	75	316.4	.237	.10	.0237
Assault	62	45	108.3	.415	.05	.0207
Larceny	226	119	348.2	.342	.06	.0205
All Others	903	469	1388.2	.351	.20	.0702
TOTAL	1554	801	2378.5		1.00	.4320

EXPECTED RACIAL COMPOSITION 1979

This is by no means the last word on the subject, however. Now that we have developed a more refined method of

determining the expected black/white racial mix in American state prisons, simply on the basis of arrest propensity, I shall employ this refined version of Blumstein's test to report the expected racial mix of state prisons in 1979. (After doing so, I will argue that even this method is not a valid test for discrimination within the criminal justice system.)

Table 35 indicates that the expected fraction of inmates who were black was about 42.6 percent in 1979. However, the actual percentage of blacks that year was 47.2 - a disparity of 5.4 percentage points. This disparity could be even greater, given that race was not reported for 2,418 state prisoners (about .84 percent of the total state prison population that date).

Crime Type	White Arrests (000)	Black Arrests (000)	Total Arrests (000)	Black Arrest Fraction	Crime Type Fraction in Prison	Expected Fract.of Prisoners By Crime Type That Are Blk.
Homicide	8703	9243	18125	.5099586	.176	.0897527
Robbery	53276	82819	137107	.6040465	.249	.1504076
Burglary	328723	140391	472877	.2968869	.181	.0537365
Drugs	452728	127277	583038	.2182997	.071	.0154993
Assault	148207	100130	251193	.3986178	.064	.0255115
Larceny	705266	344477	1061097	.3246423	.047	.0152582
Rape	13623	13588	27478	.4945047	.062	.0306593
Auto theft	104582	41420	147777	.2802872	.019	.0053255
Fraud	212402	111872	326621	.3425132	.043	.0147281
Other	2476318	1026597	3560882	.2882985	.088	.0253703
TOTAL	4503828	1997814	1997814	.3033336	1.000	.4262489

Table 36 indicates that the expected fraction of inmates who were white was about 56.5 percent in 1979, but the actual percentage of white prisoners was about 50.8 percent - a disparity of about 5.7 percent.

TABLE 36
 EXPECTED RACIAL COMPOSITION OF STATE PRISONS, YEAREND 1979,
 CALCULATED ON THE BASIS OF ARREST PROPENSITY (WHITES)

Crime Type	White Arrests	Black Arrests	Total Arrests	White Arrest Fraction	Fraction in Prison by Offense	Expected Fraction of Inmates that are White
Homicide	8703	9243	18125	.4801655	.176	.0845091
Robbery	53276	82819	137107	.3885724	.249	.0967545
Burglary	328723	140391	472877	.6951554	.181	.1258231
Drugs	452728	127277	583038	.7764983	.071	.0551314
Assault	148207	100130	251193	.5900125	.064	.0377608
Larceny	705266	344477	1061097	.6646574	.047	.0312389
Rape	13623	13588	27478	.4957784	.062	.0307383
Auto theft	104582	41420	147777	.7077015	.019	.0134463
Fraud	212402	111872	326621	.6503011	.043	.027963
Other	2476318	1026597	3560882	.6954227	.088	.0611972
TOTAL	4503828	1997814	6586195	.6838285	1.000	.5645626

NOTE: "Total Arrests" exclude those categorized as "other" or "unknown."

SOURCE: 1978 UCR, 1979 Dept. of Justice prison census

Interpretation

Based on these results, it appears that only 78.3 percent of the variation in the ratio of the actual racial disproportionality in imprisonment can be accounted for by arrest. Or, to put it another way: the difference between the actual and white black fractions of the prison population is only 13.1% of what would be expected based on differences in arrest propensity alone. Both of these findings are at odds with Blumstein's and the latter indicates that one's approach to trying to make the comparison can drastically affect the result that is reached.

"HUMANIZING" THE DISPARITY

Based on his own calculations, Blumstein arrived at a discrepancy of 4.4 percentage points between expected and actual black composition of state prisons in 1974. He did not conclude that the discrepancy was alarming. Yet, if these percentage points are translated into people, the disparity takes on an altogether different meaning. Table 37 indicates what the various calculations we have mentioned would mean in human terms.

TABLE 37 DISCREPANCY BETWEEN "EXPECTED" AND ACTUAL BLACK INCARCERATION, SHOWN IN TERMS OF PERSONS		
Method	Discrepancy in Percents	Discrepancy in Persons
Blumstein's (1974)	4.4	8,420 blacks
Blumstein's (1974), as refined by Christianson	4.6	8,804 blacks
Christianson's refined (1979)	5.2	14,826 blacks

As we can see, a difference of only two-tenths of a percentage point in 1974 amounted to 384 persons. Based on the total estimated number of state prisoners on that date (n = 191,400), a full percentage point would amount to 1,914 persons.

MAJOR PITFALL OF BLUMSTEIN'S METHOD

My greatest objection to Blumstein's test, however, is based on other grounds. As I have tried to show, even that test can and should be refined to produce a somewhat different picture of apparent racial discrimination. But even that revised result can be extremely misleading. Another, and more serious, distortion may

be generated from the 6th column of his table (see Table 33 on page 51), which bears the heading "Crime Type Fraction in Prison." Blumstein figures that about 18 percent of those imprisoned in 1974 were imprisoned for homicide, 23 percent were in prison for robbery, and so on. In other words, he considers them on the basis of offense, as if their imprisonment for such offenses was independent of their race.

Yet, the basis of the argument over racially differential incarceration is whether racial discrimination by the criminal justice system is producing or contributing to the disproportionately high representation of blacks in prison. There is no question that differential imprisonment exists, but there is debate over why it exists. Is the difference due to discrimination by the larger society but not by its criminal justice apparatus, as Blumstein suggests, or is at least some of the disparity due to racially discriminatory decision-making by the criminal justice system, which, after all is also a part of that society?

In order to demonstrate the gravity of this flaw in Blumstein's test, I have used another method to compare the racial composition of arrestees with the racial composition of state prisoners. Instead of applying Blumstein's "Crime Type Fraction in Prison," I have employed the race-specific offense data contained in the 1974 survey of inmates in state prisons, and compared it with the corresponding data for those offenses which are listed in the UCR from the previous year (1973), trying to better take into account the time that elapses from arrest to imprisonment. Even this method is not ideal, because the prison data are for prisoners in custody, and thus they also reflect sentencing and release policy differences. However, this method is superior to Blumstein's, and the racial disparities revealed are quite significant.

TABLE 38

RACIAL DISPARITIES BETWEEN ARREST & IMPRISONMENT FOR SELECTED OFFENSES

Offense	% 1973 Arrestees Who Were White	% 1973 Arrestees Who Were Black	B/W Difference in %	% 1974 Prisoners White	% 1974 Prisoners Black	B/W Difference in %	Racial Disparity in %
Drug Offenses	80.7	18.5	62.2	58.4	40.4	18.0	44.2
Larceny/auto theft	67.7	30.7	37.0	56.6	40.8	15.8	21.2
Burglary	68.3	30.3	38.0	59.5	38.6	20.9	17.1
Assault	54.4	43.9	10.5	48.8	46.2	2.6	7.9
Murder & manslaughter	46.5	51.6	5.1	43.9	54.1	10.2	5.1
Robbery	35.4	63.4	28.0	36.5	61.9	25.4	2.6

SOURCE: U.S. Dept. of Justice, Profile of State Prison Inmates: Sociodemographic Findings from the 1974 Survey of Inmates of State Correctional Facilities (National Prisoner Statistics Special Report SD-NPS-SR-4 August 1979), p. 45; and "Total Arrests by Race, 1973," from the 1973 Uniform Crime Reports for the United States, p. 133.

As Table 38 demonstrates, the prisoner population was significantly blacker than the arrestee population, for each selected offense except robbery. The reason why robbery is an exception will be examined later in detail, however most empirical research suggests that blacks are much more likely than whites to be arrested with little grounds for the arrest, and as a result their charges are more often dismissed. Blacks also appear to be arrested by the police more often than whites for the purpose of gathering information, and they too are more likely to be released. Marjorie S. Zatz has added:

When defendants are not released by the police but, instead, their cases continue on to the prosecutor, both blacks and Chicanos have their cases disposed of by the prosecutor for reason of "denial of complaint" more speedily than do whites. Again, this is controlling for offense type, offense severity, evidence, sex, and age.

Table 38 also indicates that the discrepancy in racial composition between arrestees and state prisoners varied tremendously by offense in 1974. For drug cases, the discrepancy amounted to 44.2 percentage points! Aggregate statistics do not take into account the prior criminal histories of these offenders, however it appears from our table that seriousness of offense does not account for differential imprisonment to the extent that many have assumed.

Such findings produce a very different conclusion than that which Blumstein reached from his analysis of the relationship between arrestee and prison populations. Before we can gain a more realistic picture of the extent of racial discrimination by the criminal justice system, however, arrest and other official decision-making must be examined more carefully.

RACE & "CRIME" REVISITED

This brings us to the essence of our consideration of why racially differential imprisonment exists to such a degree in the United States. As stated, more than a decade ago, by Marvin E. Wolfgang and Bernard Cohen:

No one really knows whether blacks, as socially defined, commit more crime than whites; but we do know that, according to official police statistics, more persons with the designated status of Negro than with the status of white are arrested.

In order to understand why blacks are disproportionately arrested, jailed, imprisoned, and kept imprisoned for longer periods than whites, it is necessary to consider the way our criminal justice system operates.

IV. DIFFERENTIAL PROCESSING

That Justice is a blind goddess
 Is a thing to which we black are wise:
 Her bandage hides two festering sores
 That once perhaps were eyes.

- LANGSTON HUGHES

Blacks are treated differently than whites at every stage of the criminal justice process. They are treated more harshly. The criminal justice system is a predominantly white, upper-middle/middle-class instrument that treats black people as an underclass. To say that racism has existed for centuries in this society, but not in its criminal justice apparatus, is absurd. Racism pervades the prison system as it does the rest of society.

- ALVIN J. BRONSTEIN, INTERVIEW WITH
 THE AUTHOR, AUG. 13, 1981

DISCRETIONS & INDISCRETIONS

Discretion - or the ability to choose among alternative actions or of not acting at all - has always characterized American criminal justice, and many of the ways in which it has been used have worked against blacks and other minorities.

Yet, formal efforts to control or structure discretion have not always been able, nor were they necessarily intended, to curtail such "abuses of discretion" as racial discrimination, official corruption, or political favoritism. In fact, some limits on its use actually have been designed to maintain a dual system of justice - one for whites, and another for blacks. (The laws of slavery offer the clearest example of explicit and institutionalized racism, but they are not the only example.)

This is a time in criminal justice when many uses of discretion are in disfavor. Indeterminate sentencing, parole, the insanity defense, and the treatment of young people as juvenile delinquents rather than as adult criminals, represent only a few programs which have come under attack or been abandoned in recent years. It should be remembered that some of these programs were initially assailed by liberal reformers, but lately the assault has been taken up by conservatives.

It is becoming increasingly clear that many of the growing constraints on discretion - e.g., mandatory prison sentencing - are having a profound effect on the criminal justice system, particularly the prisons. It also appears that such policies often tend to affect blacks and other minorities more than whites.

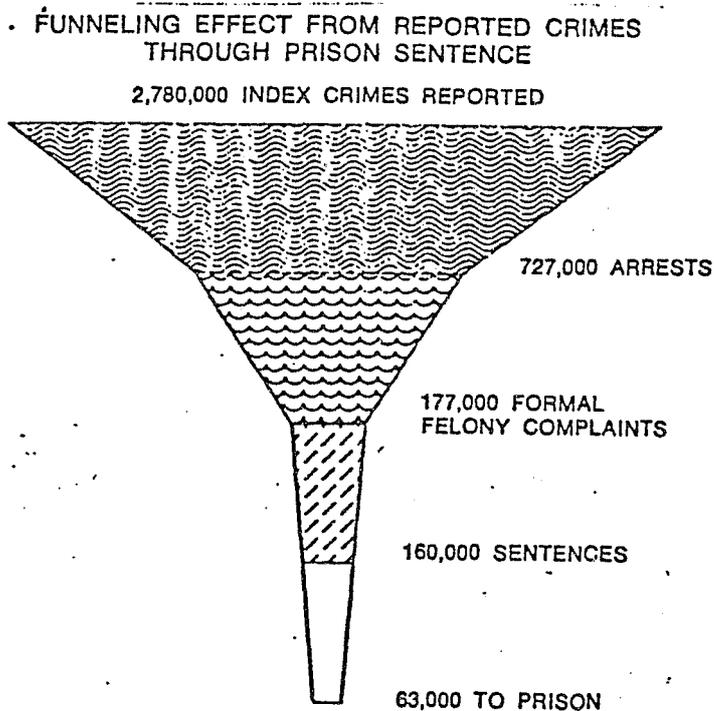
The death penalty is a case in point. The 1972 landmark decision of Furman v. Georgia proposed mandatory sentencing and guided jury discretion as means of reducing apparent racial discrimination in the imposition of capital punishment. However, Riedel has found that such methods have not reduced racial disparities, and in fact, they appear to have made them worse.

Such policies as mandatory sentencing have had the (perhaps) unintended consequence of masking bias with the appearance of fairness, while in reality they have simply concentrated discretion at other, earlier, points in the criminal justice process, and eliminated any opportunity for balancing the scales which that discretion has already tipped by the time its victims come before a sentencing "judge." In fact, mandatory simply freezes discretion before it can be corrected.

WINNOWERING OUT

A graphic illustration of the nature and extent of criminal justice discretion was offered by the President's Crime Commission in 1967 (see Figure 4 below). In it we see that only about 26 percent of all Index crimes that were reported to the police resulted in an arrest, about 6.3 percent resulted in a formal felony complaint, and less than 5.7 percent resulted in a sentence. Only about 2 percent of the crimes reported to the police resulted in imprisonment.

FIGURE 4



President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Science and Technology* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 61.

This extraordinary winnowing out process is difficult to trace, for several reasons. Some of it is due to incompetence and ineffectiveness on the part of criminal justice agencies, and government agencies do not welcome any disclosure that will cast their performance in a poor light; therefore, they covet the statistics. Some winnowing suggests misuses of authority - corruption, racial discrimination, "leniency," and other

embarrassments, which are also often concealed for reasons of self-interest. Other traces reflect honest mistakes, human kindness, and pragmatic judgements by rational decision-makers.

Some typical examples of "discretionary justice" were once offered by Kenneth Culp Davis:

Through plea bargaining a prosecutor agrees with one defendant to reduce a felony charge to a misdemeanor but refuses to do so with another defendant;

To prevent a riot, city police round up ninety Negro youths and keep them in jail for a month through impossibly high bail and delayed proceedings.

A traffic policeman warns a violator instead of writing a ticket because the violator is a lawyer and the police of the city (Chicago) have a long-standing custom of favoring lawyers.

A judge who has power to sentence a convicted felon to five years in the penitentiary imposes a sentence of one year and suspends it, even though he knows that one of his colleagues would impose a five-year sentence.

Racial discrimination is one form of discretion which is illegal under the equal protection clause of the 14th Amendment. But recognizing that it exists, proving its existence, measuring the discrimination and its impact, and doing something about it are extremely difficult. Technically, "Equal protection is denied if, factually, a member of one race (whether black or white) is subjected, because of his race, to greater or different punishment than a member of another race." Illegal use of race as a factor in criminal justice decision-making also violates the due process clause of the same amendment, which guarantees "fundamental rules for fair and orderly legal proceedings."

Racial discrimination is also morally wrong and contrary to the stated precepts of American democratic society.

"RACISM" DEFINED

The terms "racial discrimination" or "racism" can be difficult to define. However the following observations, which were offered by the United States Civil Rights Commission, merit our attention.

1. Perhaps the best definition of racism is an operational one. This means that it must be based upon the way people actually behave, rather than upon logical consistency or purely scientific ideas.
2. [R]acism may be viewed as any attitude, action, or institutional structure which subordinates a person or group because of his or their color.
3. [R]acism is not just a matter of attitudes: actions and institutional structures, especially, can also be forms of racism. An "institutional structure" is any well-established, habitual, or widely accepted pattern of action or organizational arrangement, whether formal or informal.
4. Racism can occur even if the people causing it have no intention of subordinating others because of color, or are totally unaware of doing so.
5. Racism can be a matter of result rather than intention because many institutional structures in America that most whites do not recognize as subordinating others because of color actually injure minority group members far more than deliberate racism.
6. Overt racism is the use of color per se (or other visible characteristics related to color) as a subordinating factor.
7. Institutional subordination is placing or keeping persons in a position or status of inferiority by means of attitudes, actions, or institutional structures which do not use color itself as the subordinating mechanism, but instead use other mechanisms indirectly related to color... The very essence of institutional subordination is its indirect nature, which often makes it hard to recognize.

These definitions should be kept in mind as we consider the discretionary nature of the American criminal justice process, in view of what we have already reported about racially differential imprisonment.

RACIAL DISCRIMINATION IN CRIMINAL JUSTICE

The analysis that follows is not an exhaustive study of racially differential treatment by criminal justice decision-makers, but it does attempt to examine a few of the ways that overt or institutional racial discrimination may be producing differential imprisonment in the United States.

Criminal Definition

The definition of crime is a political act by authorized agents who are predominantly white. Without law there would be no "crime," and without lawmakers there would be no lawbreakers.

Richard Quinney has noted that "[c]riminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy." Moreover, those same (predominantly white) legislators also attach particular penalties or criminal sanctions to acts which they define as criminal. As we have noted, some crimes carry very severe penalties, while others carry relatively lenient ones.

Compared to whites, blacks tend to be most disproportionately arrested and imprisoned for offenses which (predominantly white) lawmakers rank as the "most serious" crimes. Such offenses tend to have a relatively high rate of imprisonment compared to other, "less serious" offenses; they carry stiffer sentences; and persons receiving those sentences tend to spend more time in prison for them than other persons do for "less serious" crimes.

Discretionary Nature of Arrest*

The processes which lead to prison commitments involve not only offender behavior, but also the official response of agencies located throughout the criminal justice system. Actors at various decision points have the opportunity to continue passing the offender on to later stages of processing, or to terminate his flow through the system. Consequently, decisionmaking at each step determines who will advance into further processing and ultimately who serves time in prison.

- Alfred Blumstein, Jacqueline Cohen, and Harold D. Miller, Demographically Disaggregated Projections of Prison Populations (1978), p. 9.

Arrest in the United States is highly discretionary, and the arrest rates which are included in the UCR are a "complex function of both criminality and police activity" (Blumstein & Nagin, 1975). In 1980 less than one-fifth of all offenses reported to the police resulted in the taking of a suspect into custody, and there have been indications that an even larger volume of offenses were never brought to the attention of law enforcement or not recorded by the police as crimes.

Race has consistently been identified as an important factor influencing police activity, in several key respects. Although most studies have focused on the race of those who come into contact with the police, and specifically on the race of those who are arrested, the last 15 years has witnessed increased attention to the race of the police themselves. Gwynne Peirson, a black law enforcement specialist, is among

*According to UCR guidelines, an arrest is counted "each time an individual is taken into custody for committing a specific crime." If the offender who is taken into custody is a juvenile and the circumstances are such that he or she would have been arrested if they were an adult, an arrest is counted.

the many who have argued that underrepresentation of blacks in policing has produced, maintained, and reinforced biases which are often anti-black and pro-white.

Other studies have determined that a relatively small proportion of the police are involved in the majority of violent encounters, complaints, deadly force, and arrests. In Washington, D.C. in 1972, for example, the Institute for Law and Social Research found that more than half of the arrests resulting in convictions were made by 8 percent of the police force. Such studies further underscore the nature and extent of police discretion, as well as the importance of individual behavior patterns; they may also help to identify chronic sources of racial discrimination.

Important studies by Piliavin and others, conducted in the 1960's, entailed direct observation of the police at work in the field, as well as interviews with policemen and juveniles.

Among the consistent findings:

- Blacks were more often viewed by police as being "out of place" than whites, and thus, blacks were more likely to be stopped and questioned.
- Blacks were more likely to be subjected to "dragnet arrests," warrantless searches, and other abuses.
- Police often based their decisions on the dress, demeanor, and manners of the persons they confronted in the street, and they were more likely to consider blacks disrespectful and suspicious.
- Blacks were more visible to the police, and thus, more susceptible to police suspicion, interrogation, and arrest.
- Blacks were probably more inhibited in their ability to escape from a crime scene.
- Blacks and other lower class persons were generally considered to represent "safer arrests" in a legal sense, because they had less resources to contest their treatment.

- Whether real or imagined, the belief that blacks commit more crime often leads to heavier policing of black neighborhoods and more frequent contact with blacks outside such districts.
- Greater saturation of black neighborhoods by police patrol can necessarily turn up more crime, and thus produce more arrests of blacks.
- Disproportionately high arrests of blacks, whether or not it is founded in racial discrimination, necessarily reinforces the belief that blacks are more criminal.
- Because police effectiveness is measured in terms of their ability to clear crimes by arrest, and blacks arrests can pose fewer problems to the police, the police can be encouraged - and even rewarded - for arresting blacks.

"Crime Clearance"

An indication of the ineffectiveness of American police is found in the very low percentage of reported crimes which result in an arrest. According to the 1980 UCR only 19.2 percent of all reported crimes listed in the UCR resulted in an arrest. For "violent crime" the clearance rate by arrest was 43.6 percent, for "property crime" it was only 16.5 percent.

These statistics reveal that arrest data are not a very good reflection of even reported crime, since the overwhelming majority of reported offenders are not apprehended. This finding raises serious questions about the racial picture of crime which is projected by official arrest statistics; it may also lend additional support to the assumption that the disproportionate representation of black arrestees may be affected by racial discrimination in police deployment and arrest practices.

Police strength, communications, and identification have increased dramatically since the 1960's. However, as Table 38 indicates, police effectiveness - especially for violent crimes -

has actually declined. This may suggest that the police are under increased pressure to arrest suspects, and because blacks are more vulnerable to arrest, it may be contributing to an increase in the number of black arrests.

TABLE 39			
OFFENSES KNOWN & CLEARED BY ARREST, 1969 & 1980			
Offense Charged	1969	1980	% Change
TOTAL	20.1	19.2	- 0.9
Murder & nonnegligent manslaughter	86.1	72.3	-13.8
Forcible rape	55.9	72.3	- 7.1
Robbery	26.9	23.8	- 3.1
Aggravated Assault	64.7	58.7	- 6.0
Burglary	18.9	14.2	- 4.7
Larceny/theft	17.9	18.1	+ 0.2
Motor vehicle theft	17.9	14.3	- 3.6
VIOLENT CRIME	46.5	43.6	- 2.9
PROPERTY CRIME	16.1	16.5	+ .4
SOURCE: Federal Bureau of Investigation, 1980 UCR, p. 182; 1969 UCR, p. 98			

Albert J. Reiss found that when citizens reported a crime to the police, in 52 percent of the misdemeanors and 43 percent of the felonies the police decided not to arrest - even though they had probable cause to do so. This and similar findings suggest that there is room for arbitrary, personalized, and racially biased discretion, and some social scientists have argued that it exists to a significant degree.

"QUALITY OF ARRESTS"

The majority of arrests neither result in a conviction, nor imprisonment, so it is important to consider what determines who among those arrested is actually incarcerated.

Blacks and other minorities who lack resources, social position, or political power, are often considered as "safe arrests" by the police, since they are less likely to be successful in suing for false arrest or in otherwise challenging their treatment at the hands of white law enforcement. This does not mean, however, that black arrests are necessarily considered "quality arrests." In fact, as we noted for the crime of robbery, black arrests for robbery tend to be thrown out more often than those of whites - in part, because whites are less likely to be arrested without probable cause. Other studies - of burglary, for example - have also concluded that many more blacks than whites tend to be apprehended without a warrant or without sufficient evidence to advance the case another step into the criminal justice process.

ROBBERY

Several other aspects of robbery are worth considering, if only because more black persons are imprisoned for that crime than for any other offense. Police officials throughout the nation have been reporting extraordinary increases in robberies reported and in robbery arrests - the District of Columbia, for example, experienced a 17 percent increase in robberies from 1980-81, according to Chief Maurice T. Turner.

The UCR defines robbery as follows:

the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Several studies have indicated that robbery - particularly street robbery, or mugging - is strongly feared by Americans today.

In 1980 robberies accounted for about 4 percent of all Index crimes and 42 percent of the crimes of violence. The 548,809 robberies recorded that year translated to a robbery rate of 243.5 per 100,000 residents. Robberies were up 17.5 percent from 1979, when the UCR reported a total of 466,881 and a rate of 212.1 per 100,000. Their regional distribution in 1980 was as follows: 32 percent occurred in the Northeast, 27 percent in the South, 22 percent in the West, and 19 percent in the North Central states - which means that the regional frequency of robbery did not match that of either the U.S. incarceration rate, or the black incarceration rate.

Robbery in 1980, according to the FBI, was largely a big-city crime - 7 of 10 occurred in cities with a population of 100,000 or more and the rate for cities that size was 664 per 100,000 persons. It was also largely a youthful crime - 73 percent of those arrested were under 25 years old and 53 percent were under 21.

The monetary loss of robberies in 1980 has been estimated at \$333 billion, with an average loss of \$607 per reported offense. However the amount varied tremendously depending upon the type of robbery: bank robberies (which accounted for only 1.5 percent of all robberies) averaged \$2,784; whereas street or highway robberies averaged only \$399 and accounted for about 51.8 percent of all robberies.

Although robbery is considered a violent crime, the UCR does not attempt to measure the injuries suffered by robbery victims. It does report that 40 percent were committed through the use of firearms, 22 percent with knives or other weapons, and 38 percent did not involve the use of any weapon other than

strong-arm tactics.

Only about 41 percent of those arrested for robbery in 1980 were white and 58 percent were black. Relative to the general population, blacks were about 10 times more likely than whites to be arrested for robbery.

It should also be noted that many robberies were ultimately classified as homicide, aggravated assault, forcible rape, or other offenses as a result of the physical injury inflicted on their victims. (About 10.8 percent of all murders, for example, were ascribed to robberies.) Thus, the apparent disproportionate involvement of blacks in "robbery" probably results in their disproportionate representation in other crime categories as well.

Perhaps the most important aspect of robberies which should be considered relates to why most robberies occur. Most robbers are poor, and violence, or the threat of violence, is one of the few means available to them to obtain money or goods they need or want. The robberies committed by upper-class people are called by different names, and, as the following table indicates, their stealing is treated very differently by (upper-class, predominantly white) judges.

TABLE 40 SENTENCES FOR DIFFERENT CLASSES OF CRIME IN 1973		
	Average Sentence (in months)	Average Time Until Parole (in months)
Crimes of the Poor		
Robbery	133.3	51.2
Burglary	58.7	30.2
Larceny/theft	32.8	18.7
Crimes of the Affluent		
Embezzlement	21.1	13.2
Fraud	27.2	14.3
Income tax evasion	12.8	9.7
SOURCE: Reiman, 1979: 119.		

Economic deprivation may not justify a robber's disregard for the pain and suffering of his victim. But the fact that a person has committed a robbery out of desperation and material want does not excuse society for its disregard of the conditions that give rise to that form of robbery.

Prosecutorial Discretion

One of the shadowiest areas of the criminal justice process lies in the nether world between arrest and disposition. This so-called "middle stage" is dominated by (predominantly white) lawyers, judges, and clerks.

Many charges are dropped or reduced during this stage - exactly how many, and by what means, and for what reasons, is difficult to determine, in part, because many of the decisions are made behind closed doors and rendered without any formal explanation. A few examples:

- The police may not decide that the case is too weak to proceed.
- A prosecutor may determine that the case is too weak, or too flawed, to be brought before a judge at a preliminary hearing.
- At the preliminary hearing, a criminal court judge may decide there is not probable cause to support the arrest, and order the defendant released.
- A grand jury may decide not to indict the defendant.
- Pretrial motions by the defendant's lawyer may result in the charge being dismissed on the grounds that evidence was illegally seized, the grand jury was improperly composed, the statute of limitations had expired, the defendant's right to a speedy trial had not been met, and so on.
- The prosecutor, or one of his assistants, may exercise the traditional power of nolle prosequi - the discretion not to charge the suspect even though there may be

appropriate and sufficient evidence that he has committed a crime.

The possibility of abuses in the exercise of this vast discretion has concerned legal commentators for generations. Thurman W. Arnold once stated: "The idea that a prosecuting attorney should be permitted to use his discretion concerning the laws he will enforce and those which he will disregard appears to the ordinary citizen to border on anarchy."

Moreover, the extent to which such discretion is used can be very substantial. One study found that in a particular district in Maryland, the dismissal rate for domestic disturbance cases was 95 percent. Another study revealed that in another jurisdiction, the majority of felony arrests were rejected or nolle because the prosecutors concluded the cases were too weak to gain a conviction. Others have reported that prosecutors in some jurisdictions terminate as many as one half of their cases through nolle prosequi.

The extent to which these decisions may, or may not, be affected by racial bias remains a matter of conjecture, due to the lack of studies in this area. However, it does appear that, at least for some offenses (e.g., robbery and burglary), that more black arrests than white arrests are thrown out in the early stages, due to lack of evidence. This finding further underscores the hazards of trying to determine racial discrimination simply by comparing the racial composition of the arrestee population with that of the prisoner population. Racially differential dismissal practices may lend additional support to the hypothesis that racial bias or discrimination

before and after arrest is contributing to racially differential imprisonment.

Charging decisions can also be highly discretionary, and thus, the possibility exists that at least some of those charging decisions will be affected by racial discrimination. Likewise, the plea bargaining process which is so pervasive in some jurisdictions, represents one of the most controversial aspects of American criminal justice - in part, because of the tremendous potential for abuses that exist whenever expedience, pressure to plead, and closed-door decisionmaking is present (which is most of the time).

JAIL OR BAIL

The decision of whether to lock the defendant up in jail before he has been found guilty, or to release him on bail or by some other means, constitutes another critical discretionary phase in the criminal justice process. Here again, there is evidence that racial discrimination may influence what is done, perhaps to the extent that it contributes to racially differential imprisonment.

John S. Goldkamp has pointed out:

The due process precept that persons accused of crimes are "innocent until proven guilty" is central to the constitutional framework governing the administration of justice in the United States. Problematically, pretrial detention - the practice of locking people in jail prior to trial - treats certain defendants who are presumed innocent as if they were guilty. For the nearly fifty thousand defendants detained in the nation's jails on a given day, the implications of this contradiction are substantial, both in terms of the hardships that accompany confinement and the possible negative effects on the outcomes of their cases. For jailed defendants in the United States today, the presumption of innocence is more a myth than a legal reality.

Sometime after arrest - usually defined by the State as a "reasonable time" - the suspect must be brought before a magistrate for consideration of bail, which consists of money, property, or other surety deposited with the court to guarantee the defendant's appearance at trial. In some jurisdictions, an indigent defendant may be released on his own recognizance (ROR), if he can satisfy the court that he is likely to appear later on to face the charges. Because these decisions are largely predictive in nature, their validity is questionable. Moreover, the criteria on which such decisions are based must be considered for potential class or racial bias.

Generally speaking, blacks tend to be detained in jail more and released (by bail or ROR) less than whites. Goldkamp, for example, has offered the following picture of decisionmaking in Philadelphia from August to November 1975.

TABLE 41 ESTIMATED NUMBER OF DEFENDANTS APPEARING AT PRELIMINARY ARRAIGNMENT, BY CUSTODY STATUS AND RACE, IN PHILADELPHIA, AUG.-NOV. 1975			
Defendant	% Released	% Detained	Total %
Hispanic/other	83.3	16.7	100.0
Black	70.0	30.0	100.0
White	89.0	11.0	100.0
SOURCE: Goldkamp, Two Classes of Accused, pp. 166-67.			

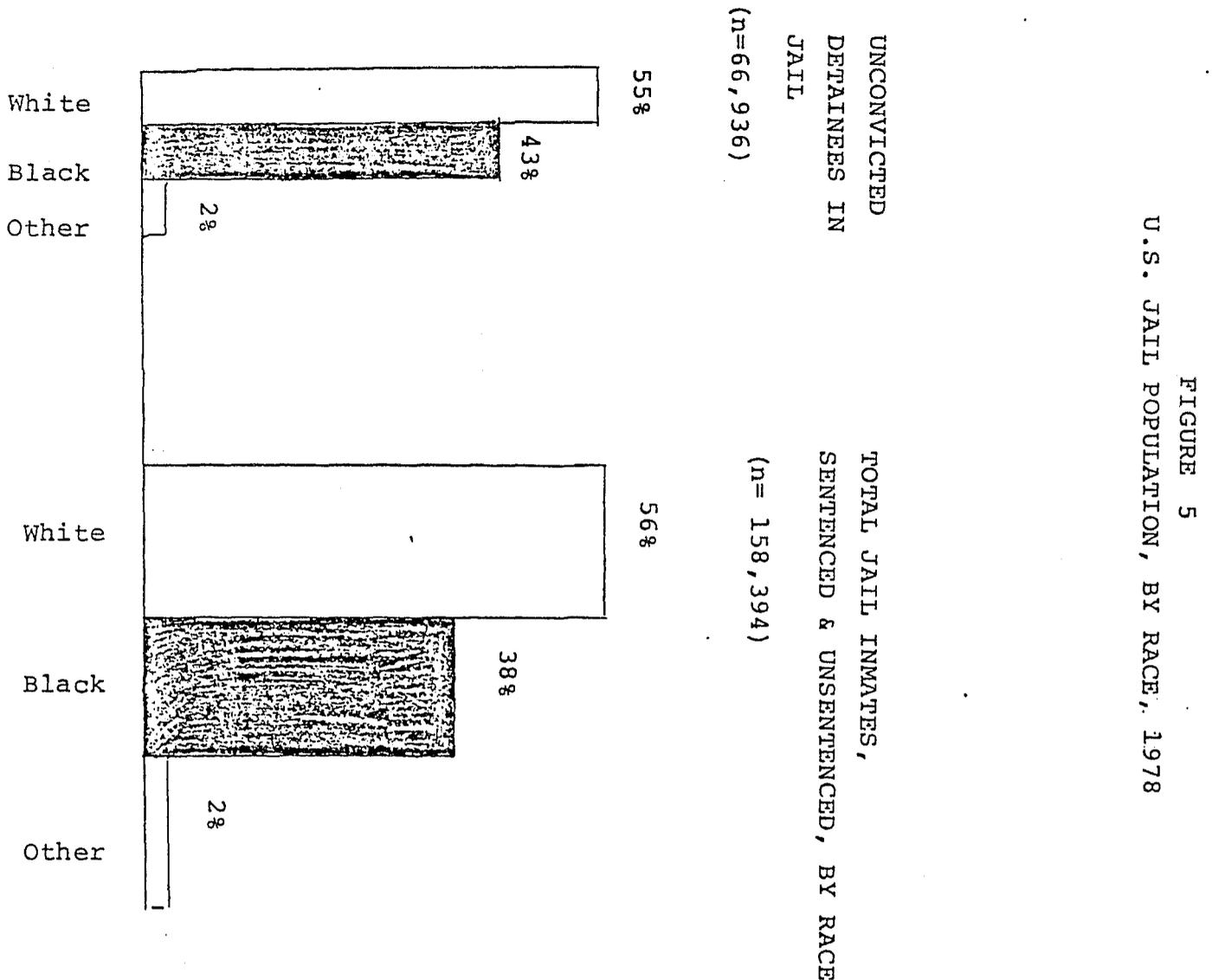
The National Bail Study (Thomas, 1976) found that between 1962 and 1971 the percentage of felony defendants detained decreased by about one-third and the percentage of misdemeanor defendants detained in jail dropped by about one-third - apparently due to

increases in the use of ROR over that period. However, specialists in pre-trial processing have become increasingly aware that race/ethnicity and several other indicators related to a defendant's socioeconomic status can affect how is released on ROR - just as they have always affected who is released on bail. For example, many ROR release criteria include such factors as defendant income, whether or not he has a telephone, owning a motor vehicle, marital status, etc. - some or all of which can place blacks (and other relatively poor defendants) at a disadvantage.

Each year, about 6.2 million persons are committed to jail in the U.S. Jails handle about 17 times the number of inmates handled by state and federal prisons combined. Some of these jail inmates are pretrial detainees and some are serving sentences for felonies or misdemeanor offenses.

The 1978 National Jail Census reported that 158,394 persons were being held in 3,493 jails on February 15, 1978, compared to 160,863 who were held in 4,037 locally administered jails on March 15, 1970. Of the 1978 total, about 56 percent were identified as white and 38 percent were identified as black. Of these, about 42.3 percent were unconvicted persons. Blacks comprised about 43 percent of these unconvicted persons and whites accounted for about 55 percent of the detainees. (See Figure 5.)

The fact that blacks are more likely than whites to be detained rather than released before outcome of their cases can affect the outcome of those cases. Goldkamp's Philadelphia study found, for example, that only about 10.5 percent of those defendants who were released within 24 hours after their



arraignment received incarcerative sentences, whereas 74.2 percent of those who were detained until final disposition were sentenced to incarceration. Only 9.4 percent of those defendants who were released within 24 hours and ultimately convicted received a minimum prison term of two years or more; however for those detained until final disposition and then convicted, 26.8 percent were sentenced to prison for two years or longer. Since blacks are jailed more for detention purposes than whites, they may be

more likely to be sentenced to prison and more likely be receive longer sentences.

SENTENCING

There is general agreement that blacks receive longer prison sentences than whites, but some disagreement over why this is so. According to one analysis of 89 multivariate studies dealing with the impact of racial and socioeconomic variables in criminal justice processing, about 80 percent failed to support the hypothesis of differential processing bias. The same study concluded that only 19 of the 52 identified studies considering racial discrimination in sentencing found support for the racial bias argument, 29 found no support, and 4 were neutral. These classifications and conclusions were furnished with very little explanation, however, and the review of the literature also neglected many other important studies which have clearly concluded that race was a factor.

One of the most exhaustive and rigorous studies of sentencing was conducted by the Alaska Judicial Council, which reported that the "race of the defendant seemed to be associated with strong variation in the length of the sentence" and that those associations were "statistically significant and of a large magnitude."

There seems to be growing agreement that racial variation in sentencing is not accounted for by racial differences in offense severity. To attribute such disparities to the prior criminal history of the offender is not sufficient to disprove racial discrimination, since the appearance that blacks have more

extensive criminal records than whites may actually reflect racial discrimination throughout the criminal justice process.

ALTERNATIVES TO INCARCERATION

It is significant that the so-called "alternatives to incarceration" movement, which began in the late 1960's and peaked in the mid-1970's, did not result in a diminishment of imprisonment. Indeed, it appears to have been accompanied by the greatest increase in the use of imprisonment of any period in American history. Moreover, the case can also be made that the so-called alternatives movement contributed to, rather than reduced, racially differential imprisonment.

The essence of this argument is that whites, not blacks, have benefited most from such programs as diversion, ROR, intensive probation, restitution, fining, half-way houses, decriminalization of "victimless crimes, temporary release, and so on. Unfortunately, national statistics are not available which show the racial characteristics of persons treated by these programs; however, it is widely acknowledged that all of these groups are considerably whiter than the prison population.

This is disturbing, but it should not be surprising, since the "alternatives" movement was dominated almost exclusively by whites, and particularly by middle-class and upper-middle-class whites. By and large, such programs were not - nor are they now - sufficiently sensitive to the racial implications of their "reforms."

DIFFERENTIAL TREATMENT IN PRISON

Corrections personnel frequently complain that the large

and growing overrepresentation of blacks and other minorities is having some disturbing repercussions on the institutions themselves. For example, racial strife and conflict, interracial sexual victimization, disjunction between the racial composition of prisoners and staff, and other developments are said to be increasing tensions in the prisons, which are also troubled by severe overcrowding and other problems that are not considered race-related.

Corrections personnel also tend to believe that they are simply inheriting these problems, rather than contributing to them, since prisons simply receive and hold people whom others have sent.

Corrections has never been immune from charges of racially biased treatment, however, and prison officials would do well to look to themselves as contributing to racially differential imprisonment.

Prisoner Classification

Racial segregation of prisoners was explicitly authorized and condoned in many prison systems until very recently, when the federal courts began invalidating some of its various forms and practices, often over the cries of protest of prison officials. Even today - 14 years after it was ruled unconstitutional by the U.S. Supreme Court - several forms of racial segregation are still in evidence in virtually all prison systems, some more than others.

Throughout the U.S., black prisoners tend to be assigned more often to maximum-security institutions and less often to

minimum-security institutions compared to whites. (See Table 42 below for the most recent breakdown in New York State prisons.) In my own state of New York, for example, the percentage of white inmates in prison on March 1, 1982 varied tremendously by institution and security-level. Green Haven, a maximum-security prison, was only 19.9 percent white; Coxsackie, a maximum-security institution for youthful offenders, was 19 percent white, and Auburn had the highest white percentage (33.1) if one ruled out reception centers listed as maximum-security. Among the minimum-security camps, on the other hand, whites were overrepresented compared to blacks. For the entire New York prison system, 26,078 prisoners were listed, of which 52.4 percent were black, 20.1 percent were Puerto Rican, and only 26.6 percent were white (0.9 percent were "other").

Racially differential imprisonment occurs within prisons as well as into them.

Some states have re-examined their classification and movement criteria with an eye toward reducing these differences in security classification. In Minnesota, for example, T. Williams,

	Maximum-Security	Medium-Security	Minimum-Security
Black	57.9 %	50.7 %	44.7 %
White	27.8 %	25.7 %	30.6 %
Hispanic	13.7 %	22.7 %	24.1 %
Other	0.7 %	0.8%	0.8%
TOTAL	100.0%	100.0%	100.0%

SOURCE: N.Y.S. Dept. of Correctional Services

who is black, has served as corrections ombudsman for nearly a decade, and he is proud of the fact that his administration has helped to cut the pattern of black and other minority concentration in the highest levels of security.

INMATE/STAFF RATIOS

Although some strides have been made in increasing black and other minority representation among prison staff, American prisons - especially maximum-security prisons - remain extremely white in terms of the keepers' race. This factor as well may be contributing to racially differential imprisonment, in a number of ways.

T. Williams has commented:

They do not formally discriminate on the basis of race in corrections. But as a black man, you cannot convince me that people aren't unconsciously committing racial discrimination. A person is the sum total of his experience, and if the majority of guards are white, rural men who have led a racially segregated life, and prisoners are the only black people they've come to know, they develop an anti-black attitude as a result, if such an attitude wasn't already there when they started.

Some of the effects of the large and growing racial difference between inmates and staff may relate to the various ways that prison employees can affect the amount of time a prisoner will serve in custody. For example, jail time credit is often computed by corrections personnel and the amount of time awarded can vary tremendously, according to the individual who figures it. Many prisoners complain - and a large percentage in some states have successfully challenged - that have been shortchanged by arithmetic; in some instances, they have also charged that racial bias affected the calculations. Likewise, with good time credit.

Both good time credit and parole can be influenced by the number of disciplinary infractions a prisoner has received from guards who are usually white. Several studies have found that blacks tend to receive more writeups than whites, particularly for infractions involving staff, such as verbal abuse, "disrespect," disorderly conduct, and the like. As a result, blacks serve longer sentences.

Programs

Very little evidence is available concerning prisoner work assignments, educational and vocational training, temporary release, visitation privileges, and other programs which may somehow be affected by racial bias. Here again, however, the possibilities for abuse, and the way that black prisoners react to those real or perceived forms of racial discrimination, may conceivably affect the quality and the quantity of prison time.

Parole

National statistics do not exist which could be helpful in determining what, if any, racial differences may exist in prison discharge by parole. The Uniform Parole Reports for 1977 indicate that about 46.1 percent of the inmates entering parole were white and 53.9 percent were members of "minority" races. However several studies suggest that the characteristics of parolees appear to bear a pretty close resemblance to those of prisoners. Blacks also appear to be about as successful on parole as whites.

V. CONCLUSION

Racially differential imprisonment is a serious and growing problem, having many grave implications for American society. Its existence is not explained by racially differential arrest data, and arrest practices are themselves a major contributor to black overrepresentation in prison. At virtually every stage of the criminal justice process, as in much of the larger society, blacks are the victims of racial discrimination.

Given the subordinate position in which most American blacks have been kept for so long - through inferior housing, inferior public education, inferior employment and greater unemployment, inferior health services, and a generally inferior standard of living - the wonder is not that blacks have committed so much crime in relation to whites; it is that blacks have committed so little. And yet, blacks have been made to feel more criminal than whites, and especially, more criminal against their own black people.

Writing exactly 50 years ago, W.E.B. DuBois put it this way:

It is to the disgrace of the American Negro, and particularly to his religious and philanthropic organizations, that they continually and systematically neglect Negroes who have been arrested, or who are accused of crime, or who have been convicted and incarcerated.

...[E]ver since Emancipation and even before, accused and taunted with being criminals, the emancipated and rising Negro has tried desperately to disassociate himself from his own criminal class. He has been all too eager to class criminals as outcasts, and to condemn every Negro who has the misfortune to be arrested or accused. He has joined with the bloodhounds in anathematizing every Negro in jail, and has called High Heaven to witness that he has absolutely no sympathy and no known connection with any black man who has committed crime.

All this, of course, is arrant nonsense: it is a combination of ignorance and pharisaism which ought to put twelve million people to shame. There is absolutely no scientific proof, statistical, social or physical, to show that the American Negro is any more criminal than other elements in the American nation, if indeed as criminal. Moreover, even if there were, what is crime but disease, social or physical? In addition to this, every Negro knows that a frightful proportion of Negroes accused of crime are absolutely innocent.

One of the most disturbing aspects of the extraordinary growth of prisons over the last ten years has been that it has occurred without any pretense of reform or improvement. For those imprisoned, and for society itself, imprisonment only inflicts further damage - it does not repair, or correct. Nor, as I have tried to show, does it even protect.

The manner in which imprisonment is used violates the most fundamental precepts of fairness, equality, and liberty. People of all colors and persuasions must join together to reduce its discriminatory use, before it prevails over us all.

VI.

POLICY RECOMMENDATIONS FOR REDUCING
RACIALLY DIFFERENTIAL IMPRISONMENT IN THE U.S.Criminal Justice:1. Block prison expansion by opposing new prison construction.

Continued new construction would perpetuate and/or increase extreme racial imbalance of the prison population.

2. Support efforts to "cap" the existing prisoner population.

Lobby for legislation to establish "maximum capacity" levels for the state prison system and each individual institution. An example of such a bill is as follows:

The commissioner shall each week report the prison population, by facility, to the governor, the clerks of the house and senate, and the appropriate joint legislative committees. Whenever such a weekly report shows that a prison overcrowding state of emergency exists, the following procedures shall be implemented until the prison population has been reduced to ninety percent of the cumulative maximum capacity:

(a) the commissioner shall release all prisoners 90 days prior to their established discharge date, and

(b) the parole board shall issue a parole permit to each parole eligible prisoner 90 days prior to his/her parole eligibility date, unless the parole board determines in writing with specific particularity that there is substantial reason to believe that upon such release a prisoner will engage in further criminal conduct.

If after 90 days the prison overcrowding state of emergency still exists, the commissioner and the parole board shall implement the early release provisions of subsections (a) and (b) such that prisoners are released 180 days prior to their established discharge and parole eligibility dates.

No prisoner shall be transferred out of state to a federal prison or another state's prison in order to reduce the prison population.

3. Request legislative hearings, open to the public, on racially differential imprisonment.
4. Encourage and support constitutional attack on racial discrimination in sentencing by mobilizing state and community resources aimed at challenging sentencing practices in selected counties.
5. Oppose proposed expansion of mandatory prison sentences, especially those for predicate felons convicted of non-violent offenses.

6. Lobby to reduce existing mandatory minimum prison sentences.
7. Encourage the development and implementation of alternatives to incarceration which do not discriminate on the basis of race, religion, or social class of the offender.
8. Consider racial quotas and mandatory discharge to reduce existing racial imbalances.
9. Redistribute correctional resources from prisons to probation and parole.
10. Institute bail guidelines which are neutral with respect to the race, gender, social or economic status of the defendant.
11. Institute sentencing guidelines which are neutral with respect to the race, gender, social or economic status of the convicted felon.
12. Institute parole guidelines which are neutral with respect to the race, gender, social or economic status of the prisoner.
13. Require all state criminal justice agencies to immediately develop and implement policies and procedures assuring the rights of citizens, suspects, defendants, and prisoners not to be subjected to discriminatory treatment based on race, religion, nationality, sex, socioeconomic status, or political beliefs.
14. Prescribe appropriate criminal and civil penalties for criminal justice personnel who violate the rights of citizens, suspects, defendants, and prisoners not to be subjected to discriminatory treatment based on race, religion, nationality, sex, socioeconomic status, or political beliefs.
15. Conduct an immediate review of minority employment, retention, and promotion for every state criminal justice agency.
16. Encourage a review of affirmative action policies and performance by municipal and county criminal justice agencies.
17. Stimulate and encourage in-service training in race relations for all criminal justice personnel, in all levels and branches of government.
18. Demand and encourage accountability on the part of criminal justice decisionmakers.
19. Enforce reporting requirements on criminal justice agencies to make them inform the public and other branches of government about their activities.
20. Encourage the federal government to make block grants available to the states to develop and implement alternatives to imprisonment which do not discriminate on the basis of race or socioeconomic status of offenders.

21. Intensify research on the origins and development of racially differential incarceration in all societies.
22. Disseminate to civic, professional, religious, and other reform-minded organizations as much information as possible about the criminal justice system's differential processing of American minorities.
23. Organize local, state, regional, and national conferences to address differential imprisonment.
24. Establish and encourage organizations to monitor criminal justice processing.
25. Organize coalitions with other minority groups and civil rights organizations to speak out on the problem.
26. Assist churches and civic organizations to provide counseling and other aid to prisoners' families.
27. Organize coalitions of prisoners' families and their representatives to make their views known about the impact of imprisonment on their lives.
28. Encourage delinquency prevention and crime prevention programs which are designed to reduce such conduct, not to increase the number of those arrested and imprisoned.
29. Require public schools to devote more attention to delinquency prevention.
30. Intensify efforts to curb growing drug abuse in minority communities by means other than stiffer drug enforcement.
31. Require public disclosure of monthly reports on prison admissions, by race, age, sex, offense, and county, in every state.
32. Encourage polling organizations to conduct regular surveys of public opinion on such issues as offense seriousness and effectiveness of criminal justice agencies.
33. Support the prisoners' rights movement and demand improvements of prison and jail conditions.
34. Encourage the news media to report conditions in jails and prisons.
35. Support programs to liberalize visitation rights for prisoners and their families, including efforts to expand contact visits and conjugal visitation.
36. Encourage medical and legal organizations to encourage their memberships to visit prisons and jails and work with prisoners on a volunteer basis.
37. Require local district attorneys to make public information

information about criminal charges and dispositions of criminal cases involving cases which have occurred in jails or prisons in their counties.

38. Oppose preventive detention.
39. Encourage the local news media to issue regular reports of local bail, ROR, and sentencing practices, with particular focus on racially differential treatment.
40. Stringently enforce legal prohibitions against racial segregation of prisoners.
41. Stringently enforce health and safety standards in prisons and jails.
42. Pressure the FBI to study the ways in which the Uniform Crime Reports present a racially distorted picture of crime in the United States.
43. Encourage minority scholars to study the Uniform Crime Reports from a minority perspective.
44. Schedule a meeting about racially differential processing in criminal justice which will be attended by representatives of the appropriate major private foundations and representatives of such organizations as the National Urban League, National Association of Blacks in Criminal Justice, National Association for the Advancement of Colored People, NAACP Legal Defense and Educational Fund, National Association of Black Law Enforcement Officers, and other minority organizations which are active in criminal justice, in order to explore needed funding of minority-related research and action.
45. Restore federal funding of criminal justice education, particularly in the black colleges.
46. Encourage all programs in criminal justice education to make their curricula more sensitive to minority perspectives and issues.
47. Restore federally-sponsored research into criminal justice processing of minorities.
48. Oppose capital punishment.
49. Encourage Amnesty International to examine human rights violations against American minorities.
50. Encourage the development of "family impact statements" to be included in all presentence reports.
51. Advise the National Institute of Justice to begin reporting race-specific data for persons convicted of felonies, probationers, and parolees.
52. Release annual reports in every state showing the extent of minority representation in the state legislature and courts.

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53. Focus minority-related research on criminal justice decisionmaking in the stages between arrest and sentencing, with particular emphasis on charges which are dropped.
 54. Focus crime prevention programs on robbery offenses in urban areas, with the goal of reducing robbery arrests.
 55. Support handgun control.
 56. Bolster enforcement of white-collar crimes, organized crime, official misconduct, and health and safety violations.
 57. Eliminate criminal and civil disabilities for ex-convicts.
 58. Demand full and impartial investigation of all race-related prisoner grievances.
 59. Liberalize good time and require uniform computation of jail time in each state.
 60. Increase the size of each state's parole board.
 61. Request the National Institute of Corrections to undertake an annual study of racially differential imprisonment and publicize the results.