

DISPROPORTIONATE IMPRISONMENT OF BLACKS
IN THE UNITED STATES:
POLICY, PRACTICE, IMPACT AND CHANGE

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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.¹ 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 reformatory 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 misery² 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.³ Simultaneously, these states gradually erected a system of state prisons, in part for the purpose of controlling some of those they had emancipated.⁴ 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."⁵

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.⁶ 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 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.⁷ 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.⁸ The Bureau of the Census noted that Negroes comprised only 9.3 percent of the adult population, but 31.3 percent of the prisoners.⁹ 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.¹⁰

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.¹¹ 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 2000.¹²

A large and increasing share of proposed new prison construction is intended to accomodate 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.¹³ Tables showing the black/white breakdowns of both populations are shown below.

TABLE 1 U.S. POPULATION, 1980		
Race	Number	Percent
Black	26,488,218	11.7
White	188,340,790	83.1
All Races	226,504,825	100.0

TABLE 2 U.S. PRISON POPULATION, YEAREND 1979				
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

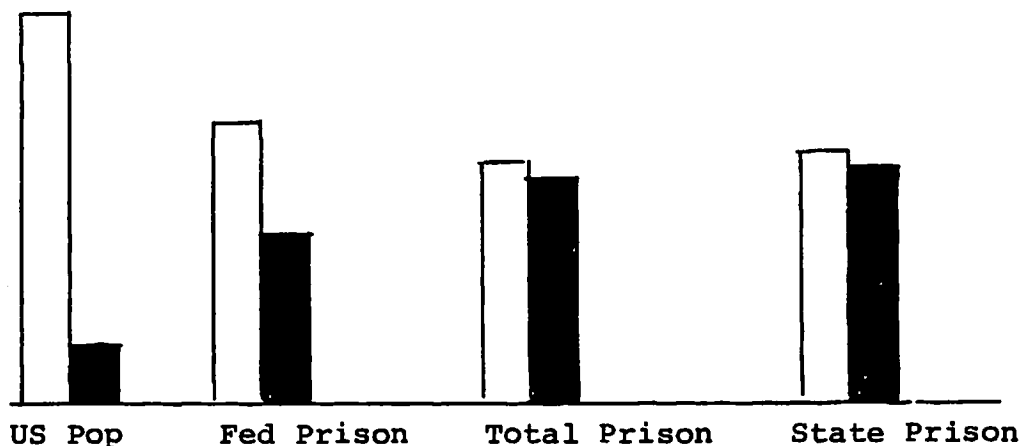


TABLE 3

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	3,904
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	9,667	4,108	5,553	5	1	0
Illinois	11,361	4,659	6,643	29	30	0
Michigan	15,002	5,452	8,743	60	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 proportions emerge:

TABLE 4 DISPROPORTIONAL IMPRISONMENT, YEAREND 1979 (in %)			
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:

TABLE 5 IMPRISONMENT RATES PER 100,000 PERSONS, BY RACE, YEAREND 1979	
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

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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	58.1	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	888.9	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:

TABLE 9 IMPRISONMENT RATES FOR BLACK MALES, BY REGION, 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:

TABLE 10 IMPRISONMENT RATES FOR BLACK MALES, BY STATE, 1978			
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.¹⁷ 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 races¹	191,367	4%	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	18,596	11,024	7,460	11,720	770	25.3
Violent offenses	40,916	5,562	2,882	2,430	2,458	2,401	2,210	8,682	5,323	3,868	4,737	353	26.1
Murder or attempted murder	11,543	1,624	494	572	601	572	671	2,063	1,368	1,172	2,277	129	27.4
Manlaughter	3,125	267	160	63	190	83	146	836	412	312	633	23	29.1
Rape	4,091	428	386	341	166	165	168	1,239	602	322	278	0	26.0
Robbery	15,428	2,478	1,345	1,304	968	1,034	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	2,232	185	142	42	83	103	129	647	351	249	300	21	28.2
Property offenses	36,976	7,620	2,871	2,694	2,289	2,141	1,755	6,558	3,691	2,736	4,279	323	24.4
Burglary	20,261	4,353	1,877	1,684	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	30	24.0
Other	7,517	753	393	421	419	416	277	1,649	986	778	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	740	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	34,526	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
Manlaughter	4,833	556	273	213	211	234	189	848	542	463	1,261	42	28.8
Rape	4,900	1,177	411	349	287	473	273	890	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	4,800	810	360	210	271	218	201	952	410	280	467	20	25.1
Other	720	86	82	61	61	19	61	124	62	39	104	0	24.5
Property offenses	23,280	5,352	2,116	1,522	1,931	1,592	1,142	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	630	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.¹⁸

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: Greenfield								

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.¹⁹ 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.

TABLE 17 OFFENSE CHARACTERISTICS OF STATE PRISONERS, 1974 & 1979 (in %)			
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	581
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
Manlaughter	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.

*See
DOCS
Recidiv.
Studies*

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
 22
 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.

23
 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
 24
 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.

25
 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. 26

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,²⁷ 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.²⁸ One writer, for example, has concluded that prison can severely affect the family in several ways.²⁹ 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.³⁰

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	88,628	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 races²	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	53,923	3,771	894	86	2,023	769	51,712	440
25-29	44,036	6,630	1,203	149	3,702	1,576	37,065	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	6,594	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	1,780	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.

²Includes 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	Charged					Not charged	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	764	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	1,648	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	2,782	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	3,964	521	246	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	79,166	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	0	398	108	4,478	0
5-5.9 years	13,577	1,932	433	82	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.

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

² Medians 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.³¹ 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.³²

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.'"³³

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."³⁴ 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.³⁵

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 it³⁶
 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."³⁷

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 disregard³⁸
 for life which all wild people have in common."

Explanations for blacks' greater criminality according to³⁹
 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. ⁴⁰ 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. ⁴¹ 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).⁴² Today this list includes eight offenses: murder and nonnegligent manslaughter, forcible rape, robbery, assault, burglary, larceny-theft, motor vehicle theft, and arson.⁴³

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.⁴⁴ 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 - admits⁴⁵ 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.⁴⁶

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 208,194,225.⁴⁷ 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 estimated⁴⁸ 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.⁴⁹ 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 1980.⁵⁰

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.⁵¹ 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 ⁵² 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

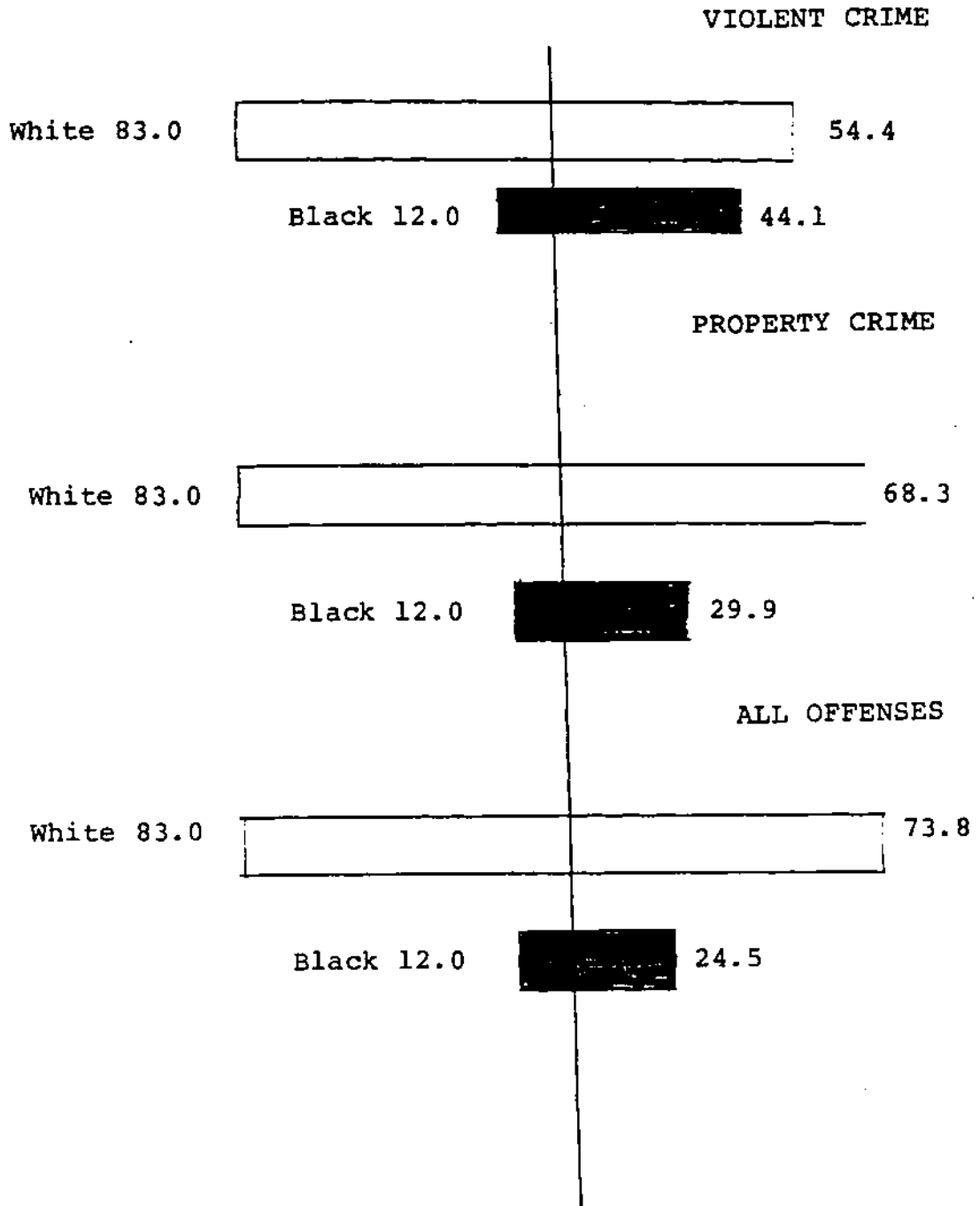
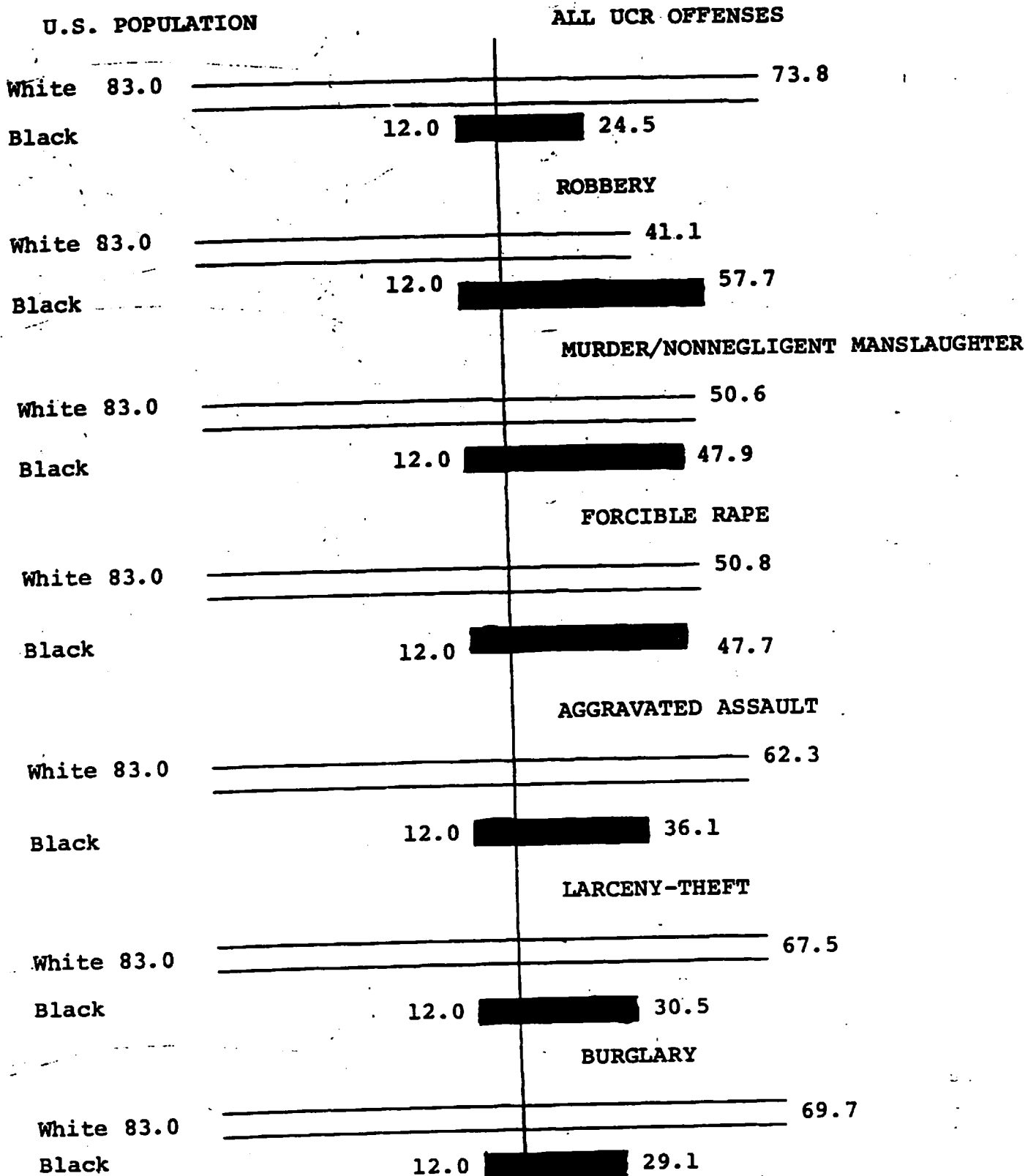


FIGURE 3
BLACK & WHITE ARREST PERCENTAGES, 1980



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.⁵³ 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.⁵⁴ 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 manslaughter	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. ⁵⁵

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.⁵⁶

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.⁵⁷

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.⁵⁸

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."⁵⁹

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."⁶⁰

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.⁶¹

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."⁶²

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
Murder	5.9	6.8	12.7	.535	.18	.0963 ³
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."⁶³

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.⁶⁴ 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 or over, for whom race was reported. However, 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

When Blumstein's test is refined to consider arrestees of races in addition to those who were white or black, 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.)

TABLE 34
REFINED EXPECTED BLACK/WHITE COMPOSITION OF STATE PRISONS, 1974

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.

TABLE 35 EXPECTED RACIAL COMPOSITION OF STATE PRISONS, YEAREND 1979, CALCULATED ON THE BASIS OF ARREST PROPENSITY (BLACKS)						
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 black and white 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.⁶⁵

"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?⁶⁶

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 Differ- ence in %	% 1974 Prison- ers White	% 1974 Prison- ers Black	B/W Differ- ence 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. 67

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.⁶⁸

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.

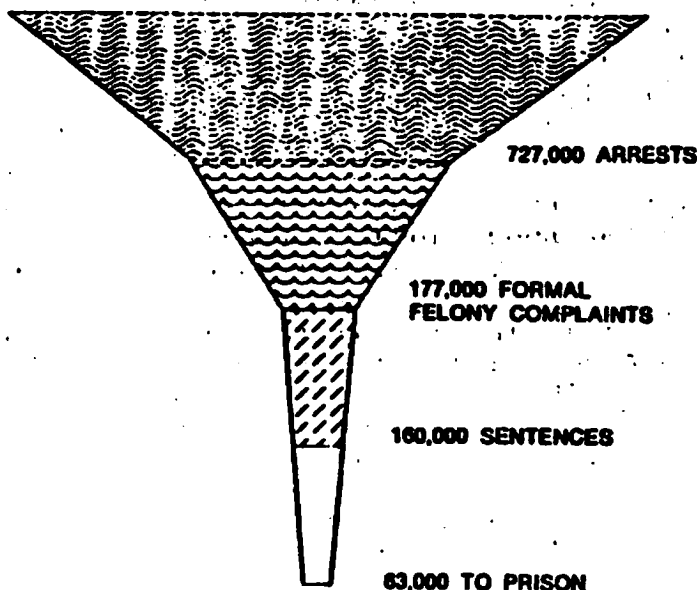
WINNOWING OUT

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

**FUNNELING EFFECT FROM REPORTED CRIMES
THROUGH PRISON SENTENCE**

2,760,000 INDEX CRIMES REPORTED



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. 71

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." 72 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.⁷⁵

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.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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. ⁷⁹

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, <u>1980</u> 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.⁸⁰ 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.⁸¹ 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.⁸²

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.⁸³ 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.⁸⁴

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. ⁸⁵

Several studies have indicated that robbery - particularly street robbery, or mugging - is strongly feared by Americans today.⁸⁶

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.⁸⁷ 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 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."⁸⁸

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.⁸⁹

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.⁹¹

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

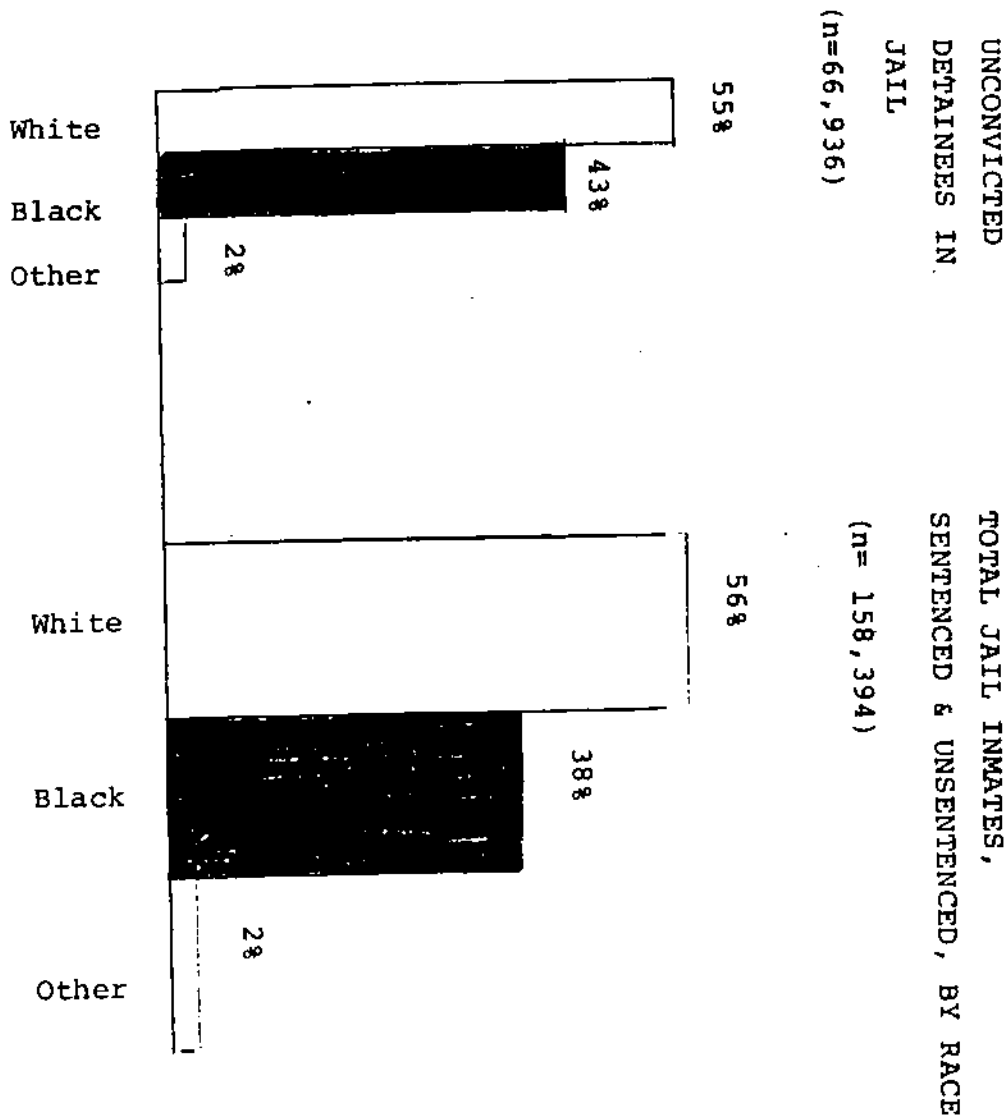
increases in the use of ROR over that period. However, specialists in pre-trial processing have become increasingly aware that race/ethnicity and several other indicators related to a defendant's socioeconomic status can affect how is released on ROR - just as they have always affected who is released 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.⁹³

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.⁹⁴ 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, 1970.⁹⁵ 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

FIGURE 5
U.S. JAIL POPULATION, BY RACE, 1978



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.⁹⁶ 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.⁹⁷ 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.⁹⁸ 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."⁹⁹

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 be 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.¹⁰⁰

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.¹⁰² (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; Cossackie, 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").¹⁰³

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,

TABLE 42 ETHNIC DISTRIBUTION OF INMATES IN NEW YORK STATE PRISONS, BY RACE & LEVEL OF SECURITY, ON MARCH 1, 1982			
	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.¹⁰⁴

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.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷
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.¹⁰⁸

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.

...[Elver 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. 109

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.

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.

FOOTNOTES

1. See generally, Keith Scott Christianson, The American Experience of Imprisonment, 1607-1776, unpub. Ph.D. diss., SUNYA, 1981.
2. Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812 (Chapel Hill: Univ N Car Pr, 1968; David Brion Davis, The Problem of Slavery in Western Culture (Ithaca: Cornell Univ Pr, 1966); David Brion Davis, The Problem of Slavery in the Age of Revolution (Ithaca: Cornell Univ Pr, 1975).
3. See, e.g., Robert William Fogel and Stanley L. Engerman, "Philanthropy at Bargain Prices: Notes on the Economics of Gradual Emancipation," J Legal Stud 3(2) (Je 1974): 377-401.
4. New York State, e.g., legislated both the gradual emancipation and the gradual creation of the State Prison on the same date in 1796. Scott Christianson, "Our Black Prisons," Crime & Delinq (Jl 1981) at page 373, n. 21.
5. Gustave de Beaumont and Alexis de Tocqueville, On the Penitentiary System in the United States and Its Application in France, trans. Francis Leiber (Philadelphia: Carey, Lea & Blanchard, 1833), p. 93. This classic report is available in paperback from Southern Illinois University Pr in Carbondale, with a useful introduction by Thorsten Sellin.
6. See, e.g., Blake McKelvey, "Penal Slavery and Southern Reconstruction," J Negro Hist 20(1) (1935): 153-79; and Mark T. Carleton, Politics and Punishment: The History of the Louisiana State Penal System (Baton Rouge: LSU Pr, 1971).
7. Thorsten Sellin, "The Negro Criminal: A Statistical Note," Ann Am Poli 140 (N 1928), p. 63.
8. William T. Root Jr., A Psychological and Educational Survey of 1916 Prisoners in the Western Penitentiary of Pennsylvania (Pittsburgh: Bd Trustees W Penit, 1927).
9. U.S. Department of Commerce, Bureau of the Census, Crime Conditions in the United States as Reflected in Census Statistics of Imprisoned Offenders (Washington, D.C.: USGPO, 1926), p. 59. For the period 1930 through 1932 the Census reported that Negro males were over 3 times more likely than native white males to be committed to prisons. U.S. Department of Commerce, Bureau of the Census, Negroes in the United States, 1920-32 (Washington, D.C.: USGPO, 1935), p. 555.
10. Hans von Hentig, "The Criminality of the Negro," J Am Inst Cr L Crim 30 (1940) 662-680.

11. Telephone interview with Allen F. Breed, director, National Institute of Corrections, Washington, D.C., Sept. 28, 1981.
12. Alfred Blumstein, Jacqueline Cohen, and Harold D. Miller, Demographically Disaggregated Projections of Prison Populations (Pittsburgh: Carnegie-Mellon Univ., 1978),
13. 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.: US Dept Justice, 1981); and U.S. Dept. of Commerce, Bureau of the Census, 1980 Census of Population and Housing. Advance Report No. PCH80-V-1, United States Summary: Final Population and Housing Counts (Washington, D.C.: Dept Commerce, 1981).
14. U.S. Dept. of Justice, ibid., p. 2.
15. The South's execution record is discussed in detail in William J. Bowers, Andrea Carr, and Glenn L. Pierce, Executions in America (Lexington, MA: Heath, 1974).
16. These rates were first developed in Scott Christianson and Richard Dehais, The Black Incarceration Rate in the United States: A Nationwide Problem (Albany: School of Criminal Justice, 1980); and Christianson, "Our Black Prisons," supra note 4.
17. U.S. Dept. of Justice, LEAA, NCJRS, 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 (Washington, D.C.: U.S. Dept Justice, Ag 1974). Hereafter cited as 1974 prison survey.
18. Lawrence A. Greenfeld was kind enough to supply a preliminary draft of his paper, a version of which was presented at the annual meeting of the American Society of Criminology in Washington, D.C., in Nov. 1981.
19. Illinois Dept. of Corrections, Population & Capacity Report - 1980 (Springfield: Dept of Correct, 1981). The author also conducted telephone interviews with the research staff who prepared the statistics.
20. The FBI does not define "violent crime," but it does include the following offenses under the category of "violent crimes": murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.
21. See, e.g., Hans Toch, Living in Prison: The Ecology of Survival (New York: Free Pr, 1977).
22. Gresham M. Sykes, The Society of Captives (Princeton: Princeton

Univ Pr, 1958), esp. chap. 4.

23. See Anthony Guenther, "The Impact of Confinement," in Norman Johnston and Leonard D. Savitz, eds., Justice and Corrections (New York: Wiley, 1978), pp. 596-603.
24. Donald Clemmer, The Prison Community (New York: Holt, Rinehart & Winston, 1958).
25. David A. Jones, The Dangerousness of Imprisonment, unpub. Ph.D. diss., SUNYA, 1975.
26. See, e.g., Daniel Lockwood, Prison Sexual Violence (New York: Elsevier, 1980); Israel Drapkin, "The Prison Inmate as Victim," Victimology 1(1) (Spr 1976): 98-106; Alvin J. Bronstein, "Reform Without Change: The Future of Prisoners' Rights," Civil Lib Rev 4 (O 1977): 27-45 and Ira P. Robbins, ed., Prisoners' Rights Sourcebook: Theory, Litigation, Practice. Vol. II (New York: Clark Boardman, 1980).
27. See Donald Clemmer, "Observations on Imprisonment as a Source of Criminality," J Crim L & Crimin 41(1950-51): 311-319.
28. See, e.g., Velma LaPoint, "Children of Incarcerated Mothers," in Child Development, ed. by R. Green and T. Yawkey (Lexington, MA: Heath, 1979); W.H. Sack, "Children of Imprisoned Fathers," Psychi 40(2) (1977): 163-174; Donald P. Schneller, An Exploratory Study of the Effects of Incarceration on the Families of Negro Inmates of a Medium-Security Prison, unpub. Ph.D. diss., Catholic Univ., 1966); Schneller, "Some Social and Psychological Effects of Incarceration on the Families of Negro Prisoners," Am J Correction 37(1) (Ja-F 1975): 29-33; Larry L. Hunt and Janet G. Hunt, "Race and the Father-Son Connection: The Conditional Relevance of Father Absence for the Orientations and Identities of Adolescent Boys," Social Prob 23(1) (1975): 35-52; Stanley L. Brodsky, Families and Friends of Men in Prison: The Uncertain Relationship (Lexington, MA: Heath, 1974; Johnny Spain, "The Black Family and the Prisons," Black Scholar 4(2) (1972): 18-31; Norman Holt and Donald Miller, Explorations in Inmate-Family Relationships, Research Report No. 46 (Sacramento: Calif Dept Corrections, 1972); S. Zalba, Women Prisoners and Their Families (Los Angeles: Delmar, 1964); and L. Alex Swan, Families of Black Prisoners: Survival and Progress (Boston: G K Hall, 1981). I am grateful to Alice Green of the Center on Minorities and Criminal Justice at SUNYA for her sharing of many materials on this topic; her forthcoming dissertation examines the impact of incarceration on the black family.
29. Anne Newton, "The Effects of Imprisonment," Crim Just Abstracts 12(1) (Mr 1980): 134-51.

30. "Our Black Prisons," supra note 4, p. 369, n. omitted.
31. James B. Jacobs, "The Limits of Racial Integration in Prison," Crim L Bull 18(2) (Mr-Apr 1982): 117-153.
32. E.g., see Edward Bunker, "War Behind Walls," Harper's, 244 (F 1972): 39-47.
33. Telephone interview with Alvin J. Bronstein, Aug. 13, 1981.
34. Personal interview with Commissioner Kirkland, Albany, Aug. 13, 1981.
35. See "Black on Black Crime - The Cause, The Consequences, The Cures," Ebony 34 (Ag 1979), 1-162.
36. Douglas S. Greenberg, "Patterns of Criminal Prosecution in Eighteenth-Century New York," NY Hist 56(2) (Ap 1975): 132-153; and Crime and Law Enforcement in the Colony of New York 1691-1776 (Ithaca: Cornell Univ Pr, 1974).
37. Beaumont and Tocqueville, supra 5.
38. Lombroso, "Neue Verbrecher-Studien" (1907), in Adriaan Bongers, Race and Crime, trans. Margaret Mathews Hordyk (Montclair, NJ: Patterson Smith, 1969 reprint of 1943 edition), 48-49.
39. A comprehensive listing is contained in Scott Christianson, ed., Index to Minorities & Criminal Justice (Albany: Center on Minorities & Criminal Justice, 1981).
40. Ibid.
41. For a recent examination of some of these developing techniques, consult Frank E. Hagan, Research Methods in Criminal Justice and Criminology (New York: Macmillan, 1982).
42. The origin of the UCR is described in Thorsten Sellin and Marvin E. Wolfgang, The Measurement of Delinquency (New York: Wiley, 1964). One of the better appraisals of the UCR is still Marvin E. Wolfgang's, "Uniform Crime Reports: A Critical Appraisal," Univ Pa L Rev 111 (Ap 1963): 708-738.
43. Arson was added in 1979.
44. See e.g., Edward Green, "Racial, Social Status, and Criminal Arrest," Am Sociol Rev 35 (1970): 476-490; Alfred Blumstein and Daniel S. Nagin, "Analysis of Arrest Rates for Trends in Criminality," Socio-Economic Planning Sci 9 (1975): 221-227; Darrell J. Steffenmeier and Michael J. Cobb, "Sex Differences in Urban Arrest Patterns, 1934-79," Social Prob 29(1) (O 1981): 37-50.
45. Self-report study validity is discussed in Michael J. Hindelang, "Race and Involvement in Common Law Personal Crimes," Am Sociol Rev 43 (1978): 93-109; and in Roger

McNeely and Carl Pope, "Race and Involvement in Common Law Personal Crime: A Response to Hindelang," Rev Blk Polit Econ 8 (Sum 1978): 405-410.

46. Wesley G. Skogan, Issues in the Measurement of Victimization (Washington, D.C.: US Dept Justice, Bureau of Justice Statistics, 1981).
47. Federal Bureau of Investigation, Uniform Crime Reports for the United States - 1980 (Washington, D.C.: USGPO, 1981), p. 193. Later cited as 1980 UCR.
48. Ibid., p. 204.
49. Ibid., p. 41.
50. Ibid. The reporting rates ranged from 98.8% in SMSA's, to 96.1% in Other Cities, to 93.5% in Rural areas.
51. See Jeffrey H. Reiman, The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice (New York: Wiley, 1979), esp. pp. 57-94.
52. 1980 UCR, p. 204. For racial distribution of arrests for persons under 18 years old, see p. 205.
53. 1980 UCR, p. 204; and Federal Bureau of Investigation, Uniform Crime Reports for the United States - 1969 (Washington, D.C.: USGPO, 1970), p. 118. Later cited as 1969 UCR.
54. 1980 UCR, p. 205; 1969 UCR, p. 119.
55. William G. Nagel, "On Behalf of a Moratorium on Prison Construction," Crime & Delinq 23(2) (Apr 1977): 154-172.
56. Jack H. Nagel, Crime and Incarceration: A Reanalysis. Fels Discussion Paper #112 (Philadelphia: School of Public & Urban Policy, Fels Center of Govt., Univ. of Pa, Sept. 1977).
57. James Garofalo, "Social Structure and Rates of Imprisonment," Just Systems J 5 (Sp 1980): 299-305.
58. Kenneth Carlson, American Prisons and Jails. Vol. II: Population Trends and Projections (Washington, D.C.: U.S. Dept. Justice, National Institute of Justice, O 1980), pp. 3, 27, 50-51. Later cited as Abt study.
59. Blumstein letter to Allen F. Breed, director, National Institute of Corrections, Washington, D.C., Dec. 20, 1979, p. 4. Cited hereafter as Blumstein's letter.
60. Telephone interview with Prof. Alfred Blumstein, Aug. 12, 1981. Prof. Blumstein also stated this same point on a number of other occasions, including his presentation of a paper entitled "On the Racial Disproportionality of

Prison Sentences," delivered at the Race, Crime & Incarceration Symposium held at the State University of Albany on May 1, 1981; in other telephone interviews with the author on Aug, 12 and Sept. 30, 1981, and in Blumstein's letter.

61. Blumstein's letter.

62. Ibid., p. 2.

63. Ibid., p. 4.

64. Telephone interview with Allen F. Breed, director, NIC, Sept. 28, 1981.

65. I wish to acknowledge the assistance of Richard Dehais of the Center on Minorities & Criminal Justice in conducting this analysis.

66. According to Blumstein:

"These results strongly lead me to the 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. If that is the case, then we must look to the factors in the general society causing that disparity. Anyone who has studied the socioeconomic correlates of crime knows the nature of those factors, which are largely associated with various forms of socioeconomic deprivation. These factors go far beyond anything the criminal justice system can do much about. In particular, it is not clear what a group of experts on the criminal justice system will be able to do to address those issues."

Blumstein's letter, p. 4.

67. Marjorie S. Zatz, Dynamic Modeling of Criminal Processing Histories (unpub. paper presented at annual meeting of the American Society of Criminology, Washington, D.C., Nov. 1981, later revised and scheduled to appear in John Hagan, ed., Methodological Developments in Criminological Research Vol. I, to be published by Sage in 1982, p. 20 of her manuscript).

68. Marvin E. Wolfgang and Bernard Cohen, Crime and Race: Conceptions and Misconceptions (New York: Instit of Human Relations Pr, 1970), p. 37.

69. Furman v. Georgia, 408 U.S. 238 (1972).

70. Marc Riedel, "Discrimination in the Imposition of the Death Penalty: A Comparison of the Characteristics of Offenders Sentenced Pre-Furman and Post-Furman," Temple L Q 49 (W 1976): 261-287.

71. United States Commission on Civil Rights, "Racism in America and How to Combat It" (1970), in Derrick A. Bell, Jr., Race

Racism and American Law (Boston: Little, Brown, 1973), pp. 87-89.

72. Richard Quinney, The Social Reality of Crime (Boston: Little, Brown, 1970), p. 16.
73. See, e.g., Edward Green, "Race, Social Status, and Criminal Arrest," Am Sociol Rev 35 (1970): 476-490; William M. Kephart, "Racial Factors and Urban Law Enforcement," Br J Delinq 5(2) (O 1954): 144-45; Kephart, "The Negro Offender: An Urban Research Project," Am J Soc 60 (J1 1954): 46-50; John R. Hepburn, "Race and the Decision to Arrest: An Analysis of Warrants Issued," J Res Crim Delinq 15(1) (Ja 1978): 54-73; Michael Katz, "Patterns of Arrest and the Dangers of Public Visibility," Crim L Bull 9(4) (1973): 311-324; Jack L. Kuykendall, "Police and Minority Groups: Toward a Theory of Negative Contacts," Police 15(1) (1970): 47-55; Donald Black and Albert J. Reiss, Jr., "Police Control of Juveniles," Am Sociol Rev 35 (1970): 63-77; Donald J. Black and Albert J. Reiss, Jr., "Patterns of Behavior in Police and Citizen Transactions," in Charles E. Reasons and Jack L. Kuykendall, Race, Crime, and Justice (Pacific Palisades, CA: Goodyear, 1972), pp. 176-205; P. Wald, "Poverty and Criminal Justice," in M.E. Wolfgang and L. Savitz, and N. Johnston, The Sociology of Punishment and Correction (New York: Wiley, 197); I. Piliavin and Briar, "Police Encounters with Juveniles," Am J Soc 70 (1964): 206-214; William J. Chambliss and R.B. Seidman, Law, Order and Power (Reading, MA: Addison-Wesley, 1971); Michael J. Hindelang, "Race and Involvement in Common Law Personal Crime," Am Sociol Rev 43 (1978): 93-100; and M.A. Forslund, "A Comparison of Negro and White Crime Rates," J Crim L Crimin & Pol Sci 61 (1970): 214-217; to name a few.
74. See, e.g., Joseph D. Lohman, The Police and Minority Groups (Chicago: Chicago Park Dist, 1947); Elliot M. Rudwick, "Police Work and the Negro," J Crim L Crimin & Pol Sci 50 (5) (1960): 596-599; Glen D. King and Jesse E. Curry, "The Effects of Prejudice on Minorities," in W. Bopp, ed., Police-Community Relationships (Springfield, IL: Chas C Thomas, 1972): 86-90; David H. Bayley and Harold Mendelsohn, Minorities and the Police (New York: Macmillan, 1968); Bruce Cory, "Minority Police - Tramping Through a Racial Minefield," Police Mag 2(2) (Mr 1979): 4-14; R. McClory, The Man Who Beat Clout City (Chicago: Swallow Pr, 1977); National Urban League, Inc., Project LEMMP (New York: NUL, 1974); National Criminal Justice Reference Service, Affirmative Action Equal Employment Opportunity in the Criminal Justice System: A Selected Bibliography (Washington, D.C.: U.S. Dept Justice, NIJ, My 1980).
75. See Gwynne Peirson, "Institutional Racism and Crime Clearance," in Robert Woodson, ed., Black Perspectives on Crime and the Criminal Justice System (Boston: G K Hall, 1977), 107-122.

76. Hans Toch, Violent Men: An Inquiry into the Psychology of Violence (Chicago: Aldine, 1969); Toch, Peacekeeping - Police, Prisons and Violence (Lexington, MA: Heath, 1977); Albert J. Reiss, Jr., The Police and the Public (New Haven: Yale Univ Pr, 1970); William A. Westley, Violence and the Police (Cambridge, MA: MIT Pr, 1970).
77. Tom Goldstein, "Police Study Views Low Conviction Rate," NY Times, Sept. 19, 1977.
78. See Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," Am J Soc 70 (Sept 1964): 206-214; Carl Werthman and Irving Piliavin, "Gang Members and the Police," in David Bordua, ed., The Police: Six Sociological Essays (New York: Wiley, 1966): 56-98; Morris Forslund, "A Comparison of Negro and White Crime Rates," J Crim L Crimin & Pol Sci 61 (Je 1970): 214-217; Donald Black and Albert J. Reiss, Jr., "Patterns of Behavior in Police and Citizen Transactions," in President's Commission on Law Enforcement and Administration of Justice, Studies of Crime and Law Enforcement in Major Metropolitan Areas, Vol. II (Washington, D.C.: USGPO), sect. 1; Angus Campbell and Howard Schuman, "Racial Attitudes in Fifteen American Cities," in National Advisory Commission on Civil Disorders, Supplemental Studies for the National Advisory Commission on Civil Disorders (Washington, D.C.: USGPO, 1968); Joseph Lohman et al, The Police and the Community, Field Survey IV, Vol. I. The President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: USGPO, 1966).
79. 1980 UCR, p. 182.
80. Reiss, Police and the Public, p. 134.
81. One writer has argued, however, that police discrimination is based on the suspect's social class and status rather than his/her racial or ethnic group. Gerald D. Robin, Introduction to the Criminal Justice System (New York: Harper & Row, 1980, p. 65.
82. See, e.g., Carl E. Pope, "Post-Arrest Release Decisions: An Empirical Examination of Social and Legal Criteria," J Res Crim & Delinq 15(1) (Ja 1978): 35-53; John R. Hepburn, "Race and the Decision to Arrest: An Analysis of Warrants Issued," J Res Crim & Delinq 15(1) (Ja 1978): 54-73; and Zatz, *supra* note 67.
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Cases in Court (Washington, D.C.: Instit Law & Soc Res, 1979).

84. Law Enforcement News, "Capitol Ideas in Washington: An Interview with Washington, D.C., Police Chief Maurice T. Turner," Law Enf News 8(4) (Feb 22 1982), p. 8.
85. 1980 UCR, p. 347.
86. See Morton Hunt, The Mugging (New York: Atheneum, 1972).
87. Many of the observations made in this section are drawn from Donald J. Newman, Introduction to Criminal Justice (Philadelphia: Lippincott, 1975).
88. Thurman W. Arnold, "Law Enforcement - An Attempt at Social Dissection," Yale L J 42(1) (1932), p. 7.
89. Robin, Introduction to the Criminal Justice System, 32-36, 96-97, 216-219, 260-261.
90. See Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," Univ Pa L Rev 102 (1954), 1031; Foote, "The Coming Constitutional Crisis in Bail," Univ Pa L Rev 113 (1965), 959 and 1125; John S. Goldkamp, Two Classes of Accused: A Study of Bail and Detention in American Justice (Cambridge, MA: Ballinger, 1979).
91. Goldkamp, ibid., p. 3.
92. Wayne Thomas, Bail Reform in America (Berkeley, CA: Univ of Calif Pr, 1976): 38, 65.
93. See Goldkamp, Two Classes of Accused, 227-228.
94. Statistics provided by the National Coalition for Jail Reform, 1333 New Hampshire Ave., N.W., Suite 1220, Washington, D.C. 20036 (Tel. 202-296-8630).
95. U.S. Department of Justice, Bureau of Justice Statistics, Profile of Jail Inmates: Sociodemographic Findings from the 1978 Survey of Inmates of Local Jails (Washington, D.C.: USGPO, 1980).
96. Goldkamp, Two Classes of Accused, pp. 202-206.
97. Carl E. Pope, "The Influence of Social and Legal Factors on Sentence Dispositions: A Preliminary Analysis of Offender-Based Transaction Statistics," J Crim Just 4 (1976): 203-221.
98. Franklin P. Williams III, "Conflict Theory and Differential Processing: An Analysis of the Research Literature," in James A. Inciardi, ed., Radical Criminology: The Coming Crises (Beverly Hills, CA: Sage, 1980): 213-232.
99. Letter from Michael L. Rubinstein, Executive Director, Alaska Judicial Council, to Matthew Myers, staff counsel of ACLU

National Prison Project, July 24, 1979. For the Alaska findings, see the following reports by the Alaska Judicial Council: Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Preliminary Report (Anchorage: ACJ, 1977); Judicial Council Findings Regarding Possible Racial Impact in Sentencing (Anchorage: AJC, 1978); and Michael L. Rubinstein, Nicholas Maroules, and Teresa White, Statistical Analysis of Misdemeanor Sentences in Anchorage and Fairbanks (Anchorage: AJC, 1979).

100. See, e.g., A.R. Smith, "Black Perspective on Pretrial Diversion," Urban League Rev 1(2) (Fl 1975): 25-28; David M. Peterson and Paul Friday, "Early Release from Incarceration: Race as a Factor in the Use of Shock Probation," J Crim L & Crimin 66 (Mr 1975): 79-97. It is interesting, for e.g., to note the following racial characteristics of persons sentenced to probation in New York State as of Aug. 5, 1981, according to the New York State Division of Probation:

Whites -	24,896
Blacks -	14,617
Chinese -	163
Indians -	79
Hispanics -	4,124
Other -	531
Unknown -	641
Total -	45,051

101. Washington v. Lee, 263 F.Supp. 237 (M.D. Ala 1966), aff'd per curiam 390 U.S. 333 (1968).
102. Abt study.
103. Data from New York State Department of Correctional Services, Bldg. 2, State Office Campus, Albany, NY 12226.
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