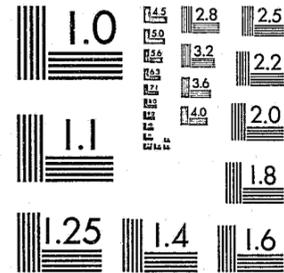


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RACISM AND IMPRISONMENT IN THE UNITED STATES IN THE 1980s;
A POLICY ANALYSIS*

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INTRODUCTION

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

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

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

I. RACIST JUSTICE: AN OVERVIEW

Racism is a Central Component of the Criminal Justice System

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

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

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

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

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

Racism in the Penal System is on the Increase

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

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

Analysis of national prison statistics for 1973 and 1979 reveals

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

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

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

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

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

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

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

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

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

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

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

Racism Inside Prisons is on the Increase

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

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

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

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

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

II. RACISM AND IMPRISONMENT: ADULT MEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. States with a high incidence of persons living below the poverty level tend to have a lower crime rate but a higher incarceration rate.

3. There is a strong positive correlation between unemployment rate and crime rate.

4. There is no significant correlation between a state's racial composition and its crime rate but there is a very great positive relationship between its racial composition and its incarceration rate.

5. The larger the prison bed space capacity of a state, the higher the incarceration rate of that state.

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

Discrimination in the Criminal Justice System

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

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

1. Men who are ex-convicts are significantly more likely to be brought to court, to be convicted and to be given a prison sentence. Burke and Turk suggest that ex-convicts are more vulnerable to the biases of legal control agents but do not indicate how those biases operate.

2. Young male offenders are more likely to receive a "break" by the court, but those who are brought to trial are more likely to receive prison sentences. Burke and Turk argue that this is largely a function of the offense, i.e., young males are more likely to have been charged with relatively serious offenses. Those who commit less serious offenses are treated more "mildly" by the court.

3. In general, the lower the occupational status of an offender, the more severe the disposition. Burke and Turk recognize the confounding factors that a prior record, race, and social class are highly inter-correlated with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant and Irrelevant Factors in Sentencing

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

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

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

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

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

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

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

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

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

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

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

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

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

work history and economic dependency.

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

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

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

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

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

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

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

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

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

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

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

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

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

III RACISM AND IMPRISONMENT: YOUTH AND WOMEN

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

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

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

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

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

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

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

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

Table 1

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

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

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

Source: Sheldon, 1982:348

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

Summary

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

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

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

IV. RACISM AND THE PENAL SYSTEM; AN ANALYSIS

The Prison Has Always Been an Instrument of Class Justice

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

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

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

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

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

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

Imprisonment is Related to Economic Conditions, especially unemployment

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

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

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

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

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

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

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

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

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

Minorities are Special Targets in Current Crisis

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

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

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

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

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

Racism in Penal System Must be Addressed in Larger Context

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

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

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

concluding section, we will address this issue.

V. POLICY RECOMMENDATIONS

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

(1) BRING EQUAL JUSTICE TO BAIL SYSTEM

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

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

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

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

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

(2) ABOLISH MANDATORY SENTENCES

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

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

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

(3) RESTORE INDETERMINATE SENTENCES

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

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

- a. Legislation should be enacted to permit paroling authorities to release an offender immediately from prison either on parole or to a community-based facility. This authority is needed as a corrective to practices by some courts that unnecessarily sentence offenders to prison.
- b. Studies have shown that judges rely on non-legal factors in selecting a sentence from among the range of alternatives. The poor and blacks tend to receive the more severe sentence. Given this reality, legislation is needed to set precise lower and upper limits for specific offenses, including misdemeanors. Punishment guidelines that specify "up to a \$500 fine or six months in jail" result in the poor and blacks ending up in jail for the maximum term.
- c. All indeterminate sentences should be fixed within a narrow range, that is, the indeterminate sentence should not have a broad range such as one year to life. The lower limit of an indeterminate sentence should always be at zero.

(4) COMBAT RACISM IN CRIMINAL JUSTICE PROFESSIONALS

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

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

- a. Judges and other criminal justice officials need to be informed that crime rates and more specifically, violent crime rates, have no relationship to incarceration rates (Nagel, 1977; Thornberry, 1979; Box and Hale, 1982). A concerted effort to re-educate criminal justice officials is especially critical in states where blacks are disproportionately imprisoned compared to whites, namely, Wisconsin, Nebraska, Iowa, Massachusetts, etc.
- b. It is recommended that National Institute of Justice funds be earmarked for the continuing re-education of criminal justice officials to address the specific processes of discrimination.

(5) PROSECUTE CORPORATE CRIME AND RACIST VIOLENCE

Crime is a very serious problem in minority communities.

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

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

(6) INCREASE EMPLOYMENT TO LOWER INCARCERATION RATE

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

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

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

(7) RESTORE FUNDING FOR COMMUNITY ALTERNATIVES TO IMPRISONMENT

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

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

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

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

(8) SUPPORT PRISONERS' HUMAN RIGHTS

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

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

to prisoner unions and political organizations.

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

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

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

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