

AN EXAMINATION OF  
DISPARATE RATES OF INCARCERATION OF  
AFRICAN-AMERICANS IN THE STATE OF IOWA

by

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A thesis submitted in partial fulfillment  
of the requirements for the Master of Arts  
degree in African American World Studies  
in the Graduate College of  
The University of Iowa

May 1999

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To Dee and Frank Haughton  
in love and remembrance

## ACKNOWLEDGMENTS

I would like to acknowledge the extensive help received from my thesis committee in the often, frustrating process of writing this paper. Without their assistance this project would have resulted in a paper of significantly less depth and thoughtful analysis of the problem than presented herein. To these three professors, I acknowledge both my debt and expressions of undying gratitude.

Donnarae MacCann, American Studies and African-American World Studies scholar whose technical, philosophical and theoretical assistance helped me keep this project personal. Professor MacCann encouraged the expression of my passion, the aspect of writing that I find most enjoyable. Thanks Donnarae, you are truly one of the sweetest people I have met in academia.

John Stratton, Sociology and Criminology scholar whose perspectives and theoretical insights into the criminal justice system kept me focused on the issues. My debt to professor Stratton extends back to my undergraduate days followed by many years that I worked in the field of corrections. His contributions to my academic career in general and this paper in particular are all the more appreciated as they come on the eve of his retirement from the academic grind. Enjoy, ‘Cowboy John,’ I for one will surely miss you.

Michaeline Crichtlow, African-American World Studies, Caribbean and African Diaspora scholar whose uncompromising standards pushed me to new levels of scholarly accomplishment. Demanding in her expectations, professor Crichtlow had the taskmaster's unpleasant duty of keeping me on track and on time. Her theoretical insights gave me pause in all aspects of my writing, leading I believe to a more polished and intellectually stimulating finished product. In a nutshell, the woman is relentless, fortunately for me. Thanks Michaeline, "we be jammin'."

Last and most importantly, I want to acknowledge the singly most significant individual in the completion of this project, my wife, Rose Marie Haughton. During research, writing, rewriting, last minute changes: feelings of frustration, insanity and now unrestrained joy, Rose was there by my side, putting up with it all. Involved at every stage of development without complaint (well not much), Rosie was indispensable in the completion of this masterpiece as well as in the 'work in progress' I call my life. Thanks Honey, I couldn't have done it without you, nor would I have wanted to.

## TABLE OF CONTENTS

	Page
LIST OF FIGURES .....	vii
CHAPTER	
I. INTRODUCTION .....	1
Background .....	1
Disproportionality .....	4
Defining Racism .....	6
Goals .....	8
Chapter Review .....	10
II. METHODOLOGY .....	14
III. REVIEW OF LITERATURE .....	21
Theories of Crime .....	21
Historical Implications .....	29
Disparity vs. Discrimination .....	31
IV. OVERVIEW OF INCARCERATION .....	48
Rates of Incarceration .....	48
The Male Population .....	51
The Female Population .....	51
The Juvenile Population .....	52
County Demographics .....	54
V. DISPROPORTIONALITY EXAMINED .....	60
Arrest .....	60
The Police .....	63
The Courts .....	73
Role of Attorneys .....	74
Juries .....	77
Judges and Sentencing .....	79

Impact of ‘War on Drugs’ .....	86
Corrections.....	92
The Prison System .....	93
Treatment of Black Staff .....	95
Specialized Programming .....	99
Impact of Revocation .....	100
Economics of Incarceration .....	102
Politics of Incarceration .....	105
‘Criminalization’ of Black America .....	106
VI. CONCLUSION .....	112
BIBLIOGRAPHY .....	118

## LIST OF FIGURES

Figure	Page
3.1 Discrimination-Disparity Continuum.....	47
4.1 Number of Blacks and Whites Incarcerated Jan. '90 and Dec. '97 .....	56
4.2 Demographics of Iowa Prison Population.....	57
4.3 Per 100,000 Population Incarceration .....	58
4.4 Most Common Counties of Commitment .....	59

## CHAPTER I

### INTRODUCTION

As may be noted in the title of this thesis, the focus of this work is the examination of the rates of incarceration of African-Americans in the United States in general and the state of Iowa in particular. There is gross disproportionality in the number of African-Americans incarcerated in the United States and the state of Iowa in relation to the percentage of African-Americans in the population as a whole. The problem is growing and discussion continues to skirt one of the fundamental causes of the disparity in the rates of incarceration, racism. This writer will define racism as this essay continues, in order to more fully explore the intersection of race, crime and the criminal justice system.

#### **Background**

At this period in our history it is of little dispute that African-Americans are disproportionately represented in the ranks of the incarcerated in America. What is disputed is the reason for this disproportional representation. Currently, there are approximately 1.7 million individuals incarcerated in the jails and prisons nationwide. Of the 1.7 million persons incarcerated approximately 54% are African-Americans.<sup>1</sup> Nationally African-Americans comprised approximately 13% of the total U.S. population. Within Iowa, the African-American population is roughly 2% of the state total. Yet, the African-American representation in the state's prison system averages

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<sup>1</sup> Bureau of Justice Statistics, "Prisoners in 1996," Bulletin June 1997, NCJ 164619.

approximately 25% of the total.<sup>2</sup> This disproportionality which is growing daily is the basis for the examination in this work.

My interest in this subject is a result of employment in the field of corrections for approximately 13 years. Of those 13 years, I worked as a correctional officer for the Iowa State Penitentiary for approximately three years and as a probation/parole officer with the Sixth Judicial District Department of Correctional Services for approximately ten years.<sup>3</sup> During these periods of employment, I came to a recognition of the growing problem of persons incarcerated in this country and noted with alarm the growing disproportionality in the representation of African-Americans among those numbers. Concerned that race was and continues to be a major determinant in the increasing numbers of Blacks sent to jail or prison, I have embarked on an ongoing examination of this problem. As a result of my years in corrections, I have become increasingly aware of the disparities in the rates of incarceration of Blacks in Iowa and the United States proportional to their representation in the state's general population.

It should be noted that as the numbers of Hispanics in the general and prison population are increasing rapidly nationwide, Hispanics encompass different races. This increases the difficulty in tracking the demographics of the group designated as Hispanic as the definition varies among jurisdictions. Additionally, in the United States, the Hispanic population is represented by a wide variety of source countries. Many Puerto Rican-Americans live in the Northeast, with the majority concentrated in New York, the

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<sup>2</sup> Iowa Department of Corrections, Monthly Movement Summary, January to December 1997.

<sup>3</sup> The exact periods of employment were: two (2) years, nine (9) months for the Iowa State Penitentiary and ten (10) years, nine (9) and one-half (1/2) months with the Sixth Judicial District Department of Correctional Services.

majority of Cuban-Americans reside in Florida, while many Mexican-Americans live in the Southwest. In Iowa the Hispanic population is growing but remains slightly lower than the Black population.<sup>4</sup> The Asian-American population is very small in the state and represents a very small part of the prison population, negligible by statistical standards. In Iowa, whites comprise the largest number of individuals incarcerated, Blacks the next highest population with the Hispanic population third and expanding quickly. Hispanic levels of incarceration are rapidly approaching those of African-Americans, as are the numbers of Hispanics in the general population as compared to the Black population. For the purposes of this study I am going to concentrate on the African-American population and refer to whites and Hispanics for comparative purposes only.

### **Disproportionality**

The problem, placing the disproportional incarceration of African-Americans into proper perspective is a difficult one. Why are Blacks disproportionately represented among the incarcerated? The problem could be surmised as one of racial discrimination against Blacks, given the level of disparity between the representation of African-Americans in the general population and the percentage incarcerated. The belief exists among many non-whites that discrimination in the criminal justice system is widespread, particularly African-Americans. Surveys consistently show that Blacks have less confidence in the ‘system’ than whites. The issue of disproportionality is however, much too complex to simply dismiss it as an affirmation of a racist criminal justice system

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<sup>4</sup> Iowa PROfiles Public Resources Online,  
<http://www.profiles.iastate.edu/data/census/county/general.asp?sCounty=19000>.  
Census figures show population demographics for Iowa (respectively for 1980 and 1990): White 97.4%/96.6%, Black 1.4%/1.7%, American Indian, Eskimo, or Aleut 0.2%/0.3%, Asian or Pacific Islander 0.4%/0.9% and Hispanic Origin (of any race) 0.9%/1.2%.

without further examination. One would be remiss in his duty as a researcher to fail to fully delve into the intricacies of the problem and examine the various possibilities. For instance, is the problem one of discrimination or more specifically, racism? Can the disproportionality be explained by differing rates of criminal activity among the various races? The latter is a contention not to be taken lightly as it has been a widely debated topic of research. As this essay progresses, it is the intention of this writer to delve more deeply into the specifics of a variety of studies in order to provide comprehensive analysis of the problem.

One of the first difficulties to be overcome in this work is defining racism. In his book, The Myth of a Racist Criminal Justice System, William Wilbanks states that defining racism is a hindrance to the discussion of discrimination in the criminal justice system and other terms should be used. Specifically, Wilbanks advocates the use of the term ‘racial prejudice’ instead of ‘racism’ as the definitions differ so widely between Blacks and whites.<sup>5</sup> Wilbanks decidedly misguided beliefs will be examined further in this work as “Myth” was and continues to be regarded as a significantly influential study of this topic. For the present, allow me to synopsize Wilbanks’ view of racism by stating that he asserts both Blacks and whites can be and are racist. In Wilbanks’ view ascribing racism solely to whites is endorsing a double standard. Wilbanks refutes the contention of many, this writer among them, that Blacks and other non-whites cannot be racist as they are not able to act upon whatever racial prejudices they may have due to a lack of power. Wilbanks rebuffs such a contention by pointing to Black prison inmates raping white inmates as an

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<sup>5</sup> Wilbanks, William, The Myth of a Racist Criminal Justice System. Monterey, CA: Brooks/Cole Publishing Company, 1984.

example of the use of power. I disagree. Ultimately it is the white power structure that wields the power in the form of the prison administration. Individual acts of violence are generally not considered examples of the type of power that advocates of the anti-Wilbanks' camp utilize. References to power, as defined by this writer, exemplify the uses of institutional power, political, economic or educational for example. I intend to examine this notion more fully later in this paper but find Wilbanks use of this example not only ludicrous, but insulting. To place individual acts of Black prejudice against whites on a par with the historical oppression of African-Americans in this country is a blatant attempt to minimize the behavior of whites against non-whites up to this point in American history.

## **Defining Racism**

This writer agrees with one point made by William Wilbanks in 'Myth,' that is that defining racism is very difficult. This writer readily accepts recognition of multiple definitions of the concept called 'racism' by persons of all races. I find that many African-Americans disagree with my definition of the concept. However, as this is my work, it will be my definition that will be utilized in the context of this study.

Racism, defined by this writer and others, for the purposes of this work, is recognition of the belief of whites in their inherent superiority to those of other races. Additionally, imbedded in this view of white supremacy is recognition by whites of negative traits held by those other races. In other words, this writer defines racism for the purposes of this essay as a euphemism for white supremacy. Coupled with this belief is the ability to control the 'other,' meaning non-whites, through institutions controlled historically by the majority population. This definition is in large part an echoing of the definition expressed

by Corramae Richey Mann in her book, Unequal Justice: A Question of Color. Mann states:

Race *prejudice* is rooted in the belief that one's own race warrants a positive attitude and that other races should be viewed negatively. When institutional power is added to prejudice, the result is *racism*. Within such a perspective, if the social, political, economic, religious, and educational structures of the major institutions in a society benefit a particular race—the “white” race in the United States—at the expense of other races, the practice is identified as *institutional racism*. While American minority peoples, similar to Euro-Americans, can be prejudiced, the fact that they lack control of institutional power prevents their subordination of Euro-Americans and negates definitions of them as racists. Therefore, the only accurately defined racists in the United States are those who control the primary institutions which are used to the advantage of one race at the expense of other races. Notions of “black racism” and “reverse racism” as practiced by minority group members are definitionally impossible. Finally, the negative and differential impact of racist practices against the subordinate American minorities by the Euro-American dominant group is *discrimination*.<sup>6</sup>

Not only does Wilbanks hold a view that is opposite to that put forth by Mann, but contends that Blacks are in his belief, more racist than whites (pg. 27). That white policy makers held ‘Myth’ as one of the definitive works of its period tends to reinforce the assertions made by Mann as to the nature of racism and its implementation by whites. This belief is reinforced in the work of Derrick Bell in his book, Faces at the Bottom of the Well.<sup>7</sup> In his chapter on the rules for racial standing, Bell’s “THIRD RULE” (pg. 114) posits that those Blacks who are willing to criticize other Blacks that make statements that offend or upset whites will be given enhanced standing. The response to ‘Myth’ by white policy-makers is clearly an example of Bell’s thesis in action.

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<sup>6</sup> Mann, Corramae Richey, Unequal Justice: A Question of Color. Bloomington, IN: Indiana University Press, 1993.

<sup>7</sup> Bell, Derrick, Faces at the Bottom of the Well: The Permanence of Racism. New York: Basic Books, 1992.

## **Goals**

The goal of this writer is to examine as thoroughly as time and talent allow the issue of disparity of rates of incarceration of African-Americans in Iowa. Inherent in this study will be a review of relevant literature with an eye toward discerning what factors are key to this examination. By reviewing the criminal justice system through the lens of close analysis it is hoped that this work may shed some light on the most salient factors causing the growing disparity and generate some additional research on this trend. Granted the task laid out is a monumental one for the issues surrounding the growing correctional population in Iowa and the nation are numerous and complex.

This writer is aware from first-hand experience, that many alternatives to incarceration are being considered around the state. These measures result from a realization that 'business as usual' is no longer working in the field of corrections. The methods utilized in the past have proven to be woefully inadequate given the growing jail and prison populations. Projected prison populations and need for additional cells continues to generate debate on the enormous cost to the taxpayers to fund the construction and maintenance of the new facilities. Special programming, new ways to classify offenders, electronic monitoring, are many alternatives to incarceration being considered if not already in use.

At the heart of this research is a desire to get to fundamental reasons for the explosion of African-American prisoners in a state that has such a small African-American representation of the total population. Through research of this phenomenon of overrepresentation I hope to expose many of the issues related to my hypothesis on this topic. Specifically, my hypothesis holds that the disparity in the rates of incarceration of

African-Americans in Iowa is significantly, though not solely related to racially biased policies, procedures and interpretations of law in the state by those who are charged with the responsibility of upholding the laws of the state. In other words, Blacks are incarcerated in numbers disproportional to their numbers in the general population not solely as a result of higher levels of criminal activity. The higher levels of incarceration are the result of policies, procedures and behaviors by law enforcement, court and correctional personnel, that act in such a way as to target and penalize Blacks more harshly and often than whites. There are crimes that have been shown to have statistically higher rates of Black involvement as will be shown by review of index crimes (rape, robbery and murder). These disparities do not adequately explain the disproportionality in the incarceration rates of Blacks, as the stated offenses do not comprise a large enough percentage of the total crime.

As this work progresses there will be review of a number of studies that offer conflicting conclusions as to the role of race in the criminal justice system. Do the police discriminate, do Black cops make a difference? Do judges, juries, defense and prosecuting attorneys discriminate and do their races make a difference? What is the role of corrections personnel and the critical decisions in a probationer or parolee's period of supervision that could result in some or additional prison time? Do the races of the correctional personnel make a difference? There are statistical surveys that examine these questions but from the standpoint of this writer, in a narrow, limited context. The result I contend is conflicting, often contradictory, conclusions that result ultimately in a clouding of the issues. I find researchers frequently base their findings on techniques that crunch numbers but fail to provide illumination into the human factors that manifest

themselves in the inner workings of the criminal justice system. The system is after all merely a collection of decisions made by human beings in a specific context, whether they be police, judges, lawyers, juries or correction personnel. By interjecting my own narrative gleaned from years of experience in the field of corrections as well as studies that transcend the aforementioned trend (Mann, 1993, Walker, et al, 1996), I will show that there exists an alternative to strictly statistical analysis of the problem stated. I will show that there is another voice beyond the charts and graphs that lends relevance to the discussion of discrimination in the ‘system.’

### **Chapter Review**

In the chapter to follow, Chapter II, I will examine the methods utilized in my search for information on this topic. What was done in this search and how the information was processed, review of the data analyzed and its relevance, (pro or con) to my basic hypothesis. I will discuss the theories that bolster or contradict my assertions of a discriminatory criminal justice system and why I find them valid, or not, as far as my thesis is concerned. In review of the various statistical models found I will compare and contrast them to non-statistical works and explore the need for non-statistical analyses.

Chapter III will constitute a review of the literature found that forms the basis for the information provided in this work. I will review the literature, and note whether it bolsters or contradicts my hypothesis. Most importantly I will show why the non-statistically based works are important to a discussion of discrimination in the criminal justice system and why this information is both relevant and necessary to this discussion.

The object of Chapter IV is to provide an overview of incarceration nationally and relate those patterns of incarceration to the situation in Iowa. An examination of the male,

female and juvenile populations of Iowa as well as the rates of incarceration in the context of Black to white ratios will be the focus of this chapter.

In Chapter V, I will examine the problem of the disproportionality of Black rates of incarceration from a national then state perspective and compare them. By placing Iowa in relationship to the rest of the nation, it will be seen that disproportionality in rates of Black to white incarceration is far from an isolated problem. Iowa is a leader in the nation in the ratio of Black to white rates of incarceration proportional to African-American representation in the overall population of the state. Though numbers of Blacks incarcerated are not as high as other states, examination of the disparity is important, for it displays the centrality of the issue of race in our criminal justice system. In this chapter an analysis of various aspects of Black incarceration and reasons for the disparity in incarceration rates will be presented. Among the reasons cited by various scholars for this discrepancy is a higher incidence of Black crime for some offenses. This author will demonstrate the questionable nature of such an argument as it falls short of fully explaining the disparity that exists. A law and order attitude becomes most prevalent when Americans perceive there is a particular group that presents a threat and thus needs to be controlled. Such has been the case for African-Americans since Emancipation in 1865. This call for stiffer penalties for lawbreakers, precipitated by a societal perception of leniency towards criminals has resulted in legislatures, both at the state and national level, instituting laws and policies that have enhanced the penalties and lengthened prison sentences of offenders. The result of such policies has been an increase, both in the number of people in prison and lengthier stays once there. Prison cell space is at a premium and overcrowding is epidemic nationally. Few states can keep up in spite of a

building boom in prison and jail cells. Though incarcerated whites are also serving longer sentences the impact of disproportionate incarceration has been significantly greater on Blacks. The ever-increasing percentage of Blacks enmeshed in the system and placed under some sort of court-ordered supervision is becoming epidemic. Nationally the ratio has increased from one out of every four Black men between the ages of 18 to 25 years old under supervision in 1990, to one out of every three in 1994.<sup>8</sup>

In Chapter VI I will synopsize the information and conclusions of the previous chapters. By this point in this work this writer will have provided the reader with a viable body of information that will, if not convince, at least stimulate thought in regard to this author's contention that discrimination is widespread in the criminal justice system.

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<sup>8</sup> The Sentencing Project, Young Black Americans and the Criminal Justice System: Five Years Later. 1995, <http://www.sproject.com/rep4.htm>.

## CHAPTER II

### METHODOLOGY

In making a case for discrimination in the criminal justice system this writer will first assert that inequality in our system of justice is but a byproduct of a society marked by social inequality. As stated in the quote by Mann in the introduction of this paper, “if the social, political, economic, religious, and educational structures of the major institutions in a society benefit a particular race--the “white” race in the United States...,”<sup>9</sup> which they do, then inequality in the administration of justice should come as no surprise to anyone. Yet, the very existence of inequality in our criminal justice system is denied by some of our most noted scholars and criminal justice practitioners. William Wilbanks argued this very point in his seminal work, The Myth of a Racist Criminal Justice System. I cite examples from Wilbanks’ book specifically throughout this essay due to its significant impact on the field of criminal justice policy and practice. It is the belief of this writer that Wilbanks ‘missed the mark’ in his work due in large part to erroneous, simplistic interpretations of issues dealing with race and relations between whites and Blacks. I will demonstrate through an analysis of that study and others (Blumstein, 1993, Bullock, 1961, Hacker, 1992, Hawkins, 1985, Jones, 1978, Mann, 1993, Miller, 1996, Myers, 1993, and Petersilia, 1985) that statistical analyses may be interpreted in a number of different ways. The information gleaned from these myriad studies provide consistently conflicting results and lead many of the researchers to conclude that they believe they are correct but are

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<sup>9</sup> Mann, Corramae Richey, *Unequal Justice: A Question of Color*. Bloomington, IN: Indiana University Press, 1993.

unsure. The disparity of views gleaned from numerous researchers belies the complexity of this issue. The difficulty inherent in exposing racial discrimination within social institutions frequently does not lend itself to traditional modes of research. Such is the problem in uncovering racial discrimination within the criminal justice system. There exist within the scope of human interactions, myriad subtleties in behavior that are virtually unquantifiable. Through analysis that explores alternative methods of analyzing behavior of those that comprise the criminal justice system, law enforcement, court and correctional officials, I will show that discrimination is prevalent in the 'system.'

In order to put the problem of disparate rates into proper perspective, it will be necessary to gain some insight into the national problem of racial disproportionality of rates of incarceration. This perspective will be garnered through a review of literature pertaining to race and the criminal justice system. The literature will include books, reviews of scholarly studies and articles published in books and the popular press.

Once the overview of the literature pertaining to disparate rates of incarceration has been presented, this writer will then focus on the specifics of the situation in Iowa. I will review the numbers of African-Americans incarcerated in the state and provide a breakdown of the percentages as compared to the numbers of those of the majority population. The data will be compared to that of the nation, but my focus will be on Iowa.

Raw data alone does not tell a complete story as it is subject to the beliefs and biases of the interpreter collecting the data. In this project I will examine studies and data then discuss those issues that do not lend themselves readily to statistical analysis. Specifically, how are attitudes toward race and crime framed in the United States generally and in Iowa in particular? I will examine the role of stereotyping of Black

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'criminals' in the system and the media. How do they impact each other? What do the studies say about the impact of economics on the African-American population and the rates of crime? Are Blacks, merely grist for the criminal justice mill? Is the role of African-Americans in the criminal justice system to be that of a commodity to fuel the economic needs of the system? A topic frequently ignored but of paramount importance concerns the role of African-Americans who work within the criminal justice system. Do they help or hinder this process of incarcerating large numbers of Blacks? What do the studies say about Black police officers, correctional workers and lawyers? In this review I will examine the dominant sociological theories of crime<sup>10</sup> and explain which of these theories fit my perception of discrimination in the 'system.'

Iowa leads the nation in the number of Black youth it has in detention in relation to the number of white youth incarcerated or in detention.<sup>11</sup> It is my intention to show that this incarceration and criminalization of Black young people, in increasing numbers, contributes to the continuum of involvement in the criminal justice system by African-Americans.

The focus of this work will be an examination of the numbers of adult African-American males within the Iowa prison system. Not to minimize the number of Black women incarcerated in the nation's prisons, given the rapid increase in the non-white female population in the last few years, the fact remains that the number of Black males incarcerated is so overwhelming that its scope cannot be ignored.

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<sup>10</sup> Conflict Theory, Culture Conflict Theory, Social Disorganization Theory, Social Strain Theory and Differential Association Theory.

<sup>11</sup> As provided in a report by the Division of Criminal Juvenile Justice Planning agency (Iowa Department of Human Rights).

Among the many issues I will be examining will be the societal demand for harsher penalties for offenders resulting in much debated mandatory sentencing of courts.

Directly related to many of the sentencing reforms and policies introduced during the Reagan era these policies, though significant, are by no means the beginning of the disparate treatment of Blacks within the system. What is the impact of current ‘three strikes’ legislation and mandatory minimum sentences for violent offences in which weapons are used? What is the legal response to the sale of crack cocaine? How is the latter related to the ‘War on Drugs’ which many assert is actually a war on non-whites? I will examine belief systems that lead many to believe that Blacks are inherently more violent and prone to criminal activities than other racial segments of the population. I will explore opinions of many that lay the foundation for the policies that in turn result in the implementation of laws resulting in the disproportionality of Blacks in prisons.

A close examination of the mechanics of the criminal justice system will also be a fundamental aspect of this project. What is the role of the arrest of Blacks at the street level? What is the role of the courts in this process? The Iowa judicial process is, as is the case of the police and corrections (involved in pre and post trial activities), virtually all white. There are only two Black District Court Judges and one Associate District Court Judge in the entire state. Does this make a difference to defendants, especially Blacks? The majority of the attorneys in the state, both prosecution and defense, are white. The majority of juries that hear cases in this state are almost exclusively white.

One of the most important aspects of this work will be the personal experience this writer brings to the discussion as it pertains to the machinations of the criminal justice system. I will utilize the wealth of over thirteen years of ‘field’ experience in the area of

corrections and criminal justice work to highlight the thesis that is being furthered. Over the course of my employment in the field of corrections I have functioned as a Correctional Officer,<sup>12</sup> Residential Adviser,<sup>13</sup> a Probation/Parole Officer with a traditional caseload,<sup>14</sup> and a Probation/Parole Officer with specialized caseloads. In my particular case the specialized caseloads included Intensive Supervision Probation<sup>15</sup> and Coordinator of the Youthful Offender Program<sup>16</sup> for my previous employer, the Sixth Judicial District, Department of Correctional Services.<sup>17</sup> There are many instances where my personal experiences will be

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<sup>12</sup> Employed by the Iowa State Penitentiary from 1977-79, my primary duties were to guard inmates that came to the University of Iowa Hospitals and Clinics for medical treatment. Later these duties were placed under the purview of IMCC (Oakdale Prison), by which time I had changed jobs.

<sup>13</sup> Residential Advisers are those who monitor and supervise the clients at the residential facilities run by the various departments of Correctional Services of which there are eight statewide. One for each judicial district in the state.

<sup>14</sup> A traditional caseload is one that is not considered to be ‘specialized’ in some way. This is the type of case work that the majority of probation parole officers in the state supervise.

<sup>15</sup> Intensive Supervision Probation or Parole (ISP) involve supervising offenders that are deemed to require higher levels of supervision due to increased risk. This risk could be determined by a history of assaultive offenses, substance abuse, use of weapons or repeat offenses. A combination of any of these could persuade a supervisor to assign the case to an ISP Officer.

<sup>16</sup> The Youthful Offender Program (YOP) is a specialized caseload dealing with offenders between the ages of 18-21, or in cases of juvenile waiver to adult court, younger. This program was developed to address particular problems and circumstances of younger offenders and what are perceived to be their special needs. These may include educational goals, programs to address self-esteem issues, employment education or classes in the appreciation of law, control of anger, parenting or decision-making.

<sup>17</sup> Iowa is divided into eight judicial districts each with its own Department of Correctional Services run by a district director and run by a board of directors.

interjected to reinforce a point, especially the point that the lack of practical experience by many who research this field results in a perceptual handicap of the situation.

The Bureau of Justice Statistics (BJS) maintains a wealth of statistics on individuals incarcerated in the nations jails and prisons and their attendant demographic information. This information has proven to be very useful to this work. Many believe, mistakenly, that federal prison sentences begin with arrests by federal agents but this is frequently a mistaken impression. There are many types of arrest that begin with local police and are referred to the United States Attorney's Officer for prosecution. Most notable among these are lesser drug offenses.

In conclusion, I will combine the various facets of this work and demonstrate that my thesis is a viable one. To reiterate, it is my contention that the predominant factor in disparate rates of incarceration of African-Americans in Iowa, as well as the nation, is in fact racism.

## CHAPTER III

### REVIEW OF LITERATURE

What role does race play in the arrest, prosecution and sentencing of Blacks in Iowa and America? Is there a significant difference in the treatment of Blacks in this state and this country when it comes to the administration of criminal justice? Iowa is a microcosm of the nation and as such the information that is national in scope is very relevant to this research.

#### **Theories of Crime**

In her article, “US: the Black poor and politics of expendability,” Barbara Ransby discusses what she characterizes as the criminalization of poor Black people and their containment.<sup>18</sup> In this article Ransby highlights national problems centered in the criminal justice system and its relationship to Blacks—problems very much in evidence in Iowa. She notes the increase in the prison population among Black women, the impact of mandatory sentencing and increased harassment by the police. She cites statistics that reflect the disproportionate rates of Black incarceration and points to racism as the prime motivating factor. She highlights the sociological factors that lead to the criminalization of Blacks and subsequent overrepresentation in the prison system. In Iowa this process takes place in the perceptions generated by media images of Blacks and the way law enforcement officials treat Blacks. The criminalization process that Ransby describes

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<sup>18</sup> Ransby, Barbara, “US: The Black Poor and the Politics of Expendability.” Race and Class, 38(2) (1996).

encompasses all facets of social interaction with negative traits of African-Americans promoted as the dominant traits of the race.

Ransby (1996),<sup>19</sup> Mann (1993)<sup>20</sup> and Walker, et al (1996)<sup>21</sup> are by virtue of the arguments they forward placing discrimination in the criminal justice system in the context of conflict theory. In their book, The Color of Justice, Walker, Spohn and DeLone explain conflict theory as a reflection of the majority population's continuing effort to control the 'other.' The other is the segment of the population consisting of non-whites and particularly refers to those at the lower socio-economic level of society. As explained by Walker, et al,<sup>22</sup> "the more powerful groups use the criminal justice system to maintain their dominant position and to repress groups or social movements that threaten it."<sup>23</sup> In Iowa that perceived threat comes from the increasing number of young Blacks and Hispanics that live in the state or have moved here from neighboring states. There is much discussion in Iowa of the increase in 'gang activity' with particular focus on Black street gang activity. Conflict theory is but one of many theories one need take into consideration when examining the disparities in rates of incarceration.

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<sup>19</sup> Ibid.

<sup>20</sup> Mann, Corramae, Unequal Justice: A Question of Color. Bloomington: Indiana University Press, 1993.

<sup>21</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>22</sup> Ibid.

<sup>23</sup> Allen E. Liska, ed., "Social Threat and Social Control" (Albany: State University of New York, 1992), in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

During the period following Reconstruction in post-bellum America, 1877 on, white southern society solidified the separation of the races through de jure methods called the Black codes. Legislated by southern governments to assure continued control of African-Americans subsequent to their emancipation, these laws took up the slack left by the ending of ‘official’ institutional slavery. Conflict theory was manifest in laws that enabled whites to arrest unemployed Blacks as vagrants and lease them to those whites that needed workers. This was a de facto continuation of slavery as Blacks had little to no choice and were usually not paid. This system was expanded to a larger scale as the criminal justice system was utilized to control a large portion of the Black population through the institution of the convict lease system. As Walker et al<sup>24</sup> point out, crimes by Blacks, real and contrived, were punished harshly whereas crimes against Blacks by whites went virtually unpunished.<sup>25</sup>

Inherent in a discussion of sociological factors affecting the committal of crime must be the issue of continuing inequality in this society. Walker et al explain the continuing economic inequality that exists in the non-white community and the impact of poverty on that segment of the population. The authors elaborate upon the disparities in the structure of income, wealth, unemployment and poverty status in the United States by comparing whites and Blacks.<sup>26</sup> The conclusions the authors provide demonstrate that non-whites continue to lag behind whites in those categories and this disparity has a direct link to patterns of criminality. In other words, the racism found in the criminal justice

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<sup>24</sup> Ibid.

<sup>25</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>26</sup> Ibid., pp. 62-66.

system is a microcosm of the society-wide system of inequality that perpetuates the continued hegemonic practices of the majority white population.

In order to explain the connection between inequality and crime more fully, Walker et al.<sup>27</sup> define the dominant theories of criminal behavior.

Developed by Robert Merton, ‘Social Strain Theory’ states that the dominant society has specific goals and values and methods for attaining them. Further, given the inability of everyone in the society to live up to or achieve these goals the resulting tension is called social strain.<sup>28</sup> Merton’s theory states that those who cannot live up to the dominant culture’s standards and values respond in a variety of ways, some involving criminal activity. These responses Merton designated as “Rebellion, Retreatism and Innovation.”<sup>29</sup>

“Rebellion involves a rejection of both society’s goals and the established means of achieving them, along with an attempt to create a new society based on different values and goals.”<sup>30</sup> This could include activities described as revolutionary with a goal to overthrow the established order and could include criminal activity such as terrorism.<sup>31</sup>

Retreatism, like rebellion involves a rejection of society’s goals and means of achieving them, but with a different response to cope with that rejection. This response

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<sup>27</sup> Ibid.

<sup>28</sup> Robert K. Merton, *Social Theory and Social Structure* (New York: Free Press, 1957) in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America, Belmont, CA: Wadsworth Publishing Company, 1996, p. 73.

<sup>29</sup> Ibid., p. 73.

<sup>30</sup> Ibid., p. 73.

<sup>31</sup> Ibid., p. 73.

could include substance abuse or the acceptance of an alternative lifestyle. Frequently associated with substance abuse, especially drug abuse, are a wide variety of criminal activities, i.e., dealing drugs or stealing to get money to purchase drugs.<sup>32</sup>

"Innovation involves an acceptance of society's goals but a rejection of the accepted means of attaining them."<sup>33</sup> Criminal activity such as pimping or drug dealing is, as Walker et al<sup>34</sup> state, a form of innovation to gain monetary success in a society that holds acquisition of material wealth as the standard to be attained.<sup>35</sup> As the result of the inability of many non-whites to attain the material wealth prized in this society by conventional means, Social Strain Theory helps to explain their acceptance of alternative behaviors. Rampant drug dealing and use is a byproduct of continuing inequality.

"Edwin Sutherland's 'Theory of Differential Association' holds that criminal behavior is learned behavior. The more contact a person has with people who are already involved in crime the more likely that person is to engage in criminal activity."<sup>36</sup> This theory explains the higher levels of criminal behavior in poor Black communities. As a result of economic segregation and lack of substantial employment opportunities potentially higher

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<sup>32</sup> Ibid., p. 73.

<sup>33</sup> Ibid., p. 73.

<sup>34</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>35</sup> Ibid., p. 73.

<sup>36</sup> Edwin H. Sutherland, Principles of Criminology, 3d ed. (Philadelphia: Lippincott, 1939) in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996, p. 74.

rates of criminal activity are perpetuated by those that may come to see them as accepted norms of behavior.

‘Social Disorganization Theory’ developed by sociologists of the Chicago school of thought holds that the conditions of poverty undermine the institutions that socialize people into conventional modes of life in a modern society.<sup>37</sup> This theory helps explain high rates of criminal activity among racial minorities in the context of highly segregated urban poverty pockets that tend to disrupt social organizations. Lacking viable social institutions, poverty stricken areas are marked by disorganization and criminal activity.

“Culture conflict theory holds that crime will be more likely to flourish in heterogeneous societies where there is a lack of consensus over society’s values.”<sup>38</sup> This theory states that in a society comprised of a variety of ethnic, racial and religious cultures the concept of criminality becomes subjective and dependent upon the values held by the different groups. In other words behavior that may be considered legitimate by one group may be seen as criminal by another. Walker et al<sup>39</sup> cite the example of America’s period of Prohibition or the debate on abortion as

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<sup>37</sup> W.I.Thomas and Florian Znamiecki, *The Polish Peasant in Europe and America* (Boston: Gorham, 1920); Clifford R. Shaw, Frederick M. Forbaugh, and Henry D. McKay, *Delinquency Areas* (Chicago: University of Chicago Press, 1929) in Walker, Samuel, Cassia Spohn and Miriam DeLone, *The Color of Justice: Race, Ethnicity, and Crime in America*. Belmont, CA: Wadsworth Publishing Company, 1996, p. 74.

<sup>38</sup> Thorsten Sellin, Culture Conflict and Crime, Bulletin 41 (New York: Social Science research Council, 1938) in Walker, Samuel, Cassia Spohn and Miriam DeLone, *The Color of Justice: Race, Ethnicity, and Crime in America*. Belmont, CA: Wadsworth Publishing Company, 1996, p. 75.

<sup>39</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, *The Color of Justice: Race, Ethnicity, and Crime in America*. Belmont, CA: Wadsworth Publishing Company, 1996.

examples of this interpretation.<sup>40</sup>

The relevance of these various theories of criminal behavior to the African-American population in Iowa may be noted when one looks at the concentrations of Blacks in the state. As in most states the concentrations of Blacks are in the larger urban areas of the state. In Iowa the majority of Blacks may be found in Des Moines (Iowa's largest city), Waterloo, Cedar Rapids, Council Bluffs and Davenport. It is also from these cities that a large number of prison incarcerations originate. These cities are marked by low wages, high unemployment, social dislocation and high rates of crime among the Black populations that reside there. Walker et al establish that the incidence of contact with the police is much higher in urban areas where the poor are concentrated. As a result of the patterns of offending that occur in poorer neighborhoods there are in many cases a request for higher police presence. This increased presence by law enforcement leads to more aggressive policing, which leads to higher rates of exposure to the police and thus higher rates of arrest. Victim surveys demonstrate that the poor are more likely to be victimized than those with more substantial resources and as a result are more dependent upon those (the police) who are frequently accused of further victimization, resulting in a cycle of dependence and distrust among citizens and law enforcement.

### **Historical Implications**

Scott Christianson equates the current status of the disproportionate nature of the criminal justice system with an extension and legacy of the institution of slavery.<sup>41</sup> Christianson delves into the historical aspects of penology in this country

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<sup>40</sup> Ibid., p. 75

<sup>41</sup> Christianson, Scott, "Our Black Prisons". Crime and Delinquency, v27, 1981, p. 364-375.

and cites such little known facts as the emancipation of slaves in New York and the creation of a state prison on the same day by the New York legislature in 1796.<sup>42</sup> The author's implied relevance is the role the criminal justice system is to assume designated to assume when an institution such as government sanctioned slavery is abolished. In the Christianson study, which compared rates of incarceration in 1973 and 1979, Iowa was ranked 15th in the nation in terms of the disparity between Blacks and whites incarcerated, but still fourth in the nation in the number of Blacks incarcerated per 100,000 of the population.<sup>43</sup>

The thesis of Christianson's work is that the criminal justice system is used as an anti-black control mechanism and that this system became the dominant one subsequent to the emancipation of the slaves. In other words the abolition of slavery precipitated the need for new means of control of the freedmen. The expansion of the criminal justice system was, in part, a response to the need felt by southerners to control this previously enslaved segment of the population.

This interpretation is echoed in the research done by Alex Lichtenstein in his work on the convict lease system in the South.<sup>44</sup> The author shows how conflict theory was manifested in the system as it was developed into a control mechanism on the one hand and an engine of economic exploitation on the other. The cruelty inherent in this system was in some ways, according to Lichtenstein, far worse than that frequently found in

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<sup>42</sup> Ibid., p. 373.

<sup>43</sup> Ibid., p. 367-368. Iowa incarcerated 1,072.2 African-Americans per 100,000 population during this period.

<sup>44</sup> Lichtenstein, Alex, Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South, 1996.

slavery. The convicts were perceived in some cases as having less worth than slaves due to the fact that the lessees did not have to purchase them (as they would slaves) and as such they were more expendable. Eventually the abuses of the system were too significant to ignore and an awareness of the injustices forced many states to abandon this system. Lichtenstein sees the present criminal justice system as a continuation of past beliefs, attitudes and behaviors in the viability of the criminal justice system as a tool of control. Similar conclusions have been reached by other writers in regard to the abuses of the convict lease system as it developed in the South. In his book, Vengeance and Justice: Crime and Punishment in the 19<sup>th</sup> Century, Edward Ayers analyses the culture of punishment in the post-slavery south and its relationship to Blacks. A similar work by David Oshinsky, Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice, tracks similar abuses of the convict lease system.

The relevance of these works to this project is the centrality of the theme of control of African-Americans and its continuation to the present. All of the aforementioned authors establish the connections in the development of the criminal justice system as a control mechanism for a largely disenfranchised Black population. Conflict theory holds that the majority population is desirous of controlling the non-white segment of society and utilizes authoritative means to accomplish that goal. Given the predominance of the white population in Iowa, accomplishing this goal is made easier by virtue of numerical as well as institutional superiority. The majority of police, court, correction personnel and citizens are overwhelmingly white. Given the low numbers of non-whites in the state, the dominance by the white population is accepted as a given by that population. Attempts to

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alter that balance or even influence a modicum of change in the state's institutions are for the most part neutralized by the dominant majority.

### **Disparity vs. Discrimination**

In The Color of Justice, Walker et al<sup>45</sup> make it clear that one needs to differentiate between disparity and discrimination. Through examples they demonstrate the notion that disparity can and does occur in many situations that do not involve discrimination.<sup>46</sup> The authors note that in some cases, legal factors accurately explain the disparities found within prison populations. Designating prior record and seriousness of offense as examples of legal factors, they argue that these are legitimate factors to be considered in sentencing offenders.<sup>47</sup> Extra-legal factors that take into consideration an individual's race, social status, ethnicity or lifestyle, are not legitimate factors to consider in sentencing.<sup>48</sup> These factors must be taken into consideration when leveling a charge of discrimination in decision-making by those in the 'system.'

Marc Mauer of the Washington D.C. Sentencing Project has written extensively on the racial disparities in the criminal justice system. In 1990, The Sentencing Project issued a report, "Young Black Men and the Criminal Justice System: A Growing National Problem," which, at the time, stated that one in four African-Americans males in the age group 20 to 29 was under some form of criminal justice supervision.<sup>49</sup> Those statistics

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<sup>45</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>46</sup> Ibid., p 15-16.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> The Sentencing Project, 1990.

included those sentenced to prison or jail incarceration, as well as those on probation or parole. In 1995, the Sentencing Project did a follow up to its 1990 report titled, "Young Black Americans and the Criminal Justice System: Five Years Later." In that report, the number of Black males under the supervision of the 'system' had increased to one in three, or approximately 32.2 %, a segment of the population numbering about 827,440 on any given day in the year studied.<sup>50</sup> The Sentencing Project reports that as a result of American increases in the rates of incarceration of Blacks and Hispanics, this country leads the world in the imprisonment of its citizens. Surprisingly, the United States surpasses the incarceration rates found in South Africa and the former Soviet Union.<sup>51</sup> On the national level, The Sentencing Project reports that during the period from 1988-1994 the rate of incarceration in state prisons increased from 6.88 times that of whites to 7.66 and that several states, twelve (12) and the District of Columbia had rates more than 10 times those of whites.<sup>52</sup> The Sentencing Project attributes this marked increase in the rates of incarceration primarily to the manner in which the drug laws are now enforced. While the numbers of violent offenders remained relatively similar, though one must note the overrepresentation in the number of Blacks arrested for violent offenses, the increase in the numbers of drug offenders is vastly more disproportionate. In the period between 1986-1991, the number of Black drug offenders compared to whites was 66,000 (Blacks)

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<sup>50</sup> The Sentencing Project, 1995.

<sup>51</sup> The Sentencing Project, Americans Behind Bars: A Comparison of International Rates of Incarceration,<http://www.sproject.com/rep1.htm>.

<sup>52</sup> The Sentencing Project, "Intended and Unintended Consequences: State Racial Disparities in Imprisonment", <http://www.sproject.com/rep5.htm>.

to 15,000 (whites).<sup>53</sup> The information provided by the Sentencing Project resonates throughout the criminal justice system. In Iowa, substance abuse is an integral factor in the incarceration of African-Americans. The ‘war on drugs’ is, in this state as in the rest of the country, an issue of major focus and marshalling of resources directed frequently and unevenly at non-whites. The issue of disparity in the matter of the application of drug laws will be examined more fully at a later point.

Andrew Hacker, noted political scientist, writes not only about the large numbers of Black men in prison, about 1.7 million incarcerated in federal, state and local penal institutions, but the attitudes held by many whites on the subject of ‘Black’ crime.<sup>54</sup> Hacker explores attitudes held by whites pertaining to Blacks and crime and includes his conclusions in his study. Hacker alleges whites differentiate between a widely held notion of ‘Black crime’ which is generally associated with ‘violence’ and ‘white crime,’ frequently associated with non-violent ‘white-collar’ crime, which is overwhelmingly perpetrated by whites.<sup>55</sup> Hacker reveals that many white-collar criminals commit crimes that net substantially more monetary reward for the perpetrators. Opportunity to commit crimes that are more undetectable are afforded those white collar criminals who frequently have offices or nice work places from which to perpetrate their offenses, not to mention access to larger sums of money. Even those workers labeled blue collar, have more opportunity to take goods from employers than the non-working poor. That Blacks are heavily

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<sup>53</sup> The Sentencing Project, “Intended and Unintended Consequences: State Racial Disparities in Imprisonment”, <http://www.sproject.com/rep5.htm>.

<sup>54</sup> Hacker, Andrew, “Malign Neglect: The Crackdown on African-Americans.” The Nation, July 1995, p. 46.

<sup>55</sup> Ibid, p. 46.

represented in this last category is a given and as Hacker and others point out, may account for the vast discrepancy in the arrest rates of African Americans. In spite of the economic impact of such crimes, Hacker alleges that whites fear victimization by Blacks because of a belief that retribution for past wrongs of white society will become a factor in the crime. In his book Two Nations: Black and White, Separate, Hostile, Unequal, Hacker delves more deeply into the reasons for the fear of 'Black' crime by whites. One of the keys to the thesis presented by Hacker is the notion that there are a number of people inclined to commit criminal acts and that these tendencies cross class lines. But, given the nature of the economic structure in this country, the poor and disenfranchised wind up committing crimes which are more easily detected. Heightened police presence in urban neighborhoods as well as the nature of crimes frequently committed by the poor tend to lend themselves to higher arrest rates among Blacks. Hacker refers to Uniform Crime Report (UCR) statistics about the higher rate of violent offenses than the arrest rates bear out. In the categories of murder, rape and especially robbery, Hacker points out that Blacks are grossly over-represented and that as long as they (Blacks) continue to engage in these offenses at disproportionate rates they will continue to be disproportionately represented within the prison system. Hacker fails to delve at any length into the problems with the UCRs that other researchers (Walker, et al) have pointed out. Inconsistency in the acquisition of UCR information nationwide leads to suspect results in the analysis of the information gained from this source. The dependence on UCR information by Hacker and other researchers leaves their analyses lacking in this critical area. Though lacking in ways previously mentioned, the UCR's are at present the most

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complete compendium of criminal justice statistics. Given their flawed nature, this is in and of itself a sad commentary on our recording of relevant criminal justice information.

Hacker is not the only researcher to depend on the data derived from arrest rates that are reported to the Federal government by individual states, culminating in the Uniform Crime Reports (UCR). Alfred Blumstein, in his "Racial Disproportionality Revisited," examined the disproportionate numbers of Blacks in prison and questioned whether the stated disparity was a reflection of discrimination in the criminal justice system, or merely a reflection of disproportional involvement in particular offenses.<sup>56</sup> Echoing the sentiments of Blumstein, Michael Tonry in his book, Malign Neglect: Race, Crime, and Punishment in America, depends heavily on the arrest statistics provided by the government, the UCR's.<sup>57</sup> Blumstein states that Blacks are disproportionately

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<sup>56</sup> Blumstein, Alfred, "Racial Disproportionality of U. S. Prison Populations Revisited". University of Colorado Law Review, 64(3), 1993, p. 743-760.

<sup>57</sup> Tonry, Michael. Malign Neglect: Race, Crime, and Punishment in America. Oxford: Oxford University Press, 1995.

represented in offenses such as robbery, because they (Blacks) commit more robberies than whites. At present, Blacks constitute more than 50 % of the arrests for the offense of robbery. Blumstein goes on to say that the disparities between the arrest and incarceration rates of Blacks to whites have remained fairly consistent, though steadily increasing, except in the area of drug arrests, which have skyrocketed. Blumstein acknowledges the ever-increasing disproportionality of the prison system with regard to the incarceration of Blacks, however he states that Blacks are getting what they deserve, as they are committing more of the recorded violent crime. This reflects the stereotypical attitudes that are credited to whites by Hacker in his writings, in which he states that most whites not only feel Blacks are rightly incarcerated at present numbers, but that the current rates are probably too low.

Tonry claims that in spite of the existence of racial stereotyping by those in the criminal justice system, stereotyping does not account for the disproportionality of Blacks in the system. Ironically it is Tonry who believes that judges should be able to take social circumstances of offenders into consideration when sentencing and in doing so consider mitigating circumstances when making these decisions. But like Walker et al, this writer takes issue with Tonry's dependence on the Uniform Crime Reports that he (Tonry) like so many others seem to accept as gospel. Like Blumstein, Tonry focuses on reported rates of arrest in order to further his thesis that racism is not a significant factor in Black disproportionality in the criminal justice system.

Walker et al<sup>58</sup> note problems with utilization of the UCRs in determining patterns of criminal behavior. First and foremost the authors argue that the UCR information is

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<sup>58</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

flawed due to its incomplete nature which results from the way the information is collected. Additionally the UCR information is potentially misleading because it includes only offenders whose crimes result in arrest.<sup>59</sup> They go on to state that use of the UCR is additionally flawed as the four racial designations (white, African-American, Native American and Asian), do not differentiate by ethnicity (Hispanic versus non-Hispanic).<sup>60</sup>

In addition to Blumstein, studies by Petersilia (1985),<sup>61</sup> Wilson and Pruitt (1983),<sup>62</sup> Spohn, Gruhl and Welch (1981)<sup>63</sup> and Wilbanks (1987),<sup>64</sup> came to the conclusion that there is no racial disparity in the criminal justice system and that whatever disparities may exist can be explained by secondary factors. In Spohn, et al,<sup>65</sup> the authors, state that one of the factors may be poverty and the impact that wealth has on conviction or acquittal. Given more Blacks are poor, as the reasoning goes, the numbers of Black convictions are higher. This is an economic explanation as opposed to a racial explanation according to the authors who refuse to make the leap to race as a causative factor of poverty. Lower

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<sup>59</sup> Ibid., p. 37.

<sup>60</sup> Ibid., p. 37.

<sup>61</sup> Petersilia, Joan, "Racial Disparities in the Criminal Justice System: A Summary". Crime and Delinquency, 31(1), January 1985, p. 15-34.

<sup>62</sup> Wilson, James and Charles Pruitt, "A Longitudinal Study of the Effect of Race on Sentencing". Law and Society Review, 17(4), 1983.

<sup>63</sup> Cassia Spohn, John Gruhl and Susan Welch, "The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question". Law and Society Review, v16(1), 1981-82.

<sup>64</sup> Wilbanks, William, "The Myth of a Racist Criminal Justice System". Monterey, CA: Brooks/Cole Publishing Company, 1987.

<sup>65</sup> Cassia Spohn, John Gruhl and Susan Welch, "The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question". Law and Society Review, v16(1), 1981-82.

socio-economic status may also affect release conditions insofar as the poor people frequently have less ability to post bail as well as obtain private legal representation. Blacks are disproportionately represented among the unemployed and as employment is frequently a factor in release conditions, Blacks are less likely to be released on their own recognizance. Walker et al found that ability to get out of jail prior to trial had a direct relationship to rates of conviction and sentence received. The overriding conclusion that this study came to was "... that race does not have a direct effect on sentence severity, but that Blacks are more likely than whites to be incarcerated."<sup>66</sup> Attributing more extensive prior records to the study group, the researchers came to the commonly held conclusion that Blacks are committing more crime and more serious types of crimes than whites. Wilson/Pruitt (1983) and Wilbanks (1987) came to similar conclusions based on similar types of studies that

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<sup>66</sup> Ibid.

found little to no relevance to the argument that the criminal justice system is inherently racist or that race is a crucial factor in today's criminal justice atmosphere. One need not belabor the point made by these researchers, but simply note that the validity of these views are widely accepted as indicated by the laws and policies that have come to dominate the 'system.'

There are studies that contradict those cited above. Shade (1982),<sup>67</sup> Unnever, Frazier and Henretta (1980),<sup>68</sup> Myers (1993)<sup>69</sup> and Zatz (1987)<sup>70</sup> came to the conclusion that there is racial discrimination in sentencing. Common to the studies that did find discrimination in the courts and in the behavior of the police is recognition that the examination of raw data alone does not reveal the subtle distinctions in the treatments of whites versus Blacks that used to take a more overt form. This lack of overt racist behavior appears to influence the findings of those who argued against findings of racial discrimination. Recognition of the 'unseen' factors in the criminal justice system allow the pro-discrimination researchers to come to wholly different conclusions about the nature of racism in the system and how it manifests itself in the actuality of criminal justice processing. Myers states:

Disparities arose because in effect the sentence was not determined by the law or by the trial judge alone. Instead, the time actually served and the type of

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<sup>67</sup> Shade, Oscar, "Determinate Sentencing: A Racist Reform?" Corrections Today, 1982.

<sup>68</sup> Unnever, James, Charles Frazier and John Henretta, "Race Differences in Criminal Sentencing". The Sociological Quarterly v21, Spring 1980, p. 197-205.

<sup>69</sup> Myers, Samuel, "Racial disparities in Sentencing: Can Sentencing Reforms Reduce Discrimination in Punishment?" University of Colorado Law Review, v64, 1993, p. 781-808.

<sup>70</sup> Zatz, Marjorie, "The Changing Forms of Racial/Ethnic Biases in Sentencing". Journal of Research in Crime and Delinquency, v24(1), February 1987, p. 69-92.

punishment received ultimately were affected by the unknown and uncertain interaction of the parole board, and later the parole or probation officer. To the extent that there existed in the general society prejudiced views about the abilities and competencies of nonwhites, so too such views presumably existed among criminal justice officials. It is easy to see how individual prejudice could translate into disparate outcomes.<sup>71</sup>

Among the many who disagree with Tonry is Corramae Richey Mann whose work, Unequal Justice: A Question of Color, refutes the assertions made by Tonry, Blumstein, et al. Mann is explicit in stating that the overriding factor in this debate is color. Behavior by those within the criminal justice system is institutionally racist, as are all of this society's major institutions. States Mann:

The racism found in each of the nation's established institutions is enormous, pervasive and debilitating. At every level of contemporary human existence...education, housing, politics, health, law, welfare, economics, religion, and the family—racism and racial discrimination in American institutions have contributed to and continue to perpetuate the minority status and the current condition of African-Americans, Native Americans, Hispanic-Americans and Asian-Americans.<sup>72</sup>

Mann addresses the problem of warehousing inmates into increasingly overcrowded prisons and discusses the conditions within these institutions, which due to their overcrowding results in deteriorating conditions. Mann points to a petition filed by inmates of the Iowa State Penitentiary in late summer of 1989 alleging in addition to overcrowded conditions, abuses of inmates by correctional staff.<sup>73</sup> More so than many of the other works investigated, Mann looks at conditions within the prisons and the behavior of the staff that work there and the

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<sup>71</sup> Ibid., p. 786.

<sup>72</sup> Mann, Corramae, Unequal Justice: A Question of Color. Bloomington: Indiana University Press, 1993.

<sup>73</sup> Mann, Corramae, Unequal Justice: A Question of Color. Bloomington: Indiana University Press, 1993, p. 230. Inmates filed a petition with the warden stating that they were, "being

role race plays.

Another book that attempts to cover the spectrum of the criminal justice system's relationship with Black Americans is African Americans and the Criminal Justice System by Marvin D. Free, Jr. Free, like Mann, attempts to cover the myriad relationships of the 'system' with Black Americans from the perspective of those that are 'consumers' of criminal justice services (criminals) as well as Blacks that work within the system. Free elaborates on conditions within the prison setting and discusses the role of Blacks working within the correctional setting; he examines the relevance race plays in inmate and staff relations. Treatment of Black inmates by whites in corrections in Iowa and the importance of Black staff are central to my thesis of the disparities that exist and the extent of discrimination within the Iowa criminal justice system.

Marjorie Zatz points to the changing face of research in this area and the evolution of the forms of discrimination from the overt to the subtle. More subtle forms of discrimination result in the institutionalization of biases in arrests by police, sentencing by judges and treatment by correctional personnel of people once incarcerated or on supervision. Others are more direct in their condemnation of the criminal justice system. Among these scholars are Terry Jones who states in his article, "The court system and Black America: A Critical Analysis," that racism is both institutional and pervasive. Jones examines the politics of the criminal justice system and the supposed rationale for oppressing a population pushed to the margins that is struggling to free itself from a lower

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discriminated against, abused, unnecessarily harassed and degraded by prison employees who obviously have come to believe that being a racist is the way to become accepted by co-workers and superiors."

socio-economic status. In this regard Jones echoes the conclusions of scholars Mann (1993) and Ransby (1996) that race and specifically racism are central to the discussion.

There are two relatively recent works that address the totality of the criminal justice system and investigate the question of discrimination within that system. William Wilbanks' seminal work The Myth of a Racist Criminal Justice System (1984) and Samuel Walker, Cassia Spohn and Miriam DeLone's The Color of Justice (1996). Both books examine and analyze the findings of previous researchers and attempt to place their theses within the context of that research. Walker et al contend, that, contrary to popular belief, the issue of discrimination in the criminal justice system is far from an 'all or nothing' proposition and should be analyzed in a broader context. The authors utilize a Discrimination-Disparity Continuum<sup>74</sup> to illustrate differing levels or degrees of discrimination within the system (see Figure 3.1).<sup>75</sup> It is the contention of Walker, Spohn and DeLone that discrimination exists within the criminal justice system but the context changes depending on the circumstances. Those circumstances may be location, time, persons involved: any number of factors that contribute to a finding or non-finding of discrimination.

The findings in Color of Justice directly contradict those of William Wilbanks' Myth of a Racist Criminal Justice System on a number of points; specifically, the level of discrimination within decisions made by the police in arrest, judges in sentencing, the role of all white juries, prosecutor's utilization of peremptory challenges and the role of those in corrections. These points of diversion will be covered in more depth as this work

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<sup>74</sup> Ibid., p. 16.

<sup>75</sup> Disparity-Discrimination Continuum illustration, p. 46.

proceeds, however, the bottom line is that the work done in ‘Color’ is a direct refutation for the most part, of the opinions expressed by Wilbanks in ‘Myth.’ It appears that in spite of Wilbanks’ acknowledgement of discrimination in the criminal justice system, he attempts to minimize both its scope and impact. Wilbanks states that though there is discrimination against Blacks at various points in the criminal justice system this prejudice and discrimination is not “systematic.”<sup>76</sup> Walker et al refute this assertion and in their study effectively counter Wilbanks point by point. The conclusion reached by Walker et al clearly affirm the existence of widespread discrimination; the authors state:

Our analysis of race and crime in the United States suggests that those who conclude that “the criminal justice system is not racist” (Wilbanks) are misinformed. Although reforms have made systematic racial discrimination—discrimination in all stages, at all places, at all times—unlikely, the American criminal justice system has never been, and is not now, color-blind.<sup>77</sup>

One of the difficulties perceived by this author with the use of the ‘Discrimination-Disparity Continuum’ utilized in The Color of Justice is within the definition of “Systematic Discrimination.” For this author, to state that the definition of ‘systematic’ must be absolute as stated by Walker et al is unrealistic. Absolutism is non-applicable in situations when discretion is very much a factor in the disposition of individual cases. Within the definition utilized, the authors designate “Systematic Discrimination” as existing “...at all stages of the criminal justice system, at all time, and all places. Systematic in the mind of this writer connotes a pattern that can be established over time but not necessarily *all* the

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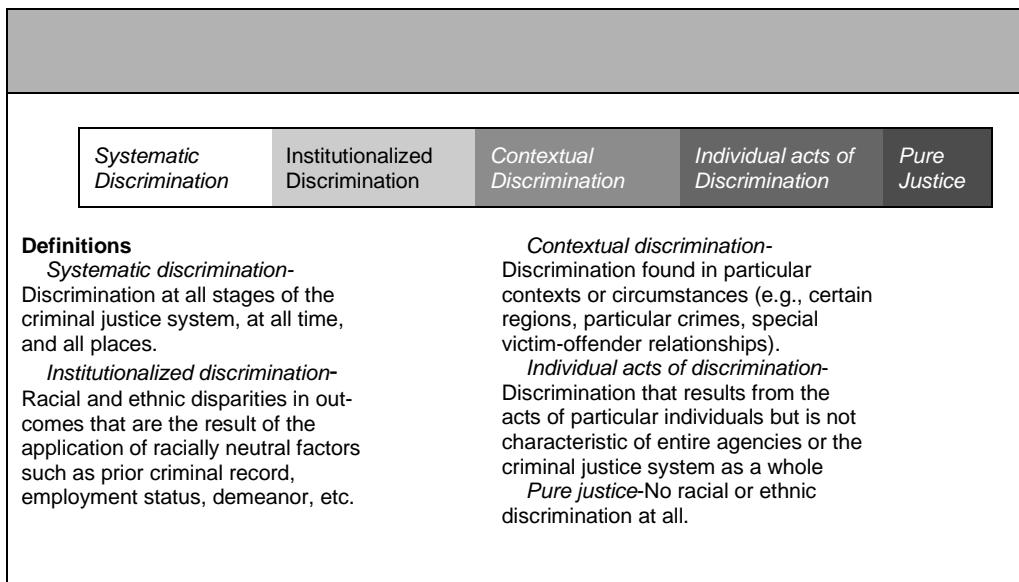
<sup>76</sup> Wilbanks, William, “The Myth of a Racist Criminal Justice System”. Monterey, CA: Brooks/Cole Publishing Company, 1987.

<sup>77</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

time. Therefore, I add this reservation in spite of the utility found in the use of this instrument.

Figure 3.1

### Discrimination-Disparity Continuum



## CHAPTER IV

### OVERVIEW OF INCARCERATION

#### **Rates of Incarceration**

In January of 1990, the Iowa Department of Corrections claimed an inmate population of 3,659. By December of 1997, that department claimed an inmate population of 6,938 in the state's correctional institutions. Of these populations, 806 of the inmates in January of 1990 and 1,696 in December 1997 were African-American, an increase of more than 100 % (see fig. 4.1).<sup>78</sup> These figures represent approximately 22.03% and 24.45% of the totals, respectively, with a yearly average in 1997 of 24.58%.<sup>79</sup> A Bureau of Justice Statistics (BJS) Bulletin announced in the period of 1991-1996 the Black inmate population increased in Iowa's prisons by 53%.<sup>80</sup> Additionally, while the number of African-American inmates has risen steadily during this period one may note that the percentage of white inmates has dropped from approximately 75.92% in January of 1990 to roughly 68.77% of the total population in December of 1997 (see fig. 4.2)<sup>81</sup>.

In perusing these figures one must take into account that African-Americans comprise less than 2% of the state's population, but comprise approximately one-quarter

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<sup>78</sup> Number of Blacks and Whites Incarcerated: January 1990 and December 1997, p. 55.

<sup>79</sup> Iowa Adult Corrections, Monthly Statistical Summary for the State, 1990-1997.

<sup>80</sup> Mumola, Christopher and Allen Beck, "Prisoners in 1996". Bureau of Justice Statistics Bulletin, June 1997.

<sup>81</sup> Demographics of Iowa Prison Population, p. 56.

of the states prison population. These figures are significant when placed in the context of the likelihood of being arrested and sent to prison if one is a Black citizen of Iowa as opposed to a white one. A comparison of rates of incarceration in the years 1988 and 1994 (Mauer, 1997) show the disparity between the Black to white incarceration rate jump from a national average of 6.88:1 in 1988 to 7.66:1 in 1994.<sup>82</sup> In Iowa, the ratio of Black to white incarceration rates for the years covered by this study, 1988 and 1994 (Mauer, 1997), were significant in the increases noted by this study. The incarceration ratio noted in the study for Iowa, during one year of examination (16.33:1 in 1988) was far in excess of the national incarceration ratio average of 6.88:1 for that year.<sup>83</sup> In 1994, the ratio leapt in Iowa to 18.43:1, as compared with the national average of 7.66:1<sup>84</sup> Put another way, in 1988, Iowa was incarcerating Blacks at a rate of 1,395 per 100,000 population for Blacks compared to a rate of 85 per 100,000 population for whites<sup>85</sup> (see fig. 4.3).<sup>86</sup> In 1994 the 'per 100,000' rate increased to 2,544 for Blacks compared to 138 for whites (see fig.4.3).<sup>87</sup> This study (Mauer, 1997) revealed the Black to white incarceration ratio for the period covered increased in 38 states and the District of Columbia. Additionally, the ratio for

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<sup>82</sup> Mauer, Marc, "Racial Disparities in Prison Getting Worse in the 1990's". Overcrowded Times, v8(1), 1997, p. 1, 8-13.

<sup>83</sup> Ibid., p. 9.

<sup>84</sup> Ibid., p. 9.

<sup>85</sup> Ibid., p. 9.

<sup>86</sup> Rate of Incarceration per 100,000 population, p. 57.

<sup>87</sup> Rate of Incarceration per 100,000 population, p. 57.

Black incarceration was at least 10 times that for whites in 12 states and Washington, D.C.<sup>88</sup>

How do the rates of incarceration in Iowa stack up against those of the country as a whole? According to the BJS Report, "Correctional Populations in the United States, 1995," an estimated 1.1 million people were incarcerated in the nation's State and Federal prisons at year-end 1995. Of these it is estimated that approximately 94% were men, 48% were white and 50% were Black. The number of inmates increased from the 1990 inmate census by approximately 43%.

By the end of 1996 approximately 3.9 million adult men and women were on probation or parole. The numbers on probation made up the majority of this figure with approximately 3,180,363 being on probation and 704,709 being on parole.<sup>89</sup> This report states that of these probationers, approximately one third or 765,700 were Black.<sup>90</sup> The demographics for the probation population nationally show that 64% of this population was white, 35% Black and 1% other races.<sup>91</sup> When one examines the parole population for this period nationally, the percentages are 53% white, 46% Black and 1% other.<sup>92</sup> One must keep in mind that nationally, approximately 54% of those incarcerated during this period were Black.

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<sup>88</sup> Ibid., p. 8.

<sup>89</sup> Bureau of Justice Statistics, Nation's Probation and Parole Population Reached Almost 3.9 Million Last Year. August 14, 1997.

<sup>90</sup> Ibid., p. 2.

<sup>91</sup> Ibid., p. 8.

<sup>92</sup> Ibid., p. 8. Note the higher ratio of whites who received probation as compared to the number of Blacks and the smaller difference in the numbers of Blacks versus whites on parole.

## **The Male Population**

Men comprise the largest number of those on some sort of correctional supervision, comprising 94% of all inmates incarcerated. BJS provides statistics that show that the numbers of women incarcerated and on supervision ( i.e., probation or parole) is on the rise. In the probation/parole statistics for 1996, BJS states that 21% of this population are women. Translated from percentages to actual numbers women represent 515,000 probationers and 79,300 parolees. These figures represent an increase from 1990 of 18% and 8% respectively.<sup>12</sup>

## **The Female Population**

In Iowa, women in general have come to represent a steadily increasing portion of the prison, probation and parole population. In January of 1990, women comprised approximately 4.67% of the total prison population in Iowa. By December of 1997 that number was up to roughly 13.14% of the total population in prison, an almost threefold increase.<sup>13</sup> African-American women have experienced the greatest increase in the rate of incarceration among all demographic groups, increasing by 78% from 1989 to 1994.<sup>93</sup>

## **The Juvenile Population**

Among juveniles, Iowa is a leader in the nation in the number detained.<sup>94</sup> Among juvenile systems, Iowa is number one in the nation in the number of African-American juveniles held in detention, proportional to their numbers in the overall population.<sup>95</sup>

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<sup>93</sup> The Sentencing Project, Young Black American and the Criminal Justice System: Five Years Later. 1995, <http://www.sproject.com/rep4.htm>.

<sup>94</sup> Iowa Department of Human Rights/Division of Criminal & Juvenile Justice Planning , Iowa Criminal and Juvenile Justice Plan, 1997 Update.

<sup>95</sup> Ibid.

African-Americans comprise 2.5% of the total Iowa youth population in the state, yet 23% of the population of youth detained throughout the state.<sup>96</sup> The county with the highest percentage of juveniles in detention is Black Hawk (Waterloo), with approximately 54% of the youth detained being African-American. Numerically the highest number is in Polk county (Des Moines).<sup>97</sup>

Jelani Faraja Kafela states in his essay, "The Imperative of an African-American Success Model," that, when mothers and fathers are increasingly removed from nurturing environs, meaning incarcerated in greater numbers, the results are youth that:

...are subsequently left to set aside priorities and chart their future destination within malfunctioning social, familial and communal environments.<sup>98</sup>

In other words, if we continue to lock up Black parents in disproportionate numbers we can expect that the offspring of these individuals will very likely wind up as members of the criminal justice system as well.

Juvenile involvement in the criminal justice system has been studied extensively. In their pivotal study in Philadelphia, Marvin Wolfgang et al. (1972) found that race was a significant determinant in the dispositions of cases involving juveniles. Specifically, non-whites consistently received harsher punishments than whites in most cases and were

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<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Kafela, Jelani, "The Imperative of an African-American success Model". [HandsNet Headline](http://www.handsnet.org/handsnet2/article/art.832617230.html), <http://www.handsnet.org/handsnet2/article/art.832617230.html>.

more likely to be prosecuted to the fullest extent of the juvenile system also in direct contrast to their white counterparts.<sup>99</sup> Stated Wolfgang:

“The most significant factor related to a boy's not being remediated [picked up and released] by the police, but being processed to the full extent of the juvenile justice system, is his being nonwhite. That differential treatment based on race occurs is once again documented from this cohort study.”<sup>100</sup>

Carl Pope (1978) studied the differences in responses to various self-reporting surveys and concluded that all other factors notwithstanding, Black youth were no more oriented to criminality than their white counterparts. The disparate rates of arrest and detainment were, as in the adult system, grounded in systemic discrimination.<sup>101</sup> Again, this is the point made by Ransby that criminalization of Blacks becomes a self-fulfilling prophecy. If you treat people like criminals, eventually they will behave in a like manner.

As one can see, the disproportionality of Blacks involved in the criminal justice system is irrefutable in light of the evidence presented. This holds true for Iowa as well as the nation as a whole. What has been and continues to be the sources of dispute are the reasons for this over-representation of African-Americans in prison. As this work proceeds this writer will examine in-depth the specifics of African-American incarceration.

## **County Demographics**

The counties in Iowa with the highest rates of monthly commitments to the prison system are also those with the highest African-American populations. Throughout 1997,

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<sup>99</sup> Marvin Wolfgang, Robert Figlio and Thorsten Sellin, “Delinquency in a Birth Cohort.”. Chicago: University of Chicago Press, 1972. Quoted in Carl E. Pope’s, Race and Crime revisited, Crime and Delinquency, July 1979, p. 348-49.

<sup>100</sup> Ibid., p. 349.

<sup>101</sup>“ Pope, Carl E., “Race and Crime Revisted”,. Crime and Delinquency, July 1979, p. 347-357.

the same top five counties provided the highest levels of committals in the same order, every month for that year<sup>102</sup> (see fig. 4.4)<sup>103</sup> The top three of these counties have in descending order the most Blacks in them in the state: Polk County (Des Moines), Scott County (Davenport) and Black Hawk (Waterloo).<sup>104</sup> While this fact does not in and of itself prove discrimination, it should give pause for concern: concern that will eventually stimulate more in-depth research as to the cause of this distribution.

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<sup>102</sup> Iowa Adult Corrections, Monthly Statistical Summary for the State, 1990-1997.

<sup>103</sup> Most Common Counties of Commitment, p. 58.

<sup>104</sup> Ibid.

Figure 4.1

Number of Blacks and Whites Incarcerated  
Jan. '90 and Dec. '97

	<u>Jan-90</u>	<u>Dec-97</u>
Black	806	1,696
White	2,778	4,800
Other	75	439

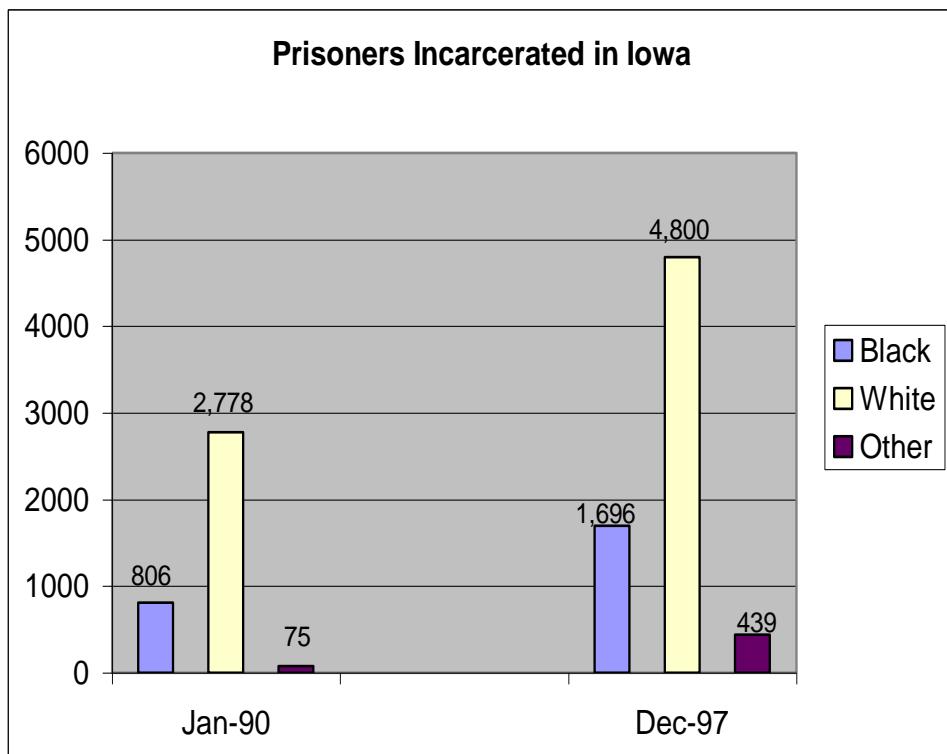


Figure 4.2  
Demographics of Iowa Prison Population

	Jan-90	Dec-97
Black	22.03	24.44
White	75.92	68.72
Other	2.05	6.84

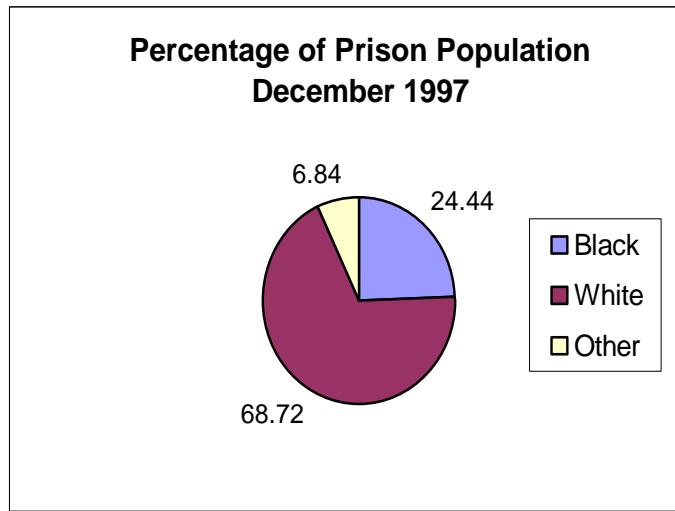
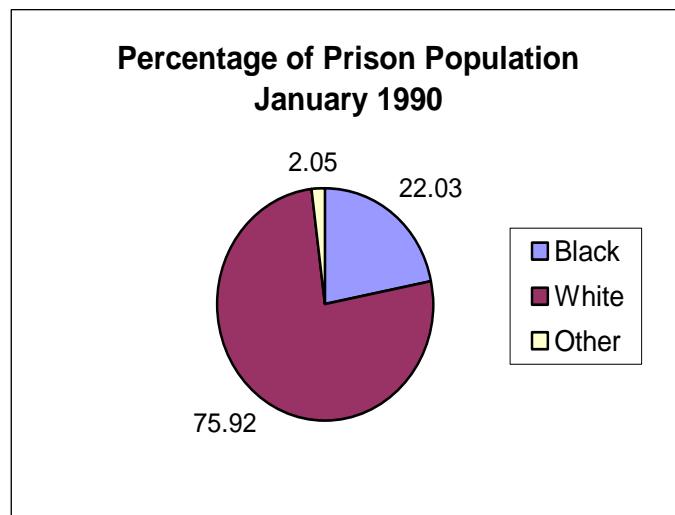


Figure 4.3  
Per 100,000 Population Incarceration

	<u>1988</u>	<u>1994</u>
Blacks	1395	2544
Whites	85	138

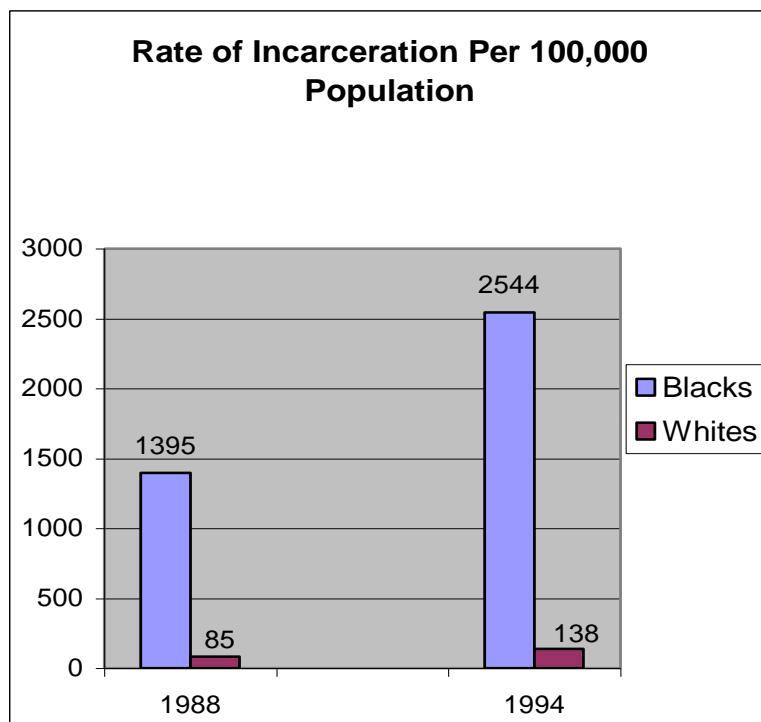
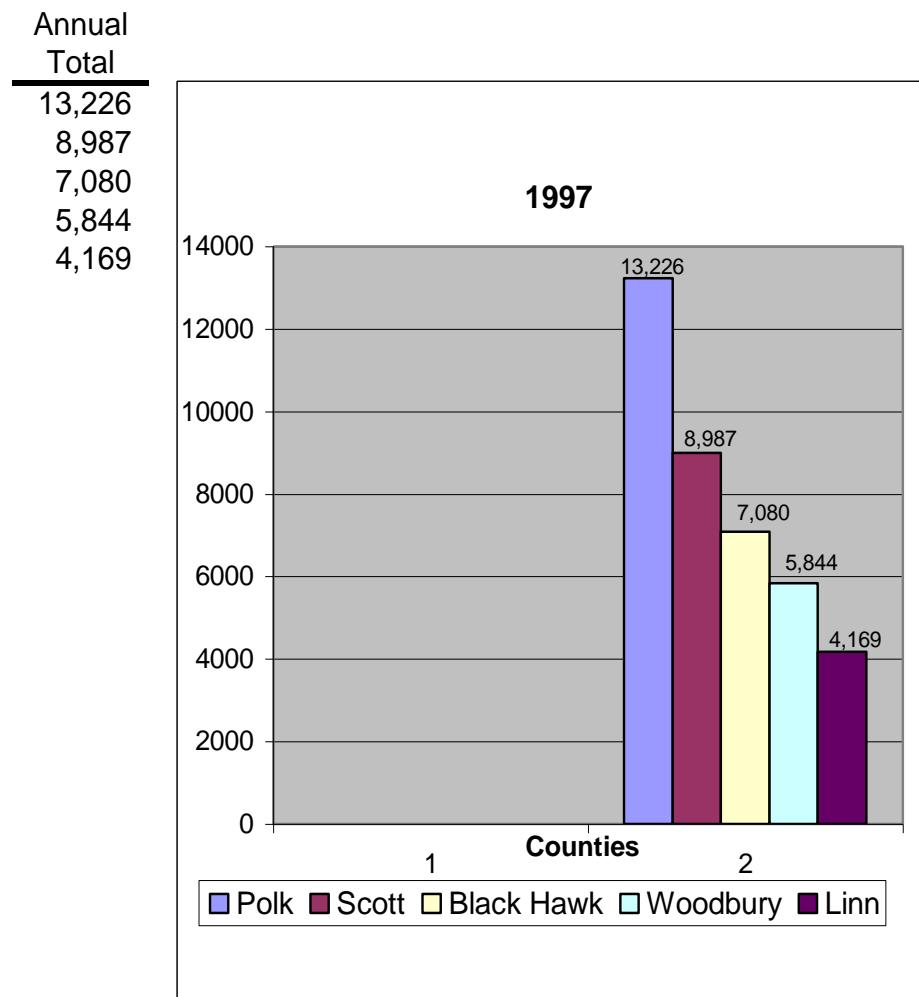


Figure 4.4

Most Common Counties of Commitment



## CHAPTER V

### DISPROPORTIONALITY EXAMINED

#### **Arrest**

The era of public policy under the Reagan/Bush administrations was marked by a 'law and order' tenor that held great appeal for the American public. As the result of the 'scare' tactics utilized by the 'far right' more restrictive policies were instituted that led to an increase in the numbers of people incarcerated in this country. The eighties saw a marked increase in the prison population that would catapult the United States to number one in the world for the incarceration of its own citizens.<sup>105</sup>

Blumstein (1982) cites the rates of arrest of African-Americans as being representative of their involvement in crime. His thesis consists of a correlation between the number of Blacks that are arrested and, in his view, the fully legitimate disproportionality of Blacks in the prison system. He is far from alone in this conclusion. Andrew Hacker who affirms racial prejudice in the criminal justice system comes to basically the same conclusion as Blumstein in one regard: Blacks are committing more violent crime than whites. This is a widely held belief that results in a perpetuation of attitudes among whites and others of inherent criminality within the Black populace. Corramae Richey Mann, as I stated previously, discusses in her book, Unequal Justice, the prevalence of institutional racism in every facet of our society. The attitudes that exist

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<sup>105</sup> The Sentencing Project, Americans Behind Bars: A Comparison of International Rates of Incarceration,<http://www.sproject.com/rep1.htm>.

in this society today have at their foundation the belief in the innate inferiority of Blacks that have existed since the first Africans were enslaved on this continent. In a myriad number of ways the society has perpetuated and reinforced the notion of non-white inferiority to the point that the belief is firmly ingrained in the majority population psyche. The evidence lies not in the proclamations of this nation's leaders but in the facts of the functioning of our nations institutions.

Is there a connection between poverty and arrest? Wilbanks (1984) states the higher rates of arrest are reflections of the higher incidence of offense by Blacks as reflected in the UCRs. Walker et al demonstrate that higher rates of poverty as related to social inequality do have a direct relation to levels of criminality. By citing specific areas of inequality (distribution of wealth, income and standards of living) the authors show that the likelihood of criminal activity increases dramatically. That Blacks are more likely than whites to dwell below the poverty line is proven in their study, potentially resulting in disproportional rates of crime.<sup>106</sup> The potential for higher rates of criminal activity does not however explain the disparity in the rates of incarceration of African-Americans. Other factors must be taken into consideration.

Characteristic of the rest of the country, Iowa has also lost much of its industrial base and this has resulted in loss of employment. Communities like Waterloo have, with the closing of such industries as Rath Packing and cut backs by John Deere farm implements, seen many of its members put out of work. This has resulted in employment that was previously open to many African-Americans being eliminated. With the rise in

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<sup>106</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

unemployment and a stagnating economy the incidence of crime has increased markedly in many Iowa communities. This pattern is repeated across the state and Iowa now has many poor, predominantly Black communities in which crime is rampant. Fueled by desperation, violent crime is increasing in this state while declining in many other areas of the country (though still very high). Fueled by the war on drugs, arrests are high and increasing. While much is being done to address these problems from a law enforcement standpoint, very little is offered to erase the social inequalities that continue to reside at the heart of the problem.

Pervasive poverty and increased rates of crime are as stated potential links that help explain some patterns of criminal behavior. Studies cited in this work have provided evidence to that effect. The existence of widespread poverty within the Black community does not however explain the gross disparities in the rates of incarceration of African-Americans. Economic inequality is but a facet of a larger societal inequality that manifests itself in all areas of human endeavor. Within the criminal justice system inequality is informed by the attitudes of the law enforcement, court and corrections communities: institutions that comprise the criminal justice system. The criminal justice system is but a microcosm of the larger society and this society is marked by persistent, pervasive racism in all of its institutional forms. I will examine these components individually.

## **The Police**

Historically, the modern police in this country developed in response to a perceived need by white society to control Blacks.<sup>107</sup> At the turn of the century there were many

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<sup>107</sup> Lane, Roger, The Roots of Violence in Black Philadelphia, 1860-1900. Cambridge, MA: Harvard University Press, 1986.. Lane points out that in cities like Philadelphia at the turn of the century local ‘thugs’ and “gang members” were hired to the newly formed

riots in which the police took part in the killing and maiming of Blacks. Many believe that the beating and killing of Blacks by the police are occasional aberrations that occur by rogue cops. In truth police brutality today, which is on the rise, is a continuation of historical patterns of brutality that originated with the formation of the modern police in America. It is only on occasion that luck and circumstance produced a situation like the Rodney King

(affair) where the police are actually caught on video tape in the commission of the beating of a Black man. Abuse of Black citizens in the United States by the police is, for many officers, business as usual.

I have been in meetings with police officers in my previous capacity as a probation officer and listened to racist comments couched in macho police jargon. I have listened to conversations where the topic was about disputes between alleged Black drug dealers and heard comments from police officers such as "who cares if the bad guys kill each other?" The tone and context of the conversation led me to believe that the true sentiment was "who cares if these niggers kill each other?" Subsequent to this meeting another Black probation officer expressed an identical impression of what was said, independent of any prior conversation on our part. Other police officers and even probation officers have often been in agreement with the sentiment expressed by the police officer. Such candid behind-the-scenes sentiments seldom appear in studies on criminal justice for they are seldom spoken to outsiders.

During the O. J. Simpson trial, you may recall that Los Angeles Police Officer Mark Furman swore under oath that he had never used the racial epithet 'nigger' in reference to

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police departments. They were licensed to continue their terrorization of Blacks but with sanctioning by the municipal government.

any Black person. Again, due to luck and circumstance he was caught on tape contradicting his sworn testimony; he was caught in a lie. Police officers in departments all across the country came out and stated that officers like Furman were and continue to be an anomaly. The number of incidences of brutality perpetrated by law enforcement officials upon African-Americans continue to increase daily.

Iowa has its own share of incidents alleging police brutality or at the least, mistreatment towards Blacks. At present in Iowa City there is a debate raging about whether the police are targeting a disproportional number of Blacks and Hispanics and making them the focus of undue harassment. The police in Iowa City use the same code words for what they do as other police officers all over the country. Wilbanks (1984) posits that it is the macho police culture not considerations of race that motivate police to behave in abusive ways. I heard this same reasoning provided by two police supervisors of the Iowa City Police Department when I asserted that many young Black and Hispanic males were targeted by that department's gang intervention squad. What citizens (especially non-white, young males) describe as harassment, the police characterize as 'aggressive policing.' The police legitimize 'aggressive policing' by stating it is what the community is requesting. Increased request for police services are characteristic of poor neighborhoods beyond requests related to levels of high crime. Walker et al (1996) state that those in poor neighborhoods frequently turn to police when those of more substantial means would utilize other services. For instance in cases of medical emergencies and domestic disputes, police are more widely utilized in poor neighborhoods than in more affluent neighborhoods. As a result the police are more likely to feel they have a mandate to act in ways they wouldn't in more affluent neighborhoods due to increased request for

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their presence and perception of powerlessness on the part of the poor they encounter in those neighborhoods.

The most common techniques used by the police to instigate a situation with Blacks have become so commonplace that they constitute universal recognition by Blacks across the country. Police in Iowa utilize the same techniques as officers around the country. The traffic stop is the most common means by which police engage Black people. This technique (called profiling) results in a substantial amount of the harassment of which police are accused. The widespread use of profiling, or stopping people as a result of predetermined physical characteristics, particularly race, has led to the designation of such behavior of the police by Blacks as the offense of ‘Driving While Black.’ Unlike the vast majority of ethnic groups that fall into the Caucasian racial group, the Black community is marked by one significant trait, color. This visibility was one of the key motivations to the enslavement of Africans in the first place, it made escape more difficult for the slaves. This has translated into a contemporary marking of citizens that has led to the common usage of racial ‘profiling’ by law enforcement agencies across the country. Linked with departmental policies of ‘aggressive policing’ the result is the widespread harassment of Blacks, on streets, in cars, wherever they (Blacks) are visible to the police. The commonality of profiling and the almost universal denial of the law enforcement community of its prevalence has led to ongoing racial tensions between Blacks and police nationwide. The New York Times recently revealed that in New Jersey, State police officials have been “besieged” by allegations of racial profiling against Blacks and Hispanics along New Jersey’s Turnpike. In addition to allegations of disproportionate stops of this segment of the populace along this roadway, state police are accused of

enlisting the help of hotel and motel workers to point out potential drug offenders.<sup>108</sup> The police continue to deny that racial profiling is a significant factor or taught to officers. The article contradicts the official police line by citing employees who were told by officers of the New Jersey State Police that they were in fact specifically targeting Blacks and Hispanics, especially the latter from Central American countries.<sup>109</sup>

Rulings by a conservative Supreme Court have expanded the limits of police power to search and arrest. The police have wasted no time in taking advantage of the newly granted leeway handed down by the courts. The courts are not however giving law enforcement carte blanche to utilize whatever tactics they (police) deem to be appropriate to meet their stated needs. The Supreme Court recently ruled unanimously against Iowa's efforts to expand the authority of police to search subsequent to routine traffic stops (offenses such as speeding, missing light, etc.). The court stated it feared abuse--abuse of the type of which this writer has alleged Iowa City Police are guilty: the profiling of suspects, stopping for alleged minor infractions, then using the aforementioned law to search vehicles and occupants.

The area in which this police-hostile atmosphere is most manifest is in the continuing 'War on Drugs.' This war, that many feel is in actuality a war on non-whites, is a hold over from the Reagan years of 'law and order' politics, which hearken back to turn of the century laws and policies. Yet even now with a Democratic President, the issue of drugs in our society is a topic of such volatility that few politicians, regardless of political ideology, dare to repeal the wholly ineffective laws that result in massive increases in the

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<sup>108</sup> Kocieniewski, David, "New Jersey's State Police Enlist Hotel Workers in War on Drugs." The New York Times, Thursday, April 29, 1999.

<sup>109</sup> Ibid.

rates of drug offenders being imprisoned. Having been privy to the inside world of law-enforcement I can tell you that what many researchers put on paper does not reflect the true story of what many police officers say and do behind ‘closed doors’ or in the ‘field’ when dealing with potential arrestees. Unfortunately the young Blacks and Hispanics who are frequently targeted by police are generally discounted when they relate incidences of police brutality or harassment.

Over the years I have observed, with great consternation, a parade of small-time Black drug dealers proceed through the correctional offices in which I worked as a probation officer. I have found the situation to be fairly consistent across the state. The police arrest an individual for what is usually a small amount of drugs. The goal is then to ‘turn’ or get that person to work with them arresting others in exchange for consideration of leniency in their own case. The result is the police are able to generate high numbers of arrests. The ability of a police agency to show large numbers of arrest are frequently the basis of major funding decisions or requests for government grants. The problem however is that those intermediate and large dealers, whether the product is cocaine, heroine or perhaps methamphetamine, have an increased opportunity to get away with their activities. The rationale among the police is a need for quick results. Trying to get a lead on larger dealers takes more time, money, and person-hours to accomplish, whereas narcotics departments can arrest small-time dealers virtually at will. The fallacy of the war on drugs is that it is virtually impossible to attack the problem of drugs in this country from a ‘supply-side’ perspective. Locking up small-time drug dealers does virtually nothing to halt the flow of drugs into the community because you are not locking up the ‘problem’ when you put a person in prison for dealing drugs. Instead of acting as a deterrent in the

community, the locking up of dealers is frequently perceived as an opportunity. The person who has been arrested and sent away has left a vacuum in their place and as we all know, nature abhors a vacuum. The locking up of dealers is a convenient way to deal with symptoms but for the most part, ignores the problem. It's a feel good salve for society and meets the needs of the police by providing a rationale for increased funding which I will cover in more depth in the section on the economics of incarceration.

In his book in which he reviews a number of studies by various researchers, Wilbanks concludes that evidence of police discrimination in the performance of the various aspects of their duties is "sparse, inconsistent, and contradictory to the DT" (Discrimination Theory).<sup>110</sup> Wilbanks states that the views Blacks and whites have developed as to why they each have such divergent views on racism and discrimination are fundamentally ignorant as they are both formed within an information vacuum based on personal and cultural ideology.<sup>111</sup> Stating that Blacks and whites ignore what he (Wilbanks) calls "the facts" results in views that ignore the truth as he sees it. Wilbanks' framing of the views of the issue insults both Blacks and whites. The author ignores the collective experiences of numerous people simply because they cannot be corroborated by the studies which he has reviewed. Additionally, Wilbanks speaks of Blacks as a monolithic entity that has no diversity of view or opinion. His views should demonstrate the fallacy of such a technique. One of the examples utilized by Wilbanks to illustrate his view as to why Blacks feel the 'system' is racist is that Blacks who work within the system are reluctant to state it is racist for fear of retribution from colleagues and community. My

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<sup>110</sup> Wilbanks, William, The Myth of a Racist Criminal Justice System. Monterey, CA: Brooks/Cole Publishing Company, 1987.

<sup>111</sup> Ibid., p. 38.

own case is clearly contradictory to this position and the ongoing debate I have with an associate, a Black police supervisor on the Iowa City Police Department, illustrates the diversity of opinion within the Black community. The Black officer and I, both with many years of experience within the criminal justice system, vehemently disagree with each other as to the levels of discrimination existing within the system.

Does the presence of Black officers make a difference for Black defendants? The existence of Blacks working within the ‘system’ does not necessarily mean that non-white offenders in the system will receive more favorable treatment. It does mean that non-white staff will more than likely be able to relate to the discrimination experienced by non-white offenders. Whether this shared understanding is mutually beneficial or is acted upon by non-whites in positions of power remains with the individuals involved. While these shared experiences have proven positive for this writer, I realize that my perceptions and experiences are not universally shared. I also believe that it makes a profound difference as to the role one plays in the criminal justice system. My own experience has shown me that flexibility is more often a viable option for those that work in the area of corrections as opposed to the police. Police departments are by their nature rigid, para-military organizations that subject their officers to closer scrutiny than those in community corrections. The Black police officer is between the proverbial ‘rock and a hard place.’ By this I mean that in Iowa, the white-male culture of most police departments dictates that those who work within them conform to the values and beliefs of their department. Free (1996) refers to this in his book as part of the theory of ‘double marginality.’ In other words, Black police are not fully accepted by their fellow white

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officers nor are they fully accepted by the Black community that perceives them as part of the oppressive white power structure.<sup>112</sup>

The Sourcebook of Criminal Justice Statistics 1997, (p. 107), shows in a survey of attitudes about the police that whites clearly have more confidence in the police than non-whites generally and Blacks in particular. The study showed those with a "Great deal/Quite a lot" of confidence ranged from 61% for whites to 34% for Blacks and 40% for non-whites. In the "Some" confidence category the responses were 30, 38 and 33 percent respectively. Perhaps the most telling category was those that had "Very little" confidence in the police. Responses were 8% (white), 25 % (Black) and 24% (non-white).<sup>113</sup> The unity of opinion of the races implied by Wilbanks is clearly nonexistent.

Nowhere will one find the expression of an 'us versus them' mentality more apparent than within a police department. I had the opportunity to attend a graduation ceremony of the Cedar Rapids Police Academy in February of this year ('99). Near the end of the program, a new graduate who had been chosen to represent her graduating class addressed the audience. She spoke of good guys (cops) versus bad guys (crooks) and at the conclusion of her speech she admonished her fellow classmates not to forget the words of one of their instructors, "We're cops, they're not. We always win, they always lose." With this closing the young woman was close to tears, as was I, but not because of the emotional rendition she had just given. I envisioned within this good guy versus bad guy dichotomy a number of Black people getting 'caught up' in the idealist fervor of these new officers. The 'fervor' I refer to manifests itself in the behavior of police who

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<sup>112</sup> Free, Marvin, D. Jr. African Americans and the Criminal Justice System. New York: Garland Publishing, Inc., 1996.

<sup>113</sup> Sourcebook of Criminal Justice Statistics 1997.

embellish reports to reflect heightened rates and impact of violations of those they arrest, particularly non-whites. This embellishment then becomes sworn testimony in courts of law and given the relative power structure of the accusers and the accused, is usually accepted as fact in our courts.

Modern police ‘systems’ have evolved fairly uniformly across the United States since the late 18<sup>th</sup> Century. Though there have been variances from region to region the science of policing today is relatively universal. With this standardization of police practices and policies have come a similarity of attitudes and beliefs within departments. This explains both a universality of opinions by Blacks across the country in regard to the police, as well as reports of like treatment of Blacks by police in jurisdictions across the country. In other words, the names and circumstances may be different but the game is fundamentally the same across the country. Iowa is no exception, widespread abuse of discretionary power by the police is common here, as in the rest of the country. For this reason I state that the discrimination of the police towards Blacks particularly, falls on the “Systematic Discrimination” end of the ‘Discrimination-Disparity Continuum’ found in The Color of Justice.<sup>114</sup>

## **The Courts**

Among the reforms instituted with the call for ‘law and order’ were the ‘three strikes’ laws and requirements for mandatory minimum sentences for certain crimes. Playing on the notion that liberals had long been ‘soft’ on crime and criminals, images of crime as

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<sup>114</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996. Inherent in this belief is my caveat about the use of absolutist language in the continuum scale. Again, nothing happens *all* the time. See p. 44, Figure 3.1.

being out of control were splashed across the television sets of Americans. The use of the ‘Willie Horton’ rapist-on-furlough-scare was effective in helping George Bush get elected to the presidency in 1988. But the foundation for the most recent campaign had already been established under the administration of President Ronald Reagan who ran as a ‘law and order’ candidate with a promise to ‘get tough on crime.’

### **Role of Attorneys**

The criminal court system in the United States is marked by a defining characteristic: its adversarial nature. The quest for justice has taken a back seat to the desire of opposing attorneys to win, frequently at all costs. This means that for the most part, the lawyer who puts on the best show for the jury wins. In this atmosphere, one of the first casualties of the system of determining guilt or innocence is truth.

The reality of our system is that very few but the most serious cases will ever see the light of trial. The majority of cases in this country are now settled by plea agreement. This is a system where one pleads guilty to an offense usually in exchange for a reduced sentence on a lesser charge. This can prove to be a double-edged sword. On the one hand, individuals are allowed to receive reduced sentences for crimes they may have committed; on the other, many defendants who claim to be innocent yet do not have the means to bail out of jail frequently ‘cop a plea’<sup>115</sup> just to get out of jail. This system favors those with the financial resources to post bail, as other facets of the system favor those who have the resources to hire private attorneys. Affluence, in and of itself will sometimes result in officers of the law, in court and on the street, to grant special consideration in some cases.

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<sup>115</sup> Agree to a plea bargain.

The role of the defense attorney is in theory to provide the defendant with the best possible defense. In reality this role is frequently transformed into facilitating the smooth running of the court system. Those who cannot afford to hire a private attorney find themselves dealing with overworked bureaucrats in the form of the public defenders. Though generally sincere, well-meaning individuals, public defenders are usually hampered by caseloads that border on the prohibitive resulting in little time to devote to individual clients. I have heard the sentiment on many occasions, by clients just placed on probation that if they had known what they were in for while on probation, they would not have pleaded guilty to a crime that they claim they did not commit in the first place. Given the opportunity to get out of jail, however, the offer of probation seems like a good one.

In Iowa, the prosecutors are called county attorneys. It is these lawyers that have the discretion to go forward with the charges made by the police and pursue a conviction. When police arrest, they frequently charge individuals with as many offenses as possible under the theory that it places the prosecutors in a stronger position if the case comes down to a plea bargain. There is very little written about the role of race and its impact on a prosecutor's charging decisions; it is an area definitely worthy of more in-depth study. However, it is at this point in the administration of the criminal justice that we see how the system feeds on and perpetuates itself. Prosecutors act on complaints and information provided by the police. As stated previously, this information is frequently embellished or contrived in such a way as to validate the actions of the police who in many cases have abused their discretion. By proceeding with questionable charges, prosecuting attorneys give credence to abuses

of police discretion. Further, with the power of the state behind them, prosecutors are in a unique position to further embellish said evidence and have been known to withhold crucial evidence from the defense attorneys. This is called prosecutorial misconduct and it comes in many forms. But what is the motivation for prosecutorial misconduct? Why would an attorney charged by the state, abuse the discretion and power entrusted to them by the people? Frequently the answer may be summed up simply as, pressure to win. As stated from the outset of this section, our criminal justice system is adversarial in nature. This places intense pressure on prosecutors to gain convictions, especially in those cases labeled, 'high profile.' Murders, armed robberies, rapes, those crimes that elicit the most vigorous public response, are generally 'high profile' cases. The prevalence of prosecutorial misconduct was documented in a recent study conducted by reporters from the Chicago Tribune.<sup>116</sup> The Tribune researchers concluded that in the period covered by the study, from 1963 to the present, misconduct was not only widespread, but frequently overlooked by the 'system' and condoned to the point of the perpetrators being rewarded by promotion or election to political office.

Given, as I stated previously, that most charges are resolved through plea bargain, the courts have become de facto factories for the disposition of a 'justice-like' product: providing an appearance of justice where little in fact might exist.

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<sup>116</sup> Armstrong, Ken, Maurice Possley, "Prosecutorial Misconduct." The Chicago Tribune, January, 1999. Researchers reported that they examined approximately 11,000 court rulings in Lexis-Nexis and Westlaw databases. The researchers additionally studied approximately 8,700 news stories, dozens of books, law review articles, studies and other legal research material that described wrongful convictions or misconduct by prosecutors.

## Juries

Jury selection and composition is as controversial a topic today as it has ever been. Though much has changed over the years, the processes by which juries are selected and their subsequent composition for trials have been hotly contested. At one time in this country, prohibition of Blacks from potential jury pools was the norm. It is my contention that it still is; but the form that this exclusion has taken has, like so many aspects of discrimination in our society, become more subtle.

In 1879 the Supreme Court of the United States first ruled on a discrimination case pertaining to jury selection. In *Strauder v. West Virginia*, the court ruled that a West Virginia statute limiting jury service to white males violated the equal protection clause of the Fourteenth Amendment and as such was unconstitutional.<sup>117</sup> Subsequent rulings by the same court found that a variety of techniques used by jurisdictions to disqualify Blacks from jury pools were equally unconstitutional.<sup>118</sup>

The Supreme Court has thus far refused to overturn the use of the peremptory challenge, stating in *Swain v. Alabama* in 1965 that a prosecutor's use of this technique to disqualify all six African-Americans from the jury pool was not a violation of the equal protection clause of the Constitution.<sup>119</sup> Twenty-one years later, in 1986, the narrowness

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<sup>117</sup> Strauder v. West Virginia, 100 U.S. 303 (1880), in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>118</sup> Neal v. Delaware, 103 U.S. 370, 394 (1881), Norris v. Alabama, 294 U.S. 587 (1935), Avery v. Georgia, 345 U.S. 559 (1953), in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>119</sup> Swain v. Alabama, 380 U.S. 202, 212 (1965) in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

of the ruling by the justices in *Swain* were relaxed.<sup>120</sup> Writing on ‘*Swain*’ Justice Brennan wrote:

With the hindsight that two decades affords, it is apparent to me that *Swain*’s reasoning was misconceived.... *Swain* holds that the state may presume in exercising peremptory challenges that only white jurors will be sufficiently impartial to try a Negro defendant fairly. In other words, *Swain* authorizes the presumption that a Negro juror will be partial to a Negro defendant simply because both belong to the same race. Implicit in such a presumption is profound disrespect for the ability of individual Negro jurors to judge impartially. It is the race of the juror, and nothing more, that gives rise to the doubt in the mind of the prosecutor.<sup>121</sup>

Prosecutors are still allowed to use peremptory challenges to dismiss potential Black jurors. If challenged, they must be able to provide a race-neutral reason for doing so, an obviously easy task. In Iowa this task is made easier by virtue of the low Black population. As elsewhere in America, potential Black jurors are routinely disqualified in cases involving Black defendants. In spite of rulings finding that race-neutral explanations for disqualifying potential Black jurors are valid under ‘*Batson*,’ Walker et al conclude “the peremptory challenge remains an obstacle to impartiality.”<sup>122</sup>

### **Judges and Sentencing**

Unnever et al (1980) stated that there was discrimination in the matter of criminal sentencing, as did Myers (1993). Pruitt and Wilson (1983) and Petersilia (1985) came to the opposite conclusion: that race was not a factor in sentencing in

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<sup>120</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986) at 96 in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>121</sup> Justice Brennan, dissenting from denial of certiorari in Thompson v. United States, 105 S. Ct. at 445, in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>122</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

the courts. The fact remains that there are a number of statistical studies that arrive at conclusions as numerous as the number of researchers initiating them. William Wilbanks summed up his findings and condensed them into nine key points:

1. Racial discrimination in sentencing has declined over time.
2. Race of defendant does not have a consistent impact across crimes and jurisdictions.
3. Race of victim may be a better predictor of sentence than race of defendant.
4. Extralegal variables are not as predictive of sentence as legal variables.
5. The black/white variation in sentences is generally reduced to near zero when several legal variables are introduced as controls.
6. The race effect, even before controls, is not substantially significant, in that the predictive power of race is quite low.
7. There is no evidence that black judges are less likely than white judges to send blacks to prison or to give blacks lengthy sentences.
8. Most sentencing studies have a large residual variation, suggesting that the models used did not fit the actual decision making of judges.
9. The possibility remains that racial discrimination both for and against blacks may exist on a large scale when individual judges are considered, since most studies have examined judges in the aggregate.<sup>123</sup>

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<sup>123</sup> Wilbanks, William, The Myth of a Racist Criminal Justice System. Monterey, CA: Brooks/Cole Publishing Company, 1987.

The last point, (number nine) is to this writer the most telling on Wilbanks' approach to discrimination in the criminal justice system. He argues that there are times when Blacks are treated more leniently by the system, and that tends to negate, or cancel out findings of discrimination against Blacks. Walker et al point to findings that assert that differentiation in sentence severity and leniency may both be indicators of discrimination against Blacks.<sup>124</sup> For instance the authors illustrate by showing that a Black may be sentenced more harshly for victimizing a white yet receive more lenient treatment for victimizing another Black. In his book Makes Me Wanna Holler, Nathan McCall relates his coming to awareness of this double standard through first-hand experience as a young thug. McCall recalls how he shot and almost killed another Black man yet received only 30 days in jail. When he later robbed a fast food restaurant in a white section of town, injuring no one, he received a sentence of twelve years in prison.<sup>125</sup> Wilbanks would probably cite the disparity in sentences this way: when he shot the Black guy he had no prior record but when he robbed the fast food restaurant, he had the shooting on his record. The conclusion Walker et al come to is that interpretation of conflict theory needs to be modified to include more of the complexities acknowledging racial relationships. In other words, the reasoning utilized by Wilbanks is frequently too simplistic to adequately explain outcomes.

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<sup>124</sup> Ruth D. Peterson and John Hagan, "Changing Conceptions of Race: Towards an Account of Anomalous Findings of Sentencing Research," American Sociological Review 49 (1984): 56-70, in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>125</sup> McCall, Nathan, Makes Me Wanna Holler: A Young Black Man in America. New York: Random House, 1994.

The research of Walker et al in Color of Justice reflects recognition of contextual discrimination as measured on their discrimination scale<sup>126</sup> (see Figure 3.1). The authors provide three possible explanations for racial disparities in sentencing. First, sentence severity may be explained by legal factors such as committal of more serious offenses or more extensive prior record. These factors which are frequently taken into account would belie no discrimination exists. Second, economic factors that were previously discussed, poverty, wealth, etc. could have an indirect impact on the ability to make bail. Getting out of jail prior to trial has been shown by these researchers to be a factor in sentencing. Walker et al point to a study that shows that race is a valid predictor for pre-trial detention<sup>127</sup> and those who are detained prior to trial receive more punitive sentences, regardless of race. As a result of widespread social inequality that ensures a large number of non-whites will continue to be pushed to the margins, it is likely that Blacks will receive the brunt of this disparate treatment. Additionally, the authors contend that the ability to hire a private attorney as opposed to having one appointed by the court also has an impact on outcome. Third, and this alludes to overt discrimination, judges take race of defendant in account when sentencing.<sup>128</sup> The authors conclude that overt or systematic

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<sup>126</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>127</sup> Darnell F. Hawkins, "Beyond Anomalies: Rethinking the Conflict Perspective on Race and Criminal Punishment," Social Forces 65 (1987): 719-745, in Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

<sup>128</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996.

discrimination no longer exists but Blacks do still receive harsher sentences particularly when the victim is white.<sup>129</sup>

Do Black judges make a difference? Studies have shown that having Black judges does make a difference in the court system when it comes to sentencing factors for Blacks.<sup>130</sup> Black judge and member of the New York Supreme Court Bruce Wright, Black Robes, White Justice condemns white judges for their insensitivity towards Blacks not to mention overt hostility towards that population.

Another eminent Black jurist, George W. Crockett, Jr., sums it up best by saying:

There is no justice for Black people in our criminal courts, and there never has been. This is the shame of our whole judicial system. In a country whose Supreme Court is emblazoned with the motto EQUAL JUSTICE UNDER LAW the quantity and quality of justice is in fact in direct proportion to the size of one's pocketbook and the color of one's skin. This is so, not because the written law says it shall be so, rather it is so because our judges, by their rulings, make it so.<sup>131</sup>

The significance and impact of Black judges on sentencing decisions is hard to determine in Iowa as there are only three Black judges in the state: two District Court Judges and one Associate District Court judge. This scarcity of judges of color is in and of itself an indictment of the Iowa criminal justice system. Given the number of Black and other non-white defendants processed in the state, the failure of the judiciary to recognize and strive towards increased diversity belies a racist attitude. As a result, the vast majority of Black defendants (and there are many) are sentenced solely by white judges. The presence of non-white judges provides

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<sup>129</sup> Ibid.

<sup>130</sup> Welch, Susan, M. Combs and J. Gruhl, "Do Black Judges Make a Difference?" 1986.

<sup>131</sup> Crockett, George W., interview in Black Judges on Justice, Linn Washington, ed. New York: The Free Press, 1994, p. 149.

a diversity of opinion and perception of the way the world is formed. Lack of such diversity makes for a narrow perspective of the world, one in which white privilege is the dominant philosophy.

Former Black jurists, Bruce Wright, A. Leon Higginbotham and George Crockett Jr., concur that Blacks will not see justice in the American 'criminal justice' system. Wright frequently writes on the ignorance and arrogance of white judges and their need to make a conscious effort to become more knowledgeable about Blacks. Higginbotham also speaks frequently on the inequalities that exist in their (the judge's) professions and speaks in terms that are a scathing indictment of the judicial system and its culpability in continued oppression of Blacks.

Blacks are more likely than whites to receive direct sentences to prison in Iowa and across the nation for like offenses for which whites frequently receive probation. Many times the factors contributing to recommendations of harsher sentences are based on family backgrounds or demeanor of defendants during pre-sentence interviews. As the majority of the pre-sentence interviewers in the state are also white, the Black defendant in Iowa realizes that the cards are stacked against him/her at every turn. This realization is frequently manifested in hostility towards the system that is perceived by the offender as racist.

Considering the role of the courts *in toto* one perceives a consistency in behavior towards Black Americans that has changed relative to the changes in overall society. Is equality of treatment for Blacks in contemporary America a reality? Without question the answer is, more so than there has been historically. However, this society is far from achieving the equality it claims to be striving for as is evidenced by the disparities in

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sentencing outcomes for like offenses between Blacks and whites. Additionally, decisions by prosecutors to pursue prosecution of Blacks as well as the use of peremptory challenges to eliminate Blacks from juries in which Blacks are defendants has been established as a historical fact. All-white juries disproportionately convicting Black defendants create for this writer a clear pattern of discrimination. Taking these factors in consideration leads this writer to state that the courts also fall within the “Systematic Discrimination” end of the ‘Discrimination-Disparity Continuum’ found in The Color of Justice.<sup>132</sup>

### **Impact of the ‘War on Drugs’**

Fear of the effects of wanton drug use is far from new in this country. Additionally, fear of Blacks and drug use is also far from a new phenomenon. At the turn of the century the belief by whites that Blacks, cocaine and alcohol were a combustible mix was widespread and needed to be addressed.<sup>133</sup> It should be noted that use of both substances (cocaine and alcohol) was widespread in white society then as it is now. The prescription for this ill was widespread discussion of legislation to prohibit the use of both cocaine and alcohol. We all know the results of the attempt to regulate the use of alcohol with the 18<sup>th</sup> Amendment to the Constitution: the disaster called Prohibition.

During the Reagan administration the vaunted “War on Drugs” came into being and with it a burgeoning of the prison population among people of color. The

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<sup>132</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996. Inherent in this belief is my caveat about the use of absolutist language in the continuum scale. Again, nothing happens *all* the time. See p. 47, Figure 3.1.

<sup>133</sup> Williamson, Joel, A Rage For Order: Black/White relations in the American South Since Emancipation. New York: Oxford University Press, 1986.

drug war and the implementation of mandatory sentencing in convictions for drug offenses have been the most significant reasons for the explosion of prison populations across the nation in state prisons and the Federal Prison System. Most notorious among the mandatory drug laws are the federal laws pertaining to sale and distribution of cocaine. In the federal system there is a disparity between the punishments for the sale of cocaine in rock form (called 'Crack') and cocaine sold or possessed in powdered or crystalline form. The sale or possession of cocaine in 'rock' form is punishable by penalties that recognize a 100 to 1 ratio for the possession of powder cocaine versus crack cocaine. In other words, the mandatory minimum sentence for crack cocaine of 5 years for 5 grams is equivalent to the sentence for possession of 500 grams of cocaine in powder form.

The cry of racism pertaining to this discrepancy in the sentencing structure has been deafening. The Reverend Jesse Jackson states his belief that the policy on sentencing for crack as opposed to powder cocaine is clearly discriminatory.<sup>134</sup> Jackson cites statistics provided by the Bureau of Justice Statistics (1992) showing the discrepancy in the number of Black defendants convicted of crack cocaine offenses (91.5%) in federal prison as opposed to 3% of whites. Citing a study by the National Institute for Drug Abuse, Reverend Jackson states that 64.4 % of all crack users are white.<sup>135</sup> The result has been the increase in the numbers of African-Americans that have been sentenced under these laws with policy-makers claiming that these laws are color-blind.

In Iowa, many police departments employ a strategy by which they build cases (by making drug buys) on individuals in order to refer those cases to federal prosecutors as

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<sup>134</sup> Jackson, Jesse Rev., "Crime bill is 'discriminatory.'" USA Today (Opinion Section), 28 Mar, 1994.

<sup>135</sup> Ibid.

opposed to state prosecutors. What is the significance of this strategy? In Iowa the sale and distribution of cocaine, in any form, is a Class C Felony offense.<sup>136</sup> Though drug convictions in Iowa require serving a mandatory minimum of 1/3 of the sentence, that aspect of the sentence is frequently waived. Additionally, given that Iowa has indeterminate sentencing, an individual with a sentence 'of up to ten years' may be able to get out of prison in less than two years. To many citizens and especially those in law-enforcement this is perceived as being 'too lenient' on criminals. The police recognize, however, that in the federal system a drug conviction may require the offender to do all of the time received at sentencing. Thus the preference on the part of the police, especially for Black offenders, to have drug cases tried in the federal courts. The ACLU released a report (1996) that though focused on California reflects the situation here in Iowa as well. According to the report:

The federal public defender's office in Los Angeles discovered that of the 24 crack cocaine cases closed out in 1991, all of the defendants were African American. Moreover, between 1991 and 1993 the federal public defender represented 53 defendants in crack cocaine cases, none were white. In contrast, from 1990 to 1992, 222 white defendants charged with crack cocaine offenses were prosecuted in state court; thus, effectively avoiding the harsh sentences required under the federal sentencing guidelines.<sup>137</sup>

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<sup>136</sup> Iowa has four classes of felony offenses and three misdemeanor classes. The felonies, labeled from the most serious to the least are A through D. An 'A' Felony is punishable with a mandatory life sentence. 'B' with a 25 or 50 year mandatory sentence depending on the offense, 'C' with an indeterminate sentence not to exceed 10 years and 'D' with an indeterminate sentence of no more than 5 years. The three classes of misdemeanor offenses are from the most to least serious, Aggravated, Serious and Simple. Only one of which, Aggravated may include a prison sentence of up to two years. The other two may require terms of jail of 1 year and 30 days, respectively.

<sup>137</sup> ACLU, ACLU Says Court Case Exposes America's Dirty Little Secret: The Criminal Justice System is Racially Biased. February 26, 1993.

This is a tactic widely used in Iowa as well as California: prosecution of Blacks under federal guidelines as opposed to the less stringent penalties found in the state system. That Blacks are more frequently prosecuted under the auspices of the federal law is again legitimated by the claim that 'crack' cocaine is more destructive than cocaine in powder form. Yet whites are less frequently the targets of 'crack' cocaine crackdowns, in spite of their widespread use, abuse, and sale of the drug. This report goes on to say that in 1993, 88% of those sentenced federally for crack cocaine distribution was African-American, while only 4.1 percent of the defendants was white. This in spite of studies that show that the majority of the nation's crack cocaine users are white.<sup>138</sup>

One of the realities of Iowa is that some drugs command higher prices here than in some of the urban areas nearby. Historically a hub for drug activity in the Midwest, Iowa continues to be significant to the drug trade. From Chicago, Minneapolis, Omaha and St. Louis to name a few major urban areas close to Iowa, come drug entrepreneurs looking to establish new markets. I encountered a number of them while working in corrections, young Black males who have come here for a variety of reasons; some came specifically to sell drugs, others to visit family or friends. Many wound up in the system: locked down or on court-ordered supervision, comprising that one-in-three designated by Marc Mauer as part of the growing population of Blacks in

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<sup>138</sup> Ibid., p. 3.

the system.<sup>139</sup> Many confess to this writer that they felt Iowa was “easy pickens,” only to find that officials here are passing out ‘time’ (to Blacks) like it is ‘free lunch.’

I have no sympathy for drug dealers. Yet I know as do many in law enforcement that many engaged in these activities are white. The focus continues to be on the Black community frequently to the exclusion of the white segment of the population. The fact is that much of the trade in drugs by Blacks is dependent upon white complicity and patronage. It is only when the drug problem attains epidemic proportions among whites that there is an outcry for solutions other than strict law enforcement. Iowa is seeing an increase in the use of methamphetamine or ‘speed’ among whites that is a source of great concern among citizens. Heroin, though never gone, is also making a strong comeback. Whereas it was previously perceived as a ‘Black’ drug, many white youth have discovered its alluring properties. A wealthy suburb outside of Dallas, Texas experienced a rash of deaths of white youth experimenting with black tar heroin that sent shock waves through the community a few years ago. New and more potent forms of this and other drugs are showing up all over the country and Iowa is far from immune.

Approach to the drug problem in America will have to change if we as a society ever hope to free ourselves of the detrimental effects of drug use and abuse as well as the negative ramifications of the ‘war on drugs.’ The old techniques are not working; as a society we are losing the ‘war on drugs.’ But is ‘winning’ this war truly a goal? If illegal drug use were eliminated in America tomorrow, a potentially large segment of the working and middle class would possibly find themselves unemployed. It is apparent that we

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<sup>139</sup> The Sentencing Project, Young Black American and the Criminal Justice System: Five Years Later. 1995, <http://www.sproject.com/rep4.htm>.

cannot halt the flow of drugs by hiring more police and building more prisons. Yet this is the course upon which we have chosen to embark.

Though ‘color-blind’ on paper, the impact of the ‘War on Drugs’ is clearly discriminatory towards non-whites in general and Blacks in particular. Due to the reasons stated, this ‘war’ falls on the “Systematic Discrimination” end of the ‘Discrimination-Disparity Continuum’ found in The Color of Justice.<sup>140</sup>

## **Corrections**

Once sentenced, the Black defendant in Iowa is going to enter a virtually all-white correctional system. It doesn’t matter if it is prison or community based corrections as both are similarly lacking in racial diversity. In the State of Iowa, the Department of Corrections connotes a different entity than Department of Correctional Services though the latter falls under the auspices of the former.

The center of administrative power for the Iowa Department of Corrections is in the State Capitol, Des Moines, Iowa. The headquarters of the department called ‘Central Office’ has few African-Americans in administrative roles. There are at present no wardens, deputy wardens, superintendents or their deputies of African-American descent in Iowa (although this was not always the case).<sup>141</sup> This reality means that treatment of non-white inmates will be perceived differently by those in control of the various institutions. Vacancies within the Department of Corrections

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<sup>140</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996. Inherent in this belief is my caveat about the use of absolutist language in the continuum scale. Again, nothing happens *all* the time. See p. 47, Figure 3.1.

<sup>141</sup> Under the previous Director of the Department of Corrections, Sally Chandler-Halford, there were two Black wardens at the Iowa State Penitentiary. They served consecutively.

and the Departments of Correctional Services have not readily been filled with non-whites, nor are they likely to be anytime soon. History has shown that without the 'push' of Affirmative Action law, few all-white organizations are successful in efforts to recruit, hire and retain Black employees. This is particularly true with corrections in Iowa. Within the Sixth Judicial District Department of Correctional Services, my former employer, there were approximately twenty-four African-American employees at the peak of Black employment within the department. At present that number is approximately thirteen African-American employees as a number of Blacks have left or been forced out of the department for a variety of reasons. Within corrections statewide, there is much discussion among Black employees about the 'hostile' atmosphere that exists within this system. One of the forums of such discussion has routinely been meetings of the Multi-cultural Issues Committee

(MIC), a subcommittee of the Iowa Corrections Association. It is apparent given the frequency of discussion of the issue and the representation from various institutions and judicial districts that this continues to be an ongoing problem.

### **The Prison System**

The prison system in Iowa continues to be a bastion of the 'good ole boy' system as many of the prisons in Iowa are located in or near rural communities and staffed by individuals from small, rural communities. As is frequently the case, parochial attitudes about race relations continue to thrive in these communities. As a result staff that resemble the Black inmates are few and far between. This lack of cultural diversity impacts upon the treatment Blacks will receive while incarcerated or under other forms of court-ordered supervision.

Racial tensions are frequently heightened within the prison setting by virtue of the existence of deferential treatment toward white inmates by white guards and more intense scrutiny of Blacks. This biased treatment frequently results in more negative sanctions being imposed on Black inmates. As an example, I have in my career spoken with individuals within the prison setting and on parole that talk about the problems associated with viewing TV in the prison. Many times, say African-American offenders, they would be required to 'vote' on what shows they would get to watch while in the TV room. Given the population in any given Iowa prison is predominantly white, those of the majority population would be given precedence for viewing options. When 'Black' shows (generally few and far between) come on, the Black inmates were frequently told that 'majority rules' and would not get to watch 'their' shows. This is the source of much hostility within the Iowa prison system and when that hostility among the non-white inmates manifests itself in these situations the punishment is swift and severe. More often than not, this punishment includes time in the 'hole'<sup>142</sup> or loss of privileges. Much of this treatment is not benign insensitivity towards Blacks but overt, hostile treatment based on racist attitudes and beliefs. In addition to being from rural areas, where they grew up in mostly all-white communities with little to no contact with Blacks, the majority of prison guards in Iowa have only high school diplomas as their highest educational level. The correlation between education and attitude frequently belies exposure to others outside of one's immediate culture. In other words, if a person never leaves their hometown, their cultural experiences are likely to be narrower than if they went off to college. The reality

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<sup>142</sup> The slang term for administrative segregation, removal from the general prison population and placement in solitary confinement. This would also entail loss of privileges and a requirement to work through the level system once put back in the 'regular' population.

of the majority of the prison guards in Iowa is their level of education, rural background, and lack of contact with non-whites while growing up; this translates into a lack of tolerance for diverse peoples and cultures. Some might argue that it is only human nature that individuals favor those who resemble themselves and in this case, treat more harshly those who do not, especially when they are ‘convicts.’

As a member of the correction’s community for over thirteen years I have been privy to a host of complaints by inmates, of all races, in reference to their treatment in the prison system. This is to be expected if one is to realistically consider the role of prison in our society today. But there are aspects of prisoner treatment that appear to be culturally biased. It is hard to believe that the same types of complaints of Black inmates who have served time in different prisons within the Iowa system can all be wrong. Additionally, one must consider the organizational structure of the Iowa Department of Corrections when analyzing the attitudes and belief systems in place. In any organization the ‘culture’ is top down in nature. The Iowa Department of Corrections is no different. Such is also the case in the eight Departments of Correctional Services; each district is a reflection of its director and administrative staff. The fact remains there are few Black supervisors in corrections in any capacity in the State of Iowa.

### **Treatment of Black Staff**

Differential treatment of Black employees is commonplace within Iowa corrections. When brought to the attention of management or administration by Blacks, said treatment is frequently minimized or dismissed by those in charge as non-existent. A good example of the continued existence of the ‘good ole boy’ system is the dearth of Black females in corrections at the supervisory level. Note that overall Iowa is well represented by white

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females, even at the supervisory level. My former employer, the Sixth Judicial District Department of Correctional Services, maintains roughly, if not over, 50% female employment. Within this number there are several female supervisors, including the Assistant Director. There are relatively few Black males in supervisory positions statewide, but it appears Black women are perceived as being more vulnerable to discriminatory intimidation tactics.

This writer is familiar with four Black women presently or formerly within Iowa corrections, who have all sued or have contemplated suing the Department of Corrections/Department of Correctional Services for racial discrimination and/or harassment. The tales of these Black women, though from different organizations within the correctional system, are surprisingly similar.<sup>143</sup> In the case of all four, each related to this writer how the levels of harassment and disparate treatment by other managers or administrators caused them to develop adverse health problems brought on by the infliction of emotional and psychological stress. Insomnia, adverse physical reactions and various levels of depression were some of the symptoms of their stressful situations. Of the three, two filed discrimination lawsuits, a third quit her employment on the advice of a physician and the fourth was fired.<sup>144</sup> One of the suits was settled out of court, one is still pending at present and whether the other two filed lawsuits is unknown to this author at

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<sup>143</sup> One worked for Central Office but was headquartered at Iowa Medical and Classification Center (IMCC), a.k.a. 'Oakdale'; one was the only Black female supervisor in an Iowa prison, a lieutenant at the medium security prison at Mt. Pleasant, Iowa; the third is a Residential Supervisor with the Sixth Judicial District Department of Correctional Services (my old employer). The fourth was an administrative assistant with the First Judicial District Department of Correctional Services.

<sup>144</sup> The employee that was fired had just returned to work from maternity leave and was told that she could either accept a demotion or would be fired. She refused to accept the demotion.

this time. All four women were in 'administrative' positions and two were supervisors. Administrators not only did little to support these women but were more often supportive of, if not the source, of the harassment and discrimination.

In addition to the women cited above, this writer is familiar with a number of other African-Americans who have left employment with Iowa corrections and cited 'hostile' work environment as the cause for their leaving. These complaints are most common in the prison system where many of the complaints entail harassment by white co-workers and supervisors. The culture in these work spaces is most often described as 'good ole boy' or 'redneck' by those that suffer this on the job harassment.

There are a number of reasons why Blacks do not seek employment in the Iowa correctional system or once hired, remain in its employ. The problem of finding qualified African-Americans is one oft quoted theme from those who are in positions to hire, but the fact remains that there are a number of Blacks that are qualified yet routinely passed over for consideration. African-Americans are quite simply not being sought for employment to any great extent except by other Blacks that already work within the system. Those that do continue to work in this 'system' acknowledge to potential employees that racist attitudes are prevalent and pervasive. This supports my contention that corrections in Iowa remains a 'good ole boy' system that does not readily welcome non-whites. If Black staff feel they are being mistreated in the workplace and cite as the principal reason their belief that the cause is racism, how do non-white inmates fare within this system?

My own experiences within Iowa corrections made me aware of classism, sexism and racism that are evident within the system. Little is being done to address these problems and more often than not 'lip service' is being paid to them. Corrections

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administrators like law enforcement administrators are reluctant to admit that these ‘-isms’ exist within their departments. Denial of prejudice in the corrections community is reflective of the society as a whole.

Expectations of adherence to middle-class value systems for offenders is a manifestation of classist attitudes projected toward clients by correctional staff whose sense of self-importance hinders their ability to relate to non-middle-class clients. I once heard a co-worker state, in all earnestness, that ideally her clients would strive to be “just like her.” The thought that those living a lower socio-economic existence would not aspire to her values and beliefs was (and probably still is) inconceivable to her. The reality is that many African-Americans fall into the category of those who have been pushed to the margins in this society. From white co-workers I frequently heard that a particular Black client was ‘hostile,’ while from Black clients I heard that their probation/parole officer was ‘condescending’ or also ‘hostile.’ Misperceptions frequently led to misunderstandings that ultimately and frequently resulted in negative sanctions placed upon the offenders--upon those who resisted the control techniques of those supervising them. Like white police officers, court officials or prison employees, those in community-based corrections see themselves as the ‘righteous’ upholders of the law. In this role, their perception of Black hostility and the need to attempt to ‘crush’ it are seen as legitimate control techniques. The result is higher incidence of African-Americans being revoked from probation or parole than their proportionate representation in the system, which is already disproportionate.<sup>145</sup>

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<sup>145</sup> Revocation studies by two Departments of Correctional Services, in the First and Sixth Judicial Districts, resulted in recognition that Blacks were more frequently revoked than other races.

## **Specialized Programming**

Though the value of what are deemed 'culturally specific' programs have been validated, programming geared to those of other than white backgrounds are in short supply in Iowa corrections. Case in point is the lack of substance abuse programs geared specifically to African-Americans. I have known of many cases where a Black client or offender is told to go to a Narcotics Anonymous or Alcoholics Anonymous group with little thought that they feel uncomfortable as the groups are usually all white. When culturally specific programs are instituted they frequently lack the support of management and staff. This writer attempted to institute such a program for Black male offenders but received little support from management and encountered skepticism and derision from white staff. In one instance, a client came to class and stated that he had been asked by a white worker in his residential facility if during the classes we (Blacks) watched basketball movies. The type of support required of administrations necessary to make culturally specific programs thrive is in short supply.

## **Impact of Revocation**

The impact of probation and parole revocations in the state of Iowa is significant in that these community-based programs account for 1/3 of the admissions to the prison system. If one were to take the year 1990 into account, there were more African-Americans admitted into the prison system in that fiscal year than were released.<sup>146</sup> During that fiscal year, FY 90, 19.5 % of the aforementioned releases were African-American. However, African-Americans accounted for 20.4 % of the total parole returns to prison. In other words, more Blacks were returned to prison from parole than

were released on parole for that year. Barbara Ransby (1996) cites the difficulties of Blacks receiving paroles in the first place as compared to whites. Compound that problem with a higher incidence of parole revocations and disproportionality of Blacks becomes more evident. In spite of the contentions of many that Blacks commit more crime and re-offend at

higher rates, the fact remains that Blacks are disproportionately revoked from probation and parole than whites. In May of 1996, of the total number of new prison commitments for African-Americans, 22.7% were a direct result of probation revocations and 22.1% were attributed to parole returns.<sup>147</sup> These numbers are almost equal to the percentage of the prison population of Blacks at this time (25%). The majority (52%) of the new admissions cited for probation and parole was the result of technical violations. This means that no new crimes were committed, but that some form of probation or parole rules were broken. In other words, it may not be a matter of criminality, but general compliance with probation or parole rules. Implicit in this situation is the subjective interpretation of the individual's attitude by particular officers, if that offender is Black and the supervising officer is white and racist; the situation is frequently a setup for failure. The problem as I see it, is the expectation by those that work in the system that people who have been locked up for some time will return to society and behave according to idealistic, middle-class standards of compliance, with little room for

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<sup>146</sup> "African Americans in Iowa's Justice System: A Discussion of Data and Data Availability", Nov., 1990. Summarized in the Iowa Criminal and Juvenile Justice Plan, 1997 Update, Feb., 1997.

<sup>147</sup> Iowa Criminal and Juvenile Justice Plan, Incarceration Rates of African-Americans. February, 1997.

error. If those on probation and parole were exhibiting sound judgment they wouldn't be under supervision in the first place. I once heard a co-worker tell an offender in a residential facility, in her most condescending manner, "I have never broken any law and I never will." This response was the result of an inquiry as to the staff member's pompous 'holier-than-thou' attitude that the client perceived and asked the staff person about. The client could only walk away in disgust.

Among the eight judicial districts and their community-based correctional departments there are at present no non-white district directors. There are also districts that have no Black employees. Again, absence of racial diversity does not necessarily indicate discrimination. However, one of my core beliefs is that a homogenous work force that serves a heterogeneous client pool will be handicapped in the way its personnel relate to the offenders. Applied to upper management, a lack of diversity insures that voices that might provide insight into the thoughts and feelings of non-white clients and staff will not be heard.

### **Economics of Incarceration**

Why is it that small, rural communities are clamoring for prisons to be built in their back yards? The expression, "anywhere but here" is far from the case when it comes to the building of prisons and jails, nationally and in Iowa. Communities are offering state and county government financial incentives to build jails and prisons in their communities while simultaneously trying to convince these government bodies that an ample workforce awaits construction. Jobs, jobs and more jobs are at the foundation of the desire to have these institutions built. The impact of this boom in prison construction on small rural communities is enormous. Yet a great many of the prisoners that are held in these

facilities will not see individuals that look like them during their incarceration, because quite simply many of the incarcerated will not be white. The profit margin, increase in the tax base and the generation of jobs are not to be understated in this issue. Construction of jail and prison cells has replaced many declining industries (steel, auto) as the primary industry in America. It is my contention that the need for employment coupled with an ever-increasing Black and Hispanic population, many of them poor, will be linked to the desire of the majority population to control the poor, non-white segment of the population while simultaneously providing work for the majority middle-class.

With the growth of prison populations comes a growth of prison industry. The days of the convict lease system that saw Black convicts exploited by prison officials that leased them to employers are returning. Across the country inmates are making a wide-range of goods that are generating millions of dollars for state prison systems. Road crews, providing cheap road maintenance, a system that never completely ended in the deep south, is seeing a resurgence in the north as well.

“Pay for stay”<sup>148</sup> programs are rapidly becoming the norm as society not only demands its ‘pound of flesh’ but wants to require the offender to pay to have it removed.

Iowa has no federal prisons within its borders. As a result a system has been devised by which the federal government pays judicial districts and county jails to house federal prisoners. The ‘rent’ paid by the federal government for the daily care and upkeep of its prisoners, results in a substantial windfall for the various facilities. These ‘rents’ amount to millions of dollars paid by the taxpayers to house these prisoners.

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<sup>148</sup> Approved by the Iowa Legislature, the Linn County Jail, representative of many Iowa jails now charges prisoners sixty (\$60) dollars a day for incarceration. The amounts vary from jail to jail but charging for stay is becoming the norm as is rent for residence within the facilities of the various judicial districts.

The ‘War on Drugs’ is a myth created as a means by which police departments can legitimize requests for expensive equipment, training and additional officers. Iowa, like many other states, has been able to cash in on the war by obtaining grants from the Federal government as a result of the recently passed ‘Crime Bill,’ to fund new officers for their police forces. By focusing on the issues of gangs and drug dealers, police departments are able to acquire funding for ‘specialized’ police units, such a Special Weapons and Tactics (S.W.A.T.) Teams. These units go by a variety of different names but basically have the same function, ‘aggressive policing.’

Like many other police departments, The Iowa City Police Department is preparing to hire new officers funded by grant monies. When more police are hired their existence must be justified by increased arrests.

Is the ‘war on drugs’ a welfare program for the middle-class? Could it be a means to an economic end for a large segment of this society? By virtue of the funding for this ‘war,’ a large segment of the population is able to earn its livelihood: police, correctional personnel, court officials, substance abuse specialists, doctors, lawyers, chemical manufacturers, construction workers, architects, building contractors, makers of security equipment and of course, morticians. To shift the approach to drug use by emphasizing treatment and education or call off the ‘war’ would in fact put many out of work. It would require an admission of the failure of efforts to fight the drug problem by current methods up to this point. But as long as there is a ready source of bodies for the cops, the courts and corrections officials to sustain their existences there will be little change in the policies as they now exist.

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The financial rewards of increased law enforcement and incarceration benefit a wide spectrum of the middle-class as previously stated. Many middle-class professionals benefit monetarily from the ever-increasing incarceration of the poor and disenfranchised.

### **Politics of Incarceration**

Politics, race and crime have consistently been linked in the United States usually to the detriment of the non-white population. Issues of criminality and race have been successfully utilized to the advantage of many politicians. This section examines the link between politics race and crime issues that have been used when attempting to galvanize public opinion in order to garner the votes of Americans.

Additionally, the disfranchisement of ex-felons in general and Black ex-felons in particular, is having a significant impact on the ability of a large number of African-Americans to participate in the political processes of this country. An unexpected result? It is my contention that the disfranchisement of Black ex-felons is an attempt to nullify the political participation of large numbers of African-Americans and reverse the accomplishments of the voting rights acts of the 1960's in particular and the Civil Rights Movement in general. In America attempts to keep the voting franchise from Blacks has been a consistent historical political and social reality. The Civil Rights movement was but a temporary setback to those who desire as complete a neutralization of Black political participation as possible.

Across America and across Iowa the consistency in the treatment of Black offenders belies a system in which continuity has been well established. The facts speak for themselves in the disparities in length of time spent incarcerated and rates of revocation (probation and parole) of Blacks. Problems in the hiring, retention and disparate (hostile)

treatment of Black staff have been well documented in Iowa and continue to be a significant problem.

My analysis of corrections in the nation in general and Iowa in particular lead me to place corrections within the “Systematic Discrimination” sphere of the ‘Discrimination-Disparity Continuum’ found in The Color of Justice.<sup>149</sup>

### **‘Criminalization’ of Black America**

The foundation of this system lies in the education or more accurately, ‘mis-education,’ of African-Americans that is pervasive in the Euro-centric school systems--systems that Blacks fought so hard to be able to enter. It is there that the lack of worth of Blacks in America is subtly established in the minds of young Blacks and perpetuated by a society that systematically excludes Blacks from mass participation in the mainstream. As a result there are many young Blacks that turn to crime as a way out of the ‘box’ in which they feel white society has placed them. As a former member of the criminal justice system I firmly believed and continue to believe, that those who engage in behaviors that are generally destructive to their communities and society as a whole should be punished. Yet the fact remains that only a small portion of those who are breaking the law are ever brought to ‘justice.’ By virtue of focus on those at the lower socio-economic end of society, the criminal justice system ensures that a majority of that population is Black.

In his work, The Mis-Education of the Negro, it is to this segment of the population that I believe Carter G. Woodson refers. Says Woodson:

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<sup>149</sup> Walker, Samuel, Cassia Spohn and Miriam DeLone, The Color of Justice: Race, Ethnicity, and Crime in America. Belmont, CA: Wadsworth Publishing Company, 1996. Inherent in this belief is my caveat about the use of absolutist language in the continuum scale. Again, nothing happens *all* the time. See p. 47, Figure 3.1.

The same educational process which inspires and stimulates the oppressor with the thought that he is everything and has accomplished everything worth while, depresses and crushes at the same time the spark of genius in the Negro by making him feel that his race does not amount to much and never will measure up to the standards of other peoples. The Negro thus educated is a hopeless liability of the race.<sup>150</sup>

Frustrated with society and an educational system that reinforces a sense of hopelessness, many young Blacks engage in behaviors that enable them to attain, at least within themselves, a sense of self-worth. Involvement in gang activity may at times be symptomatic of such a quest, yet I have heard and continue to hear the youth of this country, especially Black youth, referred to as scum or trash to be discarded. Actions of those within the criminal justice system to these youths are affirmation of the prevalence of this attitude.

I have shown in this work that approximately one fourth of the juveniles detained in Iowa are African-American making Iowa one of, if not the top state in the locking up of Black youth disproportional to their numbers in the population. What are the causes and more importantly, what is the solution? The causes are multiple, including the phenomenon of stereotyping of African-Americans. Negative images are common material while few positive images of Blacks are provided by the mainstream media. It is most frequently the negative actions by Blacks that make it on the TV news or in the newspapers.

Iowa is not immune to the negative stereotyping that I am referring to in the media. The phenomenon of ‘blame the Black’ that was employed by Susan Smith<sup>151</sup> when she

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<sup>150</sup> Woodson, Carter G., The Mis-education of the Negro. Trenton, NJ: Africa World Press, Inc., 1990, first published by The Associated Publishers, 1933.

<sup>151</sup> Lacayo, Richard, “Stranger in the Shadows.” Time, v.144(20) Nov. 14, 1994. Susan Smith was convicted of the murder of her two young sons whom she had originally

killed her own children or Charles Stuart of Boston when he killed his pregnant wife are symptomatic of a common attitude in America as evidenced by the frequency of its use.<sup>152</sup> It is and was a common tool of persecution of Blacks that reached its peak at the turn of the nineteenth century with the lynchings and burning of thousands of Blacks. Few realize that Iowa was also the site of lynchings of Blacks. The nature of oppression of non-whites is more subtle now than in the past but continues to be a significant factor in the relationships between the races. The criminalization of African-Americans has become a self-fulfilling prophecy in America. Historically and contemporarily, Blacks have been told that they are criminals and treated in such a manner as to make this assumption evident. Many strive to fill this role as frustration becomes the order of the day and they feel it doesn't matter to white society what they do or say. Many Blacks see crime as a means of not only attainment of that aspect of the 'American Dream' coveted by the rest of America—namely, money--but as a form of resistance. It is apparent when one goes into American cities and speaks with young people that many have become infected with this sense of nihilism as described by Cornell West in Race Matters.<sup>153</sup> Disregard for life,

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claimed had been kidnapped by an unknown black assailant that had car-jacked her vehicle. It was later found that she had allowed her car to roll into a lake down a boat ramp with the two children strapped into the back seat, drowning them. Insurance money was the motive provided during Smith's trial by the prosecution. Smith was convicted of murder and is serving a life sentence.

<sup>152</sup> The Wicked Good Guide to Bizarro Boston, <http://www.boston-online.com/bizcrime.html>. On October 23<sup>rd</sup>, 1989, Charles Stuart, found wounded by gunshot on a Boston street late that night, claimed that he and his slain wife (she was 8 months pregnant) were victims of a failed car-jacking by two unknown Black males. The Boston Police initiated a widespread manhunt, primarily in the predominantly Black Roxbury section of the city. It was later discovered that Stuart had shot his wife and himself to collect money on her insurance policy. Stuart committed suicide prior to being charged with the crime.

<sup>153</sup> West, Cornell, Race Matters. New York: Vintage Books, 1994.

theirs and especially others, has led many who have become ‘fodder’ for a racist criminal justice system to perceive going to prison as a rite of passage. This attitude was aptly expressed by George Jackson in 1970 and continues to be relevant today. Stated Jackson:

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. Being born a slave in a captive society and never experiencing any objective basis for expectation had the effect of preparing me for the progressively traumatic misfortunes that lead so many black men to the prison gate. I was prepared for prison. It required only minor psychic adjustments.<sup>154</sup>

I remember when working for the Department of Correctional Services for a short time, that a young white girl in Cedar Rapids was raped while delivering newspapers. The alleged perpetrator was said to be a Black male. Do I feel it made a difference that the alleged perpetrator was described as Black as opposed to white? I distinctly remember an editorial cartoon in the Cedar Rapids Gazette that portrayed the alleged rapist as a black silhouette, ape-like in its appearance. Whenever I may be foolish enough to think some progress has been made, I am reminded by white America that “the more things change, the more they remain the same.”

Negative portrayals in the media of Blacks charged with criminal offenses are also common in this state. One will hear on the news of a crime being committed and the description and/or picture of a Black person is splashed across the screen. One can tell when the alleged offender is white because frequently no mention of race and no picture

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<sup>154</sup> Jackson, George, Soledad Brother: The Prison Letters of George Jackson. New York: Bantam Books, 1970, p. 9.

will be mentioned or shown. By perpetuating stereotypes of Blacks as criminals, it is easy for communities to justify mounting the full force of the criminal justice system against them.

## CHAPTER VI

### CONCLUSION

The disproportionality of the Black prison population is a growing problem in Iowa and in the United States. The numbers of Blacks in prison or on other forms of court-ordered supervision, males and females are increasing at an alarming rate. Since the middle of the 1980's, the rate of imprisonment and placement on some sort of criminal justice supervision for the Black population has increased exponentially.

The criminal justice system as a control mechanism for African-Americans has a long history in America sprouting from the seeds of freedom that proclaimed "All men are created equal"<sup>155</sup> yet denied the recognition of Blacks as human. From this foundation, a system of inequality (social, economic, political and legal) was established and has yet to be eradicated in spite of the recognized advances that we as a society have made. Problems of race relations are most manifest in the administration of criminal justice in America.

In this analysis of the criminal justice system I have stated my belief that the three major components of that system, the police, the courts and corrections are all burdened with pervasive and systematic discrimination. While acknowledging

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<sup>155</sup> The Constitution of the United States of America.

the difficulty in proving this thesis through standardized empirical methods — a difficulty shared by researchers considerably more experienced than myself - I have shown that measurement of discrimination exists in multiple forms. Traditional methods of quantitative measurement fall woefully short when attempting to measure attitudes and beliefs of those that comprise the criminal justice system.

Measurement of police attitudes that lead to widespread abuses of power and brutality towards non-whites are difficult to chart, much less measure. Even more difficult is eliciting admission of those attitudes that lend themselves to discriminatory behaviors from those who are sworn to ‘protect and serve.’ Yet, I have demonstrated that the patterns of discrimination that have existed historically continue to thrive to the present. Racial profiling, in spite of claims to the contrary by law enforcement officials is a widespread, accepted aspect of the enforcement of the law and the targeting of selected populations. From local police departments to federal agencies, accusations of its use and attendant abuse of police discretion are on the rise among African-Americans and other non-whites. The reporting of incidences of police brutality towards non-whites has become an almost daily occurrence in the media.

In the courts, prosecutors frequently abuse their authority, give credence to the misrepresentations of the police or at worst, withhold or fabricate evidence in order to win cases, have become commonplace in our society. The court system takes advantage of the disadvantaged who cannot afford expensive legal representation and routinely denies Blacks, a ‘jury of their peers’ via the

peremptory challenge, contribute to the discrimination pyramid. Built brick by brick upon a foundation of police discrimination, questionable prosecutorial discretion and all-white juries, the judiciary provides the capstone to this uniquely American structure that increasingly entombs Black Americans in perpetuity like the pharaohs of ancient Egypt. The monuments of burial are not, as we know pyramids, but prisons, increasing in number daily. Appropriate to this discussion of the power of American society and its desire for control of the ‘other’ is a comparison to Foucault’s discussion of Bentham’s Panopticon.<sup>156</sup> Like those engulfed in the disciplinary machinations of the Panopticon, non-whites are pushed to the periphery and forced into designated spaces, where they may be observed at will. The visibility built into the structure of the Panopticon is not required in the contemporary version as it is built into the physiology of those the ‘system’ seeks to control. For Blacks their ‘race’ affords the observer in the panoptic tower the constant visibility required to assure compliance with the disciplinary regimen. Within the philosophy of panopticism the African-American is much like the leper, perceived and treated as an outcast in his own community:

Generally speaking, all the authorities exercising individual control function according to a double mode; that of binary division and that of coercive assignment, of differential distribution (who he is; where he must be; how he is to be characterized; how he is to be recognized; how a constant surveillance is to be exercised over him in an individual way, etc.).<sup>157</sup>

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<sup>156</sup> Foucault, Michel, Discipline and Punish: The Birth of the Prison. New York: Vintage Books, 1995, first published in France, 1975.

<sup>157</sup> Ibid., p. 199.

Am I saying that African-Americans are blameless in this situation? No. There are Blacks in Iowa (and the nation) engaged in a wide assortment of criminal activities, as are many whites. I have in this essay discussed some of the bases for criminal involvement but ultimately involvement in crime comes down to personal choice. The reality of social inequality does not justify criminal behavior, it merely aids explanation of said behavior in part. Social inequality also does not explain the disparity in the rates of incarceration of African-Americans in Iowa or the United States. Persistent and prevalent racism however, does. My disagreement with the administration of justice, generally and in Iowa, is that Blacks are frequently targeted by the criminal justice system to the exclusion of many whites that are committing many of the same offenses, simply because of difference. Racial difference. The visibility of Blacks and other non-whites in this majority white society has resulted in heightened scrutiny of non-whites to the clear benefit of whites. The ‘war on drugs’ is just one of many examples in which this inconsistency exists. Consistency in the application of the laws of the land should be our goal as a society. This is what I advocate, not leniency for non-white offenders.

The attitudes found within those that work in the criminal justice system are symptomatic of those found within our society at large. Iowa is a microcosm of the nation and the criminal justice system is a microcosm of general societal attitudes. I am not making a case that those that are sworn to uphold the law are in some way vastly different than the majority populace as a whole. Quite the contrary, I am

asserting that because racism is endemic to American society its pervasive presence within the criminal justice system is to be expected. As Mann (1993), Ransby (1996) and others have pointed out, racism impacts all institutions of social interaction in this country. In Iowa, the majority of the police, lawyers, judges and juries are white, because the majority of its citizens are white. I have shown in this work that lack of diversity within our legal institutions will impact and influence the beliefs and values inherent within those institutions. Unlike the majority of citizens, those that function within the criminal justice system are charged with the responsibility to make decisions that may have direct bearing on one's freedom or even life. Unchecked discretion among officials charged with upholding the law at all levels of the criminal justice system results in continued abuses within that system. Abuses that we as a society will have to pay for at some point in the future. That institutional racism is alive and well in the 'system' is oft disputed yet rarely refuted.

I have made a case for widespread discrimination in the criminal justice system but concede it is only a beginning; more research needs to be done. In Iowa particularly those aspects in the administration of criminal justice need to target and examine the racial impact of our legal policies and practices at every level. Those who attempt to make the argument that criminal justice in Iowa and the rest of the nation is 'color-blind' do a disservice to those of us who know better due to our first-hand experiences in this field, as African-Americans and researchers in this area. Those studies that purport to show that race is not a

factor contain little of the ‘inside’ information of the type provided in this examination. Combined with historical fact and contemporary examples as provided in this piece--the case for pervasive and persistent racism in the criminal justice system is clearly compelling.

Blindness is a factor in the disposition of justice in our present system, but not because (Lady) “Justice is Blind”: it is blindness to the continuing harm done by racist policies and procedures that our society in the form of our legal institutions is so reluctant to abandon.

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