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Inequality of Justice [report] [2]

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It should be mentioned that there is a movement to repeal the drug-related crime statutes in many states. Should this occur, it would be interesting to observe the effects of such change in the law on the arrest and conviction rates of Mexican-Americans. Sensitive and systematic research should follow these developments, especially as they might affect crime statistics for the Mexican-American community.

b. Puerto Ricans. According to the monthly report of ethnic distribution of correctional inmates produced by the New York State Department of Correctional Services at the end of March 1979, 19.8 percent of 20,122 prisoners of both sexes in New York State correctional facilities were Puerto Rican and 19.9 percent of the 19,568 male inmates in the state were Puerto Rican. Since New York State has the largest average Puerto Rican population, the fact that its Hispanic inmate population is comparable with the national average might suggest that Puerto Ricans are not overrepresented in the system.<sup>15</sup>

First, there is and has been a progressive increase in the number of new commitments of Puerto Ricans to state correctional institutions in both absolute and percentage terms since 1971. In addition, the incarceration of Puerto Ricans who live in New York City is different from that of the rest of the state.

Since 1973, the Puerto Rican share of the inmate population has increased by about 5 percent. This is significant when compared with the other main ethnic inmate populations, as Table II-2 reveals. The increase in the percentage of Puerto Ricans in state prisons reflects the increase in the Puerto Rican share of new commitments since 1971 for both male and female populations. The number of all new male commitments to the state correctional institutions increased from 4,527 to 8,111, an increase of 79.1 percent between 1971 and 1977. But the commitments of Puerto Rican males rose from 710 to 1,736, an increase of 144.5 percent in the same period, as shown in Table II-3.

Table II-2

**Ethnicity of All Inmates in New York State  
Correctional Facilities, 1972-1979,  
Over Two-Year Intervals**

| Ethnicity    | 1973   | 1975   | 1977   | 1979 <sup>a</sup> | Change  | Percent |
|--------------|--------|--------|--------|-------------------|---------|---------|
|              |        |        |        |                   | 1973-79 | Change  |
| White        | 3,663  | 4,291  | 4,635  | 5,220             | 1,557   | + 42.5  |
| Black        | 7,766  | 9,100  | 10,285 | 10,784            | 3,018   | + 38.8  |
| Puerto Rican | 1,945  | 2,616  | 3,625  | 3,991             | 2,046   | +105.2  |
| Other        | 61     | 67     | 101    | 127               | 66      | +108.2  |
| TOTALS       | 13,435 | 16,074 | 18,646 | 20,122            | 6,687   | + 49.8  |

<sup>a</sup> As of March 30, 1979

Source: Adapted from State of New York Department of Correctional Services, Annual Statistical Reports, 1975 and State of New York Department of Correctional Services, Monthly Reports of Ethnic Distributions of Inmates Under Custody 1977 and March 1979.

Table II-3

Ethnicity of New Male Commitments to Facilities of  
New York State Department of Correctional Services,  
1971-1977

| Ethnicity    | 1971  | 1972  | 1972  | 1974  | 1975  | 1976               | 1977  | 1971-77 | Percent Change |
|--------------|-------|-------|-------|-------|-------|--------------------|-------|---------|----------------|
| White        | 1,495 | 1,450 | 1,660 | 1,716 | 1,997 | 2,092              | 2,253 | 758     | 50.7           |
| Black        | 2,309 | 3,623 | 3,587 | 3,587 | 3,927 | 4,135              | 4,078 | 1,769   | 76.6           |
| Puerto Rican | 710   | 813   | 1,042 | 1,164 | 1,253 | 1,497              | 1,736 | 1,026   | 144.5          |
| Other        | 13    | 15    | 32    | 26    | 34    | 43                 | 44    | 31      | 238.5          |
| Totals       | 4,527 | 5,534 | 6,357 | 6,493 | 7,211 | 7,767 <sup>a</sup> | 8,111 | 3,584   | 79.1           |

<sup>a</sup> Omits ten cases for which no data are available. Actual number is 7,777.

Source: Adapted from:

State of New York Department of Correctional Services,  
Characteristics of New Commitments, 1976, Vol XI No. 1

State of New York Department of Correctional Services,  
Characteristics of New Commitments, 1977, Vol XII

The most common offense, in both 1975 and 1976, for which males of all ethnic origins were incarcerated was robbery. While this offense is more prevalent among black inmates than others, it did account for the largest number of confinements in each of the ethnic groups. The contrast between the percentages for commitments for robbery and burglary are important. While the black and Puerto Rican populations have large percentages of commitments for robbery, the percentages in those groups that committed burglaries were substantially smaller than the percentages for the white population committing this offense for either 1975 or 1976.

However, the distribution for drug-related offenses is more revealing. In both years, the Puerto Ricans had the largest percentage of new commitments for drug offenses, while the black populations had the smallest percentage of offenders in this category. In addition, while the percentage of drug offense among new commitments increased for both white and Puerto Rican males for 1975 and 1976, the percentage for blacks remained unchanged, as shown in Table II-4.

Given such disproportionate representation in the correctional system as related to one major category, drug-

Table II-4

Percentage of Males Admitted to  
New York State Correctional Facilities  
in 1975 and 1976  
by Ethnicity and Offense

| Offense                     | White |      | Black |      | Puerto Rican |      |
|-----------------------------|-------|------|-------|------|--------------|------|
|                             | 1975  | 1976 | 1975  | 1976 | 1975         | 1976 |
| Murder/Homicide             | 9.2   | 10.0 | 11.1  | 13.3 | 18.0         | 17.3 |
| Robbery                     | 24.3  | 24.0 | 46.4  | 44.5 | 36.4         | 31.6 |
| Burglary                    | 22.7  | 20.2 | 9.2   | 9.5  | 10.3         | 9.8  |
| Felonious Assault           | 5.6   | 4.4  | 5.1   | 5.0  | 6.3          | 4.1  |
| Grand Larceny<br>(not auto) | 4.8   | 4.0  | 2.3   | 2.7  | 1.3          | .9   |
| Rape                        | 2.3   | 2.7  | 3.5   | 3.4  | 1.8          | 2.6  |
| Sex Offenses                | 2.9   | 3.1  | 1.2   | 1.0  | 1.4          | .7   |
| Drug Offenses               | 13.9  | 17.5 | 10.4  | 10.4 | 16.1         | 25.3 |
| Dangerous Weapons           | 3.7   | 3.1  | 6.1   | 5.2  | 5.8          | 5.2  |
| Other Felonies              | 10.0  | 10.6 | 4.2   | 4.6  | 2.0          | 2.2  |
| Totals (%)                  | 99.4  | 99.4 | 99.5  | 99.6 | 99.6         | 99.7 |
| Totals (N)                  | 1997  | 2092 | 3927  | 4135 | 1253         | 1497 |

Note: Columns do not add up to 100 % because of rounding to one decimal place.

Source: Adapted from:

State of New York Department of Correctional  
Services Characteristics of New Commitments, 1975,  
and Charact New Commitments, 1976, Vol. XI, No. 1

1975p<.001

1976p<.001

related offense, it is interesting to speculate on the correlation between drug-related crimes and the representation of Puerto Ricans in the correctional system. Further research might go beyond available statistical data and provide some insights into this phenomenon.

c. Cuban-Americans. Present data-reporting systems do not allow for the presentation of accurate statistics regarding the presence of Cubans in the correctional system. Information regarding Cuban criminal activity has been culled from newspaper reports and from the Cuban National Planning Council in the Miami-Dade County area.

The growth of Dade County's Cuban population with the concurrent flight of thousands of non-Cuban whites from the Dade County area has been a source of concern to local politicians and local law enforcement officials. The influx of tens of thousands of Cuban refugees into Miami between April and June of 1980 exacerbated these concerns. Local newspapers reported that 18,000 to 20,000 hard-core criminals were among the new refugees. However, the latest reports have reduced these numbers by 90 percent, to about 1,800 to 2,000.<sup>19</sup>

At the present time, more than 1,000 Cubans from Mariel (a major port city) are being held in various detention centers in the United States. The Cuban community is concerned about the early release of immigrants who were arrested in Cuba for offenses such as stealing food or trying to leave the country illegally. Also, recently, several Mariel Cubans already settled in Miami have been mistakenly arrested and delivered to INS officials. Such arrests occurred as these persons were waiting for a bus dressed in work clothes or upon their being stopped on minor traffic violations.

The absence of comprehensive records makes it difficult to discern any patterns of criminal behavior regarding this population. Further research should pay attention to the categories of arrests for this subgroup, especially given the politically sensitive nature of the Cuban refugee issue in Miami-Dade County.

The incarceration of Hispanic-Americans is specific to certain geographic areas, rather than to the nation as a whole. In California and much of the Southwest, the Hispanic-American inmate population is almost totally Mexican-American, while in the Northeastern states, it is almost entirely Puerto Rican. In Florida, it is almost entirely Cuban. Still, given the issues related to definition of the population, further research might reveal errors which are significant. As mentioned in the introductory section of this chapter, the migration of Central and South Americans to

the United States has increased considerably; little attention has been given to the presence of any of these various national groups. As indicated previously, there are also problems in getting local and state law enforcement officials to report accurately the participation of the major subgroups of Hispanics in the criminal justice system. Thus, it may be impossible to expect reporting of smaller subgroups such as Dominicans and Brazilians.

## 2. Offender Characteristics

All major studies of criminal activity have provided a profile of the typical inmate in correctional institutions as most likely to be minority, male, young, unemployed at the time of arrest and undereducated. While this profile may be applicable to blacks, it is problematic for Hispanic-Americans. Presentations before the Council and other conferences and symposia related to crime in Hispanic communities have all attested to the absence of accurate data on the participation of Hispanics in the criminal justice system. There are few statistically accurate data to suggest the typical profile of the Hispanic offender.

In a presentation before the National Hispanic Conference on Law Enforcement and Criminal Justice, a judge of the district court in El Paso, Texas, stated:

There is no accurate statistical information available on the characteristics of youth that are processed through the juvenile justice system. A major obstacle is the fact that there are no accurate population figures available on youth according to racial classification nation-wide. As an example, in our community of El Paso County, persons who are arrested are only reported by age, sex, and race--race being divided into two groups, either white or black.<sup>20</sup>

However, another study which concentrated on Hispanics, by using data available from New York State, reported an inmate profile that was not consistent with the national profile. When educational attainment and ethnicity were correlated, the Puerto Ricans in the group had characteristics considerably different from those of the other inmate groupings. When compared to white and black offenders, Puerto Rican offenders were less likely to have completed high school. Indeed, of the group, almost half of the Puerto Ricans had not gone beyond elementary school, in comparison to less than 20 percent of the white and a little more than 20 percent of the black offender grouping.<sup>21</sup> Thus, in this one major study, there was considerable evidence to disprove the widely-held view that prisons are made up of those who are primarily

uneducated or undereducated.<sup>22</sup>

The same data did reveal, however, that there was a uniform concentration in the unskilled occupations for all of the new inmates. The differences of occupations between the three ethnic groups were not significant, as tends to be the case for occupational groupings by ethnicity for society as a whole. Table II-5 gives these percentages.

Table II-5  
Percentage of New Male Commitments  
to New York State Correctional Facilities in 1976  
by Ethnicity and Education

| Ethnicity                 | Number | Percent | Elementary School | High School Non-Graduate | High School Graduate | College | Other |
|---------------------------|--------|---------|-------------------|--------------------------|----------------------|---------|-------|
| White                     | 2092   | 99.7    | 22.1              | 37.1                     | 26.1                 | 11.9    | 2.5   |
| Black                     | 4135   | 99.8    | 19.2              | 51.3                     | 19.1                 | 7.5     | 2.7   |
| Puerto Rican <sup>a</sup> | 1540   | 99.9    | 39.9              | 40.6                     | 11.0                 | 3.6     | 4.8   |
| Totals <sup>b</sup>       | 7767   | 99.8    | 24.1              | 45.4                     | 19.3                 | 7.9     | 3.1   |

<sup>a</sup> Includes 43 "other" ethnic cases which were computed with Puerto Ricans in official reports.

<sup>b</sup> The total N omits 10 cases for which no data are provided by the state. The actual number of new commitments was 7,777.

Note: Rows may not add up to 100 percent owing to rounding to one decimal place.

Source: Adapted from:

State of New York Department of Correctional Services,  
Characteristics of New Commitments, 1976, Vol XI No. 1

Although the representation of Hispanics in the offender/inmate population may be difficult to discern in some states, if the factor of race alone is accounted for, the representation of minorities is still disproportionate to their participation in the general population. The inaccurate reporting or nonreporting of the ethnicity of the offender creates a multitude of problems for advocates of the various ethnic and racial communities and enables law enforcement agencies to use statistical data for their own political purposes. For example, some studies have concluded that the differences between treatment received by minority and majority youth are not substantial. However, if Spanish heritage youth are designated as "white," this may be the case; if designated as minority, the picture changes radically. This was clearly pointed out in the case of El Paso County, Texas, where such an allegation was made. The Hispanic respondent noted:

. . . the author overlooked the fact that, when combined, the different ethnic classifications of the study (Spanish-heritage, black, and other) accounted for 75% of the juveniles detailed versus 19% of whites detained (underline provided by respondent).<sup>23</sup>

### 3. The Impact of Crime on Hispanics

A report of Bureau of Justice Statistics, published in June 1980, presented a disturbing picture of the impact of crime on Hispanics in the United States.<sup>24</sup> This report states that Hispanics generally have a higher victimization rate than non-Hispanics, despite the fact that reporting rates for both Hispanics and nonHispanics are about the same and despite the fact that crime rates within the Hispanic communities across the country have not appreciably changed in recent years. While the distribution of crime within the non-Hispanic population is not unlike the distribution within the non-Hispanic population, the target of crime within the Hispanic population is considerably different from that within the non-Hispanic population.

In terms of types of crimes, Hispanic households were more likely than non-Hispanic households to be the victims of residential burglary, larceny and motor vehicle theft. For personal crimes, there were no significant differences between rates for assault on Hispanics and non-Hispanics, but individuals of Hispanic origin had a higher rate of robberies than did non-Hispanics. These data are displayed in Table II-6. In addition, non-Hispanics were more likely to be victims of personal larceny without contact, while Hispanics seemed to be the more likely victims of pocket picking and purse snatching.

Table II-6

**Personal and Household Crimes:  
Victimization and Police Reporting Rates,  
1973-78 Average**

| Sector and<br>Type of Crime         | Victimization Rates |              | Police-Reporting Rates <sup>a</sup> |              |
|-------------------------------------|---------------------|--------------|-------------------------------------|--------------|
|                                     | Hispanic            | Non-Hispanic | Hispanic                            | Non-Hispanic |
| <b>Personal sector<sup>b</sup></b>  |                     |              |                                     |              |
| Crimes of violence                  | 37.1                | 32.9         | 46.3                                | 46.5         |
| Rape                                | 1.0                 | 0.9          | 70.3                                | 52.2         |
| Robbery                             | *8.7                | 6.4          | 46.1                                | 53.5         |
| Robbery with injury                 | **3.1               | 2.1          | 54.7                                | 64.8         |
| Robbery without injury              | **5.6               | 4.3          | 41.4                                | 48.0         |
| Assault                             | 27.4                | 25.6         | 45.5                                | 44.5         |
| Aggravated assault                  | 11.8                | 9.8          | 56.4                                | 53.7         |
| Simple assault                      | 15.6                | 15.7         | 37.3                                | 38.8         |
| Crimes of Theft                     | *86.6               | 95.9         | **21.6                              | 25.0         |
| Personal larceny                    |                     |              |                                     |              |
| with contact                        | 4.1                 | 2.9          | 25.8                                | 35.1         |
| Purse snatching                     | 1.6                 | 0.9          | 34.1                                | 44.8         |
| Pocket picking                      | 2.5                 | 2.0          | 20.6                                | 30.7         |
| Personal larceny                    |                     |              |                                     |              |
| without contact                     | *82.5               | 93.0         | 21.4                                | 24.7         |
| <b>Household sector<sup>c</sup></b> |                     |              |                                     |              |
| Burglary                            | *100.9              | 89.5         | 46.2                                | 48.0         |
| Forcible entry                      | *39.7               | 29.6         | 69.0                                | 71.4         |
| Unlawful entry                      |                     |              |                                     |              |
| without force                       | 35.5                | 39.9         | 34.7                                | 38.1         |
| Attempted forcible entry            | **25.7              | 20.0         | 26.9                                | 32.9         |
| Household larceny                   | *140.5              | 119.9        | *18.7                               | 26.0         |
| Less than \$50                      | **83.8              | 72.3         | *8.6                                | 15.0         |
| \$50 or more                        | 41.6                | 35.0         | *39.2                               | 50.1         |
| Amount not available                | 6.1                 | 4.3          | 17.5                                | 19.6         |
| Attempted larceny                   | 9.0                 | 8.3          | 19.3                                | 23.9         |
| Motor vehicle theft                 | *27.6               | 17.6         | 68.6                                | 68.4         |
| Completed theft                     | *17.0               | 11.2         | **94.3                              | 88.2         |
| Attempted theft                     | *10.7               | 6.5          | 27.9                                | 34.1         |

<sup>a</sup> Percent of victimizations reported to the police.

<sup>b</sup> Victimization rates per 1,000 persons age 12 and over.

<sup>c</sup> Victimization rates per 1,000 households.

Note: Detail may not add to total shown because of rounding.

\* Significantly different from the rate for non-Hispanics at the 95-percent confidence level.

\*\* Significantly different from the rate for non-Hispanics at the 90-percent confidence level.

Violent crimes were more often committed against Hispanics than non-Hispanics. In approximately two-fifths of all crimes involving Hispanics, one or more guns, knives or other weapons were wielded. There was some indication in the report that weapons were more likely to be present during a personal robbery than an assault, and when the offender was a stranger rather than a non-stranger. These data are given in Table II-7.

The Hispanic victim was more likely to be a male than a female. This differs significantly for Hispanics and non-Hispanics. Furthermore, young persons between the ages of 12 and 19, irrespective of sex, had a much higher victimization rate than the elderly. And, in terms of high violent crime rates, they were more likely to exist for the poor, the unemployed and the divorced or separated. In terms of this latter set (the poor, the unemployed, the divorced or separated), this tended to be true for both the Hispanic and non-Hispanic populations.

The Bureau of Justice Statistics' report is disturbing. Violent crime in the Hispanic community hits hardest at those on whom the community has the greatest reliance: males, whose strength and income is the foundation of the community and Hispanic family, and the young, who represent an investment in the future of the Hispanic community. That Hispanic households are more prone to burglary, larceny and motor vehicle theft is equally disturbing, given the low-income status of most Hispanic households. The loss, by low-income Hispanics, of their meager possessions, purchased with limited earnings, leads to frustration, anger and disillusionment. To those for whom an automobile is essential to getting to work, the loss of one's car can be devastating, especially in communities in which public transportation is inaccessible, limited and/or expensive.

The BJS report further states that the reporting rates for Hispanic and non-Hispanic households were roughly equivalent. This must be looked at with caution, since, in testimony before the Council, several witnesses reported that many Hispanics distrusted the local law enforcement officials,<sup>28</sup> that Hispanics have reported that local law enforcement officials are slow to respond to reports by Hispanics that a crime is in progress,<sup>29</sup> and that there is a history of distrust between Hispanic communities and local law enforcement.<sup>30</sup>

Table II-7

Personal Crimes of Violence:  
Percent of Incidents in Which Offenders Used Weapons,  
by Type of Crime and Victim-offender Relationship,  
1973-78 Average

| Type of Crime          | Hispanic      |                     |                         | Non-Hispanic  |                     |                         |
|------------------------|---------------|---------------------|-------------------------|---------------|---------------------|-------------------------|
|                        | All Incidents | Involving Strangers | Involving Non-strangers | All Incidents | Involving Strangers | Involving Non-strangers |
| Crimes of violence     | 42.0          | 46.3                | 33.0                    | 36.4          | 40.0                | 30.3                    |
| Rape                   | 28.6          | 35.3                | **9.1                   | 26.2          | 30.0                | 16.8                    |
| Robbery                | 52.1          | 54.3                | 34.4                    | 47.5          | 50.7                | 33.8                    |
| Robbery with injury    | 55.7          | 58.6                | **36.3                  | 45.4          | 46.9                | 39.7                    |
| Robbery without injury | 50.1          | 51.9                | 33.5                    | 48.6          | 52.6                | 30.4                    |
| Assault*               | 39.1          | 96.8                | 95.2                    | 34.0          | 36.6                | 30.3                    |
| Aggravated assault     | 96.2          | 96.8                | 95.2                    | 94.2          | 95.4                | 92.1                    |

\* Includes data on simple assault, which by definition does not involve the use of a weapon.

\*\* Estimate, based on about 10 or fewer sample cases, is statistically unreliable.

D. **Hispanics, Law Enforcement Agencies and the Criminal Justice System**

1. **Hispanics and Local Law Enforcement Agencies**

Injustices on the part of majority Americans against people of Mexican descent began over a century ago. It was first demonstrated in the doctrine of "manifest destiny," a vehicle for denying Mexican citizens who lived in the Texas territory their civil rights. More recently, it was enunciated by King Fisher, an infamous Texas gunman, who said, very graphically, that he had "thirty-seven (notches on his gun), not counting Mexicans."<sup>31</sup>

At Ludlow, Colorado, in 1914, striking miners were assaulted by militiamen and company guards who shot at the miners' tents, setting them on fire. Of the 18 victims of the Ludlow massacre, half were Mexican-Americans. The next year three Mexican unions struck mines in Arizona over the issue of a "Mexican rate" and outrage over a foreman who sold, and demanded money to hold, jobs. The company sealed the mine, and eventually hundreds of miners were arrested before the National Guard was called in. Along the border, violence against Mexicans was so common that U.S. Secretary of State Hughes, in 1922, warned the governor of Texas that federal action would be taken to protect Mexicans if killings of them did not end.<sup>32</sup>

In the late twenties, the first strike of Mexican farmworkers, who had organized into the Confederation dos Uniones Mexicanos, was broken up by wholesale arrests. These arrests were followed by deportation of everyone closely connected to the union. There were several major farmworker strikes by Hispanics in the thirties, in which the police were used as strikebreakers. In 1936, a strike by Mexican farmworkers in Southern California was met by a police force of 1,500 men.

[Strikers were] pursued by the police to their homes and, in a number of cases, tear-gas bombs were tossed into shacks where children were playing.<sup>33</sup>

In the zoot suit riots in Los Angeles in 1943, hundreds of sailors formed a convoy of taxi cabs and launched an attack on Mexicans. A prominent national magazine described the attack this way: "The LAPD practice was to accompany the caravans in police cars, watch the beatings and jail the victims."<sup>34</sup> In March 1948, Los Angeles police officer Keyes killed Augustin Salcido, age 17. Keyes "had put bullets into Mexicans quite a few times . . . and never any fuss made about it . . . ." In private, Keyes had boasted of having 12 notches on his gun. Three bullets went through

Salcido's head, one leaving powder burns. Keyes's defense was that Salcido was escaping; Keyes was acquitted.<sup>35</sup> In the early sixties, two Puerto Ricans were shot and killed by police at a location far from where they were arrested and placed in a police car. The officers claimed that one victim pulled his gun at the second location. Both were acquitted. This incident precipitated one of the first instances in which Hispanics demonstrated outside a police station. In 1967, the Texas Advisory Committee to the Commission on Civil Rights was told in its hearings, "There's a lot to the saying that you hear in south Texas that all of the Rangers have Mexican blood. They have it on their boots . . . ." <sup>36</sup>

Yet these incidents and many more did not make Hispanic problems with law enforcement prominent to the Anglo public. In 1968, according to a Civil Rights Commission report: "There has been no concerted legal attack on the civil rights problems of Mexican-Americans. Very few suits have been brought against the police in cases of alleged brutality . . . only one such involving Mexican-Americans has gone to court . . . ." <sup>37</sup> Mexican-Americans who felt they were discriminated against typically lacked the money to prosecute a case, and many were too afraid to protest--even in the courts.

But in the last few years, the issue of the treatment of Hispanics by the criminal justice system has received more attention by the media and is becoming a concern of government and politicians. These changes are due in part to the growth in the Hispanic population from five million in 1960 to three or four times that number today, and to the attention this growth is now receiving from society. It is also due, in part, to the impact of the Civil Rights Movement. The 1964 Civil Rights Act, various affirmative action programs, legal redress and suits brought by Hispanics against law enforcement institutions under federal civil rights statutes are having an impact on government and society. Yet, despite the fact that Hispanic problems with the law enforcement system are becoming known and some first few steps are being taken, the situation of Hispanic treatment under the law remains critical.

The police force is the most visible government agency and is the first criminal justice contact point between Hispanics and the law enforcement system. More than any other agency, the police draw the ire of Hispanic communities. With few exceptions, police do not speak Spanish and know little about Hispanic culture. In the early seventies, an attorney for the Mexican American Legal Defense and Education Fund (MALDEF), testifying before a California legislative committee, described the Los Angeles police working in the Chicano communities:

Anglo police officers, who come into East Los Angeles . . . view it as an armed camp where the people look . . . speak . . . and eat different . . . . [It] is a police force which is mainly Anglo, insensitive, fearful, and heavily armed with blackjacks, night sticks, mace, guns, and helicopters, who are set free to deal with a minority community they do not understand.<sup>38</sup>

The seriousness of this problem was emphasized by Gilbert Porpa, director of the Community Relations Service of the U.S. Justice Department:

I believe that the anger, frustration, and distrust existing between police and minorities are vital contributors to this undeclared war . . . . Minorities, especially minority youth, generally see the police as representing everything that is socially and institutionally denied them. They are the most visible agents operating in their communities to maintain the status quo.<sup>39</sup>

A disturbing problem in the Hispanic communities is the perception that the police treat them without dignity, respect and compassion. Though not so well publicized as physical brutality by the police, "psychological brutality on the part of many police officers" was viewed in a 1968 report prepared for the Civil Rights Commission as "more subtle, but undoubtedly more widespread."<sup>40</sup> Numerous Hispanics experience discourtesy, harassment, threats and violence at the hands of the police. Where police departments are most "professional," it is often disturbing to Hispanics when they are treated by an Anglo agency, especially the police, in a cool, crisp and impersonal way. As a result, community and control agency values clash. Hispanics perceive the criminal justice system as being devoid of humanistic concern for their values.

"Minority communities are patrolled while the communities of the majority are protected," said Robert Lamb, Jr., director of the Seattle Office of the Community Relations Service.<sup>41</sup> In Hispanic communities, police have a high presence, shown in police-initiated actions such as stopping, questioning, interrogating and searching suspects. Armando Morales found that, even though there was an Anglo area in Los Angeles with a higher crime rate than a similar Mexican-American section, there were far more police in the barrio.<sup>42</sup> Similar patterns of assigning more police to Chicano areas have been noted by the Community Relations Service and other agencies.

Identical problems receive different police responses. In an East Los Angeles neighborhood that is heavily Chicano, Morales found an alcoholism rate identical to that of a wealthy Los Angeles West Valley area which is almost totally Anglo and of the same size numerically. However, the police made 800 drunk and drunk-driving arrests in the Chicano area and only 125 in the Anglo area.<sup>43</sup> Judge Ben Roybal, of Albuquerque's Municipal Court, conducted a survey of traffic citations given in the overwhelmingly Anglo northeast section of Albuquerque, since he suspected Chicanos were being singled out there. In 1977, of 517 citations given, only 20 were issued to Anglos; 95 percent were issued to Chicanos.<sup>44</sup>

When it comes to responding to calls for assistance, the Hispanic community perceives the police as being inadequate. Gilbert Pompa notes that Hispanics and other minorities complain that police service is not as fast, fair or effective in their parts of town as in white neighborhoods.

These perceptions have led to distrust of local law enforcement agencies, even when law enforcement assistance is needed. A study in Brooklyn, New York, in 1975, notes that Hispanics infrequently reported crime to the police:

Since most Hispanics in that borough reside in low-income neighborhoods with high crime rates, Hispanics would also be expected to make up an equally high proportion of the complainants in Brooklyn . . . . This fact . . . expresses the alienation . . . between the Hispanic community and the criminal justice system.<sup>45</sup>

Minority members who do not trust the police are faced with a dilemma: they are fearful victims of criminals, but are also hesitant to call police for assistance because of distrust and fear. Understandably, according to Pompa, the police generally lack confidence that minorities will voluntarily come forward and assist in the detection of crime and the prosecution of criminals. They tend to identify minorities and crime as "part and parcel."

Throughout the Mexican-American and Puerto Rican mainland communities, it is common to hear people say, "When I was a kid, whenever I saw a cop, I took off in the opposite direction." So, it is not surprising that, among Puerto Ricans surveyed in New York, 55 percent rated police treatment as "bad" or "very bad" and only 17 percent of the sample rated it as "good" or "excellent."<sup>46</sup>

The history of Mexican-Americans and local law enforcement agency relations has been a sad one. Mexicans have come

to view local law enforcement agencies and their personnel as instruments of oppression and suppression of their legal and normal aspirations. However, of all the concerns which Mexican-Americans and other Hispanics have regarding local law enforcement agencies and their interactions with their respective communities, none is more volatile than the issue of the use of "deadly force" by police.

2. The Use of "Deadly Force" by Local Law Enforcement Agencies Against Hispanic Communities

Police use of excessive force looms on the horizon as one of the most serious and inflammatory community relations problems facing our nation. No other single issue provokes both majority and minority resentment, or has more potential for spurring community conflict, than this one . . . . Minorities still see police as an alien occupation force. Each group still harbors a measure of fear that it may be the victim of physical violence inflicted by the other.<sup>47</sup>

Nothing in Hispanic communities arouses more anger or precipitates protest demonstrations more than when police unjustifiably kill an innocent citizen. Police use of "deadly force" has been the dominant concern of numerous Hispanic communities for a long time, and there have been repeated angry local protests over killings of farmworkers, striking factory workers, undocumented workers and local citizens by local law enforcement agencies. Outside of Hispanic communities these protests were not considered seriously or were considered to be isolated cases, until recently.\*

By the end of the 1970s the issue of police killings of Hispanics could no longer be neglected by the media and government. Much of the credit for forcing the issue on the public consciousness belongs to the Mexican-American Legal Defense and Education Fund (MALDEF). With financial support provided by the Carnegie Foundation, MALDEF gathered information on over 100 instances in which Hispanics were brutalized and focused on 56 cases, which they documented thoroughly. The list includes 32 people killed, 13 of whom were in police custody. Of those victims who died in jail, none had committed a serious crime. Often the brutality was

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\* In the early seventies, Armando Morales wrote Ando Sangrando: I Am Bleeding, the best case study of extreme police violence in one city--Los Angeles. Morales took the book to seventeen publishers before it was accepted. To this day it is unnoticed and uncited by virtually every non-Hispanic writer on police violence.

chilling. One victim had 92 wounds over this body. Police at first claimed he committed suicide; they later said the death was accidental. Another victim was beaten to death by a sheriff wielding a pool cue. Another, beaten with black-jacks while being arrested, was found dead after having been kicked and beaten in his cell. Fifteen of those killed had committed no crime at all.<sup>48</sup>

In Los Angeles, a Mexican-American went to the aid of a man being beaten by two derelicts, who turned out to be undercover policemen; they shot the Good Samaritan without identifying themselves. In another case in National City, California, an officer enroute to investigate a purse-snatching saw a Hispanic one and a quarter miles away from the crime scene and shot him dead because he ran away. The victim had reason to run--the officer had previously threatened him; however, he was not the person who had taken the purse.

Jose Campos Torres was so brutally beaten by Houston police while handcuffed that a desk sergeant refused to book him into jail; instead, he ordered the arresting officers to take him to a hospital for medical treatment. The officers took him to a bayou with water 14 to 16 feet deep and pushed him in. Torres drowned.

MALDEF's research concentrated on the Southwest--all but 5 of the 56 cases occurred in five southwestern states--and their data substantiate that extreme police violence against Hispanics is widespread in that region. The MALDEF data indicated the problems with the police were organizational and systemic. Certain policemen were involved again and again in brutality cases. In Philadelphia, MALDEF charged that officer Gerald Salerno had a notorious reputation for violence against the Hispanic community. He was party to the brutal beating of Edgard Ortiz in June 1977 and a month later killed Jose Reyes. In Albuquerque, officer James Babich was involved in three cases of alleged brutality over a six-month period; all involved beating Hispanics with a heavy flashlight. Only the last beating killed someone.\* Christopher Dean, the policeman who killed Jose Sinohui in South Tucson in July 1977 had previously brutally beaten a private citizen in a personal matter.

Of the 56 cases MALDEF investigated, policemen were convicted in only six of the homicide cases by state juries and in only two cases by federal juries. Some sentences are

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\* Two years after the MALDEF report appeared in Agenda (Sept./Oct. 1978), former police officer James Babich ran for Sheriff of Los Alamos, New Mexico. He was, however, defeated.

considered "outrageously lenient."<sup>49</sup> The policeman who killed Santos Rodriguez in Dallas was paroled in ten months; the three convicted in drowning Jose Campos Torres in Houston were sentenced to a year and a day.

The number of excessive force complaints received by the Justice Department's Community Relations Service doubled from 185 in 1974 to 382 in 1978, remained steady in 1979 and then increased another 40 percent the first half of 1980. Similar reports were addressed a decade previously in the U.S. Commission on Civil Rights' 1970 report on Mexican-Americans in the Southwest. A review of the Department of Justice files covering January 1965 through March 1969 showed 256 complaints of police abuse, mostly of a serious nature, made by Spanish-surname persons in the five southwestern states, "over half from Texas." In addition, the American Civil Liberties Union of Southern California had received "174 complaints of serious police brutality against Mexican-Americans" between 1967 and 1969.<sup>50</sup>

The MALDEF data show that many individual policemen have a low regard for the lives of Hispanics.\* Yet the police are considered as "expert Witnesses" whether or not they tell the truth, and are always called on to give testimony in cases brought against their colleagues in the department. Despite this knowledge and, often, despite testimony by their colleagues about their negative behavior, the outcome of such cases is usually the same: the policeman is acquitted.

District attorneys are typically loathe to bring a charge against any policeman because the vast majority of their prosecutions require police cooperation. The internal review procedures of most police departments are flawed because they ask the police to police themselves. Other forms of organizational control are equally flawed. There is a mayoral advisory board in Albuquerque, a civilian review board in Denver and a civilian review board in Chicago appointed by the police chief. The Chicago review board, it should be added, has no funds with which to operate. Still, in instances where complaints were brought against the police in these cities, the results were the same: no action taken against the officer charged. There was one exception; in Denver, in 1979, three of the 92 complaints about police

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\* In a recent tape-recorded interview played before a coroner's inquest in the shooting deaths of Jual Louis Garcia and Jeff Cordova, August 14, 1980, Officer Glen Horner jokingly admitted to fellow officers, "When I get cleared, they're gonna bug me until I put two notches on my gun." Longmont, Colorado, Times-Call, September 11, 1980.

brutality were sustained by the police department's review panel.

When a case of police brutality be tried by a jury, the police officer is unlikely to be convicted.

Even in the few instances when an indictment results, generally white juries will acquit a white police officer who kills a Hispanic or a Black.<sup>51</sup>

If the judge sentences the officer, the term is usually low or probated. Hispanics cannot help but compare the conviction rate and level of punishment of police officers with the rate and punishment of Hispanics. As Pompa has observed:

It is fair to say that Hispanics feel that, compared to their Anglo counterpart, if detained by a law enforcement officer, they stand a greater chance of being arrested. If arrested, they stand a greater chance of being prosecuted. If prosecuted, they stand a greater chance of being convicted. If convicted, they stand a greater chance of receiving a disproportionately longer sentence. If sentenced, they stand a greater chance of being denied parole.<sup>52</sup>

Since MALDEF and numerous others have pursued the issue of excessive police violence, there have been changes. Police administrators in New York City in the early seventies<sup>53</sup>, and Los Angeles in 1977<sup>54</sup> tightened their regulations regarding "justified shootings," and the number of shots fired when suspects had no weapons declined substantially (though several police killings, which have angered Hispanic populations, have occurred in both cities since then). Twenty-four states, though, still permit deadly force against any person suspected of having committed a felony.

Though Hispanics welcome any changes that will reduce the number of shootings of unarmed felons, the consensus is that the problem of police use of excessive and deadly force persists. Almost all police departments are perceived as failing to screen out officers with prior histories of abuse of citizens and as being supportive of offending officers. This reinforces feelings that law enforcement agencies do not respect Hispanics and that America still maintains a double standard of justice.

### 3. Hispanics in the Law Enforcement and Criminal Justice Systems

Increasingly, there is a consensus developing that cultural considerations ought to play a role in the criminal justice system. However, the definition of that role (or roles) is yet to be outlined. Most of the attention surrounding minorities in the law enforcement and criminal justice systems has come directly from the need to deal with a crisis: pressure to be responsive to the "equal employment opportunity" legislation and/or affirmative action decrees, or the need to have officers who can speak the language of an increasingly non-English-speaking local population. But, as one authority has pointed out:

. . . . there are few, if any, attempts to develop a cohesive rationale for sub-cultural actualities of the introduction of Hispanic officers and treatment personnel into the criminal justice system.<sup>55</sup>

What are the pressures placed on Hispanics who participate in the law enforcement and criminal justice systems, not as offenders, but as law enforcers and jurists? How do they deal with these pressures? How are their behaviors perceived and interpreted by their peers in the professions and by the Hispanic communities, for whom they are held up as role models?

The laws of the United States are legislated, interpreted and administered by an almost exclusively Anglo government. The result is that legislation which is often unfavorable to the best interests of Hispanics is passed, as in the case of immigration laws. Laws are administered unfairly and often in a discriminatory manner. As noted, prosecution and incarceration are disproportionately high for the Hispanic population involved.

Today, there is no Hispanic U.S. States Senator. There are only five Hispanics out of 437 U.S. congresspersons. No member of the House Judiciary Committee or the House Subcommittee on Crime--neither congressperson nor staff--is Hispanic. There is also underrepresentation of Hispanics in almost every state and city legislature.

There are too few Hispanic lawyers in the United States. Currently, there are more than 600,000 lawyers in practice.<sup>56</sup> Though the Hispanic population in New York City exceeds 1.5 million, for example, there are only 400 Hispanics in legal practice<sup>57</sup>. And the situation does not appear to be improving. According to the American Bar Associa-

tion, for 1978-1979, of 122,801 students attending 169 accredited law schools, 1,558 were Mexican-American, and 714 were other Hispanic-Americans.<sup>58</sup>

There are too few Hispanics in the judiciary. At the federal level, it was not until October 1979 that the first Puerto Rican, Jose Cabranes, was named to a federal judgeship on the U.S. mainland.<sup>59</sup> According to Benjamin Aranda, III, in testimony before the Council:

In San Diego . . . there is no Mexican-American judge; in fact, there is no Mexican-American federal judge in the entire state of California . . . .<sup>60</sup>

In Texas, in 1978, Mexican-Americans represented 19 percent of the state's population, but comprised only 2.4 percent of appellate court judges, 5.3 percent of the district judges, 3.5 percent of the county judges, and 9.3 percent of the justices of the peace.<sup>61</sup>

In the prosecuting attorney category, the figures are equally as grim. At the federal level, in the U.S. Department of Justice, in 1979, only 1.6 percent of the 3,920 attorneys were Hispanic.<sup>62</sup> All Hispanic employees, including attorneys, within the U.S. Department of Justice for 1979 comprised just 5.4 percent of the total, excluding those in the Immigration and Naturalization Service, where they comprise 3.6 percent of the 40,000 employees.<sup>63</sup> A similar situation prevails at the state and local levels. In Texas, only 3.3 percent of the district attorneys are Hispanic.<sup>64</sup>

At the law enforcement level, the figures are no more encouraging. Though Hispanics make up more than 1.5 million of the population of New York City, and though there are more than 20,000 uniformed officers employed by the city, less than three percent of that number are Hispanic.<sup>65</sup> In Dallas, Mexican-Americans comprise just three percent of the 1,994 uniformed officers;<sup>66</sup> in Los Angeles, Mexican-Americans represent 10 percent of all uniformed officers;<sup>67</sup> and in Philadelphia, Hispanics are 0.4 percent of all uniformed officers.<sup>68</sup>

What are the experiences of Hispanics who have been recruited? How are they employed? What pressures do they have to face, and how do they cope with these pressures? Are Hispanic concerns in any way ameliorated by the mere presence of Hispanics in the system? There is some evidence that the representation of Hispanics in the law enforcement and criminal justice systems does not bring about any significant change. While it is unclear whether this absence of change

is due to low representation or other factors, the presence of Hispanics in the system is not sufficient. Probably the best evidence of this negative picture is the perception of Hispanics about Hispanic policemen in those departments where their representation has been increasing. Many Hispanics state that the benefit derived from having a Hispanic officer is not sufficient to compensate for the brutal treatment they receive.

There's an old rule in the barrio that says whenever a cop stops you que tengas cuidado. Be careful. Rule No. 2. If he looks like you, be twice as careful. He may look like you and talk like you. He may have that same accent and the same paint job. Maybe he's even a bit more bronze; but that doesn't mean you're going to relate . . . . The Chicano cop's reputation is built on busting heads.<sup>69</sup>

When a Hispanic joins a police department he enters a very powerful peer group society which, with very rare exceptions, is seen by Hispanics as having a repressive orientation. The social pressure on new Hispanic recruits is especially powerful. They tend to be given unwanted assignments, such as undercover work in the Hispanic community. They enter the force under suspicion, as one of "the enemy camp," and are held to higher performance standards than are Anglo recruits. Many Hispanic police believe that they must demonstrate "fairness," to the point of being especially severe in dealing with fellow Hispanics.

The assignments given Hispanic officers and the pressure from their peers to become "one of the team," coupled with the normally arduous aspects of police work, create severe problems for Hispanics in terms of their relationships with their families and the community. Increased pressure tends to isolate the officers from their social/familial environment.

Another aspect of being a Hispanic officer is that it forces the person to look at himself and to question what it means to be both Hispanic and a police officer. As mentioned in the introduction, the immigrant experience in some instances has led to the individual internalization of the racism that has been forced on him or her. If these feelings are not addressed in one's youth, they rise to the surface and cry for attention in one's later life. Thus, it is not surprising that often some Hispanics who are negatively afflicted by racism themselves become members of local police departments and use their positions of authority as a means, not for addressing the racism, but for perpetrating it. Fortunately, however, their numbers are few.

On the other hand, for those Hispanics who are sensitive to the contradictions inherent in racist law enforcement and criminal justice administration, the picture also is not a good one. Those who attempt to redress the grievances of the Hispanic community often find themselves isolated within their profession. They are given the least desirable assignments; they find it difficult to receive promotions; they are written up for minor infractions of the local department's rules. Every attempt is made to force the individual to change his behavior and accept the behavioral code of the department or to leave the department. Nationally, Hispanic law enforcement leaders are beginning to meet, to coalesce and to define the role of police in Hispanic communities differently from what has been the practice to date. The same writer who wrote "the Chicano cop's reputation is built on busting heads" described a recent National Hispanic Conference on Law Enforcement and Criminal Justice held in Washington, D.C., in September 1980 in this manner:

The multi-hued Chicano and Hispanic police officer is . . . just . . . finding identity and organizing . . . . A new day is dawning. They talked about ways to educate their colleagues. They dealt with the role of police and saw "protector" rather than "enforcer."

They discussed their own isolation in the station house and saw its parallel to the isolation barrio people feel. They talked earnestly about the same problems that others in the barrio have been begging to be addressed for years . . . .

To survive before, they had to reject their community. To progress now they need it. [Emphasis in original]<sup>70</sup>

If the increase in the numbers of Hispanic line officers has not fundamentally improved police practices in Hispanic communities, it has set the stage for Hispanics to move into administrative positions. To what extent they will be blocked from entering, or limited in their impact on, police policy-making circles remains to be seen.

#### 4. Hispanics and the Court Systems

Most Hispanics who participate in any court-related procedure experience cultural shock; the entire set of procedures is usually alien to them. They sense that they will not be adequately represented by their court-appointed lawyer, since, in most instances, the lawyer does not understand Spanish and the accused is not conversant in English. They

feel that they will be judged by a narrow cross section of the community, since few Hispanics are on the juries. They do not understand the proceedings, since American jurisprudence is different from what they may have experienced in their homeland.<sup>71</sup> And they feel ashamed, for in most Spanish-speaking countries to be accused of a crime and judged guilty are tantamount to social ostracism.<sup>72</sup> Thus, the accused fears the outcome of the proceedings and, anticipating the worst, often through his or her withdrawal in his or her defense, aids in the fulfillment of that outcome.

The first problem for Hispanics is that of raising bail, since most Hispanic offenders are poor. A study by the Legal Aid Society of New York City revealed that over 63 percent of the inmates at Rikers Island, a New York City maximum security prison, were there not because they had been convicted of a crime but because they were too poor to make bail. There have been instances of people being incarcerated from six months to a year for minor crimes only to be found innocent.<sup>73</sup>

Hispanics need representation in the prosecutor's office. It is the prosecutor's office that makes the initial determination on whether a person will be charged with a crime and held subject to trial. A prosecutor familiar with Hispanic customs and culture can often deal with what might otherwise be a miscarriage of justice, inasmuch as many incidents before courts are generally a result of misunderstandings and family-related situations.<sup>74</sup>

If held for trial, the accused Hispanic needs a lawyer who understands his culture, his language and his position regarding his case. As cited previously, the number of Hispanics who practice law is small, and there is a dearth of lawyers who are committed to equal justice and who also are sensitive to the problems and needs of Hispanic people. If the case goes to trial, there is a need for Hispanic representation on the juries. This is seldom the case, however. Those who sit on juries have been overwhelmingly Anglo and considerably older and of higher socioeconomic class than Hispanic defendants. Hispanic participation on juries has been disproportionately low. Part of the reason for the low participation is related to the process for jury selection, another is related to the low remuneration which jury members receive, and still another is related to Hispanics' unfamiliarity with American jurisprudence. For example, in Bronx County, New York, 30 percent of whose population is Hispanic, only eight percent of the juries in criminal cases consisted of Hispanics, according to a recent study of juries.<sup>75</sup> Hence, the outcome for Hispanic defendants is that, even though the general population may contain a high

number of Hispanics, seldom are they judged by their peers.

Hispanics have special difficulty with a court system that is conducted in English, when most of the Hispanic defendants have limited knowledge of English. In a study conducted in New York City in the 1970s, between one-third and one-fourth of the defendants said they needed an interpreter in court, had doubtful ability to communicate in English and did not understand the charges brought against them.<sup>76</sup> Hispanics still are underrepresented in the legal professions. The issue remains not how far Hispanics have come but how far they still have to go before they are equitably represented in the criminal justice system.

Although the situation is marginally better than a decade ago, the summary of the 1970 U.S. Commission on Civil Rights report--Mexican Americans and the Administration of Justice in the Southwest--still has the ring of reality:

Mexican Americans are distrustful of the courts and believe them to be insensitive to Mexican-American background and culture . . . they view the law as an instrument to create and perpetuate injustice, rather than as an instrument to solve their problems.<sup>80</sup>

Testifying before a California State Assembly Committee, the chair of the State Advisory Committee to the U.S. Civil Rights Commission said:

I don't believe any of you here would be willing to be tried by 12 people that don't understand you; that can't speak your language; can't understand what you say. Yet we do that every day in the courtrooms here.<sup>77</sup>

The complaints of Hispanics go even beyond these "structural" problems of class, language and cultural differences. These complaints, and some corroborating evidence, suggest discrimination by the courts, especially when the courts have great discretion in arraignment or sentencing. Five years ago in New York City, Hispanics received higher bail assessments compared to whites facing similar charges; of those who pleaded guilty, Hispanic defendants were fined more than non-Hispanic defendants; sentencing of Hispanic defendants resulted in longer terms than those for other defendants. Finally, although more Hispanics than persons of other races met formal criteria as qualifying for release on one's own recognizance (ROR), fewer Hispanics were actually recommended for ROR.<sup>78</sup>

There have been some improvements for Hispanics in the

courts over the last decade. Largely as a result of the Civil Rights Movement and affirmative action policies in universities, there was a significant jump in the number of Hispanics graduating from law schools, though the percentages of the total student population in law schools is statistically insignificant. A recent decision by the American Bar Association's House of Delegates requiring law schools to "demonstrate . . . by concrete action" a commitment to ethnic groups that have been victims of discrimination, or else face the loss of accreditation<sup>79</sup> should substantially counteract the impact of the 1978 Bakke decision. Nonetheless, the situation parallels employment trends among police departments--Hispanics still are woefully underrepresented in legal professions.

5. Illegal Aliens, Undocumented Workers, and Immigration Law

The issues related to illegal aliens, undocumented workers and immigration law are profound for Hispanics. The communities are torn between their love for those of similar cultures and backgrounds and their desire to protect what small gains they have made in their relationship with the dominant society. Profound tension exists between traditional Hispanic cultural influences and the effects of assimilation into the American society. These issues are persistent and need to be addressed, since much of their resolution involves the criminal justice systems of the various states and of the nation. In general, the subissues surrounding the larger topic of illegal aliens and undocumented workers are identity of the group, due process in the courts, the nature of immigration laws, and the impact of these individuals and groups on the economic and social welfare of the various communities in which they are a part.

While the Spanish-speaking constitute the bulk of the undocumented workers in the United States, it is a mistake to conclude that all Hispanic illegals are from Mexico. As Judge Armendariz stated before a major conference on Law Enforcement and Criminal Justice:

Just recently, my docket for deportation proceedings in El Paso, Texas, contained 80% Central and South American respondents to deportation charges. The influx of this segment of the South American population as illegals is obviously on the rise. This is a phenomenon with little, if any, reliable statistical data in which the need for research and analytical assessment abounds. Every Hispanic who is here by virtue of U.S. citizenship or U.S. resident status is affected in his daily life by constant and uncontrolled addition to our numbers

within the United States.<sup>81</sup>

Thus, in the absence of reliable information about who is coming to the United States via illegal means and what their impact is or might be on the various communities in which they reside, the welfare of all Hispanics is affected. In many instances, the action of immigration agents on the local Hispanic communities may be likened to the action of slave hunters on the free black communities during the antebellum period of the United States. Though free blacks thought that their residency status granted them some immunities from invasion of privacy, in fact, this was not the case. Native-born Hispanics and legal U.S. residents of Hispanic origin often have to prove to immigration agents that they have a right to be where they are, when they are mistaken for an illegal alien or undocumented worker.

This subissue of definition of status and rights of the individual is related directly to the subissue of "due process." When arrested by an immigration or other law enforcement official, the person involved, whether rightly or wrongly detained, often finds himself or herself in a "Catch 22" situation.<sup>82</sup> He or she is often held though no criminal charge has been filed or is pending, yet he or she cannot and will not be released, because the nature of the offense "has yet to be determined."<sup>83</sup> The result is that detention periods can and do run from one month to a year, in spite of requirements that there be biweekly reporting stating the reasons why a person should not be released.<sup>84</sup> In other related matters, individuals who are detained, when suspected of being illegal aliens or undocumented workers, are not released on bail, because the usual determination is that the individual is a poor bail risk.<sup>85</sup> Advisement on the right of counsel is general, given under psychologically coercive conditions and in a misleading fashion, so that the individual is virtually denied any meaningful choice in the handling of his or her affairs.<sup>86</sup>

What options are available to the Hispanic community? Unfortunately, they are very few. The nature of immigration law is complex and highly political. As pointed out in the preceding historical section, the various waves of immigration of Hispanics to the United States have usually been related to economic need. When the country has had a need for cheap labor, laws have been passed to facilitate that need; however, when economic times have been hard, local communities have pressed local politicians to alter the laws on the pretext that the presence of illegals created a hardship on the local communities.

The evidence that the illegals create hardships is mixed. For example, employers who have hired illegals and

undocumented workers tend to be those who claim that their profit margin is slim and that it is difficult to recruit and retain a stable labor force. This is the case for those who own small businesses, especially in the textile and fashion industry; farmers who produce seasonal crops; and those in the service sector such as restaurants and other food establishments. They also claim that most Americans do not want these types of jobs, although these services are essential to the economy. Illegals and undocumented workers are hired, they argue, because they fill a manpower need.

Workers, and especially unions, claim that this is not the case. They argue that employers use undocumented workers to keep labor costs down and to increase their own profits. They counter that such categories of work could be made desirable if the employers were willing to pay a living wage to their regular employees. Unfortunately, the controversy is fraught with emotionalism, with neither side presenting substantial facts to support its claims. The result is that the picture that is held up to the American public is one of Hispanic illegals replacing Americans who want to work. This picture has developed into a stereotype that is very strong in the minds of most Americans.

The options available for the Hispanic communities are few, given the political nature of the debate regarding illegal aliens and undocumented workers. Until such time as there are verifiable statistical data regarding the profile of this population and their impact on the economic and social welfare of the American community in general, the topic will continue to be an emotional issue. However, any debate on the issue must begin with a careful look at the complicated immigration laws and the racist nature of these laws. Only then can Hispanic communities hope to achieve fairness and due process for themselves and citizens and for those who desire to become citizens.

## **E. Conclusion**

What does it mean to be of Hispanic origin and to be a citizen of the United States? The response to this question, of necessity, is a complex one. As stated at the beginning of this chapter, social science research has yet to come to grips with this basic question. Reasons for the failure to do so are myriad, the most obvious of which are the absence of conceptual frameworks which might explain the varieties of experiences and the absence of strong statistical data related to definition of the population and subpopulations.

Another issue related to the response to this question is that posed by the mixed histories of the various Hispanic subgroups. While the experience of most of the various

Hispanic groups has been one that is characterized by its immigrant nature, increasingly the experience of various Hispanic subgroups is being characterized by the nature of political exile and flight from the various homelands. Once in the United States, most Hispanics, whether immigrant or refugee, must deal immediately with the twin problems of race and language. The various strategies which have been devised by the communities to deal with these phenomena are still to be understood or even developed.

The issues of race and language affect the participation of Hispanics in the criminal justice system. They are exacerbated by economics. The low economic status of most Hispanics affects their ability to qualify for bail and to have legal counsel that is competent, committed, and capable of understanding their problems as they present them. Their low economic status is usually coupled with low educational status, which in turn affects the ability of the communities to speak for themselves and to acquire the political power necessary to bring attention to the nature of their condition in the various communities of the United States.

Finally, to be Hispanic and an American is no guarantee that one's rights to privacy and rights to due process will be respected. In the emotionally charged atmosphere and debate surrounding the topic of illegal aliens and undocumented workers, there is an absence of strong statistical data which accurately profiles the population involved, there is an absence of attention to the racist nature of immigration laws, and little attention has been paid to the complexities of these laws which render any logical and sane resolution of the many cases which must be addressed on a daily basis.

In short, Hispanics as a group live with a persistent and nagging dilemma; they are victimized by racism in its many forms--laws, structures, and systems. To wage war against these forms means to risk being labeled as deviant, immoral, and destructive. Yet the failure to wage war against the insidious system that oppresses them means that they themselves allow the oppression to continue. This is the sum total of the response to the query of the duality of being Hispanic and American, and it is a condition which can begin to be alleviated with the reduction in the unequal nature of the current justice system.

## NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Fresno, California, October 29, 1977.
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3. Ibid., p. 1.
4. Ibid., p. 2.
5. Ibid., p. 4.
6. Ibid., p. 5.
7. See chapter, "Hispanics," The Harvard Encyclopedia of American Ethnic Groups, Stephan Thernstrom et al. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980, p. 462.
8. Ann Orlov and Reed Ueda, "Central and South Americans," The Harvard Encyclopedia of American Ethnic Groups, Stephan Thernstrom et al., eds., pp. 210-217.
9. Carlos E. Cortes, "Mexican Americans," The Harvard Encyclopedia of American Ethnic Groups, ed. Stephan Thernstrom et al., eds. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980), pp. 697-719.
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57. Ibid.
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66. Dallas Area Criminal Justice Council, 1979; Metropolitan Justice Plan, 1977.
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Law Enforcement Assistance Administration, July 28-30, 1980, Washington, D.C. Mr. Armendariz is a U.S. Immigration Judge stationed in El Paso, Texas.

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85. Ibid.
86. Ibid.

## APPENDIX

### Chapter II: Impact of Crime and Criminal Justice on Hispanic-Americans (Relevant Tables)

- Table II-8: People of Puerto Rican Origin in Continental U.S. and New York City, 1910-1970
- Table II-9: Percentage of Foreign-born Spanish-origin, 12th Year of School or Higher Completed, 1970
- Table II-10: Native-born Persons of Spanish Origin Who Have Completed 12th Year or Higher of School, 1970
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- Table II-12: Central and South Americans in the United States
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Table II-8

People of Puerto Rican Origin in Continental United States  
and New York City, 1910-1970

| Generation and<br>Year of Birth | U.S. Total | N.Y.C.<br>Total | Percent<br>U.S. Total<br>in N.Y.C. |
|---------------------------------|------------|-----------------|------------------------------------|
| First and second                |            |                 |                                    |
| 1910                            | 1,513      | 554             | 36.6                               |
| 1930                            | 52,774     | --              | --                                 |
| 1940                            | 69,967     | 61,462          | 87.8                               |
| 1950                            | 301,375    | 245,880         | 81.6                               |
| 1960                            | 887,662    | 612,574         | 69.0                               |
| 1970                            | 1,391,463  | 817,712         | 54.8                               |
| First                           |            |                 |                                    |
| 1910                            | 1,513      | 554             | 36.6                               |
| 1930                            | 52,774     | --              | --                                 |
| 1940                            | 69,967     | 61,463          | 87.8                               |
| 1950                            | 226,110    | 187,420         | 82.9                               |
| 1960                            | 615,384    | 429,710         | 69.8                               |
| 1970                            | 810,087    | 473,300         | 58.4                               |
| Second                          |            |                 |                                    |
| 1950                            | 72,265     | 58,460          | 77.7                               |
| 1960                            | 272,278    | 182,964         | 67.2                               |
| 1970                            | 581,376    | 344,412         | 59.2                               |

Source: U.S. Bureau of the Census, Census of the Population, 1970, Subject Report PC(2)-1E, Puerto Ricans in the United States (Washington, D.C., 1973), table 1; U.S. Bureau of the Census, Census of the Population, 1970, Subject Report PC(2)-1D, Puerto Ricans in the United States, Final Report (Washington, D.C., 1963), p. viii, Table A.

Table II-9

Percentage of Foreign-born Spanish-origin 12th Year of  
School or Higher Completed, 1970

|       | Age   | Mexican | Puerto Rican <sup>a</sup> | Cuban | Central and South American |
|-------|-------|---------|---------------------------|-------|----------------------------|
| Men   | 20-24 | 38.3    | 37.1                      | 70.3  | 65.7                       |
|       | 25-29 | 27.9    | 29.2                      | 66.2> |                            |
|       | 30-34 | 21.9    | 23.0                      | 47.7> | 65.5                       |
|       | 35-44 | 15.3    | 21.5                      | 45.3  | 64.1                       |
|       | 45-54 | 17.1    | 19.1                      | 46.7  | 56.9                       |
|       | 55+   | 9.1     | 11.7                      | 40.9  | 42.5                       |
| Women | 20-24 | 32.1    | 37.1                      | 65.5  | 40.9                       |
|       | 25-29 | 26.0    | 28.8                      | 57.9> |                            |
|       | 30-34 | 19.4    | 23.1                      | 43.4> | 60.5                       |
|       | 35-44 | 16.7    | 19.4                      | 46.4  | 55.0                       |
|       | 45-54 | 15.7    | 14.7                      | 42.3  | 49.3                       |
|       | 55+   | 8.6     | 9.8                       | 24.9  | 36.3                       |

<sup>a</sup> Island-born Puerto Ricans.

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States—Changing Demographic Characteristics (New York, 1976), pp. 382-387.

Table II-10

Native-born Persons of Spanish Origin Who Have Completed 12th Year  
or Higher of School, 1970 (in percentages)

|       | Age   | Mexican | Hispano <sup>a</sup> | Puerto Rican <sup>b</sup> | Cuban | Central and South American | Non-Spanish White |
|-------|-------|---------|----------------------|---------------------------|-------|----------------------------|-------------------|
| Men   | 20-24 | 56.0    | 68.1                 | 58.8                      | 81.8  | 83.1                       | 82.0              |
|       | 25-29 | 49.8    | 61.5                 | 54.3                      | 77.3> |                            | 77.8              |
|       | 30-34 | 40.7    | 55.9                 | 55.4                      | 68.4> | 76.3                       | 72.9              |
|       | 35-44 | 30.2    | 43.9                 | 45.9                      | 66.7  | 72.0                       | 64.7              |
|       | 45-54 | 20.1    | 39.5                 | 34.7                      | 44.2  | 65.6                       | 56.3              |
|       | 55+   | 8.8     | 19.4                 | 11.8                      | 14.5  | 57.8                       | 33.7              |
| Women | 20-24 | 53.3    | 66.8                 | 64.3                      | 81.2  | 83.9                       | 82.4              |
|       | 25-29 | 45.1    | 56.6                 | 53.9                      | 74.5> |                            | 77.6              |
|       | 30-34 | 38.2    | 50.7                 | 52.0                      | 65.8> | 77.4                       | 73.2              |
|       | 35-44 | 25.0    | 40.2                 | 46.5                      | 60.2  | 76.0                       | 67.3              |
|       | 45-54 | 16.2    | 32.7                 | 36.4                      | 39.6  | 53.4                       | 59.3              |
|       | 55+   | 9.3     | 23.2                 | 15.8                      | 20.3  | 51.2                       | 37.4              |

<sup>a</sup> Hispanos are native Americans, most of whose ancestors have been in the United States for a number of generations.

<sup>b</sup> Puerto Ricans born in the mainland United States.

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States--Changing Demographic Characteristics (New York, 1976), pp. 382-387.

Table II-11

Spanish-origin Persons, 16 Years of Age and Over, by Broad Occupational Groups, 1970 (in percentages)

|            |              | Central<br>and South<br>American |         |                 |       |      |  | Non-Spanish<br>White |  |
|------------|--------------|----------------------------------|---------|-----------------|-------|------|--|----------------------|--|
| Occupation |              | Mexican                          | Hispano | Puerto<br>Rican | Cuban |      |  |                      |  |
| Men        | White-collar | 18.6                             | 30.5    | 23.2            | 37.4  | 40.4 |  | 42.7                 |  |
|            | upper        | 9.6                              | 16.5    | 8.8             | 20.6  | 24.5 |  | 27.4                 |  |
|            | lower        | 9.0                              | 14.0    | 14.4            | 16.8  | 15.9 |  | 15.3                 |  |
|            | Craftsmen    | 20.5                             | 21.9    | 15.5            | 18.0  | 18.9 |  | 21.7                 |  |
|            | All other    | 60.9                             | 47.6    | 61.4            | 44.5  | 40.8 |  | 65.4                 |  |
| Women      | White-collar | 39.6                             | 53.7    | 42.9            | 41.5  | 45.4 |  | 65.4                 |  |
|            | upper        | 8.5                              | 13.7    | 8.9             | 10.9  | 12.6 |  | 20.5                 |  |
|            | lower        | 31.1                             | 40.0    | 34.0            | 30.6  | 32.8 |  | 44.9                 |  |
|            | Craftsmen    | 2.4                              | 1.6     | 2.4             | 2.6   | 2.1  |  | 1.9                  |  |
|            | All other    | 58.0                             | 44.8    | 54.7            | 56.0  | 52.4 |  | 32.8                 |  |

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States—Changing Demographic Characteristics (New York, 1976), pp. 66.

Table II-12  
Central and South Americans in the United States

| Country                   | Arrivals<br>1967-1976 | 1970 Census |         | 1976 Alien<br>Registration |
|---------------------------|-----------------------|-------------|---------|----------------------------|
|                           |                       | Total       | White   |                            |
| Central America           |                       |             |         |                            |
| Costa Rica                | 12,093                | 25,840      | 21,645  | 14,454                     |
| El Salvador               | 19,665                | 23,502      | 22,970  | 22,827                     |
| Guatemala                 | 19,683                | 26,865      | 25,394  | 20,196                     |
| Honduras                  | 13,604                | 31,150      | 23,020  | 16,039                     |
| Belize (British Honduras) | -0-                   | 14,221      | 7,561   | -0-                        |
| Nicaragua                 | 45                    | 28,620      | 27,104  | 13,439                     |
| Panama                    | 16,963                | 38,196      | 19,807  | 14,596                     |
| Other                     | -0-                   | -0-         | -0-     | 1,529                      |
| Total                     | 89,463                | 188,394     | 147,501 | 103,080                    |
| South America             |                       |             |         |                            |
| Argentina                 | 26,221                | 67,364      | 66,874  | 29,970                     |
| Brazil                    | 15,035                | 46,758      | 45,561  | 18,905                     |
| Chile                     | 10,552                | 25,125      | 24,512  | 13,065                     |
| Colombia                  | 62,135                | 84,921      | 82,505  | 67,627                     |
| Ecuador                   | 44,489                | 49,491      | 47,287  | 43,967                     |
| Guyana                    | 24,200                | -0-         | -0-     | 11,706                     |
| Peru                      | 16,981                | 35,450      | 33,488  | 20,638                     |
| Paraguay                  | -0-                   | -0-         | -0-     | 1,241                      |
| Uruguay                   | 6,314                 | 7,041       | 6,928   | 4,996                      |
| Surinam                   | -0-                   | -0-         | -0-     | 230                        |
| French Guiana             | -0-                   | -0-         | -0-     | -0-                        |
| Bolivia                   | -0-                   | 10,187      | 9,916   | 5,068                      |
| Venezuela                 | 5,868                 | 17,321      | 16,292  | 11,641                     |
| Other                     | 7,222                 | 45,806      | 30,641  | 2,403                      |
| Total                     | 218,987               | 389,464     | 364,004 | 23,457                     |

Source: U.S. Immigration and Naturalization Service, Annual Report, 1976 (Washington, D.C., 1977), pp 89, 142; U.S. Bureau of the Census, Census of the Population, 1970, vol. 1, Characteristics of the Population, pt. 1, U.S. Summary (Washington, D.C., 1973:, I, p. 598, Table 192.

Table II-13

Median Earnings (in dollars) by Years of Schooling and Sex of  
Spanish-origin Groups, 1969

| Country | Schooling<br>(years) | Mexican | Hispano | Puerto<br>Rican | Cuban | Central and<br>South American | Non-Spanish<br>White |
|---------|----------------------|---------|---------|-----------------|-------|-------------------------------|----------------------|
| Men     | Under 12             | 4,460   | 4,940   | 5,080           | 4,980 | 5,050                         | 5,850                |
|         | 12                   | 6,070   | 6,610   | 5,960           | 5,810 | 6,530                         | 7,730                |
|         | 13-15                | 6,310   | 6,380   | 5,920           | 6,640 | 6,630                         | 7,920                |
|         | 16+                  | 8,990   | 9,620   | 9,820           | 8,590 | 10,360                        | 11,620               |
|         | Total                | 4,970   | 5,800   | 5,430           | 5,710 | 6,140                         | 7,290                |
| Woman   | Under 12             | 1,670   | 1,600   | 3,170           | 2,920 | 3,090                         | 2,230                |
|         | 12                   | 2,930   | 2,950   | 3,880           | 3,470 | 3,960                         | 3,400                |
|         | 13-15                | 2,940   | 2,820   | 4,060           | 3,570 | 3,600                         | 2,870                |
|         | 16+                  | 5,590   | 5,710   | 6,090           | 4,550 | 4,660                         | 6,000                |
|         | Total                | 2,100   | 2,350   | 3,420           | 3,260 | 3,470                         | 3,090                |

Source: A. J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States-Changing Demographic Characteristics (New York, 1976), p. 64.

Table II-14

Number of Earners Per Spanish-origin Family, 1970, in Percentages;  
Median Income of Spanish-origin Families (1969)

| Earners       | Mexican | Hispano | Puerto Rican | Cuban   | Central and South American | Non-Spanish White |
|---------------|---------|---------|--------------|---------|----------------------------|-------------------|
| 0             | 7.7     | 8.9     | 20.7         | 6.0     | 6.3                        | 8.7               |
| 1             | 41.4    | 42.3    | 43.1         | 33.0    | 39.5                       | 40.3              |
| 2 or more     | 50.9    | 48.4    | 36.2         | 61.0    | 54.2                       | 51.0              |
| Median income | \$6,960 | \$7,860 | \$6,230      | \$8,690 | \$8,920                    | \$10,100          |

Source: A. J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States-Changing Demographic Characteristics (New York, 1976), p. 60, 421

## CHAPTER III

### IMPACT OF CRIME AND CRIMINAL JUSTICE ON AMERICAN INDIANS

The tribal chairman sent me here not to talk about treaty violations, not to talk about hundreds of years of discrimination and not to talk about our terrible economic situation...but about what's happening now on our reservation. We need people, we need training, we need to directly address the problems of alcoholism, lack of facilities for juveniles and lack of sufficient numbers of police to enable them to do their job.<sup>1</sup>

#### A. Introduction

Crime and the criminal justice system as they relate to American Indians in the United States cannot be understood without some knowledge of the history of the political relationships between and among the various Indian nations and the federal and state governments. These political relationships have led to the expropriation of Indian tribal lands, the isolation of Indian nations from other American people and other Indian nations, and a mixed history of attempts to enforce assimilation between the Indian nations and Americans of European ancestry.

The critique offered in this chapter is based on the assumption that, given their strong traditional and cultural ties, American Indian peoples can survive in the U.S. pluralistic society while retaining their national identity. As the indigenous people of the United States and North American continent, American Indian peoples especially should be free to retain their traditional cultural identity. Much of this identity is contingent on the recognition and support of separate and autonomous tribal government and criminal justice systems.

To support the recommendations offered later in this report, this chapter examines three aspects of American Indian relationships with crime and the criminal justice system: (1) traditional legal and criminal justice systems of Indian nations, (2) statistics and reports demonstrating the discriminatory and selective treatment of American Indians within the American criminal justice system, and (3) tribal criminal justice systems.

The situation of the indigenous people of the United States relative to the criminal justice system defies description. For those who do not understand the historical development of the North American Indian people in the

post-Columbian era, the Indian situation is a hopeless tangle of myth and reality, fact and fiction, incomprehensible problems. For those who do know, often through bitter experience, what happens in Indian country, frustration, bitterness, and, from time-to-time, rage characterize their attitudes.

Criminal justice professionals, Indian and non-Indian alike, are caught in a system of conflicting and unworkable policies, a mountain of legal and statutory ambiguities, uncaring bureaucracies, and economic, social, and cultural factors which are so intertwined with the causes of crime (as well as the consequences) that they feel overwhelmed and powerless. At a Council public hearing, a legal aid attorney working with Navaho people in Arizona told of a judge who refused to appoint attorneys for indigent Navahos arrested in the town, a violation of their constitutional rights, because he felt it was "up to the Navaho tribe" to supply attorneys. Some judges do not appoint interpreters for Indians unless their English skills are so lacking they cannot even get them to say "Yes" on a guilty plea form.<sup>2</sup> The story told over and over again was one of racism, discrimination, neglect, and injustice.

But what of Indians who leave the reservation for the economic opportunities of the cities? In the words of one urban Indian, "People from many different tribes have been dumped together in these ghettos, ill-equipped to even understand the complex makeup of the cities in which we now live."<sup>3</sup>

A study of the number of Indians who are incarcerated in Minnesota prisons showed that 61 percent resided in the metropolitan area, while only 24 percent live in rural areas. Cut off from their tribes, denied assistance available to Indians on reservations, Indians in dozens of major cities across the nation have become significant statistics in the criminal justice system, often becoming the minority group on the lowest rung of the social ladder, the least understood, the group whose problems most defy analysis, let alone solution.

There is a third group of Indians, those who do not live within the boundaries of closed reservations (reservations where the tribe exercises criminal and civil jurisdiction) or in urban areas. Typically, these people live in reservation areas where the powers of the tribe to govern itself have been all but extinguished. Control over most of this land has passed into non-Indian hands via the Indian Allotment Act or some other means, and the state exercises criminal and civil jurisdiction, mainly through county sheriffs and county court systems. Whites control the economic base of the area,

and through that, they control the other major spheres of influence.

## B. Problems

The Council held public hearings in three areas with large Indian populations, including South Dakota, Oklahoma and Arizona. More than 125,000 Indians in Oklahoma, the old Indian Territory, live in a situation in which reservation boundaries were eliminated and land opened to white settlement under the Allotment Act, and it was here that some of the most disturbing testimony was gathered by the Council.

Many witnesses talked about the overwhelming overrepresentation of Indians in the arrest statistics and in prison populations. The prevalence of discriminatory or unconstitutional practices that adversely affect American Indians almost daily was affirmed repeatedly.

Perhaps the most damaging allegations surround the issue of Indians who are arrested on drunk charges by small-town police. Several witnesses complained about the practice, but one young Indian law student was particularly moving. She said, in part, "I wasn't going to testify. But . . . people [were] talking about some things that have gone on in the Western district of Oklahoma. I was born and raised in that district, and I'm currently a second year law student . . . ." She continued:

When I went to law school, I thought I was studying about laws from a foreign country, because none of the laws I read about existed where I come from. (Laws safeguarding constitutional rights.) The winos in Clinton [Oklahoma] are picked up continually. The city cops would drive down the street and point to any one of the winos sitting on the street and say, "Come on." They'll get in the car and they'll go, and five minutes later they'll be cleaning up the fire trucks or the police cars.

This practice has been going on so long there is evidence that the police in Clinton have a record of these people, where their finances are coming from. Some of these winos are old men who have land [and who] are receiving lease checks . . . . The police have a record [of] when these checks are going to come in . . . . One or two days before these checks are going to come in, they'll pick up these people and give instructions to pass on to other people to pick up their checks, cash it, and come and get them out of jail.<sup>4</sup>

There was extensive testimony before the Council alleging that, when there were public works projects to be done, indigent Indians were picked up in large numbers, given stiff fines, and if they couldn't pay, ordered to work off the fines at so much a day.

Other people had talked about police setting up roadblocks outside of Indian gatherings and stopping everyone, checking their licenses, identification cards and cars. The law student continued:

The Cheyenne Arapahoe Labor Day powwow is on tribal land, but the Oklahoma Highway Patrol is always there. One incident was when an older couple in their mid-eighties were stopped by the police, and were asked to get out of the car. After that the police shined the flashlight inside the car, hunting for booze or something.

The mentality that has developed among most of the Indian people in Oklahoma is 'once you're picked up by the police, you're automatically guilty. No one ever thought of going to jail and pleading not guilty.

All this week we were attending arraignments which were held in Anadarko during the American Indian Exposition. All five days that I was there, all I saw in that courtroom was minority people, blacks, Chicanos and Indians . . . All the minorities plead guilty to whatever charge was brought against them.<sup>5</sup>

In Sioux Falls, South Dakota, many Indian and non-Indian witnesses testified on the severe and extremely brutal treatment experienced by Indians from elements of the criminal justice system.

The Council was told of policemen who identify Indians with long hair as members of the American Indian Movement (AIM) and subject them to harrassment, including shooting into their houses; of the FBI's complicity with local officials to deprive Indians of just treatment and their constitutional rights; and of whites who commit crimes against Indians receiving no punishment. As one witness, Mr. Young Bear, put it, "I think they can do whatever they want to do. When it's a white man that has committed a crime, then it's put off on a shelf someplace. But when it's an Indian, it kind of gets immediate attention."<sup>6</sup>

Witnesses told the Council of how guards handcuffed Indian prisoners and beat them; Indians who are sent to

solitary confinement in prisons, "the hole" which is kept below 45 degrees, were chained and given no blankets. In these places no toilet facilities are provided. The Council heard of the cases of Vincent Bad Heart and Jerry Vassar and numerous others who received absolutely inhumane treatment, including beatings by prison personnel and denial of medical attention for days, though suffering from stab wounds.

The Council heard of the practice of disparate sentences between Indians and whites in the region; of the difficulties that families and friends and even lawyers and priests have who attempt to see Indian prisoners; of Indians being denied the right to practice their native religions; of the language difficulties faced by the Indian in understanding court proceedings. Testimony revealed that Indians, forced by dire poverty to migrate, under Bureau of Indian Affairs prodding, were dumped into urban centers without any support into social conditions practically as severe as on the reservation.

Given the history of insensitive, inept and criminally negligent policies of the government toward American Indian people to this day, few with any conscience could fail to sympathize with the opening lines of the Preamble for the Declaration of Continuing Independence by the first International Treaty Council:

The United States of America has continuously violated the independent Native Peoples of this continent by executive action, legislative fiat, and judicial decision. By its actions, the United States has denied all Native People their international treaty rights, treaty lands, and basic human rights of freedom and sovereignty. This same United States Government, which fought to throw off the yoke of oppression and gain its independence, has now reversed its role and become the oppressor of sovereign Native Peoples.<sup>7</sup>

#### **C. Historical Evolution: Traditional Systems of Law and Order**

Long before intruding Europeans reached America, Indian nations had established their own laws and methods of law enforcement. The Indian system of oral traditions was quite different from the written documents of the European legal system, but the intent and effects were the same. Both were methods of maintaining order devised by a sovereign nation.

In reviewing the Indian criminal justice system, before the interference by white culture, it is important to remember two things. First, Indian nations were and are sover-

eign, and from their sovereignty comes the inherent power to enforce their own laws (although Supreme Court decisions have held that the sovereignty and inherent power have been diminished and are limited). Second, Indian nations vary in their traditions and customs. No two tribes are structured exactly alike. However, it is possible to observe general patterns and practices among Indian nations while still recognizing the uniqueness of each individual nation.

Throughout the ages a complex and integrated system governed relations among Indians. One such system of laws was embodied in a constitution known as the Great Binding Law of the Five Nations. This document, adopted by Indian nations long before white men reached America's shores, "established the democratic principles of initiative, recall, referendum, and equal suffrage . . . ."8 This tradition of an ordered, rule-oriented society reached its height in the administration of criminal justice. A system of justice within each tribe was established to maintain social order, to protect the tribe's food source, and to defend it against aggression. The number of punishable offenses against the tribe were few, generally corresponding to European felonies. An early author on the subject noted, "The list of crimes. . . was by no means such an extended category as that amongst white people, and strange as it may seem, the evidence indicates that vice and crime were not as prevalent amongst the savages as amongst the civilized people."9

The basis of the Indian justice system was a strong sense of community. Tenets of Indian religion and culture so infused tribal life that instances of violations against tribal codes were rare. Each member of the tribe was important to the group's survival, in contrast to a capitalistic system with its "necessary" high-level of unemployment. The individual recognized his dependence on the community while simultaneously comprehending his own worth to the tribe. An illustration of this interdependence can be seen in the case of Sticks Everything Under His Belt, the Cheyenne Indian, who had announced that the rules against individual hunting did not apply to him because he was declaring himself independent of the tribe, a man on his own. Because the hunting discipline was so important for tribal survival, it was determined by the tribal authorities that Sticks Everything Under His Belt would be banned forever from the tribe.<sup>10</sup> The tribal authorities realized that an "each man for himself" ethic ultimately meant destruction of the tribe.

Behavior in Indian societies was not governed by published statutes. Rather, oral traditions communicated acceptable behavior patterns, while a fear of gossip, revenge, or retaliatory witchcraft encouraged adherence to societal standards.<sup>12</sup> Ridicule was also a means of public

restraint or punishment. An offender might be made to wear the opposite sex's clothing while sitting in public view or be made the butt of jokes at tribal ceremonies.<sup>13</sup> The most severe punishment for violation of a tribal law was banishment.<sup>14</sup> With such strong internal restraints, harsh external punishments such as imprisonment or corporal punishment were seldom necessary.

Often, the offender's family was involved in the process of making reparations for his crime. Because of the intimacy of tribal life, the entire community was aware of each member's actions. Acts detrimental to group survival, such as selfishness or treachery, could turn the whole community against the wrongdoer and his kin. Therefore, the family attempted to rehabilitate the offender, or at least offered compensation to whoever was wronged.<sup>15</sup>

The family of the victim also played an important part in the carriage of justice. The Seneca tribe allowed the family of a murder victim to kill the murderer without fear of retaliation from the murderer's family (provided there existed an agreement of his guilt). But most often, a murderer would admit that he had erred and offered his services or possessions to the victim's family. They, in turn, were expected to accept the conciliatory act and to consider the matter closed.<sup>16</sup> Emphasis was always placed on making amends to the victim's family rather than punishing the murderer.

Many tribes had highly developed legal systems for the processing of crimes. The Cheyenne designated a Council of Chiefs to determine the internal juristic norms of the tribe and to preside over legal matters of primary importance. The Cheyenne Soldier Society exercised judicial power over criminal and civil proceedings, except homicide and domestic relations. To prevent a concentration of power, no individual was allowed to serve on both councils.<sup>17</sup> Soldier societies were common to many tribes who performed the duties that white society distributes among police, prosecutors, judges and penal authorities. The Menominees, and other central Algonquian peoples, developed formal three-party judicial procedures for the prosecution of crimes. A member of the police society served as an investigator and prosecutor, while the pipeholder, who was also a warrior chief, acted as defense attorney. Trials were attended by a "police go-between," who acted as a mediator in negotiating a settlement between the accused and the offended parties.<sup>18</sup>

It was difficult for the Europeans coming to America to understand Indian concepts of crime and punishment.<sup>19</sup> The colonial view that Indians were men without laws or had not advanced to a state of civilization in which they needed

laws set the foundation for attitudes that are still held today. The United States' behavior reflected the belief that Indian tribes were unsophisticated and inferior, as well as dangerous. After adoption of the Constitution, Congress, on August 7, 1789, established the War Department and placed Indian affairs under its control. Indian nations that once had unlimited control over their domestic and international affairs were declared to be "domestic dependent nations"<sup>20</sup> under the exclusive jurisdiction of the federal government and were limited to regulation of their internal affairs. As the U.S. government grew stronger, it expanded its regulatory role over Indian nations,<sup>21</sup> causing disruption and destruction of the tribal legal systems. The tribes were left with little or no protection from criminal violations by non-Indians and a growing disbelief that any part of the white man's legal system would provide the needed protection.

Tribal police forces supported by the federal government were initiated under President Grant's Peace Policy of 1869. Grant's policy called for Indian disputes to be handled on an individual basis by the federal government rather than by the Indian governments. Indian agents who once had the role of international ambassadors to the Indian nations became colonial governors over the domestic affairs of the Indian nations.

By 1877, many Indian nations had been so thoroughly dispossessed of their lands and their heritage, with attending stress placed on the fabric of their society, that traditional law and order systems began to break down.<sup>22</sup> Congress began appropriating funds for Indian police in 1879. Indian nations, which for centuries had had no need for jails or law enforcement officers from outside the tribe, were now being patrolled by forces commanded by white leaders. Some tribes, such as the Pine Ridge Sioux, realized that a police force controlled by federal government agents posed a threat to their tribal authority.<sup>23</sup> Although traditional leaders did not want the federal Indian police on their reservations, they recognized the federal Indian police as a lesser evil than federal military troops.<sup>24</sup>

Attempting to apply white solutions to Indian problems, the United States' Indian policy has most often been an effort to assimilate Indians into white society rather than to preserve Indian autonomy.<sup>25</sup> Although the Supreme Court held in ex parte Crow Dog<sup>26</sup> in 1883 that the United States had no jurisdiction over crimes committed by Indians in Indian territory, in later years, Congress passed a series of statutes that infringed more and more on the jurisdiction of tribal courts. Despite attempts of the military and the Bureau of Indian Affairs to enforce American concepts of law

and justice, many Indian nations have continued traditional practices. Thus, Indian people today are faced with the difficult and confusing dichotomy of competing federal and tribal criminal systems.

#### **D. Experiences of American Indians in the Criminal Justice System**

The displacement of Indian sovereignty by the encroaching Anglo-European system of laws and values has had pernicious, debilitating effects to the present. The legacy of this dispossession is graphically revealed in current criminal justice statistics. American Indians have, by far, the highest arrest rate of any ethnic group. Their arrest rate is consistently three times that of blacks and ten times that of whites.<sup>27</sup> (See Table III-1.) As many as 80 percent of Indian prisoners are incarcerated for alcohol-related offenses,<sup>28</sup> a rate twelve times greater than the national average.<sup>29</sup> The major crime rate is 50 percent higher on reservations than in rural America. The violent crime rate is eight times the rural rate; murder is three times the rural rate, and assault is nine times as high. Furthermore, the percentage of unreported crime on reservations is higher than anywhere else; thus, the situation is actually worse than the statistics portray, according to a 1975 Task Force Report on Indian Matters by the Department of Justice.<sup>30</sup>

These appalling statistics for American Indians do not exist in a vacuum. Available statistics on Indian socioeconomic problems reflect with equal starkness the fate of a people robbed of their culture, land and heritage. The poverty rate was almost three times that of whites in 1976. The median family income was \$5,832 in 1969; 38.3 percent of all Indians have incomes below the poverty line.<sup>31</sup> In addition, 80 to 95 percent of all Indian housing is substandard.<sup>32</sup> Life expectancy for American Indians is 65.1 years, while infant mortality is 1.2 times greater than the national average.<sup>33</sup> According to the NAACP Legal Defense Fund, "By every standard, Indians receive the worst education of any children in the country."<sup>34</sup> Their educational achievement at the high school and college levels, which increased from 1960 to 1976, actually shows a widening gap relative to the white population.

Forty percent of all reservation Indians are unemployed, and an additional 18 percent are categorized as underemployed.<sup>35</sup> Their unemployment rate in 1976 was more than twice that of whites, and their teenage unemployment rate was approximately six times that of white males. In short, by every standard, American Indians are extremely unequal to the white population, and in many instances, worse off than other minorities.

**Table III-1**  
**Arrest Rates by Race, 1960-1978**

| Year | White | Black  | American Indian |
|------|-------|--------|-----------------|
| 1960 | 572   | 1,957  | 3,492           |
| 1961 | 594   | 2,083  | 4,263           |
| 1962 | 803   | 2,679  | 8,527           |
| 1963 | 1,261 | 4,579  | 15,278          |
| 1964 | 1,198 | 4,185  | 15,815          |
| 1965 | 1,301 | 4,856  | 17,158          |
| 1966 | 1,381 | 6,034  | 19,311          |
| 1967 | 1,396 | 5,863  | 17,960          |
| 1968 | 1,572 | 6,626  | 20,536          |
| 1969 | 1,730 | 7,507  | 26,931          |
| 1970 | 2,324 | 9,225  | 24,309          |
| 1971 | 2,482 | 9,501  | 28,804          |
| 1972 | 2,638 | 10,521 | 30,647          |
| 1973 | 2,602 | 9,878  | 31,059          |
| 1974 | 2,700 | 9,947  | 30,428          |
| 1975 | 2,860 | 11,225 | 34,785          |
| 1976 | 2,943 | 10,958 | 33,278          |
| 1977 | 3,210 | 12,180 | 37,239          |
| 1978 | 3,271 | 12,256 | 36,584          |

Note: Rates are computed for 100,000 population 14 years and older for each race taken from the U.S. Census of Population, 1960 and 1970 and FBI Uniform Crime Reports 1960-1978.

American Indians are disproportionately represented in all phases of the criminal justice system. The Indian prison population in Montana comprises 33.3 percent of the total, while the proportion of Indians in the state population is only 3.9 percent. In North Dakota, where Indians make up only 2.33 percent of the state population, the Indian prison population is 17.5 percent. In Minnesota Indians comprise only 0.6 percent of the state population but account for 12.5 percent of the prison population, a figure 25 times their proportion in the state population.<sup>36</sup> (See Table III-2.) Based on 1975 police records, 100 percent of those arrested in Rushville, Nebraska (a bordertown adjacent to the Pine Ridge Reservation), were Indians.<sup>37</sup>

Although American Indians are estimated to comprise, at the most, 10 to 11 percent of Rapid City's population, Judge Charles E. Carrell, the city's magistrate who handles all misdemeanors and preliminary hearings for felonies, estimated that 80 percent of the cases before him involve Indian people.<sup>38</sup> According to a 1974 report by the Flagstaff, Arizona, police department, "It is statistically possible that every Indian in Flagstaff could have been arrested at least once in 1974, since the total number of Indians arrested is nearly 300 more than the local resident Indian population."<sup>39</sup> Court statistics from Phoenix City, Arizona show that approximately 25 percent of all males arrested for alcohol-related offenses are Indian and that 50 percent of the women arrested for such offenses are Indian. The tragedy of these figures is underscored by the fact that Indians comprise less than 1 percent of the city's population.<sup>40</sup>

Because the federal government, not the state, has criminal jurisdiction on some Indian reservations, Indians convicted of crimes on these reservations are sent to federal prisons. Statistics from the Federal Bureau of Prisons give some indication of criminal justice activity on Indian reservations. Table III-3 shows commitment rates of federally sentenced prisoners for 12 years. The rate of commitment of American Indians greatly exceeds the rates for both whites and blacks. Of the inmate population in federal institutions, American Indians were 76 per 100,000, blacks were 25 per 100,000, and whites were 8 per 100,000 in 1976. American Indians have a much higher rate of incarceration than other racial groups.

American Indians also experience a higher rate of arrest and conviction than any other racial group in the United States. Although the statistics are somewhat suspect, the difference is too great to be explained solely on that basis. In fact, the disparity evidenced in these figures is too vast to be credible without assuming the operation of a discriminatory and selective system of law enforcement. This hypo-

Table III-2

## American Indian Population by States and Percentages

| State          | Indian<br>Population | Percentage<br>of Total |
|----------------|----------------------|------------------------|
| Oklahoma       | 98,000               | 3.82                   |
| Arizona        | 96,000               | 5.41                   |
| California     | 91,000               | 0.46                   |
| New Mexico     | 73,000               | 7.16                   |
| Alaska         | 52,000               | 17.05                  |
| North Carolina | 43,000               | 0.86                   |
| Washington     | 33,000               | 0.98                   |
| South Dakota   | 32,000               | 4.86                   |
| New York       | 28,000               | 0.16                   |
| Montana        | 27,000               | 3.91                   |
| Minnesota      | 23,000               | 0.61                   |
| Wisconsin      | 19,000               | 0.43                   |
| Texas          | 18,000               | 0.16                   |
| Michigan       | 17,000               | 0.19                   |
| North Dakota   | 14,000               | 2.33                   |
| Oregon         | 14,000               | 0.65                   |
| Illinois       | 11,000               | 0.10                   |
| Utah           | 11,000               | 1.06                   |
| Colorado       | 9,000                | 0.40                   |
| Kansas         | 9,000                | 0.39                   |

Source: Compiled from statistics in Bureau of Census, U.S. Department of Commerce, 1970 Census of Population: Subject Reports, American Indians (1973).

Table III-3

Commitment Rates to Federal Prisons by Race,  
1960-1969, 1974 and 1976

| Year | White | Black | American Indian |
|------|-------|-------|-----------------|
| 1960 | 13    | 40    | 159             |
| 1961 | 14    | 42    | 181             |
| 1962 | 14    | 39    | 196             |
| 1963 | 15    | 43    | 200             |
| 1964 | 17    | 44    | 202             |
| 1965 | 15    | 43    | 265             |
| 1966 | 11    | 42    | 175             |
| 1967 | 12    | 41    | 150             |
| 1968 | 12    | 41    | 135             |
| 1969 | 12    | 42    | 370             |
| 1974 | 8     | 27    | 65              |
| 1976 | 8     | 25    | 76              |

Note: Data were taken from Federal Prisons, 1960-69, and Federal Bureau of Prisons, 1974 and 1976; rates are based on 100,000 population 14 years and older for each race taken from the U.S. Census of Population, 1960 and 1970.

thesis is supported by reports and testimony from the local Indian community.

Indians do not receive the same quality of protection from law enforcement agencies as do non-Indians. The Civil Rights Commission heard numerous allegations during its 1971 field hearings that the local police in Rapid City and Sisseton (on the Sisseton Reservation), South Dakota, seldom responded to calls from the Indian community.<sup>41</sup> The American Indian Policy Review Commission Task Force II stated, "There are repeated assertions by tribal community leaders that federal marshals, prosecutors, and the FBI are very selective in the manner in which they enforce felony laws on reservations. All too often, non-Indians are not prosecuted as vigorously as Indians."<sup>42</sup> Hazel Bonner, a volunteer counselor for Citizens Against Rape in Rapid City, South Dakota, stated that in her two years of counseling she did not know of a single Indian rape case in which an arrest had been made.<sup>43</sup> Michael Wilson, a Papago Indian and a member of the South Tucson Indian Center Board of Directors, testified before the U.S. Commission on Civil Rights that Indians in South Tucson are constantly and indiscriminately arrested for public intoxication in situations under which whites would be far less likely to be arrested.<sup>44</sup>

Another example of discriminatory law enforcement and harassment is the case of Raymond Yellow Thunder. Early in the spring of 1972, Yellow Thunder, an elderly Sioux from the Pine Ridge Reservation, was accosted by a group of five whites, beaten, stripped below the waist, taken to the American Legion Hall in Gordon, Nebraska, and forced to dance for the entertainment of the celebrating white patrons. He was later stuffed into the trunk of a car and then abandoned. He was found dead several days later. No investigation was conducted until members of the American Indian Movement (AIM) organized a demonstration and demanded that action be taken.<sup>45</sup>

An attempt made several years ago on the life of Puyallup tribal chairwoman and Indian activist, Ramona Bennett, underscores the lawlessness that many American Indians face in the course of their daily lives. On February 7, 1978, a car pulled up beside the one in which Ms. Bennett was driving, a shotgun was jammed out the window, and a blast struck her car, inches above her head.<sup>46</sup> The assailant has yet to be apprehended. Ms. Bennett has been involved in controversial Indian issues for a number of years, including fishing rights, interracial adoption, and opposition to a newly nominated U.S. District Court judge in Washington, Jack Tanner.

In contrast to the above examples of nonenforcement where whites were the perpetrators, Indians often find them-

selves the hapless victims of unprovoked police brutality, harassment, and sadism. The Rapid City Field Trip Summary of the U.S. Commission on Civil Rights documents instances in which police, often accompanied by the county sheriff and State Highway Patrol, followed Indians home, broke in, and destroyed property. Several Indians reported having been severely beaten by police officers, resulting in hospitalization.<sup>47</sup> Reverend John Fife, a pastor of the Southside Presbyterian Church in South Tucson testified in hearings before the U.S. Commission on Civil Rights that during the past few years several members of his congregation suffered from beatings they received while being held in the local jail.<sup>48</sup> Joanne Yellow Bird, a young Indian mother, was kicked in the stomach by a police officer during the arrest of her husband in Rushville, Nebraska, in September 1976. Days later, doctors confirmed the death of her seven month old fetus, caused by the police officer's kick; the police subsequently refused to provide medical assistance to Mrs. Yellow Bird. White citizens have formed self-styled "civil defense" units across the Midwest, acting as a quasi-police force with the local Indian communities as their primary target. These vigilante groups allegedly have often been involved in police posses and arrests, and appear to have no compunctions about arming themselves with M16s.<sup>49</sup> Members of the AIM and other politically active Indian groups are objects of special attention and harassment by state police, according to the South Dakota Advisory Committee on Civil Rights.<sup>50</sup> The Advisory Committee's report noted that Donald Holman, a member of the Sisseton-Wahpeton Sioux Tribe, stated in his February 9, 1977, letter of resignation from the South Dakota Criminal Justice Commission:

I have become increasingly aware of the fact that Native Americans who hold traditional views (the tradition of their own culture) and are political activists, are singled out for special treatment by the criminal justice system in South Dakota. . . . I have seen many things happen to native people which I believe were politically or racially motivated.

Police brutality and harassment are difficult charges to prove and are seldom pursued. Many incidents of physical abuse by police officials go unreported, an inaction bred by fear of further harassment or a deadening sense of futility.<sup>51</sup>

#### 1. Discrimination Within the Judicial System

The discriminatory law enforcement experienced by American Indians is perpetuated in the U.S. judicial system, where

it assumes the more subtle form of institutionalized discrimination and racism.

The formal setting of bail, often the first contact the accused has with the court system, is a bitter presage of what is to follow. Except for capital crimes, all defendants have a constitutional right to reasonable bail.<sup>52</sup> It is not legitimate to use bail as a pretrial punishment or to suppress an unpopular cause. Despite the constitutional guarantee, bail set for Indian people is consistently excessive, and often the entire system operates to their disadvantage. The South Dakota Civil Rights Advisory Committee heard allegations that high bail was set for certain Indian persons in order to keep them in jail, citing as an example the bail set for several young Indian men charged with burglary in connection with the second takeover of the Wagner Pork Plant. Bond was set at \$25,000 for each defendant, despite the fact that all of the accused were minors and none of their families had property or assets of any consequence.<sup>53</sup>

This is just one example of the great discretion trial judges have in setting bail,<sup>54</sup> a process that does nothing to prevent judges or magistrates from using their own subjective evaluation of the likelihood of the defendant's appearance at trial. Too often, racial stereotypes play a major role in such a subjective system. In addition, American Indians have more difficulty than whites in raising bail. The high unemployment rates and the large percentage of families with incomes below the poverty line creates an environment in which ready cash is rarely available. The high levels at which bail is set force a reliance on commercial bonding--an inherently unfair system because the defendant forfeits his 10 percent fee, whether or not he appears for trial. Commercial bondsmen generally consider Indians to be bad risks because they claim it is difficult to locate defendants on the reservation, while some bondsmen refuse to serve Indian defendants at all. The combined result of all of these factors is that a large number of Indian defendants suffer unnecessary pretrial detainment simply because they cannot post bond. A presumption favoring release of defendants on their own recognizance should always be in operation, and judges should recognize the implicit constitutional requirement that bail be scaled to reflect the defendant's ability to pay.<sup>55</sup>

The right to plead not guilty is another important constitutional right for criminal defendants. The magistrate or judge is required to fully inform a defendant of this right before accepting a guilty plea. However, whether this constitutional right is being adequately protected is questionable given the high number of guilty pleas among American

Indians. A recent informal survey found that 90 percent of the American Indians in the South Dakota Penitentiary had pled guilty.<sup>56</sup> The Pennington County, South Dakota, Public Defender's records show that only 13.4 percent of the Indian defendants pled not guilty in a one-year period from October 1, 1975, to September 30, 1976.<sup>57</sup>

Lack of legal representation before or at the time of pleading contributes significantly to the high rate of guilty pleas. Police and court officials frequently fail to adequately inform the accused of his right to silence and to free counsel, or fail to offer free counsel to the accused until after he pleads not guilty. American Indians for Community Action stated in hearings before the U.S. Civil Rights Commission that the absence of interpreters fluent in the Navajo and Hopi languages to advise American Indians of their constitutional rights was the greatest criminal justice problem in Flagstaff, Arizona.<sup>58</sup>

A guilty plea is often chosen as the path of least resistance. According to Bryan Short of the Arizona ACLU, "If a defendant pleads guilty, he is allowed some length of time in which to get the fine together . . . . If he pleads not guilty, he is faced with the problem of coming up with bond . . . ." <sup>59</sup> Michael Wilson, in an interview with a member of the U.S. Commission on Civil Rights, stated that few Indians are aggressive enough to stand up for their procedural rights or to demand representation by counsel. Most will simply plead guilty to avoid a confrontation.<sup>60</sup> Renee Howell, a former paralegal for the Wounded Knee Legal Defense/Offense Committee, stated that most Indian defendants plead guilty, even if they are innocent, because they fear the treatment they might receive in a jury trial.<sup>61</sup>

The high percentage of American Indians who plead guilty also reflects the widespread use of plea bargaining. In the plea bargaining process, a defendant agrees to plead guilty if certain conditions are met--usually a reduction of the charges. The prosecution, in turn, recommends a lighter sentence or promises to drop some of the pending charges. The American criminal justice system has been built on the practice of plea bargaining and guilty pleas,<sup>62</sup> without which many commentators agree the caseload would prove to be too large for the present system to handle.<sup>63</sup> The practice is, however, a subject of considerable controversy. The insidious practice of overcharging has been fostered by the reliance on plea bargaining, applying extra pressure on a defendant to plead guilty to a lesser charge.<sup>64</sup> On the practice of overcharging, Jim Robideaux, the American Indian director of the Rapid City Indian Service Council's program for ex-offenders, stated:

Now [the police] pick up a man and they'll slap a whole bunch of charges on him . . . only one crime is committed, but they'll slap a whole bunch of [charges] on him and then in comes a plea bargain later on.<sup>65</sup>

The potential abuses of the plea bargaining system are often realized in the case of American Indian defendants.

When legal representation is present, it often proves inadequate. Indians charged with a crime most often are unable to afford competent counsel.<sup>66</sup> Thus, a fair trial for an Indian depends on the availability of free legal assistance. Court appointment of lawyers from the local bar associations is the most common method of providing such representation. Under this arrangement, many Indian defendants do not receive any consultation or representation before trial.<sup>67</sup> General dissatisfaction with this arrangement exists among Indian people who view inexperience, prejudice, apathy, and misconception as contributing factors to the ineffectiveness of court-appointed lawyers.<sup>68</sup> An informal survey of American Indians who were in the Sioux Falls prison between September 1975 and January 1976 found that 75 to 90 percent of them had court-appointed attorneys.<sup>69</sup> Furthermore, a court-appointed lawyer in a small town might blunt the vigor of his representation of an Indian defendant for fear of repercussions to his private practice. The National Center for Defense Management has developed a study of legal defense delivery systems in South Dakota. James Neuhard, a consultant for that study, explained that the trial of an Indian defendant is carried out in an extremely emotionally charged atmosphere where "the volatile nature of their cases and extreme public exposure places pressure on local defense lawyers which detrimentally affects the Indian's defense."<sup>70</sup> Jim Robideaux lent his support to this view when he spoke before the South Dakota Advisory Committee to the U.S. Commission on Civil Rights:

Most often [court-appointed attorneys] live here, they work here, and if they do a pretty good job . . . pretty soon they kind of get a little bit of pressure . . . and the next thing you know the attorney . . . is not objecting to . . . inadmissible evidence or he is not making the motions that are . . . very necessary for a man's appeal . . . So my feeling is that if attorneys do a pretty good job . . . they have a tendency to get black-balled . . . maybe they won't get the business now that they normally would get.<sup>71</sup>

Representation by public defenders is rarely available in rural areas. South Dakota has one public defenders of-

fice, located in Rapid City, for the entire state.<sup>72</sup> A unified, insulated system for criminal defense, such as a statewide public defenders office, offers many advantages, including avoidance of the above-mentioned conflicts of interest. The chief recommendation from the study by the National Center for Defense Management was to establish a full-time public defender system throughout South Dakota.<sup>73</sup> However, dissatisfaction with even the public defender system exists among the Indian populace, who criticize the scheme for its lack of experienced lawyers, the high turnover of personnel, and the excessive caseload.<sup>74</sup>

When an Indian defendant walks into court, he faces an almost entirely white system. Communication, even with his own counsel, often poses great obstacles. He has difficulty understanding the court procedure. Even the right to an impartial jury is often abridged in the case of an Indian defendant. Allegations of prejudiced jury panels are widespread within the Indian community. Jay Schulman, project coordinator for the National Jury Project, after conducting a survey of potential jurors in western South Dakota during January and February 1976, presented an affidavit to the U.S. District Court for South Dakota in which he stated:

The level of prejudice against the defendants [two AIM members] among prospective jurors in the South Dakota Federal District is so great that there is no chance that the defendants can obtain a jury in any of the four South Dakota divisions sufficiently free from negative predispositions to render a verdict on the evidence presented in the courtroom alone . . . .<sup>75</sup>

Few Indians serve on jury panels, thus denying an Indian defendant his right to be adjudged by a jury of his peers. Charles Carrell, a law magistrate in South Dakota, stated that he could not recall a single case in which an American Indian served on a jury in his court.<sup>76</sup> Jury panels are customarily chosen from voter registration lists, a procedure that effectively excludes a large majority of Indians who do not register to vote.

Once an American Indian has been jailed, he or she will serve, on the average, 35 percent more time before parole than a non-Indian for a similar offense.<sup>77</sup> This is because (1) Indian offenders receive, on the average, longer sentences than do non-Indians and (2) an Indian offender serves a longer time before he is paroled. With regard to the former, Indian defendants typically do not fare well in the discretion-filled process of sentencing. A Minneapolis study revealed that American Indians convicted of criminal misdemeanors in that city were more than twice as likely as

convicted whites to serve jail sentences.<sup>78</sup> A one-year study of white and American Indian prisoners undertaken by two professors at the University of Montana illustrated that American Indians were less likely to receive deferred sentences (12.7 percent versus 24.4 percent), more likely to receive a partially suspended sentence (4.2 percent versus 2.6 percent), and more likely to receive sentences of full imprisonment (76.1 percent versus 59.4 percent).<sup>79</sup>

Statistics on comparative rates of parole underline, once again, the discrimination found throughout the criminal justice process. In the federal system, the average rate of release by parole during 1973-74 was more than 40 percent greater for non-Indians than for Indian prisoners convicted of crime in the same category.<sup>80</sup> The relative timing of paroles differs as well. Among parolees, Indians had served, on an average, a 15 percent more of their original sentence than non-Indians.<sup>81</sup> These disparities cannot be explained by the type of crime committed or the length of original sentence. Longer sentences, fewer paroles, and higher arrest rates result in a consistently disproportionate rate of incarceration for Indian offenders.

## 2. Problems in the Penal System

The prison environment, in which a disproportionate number of American Indians find themselves, given the selective and discriminatory law enforcement system, is especially hostile and alien. Indians are greatly overrepresented in prison populations, yet they often lack a voice in prison operations. For example, in South Dakota, the Indian population was less than 5 percent in 1976. However, 34.6 percent of the total arrests in the state were of Indians. The Indian population in the State Penitentiary in Sioux Falls is 33 percent. The Indian population at the Women's Prison is 50 percent.<sup>82</sup> Overrepresentation of Indians in the correctional system does not, however, extend to prison staffs. For instance, in South Dakota, the State Training School, the Youth Services Program, the Board of Pardons and Paroles, and the Probation and Parole Staff all have no Indian personnel, and the State Penitentiary has few.<sup>83</sup>

It is commonly noted that Indians receive poor treatment in prisons because of their relative powerlessness as a minority.<sup>84</sup> Blacks and Hispanics are much more vocal and aggressive in their demands. The perceived weakness and relatively small number of Indian inmates often cause them to be prime targets of harassment by prison staff and other inmates. Indian inmates from the Fort Belknap and Rocky Boy Reservations in Montana reported receiving cruel and unusual treatment while incarcerated. They were not given blankets in winter, some were forced to eat their meals on the floor

with no utensils, and others were denied medical services.<sup>85</sup>

Members of prison staffs are often insensitive to the special problems facing American Indians, and few make any effort to positively reinforce an Indian inmate's cultural identity.<sup>86</sup> In many cases, Indian cultural/religious groups that are initiated by the inmates are actively suppressed by prison authorities. The groups often find their mail censored or their mailing privileges suspended. Further examples of harassment include Indian inmates not being allowed to wear beaded headbands and being forbidden to speak native languages or to play native music. Many Indian inmates have been subject to disciplinary action for refusing to cut their hair.<sup>87</sup>

Statistics indicate that Indian prisoners are often treated more harshly than other inmates. Figures provided by the Minnesota Indian Programs Coordinator concluded that, while Indian offenders comprise approximately 9 percent of the total inmate population in the Minnesota Department of Corrections, they often comprise more than 75 percent of the population in the maximum security units (lock-ups) and are often less than 1 percent of the minimum security unit population.<sup>88</sup>

Often, no alternative facilities are available for alcohol offenders, who are in need of treatment, not punishment.<sup>89</sup> The lack of alternative programs, such as halfway houses and treatment programs, has an especially harsh effect on the Indian offender population, the overwhelming majority of which has committed crimes that are alcohol-related.<sup>90</sup>

It should be noted that Indians are poorly represented in most penal rehabilitation programs. A 1974 report on western states showed that more than half of American Indian offenders do not participate in rehabilitation programs. Furlough or counseling programs rarely have an Indian cultural orientation. Furthermore, as noted by John Poupart, director of the Anishinabe Longhouse, a community corrections facility for Indian offenders in Minneapolis, the standards for admissions in alternative institutions address characteristics that are largely irrelevant to Indian lifestyles, such as credit ratings and a fixed place of residence.<sup>91</sup>

Moreover, most state and federal programs fail to rehabilitate Indian offenders because correctional officials do not recognize that American Indians suffer from cultural conflict. Generations of contact with the majority society have left many American Indian prisoners without a favorable self-concept because of the constant assault on their cultural

heritage. It must be recognized that less is known about the proper psychological methods of treatment and rehabilitation for the Indian offender than for offenders from other ethnic groups,<sup>92</sup> and Indian-run counseling and rehabilitation centers must be established to fill this vacuum. The lack of alcohol rehabilitation centers, the low participation of Indians in general rehabilitation programs, and the lack of a cultural identity within the prison setting all contribute to the recidivism rate, which sometimes reaches 54 percent among Indian offenders.<sup>93</sup>

Any reassessment of the U.S. Indian policy, be it health care delivery or the treatment of Indian offenders within the criminal justice system, must begin with the recognition that prejudice has always been a factor influencing the relationship between the races. The preceding statistics demonstrate quite clearly that the problem continues to exist. The hold of this discrimination cannot be loosened by submitting Indian defendants to "equal treatment" under the American criminal justice system--a system acknowledged to be rife with the kind of discretion that enables judges, the police, juries, prosecuting attorneys and prison officials to vent long-held personal prejudices. What is needed is an acknowledgment of the complicity of the white judicial system in maintaining this prejudice and, thus, its fundamental inappropriateness for administering justice to American Indians. Instead, the distinction between white and Indian traditions, culture, values, and laws must be recognized, along with a commitment to respect and to uphold viable tribal legal practices that have come down through the centuries.

#### **E. Tribal Criminal Justice Systems**

Before stating the current conditions of tribal justice systems, it is vital to understand their evolution. Indian tribes, as totally sovereign and independent nations, had their own laws and customs regulating criminal behavior within the tribe. After the arrival of the white man, many tribes were "removed" to reservations where their former legal systems were disrupted and destroyed.<sup>94</sup> (See Table III-4.) Tribal economy and political structure were also uprooted, and many tribes grew dependent on the U.S. government. Indians became captives within these reservations that were established as their last homeland. Many viewed reservations as tantamount to concentration camps, the last chapter in the legacy of countless wars and broken promises perpetrated by the U.S. government. Robbed of their lands and economic base, tribes sank into extreme poverty. Education was almost nonexistent, unemployment was prevalent, and despair was rife. These factors have fostered the social degradation that has led to a crime rate grossly disproportionate to the national norm.<sup>95</sup>

Table III-4  
Tribal Profile by Population

| Tribe                                | State                     | Total<br>Population | Population<br>on or Near<br>Reservation |
|--------------------------------------|---------------------------|---------------------|-----------------------------------------|
| Navajo                               | Arizona-New Mexico-Utah   | 146,200             | 131,400                                 |
| Cherokee                             | Oklahoma                  | 47,000              | 21,400                                  |
| Lumbee                               | North Carolina            | 40,000 <sup>a</sup> | Not Available                           |
| Minnesota Chippewa                   | Minnesota                 | 31,200 <sup>b</sup> | 7,800                                   |
| Choctaw                              | Oklahoma                  | 28,000              | 10,800                                  |
| Creek                                | Oklahoma                  | 18,900              | 15,200                                  |
| Pine Ridge Tribe                     | South Dakota              | 18,300              | 11,400                                  |
| Turtle Mountain Band<br>of Chippewas | North Dakota              | 18,200              | 7,300                                   |
| Papago                               | Arizona                   | 16,500              | 8,000                                   |
| Gila River Pima-Maricopa             | Arizona                   | 15,500              | 8,300                                   |
| Chickasaw                            | Oklahoma                  | 11,500              | 5,900                                   |
| Citizen Bank of Potawatomi           | Oklahoma                  | 11,400              | 1,400                                   |
| Blackfeet                            | Montana                   | 11,000              | 6,200                                   |
| Rosebud Sioux                        | South Dakota              | 11,000              | 7,500                                   |
| Cheyenne River Sioux                 | South Dakota              | 9,100               | 4,300                                   |
| Kiowa                                | Oklahoma                  | 8,700               | 3,300                                   |
| Commanche                            | Oklahoma                  | 8,000               | 3,300                                   |
| White Mountain Apache                | Arizona                   | 7,700               | 6,500                                   |
| Sisseton Sioux                       | North Dakota-South Dakota | 7,200               | 2,400                                   |
| Standing Rock Sioux                  | North Dakota-South Dakota | 7,100               | 4,700                                   |

<sup>a</sup> American Indian Policy Review Commission, Final Report 472, 1977.

<sup>b</sup> The Minnesota Chippewa Tribe is an organized tribal entity of six Chippewa Tribes.

Source: Memorandum, Branch of Tribal Enrollment Services, Bureau of Indian Affairs (June 26, 1978) and U.S. Department of Commerce, Federal and State Indian Reservations (1975).

Seeking to ameliorate the deplorable situation that has developed under the federal management of Indian affairs, the United States adopted a policy of "self-determination" for Indian tribes.<sup>96</sup> It was felt that, if the tribes were encouraged to develop or to expand their own system of justice, tribal members would respect and trust such systems and maintain a more orderly society. In theory, the policy ultimately was to lead back to tribal self-government and economic development, independent of state and federal government interference. It was conjectured that, if tribes were allowed to develop strong credible institutions, the administration of criminal justice would improve and, in turn, the crime rate would diminish.

However, to accomplish such a goal, tribal institutions must exist as separate entities, independent of state and federal intervention.<sup>97</sup> While espousing a policy of tribal self-government, the United States continues to appropriate large funds to tribes to promote assimilation, rather than attempting to develop tribal institutions as unique, distinct and sovereign governments. This serves not only to weaken tribal government systems, but also to increase tribal dependence on the federal government.<sup>98</sup>

#### 1. Public Law 280

The pattern of criminal jurisdiction found on Indian reservations was altered in 1953 by the passage of Public Law 280.<sup>99</sup> Public Law 280 was designed to further the federal termination policy adopted in the forties and fifties<sup>100</sup> by giving certain designated states outright civil and/or criminal jurisdiction over Indian reservations within their borders<sup>101</sup> and authorizing others to adopt legislation, or to amend their state constitutions to assume jurisdiction over Indian country.<sup>102</sup> However, some of these assumptions of jurisdiction are highly questionable and, in some cases, have been successfully challenged.<sup>103</sup>

Only ten states are under Public Law 280, so not all tribes were affected. Nonetheless, most tribes sensed the terminationist threat posed by the law. As a result of vigorous tribal protest, the Act was amended by the 1968 Indian Civil Rights Act to add a tribal consent requirement and to allow states to retrocede their jurisdiction over Indian country to the federal government.<sup>104</sup>

Neither the General Crimes Act nor the Major Crimes Act is applicable in P.L. 280 jurisdictions.<sup>105</sup> Thus, except for expressly federal crimes, P.L. 280 states may exercise jurisdiction in Indian country, to the exclusion of federal

authorities, over offenses committed by Indians against either Indians or non-Indians and over non-Indians against Indians.<sup>106</sup> P.L. 280 actually gives more criminal jurisdiction to the states than the federal courts can assume. In states not bound by P.L. 280, jurisdiction over offenses committed by Indians against Indians, except for the fourteen major crimes, rests with the Indian tribes rather than with the federal government.<sup>107</sup>

Many Indian tribes have urged that P.L. 280 be repealed on the ground that it authorizes unilateral application of state laws to all tribes without their consent regardless of their needs and special circumstances. Tribes also assert that tribal laws are unnecessarily preempted by P.L. 280 and, hence, they cannot effectively govern their communities.<sup>108</sup>

The issue of concurrent tribal jurisdiction under P.L. 280 is hotly debated. Under long-standing principles of Indian law, Indian tribes retain all powers of internal sovereignty except as they are modified by agreement or statute.<sup>109</sup> The language of P.L. 280 does not clearly abrogate tribal criminal jurisdiction; hence, tribes should be recognized as retaining concurrent jurisdiction over criminal matters. This contention is supported by the language of the Act, which indicates that Congress intended the continuation of the tribal court system.<sup>110</sup>

In assuming jurisdiction over Indians within their borders, states affected by P.L. 280 promised to provide law enforcement services. Yet, Indian nations repeatedly have found state and federal authorities unwilling to enforce the laws on Indian reservations.<sup>111</sup> Understaffed and underfunded tribal police are forced to take over in desperate situations. Many Indians believe that, in assuming jurisdiction over Indian reservations, the state considered not the needs of the tribe, but only those of the non-Indian population.<sup>112</sup> Public Law 280 states should be relieved of the law enforcement burdens that they are unable or unwilling to shoulder, and Indian nations, with the assistance of the federal government where needed, should be given the opportunity to provide adequate law and order.

## 2. Tribal Police

Traditionally, federal law enforcement on the reservation has been sporadic and weak at best. Four agencies have been responsible for law enforcement: tribal police, state police, the Federal Bureau of Investigation and the Bureau of Indian Affairs. This overlapping of responsibility has caused a duplication of activities, lack of coordination and cooperation, confusion concerning accountability, and general

inefficiency.<sup>113</sup> Augmenting this problem has been the uncertainty of authorities concerning the existence and extent of the jurisdiction that they possess.<sup>114</sup> Jurisdiction usually depends on the type of crime committed, the race of the suspect and victim, and the location of the crime.<sup>115</sup> Further, uncertainty has been spawned by legislation such as P.L. 280<sup>116</sup> and the Major Crimes Act.<sup>117</sup> Thus, the reservations are left with too many law enforcement agencies from outside the reservation that have overlapping or uncertain jurisdiction.

Another problem is that tribal police are poorly trained, underfunded, and ill-equipped.<sup>118</sup> Of the four agencies, the tribal police work most closely, continually, and cooperatively with the Indian people because of their accessibility to and familiarity with people. The tribal police force holds a distinct advantage over an FBI or state agent who may have to travel more than 200 miles to investigate a crime. Unfortunately, tribal police are often denied the necessary equipment to maximize their effectiveness.

Furthermore, Indian people have generally looked on the FBI with suspicion and distrust.<sup>119</sup> Thus, they are less likely to cooperate with these white agents whom they view as aliens. It has also been alleged that FBI agents ascribe little importance to reservation crime unless the victim is white.<sup>120</sup> The BIA police have been similarly criticized for their less than adequate performance. The obvious answer is to replace both the FBI and BIA agents with the more accessible and responsible tribal force.

The ultimate solution would be for the tribal police, under the direction of the tribal governments,<sup>121</sup> to assume exclusive responsibility for law and order on the reservations. Most tribes lack sufficient funds to train and maintain an adequate tribal police force. Jurisdictional uncertainties also discourage such an undertaking. In some states, federal and state governments have sought to gain criminal jurisdiction over reservations. Yet, in such cases, the agencies prove unwilling to provide the manpower and financial commitments necessary for a competent law enforcement system.

To alleviate these problems, jurisdictional conflicts and confusions must be resolved. The primary criminal jurisdiction that tribes have exercised for centuries ultimately should be operated by tribal governments over all crimes, major and minor, all persons (including non-Indians), and all lands within the reservations. The serious problems caused by the institutionalized racism of P.L. 280 would thus be removed, and a more effective system could develop.

### 3. Tribal Courts

Many tribes have their own justice systems. One encouraging sign indicating the potential of tribal governments in the area of justice and law enforcement has been the reemergence of tribal courts.<sup>122</sup> Tribal courts have made tremendous progress in the last few years. Tribal judges are becoming more sophisticated and knowledgeable and can rely on the expertise of tribal advocates and paralegals. Yet, as caseloads increase, many tribal courts lack sufficient personnel to adequately handle all the cases. Tribes need better court facilities and more full-time judges, paralegals, and lawyers. Yet few tribes possess the necessary funds to substantially expand their tribal justice system,<sup>123</sup> and present sources of financial assistance prove inadequate.

The tribal court appellate system also needs to be more fully developed.<sup>124</sup> Many tribal courts either do not have an appellate system or rely on administrative courts of the Interior Department. Often, the appellate court consists of the tribal council, which creates a further problem of inadequate checks and balances. To be more effective, the tribal court judicial system will have to maintain an independence and separateness from the tribal executive and legislative branch.<sup>125</sup>

Just as the tribal police force needs to have at least primary and perhaps exclusive jurisdiction over reservation law enforcement, tribal courts must have full criminal jurisdiction over all cases prosecuted on the reservation.<sup>126</sup> As stated earlier, jurisdiction in Indian country is complex and confusing. Many tribal courts exercise jurisdiction over tribal members only.<sup>127</sup> Yet, for tribal self-government to be meaningful and for the judicial system to be effective, tribal courts will have to assert territorial jurisdiction over all crimes. The extent of tribal court jurisdiction varies among the different tribes. Sometimes restrictions are imposed by federal legislation and sometimes by the tribes themselves, if they feel they are not ready to assume the responsibilities. The intrusion of federal jurisdiction and restrictions on tribal judicial autonomy in Indian country still poses problems to the efficient administration of justice.

One such problem has been the concurrent or exclusive federal jurisdiction over crimes committed by non-Indians in Indian country. In 1978 the U.S. Supreme Court decided that Indian tribes do not have concurrent jurisdiction over non-Indians. Under the General Crimes Act, Congress legislated that criminal jurisdiction over non-Indians belongs to the federal government. This decision against exclusive or

concurrent criminal jurisdiction over non-Indians is important because it negatively affects the ability of tribal police to maintain law and order on the reservations. Since federal and state authorities are often slow to arrest and prosecute non-Indians committing offenses on reservations, lack of tribal authority creates a law enforcement vacuum in many cases.<sup>128</sup> The decision is also important from a political point of view because denying tribal jurisdiction over non-Indians erodes the concept that the tribes are sovereign entities possessing inherent jurisdiction. The doctrine of inherent sovereignty states that tribes retain territorial jurisdiction over all of their land unless the United States has by treaties or special legislation taken all or a portion of this jurisdiction away.

The notion of the concurrent jurisdiction of Indian tribes is difficult to understand and has posed some problems in the law enforcement area. Eventually, tribes should be able to assume full and exclusive jurisdiction over their territories. Another major reversal in attaining this goal has been the outcome of litigation. In the 1978 case of Oliphant v. Suquamish Tribe, the Supreme Court concluded that "Indian Tribes do not have inherent jurisdiction to try and punish non-Indians."<sup>129</sup> It is unlikely in the near future that Congress will repeal the General Crimes Act so that tribes can exercise this jurisdiction.

Another major piece of federal legislation that has posed many problems to tribal courts and the administration of justice within Indian reservations<sup>130</sup> is the Indian Civil Rights Act of 1968.<sup>131</sup> If tribes are to continue as self-governing, autonomous entities, tribal courts must be allowed to develop as unique Indian justice systems with their own customs, laws, and traditions.<sup>132</sup> In 1968, the U.S. Congress enacted an Indian Bill of Rights<sup>133</sup> as part of the 1968 Civil Rights Act. The Act was passed to ensure that American Indians are offered the broad constitutional rights secured to other Americans.<sup>134</sup> In theory, the purpose of the Act was to protect individual Indians from civil rights violations by their own tribal governments.

The Act, however, favors individual rights to the detriment of tribal sovereignty. First, the Act imposes a foreign system of values and justice over and in place of traditional tribal laws and customs. Indian courts are not free to adopt their own procedure or to apply tribal laws. Rather, all the laws and procedures must conform to the value system and constitutional framework of the United States. Many tribal judges and court personnel are unfamiliar with current doctrines of constitutional law and the concepts of justice necessary for compliance with the Civil Rights Act. Also, administration of tribal justice under the Indian Civil

Rights Act requires considerably greater funds since the Act can be interpreted to mean that tribal courts must allow a jury trial for almost any offense and defendants must be allowed representation by professional attorneys.<sup>135</sup>

Second, under the Act, the maximum sentence that tribal courts can impose is six months and/or a maximum fine of \$500.<sup>136</sup> Such a limitation is arbitrary and unwarranted and diminishes the power of the tribal court. It also robs the tribal justice system of necessary flexibility in deterring crime. The problems caused by such federally imposed limitations on the powers of tribal courts can clearly be seen in the case of U.S. v. Wheeler, Docket No. 76-1629, decided by the U.S. Supreme Court in 1978.

The factual context of the case is useful in clarifying the issue:

A Navajo Indian was involved in an incident with a young Indian girl on the Navajo reservation. He pleaded guilty in the Navajo tribal court of willfully contributing to the delinquency of a minor and was sentenced by the tribal court to serve 60 days at hard labor or to pay a fine of \$120. The United States, however, received evidence that he was guilty of a larger crime and attempted to prosecute him in federal district court for "assault with intent to rape."

The defendant moved for a motion to dismiss the indictment on the ground that his federal prosecution was barred by the double jeopardy clause of the 5th Amendment since the prosecution was based on the same incident and involved the same acts as his conviction in tribal court. The double jeopardy clause states that a defendant cannot be subject to prosecution twice by the same sovereign for offenses arising out of the same acts. The district court therefore granted the motion to dismiss and the Court of Appeals affirmed the dismissal holding that since Indian tribal courts and U.S. district courts are arms of the same sovereign, once a defendant is convicted in one court, he cannot be prosecuted for an offense arising out of the same acts in the other court.

The United States argues that such a prosecution is allowable because tribal courts are not arms of the same sovereign as U.S. district courts. Implicit in the United States argument is the notion that Indian tribes still possess attributes of inherent sovereignty.

The United States further notes that the holding of the Court of Appeals means that an Indian could escape prosecution of a serious federal crime such as rape by pleading guilty to violations of a lesser offense in tribal court. The United States points out that not to allow federal prosecution in such cases would be unjust and will eventually result in congressional abrogations of tribal court jurisdiction.

However, in its brief the government failed to mention that the problem could easily be solved if tribes were allowed to punish criminals without artificial limitations, such as the maximum 6-month sentence imposed by the Indian Civil Rights Act. In its decision, the Supreme Court speaks about the "retained sovereignty" of the Navajo tribe, a recognition that, while some aspects of sovereignty have been divested from them, "Indian tribes have not given up their full sovereignty."

In sum, the power to punish offenses against tribal law committed by tribe members, which was part of the Navajo's primeval sovereignty, has never been taken away from them . . . and is attributable in no way to any delegation to them of federal authority. It follows that when the Navajo Tribe exercises this power, it does so as part of its retained sovereignty and not as an arm of the federal government.

Since tribal and federal prosecutions are brought by separate sovereigns, they are not "for the same offense" and the Double Jeopardy Clause thus does not bar one when the other has occurred.

And finally, the Act can be interpreted as waiving the sovereign immunity of the tribes, thereby allowing a plaintiff to sue the tribe in federal court for violation of constitutional rights.<sup>137</sup> Tribes, most of which already lack sufficient funds, are now required to spend more money on additional litigation and potential damage awards to individual plaintiffs.

An important legal issue surrounding civil litigation under the Indian Civil Rights Act and the extent of federal intervention into tribal life authorized by the Act, was resolved in 1978 with the U.S. Supreme Court's decision in Santa Clara v. Martinez, Docket No. 76-1615. The case required the Supreme Court to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

A female of the Santa Clara Pueblo Indians brought suit in federal court against the tribe and its governor, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who married outside the tribe, claiming this was a violation of Title I of the Indian Civil Rights Act of 1968.

The Court concluded, "Efforts by the federal judiciary to apply the statutory prohibitions in a civil suit may substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity.<sup>138</sup> The Court added:

Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of § 1302 . . . . But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.<sup>139</sup>

Nonetheless, the Indian Civil Rights Act stifles any meaningful opportunity for tribal institutions to develop autonomous procedures and practices. Tribal courts are forced to adopt a system based on values of American justice to the detriment of Indian custom, tradition, and community needs. Many tribal councils are revising or rewriting tribal criminal law codes.<sup>140</sup> However, because of the Indian Civil Rights Act, the tendency is to "Anglicize" the revisions by modeling them on existing American codes, rather than by drawing on traditional Indian laws and cultures.

For tribal criminal justice systems to work efficiently, tribes should also operate their own jails. As stated earlier, traditional Indian justice systems had no need for jails. However, as more and more Anglo legal systems were imposed on tribes, jails became a necessary evil. Today, such prison systems increasingly have become outdated and inadequate.<sup>141</sup> Facilities as well as rehabilitation programs are desperately lacking.<sup>142</sup> The situation can only be ameliorated through increased funding and active support of the concept of tribal autonomy.<sup>143</sup> It seems logical that for an integrated criminal justice system to work tribes must have power and control over all aspects of the system.<sup>144</sup> If Indian tribes are to remain distinct political communities, their inherent sovereignty and right to self-government should be respected,<sup>145</sup> and if the tribes

are to become efficient political organizations, a complete assumption of judicial powers within their criminal justice system is needed.<sup>146</sup>

#### 4. Tribal Criminal Laws and Legislation

Federal interference with the tribal legislative process has been a major obstacle in developing effective tribal criminal justice systems.<sup>147</sup> To facilitate a more efficient system, BIA and other federal agencies must permit tribal councils to enact law and order codes without the requirement of federal approval. Tribes should also be able to enact criminal laws without restraint from federal statutes limiting their jurisdiction, such as P.L. 280 and the Major Crimes Act.

Tribal laws should be sufficiently comprehensive to encompass all criminal activities occurring on the reservation and should be the definitive standard for law enforcement. The multitude of autonomous legislative bodies such as federal and state agencies, BIA, tribal councils, and federal and state legislatures clearly detracts from orderly administration of justice.<sup>148</sup> The tribal council should enact all laws on the reservation to ensure uniform enforcement and treatment to all persons.

#### F. Conclusion

Indian self-government is beneficial to the development of better administration of justice on Indian reservations. Self-government encompasses every aspect of self-sufficiency in the criminal justice system, including autonomy in legislation, law enforcement, judicial policy and jurisdiction. Until these goals are realized, the state of criminal justice on reservations will remain chaotic.

Indian tribes have been recognized as possessing sovereign power and, with federal assistance, have developed their own tribal police forces, court systems, and criminal codes. Many of these justice systems contain critical inadequacies because of limited funds.<sup>149</sup> It is the responsibility of the federal government, under the trust relationship doctrine, to financially assist the administration of the tribal justice systems. Though financial and technical training assistance is warranted, federal interference in the internal tribal affairs serves only to negate the beneficial effects. Unfortunately, the federal government too often views its role as one of dictating to tribal governments. It is hoped that in the future the U.S. government will limit its involvement in this area but provide more financial assistance. Otherwise, future tribal criminal justice systems should be left to internal self-government.

## NOTES

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39. Cited in the Arizona Advisory Committee to the U.S. Commission on Civil Rights, Justice in Flagstaff: Are These Rights Inalienable?, 14 (March 1977).
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42. AIPRC, Task Force II, p. 35; see also, South Dakota Advisory Committee, op. cit., note 31, pp. 48-49.
43. South Dakota Advisory Committee, op. cit., note 31, p. 49.
44. U.S. Commission on Civil Rights, The Southwest Indian Report, 39 (May 1973).
45. Deloria Vine, Behind the Trail of Broken Treaties, 45 (1974).
46. The Daily Olympian and Seattle Post-Intelligence, Feb. 9, 1978.
47. See U.S. Commission on Civil Rights, Field Trip Summary: Rapid City, South Dakota, July 20-29, 1971.
48. The Southwest Indian Report, op. cit., note 37, p. 40.
49. John Keller, Yankton Sioux tribal attorney, testified to the South Dakota Civil Rights Advisory Counsel that the

Charles Mix County Civil Defense Unit was apparently an official, deputized arm of the sheriff's office. Keller further stated that both the Highway Patrol and the Division of Criminal Investigation routinely carried M16 automatic rifles and that some sheriff officers have them. South Dakota State's Attorney Raymond DeGeest stated that the Civil Defense Unit had on several occasions been called to assist law enforcement officers in Charles Mix County. (South Dakota Advisory Committee, op. cit., note 31, pp. 35-36.)

50. Ibid., p. 43.
51. Arizona Advisory Committee, op. cit., note 32, pp. 9-14.
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53. South Dakota Advisory Committee, op. cit., note 31, p. 81.
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58. Arizona Advisory Committee, op. cit., note 32, p. 19.
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60. Southwest Indian Report, op. cit., note 37, p. 40.
61. South Dakota Advisory Committee, op. cit., note 31, p. 76.
62. David M. Lawson, "Criminal Procedure: New Standard and Procedure for Accepting Guilty Pleas," 22 Wayne L. Rev. 1463, 1466 (1976).
63. Note, "Plea Bargaining and the Transformation of Criminal Process," 90 Harvard Law Review 564, 564-5 (1977).
64. National Center for Defense Management, Systems Development Study of Indigent Defense Delivery Systems for the State of South Dakota, 32 (Washington, D.C., 1977).

65. South Dakota Advisory Committee, op. cit., note 31, p. 79.
66. In Charles Mix County, South Dakota, 70 to 90 percent of the court-appointed lawyers are for Indians, according to the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, op. cit., note 31, p. 66.
67. Joint Committee of the Montana, North Dakota, and South Dakota Advisory Committees to the U.S. Commission on Civil Rights, Indian Civil Rights Issues in Montana, North Dakota, and South Dakota, 44 (Aug. 1974).
68. South Dakota Advisory Committee, op. cit., note 31, p. 66.
69. Ibid.
70. Ibid., p.67.
71. Ibid., p.69.
72. Ibid., p.64.
73. Ibid., p. 68.
74. Ibid., p. 72.
75. Jay Schulman, U.S. District Court, District of South Dakota, Western Division, United States v. Darelle Butler/Robert Eugene Robideaux, C.R. 75-5106-3, 75-5106-2 (Affidavit: State of New York)--cited in the South Dakota Advisory Report, p. 89.
76. South Dakota Advisory Committee, op. cit., note 31, p. 85.
77. Byron Swift and Gary Bickel, "Comparative Parole Treatment of American Indians in Federal Prisons: Fiscal Years 1973 and 1974," 8 Clearinghouse Review 726 (1975).
78. Rachael Rohde and Robert Grama, "Racial Status and the Likelihood of Serving a Jail Sentence When Convicted of a Criminal Misdemeanor in Hennepin County, 1973-74" (unpublished paper, January 1976). The report stated that the differences regarding types of crime committed and previous criminal convictions of the defendant did not explain the differential treatment.

79. Edwin Hall and Albert A. Simkus, "Inequality in the Types of Sentences Received by Native Americans and Whites," 13 Criminology 199, 211 (August 1975).
80. Swift, op. cit., note 69.
81. Ibid.
82. Gary Bickel, "Indians in South Dakota's Correctional System" (Bureau of Social Science Research 1975). This high Indian population is partially maintained by (1) an inability to meet excessive bail and (2) the imposition of high fines against Indian people who cannot afford to pay. (Community Corrections Resource Programs, Inc., "Swift-Bird Corrections Center Feasibility Study" (Ann Arbor, Michigan 1977)).
83. Ibid., note 31, p. 25.
84. Southwest Indian Report, op. cit., note 37, pp. 44-45.
85. See U.S. Commission on Civil Rights, Field Trip Summary: Rocky Boy's and Fort Belknap Reservations (Aug. 9-11, 1971).
86. Bickel, op. cit., note 74.
87. Ibid., p. 73.
88. Community Corrections Resource Programs, Inc., "Swift Bird Corrections Center Feasibility Study," 32 (1977).
89. Southwest Indian Report, op. cit., note 37, p. 43.
90. According to Gary F. Jensen and Joseph H. Strauss, "Crime, Delinquency and the American Indian," p. 2, in alcohol-related offenses the Indian arrest rate is 7 to 22 times greater than the arrest rates for black or whites in urban areas.
91. Minnesota Advisory Committee to the U.S. Commission on Civil Rights, "Bridging the Gap: The Twin Cities Native American Communities," 62 (1975).
92. Notes and Comments, "American Indians Imprisoned in the Oklahoma Penitentiary: A Punishment More Punitive Than Torture," 2 American Indian Law Review, 85-99, 88 (1974).
93. "Corrections in South Dakota," John Howard Report (1975). This is in comparison to a 25 percent recidivism rate for non-Indians.

94. Act of May 28, 1830, 4 Stat. 411.
95. U.S. Department of Justice, Report of the Task Force on Indian Matters, October 1975, p. 23.
96. 25 USCA §§ 450 et seq. (Supp. 1976).
97. American Indian Policy Review Commission, "Final Report I," May 17, 1977, p. 143.
98. American Indian Policy Review Commission, "Law Consolidation, Revision, and Codification I," Final Report Task Force No. 9, September 1976, p. 27.
99. Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (now codified as 18 U.S.C. § 1360 and other sections scattered throughout 18 and 28 U.S.C.).
100. See Senate Committee on Interior and Insular Affairs, "Background Report on Public Law 280," 94th Cong., 1st Sess. 12 (1975); and House Concurrent Resolution 108 (1953).
101. These states were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin; 18 U.S.C. § 1162(a) (1970).
102. Nevada, Florida, Idaho, Washington, Montana, Arizona, South Dakota and Utah have assumed jurisdiction in this manner.
103. State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 552 F. 2 1332 (1977); appeal granted, Docket No. 77-388 (February 1978).
104. 25 U.S.C. §§ 1321-26 (1970). The amendments did not, however, allow tribes to initiate the retrocession.
105. 18 U.S.C. § 1162(a) (1970).
106. American Indian Lawyer Training Program, Manual of Indian Criminal Justice, p. 105 (1977).
107. Ibid., p. 106.
108. Special Report No. 1553, 89th Congress, 2nd Session. 8-9 (1966).
109. Ex parte Crow Dog, 109 U.S. 556 (1883).
110. See Bryan v. Itasca County, 426 U.S. 373 (1976).

- 111. Justice and the American Indian, Vol. 1, pp. 7 and 9.
- 112. Ibid., p. 13.
- 113. Justice and the American Indian, 5 Vols. (Washington, D.C.: National American Indian Court Justices Association, 1974), Vol. 5: Federal Prosecution of Crimes Committed on Indian Reservations, pp. 11-12.
- 114. AIPRC, Final Report, p. 152.
- 115. AIPRC, Final Report, pp. 156-58.
- 116. Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. Sec. 1162, 28 U.S.C. Sec. 1360.
- 117. 18 U.S.C. 1153.
- 118. AIPRC, Final Report, pp. 162-3.
- 119. Justice and the American Indian, op. cit., note 106, p. 30.
- 120. American Indian Policy Review Commission, "Report on Federal, State and Tribal Jurisdiction," Final Report Task Force No. 4, 1976, p. 47: "A contrast is seen between the Wanblee incident, where [an Indian] person was killed and shooting was allowed to continue over a period of 2 days, and the incident in July when 2 FBI agents were shot and nearly 300 combat-clad agents, along with the trappings and armament of a modern army, were brought in 'to control the situation and find the killers.'"
- 121. American Indian Policy Review Commission, "Tribal Government," Final Report Task Force No. 2, 1976, p. 33.
- 122. Indian Self-Determination and the Role of Tribal Courts. A Survey of Tribal Courts Conducted by the American Indian Lawyer Training Program, 1978.
- 123. Ibid., 11.
- 124. Research Document in Support of the Criminal Court Procedures Manual: A Guide for American Indian Court Judges (Washington, D.C.: National American Indian Court Judges Association, 1971), p. 159.
- 125. Ibid., note 117, p. 159: "Appeals from the tribal courts to the tribal appellate courts are extremely rare, almost to the point of being nonexistent. The

structure for appeals to an appellate court exists in the tribal laws and ordinances. However, in almost every instance, appointments had not been made by tribal councils to fill the positions on the appellate courts. This was attributed to an absence of qualified persons to so appoint. A great deal of confusion exists as to whether or not the original tribal judge can even be a member of the appellate court on an appeal of a case which originated in his court."

126. Justice and the American Indian, op. cit., note 106, p. 52.
127. Indian Self-Determination and the Role of Tribal Courts, op. cit., note 115, pp. 47-8.
128. AIPRC, Task Force No. 4, op. cit., note 113, pp. 37-38.
129. Oliphant v. Suquamish Indian Tribe, Docket No. 76-5729.
130. Justice and the American Indian, op. cit., note 106, p. 53.
131. 25 U.S.C., §§ 1301 et seq. (1970).
132. Justice and the American Indian, op. cit., note 106, p. 55.
133. Act of April 11, 1968, 82 Stat. 78, 25 U.S.C. §§ 1301-1303 (1970).
134. See, Special Report No. 841, 90th Cong., 1st Sess. 6 (1967).
135. 25 U.S.C. 1302 (6).
136. 25 U.S.C. 1302 (7).
137. 25 U.S.C. 1303.
138. Santa Clara v. Martinez, 76-1615.
139. Ibid.
140. Indian Self-Determination and the Role of Tribal Courts, op. cit., note 115, p. 48.
141. Ibid., p. C-9.
142. Ibid., p. 79.
143. AIPRC, op. cit., note 114, p. 46-7.

144. Ibid., p. 34.
145. Felix Cohen, Handbook of Federal Indian Law (Albuquerque: University of New Mexico Press, 1971), pp. 145-49.
146. AIPRC, op. cit., note 114, p. 35.
147. AIPRC, op. cit., note 114, pp. 28-9.
148. Research Document in Support of the Criminal Court Procedures Manual, op. cit., note 117, pp. 159-60: "Great conflict exists between certain tribal courts and the Bureau of Indian Affairs Police, specifically in the areas such as ultimate disposition of particular cases; carrying out of court orders; serving of warrants; and the control of evidence. One of the greatest areas of conflict exists regarding the control of court funds derived from the collection of fines. It is urged by some that the BIA exercises control over ultimate disposition of such funds to the distinct disadvantage of the tribal courts. Such BIA control of court funds thereby prevents the court from upgrading itself in many ways."
149. Ibid., note 117, p. 160: ". . . there is a general lack of court office and library facilities for tribal judges. In a number of cases, court is actually conducted right next to the police radio in the police office or immediately adjacent thereto. In some of the courts observed, the courtrooms were found to be so small as to preclude six jury members from even entering the room and staying during the course of the trial, not to mention facilitating all of the other necessary parties to a jury trial."

## CHAPTER IV

### IMPACT OF CRIME AND CRIMINAL JUSTICE ON ASIAN-AMERICANS

Mr. Lim: Yes. The impact of delinquency on the elderly and also on the businessmen in Chinatown is phenomenal. In terms of actual size and number, so few people have really affected so many in terms of business. The elderly are getting mugged by our own people, as well as other groups, because we live in the kind of housing that sets up a situation for these people to get mugged. When there was a crime committed that involved a Chinese-speaking citizen, they had to go to the computer to locate a Chinese-speaking officer; then, hopefully, he speaks the dialect that the victim speaks.<sup>1</sup>

#### A. Introduction

The alarming increase of crime in America over the last 15 years is somewhat reflected in the Asian communities and serves as the context in which this analysis of crime and criminal justice practices in selected Asian communities is made. This analysis is long overdue given the failure of social science research to address the issues. An overview of the literature reveals several interrelated reasons for this neglect.

A major reason for this neglect is that there are only a handful of studies on crime in the Asian communities. Most studies on Asians have tended to focus on employment, educational achievement, immigration, or the impact of racism. An understanding of crime in the Asian community can only be gleaned, inferentially, from these broader inquiries. There is virtually no literature that addresses crime among Filipinos, Koreans, and the recent Indochinese immigrants, or for that matter, more established Asian-American communities of citizens of Chinese or Japanese ancestry.

The few studies on Asians and crime that do exist are not particularly informative. The studies are hampered by the lack of national statistics. Since Asians comprise a small proportion of the total U.S. population, their crime rates have not always been separately reported. Thus, the traditional sources for crime statistics cannot be relied on in investigation of this topic.

Based on studies that have employed traditional sources for data, researchers have concluded that low crime rates are the single most dominant characteristic of Asian communities.

The major paradigms in studies devoted to explaining the low rates have been the culture and personality or acculturation models. It was not until the publication of Walter Beach's study in 1932 that we began to see scholarly interpretations of crime among immigrant Chinese and Japanese. Beach's Oriental Crime in California is based on official data from the police and the prison system for the period 1900 to 1927.<sup>2</sup> He compared the Chinese and Japanese across counties, age, and occupation and offered a sociological interpretation that, while varying in emphasis in later years, became the dominant paradigm in explaining the low crime rate for these two populations:

. . . the evidence points to . . . certain aspects of culture mingling. The problem of adjustment of one culture to another inevitably illustrates the difficulties which arise through misunderstanding, and through the differences in the weight of emphasis which different forms of behavior are given to one culture as compared with another. It is well to understand that custom and law as affecting human conduct belong, in each case, to a cultural unit or whole, and criminal conduct itself must be studied in relation to the cultural background of the offender.<sup>3</sup>

Beach's interpretation is rather remarkable in that it represents a definite break from the theories of the immediate past--biological interpretations based upon IQ studies, the "instinct" assumption underlying Robert E. Parks's race relation studies, and the racial theories promoted by the social eugenicists.

Beach's culture conflict thesis assumes the relativity of culture, attributing criminal conduct to cultural differences. The thesis, however, is turned around in studies of Asian-American delinquency, attributing the low rate of delinquency among the children of these immigrants to the cultural values brought over by the immigrant parents. Norman Hayner, who conducted some of the earliest studies of Chinese and Japanese adolescents, asserted: "The low delinquency rate seems to be accounted for by the strong family and community organization characteristic of this immigrant group."<sup>4</sup> By 1938, Hayner was convinced that cultural factors explained the low delinquency rates among the Chinese and Japanese: "One of the major factors that accounts for the low rate of criminality [is] the integrated families that are characteristic not only of Japan but also of China and the Phillipines."<sup>5</sup> Hayner specified other factors to be filial piety, feelings of kinship, moral discipline, emphasis on courtesy, and strong parental feelings of responsibility. Helen MacGill, in a study of Chinese and Japanese adolescents

in Vancouver, British Columbia, was equally convinced that the explanation was to be found in the cultures of China and Japan.

The explanation seems to lie in the strong family system of both China and Japan, which operates to control and dominate the individual. The family structure has its roots in the religious beliefs of the two nations, for it is based upon and entrenched by ancestor worship. . . . Inculcated in the children of both nations is an extraordinary respect for parents and elders, and a strong sense of responsibility . . . .<sup>6</sup>

These early studies not only conveyed the impression of low crime rates among both the Chinese and Japanese, but laid the foundation for a culture and personality theory to explain the behavior and conduct of Asian-Americans. The theory assumes that the cultures of China and Japan contained the key elements that shaped and controlled the behavior of Asian-Americans and, for whatever the children achieved or failed to achieve, the strategy credited or blamed the cultural elements in the mother country.

Since World War II, research on Asian-Americans has been dominated by two theoretical perspectives: the assimilation--acculturation thesis, and culture--personality explanations. Both theses were first introduced in the delinquency literature by Walter Beach, Norman Hayner, Helen MacGill, and Arthur Lind.<sup>7</sup> As late as 1968, Sollengerger concluded from a study of San Francisco's Chinatown that the low delinquency rate is due to child-rearing practices, their cultural values and their family structure of Chinatown residents.<sup>8</sup> He also concluded that, as more and more youth assimilate American culture, delinquency will increase.

Some recent studies have noted that delinquency among Chinese youth in San Francisco, as measured by arrests, began to increase rapidly about 1965.<sup>9</sup> The Japanese in San Francisco, however, did not experience the same increase. Takagi and Platt<sup>10</sup> noted that the arrest rate of Chinese youth referred to the Juvenile Probation Department in San Francisco was the same for both the American-born and China-born youth. They argued that if the arrest rates are the same for both categories of youth, we cannot invoke the culture-conflict thesis advanced by Beach. The thesis might apply to the foreign-born, but not to the American-born.

The number of Chinese juveniles arrested has increased in recent years, but the number has not increased for the Japanese. Thus, the prediction that greater acculturation will lead to delinquency does not explain the case of the

Japanese. A case might be made that the Chinese have undergone greater acculturation than the Japanese, but this is problematic because half of the Chinese arrests were suffered by the China-born youth. This leads to the awkward proposition that, while some Chinese became delinquent through the process of acculturation, others became delinquent because of culture conflict. The proposition is awkward because, according to the culture and personality thesis, the China-born youth, being relative newcomers from a society that emphasizes traditional values, ought to be more deeply imbued with those values associated with a low delinquency rate. However, to twist and turn the culture and personality thesis does not help to explain the current relative increase of crime among Chinese youth in San Francisco.

To understand the impact of crime and criminal justice practices on Asians, one needs to move beyond culture- and personality-oriented investigations. For example, the origin and development of the laws Asians violate should be examined to determine if the problem is located in Asian behavior or the law itself; alternatively, the social realities in Asian communities that lead to the enforcement of particular laws need to be examined. What should also be taken into consideration is the "undetected" crimes in Asian communities, which is particularly relevant in the light of Asian people's reluctance to report crime to the police. A broader definition of crime is needed in order to assess whether the racially discriminatory legislation, which deprived Asians of rights and freedoms, can be considered a violation of human rights. Finally, what is needed is a discussion of how criminal justice procedures create negative images and labels which can heighten victimization and criminalization of Asian people.

This chapter will develop a line of analysis on the impact of crime on Asian communities that is different from the extant literature. The chapter consists of four major sections: The first section is a historical analysis of the Asian experience, with particular focus on how certain events affected the nature and extent of crime among Asians. The interrelation of racial antagonisms and economic conditions and the manner in which they influenced both the concrete life situations of Asians and the responses that emerged from them will be examined.

Following this historical analysis, the problem of Asian crime, as reflected in available official statistics, will be analyzed. These statistics reveal that Asian communities for the most part have been relatively crime free, the basis for much of the published studies. However, these statistics should be approached with caution, for there are limitations in employing official statistics as the sole basis of analy-

sis. The low arrest rates and low prison commitments, for example, are not accurate indicators of crime in Asian communities, but may reflect the nature of law enforcement practices in the Asian community, which is influenced by the image that Asians are "law abiding" people. The practice of categorizing all Asians as "others" poses yet another problem in assessing the nature of Asian crime based upon official statistics.

To provide a more comprehensive analysis of crime in Asian communities, the third section examines the impact of crime in specific, selected communities: the Japanese, Chinese, Thai, Korean and the new Indochinese communities. The analysis in the latter section is based on testimonies by citizens before the NMACCJ public hearings, in-depth interviews gathered from alternative sources which include officials and community people, as well as information from newspapers and local police records.

The fourth section of this chapter discusses drug abuse in the Asian community. Again, the analysis is somewhat hampered by the lack of adequate information. For example, data on Asian-Americans are unavailable in the LEAA-sponsored Criminal Victimization Surveys, the National Prisoner Statistics, Children in Custody, and the Survey of Inmates in State Correctional Facilities.<sup>11</sup> However, the discussion of drug abuse among Asians is important, for it calls into question the prevailing misconception that Asian communities do not experience the problems that plague the larger society.

In general, we do not know the crime rates in the several Asian-American communities. Official statistics indicate that there is relatively little crime, a fact that, in turn, is supported by the few Asians confined in correctional facilities and the research studies that have focused on the low crime rates among the Chinese and Japanese. For example, data on Hawaiians were presented at a civil rights hearing in Washington, D.C. Those data are shown in Table IV-1. One cannot draw any conclusions about the crime rates among Asians in Hawaii based on data on the resident penal population and those on parole in the general population. If further study reveals the preliminary findings are constant then one might be able to make some statements about a crime problem among Samoans, and to a lesser extent among Filipinos.

There is, however, a serious problem in looking at criminal justice data on minorities by comparing racial categories of people with the white category serving as a normative reference. It is fruitless to make these comparisons because the racial categories of people are not comparable in their experiences nor in their resources to cope with the exigencies of life. One also cannot continue to study the criminal

Table IV-1

**Population by Race of Persons Confined in  
Correctional Institutions**

| Ethnic Group    | Total<br>Population | Total/Prison | On Parole   | Rate/   |
|-----------------|---------------------|--------------|-------------|---------|
|                 | (1976)              | (Feb. 1978)  | (Feb. 1978) | 100,000 |
| Caucasian       | 230,078             | 50           | 37          | 37.8    |
| Japanese        | 219,824             | 24           | 20          | 20.0    |
| Native Hawaiian | 146,291             | 9            | 5           | 9.5     |
| Filipino        | 83,791              | 35           | 36          | 84.7    |
| Chinese         | 35,791              | 6            | 3           | 25.1    |
| Korean          | 10,733              | 2            | 3           | 46.6    |
| Black           | 4,460               | 12           | 7           | 426.0   |
| Samoan          | 3,183               | 21           | 14          | 1099.6  |
| Mixed           | 76,324              | 180          | 125         | 399.6   |
| Unknown/others* | 9,283               | 65           | 73          | 1486.6  |

Source: Lawrence Koseki in Civil Rights Issues of Asians and Pacific Americans (U.S. Civil Rights Commission, Washington, D.C., May 1979).

\* "Unknown/others" are not specified under Total Population. For the corrections data, they are: Portuguese, Puerto Rican, Others, and Unknown.

justice processes as operating in a political and social vacuum. The reason this perspective is inappropriate is that the implicit bias in American social sciences focuses on proportions, averages, or summaries, which do not reflect similarities as they collapse a range of differences. Put differently, an average or median says that for every rich person there is a poverty-stricken person. Thus, behind the percentages and averages reflecting the high educational attainment, occupational status and income levels of Asian-Americans, there exists criminogenic conditions among those less well endowed. Such criminogenic conditions exist in Chinatown, which is discussed in this chapter. Analogous to the rebellion in Watts that caught the country by surprise in 1965, a delinquency problem in the nation's Chinatowns was similarly unexpected. The intent in this chapter is to discuss and analyze what appears to be a contradiction--a crime or criminal justice problem in ostensibly crime-free Asian communities.

## B. The Asian Experience in America

This section is a historical overview of the Asian in America. The purpose is to highlight the relationship between racism and crime. Since there already exists much literature that provides a more comprehensive account of Asian history beyond the scope of this chapter, the following history will, instead, limit its focus to selected events that took place in the Chinese, Japanese, and Filipino experiences in America. This section will analyze the forces behind these key events and interpret their significance with respect to crime and criminal justice. This interpretive history provides the perspective to understand crime and its related impact on contemporary Asian communities.

First, however, one needs to understand some terms. The terms "Asian" or "Asian-American" are relatively new ones. They were introduced on the West Coast during the student movement of the late sixties and are similar in usage to Afro-American, Native-American, Mexican, and Latino. The original use of the terms was clearly political, as they conveyed the idea of unity, reflecting certain shared experiences in America. Those who used the terms understood the necessity to transcend the prevailing ethnic and national chauvinism that tended to promote ethnic hostility.

Originally, the term Asian-American included only those representative ethnic Asians on the San Francisco State and the University of California-Berkeley campuses; that is, Chinese, Japanese, Korean, and Filipino students. As the term Asian or Asian-American came to be adopted in the larger community, Pacific Islanders (or Pacific Americans), representing Samoans, Hawaiians, Guamanians, and Malaysians, were appended, as in the acronym PAAMHRC (Pacific/Asian American Mental Health Research Center),<sup>12</sup> or separately identified, as in the recently issued U.S. government publication, Asians and Pacific Americans: Myths and Realities.<sup>13</sup> Today, the term is used to include the new Asian populations --the Vietnamese, Laotians, Cambodians, and Thais.

One cannot talk reasonably about crime and criminal justice and their impact on Asians without separately discussing the experiences of each ethnic population. Such a task goes far beyond limits imposed by a single chapter in a book, requiring, it would appear, an arbitrary decision to report on some groups and not others. The decision to report on some groups and not on others was not completely arbitrary because, to a large extent, existing data were relied upon as well as cooperation from community people who agreed to be interviewed on the topic.

## 1. Chinese in America

Chinese immigration to the United States began as early as 1848. Immigration rates were low in the subsequent three years; however, economic opportunities on the West Coast, and political turmoil in China, quickly led to a tremendous increase in Chinese immigration, beginning in 1852. In that year, 20,026 Chinese arrived in San Francisco. By 1880, the Chinese population in the U.S. had grown to 105,465.<sup>14</sup>

Upon their initial arrival, the Chinese were favorably received. Americans viewed them as quaint curiosities, who could potentially participate in every realm of American society.<sup>15</sup> This image was soon replaced as the concrete conditions in the economy, combined with the growing nativist feelings, resulted in strong anti-Chinese sentiments.

The Gold Rush dominated the economic context in which Chinese immigration took place. Many of the Chinese sought their fortunes by heading for the mining country. By 1854, much of the surface gold had "panned out." Small mining operations no longer produced high yields. It became evident that only with the use of heavy hydraulic machinery would mining be feasible. White miners, faced with less productive claims and threatened by competition from the Chinese and Mexicans, began to vent their anger and frustration against the Chinese through violent takeovers of the more desirable claims. It was at this time that a series of foreign miners' tax laws were enacted in the Western states. In California, the first foreign miner's tax was passed in 1850, and was followed by a series of laws which periodically readjusted the rate of the tax.<sup>16</sup> In 1850 all miners who were not native-born citizens of the United States were required to take out licenses for which they paid twenty dollars per month. Failure to obtain a license was punishable by expulsion from the mines, with possible fine and imprisonment. The law was initially directed against miners from Chile, Mexico, and Australia. The law was revised in 1852 to apply to the Chinese and amended in subsequent years so that foreigners who declared their intention of becoming citizens were exempted from paying the tax. The Chinese, however, were not permitted to become naturalized citizens. The tax not only drove many of the Chinese and Mexicans from surface mining claims, but it created a wage-labor force that was needed by the developing corporate mining companies.

The foreign miner's tax presented a state definition that Chinese and Mexicans were of lesser political status than whites. This classification, sanctioned by law, created the idea that virtually anything could be done to the Chinese and Mexicans with impunity. This stigma not only allowed whites to commit crimes against the Chinese and Mexicans

without fear of criminal penalty, but also set an important precedent for future discriminatory legislation.

In 1854, for example, it was ruled that a Chinese person would not be allowed to testify against a white person,<sup>17</sup> making it virtually impossible for the Chinese to obtain due process either in cases in which they were charged with crimes or in instances when they were victims of crimes committed by whites. Though no research has been done on the effects of these laws, it could have contributed to the large number of Chinese committed to prison during the late 1800's.<sup>18</sup>

The rights and opportunities of the Chinese were further restricted by a variety of local ordinances. Laws were passed allowing states to withhold money from districts with integrated classrooms, thus, excluding Chinese children from public schools. In the 1870's, a number of ordinances were passed to discourage the Chinese from continuing their laundry businesses. Taxes were enacted to make it difficult, if not impossible, for the Chinese to pursue certain occupations; for example, the imposition of heavy taxes on the fishing industry that the Chinese had established.<sup>19</sup>

The repression of the Chinese through legislation culminated in the Chinese Exclusion Act of 1882.<sup>20</sup> This was the first law on the statute books of the United States restricting the immigration of an entire race. It suspended the immigration of Chinese laborers for ten years and was renewed every ten years until 1902, at which time the Chinese were permanently excluded from immigration to the United States. As an aside, the origin of the 1882 Chinese Exclusion Act is an interesting topic in the sociology of law. The government of China agreed to the legislation on the condition that the government of the United States enact legislation to prohibit Americans from trafficking opium into China. The U.S. government did so in 1886, enacting the first federal law governing the international trafficking of narcotics.<sup>21</sup> An examination of the political economy helps to explain the reasons for, and implications of, this law. As is well known, the Chinese were primarily responsible for the construction of the western portion of the transcontinental railroad. The need for labor led to mass recruitment of the Chinese, which explains their heavy immigration during the 1860's. When the railroad project was completed, the anticipated expansion of the economy did not occur. Instead, the influx of eastern products and massive unemployment of California workers were accompanied by a serious economic depression during the 1870's.

The unemployed Chinese sought new employment in urban manufacturing centers, agriculture, and land reclamation

projects. The growing white labor movement at the time reacted strongly to these events. It charged the Chinese with unfair labor competition, intensifying the anti-Chinese sentiments. The political manifestation of this racism resulted in the passage of the Exclusion Act, forbidding the further immigration of Chinese laborers, creating for the next fifty years a male-dominated Chinese community.

How do these selected events relate to the issue of crime and criminal justice in the Chinese experience? The criminal justice apparatus explicitly designated the Chinese as politically inferior. The Chinese, under existing laws and social policies, were victimized and criminalized. Further, cruel laws were enacted which victimized the Chinese by defining their normal pursuits as crimes; for example, prohibitions against the carrying of laundry with poles, a traditional, Chinese cultural mode.

The discriminatory laws, combined with the intense racial violence against the Chinese, led to the formation of a Chinatown. The racial violence in rural areas drove many Chinese to the "safe" urban areas, where other Chinese lived. However, discriminatory city ordinances further restricted the Chinese to a circumscribed area. Without access to services in the white sections of the city, the Chinese established their own ethnic enterprises for goods and services. The same conditions giving rise to parallel business ventures in Chinatown also account for the development of illegal economies, particularly gambling, prostitution, and drugs. The conditions that resulted from racism account for crimes among the Chinese in the nineteenth century and help to dramatize how laws are employed to maintain racist ends.

The passage of the Exclusion Act had a profound effect upon the composition of the Chinese population. The end of immigration left a predominantly male Chinese population. With no opportunity to establish family life, Chinese males had to seek other avenues to occupy their time and to escape the harshness of their existence. The loneliness they faced made gambling an attractive form of entertainment and fueled the fantasy of a "big score" so they might return to China. The lack of female companionship made prostitution a thriving enterprise, and the harsh realities induced many to seek escape through the use of opium.

## 2. Japanese in America

The 1882 exclusion of the Chinese did not eliminate the need for labor in the developing economy of the West Coast. Japanese immigrants came to fill this need. Initially, rates of immigration were low; between 1869 and 1890, only about 200 Japanese arrived each year. By 1890, however, the

immigration increased and the Japanese population grew to 24,326. The most significant period of growth occurred from 1900 to 1910, when 129,797 Japanese came to the United States.<sup>22</sup> As with the Chinese, much of the early immigration was predominantly male, and thus, it was not uncommon for the Japanese to engage in activities such as gambling and prostitution. As time progressed, the particular nature of the Japanese experience gave rise to a different picture with regard to crime and criminal justice.

Upon their arrival, the Japanese provided a major portion of the agricultural labor force. Working in labor gangs, moving from area to area to harvest crops, the Japanese quickly became known as a cheap, reliable, and hard-working labor force. They did not, however, remain a migratory work force for long. The Japanese took their meager earnings and used them to enter independent farming, through tenant farming and land leasing. Their reputation as hard workers actually facilitated hard acquisition, for white farmers were willing to lease to Japanese, knowing that they and their land would profit.<sup>23</sup> The Japanese were also able to purchase their own farms and became a major factor in California's thriving agricultural industry. Table 4-2 indicates their rise in agriculture.

Table IV-2  
Growth of Japanese Farming  
(in acres)

|      | Owned  | Leased   | Shared Crop |
|------|--------|----------|-------------|
| 1904 | 2,422  | 35,258   | 19,572      |
| 1909 | 16,449 | 80,232   | 59,001      |
| 1919 | 74,769 | 383,287* | --          |

Source: Roger Daniels, Politics of Prejudice (Berkeley: University of California Press, 1972).

\* Lease figure includes cropping contracts.

The establishment of independent farming as an economic mainstay represents a significant difference in the Japanese experience as compared to the Chinese. The other major difference was in the sexual composition of Japanese immigration. Unlike the Chinese, large numbers of Japanese women later immigrated to the United States. The immigration of women established family life among the Japanese. The following figures illustrate the sexual ratio in Japanese

immigration. In 1900, of the 24,326 Japanese, only 985 were female. In 1910, the number of females rose to 9,087; and by 1920, out of a total population of 111,010, 38,303 were women.<sup>24</sup>

The fact that the Japanese were able to establish a stable independent economic base as well as a family life explains, in part, the low crime rates. The Japanese were mostly rural residents; therefore, gambling and prostitution were not as extensive as among the Chinese. Thus, family-based life produced programs and activities centered around churches, youth organizations and schools. The relatively low crime rate among the Japanese was the basis for most of the studies on Asian crime during the twenties and thirties.<sup>25</sup>

These studies did not, however, take into account the impact of discriminatory legislation, especially the limitation of civil liberties. When examined from this perspective, the experience of the Japanese resembles that of the Chinese.

The Japanese inherited the legacy of discrimination that developed against the Chinese. Their arrival triggered a new fear of a "yellow peril" in the minds of whites, particularly white workers who felt their economic positions might be threatened.

The first major anti-Japanese movement in 1906 centered on the issue of school segregation. White San Franciscans were fearful of having Japanese children in the same classrooms with their children, and sought to have them assigned to the existing, segregated Chinese school. This action escalated into an international controversy. As a rising world power, Japan was able to wield political clout, and a compromise between the U.S. and Japan, known as the Gentlemen's Agreement, was reached. San Francisco rescinded the order to segregate, and Japan volunteered to limit the emigration of male laborers. The agreement did not prohibit wives of resident aliens from immigration, and many Japanese women continued to come to the U.S. under the "picture bride" system.

The Alien Land Law of 1913 was the first major anti-Japanese legislation. Resulting from the growing anti-Japanese movement, this law made it illegal for Japanese aliens to own land. Though considered a political victory among nativists, the law did not prevent the Japanese from purchasing land. The Issei, or first generation Japanese, bought land but placed the title to their land in the names of their American-born children.

Both the Gentlemen's Agreement and the Alien Land Law represented efforts to limit the freedom and rights of the Japanese. As with the Chinese, these actions served to define the Japanese as having lower political status than whites, and made them vulnerable to criminal victimization. The anti-Japanese legislation also created crimes out of previously noncriminal activity, such as owning land.

The response of the Japanese to these conditions exacerbated anti-Japanese feelings. The immigration of women through the picture bride system and the placement of land in the name of American-born children were viewed as explicit attempts by the Japanese to circumvent the laws of the land. The image of the Japanese as devious, criminally fraudulent and unscrupulous began to emerge as a stereotype.

These early events became the foundation for future discriminatory actions. In 1924, Japanese were totally excluded from immigrating to the United States. Then in 1942, the ultimate demonstration of racism occurred when 110,000 Japanese were rounded up and placed in concentration camps for the duration of World War II. In effect, an entire race was deemed a criminal threat to America, solely on the basis of its race. This massive deprivation of Japanese rights is the most blatant example of anti-Asian sentiment expressed by white society, an act which was sanctioned by the U.S. Supreme Court.<sup>26</sup>

### 3. Filipinos in America

The immigration restrictions on the Japanese in 1924, again, did not eliminate the need for cheap labor in California. In fact, with the growth of large-scale corporate farming, the need for agricultural workers was greater than ever. To fill this need, people of the Philippines were recruited for agricultural labor. Because the Philippines was a territory of the U.S., its citizens were considered "wards" of the U.S. and were exempt from the immigration laws invoked against other Asian groups. During the twenties, some 45,000 Filipinos came to the West Coast.<sup>27</sup>

As with the Chinese, the vast majority of the Filipino immigrants were males. Females did not come to America for several reasons. For one, many male Filipinos who did immigrate did not intend to remain in the U.S. They came to seek their fortunes and intended to return eventually to the Philippines. Second, Filipino cultural values made female emigration difficult, for women would rarely travel unchaperoned. Finally, the labor needs of agricultural interests specifically called for able-bodied men.<sup>28</sup>

The overwhelming male composition of the Filipino population needs to be examined as a precondition for crime and victimization among Filipinos. Whites, for example, believed that the absence of Filipino women would lead the men to lust for white women. This led to vigorous enforcement of anti-miscegenation laws. With no opportunity for establishing female relationships, Filipino men engaged in marginal activities. The phenomenon of taxi-dance halls, where the men purchased tickets for a two-minute dance, became a popular pastime for Filipinos. Prostitutes did a lively business among Filipinos.

In addition to the problems associated with a male-dominated population, the nature of Filipino labor-force participation had helped to create negative racial images. Their role as migratory agricultural workers placed Filipinos in a perpetual state of poverty and instability. This facilitated images of Filipinos as dirty, inferior beings, who are viewed with suspicion by the larger society. The state of poverty also led Filipinos to seek their fortunes through gambling. Many stories on Filipino life depict Filipinos as spending their entire seasons' earnings in the gambling dens of Little Manila in Stockton.<sup>29</sup>

The histories of only three Asian populations have been discussed because of the availability of voluminous historical material. While it is true that Koreans and Hindus also came to the United States as early as the turn of the twentieth century, very little is known about their early histories. In the remaining sections of this chapter, crime and its impact in the Japanese and Chinese communities are discussed in depth, but crime in the new Asian communities is discussed briefly, specifically, in the Korean community whose population has experienced phenomenal growth since 1965; in the Thai community, a little-known community in Los Angeles; and in the Indochinese refugee community, the latest population from Asia to settle in the United States.

#### 4. Summary

These events in the experiences of Asians in America illustrate how crime and the operation of the criminal justice system has historically affected the lives of Asian-Americans. We need to look beyond the mere descriptions of historical events to examine how these events came about, how Asians responded to them, and how crime and criminal justice practices impinged on Asians' lives. Two considerations emerge from this discussion. First, the analysis of crime cannot be limited to studying attributes of the offenders who get caught up in the criminal justice system. Traditional social science research has focused on crime, as defined by law. While this is valid, there are other aspects of crime

that should be pursued with equal vigor. For example, discriminatory legislation had serious consequences for Asians as it deprived them of their basic civil liberties. The law itself cannot be accepted uncritically; laws were enacted to criminalize the normal pursuits of Asians. Moreover, the laws legitimized the idea that Asians are inferior to whites, thus creating negative images of Asians which made them vulnerable to criminal victimization.

Second, the nature and impact of crime varied enormously among Asian groups, depending on the sexual composition of the immigration population and its participation in the labor force. The Japanese, for example, because they were able to establish a stable economic base and family life, experienced lower crime rates than the Chinese and Filipinos, who were predominantly single males and waged laborers. Thus, two focal points are needed in studying crime and its impact in Asian communities. First, the class of recent immigrants must be examined to fully understand the present structure of Asian communities; and second, the communities' effects upon crime and criminal victimization must be analyzed.

### C. Official Statistics on Asian-American Crime and Victimization

The critical role that official statistics play in the analysis of crime in general, and for Asians in particular, requires an examination of the nature of Asian crime as revealed in these statistics. The following discussion serves a two-fold purpose. It attempts to present the extent of Asian crime as recorded by official agencies; concomitantly, it tries to point out the limitations inherent in these statistics.

On a national level, data on crime and criminal victimization of the Asians in the United States are sparse. As noted earlier, data on Asian-Americans are unavailable from ordinary, primary and useful sources. One can, however, refer to Crime in the United States, Uniform Crime Reports, issued annually by the Federal Bureau of Investigation. In the relevant sections of that report, one can retrieve data on the total number of arrests nationally by race and offense. The five major racial breakdowns are "White," "Negro," "Indian," "Chinese," and "Japanese." Additional breakdowns are by age and location. Thus, to understand crime and its impact upon Asian-Americans, it is necessary to visit each of the major cities in the United States to obtain something as basic as arrest data. Even visiting local jurisdictions at the state, county and municipal levels requires the cooperation of officials, something that is not always easy to obtain.

State and local criminal statistics provide more information about Asian crime, but even with these data there are certain limitations. For example, the Asian Task Force of the Los Angeles Police Department was not able to provide summary statistics on Asian-American crime and delinquency in Los Angeles. While other jurisdictions, such as San Francisco, do produce annual statistics, they are often for internal use only.

The best information available comes from the California Department of Corrections, the California Department of the Youth Authority, and the California Bureau of Criminal Statistics. While the reliance on California sources poses some problems in making national generalizations on Asian-American crime and delinquency, it should be noted that 36 percent of all Japanese in the United States, 39 percent of all Chinese, and 40 percent of all Filipinos live in California.<sup>30</sup>

The most complete data on Asian-American crime are collected by the California Department of Corrections, the state's adult prison system. The data are published annually, going back to 1854.<sup>31</sup> In 1973, in an issue of California Prisoners, the data on male felons received from courts show 11 Chinese, 11 Filipinos, and 4 Japanese. In 1972, there were 13 Chinese, 6 Filipinos, and 9 Japanese. There were no Chinese or Japanese adult females committed to prison in 1972 and 1973. Two Filipino women were committed during these years, one in each of the two years.

Table IV-3, summarizes the penal commitment of Asian-Americans in California since 1945. Among Filipino and Japanese adult males, there is no discernible pattern of penal commitment. There was a relatively larger number of Chinese penal commitments during the fifties, but the numbers decreased in the subsequent years. Perhaps what is most striking about Table IV-3 is the apparently "crime free" behavior among Asian-American adult females.

The California Department of the Youth Authority, the sister agency of the California Department of Corrections, also issues an annual report, but it has only recently identified Asian-American commitments in youth penal facilities. Unfortunately, the report uses the category "Asian" to describe the Chinese, Japanese, and Korean, so there is no way of comparing the three ethnic groups. The 1976 annual report shows 25 Asians committed in 1976 plus 7 Filipinos. No Asian-American female was committed in that year.<sup>32</sup>

The Bureau of Criminal Statistics of the California Department of Justice monitors and collects statistical data on crime and delinquency from the police departments,

Table IV-3

**Asian-Americans Committed to  
California Prisons, 1945-1973**

| Men        |         |          |          | Women   |          |          |
|------------|---------|----------|----------|---------|----------|----------|
| Year       | Chinese | Japanese | Filipino | Chinese | Japanese | Filipino |
| 1945<br>to |         |          |          |         |          |          |
| 1949       | 60      | 6        | 80       | -       | -        | -        |
| 1950       | 14      | 5        | 10       | -       | -        | -        |
| 1951       | 33      | 5        | 17       | -       | -        | -        |
| 1952       | 35      | 7        | 12       | 3       | -        | -        |
| 1953       | 27      | 1        | 13       | -       | -        | -        |
| 1954       | 44      | 6        | 7        | -       | -        | -        |
| 1955       | 22      | 1        | 13       | -       | -        | -        |
| 1956       | 19      | 4        | 9        | -       | -        | -        |
| 1957       | 23      | 5        | 9        | -       | -        | 1        |
| 1958       | 10      | 7        | 15       | -       | -        | -        |
| 1959       | 6       | 10       | 29       | -       | -        | 2        |
| 1960       | 8       | 6        | 12       | -       | -        | -        |
| 1961       | 10      | 5        | 10       | -       | -        | 1        |
| 1962       | 8       | 3        | 13       | -       | -        | -        |
| 1963       | 8       | 8        | 12       | 1       | 1        | 1        |
| 1964       | 2       | 3        | 9        | -       | -        | 1        |
| 1965       | 5       | 1        | 8        | -       | -        | -        |
| 1966       | 2       | 7        | 9        | -       | -        | 2        |
| 1967       | 8       | 3        | 5        | -       | -        | -        |
| 1968       | 12      | 3        | 10       | -       | -        | 1        |
| 1969       | 8       | 5        | 8        | -       | -        | -        |
| 1970       | 5       | 7        | 12       | -       | -        | 2        |
| 1971       | 8       | 5        | 14       | -       | -        | -        |
| 1972       | 13      | 9        | 6        | -       | -        | 1        |
| 1973       | 11      | 4        | 11       | -       | -        | 1        |

Source: Adapted from California Prisoners, Department of Corrections, Sacramento, California.

sheriff's offices, and the county-operated juvenile and adult probation departments. The units report data on race and ethnicity, but because of the small number of Asian-American offenders, they are collapsed into the category "other" in the Bureau of Criminal Statistics' annual report called Crime and Delinquency in California.<sup>33</sup> The detailed data collected by the reporting agencies, including information on race, while they disappear into the "other" category in California's annual reports, reappear in the U.S. Uniform Crime Reports.<sup>34</sup> For example, one can retrieve information on the number of Asian-Americans arrested for a given offense:

Table IV-4

1971 Arrests and Citation of Male Juveniles by Race

| Offense             | White | Black            | Chinese |
|---------------------|-------|------------------|---------|
| Robbery             | 8%    | 22%              | 20%     |
| Aggravated Assault  | 8     | 10               | 16      |
| Assault - All Other | 14    | 15               | 12      |
| Burglary            | 34    | 35               | 26      |
| Grand Theft         | 6     | 14               | --      |
| Auto Theft          | 30    | 3                | 26      |
| TOTAL               | 100%  | 99% <sup>a</sup> | 100%    |
| N                   | (985) | (1309)           | (114)   |

a Error due to rounding percentage.

Note: There was no arrest of Chinese for homicide or rape in 1971.

Source: Adapted from an Asian-American Studies class project paper, University of California, Berkeley (no date).

It is evident that even the best available data contained in official crime statistics provide little substantive information on the nature and impact of crime and victimization in Asian communities. The focus on prison commitments represents but a fraction of actual criminal offenses. The practice of lumping Asians together as others further distorts the picture.

The limitations of official crime statistics require the use of alternative methods to analyze the nature of Asian crime. The following section presents an alternative account of Asian crime, based on the informed opinions of people in Asian communities, who testified before the National Minority Advisory Council on Criminal Justice.

#### D. Crime and Delinquency in Contemporary Asian-American Communities

This section examines the impact of crime, delinquency, and criminal victimization in selected Asian-American communities.<sup>35</sup> The separate analysis of Asian communities allows us to highlight the tremendous variations among the several Asian groups, with respect to the issue of crime. As in the historical overview, the analysis of crime will be done by examining the nature of immigration, participation in the labor force, and the response of Asians to the conditions that characterize their lives in the United States.

To obtain a sense of the population of Asian-Americans and Pacific Islanders in the United States, one can examine the data presented before the U.S. Civil Rights Hearings on Asian-Americans in May of 1979.<sup>36</sup>

Table IV-5

#### Asian-Americans and Pacific Islanders in the United States (Estimated population in 1979)

|                                  |         |
|----------------------------------|---------|
| Chinese Americans                | 750,000 |
| Japanese Americans               | 600,000 |
| Korean Americans                 | 400,000 |
| Filipinos and Filipino Americans | 250,000 |
| Indochinese (all groups)         | 200,000 |
| Pacific Islanders                | 100,000 |

These population estimates cannot be taken seriously, as an HEW report based on 1970 census data indicate that there were 591,000 Japanese and Pacific Islanders, and the other Asian categories have experienced heavy immigration since 1970.

Presented in Table IV-6 is the 1970 geographic distribution of Asian-Americans based upon Standard Metropolitan Statistical Area with over 5,000 or more members of that ethnic group.

##### 1. The Korean Community

What is generally not known, and certainly not reported in published accounts, is the existence of a large Korean population in the United States. Interviews with the Los Angeles police, county officials, and members of community organizations contributed to information on the subject. It is difficult to ascertain the exact numbers of the Korean community, except for the publication of a recent sociological study of petty entrepreneurship in the Korean community,<sup>37</sup> but no published data on Korean-Americans exist.

Table IV-6

## Geographic Distribution of Asian-Americans

|                                    | Japanese | Chinese | Filipino | Korean |
|------------------------------------|----------|---------|----------|--------|
| Anaheim/Santa Ana/<br>Garden Grove | 10,700   |         |          |        |
| Chicago                            | 15,700   | 12,000  | 11,500   |        |
| Denver                             | 5,600    |         |          |        |
| Fresno                             | 5,600    |         |          |        |
| L.A./Long Beach                    | 105,000  | 41,500  | 32,000   | 9,400  |
| New York                           | 16,600   | 77,100  | 12,500   | 4,700  |
| Sacramento                         | 12,000   | 10,500  |          |        |
| San Diego                          | 7,600    |         | 15,000   |        |
| San Francisco/Oakland              | 33,500   | 88,400  | 44,300   |        |
| San Jose                           | 16,100   | 8,000   | 6,700    |        |
| Seattle/Everett                    | 14,000   | 7,700   | 7,700    |        |
| Honolulu                           | 169,000  | 48,900  | 66,600   | 8,900  |
| Boston                             |          | 12,100  |          |        |
| D.C./Md./Va.                       |          | 7,800   | 4,600    |        |
| Norfolk/Portsmouth, Va.            |          |         | 5,500    |        |
| Salinas/Monterey                   |          |         | 6,100    |        |

The 1970 U.S. Census reported 70,000 Koreans living in the nation. In 1978, the Korean population was estimated to be nearly 260,000, with about 100,000 in the city of Los Angeles, concentrated along a twenty-block strip on Olympic Boulevard from Vermont to Crenshaw Avenues. Dr. Samuel Rhee, of the Los Angeles Mayor's Office for Youth Development, reports that the Koreans are disproportionately young; 41.5 percent are below age 25, and 87.3 percent are below age 45. An estimated 5,000 Korean youngsters are enrolled in the Los Angeles public schools.

Although Korean-Americans are highly educated as a group, most have been unable to find employment commensurate with their education. While the language barrier accounts for some of this, many Koreans in Los Angeles have opted for self-employment. There are 4,500 small businesses, some 1,200 of which are liquor stores and restaurants. An unspecified number are self-employed as gardeners and janitors. The women are reported to be employed mostly in the garment industry.<sup>38</sup>

In sharp contrast to the experience of the recent Chinese immigrants who have settled in established China-

towns, the Koreans have literally created a new community by transforming the existing storefronts and office buildings into businesses catering not only to the Korean-American trade, but also to increasing overseas trade with Korea. The phenomenon of self-employment or entrepreneurship among Asians needs to be examined in some detail because the ideology and values associated with it might be key determinants of the low crime rates among Asians, that is, it is a conservative ideology that promotes traditional values.

The phenomenon of self-employment among earlier Asian immigrant groups (the Chinese and the Japanese), and now among the new Korean-Americans, has been explained by sociologists as a phenomenon of a middleman minority,<sup>39</sup> which is to say that under certain conditions, a minority group comes to occupy a higher niche in society. The middleman minority possesses economic resources out of proportion to its numbers, but its members occupy a relatively low status with respect to political power and social privileges.

The structure of the theory is limited in scope as it purports to apply to classes of immigrants who did not intend to remain in the United States; for example, the sojourner, who comes to make money and then returns to the mother country. As far as can be determined, the new Koreans intend to remain permanently in the United States.

There are other problems with the theory. While earlier Asian immigrant groups were able to claim territories during a period when there was relatively open geographic space, how did contemporary Koreans manage to obtain geographically bounded housing and places of business in an already developed urban space? Moreover, the small businesses of the Koreans, including the activities of the self-employed gardener, are commodity redistribution, which can only be understood by examining what Braverman calls "the universal market."<sup>40</sup> "The first step in the creation of the universal market is conquest of all goods production by the community form, the second step is the conquest of an increasing range of services and their conversion into commodities, and the third step is a product cycle which invents new products and services . . . ."<sup>41</sup>

A more persuasive account of petty entrepreneurship among the new Korean immigrants can best be understood by examining not only Braverman's analysis of the changing occupational structure in the United States, but also Harvey's work on the political economy of urban space.<sup>42</sup>

Moreover, the influence of religion plays an important role in the formation of a new racial community.<sup>43</sup> The internationalization of capital has apparently threatened the

educated class in Korea, which might be related to that society's need to produce technically-oriented workers, thus profoundly altering the traditional institutions (colleges and universities) to meet the needs of commerce and technology. The significance of this social dislocation lies in the number of doctorate degree holders (in Philosophy or Divinity) who have emigrated from Korea. There are more doctorates in the Korean population in the United States than in the other Asian groups combined; large enough that they have formed a national organization called the North American Association of Christian Scholars.

The Korean intellectual class in America wields an enormous amount of influence that stems from the prestige and privileges traditionally accorded the literati class, learned in calligraphy, poetry and art. The intellectuals produce a large number of publications--books, pamphlets, newsletters, journals and newspapers, which are widely consumed given the high literacy rate among the new immigrants. The publications focus upon issues in Korea, major themes being the "unification of Korea" or "human rights and democratic elections" in Korea. The writings emphasize nationalism and Christianity, revealing the intellectual's hope of someday returning to the mother country to regain the privileges once enjoyed.

In the Korean community, the preacher is the one person who comes closest to approximating the standards of the literati class. There are officially 100 Korean Protestant churches in the city of Los Angeles alone, and about three times that number if congregations headed by lay ministers are included. The ministers are mostly Presbyterians and, to a lesser extent, Methodists. The lay preachers are graduates of Korean colleges, having obtained what would be equivalent to a bachelor's degree in theology, while the ministers of churches have had three years of additional work in a theological seminary in the United States.

The key to understanding the social and economic organization of the Korean community is the lay preacher. He is the modern day comprador, serving as the unofficial immigration officer, the welfare agent, the employment counselor, the family advisor, and the investment counselor. Each lay preacher has a congregation of ten to fifty families. Prayer meetings are held daily early in the morning, and the successful preacher recognizes the importance of audience participation, rousing songs that generate enthusiasm and zeal to express devotion.

The prayer meetings are held in the apartment building owned by the lay preacher, purchased by offerings that come to 10 to 15 percent of the annual income of each family. The

large offerings not only are a demonstration of one's devotion, but support the intellectual activity of the preacher, which may take the form of writing books and articles, collecting ceramics and art works, and managing the economic interests of the group.

Each congregation is an economic group as well as a religious unit. The preacher organizes the pooling of resources to float substantial loans to purchase small businesses and property for the group. In this way, many of the storefronts along Olympic Boulevard in Los Angeles, and the apartment buildings behind them, were acquired by Koreans. The larger congregations represent, in some instances, the merger of smaller groups. Whether the mergers are based on economic or spiritual grounds is not clear. Thus, concealed from view, behind the day-to-day proletarian work, is a version of communal Christian capitalism, which raises serious questions about the theory of a middleman minority.

While the police and other sources can reveal the extent and quality of crime and victimization in these new racial communities of Southeast Asians, a deeper analysis needs to be done in order to understand the immigration and settlement patterns; the basis for the economic and political organizations in these communities; and how crime, criminal victimization, and criminal justice practices vary, depending upon the structure and cultural patterns in these communities. For example, self-employment among Koreans is directly related to their victimization by criminals. According to informants, many Koreans are victimized by unscrupulous real estate agents who sell income property or "mom and pop" stores and other small businesses in high crime areas at inflated prices. A police officer noted that many of these small store owners are then victimized by armed robbers, extortionists, and vandals. The victims are reluctant to press charges for fear of retaliation. Fellow Koreans also victimize these small business men and women by passing fraudulent checks knowing that the victim will not file a complaint.

Sporadic conflicts among the Korean youth--some have called it gang activities--are explained by loyalties and ties resulting from peer relations developed in school. Unlike other immigrant communities which emphasize family and extended kin relations, religion, or prefectural origin, Koreans apparently place greater value upon ties developed in the schools. These values have been apparently transplanted to the United States and at times have erupted into group conflicts and have been mistakenly attributed to gang-related activities.

The police, however, are of the opinion that school ties from Korea lead to obligatory and reciprocal relations in the

United States, requiring a small businessman to hire a former classmate. Although the economic aspect of "organized crime" in the Korean community is not known, it is an open secret that a group of "thugs" in the Korean community make certain that the retail outlets do not engage in price cutting or other competitive practices. It is not clear whether thugs are retained to enforce obligatory relations, such as the hiring of a former schoolmate. According to informed sources, the thugs operate more like a syndicate which controls the distribution of commodities to legitimate business, and who operate in the irregular marketplace by loan-sharking. Both police and workers in community organizations reported their suspicions in these matters.

Social scientists, impressed by the high percentage of self-employment among Asian-Americans, have focused on cultural factors, such as the rotating credit associations, to explain the origin of business capitalization.<sup>44</sup> The underside of Asian-American life, including alleged loan-sharking in the Korean community, the recent studies showing the enormous profit accumulated by Japanese pimps,<sup>45</sup> and the financial operations of the pre-World War II Tokyo Club (a gambling syndicate with branches throughout the western region of the United States)<sup>46</sup> suggest that profits from the irregular marketplace are linked to legitimate enterprises. This is not unique to Asian-Americans, as a recent study of early life in the Jewish community revealed similar activities.<sup>47</sup>

What all of this suggests is the need for ongoing research and studies of the several Asian-American communities, examining factors and concepts other than cultural factors transplanted from overseas.

## 2. The Japanese Community

The Los Angeles/Long Beach area has the largest Japanese population on the U.S. mainland, some 105,000 according to the 1970 census. The Japanese national is sociologically distinguishable from the Japanese-American in occupation, residential pattern, language and lifestyle. One of the difficulties in discussing race and crime is that a given racial population, like the Japanese, is not socially and culturally a homogeneous population of people. As noted in the historical overview, the Japanese first came to this country around the turn of the twentieth century. The Japanese make the distinction between generational groups so that the immigrants are referred to as Issei, literally, the first generation; the children of the immigrants are referred to as Nisei or the second generation; and the children of the Nisei are called Sansei or the third generation, and so on. The Issei, Nisei, Sansei, and so on, are sociologically distinguished

from the newcomers, or war brides, that came to the United States after the several Asian wars beginning with the end of World War II. The newcomers are also socially and culturally distinguished from the Japanese nationals, the employees of Japan-based multinational corporations. The Japanese nationals are referred to as "kaisha" people or, literally, corporate representatives. The latter category of Japanese is a fluid population and there are no estimates on their number except to note that they are concentrated in urban centers of trade.

In recent years, for example, the Japanese community has been invaded by Japanese nationals and their employers, the Japan-based corporations. The nihonmachi (Japan-towns) in Los Angeles and San Francisco have been completely transformed from "ethnic" communities serving its residents to corporate centers of trade.

The Japanese nationals are typically single, male adults, and in those cases where there is a family unit, the children tend to be quite young. Since the Japanese national is sent to the United States for short-term assignments, he does not experience the usual problems of the immigrant in employment and housing. Problems in social adjustment do not affect the community because there is no long-term commitment to stay in the United States.

There is some crime reported among Japanese nationals, but the criminal victimization of this group has received greater attention by the press and the police. Since there are a large number of single, adult males, they have been especially vulnerable to victimization by prostitutes who work in pairs. According to the Los Angeles Police Department, while one woman engages the victim in a sexual act, another steals the victim's wallet or other personal possessions. The victim sometimes reports the crime to the police, but convictions are rare because the victim is a transient or is too embarrassed to testify in court.

As is the case with most tourists traveling abroad, the Japanese nationals are frequently victimized by unscrupulous merchants selling shoddy merchandise. A member of the Asian Task Force (a special unit of the Los Angeles Police Department) relates an incident where a victim purchased what he believed to be diamonds. The victim returned to Japan and some months later took the diamonds to a jeweler. To the victim's dismay, he learned they were fakes.

Historically, official crime and delinquency rates have been low among Japanese-Americans. Table IV-3 confirms this conclusion, as the number of Japanese committed to prison equaled no more than ten persons per year for the past thirty

years. The low crime rate among the Japanese (and Chinese) has drawn the attention of scholars, leading to several studies conducted over the years that attempted to identify cultural and social factors associated with an apparently crime-free community. However, members of community organizations vehemently deny the myth of a crime-free community, pointing to recent robbery-murders committed by Japanese and drug abuse among Japanese youth. The Los Angeles Police Department seems to be concerned about particular types of crime and criminal victimization, rather than a crime wave in the Japanese community.

One type of crime that is increasing alarmingly in the Japanese community is muggings and assaults on the Japanese elderly. The elderly are the original immigrants, the Issei, now in their late seventies, eighties, and nineties. While some are able to speak English, the majority have retained their old ways--independence and self-reliance. Census data support this portrayal of the Issei.

The Issei enjoy longevity. The census data show that there are more Japanese aged 65 and over than among the Chinese. For example, .075 percent of Japanese males and .084 percent of the Japanese females are aged 65 and over. Among the Chinese, the percentages are .067 and .056, respectively.<sup>48</sup> The census data indicate that the elderly Japanese over 65 continue to be active in the labor force: 34.2 percent of Japanese males and 15.3 percent of the females, compared to 23.6 percent and 11.1 percent among the Chinese.<sup>49</sup> One might conclude from these data that the greater number of Japanese elderly and their active life place them in greater risk situations.

A contributing factor to the criminal victimization of the Japanese elderly is urban renewal and the invasion of the Japan-based corporations which have destroyed the community characteristics of nihonmachi (Japan-towns). In the past, the social, cultural, and religious activities of the Japanese were self-contained in a geographically bounded and racially homogeneous area. When the Japanese residents are forced out, they must find housing in distant parts of the city, and must rely on public transportation to Japan-town for their ethnic grocery shopping, entertainment and church-related activities. According to the police, the muggings and armed robberies of the elderly Japanese occur at bus stops or on sidewalks near the victims' destinations. Trips to Japan-town call for cash transactions, rather than the use of credit cards or checks, and this fact makes the Japanese elderly a favorite target for victimization.

Japanese war brides from the several Asian wars require separate discussion because of their unique problems. Their

numbers in the population are difficult to gauge, but one way of estimating the number is to examine the age distribution of the Japanese in the United States by sex. The relevant census table shows the sex distribution to be the same to age 20. Females exceed the number of males beginning in the 20 to 24 age range to age 49. To put it differently, there are 117,800 Japanese males aged 20 to 49, and 161,800 females.<sup>50</sup> One might tentatively conclude that the difference of 44,000 consists of newcomers, mainly brides of American servicemen.

The newcomers are also sociologically distinct from the numerically dominant Japanese population consisting of the Nisei and Sansei, second and third generation natives. There is virtually no social intercourse between the newcomers and the dominant Japanese population; thus, the social problems among these newcomers--neglect, wife abuse, nonsupport of minor children and their exploitation--receive very little attention from the larger Japanese community. The International Institute in Oakland, California, now sponsors a newcomers program, including the service of a social worker. From this source, it is clear that these women experience problems, some of which are criminal, such as wife battery and nonsupport of minor children on the one hand, and on the other, their involvement in petty theft, prostitution, and occasionally, child abuse. The latter offenses are considered crimes of moral turpitude which result in additional problems with immigration authorities.

The exploitation of these newcomers occurs in the kind of work available to them as waitresses and hostesses to lend oriental authenticity to restaurants and clubs. The businesses cater to Japanese-nationals and work is typically non-union: the workers are poorly paid, receive minimal fringe benefits, and have no mobility.

On the other hand, the numerically dominant Nisei and Sansei dominate the social and political structure of the community. It is the Nisei who have been lauded for their educational and occupational achievements, a legacy which the Sansei seems to be currently continuing. The relative success of the Nisei makes them, according to the Los Angeles Police Department, prime targets for fraudulent investment schemes. From time to time, Nisei have been swindled out of large amounts of money but have been reluctant to press charges because of embarrassment to admit that he or she had been taken. Some recent fraud cases that the police are aware of involved the "pyramid scheme" and a multimillion dollar real estate venture. In both cases, thousands of dollars were lost by the investors.

The police feel that crime among the Nisei and Sansei is not a major problem except for an occasional armed robbery, gambling at Mah Jong parlors, and from time to time, their victimization by investment schemes. Thus, the belief persists that the Japanese-American community is relatively crime free. How, then, does one reconcile the "officially" low rate of crime with the belief among community people that there is crime and delinquency in the Japanese community?

One approach is to examine self-reported delinquency studies. Researchers administer a questionnaire to individuals who indicate the character and frequency of any illegal behavior they may have engaged in during the past year. Two relatively recent studies included Japanese youth in their sample. Chambliss and Nagasawa<sup>51</sup> found differential rates of police arrest and self-reported behavior among white, black, and Japanese high school students. The official arrest figures were 11 percent for whites, 36 percent for blacks, and only 2 percent for the Japanese. On self-reported behavior, the investigators found 53 percent among the whites, 52 percent among blacks, and 36 percent among the Japanese. From these findings, the researchers concluded that the Japanese manage to avoid entanglements with the law because of the belief among police that the Japanese are generally law-abiding citizens, that the nature of their offense is less visible, and that Japanese youngsters tend to exhibit the proper demeanor when confronted by authority figures. Although the 36 percent self-reported behavior among Japanese boys is lower than the percentages for whites and blacks, it is considerably higher than the official arrest figure of 2 percent.

Mitchell investigated Berkeley, California, high school students, examining official records, school misconduct files, and the results from a self-reported delinquency questionnaire.<sup>52</sup> The findings essentially duplicated the Chambliss and Nagasawa study, which showed that whites and blacks had considerably higher official and self-reported law breaking behavior than the Japanese. These studies explain the difference between what the police and community workers report about crime.

Harry Kitano has conducted several studies of Japanese crime and delinquency. The findings are summarized in his book, Japanese Americans: The Evolution of a Subculture.<sup>53</sup> Based upon Uniform Crime Reports, Kitano compared arrest rates of selected ethnic groups in the United States for census years 1940 to 1960. The findings confirm the general belief of the low crime rate among the Japanese.<sup>54</sup> Kitano also studied probation referrals in Los Angeles County.<sup>55</sup> He examined both adult and juvenile referrals from 1920 to 1960, and by calculating age-

specific rates found that the adult rates peaked in 1940 (149 referrals per 100,000 Japanese, dropping to 111 per 100,000 by 1950). For juvenile probation referrals, the rate peaked in 1930 at 300 per 100,000 population; the rates dropped in the following decades, but peaked again in 1960 with 450 referrals per 100,000 population. While these rates appear to be high, they are by comparison three and one-half to four times lower than among non-Japanese. Kitano correctly concludes that the rates peaked during periods when the Japanese generations, the Nisei and Sansei, were in their adolescence, confirming the generalization that crime tends to be a phenomenon of the adolescent period.

Kitano, among others, has predicted that, as the Japanese become more acculturated, their criminality would begin to approximate that of the larger society. While the task of prediction in the social sciences is at best speculative, it is likely that so long as the Japanese do not experience the miseries of poverty and the World War II levels of racism do not recur, crime and delinquency are not likely to become a serious problem in the Japanese community, for race and poverty are the two factors that account for most of the variation in crime rates.

### 3. The Thai Community

The Thais are a relatively new group of people to settle in Los Angeles. Not much is known about the Thais, although a social service center exists for this group. It is estimated that there are anywhere from 15,000 to 25,000 Thais in the Los Angeles area, mostly in Hollywood. Most Thailanders came to the United States as students. Many of them desire to remain in the country because of the higher living standards in the United States, the availability of employment and the instability of the political situation in their homeland.

The desire to remain in this country leads to a violation of the immigration laws when their student visas expire. This situation contributes to the manufacturing and dispensing of fake "green cards," which cost anywhere from \$75 to \$2,000, depending upon the quality of the cards. The demand for green cards is not limited to Thais, as illegal immigrants generally support, what is understood to be, a lucrative and thriving market.

Law enforcement is aware of the market in illegal green cards. Some recent shootings and killings of Thais are believed to be related to a power struggle for control of this market. The police also suggest that the Thai community might be the conduit for some high grade heroin that has recently appeared on the streets. According to the Los Angeles

police, the drug is clearly identifiable as heroin from the Golden Triangle. However, there is no hard evidence to support these suspicions.

The Thais started to come to the United States around 1960, some at the behest of the U.S. government. An unspecified number of women came to the U.S. as brides of servicemen. Of the estimated 25,000 Thais in Los Angeles, some 5,000 are permanent residents. The remainder are either tourists or students. The ratio of Thai males to females is 4 to 1.

Many of the Thais along with the other recent Asian immigrants work at menial jobs during the day, attend school during evenings to learn English, and try desperately to improve their occupational levels to qualify for permanent residence. While many Koreans have become self-employed, the Thais aspire toward technical and semiprofessional occupations--bookkeepers, accountants, draftsmen, etc.--as the most expedient way to become permanent residents.

#### 4. The Chinese Community

The structure of the present-day Chinese community is the product of 100 years of discriminatory legislation and extralegal repression. Chinese families long separated by exclusionary laws were finally united following the liberalization of the immigration laws in 1965. By contrast to the Japanese, recent Chinese immigration to the United States consists mainly of "permanent" residents. The Chinese population increased from 237,000 in 1960 to over 435,000 in 1970. Over 122,000 of this population increase was the result of immigration.<sup>56</sup> The new immigrants settling in an already crowded Chinatown exacerbated the long-standing problems of inadequate housing and limited employment opportunities.

Today, San Francisco's Chinatown consists of 40,000 people compressed into an area of 42 blocks. The density of 885 people per acre is ten times the city's average. A recent social survey revealed that the average family monthly income was \$311. Sixty-three percent of Chinatown's families had an annual income of \$3,600. The adult unemployment rate is 13 percent and considerably higher among youth. The suicide rate is three times higher than the national average. Chinatown has the nation's highest tuberculosis and infant mortality rates, more than twice those of the rest of the city. Two-thirds of the adults have less than a seventh grade education, and the rate of substandard housing is 67 percent for Chinatown compared with a figure of 19 percent for the rest of San Francisco.<sup>57</sup> Of Chinatown's labor force of 8,000, 3,500 are women who work primarily in the garment industry on

a piecework basis. Their wages average less than \$300 a month, while the workday often exceeds eight hours.

These statistics, which are indicators of extreme poverty, reveal the grim social conditions behind the facade of a "mysterious and exotic" Chinatown displayed in travel folders put together by the San Francisco Chamber of Commerce. The bitter irony of Chinatown is captured by a community worker: "This is the only ghetto in the United States with a Grey Line bus tour."

Youths, living in any ghetto community, are vulnerable to the harsh conditions of life, which criminologists recognize as criminogenic conditions. In Chinatown, the problems are particularly acute given the large proportion of its youth population. A Health, Education and Welfare (HEW) report of Asian-Americans states: "Of all Chinese husband-wife families, 66% have children under 18 (compared to 56% for the total U.S.)."<sup>58</sup> Moreover, the Chinese family tends to be larger than families in the United States in general. The average Chinese family contains 4.0 persons,<sup>59</sup> but in a special study of Chinese youngsters referred to the Juvenile Probation Department, it was found that the family size was closer to 6.0 members.<sup>60</sup>

The poverty, the lack of open space and recreational areas, and the absence of supervision of these children in the home, caused by the needed for both parents to work, are factors that contribute to the difficulties of Chinese youth.

The risk of turning to crime is further exacerbated by the inability of newly arrived immigrant youth to handle their schoolwork, and if they drop out, the inability to find employment. In light of these circumstances, it is not surprising to discover that the number of arrests of Chinese youths has increased dramatically since the sixties.

The issue of crime and delinquency in Chinese communities would be relatively clear-cut if one could simply focus on how adverse economic conditions in Chinatown affect youth behavior. Unfortunately, this is not the case, for the problem has come to be defined, by the media, police, school officials and government leaders, as a crime wave involving youth gangs. The impact of this exaggerated and sensationalized image of the people in Chinatown is tremendous, and adds an entirely new dimension to the issue. The importance of this image dictates an analysis of the gang phenomenon.

The publicity based upon statements by criminal justice officials has created an image that crime and delinquency in Chinatown mean youth gangs. An example of how hearsay infor-