

THE AMERICAN CRIMINAL JUSTICE SYSTEM AND ITS IMPACTS  
ON THE AFRICAN AMERICAN COMMUNITY:  
ARRESTS AND SENTENCING

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A Thesis  
Presented  
to the Faculty of  
California State University, Chico

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In Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts  
in  
Political Science

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by  
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Spring 2017

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Reva Joan Ashlan Trainor

Spring 2017

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## DEDICATION

I would like to dedicate this to my grandmother,

Albertha Green Dickerson



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I would like to express my gratitude to Dr. Matthew Thomas for the support and mentorship during this endeavor. When I first began this endeavor I started off with a different committee chair. Once I found out that the professor would not be with school any longer, I asked Dr. Thomas if he would my committee chair and without hesitation he said yes. I am grateful that he stepped in and became a great help and motivation with this project. I would also like to thank Dr. Lori Weber who also took part in my graduate studies learning. Anytime I could make it to open office hours in between my work schedules she was always helpful and assisted me with the information that I needed in order to succeed. Lastly, but not least, I would like to recognize Dr. Darin Haerle, thank you so much for your willingness to help and your support.

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## ABSTRACT

### THE AMERICAN CRIMINAL JUSTICE SYSTEM AND ITS IMPACTS

#### ON THE AFRICAN AMERICAN COMMUNITY:

#### ARRESTS AND SENTENCING

by

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Master of Arts in Political Science

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African Americans, prior to having the title of Americans, were Africans that were captured, shackled and shipped away from everything they knew. During this passage from to America, Africans were forced on ships that removed them from their tribal lands. They were broken, beaten and confused. During a lot of horrifying acts and mistreatment during the transport to America many died along the way. The ones that made it to this new-found land had no idea what was in store for their arrival. The mistreatment of African Americans began with slavery, and continued throughout our history.

Even though historians have noted that the presence of the KKK had died down by 1965; however, we have seen the presence of the KKK is currently resurfacing

back on black college campuses and all over the United States. The underlining common theme they carry today (as they did before) is to perpetuate *fear* in the black community, along with any other community they deem as a target. The *fear* that the black community faces now is either being wrongful detained, arrested or killed by law enforcement. In this thesis I argue that the criminal justice system has played an important role in the present state of the black community. There are many knowledgeable scholars that have begun to examine the relationship between the Jim Crow era and the current era of mass incarceration. The deep racial disparities found in the criminal justice system have gone undetected for many of years, and since 2000 the term *mass incarceration* has been ringing throughout the media and in the academic scene.

Being African American in this country is a difficult thing to be on an everyday basis. Recognizing that all minorities (as a whole) are at a disadvantage, this thesis argues that the unique history of blacks that is tied to white, first through slavery and later through disparities in the penal system. This speaks volumes about the hardship that black people had to go through. African American leaders fought and stood for such a long time to simply be placed in the same sentence as white people. America has progressed since its beginning once separated from Great Britain. However, even though the image of America had progressed, the individual groups within America have experienced a great deal of brokenness, heartache and death. Having a clear understanding of the past, it is important that we do not allow history to repeat itself. We

must continue to push toward what this country was founded on the notion; that all men are created equal.

The War on Drugs had dreadful repercussions for the African American family in the United States. Looking over the past decades of blacks in America, there is a repetition of history. In some respects the social and economic status has changed little for blacks since slavery, except for the fact that they are not physically owned on plantations any longer.

The criminal justice system is very broad, there is a number of major roles that plays in the functionality of how our system works. This thesis will only focus on two aspects of the criminal justice system; arrest and sentencing. With focus on the war on Drugs, I perform first hand research in gathering arrest data from all 58 counties in the state of California, during the War on Drugs. The results of this analysis suggest that African Americans were arrested a much higher rate in comparison the white population. Looking at sentencing, I specifically focused on how mandatory sentencing produced more of a racial disparity in the judicial system. The results of the sentencing analysis suggests that African American were sentenced longer for drug offenses than white offenders.

## CHAPTER I

### INTRODUCTION TO THE STUDY

#### Introduction

*To be a Negro in this country and to be relatively conscious is to be in a rage almost all the time.*

-James A. Baldwin

One of the most publicized eras, that was heavily influenced by racial disparities, and have negatively impacted the African American community is the War on Drugs. The circumstances that surround this era is the influx of cocaine had swept this nation, and Americans all over have become addicted. With this new found addiction the federal government enacted the Anti-Drug Abuse Act of 1986. Unfortunately, this act did little to prevent the amount of drugs in cities and to prevent anyone from using them.

This thesis mainly focus on the racial disparities in the arresting and sentencing of American Americans, during the War on Drugs, as a result of the Anti-Drug Abuse of 1986. It also looks at social disorganization demonstrating how it influenced to how and why policing was done in African American communities.

The historical relationship between African American and America has always been a sensitive topic. Even though that the conversation of racial division can be uncomfortable, it is yet a conversation that need to be had. When examining the impact that racism and racial division had on the African American community, it can be viewed

from many levels. Some of these levels include, but are not limited to, educational system, the housing market, the work force, and even in the justice system. Out of the all the areas of in America where we find racial disparities, it is the justice system continues to negatively impact the African American community. To understand African Americans in America is understanding the legacy of slavery. The history of slavery produced a negative social stigma towards the African American community that continues to follow them to this day.

#### Purpose of the Study

The history of the U.S. penal system can be traced back towards the end of the Civil War of 1861-1865. Sociologist Christopher Adamson (1983) studied punishment after slavery and states “to understand the political and economic forces which shaped the post-Civil War approach to crime control and punishment, it is necessary to keep in mind that plantation justice tended to siphon blacks out of the state punishment system in the pre-Civil War period” (Adamson, 1983, p. 555). When we look over the history of African Americans in America, we must understand things that occurred to the African American community did not happen as a coincidence, but it has always been a subjugation set in motion from the time of slavery. The purpose of this study is to investigate how the structure of the criminal justice system has impacted the African American community. I will examine the history and impact of African American over-representation in the criminal justice system; specifically referring to imprisonment and incarceration.

## Background

On July 14, 2015 at the NAACP 106<sup>th</sup> Annual National Convention, held in Philadelphia, President Obama stated that, “America is home to five percent of the world’s population and twenty-five percent of the world’s prisoners.” When we look at the percentage of prisoners incarcerated, it is alarming because the world looks at American to be *the land of the free*. From the institution of slavery to the large waves of social change that America has faced for the never ending fight for freedom and equality, the foundation of our political culture has been established on the basis of race.

There is no understanding of our American political culture without understanding the role of race, with slavery a never-ending cycle of oppression. There are several interpretations of the Civil War; scholar Richard Enmale examined the Civil War from two different points of view, one of a southern and one of a northern<sup>1</sup>. From both viewpoints, they “agreed that the American conflict was a struggle for political power, they nevertheless disagreed as to the part played by slavery in bringing on the contest” (Enmale, 1937, p. 127). Enmale also examines a traditional thesis that was written by James F. Rhodes<sup>2</sup>, who demonstrated the Civil War as an issue of morality. The northerners and southerners had a conflicting opinion of the *moral justification of slavery* and that the war had no fundamentally economic bases (Enmale, 1937; Rhodes, 1893-1906). One side of this dispute believed that the Civil War was a direct result of the immorality of slave, as for the other side, they believed that the Civil War was a result of

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<sup>1</sup> Richard Enmale examines the writings of two historians; Edward A. Pollard, a southern, and Horace Greeley, a northerner.

<sup>2</sup> James F. Rhodes was an American historian who is known for his multivolume investigation of the American Civil War and the Reconstruction periods of the United States history.

any economically benefit from the institution of slavery. Ultimately despite all the interpretations of the Civil War, the bottom line reason it was not because people begin to recognize slavery as an immoral and disgusting institution, but the economic growth for the country benefited the south more than it did he north.

### Overview of Thesis

Chapter Two provides a review of scholarly literature that discusses the relationship between the government and the African American community. In this chapter, I examine the timeline beginning at the end of the Civil War, where history begins to provide the starting struggle for African Americans to gain citizenship in the United States. This chapter talks about the causes of the massive increase of the incarcerated African Americans becoming blacker and less diverse. The chapter also explores the topic of sentencing and the road that lead to sentencing reform. Also, examining for sentencing reform impact women as well as men. Lastly, chapter two explores felon disenfranchisement and its history. Understanding that the ultimate goal of the systematic bondage behind, the establishment of felon disenfranchisement laws, were geared to maintain the white supremacy in how this country is ran; controlling who votes.

Chapter Three is targeted more toward policing during the War on Drugs era, in particular the arrest phase. During this era, with the amount of focus on the crack cocaine that there was throughout the country, policing is one of the many things that will shift along, with how and where policing is done. This chapter focuses on exactly where crime is, looking at the concentric zone model as proposed by the social disorganization theory of crime. When one can locate where much of the crime takes place, then one can

better structure how to monitor and control it. Also, taking a glance into the topic of social and economic disorder; it is more than likely where there is social disorder and an economic imbalance, one tends to find higher crime rates as well. This chapter also focuses on how policing is done, looking at how police can violate an individual's human rights. Finally, in this chapter I present an analysis that reveals racial disparities in arrest using Census data for the State of California and arrest data from the Bureau of Justice Statistics.

Chapter Four will look at the judicial system role during the War on Drugs. Chapter Four explains how what happens in the courts directly affects the prison population. By looking at who can afford private counsel, we can see the economic imbalance in society that plays out in the courtroom. In this chapter, I examine the Anti-Drug Abuse Act of 1986, which states the limited authority that judge's hold after the mandatory sentencing laws were passed. Lastly, it will present federal sentencing data from 1998 to 2012, demonstrating how blacks were sentenced at a much higher rate than whites.

Chapter Five presents potential limitations of the research discussed in the previous chapters. This chapter will provide suggestions for future research to further the understanding of the racial division in America, and will also present recommendations for what is needed to address this division.

## CHAPTER II

### LITERATURE REVIEW

#### Introduction

*Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is in an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe.*

-Frederick Douglass

Over the past five years, the state of California has seen an awakening in the media coverage surrounding mass incarceration and the steps that California has made to alleviate the over populated prisons. Studies and statistical evidence demonstrates that African Americans are over represented within the incarcerated population across all 50 states.

The National Association for the Advancement of Colored People (NAACP) provides a criminal justice fact sheet that focuses on the incarceration trends in America, racial disparities in incarceration, drug sentencing disparities, contributing factors, the effects of incarceration, and the cost of incarceration. Most, if not all, contribute toward the breaking down of the African American community. The Bureau of Justice Statistics (2007) provides information that one in every three black men can expect to go to prison in their lifetime and one in every one-hundred African American women are expected to go to prison (Bureau of Justice Statistics, 2007). From the abolishment of slavery to the

creation of such a one sided criminal justice system and penal code, it is important to look at the bigger picture.

Thus, an African American male child's future seems determined for them before they even have a chance to live. According to the American Progress

Organization:

the prison population grew by 700 percent from 1970 to 2005, a rate that is outpacing crime and population rates. The incarceration rates disproportionately impact men of color: 1 in every 15 African American man and 1 in every 36 Hispanic men are incarcerated in comparison to 1 in every 106 white men. (Kerby, 2012)

The literature portion of my thesis will examine the potential causes of this massive increase in the prison population of African American men. The purpose of this project is to bring light to the foundation of the criminal justice system, with the understanding that the justice system is not blindfolded; it only sees what it wants and with the evidence that has been produced in recent years, the justice system does in fact see color. It is interesting to see how race impacted the incarcerate population, within the criminal justice system. The key areas this literature review will cover are: the legacy of slavery, the criminal justice system and race, and felon disenfranchisement.

### Legacy of Slavery

The tinted relationship between the African American community and judicial system dates back to slavery. Since the establishment of slavery, there has been a negative stigma associated with the African American community. After the abolishment of slavery, there was no more free labor for plantation owners to use in order to stimulate their economic growth. The Thirteenth Amendment did abolish slavery but did create a

large loophole for slavery to continue. *Ruffin v. Commonwealth* (1871) settled the dispute of the difference between a convict and a slave, making convicted offenders slaves of the state (Alexander, 2011, p. 31). The result of this court case meant that slaves transitioned to prisoners of the state.

Because these convicts were then considered *slaves of the state*, companies in the south begin to adapt to the newest form of slavery; convict leasing. Due to the economic downfall of the south since the abolishment of slavery and the aftermath of the war, convicted leasing was established to rebuild the economic system in the south (Adamson, 1983, p. 556). Just as slavery was an economic based institution when it was abolished, it was necessary to create another system where that free labor could still be replaced as well as stimulate economic growth for the many states. However, leasing convicts was not only used as a mechanism for economic growth but it maintained white supremacy in the south as it facilitated established a source of cheap labor, it was a redesign of slavery itself (Adamson, 1983, p. 556).

The whole black population was simultaneously viewed as a troublesome population and valued economic resource (Adamson, 1983, p. 556). Legally freed slaves were considered a social threat in need of control, given their perceived dangerous nature (Adamson, 1983, p. 556). Given the increasing population of freed slaves, the state governments were pushed to create a system that would give each individual state the authorization to do as they please with the thousands of freed slaves. The abolishment of slavery helps give a better understanding to the rapid creation of the penal system and penal codes that are often referred to as the black codes. Any violation of these black codes would cause so many African Americans to be places back under the control of

slave masters and white supremacy leaders. Historical evidence, such as landmark cases and federal acts, demonstrate that the issue behind race in America has been a consistent battle.

### Race in U.S

Racial division has been a part of many of America's infrastructures, such as public interactions, education, and even in the housing market. From the beginning of slavery to the present day, are forced to focus on one form of identification of a human being and that is based on race. Historically, it is imperative to understand that the Supreme Court rulings to desegregate society only affected the visual appearance of integration, and did nothing to repair the foundation of America moving forward as time progressed. In *Plessy vs. Ferguson* (1896), the Supreme Court upheld the "separate but equal" doctrine. This "separate but equal" doctrine causes a split in society; in many cities and towns across the nation, facilities were labeled *colored* and *whites*. This law stayed in place for 58 years until *Brown vs. Board of Education* (1954) which, overturned the *Plessy vs. Ferguson*, by finding separate but equal unconstitutional on the bases of the 14<sup>th</sup> and 15<sup>th</sup> amendment.

The fight for equality went past the social and, educational arenas, and into the housing market. The Supreme Court decisions, of *Shelley v. Kraemer* (1948) and *Jones v. Mayer Co.* (1968)<sup>3</sup>, "barring the exclusion of African Americans or other minorities from certain sections of cities, race-based housing patterns were still forced by the late 1960s, and those who challenged them often met with resistance, hostility and

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<sup>3</sup> History.com ([www.history.com/topics/black-history/fair-housing-act](http://www.history.com/topics/black-history/fair-housing-act))

even violence” (History.com, 2017). It was not until 1968, when the Fair Housing Act was signed into law, it became illegal to, “discriminate against any person in the terms, conditions, or privileges of sale or rental of dwelling, or in the provision of serviced or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin” (Civil Rights Act of 1968, Sec. 804, 17).

The greatest infrastructure that holds the most value as well as hold the highest intention of demise of the minority groups in America is the judicial system. From the Supreme Court, to federal courts, to state courts, and all throughout the circuit courts, at some point in time, there has been legal opposition to the mistreatment of minorities in the judicial system, whether they are victims or offenders.

The African American community falls under the most highly underrepresented group in the judicial system. The racial division in this particular governmental structure was established to maintain a legal hold on the African American community under a legal system. The inequality of African Americans within our judicial system has visually made its presence known, since the founding of the system. Society is forced to deal with the concept of mass incarceration, but when we break down the demographics of our prison system we see that African Americans are more likely to have been imprisoned than whites, prison for African American men is determined as normal (U.S. Department of Justice, 2007; Schlesinger, 2008; Western & Pettit, 2010).

The official way of entering the criminal justice system, as a criminal, is to have negative contact with police that leads to an arrest. The fact of the matter is that anyone can have a negative experience with the police that may not always lead to an official arrest. Over the years many studies and observations have been done, which have

shown the criminal justice system to be racial bias from different levels of this system, rather than ensuring justice (Rattner, 1988: Mauer and Huling, 1995: Cole, 1999: Lynch, 2002: Bobo and Thompson, 2006: Gottschalk, Lerman, & Weaver, 2015). A disproportionate number of African Americans versus non-African Americans experience contact with the criminal justice system through arrest, convictions, and sentencing. From the abolishment of slavery, to the mass incarceration problem that is currently taking place in the United States, we are left to wonder what has changed? Since 2001 one out of six African American men have been incarcerated (NAACP, 2017), what is the cause of the rise in numbers?

## The War on Drugs and Race

### War on Drugs and Politics

The War on Drugs era was a time in America where the use, selling, and manufacturing of narcotics was at its all-time high. Due to this epidemic there was a shift in crime as well as policing. The War on Drugs, not only did the conviction and sentencing rates increase, but also the arrest rate increased at a substantial rate. With the negative propaganda that stemmed from painting the picture of the perfect criminal, the War on Drugs played a major role in increasing arrest rates of both African American men and women. We begin to see a ripple effect that targeted African Americans. From slavery, black slaves were a target, and then when slavery was abolished freed blacks were then a target for criminal penalties whether or not they were the actual perpetrators of a specific crime. The issue of race, drugs, and the criminal justice system was something that was a presidential speaking point. Presidential candidates and

administrations stood on the platform of being tough on crime and tackling the drug issues in America.

During Nixon's administration, his main target was crime. Unfortunately by the end of the Nixon administration violent crimes was at its highest, in return the motive behind the War on Crime was at questioned (Coates, 2015, p. 40). John Ehrlichman was one of Nixon's aid in the 1972 elections, he wrote "We'll go after the racists... That subliminal appeal to the anitblack voter was always in Nixon's statements and speeches on schools and housing" (Coates, 2015, p. 40). Another of Nixon's aids, H.R. Haldeman, stated:

The president believed that when it came to welfare, the '*whole* problem [was] the blacks'. Of course, the civil-rights movement had made it unacceptable to say this directly. 'The key is to devise a system that, recognizes this while not appearing to', Haldeman wrote in his diary. (Coates, 2015, p. 40)

Understanding the motives behind the man [President Nixon], now is where the major shift happened geared toward the arrest of so many African Americans. Based on the extensive legacy of associating African Americans with being criminals and criminal activity as a whole, it was not necessary for Nixon to specified drugs as a public enemy (Coates, 2015). The stage to target African Americans has already been set way before any president has taken the oath of office, all based on the unlimited amount of negative propaganda that has been published about people of color for so any centuries, since the time of slavery.

The War of Drugs "produced profoundly unequal outcomes across racial groups, manifested through racial discrimination by law enforcement and disproportionate drug war misery suffered by communities of color" (Drug Policy

Alliance, 2017). The heavily publicized War on Drugs in the United States is closely compared to the Communists Red Scare in the 1950s. Since many, if not all, levels of government including local, state, and federal, made such a media frenzy on drugs and the said crimes that follow drugs, gears for policing has shifted. It is to believe that during the War on Drugs there were incentives allocated for police bureaucracies. With allocated incentives pushed across the nation throughout the police departments, scholars examine why an increasing amount of policing resourced were allocated toward drug enforcement in the mid- to late- 1980s (Benson, Rasmussen & Sollars, 1995).

The political battle for the War on Drugs was put into place beginning in Richard Nixon's administration and following throughout President Ronald Reagan's administration. During the 1970s the prison industry was considered a gold mine. And it became a very lucrative financial source of revenue for both state and federal governments. Scholar Doris Marie Provine analysis of the Anti-Drug Abuse Act of 1986 and 1988 determined that focus of local and federal agencies highlighted low-level drug users and sellers, and the majority of these targets were African American (Jones, 2008, p. 935). Provine also examines how Congress addressed the crack epidemic in Chapter five of her book entitled "Congress on Crack". It is explained the underlying motive of the anti-crack legislation continued even after the racial disparities were obvious (Jones 2008).

Understanding that both whites and blacks had been small sellers and user of drugs, the purifying difference in the drug substance of choice is what Congress felt to be the determining factor to the higher drug convictions of African American rather than their non-African American counterparts. The legislation that was produced in the 1980s

definitely gave the perception that congress was being tough on crime. In reality, based on the '100:1' penalty ratio for crack verse cocaine offenses, it caused a shift in the complexion of state and federal prisons. (Jones, 2008, p. 935-936). Understanding dynamics of the legislation that was produced and implemented into law, establishes which level of government holds the responsibility for the impact that the War on Drugs have had on the African American community.

### Prison Industry

The prison industries “have been characterized by fundamental ambiguity as to ultimate purpose: are the primary goals to be those of punishment (through the deprivation of liberty and a requirement of work), rehabilitation (through work activities and the acquisition of either particular skills or general work habits and attitudes)” (Lightman, 1982, p. 36). This is considered to be the general concept of the prison industry, standing as a correctional institution to fix the wrongs in the society. However, with the prison population geared to one ethnic group the true purpose of the correctional system can be questionable. “From the Civil War’s end in 1865 until 1890, prison populations in most southern state penal systems were more than 95 percent Black people, many of who were leased out to work in plantations, mines, factories, and railroads” (Small, 2001, p. 899). From the beginning of the 1970 there are no more plantations, mines, and factories so convict leasing was no longer popular during this time. The racial influenced motives that came with the War on Drugs has only replaced slavery. The penal system itself is viewed as the continually reminder of racial oppression in America (Small, 2001, p. 897). With a 700 percent increase in the prison population the war on drugs had a direct impact to this massive increase. Statistics provided that

“blacks constitute 13 percent of all drug users, but 35 percent of those were arrested for drug possession, 55 percent of those convicted, and 74 percent of those sent to prison” (Small, 2001, p. 897). The legislation that was produced from the War on Drugs has impacted the convictions of so many, both men and women, in the African American community, and because of the difficulty to change laws that are heavily affecting the African American community to this day.

### Incarceration of Women

Women have never been in the forefront when it comes to the prison population but since the abolishment of slavery and the war on drugs, the incarceration rate of women has been increasing. “A primary catalyst behind America’s imprisonment binge is the war on drugs, the government’s initiative to stop drug production and use,” this caused women of color to be the ultimate victim (Reynolds, 2008, p. 72). Women were also subjected to the heavy sentencing during the era of drug offenses. Statistics have shown that single mothers that come from a history of physical and sexual abuse are often uneducated. So, based on their economic need they tend to involve themselves with men that are trafficking drug, causing a financial dependence for the woman (Reynolds, 2008, p. 88). It is the women’s involvement with the male, which ultimately determines the level of involvement that she has in drug crimes. With mandatory sentencing laws that are geared towards drug-related crimes, it takes away from the discretion that judges have when determining the sentencing of a case.

The penal policy that continues to prompt this mass incarceration has truly taken a toll on male and female offenders, as well as their families. “Mass incarceration is

not only a civil and human rights issue, but it is a women's issue. Women's incarceration rates continue to climb, but over two million people behind bars in the United States. Most these are males" (Reynolds, 2008, p. 89). African American parents are being taken away from their families for extensive periods of time, for crimes that do not deserve 15 and 20-year sentencing; in return causing the breaking of the African American family.

## Sentencing

### Sentencing Reform

Prior to the 1930s, there was no standard to sentencing, it was left to the discretion of the state and judges within the courtroom, how and what type of sentence should be given. "Between 1935 and 1975, every American state, the District of Columbia, and the federal system had an indeterminate sentencing system" (Tonry, 1988, p. 267), up until we begin to implement a great deal of change due to the Federal Sentencing Reform Act of 1984 (Tonry, 1988). By the late 1980s, the American system of sentencing had died off and there began a higher level of discretion and diversity for judges (Tonry, 1988). After this reform, jurisdictions adopted different forms of sentencing guidelines. "Some enacted statutory determinate sentencing laws. Some adopted presumptive sentencing... 'voluntary' sentencing guidelines at the state or local levels, for some or all offenses. Most enacted mandatory sentencing laws" (Tonry, 1988, p. 268). The sentencing reform allowed the jurisdiction court to choose what sentencing policy would better fit their jurisdictions.

It was "proposed by Judge Marvin Frankel more than twenty years ago as a device for reducing sentencing disparities and judicial 'lawlessness,' sentencing

commissions were to be specialized administrative agencies charged to set standards for sentencing” (Tonry, 1993, p. 117). With the development of sentencing commissions, the guidelines that were created did not only minimize the amount of discretion that judges had, but they were also “commonly criticized on policy ground (that they unduly limit judicial discretion and unduly shift discretion to prosecutors)” (Tonry, 1993, p. 138). Scholars have suggested that the guidelines that were “developed by commissions have change sentencing practices and patterns, reduced disparities, ameliorated racial and gender difference, and helped states control their prison populations” (Tonry, 1993, p. 144). Scholars prior to 1995, consistently demonstrate studies that encouraged the reduction of racial and gender difference while “others argue that new sentencing laws have little impact on disparity and that guidelines are one of the main reasons for African Americans’ disproportionate rate of incarceration in state and federal prisons (Rothman, 1995)” (Gorton and Boies, 1999, pp. 37-38). Now understanding that the sentencing reform goal was to achieve a reduction in the disparities that were attached to the sentencing process, it was apparent that it did the exact opposite.

### Sentencing and Race

There is, and always has been, a stereotype of African American offenders when it comes to their place in the judicial system. History has continually demonstrated a stereotype that black offenders will always receive the longer or harsher sentence.

“Traditional research has typically focused on black (male) offenders and the negative labels they evoke” (Steffensmeier & Demuth, 2000, p. 709). The labels that are attached to the African American males, such as “dropouts, delinquents, dope addicts, street-smart dudes, and welfare pimps,” also the selective wording of an African

American offender's criminal history, is what illustrates such a negative image of not just one, but the entire group of African Americans (Steffensmeier & Demuth, 2000). "Tittle and Curran (1988) reports that young black males symbolize behavior styles such as aggressiveness and irresponsibility that are threatening and offensive to the middle class" and because "whites hold criminal stereotypes of blacks and their lifestyles" (Steffensmeier & Demuth, 2000, p. 709). As a result, African Americans are defeated and faced with the highest sentence possible prior to even entering the courtroom. A great example of this disadvantage is the sentencing in capital punishment cases, trying to determine who can possibly be worthy of death.

In regards to sentencing in capital punishment cases, this is when we see that race truly matters. Baldus and his colleagues (1998) conclude that race is a highly-favored factor, when the victim is white. They also "investigate whether the probability of receiving the death penalty is significantly influenced by the degree to which the defendant is perceived to have a stereotypically Black appearance (e.g. broad nose, thick lips, dark skin)" (Eberhardt, Davies, Purdie-Vaughn, & Johnson, 2006, p. 383). The research done by Baldus and his colleagues (1998) concluded that stereotypical sentences occur most often when there is an African American defendant and a white victim, and there is less stereotypical sentencing when there is a African American defendant and a African American victim (Eberhardt et al., 2006).

Furthermore, beyond the stereotypes, because African American "offenders are socioeconomically disadvantaged and are presume to lack the resources to thwart the imposition of legal sanctions" (Steffensmeier & Demuth, 2000, p. 709), then they are subjected to this abused authority and racial disparity of sentencing without being able to

go against this inequality of justice in a legal manner. The sentencing goal that was intended for the reduction did the opposite and placed African American offenders at a greater disadvantage than prior to the reform. “For these reasons, the lack of resources, coupled with attributions that associate black offenders with a stable and enduring predisposition to future criminal activity or dangerousness, are thought to increase sentence severity for black defendants” (Steffensmeier & Demuth, 2009, p. 709). This idea of giving African Americans extensive sentences because there is no opportunity for them and resources outside the correctional system is supposed to make up for the inequality in society as well. Like race, gender plays a just as important role in the sentencing process regarding women.

### Sentencing and Women

Sentencing policies impacted many women in America. Policies “such as mandatory terms and sentencing enhancements may disproportionately impact women in several ways” (Schlesinger, 2008, p. 28). Many scholars have argued “that changes in sentencing policies played a key role in increasing the percentage of prisoners who are women” (Schlesinger, 2008, p. 28). Also, despite the gender difference black women are still affected by the “long standing racial disparities” of our sentencing policies (Schlesinger, 2008). Generally, the War on Drugs increased the amount of women, both black and white, going to prison by six times (Schlesinger, 2008, p. 28).

One of the major impacting factors for women and the sentencing policy reform, made very “difficult for judges and other criminal justice officials to consider socially relevant and highly gendered characteristics, such as childcare responsibilities” (Schlesinger, 2008, p. 28). The loss of judicial discretion does not allow the judges to

take into account everything that is active in a woman's life, other than the criminal activity. Due to the shift in the sentencing policy "many women who previously would have been sentenced to community sanctions are now incarcerated" (Schlesinger, 2008, p. 29). It is important for women staying within the community is simply because so many women that are incarcerated currently have children. When women are placed behind bars, without previous arrangements for the children, then we find an increase in children in the foster care system.

Many women that are currently serving an extensive sentence were simply involved with men in criminal activity. As a result, "many mandatory terms and sentencing enhancements explicitly ignore level of involvement, thus increasing punishment for women who would have received less severe sentences than the men who they commit crimes with under old sentencing policies (Gaskins, 2004)" (Schlesinger, 2008, p. 29). The sentencing of the courts structures the new form of sentencing "treating likes alike and unlikes unlike. However, from a legal perspective men and women offender are often no similarly situated" (Schlesinger, 2008, pp. 29-30). It is rare that females hold a predominant role in many drug offense cases. With the shift in sentencing causes a female offender to receive an equal sentence as a male would, despite her involvement in the activity.

### The Supreme Court and Sentencing

In 1995-96 the U.S. Supreme Court made it "clear that in the guidelines regime both prosecutors and judges retain substantial power to determine the length of federal sentences" (Forman Jr. & Shay, 1996, p. 28). Despite the gesture of making sure that lower level courts retain this discretionary power "discrimination continues to plague

the criminal justice system, and that increases discretion is unlikely to remedy that problem” (Forman Jr. & Shay, 1996, p. 28). The *United States v. Armstrong* cases highlights the activity of the Supreme Court and its lack to support a non-racial approach.

Prior to *United States v. Armstrong*, “the Court affirmed that already tremendous discretion that federal prosecutors have to determine whether to prosecute in federal court or refer a case to state court” (Forman Jr. & Shay, 1996, p. 28). In the *Armstrong* case, five African Americans were charged with gun and drug offenses in federal court. The sentencing implications in federal court for drug charges compared to the state level mandatory sentence are two vastly different outcomes. “Federal law imposes a sentence of 10 years to life for selling over 50 grams of crack cocaine, whereas California state law mandates only 3-5 years” (Forman Jr. & Shay, 1996, p. 28). Further details of the cases move that the defendants file a motion arguing that the Districts Attorney’s office chose to prosecute the defendants on a federal level because they were African American. It was the instructions of the court to “provide limited discovery, including (1) the race of the defendants charged with both crack and gun offenses in the past three years, and (2) the criteria used by the U.S. Attorney’s Office in determining whether to bring a crack cocaine case in federal court” (Forman Jr. & Shay, 1996, p. 28).

Chief Justice Rehnquist explained:

. . . a criminal defendant must provide ‘clear evidence’ of the government’s violation of equal protection. The claimant must demonstrate that the government fails to prosecute similarly situated individuals, and that the government’s policy had both a discriminatory effect and a discriminatory purpose. (Forman Jr. & Shay, 1996, p. 28)

Another case where the U.S Supreme Court has demonstrated itself as encouraging the racial disparities of African Americans (as a whole) is *Koon v. United*

*States (1996)*, related to the Rodney King beating. The judge who presided over the case “granted a five-level downward departure to the officers based on his finding that Rodney King’s wrongful conduct contributed significantly to provoking the officers’ illegal actions” (Forman Jr. & Shay, 1996, p. 29). The Supreme Court under Justice Kennedy “held that three of Judge Davies’ five asserted grounds for departure were appropriate: Rodney King’s wrongful conduct, the dual prosecution of the officers, and the officers’ susceptibility to abuse in prison” (Foreman Jr. & Shay, 1996, p. 29). Justice Kennedy “noted that even in an era of sentencing uniformity, sentencing judges should and must, “. . . consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify the crime and the punishment to ensue” (Forman Jr. & Shay, 1996, p. 29).

Now the only problem with this statement is that, the only time we see a case studied as a unique case is when there is an African American victim, and when there is a white offender or a police officer as the defendant. Unless it is one of the three, every other case with an African American involved, whether being victim or offender, is treated harsher than the average white offender.

## Felony Disenfranchisement

### History of Disenfranchisement

Michelle Alexander introduced her book beginning with the voting timeline of an African American family:

Jarvious Cotton cannot vote. Like his father, grandfather, great-grandfather, and great-great-grandfather, he has been denied the right to participate in our electoral democracy. Cotton’s family tree tells the story of several generations of black men who were born in the United States but who were denied the most basic freedom

that democracy promises—the freedom to vote for those who will make rules and laws that govern one’s life. Cotton’s great-great-grandfather was beaten to death by the Ku Klux Klan for attempting to vote. His grandfather was prevented from voting by Klan intimidation. His father was barred from voting by poll taxes and literacy tests. Today, Jarvis Cotton cannot vote because he, like many black men in the United States, has been labeled a felon and is currently on parole. (Alexander, 2011, p. 1)

How does being a felon, and on parole, hinder someone from being a part of this democratic society that Americans have prided themselves on for so many years?

Democracy is the American way of life, and having that freedom to actively participate in the establishment of government is what makes America great. But, yet we see so many people are having that American right taken away from them not only temporarily, but for life.

The “felon disenfranchisement laws are constitutional or statutory restrictions on the right to vote after one has been convicted of a felony. These restrictions are prescribed by states beyond the sentence imposed by the courts and vary considerably across the country” (Preuhs, 2001, p. 735). The policy that surrounds the disenfranchised population, gives every state their own ability to set the guideline to how that individual state would like to implement the felon disenfranchisement law. It is worth noting that this law did not just appear out of thin air, but it was actually a spin-off from what European countries deemed as *civil death*. According to the 2007 Alabama Law Review:

. . . felony disenfranchisement is far from a new idea as a ‘disenfranchisement in the U.S. is a heritage from ancient Greek and Roman traditions carried into Europe.’ In the Roman Empire and Greece, criminals were prohibited from appearing in court, making speeches, attending assemblies, serving in the army, and voting. (Liles, 2007, p. 58)

When the English colonists made their way to America they also brought with them many of the traditions that they lived by in European lands over into the British

colonies. By the end of the 1700s and throughout the beginnings of the 1800s many states, such as Connecticut, Alabama, Missouri, Vermont, Ohio, Kentucky and so many more established criminal disenfranchisement. The Kentucky Constitution of 1792, Ohio Constitution of 1802, Mississippi Constitution of 1817, and many more throughout the 1800s were common in the fact that the criminal disenfranchisement laws barred “those convicted of bribery, forgery, perjury, or other high crimes or misdemeanors” (Mississippi State Constitution of 1817). So, what is considered to be a race issue did not become problematic to white Americans until after slavery was abolished. Criminal disenfranchisement was something that was used for poor whites during the institution of slavery, beginning in 1619.

On January 1<sup>st</sup>, 1863, President Abraham Lincoln issued the Emancipation Proclamation freeing the slaves all over the United States, but the actual movement to freeing slaves did not take place until 1865. The 40<sup>th</sup> Congress ratified the 15<sup>th</sup> amendment on February 3<sup>rd</sup>, 1870 stating in section one that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude” (Constitution of the United States of America, 1870). From the 1870s until 1900, freed slaves had an opportunity to exercise that liberty to vote and be active in the voting aspect of politics without being ostracized. It was not 1901 we beginning to see the race influenced disenfranchisement being to make it presence in state governments. It is believed that the racist intent of states disenfranchisement law was not present prior to 1865, but after the Reconstruction period “Between 1910 and 1980 many states adopted new laws or reconfigured preexisting law to handicap newly enfranchised black citizen whose rights had been

expanded by both the Fourteenth and Fifteenth Amendments” (Hull, 2006, p. 18). And from here we begin to see the rise of the KKK in American history and the story line of Jarvis Cotton’s family unfold following the voting timeline of American history in regards to African Americans and their ability to vote. The main purpose of preventing African Americans the privileges of voting was efforts to maintain white supremacy in America and limit the amount of influence blacks could possibly have in their home states. Felon disenfranchisement went unnoticed for several years. There are two plausible reasons: one, people may have not been aware of the state laws that are in place regarding criminals and their rights as citizens, or two, it was purposely overlooked for a long period of time.

“The spotlight on the 2000 presidential elections illuminated many significant elements of American politics and public policy” (Preuhs, 2001, p. 733). It was not “until the 2000 election, disenfranchisement was a ‘non-issue,’ something about which even well-educated individuals were largely unaware” (Hull, 2006, p. 1). Disenfranchisement made its presence known “in the 2000 presidential election, 4,686,539 Americans—more than 2 percent of the voting-age population –were barred from the polls” (Hull, 2006, p. 1). This percentage of voters that have been barred from the polls in the 2000 presidential election are men and women that have completed their sentences, some even extending to the completion of their parole and probation. “All but two states deprive convicted felons of the right to vote for some period of time” (Miles, 2004, p. 85).

According to the website ProCon.org, in 11 states convicted felons lose their right to vote permanently, in 20 states the right to vote is restored after term of incarceration, parole and probation, in 4 states the right to vote is restored after term of

incarceration and parole, and 13 states including Washington D.C voting is restored after term of incarceration. “In the United States, the right to vote is regarded as an essential element of liberty, freedom, and self-expression. The ability to exercise the franchise lies at the very root of citizenship and is zealously guarded by those who have struggled to gain its privilege” (Harvey, 1994, p. 1145). One of the pillars of the Civil Rights movement besides desegregation was granting African Americans the ability to vote. Civil Right leaders, both African American and white, have placed their lives on the line for the newer generations that came up to have the granted citizenship with the ability to vote. Understanding that “it is not uncommon for individuals convicted of crimes in the United States, especially those convicted of felons, to be legally barred from voting” (Lippke, 2001, p. 553), meaning that when a person is incarcerated for some time their rights to vote have been take away. When we examine the demographics of the disenfranchisement population, identifying that African Americans hold the highest percentage of the disenfranchised population, based on incarceration status. It is worth examining if African Americans hold that same high percentage in the disenfranchised population as well.

In 1985, the issue was addressed for the first time by a Tennessee federal district court in *Wesley v. Collins*. In *Wesley*, the plaintiff, a black convicted felon, argued that a Tennessee statute disenfranchising felons resulted in the unlawful dilution of the black vote in violation of the U.S. Constitution and the federal Voting Right Act Amendment of 1982. (Harvey, 1994, p. 1147)

The result of this court case was dismissed because it was said that the plaintiff failed to state a claim. From this court case alone it raised so many unanswered questions to how state policy on felon disenfranchisement has created a filter for the black vote. Statistical evidence provides that “according to the most recent *Bureau of Justice Statistics Bulletin*

blacks represented 47% of felons convicted of violent crimes in 1990, although they made up only 12.1% of the U.S. adult population in that year” (Harvey, 1994, p. 1151). African Americans made up such a small portion of the U.S. total population, the question that should alarm many if not all Americans, is why African American make up the larger portion of the imprisoned population as well as the disenfranchised population?

### Race Influenced Disenfranchisement

Supporters of the disenfranchisement laws believe that there is no race influence when it comes to these laws, more of a criminal-based influence. Opponents of the disenfranchisement laws beg to differ, because despite the originality of this law being known as *civil death*, prior to slavery being abolished there was not an outside threat of influence in the political agenda. According to scholar Richard L. Lippke there is:

. . . a way of construing this argument for disenfranchisement that make it plausible. If individuals demonstrate, through a serious of convictions for serious offenses, that they are generally unwilling to abide by the laws of reasonably just societies, then deprivation of the franchise may be an appropriate adjunct to whatever other criminal sanctions they face. (Lippke, 2001, p. 564)

His argument could only be considered if, and only if, the law was not influenced by race. Lippke’s attempt to support the disenfranchisement law is contradicted with the evidence that he provided, stating that,

It is estimated that disenfranchisement laws affect four million felons and ex-felons in the United States. Given their disproportionate representation in the criminal justice system, many of those disenfranchised are African-American or Hispanic. It is estimated that one in seven black men in the United States cannot legally vote because of the disenfranchisement laws. (Lippke, 2001, p. 554)

If we are fully aware of how these laws heavily impact one community, the disproportionate numbers in the criminal justice system, and the lasting effect on much of

the African American population, then it is important to look at the hidden motive of these laws.

It was “during the Jim Crow era, Southern state governments and officials used several methods to disenfranchise African Americans, including physical force and threats, but literacy test provide a particularly apt lens through which to view the disenfranchising schemes and rationales of that era. By the 1950s and the 1960s, literacy tests were the remaining, most prevalent, and most effective mechanism of political exclusion” (Goldman, 2004, p. 612). When literacy test became illegal under the passing of the Voting Right Act of 1965 sign by President Lyndon B. Johnson, felon disenfranchisement was the last benefit to state governments to maintain the elimination of the African American vote. Many social scientists “have begun to seek systematic evidence of the causal relationship between ex-felon disenfranchisement and voter participation. Manza and Uggen (1998) are undertaking a research agenda in which they anticipate linking long-term declines in voter participation to the growth of disenfranchised population.” (Miles, 2004, p. 87). So much research has been done to identify the cumulating factors that influence the dramatic decrease in voting turnout and the substantial increase in the disenfranchised population.

#### Public Opinion and Disenfranchisement

From the passage of the Voting Right Act of 1965, many American citizens believed that the problems surrounding the African American vote had come to an end. Unfortunately, since the implementation of the state level felon disenfranchisement laws, it is concluded that it has not come to a complete end, but it has shifted. Today, one in every thirteen African American people is subjected to the disenfranchisement laws in

their given state and not allowed to vote, unless they live in Vermont or Maine, are not allowed to vote. This was highlighted in the 2000 presidential election when thousands of African Americans in the state of Florida were not able to vote due to the disenfranchisement law that is enacted in the state of Florida. The problems surrounding the felon disenfranchisement laws in the states have gone far past the state level, but also “at the national level a measure banning the states from placing any restrictions on the voting right of ex-felons reached the floor of the U.S. Senate in February 2002, where it was defeated on a 63-31 vote” (Manza, Brooks & Uggen, 2004, p. 276). A public opinion study was done by Manza, Brooks and Uggen (2004) to consider how the public views citizens being stripped of their right to vote; their study took account of

All categories of felons who are not currently in prison, relatively large majorities (between 80 percent in the case of generic ex-felons and 52 percent in the case of former sex offenders) favors enfranchisement. Additionally, we find evidence that between 60 and 68 percent of the public believes that felony probationers, who make up a full one-fourth of the disenfranchised felon population, should have their voting rights restored. (Manza, Brooks, & Uggen, 2004, p. 283)

When examining the crime element that plays in the likelihood of someone being convicted of a felony; we also see that the majority of the disenfranchised African American population have lost their ability to vote due to misdemeanor drug charges that were harshly enhanced into felony level crimes.

The ultimate punishment of becoming a convicted felon goes far past the fact that one must spend several years in prison, but also understanding that after their time has been served, depending on where you live, the restoration of complete citizenship does not fully follow. “The case of felon disenfranchisement is a powerful reminder that

even the most basic element of democratic governance, such as a universal right to vote, can still be threatened in a policy otherwise asserting its democratic credentials. It exemplifies how ‘waves of democracy’ do not necessarily move in unilinear fashion towards greater inclusiveness” (Manza & Uggen, 2004, p. 502). African Americans have been one of the most targeted minority groups after the cancellation of the natives. When examining the voting denial of the Cotton’s family timeline, in the beginning portion of the felon disenfranchisement section, the felon disenfranchisement laws in these states fail to be a legitimate laws, but instead another tunnel to maintain the absence of African American influence in state and local governments throughout the nation.

There is a lot of supporting evidence that has been published over the years that has demonstrated that it is the intentions of this government to maintain control over the African American community, since the end of slavery (Small, 2001; Spohn & Wu, 2010; Maurs, 2011; Miles, 2004). When looking at the simplicity of the timeline we notice a shift from slavery to convict leasing to the Jim Crow system, which (in essence) made it offensive to be black in public and made African Americans second-class citizens. After living in the Jim Crow system and going through the Civil Right Era, society shifted into this era of mass incarceration, which has now been unfolding since the 1970s. The next chapter we are going to look at the major changes in the African American communities that came from this War on Drugs, which is how community policing contributes to arrest.

## CHAPTER III

### POLICING AND ARREST

#### Introduction

*You start out in 1954 by saying nigger, nigger, nigger. By 1968 you can't say nigger that hurts you. It backfires. So, you say stuff like forced-bussing, state's rights and all that stuff. You're getting so abstract now, you're talking about cutting taxes and all of those things you're talking about are totally economic things and the by-product of them is blacks get hurt worse than whites.*

–Lee Atwater, 1981. Campaign Strategist to Reagan Administration

One government function is to establish laws, but it is the local law enforcement function to enforce those laws and ensure that people in any given community are following the laws that have been set in place by the government. One of the complications with policing here in America is that this country is made up of fifty states and within those states, counties, and cities, policing methods will vary. “There are many different types of law enforcement agencies, from small town police departments to large federal agencies” (Discover Policing, 2017). The consistent thing that American law enforcement agencies have in common, is to ensure the safety of community, prevent crime, and uphold state and federal constitution. The mass incarceration era’s starting point is 1970 that is when we begin to see a steady rise in the prison population (DuVernay, 2016). African American men and women did not just walk into prison on their own, there is a step-by-step process, and local law enforcement is the first point of contact for our criminal justice system.

This chapter will answer the following two questions: 1) where has most policing taken place and why? and 2) why was policing so heavy in African American communities rather than in white communities, in relationship to the War on Drugs? Data and methods will also be presented for arrest rates in California from 1980 to 2012. The purpose is to look at the population of African-Americans and whites in comparison to the number of arrests. This data will demonstrate if the number of arrests of African Americans will be proportionate to the overall population of African Americans in California during the War on Drugs.

### Where Is Crime?

#### Community Policing and Crime Mapping

It is necessary to understand that where crime rates are highest is where much of the policing will be happening. Crime is not restricted to one location, but is spread across an entire region; the only thing that differs is the amount of crime. Crime mapping was established to determine which area of a region has experience the higher levels of crime. Eck, Chainey, Cameron, Leitner & Wilson (2005) describes crime as having a clumping effect, because crime is not even across the map, but “it clumps in some areas and is absent in others. People use this knowledge in their daily activities. They avoid some place and seek out others” (Eck et al., 2005). Crime mapping was established as a tool to better aid the police to determine exactly where the crime was happening in the

local communities. The mapping of crime was developed by understanding the concentric zone model<sup>4</sup>

The Concentric Zone Model includes five different zones, and each zone represents a social group of people. What Burgess and Park (1920) found was that social structures extend outward from one central business area, and the further away from the business district the population of people continues to decrease more and more. Zone one is the central business district; this zone is mainly a non-residential center for business and is considered the downtown area. The central business district is often commuted to and from by the residents in all the other zones. Zone two is known as the zone of transition; this zone has high rates of people moving in and out, and here in this zone is where the highest crime rates are. Zone three is the working class, also known as the blue-collar zone. This zone has residence that could afford to move out of zone two. Zone four is where the majority of our middle class or white collar workers live. The people who live in this zone are the well off and educated group; it is this zone where you will find professors, corporate and business owners. The last zone is zone five, which is where all our doctors, lawyers, CEOs and judges live; considered the upper class. The reason this model is so relevant to policing is because it is important to know where the crime is in order to control and monitor it. Considering the implications of Burgess and Park's theory, Chicago was used as their outline. So, since not every city is laid out the exact

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<sup>4</sup> The concentric zone model was established by Ernest Burgess and Robert Park at the University of Chicago in the 1920's. The original purpose of the mapping theory was to explain the socioeconomic divides in and out of the city of Chicago. This particular theory was the first theory to explain the distribution of social groups.

same way, a common principle of where the clumps of crime occur is needed. Figure 1 provides an illustration of the concentric zone model.

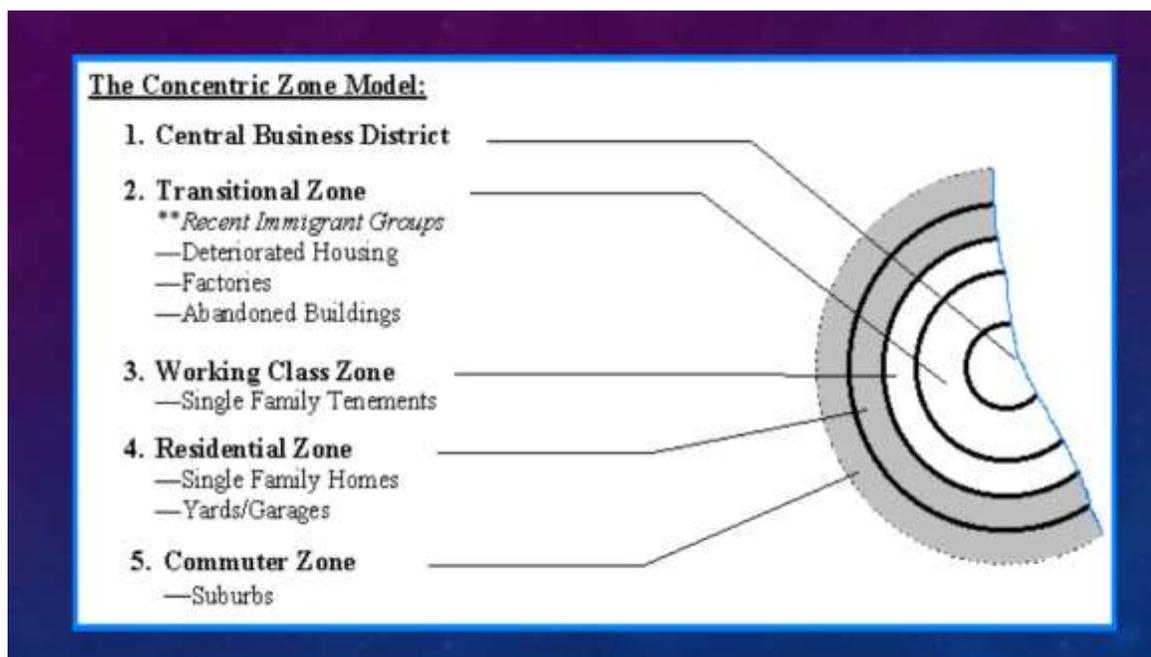


Figure 1. The Concentric Zone.

During the War on Drugs policing often targeted the poverty-stricken communities. Based on the theory presented above, the transitional zone is where the majority of the urban communities lived. The policing that was done during the War on Drugs did little to nothing to minimize the amount of drugs that were coming in and out of the African American communities. The type of policing that was produced, by some individual officers, did in fact highlight many human right violations that may have occurred during the War on Drugs era.

Examining the tension between the African American community and law enforcement was not established at the time of the War on Drugs. Ritchie and Mogul

(2008) established that the first form of policing was slave patrols. This was considered the first state-sponsored police force. Historically, slave patrols:

. . . had only three primary functions: (1) to chase down, apprehend, and return to their owners, runaway slaves; (2) to provide a form of organized terror to deter slave revolts; and, (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside of the law, if they violated any plantation rules. (Muhammad, 2016)

The slave patrol just like the slave codes, the black codes, and the segregation laws, were fueled solely on racial profiling and police brutality (Ritchie & Mogul, 2008). It is important to understand that policing African Americans in America did not just start all of a sudden, but there is a long history of tension between any form of law enforcement and the African American community.

Official studies, as well as those of domestic and international civil and human rights organizations, have consistently found that people and communities of color are disproportionately subjected to human rights violations at the hands of law enforcement officers. (Ritchie & Mogul, 2008, p. 177)

The type of human rights violations include but are not limited to; racial profiling, verbal abuse, harassment, the use of excessive force, and shootings that are unjustified.

The War on Drugs led to the development of different types of policing. Social disorder directly influenced with how policing is done because in communities where crime rates are increased. According to Caudill, Getty, Smith, & Trulson (2013), social disorder was a direct influence of the crack cocaine epidemic, and where there is social disorder we tend to find higher levels of crime. When there is any form of social disorganization either caused by a social wave change or sometimes even an economic disruption, historical America tends to see a spark in criminal activity. For an historical example, the Great Depression, “brought a rapid rise in the crime rate as many

unemployed workers resorted to petty theft to put food on the table. Suicide rates rose, as did reported cases of malnutrition. Prostitution was on the rise as desperate women sought ways to pay the bills” (USHistory.org, 2017). Social disorganization is an impact of the socioeconomic status, of a given community. In an African American community where there is lack in funding in schools, community, and various outlets to reframe children from turning to criminal activity causes and influence social disorganization. According to the American Psychological Association, the “socioeconomic status (SES) is often measured as a combination of education, income, and occupation” (APA, 2017). Often times the evidence of these disadvantages are in employment, education, and even in housing.

Regarding employment, “African American men working full time and year around have 72 percent of the average earnings of comparable white men. For African American and white women, the ratio is 85 percent” (Rodgers, 2008). In education, the National Center for Education Statistics found that African American and Hispanic students were most likely to attend high poverty school than Asians and whites (National Center for Education Statistics, 2007). Even in housing, “more than 53 percent of home-purchase loans made to African American in 2006 were high-cost, as opposed to only 18 percent for white” (Logan & Westrich, 2008). These are prime examples of how economical, educational, and social disadvantages affect the African American community.

The Black Lives Matter movement is a direct result of low socioeconomic status within the African American community, this is inclusive but not limited to an inequality in social, economic, criminal, and educational disparities. This movement was

established mainly as a result of the high numbers of unarmed black men that have been shot and killed by police. Even though this movement was established on the basis of the excessive force of the law enforcement, this movement has forced the world to face what has been going on forever. The difference between then and now is the simple fact that things are now recorded and can be published on the internet. This is an ongoing issue with waves of social change in America; when there is a serious problem, movements begin to form and things become more monitored and it becomes an important topic that must be discussed. African American communities were heavily policed primarily because minorities' communities were often poverty stricken, and so these were the communities where higher rate of crime took place.

This is not to say that crime did not occur in other communities, but rather this meant to emphasize that people who live in low socioeconomic status locations experience crime at a higher rate than people who do not. This War on Drugs was declared due to the amount drugs that were all over the United States. It is a fact that drugs had swept this nation in a dramatic way. This nation was in a state of emergency due to the amount of Americans becoming more and more dependent on powder and crack cocaine. The drug epidemic that swept this nation should have been a war against the health and substance abuse that came with the drug, but rather focusing on the dependence aspect of drugs the government turned it into a hidden message that targeted the urban communities. Rather than looking for a way to help so many people to beat the addiction that came along with drugs, laws were produced to create a disparity between crack and powder cocaine. Crack cocaine was publicized as the crime drug that was to be associated with African Americans. In all reality there was no difference between powder

and crack, but rather two types of the same drug that a large number of people, both black and white, became addicted to. There was this notion that African Americans did crack over powder, but whites also used crack cocaine. An addict of cocaine does not have a preference, whether it be crack or powder. Either way they are going to use it, despite race or ethnicity. However, U.S. Congress had a different point of view of the drug, a disparity and establishing law that ultimately targeted the African American communities.

### Data and Methods

#### *Hypothesis:*

During the War on Drugs, higher arrest rates for drug offenses occurred for African Americans than for whites.

#### *Definitions:*

**Drug Offenses:** Everything including sales, possession, manufacturing, and the use of a controlled substance.

**Black:** A non-white or Hispanic individual.

**White:** A non-black or Hispanic individual.

**Population:** The number of people in a designated area during a given time.

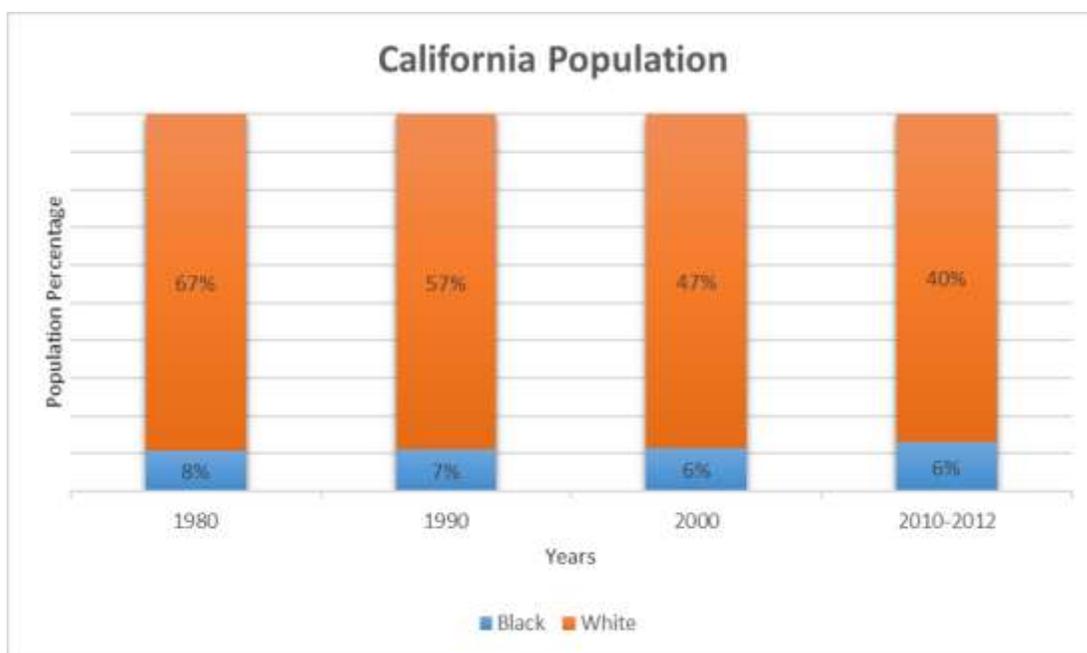
**Demographics:** The population layout, based on race, during a given time frame.

**Arrest:** Subjects who were arrested and booked into a local jail for drug offenses.

#### Data

The census for California in regards to population is collected every ten years. According to the U.S. Census Bureau it is a mandate by Article I, Section 2 of the

Constitution to count every resident in the United States. This mandate was established mainly to determine the number of representatives that a state can have. When looking at the census data on population in California during the War on Drugs, it is necessary to note that between African Americans were made up of 6 to 8 percent of the total population. Figure 2 and Table 1 represent the population of California covering the 1980s, 1990s, 2000s and 2010s.



*Figure 2.* California's population based on the demographics of the black and white population.

The Bureau of Justice Statistics has provided an arrest data analysis tool that helps determine the number of arrests that have occurred from 1980 to 2012. The data analysis tool allowed me to customize the results of the tables by agency, race, year and the specific offense. For this portion of my research I looked at the State of California. California is broken down into 58 counties, each county is made up of cities, and each of

Table 1

*Total Population in Comparison to the Percentage of the Black and White Population*

| Years     | Total Population | Black             | White               |
|-----------|------------------|-------------------|---------------------|
| 1980      | 23,667,902       | 1,783,777<br>(8%) | 15,763,992<br>(67%) |
| 1990      | 29,760,021       | 2,092,446<br>(7%) | 17,029,126<br>(57%) |
| 2000      | 33,871,648       | 2,181,926<br>(6%) | 15,816,790<br>(47%) |
| 2010-2012 | 37,253,953       | 2,163,804<br>(6%) | 14,956,253<br>(40%) |

those cities has their own local law enforcement agency. Utilizing the data analysis tool, I was able to take each agency within a county and document the arrest numbers of both white and black persons that had been arrested for drug abuse violations. When looking at the term of drug abuse violations, it is a breakdown of both possession and the sale or manufacturing of a drug.

The arrest data was accumulated from each law enforcement agency with California's counties. Table 2 shows how the number of law enforcement agency varies between each county. Using the Bureau of Justice Statistics data analysis tool, I was able to create 58 tables that listed each agency and recorded the numbers of each year for both African Americans and whites. From there I created excel spreadsheets in order to calculate the totals for each year and each agency, within that county, resulting in a county total of arrest.

Table 2

*Counties with California and the Number of Law Enforcement Agencies within the County*

| California Counties |                   |                   |                 |                     |
|---------------------|-------------------|-------------------|-----------------|---------------------|
| Alameda (15)        | Alpine (1)        | Amador (4)        | Butte (5)       | Calaveras (2)       |
| Colusa (3)          | Calaveras (18)    | Del Norte (2)     | El Dorado (3)   | Fresno (13)         |
| Glenn (3)           | Humboldt (8)      | Imperial (8)      | Inyo (2)        | Kern (9)            |
| Kings (4)           | Lake (3)          | Lassen (2)        | Los Angeles(46) | Madera (3)          |
| Marin (9)           | Mariposa (1)      | Mendocino (4)     | Merced (7)      | Modoc (2)           |
| Mono (2)            | Monterey (11)     | Napa (3)          | Nevada (4)      | Orange (22)         |
| Placer (5)          | Plumas (1)        | Riverside (16)    | Sacramento (8)  | San Benito (2)      |
| San Bernardino (12) | San Diego (10)    | San Francisco (2) | San Joaquin (7) | San Luis Obispo (8) |
| San Mateo (20)      | Santa Barbara (5) | Santa Clara (13)  | Santa Cruz (5)  | Shasta (3)          |
| Sierra (1)          | Siskiyou (5)      | Solano (8)        | Sonoma (10)     | Stanislaus (8)      |
| Sutter (2)          | Tehama (3)        | Trinity (1)       | Tulare (9)      | Tuolumne (2)        |
| Ventura (6)         | Yolo (5)          | Yuba (3)          |                 |                     |

From those tables, I separated the data for each decade, making the research focus on four decades; 1980s, 1990s, 2000s, and from 2010-2012. Figure 3 gives the percentages of both African Americans and whites that were arrested for drug offenses.

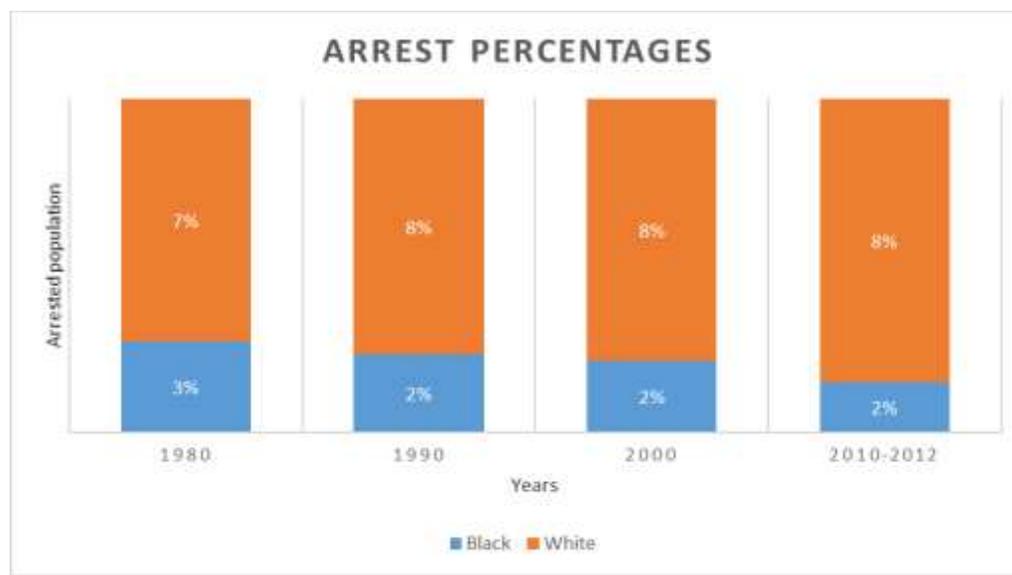


Figure 3. California's arrest percentage for drug offenses.

Table 3 presents the total number of people who were arrested for the drug offenses, and by African Americans and whites.

Table 3

*The Total Number of Black and White Arrest in California*

| Years     | Arrested Population | Blacks       | White          |
|-----------|---------------------|--------------|----------------|
| 1980      | 1,288,170           | 357,109 (3%) | 931,061 (7%)   |
| 1990      | 2,037,608           | 483,901 (2%) | 1,533,707 (8%) |
| 2000      | 2,143,850           | 458,682 (2%) | 1,658,168 (8%) |
| 2010-2012 | 487,503             | 76,319 (2%)  | 411,184 (8%)   |

The arrested population compared to the actual population of California is relatively a very small percentage. Table 4 shows California population to the arrested population with percentages. The arrest population totals include the summed arrest totals of each county.

Table 4

*California's Population in Comparison to the Arrested Population*

| Years     | California Population | Arrested Population | Arrested % Compared to California Pop. |
|-----------|-----------------------|---------------------|--|
| 1980      | 23,667,902            | 1,288,170           | 5%                                     |
| 1990      | 29,760,021            | 2,037,608           | 7%                                     |
| 2000      | 33,871,648            | 2,143,850           | 6%                                     |
| 2010-2012 | 37,253,956            | 487,503             | 1%                                     |

The next step is to determine if the expected number of arrests differs based on the percentage of African Americans and whites in California. To find the expected number of arrests, I am going to take the percentage of both African Americans and whites and multiply by the actual number of arrest from the previous data that was collected. That equation looks like this:

$$\text{Population \%} \times \text{Actual Arrest} = \text{Expected Arrest} \quad (1)$$

The next step is to find the actual percentage of African Americans and whites that were arrested, as compared to the amount of both, African Americans and whites, in California. To find the actual percentage of individuals that were arrested for both races, I am going to divide the actual number of arrests by the expected number of arrests. That equation looks like this:

$$\text{Actual \# of Arrest by Race} / \text{Expected \# of Arrest} = \text{Actual \% of arrested} \quad (2)$$

The expected number of arrest means that based on the demographics of the population there is an expected amount of arrests. In each era, the data will reveal whether or not the actual percentage of arrest exceeds the percentage of the represented population of African Americans and whites in California. Table 5 demonstrates the first equation in a table. When I multiply the percent of either the black or white population by the total number of arrests it results in the expected number of arrest per race based on population.

Table 6 demonstrates how much more or less the actual percent of individuals that were arrested was based on the population proportion of each race. In the 1980s, African Americans represented 8% of California's population, but compared to the 67% of whites in California during that time, were arrested 3.4% over the expected rate while white were arrested 1 % below the expected rate. That follows throughout the other years

Table 5

*Results of the Expected Number of Arrest, Based Black and White Populations*

| Years     | Race  | Pop % by Race | Total Arrest | Expected Arrest |
|-----------|-------|---------------|--------------|-----------------|
| 1980      | Black | 8%            | 1,288,170    | 103,053         |
|           | White | 67%           |              | 863,073         |
| 1990      | Black | 7%            | 2,037,608    | 142,632         |
|           | White | 57%           |              | 1,161,436       |
| 2000      | Black | 6%            | 2,143,850    | 128,631         |
|           | White | 47%           |              | 1,007,609       |
| 2010-2012 | Black | 6%            | 487,503      | 29,250          |
|           | White | 40%           |              | 195,001         |

Table 6

*Results of the Actual Percentage of Arrest, Based on the Actual and Expected Number of Arrest*

| Years     | Race  | Actual Arrest | Expected Arrest | Actual % of Arrest |
|-----------|-------|---------------|-----------------|--------------------|
| 1980      | Black | 357,109       | 103,053         | +340%              |
|           | White | 931,061       | 863,073         | -10%               |
| 1990      | Black | 483,901       | 142,632         | +340%              |
|           | White | 1,533,707     | 1,161,436       | -13%               |
| 2000      | Black | 458,682       | 128,631         | +350%              |
|           | White | 1,685,168     | 1,007,609       | -17%               |
| 2010-2012 | Black | 76,319        | 29,250          | +26%               |
|           | White | 411,184       | 195,001         | -21%               |

as well, African Americans in California were consistently a low percentage of the population, but were 3 times more likely to be arrested for drug offenses.

## Conclusion

During the War on Drugs, a large amount of attention was targeted toward the African American community and they were policed more than a white community, African Americans made up a very small percentage of the population. However, even though African Americans had such a small percentage of California's population based on the data provided they were arrested at a much higher rate than whites.

Based on the results of the analysis communities that had higher arrest rates can be identified as communities with socioeconomic status. The major lack that is found in many poverty stricken communities is the lack of funding. When educational funding decreases, it takes away the after school programs; such as clubs, music, and sports, and programs that keeps children from being negatively distracted by criminal activity. Rebuilding the relationship between law enforcement and community will reestablish the need for revisiting the foundation of community policing.

## CHAPTER IV

### COURTS AND SENTENCING

#### Introduction

*Until justice is blind to color, until education is unaware of race, until opportunity is unconcerned with the color of men's skin, emancipation will be a proclamation but not a fact.*

-President Lyndon B. Johnson

During the War on Drugs the federal government had a great deal of influence in how the court went about sentencing when it came to drug cases; whether big or small, it was mandatory for the court to punish a certain way. The purpose of this section of research is to see how the implementation of the Anti-Drug Abuse Act of 1986 and 1988 impacted different aspects of the criminal justice system highlighting mandatory sentencing. Sentencing data will be presented from the federal level, looking from 1998 to 2012. Before looking at the numbers, I want to first examine the courts and the role they play in society, the complexity of the courts, and how race holds and have always held an important place in the courts.

The research presented in this next section will provide a better understanding of how the laws established during this War on Drugs era has been created to maintain the ongoing suppression of the African American community.

## The Courts

What happens in criminal courts directly affects our prison population, and what happens in the courts will determine which part of our criminal justice system is most affected. Judges have the authority to either send someone to prison, place them on probation, community services, or some other alternative to incarceration. The problem that arises with the courts is looking at who is going where. Are African Americans going to prison over probation more or are whites being placed on probation more than blacks? Where does the racial disparity stem from within the courts? Looking at the sentencing outcome will give a small insight to the foundations of the racial discrimination that lies within our criminal justice system. The criminal justice system is not only made up of local law enforcement agencies, courts, and prisons; but it also consists of jails, prisons, parole, probation and even juvenile justice. This justice system that we live under is ran and guided by the laws, rules, and regulations of both state and federal government. The state and federal courts are subjected to uphold and follow both state and federal constitutional laws.

### Who Can Afford Court?

Courts fees can be very expensive. When individuals are not in the position to pay for a private lawyer, they are given a public defender. Time and time again courts, have proven to be a place that lets the wealthy people off and the poor people are given the shorter end of that stick. One of the most important imbalances in the courts is the social-economic disparity that it presents between the rich and the poor. Interestingly, race has always been at the center of social economic disparities, so you cannot have one

without the other. The African American population is subject to the proceedings of the courts, because they do not have the resources to combat it.

Another tool that is used by the prosecuting attorney in more ways than necessary is plea bargaining. Plea bargaining is when a defendant agrees to plead guilty in the hopes of receiving a lesser charge, which gives the expectation of leniency. Often time's defendants accept a plea deal mainly because they cannot afford to go to trial. Even though it is stated to anyone that is arrested that they have a right to an attorney, and if they cannot afford one, then one will be appointed to them; court fees will continue to add up and someone is left with the large bill to pay.

### Mandatory Sentencing

Another aspect of the courts is sentencing. After an individual goes through the criminal justice system and prior to landing in a prison for an extensive amount of time it is the court that issues the sentence in order for a person to go to prison. The Anti-Drug Abuse Act of 1986 and 1988 made it mandatory for courts to sentence a certain way, hence the term mandatory sentencing. Mandatory sentencing is what really impacted the courts during the War on Drugs era. This act went into public law on October 27, 1986; in section 1007 states:

Limited Authority to impose a sentence below a statutory minimum. Upon have of the Government the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. (Anti-Drug Abuse Act of 1986, Section 1007 (e))

The issue with mandatory sentencing is that it completely strips the judge's authority and discretion out of the courtroom. A judge's role in the court is meant to be the neutral,

unbiased person, the one who hears both sides and from there decides on a judgment.

This portion of the act literally tells the judge what he or she can and cannot do when it is time to rule a sentence term with drug offense cases. The second part of this section of the act says that if there are more than one defendant apart of the case then they have the ability to determine who played a more predominant role in the crime that was committed. Based on the numbers of African Americans in prison, how much was that discretion used when a case was presented with multiple African American defendants?

Examining the act there are some points that law-makers made to define what it meant by the term *drug or narcotic offenses*; the act states that the term includes “possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer both” (Anti-Drug Abuse Act of 1986). The act gives a very clear and inclusive definition of either drug or narcotic offenses. Subtitle B states that:

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was directly, or pursuant to a valid prescription or order, from a practitioner . . . (Drug Possession Penalty Act of 1986, section 404(a))

From these we know two things. We know what the government means behind the term of drug or narcotic offenses, and what the exact law states for people knowingly or intentionally in possession of a controlled substance. Many people who were in the courts for a drug offense were there for possession. It is not every day that, based on the number of people that were arrested during this era, that an average beat police officer was arresting individuals manufacturing drugs in the inner city, The Drug Enforcement Agency (DEA), is the agency that tackled more of the heavy-duty drug manufacturers

and distributors, not a simple police officer on patrol. From African American communities that were policed so heavily, a high number of African American people that were in court repeatedly were there for possession. The strict laws that were imposed during this time did not take into consideration that the individuals, both black and white, lives were being ruined by the mass number of drugs that were in these communities. People that were being lock up for possession were addicts and they needed more than just prison, but treatment for drug abuse.

The act continues to state that:

. . . if any person commits such violation after one or more prior convictions for an offenses punishable under this paragraph, or for a felony under any other provision of this Title or Title III, or other law of the state, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substance have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment. (Anti-Drug Abuse Act of 1986)

The act imposes that someone only has to be arrested for drug possession once and have a great chance to be sentenced for twenty years. The act also does state *one or more*, “criminal history plays quite an important role in the sentencing process in virtually all jurisdictions. Statutory enhancements for repeat offenders exist in most states where there is widespread public support for harsher penalties” (Rodriguez, 2003). During the War on Drugs era, a vast majority of the population believed in harsher punishments for individuals who were involved in drugs. Tough on “crime” is slogan on which former presidents Nixon, Reagan, and Clinton based their entire campaigns.

It is surprising that a rapist can serve less time in prison than someone who is NOT a drug dealer, but someone who uses drugs and has become an addict. Mandatory

sentencing prevents judges from being neutral and weighing the facts of the case. The courts hold a very large and important role in the criminal justice system. The courts are the portion of the system that has only one priority, which is to provide the aspect of justice and ruling on the law itself, given the fact that it has been broken. Law enforcement does just what their title describes, they are to enforce the laws, but the courts itself upholds of the law.

### Data and Methods

#### *Hypothesis:*

African American defendants were sentenced at a much higher rate than white defendants during the War on Drugs.

#### *Definitions:*

Drug Offenses: Everything including sales, possession, manufacturing, and the use of a controlled substance.

Black: A non-white or Hispanic individual.

White: A non-black or Hispanic individual.

Sentence: The punishment that was imposed for the commitment of a crime.

#### Data

On the national level, I was able to use the data analysis tool from the Bureau of Justice Statistic to focus on the length of sentences imposed by the courts for drug offenses. The unit of analysis here is the number of offenders, controlling by race, operationalized as black or white. The goal is to determine who received lengthier sentences; the black offenders or the white offenders? I hypothesizes that black offenders

received longer sentences than whites. For the amount of time imposed, information provided by the Bureau of Justice Statistic, the sentences have been broken down from no prison time to life sentences. The research provided by the data analysis has represented the length of sentences in the amount of months. Each length of sentencing is either greater than or less than. The very first sentence is *none ordered*, meanings that prison time was not ordered as a sentence. One of the most unique things about the courts is the position of the judge. The judge has the discretion to impose a specific type of sentence. In drug offense cases, prison time can be imposed, as well as, other judgments such as probation, community service or a small amount of jail time.

It was not every year that white offenders received a shorter sentence than African American offenders. The following table gives the variables of sentences that are imposed. The table presented above, Table 7 gives the definition of the symbols as well as the conversions from months to years. Table 8, show that blacks have been sent to prison for extended periods of time compared to white offenders for the same types of drug offenses.

Table 9 shows the total number of defendants that were sentenced from 1998-2012 for each of sentences presented. The percent, following the total number, was calculated by dividing the total number sentenced with the actual number of defendants sentenced to each particular term listed in column one.

Table 7

*Definition Translated from Months to Years*

| Sentence             | Months Converted into Years   |
|----------------------|---|
| Not Ordered          | No sentence imposed on the defendant  |
| <1 month             | Sentence greater than one month   |
| >1 to <= 6 months    | Sentence less than one to greater/equal to six months                         |
| >6 to <=10 months    | Sentence less than six to greater/equal to ten months                         |
| >10 to <=12 months   | Sentence less than ten months to greater/equal to 1 year                      |
| >12 to <=18 months   | Sentence less than 1 year to greater/equal to 1 year, 6 months                |
| >18 to <=24 months   | Sentence less than 1 year, 6 months to greater/equal to 2 years               |
| >24 to <=30 months   | Sentence less than 2 years to greater/equal to 2 years, 6 months              |
| >30 to <=37 months   | Sentence less than 2 years, 6 months to greater/equal to 3 years, 1 month     |
| >37 to <=59 months   | Sentence less than 3 years, 1 month to greater/equal to 4 years, 11 months    |
| >59 to <=63 months   | Sentence less than 4 years, 11 months to greater/equal to 5 years, 3 months   |
| >63 to <=78 months   | Sentence less than 5 years, 3 months to greater/equal to 6 years, 6 months    |
| >78 to <=105 months  | Sentence less than 6 years, 6 months to greater/equal to 8 years, 9 months    |
| >105 to <=120 months | Sentence less than 8 years, 9 months to greater/equal to 10 years             |
| >120 to <=188 months | Sentence less than 10 years to greater/equal to 15 years, 8 months            |
| >188 to <=359 months | Sentence less than 15 years, 8 months to greater/equal to 29 years, 11 months |
| >359 months          | Any sentence that is greater than 29 years and 11 months                      |

Table 8

Data provided by the Bureau of Justice Statistic; Federal Court Sentencing 1998-2012

| Sentence: Prison Drug<br>Offense | 1998   |       | 1999   |       | 2000   |       | 2001   |       | 2002   |       | 2003   |       | 2004   |       |
|----------------------------------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|
|                                  | White  | Black |
| None ordered                     | 867    | 259   | 962    | 291   | 1,051  | 295   | 1,140  | 315   | 1,181  | 275   | 1,186  | 258   | 923    | 255   |
| <1 month                         | 69     | 21    | 65     | 19    | 80     | 22    | 76     | 31    | 100    | 31    | 117    | 37    | 100    | 44    |
| >=1 to <= 6 months               | 656    | 129   | 868    | 156   | 800    | 115   | 881    | 117   | 1,064  | 109   | 1,112  | 117   | 781    | 126   |
| >6 to <=10 months                | 467    | 54    | 622    | 59    | 589    | 73    | 650    | 66    | 782    | 74    | 676    | 65    | 556    | 63    |
| >10 to <=12 months               | 808    | 131   | 1,028  | 121   | 1,088  | 114   | 1,169  | 134   | 174    | 45    | 183    | 37    | 119    | 22    |
| >12 to <=18 months               | 970    | 222   | 1,174  | 228   | 1,207  | 208   | 1,255  | 239   | 2,105  | 315   | 1,674  | 263   | 1,498  | 243   |
| >18 to <=24 month                | 891    | 278   | 1,080  | 293   | 1,154  | 307   | 1,116  | 282   | 1,162  | 317   | 998    | 283   | 974    | 230   |
| >24 to <=30 months               | 960    | 372   | 1,101  | 375   | 1,252  | 348   | 1,271  | 389   | 1,278  | 416   | 1,262  | 324   | 1,058  | 248   |
| >30 to <=37 months               | 894    | 337   | 1,113  | 409   | 1,229  | 419   | 1,245  | 460   | 1,157  | 431   | 1,465  | 443   | 1,312  | 349   |
| >37 to <=59 months               | 1,495  | 734   | 1,759  | 784   | 1,954  | 828   | 2,044  | 825   | 2,154  | 860   | 2,331  | 798   | 2,284  | 722   |
| >59 to <=63 months               | 813    | 513   | 921    | 488   | 1,082  | 546   | 1,057  | 546   | 1,063  | 532   | 1,122  | 492   | 1,031  | 425   |
| >63 to <=78 months               | 806    | 570   | 884    | 637   | 1,098  | 699   | 1,081  | 626   | 1,194  | 659   | 1,205  | 651   | 1,210  | 570   |
| >78 to <=105 month               | 676    | 607   | 723    | 749   | 900    | 725   | 913    | 728   | 1,064  | 732   | 1,073  | 754   | 1,093  | 724   |
| >105 to <=120 month              | 577    | 563   | 552    | 615   | 678    | 625   | 751    | 562   | 819    | 663   | 908    | 634   | 966    | 613   |
| >120 to <=188 month              | 847    | 1,167 | 875    | 1,201 | 1,012  | 1,323 | 1,019  | 1,268 | 1,247  | 1,268 | 1,410  | 1,376 | 1,493  | 1,389 |
| >188 to <=359 month              | 407    | 695   | 350    | 654   | 386    | 669   | 383    | 638   | 437    | 642   | 596    | 756   | 578    | 745   |
| >359 months                      | 67     | 170   | 73     | 173   | 78     | 131   | 59     | 123   | 94     | 120   | 85     | 150   | 105    | 154   |
| Life sentence                    | 34     | 115   | 42     | 160   | 39     | 102   | 40     | 80    | 61     | 93    | 46     | 102   | 41     | 98    |
| Death sentence                   | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     |
| Term not specified               | 3      | 0     | 0      | 0     | 0      | 1     | 1      | 0     | 3      | 3     | 5      | 1     | 29     | 11    |
| Missing/Unknown                  | 116    | 55    | 137    | 95    | 255    | 92    | 180    | 76    | 101    | 69    | 82     | 38    | 103    | 28    |
| Year Total                       | 12,423 | 6,992 | 14,329 | 7,507 | 15,932 | 7,642 | 16,331 | 7,505 | 17,240 | 7,654 | 17,536 | 7,579 | 16,254 | 7,066 |

Note. Data provided by the Bureau of Justice Statistic; Federal Court sentencing 1998-2012.

Table 8 (Continued)

| 2005   |       | 2006   |       | 2007   |       | 2008   |       | 2009   |       | 2010   |       | 2011   |       | 2012   |       |
|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|
| White  | Black |
| 846    | 266   | 820    | 242   | 734    | 237   | 922    | 267   | 961    | 292   | 989    | 321   | 1,138  | 363   | 992    | 388   |
| 146    | 63    | 192    | 54    | 168    | 60    | 156    | 58    | 201    | 77    | 194    | 64    | 193    | 77    | 221    | 98    |
| 709    | 134   | 694    | 129   | 699    | 113   | 707    | 103   | 824    | 125   | 651    | 115   | 549    | 112   | 819    | 131   |
| 581    | 61    | 469    | 69    | 513    | 62    | 526    | 59    | 508    | 70    | 444    | 64    | 370    | 58    | 357    | 70    |
| 135    | 42    | 122    | 39    | 110    | 17    | 102    | 31    | 145    | 34    | 114    | 38    | 119    | 36    | 96     | 39    |
| 1,505  | 264   | 1,733  | 246   | 1,609  | 232   | 1,558  | 275   | 1,600  | 312   | 1,808  | 282   | 2,255  | 355   | 2,123  | 373   |
| 987    | 262   | 948    | 250   | 929    | 212   | 889    | 234   | 906    | 279   | 937    | 265   | 1,037  | 325   | 1,070  | 286   |
| 1,034  | 271   | 979    | 285   | 870    | 225   | 903    | 299   | 893    | 276   | 1,008  | 235   | 1,087  | 287   | 1,140  | 281   |
| 1,217  | 369   | 1,227  | 413   | 1,200  | 373   | 1,184  | 383   | 1,146  | 377   | 1,231  | 311   | 1,341  | 350   | 1,312  | 417   |
| 2,145  | 754   | 2,213  | 791   | 2,159  | 694   | 2,008  | 783   | 1,914  | 726   | 2,046  | 617   | 2,208  | 634   | 2,186  | 740   |
| 1,138  | 560   | 1,294  | 602   | 1,371  | 590   | 1,329  | 753   | 1,324  | 728   | 1,446  | 688   | 1,430  | 755   | 1,480  | 679   |
| 1,219  | 634   | 1,279  | 682   | 1,309  | 651   | 1,226  | 660   | 1,214  | 668   | 1,295  | 564   | 1,208  | 584   | 1,366  | 646   |
| 1,097  | 728   | 1,149  | 812   | 1,150  | 779   | 1,093  | 787   | 1,059  | 63    | 1,094  | 621   | 1,115  | 636   | 1,174  | 750   |
| 1,111  | 815   | 1,225  | 781   | 1,175  | 832   | 1,141  | 1,049 | 1,049  | 1,004 | 1,182  | 918   | 1,172  | 849   | 1,136  | 697   |
| 1,454  | 1,375 | 1,630  | 1,417 | 1,458  | 147   | 1,310  | 1,390 | 1,248  | 1,283 | 1,265  | 1,064 | 1,325  | 970   | 1,383  | 1,071 |
| 553    | 777   | 675    | 820   | 703    | 925   | 584    | 831   | 600    | 768   | 616    | 654   | 525    | 564   | 589    | 518   |
| 82     | 140   | 82     | 97    | 88     | 128   | 71     | 104   | 72     | 97    | 69     | 61    | 55     | 61    | 65     | 62    |
| 39     | 100   | 54     | 124   | 32     | 118   | 47     | 104   | 58     | 110   | 48     | 72    | 41     | 48    | 40     | 45    |
| 0      | 0     | 2      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     | 0      | 0     |
| 6      | 6     | 5      | 4     | 2      | 0     | 2      | 3     | 3      | 0     | 0      | 2     | 0      | 0     | 0      | 1     |
| 42     | 10    | 50     | 7     | 23     | 13    | 21     | 8     | 6      | 4     | 6      | 4     | 17     | 3     | 6      | 4     |
| 16,046 | 7,631 | 16,842 | 7,864 | 16,302 | 7,728 | 15,779 | 8,181 | 15,731 | 7,893 | 16,443 | 6,960 | 17,185 | 7,067 | 17,555 | 7,296 |

Note. Data provided by the Bureau of Justice Statistic; Federal Court sentencing 1998-2012.

Table 9

*Percentage Comparison between Sentenced Offenders, 1998-2012*

| Sentence Term     | Black          | White          |
|-------------------|----------------|----------------|
| None Ordered      | 4,324 (3.8%)   | 14,712 (6.1%)  |
| <1 month          | 756 (0.6%)     | 2,078 (0.8%)   |
| 1 to 6 months     | 1,831 (1.6%)   | 11,814 (4.9%)  |
| 6 to 10 months    | 967 (0.8%)     | 8,110 (3.3%)   |
| 10 to 12 months   | 880 (0.7%)     | 5,512 (2.3%)   |
| 12 to 18 months   | 4,057 (3.6%)   | 24,074 (10%)   |
| 18 to 24 months   | 4,103 (3.6%)   | 15,078 (6.3%)  |
| 24 to 30 months   | 4,631 (4.1%)   | 16,096 (6.7%)  |
| 30 to 37 months   | 5,841 (5.2%)   | 18,273 (7.6%)  |
| 37 to 59 months   | 11,290 (10%)   | 30,900 (12.8%) |
| 59 to 63 months   | 8,897 (7.9 %)  | 17,901 (7.4%)  |
| 63 to 78 months   | 9,501 (8.4%)   | 17,594 (7.3%)  |
| 78 to 105 months  | 10,195 (9.1%)  | 15,373 (6.4%)  |
| 105 to 120 months | 11,220 (10%)   | 14,442 (6%)    |
| 120 to 188 months | 17,709 (15.8%) | 18,976 (7.9%)  |
| 188 to 359 months | 10,656 (9.5%)  | 7,982 (3.3%)   |
| >359 months       | 1,771 (1.5%)   | 1,145 (0.4%)   |
| Life Sentence     | 1,471 (1.3%)   | 662 (0.3%)     |
| Totals            | 111,997        | 240,724        |

## Results

Overall, the data shows that white people went to prison just as much and maybe even more than the African American population for drug offenses. And the truth of the matter is, based on the population of whites, it makes sense that there was a greater rotation of whites in the courts, since African Americans maintain a low percentage of the population. The disparity in courts demonstrated the fact that African American defendants are more likely to be sentenced harsher for drug offenses than a white defendant. From 1998 to 2009, African American defendants have been consistently sentenced to 105 months or greater. From 2003 to 2007, and not until 2010 we begin to see whites are sentenced

anywhere from 120 months and greater. Yes, there are a number of African Americans that were sentenced to less than 120 months, but the majority for each year is sentenced greater than 188 months; and the chart shows this is the case until 2010. It should be noted that in Table 11, African American offenders sentencing percentages continue to increase, as the length of sentence increases. As for white offenders, sentencing percentage decrease as the length of sentence increased.

Some possible error with the research is how to actually factor race into a judge's decision when it is time to issue a sentence to a defendant. The methods to gather the research came from the U.S. Bureau of Statistics from the federal level; meaning that the cases that resulted in these specific sentences were cases that were heard in a federal court. So, the results from the state level may be very different in comparison to what takes place on the federal level. But then again, it could very well be a mirror to exactly how the state courts rendered sentencing, following the Anti-Drug Abuse Act of 1986 and 1988.

### Conclusion

The mandatory sentencing clause in the Anti-Drug Abuse Act of 1986 and 1988 prevents judges from evaluating the health aspect of what a drug does to an individual. Also, if it is someone's first time in a courtroom with a drug charge, even simple possession charges were subjected to the mandatory minimums. This law did not consider the addiction portion of the drug epidemic that had swept the nation, but these mandatory minimums were imposed to maintain control over the African American community. From slavery, the black codes, and throughout the Jim Crow era it has always been the motive to monitor and control the African American community. The

mandatory sentencing that came from the war on drugs era was just another tool that was used to keep the African American locked into a systematic bondage.

The criminal justice system, like all other major infrastructures in the United States, has been established on the terms of racial division. Many years have passed since the Civil Rights Movement, but to this day in the media we see Civil Rights activists steady on this fight for equality. Just because the years continue to change, does not mean that the situation is any different. Many African American are still fighting the same fight for freedom and equality. The government, both states and federal, have been an undying tool used for generations to continue to suppress and very much destroy the African American community.

CHAPTER V  
THE CONCLUSIONS AND  
RECOMMENDATIONS

Summary

*You can't separate peace from freedom because no one can be at peace unless he has his freedom.*

-Malcolm X (Speech, Prospects for Freedom)

In this thesis, I have demonstrated how the government has used the infrastructure of the criminal justice system to continue to disproportionately harm the African American community. Chapter Two covered an extensive amount of information that demonstrated the ongoing redesigning of slavery. Chapter Two covered a number of different topics, such as the legacy of slavery, the criminal justice system and race, women in the criminal justice system, mandatory sentencing, and felon disenfranchisement. The data presented in Chapter Three was comparison data of both the black and white populations and the actual number of arrests from 1980 to 2012. Also, it highlighted crime mapping and how policing has shifted since the Anti-Drug Abuse Policy came into effect. Sentencing data was also presented, in Chapter Four. This data focused on the mandatory sentencing that followed the Anti-Drug Abuse policy. The population of the African American community has always been very low at both the state levels and the national level. Despite that fact, they were arrested three times more

than the white population during the War on Drugs and sentenced longer than the white population.

What is important to understand is that the War on Drugs did not stop drugs from coming in and out of these communities. The tough on crime persona that was used to rally up presidential support did not decrease the amount of crime that was being committed. The War on Drugs was an agenda that ended up targeting a broken community. The true foundation of the African American community is the family, so when the family is broken apart from each other then one is not able to sustain. That is the same thing that was done during slavery: the objective was to break the family apart, working on different plantations. The War on Drugs era was another point to break apart the African American family. With the amount of African American men going to prison during that time, “by 2000, more than 1 million black children had father in jail or prison—roughly half of those fathers were living in the same household as their kids when they were locked up<sup>5</sup>” (Coates, 2008, p. 17). What we tend to find is a snowball effect that is detrimental to both the man and his family. The situation of the father has a heavy burden on the family during and even after his incarceration. The burden that comes on a family following the incarceration of a loved one will continue to be a family burden until that person is released. Upon release, the burden and stigma, of having been a convicted felon goes beyond the prison bars; it also affects the one thing that make people know that they are a part of America: the right to vote. Going into the prison system, as a convicted

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<sup>5</sup> According to the National Research Council reported that “more than half of fathers in state prison report being the primary breadwinner in their family” (Coates, 2008, p. 18)

felon, takes away anyone's right to vote. Depending on the state they live in, upon release from incarceration, the right to vote may or may not be reestablished.

Ultimately, what needs to be noted throughout this thesis is understanding the cause and effect relationship between the major topics that were covered. First, highlighting the foundation of African Americans through the legacy and establishment of slavery. Over the history of slavery and even after the abolishment of it, African Americans communities to this day are impacted by the negative stigma that came along with slavery. Although the 13<sup>th</sup> amendment abolished the plantation form of slavery, it yet allowed slavery to be used as a tool of punishment. The reestablishment of slavery through the loophole that the 13<sup>th</sup> amendment offered allowed prisoners to be also looked at as slaves of the state. Because of the institution of slavery, racial division impacted many of the United States waves of socialization and the more predominating eras. The War on Drugs was a time where racial disparities within the criminal justice system directly affected the arrest and sentencing of African Americans. The War on Drugs era also highlight the causes of social disorganization in poverty stricken communities, as a result of low socioeconomic status, causing a direct increase in crime rates. Further, resulting in a shift in how communities are policed, law enforcement presence in a geographic area is a result of the amount of crime that occurs. The War on Drugs has also help better establish who holds the responsibility for the over-representation of African Americans in the incarcerated population. Due to the establishment of public policy that was produced during the War on Drugs, the federal government is solely responsible for the disparities in arrest and sentencing with drug offenses, causing the over-representation of African-Americans in the penal system.

### Limitations

There were a number of times during the course of my research that there were limits to the amount of information that I was able to obtain. When looking at the arrest data, I was able to gather the amount of information that I was looking for from the 1980s to 2012. Based on the fact that with every booking into a jail facility, it was documented. With the research on sentencing, I was unable to find data information for how sentencing took place during the War on Drugs. The sentencing research begins in 1998, but by that time we have fully functional tough on drugs and crime policies that were in effect. So from there we are able to see how these policies affect the African American community.

### Future Research and Recommendations

There are so many different levels to the research that can and have been done with the African American community. A portion of chapter two was dedicated to the felon disenfranchisement law that was adopted by so many states. Future research should focus on how the felon disenfranchisement laws directly affect voter turnout in the African American community. From previous history we understand the different obstacles that African Americans had to experience in order to vote; the literacy test, citizen documentation, the wrath of the KKK, and even having state identification. With so many African Americans in the prison system, it is important to examine how that felon disenfranchisement law prohibits convicted felons to vote. It would be good to see how this law directly affects the relatively small percentage of African Americans in the

United States. I think that it is important to look at the felon disenfranchisement law to see how it is used to control voter turnout in the African American community.

There have been countless discussions and research studies done on the relationship between the African American community and vast governmental infrastructures. Netflix has even created an entire documentary, 13<sup>th</sup>, dedicated to highlighting the African American timeline of blacks being in America, and the constitutional loophole that was used to continually enslave African Americans. There are so many people who refuse to acknowledge the consistent redesigning of slavery or refuse that there is and has always been a racial problem. Both African Americans and whites are either blinded to the reality that control over the African American community has never been removed just because there are blacks no longer in the fields. At this point I believe the research has been done, and talking about the racial problem in the country has played out. It is very easy to point out what the problem is and where it lies, but at what point do we start putting our ideas together to begin to come up with solutions to all these problems? We consistently see the problems that scholars have written books about, but where are the solutions?

In the beginning of this thesis, I strongly believed that being African American in this country was the hardest thing to have to bear, based on the beginning of blacks here in America. Since the last presidential election and the implantation of the Donald Trump policies, I have now concluded that to be different is a danger within itself. At this point in time, every minority is currently being subjected to racism and hatred that African Americans have had to experience for centuries. Any research from this point on should no longer look at minorities as separate groups, but one group as a

whole. Despite the struggle for minority groups has happened at different times, at this point with the current administration that is executive office, we; the African American, Asian, Latino, and Middle Eastern communities, are all the same.

### Conclusion

Steps have been made in an attempt to reduce and equalize the disparities in drug sentencing. Under the Obama administration the Fair Sentencing Act was established to reduce the sentencing ratio from a 100:1 to an 18:1. Despite the fact that he was unable to obtain an ratio of 1:1, a step forward is progress that is need to continue to establish change. The passing of the Fair Sentencing Act it take step forward to establishing the confidence between African American communities and the criminal justice system<sup>6</sup> The impact of the War on Drugs has allowed the federal government to readjust their focus on rebuilding communities that have been penalized for not being able maintain the appropriate funding to keep children off the streets.

Racism in the criminal justice system has reached its peak with the high number of African American males that have been shot and killed by local law enforcement with absolutely no justification for their deaths. “On April 12, 2015, a 25-year-old African American man names Freddie Gray was stopped by the police on the streets of Baltimore, forcibly taken into custody, and thrown, screaming in pain into a police van” (Isaac, 2015, p. 609), Freddie Gray never made it in front of the judge. Many more black males that had encounters with the police were not able to go home that day “August 2014 fatal police shooting of Michael Brown, an unarmed African American

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<sup>6</sup> Fair Sentencing Act. 2017. Retrieved from <https://www.aclu.org/feature/fair-sentencing-act>

teenager in Ferguson Missouri; and the September 2014 fatal shooting of Tamir Rice, a twelve-year-old African American child, in Cleveland, Ohio” (Isaac, 2015, p. 609) and the list continues to go on and on. Based on how the media and the police department portray these events as justified killings, but within the black community we visually see activity that heavily resembles KKK and the police during the Jim Crow era. “As recent events in Ferguson, Missouri, and Baltimore, Maryland, make clear, such accountability is an issue not simply for directly affected individuals and their families, but for entire communities, for entire cities, and indeed for the nation as a whole” (Isaac, 2015, p. 612).

The War on Drugs played and continues to play such an important role in the lives of the black community. Michelle Alexander states that “black people have been made criminals by the War on Drugs to a degree that dwarfs its effect on other racial and ethnic groups, especially whites. And the process of making them criminals has produced racial stigma” (Alexander, 2010, p. 197). The black community is now and has always been, since the time of slavery, a product of government-produced hatred. It is very important to look at the bigger picture: blacks in America in every aspect have been subject to the structured oppression that was created and facilitated by the laws and guidelines of the government.

People want to believe that just because we had an African American president, then all of the black problems are solved. Unfortunately, African Americans are reminded consistently of their history in America. For example, only three years ago at the University of Mississippi on February 16, 2014 a worker “came upon several white students yelling, ‘white power’ and ‘fuck niggers’ near the campus Civil Rights Monument” (Combs et al., 2016, 1). The Civil Right Monument of James Meredith “had

been vandalized,” a noose around the statue’s neck and an old Georgia state flag bearing the Confederate emblem” (Combs et al., 2016, p. 1). This brings back damaging history for blacks not only in Mississippi, but also for blacks across the United States.

Society must understand that, just because there is a new year, and yes we see a few, a very small percentage, of blacks that have made an unprecedented amount of wealth, it does not change the fact that racism and racial inequality is still strong and thriving today. We live in systematic slavery, the criminal policy that was made during the War on Drugs targeted for the demise of the black community. This does not take away the amount of progress that blacks have made over the years, but understand that for every one or two steps that we as a people take, we are yet reminded of the lane that we are forced to stay in, which is under the oppression of white structured government.

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