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Are the Police Racist?
A Critical Assessment of the Literature on Police Minority Relations

Shirley M. McMullen

Submitted to the Department of Criminology,
University of Ottawa, in partial fulfilment
of the requirements for the degree of Master of Arts

1994

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Executive Summary

This thesis proposes that the systemic differential treatment of aboriginal and racial minority peoples in the criminal justice system is at least partly attributed to police racism. Discrimination, which refers to the negative treatment toward out-groups (Elliot and Fleras, 1992:330), is systemic in policing and not isolated to racial minorities. The lower class and others considered deviant are also routinely discriminated against. However, the visibility of racial minorities and aboriginal peoples makes them particularly susceptible to police actions. Because the role of policing necessitates the identification of not only criminals but also potential criminals, this identification must have visible characteristics, or cues. Consequently, the police officer comes to develop these visible characteristics to identify criminals. It is thus the visibility of racial minorities which results in their being categorized as criminal and subsequently the focus of police suspicion.

Chapter one reviews the literature in other democratic countries to determine the role of police decision-making in the over-representation of aboriginals and racial minorities in the criminal justice system. Though the research is conflicting, there is evidence to suggest both a higher involvement in certain types of crimes by these groups, and police racism.

Establishing the over-representation of aboriginal peoples and visible minorities in Canada, chapter two examines various explanations for this, including the many actors of the criminal justice system, substantive criminal law, and the possibility of more frequent or differential offending rates by these groups. Playing a significant role in this over-representation, may be discrimination in police decision-making.

Chapter three presents the allegations of police racism by visible minority and aboriginal peoples. These groups claim that the communities in which they live consistently experience over-policing, police brutality, and are the victims of unjustified police shootings. They also allege that they regularly endure unwarranted suspicion of involvement in criminal activity, are blamed for their own victimization, and do not receive equal police protection enjoyed by mainstream society. This differential treatment is experienced in such a systematic way, that there is a strong belief on the part of aboriginal and visible minority peoples, that the police are racist.

On the other hand, the police complain about and are fearful of these groups. The police response to the accusation of police racism in chapter four, generally entails the belief that police work is increasingly dangerous as a result of the proliferation of drugs and weapons. The police also argue that racial minority groups are growing more

militant and political. A certain amount of police force is thus considered unavoidable. Rather than locating the cause for the differential treatment in these communities, it is proposed that police racism may originate in the role of policing implied in the recruit training programs. The final chapter provides the rational for this thesis, explaining how the particular occupational concerns impact on the police officer's decision-making processes resulting in the systemic differential treatment of visible minority and aboriginal peoples.

The traditional crime control orientation to policing will persist in the excessive criminalization of these targeted groups, and needless death and injury of both the police and minority groups as a result of needless altercations. A resolution to the current problems faced by aboriginal and racial minority peoples requires a fundamental change to the role of policing. This orientation entails the public and the police working together to address the circumstances leading to crimes, rather than focusing any efforts on the offender.

Introduction

"If any significant change is to be made in the steady trend to overincarcerate Aboriginal people, something must change in policing itself" (Harding, 1991:364), is the argument put forth by Harding in his article "Policing and Aboriginal justice". The author is critical of recent policing initiatives to address the problems faced by aboriginal peoples in the criminal justice system, claiming that the theory behind these programs remains the more effective social control of these groups.

As the front line of the oppressive arm of the state in a democratic society which is normally characterised by heterogeneity and inequalities in wealth and power, the police are the first to respond to the social conflicts which result (Ungerleider, 1991). Police decision-making therefore plays a significant role in shaping the outcome of all those affected by the criminal justice system (Harding, 1991).

This thesis proposes that the systemic differential treatment of aboriginal and racial minority peoples in the criminal justice system is at least partly attributed to police racism. Though it is the perception of racism that is important, racism for the purposes of this thesis may be understood as:

> the basing of social and political policies and actions on the belief that each human race is characterised by attributes which determine behaviour and capacities and that a particular race

is inherently superior (Jayewardene,1991:32).

More important than the motives underlying racist actions, it has been suggested, are the consequences (Elliot and Fleras, 1992). Though it is also variously interpreted, systemic racism may be defined as the unequal treatment inherent in the organization, rules, goals, norms and processes of social institutions (Elliot and Fleras, 1992:64-65). Discrimination, which refers to the negative treatment toward out-groups (Elliot and Fleras, 1992:330), is systemic in policing and not isolated to racial minorities. The lower class and others considered deviant are also routinely discriminated against. However, the visibility of racial minorities and aboriginal peoples makes them particularly susceptible to police actions. Because the role of policing necessitates the identification of not only criminals but also potential criminals, this identification must have visible characteristics, or cues. Consequently, the police officer comes to develop these visible characteristics to identify criminals. It is thus the visibility of racial minorities which results in their being categorized as criminal and subsequently the focus of police suspicion.

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result of the proliferation of drugs and weapons. The police also argue that racial minority groups are growing more militant and political. A certain amount of police force is thus considered unavoidable. Rather than locating the cause for the differential treatment in these communities, it is proposed that police racism may originate in the role of policing implied in the recruit training programs. The final chapter provides the rational for this thesis, explaining how the particular occupational concerns impact on the police officer's decision-making processes resulting in the systemic differential treatment of visible minority and aboriginal peoples.

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Chapter I

A Review of the Literature

The literature concerning the issue of race disparities in the criminal justice system makes it clear that racial minorities and aboriginal peoples are over-represented in proportion to their population, at all stages of the system. Studies in countries including the United States, Britain, the Netherlands and Australia, support a continual pattern of this disproportion at least since post World War II (Samuelson, 1993; Takagi, 1974). Research which attempts to explain this over-representation of racial minorities and aboriginals, however, remains contradictory (Dannefer and Schutt, 1982; Pope, 1984; Gale, Bailey-Harris et al,1990), particularly those studies which measure the possibility of racial discrimination in the police. Police discretion in this regard, has been studied in various capacities including: the rate at which these groups are stopped and searched (often cited as evidence of over-policing); the rate at which minorities and whites are arrested; the rate at which they are referred to court and the differences in the type of offenses for which minorities and whites are charged. In addition to differential enforcement of the law, there is also the question of racial differences in police brutality, deadly force, and under-policing.

Research addressing the issue of race as a factor in

police stops generally focuses on whether racial minorities are stopped at greater numbers than their proportional presence in the population would suggest, and at a greater rate compared to whites. The literature appears to be more consistent in Britain than in the United States (Norris, Fielding et al, 1992). Norris' (Norris, Fielding et al, 1992) research is consistent with what he and his colleagues conclude to be a trend in the British literature which shows that blacks experience both a greater number proportionally than whites, and a more frequent rate of stops by the police than whites. In an observational study of routine police patrol work in inner city London, the authors compared the rate of stops observed for both blacks and whites to an estimated baseline of 10 per cent. The data showed a 9 per cent stop rate for whites and 28 per cent for blacks (Norris, Fielding et al, 1992:212). This disproportion becomes even greater when the factor of age is introduced - nine out of ten black males under 35 are subject to police stops, while the figure for whites of equal age lies between one quarter and one third (Norris, Fielding, et al, 1992:213). Similarly, a study of police stops and searches in and around Metropolitan London revealed that annual recorded stop rates for blacks were significantly higher than those for the population as a whole (Willis, 1983). Black males aged 16-24 were likely to be stopped particularly frequently (Willis, 1983:14). Bearing in mind that official police-recorded statistics under-

estimate by about 50 per cent the number of stops made by police officers, the stop rate for young black males was found to range from between 2.1 and 3.6 times the rate for the overall rate of males of equal age (Willis, 1983:14). Given the average rate of stops as a whole, the rate for young black males is 10 times this figure (Willis, 1983:14). Research by the Policy Studies Institute of police in London (Smith and Gray, 1983) revealed that for vehicle stops, West Indians were one-and-a-half times as likely as whites to be stopped and searched, but that the average number of stops was nearly three times as high, since West Indians who were stopped tended to be so repeatedly (Smith and Gray, 1983:309). The rate for which blacks were stopped while on foot, is nearly four times the rate for whites (Smith and Gray, 1983:309).

Empirical studies in the Netherlands have also found evidence to indicate that compared to whites, blacks are at a greater risk of being suspected and apprehended (Vrij and Winkel, 1991:17). In one study in four major cities which involved analysis of official statistics and interviews, the police in Amsterdam and Rotterdam claim that ethnic minority youth make up about one third of all police contacts with juveniles, while ethnic minorities in total, constitute approximately 10 per cent of the population in these cities (Junger-Tas, 1984:15). They are also over-represented in police contacts in The Hague but not in Utrecht, which has experienced different patterns of immigration.

There is a considerable amount of research which suggests a pattern indicative of less substantial grounds for police stops of racial minorities. Observations by Norris (Norris, Fielding et al, 1992) showed that though blacks are on the average, stopped for the same types of offenses, they are more often stopped than whites, on more speculative grounds, rather than on more tangible evidence that an offence has taken place. Though not conclusive, the authors suggest the finding may be indicative of police racial stereotyping used in stops. Research by Smith and Gray (1983) suggests that colour may be a criterion for stops. As an example of this, the authors quote a patrol officer attempting to instruct a group of recruits on stops:

> How does an experienced policeman decide who to stop? Well, the one that you stop is often wearing a woolly hat, he is dark in complexion, he has thick lips and he usually has dark fuzzy hair (Smith and Gray, 1983:129).

Though type of stop was not recorded by ethnic group, Willis' (1983) study supports a high rate of blacks stopped on speculative grounds, the type of stop referred to by police officers as "re movements", which the author describes was variously interpreted and left unspecified when recorded (Willis, 1983:15). Before its repeal in Britain, blacks were even more likely to be arrested under the 'sus' law (Chigwada, 1991). Literature frequently notes the impact that the 'sus' law had on the frequency of blacks arrested for suspicious behaviour (Chigwada, 1991; Humphry, 1972; Gordon,

1983). Gordon (1983) argues that this law was used as a means of immigration control, providing police with the grounds to stop blacks and then demanding to see their passports.

There is evidence to support that while racial minorities are stopped at a higher rate, the probability of arrest is the same as rates for whites. While this is not supported by Black and Reiss (1970), evidence is put fourth by Willis (1983), Junger-Tas (1984) and Norris (Norris, Fielding et al, 1992).

Some authors point to an institutional response to explain this selectivity of minorities by police. In his analysis of police racism in Australia, Samuelson (1993) describes a major shift in the dominant political ideology which fuelled over-policing of aboriginal communities. Social tensions occurring from the depressed economy, the author states, resulted in a "transference of old colonial racist attitudes and practices into a new 'law and order' campaign" (Samuelson, 1993:30).

Milne (1983) points to the implications of police patrols and the over-policing of certain social groups in country towns, claiming that the much greater proportion of Aborigines in arrests for public intoxication is due to the greater police presence. Examples of intensive sector policing and enforcement of the NSW Intoxicated Persons Act are also common in Sydney's inner city hotels (McIlvanie, 1984). Similarly, a study of Navajo drinking patterns concluded that this

behaviour is clearly targeted by the police (Katel, 1980 in Harring, 1982:98). Another study describes the extent of the "Indian problem" with regard to the cost to taxpayers for the arrest and jail rates of Native Americans in small South Dakota towns (Farber, 1957 in Harring, 1982:99). Police-supplied data in Australia indicate that the number of police in the aboriginal towns in 1980 was more than twice the rates for the state as a whole (Milne, 1983).

Perceived by minority groups as harassment, over-policing has often been advanced as the cause of riots such as in Redfern in the 1970's, and the British riots of Brixton, Toxeth, Liverpool and elsewhere (Ronalds, Chapman, et al, 1983; Gordon, 1983). The police 'Redfern Raid' of 1990, was described by the National Inquiry into Racist Violence as racist:

> It was planned on the assumption that normal surveillance activities cannot operate in the black [Aboriginal] community and it involved a level of force which far exceeded the threat to society (Samuelson, 1993:30).

As far as the disproportionate arrest rates for racial minorities and aboriginal persons is concerned, the literature generally falls into one of three explanations: differential offending rates; more disrespectful demeanour or; police racial discrimination.

In her determination of whether racial discrimination exists in the various stages of the criminal justice system, Petersilia (1983) attributed the over-representation of blacks

and Hispanics in prisons to bias in the courts, but did not find evidence of discrimination by the police. Instead, she claims that the significantly higher arrest rate of minorities is due to their disproportionate involvement in crimes. Analysis of prisoner self-report data indicated some racial differences in the types of crimes committed but no racial differences in crime commission rates. Petersilia concluded that given that a crime has been committed, there is no difference between whites and minorities in the probability of arrest. In their study of police encounters with juveniles, Black and Reiss (1970) found that black youths, in the aggregate, were involved in more serious offenses. This was largely attributed to the differential rates in felony commissions - all of the 10 per cent involving blacks.

A comparison of Aborigine and non-Aborigine youths in South Australia, (Gale, Bailey-Harris et al, 1990) revealed that the significant discrepancy in Aborigine youth charge profiles could not be explained by differences in socio-economic or residential factors. Aborigine youth are over-represented in relation to their population numbers by seven times at the point of apprehension, and 19.1 times at the point of arrest (Gale, Bailey-Harris, 1990:33). These rates were found to vary dramatically across communities, despite controlling for rates of offending behaviour. The authors claim the differences result from systemic differential treatment.

Concerning the evidence of more frequent disrespect shown for the police by blacks, this too is mixed. A study of police discretion in public drunkenness encounters (Pastor, 1980) found that the over-representation of Native Americans in comparison to whites was attributable to differences in degree of intoxication and suspect demeanour. Another study of police officers in their encounters with public drunkenness offenders (Lundman, 1980a) on the other hand, ruled out suspect demeanour as a causal factor in disproportionate arrest rates for Native Americans. While the relationship between suspect deference and liability to arrest in Black and Reiss' (1970) study was found to be in the expected direction, it was relatively weak. A small proportion of cases of the total sample was found to contain very antagonistic encounters, and these predominantly involved black youths. Black's (1983) observational research on the other hand, found suspect's lack of deference to be the most significant factor affecting police decision to arrest, which he determined, accounted for the higher arrest rate for blacks.

Research in the Netherlands by Junger-Tas (1978) found that black people are less polite toward police officers and show greater indifference and aggression (cited in Vrij and Winkel, 1991:17). In a quasi-experimental study of white (Dutch) and black (Surinamese) demeanour toward police officers during an interview, Vrij and Winkel, (1991) found evidence contrary to this. Surinamese participants were

found to be more cooperative and willing to tell the truth than their white counterparts. The findings suggested that the police themselves may be the source of the unequal treatment experienced by racial minorities.

Other research reports that police show differential demeanour toward blacks and whites. In his study, Norris (Norris, Fielding et al, 1992) concluded the demeanour of blacks was found to be no different than that of whites, with the exception that whites are more likely to show signs of insobriety. It was found that this higher rate of insobriety only partly explains the more negative police demeanour with regard to whites at contact and processing. The possibility is put forth that police view blacks as a more problematic group, and the more neutral police demeanour therefore, is intended to avoid trouble in routine encounters. Conversely, though the levels of forcefulness (interrogative, imperative or coercive) (Norris, et al, 1992:220) exhibited by police officers on contact are similar, there is a slight difference in the degree of intrusiveness displayed toward blacks and whites during processing. Police officers tended to seek more corroborative information from blacks, though this did not necessarily lead to a search. Blacks were found to be subjected to a slightly higher rate of formal action which may or may not include arrest. Additionally, review of the literature in the Netherlands found evidence of police as less respectful toward blacks than whites (Aalberst and

Kamminga, 1983 cited in Vrij and Winkel, 1991:17). This was also found in Junger-Tas' examination of the literature, which suggested that the police showed "more belittling and authoritarian" behaviour and treated coloured people in a more "unkind and moralizing way" (Junger-Tas, 1984:16).

Apart from the situational factor of demeanour, it has been suggested that both complainant presence and preference may affect arrest patterns of racial minorities. Black and Reiss (1970) found that while police behaviour was similar with regard to white and black juveniles, those encounters involving blacks showed a greater tendency by the complainant to demand a more severe police response, which accounted for the differential outcomes. Another study which examined the influence of race on arrest decisions controlling for several variables (Smith, Visher, et al, 1984) concluded that punitive differential enforcement occurs only in encounters without complainants. In the presence of a citizen complainant, Pastor (1980) found a greater likelihood of formal processing, though the differences in frequency at which citizens are present at white or non-white suspect encounters is not indicated.

Smith and his colleagues (1984) however, found more decisive evidence of racial discrimination in the police's differential responsiveness to victims. Police arrest more often in encounters in which whites have been victimized, while denying black complainants under similar circumstances,

equal protection of the law. Samuelson (1993) describes a systemic pattern of under-policing of Aborigine communities experiencing high rates of violence which particularly impact on women and children.

There is evidence to indicate that significantly more important than situational and offender characteristics in police decision-making, are the organizational norms. Lundman's (1980b) observations of police decision-making in traffic law violations demonstrates the effect of organizational pressures on officer autonomy. It was found that organizational norms affecting negative stereotypes of and differential treatment toward minority, lower class, and disrespectful citizens, interacted with quota saliency: During times of high quota saliency, officers acted in accordance with these norms; when quota demands were low, race, class and demeanour did not yield significant differences. In another study Lundman (1980a) concluded that Native American drunkenness offenders were discriminated against on the basis of race. While there was no significant evidence of racial discrimination against Afro-Americans, there was evidence of discrimination against "declassified citizens", such as skid row alcoholics. This led Lundman to conclude that it is the powerlessness of the offender that is normally the pertinent factor in police decisions to arrest. Controlling for the socio-economic status of neighbourhoods, Smith, Visher and Davidson (1984) found that the suspect's

race affects police arrest decisions for females but not for males. The over-representation of black males in arrest rates was attributed to their greater proportion in lower class neighbourhoods.

While analysis of official data alone is not conclusive of police discrimination, a considerable body of literature does point to this. A study of six police juvenile bureaus in two New Jersey counties (Dannefer and Schutt, 1982) found that the race of a suspect has a significant effect on police dispositions, and this effect increased in the counties where minorities (Hispanics and blacks) constitute a greater proportion of the population. Both black and Hispanic juveniles were more likely to be arrested and were less likely to be released than whites.

Similarly, empirical studies in the Netherlands have suggested evidence of police discrimination (Vrij and Winkel, 1991). Reviews of the literature support that compared to whites, blacks are at a greater risk of being suspected, apprehended, and of being arrested (Vrij and Winkel, 1991). Though Junger-Tas (1984) asserts that ethnic minority youth do not differ with respect to the nature or frequency of delinquent behaviour, the data indicate that the police tend to handle minority cases by official means at a higher rate than with Dutch juveniles. A variety of reasons are cited for this differential treatment, including the belief by police and social agencies that social work intervention with

minority families is ineffective (Junger-Tas, 1984).

Though significant gaps in the federal crime data for Native Americans exist, available statistics paint a picture of over-representation of these groups in comparison to both blacks and whites (Harring, 1982). Despite the limited collection procedures (for example arrests on reservations were not available and the data for rural areas where fifty percent of the Indian population resides, were incomplete), Uniform Crime Report data indicate that Native American arrest rates are three times that of blacks and ten times that of whites (Harring, 1982:94). Harring claims that the high arrest rates for these people can be at least partly explained by over-policing.

While Petersilia (1983) supports little difference in both the types of crimes committed by whites and minorities, and, with the exception of personal robbery, an equal probability of arrest for both whites and non-whites, other research is conflicting.

Arrest statistics for Native Americans residing in urban centres show that a significant majority (43 percent of all recorded native arrests in 1976, in comparison with 30 percent for whites and 18 percent for blacks) of Indian arrests are for drunkenness and disorderly conduct (Harring, 1982:95). Arrest patterns on reservations show similar trends, with a larger percentage of 'drunk-related' arrests on reservations being the major difference. Australian Aborigines are also

significantly overrepresented in street offenses, particularly, public drunkenness and offensive behaviour (Milne, 1983; Gale, Bailey-Harris, et al, 1990; Sutton, 1984). Though public drunkenness has been decriminalised in New South Wales, the figures for detention indicate that this infraction yields the greatest contact with the criminal justice system (Milne, 1983). The over-representation of Aborigines in all regions of New South Wales is particularly acute in the northern regions where the majority of Aborigines reside (constituting seven to 10 per cent of these towns) and in the rates of detention for these people under the Intoxicated Persons Act (twenty-four times the rate for the state as a whole) (Milne, 1983:193). Data analysis of summary court appearances in South Australia (Sutton, 1984) found that the majority (approximately 60 percent) of the cases in which aboriginals appeared involved minor charges such as drunkenness and vagrancy (Sutton, 1984:364).

Milne (1983) observes that a substantial part of all offensive behaviour charges against Aborigines result from swearing at police officers, a behaviour apparently equally as common to whites and the police, yet whites are rarely arrested. The author found that the police commonly approach a group of Aborigines who have been drinking, on or near public drinking establishments. The disrespect shown to the police results in the police need to exert their control over the streets, and minor offenses escalate into more serious

alarm or affront charges.

> Convictions for offensive behaviour and detention for public intoxication may be seen as being more concerned with the maintenance of power over Aborigines and their culture than any real offence taken by the police or others present (Milne, 1983:199).

In his review of cases involving charges of assaulting a police officer laid against black people, Humphry (1972) claims that these charges are laid when other charges fail to stick. The common setting regarding the alleged assault is a private household or a police station, where Humphry points out, public view is not a factor. An investigation of the factors affecting police decision whether to charge the juvenile immediately or to refer the case to the juvenile bureau, led Landau (1981) to conclude that blacks involved in crimes of violence, burglary, and public disorder and other offenses, are treated more harshly than their white counterparts. The category of "public disorder and other offenses", included the offence of "suspected person", for which the large majority of juveniles were apprehended in a borough characterised by a greater proportion of blacks in the population. Research by the Policy Studies Institute showed that West Indians were more likely to be arrested for offenses of assault and robbery (Small, 1983). The Metropolitan London Police's criminal statistics in 1989 showed that blacks constituted 18 per cent of those arrested there were significant disparities across offenses so that for offenses

such as street robbery and theft from person, blacks represented 60 per cent of arrestees (Chigwada, 1991:135).

Data collected from two south London magistrates' courts showed that West Indians are charged with different offenses than white people (Cain and Sadigh, 1982). Of the West Indian subjects, 46.6 per cent were charged with victimless crimes, those offenses, (such as motoring offenses, being a suspicious person, drunkenness), enforced by pro-active means, while whites made up 30.1 per cent (Cain and Sadigh, 1982:88). The difference between blacks and whites becomes even more marked when offenses of drinking and driving and other drunkenness offenses were excluded: blacks constitute 46.6 per cent of the offenses, with only 18.8 per cent for whites (Cain and Sadigh, 1982:88). Figures with regard to youth were even more disparate: more than half of the West Indian sample were youths under 21, while for white youths the figure was approximately 12 per cent (Cain and Sadigh, 1982:88). The possibility of systemic differences in patrolling and charging practices is put forth.

With regard to the evidence of racism in police brutality, there appears to be less agreement. Definitional and methodological problems contribute to this controversy. Reiss (1980) states that what is considered police brutality is largely a matter of perception, though he elaborates:

> What citizens object to and call "police brutality" is really the judgement that they have not been treated with all the full rights and dignity among citizens in a democratic society. Any practice

> that degrades their status, that restricts their freedom, that annoys or harasses them, or that uses physical force is frequently seen as unnecessary and unwarranted. More often than not, they are probably right (Reiss, 1980 :276).

Approaches regarding the police use of excessive force appear to lie in one of three explanations (Friedrich, 1983). The individual approach attributes the behaviour to characteristics of the officers, including attitudes; the situational approach considers such factors as characteristics of the citizen - race, age, class and demeanour, while the third view sees the use of force as the product of the organization, either in the specific terms of the style of police force (Wilson, 1968), or in a more general explanation of the informal culture of the police (Friedrich, 1983).

Reiss (1980) found that lower class males, more likely those showing negative demeanour, were the most frequent victims of police excessive use of force. Blacks and whites, however are equally susceptible. Members of minority groups, including blacks and those considered deviants, are more frequently the victims of status degradation such as name calling, and of harassment such as indiscriminate stopping and commands to move on (Reiss, 1980). Members of the Christopher Commission (1994) heard abundant testimony concerning:

> ...the verbal harassment of minorities, the detainment of African-American and Latino men who fit generalized descriptions of suspects, the employment of unnecessary invasive or humiliating tactics in minority neighbourhoods and the use of excessive force (Christopher, 1994:295).

Though racial prejudice was found to be common, police brutality, Reiss suggests, is more readily explained by police culture than by any particular attributes of officers. This culture of violence is well supported. A survey of police officers in a Southeast U.S. force (Barker, 1994), found that of the five patterns of deviance measured, police subjects responded that brutality (though narrowly defined as the use of excessive force against prisoners) was engaged in most extensively, at 39.19 per cent (Barker, 1994:132). Not surprisingly, police excessive use of force was the form of deviance perceived as the least "wrong" or deviant, and the behaviour considered least likely to be reported by fellow officers (Barker, 1994:132). The Report of the Independent Commission on the Los Angeles Police Department (Christopher, 1994) attributed the racism to substantial part of the force, and the brutality engaged in by members of the department, and passively supported by management and administration, "to an organizational culture which emphasizes crime control... and hardnosed members" (Christopher, 1994:297). This style of policing, Christopher remarks, "... creates a 'seige mentality' which inevitably alienates the police from the community (Christopher, 1994:297).

Friedrich (1983), using data from the same study as Reiss (1980), attributes police use of force largely to situational characteristics, rather than organizational ones. Most notable were the demeanour of the suspect and the presence of

others (citizens or other police officers), which actually increased the probability of force being used. Drunks, and other sorts of deviants were found to be particularly susceptible to mistreatment by the police.

Other research demonstrates that police violence is extensive amongst young offenders, but that aboriginal youth are disproportionately victims. One study found that one half of young people surveyed alleged police violence, while another concluded one third (Alder, 1990 and Youth Justice Project, 1990, in Samuelson, 1993:27). Cunneen (1990 in Samuelson, 1993:27), comparing data, ascertained that the alleged violence was racist, given the much greater percentage - ninety, reported by aboriginal youth. Figures for delinquent girls in general, indicated that one in fifteen reported police violence, while for aboriginal girls the figure was eleven of fifteen (Samuelson, 1993).

While not conclusive of racism, many researchers have indicated that the pervasiveness of anecdotal evidence concerning police brutality against racial minorities, is cause for concern (National Hispanic Conference, 1981; Gale, Bailey-Harris et al, 1990; Samuelson, 1993). Pompa (1980) describes the concerns of the Hispanic community which include "allegations of harassment to brutality, to excessive use of force, specifically deadly force, and in particular, the use of firearms in situations where an officer's life or the life of another is *not* in danger" (Pompa, 1980:12). Alderete

(1980) too, describes a long pattern of "unchecked brutality in the Southwest States, and unaccountable illegal behaviour" (Alderete, 1980:198).

It is also alleged that black women are particularly vulnerable to police brutality, being coloured, female, and more likely lower class (Chigwada, 1991). Chigwada lists considerable evidence, largely anecdotal, regarding both the physical and sexual abuse of black women by police. Members of a review panel looking into the 1985 Birmingham disturbances repeatedly heard testimony of the brutal encounter between a black woman and police which apparently gave rise to the riots (Chigwada, 1991).

Samuelson (1993) states aboriginal youth routinely report their victimization in police violence. He cites a report by the National Inquiry Into Racist Violence in which Aborigine people describe a pattern of racist violence by the police:

> Most significantly, submissions, oral testimony and independent research indicated that police officers were frequently the perpetrators of racist violence against Aboriginal people. Although the Inquiry recognizes the seriousness of these assertions, they were made with such conviction and regularity that they indicate at best a major crisis of confidence by Aboriginal people in the police, and at worst, the presence of systemic racist violence. The Inquiry has been forced to conclude that Aboriginal people and Islander people regularly experience racist violence, intimidation and harassment at the hands of the police (Samuelson, 1993:28).

Additional testimony to the Inquiry included statements by serving police officers of witnessing physical assaults,

verbal abuse, threats of death and/or rape against aboriginal suspects in custody. Evidence of sexual assault and sexual exploitation was presented by individuals and agencies (Samuelson, 1993).

While evidence of police 'brutality' and 'assault' is undermined by vague/inconsistent definitions and recording, deaths due to police shootings are generally more clear cut (Kobler, 1980). Yet in a review of the literature, Blumberg (1994), determines that the debate over whether blacks are over-represented as victims of police shootings because of racism on the part of law enforcement, remains unresolved largely due to shortcomings in the methodology and data. Where there is consensus, is the disproportionate shootings of blacks, and to a lesser extent, Hispanics, by police (Geller, 1983; Fyfe, 1982; Kobler, 1980; Blumberg, 1994). Blacks have been found to be 3.8 times as likely as whites to be shot in Chicago; 6 times as likely in New York; while in 1980, blacks constituted 18 percent of the population in Los Angeles and Hispanics, 24 per cent, they were 55 and 22 per cent respectively, of the civilians shot at by police (Geller, 1983:322). A study by The Police Foundation revealed that across seven cities examined, blacks were 39 per cent of the population but 79 per cent of police shooting victims (in Geller, 1983:322).

Blumberg notes the possibility that those police forces which allow analysis of their shooting and arrest data are not

generalisable since it is likely they are more progressive and therefore not threatened by outside scrutiny. The author points to Fyfe's (1982) results, which indicate racial discrimination in Memphis, (in which case he obtained the data via a subpoena), but not in New York. Most important however, is the validity of the data themselves. A significant proportion of findings which conclude no race discrimination are based on a comparison of arrest statistics and shooting data, pointing to the higher arrest rates for Index Crimes and higher gun use rates amongst blacks (Geller, 1983). Though this argument may be tautological, if racial discrimination is systemic (Geller, 1983). Fyfe (1981) claims that the disproportionate involvement of blacks in violent crimes reflects their disproportion in the lower socio-economic groups. Given the rates at which blacks are involved in violent crimes, Takagi (1974) claims that this still cannot account for the growing disproportion of blacks shot.

A third shortcoming is found in those studies which examine the situational characteristics of shooting incidents to determine whether blacks are shot under circumstances which present less danger than in those incidents involving white victims, and in those analyses of police shooting situations in both white and minority communities, in order to determine whether there is less justification in minority communities (Blumberg, 1994). Conclusions remain tentative since there

are no baseline data available regarding all police-citizen contacts, in either white or minority communities. The literature however, does show a police perception of blacks as more dangerous (Smith and Gray, 1983; Vrij and Winkel, 1991; Chigwada, 1991). What is known is that a notable percentage of police shootings, while not formally prosecuted, are attributed by police departments, to officer misconduct (Geller, 1983). One study found departmental disapproval expressed in 7 per cent of all shootings by police in Chicago; 29 per cent in New York city; and 18 per cent in Los Angeles (Geller, 1983:324).

Despite these dubious findings then, Blumberg (1994) resolves that black over-representation in shooting victims stems from their disproportionate involvement in violent crimes, which he attributes to wider societal discrimination endemic in our institutions. According to his views, however, this racism is apparently absent in the police.

The evidence concerning deaths of aboriginal peoples in police custody is more damning. Over 100 deaths, (63 per cent of which were in police custody), of aboriginal people in Australia, between 1980 and 1988 gave rise to the Royal Commission into Aboriginal Deaths in Custody (Samuelson, 1993). It was found that aboriginal people were 23 times more likely than non-aboriginal people to die while in custody (Samuelson, 1993:29). The Commission resolved that the majority of deaths resulted from a combination of neglect and

deliberate violence. In about half of the cases, the individual was in custody for an alcohol-related offence.

That the powerless are systematically discriminated against by the police is commonly acknowledged. Because racial minorities and aboriginals are over-represented amongst the poor and those considered deviant, it is also logical to assume that this is the reason for their disproportionality in police encounters and official processing. There are those however, who argue that socio-economic status alone cannot explain the extent to which these groups are over-represented in all realms of police decision-making. Whether there exists a compounding factor of racism remains to be empirically resolved -- hampered by shortcomings in methodology and weak data. Definitional variations also yield varying outcomes. For example, while the more recent literature acknowledges racism as systemic or institutionalised, and thus possibly concealed, other studies have measured racism in terms of "flagrant" instances of behaviour (Cain and Sadigh, 1982). In light of this change in measurement, there appears to be an emerging pattern in the research which is indicative of systemic racism in the police. The same uncertainty characterises Canadian literature which requires further empirical evidence (Samuelson, 1993).

Despite these results, a review of the literature is indicative of certain patterns. It is generally agreed for example, that racial minorities and aboriginals are over-

represented in all stages of the criminal justice system. There is substantial evidence to demonstrate the over-policing of aboriginal communities, which is often attributed to a greater police presence in these communities. The literature also suggests a pattern of under-policing of aboriginal communities. Empirical studies demonstrate differences in types of arrest for racial minorities and aboriginals compared to whites: while minorities tend to experience a greater rate of arrests for street crimes, those policed by proactive means, whites tend to be arrested more for offenses detected reactively. Racial minorities and aboriginals appear to be over-represented in police brutality (status degradation, harassment and physical abuse), though other powerless groups appear to be also. Finally, blacks and Hispanics are significantly over-represented in police shootings, though this has been attributed to a greater involvement in index crimes and a more frequent use of guns by these groups. In the absence of empirically sound research however, these findings remain open to challenge.

Chapter II

The Problem of Police Racism

Canada's aboriginal population of approximately 1 390 000, or 2 to 3 percent of the Canadian population, is over-represented in federal penitentiaries and provincial prisons (Liang, 1967:42-50,63-66; Clark, 1989:12). Recent conservative estimates, based on government data, indicate that native people comprise approximately 9.6 percent of the federal penitentiary population (National Parole Board, 1989:23). The 1987 data show that 14.2 per cent of the 164 women in federal prison were of native ancestry (National Parole Board, 1989:27). The Federal Task Force on aboriginal Peoples in Federal Corrections (National Parole Board, 1989) claims that these statistics under-estimate the actual figures.

Provincial statistics reveal an even greater picture of disproportionality. According to Statistics Canada (Statistics Canada, 1991:141) aboriginal offenders accounted for approximately 19 per cent of the admissions to provincial institutions, for 1990-1991. The figure varies from province to province. In five jurisdictions (Manitoba, Saskatchewan, Alberta, Yukon, and The Northwest Territories) the native admissions rate is higher than the Canadian average. In the remaining seven jurisdictions the native admissions are somewhat lower (Statistics Canada, 1991:65).

The rate of admissions for native women are generally much higher than that for native men. During 1989-90, 29.1 percent of women in provincial and territorial facilities were native (Law Reform Commission of Canada, 1991:66). Native women constitute over 70% of the female inmate population in the Northwest Territories, Manitoba and Saskatchewan (Law Reform Commission of Canada, 1991:67).

In a number of provinces, studies and investigations have been undertaken into the manner in which aboriginal persons are treated by the Criminal Justice System. These studies and investigations also refer to the disproportionate number of aboriginal people who are incarcerated.

The Alberta Task Force on the Criminal Justice System and its Impact on the Native and Metis people of Alberta found that during the period 1985 to 1989, 29.7% to 31.5% of the total Alberta aboriginal population were in jail (Cawsey, 1991:6-4). In 1989, 31.1% of the provincial correctional population was native. Native people make up 4 to 5 percent of the total Alberta population (Cawsey, 1991:6-4). Statistics for 1990-1991 show an increase to 34 per cent of admissions to prison (Statistics Canada, 1991:128). Female native offenders comprised 44.6% of female admissions for the year 1989 (Cawsey, 1991:6-7).

In 1989, 38.5% of Alberta's aboriginal young offenders were admitted to young offender centre facilities compared to 21.4% for non-aboriginal young offenders (Cawsey, 1991:6-6).

Native young offenders sentenced admissions had recorded a consistent increase from 1986 to 1989 with an overall 18.2% increase from 347 in 1986 to 410 in 1989 (Cawsey, 1991:6-7). The non-native young offender sentenced admissions dropped 8.0% between 1986 and 1989 from 827 to 761, with a maximum decrease in 1988 of 11.6% from 1986.

A study by Hylton (1980) in Saskatchewan found that male treaty Indians had a rate of 186.2 admissions per 1 000 population over age fifteen, male Metis-non-Status Indians, a rate of 59.5 and non-natives, a rate of 5.0. Thus, male treaty Indians over fifteen were 37 times more likely to be incarcerated and Metis/non-Status Indians were 12 times more likely than non-natives. Female treaty Indians over fifteen were 118 times more likely to be incarcerated and female Metis/non-Status Indians were 25 times more likely than non-native females (Hylton, 1980:16).

Based upon the changing demography of the province, Hylton predicts that "without substantial changes to the system" (Hylton, 1980:2) there would be an increase of 41 per cent in correctional centre admissions by 1993, and that 80 per cent of all admissions would be Treaty and Metis/non-Status Indians (Hylton, 1980:2).

Though constituting 64 percent of the prison population in 1986-87 and 68 percent of prison admissions for 1990-91, aboriginals make up only 6-7 per cent of the Saskatchewan population (Jackson, 1988:3; Statistics Canada, 1991:128).

The aboriginal Justice Inquiry of Manitoba found that native people who account for approximately 11.8 per cent of the total population, formed 46 per cent of the penitentiary and 57 per cent of the provincial correctional population in 1989. In 1989, 67 per cent of the inmate population at the Portage Correctional Institution for women and 61 per cent of the population in institutions for young people were aboriginals (Hamilton and Sinclair, 1991a:101).

In an Ontario study, an analysis of 1981-82 correctional statistics showed that native men and women were incarcerated at a rate that was 3 to 40 times the rate that their share of the total population would seem to warrant (Jolly, 1982:2). Particularly problematic was the area of Kenora in Northwestern Ontario, where the aboriginal peoples accounted for 25-30 per cent of the population and 78 per cent of all male admissions and 97 per cent of all female admissions to the Kenora Jail (Jolly, 1982:3). Statistics for 1990-1991 reveal a native admissions rate of 8 per cent (Statistics Canada, 1991:128) in a province where they constitute about 2 per cent of the general population (Jolly, 1988:2).

Research conducted by Clark and associates for the Donald Marshall Commission (1989) showed that incarceration rates in Nova Scotia were significantly higher among the Indian population than the non-Indian population, particularly among the young. In British Columbia native peoples comprise 3-5 per cent of the population, and 18 per cent of admissions to

prison (Statistics Canada, 1991:128). The representation of native people in the federal prison system is increasing (Law Reform Commission, 1991:67). This is not always evident when examining the population of federal penitentiaries alone since there is greater use of exchange of services agreements for aboriginal offenders (National Parole Board, 1989:23). In March 1983, aboriginal offenders made up 17.3 per cent of federal offenders in provincial prisons, while as of the same month of 1987, this figure had increased to 24.7 per cent (National Parole Board, 1989:23). The Prairie region had the largest growth rate, with an increase from 17.3 per cent in March 1983, to 31 per cent of aboriginal inmates as of March 1987 (National Parole Board, 1989:23).

Data on aboriginal and non-aboriginal inmate populations for the period 1982/83 to 1986/87, indicate that not only has the native male inmate population in the federal institutions, including federal offenders in provincial institutions, exceeded that of non-natives (National Parole Board, 1989:23-24), but also that while the number of male inmates in federal institutions fell 1.3 per cent between 1985 and 1987, the aboriginal inmate population grew 3.5 per cent (National Parole Board, 1989:23). The proportion of federal aboriginal female offenders in provincial institutions has also increased, from 18.2 per cent in fiscal year 1982-83 to 25.3 per cent at the end of fiscal year 1986-87 (National Parole Board, 1989:27).

This differential rate of growth has been attributed in part to the different rates of growth for the aboriginal and non-aboriginal populations in Canada generally, and in part to the fact that native persons are now more likely to identify their cultural origins to correctional officials (National Parole Board, 1989:23). Yet, neither one nor both explanations can account for the huge disparity between the two inmate groups.

LaPrairie (1990) points out that if other key variables such as age and socio-economic class are considered, aboriginal people may actually be statistically under-represented. Some authors have attributed the increasing percentages of native people in the criminal justice system to their greater numbers in the 14-25 age group and their lower socio-economic class (Havemann, 1985). An analysis of arrest data for the City of Winnipeg in 1969 led Bienvenue and Latif to conclude that the over-representation of people of Indian ancestry in arrest statistics could perhaps be accounted for by socio-economic status and area of residence.

Nonetheless, there does appear to be a consensus in the research that aboriginals are over-represented in the criminal justice system. Jackson notes that although criminal justice statistics are often open to various interpretations, data regarding the impact of the criminal justice system on native people "is so evident that the magnitude of the problem cannot be misunderstood" (Jackson, 1988:2). This is on the basis of

the statistical data that is available. Pertinent in this connection is the fact that data on ethnic origin, both federal and provincial, is collected on a self-report basis. Since some members of native groups may be deliberately misreporting themselves, the figures could be much higher than what they are reported to be (British Columbia Native Indian and Metis Education Club, 1975).

It is not only the aboriginals that are over-represented in the criminal justice system. There is evidence to support a hypothesis of over-involvement of visible minorities, especially blacks, in the criminal justice system (Head and Clairmont, 1989). In the United States, this evidence is overwhelming. In Canada, studies and investigations of the proportions of visible minority groups incarcerated are lacking. There are however, references made to the disproportionate number of visible minorities in jails. James Travers points out in an article in the Ottawa Citizen (1992), that Blacks form 6 or 7 percent of the Metropolitan Toronto population, but make up more than half of the inmates in the jails (The Ottawa Citizen, 1992a:B1).

In her discussion of the causes of aboriginal over-representation in correctional facilities which is equally applicable to the visible minority groups, LaPrairie (1990) claims that criminologists have tended to focus either on the decision-making points within the criminal justice process or on the criminality of aboriginal peoples. Considering this

tendency, she points out that there are three possible explanations, which she adds are not mutually exclusive. The first explanation is that aboriginal people commit more crime than non-aboriginal people even though it may be due to non-racial factors such as poverty or alcohol use. The second explanation is that aboriginal people commit crimes that are different from those committed by non-aboriginal people, crimes that are more detectable, more serious, and/or more visible. The third explanation is that there are differences in the way that aboriginal people and non-aboriginal people are treated in policing, charging, prosecution, sentencing and parole decisions.

The Manitoba aboriginal Justice Inquiry found evidence to support the hypothesis that aboriginals commit more crime than non-aboriginals, as well as the hypothesis that they are treated differently by the justice system (Hamilton and Sinclair, 1991a:85). National crime rate statistics which of course are open to debate, reveal that the rate of crime among Indian bands is greater (1.8 times) than that of the general population (Hamilton and Sinclair, 1991a:87). This is even more the case for rates of violent crime (3.67 times the national rate for 1989-90). In Manitoba, similar statistics can be found, showing that while the reserve population was 12.3 per cent of the total population policed by the R.C.M.P., it contributed approximately 17.5 per cent to the offenses in 1989-90 (Hamilton and Sinclair, 1991a:87).

The task force did however, note while some reserves had crime rates much higher than the provincial average, others had rates that were lower, and that the reserves, for which the provincial court data was reported, and used in the above analysis, had considerably higher crime rates than other reserves in Manitoba (Hamilton and Sinclair, 1991a:88). Nonetheless, they conclude:

> we believe that there is higher rate of crime among aboriginal people, but we also believe that over-policing and systemic discrimination within the justice system contribute greatly to it (Hamilton and Sinclair, 1991a:88).

As far as visible minorities are concerned, there exists no statistical data to support their involvement in crime. Some police officers however, have expressed their belief that some minority groups contribute more than their fair share to the crime picture. Police from several urban centres across Canada claim that Asian gangs, particularly from Hong Kong and Vietnam are becoming an increasingly serious problem because of their level of violence. A spokesperson for the Montreal Urban Community Police pointed to the existence of an Iranian-based crime organization, with he has equated to motorcycle gangs and Mafia gangs, contending that this is not a new problem but a form of an old one of "...problems with aliens [and]...drug trafficking" (The Ottawa Citizen, 1988a:A15). In support of their belief that Toronto's black population are committing a disproportionate amount of crime, the police have

collected data which show that over a two year period, between 32 and 35 per cent of major criminal occurrences in Toronto have been committed by blacks, largely young Jamaicans. Jamaican immigrants make up about 2% of Metro Toronto's population. Toronto police sources describe the problem "as a young criminal culture from the Kingston slums, transplanted to Toronto" (The Globe and Mail, 1989a:A8).

In response to allegations of police discrimination, a staff inspector with the Metro Toronto police released statistics on crimes committed by blacks in the Jane-Finch corridor of North York. The officer said that black people constitute 6 per cent of the area's population but are responsible for 82% of robberies and muggings, 55% of purse-snatchings and 51% of drug offenses during 1988. He claims that crimes committed by blacks are a major cause for the tensions between the black community and the police (The Toronto Star, 1989a:A1).

Referring to the alleged greater inclination of the visible minority communities than the white community, to commit crime, Lewis claims: "There is crime in every community and its causes, while complex, are not related to race" (Lewis, 1989:22). He does point out that certain crimes, such as street crimes, are more visible than other crimes such as those committed behind the security of closed doors. This results in the conception of visible minority groups as criminal because their socio-economic conditions lead them

more in the direction of the visible crimes (Lewis, 1989:22). Further, the belief that these crimes are "more disruptive [of] society than the other", make these groups the target of police activity (Lewis, 1989:22). Pointing this out, Lewis says that linking such crimes to specific racial groups..."serves to ignore the need for police to recognize that their policies and procedures, attitudes and behaviour can contribute to dissonance in race relations" (Lewis, 1989:22).

Explanations of aboriginal over-representation in the criminal justice system often target the decision-making involved in charging and sentencing (LaPrairie, 1990). Anecdotal evidence of racism in sentencing exists (Law Reform Commission, 1991). This evidence however, provides inadequate proof. The lack of a solid empirical base has prevented any real appreciation of whether bias exists in the conviction and sentencing of aboriginal accused. Overt racism in this connection is difficult to prove, "because the culpable actors are sufficiently sophisticated to mask this motivation" (Law Reform Commission, 1991:75).

Contributing to the difficulty is the fact that the available statistical data leave unanswered, many important questions, such as whether there are differences in the rate at which aboriginal persons are charged with crimes, plead guilty, are convicted and are imprisoned. The absence of such data, argues Letourneau, makes it difficult to determine

whether members of various ethnic groups are treated unfairly: "How can one argue that too many Blacks are charged, for example, without knowing how many Blacks are charged" (Law Reform Commission, 1991:88). The Canadian Centre for Justice Statistics had initially collected some criminal justice data on ethnicity in their revised Uniform Crime Report, though this was abandoned partly as a result of considerable opposition from some visible ethnic minority communities and organizations. Critics argued that the collection of such data carries the implication that particular ethnic groups are especially prone to criminal behaviour.

In addition, the information could prove to be a double-edged sword providing ethnic minority groups with evidence of police racism and the police with evidence of ethnic criminality. A Metropolitan Toronto Police sergeant, himself a native of Hong Kong blamed what he considered a "hard core element" of Vietnamese and mainland Chinese refugees for the majority of crimes committed in Metro's Asian community (The Toronto Star, 1991a:A6). As this remark implies criminality to be an ethnic characteristic, the officer was reprimanded by the Police Commission.

As far as sentencing is concerned, racism is inferred from what has been described by Barros and her colleagues (1970) as the 'blacking' of the defendant cohort as it passes through the criminal justice system. The system filters out whites at relatively higher rates at each step in the process.

The same phenomenon was noted in a study using data from the Calgary and Edmonton Police Services. Native people constituted 13.7% of all persons charged. As the proportion in the general population of Alberta was estimated as 4%, the study concluded that aboriginal people were over-represented at the police level of involvement in the criminal justice system (Cawsey, 1991:6-5). It was then argued that if the courts were neutral, the percentage of natives going from court to prisons should not vary significantly from 13.7 per cent - the proportion charged. A significant increase in the proportion of aboriginal adults admitted to correctional centres, however, was noted in the study. Of the 31 316 total admissions to adult correctional centres, 29.5% (8 972) were aboriginal offenders, leading to the conclusion that "the courts appear to contribute to the over-representation of aboriginal people in prison, in a direct and significant manner" (Cawsey, 1991:6-5).

One possible source of the disparity in the numbers of aboriginal as opposed to non-aboriginal inmates in the makeup of prison populations, discussed by Havemann and his colleagues, is the ..."discriminatory, discretionary practices and powers of officials in the criminal justice system, particulary those who may exercise influence over which offenders are apt to be imprisoned" (Havemann, 1985:94). Reviewing the literature, these authors found the existence of differential arrest, charge and sentencing rates (Havemann,

1985:xxiv). Another review of the literature however, led to the opposite conclusion - that there was no significant sentence disparity between natives and non-natives (Clark, 1989).

The Alberta task force found that "Alberta judges ... very active in sentencing adult offenders to custodial dispositions", were very lavish in this activity as far as native offenders were concerned (Cawsey, 1991:4-33). Statistics indicate that this tendency to higher custodial dispositions appears to be increasing, despite a marked decline in the number of charges laid by the police (Cawsey, 1991:4-33).

The investigation of the Royal Commission on the Donald Marshall, Jr., Prosecution, led to the conclusion that the fact that Donald Marshall Jr. was a native contributed to his 1971 conviction for murder (Hickman, 1989:193). Hickman stated that each component of the Criminal Justice System failed Marshall: "The Sydney City Police, Crown prosecutors, defence counsel, the courts, the Department of Attorney General and the R.C.M.P all contributed to Marshall's conviction and continued imprisonment by failing to perform to an acceptable standard" (Hickman, 1989:193). To determine whether the Marshall case was an isolated incident of differential treatment based on race, a review of the Department of Attorney General files was undertaken. This review, Hickman explains, focused on the manner in which

certain cases (of high profile individuals) were handled by the Department and then compared these to the way the Marshall case was handled (Hickman, 1989:193). Each of the major components of the justice system were examined in order to assess their overall functioning and the interrelationships among the police, Crown prosecutors, the Office of the Attorney General, and the aboriginals and blacks. The Commission stated:

> The conclusion we have reached is that the system does not work fairly or equal. Justice is not blind to colour or status. There is widespread lack of understanding within the system of the appropriate roles of the Attorney General, the prosecutor and the police. And there is lack of structural control and organizational independence which has made it easier for unchecked and inappropriate decisions to be made (Hickman, 1989:193-194).

In order to determine whether there existed disparity in the sentencing of natives and non-natives, Hickman (1989) commissioned a review of two Nova Scotian Crown prosecutors' offices. The review did not show a significant variation in sentencing between the two groups, although it was discovered from interviews that some judges tended to be more lenient in sentencing native people, while others tended to be less. This disparity, the Donald Marshall Commission recognized, reflected the sentencing observed by the Canadian Sentencing Commission (Hickman, 1989:181).

Two further studies to assess allegations of disparity in sentencing based on race in Nova Scotia, were done by Clairmont (1989) and Head (1989). The first study examined

cases involving 51 blacks and 126 non-blacks convicted of theft. The second study looked at cases involving 221 males, 22 percent of whom were black, who had been convicted of assault in 1987-1988 in the Halifax-Dartmouth area.

The findings were similar for both studies. Blacks were less likely to obtain discharges than non-blacks, they were incarcerated more often, and they received longer sentences. Clairmont (1989) found that the single most important point about the data patterns was that black males were disproportionately represented among the population of males convicted of assault. About 22 percent of this group was black whereas in the larger metropolitan population the proportion of blacks is approximately 3 percent (Clairmont, 1989:171). Blacks assaulting non-blacks received longer sentences than blacks assaulting blacks. However, race was not a significant factor in the sentencing (Hickman, 1989:191). The difference was shown to be due to factors such as prior convictions, the number of related prior convictions, the extent of injury suffered by the victim, or whether other charges had been laid against the offender (Hickman, 1989:191). Nonetheless, Clairmont refuses to rule out the possibility that race plays a significant part in sentencing. He cautions:

> Racism in a system of formal rationality can be subtle and cumulative. Statistical analyses of the sort done here may be too blunt a tool to capture this well...Sensitivity to the legacy of racism and appreciation of its modern guises was not evident in the court dockets nor in the special acts of

> leniency encountered (e.g., discharges). Such sensitivity in conjunction with a concern for more equitable legal resources and socio-economic opportunities would seem to be required to truly eradicate racism and discrimination. As long as the persons making and interpreting rules and administrative policies are drawn from narrow class and race/ethnic backgrounds the sensitivity and change might be hard to come by (Clairmont, 1989:191).

Although their analysis of aboriginal and non-aboriginal sentencing in Manitoba was not detailed, Commissioners Hamilton and Sinclair of the Manitoba aboriginal Inquiry, (1991a) found significant discrepancies in the sentences given the two groups which could not be sufficiently explained by prior criminal record or seriousness of the offence (Hamilton and Sinclair, 1991a:103,109). With the past criminal record and the seriousness of the offence held constant, they found native people were more likely than non-natives to face more than one charge and to experience more severe sentences including incarceration (Hamilton and Sinclair, 1991a:103,109). It was their view that systemic discrimination was largely responsible (Hamilton and Sinclair, 1991a:103,109).

These research findings are consistent with other studies on discrimination in sentencing in both Canada and the United States (Harding, 1991; Head,1989; Thornberry, 1979). Yet definitive conclusions on sentence disparity between whites and visible minority groups is not at present possible. What the data reveal, as LaPrairie points out in her review of the

literature, is that: "Taken together these findings provide no definitive answers to the question of racial bias or unwarranted disparity in the sentencing of aboriginal people, but highlight some of the contradictions that exist" (LaPrairie,1990:434). Clairmont is more definitive. He states that what has generally been found is that "such discrimination has become much more subtle, sporadic and driven either into earlier stages of the charge/conviction/ sentencing process or into the 'backroom' of the court" (Clairmont, 1989:184).

Studies on sentencing tend to focus on two main issues: (a) unwarranted disparity in dispositions - whether aboriginal people are incarcerated for offenses in which non-aboriginals are not, controlling for legal variables as offence seriousness and criminal record; and (b) unwarranted disparity in sentence length - whether aboriginal offenders receive longer sentences of incarceration and probation than non-aboriginal offenders, with the same offence and prior record (LaPrairie, 1990:432). Although there are contradictions, the literature concerning disparity in sentence length, suggests that aboriginal offenders are given shorter sentences (LaPrairie, 1990:434).

Havemann (1985) also found in his review that though the inequality in the lengths of sentences imposed upon aboriginal offenders when compared to non-aboriginal offenders expressed itself at times in excessive leniency and at others in

excessive severity, generally the sentences for aboriginals were shorter. Aboriginals were however, incarcerated more frequently (Havemann, 1985:119). These reviews suggest a judicial leniency towards aboriginal offenders.

From his studies in Alberta, Hagan (1974) concluded that the popular belief of judicial leniency toward native offenders was unfounded and that the group's tendency to receive shorter sentences was due to their disproportionate involvement in minor offenses. His findings indicated that the greatest difference between sentences for native and non-native offenders was for crimes of relatively minor legal seriousness (Hagan, 1974). Harrell (1977), on the other hand, in his examination of Edmonton presentence reports, found the greatest discrepancy between the two groups to be for serious offenses, with native offenders receiving longer sentences.

The majority of provincial court judges who testified before the Alberta Task Force disagreed with aboriginal groups who claim that sentences passed on them were more severe than for non-aboriginal persons. Many judges referred to the more lenient sentencing for Indian and Metis as "Native discount" (Cawsey, 1991:4-32). Associate Chief Judge Murray Sinclair of the Provincial Court of Manitoba also observed:

> Interestingly, although it would appear that aboriginal people are charged and incarcerated more frequently than their numbers might warrant, their average sentence is shorter, perhaps reflecting the more minor nature of the offenses with which they are convicted and/or greater leniency on the part

of the judiciary (Cawsey, 1991:4-32).

Judge Sinclair adds that aboriginal inmates tend to have more prior convictions before their first incarceration, suggesting what he claims as judicial efforts to keep the accused out of jail initially.

Cawsey (1991) found that while aboriginal offenders are generally given shorter sentences by the courts than non-aboriginals, they spend more time in prison. A comparison of the average length of time in custody spent by adult sentenced offenders (including time on remand by later sentenced offenders) with the average aggregate sentence for such offenders, shows that native offenders, on average, spend 35.4% of their aggregate sentence in custody compared to 29.9% for non-native offenders (Cawsey, 1991:4-33).

Aboriginal people in Alberta are much more likely to receive sentences leading to admission to a federal institution (Cawsey, 1991). The total number of offenders in Alberta receiving sentences to federal institutions between the 1985 and 1989 increased by 25% (Cawsey, 1991:6-6). Non-aboriginal admissions increased by 19%, while aboriginal admissions increased by 37.3% (Cawsey, 1991:6-6). The most dramatic disparity, occurred in 1988: "a 44.5% increase of aboriginals, compared to 5.7% for non-aboriginals" (Cawsey, 1991:6-6). Variances in offence type is offered as a partial explanation for this disparity. Male native offenders recorded higher rates of offenses against the person (except

murder) while non-natives generally engaged in more offenses against property (Cawsey, 1991:6-6).

A study of differential sentencing by Schmeiser (1974), using sentencing data mainly from Saskatchewan, found a pattern of more and shorter sentences for natives and less likelihood of receiving non-custodial sentences like probation in either rural or urban area (Havemann, 1985:118). This appears to be the general pattern noted for other provinces as well (National Parole Board, 1989; Hamilton and Sinclair, 1991a).

The considerable rhetoric about overt racism and unwarranted disparity in the conviction and sentencing of aboriginal people, LaPrairie (1990) argues, stems from many studies that have "limited methodologies and levels of analysis" and point to different conclusions (LaPrairie, 1990: 432). She observes that in the data analysis, there was an absence of extra-legal variables which prevented determination of the role of socio-economic and cultural factors upon judicial decision-making. Both Havemann (1985) and LaPrairie (1990) point out that studies that do not include the examination of all of the variables considered by the courts in reaching sentencing decisions, (legal, as well as extra-legal) are unable to attribute sentencing disparity to racial bias.

Havemann notes that given the discretionary power of judges and the apparent judicial practice of individualizing

sentences, differential sentencing outcomes seem inevitable (Havemann, 1985:xvii). This inevitability has also been pointed out by Hagan (1974). However, statistics on admission of aboriginal people to correctional facilities point to the possibility that the disparity of sentences is not the result of individualization, but an "...inequality of penalties as applied to identifiable groups of people who come into contact with the criminal justice system" (Havemann, 1985:119). The challenge is to determine what factors other than the nature and seriousness of the offence, and prior criminal history, are creating bias in judicial decision-making in the case of aboriginal offenders (Havemann, 1985:119).

In a study of Alberta judges, Hagan (1975) tested the hypothesis that "...offender characteristics interact with judicial attitudes to produce disparities in sentencing" (Hagan, 1975:375). This study led him to conclude that:

> Among those judges who had an active concern for law and order there appeared to be no abuse of discretion or differential treatment of minorities. Offence seriousness and not race determined their sentencing decisions. Judges who were less concerned about law and order, however, appeared to use part of their discretion to provide lenient treatment to Indigenous offenders (Hagan, 1975:381-382).

In an attempt to explain disparity in sentencing practices for indictable offenses, Hogarth (1971) developed a sentencing model. The model presents sentencing as a dynamic, subjective process, in which the variables such as attitudes and beliefs, perception of social and legal constraints,

relevant case facts and cognitive styles, result in each judge's individual interpretation of reality (Hogarth, 1971). Utilized to predict sentence variations, Hogarth's model pointed to a marked disparity in sentencing practices for indictable offenses by Ontario judges.

Research on juveniles in northern Canada by LaPrairie and Griffiths in 1982 shows that native juveniles are over-represented at all stages of the criminal justice system. Their study however, indicated that ethnicity was not a factor in judicial decision-making. The discrepancy in numbers between native and non-native juvenile offenders was explained by "significant socio-cultural differences" (LaPrairie and Griffiths, 1982:41).

LaPrairie (1990) argues that explaining any risk of incarceration experienced by aboriginals solely in terms of racism is counter productive: it may impede solutions to the problem (LaPrairie, 1990:436). Her recommendation is to look at the disparity in sentence dispositions in terms of systemic discrimination. Clark (1989) and Archibald (1989) also favour this suggestion. Systemic discrimination is defined by Hickman (1989) as: "What happens when a specific act, policy or structural factor - intended or unintended - results in adverse effects for members of certain specific groups" (Hickman, 1989:151). Hickman claims that the huge disparity in the numbers of both black and native groups as compared to whites, on both sides of the criminal justice system, must

spell the existence of systemic discrimination in the criminal justice system.

One source of systemic discrimination is the non-payment of fines. Statistics of provincial correctional facilities reveal that a large proportion of the inmate population are fine defaulters and that these are made up of the poor and aboriginal peoples (Cawsey, 1991;Havemann, 1985; National Parole Board, 1989). Numerous studies have confirmed the connection between failure or inability to pay fines and the jailing of aboriginal people. Hagan's 1974 study of admissions in Alberta identified racial disparity in the default of fines and subsequent imprisonment.

In Nova Scotia, the situation appears to be no different. A large number of blacks are jailed for the nonpayment of fines (Head, 1989). Head notes that both blacks and non-blacks of low socio-economic status were more likely to be imprisoned for failure to pay fines than those in the higher socio-economic category (Head, 1989:37).

In a study of admissions to jail in Ontario, it was found that 25% of the admissions were for the non-payment of fines. In Northern Ontario, where more native persons are involved, the percentage is as high as 64 (Head, 1989:56).

A second source of systemic discrimination is the Provincial Offenses Act. This act was designed to relieve courts of minor highway traffic and liquor offenses and to regulate this conduct through set monetary penalties. It

allows police to proceed either by offence notice, which encourages out-of-court settlement by pre-determined fines, or by summons to court for trial and determination of penalty. In Kenora, it was found that the police proceeded by way of summons to court for primarily liquor offenses twice as frequently as police elsewhere in the province, and Kenora courts used prison penalties for liquor offenses three times as frequently as courts in the remainder of the province (Jolly and Seymour, 1983:ix-x). A similar situation appears to exist in Alberta. Statistics in 1989 revealed that 20.9% of all aboriginal offenders convicted under the Liquor Control Act were admitted to correctional centres while only 5.5% of non-natives so convicted were incarcerated (Cawsey, 1991:6-5).

Havemann (1985) points out the influence of non-judicial decision-makers on the sentencing process. Pre-parole and pre-sentence reports are an example (Havemann, 1985:126). Clark (1989) discovered disparity in the way in which pre-parole reports are prepared. He found that fewer informants were contacted in native communities in the preparation of these reports, than non-native communities. He points out that, in addition, some of the information that parole officers seek for their reports makes the reports "automatically loaded" against natives because of their more poor economic and social conditions (Clark, 1989:181). For example, the higher than average unemployment rates on the reserves provides little opportunity for job prospects. The Donald Marshall Commission

notes that save for "the overburdened and underfunded Micmac Friendship Centre of Halifax", there was very little in the way of aftercare for native offenders (Clark, 1989:181), thus making it difficult for them to get parole.

Hagan (1977) has found that probation officers in rural areas tend to recommend that Indian and Metis offenders be given severe punishments without the justification of correlated legal variables (i.e., prior record, offence seriousness and number of charges). In urban settings, the presence of a prior record for a native person meant the recommendation of more severe sentences than for non-natives.

Clark (1989) observed that a high proportion of native offenses are alcohol related. The accompanying charges often refer to violations of liquor ordinances or to relatively minor Criminal Code offenses such as property damage, break and enter and/or theft. In terms of law enforcement and sentencing, often the courts have little or no alternative to incarceration when a native person is causing trouble after drinking. The options available judges in any and every case are incarceration, discharge, or probation with a requirement for treatment designed to deal with the offender's problem. In the case of natives, because of the absence of facilities for them, these options become limited.

Systemic discrimination also affects the black population. It has been found that, with previous criminal record controlled, blacks are more likely than non-blacks to

be incarcerated for the same offence (Head and Clairmont, 1989).

Head (1989) suggests that structural discrimination or adverse effects discrimination, may be much more relevant than any direct discrimination effect. It precludes blacks from receiving discharges more frequently. The factors associated with absolute discharge such as having counsel, being employed and having higher educational attainment, are ones that blacks taken to court lack.

In his study on sentence disparity between blacks and non-blacks, Clairmont (Head and Clairmont, 1989) found it difficult to obtain empirically convincing evidence of indirect and structural discrimination, from the data collected. He explains this finding:

> While race is not on the surface or at the zero-order level or directly a particularly strong determinant of sentencing disparity it at least has some such impact and, most important, it affects moderately at least other variables that are strongly related to sentencing patterns (Head and Clairmont, 1989:178-179).

Over-representation of natives and visible minorities in the criminal justice system could possibly be due to arrests and prosecutions. A 1990 survey by the Indian Association of Alberta indicates that 78 percent of Indian men surveyed had been arrested at some time in their lives (Cawsey, 1991:4-30).

Police discretion has considerable impact upon which accused are taken to criminal court and for what charges. Police, in effect, assist in a process of sorting out

potential candidates for prisons and for penalties which may hold open the option of prison should default occur (Havemann, 1985). Havemann observes that if we are to look at sentencing as a separate process, apart from the wider socio-cultural, economic and other factors, ultimately the choice of prison is made by judges, although restricted by mandatory penalties and by police charging practices concerning offenses carrying mandatory penalties (Havemann, 1985:96). LaPrairie (1990), however, cautions: "...it is difficult to explicitly point to differential police charging and arrests as the basis for the disproportionate incarceration rates" (LaPrairie, 1990:431).

In their discussion of the role of policing in the over-representation of native people in the criminal justice system, Hamilton and Sinclair (1991a) focus on the effect of differential policing. The differential crime rate between aboriginal and non-aboriginal groups, they claim, is partly due to the way in which the behaviour of native people is "categorized" and "stigmatized" (Hamilton and Sinclair, 1991a:107). The police, it is argued, tend to view the world as comprising either "respectable citizens" or "criminal types" (Hamilton and Sinclair, 1991a:107). Criminal types, are thought to exhibit certain characteristics. The way they dress, the way they talk, the way they walk and even the colour of their skin, are some of the characteristics of this categorization considered to provide cues to the police officer to initiate action. The police keep these people

under greater surveillance, tend to stop and check a higher proportion of them, and charge them for minor offenses, simply because they believe that such people may tend to commit more serious crimes. Perceived to be a danger to public order, members of these groups are given much less latitude in their behaviour before the police take action (Jayewardene, 1979/80).

Given as an example of this police behaviour is the controlling activities the police subjected a group of aboriginal youths gathered in a park. The gathering was perceived by the police as a precursor to deviant activity. West Indians in Toronto, enjoying music, having a social drink and playing dominos in front of their homes or in a park have also been subjected to such controlling behaviour (Hill and Schiff, 1986:63-64) as have black kids hanging out in a plaza, because they were unable to remain cooped up in a building in a nearby Ontario Housing project (The Ottawa Citizen, 1989:A9). Even the inordinate number of native people charged with being drunk and disorderly in the North has been attributed to the police perception of what drinking does to a native (Jayewardene, 1979/80). Providing many examples of this differential policing, Hamilton and Sinclair (1991a) state that: ..."many aboriginal people are arrested and held in custody, where a non-aboriginal person in the same circumstances either might not be arrested at all, or might not be held" (Hamilton and Sinclair, 1991a:107). Their

conclusion was that many charges appeared to be unnecessary.

In a 1975 study, Finkler noted the disproportionate number of convictions of Inuit, at Frobisher Bay in the Northwest Territories, for offenses in which alcohol was a factor. He believed the court data reflected a differential charge rate (Finkler, 1976:49). More direct evidence of differential charge-rates comes from a Regina study (no date) of public drunkenness made by Harding (Havemann, 1985:114). Of those arrested for public intoxication, 30% of the native people, 21% of the Metis and 11% of non-native people were actually charged (Havemann, 1985:114).

Supporting this position, Havemann describes how "both substantive law and especially the law enforcement system discriminate against Indigenous people" (Havemann, 1985:xi). He states that a review of the literature indicates that aboriginal over-involvement in the criminal justice system, is partly due to discriminatory policing exercised in a manner which is negatively biased against them (Havemann, 1985:xi). He also claims that the substantive law and the law enforcement system discriminates against the poor. The poor are usually more visible on the street and therefore more vulnerable to intervention by law enforcement personnel (Havemann, 1985:20). Further, the law, in its magnanimity, treats all people equally making identical conduct engaged in by the rich, non criminal and by the poor, criminal. It is an offence to be found drunk in a public place. The poor rarely

have private places in which they can drink. To complicate the situation even further, Havemann says, drunks who can supply an address are often driven home, while homeless, unattached drinkers are more likely to be arrested (Havemann, 1985:20). Aboriginals and blacks form a disproportionately large group of them.

Havemann contends that the literature supports the view that law enforcement personnel hold negative attitudes towards native peoples and this is reflected in arrest and charge rates (Havemann, 1985:xii). He argues that the "...law itself is highly ethnocentric, and overlooks traditional or aboriginal common law, as are the sanctions it enables to be invoked and the means of adjudication it employs" (Havemann, 1985:xii). Thus, law enforcement personnel are charged with the enforcement of inherently discriminatory laws and do enforce them in a discriminatory manner (Havemann, 1985:xx).

The author points out that in the absence of empirical research specifically examining the impact of police discrimination, explanations of differential crime rates centre around "blaming the victim" (Havemann, 1985:xii). The argument here is that the groups allegedly discriminated against by the police draw attention to themselves because of their conspicuous criminality. "The result, is that the circumstances of these groups rather than police actions, are the object of analysis and no efforts are made to link

discrimination to policing practices" (Havemann, 1985:xii).

Chapter III

Evidence of Police Racism

The disparity in crime rates between different groups, Cawsey claims, can be accounted for in the most part by police conduct (Cawsey, 1991). Some American literature indicates that police use race as an indicator for patrols, arrests, detention, etc. (Quigley, 1990). Although there is a lack of comparable empirical Canadian data, there is a strong possibility that the situation is the same in Canada. The Alberta Task Force provided examples of differential policing and over-policing of native communities as compared with white communities, such as the police patrolling of city bars where native persons congregate, and not those bars which white businessmen patronize (Cawsey, 1991:2-49). Quigley (1990) explains that this behaviour does not necessarily indicate that the police are racist, since there may be some empirical basis for the police view that proportionately, more native people are involved in criminality (Quigley, 1990:5). But their view becomes self-fulfilling, since they tend to police areas they believe are frequented by groups that are involved in crime (Quigley, 1990:5).

In a report by the Law Reform Commission of Canada, "Aboriginal Peoples and Criminal Justice" (1991), Letourneau describes the tense (often hostile) relations between aboriginal peoples and police and claims that a reasonable

interpretation provided for the higher crime and charge rates on reserves, is that "in some respects, those communities are overpoliced" (Law Reform Commission, 1991:45).

Greenaway (1980) points out that crime and delinquency are found where they are looked for, and they are found among certain groups like the poor, the aboriginals and the blacks, because that is where they are sought. What is more, these groups have "...little ability to resist intrusion" (Greenaway, 1980:257).

Letourneau (Law Reform Commission, 1991) finds that native communities, both remote and urban, often experience intense police scrutiny (Law Reform Commission, 1991:47). One result is the laying of unjustified charges or too many charges "where merely the formal requirements for a charge exist" (Law Reform Commission, 1991:47).

Indicating increased surveillance of these people is the fact that the highest numbers of police per capita are in the regions which have the significantly higher rates of native inmates as compared with non-native inmates (Havemann, 1985:22). These are the Northwest Territories, the Yukon and Saskatchewan (Havemann, 1985:23; Statistics Canada, 1991). Havemann remarks that in these regions, the higher ratio of police to general population provides for a greater chance of contact between Indigenous peoples and police officials (Havemann, 1985:25).

These regions are considered underdeveloped and it has

been argued that the increased police surveillance is called for by the underdevelopment. Reports such as Indians and the Law, of 1967, acknowledge the consequences of under-development, but in other reports, Havemann notes, that no study of social, economic and other factors has been made to explain why the police believe in the necessity for the greater surveillance. Instead, it is argued that native persons draw police attention to themselves by their behaviour (Havemann, 1985:25-27).

The Manitoba Aboriginal Justice Inquiry confirmed the practice of over-policing. It is described as resulting "from the imposition of police control on individual or community activities at a level unlikely to occur in the dominant society" (Hamilton and Sinclair, 1991a:595). The inquiry heard many examples of over-policing, including multiple charging, and charges that are never proceeded with, which led Sinclair and Hamilton to conclude harassment is apparent in policing practices with aboriginal peoples. Native persons who described these instances believe that this over-policing is a result of police stereotyping native people. An aboriginal girl in Winnipeg, described how her boyfriend was stopped by the police when he was observed running down a city street. He was simply going to meet the girl (Hamilton and Sinclair, 1991a:595).

Other examples of this over-policing received by aboriginals, included the frequent stopping of aboriginal

students by the police and their being required to account for their actions. Hamilton notes that the same inquiries were not made of white students (Hamilton and Sinclair, 1991b:8). Yet another example was the systematic stopping of many Kahnawake motorists by the Quebec Police Force, apparently for highway traffic purposes, that added to heightened tensions in the wake of the Oka crisis.

Sometimes the over-policing is interpreted as an attempt by the police to escalate violence among minority groups. Employees at a Montreal club, speaking at an informal news conference stated that although the club was busy every night, the police "hassle" employees and customers on Thursday and on Sunday nights (The Globe and Mail, 1991:A1). On Thursdays the clientale is predominantly gay while on Sunday nights it is predominantly black. On a July morning in 1991, the police appeared there in riot gear claiming that they had done so only after patrons refused to clear the street outside the club shortly after 3 a.m. and "...started shouting insults at police and pelting them with beer bottles" (The Globe and Mail, 1991:A1). A spokesperson for the black community claimed that the police were deliberately inciting the blacks to violence in retaliation for condemnation of recent police actions, and in an attempt "...to show that blacks create riots so they can justify their atrocious actions against us" (The Globe and Mail, 1991:A1).

Havemann (1985) notes that there is existent Canadian and

American literature which support the view that law enforcement personnel hold negative views towards Indigenous peoples. But, he states, the literature does not specifically address the question of whether native people are arrested more often because of their criminality or as the result of discriminatory enforcement by the police (Havemann, 1985:28-29).

Rather than focus upon native people as the problem, Brass (1979) suggests that police methods should be examined. He states that native people accept the need for policing and always have: "The problem is therefore not a cross-cultural conceptual disagreement but rather one relating to police attitudes and methods" (Brass, 1979:33).

In recent times, a number of public inquiries have been conducted as a result of accusations of racism levelled against the police. The factors that precipitated these inquiries have varied. The differential treatment accorded minorities by the Nova Scotia Justice System was investigated as a part of a Royal Commission enquiring into the conviction of the 17 year old Micmac Indian Donald Marshall Jr., in 1971 of the stabbing death of an acquaintance on the basis of flawed police investigation and perjured testimony. The confrontation between Blood Tribe members and the R.C.M.P. and the concern over the manner in which the police handled sudden deaths of Blood Tribe members led to Alberta's Commission of Inquiry Policing in Relation to the Blood Tribe. The police

investigation into the death of the 19 year old Cree girl Betty Osborne and the shooting death of native leader John J. Harper by a Winnipeg police officer resulted in the Public Inquiry into the Administration of Justice and aboriginal People (Manitoba). The arrest of Winnipeg lawyer Harvey I. Pollock Q.C., (who had represented the Harper family at investigations into J.J.Harper's death), on charges of sexual assault, led to the inquiry into the behaviour of the Winnipeg police. The recognition of a general problem in the relationship between the native community and the Criminal Justice System resulted in the Alberta aboriginal Justice Inquiry. Confrontation between Toronto's black community and the police following the shooting deaths of Mississauga teenager Michael Wade Lawson and of Lester Donaldson, resulted in the Ontario's Race Relations and Police Task Force.

The 1987 shooting of black teen Anthony Griffin by a Montreal Urban police officer, and the ensuing hostile relations between the police and the black community, resulted in a Commission of Enquiry established by the Quebec Human Rights Commission, to inquire into the allegations of "discriminatory treatment and racist behaviour" (Bellemare, 1988:19) toward visible and ethnic minorities by police. These are but a few of the inquiries that have been conducted.

The Ontario Task Force on Police Race Relations chaired by Clare Lewis describes a minority perspective of police behaviour towards them as "intolerant" and "unequal" (Lewis,

1989:11). In this report, Mr. Lewis accepted the visible minority point of view that these communities are not policed in the same manner as the mainstream, white community: "They do not believe that they are policed fairly and they made a strong case for their view which cannot be ignored" (Lewis, 1989:14). The other inquiries also reached similar conclusions.

Witnesses appearing before the Ontario task Force told of beatings, false arrests, harassment and verbal abuse by the police, and their fear of reporting abuses to the same establishment responsible for these misdeeds. There were witnesses who told of native suspects "accidently falling out of moving police cars" (The Montreal Gazette, 1989:A7), describing police billy clubs with handles etched with the words: "For Indians, hold here" (The Montreal Gazette, 1989:A7), stating that "name calling, racial slurs and verbal assault against natives are so normal the exception is to be treated with respect" (The Montreal Gazette, 1989:A7). A member of the Ontario Native Women's Association complained that some northern police ignored crimes as serious as murder when native people were involved (The Montreal Gazette, 1989:A7). Then of course, there was the police use of deadly violence. The evidence presented before the other commissions was no different.

When all the grievances of the minority groups are considered, the behaviour of the police regarded as offensive

falls into four distinct categories (Jayewardene and Talbot, 1990:34). First there is verbal abuse, usually a part of other forms of racist behaviour. Police are known to have made derogatory references to natives and visible minorities and even addressed them in derogatory terms. In many of these instances, the language used indicates a racist motivation. In the inquiry into the shooting death of Marcellus François, the Coroner heard officers referring to black people as "les couleurs", "des negres", and "les noireaux" in the radio transmissions on that day (Yarosky, 1992:65-66). Apparently the officers saw nothing wrong with the use of these words, even if they realized that this language was offensive to blacks. The Coroner found that the treatment of François's three companions who were also in the car, reflected a racist mentality (Yarosky, 1992: 66-67). One of the women was told to "go and walk the street" - a statement interpreted as "Go prostitute yourself", in response to her statement that she had no money in order to get home from the police department (Yarosky, 1992:62). Discussing this case, Yarosky states:

> Considering the language used in the radio communications, the attitude reflected in the treatment of the occupants of the Pontiac and that reflected in the testimony at the inquest, there are disturbing signs within the Montreal Urban Community Police Force of insensitivity to, ignorance about, and lack of respect for members of the black community. There is evidence that cannot be ignored of a mentality that is intolerable within a police force that exists to serve and protect all citizens (Yarosky, 1992:66).
>
> ...What has also come to light during the present inquest, three years after the "Bellemare Report"

> to the Quebec Human Rights Commission, is the continued presence within the Montreal Urban Community Police Department of an attitude toward members of the black community that is completely unacceptable. The police force exists to serve all members of society. There is no room for racism within it. While this attitude often results from ignorance rather than from bad faith, it is nonetheless intolerable (Yarosky, 1992:72).

The Coroner does state however that a racist mentality cannot be attributed to all of the officers (Yarosky, 1992:67).

Second, there is physical abuse, the beating and shooting of blacks and aboriginals in what Lewis (1989) referred to as "other than extreme circumstances" (Lewis, 1989:127). Numerous examples exist.

Raymond Constantine Lawrence, a 22 year old Jamaican man was fatally shot in the chest at close range by an undercover Metro Toronto Police officer. The Special Investigations Unit probing into the incident, stated that the shot followed a foot chase during which the officer fired a warning shot. The man is said to have continued to wield a knife (The Ottawa Citizen, 1992b:D10).

On September 26, 1991, Vincent Gardner, a 49 year old black janitor innocent and unarmed, was shot in the stomach during a fumbled police drug raid. He later died in the hospital of cancer-related complications. The drug squad was apparently advised before the raid that people convicted of assaulting police and resisting arrest would be in the house. An investigation found there was no resistance, no weapons and a small amount of marijuana (The Ottawa Citizen,

1992c:C8).

Earle Edwards, a 46 year old Jamaican man was shot in the hand when he and his wife were stopped in Ottawa as they were rushing to see their hospitalized son. Police say the officer's coat was caught in the Edward's car door and the officer shot as the car began to move away (The Ottawa Citizen, 1988b:A1).

A young black man, Jonathan Howell, was shot in the head by an officer with the Metropolitan Toronto police force. The officer was in the process of arresting Howell and another suspect, when he claimed that his revolver accidently went off as he "stumbled or was tripped" (The Toronto Star, 1992:A3). Convicted of careless use of a firearm, the detective constable was given an absolute discharge, in a case which the defence lawyer claimed, reflected confusion on the part of the police force as to when it is appropriate whether to draw revolvers during an arrest (The Globe and Mail, 1994a:A14).

A 23 year old Egyptian immigrant, Essam Shedid, reported that he was beaten by two police officers of the Montreal Urban Community police department on February 4, 1992. Shedid claims that he was forcibly taken from a restaurant by 8 MUC police officers who believed him to be a suspect in a weapon possession case. He stated that he was driven in the police cruiser to an alley where he was beaten by two officers with a baseball bat and called "a God-damned immigrant" (The Montreal Gazette, 1992a:A6). The police precinct involved

stated that they have no record of the incident.

A Chinese immigrant was beaten by four masked police officers of the Vancouver Police Department's Emergency Response Team after he had been reportedly tear-gassed and dragged from his apartment. Two other officers who stood by with weapons drawn, were described as "nonchalant" (The Globe and Mail, 1992a:A6). The incident was captured on video by a neighbour. The response team had responded to a tip about guns and drugs, yet no charges were laid against the Chinese man or his roommate. The neighbour who believed that the police team's actions were unjustified stated: "These guys were ready to hurt somebody...He (Mr. Zhang) was down on the ground. There was no reason to give him the boot like that. ...He wasn't even struggling or anything. I don't know why they had to behave like that" (The Globe and Mail, 1992a:A6).

A police spokesman stated that the Chinese man was uncooperative when ordered to bring his hands up, thus he had not yet been searched and was therefore a risk. Mr. Zhang apparently spoke no english. The police source defended the actions, claiming that the police are "getting an unfair rap" (The Globe and Mail, 1992a:A6): Said he:

> Was anyone shot? Was anyone killed? Everyone's taking this as being the Rodney King thing. Everyone is annoyed to see these heavily armed guys, but I would say, so what if they kicked him? What's the difference between the blow from a foot, a hand, a club, as long as it's justified?...We get trained to use our feet. And if you have your hands full, as with a weapon, then the feet are the most appropriate thing (The Globe and Mail, 1992a:A6).

A seventeen year old black youth, Wade Lawson, was shot dead on December 8th, 1988 by two Peel Regional police officers. The youth apparently backed up into one of the officers as they attempted to stop him and a passenger in a stolen car (The Globe and Mail, 1992b:A13).

Sophia Cook, a 23 year old black women, a passenger in a car reportedly stolen when it was stopped by the North York Police for a routine check, was shot accidently on October 27, 1989, during what police investigators have described as "an altercation" between an officer and two men in the car (The Globe and Mail, 1989b:A8). The woman, who was not involved in any criminal activity, was paralysed when the bullet hit her spine. The constable was acquitted by a jury during a second trial, of the careless use of a firearm (The Globe and Mail, 1994b: A14). During the initial trial the judge ruled the Criminal Code section unconstitutional, upon which both provincial and federal courts of appeal confirmed the section's constitutionality (The Globe and Mail, 1994b: A14).

A 16 year old black youth, Marlon Neale was shot in the upper torso following a chase on foot by a Toronto police officer on May 14, 1990. The youth was apparently driving in the wrong direction at excessive speeds, posing a threat to the police officer who stated that he twice felt threatened; first by the way the car was being driven and again when the car was stopped a second time (The Toronto Star, 1990a:A4).

A young black man, Royan Bagnaut, was shot twice in the

upper torso as he fled Toronto police officers who stopped to question the man and his two friends apparently regarding an attempted purse snatching in the area. Police said that the Sergeant "emptied" his revolver when the fleeing black man turned towards him (The Toronto Star, 1991a:A1).

Lester Donaldson, a black man who had been crippled four months earlier by a police bullet, was shot dead on August 9, 1988 when Toronto police investigated a disturbance in a boarding house. The constable responsible for the shooting, who was subsequently acquitted of manslaughter, claimed that the man lunged at his partner with a knife (The Toronto Star, 1988:A1; The Toronto Star, 1994a:A1). Results of a two year public inquiry into the circumstances surrounding Mr. Donaldson's death, yielded eighty-five recommendations, including the recommendation that officers be immediately segregated and supervised following a shooting "in order to preserve public confidence in the investigation of police actions" (The Toronto Star, 1994b:A6). The jury, referring to the death as a "homicide", also advised that an internal protocol be developed, which includes the full cooperation with any investigation team (The Toronto Star, 1994b:A6).

Black teenager Anthony Griffin, was shot in the forehead on November 11, 1987 by a Montreal police officer. The youth, who was attempting to flee custody, had already obeyed the constable's order to stop. He had turned around when the officer claimed that his gun went off accidently (The Globe

and Mail, 1989c:A4).

A 22 year old Salvadoran refugee was shot dead by an undercover Montreal police officer, November 22, 1990, as he was fleeing a convenience store with stolen groceries (The Montreal Gazette, 1991:A4). The officer alleges that he shot the man in self defence when, at the end of a foot chase, he lunged at the officer with a knife (The Montreal Gazette, 1992b:A3).

A Spanish man was shot three times in the chest and killed in 1988 after an exchange of gunfire with the Montreal Urban Community Police. A coroner stated that "the officers could have intercepted him discreetly and without provocation" (The Montreal Gazette, 1991:A4).

On July 3, 1991, Marcellus François, a young black man, was a passenger in an automobile with three other black persons when he was mistaken for another person wanted in an investigation for attempted murder. When their vehicle was brought to a stop, François was shot in the head by an officer with the Montreal Urban Community Police Department's SWAT team (Yarosky, 1992). The officer claimed that he believed François was reaching for a weapon, yet no weapons were found.

In addition to the evidence of verbal and physical abuse, there is the trivialization of victimization. Members of both aboriginal and visible minority groups complained before the Ontario Task Force that the police often fail to protect them adequately, responding to their requests for assistance with

tardiness and callousness. In general, it was claimed that battered women from the visible minority community received less sensitivity from police than white females who have been abused (Lewis, 1989:153). They explained that many police seem to believe they somehow like or deserve abuse from men (Lewis, 1989:154).

Clark and associates (1989) found when the police are called by natives their response time is "inexplicably long" (Clark, 1989:39). While the police tend to deny there is a problem apart from the limited police staff and large patrol areas, Clark claims that this slow response rate is linked to the stereotypic views held by police of Indians as heavy drinkers (drunk and violent) and that domestic problems, including violence which they believe is the cause of the summons to them, are "...temporary situations that will disappear in the morning" (Clark, 1989:39). He adds that the existence of the perception of natives as drunk and violent, further involves the beliefs that the violence is not serious enough to be of any real danger to individuals (Clark, 1989:40).

More serious is the manner in which the police investigate suspicious deaths of members of aboriginal groups. Leo Lachance, a 48 year old native man was shot in the upper chest as he was leaving a gun and pawn shop in Prince Albert, Saskatchewan. The man responsible for the shooting, Carney Nerland, was commonly known to be a member of a white

supremist organization. He was arrested two days later and apparently told a R.C.M.P. officer: "If I am convicted of shooting an Indian, they should give me a medal" (Maclean's, 1991:42). Native leaders claim that many questions in the case were left unanswered, and demand to know why Nerland was charged with manslaughter rather than murder.

In the early morning of July 3, 1976, Coreen Thomas, a young native woman from a reserve outside of Vanderhoof, B.C., was struck down and killed by a car driven by a 22 year old white man, Richard Redekop. At the inquiry into the native woman's death, the investigating R.C.M.P. officer was asked why there were no criminal charges laid when various testimony put the speed of the car as high as 70 miles per hour and the officer had noted an odour of alcohol on the driver's breath. The officer testified that a key issue in deciding whether criminal charges should have been laid was whether there was contributory negligence on the part of Coreen Thomas in running in front of the car.

In what editor Clive Cocking referred to as "testimony revealing freakish slip-ups in the handling of the accident" (Weekend Magazine, 1977:8), he states the inquiry revealed that the breathalyser tests used on Redekop gave conflicting results and an expert had stated that the driver should have been tested again "until reasonable agreement was obtained between the two tests" (Weekend Magazine, 1977:8). Witnesses before the inquiry also spoke of being threatened and

intimidated by police.

Assistant Chief Judge Carl Rolf, head of the Blood Tribe Inquiry Report of Alberta, which looked into the band's accusations that several Indian deaths on the reserve were not properly investigated by the R.C.M.P., stops short of calling the sometimes inadequate R.C.M.P. actions as racist:

> The Commissioner of the Inquiry believes from the evidence before this Inquiry that there is no conscious bias or racial discrimination evidenced in the treatment of the Blood Indians by the Royal Canadian Mounted Police (Cawsey, 1991:178).

Rather, Rolf suggests that police officers sometimes behave on the basis of ignorance and their preconceptions of aboriginal people and alcohol abuse.

In their inquiry into the 1971 murder of 18 year old native woman, Betty Osborne, from the Pas reserve, commissioners Hamilton and Sinclair found evidence of "unconscious racism" on the part of the R.C.M.P. (Hamilton and Sinclair, 1991b:7). Limiting their comments on racism to this particular setting, they made it clear that the R.C.M.P. officers in The Pas community at that time acted in a discriminatory manner toward members of the aboriginal community. They concluded that racism had played a significant role in the investigation, but that it was not the cause for the long delay in bringing the suspects to trial (Hamilton and Sinclair, 1991b:89). However, they found: "certain specific acts that occurred during the course of the investigation happened because of the discriminatory attitudes

or prejudices of some of the police officers involved" (Hamilton and Sinclair, 1991b:94).

Another example of the manner in which the police treat the misfortunes of aboriginals, exists in the case of a 40 year old blind, Cree Indian woman, Minnie Sutherland. Sutherland, who was apparently intoxicated at the time, died from head injuries 10 days after being struck by a car in Hull on January 1, 1989. There is apparently conflicting testimony as to whether the police were aware of Sutherland's injury. However, a Quebec Police Commission ruled that the Hull police officers were negligent in their investigation when they left the woman on the side of the road, since they concluded that Sutherland was merely drunk (The Ottawa Citizen, 1990:A16). The report concluded that the officers' actions were not racially motivated.

Associated with the trivialization of victimization is under-policing which the Manitoba report describes as a common complaint of native peoples. Hamilton acknowledges that this is due largely to a lack of preventative and supportive police services which he claims is a result of the police taking a narrow view of their role as solely reactive (Hamilton and Sinclair, 1991a:595). The Commission believes that the police also have a responsibility to prevent crime. Some members of reserves claim that they only see the police when they come to make an arrest. They stated that the police were not present on a regular basis in an effort to prevent crime or to provide

other police services (Hamilton and Sinclair, 1991a:596).

Fourth, is the unwarranted suspicion of involvement in criminal activity, resulting in over-policing and seen as active harassment. Various "objectionable encounters" with police have been described in this connection (Lewis, 1989:154). A woman told the Ontario Task Force how young visible minority members are "constantly being stopped by police on the street, especially after dark" (Lewis, 1989:154). Lewis himself found that the black youth with whom he spoke "tended to view police with distrust and fear, feelings said to be rooted in confrontations involving physical and verbal abuse by some police officers" (Lewis, 1989:154). Several black youths in Toronto described police using racial slurs and using force "in excessive or humiliating ways" (Lewis, 1989:154).

Evidence of abuse was not limited to young members of visible minority communities. A retired businessman stated:

> I must tell you, I don't think there's any black that was born and raised in Toronto that doesn't know someone personally or hasn't personally experienced police harassment in some form or another (Lewis, 1989:155).

Other examples of discriminatory behaviour were described to the Task Force. A member of the Windsor Black Coalition stated:

> There are situations in Windsor where five people will walk across a street on a red light, which is jay-walking. If one or two of them are black, they are the ones that will get the jay-walking ticket. If a black is out going to work in the wee hours of the morning -- and most people working in the Big

> Three are out there at 5:30, 6:00 o'clock in the morning waiting for a bus -- he is apt to be harassed there. [The police] will go so far as to look in your lunch bag, and things of this nature (Lewis, 1989:155).

The newspapers give several examples of such harassment of blacks. A 43 year public servant from Pakistan, Mervyn Moscrop, explained how when he and his wife were still at work, four Metro Toronto police officers came to his home and arrested and charged his 13 year old daughter. She spent the night in jail. Mervyn Moscrop's daughter had been one of a group of children who had been horse-playing in the school yard when someone was injured. He believes that the treatment which his daughter received was a result of her skin colour - not white like the injured girl's. The case was thrown out of court (The Globe and Mail, 1989d).

A Toronto district court judge found Donahue Morgan, a 30 year old Jamaican immigrant, not guilty of seven charges including assaulting a police officer, escaping custody and dangerous driving, stating that "a small group of unscrupulous police should face criminal charges for fabricating evidence in an attempt to get the man jailed" (The Ottawa Citizen, 1989b:E1). Morgan was charged in July, 1986 after he had driven an injured person near his home, to the hospital. Judge Matlow, who discounted the officers' testimony, stated that Morgan was arrested at gunpoint in his backyard, and while screaming for help, was dragged, handcuffed across a field (The Ottawa Citizen, 1989b:E1).

The judge supported Morgan's claim that he has suffered several years of harassment by the police, saying that "police were out to get a very vulnerable member of society" (The Ottawa Citizen, 1989b:E1). Morgan, who believes he is harassed because he is Rastafarian, described how police stop him about three times a week (The Ottawa Citizen, 1989b:E1).

A 24 year old black woman, Rolanda Coe, alleges that she was the victim of police brutality and unnecessary arrest (The Ottawa Citizen, 1991a:F9). She was charged with obstructing justice on November 2, 1991 after she was apparently told twice by Hull police officers to move her car. She stated that she was choked with a night-stick, thrown to the pavement face first, and held in jail overnight. Coe also claims that she was called a "nigger" (The Ottawa Citizen, 1991a:F9).

Claudius Carnegie, a 43 year old black engineer claims that he was stopped for no apparent reason on November 16, 1991 by a Nepean constable. He maintains that the police officer had "a racist attitude and treated him in a demeaning manner" (The Ottawa Citizen, 1992d:F16). The officer, he says, "called him a liar, looked at him in a threatening manner, placed his hand on his holstered gun, and closed the police cruiser window on his hands" (The Ottawa Citizen, 1992d:F16).

Discriminatory policing practices have been recognized by many authors as a significant factor in the over-involvement of native people in the criminal justice system (Morse,

1988:32).

Not only is there an unwarranted suspicion of involvement in criminal activity, there is also the assumption of guilt in cases where aboriginals or blacks are suspects, leading the police to bias their investigations. The case of Donald Marshall Jr. is a case in point. In this case the Micmac Indian, then 17 years old, was wrongfully convicted of the stabbing murder of a black youth and sentenced to life imprisonment in November 1971. Eleven years and several R.C.M.P. reviews later, Marshall was released by the Court of Appeal on evidence that confirmed his innocence. The Royal Commission established in 1986, to inquire into the Donald Marshall Jr. prosecution, concluded that there was sufficient evidence "that this miscarriage of justice could have - and should have - been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner" (Hickman, 1989:15).

Among the conclusions regarding the initial Sydney City Police response in the murder investigation, the Commission stated:

> that the immediate police response to the stabbing was entirely inadequate, incompetent and unprofessional: that the subsequent MacIntyre investigation was inadequate, incompetent and unprofessional: that MacIntyre, without any evidence to support his conclusions and in the face of evidence to the contrary, had identified Marshall as the prime suspect by the morning of May 29, 1971 and concluded that the incident occurred as the result of an argument: that the fact that Marshall was a Native was one of the reasons MacIntyre identified him as the prime suspect

(Hickman, 1989:34).

Chief Justice Hickman's criticisms were not limited to those characters involved in the initial Sydney police investigation, but also included subsequent R.C.M.P. reviews, both the defence and Crown counsels, the Attorney General's office and the Court of Appeal. The Commission concluded that Donald Marshall's arrest, conviction and sentence, resulted "in part at least, because he was a Native person" (Hickman, 1989:17).

In another case, a R.C.M.P. sergeant whose investigation led to a native man's conviction for murder in 1986, was charged with perjury for his testimony at an Alberta court of appeal. After pressures by the federal government to reopen the case, the R.C.M.P. concluded that the investigation which lead to Wilson Nepoose's conviction was flawed (Winnipeg Free Press, 1992:A4). The appeal court also questioned the quality of the R.C.M.P. investigation in certain areas, stating that there was evidence known to police investigators before the trial but it was not passed on either to the Crown or to the defence. They determined that the evidence "is sufficient to allow us to conclude that there was a miscarriage of justice, or at least that there was a real possibility that a miscarriage of justice occurred during the trial" (The Ottawa Citizen, 1992e:A4). A former R.C.M.P. officer who investigated the case privately, suggested that "R.C.M.P. errors in the case were difficult to excuse as honest mistakes

or even as incompetence" (The Ottawa Citizen, 1992e:A4).

All of this anecdotal evidence leads toward the conclusion reached by Letourneau (Law Reform Commission, 1991) that aboriginal communities do not receive the same type of service from the police as does the majority of society, aboriginal persons do not enjoy equal access to the law and are not treated equitably and with respect" (Law Reform Commission, 1991:45).

Chapter IV

The Police Response to the Accusation

To the accusation of police racism, there have been four types of standard police responses. The first is total denial. Behind this response is the assumption that the police are professional and as such they do not allow racism or prejudice to influence or affect their decision-making. This assumption colours much of the police reaction to criticisms levelled against them. When, for example, there was an outcry for a public investigation into the shooting death of J.J. Harper, in which racism was alleged as the motivation for the shooting, Chief Stevens of the Winnipeg police claimed that there was no need for an external scrutiny because the police conducted themselves in a professional manner (Hamilton and Sinclair, 1991b:90). Were any police officer to even hint at an absence of professionalism, it evokes a violent reaction. Thus, when Chief St. Germain of Montreal's Urban Community police expressed the view that the officer who shot Marcellus François made an error in judgement and that the "operation was a failure from one end to the other", the police union demonstrated exclaiming "the Chief stabbed us in the back" (The Montreal Gazette, 1992c:A3). This despite the fact that the Coroner's report claimed that the circumstances of the death pointed to a series of individual errors based on the lack of professional judgement

and the lack of adequate training and procedures regarding the use of force, promoting the "lack of general respect for the rights of all citizens" (Yarosky, 1992:71). What the police brotherhood wanted was for the chief to point the accusing finger at the working conditions of the MUC. The shooting was attributed to an apprehension of danger in the police officer's mind. Although the Coroner believed that the apprehension resulted from "misinformation, misperception and misjudgment", (Yarosky, 1992:64) he contended that there was no evidence to substantiate that this was due to a racist attitude on the part of the individual.

The findings of the investigation of police shootings, be it conducted by the same police force or by other police forces, also reflect the police belief in a police professionalism. Most frequently those investigations result in the conclusion that the officer involved was not guilty of any wrong doing, which, the visible minority community claims gives the police the green light to shoot and not be concerned about any serious reprimand (The Ottawa Citizen, 1991b:A11). However, it is more likely that the conclusions derive from the manner in which the investigations are conducted. Hamilton and Sinclair (1991a) found that the internal investigation of the shooting death of J.J.Harper was handled differently from other homicide investigations (Hamilton and Sinclair, 1991b:41). Police killings are police killings and not homicides. The question that the investigation addresses

is whether the circumstances of the killing justified it. Jayewardene and Talbot (1990) found, in their investigation of the Internal Affairs Section of the Ottawa Police, that the conclusions arrived at in these investigations stem from the answer to three basic questions - (1) Are there departmental rules and regulations to govern the behaviour of the police officer in this situation? (2) Were these rules and regulations followed? and (3) Was the training given the police officer sufficient to enable him to make a proper decision? It is only when there is a wanton disregard of the rules and regulations that the possibility of officer wrong doing is considered.

The police are resentful of any criticism against them since it assaults the notion of police professionalism. The resentment, however, is based on the claim that "unless you are one of them, you cannot understand the experience of a beat cop". The assumption of police professionalism and the resentment of the police to any doubt expressed about it, is also reflected in any further action that is taken in police shooting cases. When charges are laid in these cases, there is again a strong reaction from the police union. Thus, when charges were laid against a Metro Toronto police constable for the shooting of a black man, killed in August 1988, the police union met and denounced the Attorney General, calling for his resignation (The Ottawa Citizen, 1989c:A3). It is not only the police who contribute to this assumption. The public also

appears to do so. When disciplinary action was taken against a Montreal police officer for unjustified use of force in the killing of a black teenager, a Quebec Labour Department arbitrator ordered his reinstatement, explaining that the officer had suffered enough in lost wages (The Globe and Mail, 1989:A4). When a police officer is taken to court, there is a tendency on the part of juries to find the accused police officer 'not guilty', prompting the remark: "If Canadian juries won't convict cops, why continue to charge them" (Ottawa Citizen, 1992f:A2)? In fairness to the juries, it should perhaps be pointed out that the question that they are called to answer in these homicide trials is not whether racism motivated the killing but whether the killing was done with malice aforethought. Most often the reason given for the shooting is that the police officer felt that his life or the life of another police officer or citizen was threatened. That the prisoner was attempting to escape is also a reason frequently proffered. Sometimes, it is claimed that the firearm discharged accidently. Under these circumstances, the police officer is entitled to shoot.

The police defend their shootings, pointing to increasing rates of violent crime. "The officers everyday risk their lives. The public need faith in their police department. For people to say we're trigger-happy is totally unfair" (The Vancouver Sun, 1992b:B1). They argue that the increase in violent crimes and the proliferation of handguns and assault

weapons, makes the use of a certain amount of force unavoidable at times (The Vancouver Sun, 1992a:A3). The police admit that at times they intervene too fast, but they claim they are nervous and stressed, having to be prepared always for a possible life-threatening situation and are compelled to make split second decision in a "shoot or be killed" situation (The Vancouver Sun, 1992b:B1).

A second response lays the blame for the police reaction on the minority community. For the recent tension between the police and the black community, the Chief of Metro Toronto Police blamed some leaders of the black community. He claimed that they were "fanning the flames of discontent" and causing false perceptions, particularly among black youth. Some black leaders, he claimed, are advocating violence, possibly for their own political gains (The Toronto Star, 1990b:A1).

As far as the behaviour of the blacks are concerned, a Montreal police spokesman contends the blacks, in particular the black anglophones resist arrest and "pester" officers with all sorts of questions and accusations of racism (The Montreal Gazette, 1988b:A1-A2). The officer equated black youths to "rabbits" as they attempt to flee the police. He said that his experiences and the incidents he has heard of, have lead him to believe he is justified in stating that "...blacks who have committed criminal infractions behave like veritable madmen when they are arrested or questioned" (The Montreal Gazette, 1988a:A2).

As far as the aboriginals are concerned, it is claimed that the excessive police reaction is brought on by the aboriginals themselves. A Winnipeg City police officer said of the shooting of J.J. Harper:

> Harper was the author of his own demise...The natives drink and they get in trouble. Blaming the police for their troubles is like an alcoholic blaming the liquor store for being open late (Hamilton and Sinclair, 1991b:95).

Here an alleged excessive drinking is blamed.

Jackson describes the pervasiveness of the "equation of being drunk, Indian and in prison" which he says has the destructive effect of stereotyping native peoples as "uncivilized and unprincipled" (Jackson, 1988:5). The author explains that the fact that this stereotypical view of native peoples is no longer reflected in official government policy, does not negate its power in the popular imagination and its influence in shaping decisions of the police, prosecutors, judges and prison officials (Jackson, 1988:5).

It is not uncommon to find the trials and tribulations the natives are subjected to in the criminal justice system being attributed to the natives themselves. "He was the author of his own misfortune", was the conclusion reached in the case of Donald Marshall imprisoned for 11 years for a crime he did not commit. He was assigned the authorship of his misfortune because he lied to the police as to what he was doing in the park on the ill- fated day.

A third response lies in what is called the "bad apple

theory". Lewis (1989) explains that "this theory suggests that there may be a few bad officers whose attitude and behaviour may be biased and discriminatory, but that if they are removed then all will be well" (Lewis, 1989:26-27). He claims that though this theory is often invoked to explain police racism, it is "essentially wrong" (Lewis, 1989:26-27). While he acknowledges the possible existence of these "bad apples", Lewis contends that the root of the police-race relations problem is systemic (Lewis, 1989:26-27). The police, of course, would disagree. Despite the general reluctance of the police to lay charges against officers who are accused of racist behaviour, there does exist evidence to support a police belief in this theory. Black MUC police officers who came before the Quebec Human Rights Commission inquiry into relations between police and ethnic groups, explained that there are a small number of officers who are racist and treat black suspects more harshly than whites (The Montreal Gazette, 1988b:A1). Members of the black community believe that it is more than simply a few individual officers who are racist. They believe the organization itself is racist. They argue that the existing police culture is racist and "out to kick black butts...[because] they think we're pains in the asses" (The Toronto Star, 1990c:B5).

The racism which the minority communities see in police behaviour is thought to derive from predominantly, white middle class police forces being ignorant of and insensitive

to the culture of others, complicated by the adoption of a paternalistic attitude. The operation of the bad apple theory becomes particularly obvious when the public criticism of police action tends to tarnish the police image. Critics have argued that the Quebec police force effectively avoided an evaluation of its performance during what has come to be called the 1990 Oka crisis, by centring out 39 individual officers to face disciplinary proceedings for several incidents during the crisis in what were referred to as "highly visible proceedings" (The Ottawa Citizen, 1992g:A4).

A fourth response lies in the claim that the police are essentially a reflection of society and that any racism found in the police is no more than the racism prevalent in society at large. The Quebec Police Federation, for example, suggested that some of its members may be racist because they are the product of a xenophobic society (The Globe and Mail, 1988:A4). They said that "the police reflect Quebec society exactly" (The Globe and Mail, 1988:A4). They admit that individual officers may possess racist mentalities, yet they argue that this is unavoidable since they merely reflect the racism in a society of which they are a part. Again, the Chief of Police and counsel for the Winnipeg Police Association suggested before the Manitoba Justice Inquiry that the presence of racism in the force simply was reflective of racism in society and therefore was not a problem which needed to be addressed (Hamilton and Sinclair, 1991b:111).

Lewis takes exception to this claim. He contends that the police organization is one that least truly reflects society due to its largely white male composition (Lewis, 1989:17). He acknowledges that racist attitudes do exist in police forces and supports this with a 1989 study by Joseph Fletcher at the University of Toronto (Lewis, 1989:18). This research indicates that:

> racist attitudes are represented in Canadian police forces at least to the degree that they are present in society as a whole. ...Thirty percent of surveyed officers mainly agreed that when it comes to the things that count most, all races are certainly not equal (Lewis, 1989:18).

Reflecting perhaps, another aspect of this same sentiment is the finding of the Manitoba Public Inquiry, that the over-representation of the aboriginal people at each step of the judicial process, from the charging of the individuals to their sentencing, could be traced to immediately after the Second World War. At this time, the R.C.M.P. began consistent enforcement of the Canadian law and exposed the aboriginal people to a justice system which deprived them of political, legal and economic control over their destinies.

Some police leaders claim that the problem is that much of the policing mandate and functioning today are not meeting society's needs, particularly those of the aboriginal peoples (Head, 1989:52). Assistant Commissioner, Robert Head explains that as a result of years of institutionalized policing based on precedence and not innovation, policies concerning aboriginal peoples are being formulated without an adequate

basis of knowledge. He quotes Superintendent of the Edmonton City police Department:

> Today's policing product has been molded very much by the mind-set of the succession of police bureaucrats over the past several decades. It has become what they thought it should be. Those mind-sets were the single, most influential ingredient in shaping policing as it exists today. But what about those mind-sets? Well, unfortunately, history shows that the typical police mind-set is predominately process-oriented, ultra-conservative, and preoccupied with control rather than creation; control of the actions of police officers rather than finding and creating solutions to community problems. Centralized command likes one thing of a type, not many, and so, as consequence, we go out of our way to hire the brightest people we can find and then proceed to teach them to follow orders. It seems to me that God has worked so hard to make us all different yet policing has worked so hard to make us all alike (Head, 1989:52).

As an example of this rigid thinking, Head points to the limited success the police have experienced in recruiting native persons to the force. This he says, is due to the police attempting to recruit only those individuals who fit into their own image of a typical R.C.M.P. member (Head, 1989:126).

In his discussion concerning allegations of police racism, Jayewardene (1990) cites several examples of police behaviour which he says tends to show that the police do act in a racist and discriminatory manner. These behaviours can also be defined simply as police abuse of power. It is the "associated connotation of differential treatment that causes it to be considered racist" (Jayewardene, 1990:34). The existence of this connotation, depends upon how the receiver

of the behaviour interprets it (Jayewardene, 1990:34). This, Jayewardene claims is the essential point, since regardless of whether the behaviour is actually racist, the belief among visible minorities that it is so, is a finger being pointed at the police, that something is wrong and needs correction.

A survey of native inmates selected from federal and provincial institutions revealed that a high (75 percent of the 230 interviewed) proportion of respondents perceived the police as discriminatory against native people (Morse and Lock, 1988:33). Another 5 percent of the respondents stated that they believed the discrimination was only sometimes. Compared with all of the other components of the criminal justice system, including the judiciary, the respondents were most certain about differential and discriminatory treatment by the police. Some of the respondents acknowledged that attitudes of native people may contribute to the negative treatment by the police (Morse and Lock, 1988:107).

Visible minority groups have argued that the police definition of a situation is dependent on the ethnic origin of the individual involved. For example, their definition of "a threat" in which force can be used, is not the same for whites and non-whites. Police officers admit that they do stereotype people. Members of the MUC Swat team have admitted that their perception of Rastafarians is that they would be more dangerous and more difficult to handle (Yarosky, 1992:17).

Jayewardene (1991) seems to attribute police racism to

police training, and more specifically to the definition of policing implied in the training programs. Head (1989) believes that racial intolerance amongst certain members is a quality attained through one's experiences and education: "As products of the larger Canadian society", he claims, "we enter its ranks with all the usual biases, prejudice and racism baggage that this society generates" (Head, 1989:80). An officer who comes to the force, already socialized to be intolerant, perhaps by being exposed to it within the family, may have his prejudice reinforced by a superior in his early years of service (Head, 1989:86). Although Head points to individual officers who may be racist, he argues that there are many other officers who are not. Yet he does not explain how in a society whose institutions seem to foster intolerance, there are so many officers who are exceptional. He hints at a beneficial effect of training. Native R.C.M.P. members, who had experienced such discrimination within the force, had told Head of the racial intolerance they saw during training (Head, 1989:85).

Head attributes the development of biased views of aboriginal people by officers policing native settlements or Indian reserves, to a lack of leadership and to social upheaval in certain native communities. The officers apparently go there with tolerant and unprejudiced attitudes, but in a short time, they have their attitudes "ruined" (Head, 1989:156). The demands placed on the police are beyond their

ability. Due to the frustration, some officers "burn out" and may develop biased views of aboriginal people in general (Head, 1989:163).

Jayewardene presents a slightly different scenario. He defines racism as "...the basing of social or political policies and actions on the belief that each human race is characterized by attributes which determine behaviours and capacities, and that a particular race is inherently superior" (Jayewardene, 1990:32). He goes on to contend that:

> although in the present day and age the belief in the inherent superiority of any one race has long been discredited, certain types of behaviour still tend to get tied to the physical attributes of race through the intervening variable of culture. The empirical linkage of culture to certain types of behaviour permits the basic racist attitude to persist disguised (Jayewardene, 1990:32).

The author explains how visible ethnic minorities may become singled out for police attention. In their daily activities, police officers make certain empirical observations concerning crime and criminals (Jayewardene, 1990; Desroches, 1992; Ericson, 1982; Skolnick, 1966). This, he says is a natural and rational response to their function as police and tells them where their investigations should be focused. In order to make these observations useful, they look for "easily discernable characteristics to make the causal linkage" (Jayewardene, 1990:33). It does not necessarily indicate racist behaviour.

The result is nevertheless, that the police do tend to

develop conscious or unconscious beliefs that members of certain groups are inclined toward a particular antisocial behaviour (Jayewardene, 1990:33). This belief then, is facilitated by the association of behaviour with values and culture (Jayewardene, 1990:33). Since visible ethnic minorities are different from the majority group, "it is easy for police to assume a dissensus over core values. They consequently get singled out for special attention" (Jayewardene, 1990:34). "Black crime", then, becomes part of the common consciousness (Lewis, 1989:22).

Chapter V

The Roots of Police Racism

The numerous incidents of alleged police discrimination over time and throughout the country, reported in the literature and the media, and attributed to the racist attitudes of police officers in several governmental inquiries, point to a pattern of behaviour common to police officers in general (Sunahara, 1992). Sunahara (1992) suggests that a proper understanding of this pattern of behaviour, needs consideration of the particular structural and subcultural demands on the police as a social institution. He claims that the discriminatory behaviour of police officers arises from the overriding concern to maintain amicable relations with other social institutions calling for a subordination of the police officer's role as peace keeper. Consequently, in the performance of their daily duties, they are compelled to treat different groups differently (Sunahara, 1992:140). In addition to this, Sunahara claims, is the hierarchial, para-military structure of the police organization, whose culture fosters discipline, conformity and control, and relegates subordinate officers to play a secondary role in an investigation and effectively prevent them from speaking out when an investigation is being conducted improperly (Sunahara, 1992:144). This characteristic, Sunahara claims, is responsible for the

arbitrary manner in which the decision to lay charges is made. Then there is the inflexibility of the organization making police officers resistant to change and indifferent and insensitive to the special needs of different peoples (Sunahara, 1992:148). This explains the manipulation of evidence and the negligent and incompetent manner in which cases involving aboriginal persons, are handled (Sunahara, 1992).

The structural demands of the police organization impact on the individual police officer through the occupational subculture. What determines the occupational subculture of a group are the central concerns of that occupation (Becker, 1961;Skolnick, 1966;Jayewardene, 1991). Because of the unique combination of elements in the police officer's role, police as a group tend to develop a particular way of viewing the world (Skolnick, 1966:42).

The police officer's role is largely influenced by elements of danger and authority, which, Skolnick suggests, must be understood within the context of both a paramilitary organization and the constant pressure for police efficiency (Skolnick, 1966). Subcultural norms arise from the particular role of the police in a democratic society. On the one hand, the police are expected to practise maximum initiative and efficiency, while at the same time, they are constrained by certain democratic principles. In order to perform their duties, the police must therefore violate, at times, both

legal and administrative guidelines (Skolnick, 1966). To apprehend a suspect, for example, the police may be forced to violate certain procedural dictates respecting the citizen's rights under the democratic rule of law. The individual police officer is permitted the use of discretion in the fulfilment of his duties. It is most commonly exercised on the streets away from the scrutiny of management and upper ranks and is recognized by the courts. An important question in this connection, is how his ability to use discretion is fashioned. What are the forces that impact on it?

The police officer's role is defined by the substantive criminal law and guided by the formal and informal rules and regulations of the police organization, both of which may be accused of bias. The police mandate is to enforce the law and maintain an order, which, in a democratic and multicultural society, becomes ambiguously defined (Skolnick, 1966;Jayewardene, 1979/80; Jayewardene, 1991). The working conditions of the police officer are largely produced by the contradictions between real and perceived police work, the seeming arbitrariness of administrative and supervisory decisions, and the bureaucratic demands for procedures and appearances (Ericson, 1982:58). It is in this context that the police officer is required to enforce the law and maintain order, and he must do it by engaging not only in the reactive activity of detecting crime and apprehending and prosecuting criminals, but also in the proactive activity of preventing

crime, calling for a prediction on the part of the police officer as to which persons are likely to commit crime (Jayewardene, 1979/80). Proactive steps are directed at "symbolic assailants" - those who represent a threat to public order (Skolnick, 1966).

The frame of reference of the police officer comes from the criminal law and a general sense of social appropriateness (Strecher, 1971). He understands his broad duty to preserve the peace as is conventionally defined. However, the discretionary power vested in him, makes him perceive of himself as one empowered to define and respond to situations (Strecher, 1971;Skolnick, 1966;Jayewardene, 1991). His commitment to middle class values and his rejection of values dissonant with his own gives him a framework for identifying potential criminals. It leads him to distinguish behaviour that does not appear to represent middle class values and to place under increased surveillance certain groups of people, interpreting certain forms of their behaviour as definite indications of criminality (Jayewardene, 1991:89). Thus lower status individuals and groups, of whom ethnic minorities make up a significant proportion, are targets of police suspicion, observation and investigation.

The element of danger prominent in the police officer's role, also has an impact (Skolnick, 1966; Desroches, 1992). Danger causes the police officer to be particularly suspicious of his environment. Under constant pressure for efficiency,

in order to identify danger, the police develop a "perceptual shorthand" (Ericson, 1982; Jayewardene, 1991) which allows them to categorize their area of patrol into 'criminal' (or potentially dangerous) and 'respectable' (Jayewardene, 1991; Skolnick, 1966; Ericson, 1982; Winslow, 1968). The police become isolated and alienated from these groups who they define as criminal. Unfortunately, they become isolated and alienated from the groups they define as respectable as well. Playing a part here is the reluctance of conventional society to be implicated in the danger experienced by the officer, which conventions of friendship would expect (Skolnick, 1966). A further possible source of their isolation is the public's accusation of hypocrisy at the police enforcement of morality. Characterised as masculine and athletic, police officers do not appear to uphold puritan beliefs associated with sex and drinking (Skolnick, 1966; Jayewardene, 1991; Desroches, 1992).

The working environment of the police officer is also conducive to the development of certain other cognitive and behaviourial propensities. The isolation and alienation renders the police officer unable to interpret, predict and influence his surroundings by way of cues, such as gestures, customs, words and facial expressions (Strecher, 1971). It results in rousing in the police officer feelings of anxiety and frustration during encounters with the community, causing him to anticipate negative outcomes with all community members since he cannot make social distinctions within the

population, but especially members of visible minorities (Strecher, 1971:89).

The police officer expects as a peace keeper and law enforcer to be treated with deference from the public. There is hence, a tendency for the police officer to respond to any behaviour he perceives as disrespectful or challenging, regardless whether it is justified (Henshel, 1983; Forcese, 1992). Many police-citizen altercations, which commonly originate in such simple encounters as traffic enforcement, result from this expectation. The police officer's suspicious outlook reinforces his need for control in every situation. The absence of control is threatening. He learns that certain environmental cues call for a specific response in order to maintain control and authority. If an officer is not initially successful in taking control of a situation, he may resort to arrest or force which may result in the confrontation reaching escalating to violence, unnecessarily.

Policing of visible minorities or native persons is particularly problematic, since from a police perspective their behaviour tends to be unpredictable, to show less deference to the police and make particular demands on the police (Forcese, 1992). The more uncertain is the officer's perception of his ability to predict danger, the greater is his perception of threat, and the greater is his need to assert his authority and control and the greater is his perception of danger. One means of reducing the perception of

danger is to elicit a response from persons involved. This has been suggested as an explanation for stopping and questioning people (Skolnick, 1966). As persons involved in the perceived dangerous or problematic situations tend to be members of minority groups, police treatment of these people is typically different than that of the rest of the population.

The conflict between the police and members of visible minorities arises particularly in the context of proactive policing, since this policing is directed at those who are considered to present problems of public order, or who are out of place (Gordon, 1983).

The identification of the dangerous or problematic is not done in an indiscriminate manner. It is based on cues which the police officer develops from his conception of crime and his working environment, which McGahan (1984) claims, includes a cognitive mapping of groups police define as troublesome. Ericson (1982) suggests that there are four general types of cues. First there is the cue of individuals out of place. This cue refers to individuals engaged in activities at a time or place the police officer deems not normal (Ericson, 1982:86-87). Then there is the cue of individuals in particular places. This cue refers to persons or groups found in what are considered known trouble spots (Ericson, 1982:87). Third is the cue of individuals of particular types regardless of place. This cue refers to persons typed as

"trouble makers" (Ericson, 1982:87). Finally, there is the cue of "unusual circumstances regarding property" (Ericson, 1982:87). This cue is provided by the condition of a particular piece of property. The problem with these cues is that there exists no universally accepted manner in which they should be interpreted for application. The police officer is left on his own and frequently resorts to stereotypes based on status cues, such as appearance, language, and behaviour (Ericson, 1982). The citizen's socioeconomic standing and race are central to the officer's decision-making, since these influence the officer's perception of demeanour, the nature of the incident (seriousness, evidence available) and whether the person is out of place (Ericson, 1982:17). The less information the officer has in a particular situation, the more he will resort to his stereotypes.

It is the potential for danger which the police respond to in the suspect (Desroches, 1992). They argue rightly that the awareness of danger is necessary for the survival of the officer. One outcome of this awareness is that the police have a tendency to interpret a multitude of stimuli as dangerous (Jayewardene, 1991:82). This perception may provide an explanation for many police shootings. One such incident is the March 1990 R.C.M.P shooting of a Vancouver man. The victim was shot in the chest within 3 seconds of opening the door of his apartment to a tactical squad assisting a drug squad in the execution of a search warrant.

The officer who fired claims he believed the victim had a weapon in his hand; it was in fact a t.v. remote control (The Vancouver Sun, 1992c). This perception of danger, whether real or imaginary, calls for a reflex response which may result in needless injury or death (Strecher, 1971).

A second outcome is that police officers are unprepared to deal effectively with the majority of situations they encounter: those situations which are not dangerous (Jayewardene, 1991). Always anticipating trouble, the patrol officer is likely to alter each of his encounters into dangerous situations. His uncertainty which accentuates his need to gain control and authority in every situation, reinforces his alienation from the community and invites conflict in circumstances which may have been resolved peacefully.

Another contributing factor is the development of emotional barriers to feelings of anxiety and fear (Jayewardene, 1991:83). These feelings are considered a hindrance to effective job performance. A psychological mechanism known as reaction formation, results in the repression of disturbing thoughts and "the conscious assertion of the opposite" (Jayewardene, 1991:83). This effect referred to as the "John Wayne" Syndrome, results in exaggerated attempts to avoid any display of weakness, by the adoption of a stance of "hyperaggressiveness and sometimes even downright recklessness" (Jayewardene, 1991:83). In his analysis of

cases of abuse and brutality by the Metropolitan Toronto Police, Henshel found this to be a potent factor. He found most police offenses resulted from "excessive zeal in the conception and performance of duty" (Henshel, 1983:7).

Developed from the need for support and trust in the face of danger, the police 'esprit de corps' depends upon the constant loyalty to one another and the institution, and the expectation of silence by all members (Jayewardene, 1991; Sunahara, 1992; Vincent, 1990). This normally allows deviant or abusive behaviour by police officers to go undetected by the administration. Henshel (1983), studying cases of police abuse and crimes in Metro Toronto, describes how lies and cover-ups form a part of the normal behaviour of the police in these instances. The 'esprit de corps' and the feeling of brotherhood have been recognized as a serious barrier to efficient management and police reform (Jayewardene, 1991:83). This point has been repeatedly stressed in the numerous governmental investigations into police behaviour. The Royal Commission on the Donald Marshall Jr. Prosecution, for example, concluded "the failure of other police officers or police management to question or criticise improper aspects of the investigation" was one possible reason for the wrongful prosecution of the Young Meti (Hickman, 1989:268).

The impact of the structural demands of the police organization on the behaviour of the individual police officer is mediated through the education and training that is offered

a police officer in the capacity of police officer. Several governmental inquiries into police racism, identified recruit training and socialization as a source of their discriminatory behaviour. The Ontario Race Relations and Policing Task Force (Lewis, 1989) was critical of deficient recruit training and socialization which is believed to play a role in police discriminatory behaviour. Lewis suggested that the focus in recruit training on the traditional law enforcement approach to policing was the main weakness. Encouraging officers to take a very narrow view of the police role as enforcing the law or crime fighting, it impedes the development of positive community relations. From this perspective, the police may view all citizens with whom they come in contact as criminally inclined (Lewis, 1989:60). Indeed, Harding (1991) points out that the net widening effect also experienced by some of the new tribal policing programs are a result of this emphasis on law enforcement in police training. The limited resources available for the aboriginal communities, results in the continued focus on crime control, rather than preventative measures aimed at the underlying social, political and economic problems (Harding, 1991:372).

It could, however, be argued the very role of the police is based on the theory that there always exists some departure from normality to which a response is demanded (Erickson, 1974) and that this fact must be taken into consideration in determining the approach adopted in training officers to

fulfil their duties.

The Task Force also pointed out as a second shortcoming the overemphasis in training on the final stage of conflict -- shooting. This overemphasis was at the cost of the police use of discretion to adopt other means of conflict resolution. The Alberta aboriginal Justice Inquiry contended that "the police unwillingness" (Cawsey, 1991:2-52) to compromise can be attributed in part, to the focus of training on development of reactive policing skills with the result that the police are not trained adequately for diversionary tactics. A third observation the Ontario Task Force made was that there was a lack of commitment, partly as a result of limited support by management, to certain programs such as race relations instruction and this contributed to negative attitudes.

One of the main goals of educational programs is to acquaint the student with the existing body of knowledge, in either a general or specific way (Jayewardene, 1991:74). Jayewardene goes on to explain that when the education is for a specific purpose such as the performance of a specific job, then it is a specific body of knowledge with which the program must acquaint the student. The specific knowledge that any person seeking to enter an occupation that deals with human misfortune comprises:

> 1. knowledge about the cause of the misfortune, about the possible manner in which circumstances can conspire to produce the configuration necessary to generate the misfortune;
> 2. knowledge about possible preventive and remedial action that could be taken; and

> 3. knowledge about the approach that should be adopted to ensure the efficacy of the action taken - the need for a dispassionate interest in the work so that the sobriety needed for good work will always be maintained (Jayewardene, 1991:75).

The police are, generally, not concerned with the causes of crime. Their mandate does not involve this aspect. They must carry out their functions within the framework of the criminal law which assumes individual free will. "The law defines what constitutes a crime, how the commission of a crime could be proved, and how the evidence needed to prove the commission of the crime should be collected" (Jayewardene, 1991:75). This knowledge, it is believed, is required to enable the individual to perform his job effectively and efficiently. Training programs, consequently, seek to impart this knowledge. In addition to this, there are other aspects of police work with which the recruit should be acquainted. These comprise what police work entails, the dangers that a police officer could expect to encounter during an investigation of a crime or the apprehension of an offender, and the proactive and reactive steps that could and should be taken to avoid injury not only to the officer concerned but also to members of the public. Knowledge about these aspects, consequently, also comprise part of the knowledge imparted in the training program. The training that a recruit is given comprises a period of formal training in an academic setting when instruction is given by instructors acknowledged as specialists, and a period of informal training in the field

when the recruit is paired with an experienced officer and required to perform under his guidance.

A summary of the Ontario Police College 1971 and 1973 recruit training reveals that sixty percent of the curriculum concerned law, traffic law and collision investigation, and law of evidence. The remaining time is devoted to physical activities, police procedures and "miscellaneous" activities including registration and examinations (Erickson, 1974:47).

Current Ontario Provincial Police recruit training emphasizes the same content. Significant proportions of time are devoted to the teaching of (a) the law - the criminal law, provincial statutes, special statutes, as well as the law of evidence; (b) procedures - investigative procedures, search and seizure procedures, arrest procedures, and courtroom procedures; and (c) police rules and regulations such as those governing motor vehicle pursuit, the writing of reports and the keeping of notes, the handling of prisoners and the use of force (Strategic Planning Committee on Police Learning and Education, 1992). A significant proportion of the time is also devoted to physical activity such as drill and firing practice where the stress is specifically on accuracy and the speed of reaction. Subjects and issues such as community policing, crime prevention, proactive policing, multiculturalism, ethics, crisis intervention, domestic disputes and wife assault, public relations, and victims are also dealt with in the training program (Ontario Police

College, 1988-1991) but only a small fraction of the time is devoted to these topics.

No guidelines exist as to the content and extent of the informal training. The training officer, or coach, as he is called, is expected to point out to the trainee the essential features of each incident as it occurs, explaining the finer points, the features of the incident that should be used in its interpretation, the manner in which a good police officer should react and the reasons for that reaction, so as to reinforce the principles that have been learned in the formal training and to enable him to fashion those principles into procedures for applications in the real life situations.

The emphasis on law and procedure, with their philosophies of establishment of authority and individual responsibility, assists in the recruit developing an orderly perspective of the world. The result, Strecher suggests, is that the police officer understands change in his world as the outcome of specific, logical and planned strategy to a problem (Strecher, 1971:54). Factors of change in his environment, such as the social structure, value systems, and cultural institutions, are therefore generally not understood by the police officer (Strecher, 1971). It has been suggested that the tensions between the police and cultural/ethnic minorities may be attributed to the police lack of understanding of the nature of social change (Strecher, 1971).

While training is intended to enable the recruit

integration into his new role, it makes a major contribution to his conception of his role. Studies of police socialization have shown that recruits enter into the initial phase of training with idealistic ambitions of law enforcement and public service. The emphasis in training on the mastery of technical skills involving firearms, investigation of crimes, and report writing, contributes to the recruit's conception of his role, replacing original service interests with crime fighting interests. Upon completion of their initial training, recruits were found to exhibit a decrease in their inclination to use discretion and an increase in their propensity to use force (Erickson, 1974:129). Playing a part in decreasing the inclination to use discretion as well as in increasing the propensity to use force were background characteristics (Erickson, 1974:108). Recruits with a lower class background, with only a secondary education, and with some prior police experience were affected more adversely than those from a higher class background, with post-secondary education and with no prior police experience (Erickson, 1974).

All training has as one of its purposes the narrowing of the range of possible behaviours in a particular situation (Strecher, 1971:3). This is necessary not only to produce effective behaviour but also to maintain the stability of the organization. Yet, it could result in the production of "tunnel vision", in which the individual's perception and

behaviour becomes so narrow that he is unlikely to understand much of what occurs outside of his immediate worksetting (Strecher, 1971:3). By reinforcing adherence to rules and procedures, obedience and conformity, police training promotes rigid, linear thinking. Erickson contends that the organization of instruction at the Ontario Police College..."seem[s] unlikely to enhance an orientation involving flexible thinking towards available means" (Erickson, 1974:47).

In addition to this, whatever the content and method of training maybe, running through the whole procedure is the basic thought that police work is dangerous and that it behoves every recruit to equip himself with the wherewithal to fend off any and every attack (Jayewardene, 1991). To this end, Jayewardene (1991) argues that "the content and methods of training seek to heighten the perception of danger" (Jayewardene, 1991:82). Recruits are encouraged to rehearse frequently, mental role-playing of dangerous situations and possible reactions to them. Examples of incidents often involve injury and death to police officers:

> Visualize yourself on patrol and live through a crisis. Picture everything from scanning patrol to the full crisis (in slow motion). See a vehicle come to a stop and the driver exiting while shooting in your direction. Observe your reactions. Do this so often that if you were confronted, the role playing would takeover. Even if you get hit, injured or caught in a bad position, keep struggling until you come out on the top (Ontario Police College, 1990f:9).

Recruits are informed that the most important purpose of their training is the physical and mental preparedness to be alert to and respond to danger before it happens (Ontario Police College, 1990f:8;Ontario Police College, 1986:7). There is an expectation that the recruit would develop a state of constant alertness to suspicion arousers. They are taught to continually observe and question the normality of what they see and hear (Strecher, 1971:61). The "Golden Rule for observing gestures" is emphasized in training:

> 1.You must know what to look for.
> 2.You must continually force yourself to look for these gestures (Ontario Police College, 1991c:6).

A predominant theme in recruit instruction is the ability of the police officer to sense and react reflexively to the potential for danger. This, they are told exists in any police-citizen encounter (Ontario Police College, 1986:6;Strecher, 1971). Police training encourages the recruit to develop from his experience in policing, a 'sixthsense', which is referred to as the ability to perceive potentially troublesome behaviour or events (Ontario Police College, 1991c:4). To assist in developing this sixth sense, use is made of real and simulated scenes on videos and role playing. A troublesome behaviour or incident is traced back through its antecedents to the point at which the officer is able to isolate a prior incident as crucial in a chain of causation and extract from it characteristics which could be used as criteria in the prediction of a future trouble some

incident. It is expected that the recruit will learn to draw conclusions of future events or behaviour, from prior events or behaviour based on a certain chain of causation, and that he may thus be prepared to make the correct decision spontaneously, amongst what may be ambiguity (Jayewardene, 1991:76).

The mind set assists the police officer to categorize incoming information, and develop criteria which would help in the identification of troublesome situations. Because his responsibility entails maintenance of the status quo, behaviours or events which do not appear normal, are perceived as troublesome. It is these behaviours and events the officer has learned to be suspicious of and to investigate. However, as the police officer's interest centres on the individual who behaves in a particular fashion rather than on the behaviour per se, what is abnormal entails characteristics of the individual behaving in that fashion. Individuals are thus categorized and stereotyped.

Recruit instruction also reinforces this stereotyping in the way "potential threats", and hazardous situations, in which officers may be particularly susceptible to death or injury, are identified (Ontario Police College, 1990f:27). The training also aims to promote in the recruit the ability to differentiate those in his working environment who require protection and those who do not.

Adding to the problem is the on-the-job training. Most

recruits often complain that the formal training they receive is of little use on the streets. The recruit is consequently forced to cast aside what he has learned to learn an entirely new set of working principles on the street - those based on the experiences and perspectives of veteran officers. The more seasoned officer passes on to the recruit his methods of identifying and dealing with non-conforming groups. Frequently the knowledge that is thus transmitted only serves to "toughen [the recruit] to the long-run prospect of dealing with lower-class behaviour, and to crystallise this toughness" (Strecher, 1971:91).

The Ontario Task Force on Policing (Lewis, 1989) describes the significant role these officers play in the socialization of recruits, pointing out that it can facilitate or hinder positive relations with the visible minority community. Recommendations for a "train-the-trainer" program were also made concerning the race relations trainers, in order that they may be sufficiently qualified as not to even inadvertently "...perpetuate, reinforce or increase the level of stereotyping, prejudice, discrimination and racism that occurs within the organization" (M. Armour cited in Lewis, 1989:115).

Conclusion

In an attempt to ensure peace, order and security, society calls for the control and regulation of opportunities to commit crime. Thus crime prevention, the theory on which law enforcement is based, calls not only for the identification of criminals, but also potential criminals. This identification, which is premised on the police conception of moral and social order, must have visible characteristics. What is problematic, is that the police officer comes to develop these visible characteristics to identify criminals. Accordingly, it is not the police officer himself who is racist, rather, his behaviour. Though not necessarily acknowledging the role of the police as the root cause, various solutions have been proposed to address the problems experienced by racial minorities and aboriginals in the criminal justice system.

First, there is the argument that an increase, change and improvement in police personnel training, (Strategic Planning Committee on Police Training and Education, 1992) particularly recruit training, are required to meet the demands of a rapidly changing and culturally diverse society. It is suggested that the present focus in recruit training from the traditional law enforcement approach must be changed to an emphasis on a service-oriented approach. In addition to increased training hours, it is proposed that police officers

require the "knowledge, skills and abilities", such as interpersonal and sensitivity skills, communication skills, and conflict avoidance skills, "which facilitate or enhance human interaction" (Strategic Planning Committee on Police Training and Education, 1992:178-181). Another solution put forth is the improvement and expansion of race relations and intercultural training courses (Simms, 1993; Lewis, 1992) which are premised on the belief that the majority of misconceptions which result in police-visible minority altercations, could be avoided.

Any liberalizing effect which current police recruit training programs are described as having, has been criticized as momentary, and is lost once the recruit experiences the reality of policing on the streets, (Uglow, 1988:106,144) and is socialized into the role of police officer. Moreover, Harding (1991) explains that initiatives such as cross cultural training programs reinforce the belief that problems faced by aboriginal peoples in the criminal justice system are due to attitudes, and that correcting the use of police discretionary powers is the solution. None of the attempts at reform to the criminal justice system have considered alternatives to the fundamental role policing, with the effect that social control is strengthened, and more aboriginal people are criminalised (Harding, 1991:367-372). The author goes further, advocating that social policy must reflect the recognition of colonized peoples as a distinct culture.

A second proposal by Uglow (1988), in light of what he interprets as increasingly obtrusive policing methods, is to adopt a solely reactive stance. This would restrict police intervention to allow "response only to the commission of a criminal offence or breach of the peace, or the immediate apprehension of one of these" (Uglow, 1988:145). The author defends this as "a yardstick which reduces the possibility of arbitrary and discriminatory policing and emphasizes two salient characteristics -- that policing should be minimal and that it is a public service" (Uglow, 1988:145).

This may alleviate some of the problems experienced by visible minority and aboriginal peoples, such as regular over-policing, harassment, and the belief that they are singled out for police attention. This model of policing may be one step closer to ensuring equal treatment for these groups. Yet it's potential to realise the peace and security of the public is limited (Leighton, 1991:511). Since criminal activity impedes these ends, Leighton suggests that at a minimum then, the police should give the appearance of doing something to prevent crime.

Third, is a proactive orientation to policing, which is embodied in the readoption of certain community policing strategies. The police claim they are implementing community policing in an effort to allow the public to voice their concerns and suggest police responses to these. They also argue that this provides the means to ensure the public with

the quiet enjoyment of their lives, since the principle of partnership is based on the assumption that the level of crime, disorder and fear in a community is inversely related to the level of community participation in policing (Leighton, 1991:487). Greater police intrusion into the private lives of citizens is legitimized on the basis that these methods will reduce crime and provide a safer community.

Increased proactive policing techniques employed to maintain order and prevent crime, result in the greater surveillance and control of those groups the police perceive as troublesome. The result is that more types of behaviour, particularly street nuisance and other "non crimes" (Leighton, 1991:510), are treated as potential policing problems. In an attempt to anticipate crime, the police target "hot spots" based on sociodemographic variables, and information they acquire from other agencies and the community. The problem-solving component of community policing, Leighton warns, can "get out of control" (Leighton, 1991:508), since the police targeting of "hot spots" can easily lead to targeting "hot persons" -- those persons who are criminals or those who fit the profile of criminals (Leighton, 1991:508). An "aggressive order maintenance approach" may result in the police neglecting to address the root causes of crime, and resort to bias and harassment in their policing activities (Leighton, 1991:508).

At the same time the police express their commitment to

improving community relations, continued resources are put toward maintaining specialist units. The increased development of squads to investigate specific crimes (i.e. drugs, prostitution, obscene publications) (Uglow, 1988:13) demonstrate a police initiative to address their own areas of concern (Uglow, 1988). These activities, claim Uglow (1988), reinforce police views of their role that are in opposition to the principles which community policing espouses. Police officers continue to understand that achievement means arrests and convictions, views of policing that are inconsistent with improved community relations (Uglow, 1988:44).

The activities of these squads are described as having little effect on crime, and are viewed as racist and intrusive by targeted groups. The results of such proactive operations by drug squads, for example, has fuelled resentment by visible minority groups. The bungled raid by a combined drug squad at 22 Gould Street, Ottawa, on September 26, 1991, resulted in the police shooting and subsequent death of an unarmed black man; fear and humiliation suffered by the group of black male occupants who were forced to undergo a strip search, characterised as "extreme and unnecessary" (Simms, 1993:12); and the discovery of a minimal amount of marijuana.

In her review of police procedures preceding and during the raid, with regard to the circumstances surrounding the securance of a search warrant, Dr. Glenda Simms observed "...irregularities which could be regarded as flagrant

procedural breaches of protocol in building effective community relations and ensuring the basic rights of all members of the community" (Simms, 1993:7).

Given the poor success rates of crime prevention methods and the police insistence to maintain them, Jayewardene (1991) suggests that we reexamine what these efforts are really intended to achieve. Aside from these methods overlooking the role of relative disparity as a viable cause which might be addressed, it has been suggested that current policing methods are self-defeating (Jayewardene, 1991; Platt, Frappier, et al, 1982). In an effort to make more effective, the social control of certain groups, by focusing on the offender, crime prevention methods tend to alienate the public, which defines itself in opposition to the police, rendering its cooperation at best limited (Jayewardene, 1991).

The concept of crime and its industry, controlled largely by the police, leaves the public ignorant therefore fearful. This is particularly problematic for racial minorities and aboriginals who become scapegoats for society's ills. The disregard for the same, basic civil rights enjoyed by mainstream society is justified in order to meet the ends of peace and security -- ends which are never achieved.

Given that crime in a class society is largely accepted as an unavoidable byproduct of socialization, and its consequences as impediments to the quiet enjoyment of life, Jayewardene (1991) suggests a fundamental reorientation to

policing, from one which is perpetrator-oriented to a natural disaster or service-oriented approach. This orientation presupposes the occurrence of crime, but seeks to minimize the impact of its harm. It is premised on the belief that society's sense of order can be better addressed by equipping the public with the practical knowledge concerning crime and safety, thereby addressing the circumstances which lead to the offence, but also assisting the victim to alleviate the harm experienced.

For those who believe that they are consistently singled out for police attention, police racism is real. Yet in the absence of empirically sound evidence, it remains open to speculation. Further research concerning police decision-making processes involving members of dominant and minority groups is needed in order to generate reforms which can effectively address the problems faced by racial minority and aboriginal peoples in the criminal justice system.

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