

PHASE 1 REPORT:

**AN INVESTIGATION INTO THE DISPARITY OF
JUDICIAL AND NON-JUDICIAL PUNISHMENT RATES
FOR BLACK MALES IN THE ARMED SERVICES**

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FY92 TOPICAL RESEARCH INTERN PROGRAM (TRIP)

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ABSTRACT

The Commandant of the Defense Equal Opportunity Management Institute (DEOMI) has proposed that DEOMI investigate the problem of disparity of judicial and non-judicial punishment rates for black males in the armed services. In Phase 1 of this multi-phase research project, two FY92 Topical Research Intern Program (TRIP) participants were tasked with gathering preliminary background information and identifying data sources and offices owning data. Researchers in the follow-on phases will analyze and evaluate all available data; and the final project report will be submitted in the final phase.

We concluded that disparity of judicial and non-judicial punishment rates for black males in the Armed Services does, in fact, exist. Although this disparity may be considered high, the ratio of civilian black/white rates of incarceration is twice that of the military, 4 to 1 for civilian, while the military's is 2 to 1 and declining. The punishment rates (UCMJ punishment per population) for both whites and blacks have been decreasing over the past five fiscal years. The paradox, however, is that the black overrepresentation rate (or disparity) has increased slightly over the same period, simply because the white punishment rate has been decreasing faster than the black punishment rate.

While not part of the formal tasking for Phase 1, several observations on the data gathered were offered, and some comments were made on the Uniform Code of Military Justice conference held on 6-7 April 1992. A rational, systematic approach for analyzing the punishment process was also suggested for consideration by future researchers should competent authority decide that further investigation is warranted.

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--Statement of Problem: Most data suggest that black males in the military services are consistently and disproportionately over-represented in judicial and non-judicial punishment. The Commandant of the Defense Equal Opportunity Management Institute (DEOMI) has proposed that DEOMI investigate the disparate rates, analyze the results to determine the causes of the disparity, and present guidance to the Services to facilitate further refinements to their respective Equal Opportunity (EO) programs.

--Scope: In Phase 1 of this multi-phased DEOMI proposed investigation, two FY92 Topical Research Intern Program (TRIP) participants were tasked with gathering preliminary background information and identifying data sources and offices owning data. Researchers in the follow-on phases will analyze and evaluate all available data. The final project report on the problem of disparity of judicial and non-judicial punishment rates for black males in the armed services will be submitted in the final phase.

--Phase 1 Methodology: The intent of Phase 1 is to gather data and identify offices/sources owning data. We used the extensive literature available at the DEOMI library, augmented with inter-library loans, to develop our reference lists. We borrowed several articles and books from the Florida Institute of Technology, and contacted the various Service representatives for specific articles and reports. We also contacted several primary researchers in the field, as well as the EO representative at the Department of Defense (DoD). We utilized data from a separate draft report prepared by an adjunct TRIP intern. The report consists of an analysis of discipline rates among racial/ethnic groups, prepared from the Military Equal Opportunity Assessment (MEOA) reports.

While not part of our formal tasking for Phase 1, we made several observations on the data we gathered, as well as provided some comments on a Uniform Code of Military Justice (UCMJ) conference held at the Defense Equal Opportunity Management Institute on 6-7 April 1992. We also recommended, for the consideration of follow-on researchers, a rational, systematic approach to analyze and evaluate disparities and biases in the punishment process, so that they can determine the causes of the disparity of black punishment rates.

--Results: Appendix A briefly summarizes studies done and data gathered, up to 1989. The summary is in three parts: a chronological time-line giving the sequence of historical events and existing studies; brief narrative summaries of these items; and

summaries of the more recent military studies. Appendix B contains selected references of various books, periodicals, and studies germane to the topic, all of which we have physically gathered. Appendix C provides a list of references we have obtained via inter-library loan and have since returned, as well as a bibliography of references that we do not have but may be germane to the topic. Appendix D contains excerpts of the analysis compiled and charted by the adjunct TRIP intern. Appendix E is a listing of all pertinent points of contact and their functions within the DoD.

--Historical: The late sixties and early seventies were tumultuous in terms of race relations and affirmative action issues (Appendix A). From these times arose some of the earliest studies in disparate rates between blacks and whites in the UCMJ system. A steady stream of research occurred in the late seventies and through the late eighties, beginning with the 1974 Navy study on non-judicial punishment. Since February 1988, when the Center for Naval Analyses (CNA) conducted its study of disparities in Marine Corps non-judicial punishment rates (Horne, 1988), there was no further formal research on the subject. Recent interest in the media (Harper, 1991; McGonigle, 1991; Timms, 1991), and the "Fletcher Report" brought about a resurgence of interest in the topic of disparate rates. Although there has been a steady decline in the number of UCMJ court-martial convictions and NJP awarded for both whites and blacks over the last five years (Appendix D), the punishment rates (UCMJ punishment per population) for white males have been decreasing faster than that for black males; hence, the disparity (or overrepresentation) between the black rate and the white rate not only continues to exist, but actually widens somewhat. At least two military studies to date (Nordlie, et al. 1979; Horne, 1988) opined that there is no evidence that the UCMJ system itself is unfair, and most Service researchers tend to agree.

--Findings: From analyzing the MEOA reports, we found that for FY91, blacks in the military were 2.2 times more likely to receive courts-martial convictions than whites. Blacks were also 1.7 times more likely to receive NJPs than whites. Charles Moskos, a professor at Northwestern University, found that blacks in the military were 2.1 times more likely to go to jail than whites, whereas, blacks in civilian life were four times more likely to be jailed than whites (Matthews, 1991). According to Nordlie, et al. (1979), black males were overrepresented in the commission of violent crimes and confrontational crimes, while whites committed the majority of crimes against property, and military specific offenses. Blacks were underrepresented in drug arrests, and were overrepresented in courts-martial for crimes against persons. Blacks also received NJP, or punishment under Article 15 of the UCMJ, at higher rates than did whites (Nordlie, et al., 1979).

--Meaning of Disparity, Inequity, and Institutional Discrimination: In common usage, disparity means there are distinct, consistent, and observable differences in the punishment rates between blacks and whites. Equity, on the other hand, means the UCMJ is applied

in a racially fair manner by disciplinary decisionmakers. Hence, disparities, by themselves, do not necessarily indicate inequity because the observed differences may be caused by other factors. Institutional discrimination focuses on the practices of organizations that produce discriminatory effects, whether or not intended, and it can occur quite independently of the attitudes and motivations of individuals who may unknowingly perpetrate it. Thomas, (1988), indicated that the results of institutional racism interact across institutions, and its effects tend to accumulate. For example, the inferior education historically provided for blacks in American society interacts with test scores required by other institutions, which affect chances of promotion and success, and this can result in less technical jobs, lower income, etc.

Differences in overall punishment rates, by themselves, are not necessarily the result of inequity. It is true that inequity can cause differences, or disparities. However, these differences can also reflect different styles of leadership (reflecting the most effective style for that particular type of command). Or, they can infer institutional discrimination whereby some selection process is operating so that blacks are more likely to get into the military criminal justice system. Finally, if blacks were to commit infractions at a higher rate than whites, this could be reflected in the disparate black punishment rate.

--UCMJ Conference: A UCMJ Conference was held on 6-7 April 1992 at DEOMI to bring researchers, EO personnel, and military law experts together to examine the disparity phenomenon, and discuss the direction the Services may want to take. The conference was stimulating in that it provided insight for people who have been struggling with this problem for years. The consensus of the attendees was that the UCMJ system, in and of itself, is equitable. It is also their opinion that any bias that may exist, probably does so at the NJP level rather than at the court-martial level, simply because they believe that there is so much more discretionary power at all levels of the NJP process.

Most also agreed that some of the disparities might be attributable to "intervening variables," or events that have occurred prior to the offender committing the infractions. These events predispose or make a person more susceptible to committing (or not committing) the infractions. In-service intervening variables include technical schooling to acquire valuable skills, type of assignment and how commanding officers indoctrinate new members, attitude of supervisor or seniors, peer attitudes, organizational or assignment climate, etc. Pre-service intervening variables include physiological, sociological, and psychological differences, and other antecedents to human behavior.

The Air Force has analyzed Article 15 of the UCMJ, covering NJP, and concluded that the UCMJ system for NJPs is fair. Future analyses will be performed on Air Force courts-martial.

The Navy research representative indicated that Navy has no plans for future investigations of disparity and punishment, nor to look at the UCMJ system. If funded, however, the Navy might be interested in designing research to capture some of the decision processes that occur prior to the offenses entering the formal UCMJ system. For example, the Chit File or Unit Punishment Book is where incidents are reported. But, decisions must be made whether to move these incidents on to the NJP level, take administrative actions, or dismiss them.

The Army is the only Service which is initiating a new study, covering several major installations over a three year period. Its purpose is to establish a "paper trail," beginning with the reporting of an infraction (at the lowest decisionmaking point) to the completion of the UCMJ action (at the highest decisionmaking point) for NJPs and courts-martial.

--Discussion: The Uniform Code of Military Justice (UCMJ) is a set of statutes governing military justice, and is the formal part of the overall military punishment process. It sets forth rules and regulations to which all service personnel must adhere; directs the commander in the implementation of non-judicial punishment (NJP) procedures; and contains articles which govern the administration of courts-martial. NJP (sometimes known as "Article 15" after the article in the UCMJ where it is found) is part of the UCMJ and allows commanders to impose disciplinary punishments for minor offenses without convening a court-martial. NJP is the most commonly used means to deal with military personnel who have committed minor violations and/or infractions of the UCMJ. As shown in Figure 1, NJP falls midway in terms of severity of punishment that a commander can impose against a service member. More serious offenses against the UCMJ may be referred by the commander to a court-martial.

From the findings in Phase 1 of this investigation, we conclude that disparity does, in fact, exist in the rates at which blacks (a minority) and whites (the majority) receive UCMJ punishment, in proportion to their relative populations in the Services. We also found that although the disparity of punishment rates in the military can be considered high, it is much less than that in the civilian sector. The ratio of civilian black/white rates of incarceration is 4 to 1, while the military's is 2 to 1 and declining. In addition, we found that both white and black punishment rates (UCMJ punishment per population--For court-martial, black 0.69%, white 0.31%; for NJP, black 7.81%, white 4.50%) have been decreasing over the past five fiscal years. The paradox, however, is that the black over-representation rate (or disparity) has increased slightly over the same period, simply because the white punishment rate has been decreasing faster than the black punishment rate.

To determine the magnitude of the disparity between the black rate of offense and the white rate of offense, the entire punishment process must be looked at, using a rational, systematic

Flow Diagram

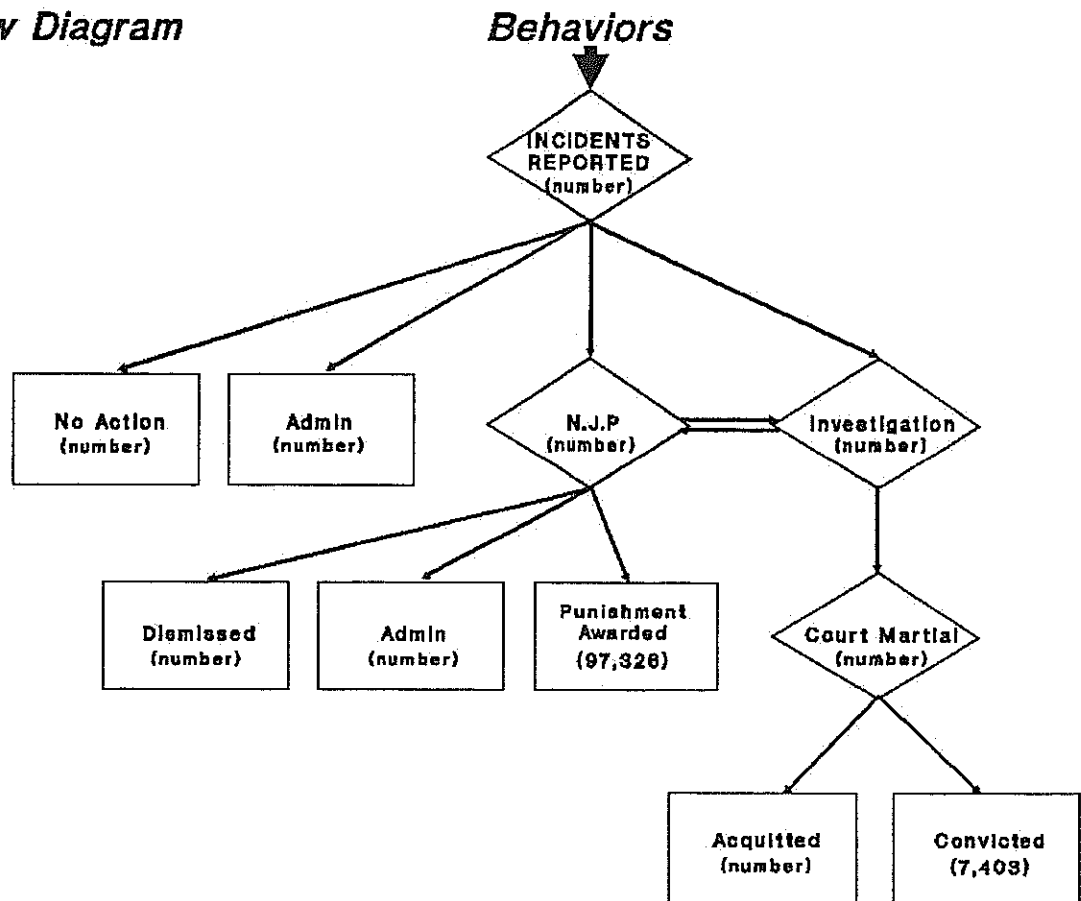


Figure 1. Discipline Flow Diagram.

approach. Figure 1, a Discipline Flow Diagram, shows the overall punishment process. This flow diagram starts with the incident reported as the result of an offender committing an infraction. The reporting of the incident is at the lowest decisionmaking point, entering the offender into the punishment process. It may take one or several disciplinary levels before the decision will be made to take no action, to take administrative actions, or to forward the case to the next level, the formal UCMJ system, for NJP processing or investigation for court-martial.

Each step in the punishment process (UCMJ and pre-UCMJ) must be isolated and examined, and each decisionmaking point must be evaluated, before we can determine whether disparity and inequity exist within the total military punishment system.

--Research Procedure: The following steps are offered as a practical procedure, for consideration by researchers in future phases of this investigation, to help them isolate and identify

potential areas where biases or discriminations could occur in the military punishment process. This procedure may help them determine the extent of disparity and decide where inequity occurs. All research should be monitored and coordinated by DEOMI.

(a) Start with courts-martial convictions. Determine the number of blacks, number of whites, and total number of courts-martial convictions given.

(Use available data first, for example start with Nordlie, et al. [1979], and Horne, [1988].)

(b) Do the same for courts-martial acquittals.

(c) Next, remove color, and sort out the convictions and acquittals by types and severity of crimes.

(d) Put color back, and determine whether color was or was not a controlling factor.

(e) Repeat this process, steps (a) through (d), for non-judicial punishments, to include NJPs awarded, administrative actions, and dismissals.

(f) Upon completion of step (e), it may or may not be possible to conclude that the formal UCMJ system is fair or unfair.

(If, it is concluded that the formal UCMJ system is fair and equitable, this finding should be published, in order to finalize the UCMJ issue. The next step of the investigation is to look at the less formal pre-UCMJ portion of the punishment process, an area where data is less readily available.)

(g) Design a methodology for collection of data, beginning with the reporting of an infraction to the completion of disciplinary actions.

(Consider working with the Army, which is initiating a new study to establish a "paper trail," beginning with the reporting of an infraction to the completion of the UCMJ action.)

(h) From this "paper trail," evaluate (capture and measure) some of the pre-UCMJ decision processes.

(i) Upon completion of step (h), it may or may not be possible to conclude that decisionmakers are fair or unfair, and/or blacks commit infractions at a higher rate than whites.

(If, by the number of incidents report, it is concluded that blacks commit infractions at a higher rate than whites, then it becomes necessary to look at intervening variables, and why these intervening variables make blacks more susceptible to committing the infractions.)

(j) Design a methodology for determining which intervening variables should be examined, how the data should be collected and evaluated.

(Navy Research may be interested in designing research to capture some of the decision processes that occur prior to the offenses entering the formal UCMJ system.)

(If, it is concluded that these intervening variables cannot adequately explain the disparity of infractions committed by blacks, then it becomes necessary, if desired, to look at pre-service intervening variables. These are physiological, sociological, and psychological variables, including antecedents to human behavior. We believe however, that this is beyond the scope of Phase 1 of this investigation.)

--Recommendations: We recommend that several fundamental questions be answered by the Office of the Assistant Secretary of Defense (OASD), as we proceed further in this investigation:

- (1) Are improvements to the military punishment rates (UCMJ punishment per population) over the past five fiscal years (for majority and minorities), considered satisfactory?
- (2) Is the current disparity or black overrepresentation rate acceptable, either when compared with the civilian rate, or standing alone?
- (3) Is the situation or the disparate rate sufficiently critical to warrant the resources required to be expended to find out why this disparity of punishment rate exists?

If OASD should decide that the current military punishment rates are sufficiently low and acceptable, then further research is not necessary. On the other hand, if OASD decides that it is important to find the causes of the disparity in punishment rates between blacks and whites in the military, then research should continue. ~~This is a doable project.~~

We have recommended a practical, rational, systematic approach, for consideration by researchers in future phases of this investigation, to help determine the causes of the disparity of judicial and non-judicial punishment rates for blacks in the Armed Services.

APPENDIX A

CHRONOLOGY OF RACIAL INCIDENTS

CHRONOLGY OF RACIAL DISCRIMINATION INCIDENTS/STUDIES

<u>DATE</u>	<u>CONGRESS</u>	<u>NAACP</u>	<u>DOD</u>
Jan 69			Racial incident at Camp Pendleton brig
Jun 69			Racial incident at Camp Pendleton brig
Jul 69			Racial disturbance at Camp Lejeune
Dec 69	HASC report on Camp Lejeune incident		
Feb 70	HASC report on Camp Pendleton incident		
Mar 70	Congressional Black Caucus met with President about racism in the military		
Apr 70			OASD (MPP) study on racial discrimination
Jan 71		NAACP sends investigative team to Germany	
Apr 71		NAACP sends report to DoD	
May 71			Racial disturbances at Travis AFB
Oct 71	OASD (M&RA) report to HASC on Lejeune and Travis incidents		OASD (M&RA) report to Congress on Lejeune and Travis incidents
Nov 71	Congressional Black Caucus members visit bases		
Jan 72			SECDEF establishes Task Force on Administration of Military Justice
Apr 72			SECDEF signs task force charter
May 72	Congressional Black Caucus issues report on racism in the military		
Jan 73	HASC report on Kitty Hawk and Constellation incidents		Racial incidents on board USS Kitty Hawk and USS Constellation/Task Force issues vol 4 report
July 73			Task Force issues

	follow-on studies
Dec 73	ARI study on race relations
n 74	Navy study on non-judicial punishment
May 77	Air Force study on disciplinary system
Feb 78	Army study on disciplinary system
Nov 79	Army study on justice and discharge systems
Feb 88	CNA Research Memo on Equity in Disciplinary Rates in USMC

REFERENCES TO CHRONOLOGY

4/20/92

Mar 1970

Members of the Congressional Black Caucus and other members of Congress meet with the President regarding reports of minority group member's problems with the military justice system.

Apr 1970

ODASD (MPP), OASD (M&RA) releases report, "Racial Discrimination: An Analysis of Serviceman Opinions." The report was 39 pages long with 89 pages of data tables. One of six chapters was on military justice, comprising 7 pages of the report (18%) and 16 pages of data (18%).

The survey indicates a disparity in disciplinary records. Blacks were twice as likely as whites to have had an Article 15 or court-martial punishment and this lead to the perception that Blacks were discriminated against in promotions.

Ref: Racial discrimination, an analysis of serviceman opinions. (1970). Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs), Special Assistant for Policy Studies, OASD(MPP).

Jan 1971

In response to requests from Negro GIs serving in Europe, as well as news accounts of increased racial tensions there, the NAACP sends a three man team to West Germany to evaluate the situation. The team stays three weeks, interviewing personnel at 15 installations.

The results of the trip are released in a report in April 1971.

22 Apr 1971

Mr. Roy Wilkins, Executive Director of the NAACP sends a report, "The Search for Military Justice: Report of an Inquiry into the Problems of the Negro Serviceman in West Germany," to Secretary of Defense Laird. The report is 26 pages long; 11 pages (42%) of which are devoted to military justice issues.

Ref: NAACP Special Contribution Fund. (1971). The search for military justice: Report of an NAACP inquiry into the problem of the Negro serviceman in West Germany. New York: Author.

22-25 May 1971

Racial disturbances occur at Travis AFB, Fairfield, CA, based in part on the perception that nonjudicial punishment

is imposed upon blacks more harshly than that imposed on whites for comparable offenses.

15 October 1971

OASD (M&RA) compiles report, "Lejeune, Travis and Beyond: A Survey of Progress in Equal Opportunity in the Armed Forces, July 1969 to Present," at the request of the Chairman of the House Armed Services Committee and submits to Congress.

The Travis AFB incident (22-25 May 1971) was based in part on the perception that non-judicial punishment was imposed on blacks more harshly than that imposed on whites for comparable offenses.

Ref: Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs). (1971). Lejeune, Travis and beyond: A survey of progress in the Armed Forces, July 1969 to present. Washington, DC: Author.

15 November 1971

Thirteen members of the Congressional Black Caucus visit ten U.S. military installations to talk with military members about racism in the military.

16 November 1971

Military Affairs Committee of the Congressional Black Caucus holds three days of hearings on racism in the military. Day one is devoted to military justice. Hearing is chaired by the Hon. Shirley Chisholm.

An edited transcript of this hearing is contained in the May 15, 1972 report issued by the Congressional Black Caucus, "Racism in the Military: A New System for Rewards and Punishments."

21 January 1972

Secretary of Defense Melvin Laird establishes a Task Force on the Administration of Military Justice in the Armed Forces. The Task Force has 14 members and is co-chaired by LTG C.E. Hutchin, Jr., USA and Mr. Nathaniel Jones, General Counsel of the NAACP.

5 April 1972

Secretary of Defense Melvin Laird charts the Task Force on the Administration of Military Justice in the Armed Forces. He asked the Task Force to:

- (1) Determine the nature and extent of racial discrimination in the administration of military justice.
- (2) To assess the impact of factors contributing to disparate punishment.

- (3) To judge the impact of racially-related practices on the administration of military justice and respect the law, and
- (4) To recommend ways to strengthen the military justice system and enhance the opportunity for equal justice for every American service man and woman.

15 May 1972

The Congressional Black Caucus releases a report, "Racism in the Military: A New System for Rewards and Punishments." The report contains 105 pages; 42 pages of which (40%) is devoted to military justice issues: article 15, pre-trial confinement, court-martial, and discharge. Report contains 8 specific recommendations relating to military justice.

Ref: Congressional Black Caucus Office. (1972). Racism in the military: A new system for rewards and punishments. Washington, DC: Author.

30 November 1972

The Task Force on the Administration of Military Justice in the Armed Forces issues a four volume report:

- Vol I - Findings and recommendations
- Vol II - Background papers
- Vol III - Statistical studies: military justice activities
- Vol IV - Statistical studies: background of military offenders, administrative discharges and miscellaneous

Among the 72 recommendations were the following:

- (1) Add an article to the UCMJ proscribing discriminatory acts
- (2) Update race and ethnic codes and establish a data base on the military justice system
- (3) Statistical disparity exists in administrative discharges
- (4) Monitor Article 15s for disparities
- (5) Abolish summary court-martial

Ref: Report of the Task Force on the administration of military justice in the Armed Forces, vol IV, statistical studies: Background of military offenders, administrative discharges and miscellaneous. (1972). Prepared for Department of Defense, Task Force on the Administration of Military Justice in the Armed Forces.

15 May 1973

The Task Force on the Administration of Military Justice in the Armed Forces issues a volume of follow-on studies. Twelve papers totalling 328 pages were published:

- Background data on individuals involved in the military justice process

- Educational strata representation in military justice processes
- Effect of nonmilitary education on mode or quantum of punishment
- Installation of pretrial confinement study
- Article 15 punishment, race of officer taking action
- Article 15 punishment, offenses
- Court-martial, trial by judge alone or court-panel
- Court-martial, pretrial confinement of accused
- Court-martial, pretrial agreement
- Court-martial, offenses
- Administrative discharge study
- Facts relating to male enlisted accessions (1920-72)

December 1973

The U.S. Army Research Institute for the Behavioral and Social Sciences releases a publication, "Race Relations and Equal Opportunity in the Army (A Resource Book for Personnel with Race Relations/Equal Opportunity Responsibility)." The report has 10 chapters and 142 pages. One chapter (10%) and 18 pages (12.7% are devoted to military justice.

Ref: Nordlie, P. G., & Thomas, J. A. (1973). Race relations and equal opportunity in the Army (a relations/equal opportunity responsibility) (Research Problem Review 73-2). U. S. Army Research Institute for the Behavioral and Social Sciences.

June 1974

Navy Personnel Research and Development Center releases the report, "Perceptions of Discrimination in Non-judicial Punishment." The 74 page report found that there was no reliable data base for studying non-judicial punishments. No differences in punishments administered were found but surveys indicated blacks perceived discrimination in promotion as a problem.

Ref: Thomas, P. J., Thomas, E. D., & Ward, S. W. (1974). Perceptions of discrimination in non-judicial punishment (NPRDC Rpt No. TR 74-22). San Diego: Navy Personnel Research and Development Center.

1977

Ronald W. Perry writes a book, *Racial Discrimination and Military Justice*, which is published by Praeger Publishers. The book addresses whether blacks and whites receive similar treatment in the criminal justice system of the USN and USMC. Perry concludes that the application of criminal justice in the USN and USMC is remarkably even with respect to race. He noted:

- black incarceration rates were slightly higher than white rates

- white offense patterns were different than those of blacks. Most AWOLs were young, low ranking whites. Most "major military offenses" were black.
- no difference in sentence length when controlled by type of offense

May 1977

Air Force Human Resources Laboratory issues a report, "Factors Related to the Incidence of Disciplinary Actions Among Enlisted Personnel." The twenty page study found:

- (1) Blacks were 1.5 times as likely to receive nonpunitive action than whites
- (2) Blacks were 1.3 times as likely to receive an Article 15
- (3) Blacks were 1.9 times as likely to receive a court-martial

February 1978

The U.S. Army Research Institute for the Behavioral and Social Sciences releases the report, "The Relationship Between Perceived Offense and Actual Discipline Rates in the Military." The 17 page report showed that:

- (1) In 1972, blacks received a disproportionate number of Article 15s.
- (2) During FY70-73, blacks received a disproportionate number of general and undesirable discharges, although the amount of overrepresentation was going down.

Ref: Hart, R. J. (1978). The relationship between perceived offense and actual discipline rates in the military (Research Memorandum 77-30). U.S. Army Research Institute for the Behavioral and Social Sciences.

November 1979

Human Sciences Research, Inc. releases a five volume research report on, "A Study of Racial Factors in the Army's Justice and Discharge Systems." The five volumes are:

- Vol I - Summary Report
- Vol II - Differences by Race in Army Discharges
- Vol III - The Military Justice System
- Vol IV - Attitudes and Perceptions
- Vol V - A Comparison with the Civilian Justice System

Major findings and conclusions included:

- (1) Blacks were overrepresented in military arrests from 1974-78, although amount of overrepresentation declined from 1975-78
- (2) Blacks were overrepresented in the military prison population from 1974-78, although the amount of overrepresentation declined from 1975

- (3) Blacks were underrepresented in drug arrests but overrepresented in arrests for violent crimes
- (4) Blacks received Article 15s at higher rate than whites
- (5) No relationship between seriousness of offense and severity of punishment for black Article 15s, but there was for whites
- (6) Blacks are overrepresented among those found guilty of court-martial of crimes against persons
- (7) Whites received a greater proportion of paroles than blacks

Ref: Nordlie, P. G., Sevilla, E. R., Jr., Edmonds, W. S., & White, S. J. (1979). A research report on a study of racial factors in the Army's justice and discharge systems: Vol I: Summary report (Rpt No. HSR-RR-79/18-Hr). Prepared for DAPE-HRR, The Pentagon. McLean, VA: Human Sciences Research, Inc.

Ref: Nordlie, P. G., & Edmonds, W. S. (1979). A research report on a study of racial factors in the Army's justice and discharge systems: Vol II: Differences by race in Army discharges (Rpt No. HSR-RR-79/19-Hr). Prepared for DAPE-HRR, The Pentagon. McLean, VA: Human Sciences Research, Inc.

Ref: Nordlie, P. G., & Sevilla, E. R., Jr. (1979). A research report on a study of racial factors in the Army's justice and discharge systems: Vol IV: Attitudes and perceptions (Rpt No. HSR-RR-79/21-Hr). Prepared for DAPE-HRR, The Pentagon. McLean, VA: Human Sciences Research, Inc.

Ref: White, S. J. (1980). A research report on a study of racial factors in the Army's justice and discharge systems: Vol V: A comparison with the civilian justice system (Rpt No. HSR-RR-80/1-Hr). Prepared for DAPE-HRR, The Pentagon. McLean, VA: Human Sciences Research, Inc.

February 1988

The Center for Naval Analyses (CNA) conducts a study which examines disparities in black and white NJP rates in the Marine Corps. The study concluded that disparities do exist, but that actual overall disparities cannot be calculated precisely with the data now available. Available information indicates that the disciplinary decisionmakers are equitable. The study recommended that further investigation focus on explanatory variables other than race, such as family background, etc. Five recommendations were made:

- (1) Commands should be required to report enlisted disciplinary statistics and racial mix of the population at the lowest possible level in the yearly statistical data reports.

- (2) Due to problems found with the accuracy of some disciplinary statistics, the reporting system should be reviewed.
- (3) When computing aggregated disparity indicators, the black/white NJP ratios at the lowest unit level should be computed first. New methods for aggregating unit-level data need to be developed.
- (4) Continued efforts should be made at all levels to sensitize disciplinary decisionmakers to the importance of judging all Marines equitably without regard to race/ethnic group.
- (5) Incidents of racial bias in disciplinary decisionmaking should continue to be reported and investigated thoroughly on a case-by-case basis.

June 1989

The third annual DoD military equal opportunity conference concludes. Members found that no DoD-wide standardized system of reporting and retrieving information exists to determine the basis for disparities in the military disciplinary rates. Five recommendations were made to resolve the problem:

- (1) Establish a DoD study group to determine data elements necessary to identify and monitor disparities
- (2) Compare respective Service tracking systems
- (3) Consolidate existing systems and avoid new reports
- (4) Ensure that data tracking systems allow for flexibility
- (5) Establish a research program to analyze disparate rates

RECENT MILITARY STUDIES

1. "Factors Related to the Incidence of Disciplinary Actions Among Enlisted Personnel," Air Force Human Resources Laboratory, Lackland AFB, TX (1977).

PURPOSE: To examine the disciplinary rates of various subgroups of the enlisted population and the attitudes of officers and enlisted personnel towards the military justice system.

DATA: Data came from the 1973 DoD Personnel Survey (30,000 responses). Some limitations: (a) only active duty, no personnel in confinement; (b) disciplinary rates are understated, since the more serious disciplinary actions often result in either confinement or separation.

FINDINGS: Overall, members of racial or ethnic minority groups were more likely to have received a disciplinary action than whites. In descending order: American Indians, blacks, Asian Americans, whites. Blacks were 1.5 times as likely to receive non-punitive administrative actions than whites (unofficial reprimands, censures, rebukes, etc.); blacks were 1.3 times as likely as whites to receive NJP; and blacks were 1.9 times as likely to receive a court-martial. As can be expected, officers were found to judge disciplinary actions as reasonable and fair while enlisted personnel were more likely to see them as being too strict.

2. "A Study of Racial Factors in the Army's Justice and Discharge Systems," Human Sciences Research, Inc., McLean VA (1979).

PURPOSE: The objectives of this study were to:

- (1) determine what race-related differences exist;
- (2) determine what factors other than race may account for the differences;
- (3) examine the policies and procedures which result in any differences;
- (4) recommend changes in policies, procedures, and practices where appropriate and recommend courses of action aimed at eliminating any discrimination found.

DATA: HSR studied records of civilian and military justice systems and compared similarities and differences; surveyed implementers of the system (commanders, JAGs, etc.) and recipients of the system (E-1 through E-5, both in jail and not in jail); reviewed NJP records for 5,000 white, 5,000 black,

2,500 Hispanic, 2,500 other); reviewed records of prison population, to include pre-service arrest records; studied discharge records on soldiers who entered the Army in FYs 1972-1975.

A major tool used in the analysis was the Difference Indicator (DI) which shows comparison groups (minority) as either overrepresented, underrepresented, or at parity with the base group (white) in judicial and non-judicial actions.

FINDINGS: There were 23 major findings of the study. Among the most significant to our undertaking are:

(1) In the military and civilian sectors, blacks were overrepresented in total arrests for each year 1974-1978. From 1975 through 1978, overrepresentation in the civilian sector fluctuated at a very high level while that of the Army steadily decreased.

(2) In the military and civilian sectors, blacks were overrepresented in the total prison populations for each year 1974-1978. From 1975 to 1978, overrepresentation in civilian society increased while that of the Army decreased.

(3) In the military and civilian sectors, blacks were underrepresented in arrests for drug offenses and overrepresented in arrest for violent crimes.

(4) Black inmates had significantly higher civilian arrest rates than both white inmates and a random sample of soldiers.

(5) Black soldiers received Article 15 at a much higher rate than did white soldiers.

(6) Blacks ^{سودان} are heavily overrepresented among soldiers found guilty of crimes against persons.

(7) There were no statistically significant differences in the sentences imposed on black and white soldiers for similar crimes.

(8) Blacks' sentences to punitive discharge were four times as likely to be approved as white sentences.

(9) Whites tended to receive higher quality discharges than blacks.

(10) Blacks were overrepresented in all adverse separation actions except drugs and in-lieu-of court-martial.

(11) Level of civilian education for blacks was related to type of discharge in the reverse of what might be reasonably expected. Higher educated blacks received lower quality

discharges than lower educated blacks.

(12) Mental group category for blacks also appeared to operate in reverse of what might be reasonably expected. Higher mental category blacks received lower quality discharges than lower mental category blacks.

The interpretation of the findings was that the differences in what happened to persons of different races were the result of cultural interaction which tended to work to the disadvantage of blacks as compared with whites. The systems themselves were not found to be racially discriminatory but rather differential results occurred because of the cultural differences in the implementers of the system and particular racial minorities.

RECOMMENDATIONS: Five recommended courses of action were offered:

(1) Education and training program aimed at recruits designed to inculcate an understanding of the Army system and impress on them how their day-to-day behavior affects one's success in the Army, direct and indirect effects of violating the UCMJ, and make them aware of cultural differences which may manifest in different behaviors.

(2) Chain of command/implementer/operator training

(3) Review of recruiting process to ensure that recruiting does not result in minority populations which are handicapped at the outset compared with their white counterparts.

(4) Improve the quality of life aspects of Army experience to more successfully eliminate the feelings of boredom, frustration, bitterness, and a can't-win feeling which are often found at the root of disciplinary problems.

(5) Create a better and more useful data base to facilitate monitoring of racial differences in the output of the discharge and justice systems.

3. "Equity in Disciplinary Rates," Center for Naval Analyses, Alexandria VA (1988).

PURPOSE: To examine statistical evidence to determine if the UCMJ is applied in an equitable manner to all Marines. As NJP is the most common form of UCMJ action taken, this study concentrates on that. NJP is the most likely to be significantly inequitable, since it could be administered differently by different commanders and still remain within UCMJ guidelines.

DATA: Marine Corps data on NJP, by command for 1986, were examined in detail. The data were supplemented by summary data from 1983, 1984, and 1985. Summary data on NJP for other services were also examined. Research and statistics from the

civilian sector were studied, including arrest statistics from the FBI, results from equal opportunity court cases, and research into racial differences in criminal behavior and judicial decisionmaking.

FINDINGS: Major findings are as follows:

(1) The disciplinary rates of the white commanders are equitable, given the assumption that rates for black commanders are equitable.

(2) Blacks are much less likely than whites to come from traditional family backgrounds. Also Marines with traditional family backgrounds are much less likely to receive NJP.

(3) The total Marine Corps black/white NJP ratio has decreased from 1.71 in 1983 to 1.43 in 1986 (comparable to the Navy at 1.34).

(4) The black/white NJP ratio varies across commands.

(5) Higher black/white NJP ratios seem to be associated with commands that have smaller percentages of black Marines.

(6) Perceptions exist among some Marines that racial bias is present in the Marine Corps. The perceptions are often based on anecdotal evidence of bias, which does not normally involve the actual NJP decisionmaker but the lower levels in the chain of command.

The analysis indicates that actual overall disparities cannot be calculated precisely with the data now available. There was no evidence to indicate that disparities are due entirely to racial bias. The emphasis of further study should focus on explanatory variables other than race, such as family background.

RECOMMENDATIONS: Four recommendations were made:

(1) Commands should be required to report enlisted disciplinary statistics and racial mix of the population at the lowest possible unit level in their yearly statistical data reports.

(2) Due to problems found with the accuracy of some disciplinary statistics, the reporting system should be reviewed.

(3) When computing aggregated disparity indicators, the black/white NJP ratios at the lowest unit level should be computed first. New methods for aggregating unit-level data need to be developed.

(4) Continued efforts should be made at all levels to sensitize disciplinary decisionmakers to the importance of judging all Marines equitably without regard to race/ethnic

group.

(5) Incidents of racial bias in disciplinary decisionmaking should continue to be reported and investigated thoroughly on a case-by-case basis.

APPENDIX B

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SELECTED REFERENCES

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APPENDIX C

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AND BIBLIOGRAPHY

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APPENDIX D

MILITARY EQUAL OPPORTUNITY ASSESSMENT (MEOA) DATA

EXECUTIVE SUMMARY

1. **INTRODUCTION.** A recent review by the U.S. Commission of Civil Rights has placed the administration of the Unified Code of Military Justice (UCMJ) under increased scrutiny. This review focused on allegations that minority service members receive a disproportionate amount and more severe administration of disciplinary actions within the military services. Also, it alleged that within the military justice system, minority members were treated differently based on the race of the accused.

2. **PURPOSE.** The purpose of this report is to present the findings of an examination of disciplinary data from Military Equal Opportunity Assessments (MEOA) reports. The objective is to determine the changes over time and the representation of racial/ethnic groups punishments and explanation of the possible underlying causes of differences.

3. **METHODOLOGY.** The study methodology involved the collection and analysis of data on the receipt of punishments (Courts Martials and Non-Judicial Punishments (NJP)) by racial/ethnic group. The data was collected from the MEOA reports that the services provide on an annual basis to the Office of the Secretary of Defense (OSD).

4. **CONCLUSIONS.**

a. The total number of courts martial convictions has decreased significantly in the last five fiscal years (48 percent). The percentage of courts martial convictions for all services and racial/ethnic groups is also decreasing. However, the decrease in courts martial convictions has varied considerably between racial/ethnic groups. The number and percent of the population being court martialled is decreasing faster for white service members compared to black service members. This explains why the overrepresentation of black service members has increased steadily for the last 4 fiscal years. The overrepresentation of black service member has increased from 65 percent in FY87 to more than 74 percent in FY91. The increased overrepresentation of blacks is not a function of an increase in the number of courts martial convictions relative to other racial/ethnic groups. Rather, the increase in overrepresentation is a function of the number of courts martial convictions of other racial/ethnic groups, particular white service members who are decreasing faster than black service members.

b. This study found that for FY91, black service members in the military were 2.2 times more likely to receive courts martial convictions than white service members. Black service members made up 21.6 percent of the military population, received 37.6 percent of the convictions, resulting in a 0.69 percent conviction rate. White service members represent 70.3 percent of the population, received 54.9 percent of the courts martial convictions, and had a 0.31 percent conviction rate. The remaining 8.1 percent of the population were other minorities, who received the remaining 7.5 percent of the courts martial convictions.

c. The relative frequency of courts martial convictions is very low. In FY91, the average rate of convictions for all service members was equal to four-tenths of one percent (.4 percent or .004) of the total military population.

d. Similar to courts martials the total number of NJPs has decreased significantly in the last five fiscal years (47 percent). The percentage of NJP awards for all services and racial/ethnic groups is decreasing. The decrease in NJP awards has varied between racial/ethnic groups. The percentage of the population receiving NJPs has decreased faster for black service members as compared to white or service members from other minorities. This explain why the representation of black service members has stayed relative constant at about 50 percent for the last 4 fiscal years. The representation of hispanic and AI/AN service members in NJP awards has increased the most in the last five fiscal years.

e. Black service members in the military are still 1.7 times more likely to receive NJP than white service members. Black service members made up 21.6 percent of the military population, received 32.2 percent of the NJPs, resulting in a 7.81 percent NJP rate. White service members represent 70.3 percent of the population, received 60.2 percent of the NJPs, and had a 4.5 percent NJP rate. The remaining 8.1 percent of the population were other minorities, who received the remaining 7.6 percent of the NJP awards.

f. The fact that the overrepresentation of black service men among courts martial convictions is greater than their overrepresentation among NJP awards, suggest that blacks are involved in more serious offenses. This is supported by Nordlie, et al. (1979), who found that black service members were overrepresented in the commission of violent and confrontation crimes, while whites service members committed the majority of crimes against property, and military specific offenses.

g. Commanders have greater discretion over handling NJPs compared to court martial convictions. If the UCMJ system is racially biased, then one may expect that overrepresentation among blacks would be greater for NJP infractions as compared to courts martials. However, the data suggests just the opposite, the degree of overrepresentation among blacks is less with respect to NJPs and black overrepresentation is growing at slower rates than it is with courts martial convictions. Also, the percent of black service members being awarded NJPs is decreasing faster than other racial/ethnic groups. While, this does not definitively answer the question of whether the NJP system is racially unbiased, it tends to contradict claims that the NJP system is unfair.

h. The rate of courts martial convictions and Non-Judicial Punishments vary considerably from service to service. Undoubtedly this is a function of many different factors such as the way the different services administer discipline, tolerance to offenses, population characteristics of service member, etc. Further research into issues of discipline and disparities among service members should be a coordinated effort to insure that the conclusions and recommendations of studies of one service are applicable to the others.

b. Minority Over/Underrepresentation Among Court Martials.

(1) The concept of the RI, as previously discussed, was applied to the total military courts martial convictions data for FY87 through FY91. The results are shown in Figure 7. The results of the RI can be interpreted to mean that black service member were 65% overrepresented in courts martial convictions than would otherwise be expected given their related population in FY87. The overrepresentation of black service member has increased steadily for the last 4 fiscal years. The overrepresentation of black service member has increased from 65 percent in FY87 to more than 74 percent in FY91. Conversely, white service member are underrepresented with respect to courts martial convictions. The underrepresentation of white service member has increased from 13 percent in FY87 to more than 21 percent in FY91. Additionally, AA/PI are nearly always underrepresented, usually significantly underrepresented, with regards to courts martial convictions. The RI for all other minority groups seem to vary considerably from period to period with no discerning patterns or trends within group representation.

(2) The increased overrepresentation of blacks is not a function of an increase in the number of courts martial convictions relative to other racial/ethnic groups. Rather, the increase in overrepresentation is a function of the number of courts martial convictions of other racial/ethnic groups, particular white service members who are decreasing faster than black service members.

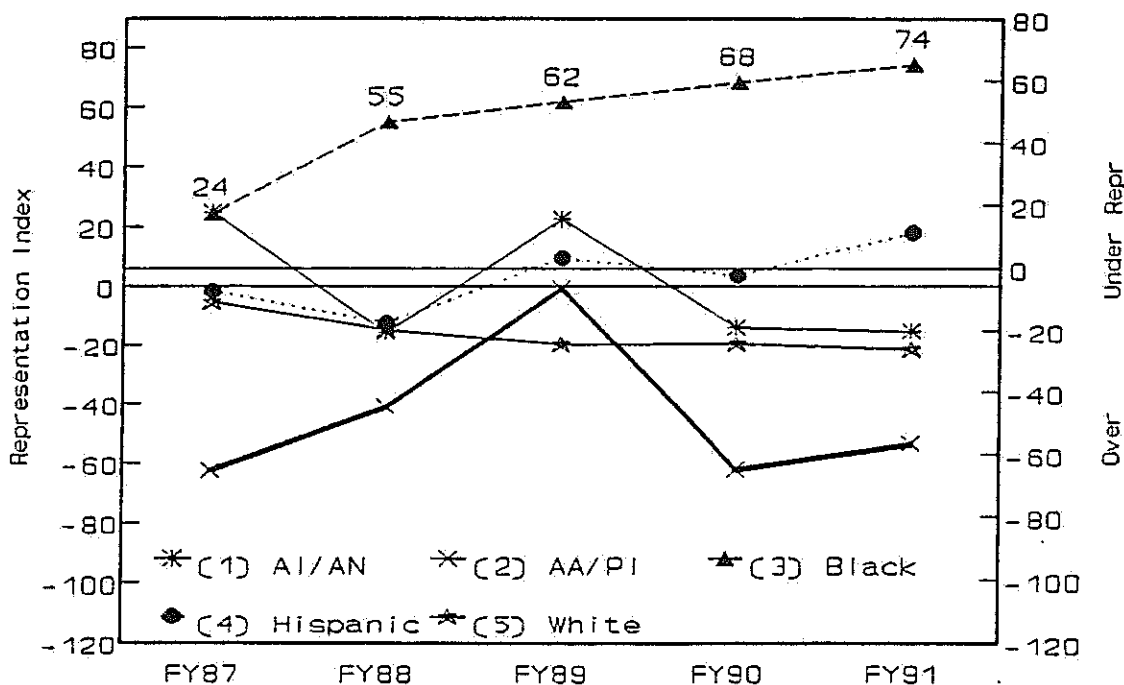


Figure 7. Representation of Racial/Ethnic Groups in Courts Martial Convictions (Total DoD)

3. Minority Representation Among NJP Awards.

a. Percentage of Courts Martial Convictions by Race.

(1) The concept of the RI, as previously discussed, was applied to the total NJP data for FY87 through FY91. The results are shown in Figure 14. The results of the RI can be interpreted to mean that black service members were 44% NJP awards than would otherwise be expected given their related population in FY87. Since FY88 the representation of black service members has stayed relative constant at about 50 percent for the last 4 fiscal years. The representation of hispanic and AI/AN service members in NJP awards has increased the most in the last five fiscal years. Additionally, for all services AA/PI are nearly always underrepresented, usually significantly underrepresented, with regards to NJP awards.

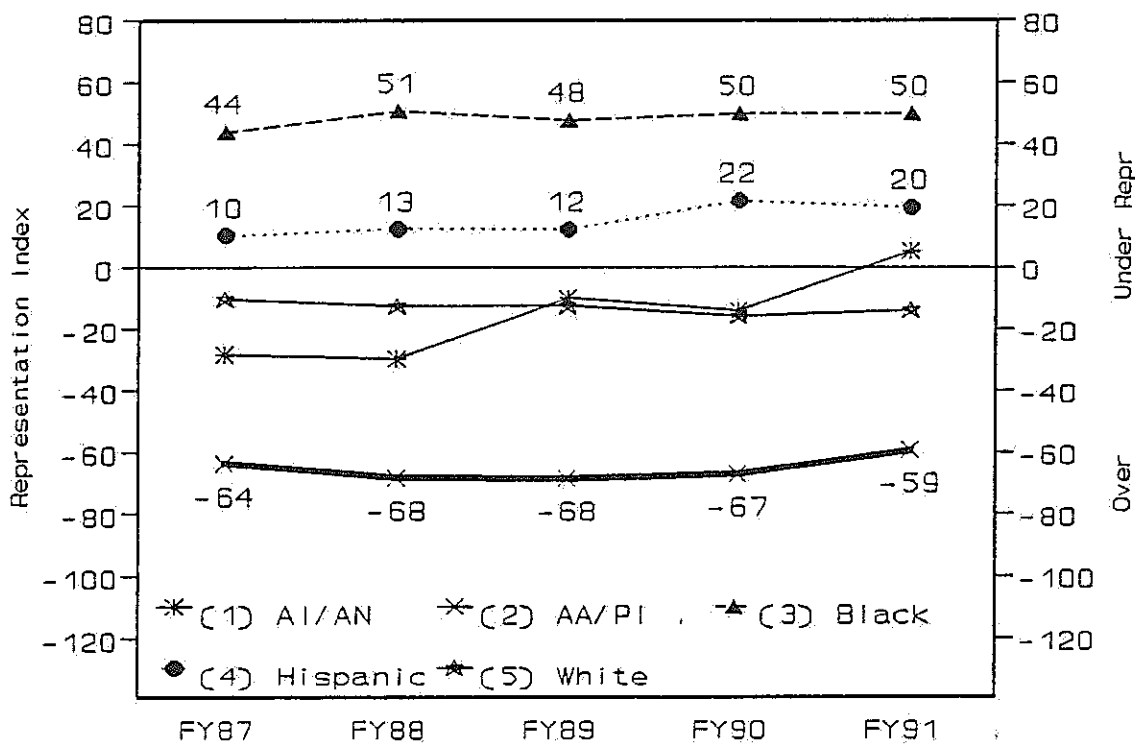


Figure 14. Representation of Racial/Ethnic Groups in Non-Judicial Punishments - Total DoD (FY87-FY91)

APPENDIX E
POINTS OF CONTACT

POINTS OF CONTACT

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