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THE EFFECTS OF RACE ON PROCEDURAL JUSTICE: THE CASE OF THE UNIFORM CODE OF MILITARY JUSTICE

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Abstract

This research examined the potential racial bias in time-related variables inherent in the administration of courts-martial under the Uniform Code of Military Justice (UCMJ). The sample consisted of a database of all charges in the US Army of aggravated assault, drug-related, and sex-related crimes found worthy of prosecution as courts-martial under the UCMJ between 1987 and 1995. Results indicated that blacks were older than whites on non-sex related crimes, had been in the service longer, and experienced more time going from initial charges to final disposition. The relationship was reversed for sex-related crimes. These results were interpreted in terms of an interaction between the level of potential public interest in a crime and the race of the accused, with blacks receiving accelerated treatment in crimes involving sex and less attention in the case of other crimes.

The Effects of Race on Procedural Justice: The Case of the Uniform Code of Military Justice

Much theorizing about fairness in the justice system has distinguished between two aspects: distributive and procedural justice.[1] The first is concerned with the equitable distribution of outcomes (e.g., length of incarceration). The second focuses on equitability in the process as an accused moves through the system to a disposition and is generally thought to consist of three aspects: a) formal characteristics of the process, b) explanations of the process, and c) interpersonal treatment.[2] Some have labeled the last two aspects interactional justice.[3] In any case, distributional and procedural justice are often seen as essentially independent functions. That is, accused individuals may be treated inequitably (e.g., receive less competent counsel, be the recipient of more intense scrutiny by investigators,[4] receive higher bail in the civilian system, etc.) yet receive the same sentence as a person not so treated.[5] This can come about when sentencing guidelines are relatively inflexible or there exist commonly agreed upon (by judges at least) penalties for certain classes of offenses. Conversely, people can be treated essentially the same while in the system, yet have quite different outcomes. It is the latter aspect that many have focused on to show that the civilian justice system is or is not racially biased. However, the results of such analyses have been mixed with most recent commentators coming to the belief that while there may exist disparities in certain localities and for certain offenses, the civilian justice system is not institutionally biased in the distribution of outcomes.[6]

Receiving relatively little attention is the potential racial bias that occurs while the accused is being processed through the system. These effects are likely to be subtle, reflecting the amount of attention functionaries in the system give the individual case. Unless the case has warranted a high level of visibility, it may be left to the vagaries of the system to determine the rate of progress through the justice maze. There are a number of methodological reasons for the dearth of research in this area. Examining the process experimentally involves simulating the passage of time in the research. Such a simulation poses considerable difficulty for research subjects who have limited amounts of time available to devote to somebody else's scholarly efforts. Hence, most such studies have focused on the interactional aspects of the process.[7] A second problem is the lack of a set of reliable and valid criteria against which variations in the procedures can be judged. The closest that some investigators have been able to come is to look at the distributions of racial groups at certain points (e.g., charges, arraignment, plea bargains, trial, and so on). This is the approach that Wilbanks[8] for example, applied in his analysis of racial disparities. Such an analysis faces a number of bothersome issues.

Among the issues that such an analysis begs is the question of the relationship of the relative frequency of each racial group to the decision making and affective states at each stage. How does a defendant know the proportion of like race peers who move out of the system at a given point versus those that continue on? And, if he or she knew that piece of information, what effect would it have on their further actions? The linkage between the measurement and behaviors of interest renders the relationship interesting or, alternatively, merely a happenstance. A more direct measure is the time that an accused

spends in the system. Since time may be related to actual confinement (as in pre-trial) or to a sense of a lack of closure, one can make the link to cognitive and affective states directly. And, if there is a consistent racial disparity that can be explained by a reasonable theory, then one can describe an institutional practice that is real and has consequences. In other words, time in the system is itself, no matter what the eventual outcome, a punishment that does not come under the strictures of various sentencing guidelines.

To be sure, there are limits. The constitutional right of an accused to a speedy trial has been reiterated by many court decisions based on the Fifth Amendment to the Constitution. Both the prosecution and defense have many ways of lengthening or shortening this process. In any case, even under the most restrictive reading, there is still sufficient leeway for disparities to exist. Hence, a full understanding of possible racial disparities in the justice process requires such an analysis and is the focus of the present paper. The venue for the present study is the court-martial system in the US Army.

Military personnel are charged and adjudicated under the Uniform Code of Military Justice (UCMJ). In most respects, the UCMJ parallels the comparable civil codes with few exceptions. Both are governed by similar rules of procedure and evidence. The accused in a civilian trial has little say in the determination of the composition of the jury hearing the case (except for the results of *voire dire*). At the same time, in a civilian trial the counsel have more challenges to use in shaping the jury than in a military trial (primarily because the jury pool is smaller in the military). The accused in a military trial has an active role in determining the type of fact finder which will hear the case.[9] The accused may elect to be tried by a military judge sitting as the finder of fact, or may elect

to be tried before a jury (panel) of military personnel. The panel may be comprised of all officer members or, if the accused is from the enlisted ranks, up to one third comprised of enlisted personnel. Also, the type of court-martial may determine how many members are on the panel: A special court-martial may have as few as three qualified members, while a general court-martial may have as few as five. Also, the accused in a military trial may request to have a jury determine the appropriate sentence if guilt is determined or admitted, as opposed to the judge alone determining punishment.

Another difference between the civil and military systems is in the application of the negotiated plea of guilty and pre-trial agreement, which is negotiated between the accused and the court-martial convening authority. An accused offers to plead guilty to all or some of the charges and, in return, the convening authority agrees to some form of limitation as to the adjudicated punishment. An accepted plea bargain is not made known to the trial court until after the sentence has been announced. A jury never hears the agreed-to limitations, and the military judge may not know of the limitations until after the sentence is announced. The final sentence is the lower of the plea bargain and that levied by the court. This difference makes it very important that studies of distributive justice use the actual sentence served by the offender rather than the sentence levied by the jury or judge. Two studies[10] have suggested that blacks disproportionately refuse plea bargains as compared to whites. One purpose of this study is to replicate those findings using a larger sample and secondly to determine if the presence of a plea bargain has an impact on the procedural justice aspects of the case.

The possibility of racial disparities in the administration of the UCMJ has been the subject of some research and discussion over the past few years.[11] All of the studies have focused on the effect of race on sentence length (i.e., distributive justice) and have generally been unable to indicate any clear racial bias. A possible confounding factor is that, with the exception of the Connelly and Robinson[12] studies, the researches aggregated over all offenses. If there are racial differences in offense profiles as Tonry[13] suggests, then such aggregation is unwarranted. The sample used in the present study permits an analysis by offense type and thus is an advance over the previous work.

A secondary purpose of this paper is to examine the role of military tenure on likelihood of involvement with the UCMJ. Knouse,[14] based on a small sample of people incarcerated at the Ft. Leavenworth Disciplinary Barracks, suggested that blacks tend to become involved with the discipline system at an earlier age than whites, a possibility echoed by Edwards & Newell[15] using a sample of records from the Navy. Knouse (personal communication) also suggested that whites tend to be much older when it comes to sex-related crimes. However, his sample was biased in that it only contained individuals who had been convicted and were given significant amounts of confinement. Due to the small sample size, Knouse also aggregated over all offenses. The present sample, which consists of a database of charges across the entire Army, allows a more precise test of Knouse's suggestion along two dimensions: Time in Service and Age, as well as exploring the role of offense type.

Method and Procedure

Sample: The sample consists of 5989 court-martial cases obtained from the Office of the Clerk of Court, United States Army Judiciary. Of these, 3509 cases involved white personnel while 2480 were charges levied against blacks. The data set covered all reported charges of Aggravated Assault, Drug Crimes, and Sex Crimes[16] (see Appendix for a definition of the offenses included in this study) levied on soldiers who entered the service between 1 July 1987 and 31 May 1995. Table 1 gives the racial distribution for each category of crime in the sample.

Table 1
Sample Frequency: Race by UCMJ Offense

	Offense										
	nl*	nm	vx	xq	xs	dp	vv	yk	ip	mt	qe
Race											
White	53	263	397	248	179	163	564	1356	120	69	98
Black	161	392	343	103	68	92	166	776	135	36	79
%Black	75.23	59.85	46.35	29.34	27.53	36.08	22.74	36.4	52.94	34.29	44.63

* nl=Aggravated Assault with a Firearm; nm=Aggravated Assault without a Firearm; vx=Wrongful Use of Amphetamine; xq=Wrongful Possession of Marijuana, less than 30 gr.; xs=Wrongful Possession of Marijuana, greater than 30 gr.; dp=Possession of Amphetamine with Intent to Distribute; vv=Wrongful Use of Marijuana; yk=Wrongful Distribution of Amphetamine; ip=rape; mt=sodomy; qe=indecent assault.

It is clear from Table 1 that blacks charged with assault, sex-related crimes, and some drug crimes exceed their proportion in the enlisted Army population (about 30%) by a maximum of 250% and are slightly underrepresented in the three marijuana-related offenses. These figures are somewhat at variance with those occurring in the civilian population.[17] For example, in 1978, blacks accounted for 41% of the arrests for aggravated assault.[18] Using a 12% figure for the proportion of blacks in the population, we can calculate that blacks are overrepresented at a rate of 341% for this offense in the

civilian justice system. Comparing the Army and the Blumstein data, it is clear that the military overrepresentation rate is no more than half that of the civilian sector.

Description of data set: The data consisted of the following information on each charge: Name, social security number, race, marital status, Armed Forces Qualification Test score, date of birth, date entered the service and prior convictions for the accused. In addition, dates of the following events were included: date charges were preferred, date charges were referred, and date hearing was concluded.

Analyses of data: Three variables were formed: length of time in the service (TIS), calculated by subtracting the date of service entry from the date charges were preferred; length of time in the criminal justice system (TCD), calculated by subtracting the date of charges being preferred from the date of hearing conclusion; and, time between charges filed and hearing (TCH). These data were subjected to a survival analysis using the LIFETEST implementation in SAS 6.03[19] and examined separately by offense with race as the independent variable. This procedure compares the time-dependent distributions (i.e., survival functions) of the two racial groups. Censoring was not necessary since only charges that had been adjudicated were included in the analysis. Significance of the difference in survival functions between blacks and whites was assessed by chi-square with 1 degree of freedom.

In order to test the impact of plea bargaining on the length of time in the system, TCD was subjected to a two-way analysis of variance with race and type of plea bargain

(no plea bargain-NO, plea bargain with conditions-YC, and plea bargain without conditions-YN) as independent variables. If the presence of a plea bargain is differentially effective for racial groups, then we would expect to have significant race by plea bargain interactions.

Results

Effect of Time in Service: Of the 10 offenses analyzed, 9 produced significant chi-squares for race (Table 2; Table 3 gives the mean days corresponding to the chi-squares in Table 2). The offenses fall into two categories: those in which blacks are significantly more senior in service than whites and those where the relationship is reversed. The former consists of the non-sex crimes (e.g., assault and drugs) and the latter involves sexual activities (rape, indecent assault, and sodomy). The differences between these two offense categories is consistent and striking.

Table 2
Significance (Chi-Square) of Survival Functions by Race for Various UCMJ Offenses

	Offense										
Variable	nf*	nm	vx	xq	xs	dp	vv	yk	lp	mt	qe
TIS***	3.99**	NS	4.25	9.62	4.87	15.53	12.28	44.21	17.64	11.63	17.77
TCH	NS	NS	NS	NS	NS	3.93	9.67	13.18	NS	NS	7.69
TCD	NS	5.47	NS	10.78	NS	9.54	8.98	58.84	4.55	NS	17.19

* nf=Aggravated Assault with a Firearm; nm=Aggravated Assault without a Firearm; vx=Wrongful Use of Amphetamine; xq=Wrongful Possession of Marijuana, less than 30 gr.; xs=Wrongful Possession of Marijuana, greater than 30 gr.; dp=Possession of Amphetamine with Intent to Distribute; vv=Wrongful Use of Marijuana; yk=Wrongful Distribution of Amphetamine; lp=rape; mt=sodomy; qe=indecent assault
** Chi-Square, 1df, (.05)=3.84; (.01)=6.64; (.001)=10.83.
*** TIS=Time in Service; TCH=Time Between Charges Filed and Hearing; TCD=Time between Charges Filed and Disposition

Table 3
Means of Time Variables (in Days) by Race and UCMJ Offense (Mean Pairs Bracketed are Significantly Different)

		Offenses										
		nf*	nm	vx	xq	xs	dp	w	yk	lp	mf	qe
Variable	Race											
TIS***	White	922.67	841.97	814.75	773.28	780.11	792.99	761.69	785.81	1074.41	1105.92	1179.47
	Black	1170.97	874.89	913.17	1003.36	959.52	1076.02	931.01	964.16	766.26	563.13	688.39
TCH	White	42.19	41.01	34.34	35.88	37.96	43.75	37.55	41.74	52.48	56.06	57.49
	Black	48.51	43.89	36.2	42.08	44.31	48.72	47.01	46.59	51.21	63.64	42.39
TCD	White	83.02	75.31	62.76	62.75	66.65	69.4	65.59	68.73	106.7	102.99	112.04
	Black	87.86	81.87	64.75	79.83	71.5	83.58	77.51	84.25	94.9	113.47	79.95

* nf=Aggravated Assault with a Firearm; nm=Aggravated Assault without a Firearm; vx=Wrongful Use of Amphetamine; xq=Wrongful Possession of Marijuana, less than 30 gr.; xs=Wrongful Possession of Marijuana, greater than 30 gr.; dp=Possession of Amphetamine with Intent to Distribute; w=Wrongful Use of Marijuana;

Effect of Time in the Criminal Justice System (TCD): Six of the ten offenses produced significant chi-squares for race (Tables 2 and 3): Wrongful Possession of Marijuana (less than 30 gr.); Aggravated Assault Without a Firearm; Possession of Amphetamines with Intent to Distribute; Wrongful Use of Marijuana; Rape; and Indecent Assault. In the case of the first four (the non-sex crimes), blacks spent significantly more time in the system than whites; the converse was true for the two sex crimes.

Effect of Plea Bargaining: The two way analysis of variance (race by plea bargain) produced significant interaction effects in only two of the six offenses (Wrongful Use of Marijuana [$F=3.73$, $p<.05$] and Possession of Amphetamines with Intent to Distribute [$F=7.02$, $p<.001$]). These effects are displayed in Figures 1 and 2. From an inspection of the figures it is clear that the overriding effect is racial, rather than the presence of a plea bargain, although it does appear that accepting a plea bargain with conditions attached results in a longer time in the system for blacks when compared with whites. However, the fact that this effect only occurs in two of eleven charges weakens the conclusion of a consistent racial effect. Hence, we can conclude that the tendency of minority offenders

to reject a plea bargain had a marginal, if any, effect on the length of time they spent being processed by the system.

Effect of Age: Table 4 presents the results of the survival analysis using age as the dependent and race as the independent variable. Except for the assault offenses, all tests were significant. The results parallel those from the TIS analysis: on non-sex offenses blacks are significantly older than whites; the reverse is true for the three sex crimes.

Figure 1.
Time Between Charges and Disposition As a Function of Race and Plea Bargain Status: Wrongful Use of Marijuana

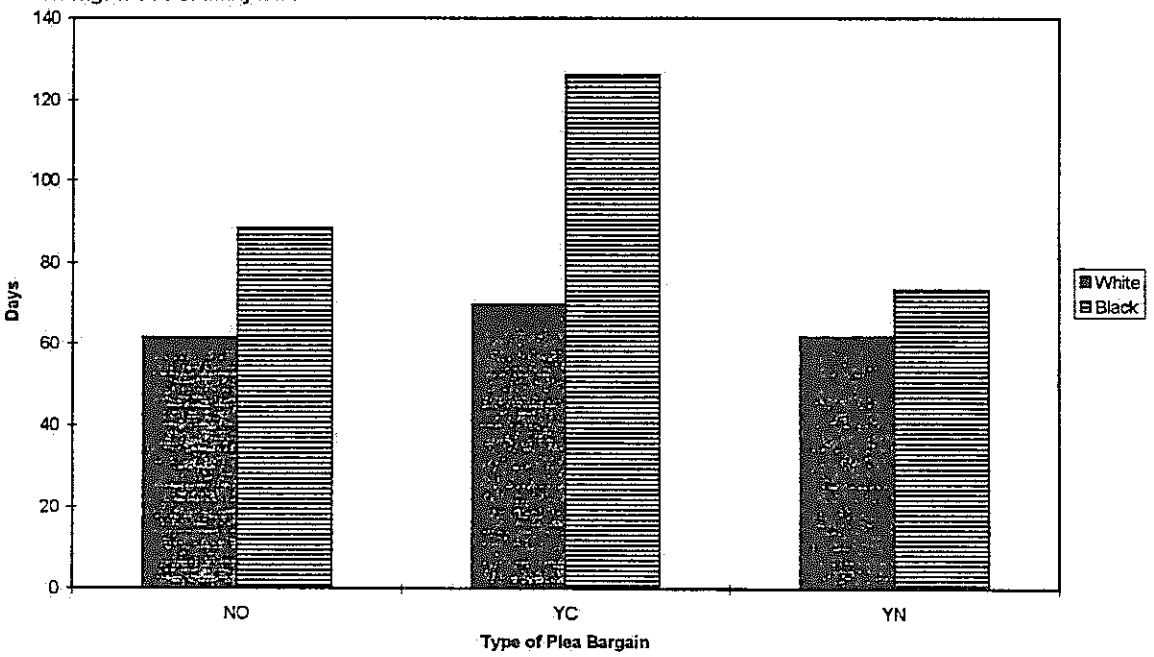

Figure 2.
Time Between Charges and Disposition as a Function of Race and Plea Bargain Status: Poss. of Amphetamines (including cocaine) with Intent to Distribute

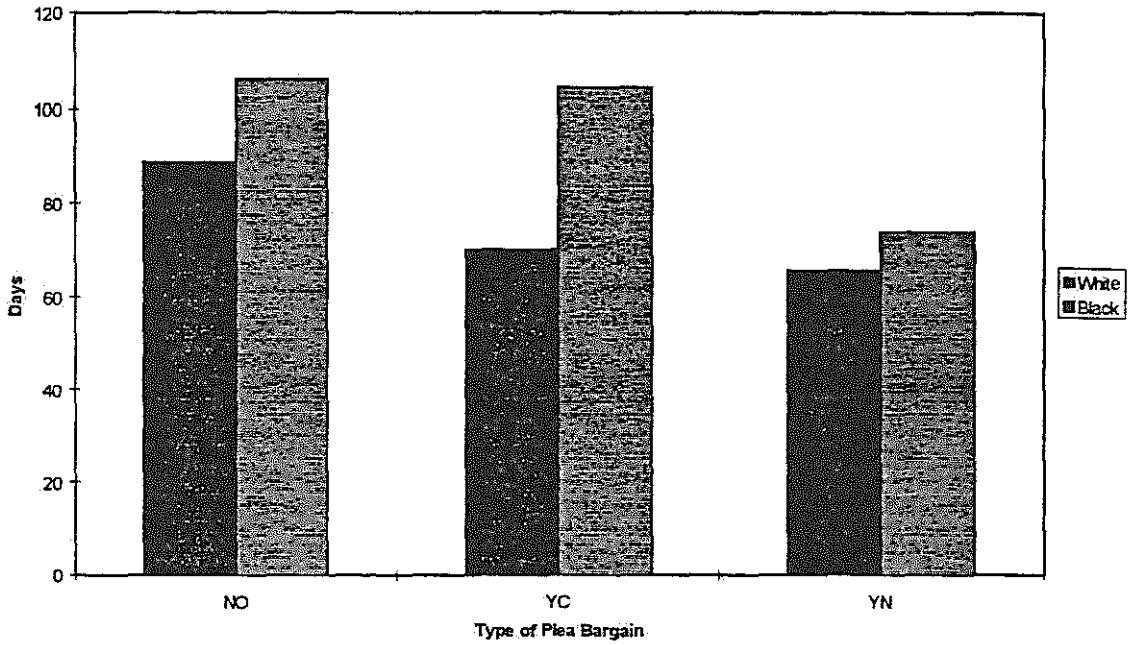

Table 4
Effect of race and charge on age (in years) of offender.

	Offenses										
	nl*	nm	vx	xq	xs	dp	vv	yk	lp	mt	qe
Race:											
White	24.35	22.67	22.83	22.07	21.94	21.35	21.77	21.89	24.1	24.39	24.55
Black	22.66	22.7	25.77	22.96	25.3	23.28	23.37	23.48	22.57	22.2	22.56
Chi-Square**	0.27	0.45	86.17	6.11	31.96	35.32	25.14	125.16	7.55	5.23	15.88

* nl=Aggravated Assault with a Firearm; nm=Aggravated Assault without a Firearm; vx=Wrongful Use of Amphetamine; xq=Wrongful Possession of Marijuana, less than 30 gr.; xs=Wrongful Possession of Marijuana, greater than 30 gr.; dp=Possession of Amphetamine with Intent to Distribute; vv=Wrongful Use of Marijuana; yk=Wrongful Distribution of Amphetamine; lp=rape; mt=sodomy; qe=indecent assault.

Discussion

This study examined the impact of race on time through the court-martial system in the U.S. Army. In contrast to studies that have found no racial disparity in terms of sentence length,[20] we found large and significant differences in how long it takes to traverse the system. We also found significant racial differences in both age and military tenure of offenders. We would argue that the means by which adjudication comes about

are at least as important as the end result. For the accused who is faced with the task of defending him-or herself, time may be either a friend or a foe. A longer time may provide more opportunities to prepare a persuasive case at trial. It may, conversely, provide pressure on the defendant to accept a less-than-optimum decision in order to obtain closure. We would argue that, for most minority defendants (few of whom have the resources to hire expensive civilian counsel), time is not a friend.

Despite the suggestions of earlier studies[21] that black offenders are younger than whites, the present data present a more complicated picture. The age of the offender depends very much on the type of offense. Part of the reasons for the failure to replicate previous studies may lie in the different databases used. The Knouse study used a small sample of serious offenders serving time at Ft. Leavenworth. In contrast, the Edwards and Newell research concentrated on discharges for misconduct, which includes much more than felony level offenses. The present study used a much more extensive data set--all serious offenders over a fairly long period of time. Hence, our data set is more representative of soldiers who find themselves in trouble than the previous sets and this may explain the differential results.

As interesting as the present results are, caution should be exercised before generalizing outside of the military.[22] As mentioned earlier, the UCMJ differs in some significant ways from the civilian milieu. First, in the military system there is a winnowing out of offenders. Military personnel who violate codes of conduct can be disciplined at a lower level or even eliminated from the service in an administrative proceeding. Hence, the population of defendants in courts-martial may represent those who have been

relatively free of previous difficulties. This is certainly true in the Army, where offenses receiving penalties under Article 15 are not centrally aggregated and, hence, do not follow the soldier as he/she changes posts. Repeated violations adjudicated under Article 15 are likely to result in discharge rather than elevation to court-martial level. While a parallel for the Articles 15 exists in the civilian sector (i.e., misdemeanors), there is no provision for escaping the system as there is in the military. Hence, people charged with felonies may often have long records of contact with the criminal justice system. Nevertheless, it will be important to cross-validate our results with data from the civilian criminal justice system.

The present data are also limited in that they explicitly do not deal with the soldiers' perceptions of the rationale for the variations in procedural justice (interactional justice). However, we do know that blacks' view of the military justice system is less than sanguine. Landis and Tallarigo[23] used items from the Military Equal Opportunity Climate Survey (MEOCS),[24] to assess perceived fairness and found that race is the most salient (as compared to gender, rank, or mission type) factor in predicting views of procedural justice. Since these data were gathered from active duty personnel, we can assume that few, if any, had any contact with the court-martial system. Any procedural justice perceptions they have must come from two sources: a) experiences before they entered the military, and/or b) what they have heard about people entangled in the system.

The differences between sex- and non-sex-related crimes requires some discussion. In these situations, it will be recalled, blacks (as compared to whites) are younger, have served less time in the military, and take less time to travel through the court-martial

system. We can speculate on the reasons for this, with the understanding that any such theorizing must be tested by further research. We would suggest a confluence of three factors: 1) sex related crimes are repugnant to victims, prosecutors, and defense counsels alike and there may be a reluctance to drag such proceedings out; 2) defense counsels may be reluctant to take on these cases, leaving them to lawyers with less experience; and 3) the stereotype, either explicit or implicit, that blacks are less able to control their sexual impulses (what Harry Golden called the myth of the "Big Black Stud"), leading to a judgment such persons are more than likely guilty of the charges and the process (not necessarily justice) need not be delayed.

The above hypothesis does not explain the procedural justice disparity in non-sex-related offenses. Here we would offer a less complex theory. Blacks simply may have less familiarity with the system and may be less able to hire competent counsel. Hence, they may be ignored by the system and have their cases delayed. The suggestion by Connelly and Robinson[25] that blacks tend to reject plea bargains is seen in the present study to have only marginal effects on time through the system. We are unable to tender any hypothesis, other than that proposed above, to explain the disparity with regard to non-sex related offenses. Clearly, further research is needed with regard to these findings.

This study has demonstrated that there are racial disparities in the administration of the UCMJ. These differences may or may not be ultimately inimical to minorities. Even if they are not, any hint of differentiation in procedures weakens the credibility of the system for meting out justice. Once that credibility is lost, almost by definition, justice cannot be attained.[26] Hence, the results of this study are worthy of reflection by the administrators of the military justice system and any other system with similar properties.

Appendix

Definition of Offenses used in this Study

Rape (lp): Sexual Intercourse by a person executed by force and without the consent of the victim, regardless of age.

Sodomy (mt): taking into one person's mouth or anus the sexual organ of another person or animal, or to place that person's sexual organs in the mouth or anus of another person or animal, or to engage in carnal copulation with an animal. There are further aggravating circumstances of committing sodomy by force, or with a child under the age of 16.

Indecent Assault (qe): An attempt or an offer to inflict some form of bodily harm in a manner not only grossly vulgar, obscene, and repugnant to common propriety, but that tends to excite lust and deprave the morals with respect to sexual relations (e.g., an unpermitted touching of a sexual nature).

Aggravated Assault (nl and nm): This is an assault committed with a dangerous weapon (if a firearm, then it is "nl") or some other means or force which is likely to result in death or serious bodily harm to the victim. There are aggravating circumstances (e.g., use of a firearm) which can result in more severe punishments.

Drug Offenses (vx, xq, xs, dp, vv, and yk): These are offenses which involve the manufacture, possession of, or possession with intent to distribute controlled substances; the introduction of controlled substances onto military property; and the importation or exportation of controlled substances into or out of the United States. In this study, controlled substances are limited to marijuana and schedule 1 drugs (amphetamines, cocaine, LSD, heroin, etc.).

Endnotes

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[1] See M. Deutch, Distributive justice: A social psychological perspective. (New Haven, CT: Yale University Press,1985); E. A. Lind & T.R. Tyler, The social psychology of procedural justice. (New York: Plenum,1988); J. Greenberg, "Reactions to procedural injustice in payment distributions: Do the ends justify the means?" Journal of Applied Psychology, 72 (1987): 55-61; J. Greenberg, "Organizational justice: Yesterday, today, and tomorrow," Journal of Management, 16 (1990): 399-432.

[2] Greenberg, " Organizational justice"

[3] See R. J. Bies & J. S. Moag, "Interactional justice: Communication criteria of fairness," Research on Negotiation in Organizations, 1 (1986): 43-55.

[4] See C. Norris, N. Fielding, C. Kempe, & J. Fielding. "Black and blue: An analysis of the influence of race on being stopped by the police," British Journal of Sociology, 43, (1992): 207-224.

[5] See A. Blumstein, "On the racial disproportionality of the United States prison populations," Journal of Criminal Law and Criminology, 73 (1982): 1259-1281

[6] Tonry has argued, in contrast, that differential outcomes can occur when the political system criminalizes behaviors which more heavily occur among minority populations. Thus, the emphasis on long terms for drugs that are particularly prevalent in minority population (e.g., crack cocaine) leads to a prison population which is predominately minority. See M. Tonry, Malign Neglect: Race, Crime, and Punishment in America. (New York: Oxford University Press 1995); Also see D. C. McDonald & K. E. Carlson, Sentencing in the Federal courts: Does race matter? The transition to sentencing guidlines, 1986-1990. (Washington, DC: Office of Justice Programs, U.S. Department of Justice,[1993]); J. Petersilla, Racial dispartities in the criminal justice system. (Santa Monica, CA: Rand Corporation, [1983]); W. Wilbanks, The myth of a racist criminal justice system. (Monterey, CA: Brooks/Cole, 1987).

[7] S. Gilliland, "Effects of procedural and distributive justice on reactions to a selection system," Journal of Applied Psychology, 79, (1994): 691-701; J. Schaubroeck, D. R. May & F. W. Brown, "Procedural justice explanations and employee reactions to economic hardship: A field experiment," Journal of Applied Psychology, 79, (1994): 455-460.

[8] See Wilbanks, Myth.

[9] Rules for Courts-Martial, 903.

[10] See J.Connelly, Equitability of treatment in the Army Judicial Proceedings (ETAJUP). (Report SR-93-14. Bethesda, MD: US Army Concepts Analysis Agency [1993]); A. C. Robinson, Blacks and the military justice system. unpublished paper. (Washington, DC: HDQR, Department of the Army, [1993]).

[11] P. G. Nordlie, E. R. Sevilla, W. S. Edmonds & S. J. White, A study of racial factors in the Army's justice and discharge system (5 vols.). (McLean, VA: Human Sciences Research, [1979, November]); R. J. Hart, The relationship between perceived offense and actual discipline rates in the military. (Research Memorandum 77-30). (Presidio of Monterey, CA: Army Research Institute Field Unit, [1978, February]); S. Conway, Effects of race and gender on court-martial rates and punishments. (NPRDC Special Report 83-20). (San Diego: Navy Personnel Research and Development Center, [1983, March]); R. G. Bauer, R. L. Stout & R. F. Holz, Predicting military delinquency. (Research Problem Review 76-4). (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, [1976, August]); D. B. Bell & R. F. Holz, Summary of ARI research on military delinquency. (Research Report 1185) (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, [1975, June]); M. R. Dansby, Racial disparities in the military incarceration rates: An overview and research strategy. (DEOMI Research Series Pamphlet 92-3). (Patrick AFB, FL: Defense Equal Opportunity Management Institute, [1992]); G. E. Horne, Equity in disciplinary rates. (Alexandria, VA: Center for Naval Analysis, [1988]); S. B. Knouse, Differences between black and white military offenders: A study of socioeconomic, familial, personality, and military characteristics of inmates at the United States Disciplinary Barracks at Fort Leavenworth. (DEOMI Research Series Pamphlet 93-2); (Patrick AFB, FL: Directorate of Research, Defense Equal Opportunity Management Institute, [1993]) Connelly, Equitability; Robinson, Blacks and military justice; M.R. Walker, An analysis of discipline rates among racial/ethnic groups in the US military. (Patrick AFB, FL: Defense Equal Opportunity Management Institute, [undated]); D. Landis & M. R. Dansby, Race and the military justice system: Design for a program of action research. (DEOMI Research Series Pamphlet 94-3). (Patrick AFB, FL: Defense Equal Opportunity Management Institute, [1994]).

[12] Connelly, Equitability; Robinson, Blacks and military justice

[13] Tonry, Malign neglect.

[14] Knouse, Differences.

[15] J. E. Edwards & C.E. Newell, Navy pattern-of-misconduct discharges: A study of potential racial effects. (San Diego: Navy Personnel Research and Development Center, [1994]).

[16] Crimes listed as involving amphetamines include cocaine, LSD and other schedule 1 drugs. We can assume that the vast majority of these offenses involve cocaine in either powder or crack form. The UCMJ does not distinguish between the forms of cocaine in terms of determining sentences.

[17] Blumstein, racial disporportionality; P. A. Langan, "Racism on trial: New evidence to explain the racial composition of prisons in the United States," Journal of Criminal Law and Criminology, 76, (1985): 666-683; Tonry, Malign neglect.

[18] Blumstein, racial disporportionality

[19] D. R. Cox & D. Oaks, Analysis of survival data. (London: Chapman and Hall, 1984); SAS , SAS Technical Report P-179, Additional SAS/STAT Procedures, Release 6.03. (Cary, NC: SAS Institute Inc, 1988).

[20] Indeed, a post-hoc analyses of sentence length using the present data found significant racial differences only with regard to the offense of distribution of amphetamines. Here the mean sentence given to blacks was significantly ($F=13.67$, $df=1,2130$; $p<.0001$) longer (by about 11 months) than that awarded to whites. It should be noted that this category includes cocaine as well as amphetamines. This difference is somewhat less than that reported for the Federal courts after the implementation of the 1987 sentencing guidlines. The fact that the UCMJ does not distinguish between crack and powder cocaine and, unlike the civilian sector, racial differences in income should not be a factor in drug preferences suggests that the civilian distinctions have permeated the evaluations made by military jurors and judges. See Connelly, Equitability; McDonald & Carlson, Sentencing.

[21] Knouse, Differences; Edwards & Newell, Navy pattern.

[22] As we were completing the final draft of this paper, we became aware of the unpublished research of Quereshi & King (M.K. Quesreshi & M. S. King, "Processing time as a function of ethnicity, gender and psychopathology," [unpublished research, Department of Psychology, Marquette University, 1995]). This study found that blacks took significantly longer to be processed through the Milwaukee courts than whites. However, unlike the present study, Quereshi & King did not examine the interactive role of type of offense, nor did they control for the economic resources of the offender, something that is likely to be much more important in the civilian as compared to the military systems.

[23] D. Landis & R. Tallarigo, "Effect of race, gender, rank, and mission type on perceived fairness of discipline in the military services." (Paper presented at the World-Wide Equal Opportunity Conference. Cocoa Beach, FL,[1994, December]).

[24] D. Landis, M. R. Dansby & R. Tallarigo, "The use of equal opportunity climate in intercultural training." In Handbook of Intercultural Training, 2nd Edition, ed: D. Landis & R. Bhagat, (Thousand Oaks, CA: Sage, 1996).

[25] Connelly, Equitability; Robinson, Blacks and military justice

[26] S. Lamb "The court-martial panel selection process: A critical analysis," Military Law Review, 137, (1992): 103-166.