

DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE DIRECTORATE OF RESEARCH

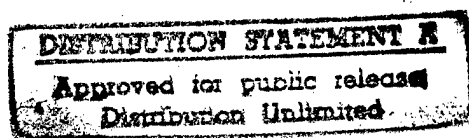
Race and the Administration of Non-Judicial Punishments in the U.S. Army

by

Dan Landis, PhD
University of Mississippi
Colonel Shirley J. Bach Professor

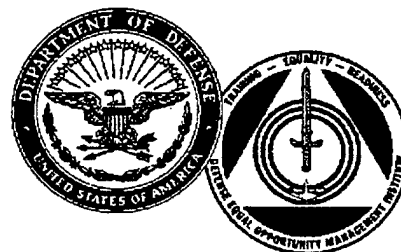
and

Rick S. Tallarigo, PhD
AON Consulting



May 1996

19960610 169



REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE 15 May 1996	3. REPORT TYPE AND DATES COVERED Final - September 1995 - May 1996	
4. TITLE AND SUBTITLE Race and the Administration of Non-Judicial Punishments in the U.S. Army			5. FUNDING NUMBERS Grant No: N00014-94-1-0515	
6. AUTHOR(S) Dan Landis and Rick S. Tallarigo				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Directorate of Research Defense Equal Opportunity Management Institute 740 O'Malley Road Patrick Air Force Base, Florida 32925-3399			8. PERFORMING ORGANIZATION REPORT NUMBER RSP-96-4	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) Office of Naval Research 800 N. Quincy Street Arlington, Virginia 22302			10. SPONSORING / MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution unlimited.			12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 words) Approximately 3300 incidents covered under Article 15 of the Uniform Code of Military Justice were gathered from 3 Army posts. Each post housed an infantry division and each was geographically distinct from the others. The database so created was merged (by social security number) with additional personnel information provided by the Defense Manpower Data Center (DMDC). Results indicated that blacks are significantly overrepresented in Articles 15, but are significantly underrepresented in the severity of punishments. Blacks are also older, have had longer tenure, and are of higher rank when they received the non-judicial punishment (NJP) and when they are discharged. The implications of these data for the retention of blacks in the senior enlisted ranks of the Army are discussed.				
14. SUBJECT TERMS Racial Disparities, Court-Martial, Non-Judicial Punishment, UCMJ Military Delinquency			15. NUMBER OF PAGES 18	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT Unlimited	

Race and the Administration of Non-Judicial Punishments in the US Army¹

Dan Landis
Colonel Shirley J. Bach Professor
and

Rick Tallarigo
AON Consulting

Abstract

Approximately 3300 incidents covered under Article 15 of the Uniform Code of Military Justice were gathered from 3 Army posts. Each post housed an infantry division and each was geographically distinct from the others. The database so created was merged (by social security number) with additional personnel information provided by the Defense Manpower Data Center (DMDC). Results indicated that blacks are significantly overrepresented in Articles 15, but are significantly underrepresented in the severity of punishments. Blacks are also older, have had longer tenure, and are of higher rank when they received the non-judicial punishment (NJP) and when they are discharged. The implications of these data for the retention of blacks in the senior enlisted ranks of the Army are discussed.

Military discipline is a term that covers many administrative actions. At its most informal and unstructured level, the term can refer to such actions as extra duty, extra instruction, short-term confinement, counseling and similar responses. At the other extreme military members can be sent to prison for terms up to life for serious felonies such as murder and even receive the death penalty. Somewhere in the middle of this dimension lies the domain of the non-judicial punishment, a series of actions in response to less than felony offenses, but more than simple errors of omission or commission.

In many ways the military system parallels the civilian environment, albeit in a more structured and confined fashion. So, one could argue that the informal system of military education/correction corresponds to the discipline meted out by superiors in the work, school, and home environments. In place of memory or sporadic record keeping, a more formal system is introduced, exemplified in the Army by the SMIF (Soldier Miscellaneous Information File). The non-judicial punishments are incrementally more formal and correspond, to some degree, to misdemeanors with the corresponding more permanent keeping of records (though, of course, the level of "permanency" is a matter of service discretion). Finally, there is the court-martial system, which is very similar, with significant differences to the criminal court structure in the civilian world.

¹ This research (the third in a series of studies dealing with race and the Uniform Code of Military Justice) was completed during the first author's sabbatical leave from the University of Mississippi. The second author was a Major in the US Air Force assigned to the Defense Equal Opportunity Management Institute (DEOMI). The first two studies are: Landis & Dansby (1994) and Landis, Hoyle, & Dansby (1996). We wish to acknowledge the invaluable aid of MSG Ashley Davis of DEOMI and Andrea J. Dettner of DMDC in the prosecution of this research. Comments on this paper can be addressed to the first author at: Center for Applied Research and Evaluation, University of Mississippi, University, MS 38677 (e-mail: ijir@vm.cc.olemiss.edu). The opinions in this paper are solely those of the authors and do not represent official policy of the U.S. Government, the Department of Defense or their agencies.

Racial disparity in the administration of criminal justice has been of interest to criminologists for some time (see Landis & Dansby, 1994, for a review of some of these studies). These studies have drawn their impetus from the universal findings that blacks are overrepresented in the criminal justice system when compared to their proportion in the population (e.g., in 1992 50.3% of prison inmates were black. Snell, 1995). The amount of overrepresentation has varied, though, and, depending on the offense, can range as high as 500%. Indeed, in some localities, close to 50% of young black men are involved in some way with the criminal justice system, accused, on trial, on probation, or on parole (Miller, 1993). Within the military, the overrepresentation ranges up to approximately 250%, again depending on the offense (Landis & Dansby, 1994).

Much of the research cited above has focused on the court-martial system. The reasons for this are obvious. First, the potential penalties that can be levied on a convicted offender can be quite serious. Second, as a formal legal proceeding, there is a requirement for complete and permanent record keeping. Hence, the data are more available than with the more informal parts of the military justice system.

Minor offenses may be disposed of under the Uniform Code of Military Justice (UCMJ), but not involve a full military adjudication. That is, determination and penalties may be levied by local commanders with incarceration² not being an option (though, of course, restriction to prescribed areas is an option). The so-called non-judicial punishment is handled somewhat differently by each service. In the Army, offenses falling under Article 15 of the UCMJ (i.e., non-judicial punishments) are seen as a way to provide correction to some behavior. Hence, they are comparatively common and do not become (except in the cases of senior enlisted personnel) part of the military member's permanent personnel file. Assuming good conduct, NJPs are routinely discarded after two years or when the member goes to a new assignment. In the Air Force, by contrast, NJPs are viewed as representing serious offenses and are used sparingly and as a last resort. Receiving one or two can mean automatic expulsion from the service.

A court-martial can be viewed as the tail end of a complex process that begins before the service member enters military life. It could be argued that once a person has been charged with an offense serious enough to warrant a court-martial, that person is lost to the service. Even if charges are not preferred or the person is acquitted, a question has been raised about the value of the individual to the service. So, in the sense of rehabilitating the person for a successful military career (however "successful" is defined), the court-martial is the wrong place to intervene.

Earlier in the process are expectations set up by receipt of either NJPs or other forms of military correction. Since these are processes in which there is greater command discretion, they are much more subject to differential treatment based on race or other irrelevant characteristics. As Bell and Holz (1975) noted some years ago, the single best predictor of military delinquency is the belief by commanders that the military person will do wrong. The receipt of an NJP may function as either a confirmation or initiation of that belief. For this reason it is important to examine the NJP system for possible racial disparities.

There is little literature dealing specifically with the administration of the Article 15 system. An early paper by Crawford & Thomas (1977) found that the human relations climate aboard ship was related to level of Captain's Mast (the Navy's version of NJP) being awarded. The literature is silent with regard to any racial differences in offense profiles or in patterns of punishment. This project is a first attempt to lift this veil.

² Actually, commanders may impose "correctional custody," though this is rarely used in practice. In the Navy, custody on "bread and water" is on the books, but again is almost never used.

We hypothesize the following:

1. Minorities will receive Articles 15 in our sample in greater numbers than their representation in post populations. This hypothesis is based on the three observations: a) across the Army, minorities are overrepresented in NJPs (Landis & Dansby, 1994); b) minorities are overrepresented in courts-martial (Landis & Dansby, 1994); and c) minorities (particularly Blacks) are overrepresented in the civilian criminal justice system (Miller, 1993; Snell, 1995). The first consideration speaks to the representativeness of our sample. While we might expect that the overall incidence for minorities in the military will be lower (due to the enlistment selection process), it will still be greater than the group's fraction of the total armed forces.

2. There will exist location and mission differences in the level of racial disparities in the awarding Articles 15. The first part of this hypothesis recognizes the role of the commander in setting the parameters of permissible behavior. The second part derives from the consistent finding that equal opportunity climate varies as a function of mission type. That is, combat units tend to have the poorest climate, while service support units have the highest (Landis, Dansby, & Tallarigo, 1996).

3. There will exist offense profile differences between white and black service people. Tonry (1995) and others have noted that blacks are disproportionately more likely to be charged with drug and related offenses, while whites are more likely to be found in so-called white collar offenses. In analyzing several years of Army courts-martial, Landis, Hoyle, & Dansby (1996) found that blacks were overrepresented in assaults, sex-related crimes and some forms of drug offenses; this same group was slightly underrepresented in three marijuana-related offenses. We suggest that similar differences in offense profiles will exist at the NJP level.

4. There will exist racial disparities in the level of punishment levied from Articles 15. We state this hypothesis, recognizing that there is considerable disagreement over racial disparities in punishment in the civilian and military systems (e.g., Tonry, 1995; Wilbanks, 1987; Connelly, 1993; Landis, Hoyle, & Dansby, 1996). The present data will add to this debate by providing an analysis of an important part of the discipline system.

5. There will be racial disparities in the age, tenure, and rank of servicepeople receiving Articles 15. This hypothesis derives from the finding that blacks who receive courts-martial are older, have been in the Army longer, and are of higher rank than whites similarly situated (Landis, Hoyle, & Dansby, 1996). It is reasonable to suppose that the same relationship will hold at the NJP level. Given that NJPs for senior enlisted personnel carry serious consequences (e.g., the termination of a career), evidence supporting this hypothesis would lead to a underlying phenomenon of "derailment" for minorities as a possible explanation.

Method

Sample: Three Army division-level infantry posts were selected. The posts were geographically dispersed within CONUS. Infantry posts were selected in order to minimize any variance due to mission. Division-level sites were needed to assure a sufficiently large sample of Articles 15. Table 1 gives the racial, gender, and service breakdown of the sample.

Table 1. Composition of sample by race and sex.

Race	Male	Female	Unknown	Total
African-American	1026	114	1	1141
Asian-American	17	3	0	20
Hispanic	166	10	0	176
Native-American	17	1	0	18
White	1769	68	1	1838
Other	137	4	0	141
Totals	3132	200	2	3334

Note: Based on number of incidents.

For each post, all Articles 15 awarded during calendar year 1994 were captured. Capturing was accomplished by physically entering the data from each DD Form 2627 and subsidiaries into a database (the DD Form 2627 is used to record details of the action). The constructing of the database was facilitated by use of a computer program (NJP.EXE³) written expressly for this project. The program was developed in dBase 5.0, compiled and installed on laptop computers that the research team carried to each site. The total number of Articles 15 thus captured numbered approximately 3300. Once the sample was gathered, the social security numbers were submitted to Defense Manpower Data Center and additional data obtained. The two databases (our NJP and the DMDC) were merged.

Data: From the DD Form 2627 (and subsidiaries), the following data were obtained for each Article 15: type (formal, summarized), social security number (ssn), birthdate, gender, ethnic group, offense, subsidiary offenses (if any), article under which offense(s) was charged, level of offense (company vs. field grade), date of offense, date of hearing, date of filing appeal, date of appeal decision, request for court-martial, request for closed hearing, decision of original hearing, penalties levied (restriction, rank reduction, fines, extra duty), suspensions of penalties and their respective outcomes. From the DMDC matches, we obtained the individual's primary occupation code, educational level, Armed Forces Qualification Test (AFQT) percentile, date of birth, marital status, dependents, ethnic group, sex, basic active service date, interservice separation code, character of service, and date of separation.

Procedure: After permission had been obtained from the post Commander, arrangements were made to visit each site. An in-briefing was conducted after which the data were extracted from the hard copy DD 2627s and other relevant forms. The computer program (NJP.EXE) mirrored the data on the form so that virtually all of the information was automatically entered into the database. Each post provided approximately 1000 Articles 15 and it took 3 people about 5 days to complete data gathering. Before leaving each post, an out-brief was conducted with the designee of the post commander (either the Staff Judge Advocate General [JAG] or the Chief-of-Staff for the Division).

Analyses of data: For analyses of incidence rates (both overall and by offense), data were cast into sets of contingency tables by race. Included in those tables were the expected frequencies obtained from post EO reports. These tables were analyzed using appropriate X^2 statistics.

In order to analyze punishments, three approaches were taken. In the first, each punishment (e.g., extra duty) was analyzed as an ordinal variable (0=absent, 1=present) and contingency tables prepared. These were analyzed as described above. In the second analysis, those punishments which were continuous (e.g., fines) were examined by analysis of variance with race as the independent variable.

³ This program is available from the first author.

The third analysis developed a metric for scaling the total effect of the punishment, since in the majority of cases an offender received some amount of all possible categories of punishment. The metric developed was:

$$SI=(k_1(PG)*5)+k_2(FINE/10)+k_3(RD)+k_4(XD)$$

Where: SI=Severity Index

k_1 =16 if punishment not suspended, 8 if suspended

k_2 =8 if punishment not suspended, 4 if suspended

k_3 =4 if punishment not suspended, 2 if suspended

k_4 =2 if punishment not suspended, 1 if suspended

and

PG =Pay grade (Enlisted only)

FINE=Amount of Fine in dollars

RD =Days restricted

XD =Days extra duty

Note: Each component is standardized by paygrade

It will be noted that the metric assumes that immediate punishment is more severe than a penalty which is suspended⁴. These values were calculated automatically as the relevant data were captured.

Results

Table 2 presents the incidence of Articles 15 by race over all three sites:

Table 2. Observed versus expected representation in Articles 15 (all sites combined).

Race	Observed Percent	Observed Frequency	Expected Percent	Expected Frequency
White	58.	1714	64.	1895
African-American	36.	1061	31.	936
Hispanic	5.	168	3.	112
Total	100.	2943	100.	2943

Note 1. Expected frequencies based on official strength statistics.

Note 2. $X^2=61.96$, $df=2$, $p<.001$

Both the Hispanic and black groups are overrepresented. A breakdown by site indicates that this pattern (for blacks) holds true, however, for only 2 of the 3 locations (Figure 1).

⁴ The weights were derived based on the research team's experience with the Article 15 system. Thus, reduction in paygrade was assumed to be a more severe penalty because it involves future earnings, prestige, and career possibilities. Extra duty, by contrast, is more of an annoyance and carries little permanent damage. Of course, these weights could be made more precise by a scaling study--a study that we fully expect to complete in the near future.

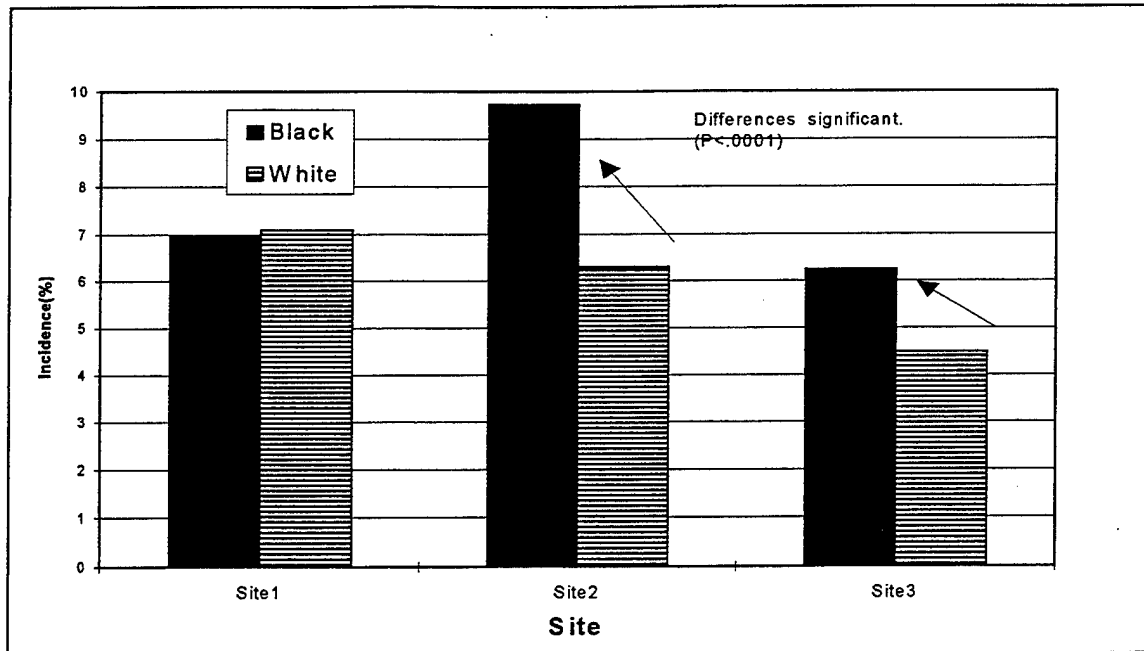


Figure 1. Incidence Rates by Site and Race

In terms of primary⁵ offense profile, significant differences appear with blacks being overrepresented in crimes against persons and property and confrontation with authority. Whites are overrepresented in drug offenses and failure to appear, while Hispanics and whites are charged more often with alcohol offenses (Figure 2).

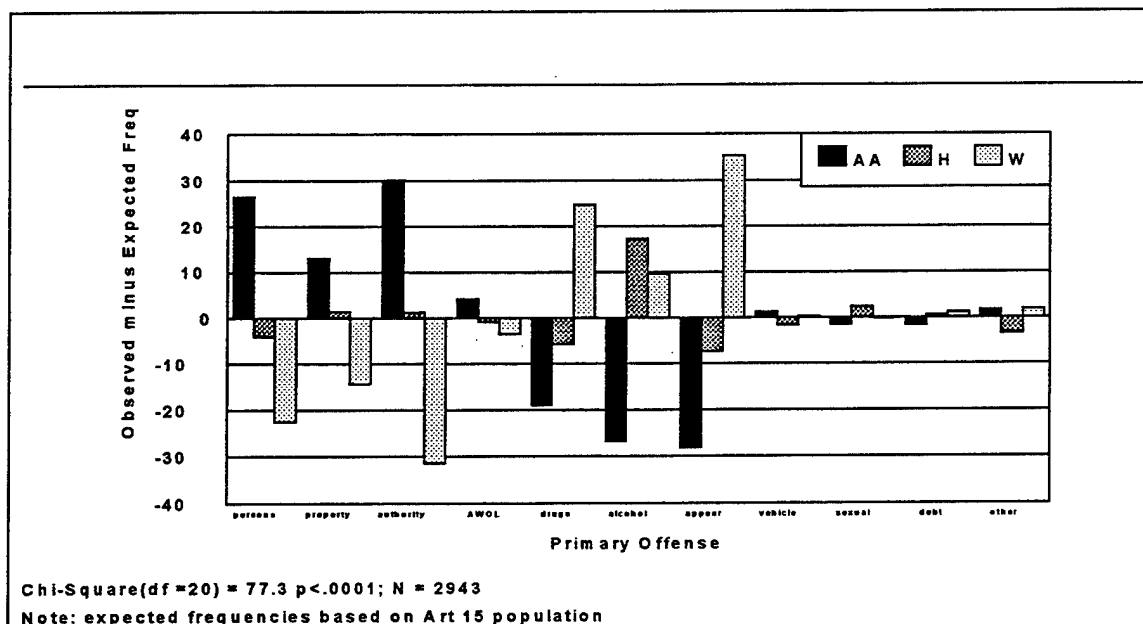


Figure 2. Relative Representation in Primary Offense for African-Americans (AA), Hispanics (H) and Whites (W).

⁵ The program captured both primary (i.e. main offense charged) and secondary (e.g. subordinate or additional charges) Articles 15.

Figure 3 indicates that whites tend to be overrepresented with respect to expected frequencies at the lower grades and underrepresented at high ranks, while the opposite is true for blacks.

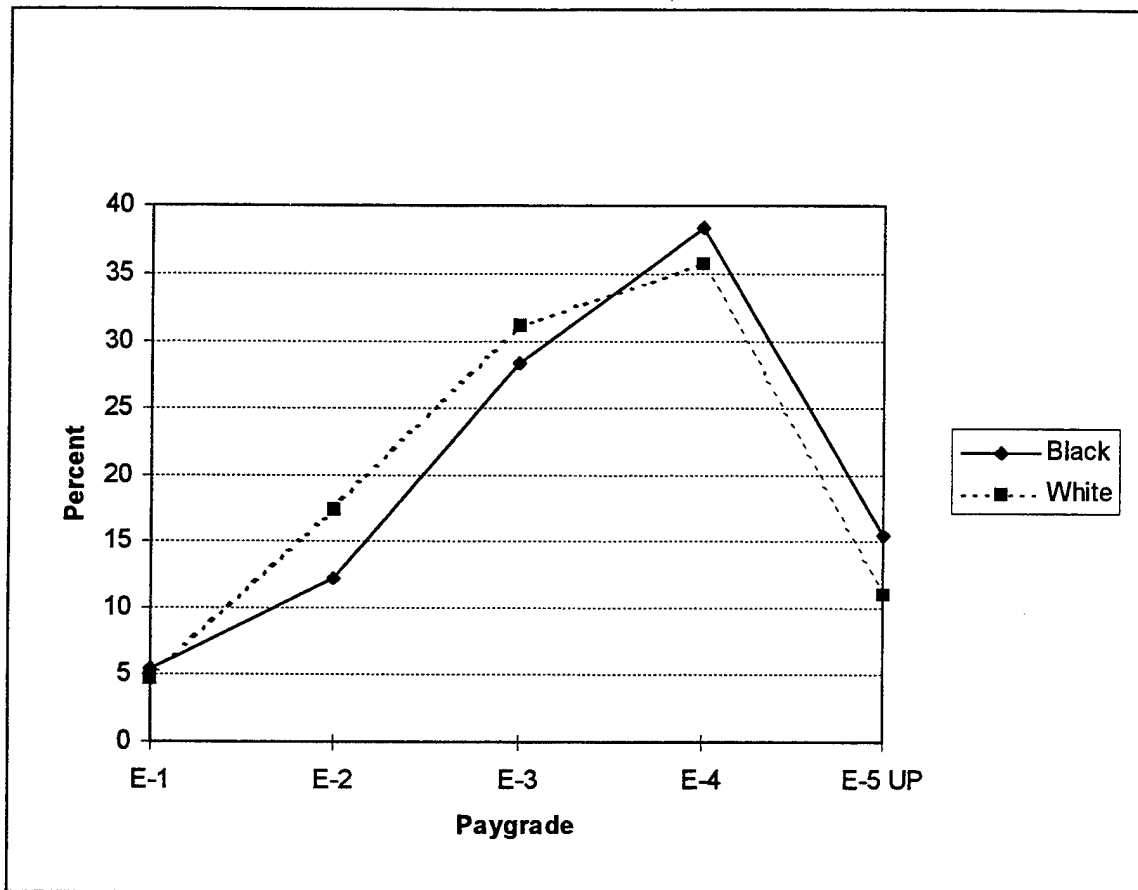


Figure 3. Percentage receiving Article 15 by race within each paygrade.

Distribution of penalties: There are four classes of penalties that can result from an Article 15 conviction⁶: reduction in rank, fine, restriction to base, and extra duty. Each of these penalties can be suspended for a specified amount of time. The pattern across all penalties is that minorities (particularly blacks) are underrepresented in receiving the penalty, and overrepresented in having the result suspended. Figure 4 illustrates this pattern for rank reductions. While the same pattern is found for restrictions and extra duty, the imposition of fines presents a somewhat different schema: both the imposition and suspension of fines show underrepresentation of minorities (Figure 5).

⁶ Purists will argue that individuals are not "convicted" of offenses under Article 15. Indeed, the Army's Form 2627 ("Record of Proceedings under Article 15, UCMJ") speaks only of "imposing punishment" not of guilt or innocence. However, from the viewpoint of the person being accused, punishment means being guilty of something (i.e. being convicted). Hence, it is a difference that, in our opinion, makes no difference except to those who, like the medieval scholastics, enjoy dancing on the heads of pins. The only advantage is that the accused can say, with perfect honesty, that they have never been "convicted" of a crime. There is, however, some advantage to the individual in this distinction. Should the occurrence of an NJP be used as evidence in an administrative separation hearing, the servicemember can contest the facts. Had he/she been convicted in a court-martial, the hearing board would consider the issue closed.

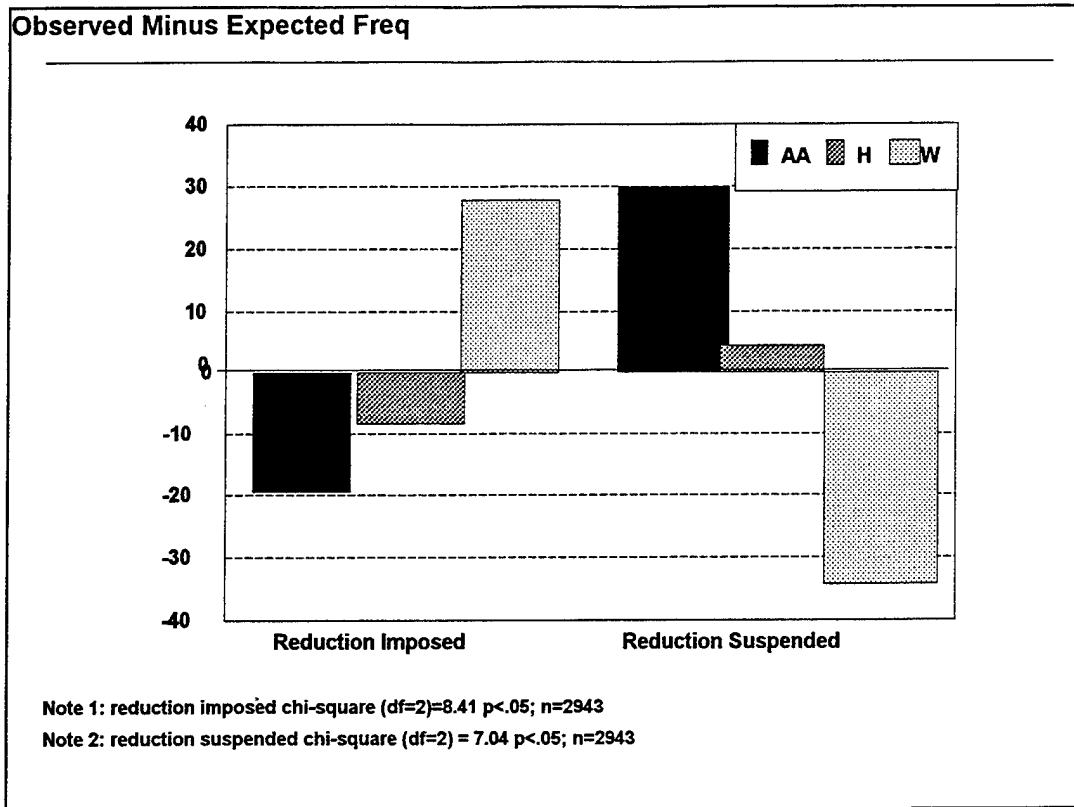


Figure 4. Observed Minus Expected Frequencies of Reductions in Rank and Suspensions of Reductions by Race.

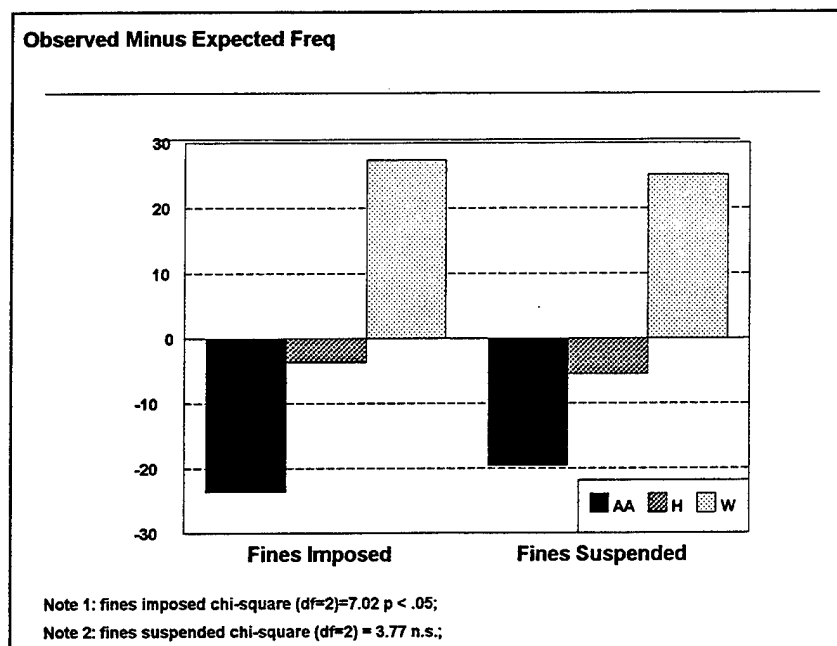


Figure 5. Observed Minus Expected Frequencies of Forfeitures by Race and Suspensions.

When fines are scaled as a percentage of salary, an interesting pattern appears: blacks at the E-1 and E-2 paygrades have a slightly higher percentage of their pay taken than whites (3.8% vs. 3.5%, respectively). The reverse is true at the E-6 and up paygrades (Figure 6).

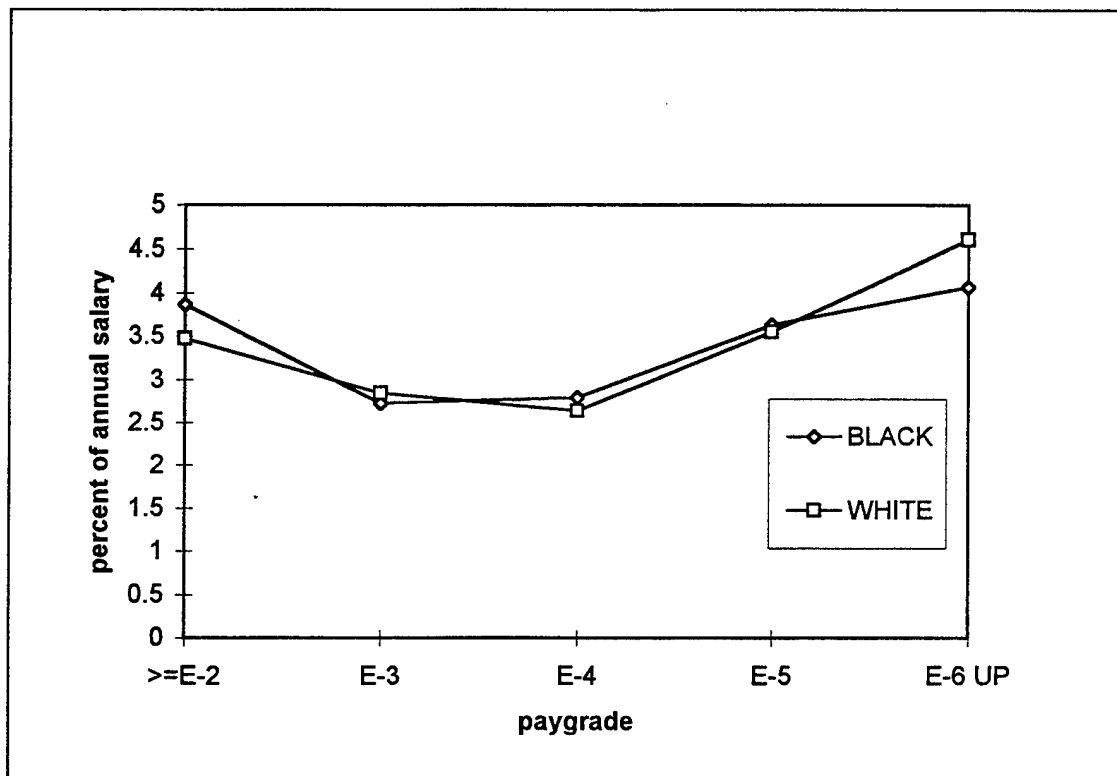


Figure 6. Fines (as a percentage of annual salary) by race and rank

Severity of Punishments: There were no significant differences ($p > .05$) between sites in the amount of punishment levied with paygrade controlled. There were also no differences when the data were collapsed across sites and offenses as a function of race. However, when offense type and race were considered jointly, a significant interaction appeared ($p < .001$). Figure 7 indicates that this interaction was due to blacks receiving significantly more severe punishments for alcohol related offenses and no other significant differences being apparent. Figure 8 indicates that this effect is due to blacks charged with alcohol offenses being given field grade NJPs at a higher rate than whites similarly charged. The punishments imposed for field as opposed to company level NJPs are much more severe.

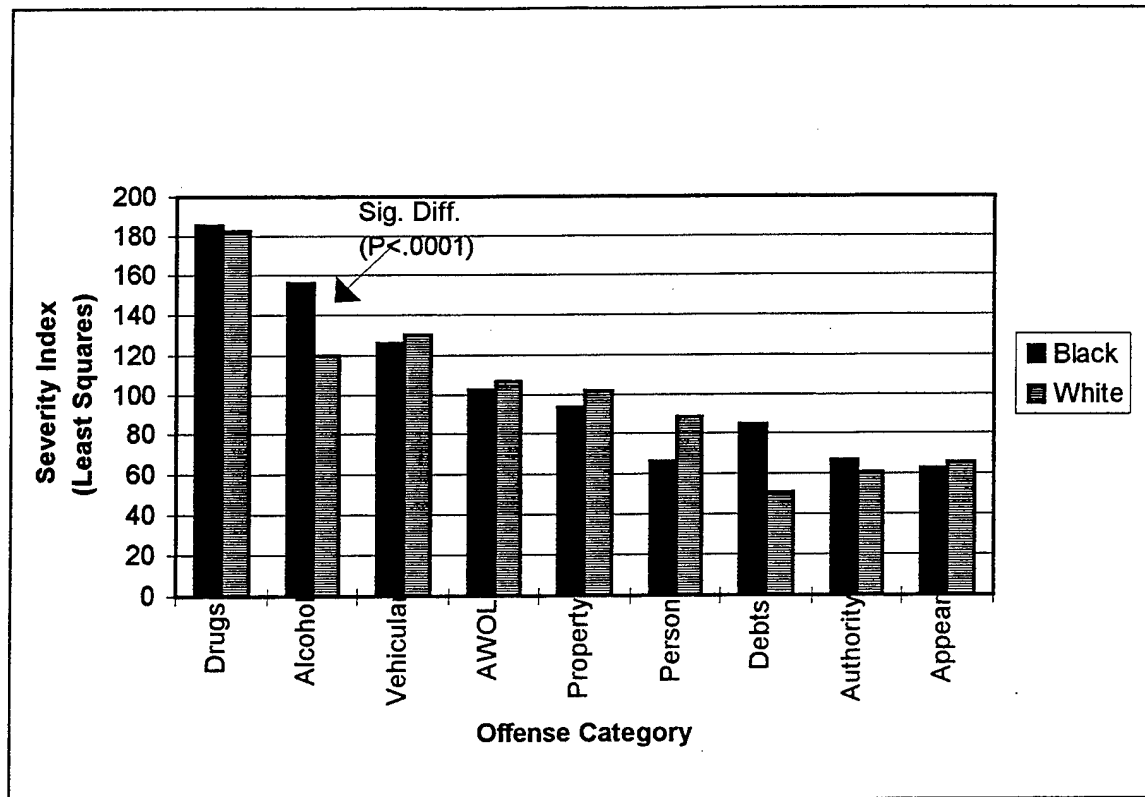


Figure 7. Punishment Severity as a Function of Offense Category and Race (With paygrade controlled)

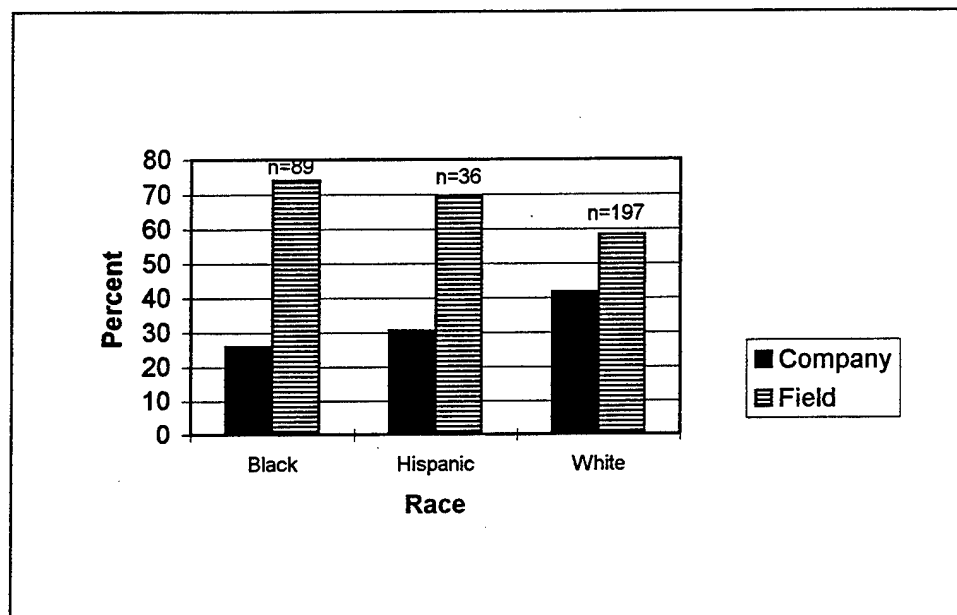


Figure 8. Percentage of Field vs. Company Grade Actions for Alcohol Offenses by Race ($X^2=7.15$, $df=2$, $p<.05$)

Although the interaction between race and offense is significant, the major component of that effect is type of offense. That effect is shown in Figure 9.

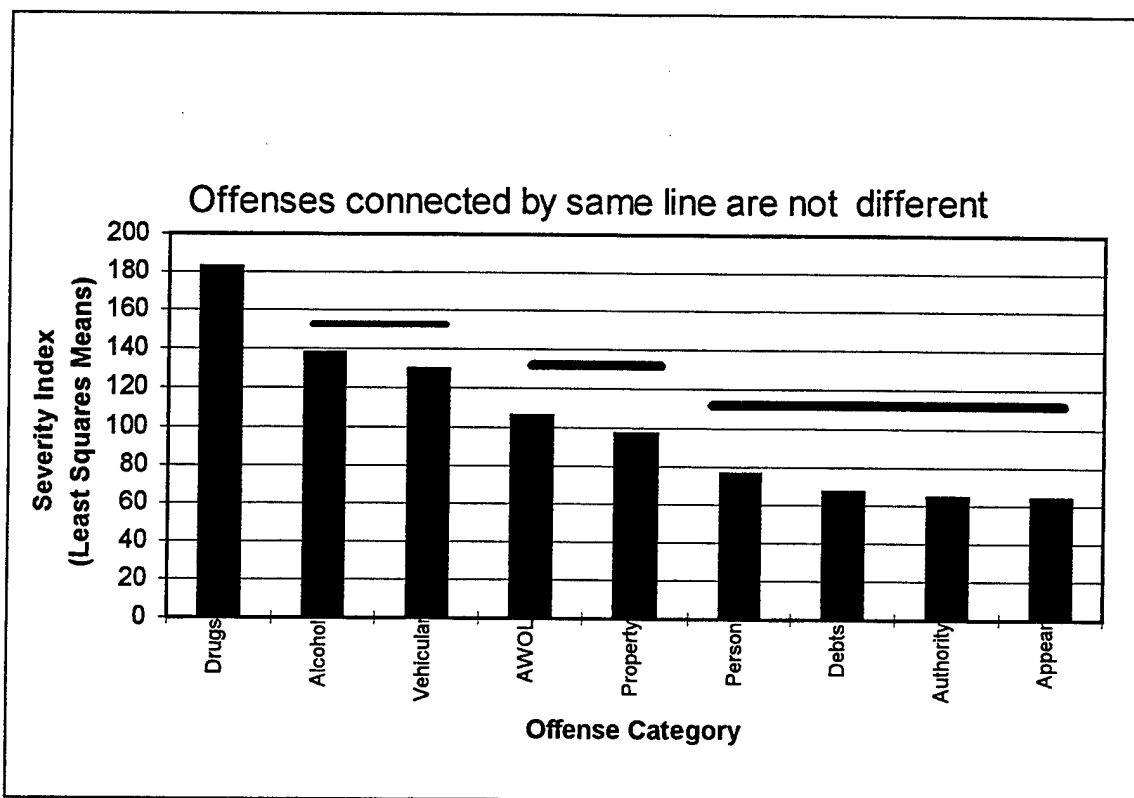


Figure 9. Punishment Severity as a Function of Offense Category With Paygrade Controlled

Figure 9 indicates that, in term of punishment severity, there are four clusters of offenses: a) drugs, b) alcohol and vehicular, c) offenses against property and AWOL, and d) offenses against person, failure to pay debts, confrontation with authority, and failure to appear. These groupings probably reflect the likelihood of a particular offense being seen as requiring a field rather than a company grade Article 15. It is interesting to note that offenses against persons (e.g., fighting, hitting a spouse) receive less severe penalties than offenses against property. One can speculate that aggressive behavior may be perceived as a necessary, if unfortunate, byproduct of military training or a "domestic issue" when involving a spouse and therefore more "private." Offenses against property and going AWOL are more serious—the former because property has intrinsic value and the latter because of its effects on good order and discipline.

Effect of unit mission: Units were categorized in terms of their basic mission: combat or support. When severity was analyzed in terms of race and mission, the interaction was significant ($p < .05$). (Figure 10). While both groups received higher levels of punishment in combat units, the interaction was produced by blacks receiving more severe punishments than whites in support units as compared to combat units.

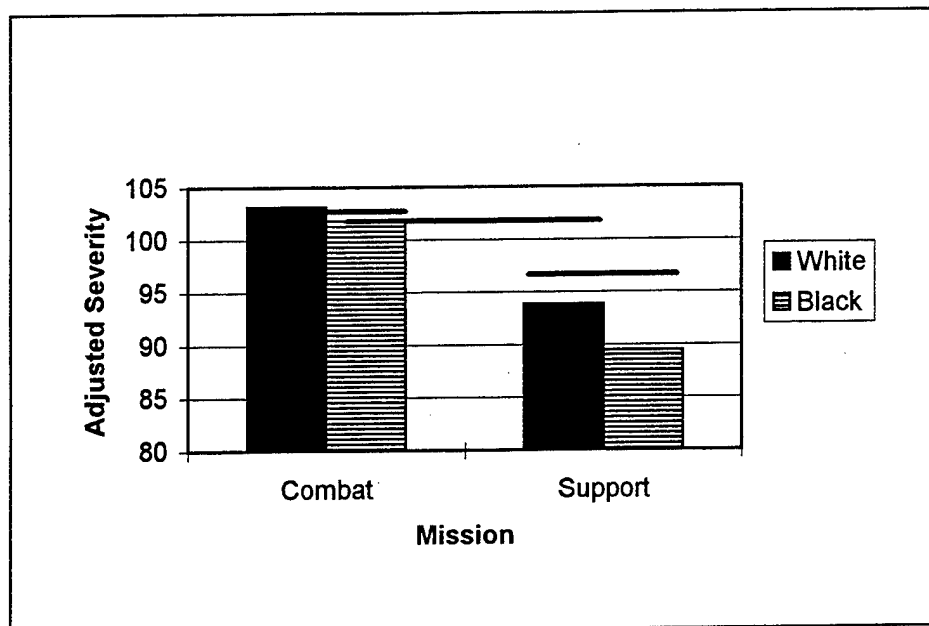


Figure 10. Severity Adjusted for Paygrade by Race and Mission (Means bracketed by lines are not significantly different)

Effect of Time in Service: Overall, blacks who receive NJPs have been in the service a little over 8 months longer than whites similarly situated ($M=47.68, 39.31$, respectively, $p<.0001$). When these data are disaggregated by offense type (Figure 11), blacks have had significantly ($p<.01$) longer tenure when receiving NJPs for drugs, alcohol, vehicular, and failure to pay debts. There is no offense for which whites have had longer tenure. At the time of discharge, blacks have served significantly longer than whites ($M=1522.53$ days, 1227.42 days, $p<.0001$, respectively). However, the time between Article 15 hearing and discharge is not significantly different for blacks and whites ($M=83.86$ days, 76.08 days, $p=.116$, respectively).

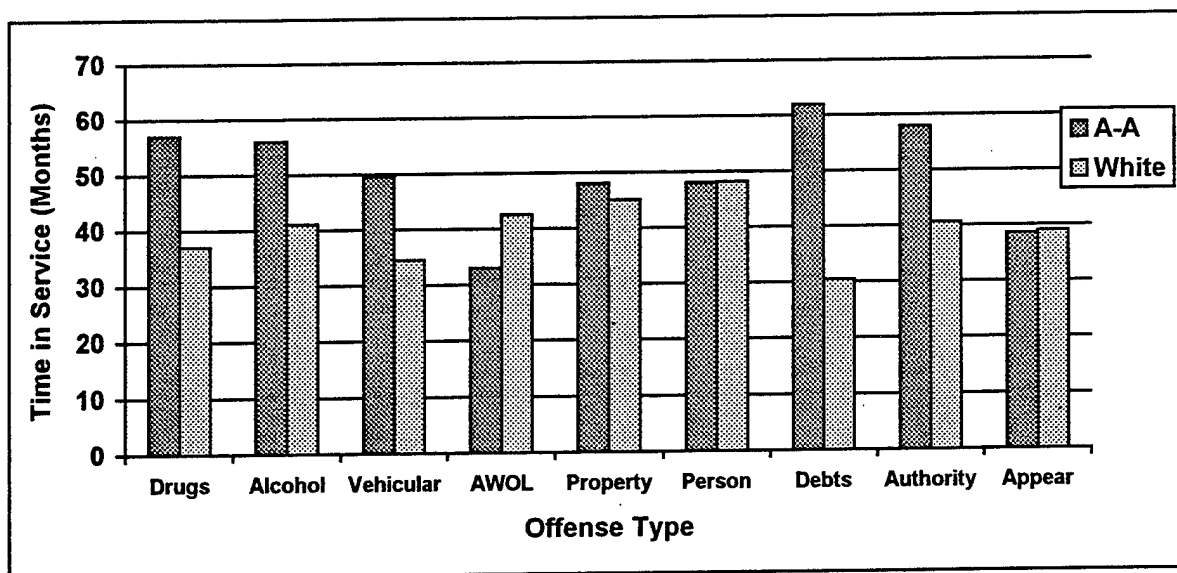


Figure 11. Relationship of Time In Service, Race, and Offense Type

Effect of race and offense type on time between offense and charge being filed: Both whites and blacks waited approximately 36 days for a hearing on the charges (36.93, 35.81, respectively, NS). The interaction between race and offense type on time to file charges was also non-significant.

Rank at time of discharge: Blacks who were charged with Article 15 offenses were of significantly higher rank on discharge than similarly charged whites ($M = 2.71, 2.45, t = 3.15, df = 1053, P < .002$, respectively).

Race, NJP, and Discharge: This question was examined by comparing the relative proportions by race of those members of the sample who were no longer in the service (as of 31 December 1994) and who had received a less than favorable condition of service. Discharge might well be a way to remove disproportionate numbers of a minority from the service thus making the Article 15 into less of a corrective mechanism for that group. For whites, the NJP would retain its warning characteristic. Of the sample, 36.85% had been discharged (38.99% black). Using 36.1 % as the expected black discharge rate (from Table 2), blacks were overrepresented in the following categories: (Early release--other [40.43%], Discreditable incidents [41.27%], For the good of service in lieu of court-martial [66.27%], and unsatisfactory performance [39.16%]); blacks were underrepresented in "Failure to meet qualifications" (19.64%).

Discharge and Offense type: Thirty-Five percent of the sample had been discharged as of the end of 1994. A cross-tabulation for this subsample by race and offense type revealed the following: Blacks were overrepresented in the offenses of crimes against persons (51.28%), crimes against property (46.94%), confrontations with authority (54.13%), AWOL (40.21%), and vehicular offenses (46.51%). It would seem that there is a tendency to see these offenses when committed by blacks as being more serious and therefore more worthy of discharge.

Discussion

The results of this study may be summarized as follows: Blacks are overrepresented in the awarding of Articles 15 (Hypothesis 1), although that phenomenon seems to be site and offense specific (Hypothesis 2). In two of the sites, the overrepresentation of Blacks was found, in the third, it was not. Such site totals tell only part of the story. More interesting are the different offense patterns. Blacks were overrepresented in crimes against persons, property, alcohol, and confrontations with authority. They were underrepresented in drug-related offenses (Hypothesis 3). This is different from the civilian situation where the "war against drugs" has resulted in very high percentages of Blacks being incarcerated for such offenses. The difference is, however, easily explained.

As Tonry (1995) notes, the war against drugs has targeted those substances which are most prevalent in minority communities. Hence, the arrests and conviction rates fall disproportionate among these groups. Simultaneously, Miller (1993) has reported very high percentages of young blacks are involved with the criminal justice system. Since such involvement has traditionally been a bar to military recruitment, the group of young blacks being accessed contained proportionately fewer individuals interested in drug involvement.

The age and tenure differences are most intriguing and offer support for a "derailment" hypothesis (#5). Here we found that blacks are older, have been in the Army longer, are of higher rank when they offend, and are of higher rank when they are discharged. Disproportionately, they also received some categories of general discharges. And, for five out of the nine offense categories, blacks were more likely to be discharged than were whites. Given that derailment occurs, what are the possible explanations?

The most obvious interpretation is that higher ranking blacks (a level at which the NJP is most damaging to a career) are targeted as recipients of disciplinary actions. An individual racism form of this

explanation requires that the judging and charging authorities be mainly white. Given the high proportion of blacks in the senior NCO ranks (where the NJPs originate), this explanation is not very satisfactory. However, a systemic version in which the process is administered by both blacks and whites who have accepted its basic premises may have some validity. Such an explanation is similar to the rational bias theory of Larwood and her colleagues (e.g., Larwood, Gutek, & Gattiker, 1984; Larwood & Gattiker, 1985). Finally, our data are in contrast to the findings and speculations of other researchers (e.g., Edwards & Newell, 1994 and Knouse, 1993) who suggest that blacks who get into trouble in the military are junior in tenure and age.

A better explanation is that as blacks progress through the rank, the range of allowable behavior becomes disproportionately smaller as compared with whites. The limits of such behavior are enforced equally by whites and blacks in authority; whites because, possibly, a dislike of high ranking blacks, and blacks because of their desire to see only good role models achieve high status. A self-restriction of the range of acceptable behavior is a common pattern among groups that have historically been the victims of discrimination.^{7,8}

The explanation suggested above has its roots in social identity theory (Tajfel & Turner, 1986) and social categorization theory (Turner, Hogg, Oakes, Reicher, & Wetherell, 1987). As outlined by Brewer (in press), this theory rests on two basic propositions which can be used to understand the behavior of black NCOs toward their race mates. First, the process of categorization of social experience minimizes ingroup differences and enhances outgroup differences. Second, the distinctiveness of the ingroup-outgroup distinction is one with affective and emotional properties because of its relevance to the self. Further, according to Brewer (in press), three principles guide the formation of intergroup schemas: First, members of the ingroup are perceived to be similar to the self and hence, more similar than those from the outgroup (the intergroup accentuation principle). Second, positive affect is given to ingroup and only rarely, if at all, to the outgroup (the ingroup favoritism principle). Third, negative affect is associated with intergroup competition (social competition principle). The first schema principle suggests a need to maintain ingroup similarity (or homogeneity) and that this need will be stronger as a direct function of the perceived hostility of the outgroup (the third principle). We would suggest that as the perceived threat is increased, the need for homogeneity of the ingroup also increases. Members of the ingroup who disturb the perceived homogeneity threaten the security of the group hence must be dealt with.

Under threat social categories become rigid; the boundaries between the ingroup and the outgroup are less permeable and the range of acceptable behavior by members of the ingroup narrowed. This increases the homogeneity of the ingroup and its ability to act in concert against the perceived threat. Hence, behaviors that in less threatening times are acceptable become less so. Violations of the rules of acceptable behavior are treated more severely by members of the ingroup.

Applying the theory outlined above to the situation of the black NCO dealing with the behavior of his/her race/rank mate is quite direct. The black NCO is expected to behave in a way that supports the self-interest of the larger group of black NCOs. Such behavior is that which is seen as similar to that emitted by other members of the group. As the level of perceived threat from the white majority increases, the level of acceptable deviance from the standard narrows. Hence, the punishment levied for deviation becomes greater.

⁷ For example, many Jews of middle age or older can recall being told by their parents that they must be twice as good (in every way) as non Jews in order to succeed.

⁸ Another interesting possibility (suggested by COL Ronald Joe, USA) is that the early application of NJPs to whites serves as a corrective device which insulates them from difficulties later in their careers. Blacks are deprived of that corrective device, thus depriving them of information useful in avoiding later problems. Unfortunately, our data do not allow a test of this hypothesis (which is a variation of the "derailment" suggestion), but it is certainly worthy of further research.

The set of hypotheses outlined above explain why blacks are proportionately more likely to receive Articles 15 and why that is particularly true for senior level minorities. However, it would also seem to predict that these individuals should receive more severe punishments, which appears not to be the case. However, we should remember that for an NCO to receive a NJP, suspended or not, is often tantamount to a career termination since a notation is placed in the permanent file available to future promotion boards.

We emphasize that the theory outlined above depends on a significant number of Articles 15 on blacks being recommended by blacks. Unfortunately, the race of the recommender is not routinely gathered in the Army. The Air Force, on the other hand, has begun to code the race of the imposing officer, an improvement certainly that the Army should consider. However, the Air Force approach does not recognize the critical role that the NCO plays in the process.

These data provide a mixed picture when seeking support for a finding of early discharge of blacks who are seen as troublesome. On the one hand, blacks who have had Articles 15 are a bit more likely to be discharged (when compared with their representation in the units) than are whites. However, when the base is those personnel who have received disciplinary actions, the difference is non-significant. When the discharge data are disaggregated by interservice discharge code, blacks are overrepresented in three, possibly four, categories and underrepresented in one. Further, the offense by race frequencies for those discharged lends some credence to the charge that discharges for offenders are racially disparate. For blacks, Articles 15 may be administered in a fashion more typical of the Air Force than of the Army. While the present data do illuminate the issue, a definitive answer will have to wait on further study.

On the positive side, blacks, once they are charged with an Article 15 offense, are procedurally treated the same as whites. That is, they progress through the system at the same rate as whites and, for the most part, receive the same or more lenient sentence (thus failing to find support for Hypothesis #4).⁹ The fly in the ointment is the suggestion, outlined above, that blacks (particularly those who are relatively senior) may be diverted into discharge actions at a higher rate than white soldiers.

The present data can be compared to that obtained from court-martial records (Landis, Hoyle, & Dansby, 1996). In that study, it was found that blacks do not spend the same amount of time in the system as whites. For non-sex-related crimes, blacks spend more time, are older, and have more tenure. For sex-related crimes, the reverse pattern was found. The present data look very much like the results from non-sex-related court-martial records. This is not surprising since there are few sex-related crimes in the present data set.

Certainly, the data reported here should alert military justice officials to examine all parts of the discipline system for possible race-based disparities. Prejudice can come in many forms and operate in many different venues. Focusing on just the Article 15 system itself may blind the organization to the reality of how the discipline system operates and its tertiary effects. For example, discharges may be only occasionally officially linked to disciplinary actions, yet they may follow such actions. Discharges or resignations may reflect the career stifling influences of Article 15 action for senior ranks, yet may be categorized as "honorable," the military equivalent of "Resignation to pursue other opportunities."

The present results (which indicate that blacks not only receive Articles 15 at a higher rate than whites but that once having received an NJP they are discharged at somewhat higher rates) have to be distressing to policy makers. Unfortunately, our data do not permit tracing a direct path from the NJP to discharge. The results are suspicious but by no means conclusive. Further research will be needed to determine just the existence and magnitude of the hypothesized link.

⁹ The failure to find punishment severity differences may be a real (lack of) effect or it may reflect the insensitivity of a non-empirically derived measure. Before the finding can be accepted as definitive, the scaling study mentioned earlier should be completed and the analyses rerun.

An important avenue of future investigation is the relative conduct leeway allowed for minorities as they move up the promotion ladder. If, as we suggest above, blacks are held to higher standards of conduct, compared to whites, as they are promoted, then some sort of training for senior NCOs and officers would seem to be in order. If, as we further suggest, this standard is held equally by whites and blacks (though for completely different reasons), then the training may be as important for minorities as for whites in those positions. For until all groups involved with any part of the military discipline system are treated equally, the process can hardly be said to be fair.

References

- Bell, D. B., & Holz, R. F. (1975, June). Summary of ARI Research on military delinquency. (Research Report 1185). Arlington, VA: U.S. Research Institute for the Behavioral and Social Sciences.
- Brewer, M. B. (in press). When contact is not enough: Social identity and intergroup cooperation. International journal of intercultural relations.
- Connelly, J. (1993). Equitability of treatment in the Army Judicial Proceedings (ETAJUP). (Report SR-93-14). Bethesda, MD: US Army Concepts Analysis Agency.
- Crawford, K. S. & Thomas, E. D. (1977). Organizational climate and disciplinary rates on Navy ships. Armed Forces and Society, 3, 165-182.
- Edwards, J. E. & Newell, C. E. (1994). Navy pattern-of-misconduct discharges: A study of potential racial effects. San Diego, CA: Navy Personnel Research and Development Center.
- Knouse, S. E. (1993). 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. Patrick AFB, FL: Defense Equal Opportunity Management Institute.
- Landis, D. & Dansby, M.R. (1994). 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.
- Landis, D., Dansby, M., & Tallarigo, R. (1996). The use of equal opportunity climate in intercultural training. In D. Landis & R. Bhagat (Eds.). Handbook of intercultural training, 2nd. Edition. (pp.244-263). Thousand Oaks, CA: Sage.
- Landis, D., Hoyle, M. & Dansby, M.R. (1996). Race and procedural justice: The case of the Uniform Code of Military Justice. (DEOMI Research Series Pamphlet 96- 3). Patrick AFB, FL: Defense Equal Opportunity Management System.
- Larwood, L., & Gattiker, U.E. (1985). Rational bias and interorganizational power in the employment of management consultants. Group and organization studies, 10, 3-17.
- Larwood, L., Gutek, B., & Gattiker, U.E. (1984). Perspectives on institutional discrimination and resistance to change. Group and organization studies, 9, 333-353.
- Miller, J. (1993). Hobbling a generation: Young African-American males in the Washington, DC criminal justice system. Alexandria, VA: National Center for Corrections Alternatives.
- Snell, T. L. (1995, January). Correctional populations in the United States, 1992. (Report NCJ-146413). Washington, DC: U.S. Department of Justice.
- Tajfel, H., & Turner, J.C. (1986). The social identity theory of intergroup behavior. In S. Worchel and W. Austin (Eds.). Psychology of intergroup relations (pp. 7-24). Chicago: Nelson-Hall.
- Turner, J.C., Hogg, M., Oakes, P., Reicher, S., & Wetherell, N. (1987). Rediscovering the social group: A self-categorization theory. Oxford: Basil Blackwell.
- Tonry, M. (1995). Malign neglect. New York: Oxford University Press.
- Wilbanks, W. (1987). The myth of a racist criminal justice system. Monterey, CA: Brooks/Cole.