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MINNESOTA DEPARTMENT OF CORRECTIONS

Race and the Disciplinary Process

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### Race and the Disciplinary Process

#### Background

It has often been asserted that racial discrimination exists at all levels of the Criminal Justice System and many studies support this assertion. Much of this unequal treatment may not, however, be intentional nor is the decision-maker necessarily aware that the effects of criteria applied in decision-making are in fact discriminatory.

A United States District Court consent decree which took effect in the fall of 1973 spelled out the inmates' basic rights in the disciplinary process. On the basis of this decree, procedures were developed which clearly state the procedure to be followed by the staff person filing the report as well as the options open to an inmate charged with a rule violation. While inmates' rights are carefully spelled out in the institutions' disciplinary plan, this in no way eliminates the possibility of discrimination or bias in the process.

The Department of Corrections has a strong commitment to provide equal treatment to all offenders in its correctional institutions. Nevertheless, charges of discrimination have been made by minority groups from time to time, particularly in regard to disciplinary action. To date, no systematic attempt has been made to either refute or document these charges. It is known that minority group members receive disciplinary sentences more often than whites, but it is not known if this apparent unequal treatment is, wholly or in part, a result of racial bias, actual behavior differences or other external factors.

#### Purpose

The purpose of this study, then, is to determine if racial bias does exist in the disciplinary process at adult correctional institutions.

The two major objectives to be accomplished are:

1. to identify decision points at which bias may be introduced,
2. to determine at which point, if any, bias appears to exist.

#### Method

The first objective was accomplished by analyzing the disciplinary process and identifying the major decision points at which bias might be introduced. Diagram 1 graphically illustrates the process from the initial report written by a correctional officer or other staff member to the final sentence imposed by the disciplinary board. Within this process, five major decision points were identified; each of which may be described as an indicator of possible bias.

These are:

1. the decision to write a report,
2. the decision to withdraw the report,
3. the decision to reduce or withdraw charges,
4. the decision to convict or acquit,
5. severity of sentence imposed.

It was decided that analyzing the first decision point for indications of bias was beyond the scope of this study. It is, however, a very basic decision point and one which allows the greatest degree of discretion and thus is much more difficult to detect or control.

In order to accomplish the second objective, data were collected from all disciplinary reports filed in 1976 at two Minnesota Correctional Facilities, the State Reformatory for Men (SRM) and the Minnesota State Prison (MSP). The major variables collected were the type of violation or violations, whether or not the report was withdrawn, whether or not the inmate was detained pending a hearing of whether or not the inmate had counsel, the type of plea, the findings of the disciplinary court and the sentence received.

The following analysis will be limited primarily to the five basic decision points. Other periphery data may be used to explain or clarify some elements of the analysis as necessary. Data for each institution is analyzed separately.

Part I: Minnesota State Prison

One cause of concern in the disciplinary practices at the institutions has been the disproportionate number of disciplinary reports received by non-white inmates. This fact is often cited as being an indication of discrimination in treatment of inmates. However, this assumes that all whites and non-whites are equally "eligible". In fact, only those inmates who are observed breaking internal rules comprise the pool of "eligibles". As pointed out earlier, an assessment of whether or not bias exists at this point is beyond the scope of this study, but it is evident that white inmates are less likely to receive reports than are black or Indian inmates.

There were 1,482 reports filed at MSP in 1976 and the proportion of reports filed for blacks and Indians was higher than their relative proportion in the general population.

TABLE 1-1: Race and the Number of Reports Filed

<u>Race</u>	<u>Number of Reports Filed</u>		<u>Percent of Institution Population as of June 30, 1976</u>
	<u>Number</u>	<u>Percent</u>	
White	836	56.4	72.7
Black	431	29.1	17.9
Indian	200	13.5	7.8
Other	15	1.0	1.6
Total	1,482		

The second major decision point at which the possibility of bias exists is the decision to withdraw the report (Table 1-2). The number of reports withdrawn at MSP represent almost sixteen percent of the total reports written. Reports may be withdrawn for a variety of reasons. The most common reason is probably duplicate reporting of the same incident. On the other hand, the hearing officer at the preliminary hearing may feel there was not enough evidence to support the charge. Some reports may be withdrawn simply because the inmate already has so many reports and charges pending that additional charges are incidental. At any rate, no significant difference was found between the proportion of reports withdrawn by race.

TABLE 1-2: Reports Withdrawn by Race

<u>Race</u>	<u>Withdrawn</u>		<u>Not Withdrawn</u>		<u>Total Number</u>
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	
White	121	14.5	715	85.5	836
Black	70	16.2	361	83.8	431
Indian	36	18.0	164	82.0	200
Other	2	13.3	13	86.7	15
Total	229		1,253		1,482

The third decision point at which bias may be introduced is the decision to drop or reduce charges (Table 1-3). Almost half (forty-nine percent) of all reports had multiple charges stemming from the same incident. Although the number of charges per report was somewhat higher for black and Indian inmates, these differences were not significant. In many instances, some of the charges were withdrawn at a preliminary hearing. In those instances in which there was only one charge, five percent were withdrawn. If a report contained two charges, in twenty-nine percent of the cases, the second charge was dropped and if there were three charges, forty-two percent were dropped.

Although blacks and other minority groups tended to have more charges per report than whites, they were no more likely to have charges withdrawn at a preliminary hearing. The difference between groups, however, was not significant.

TABLE 1-3: Percentage of Charges Withdrawn by Race

Race	Charges Withdrawn		Charges Not Withdrawn		Total	
	Number	Percent	Number	Percent	Number	Percent
White	172	15.3	949	84.7	1,121	55.2
Black	93	14.9	530	85.1	623	30.7
Indian	46	17.5	217	82.5	263	12.9
Other	5	20.0	20	80.0	25	1.2
Total	316	15.6	1,716	84.4	2,032	100.0

Reducing the severity of the rule violation was a rare occurrence, less than two percent of the cases, and, thus, is not considered as evidence of bias.

Decision point number four involves the findings of the disciplinary board. The outcome of the hearing may be not guilty, guilty with disposition or guilty with no disposition. Most of the cases in which disposition was not made were for minor rule violations.

The table below (Table 1-4) presents the number of convictions per report. The distribution of the mean number of convictions follows the distribution of the mean number of charges per report. For example, whites had the lowest number of charges per report and the lowest number of convictions per report. None of these differences are significant.

TABLE 1-4: Number of Convictions Per Report

Convictions Per Report	Race									
	White		Black		Indian		Other		Total	
	N	%	N	%	N	%	N	%	N	%
None	52	7.3	19	5.3	14	8.5	2	15.4	87	6.9
One	450	62.9	207	57.3	101	61.6	5	38.5	763	60.9
Two	172	24.1	108	29.9	36	22.0	5	38.5	321	25.6
Three	35	4.9	21	5.8	9	5.5	1	7.7	66	5.3
Four	6	.8	4	1.1	3	1.8	-	-	13	1.0
Five or More	-	-	2	.6	1	.6	-	-	3	.2
Total	715		361		164		13		1,253	
Mean Number of Convictions	1.29		1.42		1.32		1.38		1.33	

On the other hand, whites were convicted of a somewhat higher proportion of reported charges than were blacks or Indians. Whites were convicted on seventy percent of the charges filed against them, blacks were convicted of sixty-eight percent of the charges filed and Indians were convicted of sixty-six percent of charges filed. This may simply be a result of the fact that blacks and Indians were more likely to be charged with more than one violation per incident and that second and third charges were more likely to be dropped or result in a not guilty finding.

The final decision point to be examined is the severity of the sentence imposed. In order to make some kind of comparison of possible sentencing disparity, the rules violated had to be considered. This was done by assigning severity weights to each rule violation. These weights ranged from one to seven and were determined by the maximum allowable sentence prescribed in the inmate discipline plan. For example, homicides, with a 720 day maximum segregation penalty, was weighted '7'. On the other hand, a '1' weight allowed a maximum penalty of only fourteen days loss of privileges.

While there was some differences in the types of violations minority group members were charged with, the seriousness of the original charged rule violation did not differ significantly by race. The mean weights were 4.0 for Indians, 3.9 for whites and 3.8 for blacks.

For this analysis the weight of the most serious violation is used. This procedure may distort the findings somewhat but since sentences imposed are rarely consecutive using the sum of the seriousness weights seemed equally inappropriate.

The mean segregation sentence imposed for each of the seriousness weights appears in Table 1-5. Weights 1 and 2 are not included because the maximum allowable sentence provided for these violations is privilege loss or three to ten days isolation (Table 1-5).

TABLE 1-5: Mean Segregation Imposed by Seriousness Weight and Race

	<u>White</u>	<u>Black</u>	<u>Indian</u>	<u>Other</u>	<u>Total</u>
<u>Seriousness Weight 3 (maximum segregation 30 days)</u>					
Percent with No Segregation Imposed	73.0	62.5	68.1	100.0	70.0
Average Segregation Days Imposed	15.6	13.3	14.3	-	14.4
Mean Number of Priors (past six months)	1.6	3.3	1.2	-	2.2
Number	104	80	22	2	208
<u>Seriousness Weight 4 (maximum segregation 90 days)</u>					
Percent with No Segregation Imposed	64.4	58.4	37.2	50.0	57.4
Average Segregation Days Imposed	32.5	38.5	51.6	30.5	39.2
Mean Number of Priors (past six months)	1.8	3.3	2.5	1.3	2.2
Number	177	118	51	4	350
<u>Seriousness Weight 5 (maximum segregation 180 days)</u>					
Percent with No Segregation Imposed	55.3	45.2	46.5	66.7	52.4
Average Segregation Days Imposed	37.1	45.2	34.0	45.0	38.9
Mean Number of Priors (past six months)	1.5	2.6	2.1	4.7	1.9
Number	300	106	43	3	452
<u>Seriousness Weight 6 (maximum segregation 360 days)</u>					
Percent with No Segregation Imposed	8.3	-	11.1	-	8.6
Average Segregation Days Imposed	102.5	48.5	83.3	-	89.3
Mean Number of Priors (past six months)	.7	-	1.5	-	1.0
Number	12	2	9	-	23

It is evident that whites are less likely to have a segregation sentence imposed than are blacks or Indians. The apparent reason for this is that whites tend to have fewer prior convictions for rules violations. Generally, the more serious the rule violation the greater the likelihood that segregation will be imposed. An exception to this appears for Indians convicted of a rules violation with a seriousness weight of four. At that level, a higher proportion have segregation imposed and when imposed serve a substantially greater number of days than do blacks or whites.

Again, the fact that whites have fewer priors may influence the outcome. Blacks, however, have a higher mean number of priors than do Indians. Nevertheless, the proportion having their sentences suspended is higher and the number of days segregation imposed is lower than for Indians. At seriousness weight five this inconsistency disappears.

Thus, only for Indians and only at seriousness weight four does a seeming disparity exist in sentencing. An analysis of the several violations that comprise the seriousness weight four indicate two rule violations more often committed by Indians, assault, and arson/destruction of property. While these two offenses often result in longer segregation sentences, the difference in the mean sentence can also be attributed to the higher sentence imposed on Indians for the same offenses committed by whites or blacks.

Although the above analysis is not conclusive without a more detailed analysis of actual offense, it does indicate that although there is no evidence to indicate bias in the early stages of the disciplinary court procedure, it is clear that Indians do have segregation imposed more often and for longer periods of time, whether this difference is due to bias, differential attitude about certain kinds of violations or to the actual behavior of the inmate involved is not clear.



Part II: State Reformatory for Men

The disproportionate number of disciplinary reports received by non-whites at Minnesota State Prison is also apparent at the State Reformatory for Men. In addition, the SRM staff write many more violations for minor offenses than do MSP staff. For example, at MSP there were 1,482 reports filed in 1976 and only thirty percent were for relatively minor offenses (seriousness weight one or two). At SRM there were 2,288 reports filed and forty-eight percent were for relatively minor offenses.

TABLE 2-1: Race and the Number of Reports Filed

Race	Number of Reports Filed		Percent of Institution Population as of June 30, 1976
	N	%	
White	1,257	54.9	75.3
Black	809	35.4	15.4
Indian	216	9.4	8.5
Other	6	.3	.8
Total	2,288		

Again, an analysis of the first major decision, the filing of a report, is beyond the scope of this study.

The second major decision point at which the possibility of bias exists is the decision to withdraw the report. While this decision was relevant at MSP, it is not relevant at SRM. Only two reports were withdrawn because of the inmates' transfer to another institution.

The third decision point at which bias may be introduced is the decision to drop or reduce charges. Forty percent of all reports had multiple charges stemming from the same incident; only ten percent had more than two charges. There was almost no difference in the mean number of charges by race.

TABLE 2-2: Total Original Charges Filed by Race

Total Original Charges	White		Black		Indian		Other		Total	
	N	%	N	%	N	%	N	%	N	%
One	780	62.2	460	56.7	129	59.7	4	66.7	1,373	60.0
Two	360	28.7	260	32.1	62	28.7	2	33.3	684	29.9
Three	81	6.5	62	7.6	21	9.7	0	-	164	7.2
Four	26	2.1	23	2.8	4	1.9	0	-	53	2.3
Five	7	.6	2	.2	0	-	0	-	9	.4
Six	1	.1	3	.4	0	-	0	-	4	.2
Seven	0	-	1	.1	0	-	0	-	1	.1
All	1,255	54.8	811	35.4	216	9.4	6	.2	2,288	100.0
Mean	1.50		1.59		1.54		1.33			

In many instances these charges were withdrawn at the preliminary hearing. Of the 3,419 original rule violations reported, twenty-seven percent were withdrawn. The proportion of charges withdrawn differed slightly by race but the difference was not significant. The proportion of charges withdrawn, however, was substantially higher at SRM than at MSP; twenty-seven percent and sixteen percent respectively. This may simply reflect the policy of the two institutions. At MSP, reports are often withdrawn before the preliminary hearing but fewer charges are withdrawn at the hearing. SRM, on the other hand, does not withdraw reports prior to the preliminary hearing. The result may be a larger percentage of dropped or withdrawn charges at SRM. Reducing the severity of the charge is a rare occurrence and thus is not considered at this decision point.

TABLE 2-3: Number of Charges Withdrawn by Race

Race	Charges Withdrawn		Charges Not Withdrawn		Total Original Rules Charged
	Number	Percent	Number	Percent	
White	467	25.4	1,372	74.6	1,839
Black	342	27.4	906	72.6	1,248
Indian	98	30.1	228	69.9	326
Other	0	-	6	100.0	6
Total	907	26.5	2,512	73.5	3,419

Decision point number four involves the findings of the disciplinary board. The outcome of the hearing may be a guilty or not guilty verdict. There were 1,828 hearings held of which 1,669 or ninety-one percent resulted in one or more convictions. Minority group members were somewhat more likely to be found guilty (either by plea or verdict) than were whites, but the difference was not significant.

TABLE 2-4: Findings of Hearings by Race

Race	Guilty (I+)		Not Guilty		Total Number
	Number	Percent	Number	Percent	
White	949	90.1	95	9.1	1,044
Black	551	91.5	51	8.5	602
Indian	164	92.7	13	7.3	177
Other	5	100.0	0	-	5
Total	1,669	91.3	159	8.7	1,828

The table below presents the number of convictions per report. The distribution of the mean number of convictions per report follows the distribution of the mean number of charges.

Further, the proportion of total charges resulting in a conviction were almost identical for whites, blacks and Indians; sixty-five, sixty-four and sixty-five percent respectively.

TABLE 2-5: Number of Convictions per Report

Race	Convictions										Total	Mean Number Per Report
	None		One		Two		Three		Four			
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent		
White	98	7.8	1079	86.0	71	5.7	3	.5	1	.1	1255	1.07
Black	53	6.6	699	86.4	47	5.8	8	1.0	2	.2	809	1.09
Indian	13	6.0	194	89.8	9	4.2	0	-	0	-	216	1.00
Other	0	-	4	66.7	2	33.3	0	-	0	-	6	1.33
Total	164	7.2	1976	86.4	129	5.6	14	.6	3	.1	2286	1.08

The final decision point to be examined is the severity of the sentence imposed. In order to make a comparison of sentence disparity, the seriousness of the violations had to be considered. As was done with the MSP data - rule violations were ranked on the basis of the maximum sentence prescribed under the SRM inmate discipline plan. The table below (Table 2-6) shows the weight of the most serious charged rule violations which resulted in a conviction.

TABLE 2-6: Weight of Most Serious Conviction and Sentence Imposed

	White	Black	Indian	Other	Total
<u>Seriousness Weight 3 (maximum segregation 30 days)</u>					
Percent with No Segregation Imposed	60.7	66.7	54.2	100.0	62.2
Average Segregation Days Imposed	10.6	11.0	11.6	0.0	10.9
Mean Number of Priors (past six months)	4.1	8.1	4.4	2.5	5.6
Number	183	135	48	2	368
<u>Seriousness Weight 4 (maximum segregation 90 days)</u>					
Percent with No Segregation Imposed	51.5	53.2	57.9	100.0	52.7
Average Segregation Days Imposed	20.3	19.1	18.4	0.0	19.7
Mean Number of Priors (past six months)	3.9	7.5	3.7	4.0	5.4
Number	295	237	38	2	571
<u>Seriousness Weight 5 (maximum segregation 180 days)</u>					
Percent with No Segregation Imposed	36.4	35.4	28.0	100.0	36.3
Average Segregation Days Imposed	26.4	21.9	35.2	0.0	26.3
Mean Number of Priors (past six months)	2.9	6.2	3.3	0.0	3.8
Number	154	65	25	1	245
<u>Seriousness Weight 6 (maximum segregation 360 days)</u>					
Percent with No Segregation Imposed	0.0	--	--	--	0.0
Average Segregation Days Imposed	96.8	--	--	--	96.8
Mean Number of Priors (past six months)	1.5	--	--	--	1.5
Number	4	0	0	0	4

As was noted in the MSP data, the more serious the violation the greater the likelihood of having segregation imposed. There was little difference between black and white inmates in the percent of convictions in which no segregation was imposed, although blacks tended to have many more prior convictions for rules violations. In most cases, Indians were more likely to receive a segregation sentence than were blacks although they had fewer prior convictions.

One of the probable reasons for this difference may be the differential weight correctional counselors and hearing officers place on violations that, according to the discipline plan, have the same severity level. An analysis of the separate offenses making up seriousness level three indicates that the only violation Indians were charged with to a much greater degree than whites or blacks is refusal to work and it appears that, although the average stay in segregation is no different, they are somewhat more likely to be given a segregation sentence.

In seriousness level '5' Indians are also less likely to receive a suspended sentence, and if sentenced serve longer than either whites or blacks. An examination of the rule violations which make up weight '5' reveals that Indians are much more likely to be charged with possession of a weapon and whites and blacks are more likely to be charged with contraband property, money or drugs. It is quite likely that although the maximum allowable segregation is the same, the disciplinary board views the possession of contraband weapons as a more serious offense.

Thus, at this decision level there is no conclusive evidence of bias, but it does appear that Indians are treated somewhat more severely than blacks.