

AN EVALUATION OF THE ALASKA JUDICIAL COUNCIL'S
STUDY OF RACIAL DISPARITIES IN
MISDEMEANOR SENTENCING

Robert Travis

Institute of Social and Economic Research
University of Alaska, Fairbanks

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UNIVERSITY OF ALASKA
FAIRBANKS, ALASKA 99701

INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH

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Chief Justice Jay Rabinowitz
P.O. Box 850
Fairbanks, Alaska 99701

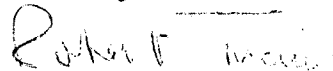
The Honorable Jay Rabinowitz:

After chancing upon the misdemeanor report by the Alaska Judicial Council, I observed several research problems that I felt were serious enough to merit an evaluation of the written report. I have enclosed copies of that evaluation for your consideration.

Because of the seriousness of the findings coming out of the Alaska Judicial Council, I would suggest the Council's reports be scrutinized by professional researchers outside the Council before such reports are released to the Legislature and the press. This suggestion is prompted by my observation of what appears a lack of statistical rigor and quality control in the misdemeanor report.

If you have any questions concerning the evaluation, please give me a call at the Institute's Fairbanks office.

Sincerely,



Robert Travis
Research Associate

RT/lc
Enclosure

The Alaska Judicial Council (AJC) studied misdemeanor sentences in Fairbanks and Alaska for the period August 1974 - August 1976. AJC randomly sampled misdemeanor conviction cases from police and court records and its present study is based on 1496 cases. Although AJC never clearly stated the purpose of the misdemeanor analysis, it seems evident that its focus is primarily on whether or not racial differences predominantly account for the amount of time served in jail.

To that end, AJC analyzed racial disparity in sentencing by several important factors:

1) PRIOR RECORD OF OFFENDER

Finding: Regardless of number of convictions or prior record, Natives averaged longer sentences than Whites.

2) FIRST CRIMINAL OFFENSE

Finding: Disparity between Natives and Whites was often greater for first offenders than in the general population of offenders.

3) INCARCERATION

Finding: Except for convictions of misdemeanor assault, Natives were more likely to receive incarceration than Whites.

4) ALCOHOL INTOXICATION AT TIME OF ARREST

Finding: Although those intoxicated averaged less time than those who were not, regardless of intoxication Natives still averaged longer sentences.

5) PROPERTY OFFENSE

Finding: The severity of prior record of property offenses did not lessen the disparity in average sentences for Natives and Whites.

6) LARCENY OFFENSE

Finding: Although racial disparity in sentencing persisted for offenders with less than 4 convictions,

no racial disparity in sentencing existed
for those with 4 or more convictions who
were last sentenced for a larceny offense.

On the surface then, it would appear that AJC carefully eliminated alternative explanations that may have explained away racial disparity in sentencing for misdemeanors. It might also appear, judging from the analytical outline, that AJC presented its findings in a clear and complete way. Nevertheless, AJC may not have identified the key factors, besides the racial issue, that may actually account for sentence disparities, nor did it present its findings in such a way that the severest disparities could be focused on for remedial action.

In the first place, the AJC report on misdemeanor sentences clearly shows a pattern in the disparities: Natives generally received longer jail sentences but smaller fines, while Whites generally received shorter jail sentences but steeper fines. This pattern suggests economic differences may also affect the length of sentencing. And although AJC did comment on this pattern in its report, it tended to downplay this finding--probably because it detected no significant differences in fines between Natives and Whites.

Yet one possible reason for observing a lack of significance in fines may be that AJC inappropriately attempted to assess significance with parametric techniques when non-parametric techniques would probably have been the more appropriate analytic tool. Income or "dollar amount" data are rarely normally distributed, meaning that measures using variance formulas rather than distributional formulas are likely not to detect significant findings in non-normal data, even though significant findings may well exist.

As such, not observing significant differences in fines may have dissuaded AJC from investigating whether or not sentence disparities are better explained

by economic rather than racial factors. It is quite possible that judges sentence those who are out of work to longer jail sentences, while requiring those who are working to pay steeper fines. If such were actually the case, the correlation between jail sentence and race, which AJC has shown to be highly significant, would be spurious. Alternatively, even if the correlation were not spurious, investigating the effects of employment status on sentence disparities could reveal that either both race and employment status independently effect jail sentences or that employment status is an intervening variable. Consequently, economic factors rather than racial factors may well explain disparities in sentences, but this explanation was completely overlooked by AJC.

In the second place, AJC did not reveal its findings in such a way that the severest disparities could be identified and focused on for urgent remedial action. That is, although AJC pointed to specific differences between Natives and Whites in amount of time served by five different degrees of prior record (no prior record, 1-3 misdemeanors, 4-9 misdemeanors, 10+ misdemeanors, 2+ felonies), this tendency to "fracture the data" led to two basic problems.

The first and most important problem is that AJC was only able to detect parity in amount of time served in one instance, conviction of a larceny misdemeanor. In this instance then, "fracturing the data" into degrees of prior record was necessary. Yet with regard to property offenses in toto or even all offenses, it clearly was not necessary to rely on complete delineation of time served by degrees of prior record as the primary interpretation. That is, the data could have been analyzed more summarily.

As the revised Table XVII indicates, both prior record and race of offender independently effect amount of time served, with race being the dominant factor.

Table XVII (Revised)
 Average Jail Sentences for Property Offenses by
 Prior Record and Race of Offender: 1974-76

MISDEMEANOR OFFENDERS

	<u>No Prior Record</u>		<u>Prior Record</u>	
	Native	White	Native	White
Average Jail Sentence (in days)	13.0	4.7	17.8	10.1
Number of Offenders	(11)	(40)	(60)	(39)

SOURCE: Alaska Judicial Council, 1979.

Nonetheless, the important point is that having a prior record increases the average time served for Whites by 115%, but only 37% for Natives. Consequently, once prior record is considered the sentence disparities between Natives and Whites, although still significant, drop 57%. And since the greater disparity between the races occur for those without prior records, AJC should have alerted the Alaska Court System to focus more of its energy and concern on this area of severer disparity.

The second problem with "fracturing the data" is that 57% of the cells in all tabulations where prior record was investigated along with race had case frequencies less than 30, with the greater majority of these cells having less than 20 cases. Subsequently, AJC's claim that 44% of the differences between these cells in amount of time served are statistically significant maybe unwarranted, because variability is often large in small sub-populations and typically renders insignificant results.

Moreover, there is evidence to suggest AJC inaccurately investigated whether or not racial disparities in incarceration are significant. For instance, as Table XIX (AJC Report) illustrates, Whites are reported to be significantly less likely to receive incarceration for property offenses than Natives, with AJC indicating significant differences in 3 out of 5 comparisons: no prior record, 4-9 misdemeanors, and 10 or more misdemeanors. Yet when the AJC analysis was replicated, Table XIX (Revised), 40% of the time the statistical tests contradicted the AJC findings. Consequently, it appears racial disparities in incarceration for property offenses is only a significant problem for offenders with severe prior records (4 or more misdemeanor convictions or a felony record). Regarding first offenders and those with less than 4 misdemeanor convictions, however, Natives do not receive significantly more incarceration than Whites. So the fact AJC's findings on incarceration

Table XIX (AJC Report)
 Proportion of Racial Group Receiving No Active Jail Sentence
 (Proportion Expressed in %)

	<u>Natives</u>	<u>Whites</u>	
	<u>No Jail</u>	<u>No Jail</u>	<u>Significance</u>
No prior record	35% (6)	57% (52)	.05
1-3 misdemeanors	36% (14)	44% (20)	No
4-9 misdemeanors	12% (2)	46% (5)	.05
10/more misdemeanors	17% (1)	100% (2)	.05
2/more felonies	9% (2)	39% (5)	No

SOURCE: Alaska Judicial Council, 1979.

Table XIX (Revised)
 Proportion of Misdemeanor Property Offenders Not Sentenced
 to Jail by Race and Prior Record: 1974-76^a

Prior Record	RACE		Chi-Square Statistic	Level of Significance
	Native	White		
No Prior Record	35% (17)	57% (91)	$\chi^2_1=2.75$	n.s.
1-3 Misdemeanors	36% (39)	44% (45)	$\chi^2_1=0.63$	n.s.
4-9 Misdemeanors	12% (17)	45% (11)	$\chi^2_1=4.04$.05
10+ Misdemeanors ^b	17% (6)	100% (2)	$\chi^2_1=4.44$.05
Felony Record	9% (22)	38% (13)	$\chi^2_1=4.41$.05

^aIt appears AJC only reported the cell frequencies rather than the total number of Natives and Whites with prior records. This is evidence, for instance, by noting in the AJC tabulation that, for Natives with 4-9 misdemeanors, 12% of 2 individuals is impossible, but 2 out of 17 is not. Consequently, it was necessary to calculate the total number of offenders from the AJC tabulation before significance tests could be computed. This explains the differences in the number of offenders between the AJC and Revised tabulations.

^bEven though a significant difference was confirmed, it is possible the statistical test capitalized on chance, since the number of property offenders with 10 or more convictions is quite small. One rule of thumb for evaluating significance in such instances is to test the effect of changing a cell frequency by 1 or 2 cases. For example, if only 1 White with 10 or more convictions had received incarceration, no significant differences would have been found. As such, the original finding should be discounted.

SOURCE: Alaska Judicial Council, 1979.

disparities for property offences were in some instances disconfirmed calls into question the statistical rigor of the report and may indicate a lack of quality control throughout the report.

In summary then, although AJC's overall findings, as previously outlined, are generally consistent with its tabulation of the data, AJC's assertion that sentence disparities are primarily a matter of racial characteristics is not a convincing argument, especially since sentence disparities for misdemeanors may be more strongly related to the economic characteristics of offenders. As such, the evidence on racial disparities in misdemeanor sentencing should be reexamined to explore what effect employment status may have on sentencing practices.

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