



## Alaska Judicial Council

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STATISTICAL ANALYSIS OF  
SUMMARY OF FINDINGS  
IN  
ANCHORAGE AND FAIRBANKS

(August 15, 1974 - August 14, 1976)

PRELIMINARY REPORT

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## SUMMARY OF FINDINGS

### Purpose of Research

Research on misdemeanor sentences was undertaken at the express request of the Alaska Supreme Court following the July 1978 release by the Judicial Council of findings indicating apparent racial disparity in the felony sentences rendered in Anchorage, Fairbanks and Juneau between 1974 and 1976. Following the publication of these disturbing felony findings the Supreme Court requested that the Council undertake a similar analysis of misdemeanor cases; the attached preliminary report summarizes the Council's findings regarding a sample of misdemeanor sentences.

### Data Base

The analysis involved a sample of 1,795 misdemeanor sentences imposed by the District Courts of Anchorage and Fairbanks between 1974 and 1976. These cases were randomly drawn by computer from among some 14,000 misdemeanor sentences rendered during the same period, according to the computerized records of the Alaska Court System. It should be understood that this sample was not originally collected for the purpose of testing for racial sentencing disparity but in order to ascertain the effect of the Attorney General's official abolition of plea bargaining.

### Gross Evidence Of Sentencing Differentials

Clear sentencing differences were found among blacks, whites and native Alaskans. For example, considering only those sentences that resulted in some period of incarceration, on the average, whites were sentenced to 7.53 jail days, blacks received 11.06 jail days, and natives received jail sentences averaging 13.76 days, which is 83% longer than the white average. (These are gross averages that do not take into account differences among the kinds of specific offenses involved, the past criminal histories of the defendants, or any other relevant factors.)

### Classification of Offenses

All sentences were then divided into five broad offense classes. For the purpose of analysis we created the following groups: (1) property offenses, (2) street offenses, (3) assaults, (4) traffic offenses, and (5) OMVIs and DWIs. In the assault or violent category there was virtually no difference in mean sentences among blacks, whites and natives. (This is of interest, since the Judicial Council's 1978 analysis of felony sentences showed a similar absence of sentence disparity for felonies involving violence.) In the categories of property and street crimes, the jail sentences of black defendants were substantially longer than those of whites. Natives' mean sentences were shorter than white sentences in the class of street crimes. (Prostitution,

vagrancy, etc.) However, native defendants received substantially longer jail sentences than whites in property, traffic and OMVI-DWI cases. The memorandum that follows focuses mainly on the native-white differences, since the presence of a relatively greater number of native cases in this sample provided us with a better basis for detailed analysis than did the smaller number of black cases.

#### Impact of Prior Criminal Record

In this data jail sentences increased in length as previous convictions increased in number. It was also true that Alaska native defendants in this sample tended to have more previous convictions than white defendants. (For example, 53% of the white defendants had no prior criminal convictions, while only 28% of the native defendants fell into this category.) Nevertheless, numbers of previous convictions did not adequately explain the sentence differences observed. For example, native defendants with no previous convictions still received much longer sentences than whites with no previous convictions who were convicted of the same kinds of crimes. In fact, when cases were aggregated in groups according to numbers of previous convictions, natives in almost all groupings consistently received substantially longer sentences than whites in the same groups.

### Avoidance of Incarceration

The analysis reported above compared differences in length of jail sentence among those defendants who were sentenced to serve at least one day of jail time. In computing these jail sentences we omitted the many cases in which jail time was equal to zero. We subsequently analyzed the data to compare natives and whites with respect to the likelihood of a zero sentence -- avoiding incarceration altogether. We found that there was a substantial difference. For example, in sentences for property crimes only 25% of the native defendants avoided going to jail as compared to 52% of the white defendants. The same general patterns appeared in the other four classes of misdemeanors as well, including the street crime category, the only group in which we had previously observed that natives appeared to receive fewer days in jail than whites. Across all groups of misdemeanor offenses Alaskan natives had a much greater chance of going to jail than whites. As in the previous discussion of mean jail sentences, comparing native and white defendants who had similar numbers of previous convictions, in almost every comparison group natives had a significantly higher rate of incarceration than whites.

### Effect of Alcohol Intoxication

In a substantial number of cases police incident reports stated that the defendant was under the influence of alcohol at the time of his arrest. We analyzed these cases

and compared them with those in which no such notation was made in order to determine what effect, if any, intoxication might have on sentence length. We found that intoxication at time of arrest was associated with shorter sentences for both white and native defendants. Because we know that the police do not always include information on intoxication in their reports, we recognize that our data in this respect leave something to be desired. However, from these preliminary findings it would seem that alcohol intoxication does not in itself contribute to harsher penalties. Nor does it seem to explain the native-white disparities in sentencing. Natives and whites who were intoxicated received more lenient treatment than those who were not; but intoxicated or sober, native jail sentences were still consistently longer than those of whites by a substantial margin.

#### Analysis Of Property Offenses

The second portion of the attached report focuses specifically on sentences in the property group -- mostly petty larceny, shoplifting etc. Property sentences were singled out for separate analysis because they were the most numerous sentences in our sample, they included a substantial number of native defendants, and the white-native sentencing differences in this class were quite large and significant. For example, the average native jail sentence for a property offense was 18.30 days compared with a white mean of 7.39 days, a difference of 148%.

### Effect Of Previous Convictions

Native defendants tended to have more previous convictions than whites. For example, while 56% of the white defendants had no previous convictions at all, only 17% of the native property defendants were first offenders. However, among this group of "clean" native defendants the average jail sentence was 13.0 days. Among the comparable group of "clean" whites the average was only 4.73 days. Natives who had up to three prior misdemeanor convictions had a mean sentence of 11.36 days. Whites in the same prior-record group had an average sentence of 8.16 days. (In this category there were exactly 25 whites and 25 natives.)

### Avoidance of Incarceration

White defendants consistently managed to avoid incarceration more frequently than natives, and this pattern held true in the comparison of groups who had similar numbers of previous convictions. For example, 35% of the native property offenders who had clean records received sentences involving no jail time at all. By comparison, 57% of the whites in the same category avoided going to jail.

### Value Of Property Stolen

On the average, the property taken by white defendants was more than twice as valuable as that stolen by the natives in our sample. (\$159.04 versus \$64.96) Therefore, natives who stole property that was on average much less valuable than that stolen by whites still received jail sentences which averaged more than twice as long.

### Effect of Alcohol Intoxication

Considering only those defendants who received at least one day of jail time, when a native was intoxicated at the time of his arrest (according to the police report) his average property sentence was 15.50 days. This compared with an average sentence of 3.17 days for reportedly intoxicated white. Where no intoxication was indicated the white average was 7.7 days and the native average was 18.5 days.

### Effect of Specific Offense

We segregated convictions for petty larceny (AS 11.20.140) from the general class of property offenses. We chose petty larceny since it was both the most common property offense and among the most severely punished in the group. It also included a relatively large number of native defendants which facilitated a comparison with whites. The average native larceny sentence was 17.16 days while the average white sentence for the same offense was 7.54 days. Sixteen percent of the Alaska native defendants convicted of petty larceny avoided going to jail, as compared with 40% of the whites convicted of the same offense.

### Conclusions and Implication

Whether the racial differences in sentencing patterns uncovered by this research were caused primarily by judges is not known at this time. In fact, there are strong preliminary indications that the patterns we found were caused by a number of separate discretionary decisions made prior to sentencing, and which may have operated in a cumulative

fashion to place Alaskan natives and blacks at a relative disadvantage compared with the majority of urban whites in this study. For example, there is reason to believe that the operation of the bail system may have an adverse affect on the rural native who has more difficulty being released on his own recognizance prior to trial or plea and may therefore spend more days in jail than his white counterpart. There is also reason to believe that the police decision to arrest, prosecutorial charging decisions, and defense practices by public defenders and other counsel may add to the final result of longer native sentences. Whatever the causes of the problems, there is universal agreement that the sentencing differences uncovered in this research are too large and statistically significant to be ignored by the criminal justice system.

Representatives of the Anchorage District Court have taken a possitive step by meeting with the Advisory Committee on Minority Judicial Sentencing Practices, a legislatively-appointed body consisting of, layman, lawyers and judges, and representing affected minority interests. The Anchorage judges have expressed profound concern over the findings and have agreed to embark on a program of active cooperation with the Minority Committee in an effort to isolate the causes of the problem and to help formulate concrete proposals in the nature of specific legislation, and other action to correct the situation. As of this time there has been discussion of two specific areas: 1) establishment of community work service alternatives to incarceration as authorized by the new criminal code, effective January 1, 1980; and 2) taking a closer look at laws, practices

and procedures relating to bail, to determine whether the bail system places rural natives at a systematic disadvantage. Judicial cooperation efforts of judges and members of the minority committee will probably produce other constructive suggestions in the near future.

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