File S.D. SAC 2/2003

--South Dakota Criminal Justice: A Study of Racial Disparities[1]

Synopsis: *This research analyzed data from the State of South Dakota's judicial, investigations, and corrections departments. Preliminary findings from the analysis suggest disparities in a number of areas, but offer no explanations of why these disparities exist because of limitations in the dataset analyzed. However, the analysis of race disparities in the state's criminal justice system identified concerns for equal treatment of American Indians in areas of legal representation, case dispositions, sentence length, and prison time served. The research also observed an encouraging reduction in race disparities in the area of parole determinations after a 1996 legislative reform of the parole system. Finally, the research addresses the need for additional research on regional disparities within the state, the impact of federal jurisdiction on state-level criminal justice, and more detailed demographic data to allow a more reliable evaluation of the explanations for disparities observed.*

Overview

In March of 2000, The U.S. Commission on Civil Rights published a report on the treatment of American Indians in the South Dakota criminal justice system.[2] The report, based largely on anecdotal evidence provided at a public hearing, criticized South Dakota for maintaining a dual system of justice where race is a critical factor in determining how law enforcement and justice functions are carried out. In response to the report, the Governor of South Dakota contracted the authors to examine whether the Commission's findings were supported by empirical data from the state's judicial, investigations, and corrections agencies.

The Commission's report is not, however, the only source of anxiety over race relations in South Dakota. Newspaper reports present numerous instances supporting the belief in

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[1] The authors wish to acknowledge the support given to this research by the South Dakota Governor's Office. That support came in the form of both financial assistance for the research and also through offering unfettered access to records and consultation. The authors also wish to recognize the contribution of several research assistants to this project. Those individuals, in alphabetical order, include Rachel Anderson, Janet Benton, Billie Kingfisher, Larry Kruger and Mike Teideman. They also wish to acknowledge the considerable support given to the project administrators at the South Dakota Division of Criminal Investigations, Unified Judicial System and Department of Corrections. We would also like to acknowledge the technical assistance received from Larry Kuzmal at BIT, the SPSS Technical Support Team and Doug Goodman of the Computer Science Department at the University of South Dakota who developed the means to create a sophisticated sentence length variable that was essential to this research. Finally, the authors owe a debt of gratitude to William Richardson, Chair of the Political Science Department at the University of South Dakota who consistently made the necessary resources and moral support available to advance this research.

[2] "Native Americans in South Dakota: An Erosion of Confidence in the Justice System," South Dakota Advisory Committee to the United States Commission on Civil Rights. March 2000. Report available at http://www.usccr.gov/.

a double standard. Sensational cases involving at least the perception of bias against American Indians in South Dakota occur frequently.[3] The frequency of these cases, along with the criticism by the Civil Rights Commission created a strong need for the discussion of racial justice in the state. Given the strain of the current race relations, it was necessary to move beyond speculation on the basis of sensational or controversial cases and investigate South Dakota criminal justice through the use of reasonable and rigorous empirical analysis, based on observations of the treatment American Indians as a whole in South Dakota criminal justice. The goal was to examine whether the perceptions of a double standard are supported or contradicted by the State's empirical data.

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[3] Perhaps the most recent string of cases associated with the view of a double standard in the State's criminal justice system included two cases that resulted in similar charges from very different circumstances. The first case involved two White teenagers in the town of Miller who chased five American Indian female high school students driving home from a school basketball game. The defendants allegedly screamed taunts and racial slurs at the girls before firing rounds from a 12-gauge shotgun at them. Although the defendants were not taken into custody for some time after the shooting, juvenile charges of aggravated assault were filed by the state.

Many from the American Indian community called for more serious charges of attempted murder, adult assault and related charges, and civil rights protections under the State's hate crimes statute. They also called for the defendants to be taken into custody when the State had yet to do so. The state maintained that there was no evidence to support any of these charges and the juvenile charges were maintained. The girls and tribal leaders were quoted in the press, stating that if the situation were reversed, and Indian boys shot at White girls, the result would have been much different. This perception caused great distress for American Indians and for the town of Miller, which was at this time being labeled as a racist community (Article Series (various authors): *Miller, Crow Creek Confront Perceptions, Prejudice*, AUGUS LEADER, January 27, 2002, at A1).

The second case involved Adelia Godfrey, a 17 year member of the Sisseton-Wahpeton Sioux Tribe. Godfrey discharged a fire extinguisher at a Police Officer to avoid being put in a holding cell after being arrested for underage drinking. The girl had a history of problems with confinement and had engaged in self-mutilation at the controversial Plankinton juvenile state prison. Still, the state pursued adult aggravated assault charges, although the officer was not seriously harmed. Perhaps the most alarming aspect of this story was the fact that after the incident, she was put in a windowless cell by herself in the basement of the Milbank police station. She was kept there while waiting a transfer to another facility as the system determined if she would be tried as an adult or juvenile offender (Lee Williams, *Teen's Jailing Angers Tribe*, ARGUS LEADER, March 3, 2002, at A1). Ironically, the girl was put in solitary confinement in a windowless basement cell for being afraid of confinement. After realizing this, the court rejected the state's request for adult charges and ordered transfer to a juvenile court.

The comparisons that result from the Miller and Godfrey cases support the perception of a double standard rather than contradict it. This is particularly relevant when comparing the seriousness of the two crimes – the discharge of several rounds of a shotgun at five high school students during a motor vehicle chase compared with the discharge of a fire extinguisher at a single law enforcement officer inside the police station – and the conditions of confinement for Godfrey versus the lack of initial confinement of the boys who shot at the car in Miller.

Concerns for other instances before these two cases were detailed in the following newspaper coverage discussing the need for a review of the State's criminal justice system: William Claiborne, *A River of Indian Anger*, WASHINGTON POST, Oct.23,1999 , at A3. Editorial, *S.D. Will Benefit from Hearings on Racial Issues*, ARGUS LEADER, Nov. 9, 1999, at 5B. Editorial, *Civil Rights Probe Welcome*, RAPID CITY JOURNAL, Nov. 17, 1999.

Concern for the American Indian criminal justice is not confined to South Dakota. A 1996 study of the treatment of American Indians in Arizona identified three general concerns.[4] First, that criminality and victimization rates involving American Indians has been shown to be higher than in other minority groups in many geographic locations.[5] Second, that over representation of American Indians exits in arrest, conviction, and incarceration.[6] Finally, that American Indians have been one of the most oppressed minority groups in the US, resulting in some of the most negative and degrading stereotypes.[7]

The first concern that criminal and victimization rates are extremely high was validated by a more recent report published by the Bureau of Justice Statistics (BJS) in 1999. The BJS findings add American Indian arrest and prosecution rates to the list of other minority groups with alarmingly high rates in these areas. American Indians received approximately one felony conviction per 200 American Indians in the population, 18 and older.[8] While this is not as high as the ratio for African Americans, which is one in 51, it is notably higher than that of Whites (one felony conviction per 300 adults) and Asians (one per 600 adults).[9]

Perhaps more alarming is the rate of crime victimization in the American Indian community. The number of victimizations of American Indians for simple assault, aggravated assault, and rape/sexual assault is over two times the victimization rate of any other racial group.[10] Moreover, American Indian women are victims of violent crime nearly 50% more than black males, who are commonly considered the most victimized class of U.S. citizens.[11] While the violent victimization rate for American Indians in urban areas exceeds that in rural areas, the rural crime rate for American Indians (89 per 1,000) is more than double the rural crime rate observed for Whites (37 per 1,000). The urban crime rate for American Indians, 207 per 1,000, is over three times as high as it is for Whites, 63 per 1,000.[12] The BJS findings were particularly troubling in the area of assault, where American Indian victimization more than doubled any other minority group.

Current Research Approach and Orientation

To build upon the existing knowledge of American Indian criminal justice, the current research attempted to track individuals arrested in South Dakota through their initial

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[4] Alexander Alvarez and Ronet D. Bachman, *American Indians and Sentencing Disparity: An Arizona Test.* 24 JOURNAL OF CRIMINAL JUSTICE No. 6, at 550 (1996).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime.* February 1999, at 25.
[9] *Id.*, at 25
[10] *Id.*, at 3
[11] *Id.*, at 4
[12] *Id.*

charges, prosecution, case disposition, sentence, and prison experience. The goal was to follow individuals in the dataset through the many stages of the process, examining the impact that being White or American Indian had on each.

The current study is based largely on data collected from the Division of Criminal Investigations (DCI), Unified Judicial System (UJS), and Department of Corrections (DOC).[13] Unfortunately, none of these agencies collects their data with the express purpose of analysis or program review. Each maintains their data as a matter of official record keeping and use in the field. Additionally, each agency employs different techniques to manage their data – with noted influences from UJS on the other agencies. As such, numerous transformations in database structure and content were necessary to build one analyzable file containing data on most every stage of the South Dakota criminal justice process.[14] The study also relied on several focus group meetings with criminal justice decision makers, community members and state government officials. The goal of these focus group meetings was to learn more about the concerns and challenges experienced by members of the community and criminal justice system. This knowledge was instrumental in framing the analysis and informing our interpretation of the research findings.

The research captured records for 18,186 unique individuals, from which 4,398 individuals had records from all three agencies (DCI, UJS and DOC). The latter number of 4,398 cases reflects the number of DOC cases that could be matched with UJS and DCI data. This is relevant because only DOC data contains rich demographic variables (e.g., age, race, employment skills, education, family history, religion, etc.) that the other agencies' data does not.[15] The DCI-UJS-only cases contained some demographic data (i.e., race and age), but not nearly the complete set provided by DOC. As such, we kept analysis of the data separated by data source on several occasions. To insure that we did not incorrectly attribute demographic information acquired from the DOC to UJS or DCI records we decided to be conservative in our approach. The research used UJS-DCI data to examine arrest through trial stages of the process and DOC variables to examine incarceration through parole. However, the benefit of having the combined dataset was to insure we could track an individual through the entire process.

A cross-sectional research design was employed to make inferences about the extent to which race impacted outcomes in the criminal justice system. The focus of the research

[13] Data was acquired directly from each division with the assistance of the SD Governor's Office and the SD Attorney General's Office. DCI data was acquired first, which provided a comprehensive list of court case docket numbers for all cases of interest. UJS then provided the authors with data that matched the docket number received from DCI. The DOC data was collected separately from the DCI and UJS data, but was merged with that data using the Social Security Number and Offense Date fields.

[14] Details of data transformation procedures and variables created for analysis can be obtain from the authors.

[15] There is an effort underway to obtain more complete demographic data from UJS to match the data contained in the DOC dataset in order to better study those who were not admitted to the prison system.

was to identify disparities between American Indians and Whites in the South Dakota criminal justice system. To identify disparities in the most straightforward manner possible, the research employed cross tabulation and comparison of means tests, as well as tests of statistical significance for each relationship examined.[16]

Perhaps more important than statistical significance, however, given the focus of this research on examining the South Dakota criminal justice system alone, is the frequency and size of disparities that exist in the State's criminal justice system. To more carefully study this, the research employed a standard that establishes concern for discriminatory treatment of minority groups when under or over representation of that minority group in specific categories exceeds 20% of their percentage in the general population.[17]

This approach assumes that some disparities may be benign. The 20% measure seeks to establish a threshold beyond which it becomes necessary to more closely study, and remedy when possible, the observed disparity. Although the authors do not maintain that crossing the threshold in either direction (under or over representation) is tantamount to discrimination, [18] policymakers, advocates and general readers will benefit from an

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[16] The type of variable being studied determined the selection of which method to use. If the variable under study was categorical, meaning that its values represented independent outcomes with no linear relationship, we used cross tabulation and chi-square. An example of this is case disposition, where each of the outcomes is unique to each other and share no mathematical or linear relationship (e.g., conviction, acquittal, dismissal, etc.). If the variable under study was a scalar variable (e.g., sentence length), it was important to evaluate the mean value in order to best compare performance for each race under study here. In this case, independent-samples T-Tests were used. Testing for the statistical significance of these relationships allow us to consider the probability that the findings are reliable. If that probability exceeds 95%, the statistical test is considered significant. Typically, this is expressed as the probability (p) is less than .05 unreliable or unexplained (here-after referred to as $p < .05$), which means that findings can not be generalized to other contexts. Statistical significance is extremely important when attempting to build or test generalizable theories. However, the purpose of this research is to address the concern that *South Dakota* criminal justice is biased. The authors do not suggest that their findings or conclusions are generalizable to the experience of American Indians in criminal justice systems generally, especially where different cultural, historical, and political factors may be quite different to those in South Dakota. A national study would be required to develop a more general understanding of American Indian criminal justice.

[17] An approach used by Ken Meier and Joe Stewart in their research on educational discrimination against the Hispanic community (KENNETH J. MEIER AND JOSEPH STEWART JR., *THE POLITICS OF HISPANIC EDUCATION: UN PASO PA'LANPE Y DOS PA'TRAS.* (Albany: State University of New York Press. 1991).

[18] Clearly the U.S. Supreme Court does not regards 20% threshold measure as confirmation of discriminatory conduct. In contemporary jurisprudence, the U.S. Supreme Court maintains that statistical disparities do not constitute discrimination on their own. However, cases do exist where disparities amounted to discrimination. In *Connecticut v. Teal*, 457 U.S. 440 (1982), black employees of a Connecticut state agency brought suit claiming a written promotion exam discriminated against them because of their race. The Court held that the employer's acts of racial discrimination in promotions, as a result of statistical disparities in the promotion examination, rendered the employer liable for discrimination. In *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), an employment discrimination suit was brought by the U.S. against both an employer and the union, claiming the employer engaged in a pattern of discriminating against Blacks and Spanish-surnamed people, giving them the lower paying less desirable servicemen or local city driver jobs instead of the higher paying over-the-road line driver jobs, which

interpretive guide to the many statistical observations presented in the following section. The 20% threshold is intended to offer clarity on the question of when a disparity necessitates attention and when smaller disparities, regardless of their statistical significance, merit less concern. It may also compel some to consider it the point at which an obligation exists for stakeholders to begin the difficult work of removing the disparity.

Findings and Discussion

General Demographics and Initial Processing

From the outset, American Indians were over represented in the South Dakota criminal justice dataset and Whites were underrepresented. American Indians make up 8.3% of the State's population[19] and 16.7% of the criminal justice data set.[20] Although this disparity is well beyond the 20% threshold discussed above, we believe it is wrong to make inferences from these comparisons. The relationship between the population percentage of a minority group in the public-at-large and their representation in the criminal justice system is extremely problematic. In the context of the current study, socioeconomic[21] and jurisdictional realities[22] of American Indian criminal justice in South

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mainly went to Whites. It was decided here that the company did engage in a system wide pattern of discrimination against minorities by regularly and purposely treating minorities less favorably than Whites.

However, controlling precedents in this area, *Washington v. Davis*, 426 U.S. 229 (1976) and *Massachusetts Personnel Adm'r v. Feeney*, 442 U.S. 256, 279 (1979), maintain that disparities do not amount to discrimination. Under standards set in these cases, a law is not unconstitutional solely because it has a disproportionate impact. Rather, the law requires evidence that a discriminatory purpose existed. Here, the demonstration of statistical disparities are not sufficient. Intentionality is necessary for evaluating and deciding discrimination cases generally.

The Court is not, however, unsympathetic to the discriminatory impact represented by statistical disparities, insofar as it allows statistical disparities alone to establish a prima facia case of discrimination. *Castaneda v. Partida*, 430 U.S. 482 (1977). Furthermore, the Court recognizes that highly subjective processes, like the jury selection process at issue in *Casteneda v. Partida*, 430 U.S. 482 (1977), are particularly open to manipulation for discriminatory purposes (Fourteenth Amendment Annotations p.20, FindLaw Constitutional Law Center, http://supreme.lp.findlaw.com/constitution/amendment14/20.html.

We suspect that the jury selection process is not the only subjective aspect of the criminal justice system and propose the 20% threshold measure as a viable means for examining when greater scrutiny of disparate instances is justified.

[19] See Figure One, Appendix A.

[20] See Figure Two, Appendix A. Also note that the percentage of American Indians in the full DCI-UJS dataset prior to the selection of unique individuals was 20.8%. This means that a secondary – an larger – overrepresentation existed in the number of American Indians who were in the South Dakota criminal justice system more than once.

[21] In the context of South Dakota American Indian criminal justice, the simple comparison tells us little because of economic disadvantages experienced in many American Indian communities. Previous research has shown that crime is a fact of life in economically disadvantaged minority communities. *See generally* Steven R. Cureton, *Justifiable Arrests or Discretionary Justice.* 30 JOURNAL OF BLACK STUDIES Iss.5, at 03-720 (May, 2000); Jeff Yates, *Racial Incarceration Disparity Among States.* 78 SOCIAL SCIENCE QUARTERLY No. 4, at 1001-1010 (Dec. 1997); F. Pommershiem, S. Wise, and S. Feimer, *Marking time:*

Dakota make comparisons between population presence and criminal justice activity nearly impossible to rely on. Additionally, comparisons between population and criminal justice system percentages provide little causal information that can be attributed to criminal justice system bias because the impact of individual behavior cannot be sufficiently controlled at this level.

To obtain a more accurate view, one that shows where concerns for discrimination actually exist and where they do not, one must take into account the criminal activity of the minority group being studied and the criminal activity of other groups in comparison within that same system.

Does Race Make a Difference? A Study of Disparate Sentencing in South Dakota. JOURNAL OF CRIME AND CRIMINAL JUSTICE (1990).

Consider also the general economic condition of South Dakota American Indians who have been observed to be among the poorest groups in the US. According to the 2000 Census, Buffalo County, South Dakota is the poorest county in the nation (www.census.gov). The lack of industry to support employment on tribal lands and a student dropout rate of 76 percent leads to a sometimes uneducated and unemployed workforce in South Dakota American Indian communities (Laura Zoss, *Research Methods Final Paper*, University of South Dakota Department of Political Science (2002)). We therefore expect to observe greater criminal justice activity in the American Indian community in South Dakota than the White community, where poverty is far less pervasive. This alone may explain some of the disparities between population percentage and criminal justice system percentage.

To the extent that American Indians in South Dakota experience this hardship – and the resulting crime and increased criminal justice activity that impacts families, employment opportunities, and self respect – we should not be surprised to see greater levels of participation of American Indians in the South Dakota criminal justice system than their population figures alone suggest. The essential question is whether the criminal justice system compounds the problem experienced by disadvantaged minority communities, treating these groups differently than the White majority (Joan Petersilia, *Racial Disparities in the Criminal Justice System: A Summary*. 31 CRIME AND DELINQUENCY No. 1 at 15-34 (Jan. 1985)) and further disadvantaging these communities in future family, employment, and criminal justice contexts.

[22] According to members of Cheyenne River Tribe, jurisdictional arrangements make the simple comparisons of American Indian population and American Indian defendants in the South Dakota criminal justice system erroneous. Tom Van Norman, a current South Dakota State Representative from District 28A (representing all of Cheyenne River and part of Standing Rock reservations), maintains that two-thirds to three-fourths of the State's American Indian population should be excluded from any comparison because that percentage of American Indians remain on reservations and, as such, are not subject to the State's criminal justice jurisdiction. Further, Van Norman, along with Bryce IN THE WOODS (Cheyenne River Sioux Tribal Council Member), pointed out that even if this percentage (estimated at 45,000 of the 62,238 American Indians residing in South Dakota) of American Indians ever left the reservations for shopping or business purposes they would not be off the reservation at the same time, subject to the State's jurisdiction at once. Van Norman argues that, as a result, it is not accurate for researchers to compare the American Indian population percentage and criminal justice percentage. For South Dakota American Indians then, the over representation in the criminal justice system becomes even worse when we factor in those who never leave the larger reservations (e.g., Cheyenne River, Pine Ridge, Rosebud), those who leave only two or three times a month, or when the number of defendants under tribal or federal charges for some of the same crimes studied in the current research of South Dakota criminal justice.

From the data considered here,[23] American Indians do not seem to be committing more crimes per individual or more serious crimes per individual than Whites.[24] This demonstrates that the South Dakota criminal justice system is not charging American Indian defendants with more crimes per docket or with, on average, more serious crimes.[25] The opposite condition was present. Whites in the dataset were charged with slightly more crimes on average and the severity of their charges in aggregate was higher.[26]

However, American Indians were denied bond eligibility at higher rates than Whites. The fact that American Indians were not charged with more serious or numerous crimes than Whites in South Dakota was expected to generate an under representation of American Indians in the area of bond eligibility, insofar as part of the bond decision is based on an individual's threat to the community. Regardless, American Indians accounted for 27% of all cases where bond eligibility was denied.[27] This disparity was well above the 20% threshold of concern.[28]

The large over representation of American Indians in this category was not wholly unexpected. The expectation that American Indians would be denied bond more than Whites in South Dakota criminal justice was informed by judicial concern for the flight risk of American Indian defendants.[29] A major concern identified in the judicial focus group meeting was whether the existence of federal jurisdiction over criminal justice on Indian reservations impacts the state criminal justice system generally. In the discussion, it was stated that judges felt that a combination of federal jurisdiction, limited economic resources, and the lack of a reliable criminal justice infrastructure in the American Indian community inhibited their ability to deliver and administer alternative sentences (e.g.,

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[23] Which covers the post-arrest through completion of sentence stages of the process. While many would argue that we should also study disparities in investigations and arrest as well, often grouped together under the heading of police profiling, the State does not collect data on these stages and, as such, we were not able to conduct any analysis of them.

[24] See Figure Three, Appendix A.

[25] It must be noted that charge number and charge severity measures are not indicative of initial charges made at the time of arrest. Instead, these reflect charges after prosecutorial decisions and alterations. As such, they reflect the courts' phase of the process. The decision to focus on this phase, rather than the initial law enforcement phase is that there is simply no reliable data to account for what happens at the state attorney phase between arrest and trial / plea phases. The fact that state attorney data was not available to the state at the time of this research represents one of the largest shortcomings of this study and potentially one of those subjective processes that the U.S. Supreme Court pointed out in *Casteneda v. Partida*, 430 U.S. 482 (1977) (*See infra* note 21). If future studies are to become more accurate over time, it will be necessary to pay closer attention to the role that state attorneys play in this process, which can be done by improving the data collection and data sharing efforts from state attorney offices and either UJS or DCI.

[26] T-Test Significance was $p < .05$ for charge count and $p < .10$ for charge severity.

[27] See Figure Four, Appendix A.

[28] The relationship between race and bond determination was statistically significant with Chi Square of $p < .001$.

[29] This was articulated in a focus group meeting with judges on July 12, 2001 (Meeting with Judges of the Unified Judicial System of South Dakota in Pierre, SD).

probation, treatment, community service) to American Indian defendants. The perception of some South Dakota judges was that alternative sentences to incarceration were not always practical for American Indian defendants. Judicial concern ranged from the lack of socioeconomic and employment resources available to American Indian defendants to the fear that defendants could "hide out" on the reservation without complying with the authority of state courts. In the latter instance, it was believed that the state could do little to regain custody or administrative control over the non-compliant defendant because of jurisdictional barriers to state legal authority.[30] It may be the case that the disparity observed here in the area of bond determination is related to the judicial perception that the state could "lose" defendants under the current jurisdictional arrangement in the state. Unfortunately, we do not have specific data on either the economic resources available to those charged with crime nor their flight risk.

Case Disposition

American Indians were also subject to subtle disparities in the areas of going to trial and case disposition (See Table One Below). Our finding that American Indians are under represented in the trial component may relate to the perception that American Indians are more likely to accept a plea bargain than Whites. Although our analysis was not conclusive because of unreliable data on plea bargains, it was discussed in focus group meetings[31] that American Indian culture prompts American Indian defendants to accept plea offers more readily than Whites.[32] Here, the data on who goes to trial is used as a surrogate for plea data, showing that a higher percentage of Whites opt for trial, while American Indians participation in the trial stage was below the 20% differential from their population percentage.

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[30] *Id.*

[31] Meeting with South Dakota American Indian Community in Rapid City, SD (June 20, 2001), Pierre, SD (June 21, 2001), and Sioux Falls (August 29, 2001).

[32] An explanation may include the cultural tendency for American Indians to distrust the White criminal justice system's ability to advance their cases in a neutral fashion. As such, these defendants may desire to simply accept initial charges and feel, as a matter of lack of confidence in the system, that challenging initial charges or the state's handling of their case will not do anything "productive" for their interests. This historical mindset dates back to original treaties made and then broken by the white legal and political community (i.e., consistent rejection of treaties made in the field by US Congress). An additional matter is the cultural avoidance of confrontation with a system that many do not understand or trust, which may result in a survival strategy rather than adversarial strategy.

Table One: Trial and Case Disposition by Race*

	Presence in the GRB Dataset	Trial	Guilty Plea / Conviction	Acquittal	Dismissal	Suspended Imposition	Transfer
American Indians	16.7%	**12.3%**	17.1%	**11.1%**	16.1%	**13.9%**	18.8%
Whites	76.7%	79.5%	76.6%	77.8%	76.3%	80.4%	**65.6%**

*.Includes American Indian and Whites only

This finding was corroborated by our analysis of DOC data in the area of processing time between arrest and admission to the state prison. The mean difference in processing time between Whites and American Indians was 37 days, where Whites average time was 266 days and American Indians average time was 229 days.[33]

The data shows a trend where Whites may be fighting charges a bit harder, taking more time to go through the entire process in those cases where prison sentences result. When considered in combination with the percentage of cases that go to trial for Whites and American Indians, we see a subtle concern for differences in how the two groups behave within the criminal justice system.

Table One also shows that American Indians are slightly more likely to be convicted, less likely to be acquitted and less likely to have their case either dismissed or suspended than are Whites in South Dakota. American Indians are, however, more likely to be transferred from the criminal courts to alternative jurisdiction (e.g., transfer to tribal court or mental health facilities). Concerns for discrimination, based on the 20% threshold measure, exist only in the trial and acquittal categories. When looked at as a whole, our analysis of case disposition shows that Whites are over represented in the more desirable dispositions (acquittal and suspended imposition) and slightly under represented in the conviction category. The opposite is true of American Indians.[34]

The differences in the trial and case disposition areas may be the result of another disparity observed in the area of legal representation. American Indians in the Felonies dataset used private counsel in less than half the instances of Whites and that they relied more heavily on court appointed defense counsel.[35] This is problematic for American Indian defendants because our data shows that the acquittal rate is lower and conviction rate is higher for defendants with court appointed representation. As such, legal

[33] The mean difference was statistically significant at $p < .05$.
[34] The differences in these case dispositions for the two races are statistically significant, with Chi Square significance of $p < .01$.
[35] See Figure Five, Appendix A.

representation is likely to be an intervening variable that may bias case dispositions against American Indians.

Sentence Length

Disparities were also observed in the sentence length given by the South Dakota courts, although the disparities were not always to the disadvantage of American Indians. American Indians received 17.9% of all sentences handed down in South Dakota between 1994 and 2000. This reflects only a slim over representation of American Indians below the 20% threshold standard employed in this research.

Much of the following analysis consider two types of sentences, aggregate and actual.[36] The aggregate sentence is defined as the sentence for all crimes given by the courts without taking into account whether the sentence was to be served concurrently or consecutively, whether the sentence was wholly or partially suspended, or conditionally set aside through a suspended imposition. Actual sentence does take account of concurrent and consecutive orders and any suspended time or whole sentence suspension that resulted from court action. In this regard, the actual sentence represents the time a defendant is expected to serve, not the sum of all time the were sentenced to.

American Indians received longer aggregate sentences than Whites. The difference in the mean for aggregate sentence was 832 days for all sentences given (See Table Two below). American Indians also received longer actual sentences than Whites. Here, the average for all sentences was 667 days longer for American Indians.

[36] Aggregate sentence here is defined as the sentence for all crimes given by the courts without taking into account the type of sentence (concurrent or consecutive), whether that sentence was wholly or partially suspended, or conditionally set aside through a suspended imposition. Aggregate sentences are compared to actual sentences below. Actual sentences in this analysis do take into account the type of sentence and any suspended time or whole sentence suspension that resulted from court action.

Table Two: Comparison of Aggregate and Actual Sentences for All Crimes

Sentence/Race	Mean	Number of Cases	Sig.	Mean Difference[i]
Aggregate Sentences	1787.75	18186		
American Indian	2484.8	3045	.065**	831.6
White	1653.1	13950		
Actual Sentences	1290.47	18186		
American Indian	1847.1	3045	.074**	667.2
White	1179.9	13950		

[i] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

The mean of actual sentences was 72.2% of the mean of aggregate sentences. This means that when all factors are taken into account, the courts expect that in a full sentence a defendant will only serve just over 72% of their sentence time. Any early release would then be a percentage of that suspended time. When taking into account how average sentences were distributed to each racial group studied here, we found that American Indians were expected to serve 74.3% of their average aggregate sentences and Whites were to serve 71.3% of their average aggregate sentences. This means that American Indians received less suspended time than Whites -- suspended time here is a product of both suspended impositions and general suspended time.[37]

A separate analysis of suspended impositions[38] showed that Whites received an average of 133 days more suspended time through the suspended imposition program than American Indians. Similarly, Whites received 103 days more general suspended time[39]

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[37] Note that this is not a measure of jail time credit, which is captured in a separate measure. Although no analysis of jail time credit was done here, it is expected that American Indians would receive a higher amount of jail time credit given the fact that, on average, American Indians sit in jail for longer time while their cases are processed as a function of longer processing times and higher rate of being denied bond. Still, analysis of jail time credit should be done to confirm this expectation. This analysis is likely to follow in the near future.

[38] Suspended impositions are often given to first time offenders who the court requires to complete some conditions rather than have their sentence imposed. If they complete the conditions successfully, the sentence is not applied. If they do not, the court may impose the initial sentence.

[39] Time suspended by the court from the initial sentence to reduce the amount of time an inmate will serve in prison. Suspended time is used in a variety of instances and is typically not tied to conditions.

than American Indians.[40] Although these observations can not be subjected to the 20% threshold analysis, we have already discussed that American Indians were under represented (13.9%) in receiving suspended impositions and that Whites were over represented (80.4%) in this category. Taken together, we see that American Indians are receiving tougher sentences.

A related point increases the concern for dissimilar results for Whites and American Indians in the sentencing area. The analysis of different crime types[41] uncovered another series of disparities that disadvantage American Indians. American Indians received longer aggregate sentences in all but two violent crime areas (Whites received longer sentences for Vehicular Homicide and Assault) and shorter aggregate sentences in all but one non-violent crime area (property crimes).[42] These findings suggest the existence of something like a White-crime type and an American Indian-crime type, where Whites are punished more harshly for their crimes and American Indians are punished more for theirs. Generally, Whites are punished more for non-violent crimes, while American Indians are punished more for violent crimes – with the noted exceptions.

This trend is, however, contradicted by the process in which aggregate sentences are transformed into actual sentences. In four non-violent crime categories where Whites were sentences to longer average aggregate sentences, the transformations resulted in longer actual sentences for American Indians.[43] The same is not true in cases were American Indians are given longer average aggregate sentences in violent crime categories. Here, we did not observe any direction shifts, where American Indian longer aggregate sentences turned out to be longer White actual sentences. In the two violent crime areas where Whites were given longer aggregate sentences, Whites were also given longer actual sentences.

It seems this phenomenon only exists in non-violent crimes. The result is that even though some balance exists on the surface between longer sentences for American

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[40] The T-Test statistic for suspended imposition was not significant ($p > .10$), however the statistic for general suspended time was significant ($p < .001$). To further our examination of the types of sentences given sentence we disaggregated the sentence length field, grouping cases by concurrent-only and consecutive-only sentences. This analysis yielded another set of disparities. We found that Whites were given longer concurrent-only sentences and American Indians were given longer consecutive-only sentences. However, American Indians were not over represented in receiving consecutive-only sentences. There, American Indians accounted for only 15.2% of consecutive-only sentences (See Table Five, Appendix A).

[41] It must be noted that the current analysis did not separate out the different sentences for individual crimes if that meant the exclusion of other crimes and sentences on the same docket. For instance, if a defendant had one charge of aggravated assault and one charge of murder on their docket, the sentence for each was captured for both. Although it creates an upward bias for some crime types, we believe that sentencing decisions are based on all crimes on the docket, criminal history, the impact of the crimes on victims, and the like.

[42] See Table Three, Appendix A, for breakdown of individual violent crime categories and Table Four, Appendix A, for a breakdown of individual non-violent crime categories.

[43] This occurred in the crimes areas of Bad Check Writing, DUI, Escape and Vandalism.

Indians in violent crimes and longer sentences for Whites in non-violent crimes, the reality is that American Indians are given longer actual sentences in 66% (14 of 21) of the crime areas tested. This occurred in a context where American Indians committed, on average, less numerous and less serious crimes on the dockets studied here.[44]

A final matter to cover in the area of sentencing by individual crime types is the percent of cases within each crime category.[45] This percent represents the number individual defendants before the South Dakota courts for each crime time. Here, American Indians were over represented in 12 of the 21 crime categories.

The general sense that results from the analysis of sentence length is that American Indians are disadvantaged here as in other areas of the pre-prison stages of the process. Still, we can offer no empirical explanation for the disparities in the data studied here. Similarly, no evidence of intentional discrimination has even been considered. What is evident, however, is that from arrest through sentencing some considerable disparities exist.

The Prison System

A regional comparison yields some interesting observations regarding the treatment of American Indians in the South Dakota prison system. According the 2000 U.S. Census figures, the number of American Indians living in South Dakota is approximately 62,238 or about 8.3% of the state's general population of 754,844.[46] By comparison and again according to the 2000 U.S. Census there are approximately 31, 329 American Indians living in North Dakota making up approximately 4.9% of the state's general population of 642,200.[47]

As inmate figures for fiscal year 2000 indicate, South Dakota's prisons housed 2,563 inmates of whom 562 or 22% are American Indian.[48] By comparison, North Dakota's prison system showed a total of 1,016 inmates on December 31, 1999 with a racial distribution of 16.4% American Indians.[49] Based on these figures, American Indians are also over represented in the North Dakota prison system.

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[44] Again, see Figure Three, Appendix A for Charge Severity and Charge Frequency results.
[45] Also found in Tables Four and Five in Appendix A.
[46] United States Census 2000, U.S. Department of Commerce, U.S. Census Bureau, Washington D.C. Summary File 1, South Dakota.
[47] United States Census 2000, U.S. Department of Commerce, U.S. Census Bureau, Washington D.C. Summary File 1, South Dakota
[48] South Dakota State Penitentiary Inmate Population Reports, South Dakota Department of Corrections FY 2000.
[49] North Dakota Department of Corrections and Rehabilitation Bi-Annual Report to the Governor July 1, 1997-1999.

According to North Dakota prison officials, the state experienced an unprecedented growth in its prison population in the 1990's.[50] An all-time high population of 961 total inmates on December 12, 1998 highlighted this trend. As with South Dakota, it appears that drug/alcohol related crimes were the primary cause of prison population increases:

> Drug offenders were the fastest growing segment of the population and the major cause of the prison population explosion the past two years (1998-99). Once again, the increasing us and manufacturing of methamphetamine by state residents spurred this increase.[51]

Without doing specific demographic analysis on the North Dakota and South Dakota inmate populations we can only suggest that, in general, American Indians are over represented in both state prison systems. However, the regional comparison conducted here shows that South Dakota has the highest percentage of American Indian male inmates than any of its neighbors.[52] South Dakota also has the highest disparity between American Indian inmate population and American Indian general population. This disparity was 14.2%, while the lowest was Iowa with a disparity of 1.2%.[53] The South Dakota disparity was greater than the 20% threshold measure of concern used throughout this report. Each of the other states in this part of the analysis were over the threshold as well.

Analysis of regional incarceration rates shows a slightly different trend. Here, South Dakota did not have the highest incarceration rate per 1,000 population.[54] Both Iowa and Nebraska had higher incarceration rates than South Dakota.[55] However, it should be noted that Iowa and Nebraska have very small American Indian populations, .3% and .9% respectively. When looked at more closely, it seems that both states incarcerate a greater percentage of out of state American Indians than South Dakota, explaining their higher incarceration rates when compared with state population demographics. In fact, an official from the state of Iowa prison system noted that their incarceration statistics were biased by arrests in Sioux City, Iowa, which sits on the boarder of South Dakota and Nebraska.[56]

The current information on prisoner demographics from the GRB dataset was developed using a filtered dataset that contains only White and American Indian inmates. Here,

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[50] North Dakota Department of Corrections and Rehabilitation, Bi-Annual Report, July 1, 1997-June 30, 1999, Prisons Division, page 7.
[51] ibid.
[52] See Table Six, Appendix A.
[53] Data on population demographics provided by 2000 U.S. Census. Data on inmate populations provided by individual states' Department of Corrections Annual Reports.
[54] See Table Seven, Appendix A.
[55] Data on population demographics provided by 2000 U.S. Census. Data on inmate populations provided by individual states' Department of Corrections Annual Reports.
[56] Documents provided by Lettie Prell, Analyst, State of Iowa, Criminal and Juvenile Justice Planning, November, 29th 2001

American Indians were again over represented. Although they constituted 17.6% of the courts and investigations dataset, they made up 20.1% of the prison dataset, which was below the 20% threshold of concern.

Of the 4,068 inmates studied, 3,053 (75%) had some contact with the Drug and Alcohol Abuse Assessment unit, either for assessment of the inmate's drug/alcohol problem or to determine whether a drug/alcohol problem exists. Perhaps the most significant difference between Whites and American Indians with regard to substance abuse or dependency is found in the "Alcohol Dependency" category where 28.3% of those assessed to be alcohol dependent were American Indian inmates. This again shows an over representation greater than the 20% threshold.

In the area of dependency on drugs, we found that 88.7% of these inmates were White -- a clear over representation of the White community.[57] These two categories show that American Indians are over represented in Alcohol dependency but not other substance dependency, where Whites are over represented. The other categories were distributed consistently with each race's population demographics.[58]

American Indians averaged 2.18 felonies, whereas White inmates carried 1.99 felonies on their inmate record.[59] The mean difference (.19) in the number of felonies was significant at the p=. *002* level, suggesting that this is not a chance finding.[60] This shows that American Indian inmates are more likely to have a worse criminal history, although that difference is substantively quite small.[61]

There was also a disparity in the amount of processing time, defined as the difference between the date of the offense and commitment date.[62] This was done to study the length of time it takes an individual to move through the criminal justice system. A secondary, but equally important, objective here was to examine whether American Indians are more likely to plead guilty rather than fight the charges in court, given our belief that individuals who plead guilty will move through the criminal justice system

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[57] See Table Eight, Appendix A.

[58] See Table Eight, Appendix A.

[59] See Table Nine, Appendix A.

[6060] Unfortunately, the Department of Corrections data does not allow us to determine if the number of the felonies data represents multiple felonies under one arrest scenario or prior felonies under several arrest scenarios. For example, if the number "3" appears in the felonies variable we could not determine whether the inmate had two prior felonies and was serving time on his third felony or he if he was sentenced to prison on three felonies charges stemming from a single arrest.

[61] The dataset as a whole offers virtually no insight into whether this results from a greater criminal activity in the American Indian community, police profiling, or increased allocation of law enforcement resources in areas with high American Indian populations.

[62] Beginning on July 1, 1996, the Department of Correction began collecting information related to the inmate's offense date. Therefore, the analysis here considers inmates who committed their offense after July 1, 1996. Using the July 1, 1996 date as a filter, we developed a subset of 2,184 White inmates and 507 American Indian inmates.

more quickly than those who prefer to go to trial. Moreover, those who accept the initial plea offered by the State will move through the system more quickly than those who attempt to negotiate their plea, reducing the terms of penalty for their crimes.

The clear trend observed here demonstrates that Whites take longer to track through the system regardless of the type of crime committed or the number of crimes associated with a defendant. The only exception occurred in the area of Non-Violent Crimes for a person with one felony only. In this instance, there was no difference in processing time.[63] It is clear from this analysis that American Indians move more quickly through the criminal justice system than Whites.

An examination of the entire dataset did not present an accurate picture of how long a person actually stays in prison, because of a reform of the parole system in 1996 and the resulting recording keeping changes at the DOC.[64] As such, we had to divide the data into two groups. The first covered the pre-reform period of Jan 1, 1994 to July 1, 1996. The second covered from July 1, 1996 to the end of our time period in 2000. In the following analysis of time served, we report findings for both periods.

The 1996 Parole Reform legislation had a substantial impact on the amount of time served by SD inmates.[65] To begin, in the period before the reform, American Indians were serving, on average, 54 more days than Whites for their crimes.[66] After the change, there was no observed difference in the average number of days served between Whites and American Indians. This is not, however, a matter of who gets parole as both Whites and American Indians experienced the same percentage of parole awards before and after the reform. The effected measure is when individuals are released on parole. Here, the parole reform reduced disparities in the time served by Whites and American Indians.

Under the old system, which placed far greater discretion in the hands of prison officials and parole board members, the process was subject to a 54-day disparity against American Indians in excess of the 20% threshold. This disparity was partly caused by

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[63] See Table Ten, Appendix A.

[64] The S.D.C.L. citation for this measure is §§24-15A (1996). According to the Department of Corrections website (http://www.state.sd.us/corrections/FAQParole.htm), prior to the 1996 Parole Reform legislation, parole was determined by an inmate's sentence length, behavior in prison, or good conduct, and an assessment of the inmate's suitability for parole. Under this system, an inmate was eligible for parole after deducting time granted for good conduct from his sentence. The new system of parole eliminated the good conduct criteria and calculated a formula for release based on a number of factors about the inmate and their crimes. The reform also created an Individual Program Directive (IPD) that was consistent with the inmate's time to serve and treatment needs. After the formula, the IPD established the final criteria for an inmate's parole.

[65] See Table Eleven, Appendix A.

[66] The relationship between race and time served before the legal change was statistically significant at the $p < .10$ level. See Table Eleven, Appendix A.

differences in the average good time lost for each racial group. [67] American Indians lost almost twice the amount of good time as Whites in the pre-reform period.[68]

Looking at this relationship in greater detail, we learned that the measure of good time lost was biased by several large values. In other words, some inmates had extremely high number of good time lost. For example, while many inmates lose good time in increments of 10 days, 20 days, or 30 days, others have lost good time ranging from for 205 days to 1,780 days. How we treat these "outliers" will affect how we understand the good-time lost issue. To accurately study this, we decided to first report good time lost using all of the cases in the distribution, including the "outliers".[69] Next, we used the median score from the good-time lost distribution to divide the data into two nearly equal sections; one section contained half of the sample with scores below the median and the second half with scores above the median value of 37 days.

Our analysis of data below the median,[70] showed that American Indians were over represented (39.2%), although the mean difference was not statistically significant $p=.775$. When we examined the data subset above the median score, we found that American Indians were again over represented, although to a lesser degree (29.5%). Both percentages, above and below the median, were well above the 20% threshold of concern for discrimination. The mean difference in good time lost was considerably higher for cases above the median (32.7) and almost identical below the median (.5). This suggests that at the higher end of the distribution, American Indians are losing more good time. American Indians lost an average of approximately 10 days more than Whites[71] – further explaining why they served more time as a whole than Whites.[72]

Good-time is also lost for parole or suspended sentence violation. This too was problematic. The distribution ranged from 91 days lost to 3,104 days. We found that American Indians were over represented in the good time lost for parole and suspended sentence violations relative to their 20% presence in the prison population. Here, American Indians made up 34.9% of all cases where good time was lost for parole or suspended sentence violations.[73] However, Whites lost more good time for Parole or Suspended Sentence violations overall with a mean difference of 80.47 days.

Under the **new parole system**, parole decisions are made, for the most part, by formula. The formula calculates an individual's criminal history, demographics of their crimes,

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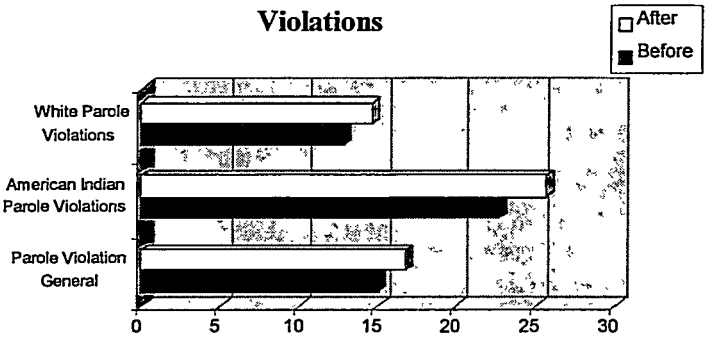
[67] Good time was assigned by a formula where one year was treated as eight months. Thus, inmates had four months good time to receive early parole or, in the case that they violated institutional rules, the institution could take good time away.
[68] This relationship was also statistically significant at the $p < .05$ level. See Table Twelve, Appendix A.
[69] See Table Twelve, Appendix A.
[70] See Table Thirteen, Appendix A.
[71] See Table Twelve, Appendix A.
[72] See Table Eleven, Appendix A.
[73] See Table Fourteen, Appendix A.

completion of individual program directive, and other individual-specific considerations when determining parole. The downside to this approach is that it takes decisions out of the hands of the experts with intimate knowledge of individual needs and capacities. The result was a 3% increase in parole violations for American Indians and 1.8% increase in parole violations for Whites in the post-reform period (See Figure Six below). The question now becomes which creates a greater burden for society: racially biased outcomes[74] or parole violations.

Figure 6: Affect of Parole Reform on Parole Violations



The percentage of sentence served was similarly affected by the reform. In the pre-reform period, American Indians were serving a greater percent of the given sentence (46.4%) than Whites (40.58%).[75] After the parole reform, this disparity narrowed and was not statistically significant. Further, the percentage of sentence served by both groups declined in the post-reform period. The reform introduced more certainty in time served and, at the same time, mitigated what appears to be a bias against American Indians.

The question of whether American Indians are more likely to serve out their full sentence than Whites was also impacted by the 1996 reform that ushered in a more "automatic out" process devoid of the "good-time" provision.

In addition to standard release types (e.g., expiration of sentence, parole, and suspended sentence), the DOC data also has codes for escape, death, and release on bond. These additional release types were reported under the label of "other" [76] because of the small number of cases in each type. The analysis of release type also showed the impact of the

[74] To the extent that race was a factor under the old system, it is likely that the decision to not parole American Indians was tied to additional considerations of economic conditions, job opportunities, family and social support networks, and other contributors to a successful or unsuccessful parole. This is, at minimum, a potential explanation for the race disparity in this category that deserves further study.
[75] This was statistically significant at the $p < .01$ level.
[76] See Table Fifteen, Appendix A.

1996 reform.[77] Specifically, the gap between Whites and American Indians in the full expiration of sentence and in.parole was narrowed considerably,[78] suggesting a more egalitarian performance of the prison system after the reform. After the reform, we observed more evenly distributed parole and expiration of sentence results, although the percentage of American Indians serving out their full sentence remains slighter higher than Whites.[79]

Conclusions

Our empirical analysis concludes with a discussion of the frequency of concerns for disparities. American Indians were disadvantaged in 70% of the relationships we tested in this research.[80] The application of the 20% threshold test here suggests that the state of South Dakota's empirical evidence validates many of the initial concerns about the treatment of American Indians. The case disposition, bond determination, and sentence length findings do not coincide with the severity or number of charges associated with the cases in the dataset. Further, disadvantages experienced in the length of prison time served and in the type of release from prison show bias in State's criminal justice system.

Conclusions about why these processes show disparities, however, are not possible given the limitations of the current dataset. Until a more comprehensive dataset is collected, which includes a wider range of individual and case demographics, we cannot confirm or discount the presence of discriminatory conduct by the criminal justice system, its institutions or actors.[81]

There were instances in this research where Whites were disadvantaged, which must not be overlooked with analyzing fairness in the process. Whites experienced longer sentences in most non-violent crimes, in two violent crime areas, and they were charged with more frequent and more serious crimes overall.

The current research has been productive in examining a wide range of phenomena that show challenges facing both communities. Still we must consider what motivates some of the more difficult outcomes observed here, particularly those that create the appearance of a double standard in our criminal justice system. To begin, it seems likely that a profound lack of trust exists between both communities. This was palpable in our

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[77] See Table Fifteen, Appendix A.
[78] See Table Fifteen, Appendix A.
[79] See Table Fifteen, Appendix A.
[80] An initial count suggests that American Indians were disadvantaged by disparities in 19 of 27 relationships examined. The number of tests done, however, is unreliable because some of the relationships were multifaceted, while others were related to one or more tests conducted. As a result, we tried to count "conservatively," although we do not rule out the possibility that additional efforts to count could produce different totals.
[81] Such research and data collection is currently underway under a second grant given by the South Dakota Governor's Office. This second round of research is focused on explaining the disparities presented in this work. The second round of research should be completed by the end of 2003.

focus group meetings and represented in some of the data. The speed with which American Indians move through the criminal justice system, their acceptance of more plea agreements, and less challenges in court result in longer sentences and a more negative criminal history. Longer sentences and criminal history then lead to harsher treatment in the process in the future, as plea agreement, sentencing, and parole decisions are based in part on these factors. We observed this in several instances of harsher sentencing for individuals with more than one felony charge and with more than one trip through the system.[82]

The ultimate result is a true dilemma for the American Indian community, insofar as these outcomes can be linked in small but important ways to their lack of faith in the system. American Indians seem to neither trust the system nor be effective in advocating their interests in it. This behavior may be the result of a historic lack of confidence in the American law generally, particularly when viewed from the perspective of the Sioux Nation, or a more specific function of the efficacy of their legal representation. This is a subject that deserves further study.

Similarly, further study remains necessary to address the underlying questions of this research: Is there a double standard in South Dakota criminal justice and are the lives of American Indians valued as much as the lives of Whites in the community? Although there were prevailing concerns in the South Dakota Advisory Committee's report, in the press coverage of the past several years and also many of our focus group meetings, it remains beyond our current knowledge to report conclusively about these two essential questions. Unfortunately, answers are not possible from a study of disparities alone, which is what was presented here. Further data on the race of victims and other crime demographics such as financial impact of the crime, use of force, use of weapons, as well as a more complete criminal history of the accused is necessary to narrow in on the question of whether the institutions and procedures of South Dakota criminal justice are biased.

The initial consideration of empirical data, however, suggests a number of problems that need to be addressed more closely regardless of cause or legal obligation to do so. The remaining question(s) is whether the state is responsible for any of the observed disparities and if so, or if not, can the various stakeholders work together to improve what seems today to be a burden on American Indians in the state.

[82] Both of which were observed in the authors' extended work on this subject.

Appendix A: Charts and Tables

Figure One: Distribution of Race in South Dakota (US Census Bureau, 2000)

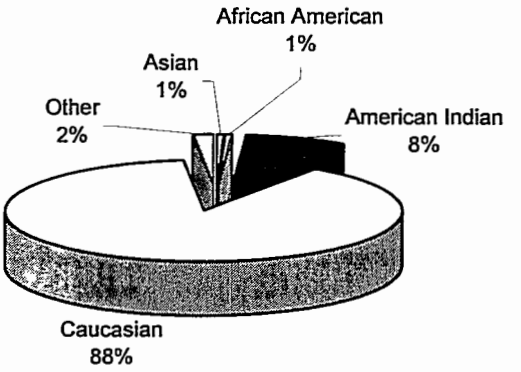

Figure Two: Distribution of Race in GRB Dataset

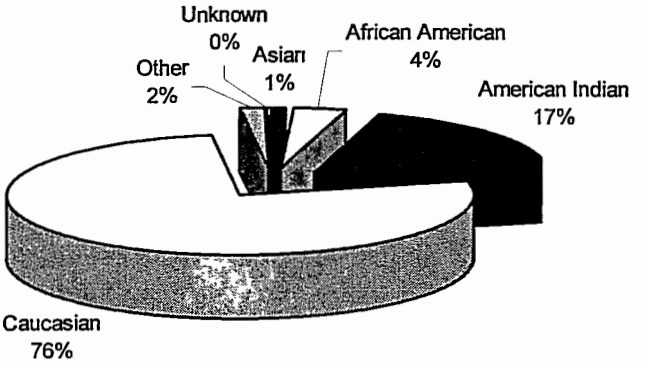

Figure 3: Charge Count and Charge Severity by Race

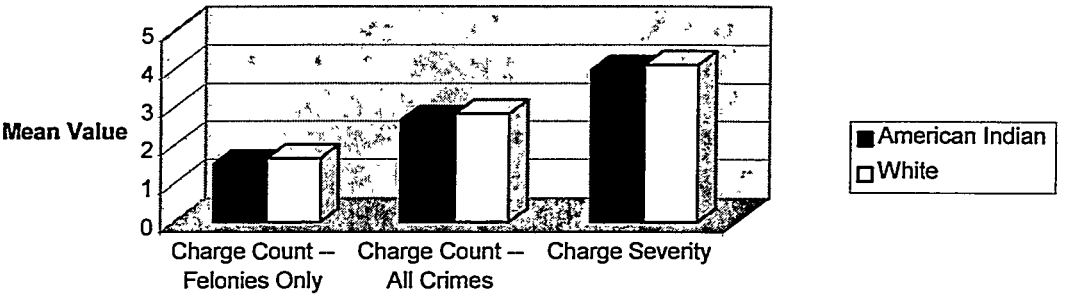

Figure Four: Percent of Defendants Denied Bond

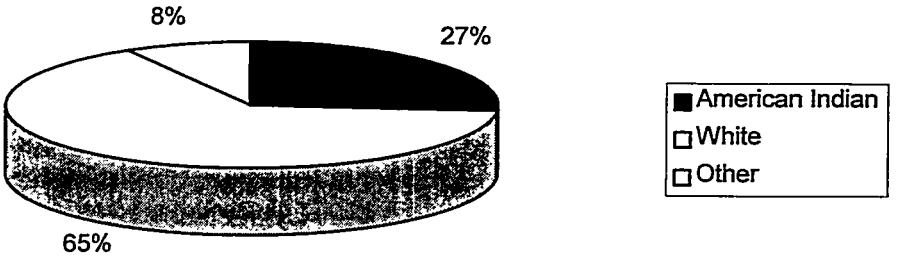

Figure Five: Legal Representation by Race

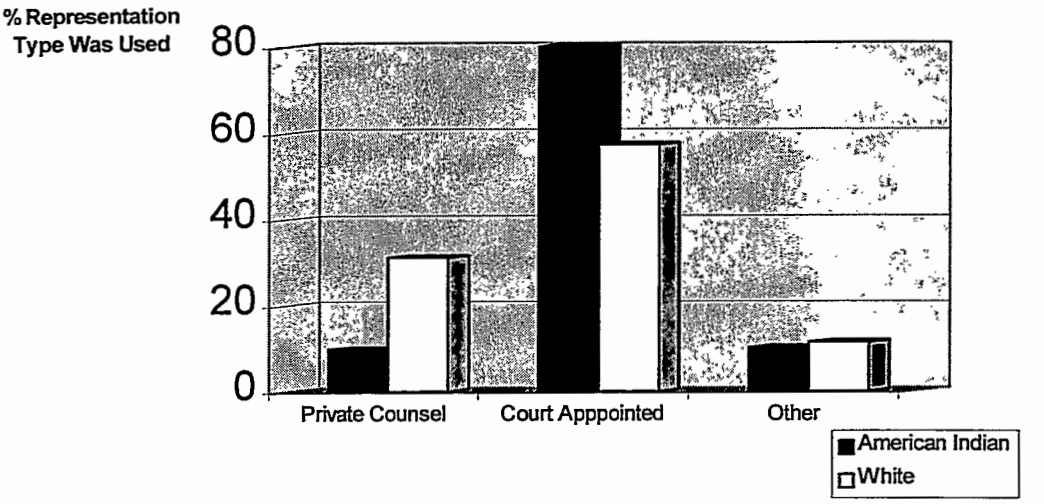

Table Three: Comparison of Mean Values and Differences for Actual[ii] and Aggregate[iii] Sentence Length in Violent Crimes

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[i]
All Violent Crimes (Actual)					
American Indian	*5224.8585*	*944*	*26.25%*	*.753*	*522.0507*
White	*4702.8078*	*2652*	*73.75%*		
All Violent Crimes (Aggregate)					
American Indian	*6730.9909*			*.637*	*1008.7446*
White	*5722.2463*				
Assault *(Actual)*					
American Indian	672.9373	610	31%	.381	-344.7587
White	1017.6961	1337	69%		
Assault *(Aggregate)*					
American Indian	971.5024			.249	-466.6922
White	1438.1946				

Crimes Against Children *(Actual)*					
American Indian	6745.5932	71	12.8%	.740	1819.0860
White	4926.5073	485	87.2%		
Crimes Against Children *(Aggregate)*					
American Indian	7132.5217			.931	485.2596
White	6647.2621				
Fire Arms Crimes *(Actual)*					
American Indian	25292.801	32	13.2%	.006*	24231.6678
White	1061.1334	210	86.8%		
Fire Arms Crimes *(Aggregate)*					
American Indian	37670.671			.007*	35834.2883
White	1836.3830				
Kidnap *(Actual)*					
American Indian	78648.534	19	25.7%	.099**	54036.7464
White	24611.787	55	74.3%		
Kidnap *(Aggregate)*					
American Indian	117582.86			.066**	84882.5461
White	32700.316				
Manslaughter *(Actual)*					
American Indian	72260.603	12	19%	.085**	49563.3527
White	22697.251	51	81%		
Manslaughter *(Aggregate)*					
American Indian	74378.722			.075**	51092.0111
White	23286.711				
Murder *(Actual)*					
American Indian	153360.76	20	21.8%	.107	66875.3772
White	86485.384	78	78.2%		
Murder *(Aggregate)*					
American Indian	191201.70			.040*	98928.1391
White	92273.558				

Rape *(Actual)*					
American Indian	15152.767	83	14.8%	.299	7095.6856
White	8057.0811	477	85.2%		
Rape *(Aggregate)*					
American Indian	19988.717			.307	9316.6574
White	10672.059				
Robbery *(Actual)*					
American Indian	13533.639	67	31.3%	.445	8562.0762
White	4971.5626	147	68.7%		
Robbery *(Aggregate)*					
American Indian	19555.370			.257	13249.7937
White	6305.5765				
Sex Offenses *(Actual)*					
American Indian	10242.874	45	11%	.076**	7150.1921
White	3092.6821	376	89%		
Sex Offenses *(Aggregate)*					
American Indian	10757.338			.102	6590.4404
White	4166.8974				
Vehicular Homicide *(Actual)*					
American Indian	817.3937	35	23.8%	.473	-340.2784
White	1157.6721	112	76.2%		
Vehicular Homicide *(Aggregate)*					
American Indian	1661.4234			.794	-141.1207
White	1802.5441				

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

[ii] Reflects the sentence length qualified by type of sentence (concurrent / consecutive) as well as time suspended from it.

[iii] Reflects a sum of all formal sentences given for all crimes on docket regardless of type of sentence or time suspended from it.

* $p < .05$ (statistically significant)

** $p < .10$ (weak statistical significance)

Table Four: Comparison of Mean Values and Differences for Actual[ii] and Aggregate[iii] Sentence Length in Non-Violent Crimes

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[i]
Arson (Actual)					
American Indian	2066.1018	11	14.5%	.438	-4422.5265
White	6488.6283	65	85.5%		
Arson (Aggregate)					
American Indian	3633.0073			.394	-9711.1610
White	13344.168				
Burglary (Actual)					
American Indian	558.1299	437	23.1%	.216	-1145.2520
White	1703.3819	1452	76.9%		
Burglary (Aggregate)					
American Indian	927.5067			.150	-1354.7446
White	2282.2512				
Bad Check (Actual)					
	85.4911	90	13.4%	.990	.4371
American Indian	85.0540	583	86.6%		
White					
Bad Check (Aggregate)					
	185.0818			.275	-68.7908
American Indian	253.8726				
White					
Drug Only (Actual)					
American Indian	313.0444	348	9%	.281	-48.9280
White	361.9724	3457	91%		
Drug Only (Aggregate)					
American Indian	659.5555			.062**	-125.6292
White	785.1847				

DUI Only (Actual)					
American Indian	348.7266	738	21.7%	.009*	56.8517
White	291.8749	2661	78.3%		
DUI Only (Aggregate)					
American Indian	604.0024			.371	-25.4392
White	629.4416				
Escape (Actual)					
American Indian	752.6487	122	39.2%	.511	82.0332
White	670.6154	189	60.8%		
Escape (Aggregate)					
American Indian	1060.9984			.598	-91.1937
White	1152.1921				
Forgery					
American Indian	408.4603	136	17.8%	.477	-49.4411
White	457.9014	627	82.2%		
Forgery					
American Indian	677.2591			.090**	-244.2363
White	921.4954				
Grand Theft					
American Indian	511.7776	310	14%	.341	-196.5712
White	708.3489	1909	86%		
Grand Theft					
American Indian	913.7806			.158	-318.8004
White	1232.5810				
Property Crimes					
American Indian	1793.2278	675	23.5%	.805	282.2786
White	1510.9892	2194	76.5%		
Property Crimes					
American Indian	2688.3513			.794	441.2780
White	2247.0733				

Vandalism					
American Indian	310.5061	189	20.2%	.644	29.4342
White	281.0719	745	79.8%		
Vandalism					
American Indian	550.5570			.151	-156.3667
White	706.9237				

[i] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

[ii] Reflects the sentence length qualified by type of sentence (concurrent / consecutive) as well as time suspended from it.

[iii] Reflects a sum of all formal sentences given for all crimes on docket regardless of type of sentence or time suspended from it.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Five: Comparison of Mean Sentence Length in Violent Crimes where Concurrent Sentences Alone are Given

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[i]
All Violent Crimes with Concurrent Sentences Only					
American Indian	1284.6464	1117	18.6%	.422	-314.4164
White	1599.0628	4874	81.4%		
All Violent Crimes with Consecutive Sentences Only					
American Indian	12499.36	15	15.2%	.002*	11550.1085
White	949.25150	84	84.8%		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Six: Regional Comparison of Inmates by Race

State	Total Male Inmates	White Inmates (Male)	Percent White Inmates	American Indian Inmates (Male)	Percent American Indian Inmates	American Indian Population by State*	Percent American Indian Population by State*
South Dakota (a)	**2,454**	**1,795**	**73.1%**	**553**	**22.5%**	**62,283**	**8.3%**
North Dakota (b)	980	714	72.9%	161	16.4%	31,329	4.9%
Iowa (c)	8,101	5,643	69.7%	119	1.5%	8,989	0.3%
Nebraska (d)	3,543	2,049	57.8%	166	4.7%	14,896	0.9%
Minnesota (e)	6060	3,278	54.2%	398	6.6%	54,967	1.1%
Montana (f)	2,108	1,600	75.9%	397	18.8%	56,068	6.2%
Wyoming (g)	1,196	885	73.9%	80	6.7%	11,133	2.3%

Note: Percentages do not equal 100% because other races have not been included.
* Source: U.S. Census 2000 includes both males and females

(a) Count as of June 30, 2001
(b) Count as of June 30, 2001
(c) Count as of July 31, 2001
(d) Count as of August 31, 2001
(e) Count as of July 1, 2001
(f) Count as of July 5, 2001
(g) Count as of December 2000

Table Seven: Incarceration Rates (per 1,000 population) by Race: A Regional Comparison (male and female)

State	White Population (State total)*	Whites Inmates and % of Pop.	White Incarceration Rate Per 1,000 Pop.	American Indian Population	American Indian Inmates and % of Pop.	American Indian Incarceration Rate Per 1,000 Pop.
South Dakota (a)	**669,404**	**N=1,945 (.29%)**	**2.91**	**62,283**	**N=639 (1.03%)**	**10.26**
North Dakota (b)	593,181	N=714 (.12)	1.20	31,329	N=190 (.61)	6.06
Iowa (c)	2,748,640	N=5,643 (.20)	2.05	8,989	N=133 (1.48)	14.80
Nebraska (d)	1,533,261	N=2,262	1.48	14,869	N=188	12.64

		(.15)			(1.26)	
Minnesota (e)	4,400,282	N=3,179 (.07)	0.72	54,967	N=425 (.77)	7.73
Montana (f)	817,229	N=1,600 (.20)	1.96	56,068	N=439 (.78)	7.83
Wyoming (g)	454,670	N=1,026 (.23)	2.26	11,133	N=88 (.79)	7.90

Note: State populations and inmate populations include both males and females.
* Source: U.S. Census 2000

(a) Count as of June 30, 2001
(b) Count as of June 30, 2001
(c) Count as of July 31, 2001
(d) Count as of July 17, 2001
(e) Count as of July 1, 2001
(f) Count as of July 5, 2001
(g) Count as of December, 2000

Table Eight: Drugs and Alcohol Usage by Race

Alcohol/Drug Usage	Number Of Cases	% of cases within Group
No Problem		
American Indian	5	14.7%
White	29	85.3%
Deferred		
American Indian	27	6.9%
White	364	93.1%
Abuse		
American Indian	10	12.8%
White	68	87.2%
Dependency-Alcohol		
American Indian	280	28.3%
White	708	71.7%
Dependency-other Substance		

American Indian White	37 289	11.3% 88.7%
Dependency-Alcohol and other Substance American Indian White	 233 936	 19.9% 80.1%
Not Assessed American Indian White	 15 52	 22.4% 77.6%
Total **American Indian** **White**	 **607** **2446**	 **19.9%** **80.1%**

Table Nine: Number of Felonies by Race

Number of Felonies/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[i]
Number of Felonies American Indian White	 816 3,252	 20.1% 79.9%	 2.18 1.99	 .002*	 .19

[i] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Ten: Processing Time

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[i]
All Crimes American Indian	 507	 18.8%	 266 days	 .050*	 -37 days

White	2,184	81.2%	229 days		
All Crimes-Multi Felonies					
American Indian	252	19%	181 days	.021*	-47 days
White	1,066	81%	228 days		
All Crimes Single Felonies					
American Indian	254	18.5%	277 days	.425	-25 days
White	1,118	81.5%	302 days		
Violent Crimes					
American Indian	171	24%	185 days	.044*	-80 days
White	541	76%	265 days		
Violent Crimes-Multi Felonies					
American Indian	69	25.6%	119 days	.021*	-114 days
White	201	74.4%	233 days		
Violent Crimes-Single Felony					
American Indians	102	23.1%	229 days	.375	-55 days
Whites	340	76.9%	284 days		
Non-Violent Crimes					
American Indians	336	17%	252 days	.483	-14 days
Whites	1,643	83%	266 days		
Non-Violent Crimes-Multi Felonies					
American Indians	183	17.5%	204 days	.366	-23 days
Whites	865	82.5%	227 days		
Non-Violent Crimes-Single Felony					
American Indians	153	16.4%	309 days	.989	0 days
Whites	778	83.6%	309 days		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Eleven: Time Served

Crimes Categories/Race	Number Of Cases	Mean (Average)	Significance	Mean Difference[i]
All Crimes- Before July 1, 1996				
American Indian	284	619 days	.098**	54 days
White	958	565 days		
All Crimes-After July 1, 1996				
American Indian	427	373 days	.992	0 days
White	1821	373 days		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Twelve: Good Time Lost in Days for Disciplinary Cause Prior to July 1996 Reform

Good time lost for Discipline/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[i]
Good Time Lost-Discipline					
American Indian	404	20.6%	21.3	.023*	9.7
White	1,558	79.4%	11.6		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Thirteen: Good Time Lost in Days for Disciplinary Cause Above and Below Median in Pre-Reform Period

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[i]
Good Time Lost / Disciplinary Action **Below** Median					
American Indian	47	39.2%	18.1	.775	.5
White	73	60.8%	17.6		
Good Time Lost / Disciplinary Action **Above** Median					
American Indian	36	29.5%	192.7	.488	32.7
White	86	70.5%	160		

[1] A positive value for mean difference represents a greater sentence for American Indians.
A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Fourteen: Good Time Lost for Parole or Suspended Sentence Violations in Pre-Reform Period

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[i]
Good Time Lost/ Parole & Suspended Sentence Violation					
American Indian	60	34.9%	368.4 days	.187	-80.47 days
White	112	65.1%	448.9 days		

[1] A positive value for mean difference represents a greater sentence for American Indians.
A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Fifteen: Release Type From Prison by Race (All Time Periods)

Race	Expiration of Sentence	Parole	Suspended Sentence	Other Release Types
All Cases				
American Indian	23%	55.1%	4.8%	17.1%
White	14.7%	62.1%	5.8%	17.4%
Before 1996 Reform				
American Indian	37.7%	45.2%	7.2%	9.9%
White	22%	58.4%	9.2%	10.4%
After 1996 Reform				
American Indian	14.3%	61.1%	3.3%	21.3%
White	11.2%	63.8%	4.1%	20.9%

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I. EXECUTIVE SUMMARY

In 2001 the Governor of South Dakota contracted the Government Research Bureau (GRB) at the University of South Dakota to examine disparities against American Indians in the South Dakota criminal justice system. The objective of the research was to examine the State's Judicial, Investigations, and Corrections empirical data for instances of disparities between Whites and American Indians.

The research uncovered disparities that disadvantage both American Indians and Whites. However, a greater number of disparities were observed against American Indians. The result of the research, as a whole, raises serious questions about the treatment of American Indians in South Dakota criminal justice. Unfortunately, we were not able to offer conclusive explanations for most of the disparities observed because of limitations in the data used for this research project. A more detailed case study, built out from the existing GRB dataset, would improve our knowledge of American Indian criminal justice by allowing individual and crime demographics that were not included in the current aggregate study. Still, the current study presents an accurate indication of how the criminal justice system looks when viewed at the most general level.

The research shows that American Indians were over represented in both the Judicial and Corrections datasets when compared with their general population demographics. A note of caution is due here, as the researchers do not believe that comparisons can reliably be made between the population percentage of a minority group in the public-at-large and their representation in the criminal justice system. Most social science research has rejected this approach, as it lends little insight into whether criminal justice systems compound the problems experienced by economically disadvantaged minority groups. However, in this particular instance, the initial disparities between American Indians population demographics and their participation the Courts and Corrections processes were problematic because American Indians were not found to commit more crimes per individual or more serious crimes per individual than Whites.

Additionally, American Indians were denied bond more often than Whites, even though their average number of crimes and average crime severity measures were slightly lower. Although speculation may vary on the cause for this disparity, any attempt to accurately explain this observation must take into account the complicating factors of jurisdictional arrangements and cooperation on extradition and warrant administration. Unfortunately, the current research was not able to systematically investigate these phenomena. The research also found that, although the number of cases that go to trial in South Dakota was quite low, Whites went to trial more often than American Indians (controlling for the greater number of whites in the dataset). Similarly, Whites were more likely to get acquitted and to receive a suspended imposition of sentence than were American Indians. Also, American Indians relied upon court appointed counsel more often than Whites.

The research observed an interesting phenomenon in the area of sentence length. Although American Indians, on average, received longer sentences than Whites, the distribution of sentences varied greatly by crime type. American Indians were typically

given longer sentences for cases involving violent crimes, while Whites received longer sentences for cases involving non-violent crimes. Exceptions to this trend were found in only two crime types – Whites received longer sentences in the violent crime areas of assault and vehicular homicide. Also, when sentence length was disaggregated to account for concurrent and consecutive sentences, we found that Whites received longer sentences in cases with concurrent-only sentences and American Indians received longer sentences in cases with consecutive-only sentences. It is essential that the reader of this report realize that the simple analysis of all sentence length findings from this research was frustrated by the way the State of South Dakota maintains its criminal justice data. Because the Unified Judicial System (UJS) organizes their data by docket number, measures of sentence length for each crime on the docket is complicated by other crimes on the docket that could not be separate out in this aggregate study. Therefore, when the reader considers the average length of time a defendant received for committing a particular crime (e.g., robbery, assault, firearms crimes), they must realize that the reported sentence length for this crime type is likely biased by other crimes presented on the same docket. This is a problem that must be corrected in future studies if we are to draw accurate and finite comparisons between Whites and American Indians with regards to sentence length. Again, we maintain that a case study approach would be the most reliable way to resolve this issue given the structure of South Dakota criminal justice data.

In our analysis of Department of Corrections (DOC) data, we observed an unusual and promising phenomenon. In July of 1996, the DOC began using a formula for determining the release date of inmates. The formula application was created in 1996 in Senate Bill 273. We found significant disparities against American Indians before the legislative reform, but virtually none after. The difference in length of time served went from 54 days more for American Indians before the reform to 0 days difference after. The percentage of sentence served was similarly affected by the reform. In the pre-reform period, American Indians served a greater percent of their sentence (46.4%) than Whites (40.58%). After the parole reform the disparity narrowed significantly. Finally, the disparities between inmates serving their entire sentences, or flat time out, were altered by the reform. In the pre-reform period, 37.7% of American Indians served out their entire sentence, compared to 22% of Whites. After the reform, 14.3% of American Indians were released by serving out their full sentence, compared to 11.2% of Whites. This shows that the reform reduced the overall percentage of flat time out, but more importantly to the current study the reform reduced the disparity between American Indians and Whites in the release category.

The downside of using a formula to determine release from prison is that, in the post-reform period, there was a 3% increase in parole violations for American Indians and a 1.8% increase for Whites. DOC officials were concerned that the use of a formula has removed too much of the necessary discretion in parole decisions. They believe that administrators with specific knowledge of inmates will produce more reliable determinations than can be achieved by formula. Still, the reform shows that legislative action can significantly reduce disparities in the criminal justice system.

In conclusion, the current empirical analysis suggests that American Indians are not treated equally in the South Dakota criminal justice system. Their treatment in case disposition, bond determination, and sentence length in violent crimes does not coincide with the severity or number of charges associated with their cases in the dataset. Further, they experienced disadvantages in the length of prison time served and in the type of release from prison. However, these measures have changed considerably since the 1996 parole reform and are expected to continue to increase parity between the two groups in the future. Additionally, there were instances in this research where Whites were disadvantaged, which must not be overlooked when analyzing fairness in the process. Whites experienced longer sentences in non-violent crimes, in two violent crime areas, and they were charged with more frequent and more serious crimes overall.

If we look at the current research in terms of identifying the specific challenges of each racial group in the state, rather than in terms of which groups receive the worst treatment, we see that Indians have greater problems with victimization from violent crimes (BJS, 1999), perpetration of non-sexual violent crimes, alcohol dependency, and lower levels of completed education, while Whites have greater problems with substance abuse, family violence, rape, sex crimes, and non-violent crimes generally. Although we saw that both communities have their own unique challenges, American Indians have the additional burden of over representation in the criminal justice system, which then has a cumulative affect on criminal history. While this is likely a function of confluence of factors, the general experience presents a greater challenge to advancement for American Indians, as a group, than Whites in South Dakota. The impacts are felt in future job opportunities, family security, criminal justice activity, and self-respect.

The current research has been productive in examining a wide range of phenomena that show challenges facing both communities. Still we must consider what motivates some of the more difficult outcomes observed here, particularly those that create the appearance of a double standard in our criminal justice system. To begin, it seems likely that a profound lack of trust exists between both communities. This was palpable in our focus group meetings and represented in some of the data. The speed with which American Indians move through the criminal justice system, their acceptance of more plea agreements and less challenges in court result in longer sentences and a more negative criminal history. Longer sentences and criminal history then lead to harsher treatment in the process in the future, as plea agreement, sentencing, and parole decisions are based in part on these factors. We observed this in several instances of harsher sentencing for individuals with more than one felony charge and with more than one trip through the system.

For American Indians, this can result in a lessening of trust in the South Dakota criminal justice system. However, this cuts both ways. Whites who have experienced the impact of cumulative criminal histories are not likely to trust the system either. Furthermore, we learned from several American Indians in our focus group meetings that the White criminal justice system could be trusted more than tribal criminal justice.

On the other side of the equation, it seems that the history between these two groups has made the White community particularly distrustful of American Indian defendants charged with violent crimes even though White defendants outnumber American Indian defendants in each of these areas and are over represented in some. Similarly, while there is widespread belief in the White community that American Indians have greater problems with alcohol-related crimes than Whites, we observed that Whites get longer sentences for their felony DWI cases and, when we consider drug crimes, have far greater instances of and sentences for alcohol and drug crimes together. As such, the perception that this is an American Indian problem is supported by stereotype not empirical evidence.

In the end, we have shown that problems exist at multiple levels and should not be oversimplified or supported by historic generalization and prejudice – on either side. The larger question of whether the lives of American Indians in South Dakota criminal justice are valued as much as the lives of Whites in the community ***can not*** be answered here. It will not be possible to resolve this issue without access to data on the race of victims and other crime demographics such as financial impact of the crime, use of force, use of weapons, as well as a more complete criminal history of the accused. This would afford a much-needed look at whether crimes with American Indian victims are pursued with the same intensity as crimes with White victims. Similarly, we would be able to examine the treatment of White and American Indian defendants in the context of the race of their victims, as well as examining the treatment of defendants with comparable criminal histories. The lack of reliable data in these areas represents the greatest shortcoming of the current research. A case study adding data from local law enforcement, state attorneys, and (if possible) court services would provide a more comprehensive analysis of criminal and environmental factors that create disparities within the state. From this, explanations could be offered for why the disparities observed here exist, which would provide a sound basis for legislative and programmatic reform.

II. GOVERNMENT RESEARCH BUREAU STUDY

A. Research Orientation:

To study race disparities in the South Dakota criminal justice context, the Government Research Bureau (GRB) attempted to track individuals arrested in the state through their initial charges, prosecution, case disposition, sentence, and prison experience. Our goal was to trace individuals in the dataset through each stages of the processes, examining the impact that being White or American Indian had on each.

B. Methodology

1. Dataset Creation

The GRB empirical study is based largely on data collected from the Division of Criminal Investigations (DCI), Unified Judicial System (UJS), and Department of Corrections (DOC). Unfortunately, none of these agencies collects their data with the express purpose of analysis or program review. Each maintains their data as a matter of official record keeping and use in the field. Additionally, each agency employs different techniques to manage their data – with noted influences from UJS on the other agencies. As such, numerous transformations in database structure and content were necessary to build one analyzable file containing data on most every stage of the South Dakota criminal justice process.[1]

The research captured records for 18,186 unique individuals, from which 4,398 individuals had records from all three agencies (DCI, UJS and DOC). The latter number of 4,398 cases reflects the number of DOC cases, which is relevant because only DOC data contains rich demographics variables (e.g., age, race, employment skills, education, family history, religion, etc.). The DCI-UJS-only cases contained some demographic data (i.e., race and age), but not nearly the complete set provided by DOC. As such, we kept analysis of the data separated by data source on several occasions. To insure that we did not incorrectly attribute demographic information acquired from the DOC to UJS or DCI records we decided to be quite conservative in our selection of relationships to examine. Typically, we used UJS-DCI variables to exam arrest through trial stages of the process and DOC variables to exam incarceration through parole. The main benefit of the having the combined dataset was to insure we could track an individual through the entire process.[2]

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[1] Details of data transformations and procedures are available from the GRB at 605-677-5244.

[2] Ultimately, it would be beneficial to have access to demographic data earlier in the process. A case study including state attorney and pre sentence investigations would insure a more complete analysis. This approach is discussed further in the final section of this report.

2. Research Design

We employed a cross-sectional research design to make inferences about the extent to which race impacted outcomes in the criminal justice system. This was done two ways. First, where comparisons were made on the basis of percentage values we utilized cross tabulation, with a focus on how the relationships broke down by race. Here, chi-square tests were used to establish the statistical significance of findings. Second, where comparisons were based on average values we used independent-samples T-Tests to analyze the difference of means and their statistical significance.

Both approaches were utilized at multiple stages of the criminal justice process. The type of variable being studied determined the selection of which method to use. If the variable under study was categorical, meaning that its values represented independent outcomes with no linear relationship, we used cross tabulation and chi-square. An example of this is case disposition, where each of the outcomes is unique to each other and shares no mathematical or linear relationship (e.g., conviction, acquittal, dismissal, etc.). If the variable under study was a scalar variable (e.g., sentence length), it was important to evaluate the mean value in order to best compare performance for each race under study here. In this case, independent-samples T-Tests were used.

The sentence length variable, SLENGTH, has a number of shortcomings that should be addressed in detail. Unlike other objects of study in this research, the GRB was not able to satisfactorily measure the sentence given to a defendant because of the complexity of how sentence records are administered. An individual in our dataset could have up to eight individual sentences that can be served concurrently, consecutively, not at all, or a combination of each. Due to all of the combinations of sentence type that exist in the data, it was not easy to represent all of the related variable fields and values in a single scalar value – one that represents the sentence that a person will actually serve, which can be quite different from the sentence they are given.[3]

Our approach to solving this problem was to create three variables to measure this one essential phenomenon. We created a summary variable that adds up all of the sentences given (SLENGTH) and two more specific variables. One that would let us focus on sentence that were to be served consecutively only (CONS_SEN) and one that focused on concurrent sentences only (CONC_SEN). CONS_SEN was created by summing all sentences where only consecutive sentences were ordered. CONC_SEN was created by selecting the highest of all sentences where only concurrent sentences were ordered. The three dependent variables became a vector of variables to examine disparities in length of time given to each defendant that reached this stage of the process. The analysis of PENTIME3, measuring time spent in prison, was more straightforward and served as a reliable dependent variable because of both its simplicity and certitude. PENTIME3

[3] If this were a case study of a few cases, perhaps 200-400 randomly selected cases, one could figure this correctly by hand as it is done in the DOC upon admission to the pen. For an aggregate study of this size (n=18,165) it would involve an extremely complex calculation that none of the software available to this project could handle. This is not to say it is not possible. It simply was not developed given the time and resource limitations for this research.

calculated the number of days spent in the penitentiary on an inmate's latest sentence. The variable was created by subtracting an inmate's date of admission from their release date.

We realize that there are limits on the generalizability of our findings to other settings and times. For example our dataset, while sufficiently large, is drawn from a relatively short time span (1994-2000) relative to the length of time the criminal justice system has been processing individuals in the State. Because time has a great impact on outcomes, we need to express a note of caution regarding how far on either side of our seven-year time window (1994-2000) we are comfortable describing. Still, the analysis here tested for significance, which was expressed as a probability. In most of the social science research, a (probability) or *p-value* of *.05* suggests that one could be 95% confident that there is only ± 5% difference (error) between what the sample findings suggests and what is represented in the larger population (i.e., all criminal justice system cases). It is important to remember that statistical significance does not necessarily imply substantive or practical significance. A large sample size very often leads to results that are statistically significant, even when they might otherwise be inconsequential (Vogt, 1993, p.221). Similarly, statistical significance, or the lack there of, should not determine whether the relationships under study are valid if the study is not focused on generalizing findings to other contexts.

Perhaps more important than statistical significance, given focus of this research on examining the South Dakota criminal justice system alone, is the frequency and size of disparities that exist in the criminal justice system. We realize that comparisons cannot be reliably made between the population percentage of a minority group in the public-at-large and their representation in the criminal justice system. Many studies have rejected this approach flatly. The fact that that social, economic, and political variables are in play make such simple comparisons inherently suspect. We know that crime is a fact of life in economically disadvantaged minority communities (Cureton, 2000; Yates, 1997; Pommersheim, Wise, and Feimer, 1990; Petersilia, 1985). This applies also to American Indians in South Dakota.

To the extent that American Indians in South Dakota experience this hardship – and the resulting crime and increased criminal justice activity that impacts their families, employment opportunities, and self respect – we should not be surprised to see greater levels of participation of American Indians in the South Dakota criminal justice system than their population figures alone suggest. The essential question is whether the criminal justice system compounds the problem experienced by disadvantaged minority communities, treating these groups differently than the White majority (Petersilia, 1985) and further disadvantaging these communities in future family, employment, and criminal justice contexts.

As such, we will employ a standard that establishes concern for discriminatory treatment of minority groups when over or under representation of minority group participation in specific actions exceeds 20% of their population figures (Meier and Stewart, 1991). Here, the relevant comparison is still between the population and participation

percentages, but accepts that some disparities may be benign. The threshold of concern is created at the point where the disparity should not be ignored – a point marked by 20% of a minority group's population presence.[4]

Another consideration is the extent to which this threshold is crossed. It may be the case after conducting this analysis that concern for American Indian discrimination exists in only 20% of the relationships studied here. If that is the case we may again suggest that those observed disparities do not constitute a systemic form of discrimination. However, if the pattern of disparities shows a greater than 20% incidence rate for observed disparities then we may conclude that a problem does in fact exist.

These standards, along with individual tests of statistical significance, will be employed throughout this research to assess the health of the South Dakota criminal justice system.

[4] Even still, we do not present the 20% threshold measure as confirmation of discriminatory conduct. The US Supreme Court has been clear on the point that statistical disparities do not constitute discrimination on their own. However, cases do exist where disparities amounted to discrimination. In *Connecticut v. Teal* (457 US 440), black employees of a Connecticut state agency brought suit claiming a written promotion exam discriminated against them because of their race. The Court held that the employer's acts of racial discrimination in promotions, as a result of statistical disparities in the promotion examination, rendered the employer liable for racial discrimination. In *International Brotherhood of Teamsters v. United States* (431 US 324), an employment discrimination suit was brought by the US against both an employer and the union, claiming the employer engaged in a pattern of discriminating against Blacks and Spanish-surnamed people, giving them the lower paying less desirable servicemen or local city driver jobs instead of the higher paying over-the-road line driver jobs, which mainly went to Whites. It was decided here that the company did engage in a system wide pattern of discrimination against minority people, which was in violation of Title VII of the Civil Rights Act of 1964, by regularly and purposely treating minorities less favorably than Whites. However, *Washington v. Davis* (426 US 229) is a decision where disparate impact on employees from a recruitment examination did not elevate into discrimination. In this case, unsuccessful Black applicants for employment as police officers brought suit claiming recruiting procedures, including a written test given to determine whether applicants had acquired a certain level of verbal skill, were racially discriminatory. In their opinion, the Court held a law is not unconstitutional solely because it has a racially disproportionate impact. In addition, the disproportionate impact on Blacks of written tests of verbal skills administered to applicants for employment as police officers did not warrant the conclusion that the tests, which were neutral on their face, were a purposely discriminatory device. Here the Court suggests that intentionality is the standard for evaluating discrimination.

C. Preliminary Research Findings

1. From Arrest Through Trial

From the outset, American Indians were over represented in the South Dakota criminal justice dataset and Whites were under represented. American Indians make up 8.3% of the State's population (Figure One) and 16.7% of the criminal justice data set (Figure Two).[5] This 8.4% over representation of American Indians is, however, is less than the 12% under representation observed for the White community in South Dakota.

Figure One: Distribution of Race in South Dakota (US Census Bureau, 2000)

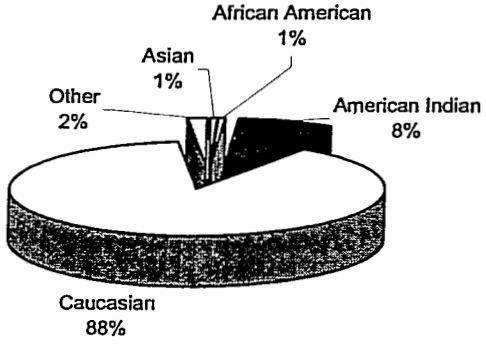
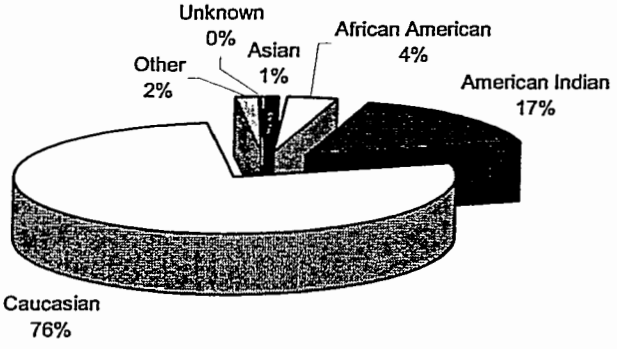


Figure Two: Distribution of Race in GRB Dataset

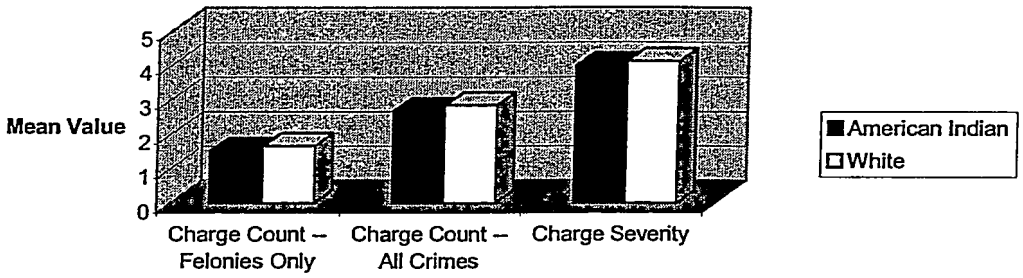


[5] The percentage of American Indians in the full DCI-UJS dataset prior to the selection of unique individuals was 20.8%. This means that a secondary – an larger – overrepresentation existed in the number of American Indians who were in the South Dakota criminal justice system more than once.

These comparisons on their own do not support conclusions of race discrimination against American Indians. As described above, it is inaccurate to conclude that observed disparities are synonymous with discrimination – intentional or otherwise. To obtain a more accurate picture, one that shows where concerns for discrimination actually exist and where they do not, one must take into account criminal activity of the minority group being studied and the criminal activity of other groups in comparison.[6]

From the data considered here, American Indians do not seem to be committing more crimes per individual or more serious crimes per individual than Whites. Figure 3 below demonstrates that the South Dakota criminal justice system is not charging American Indian defendants with more crimes per docket or with, on average, more serious crimes.[7] In fact, the opposite condition was present, wherein Whites in the dataset were charged with slightly more crimes on average and the severity of their charges in aggregate was higher. The t-test statistics comparing the means for charge count were significant at the $p < .05$ level and the value for charge severity was $p = .086$.

Figure 3: Charge Count and Charge Severity by Race



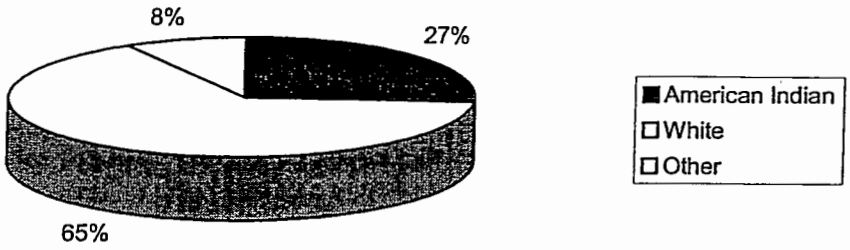
This is suggestive of concern for the overrepresentation of American Indians in the criminal justice system, insofar as their overrepresentation is not consistent with more crimes per person charged or the severity of those charges. Similarly, concern is justified for the percentage of American Indians being denied bond. Given that American Indians are not charged with more serious or numerous crimes than Whites in South Dakota, one would expect under representation of American Indians in the area of bond determinations. This was not the case. Figure Four shows that American Indians are over represented in the category of being denied bond. Their 27% denial ratio is well

[6] Some would argue that it is essential to study motivations for investigations and arrest as well. Unfortunately, we have no data on this stage of the process, often debated under the label of police profiling.

[7] It must be noted that charge number and charge severity measures are not indicative of initial charges made at the time of arrest. Instead, these reflect charges after prosecutorial decisions and alterations. As such, they reflect the courts' phase of the process. The decision to focus on this phase, rather than the initial law enforcement phase is that there is simply no reliable data to account for what happens at state attorney phase between arrest and trial / plea phases. The fact that state attorney data was not available to the state at the time of this research represents one of the largest shortcomings of this study. If future studies are to become more accurate over time, it will be necessary to pay closer attention to the role that state attorneys play in this process, which can be done be improving the data collection and data sharing efforts from these offices by either UJS or DCI.

above the 3.5 percentage point threshold of concern. This relationship was statistically significant, measured by a chi-square significance of $p = 000$.

Figure Four: Percent of Defendants Denied Bond



It should be noted that the disparity in bond determination was expected, given the articulation of judicial concern for the flight risk of American Indian defendants in the focus group meeting with judges. A major concern identified in the judicial focus group meeting was whether the existence of federal jurisdiction over criminal justice on Indian reservations impacts the state criminal justice system generally. In the discussion, it was stated that judges felt that a combination of federal jurisdiction and limited economic resources in the American Indian community limited their ability to deliver and administer alternative sentences (e.g., probation, treatment, community service) to American Indian defendants. The perception of several judges was that alternative sentences to incarceration were not always practical for American Indian defendants. Judicial concern ranged from the lack of socioeconomic and employment resources available to American Indian defendants to the fear that defendants could "hide out" on the reservation without complying with the authority of state courts. In the latter instance, it was believed that the state could do little to regain custody or administrative control over the non-compliant defendant because of jurisdictional barriers to state legal authority. It may be the case that the disparity observed here in the area of bond determination is related to the judicial perception that the state could "lose" defendants under the current jurisdictional arrangement in the state. Unfortunately, we do not have specific data on either the economic resources available to those charged with crime nor their flight risk.

American Indians were also subject to subtle disparities in the areas of going to trial and case disposition. Our finding that American Indians are under represented in the trial component (See Table One below) may relate to the widely held perception that American Indians are more likely to accept a plea bargain than are Whites. Although our analysis is not conclusive here because of unreliable data on plea bargains, it was discussed in focus group meetings that American Indian culture prompts American

Indian defendants to accept plea offers more readily than Whites.[8] Here, the data on who goes to trial is used as a surrogate for plea data, showing that a higher percentage of Whites opt for trial, while American Indians participation in the trial stage was below the 20% differential from their population percentage, suggesting a concern for discrimination (See Red Font Percentages in Figure Five below).

This finding was corroborated by our analysis of DOC data in the area of processing time between arrest and admission to the state prison. The mean difference in processing time between Whites and American Indians was 37 days, where Whites average time was 266 days and American Indians average time was 229 days. The mean difference was statistically significant at $p = .050$.[9] Again, although it is speculative, it seems that Whites fight the system a bit harder, taking more time to go through the entire process in those cases where prison sentences result. When considered in combination with the percentage of cases that go to trial for Whites and American Indians, we see a subtitle concern for how both groups act within the South Dakota criminal justice system.

Table One: Trial and Case Disposition by Race*

	Presence in the GRB Dataset	Trial	Guilty Plea / Conviction	Acquittal	Dismissal	Suspended Imposition	Transfer
American Indians	16.7%	12.3%	17.1%	11.1%	16.1%	13.9%	18.8%
Whites	76.7%	79.5%	76.6%	77.8%	76.3%	80.4%	65.6%

* Includes American Indian and Whites only

Table One also shows that American Indians are slightly more likely to be convicted, less likely to be acquitted, and less likely to have their case either dismissed or suspended than are Whites in South Dakota. American Indians are, however, more likely to be transferred from the criminal courts to alternative jurisdiction (e.g., transfer to tribal or federal court, mental health facilities, etc.). Concerns for discrimination, based on the 20% threshold measure, exist in the trial and acquittal categories, as noted in red above. When looked at as a whole, our analysis of case disposition shows that whites are over represented in the more desirable dispositions (acquittal and suspended imposition) and slightly under represented in the conviction category. The opposite is true of American

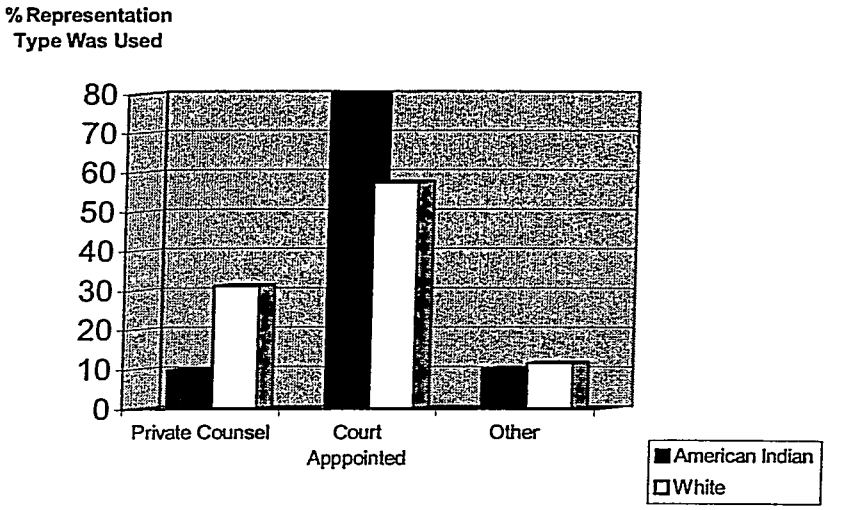
[8] A potential explanation, although completely speculative based on interviews and media accounts, is based on the cultural tendency for American Indians to distrust the White criminal justice system to advance their cases in a neutral fashion. As such, these defendants may desire to simply accept initial charges and feel, as a matter of lack of confidence in the system, that challenging initial charges or the state's handling of their case will not do anything "productive" for their interests. This historical mindset dates back to original treaties made and then broken by the white legal and political community (i.e., consistent rejection of treaties made in the field by US Congress). An additional matter is the cultural avoidance of confrontation with a system that many do not understand or trust, which results in a "just go with it" approach to enduring the experience.

[9] See DOC discussion below for additional details.

Indians, where they are under represented in acquittal and suspended imposition and over represented in conviction. The differences in these case dispositions for the two races are statistically significant, with Chi Square significance of $p < .01$.

The differences in the trial and case disposition areas may be the result of another disparity observed in the area of legal representation. Figure Five shows that American Indians in the Felonies dataset used private counsel in less than half the instances of whites and that they relied more heavily on court appointed defense counsel. This is problematic for American Indian defendants because the acquittal rate is lower and conviction rate is higher for defendants with court appointed representation. As such, legal representation is likely to be an intervening variable that may bias case dispositions against American Indians. If we view legal representation as a socioeconomic variable, given the lack of more specific socioeconomic measures in the data, we may begin to see the impact of comparatively lower resources in the American Indian community. This will remain speculative, however, until more specific socioeconomic data can be collected for future studies.

Figure Five: Legal Representation by Race



Disparities were also observed in the sentence length given by the South Dakota courts, although the disparities were not always to the disadvantage of American Indians. American Indians received 17.9% of all sentences handed down in South Dakota between 1994 and 2000. This reflects only a slim over representation of American Indians, well below the 20% threshold standard employed in this research. However, American Indians did have a greater mean sentence length than Whites. That difference[10] was 8649 days sentenced (See Table Two Below).

[10] Recall that this is not indicative of the actual amount of time that is served. See Footnote 12 and corresponding text. There is, however, another complicating factor in the analysis of the sentence length variable used here. Given the structure of data, with multiple fields for each charge-related variable, it was not possible to separate out the sentence for one crime on the docket from another. To separate out

Table Two: Comparison of Mean Sentence for All Crimes

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[1]
All Crimes					
American Indian	31047.418	2477	17.9%	.136	8649.4327
White	22397.986	11333	82.1%		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Perhaps the most interesting finding in this part of the analysis was the types of crimes where Whites and American Indians received longer sentences. Our findings suggest the existence of something like a White-crime type and an American Indian-crime type, where Whites are punished more harshly for their crimes and American Indians are punished more for theirs. Generally, Whites are punished more for non-violent crimes, while American Indians are punished more for violent crimes – with some noted exceptions.

Table Three: Comparison of Mean Sentence Length in Violent Crimes

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[1]
All Violent Crimes					
American Indian	*79834.080 81*	*0*	*24%*	*.206*	*11206.2120*
White	*68627.868*	*2566*	*76%*		
Assault					
American Indian	12723.031 48	5	31%	.277	-5442.3262
White	18165.357	1078	69%		

individual crimes for the purpose of analysis would contradict the reality of how an individual defendant is treated by the courts. In reality, a person is sentenced on the basis of all of their crimes on the docket, their criminal history, the impact of the crime on victims, etc. The creation of a clean variable that separates out individual crimes and their sentences was inhibited by the structure of both the data and the criminal justice process. In the end, we deferred to how the data is presented in the UJS dataset in providing an analysis of sentence length for individual crimes, regardless of the bias introduced by the other crimes that appear on the same docket. As such, one must take into account that a sentence for any individual crime will have an upward biased from the impact of sentence type (e.g., concurrent, consecutive, suspended) and overlap with potentially more serious crimes. It is important to note, that although this approach is less than ideal it is applied equally to all individuals in the dataset, regardless of race, criminal history, or crime type.

Table Three (cont.)

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[1]
Crimes Against Children					
American Indian	99440.294	51	11.4%	.838	15645.4595
White	83794.835	393	88.6%		
Fire Arms Crimes					
American Indian	447332.04	27	13.9%	.009*	424002.366
White	23329.671	167	86.1%		
Kidnap					
American Indian	1313612.9	17	26.6%	.193	753538.473
White	560074.47	47	73.4%		
Manslaughter					
American Indian	743805.83	12	25%	.220	413961.111
White	329844.72	36	75%		
Murder					
American Indian	2012254.2	19	21.8%	.066**	953825.534
White	1058428.7	68	78.2%		
Rape					
American Indian	252606.44	66	14.3%	.319	113879.275
White	138727.16	395	85.7%		
Robbery					
American Indian	234190.89	56	29.5%	.618	102300.184
White	131890.71	134	70.5%		
Sex Offenses					
American Indian	130838.38	37	10.9%	.117	77421.4744
White	53416.904	302	89.1%		
Vehicular Homicide					
American Indian	17608.788	33	24.3%	.726	-2014.0277
White	19622.816	103	75.7%		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Three shows results from analysis of sentences given for ten crime types.. American Indians were over represented in six violent crime types and received longer average sentences for eight. Whites were given longer sentences for assault and vehicular homicide related crimes.

In the area of non-violent crimes we observed the opposite condition. In non-violent crimes, whites were sentence longer in each of the 11 crime categories.

Table Four: Comparison of Mean Sentence Length in Non-Violent Crimes

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[1]
All Non Violent Crimes					
American Indian	*7341.8416*	*1667*	*15.9%*	*.159*	*-1525.1893*
White	*8867.0309*	*8767*	*84.1%*		
Arson					
American Indian	44372.222	9	13.6%	.407	-107964.97
White	152337.19	57	86.4%		
Burglary					
American Indian	11090.878	376	22.8%	.157	-21491.1058
White	32581.983	1268	77.2%		
Bad Check					
American Indian	3240.8824	68	12.7%	.473	-503.1112
White	3743.9936	467	87.3%		
Drug Only					
American Indian	8556.7029	276	9%	.045*	-3109.3693
White	11666.072	2770	91%		
Drug and Alcohol Crimes					
American Indian	7215.7553	801	14:6%	.011*	-2241.4588
White	9457.2141	4695	85.4%		
DUI Only					
American Indian	6715.9942	689	21.3%	.958	-15.6110
White	6731.6052	2548	78.7%		

Table Four (cont.)

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[i]
Escape					
American Indian	12277.385	109	38.3%	.617	-913.5806
White	13190.966	176	61.7%		
Forgery					
American Indian	8491.9298	114	17.8%	.010*	-5181.3368
White	13673.267	525	82.2%		
Grand Theft					
American Indian	11897.744	266	14.4%	.097**	-9079.7335
White	20977.478	1578	85.6%		
Property Crimes					
American Indian	7581.1824	888	17.4%	.170	-954.9515
White	8536.1339	4220	82.6%		
Vandalism					
American Indian	6736.5161	155	19.5%	.149	-1839.8021
White	8576.3183	641	80.5%		

[i] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Statistical significance of the difference in mean sentences for American Indians and Whites was present in only a few crime types. Two crime types, Firearms crimes and murder, were significant where the comparison resulted in longer American Indian sentences. Four types were significant, forgery, grand theft, drug and alcohol crimes, and drug only crimes, where whites received longer sentences.[11]

The lack of significance in a majority of the crime types, even where the mean difference in sentence length was substantial, is not surprising given the weaknesses of the sentence length variable used here. As noted in the methodology section of this report, the sentence length variable used here is an aggregate variable that sums all of the sentences for each individual and does not account for whether multiple sentences were to be served concurrently, to be served consecutively, were dismissed, amended, or suspended.

[11] The finding that drug and alcohol crimes were significant is likely biased by the independent affect of drug only cases, included in the combined variable measuring drug and alcohol crimes.

To expand our examination of sentence length, given the weaknesses of the sentence length variable, we studied two additional dependent variables measuring concurrent-only sentences and consecutive-only sentences (Table Five and Six Below). The examination of both produced findings different from the general sentence length variable. In short, the comparison of means for concurrent-only sentences showed longer sentences for White defendants and the comparison for consecutive-only sentences showed longer sentences for American Indians. It seems that the greater sentence length given to American Indians in sentencing generally (See Table Four) is biased by these two types of sentences, with longer concurrent sentences going to Whites and longer consecutive sentences going to American Indians. Again, this shows concern for the treatment of American Indians in that the consecutive sentence is by far the less desirable sentence type.

Table Five: Comparison of Mean Sentence Length in Violent Crimes where Concurrent Sentences Alone are Given

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[1]
All Violent Crimes with Concurrent Sentences Only					
American Indian	1284.6464	1117	18.6%	.422	-314.1164
White	1599.0628	4874	81.4%		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Six: Comparison of Mean Sentence Length in Violent Crimes where Consecutive Sentences Alone are Given

Sentence/Race	Mean	Number of Cases	Percent of cases within sentence	Sig.	Mean Difference[i]
All Violent Crimes with Consecutive Sentences Only					
American Indian	124993.6	15	15.2%	.002*	115501.04
White	9492.5150	84	84.8%		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant).
** $p < .10$ (weak statistical significance)

Looking at this relationship in the multi-variate context confirms our expectation that the general sentence length variable is not a reliable measure of sentence length. This variable did not perform well in the regression analysis.[12] The model's capacity to explain variation in the dependent variable – the main objective of this statistical technique – was extremely weak, as were the individual estimates for each of the variables put into the model. The model as a whole was significant, although this is likely a result of the size of the sample alone, and not the specification of independent variables in the model.

The only interesting observation that resulted was the significance of the American Indian demographic variable increased substantially in the consecutive-only regression – again supporting the finding that American Indians are given more lengthy consecutive sentences. Otherwise, the only significant variables present in the multi-variate relationship were "violent crime type" and "adjusted charge severity." Unfortunately, we do not have sufficient confidence in the dependent variables here to report these findings as conclusive.

[12] For this reason, we decided to not include the tables reporting findings for this test.

2. Prison Population

a. Overview

American Indians were over represented in the prison system. Although they constitute 17.6% of the courts and investigations dataset, they make up 20.1% of the prison dataset.[13] Their over representation is related to the fact that American Indians are first over-represented the UJS-DCI arrest data, they are then over represented in the conviction category of the case disposition field (analyzed above), they are over represented in the number of defendants receiving a sentence, and they are over represented in life-time felony arrests.[14] Still, under our standard that established the concern for discrimination at 20% of general population demographics, the 2.5% greater presence of American Indian in the DOC data is not a concern for discrimination.

The history of American Indians in South Dakota corrections can be traced as far back as 1889-1890, when in the first report of the penitentiary warden to the South Dakota Board of Charities and Corrections listed 79 Whites and 5 Coppers (Coppers is short for Coppertone, which at the time was the label assigned to half-breed Indians). By 1892, the warden's report listed 165 Whites, 8 Blacks, 9 Indians, and 1 Half-breed Indian, of which 180 were males and only 4 were females. By 1910, the prison population had grown to 299 inmates. Only 19 were American Indian.

The presence of American Indians in the South Dakota prison system remained relatively small until about 1940. In that year, with a total prison population of 505 inmates, one finds 439 Whites (86.9%) and 63 Indians (12.5%). By 1950, the percentage distribution of American Indians in the South Dakota prison had nearly doubled to 23.2%, or 127 inmates. By the 1968 Biennial Report to the Board of Charities and Corrections American bn Indians are solidly over represented in the prison population with 225 (37%) of the 608 total population. This high water mark is attributable to American Indian protest and the well-known activities of the American Indian Movement. Since the reduction of this activity, contemporary demographics have re-centered on the 1950's figures of low to middle 20% range (See Figure 6 below).

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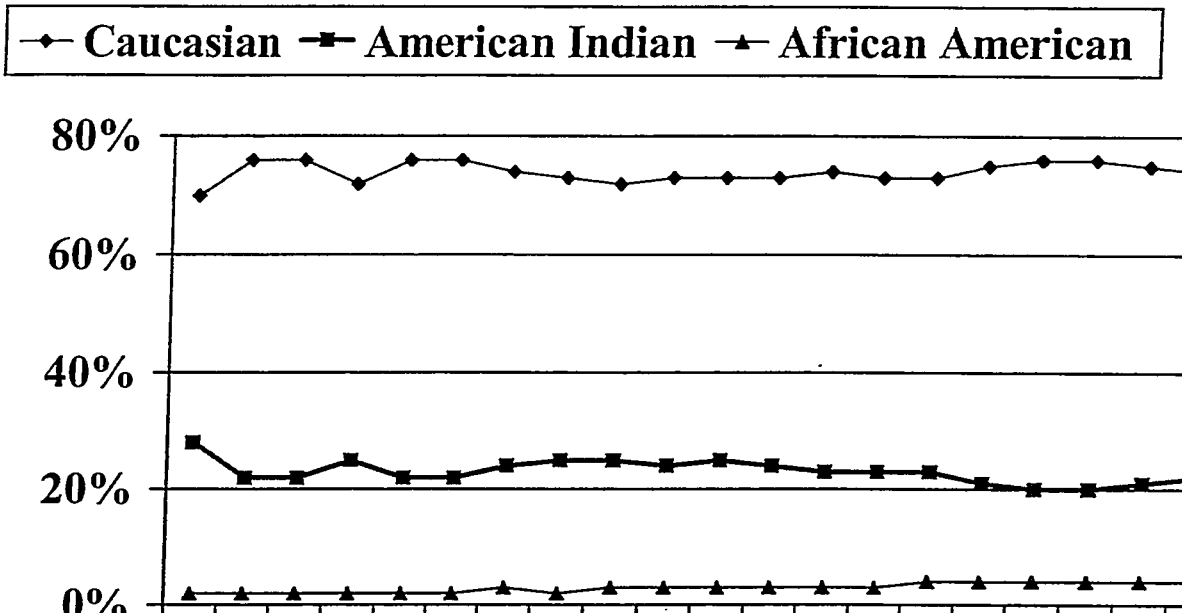
[13] The analysis in this section is based on a filtered dataset containing 3,252 White inmates (79.9%) and 816 American Indians (20.1%). The 'n' of 4068 is reduced from the initial 4398 contained in the combined dataset because of the need to filter records for other minorities not under study (e.g., African Americans and Hispanics), federal boarders, and out-of-state boarders. To insure proper analysis of relevant South Dakota cases, we created a second GRB dataset to study prison-only phenomena. That dataset was labeled GRB_DOC.

[14] See discussion of "Number of Felonies" below.

Figure 6: Percentage of South Dakota Adult Inmates by Race Last Day of Fiscal Years 1981-2000



	FY81	FY82	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00
Caucasian	70%	76%	76%	72%	76%	76%	74%	73%	72%	73%	73%	73%	74%	73%	73%	75%	76%	76%	75%	74%
American Indian	28%	22%	22%	25%	22%	22%	24%	25%	25%	24%	25%	24%	23%	23%	23%	21%	20%	20%	21%	22%
African American	2%	2%	2%	2%	2%	2%	3%	2%	3%	3%	3%	3%	3%	3%	4%	4%	4%	4%	4%	4%

Source: South Dakota Department of Corrections, 2001

An analysis of Department of Corrections Inmate Population Data for the 18 year time period beginning with Fiscal Year 1981 and ending with Fiscal Year 2000 suggests that (1) American Indians are over represented in the South Dakota prison population (23% average) relative to their presence in the South Dakota's general population (1980 8.7%, 1990, and 2000) and that their percentage distribution has remained fairly constant over this time period; (2) female American Indian inmates are over represented in the female inmate population (34% average) relative to their presence in the general population (1980, 1990, and 2000) and that their percentage distribution has shown more variation during this time period; (3) the overall prison inmate populations began to increase significantly beginning with Fiscal Year 1989 (1,223 Inmates) and that this population has continued to rise through Fiscal Year 2000 (2,563 Inmates); and, (4) during the time between 1968 and 2000, the types of crimes that inmates were most likely to be imprisoned for shifted from property and money crimes in the 1970s and 1980s to personal crimes (including sex offences) and drug/alcohol crimes (including DWI) in the 1990s.

b. Regional Comparison

A regional comparison yields some interesting observations regarding the treatment of American Indians in South Dakota.[15] According the 2000 U.S. Census figures, the number of American Indians living in South Dakota is approximately 62,238 or about 8.3% of the state's general population of 754,844. By comparison and again according to the 2000 U.S. Census there are approximately 31, 329 American Indians living in North Dakota making up approximately 4.9% of the state's general population of 642,200.

As inmate figures for fiscal year 2000 indicate, South Dakota's prisons housed 2,563 inmates of whom 562 or 22% are American Indian. By comparison, North Dakota's prison system showed a total of 1,016 inmates on December 31, 1999 with a racial distribution of 16.4% American Indians. Based on these figures, American Indians are also over represented in the North Dakota prison system.

According to North Dakota prison officials, the state experienced an unprecedented growth in its prison population in the 1990's. An all-time high population of 961 inmates on December 12, 1998 highlighted this. As with South Dakota, it appears that drug/alcohol related crimes were the primary cause of prison population increases:

> *Drug offenders were the fastest growing segment of the population and the major cause of the prison population explosion the past two years (1998-99). Once again, the increasing us and manufacturing of methamphetamine by state residents spurred this increase. (North Dakota Department of Corrections and Rehabilitation, Biennial Report, July 1, 1997-June 30, 1999, Prisons Division, page 7)*

Without doing specific demographic analysis on the North Dakota and South Dakota inmate populations we can only suggest that, in general, American Indians are over represented in both state prison systems. However, the regional comparison presented in Table Six below shows that South Dakota has the highest percentage of American Indian male inmates than any of its neighbors. South Dakota also has the highest disparity between American Indian inmate population and American Indian general population. This disparity was 14.2%, while the lowest was Iowa with a disparity of 1.2%. The South Dakota disparity was greater than the 20% threshold measure of concern used throughout this report. By this measure, each of the other states in this part of the analysis was over the threshold as well.

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[15] Throughout the process of conducting focus group meeting and during discuss with states attorneys, legislators, and criminal justice professionals, we frequently encounter the question: " Why does South Dakota with approximately the same size population of North Dakota, have more than two times the number of prisons?" While it is not within the scope of this study to conduct a comparative analysis of South Dakota and North Dakota correctional systems, the issue of comparative inmate populations did cause us to consider whether American Indians are might also be over represented in the North Dakota prison system.

Table Six: Regional Comparison of Inmates by Race

State	Total Male Inmates	White Inmates (Male)	Percent White Inmates	American Indian Inmates (Male)	Percent American Indian Inmates	American Indian Population by State*	Percent American Indian Population by State*
South Dakota (a)	**2,454**	**1,795**	**73.1%**	**553**	**22.5%**	**62,283**	**8.3%**
North Dakota (b)	980	714	72.9%	161	16.4%	31,329	4.9%
Iowa (c)	8,101	5,643	69.7%	119	1.5%	8,989	0.3%
Nebraska (d)	3,543	2,049	57.8%	166	4.7%	14,896	0.9%
Minnesota (e)	6060	3,278	54.2%	398	6.6%	54,967	1.1%
Montana (f)	2,108	1,600	75.9%	397	18.8%	56,068	6.2%
Wyoming (g)	1,196	885	73.9%	80	6.7%	11,133	2.3%

Note: Percentages do not equal 100% because other races have not been included.
* Source: U.S. Census 2000 includes both males and females

(a) Count as of June 30, 2001
(b) Count as of June 30, 2001
(c) Count as of July 31, 2001
(d) Count as of August 31, 2001
(e) Count as of July 1, 2001
(f) Count as of July 5, 2001
(g) Count as of December 2000

Analysis of regional incarceration rates shows a slightly different trend. Here, South Dakota was did not have the highest incarceration rate per 1,000 population (See Table Seven Below). Both Iowa and Nebraska had higher incarceration rates than South Dakota. However, it should be noted that Iowa and Nebraska have very small American Indian populations, .3% and .9% respectively. When looked at more closely, it seems that both states incarcerate a greater percentage of out of state American Indians than South Dakota, explaining their higher incarceration rates when compared with state population demographics. In fact, an official from the state of Iowa prison system noted that their incarceration statistics were biased by arrests in Sioux City, Iowa, which sits on the boarder of South Dakota and Nebraska.

Table Seven: Incarceration Rates (per 1,000 population) by Race: A Regional Comparison (male and female)

State	White Population (State total)*	Whites Inmates and % of Pop.	White Incarceration Rate Per 1,000 Pop.	American Indian Population	American Indian Inmates and % of Pop.	American Indian Incarceration Rate Per 1,000 Pop.
South Dakota (a)	**669,404**	**N=1,945 (.29%)**	**2.91**	**62,283**	**N=639 (1.03%)**	**10.26**
North Dakota (b)	593,181	N=714 (.12)	1.20	31,329	N=190 (.61)	6.06
Iowa (c)	2,748,640	N=5,643 (.20)	2.05	8,989	N=133 (1.48)	14.80
Nebraska (d)	1,533,261	N=2,262 (.15)	1.48	14,869	N=188 (1.26)	12.64
Minnesota (e)	4,400,282	N=3,179 (.07)	0.72	54,967	N=425 (.77)	7.73
Montana (f)	817,229	N=1,600 (.20)	1.96	56,068	N=439 (.78)	7.83
Wyoming (g)	454,670	N=1,026 (.23)	2.26	11,133	N=88 (.79)	7.90

Note: State populations and inmate populations include both males and females.
* Source: U.S. Census 2000

(a) Count as of June 30, 2001
(b) Count as of June 30, 2001
(c) Count as of July 31, 2001
(d) Count as of July 17, 2001
(e) Count as of July 1, 2001
(f) Count as of July 5, 2001
(g) Count as of December, 2000

c. South Dakota Prison Demographics

The prisoner demographic information was developed using a filtered dataset that contains only White and American Indian inmates (n=4,068). In addition to providing standard demographic descriptors such as age, sex, educational level, and marital status, we also used statistical analysis techniques to examine differences (e.g., sentence length, time served, drug/alcohol dependency problems) between Whites and American Indians.

Figure 7: Gender of SD Prison Imates

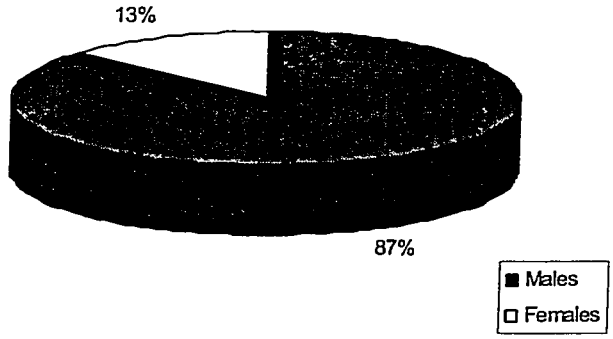
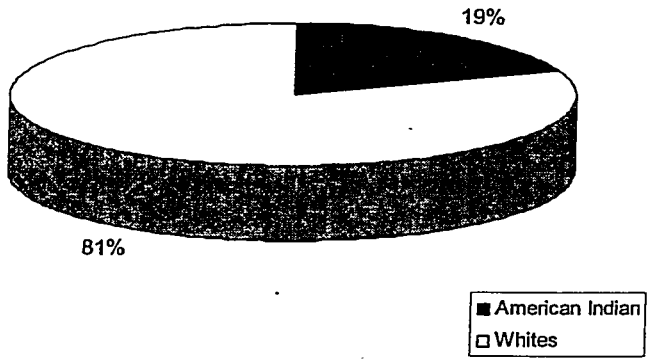
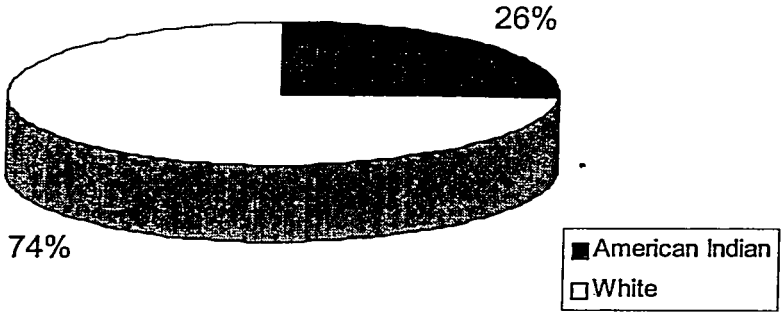


Figure 8: Distribution of Male Inmates by Race



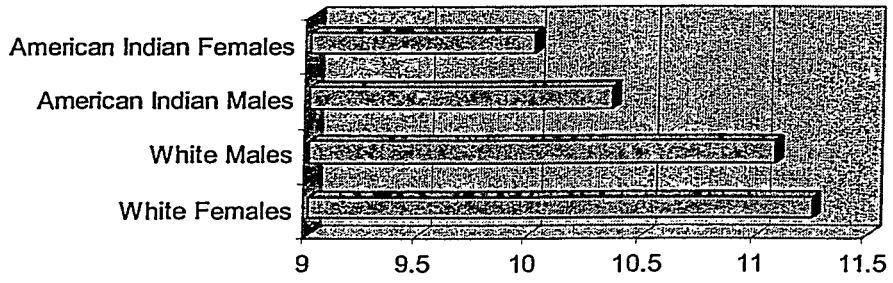
The ages of male inmates (n=3,538) ranged for 18 years old to a maximum age of 84 years with a mean age of 34.9 years and a median age of 34 years. Nearly 80% of male inmates are under 43 years of age. White male inmates (n=2,858) were, on average, 35.3 years of age, nearly two years older than their male American Indian (n=680) counterparts who averaged 33.3 years of age. The mean difference in age, two years, between White males and American Indian males was statistically significant at $p=.000$.

Figure 9: Distribution of Female Inmates by Race



Female inmates (n=530) ranged in age from 19 years to 72 years with and mean age of 35.2 years with a median age of 34.5 years. The modal age for female inmates, 25 years, was slightly higher than the modal age for male inmates. Female White inmates (n=394) were, on average, slightly older (35.5 years) than female American Indian inmates 34 years (n=136). The mean difference in age, 1.5 years, between White females and American Indian females was statistically significant at *p=. 079*

Figure 10: Average Years of Education Completed



Educational level, recorded as "last grade completed," is chronicled at the time the inmate enters prison. Educational level does not reflect any of the educational skills or advances attained while in prison.

Prison inmates averaged 10.9 years of education, with virtually no difference between males and females. If, however, we examine racial subsets of the data on years of education completed we find significant differences in educational levels for American Indians and Whites males. For example, White male inmates have a mean educational level of 11.08 years compared to 10.36 years for American Indian males. This mean difference in years of education (.71) was significant at (*p= .000*).

The mean difference in educational level is even more striking when comparing White female inmates with 11.25 years of education to female American Indian inmates at 10.02 years of education. This mean difference of 1.23 years, was also significant at (*p=. 000*). We also discovered that female White inmates had the highest educational level and American Indian females had the lowest educational level.

In short, when White inmates enter prison they have, on average, completed more years of education (11.09 years) than American Indian inmates (10.31 years). The mean difference in education, .78 years, was statistically significant at (*p=. 000*)

Analysis of the marital status variable indicates that American Indians are more likely to be single (67.8%) compared to Whites (53.1%). Correspondingly, the percentage of married Whites (21.0%) was slightly higher than for American Indians at 18.0%, while the percentage of divorced Whites (21.4%) was significantly higher than for divorced American Indians at 9.4%.

Of the 4,068 inmates in the dataset, 3,053 (75%) inmates indicated they had some contact with the Drug and Alcohol Abuse Assessment unit, either for assessment of the inmate's drug/alcohol problem or to determine whether a drug/alcohol problem exists. Perhaps the most significant difference between Whites and American Indians with regard to substance abuse or dependency is found in the "Alcohol Dependency" category.

Table Eight: Drugs and Alcohol Usage by Race

Alcohol/Drug Usage	Number Of Cases	% of cases within Group
No Problem		
American Indian	5	14.7%
White	29	85.3%
Deferred		
American Indian	27	6.9%
White	364	93.1%
Abuse		
American Indian	10	12.8%
White	68	87.2%

Table Eight (cont.)

Alcohol/Drug Usage	Number Of Cases	% of cases within Group
Dependency-Alcohol		
American Indian	280	28.3%
White	708	71.7%
Dependency-other Substance		
American Indian	37	11.3%
White	289	88.7%
Dependency-Alcohol and other Substance		
American Indian	233	19.9%
White	936	80.1%
Not Assessed		
American Indian	15	22.4%
White	52	77.6%
Total		
American Indian	**607**	**19.9%**
White	**2446**	**80.1%**

As Table Eight indicates, 28.3% of American Indians were associated with alcohol dependency, which again shows an over representation compared to their presence in the prison population. When comparing across race for "Dependency/Other Substance," one finds that 88.7% of Whites fall into this category compared to 11.3% of American Indians. These two categories show that American Indians are over represented in Alcohol dependency but not other substance dependency, where Whites are over represented. The other categories were distributed consistently with each race's population demographics.

d. DOC Analysis

Officials at the South Dakota Department of Corrections record the number of felonies that an inmate has in his/her criminal past in addition to the number of felonies that the inmate is currently serving time for. Unfortunately, the Department of Corrections data does not allow us to determine if the number of the felonies data represents multiple felonies under one arrest scenario or prior felonies under several arrest scenarios. For example, if the number "3" appears in the felonies variable we could not determine whether the inmate had two prior felonies and was serving time on his third felony or he if he was sentenced to prison on three felonies charges stemming from a single arrest.

Still, this is a viable indicator of an inmate's criminal history, as well as an indicator of the volume of crime an individual has been involved in. American Indians averaged 2.18 felonies, whereas White inmates carried 1.99 felonies on their inmate record. The mean difference (.19) in the number of felonies was significant at the *p=. 002* level, suggesting that this is not a chance finding. In other words, the data indicates that American Indian inmates are more likely to have a worse criminal history, although that difference is substantively quite small.[16]

Table Nine: Number of Felonies by Race

Number of Felonies/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
Number of Felonies					
American Indian	816	20.1%	2.18	.002*	.19
White	3,252	79.9%	1.99		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Our analysis of processing time was also showed an interesting disparity. The processing time variable was created using two existing date variables (offense date and commitment date).[17] This was done to study the length of time it takes an individual to move through the criminal justice system. A secondary, but equally important, objective here was to examine whether American Indians are more likely to plead guilty rather than fight the charges in court, given our belief that individuals who plead guilty will move through the criminal justice system more quickly than those who prefer to go to trial. Moreover, those who accept the initial plea offered by the State will move through the system more quickly than those who attempt to negotiate their plea, reducing the terms of penalty for their crimes.

The clear trend observed here demonstrates that Whites take longer to track through the system regardless of the type of crime committed or the number of crimes associated with a defendant. The only exception occurred in the area of Non-Violent Crimes for a person with one felony only. In this instance, there was no difference in processing time (See

[16] The dataset as a whole offers virtually no insight into whether this results from a greater criminal activity in the American Indian community, police profiling, or increased allocation of law enforcement resources in areas with high American Indian populations.

[17] Beginning on July 1, 1996, the Department of Correction began collecting information related to the inmate's offense date. Therefore, the analysis here considers inmates who committed their offense after July 1, 1996. Using the July 1, 1996 date as a filter, we developed a subset of 2,184 White inmates and 507 American Indian inmates.

Table Ten Below). One can conclude from this analysis that American Indians move more quickly through the criminal justice system than Whites. Speculation on why this occurs could include that American Indians accept plea bargains more readily, either as a result of cultural difference, lack of trust in the system, or greater acceptance of their guilt than Whites.

Table Ten: Processing Time

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
All Crimes					
American Indian	507	18.8%	266 days	.050*	-37 days
White	2,184	81.2%	229 days		
All Crimes-Multi Felonies					
American Indian	252	19%	181 days	.021*	-47 days
White	1,066	81%	228 days		
All Crimes Single Felonies					
American Indian	254	18.5%	277 days	.425	-25 days
White	1,118	81.5%	302 days		
Violent Crimes					
American Indian	171	24%	185 days	.044*	-80 days
White	541	76%	265 days		
Violent Crimes-Multi Felonies					
American Indian	69	25.6%	119 days	.021*	-114 days
White	201	74.4%	233 days		
Violent Crimes-Single Felony					
American Indians	102	23.1%	229 days	.375	-55 days
Whites	340	76.9%	284 days		

Table Ten (cont.)

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
Non-Violent Crimes					
American Indians	336	17%	252 days	.483	-14 days
Whites	1,643	83%	266 days		
Non-Violent Crimes-Multi Felonies					
American Indians	183	17.5%	204 days	.366	-23 days
Whites	865	82.5%	227 days		
Non-Violent Crimes-Single Felony					
American Indians	153	16.4%	309 days	.989	0 days
Whites	778	83.6%	309 days		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

In our examination of how long a person actually stays in prison we tested several variables for the entire period of the dataset (1994-2000). However, we realized that an examination of the entire dataset did not present an accurate picture of SD criminal justice because of a reform of the parole system in 1996 and the resulting recording keeping changes at the DOC.[18] As such, we narrowed in on some DOC phenomena by dividing the data into two groups. The first covered the pre-reform period of Jan 1, 1994 to July 1, 1996. The second covered from July 1, 1996 to the end of our time period in 2000. In the following analysis of time served, we report findings for both periods.[19]

Table Eleven: Time Served

Crimes Categories/Race	Number Of Cases	Mean (Average)	Significance	Mean Difference[1]
All Crimes- **Before** July 1, 1996				
American Indian	284	619 days	.098**	54 days
White	958	565 days		

[18] See Appendix C

[19] We also developed subsets of the data to examine how much time a person spends in prison based on their commission of a violent crime, non-violent crime, single crime, multiple crimes, and the like. Although these tables are not included here, they are available upon request.

Table Eleven (cont.)

All Crimes-After July 1, 1996				
American Indian	427	373 days	.992	0 days
White	1821	373 days		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Table Eleven above shows the impact that the 1996 Parole Reform legislation had on the amount of time served by SD inmates. To begin, in the period before the reform, American Indians were serving, on average, 54 more days than Whites for their crimes. The relationship between race and time served, before the legal change, was statistically significant at the $p < .10$ level. After the change, there was no observed difference in the average number of days served between Whites and American Indians. Additionally, the relationship was not significant after the reform.

It seems from our analysis that the parole reform, which introduced a formula for determining parole eligibility and parole date, reduced disparities in the time served by Whites and American Indians. This is not, however, a matter of who gets parole as both Whites and American Indians experienced the same percentage of parole awards before and after the reform. The effected measure is when individuals are released on parole.

Prior to July 1, 1996, the amount of time served in prison was contingent on sentence length, behavior in the prison, and the South Dakota Board of Pardons and Parole's assessment of the inmate's suitability for parole. For example, under the "old parole system" (before July 1, 1996), an inmate's one-year sentence with "automatic good-time credit" would actually be 8 months. In other words, an inmate would automatically receive 4 months of "good-time" and would be released in 8 months assuming that the inmate did not lose good-time for disciplinary reasons and completed his/her Individual Program Directive (IPD)[20]. In this regard, good time was used as an institutional control, particularly with regard to behavioral issues. Prison officials and parole board members suggest that the old system created a proper environment for determining whether an inmate was ready for release. This argument is based on the belief that their intimate knowledge of individuals and their emotional, financial, and domestic condition is the appropriate basis for parole decisions. However, the old system produced disparities in excess of the 20% threshold in the area of release time decisions by the Board. Again, this disparity worked against American Indians (See Table Eleven Above).

This disparity was partly caused by differences in the average good time lost for each racial group. Table Twelve shows that American Indians lost almost twice the amount of

[20] Note that after the July 1, 1996 legislation change, good time lost was no longer calculated by the Department of Corrections.

good time as Whites in the pre-reform period. This relationship was also statistically significant at the $p < .05$ level.

Table Twelve: Good Time Lost in Days for Disciplinary Cause Prior to July 1996 Reform

Good time lost for Discipline/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
Good Time Lost-Discipline					
American Indian	404	20.6%	21.3	.023*	9.7
White	1,558	79.4%	11.6		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Looking at this relationship in greater detail, we learned that the measure of good time lost was biased by several large values. In other words, some inmates had extremely high number of good time lost. For example, while many inmates lose good time in increments of 10 days, 20 days, or 30 days, others have lost good time ranging from for 205 days to 1,780 days. How we treat these "outliers" will affect how we understand the good-time lost issue. To accurately study this, we decided to first report good time lost using all of the cases in the distribution, including the "outliers" (See Table Twelve Above). Next, we used the median score from the good-time lost distribution to divide the data into two nearly equal sections; one section contained half of the sample with scores below the median and the second half with scores above the median value of 37 days.

Our analysis of data below the median (Table Thirteen Below), showed that American Indians were over represented (39.2%), although the mean difference was not statistically significant $p=.775$. When we examined the data subset above the median score, we found that American Indians were again over represented, although to a lesser degree (29.5%). The mean difference in good time lost was considerably higher for cases above the median (32.7) and almost identical below the median (.5). This suggests that at the higher end of the distribution, American Indians are losing more good time. This is represented in the findings discussed in Table Twelve, where American Indians lost an average of approximately 10 days more than Whites – further explaining why they serve more time as a whole than Whites (See Table Eleven).

Table Thirteen: Good Time Lost in Days for Disciplinary Cause Above and Below Median in Pre-Reform Period

Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
Good Time Lost / Disciplinary Action Below Median					
American Indian	47	39.2%	18.1	.775	.5
White	73	60.8%	17.6		
Good Time Lost / Disciplinary Action Above Median					
American Indian	36	29.5%	192.7	.488	32.7
White	86	70.5%	160		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

The good-time is also lost for parole or suspended sentence violation. This too was problematic. The distribution ranged from 91 days lost to 3,104 days. Using the entire distribution of cases we found that American Indians were over represented in the good time lost for parole and suspended sentence violations relative to their 20% presence in the prison population. Here, American Indians made up 34.9% of all cases where good time was lost for parole or suspended sentence violations (See Table Fourteen Below). However, Whites lost more good time for Parole or Suspended Sentence violations overall with a mean difference of 80.47 days.

Table Fourteen: Good Time Lost for Parole or Suspended Sentence Violations in Pre-Reform Period

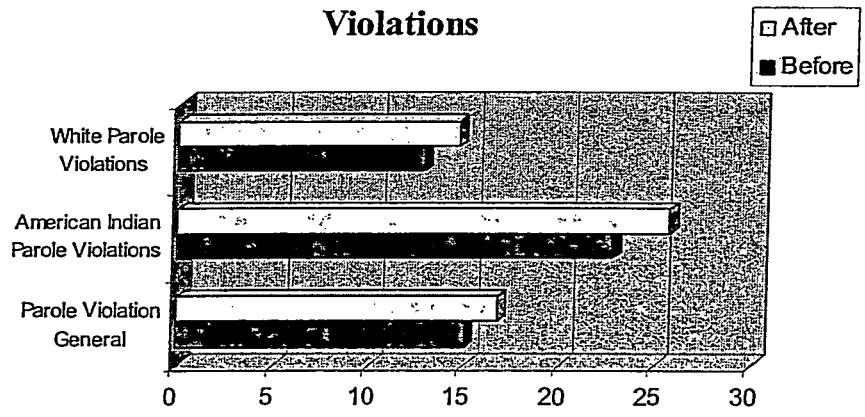
Sentence/Race	Number Of Cases	% of cases within Group	Mean (Average)	Significance	Mean Difference[1]
Good Time Lost/ Parole & Suspended Sentence Violation					
American Indian	60	34.9%	368.4 days	.187	-80.47 days
White	112	65.1%	448.9 days		

[1] A positive value for mean difference represents a greater sentence for American Indians. A negative value represents a greater sentence for Whites.

* $p < .05$ (statistically significant)
** $p < .10$ (weak statistical significance)

Under the **new parole system,** parole decisions are made, for the most part, by formula. The formula calculates an individual's criminal history, demographics of their crimes, completion of individual program directive, and other individual-specific considerations when determining parole. The downside to this approach is that it takes decisions out of the hands of the experts, as described above. The result was a 3% increase in parole violations for American Indians and 1.8% increase in parole violations for Whites in the post-reform period (See Figure 11 Below).

Figure 11: Affect of Parole Reform on Parole Violations



Still, the removal of discretionary good time administered by the Parole Board leveled out the differences in terms of time served, as noted in Table Eleven above. The question now becomes which creates a greater cost for society: Race-based decision making or Parole Violations. To the extent that race was a factor under the old system, it is likely

that the decision to not parole American Indians was tied to additional considerations of economic conditions, job opportunities, family and social support networks, and other contributors to a successful or unsuccessful parole. This is, at minimum, a viable explanation for the race disparity in this category. Whether it is factually-based is a matter for secondary research on the subject. In any case, we can be reasonably certain that the parole reform reduced the disparities between the two races in the area of time served.

The percentage of sentence served was similarly affected by the reform. In the pre-reform period, American Indians were serving a greater percent of the given sentence (46.4%) than Whites (40.58%). This difference was significant at $p < .01$. After the parole reform, the disparity narrowed and was not statistically significant.

It is important to note that the percentage of sentence served by both groups declined in the post-reform period. The reform introduced more certainty in time served and, at the same time, mitigated what appears to be a bias against American Indians. Again, we do not wish to argue that this bias is the result of race-based decision making. It may have been an artifact of other socioeconomic considerations, as described above. Still, the data show a more egalitarian performance of the prison system after the reform.

g. Getting out of Prison (Release Type)

The focus of this section is on whether American Indians are more likely to serve out their full sentence than Whites. This issue is particularly important when considered in light of the July 1, 1996 legislation that ushered in a more "automatic out" process devoid of the "good-time" provision.

In addition to standard release types (e.g., expiration of sentence, parole, and suspended sentence), the DOC data also has codes for escape, death, and released on bond. These additional release types were reported here under the label of "other" because of the small number of cases in each type.

Table Fifteen again shows the strong impact of the 1996 reform on DOC behavior. Specifically, the gap between Whites and American Indians in the full expiration of sentence and in parole was narrowed considerably (See Table Fifteen Below).

Table Fifteen: Release Type From Prison by Race (All Time Periods)

Race	Expiration of Sentence	Parole	Suspended Sentence	Other Release Types
All Cases				
American Indian	23%	55.1%	4.8%	17.1%
White	14.7%	62.1%	5.8%	17.4%
Before 1996 Reform				
American Indian	37.7%	45.2%	7.2%	9.9%
White	22%	58.4%	9.2%	10.4%
After 1996 Reform				
American Indian	14.3%	61.1%	3.3%	21.3%
White	11.2%	63.8%	4.1%	20.9%

After the reform, we see a more even distribution of parole and expiration of sentence, although the percentage of American Indians serving out their full sentence is still slighter higher than Whites. This analysis corroborates our earlier discussion of case disposition. In that discussion we were able to observe a subtle trend, where American Indians were given the less desirable dispositions in all but one type of disposition. The one exception was in the area of transfer to alternative jurisdictions. Otherwise, in the UJS disposition field, as well as the DOC release type field, American Indians are consistently on the wrong end of the outcome type.

D. Discussion and Conclusions

1. Viewed as a Whole

Our empirical analysis concludes with a discussion of the frequency of concerns for discrimination. American Indians were disadvantaged in a majority of the 30 relationships we tested in this research. The employment of the 20% threshold test, along with a common sense approach, suggests that American Indians are not treated equally in the South Dakota criminal justice system. Their treatment in case disposition, bond determination, and sentence length in violent crimes does not coincide with the severity or number of charges associated with their cases in the dataset. Further, they experienced disadvantages in the length of prison time served and in the type of release from prison. However, these measures have changed considerably since the 1996 parole reform and are expected to continue to increase parity between the two groups in the future.

There were instances in this research where Whites were disadvantaged, which must not be overlooked with analyzing fairness in the process. Whites experienced longer sentences in non-violent crimes, in two violent crime areas, and they were charged with more frequent and more serious crimes overall.

If we look at the current research in terms of identifying the specific challenges of each racial group in the state, rather than in terms of which groups receive the worst treatment, we see that Indians have greater problems with victimization from violent crimes (BJS, 1999), perpetration of non-sexual violent crimes, alcohol dependency, and lower levels of completed education, while Whites have greater problems with substance abuse, family violence, rape, sex crimes, and non-violent crimes generally. Although we saw that both communities have their own unique challenges, American Indians have the additional burden of over representation in the criminal justice system. While this is likely a function of confluence of factors, the general experience presents a greater challenge to advancement for American Indians, as a group, than Whites in South Dakota. The impacts are felt in future job opportunities, family security, criminal justice activity, and self-respect.

The current research has been productive in examining a wide range of phenomena that show challenges facing both communities. Still we must consider what motivates some of the more difficult outcomes observed here, particularly those that create the appearance of a double standard in our criminal justice system. To begin, it seems likely that a profound lack of trust exists between both communities. This was palpable in our focus group meetings and represented in some of the data. The speed with which American Indians move through the criminal justice system, their acceptance of more plea agreements, and less challenges in court result in longer sentences and a more negative criminal history. Longer sentences and criminal history then lead to harsher treatment in the process in the future, as plea agreement, sentencing, and parole decisions are based in part on these factors. We observed this in several instances of harsher sentencing for individuals with more than one felony charge and with more than one trip through the system. The ultimate result is a true dilemma for the American Indian community, insofar as these outcomes can be linked in small but important ways to their lack of faith in the system. American Indians seem to neither trust the system nor be effective in advocating their interests in it. This behavior may be the result of a historic lack of confidence in the American law generally, particularly when viewed from the perspective of the Sioux Tribes.

On the other side of the equation, it seems that the history between these two groups has made the White community particularly distrustful – even fearful -- of American Indian defendants charged with violent crimes (particularly weapons crimes and crimes resulting in the loss of life) even though White defendants outnumber American Indian defendants in each of these areas and are over represented in some. Similarly, while there is widespread belief in the White community that American Indians have greater problems with alcohol-related crimes than Whites, we observed that Whites get longer sentences for their felony DWI cases and, when we consider drug crimes, have far greater instances of and sentences for alcohol and drug crimes together. As such, the perception that this is

an American Indian problem is supported by stereotype not empirical evidence. In the end, we have shown that problems exist at multiple levels and should not be oversimplified or supported by historic generalization and prejudice – on either side.

It is true, however, that the lack of trust on both sides has resulted in greater disadvantages for American Indians; a result which has been observed in other minority group contexts and needs to be remedied by individuals in positions of power. One can not underestimate the impact that legislative reform can have on criminal justice outcomes. The efficacy of the 1996 parole system reform must be held out as a model of system change that can improve race relations and help to build the much-needed trust in the community-at-large. Instances of such success become the platform on which the ideational shifts necessary to achieve greater racial harmony and greater parity in the administration of justice will occur. While much of the work needs to be done in the hearts and minds of citizens, we should not overlook opportunities to use legal change to lead social change. Here, we saw first hand how a procedural change can level the playing field in an otherwise disparate environment.

2. Advancing the Research

From a theoretical perspective, our findings showed inconsistencies with conflict theory as used in previous studies of disparate treatment of ethnic and racial minorities (Alvarez and Bachman, 1996; Cureton, 2000). The conflict theory suggests that minority groups experience disparate treatment in property crimes, but not in violent crimes because of the intra-racial character of violent crime. However, in South Dakota, American Indian violent crime defendants receive longer sentences than most White violent crime defendants. This contradictory finding should be examined in greater detail in a follow-up research project directed at contributing to the scholarly discussion of minority group treatment in the US.

This is but one smaller piece of research that will come out of the current study. Others include (1) an in-depth analysis of the 1996 Parole Reform and the use of formulas to reduce racial disparities, (2) a study of the treatment of single v. multi-offense defendants, and (3) an examination of the role of gender and race in the criminal justice system.

Still, the larger question underlying much of this research is: Are the lives of minority group members in South Dakota criminal justice valued as much as the lives of Whites in the community? This was prevailing question present in much of our public focus group meetings. It was clearly present in US Civil Rights Commission Report. It also exists explicitly and implicitly in much of the news accounts of controversial cases across the State.

Unfortunately, it is not possible to address this issue without access to data on the race of victims and other crime demographics such as financial impact of the crime, use of force, use of weapons, as well as a more complete criminal history of the accused. This would afford a much-needed look at whether crimes with American Indian victims are pursued

with the same intensity as crimes with White victims. Similarly, we would be able to examine the treatment of White and American Indian defendants in the context of the race of their victims.

The lack of reliable data in these areas represents the greatest shortcoming of the current research. In order to examine the larger question of whether a double standard exists, it will be necessary to engage in detailed case studies of the South Dakota criminal justice system. This would be possible through the random selection of a subset of the GRB dataset so that existing data from local law enforcement, state attorneys, and (if possible) court services could be added to provide a more comprehensive analysis of criminal and environmental factors that create disparities within the state.

We are also interested in expanding this research beyond the State of South Dakota. Our main objective here is to include additional state, tribal and federal data in order to examine the impact that jurisdiction has on the administration of state criminal justice. This national study would be focused on gaining a better understanding of whether the existence of federal jurisdiction is a benefit or burden to the American Indian community. Here, we are also interested in examining the impact that reservation sovereignty and jurisdictional arrangements generally have on the administration of state criminal justice.

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