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Full Name of Author — Nom complet de l'auteur

Bruce Myatt Burchett

Date of Birth — Date de naissance

8 July 1947

Country of Birth — Lieu de naissance

United States

Permanent Address — Résidence fixe

910 West Markham Avenue
Durham, North Carolina 27701
U.S.A.

Title of Thesis — Titre de la thèse

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Name of Supervisor — Nom du directeur de thèse

Gertrud Newirth

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Race and the AWOL Offender:

**The Effect of the Defendant's Race on the
Outcome of Courts-Martial Involving Absence without Leave**

by

© Bruce M. Burchett

Department of Sociology
Carleton University

Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
of Philosophy in the Department of
Sociology and Anthropology
in the Graduate School of
Carleton University

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Sociology / Anthropology
Department of Student

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.....
Chairman, Department of Sociology and
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.....
Thesis Supervisor

.....
External Examiner

Carleton University
January 5, 1984

ABSTRACT

This study examines the administration of military justice in the United States Army during the last years of the Vietnam War. During that time the military justice system was subjected to unprecedented levels of criticism. Some of that criticism was the direct result of the war; some represented long-held suspicions concerning the quality of justice administered by the military. One of the criticisms frequently raised charged that the military justice system engaged in racial discrimination. Whether or not black soldiers were subject to racial discrimination in the administration of justice is the primary focus of the research. A secondary focus concerns whether the major determinants of the outcomes of cases were the characteristics of the defendants, the characteristics of the offenses or features of the organization and the results of prior decisions. For the purposes of the research, the three sets of factors are associated with theoretical perspectives in sociology and criminology--the conflict, consensus and organizational perspectives.

The data upon which the research is based come from the records of courts-martial held at Fort George G. Meade, Maryland, during the period from late 1971 to early 1974. The data were collected by the author while he was a

soldier, stationed at that fort. Of the more than one thousand trials held at that fort, more than eighty-five percent had an absence offense as its major charge. It is these cases that are examined in the research.

The dependent variables in the research were the decisions of military authorities with respect to various stages of the administration of military justice. Those decisions concern the imposition of pretrial confinement, the level of court to which the case is referred, the verdict, the sentence adjudged and the final action by the soldier's commander. The independent variables refer to characteristics of the defendant, characteristics of the offense, features of the court-martial and characteristics of the organization and the results of prior outcomes.

Ordinary least squares regression was the statistical technique employed in the analyses. This technique enables one to determine the effect of race, or other variable, while holding constant the effects of other variables.

The length of the absence and the number of charges were the major determinants of whether or not pretrial confinement was adjudged. The length of the absence explained an extremely large proportion of the variation in the level of court. With respect to the verdict, very few soldiers were acquitted, and very little variance was explained. The level of court was the most important factor in explaining the variance, as no one tried at either of the

two highest courts was acquitted,

The level of court was also an important factor in the determination of the sentence imposed, intervening between the length of the absence and the sentence. Almost all soldiers who were subject to a punitive discharge were sentenced to a discharge. Having a pretrial agreement and receiving a recommendation for clemency were important predictors of whether or not the soldier's commander granted him clemency with respect to confinement. This decision was the only one in which there was a disparity in the treatment of Whites and blacks, but even here the differences were not statistically significant. Almost all soldiers sentenced to a discharge had those discharges approved by the post commander.

The race of the defendant was found not to have any significant effect on the outcome of his case. The major determinants of the outcomes were the characteristics of the offense. Of secondary importance were characteristics of the organization and the results of prior decisions. Though the research undertaken herein does not permit one to conclude that racial discrimination did not exist within the military justice system, the results obtained do indicate that, at least with respect to the handling of the absence offenses at Fort Meade, black soldiers did not receive treatment that was less fair than that afforded white defendants.

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It is probably axiomatic that the writing of any dissertation is an ordeal. Mine has been no exception to this. My task was made extremely difficult by my not being at Carleton during its writing.

Being away from my school made matters very difficult for my committee and my family. I owe them all an apology and my heartfelt gratitude for not having given up on me. My wife, Julie, probably suffered more than anyone, yet she spent countless and thankless hours reading the drafts. I know that, at times, she felt powerless to do anything to accelerate my progress. Nevertheless, she and my children, Matthew and Melissa, have stood by me and been a source of pride and joy.

Professor Gertrud Neuwirth has been my teacher, advisor and friend throughout my graduate education. Her criticisms and suggestions have been an invaluable source of help to me. I realize that I must have been a frustrating student these past years. I have benefited greatly from my association with her, and I have much for which to be grateful.

Professor Adam Podgorecki was kind enough to join my committee even though I was no longer in residence at Carleton. He has been very encouraging of my research and

interest in the sociology of law. In my future work in the sociology of law, I shall endeavor to incorporate Professor Podgorecki's suggestions and ideas into my research. Professors John Harp and John Myles provided thoughtful criticisms and comments regarding the statement of the problem and the methodological aspects of the research. Their contributions did much to clarify my task.

During my years at Carleton, I have been grievously saddened by the deaths of two of Canada's most distinguished professors, both of whom were my teachers and members of my committee. Professor John Porter was an erudite scholar and a gentle person who was always open to new areas of scholarship, areas which were not always pertinent to his own research. His legacy is assured by the legions of Canadian sociologists he either taught or profoundly influenced.

Professor Zbigniew Jordan was a major factor in my intellectual development. His uncompromising dedication to truth and excellence was, and continues to be, a source of inspiration to me. Though he could be very critical, he was always fair, and he never ceased to be supportive and encouraging. Having had the opportunity to study under Professor Jordan was one of the most meaningful experiences of my education. I shall always consider it a great honor to have been Zbigniew Jordan's student.

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List of Variables Employed in the Analyses

<u>Variable</u>	<u>Interpretation</u>
Ageoff	Age at the time of the offense, in years..
AWOL	Absent without Leave.
Cav	Whether or not the soldier was a member of the 6th Armored Cavalry.
Chlrec	Whether or not the sentencing authority recommended that the convening authority suspend the confinement adjudged.
College	Whether or not the defendant attended college.
Court	Level of court to which the case is referred.
Desertn	Whether or not the defendant was convicted of desertion.
Disclem	Whether or not the convening authority suspended an adjudged discharge.
Engr	Whether or not the soldier was a member of the 76th Engineers.
Forum	Whether the soldier was tried by a military judge alone or by a jury.
Gradesch	Whether or not the soldier had less than a high school education.
Judge A	The judge who tried most of the general courts-martial and some of the specials.
Judge B	The judge who tried most of the special courts-martial.
Lghawol	The length of the longest absence, coded with an ordinal measure.
Lghserv	The length of time the soldier had been in the Army, coded with an ordinal measure.
Miscunit	Whether or not the soldier was a member of a unit other than PCF, 76th Engineers or the 6th Cavalry.
PCF	Whether or not the soldier was a member of the Personnel Control Facility.
PTA	Whether or not the soldier had a pretrial agreement.
PTC	Whether or not the soldier was placed in pretrial confinement.
Plea	Whether or not the soldier pled guilty to all charges.

Prevcm Whether or not the soldier had been convicted of a previous charge.

Spec The number of AWOL charges filed against the soldier.

Term Whether the soldier surrendered from all absences or was apprehended from at least one of the absences.

Verdict Whether the soldier was acquitted of all charges or convicted of at least one charge.

Year Whether the court-martial occurred before or after January 1973.

Chlclem Whether or not the convening authority suspended or disapproved the confinement adjudged.

Disclem Whether or not the convening authority suspended or disapproved an adjudged discharge.

Sentchl The number of months of confinement adjudged.

Sentdis Whether or not a punitive discharge was adjudged.

Race and the AWOL Offender:

The Effect of the Defendant's Race on the
Outcome of Courts-Martial Involving Absence without Leave

CHAPTER I

THE PROBLEM OF MILITARY JUSTICE

Introduction

In the Senate Watergate hearings during the summer of 1973 Senator Sam Ervin commented that, in his opinion, the Watergate affair was the greatest tragedy to befall the American people in its two hundred year history. It was, he said, even more tragic than the Civil War, as it lacked the acts of heroism and sacrifice associated with that conflict.

While there may be no official measures for evaluating whether one crisis or conflict is more or less tragic than another, any listing of the tragedies which have been experienced by the American people would have to number the war in Vietnam at or near the top. The American involvement in Vietnam spanned nearly two decades, resulted in the deaths of more than fifty thousand servicemen, left many times that number wounded or scarred, cost in excess of a hundred billion dollars--thus spawning the inflation which continues to plague the American economy, sent tens of thousands of America's youth to prison or into exile and was a major contributor to the feelings of alienation from and disillusionment with the political establishment that were experienced by many during the 1960's and 1970's. Yet, in the end, despite the costs, despite the sacrifices, despite the power, the technology and the destruction, the Americans lost.

The Vietnam War further divided a nation that was already polarized on the issue of civil rights. Unlike many social and political issues in which public opinion swings from one side to the other, the feelings of Americans were not so vacillating. At the onset of the conflict, few Americans actively opposed the war, but as the war dragged on opposition continued to grow. Many people switched from support of to opposition to the war but few moved from opposition to support of the government's policies. Opposition to the war grew both in absolute numbers and in intensity over the years (Gelb and Betts, 1979).

For many opposed to it, the war was a corrupt venture which spoiled everything with which it came in contact. Not only were the institutions directly involved in the war--government, military and business--regarded as immoral, but those only indirectly linked to the war were subject to severe criticism as well. By the time the war ended in 1973, the struggle over the nation's involvement had grown into a conflict over more than the immediate issue of the war; it became a conflict over a broad range of political and moral values; it was a conflict between generations, and it was a conflict over lifestyles. Not since the Civil War had the American people been so bitterly divided, and never before had the basic institutions of American society come under such attack.

As the military was the institution responsible for

fighting the war, it is not surprising that its fortunes would rise or fall with the outcome of the war. Since the war in Vietnam was unpopular domestically and less than successful on the battlefield, it should not have been unexpected that the military would receive a great deal of criticism. However, the level of criticism directed at the military was far greater than at any time in the nation's history. Though they may have differed in virtually every other respect, some supporters and critics of the military and the war could agree on one thing--that in the early 1970's the armed forces of the United States were in a state of crisis, a crisis which was threatening the legitimacy of the military and its system of justice (Cortright, 1976; Heintz, 1974; Savage and Gabriel, 1976; Segal and Blair, 1976; Sherman, 1970, 1971, 1974; Taylor, 1976).

Vietnam and Military Justice

All wars are to some extent unpopular--especially among the soldiers who must fight them. This is evidenced by the elevated rates of AWOL and desertion which occur during wartime. Table 1.1 gives the rates for these offenses during the Vietnam War. The rates of absenteeism rose, reaching a peak in 1971 and slowly dropping from 1971 to the end of the war in 1973. At this time the Americans were being gradually withdrawn and the war was being "Vietnamized". The number of U.S. casualties was declining

during these years as more and more of the ground fighting was being performed by units of South Vietnam, and the American fighting role was becoming more and more one of

Table 1.1

AWOL and Desertion Rates, United States Army *

1966-1973 **

Year	AWOL	Desertion (AWOL over 30 Days)
1966	37.2	14.0
1967	78.0	21.4
1968	89.7	29.1
1969	112.3	42.4
1970	132.5	52.3
1971	176.9	73.5
1972	166.4	62.0
1973	150.0	52.0

* Per 1000 enlisted strength.

** Source: Contright, 1975.

support and bombing.

One reason why relatively more absence offenses occur during a time of war is due to the character of the soldiers themselves. Wars require large increases in manpower levels. Soldiers must be assigned to combat units, where

inevitably some are killed or wounded. Casualties must be replaced, and increased numbers of soldiers are required to supply those in combat. To meet the increased needs, the military often takes two courses of action—it lowers the entrance requirements for recruits, and it brings in more persons through conscription. Even if everything else were equal, the increase in the number of soldiers in general and in the number of marginal soldiers in particular would tend to result in increased levels of offenses such as AWOL and desertion and hence in an increased level of military justice activity.

The Vietnam War was similar to its predecessors in the above respects. Though the number of soldiers in the Army nowhere near approached the levels reached during the Second World War, the size of the Army, depicted in Table 1.2, did increase significantly during the Vietnam War. The peak in 1969 reflects the period in the war when the most intense fighting took place. As the process of Vietnamization took place, beginning in 1970, the number of American soldiers, in Vietnam and elsewhere, gradually declined.

To fulfill its increased manpower needs, the Army had to lower its entrance requirements. Project 100,000, instituted in 1967, was designed to bring in many soldiers whose educational levels and test scores would otherwise have prevented them from being admitted into the Army. While the addition of "warm bodies", so to speak, was

certainly a goal of Project 100,000, it was also intended to give many disadvantaged youths a chance to receive the benefits (e.g. education, job training) of military service. Those brought in under this plan did have disproportionately high rates of absenteeism and did commit other military offenses at a rate higher than did other recruits (Gelb and Betts, 1979).

The major source of recruiting additional personnel, however, was the draft. Prior to the onset of the Vietnam War, there was talk by military and government officials of ending the draft. The escalation of the Vietnam War, however, quickly put an end to any such thoughts. Table 1.2 contains the yearly figures of those drafted. The figures for the number drafted show a similar pattern, as more and more volunteers were replacing draftees in the military.

Although the major decisions regarding the conduct of the war were made by political leaders, neither the military nor the Selective Service System were immune to anti-war protests. A number of demonstrations were directed at the military, such as the one in October, 1967, when thousands of anti-war protesters descended on the Pentagon. In the years to come literally millions of Americans would protest the war and the draft. Before the fighting would end in Vietnam the issue of amnesty for draft dodgers and deserters would become a major political issue, with many Americans feeling strongly that the government should not prosecute

Table 1.2

Size of the Army/Number Drafted/In Vietnam, 1966-1974

Year	Size of Army	Number Drafted	In Vietnam *
1966	1,096,803	312,900	184,300
1967	1,430,009	288,900	385,300
1968	1,510,064	337,400	485,600
1969	1,528,707	254,900	536,100
1970	1,473,191	200,600	475,200
1971	1,279,857	152,000	334,600
1972	993,587	41,000	156,800
1973	852,098	35,000	24,200
1974	799,301	0	—

Source: Department of Defense, Selected Manpower Statistics

* At the beginning of 1965, 23,300 soldiers were in Vietnam.

Source: Statistical Abstracts of the United States.

those who avoided military service.

In the early years of the protest movement the focus of the anti-war activists was on the draft (Cooney and Michalowski, 1977; Hayes, 1975). As a result, relatively little attention was given to dissent within the military. This seemed to suit the military, as they attempted to portray the protest movement as not just anti-war but anti-military and anti-soldier as well (Moskos, 1970). Thus military officials hoped that those in the military would be less likely to break ranks, so to speak, with the military's

more or less official position on the war.

From the earliest days of the war there were soldiers who opposed the war, though most of them limited their opposition to griping in barracks' bull sessions, a hallowed military tradition. However, the actions of a few led them into confrontations with the military justice system. I shall mention a few of the more outstanding cases. (For more detailed accounts of anti-war activity by servicemen, see Hayes, 1975; West, 1974; Sherrill, 1974).

In 1965 an off-duty lieutenant, Henry Howe, attended an anti-war rally in San Antonio, Texas, during which he carried a sign opposing President Johnson's policies on the war and intimating that Johnson and the war were fascistic. Howe was charged with making disloyal statements and tried by court-martial. He was convicted and sentenced to two years imprisonment and a dismissal from the Army.

In 1966 two black marines received lengthy prison sentences for statements they made during a barrack's bull session. At Fort Hood, Texas, three soldiers who refused to go to Vietnam were given lengthy sentences to confinement and discharged from the Army.

Perhaps the most famous case involving an anti-war soldier was that of Captain Howard Levy. Before being drafted into the Army, Levy was a dermatologist in Brooklyn, New York. At Fort Jackson, South Carolina, he was ordered

to give medical training to Green Beret medics bound for Vietnam. He refused, citing the Nuremberg trial precedents which forbade participation in activities which would contribute to war crimes, crimes which, Levy charged, were being committed in Vietnam.

For his refusal, Levy was tried by court-martial for a variety of offenses. His trial attracted the attention of the national media which portrayed it as a struggle between an anti-war soldier and his pro-war commander. At his trial Levy attempted to employ a "Nuremberg defense" but his efforts were thwarted by the military judge. He was convicted and sentenced to three years imprisonment and a dismissal from the military. The national coverage which Levy's court-martial received drew attention to the presence of anti-war soldiers and to the potential for dissent within the ranks.

In the late Sixties and early Seventies more and more anti-war soldiers entered the military. Some, naturally, were brought in by the draft, while others volunteered in order to avoid the draft.* Still others came to oppose the war after their entrance into the military. More college students were being drafted as deferments for students

* This action was done in order to avoid the infantry. Persons who enlisted often were able to select the type of training they would receive. Those who were drafted received no such guarantees, and many were assigned to the infantry.

ended. Those who had attended college prior to their entry into the Army had been exposed to the protest movement and to the counter-culture which had been spawned during the late Sixties. Even those who had not attended college were likely to have had more than a passing familiarity with those social phenomena.

In the late 1960's anti-war activity by soldiers increased dramatically. Peace symbols could be found on virtually every military base, and soldiers, particularly younger enlisted men, regularly greeted each other with the peace sign or the more militant clenched fist. The anti-war movement began to take note of the protest movement within the military, and organizations were established in order to counsel soldiers who had run into trouble with military authority. Soldiers at several forts printed underground newspapers similar to those published by their civilian counterparts, and G. I. coffeehouses were set up to serve as places where dissident soldiers could go to meet each other and make contact with civilians in the anti-war movement. The number of G.I. newspapers corresponded with the AWOL and desertion rates, reaching a peak in 1971.

On the battlefield the military faced a determined enemy which had fought the world's strongest power to a virtual standstill, while at home the Army faced a number of major internal problems. As noted above, the rates of AWOL and desertion were at their highest levels in recent history,

and drug use by soldiers was rampant. Combat soldiers could not be counted on to fight the enemy. Some units went on "search and avoid" rather than "search and destroy" missions. The phrase "cover your ass" became frequently used to describe an unwillingness of soldiers to take risks or responsibilities. No soldier wanted to be the last one killed in Vietnam, and many conscientiously avoided taking any chances. Praggings, that is, assaults on officers and sergeants, was a constant risk for those who would order their troops into dangerous situations. Some commanders were so apprehensive about the behavior of soldiers in their command that they forbade their carrying weapons when they were not on duty. Anti-war and anti-military soldiers, an extremely vocal minority, contributed to the appearance of an army divided amongst itself. Such anti-war and anti-military sentiments were no doubt the result of suspicions about the morality and usefulness of the war and about the character of the military as an organization and as an institution in American society.

The military did take steps to alleviate some of its problems (Yarmolinsky, 1971, 1972). In 1969 the Department of Defense issued a memorandum outlining and clarifying the right of soldiers to participate in anti-war demonstrations. It stated that the soldiers had to be off-duty and out of uniform. Policies were also issued specifying the conditions for the distribution of underground newspapers on military posts. These actions were in response to

suspensions that in attempting to firm up support for its war effort, the military was willing to trample on soldiers' constitutional rights.

From 1970 on, little effort was made to prosecute dissident soldiers. The last noteworthy court-martial of an anti-war activist was that of Navy Seaman Roger Priest in 1970. Priest, the editor and publisher of an underground newspaper, was charged with soliciting soldiers to desert and with several other offenses. Though he was convicted and sentenced to a bad conduct discharge, Priest was not given a prison sentence. Had his trial taken place a couple of years earlier, one might well speculate that he would have received an active sentence. The changed attitude of the military may be seen in the case of a soldier who deserted to Canada to protest the war. He appeared before a Congressional committee to speak for an amnesty and to publicly surrender from his absence. He was taken to Fort Meade for the disposition of his case. There he was quietly discharged in less than three weeks with an administrative discharge.

Long before the war was concluded it became apparent that the draft would be ending. In the post-Vietnam era, the military would have to rely exclusively on volunteers to fill its ranks. Thus military life had to be made more attractive than had heretofore been necessary. In 1971 soldiers were granted a significant increase in pay. At the

same time the Army established the Modern Volunteer Army (MVA) program. Some barracks were spruced up, with single and two-man cubicles replacing rows of bunks. Rugs were installed on the floors, and beer was permitted in the barracks.

Rugs in the barracks and underground newspapers on the post could not keep soldiers from going AWOL. As it turned out, the huge absenteeism rate posed both a problem and an opportunity for the military. To bring all who were charged with AWOL or desertion to trial would have placed an immense burden on the military justice system. The number of courts-martial, represented in Table 1.4, showed a steady rise through 1971. The figures show a similar pattern to those of the number of soldiers and the number drafted (Table 1.2). With the end of the war, however, the military's manpower needs were declining, as would be expected during a transition from a war-time to a peace-time military. Thus the military really did not need to retain many of those who went AWOL.

In the early 1970's the military took steps to deal with the AWOL problem. Battalion level units were established at several forts to handle the disposition of AWOL cases. These units were known as Personnel Control Facilities (PCF). If a soldier was absent more than thirty days, he would, upon his return to military control, likely be assigned to a PCF unit, where his case would be handled.

Table 1.3
Discharges for the Good of the Service
(Chapter 10 Discharges), 1967-1975 *

Year	Number Discharged
1967	295
1968	384
1969	444
1970	6,911
1971	12,012
1972	25,465
1973	21,047
1974	17,640
1975	14,784

* Source: Hansen, 1976.

One consequence of such an action was to relieve the original units from having to keep a soldier on its rolls while he was awaiting trial; another consequence was to insure that a more uniform treatment of AWOL offenders took place.

At the same time the Army started making more use of administrative discharges for soldiers who had been AWOL and did not want to be in the military. If a soldier had been absent more than thirty days, or had two offenses of at

least three days each, he could apply for an administrative discharge "for the good of the service", a "Chapter 10" discharge. If the request for a discharge was granted, a court-martial would rarely take place. Instead the soldier would be issued an administrative discharge, usually an undesirable discharge. Approximately three-fourths of the Chapter 10 discharges issued by the Army were undesirable discharges (Hansen, 1976). Even though an undesirable discharge represented a stigma and deprived the soldier of virtually all veterans benefits (e.g., educational benefits, job preference, eligibility for loans), a great many soldiers charged with AWOL applied for and were granted an administrative discharge. At Fort Meade, the fort examined in the following research, roughly three-fourths of those charged with an absence offense received such a discharge. The only class of soldiers regularly denied administrative discharges were those with lengthy absences. As a result of the administrative discharges, the soldiers who went to trial consisted of those with relatively short absences who wished to return to duty and those with long absences, whether or not they desired to return to duty.

Chapter 10 discharges were originally administered in 1966, but it was not until the latter years of the Vietnam War that their use became commonplace (Hansen, 1976). Table 1.4 presents the yearly distribution of Chapter 10 discharges. Several persons, including military jurists and U.S. senators, have expressed concern about the use of

Table 1.4

Courts-Martials, U.S. Army, by Year

Year	Summary	Special	General	Total
1966				
Convicted	13,169	22,169	1,386	36,724
Acquitted	847	952	90	1,889
Total	14,016	23,121	1,476	38,613
1967				
Convicted	12,385	33,293	1,805	47,483
Acquitted	921	1,442	97	2,460
Total	13,306	34,735	1,902	49,943
1968				
Convicted	10,594	41,834	2,221	54,649
Acquitted	947	1,935	154	3,036
Total	11,541	43,769	2,375	57,685
1969				
Convicted	13,115	56,805	2,323	72,243
Acquitted	1,126	2,792	159	4,077
Total	14,241	59,597	2,482	76,320
1970				
Convicted	14,146	38,624	2,449	55,219
Acquitted	877	2,724	179	3,780
Total	15,023	41,348	2,628	58,999
1971				
Convicted	13,913	25,914	2,571	42,398
Acquitted	1,083	2,075	180	3,338
Total	14,996	27,989	2,751	45,736
1972				
Convicted	12,134	15,239	1,867	29,240
Acquitted	793	1,303	180	2,347
Total	12,927	16,613	2,047	31,587
1973				
Convicted	6,627	12,802	1,493	20,922
Acquitted	699	1,049	128	1,876
Total	7,326	12,909	1,621	22,798
1974				
Convicted	4,825	13,644	1,696	20,165
Acquitted	500	1,170	152	1,822
Total	5,325	14,814	1,848	21,987

administrative discharges, noting the belief that an undesirable discharge is as bad as any punitive discharge (Judges Quinn, Ferguson, Kilday and Senators Ervin and Javits in CONA, 1966; also Fairbanks, 1971). Moreover the heavy reliance on administrative discharges has led to some skepticism that the military is attempting to circumvent the legal rights of soldiers (Starr, 1973). Accordingly, the idea that such discharges be subject to judicial review is not without considerable support, though no such policy has been implemented.

The relationship between administrative discharges and punishment in the military is not an uncomplicated one. Some, including many defendants, feel that a discharge from the Army is so desirable that the characterization of the discharge does not matter greatly. To such people, being tried by court-martial and returned to duty is a more severe form of punishment than an undesirable discharge. However, to military officials, an undesirable discharge is more punitive to the soldier than a court-martial conviction and return to duty, even if the latter involved several months imprisonment. Such differing conceptions of the punitive nature of undesirable discharges likely contributed to any success of a policy aimed at reducing the court-martial load by discharging soldiers in lieu of a trial. Many of the soldiers applying for a discharge saw the discharge as less

punitive than a trial, while many of the officers regarded the discharges as more punitive than a special court-martial (but less punitive than a general court-martial).

The use of administrative discharges greatly eased the pressure on the military justice system. Had the military been as draconian as many people feared and thus brought to trial all or most of those charged with an absence offense, it would have been faced with both an unmanageable workload and torrents of protest from the public. By discharging so many problem soldiers, the military contributed to the efficiency of its own system of justice and avoided a number of potentially serious problems.

By granting so many administrative discharges, the Army did avoid many problems and attacks upon itself. Nevertheless there were continued criticisms of the quality of the justice that was being administered. To many the words "military justice" continued to be a contradiction in terms.

In conclusion, it must be said that apart from whatever effect it had on the battlefield, the Vietnam War had a profound impact on the military and its system of justice. At few times in its history had the military fallen into such low esteem. For the most part, the attacks had nothing to do with the quality of combat performed. If anything, many felt that it was performing its combat task a bit too well.

Two of the major issues which confronted the Army during this period were the handling of anti-war dissent among soldiers and the treatment of those soldiers who had gone AWOL. The challenges in these areas were made the more profound because the military's critics often invoked principles of constitutional and natural law in pressing for tolerance of dissent and leniency in the treatment of deserters. The Vietnam War intensified the problems which the military faced with respect to the issue of racial discrimination, an issue which had been raised on numerous occasions. The issue of race was one which preceded the war and would be present long after the last troops had been withdrawn from Southeast Asia. It is to this issue that I shall now turn.

The Issue of Race and Military Justice

Historically, militaries have been regarded as rather autocratic institutions, particularly when it came to enforcing discipline among its members. Deserters have frequently paid with their lives for their actions, and even when the death penalty was not exacted, the punishment imposed was often extremely harsh. In the nineteenth century deserters were frequently branded with a "D", which was placed on the left hip--in order to distinguish deserters from drunks, who had similar brands placed on the other hip (Benet, 1868; de Hart, 1846).

Since the Civil War only one soldier has been executed for desertion, that being Eddie Slovik in the Second World War. Nevertheless lengthy sentences were imposed in both that war and the later Korean conflict. During the Vietnam War, many people felt that extremely lengthy sentences were being imposed on soldiers who either did not wish to serve in or could not adjust to the military. Some even felt that the death penalty could be imposed for desertion, even though it did not apply to the Vietnam War, as the United States was not officially at war with North Vietnam.

Few changes in the military justice system took place between the nineteenth century and the end of World War II. Following each of the world wars have veterans protested against what they felt to be the heavy-handed tactics of the military justice system. The system in those times consisted almost exclusively of officers sitting in judgment over enlisted men. Officers had been regarded as career professionals while enlisted soldiers were often looked upon as little more than renegades from civilian life (Moskos, 1970). Commissions were established to investigate the complaints, and while those commissions found areas of fault with the military justice system, major reforms were neither recommended nor undertaken (see Generous, 1977).

The first major reform of the military justice system came in 1951 with the creation of the Uniform Code of Military Justice (UCMJ). The justice systems of the

separate service branches were joined under a central judiciary, a court of military appeals was created, and many reforms of the existing system of justice were undertaken. Some of those reforms resulted in practices which had yet to be enacted in the civilian criminal justice system. By 1951 soldiers were routinely warned about their right to refrain from self-incrimination and were provided with defense attorneys at no expense. It would be a decade and a half before defendants in civilian criminal cases would be guaranteed an attorney, regardless of their ability to pay, or be read their Fifth Amendment rights against self-incrimination. In addition, the UCMJ provided that enlisted soldiers could have up to one-third of their jury composed of other enlisted persons.

Many authors have defended the military justice system against its critics (Bishop, 1974; Everett, 1973; Poydasheff and Suter, 1975; Quinn, 1970; Schiesser, 1970; Volz, 1970; Walton, 1973). These authors have emphasized the reforms in the military justice system which were initiated by the military itself. Some have argued that in guaranteeing the rights of the accused the military justice system is no worse off than is the civilian system of criminal justice. Quinn (1970) and others also point out that, excluding AWOL cases, the conviction rates in the military are no higher than those in the civilian criminal justice system. Despite the reforms, suspicions about the quality of military justice have persisted. Extensive coverage of courts-

martial during the Vietnam War, the Presidio "mutiny" trials and the reports of the conditions of stockades insured that many Americans would continue to regard the military justice system with more than a small amount of skepticism (see Gardner, 1970; Sherrill, 1970; Barnes, 1972; West, 1974).

One of the more problematic areas for the military justice system has been the treatment of blacks. The military has always been an institution within the society, and there is every reason to believe that conditions in the larger society should influence those in the military (Stouffer et al., 1949). Throughout most of American history blacks and racial minorities were subject to discrimination in a variety of areas. The existence of racial tension was a common feature of American life, and the American military proved to be no exception in this regard.

In the First World War, the trial and execution of several black soldiers for violently protesting the segregated conditions that existed in the Army and in the local Texas community in which they were stationed angered the then acting Judge Advocate General, Samuel T. Ansell, who in turn attempted to initiate some substantial reforms of the military justice system (Generous, 1977).

In the Second World War, blacks were largely kept in segregated units, commanded by white officers and assigned to engineering and transportation units where they were

assigned to such jobs as truck drivers, cooks and general laborers. Stouffer et al. (1949) noted that blacks often complained on the one hand about their exclusion from combat units and had mixed feelings about military service. On the other hand, they hoped that their service in the military would result in opportunities and improvements in their civilian lives following the war.

In 1948, President Harry Truman issued an executive order banning segregation in the military. This was six years before the U.S. Supreme Court banned segregation in the public schools. Integrated units fought in the Korean War for the first time in American history. Following that war, the issue of race in the military, like the issue in the larger society, was dormant and would remain so until the 1960's.

Contrasted with the situation in the Second World War, black participation in the military per se was not an issue during the Vietnam War. On the contrary, blacks and critics of the military charged that blacks were overrepresented in the military in general and in the combat units in particular. Blacks were indeed overrepresented in the Army and the Marines, where they constituted 17.1 and 13.7 percent of the forces respectively. In the Navy and the Air Force, traditionally the more elite branches of service, blacks constituted only 7.3 and 12.6 percent of those branches (Task Force, 1972). To some extent blacks were

more likely to be exposed to combat than were whites. Their greater membership in the Army and the Marines, the branches most intimately involved in the war, would in itself suggest that blacks would have a higher proportion than whites in combat, everything else being equal. Within the Army itself, assignment to infantry and other combat jobs was based, among other things, on test scores and educational background, where the disadvantages experienced by blacks might well be translated into an increased likelihood of assignment to combat units.

Throughout the late 1960's and early 1970's feelings persisted that, despite numerous legislative enactments and policy statements, racial discrimination continued to exist and flourish in many social institutions of American society, including the military. Suspicions concerning the treatment of blacks and other racial minorities in the military were in no way lessened by the fact that the social structure of the military was dominated by officers, and many officers in the Army were from the South, where segregation had persisted more openly perhaps than in other parts of the country.

The feelings that racial discrimination existed in the military were so prevalent that in 1972 the then Secretary of Defense Melvin Laird appointed a commission to investigate the administration of justice within the military. This commission (hereafter referred to as "Task

Force") consisted of both military officials and representatives of legal, governmental and civil rights organizations. Several members of the Task Force regarded the existence of discrimination as a given and saw their task as identifying the causes of discrimination and suggesting ways in which it might be alleviated. In pursuing its objectives, members of the Task Force visited several military forts in 1972, both in the United States and abroad, where they talked to Soldiers and examined official records.

The Task Force found that disparities between the races existed in several areas of military justice activity, and blacks almost always appeared to be on the short end. Among these were the likelihood of pretrial confinement being imposed, the length of pretrial confinement and the length of confinement adjudged. In the final report the majority opinion recommended the adoption of several measures designed to insure the appearance as well as the reality of fairness in the administration of military justice.

The Task Force identified two types of racial discrimination, intentional and systemic. Intentional discrimination consisted of deliberate acts of discrimination based solely upon a person's race. Systemic discrimination, on the other hand, was not based directly upon the person's race but rather was due to a reliance upon certain factors in which one racial group was more

advantaged than another. After extensive inquiries at a number of military installations, the majority of the Task Force concluded that racial disparities did exist in a number of areas within the military in general and the military justice system in particular. The source of the disparities, particularly those involving rank and class of job, were said to be due predominantly to systemic discrimination.

The Research Questions

In this research I shall be inquiring into the quality of military justice during the last years of the Vietnam War by looking at one particular aspect of it. I shall be examining the disposition of court-martial cases where the major charge was an absence offense. In addition to being interested in the general disposition of those cases, I shall focus on the question of whether or not military officials engaged in racial discrimination in the administration of military justice. The questions which I shall ask are:

Were black soldiers charged with an absence offense more likely to be confined than were white soldiers?

Was there any racial discrimination in referring cases to trial, that is, in the assignment of cases to particular courts?

Were blacks more likely than whites to be convicted of an absence offense?

How did the sentences adjudged black defendants compare with those adjudged white defendants?

Did commanders discriminate against blacks in their post-trial reviews of cases?

The analyses will consist of the creation of multivariate models in which the dependent variables are the decisions of military officials and the independent variables the factors noted above. In addition to the effect of race on the outcomes of cases, I shall be interested in the quantity of punishment imposed and the relative strength of the various factors. The above questions may be expressed in the following null hypotheses:

H1: There was no relationship between the race of the defendant and the likelihood of his being placed in pretrial confinement upon being charged with an absence offense.

H2: There was no relationship between the race of the defendant and the level of court to which his case was referred.

H3: There was no relationship between the race of the defendant and the verdict received in a court-martial.

H4: There was no relationship between the race of the defendant and the sentence adjudged in the event of a guilty verdict.

H5: There was no relationship between the race of the defendant and the likelihood of a clemency action being taken in his case.

In statistical terms, I shall be seeking to ascertain

whether the coefficient for the effect of race is zero, or greater than zero, the latter of which would constitute evidence of racial discrimination. At this time I shall describe the major features of the military justice system of the United States. The discussion is necessarily brief. Should the reader desire a more thorough discussion of military law, he should refer to a text on the subject (for example, Byrne, 1976).

The American Military Justice System

The military justice system of the U.S. is a subsystem of the military whose function it is to administer all matters involving military law and many legal matters involving military personnel. In addition to handling the criminal violations of military law, the military justice system administers a variety of civil matters involving military personnel and their families. It is strictly the criminal aspect which is within the scope of the present research.

Military justice in the United States is based upon the Uniform Code of Military Justice (UCMJ). The UCMJ was created by the Congress as part of the Military Justice Act of 1951. It was part of a major reorganization of the military justice system of the U.S. The UCMJ contains articles pertaining to offenses in which there is an equivalent in the civilian sector as well as offenses which are strictly military in nature. In addition to delineating the various tenets of military law, the UCMJ specifies the

organizational structure of the military justice system. The rules of procedure are determined by the Manual for Courts-Martial (MCM), which is an Executive Order of the President.*

There are three distinct groups who perform military justice activity: the command, the office of the Staff Judge Advocate and the judiciary. The tasks of prosecuting and defending soldiers are performed by personnel in the Office of the Staff Judge Advocate, sometimes referred to as the JAG (Judge Advocate's General) office. This office is headed by the Staff Judge Advocate, the legal advisor to the post commander and other convening authorities. Under him, within the military justice section of the JAG office, are both the prosecution and defense counsel. In addition to the attorneys are various clerks, court reporters and administrative personnel who assist in the processing of cases.

The commander occupies a unique role in the military justice system in that there is no equivalent figure in the civilian legal system. When dealing with matters pertaining to military justice, commanders are the convening authorities. There are two levels of convening authority, special and general court-martial convening authority. A special court-martial convening authority is usually the

* At the time of the research, the 1969 edition was in effect.

commander of a batallion or small fort; the general court-martial convening authority is usually the commander of a division or of a large fort. He is also the commanding officer of the military personnel in the JAG office, as well as of the defendant and the members of the jury in a court-martial. As convening authority, the commander decides to which level of court, if any, a case will be referred. Following the trial convening authorities conduct a review of the case, and no sentence can be carried out without the approval of the convening authority.

The military judiciary is a relatively recent creation. Prior to 1968 all trials were before juries, and the most important figure in the courtroom was the President of the Court, the highest ranking member of the jury who, more likely than not, had no legal training. The role of judge was filled by the law officer, who advised the President of the Court on points of law. With the passage of the Military Justice Act of 1968 the position of military judge was created. Unlike the members of the JAG office, military judges are independent of the command. Soldiers in noncapital cases may elect to be tried before a military judge alone, rather than before a jury. In the absence of offenses, the majority of defendants exercised this option.

Punishment in the military can be either judicial or nonjudicial. Judicial punishments are the courts-martial, of which there are four levels: summary, special, BCD

special and general.* As will be discussed in Chapter III, the punishments of discharge and confinement are the only ones examined in this research. Considering only the punishments of confinement and the punitive discharge, the following are authorized at the three courts:

Summary courts	Confinement for one month.
Special courts	Confinement for six months.
BCD special	Bad conduct discharge and confinement for six months.
General courts	Dishonorable discharge and confinement varying by offense.

The main form of nonjudicial punishment in the military is the Article 15.**If a soldier is accused of a relatively minor offense, such as a short AWOL, his commander may offer him an Article 15. If the soldier decides to accept it, he will be punished, but in all likelihood there will be no court-martial and no sentence to confinement. The punishment imposed usually involves some combination of a reduction in rank, forfeiture of pay, extra duty and restriction to the company area. The amount of punishment which may be imposed varies, depending upon the level of the commanding officer who offers it. The soldier need not

* Strictly speaking, BCD special courts are a proper subclass of special courts. However, a BCD special and a regular special are convened by different convening authorities, and they can impose different punishments. Since punishment is the focus of this research, the two will be treated as distinct.*

**From Article 15 of the UCMJ.

accept the Article 15; however, should he refuse, he will almost certainly be tried by court-martial. While an Article 15 is not an admission of guilt, the record of its issuance may be entered at a future court-martial as evidence of prior misconduct.

The issuance of Article 15's has been a source of controversy as it affords the commanders considerable discretion in whether or not to offer the soldier an Article 15 and what punishments to impose should the soldier accept it. The Task Force concluded that discrimination existed in the imposition of nonjudicial punishment. Whether that was the case at Fort Meade is, however, beyond the scope of the present research.

Nature of the Research

The research is based on the military courts-martial held at Fort Meade, Maryland, during the period from late 1971 to early 1974. The data in the analysis were taken from information contained in the records of trial of the courts-martial held in that period. I conceived of the research and collected the data myself when I was working in the JAG office as a legal clerk and paralegal assistant to the defense counsel.

The office to which I was assigned was responsible for the administration of military justice at Fort Meade and at a number of smaller installations within its jurisdiction.

Following each trial, a record of trial was prepared by a court reporter. This record, along with the recommendations of the Staff Judge Advocate, was forwarded to the convening authority with jurisdiction over the case. After the convening authority had taken action on the case, the record was returned to the JAG office. Several copies of the record were made; one went to the defendant, one was forwarded to the Department of the Army for possible appellate review, and one was kept at the JAG office for a year before being shipped for storage.

It was while the records were being kept at the JAG office that I was able to examine them and to gather the data. With the exception of some summary court-martial records, I was able to examine all of the records of trial held in that period. In all, I gathered data from more than one thousand cases, of which 849 had an absence offense as its major charge. It is these latter cases which comprise the sample upon which the research is based.

The manner in which I came to collect the data insures that the research is somewhat unique. During the early 1970's, I spent two years in Canada as a deserter because of my opposition to the war in Vietnam. During 1972 I decided to end my exile and return to the United States. After some discussion with people in the anti-war movement, I decided to turn myself in at Fort Meade, Maryland. There I was tried for and convicted of AWOL. However the post

commander, upon the recommendation of the officials in the JAG office, suspended my sentence, and I was assigned to work in the JAG office. During this time I worked as a paralegal assistant to the defense counsel in addition to maintaining the office's statistical files. Part of my job was to interview those facing disciplinary actions, both nonjudicial punishment and court-martial. I spent nearly two years working in the office that had been responsible for trying me and others like me. Needless to say, this is an opportunity which few defendants ever have.

After just over a year in the JAG office, I decided to collect the data upon which this research is based. In this role I was doing something which few sociologists have done--engage in sociological research in which the researcher is one of the subjects. I also had the opportunity to observe the practices and attitudes of those responsible for the administration of military justice in a manner that few other researchers would have. I was certainly a participant observer in the military justice system, but my role as a sociologist was one of which the officials were unaware. Very few studies have been conducted with this degree of anonymity. One of the few is the study of jury deliberations which took place in the United States during the 1950's. In this research the jury rooms were "bugged", and researchers were able to investigate the deliberations. The research portended to be extremely fruitful until protests by civil liberties groups

put a halt to any electronic surveillance of jury rooms (Schur, 1968). (See Podgorecki, 1974: 125-128 for a discussion of the monographic method in sociological research on the law. In several respects the present research could be considered to employ this methodology. In his study of lay judges in Poland, the actions of judges were observed without their knowledge, and those actions were compared with statements about their practices. This was similar to part of my own methods.)

The Nature of the Research Setting

Fort Meade is a fairly large military base located about halfway between Washington, D.C. and Baltimore, Maryland. About twelve thousand soldiers were stationed in armor, transportation, medical, engineering, military police and administrative units. Fort Meade also contained a Personnel Control Facility. The PCF at Fort Meade served the Middle Atlantic region of the United States, from Virginia to New Jersey and Ohio to the Atlantic. Any soldier who surrendered or was apprehended for AWOL in the Army within this area was brought to Fort Meade to have his case processed. The majority of those charged with AWOL asked for and were granted administrative discharges, thus making those who went to trial a minority. Of this latter group, there are two major classes--those charged with relatively short absences (generally less than a year) who desired to return to duty and were being tried at summary and special

courts-martial and those with lengthy absences who were being tried by BCD special and general courts-martial. The trials examined in the research do come from one fort, and though the practices to be examined are regarded as only an example of the administration of military justice, the fact that the trials were held at the same fort inevitably raises the issue of the representativeness of the data.

When one examines a sample rather than an entire population, there exists a possibility, however remote, that the cases examined are not representative of the population and thus that the sample is biased. The unit of analysis in the present research is the individual trial, while the population is restricted to those trials held at Fort Meade. Since the overwhelming majority of cases processed at Fort Meade during this period were examined, there is no problem with the representativeness of my data with respect to the particular population. However, as the research is intended to illuminate the administration of military justice in the entire Army during the particular period of time, some comments are needed on the ways in which the practices at Fort Meade are representative of the administration of military justice in general. In restricting the research to the analysis of cases which went to trial, I am unable to examine whether or not discrimination existed within those cases which did not result in a court-martial. As a majority of those charged with an absence offense received discharges, the possibility exists that discrimination

occurred within decisions pertaining to administrative discharges.

As I have noted, the research is restricted to the absence offenses; therefore there will be no treatment of those cases which deal with normal breaches of discipline or criminal conduct, such as robbery, assault and the confrontation offenses. By focusing on AWOL cases many of the problems of the representativeness are eliminated. A large proportion of AWOL and desertion cases were tried in PCF units throughout the country; therefore the major issue concerns the extent to which the practices at Fort Meade are representative of those of the military justice system as a whole in the handling of AWOL cases. Here some personal observations are in order.

Fort Meade, as I noted above, is located very near Washington, D.C.; the Pentagon, Congress, the White House and the federal appellate courts are all located within the physical jurisdiction of Fort Meade. When the soldier, noted earlier, appeared before Congress to testify in favor of an amnesty and to surrender from his absence, he was taken to Fort Meade where his case was processed. The officials at Fort Meade could be certain that their conduct did not escape the attention of higher officials, both military and civilian.

During my stay at Fort Meade, several cases were overturned on appeal due to the errors of various legal

officials, but these constituted a small minority of the cases. On balance, one would have to conclude that the practices at Fort Meade were well within the level of expectations regarding the quality of justice and, if anything, Fort Meade could be considered to provide a higher quality of justice than that found at many forts. It has been suggested that the larger forts dispensed a higher quality of justice than did the smaller, more isolated forts (Task Force, 1972; Everett, 1972). Should this be the case, the practices at Fort Meade might well be different from those at some other forts. Since so many AWOL cases are processed at the larger forts, this should not present any problems for the present analysis.

Finally, as I am looking at the issue of racial discrimination, the existence of discriminatory practices at a fort such as Fort Meade would lead one to conclude that discrimination was likely to exist throughout the military. It is true, however, that the lack of discrimination at Fort Meade will not enable one to conclude that discrimination did not exist throughout the military, but that issue will have to be resolved by a more extensive analysis and thus is beyond the scope of the present research. At the very least, the present research may be considered to be a starting place for such an endeavor.

Significance of the Issue

The issue of racial discrimination is an extremely important one for any social institution. There may be few areas of agreement among politicians across the American political spectrum, but there is general agreement that racial discrimination is wrong and cannot be tolerated. Since the civil rights struggles of the 1960's, few politicians or government officials would dare express any view other than one which deplores the evils of discrimination. If the practices of any governmental institution demonstrate a pattern of discrimination to any significant extent, one may be sure that those practices contravene the explicitly stated policies of that institution.

The military justice system represents the interface of two of society's more important social institutions, the military and the criminal justice system. Each of these institutions has much to do with an individual's obligation toward the society. —

The legal system establishes a set of negative prescriptions while the military imposes a positive obligation on a certain segment of the society. Just as it is incumbent upon a citizen not to violate the criminal law and to serve in the armed forces if called, it is widely felt that officials in the legal system and the military have an important obligation to administer justice in a manner which is consistent with the official policies and

laws of the United States.

The unique nature of the military justice system as a legal institution makes it especially important that it be administered fairly, that is, without any significant racial discrimination. The military justice system administers a unique set of laws. Some of its laws, including those pertinent to this research, forbid actions which are criminal only if committed by a soldier. There is no civilian equivalent of AWOL or desertion. If a person does not like his job or his family life, he can simply leave without facing any criminal charges. However, if a soldier does not like his military job or want to be in the military, he can only hope that his superiors will grant him some relief. He cannot take matters into his own hands by leaving. Should he do so, he could spend many years in a military or federal prison.

The military justice system also has a unique set of procedures for administering justice. There is no provision for bail; the decision concerning pretrial restraint rests largely with the soldier's commanding officer. The soldier's commanding officer will decide whether or not to approve any request for a discharge. Should the case go to trial, the commander will decide to which level of court to refer the case, a decision which will determine the maximum punishment in the event of a conviction. At the time of the referral, the commander can often decide whether

or not to enter into a pretrial agreement with the defendant and, should he do so, he will decide what the terms of the agreement are to be. The commander also selects the members of the jury pool, all of whom will exceed the defendant in rank. Unlike the case in a civilian criminal court trial, a unanimous verdict is not required for conviction.

Following the adjudging of the sentence, the case is sent to the commanding officer who convened the court-martial for his review. He alone has the discretion to approve, suspend, reduce or disapprove the sentence adjudged. Though he rarely has any formal legal training, the role of the convening authority has been described as quasi-judicial.

The military justice system lacks many features which are found in the civilian criminal justice system, features which are intended to protect the defendant from arbitrary prosecution. The lack of such guarantees was a major factor in the ruling in O'Callahan v. Parker,* a decision which denied the military jurisdiction over nonservice connected offenses. In his ruling Justice Hugo Black referred to the summary and arbitrary character of the military justice system. Defenders of the military justice system do not deny that military justice differs from civilian criminal justice in several important respects. Rather they justify the differences by referring to the unique character and

* 395 U.S. 258 (1969).

social function of the military. (See the opinion of Justice William Rehnquist in Parker v. Levy.)*

The more summary character of the military justice system increases the potential for unfairness within the military's system of justice. For example, a commander who harbors racial prejudice could easily discriminate against black defendants in the referral of cases to trial, in reaching pretrial agreements and in his review of the case. Therefore the concept of fairness is likely to be a more problematic issue in the military than in the civilian system of criminal justice, and it is especially important that discrimination in the administration of justice not occur in the military justice system. One of the major objectives of the present research is to ascertain whether racial discrimination did occur during the administration of military justice during the last years of the war in Vietnam.

Conclusions

One of, if not the, major questions which one asks of a legal system is "Is it just?". During the Vietnam War, many Americans felt that the military justice system was not just. While the military justice system has long been considered by some to be a somewhat inferior legal system, during the Vietnam War its reputation sank to an alltime

* 417 U.S. 733 (1974).

low. It was seen by many Americans as an instrument used by the command to suppress anti-war sentiment among American soldiers. In addition, there have been allegations that in the administration of justice the military justice system engaged in racial discrimination and favored higher ranking over lower ranking soldiers. In other words, critics of the military justice system have charged that the practices of that system significantly deviated from the rational-legal model of justice.

If the military justice system did discriminate on the basis of race or social class, one would have to conclude that it was not a fair system of justice. If a legal system is not fair, then a fortiori it is unjust. Whether or not a legal system is just is a normative concept and thus beyond the scope of an empirical analysis. Fairness, however, which has been held to be a necessary condition of justice (Rawls, 1971; Hart, 1958), can be examined empirically (Perelman, 1963). While one may argue that, if the military justice system, or any legal system, discriminates on the basis of race, then the standards of fairness will not have been met, it is not the case, however, that a legal system should be considered to be just merely because it did not engage in racial discrimination. One can only conclude that one important source of injustice has been rejected.

The research lacks the scope of some other studies of the military justice system in that the data come from a single

fort and the offenses examined are restricted to the class of absence offenses. However, it is hoped that these shortcomings will be compensated for by a greater depth and the utilization of a more sophisticated methodology than found in some earlier studies. The unique character of the military justice system requires some methodological adjustments in the analysis of that system of justice as opposed to those required in the analysis of legal systems in the civilian sector. Thus it is hoped and anticipated that this research will make a contribution to the methodology of the study of military justice.

In the next chapter I shall discuss the analysis of military justice as a sociological issue. Included will be a discussion of the theoretical perspectives which have been employed to examine the administration of justice and a review of the literature on sentencing in criminal courts.

CHAPTER II

MILITARY JUSTICE AS A SOCIOLOGICAL ISSUE

Introduction

In this chapter I shall discuss the theoretical perspectives which have been invoked by sociologists studying the criminal justice system, these being the consensus, the conflict and the organizational perspectives. I shall also review prior research on the subject of racial discrimination in sentencing.

The issue of racial discrimination in the criminal justice system is part of a larger issue which focuses on the factors which account for variations in the outcomes of cases. There are three sets of factors which can affect the outcome of a criminal trial, aside from the strictly legal issue of guilt or innocence. They are: characteristics of the defendant, of the offense and of the setting in which the processes occur. The characteristics of the offense, including the defendant's prior record, are considered to be legally relevant factors. The characteristics of the defendant, such as his race, age, sex, education or social class, are regarded as extra-legal factors. The characteristics of the setting, including the outcomes of decisions made at earlier stages (for example, whether or not the defendant was in pretrial confinement), are also extra-legal variables, but they are not characteristics of the particular defendant.

The above sets of variables have been associated with differing theoretical perspectives in sociology. For the purposes herein, I shall treat those who stress the importance of legally relevant characteristics of the offense as representing the consensus perspective and those who stress the importance of characteristics of the offender as representing the conflict perspective. Finally, though the term "organizational perspective" is not unambiguous, I shall regard those who emphasize the significance of organizational factors and the prior decisions as belonging to the organizational perspective.*

The ambiguity noted above refers to the fact that the organizational perspective is not independent of the conflict-consensus dimension; it could be included as part of either of them. As I use the term, I am simply denoting a group of social scientists who hold that characteristics of the setting significantly influence the outcomes of criminal trials. At this time I shall turn to a discussion of the three perspectives.

Perspectives on the Administration of Justice

The theoretical perspectives which have been employed in efforts to explain social phenomena in general have also been used to explain the processes which take place in the

* This is the term which some have used to refer to themselves (Hagan, Hewitt and Alwin, 1979).

legal system (Vaco, 1981). The various perspectives are based on competing, if not conflicting, conceptions of the world and thus often put forth radically differing explanations for the same event or state of affairs. For many years major debates have taken place in sociology between representatives of what may be referred to as the conflict and the consensus paradigms. In more recent years the organizational perspective has entered the fray.

The debates between the conflict and consensus theorists have centered around one of the perennial problems of social theory--the problem of order. The problem for social theorists and philosophers since the time of Hobbes has been to explain how it is that social order is possible (Parsons, 1939). Closely linked with the problem of order is the issue of social control, that is, the manner in which order is preserved. The law, understandably, is seen as playing a crucial role in the maintenance of the social order (Ross, 1922; Pound, 1942). Differing conceptions of how order is maintained and the functions of the law and legal systems are manifested in the competing theoretical perspectives.

The consensus perspective is generally thought to derive from functionalist theory, which was for many years the dominant paradigm in sociology (Chiricos and Waldo, 1975).*

* It is important to distinguish between functionalism as a mode of analysis and functionalism as a theoretical perspective. The former is as old as sociology itself, having been employed by Karl Marx, who could hardly be said

As a theoretical perspective, functionalism has stressed the contribution of social institutions to the maintenance of order in society. An emphasis has been placed on the existence and importance of shared values among the various elements in the society.

Talcott Parsons (1951, 1962) positioned the legal system in a theory of social structure. Law, he said, performed an integrative function in society in that it articulated and enforced certain social norms, provided a mechanism for conflict resolution and helped to promote communication among the various elements of the society. Harry Bredemeier (1962) expounded further along these lines, arguing that the law is a mechanism which promotes order and stability. The law is seen as bringing about cooperation and compromise among otherwise conflicting groups and thus reflects a set of shared values held by a broad segment of the population.

One of the fundamental assumptions of the consensus theorists is that the law is a neutral presence in a pluralistic society (Vaco, 1981). Here the conflict theorists take issue with their somewhat more optimistic counterparts. The conflict theorists can trace their heritage to the sociology of Marx and, to a lesser degree,

to be a functionalist in the latter sense. Emile Durkheim asserted that even deviance was in some respects functional because it emphasized the boundaries of socially acceptable conduct and caused members of the society to reaffirm their shared values (Durkheim, 1964).

-Simmel. Not surprisingly, adherents of the conflict perspective emphasize the presence and importance of conflict in the maintenance of order. Domination, not cooperation, characterizes the social order (Quinney, 1970). Furthermore, the law is regarded as anything but a neutral force; rather it is a "weapon in the hands of the dominant class" (Chambliss and Seidman, 1971). The exercise of legal authority is viewed as tending to serve the interests of the ruling classes, whether those interests be legal, political or economic. In his study of vagrancy laws in the fourteenth century, Chambliss (1964) argued that the purpose of such laws was to force laborers to accept employment, even at low wages, and thus insure that landowners had an adequate supply of manpower at a price which would guarantee them a healthy profit.

The above two perspectives have radically differing conceptions of the world in general and of the nature and function of the law and legal systems in particular. One of the areas in which members of the two perspectives have taken issue with each other is the imposition of punishment. Unlike some of the disagreements between consensus and conflict theorists whereby the latter argue that the real motive behind a legal action is at variance with the stated motive, the dispute here is not so much over basic values as over whether or not the legal institutions live up to their own stated values (Kleck, 1981). The consensus theorists hold that in modern societies the legal system is organized

in accordance with and an adherence to the rational-legal model, as articulated by Max Weber (1954). According to such a model, the rendering of legal decisions in general and the imposition of punishment in particular should be based on legally relevant factors. Conflict theorists, on the other hand, argue that legal sanctions reflect the relations between the classes. Donald Black (1979), for instance, hypothesizes that the severity of the law is inversely related to stratification. Thus Black would hypothesize that a lower class person would be treated more harshly than would a middle or upper class person were they charged with similar offenses, and an offense against an upper class person would be regarded as more serious than one against a lower class individual. Likewise in the distribution of criminal sentences, one should expect that extra-legal factors, such as the race and social class of the defendant, affect the amount of punishment imposed.

The disagreement of the conflict theorists with the consensus theorists regarding the imposition of punishment is not over the intended importance of the legalistic factors; both groups agree that the legalistic factors should be of paramount importance in the distribution of sentences. Rather, the conflict theorists charge that the actual practices deviate from their stated ideals. Both consensus and conflict theorists hold that the race of the defendant ought to have no bearing on the outcome of his case, but the conflict theorists are more likely to argue

that it in fact does, that blacks and members of racial minorities are subject to systemic discrimination at several stages within the legal system. They are more likely to be arrested, more likely to be formally charged, more likely to be kept in pretrial confinement, more likely to be convicted, more likely to receive a severe sentence and less likely to have that sentence suspended than are whites.

For many years, research has been undertaken to investigate the relative importance of the legalistic versus the extra-legal factors in the imposition of punishment. In recent years, a third perspective has emerged--the organizational perspective. Members of the organizational perspective agree with the conflict theorists that extra-legal factors are significant determinants of the sentences adjudged in criminal cases; however, they argue that the factors posited by the conflict and consensus perspectives fail to account for a great deal of the variation in the sentences imposed (Hagan, Hewitt and Alvin, 1979). Members of the organizational perspective argue that structural characteristics of the processes which take place, and features of the organizations within which they occur, are actually better predictors of the outcomes of cases than either the legalistic or the extra-legal characteristics of the defendants.

While one can conceive of the legalistic and extra-legal factors as fitting along a single dimension in which the

different positions can be expressed as contradictories, the organizational variables do not bear such a clear relationship with the other two sets of variables. The organizational factors are generally considered to be in the broad class of extra-legal factors in that they are not factors which are generally thought to be legally relevant to the imposition of punishment. Because the organizational factors do not represent characteristics of the individual defendant, they may be treated as a separate category.

The assignment of variables to the conflict and consensus perspectives is rather clear and understandable. The situation is not so clear with respect to the assignment of variables to the organizational perspective. The conflict perspective contains variables which represent the characteristics of the defendant prior to the offense of which he is charged. The characteristics consist both of those which exist prior to his entry into the military (race, education, age) and characteristics of his military service (rank, length of service). The variables assigned to the consensus perspective consist of the characteristics of the offense (length of the absence, number of charges, manner in which the absence was terminated) and the prior record of the defendant, generally considered to be a legally relevant factor. Given the fixed nature of the assignment of variables to the above two perspectives, the organizational perspective may appear at first to be a residual category. However, to conclude as such would be

overly simplistic. The variables assigned to the organizational perspective represent in general extra-legal characteristics other than the those of the defendant. Included within the organizational perspective are characteristics of the setting, such as the unit, year and judge who presided over the case. Also included are the results of prior decisions, such as whether the defendant was placed in pretrial confinement and the level of court to which the case was referred. Finally are the variables pertaining to decisions made by the defendant at his trial--whether or not he chose to be tried by a jury and whether or not he pled guilty to all charges.

The organizational perspective as described in this work contains strains from differing theoretical perspectives. For instance, the inclusion of the variable indicating whether or not pretrial confinement was imposed could be of interest to labelling theory. Likewise, the plea and forum could be incorporated into propositions of exchange theory. The general thrust of the factors associated with the organizational perspective is that they represent factors which, according to the rational-legal model of criminal justice, should not have significant effects on the sentences imposed, particularly after the effects of the legally relevant variables are controlled. This is not to deny that one could produce arguments why some of the variables associated with the organizational perspective should properly influence the outcomes of cases. It is

unlikely, however, that one would forcefully argue that any of these factors should be a major determinant of the punishment imposed.

It should be noted that the focus of members of the organizational perspective was also important to the legal realists, a major perspective in American jurisprudence during the first half of the twentieth century. As a movement in jurisprudence, legal realism began in the early twentieth century, when legal scholars as well as philosophers and social scientists were reacting against metaphysics and developing empirical methods for the analysis of social phenomena. It was as behaviorism was being developed in sociology, psychology and pragmatism in philosophy that legal realism was established as a school of jurisprudence. A major tenet of legal realism was that the law was a social phenomenon and, as such, was subject to analysis by the same methods as were the social sciences.

In their writings, the legal realists reacted to what they regarded as the metaphysical underpinnings of natural law theory and what was referred to as a mechanistic jurisprudence. The realists strongly objected to any conception of the law as being "out there", either as a Platonic entity or as legislative pronouncements which could be explicitly articulated. The realists objected to the conception of legal reasoning which held that legal decisions were reached by a process of syllogistic reasoning

in which the "rule of law" is the major premise, the facts the minor premise and the legal decision the conclusion. The role of judges in this scheme was as interpreters rather than as makers of the law. Legal systems could be evaluated as valid or invalid, depending upon their compliance with the rules of logic and the "rule of law" as it actually is.

Early realists contended that the judicial role was much greater than previously thought. John Chipman Gray (1909) wrote that whoever had the power to interpret the law was, in the final analysis, the true law giver. Jerome Frank was a major proponent of the idea that much of the law is made by judges and not just interpreted by them (Frank, 1935). Rather than as normative pronouncements, the law came to be regarded as particular observable phenomena--the decisions in actual cases. Gray distinguished between the law, by which he meant judicial decisions, and the sources of the law, by which he meant statutes, prior court opinions and even principles of moral reasoning or natural law.

For Oliver Wendall Holmes, Jr. (1897) the law consisted of predictions of what the courts would rule in actual cases. A decision might appear to contradict all legal precedent, yet for the parties in the case, until it gets set aside by a higher body, that decision is the law. The development in the law, Holmes said, was due more to experience than to logic. Roscoe Pound emphasized the role of social interests in the rendering of legal decisions. To

understand the nature of the law, he said, it is necessary to understand the various social interests represented.

Thus the pragmatic and empirical traditions with which the legal realists are identified have resulted in a greater focus on the role of the trial court judge as the central figure in the legal process. One of the more thorough investigations of judicial behavior has been that of John Hogarth (1971), whose analyses included examinations of the backgrounds, attitudes and roles of magistrates as well as a consideration of the roles which other officials play in the courtroom and the structural characteristics of the organizations in which the processes take place.

In summary, the three perspectives posit that differing sets of factors will best account for variations in the sentences imposed in criminal cases. The consensus theorists stress the importance of legalistic variables, the conflict theorists the importance of extra-legal characteristics of the defendant and the organizational theorists the primacy of extra-legal factors other than those of the defendant. The three perspectives, it should be noted, are not mutually exclusive. Several factors may be significantly linked to the sentences imposed, and it is quite conceivable, if not likely, that factors from competing paradigms will be significant predictors of the sentences adjudged. Nevertheless, the examination of the criminal justice system with reference to the above

paradigms should be a useful undertaking. For such an examination, the following general model of sentencing may be used to express the relationships among the three sets of factors and the outcomes.

The fact that the arrows proceed from left to right indicates that the model is recursive. In other words, while the characteristics of the defendant may influence the legalistic variables, the converse cannot be the case. For example, race may be associated with and in fact influence the severity of the offense, but the severity of one's alleged criminal conduct cannot influence his race. In such a model the characteristics of the defendant are considered to be exogenous to the model in that no effort is made to account for the presence of these variables or for variations in their distribution. The legalistic and organizational factors are intervening variables, and the outcomes are endogenous in the model.

In examining the practices of the military justice system, or any legal system, with the above model, one seeks to ascertain the effects of the variables in the first

category to see if they are significantly associated with the dependent variable. Then one would attempt to determine whether those variables continue to have significant effects on the outcomes of cases when the effects of the intervening variables have been controlled. In this manner one can ascertain not only the relative weighting of the individual variables but also the relationships among the several independent variables as they act to affect the dependent variable. In the present research the race of the defendant is given primary attention, not only because it is clearly exogenous to the model, but also because of the controversy which has surrounded the issue of race in American society in general and in the legal system in particular.

Review of Prior Research on Discrimination in Sentencing

In this section I shall review the prior research concerning the subject of racial discrimination in sentencing in the criminal justice system. I shall begin by discussing a number of methodological issues and then proceed to the substantive ones.

Despite the level of interest in the issue of discrimination in sentencing and the number of studies performed on the subject, there continues to be a considerable level of controversy as to whether or not there is racial discrimination in the treatment of criminal defendants. Part of the reason for the lack of consensus among the research is due to variations in the methodologies

of the researchers. It is for this reason that some attention to methodological issues is warranted.

One of the likely reasons why disparities between studies might exist lies in the various locations of the research setting. It is well known that the American South was a haven for racism. As such, it should not be surprising that a study of sentencing practices in that region might produce results which are at variance with those taken from another region. Studies by Mangum (1940), Johnson (1949), Garfinkel (1949), Johnson (1957), Martin (1935) and the Southern Regional Council (1969), which were based on the practices in various Southern states, concluded that racial discrimination existed, while other studies, based on the analysis of jurisdictions outside the South (Bensing and Schroeder, 1960; Bedau, 1964, 1965; Judson et al., 1969; Green, 1961) reached contrary conclusions. In a study by Bowers (1974), in which the region was controlled, it was found that discrimination existed in the South but not in other regions.

In addition to the region, the time period examined can be a source of variation. The most obvious patterns of racial discrimination took place prior to the 1960's, when the civil rights movement helped bring about legislation designed to end racial discrimination in a variety of areas of public life. Consequently, it is not unlikely that studies of more recent practices might well reach contrary

conclusions to those which have examined the administration of justice prior to the onset of the civil rights movement. Indeed, several of the studies which reported the existence of racial discrimination were early ones (Sellin, 1928, 1935; Martin, 1935; Mangum, 1940; Johnson, 1941; Lemert and Rosberg, 1948).

The type of offense charged against the defendant might well be a source of variation between studies. Judges and juries often reflect community feelings, and it is quite possible that judges and juries respond differently to offenses committed by persons of different races. Crimes of violence are often intra-racial, while property crimes are more likely to be committed against whites. Therefore blacks accused of crimes of violence are likely to have committed those crimes against other blacks, while blacks accused of robbery are more likely to have committed their crimes against whites. If the race of the victim is a factor taken into consideration at the time of the sentencing, discrimination is more likely with respect to property offenses than with crimes of violence.

It has also been hypothesized that discrimination is more probable in capital cases, where the nature of the offense might well arouse a more intense community feeling. In fact, a reanalysis of sentencing research by John Hagan (1974) reported that a majority of the studies involving capital offenses concluded that discrimination existed. In

the case of rape offenses, the likelihood of racism in sentencing appears to be greater. In four of the five studies dealing with rape which were examined by Kleck (1981) discrimination was said to exist. Here it should be noted that the treatment of rape as a capital offense has been largely restricted to the South; therefore the geographic factor may confound this issue.

One of the issues to emerge in more recent years has been the issue of the extent to which statistical controls are employed. Without the employment of controls, one can only attempt to ascertain whether there are differences in the sentences imposed on defendants of different races. One cannot, however, determine whether any differences are due to racial discrimination or to differences between the races in their distribution on certain other factors, usually the nature of the offense and the prior record of the defendant. The use of controls is tied to the issue of indirect versus direct discrimination. If there are significant disparities between the sentences imposed on white and black defendants, those disparities could be due to the race of the defendant itself or to other factors which co-vary with race. To conclude that racial discrimination is direct, it is necessary to show that disparities in sentencing are the result of the defendant's race itself. Indirect racial discrimination exists when disparities exist because of reliance upon factors which were correlated with race. If the factors which accounted for disparities were legally

relevant, such as the severity of the offense or the prior record of the defendant, one would likely reject any hypothesis of discrimination. However, if education or social status intervened between race and the sentence, one would probably conclude that the legal system was not free from discrimination. In his reanalysis of sentencing studies, Hagan (1974) considered the degree to which studies incorporate controls to be an important source of variation. It should be noted that even controlling for legally relevant variables may not remove the controversy. If the acquisition of a prior record was the result of discrimination, then it is a "contaminated variable" (Horan et al., 1979; Farrell and Swigert, 1978).

It is also important to consider from what stage of the proceedings the sample being analyzed is taken. As cases proceed through the criminal justice system--from arrest through incarceration, a filtering process, so to speak, takes place. Some cases are dropped before reaching court; some are dismissed during preliminary hearings; still others are acquitted, and some are convicted but not sent to prison. At each succeeding stage, the level of variation decreases. Therefore a study of the sentences imposed on prisoners is likely to reveal less variation than one performed on those arrested by the police. Consequently, everything else being equal, one is less likely to detect discrimination at later stages of a legal system than at earlier ones.

Related to this is the "gatehouse versus mansion" view of the criminal justice system (Packer, 1968). According to those who make this distinction, discrimination is more likely to be found in the preliminary stages (for example, arrest and the decision to try) than in the "mansion" phase, that is, the courtroom. The fact that criminal trials are public events and thus open to greater scrutiny renders them less susceptible to discriminatory practices than those stages which are out of the public view.

In the military justice system, such a phenomenon could occur in the handling of administrative discharges. A great many defendants are discharged prior to trial, and some are brought before discharge boards following their court-martial. These proceedings were not covered in the present research and thus could represent a source of discrimination over and beyond any found in the analysis of trial practices.

At this time I shall discuss the substantive research on the issue of racial discrimination in criminal sentencing. There are three patterns in sentencing which are of interest: (1) where the effect of race has a direct effect on the outcome, (2) in which the legally relevant factors are of primary importance and (3) in which characteristics of the organization and the results of prior decisions have a significant impact on the sentence. Though the three are not mutually exclusive, each set of patterns will be

associated with a particular theoretical orientation. The first will be associated with the conflict perspective, the second with the consensus perspective and the third with the organizational perspective.

There has been a significant body of opinion that racial discrimination has existed in various aspects of the legal system, including the sentencing of defendants in criminal trials. Much of the early research on sentencing confirmed the views of those who regarded the American criminal justice system as discriminatory.

Thorsten Sellin (1928) examined the criminal justice system of Detroit, Michigan, for the year 1926. He reported that blacks were more likely to be arrested than whites for several criminal offenses--burglary, robbery, larceny, assault and murder. Blacks, Sellin said, were more likely to be convicted for property offenses than were whites, but less likely to be convicted of violent crimes, a fact which he attributed to their higher arrest rates. Nearly 31% of blacks convicted of felonies and 8.5% of those convicted of misdemeanors were sent to prison, compared to 15.5% and 5% of whites. Similarities were reported for Alabama and North Carolina. In a second study seven years later, based on a national sample, Sellin (1935) reported that blacks received longer sentences than whites in almost all offense categories in states with indeterminate sentences. In states with determinate sentences, discrimination was not so

pronounced.

Compared to more recent studies, Sellin's research appears to be somewhat methodologically unsophisticated. He employed no statistical controls other than for the type of offense, nor did he make use of any tests of significance or measures of association. Thus it is impossible to determine whether the disparities were due to racial discrimination or to differing patterns of criminality.

Roscoe Martin (1935) studied the sentencing practices involving various felony charges in Texas for the year 1930. He reported that native-born whites received preferential treatment over all other groups, with foreign-born whites and Mexicans in the middle and blacks at the bottom. Like Sellin, Martin controlled for the type of offense but not for prior record. He noted that blacks and whites appeared to have differing patterns of criminality, but he did not empirically test this proposition. In a more recent study involving ethnicity, Hall and Simkus (1975) used multiple regression to analyze 1795 felony court records. They also found that whites tended to receive more lenient treatment than did native Americans.

Edwin Lemert and Judy Rosberg (1948) examined the court records of Los Angeles county for the year 1938. Unlike Sellin and Martin, they controlled for prior record and employed a test of significance (chi-square). They, too, found that blacks were more likely to be arrested; however

the conviction rates of blacks were lower, attributable, they concluded, to the higher arrest rates. The type of offense had some bearing on whether blacks were subject to discrimination. Blacks convicted of burglary received longer sentences than did whites, but this pattern did not exist for offenses involving violence or narcotics. As did the previous researchers, Lemert and Rosberg noted the possibility that some of the disparities in sentencing could be the result of differing patterns of criminal conduct.

H. A. Bullock (1961) investigated the effect of race on the sentences of 3644 male prisoners in Texas for the year 1958. In his research Bullock sought to control the effects of other influential variables. There were significant correlations between several non-legally relevant factors in addition to the race of the defendant. Region and the degree of urbanization were significantly associated with the length of the sentence imposed. Blacks were more likely to receive long sentences than were whites, a disparity that did not disappear when controls for non-racial factors were employed. Bullock discovered a pattern similar to that found by Lemert and Rosberg--blacks received longer sentences for property crimes than did whites, while there was no significant discrimination with respect to the violent offenses. This latter category tended to consist of intra-racial offenses. Bullock attributed this to an indulgent versus a non-indulgent view of criminality. The police and court officials, he concluded, maintained a

double standard with respect to criminality by whites and blacks.

Wolfgang and Riedel (1973) analyzed 3000 cases involving rape convictions from eleven states over a twenty year period, 1945-1965. They put forth two hypotheses pertaining to racial discrimination: no significant association would exist between the race of the defendant and the sentence and, secondly, there would be no significant difference between the proportion of black defendants with white victims and all other groups sentenced to death. Both hypotheses were rejected in each state, however blacks were more likely to have a contemporaneous offense, but cases with multiple offenses were excluded from the analyses.

Racial discrimination has also been found in the juvenile justice system. William Arnold (1971) examined 758 court files involving both misdemeanors and felonies. Race was associated with both dependent variables, the probation officer's decision to submit cases to the courts for a formal hearing and the decision by the judge to commit individuals to the state youth authority. Terence Thornberry (1973) also studied the juvenile justice system. His data consisted of 3475 cases taken from Philadelphia. Blacks were more likely to receive severe treatment at all stages of the process, even after the effects of offense severity and prior record were controlled.

Racial discrimination has been reported in a number of other studies. Chiricos, Jackson and Waldo (1972) reported that being white was among several characteristics (i.e., being young, highly educated, pleading guilty and having a private attorney) which significantly influenced having an adjudication of guilty withheld. Unnever, Frazier and Henretta (1980) claimed that race had a direct effect on the police officer's recommendation which, in turn, influenced the disposition of the case. Uhlman (1977) found race to affect the length of sentences imposed in various cases in a "major metropolitan center", though it should be noted that he did not control for prior record. Rhodes (1976) reported that race (and sex) directly influenced the disposition of cases involving narcotics possession, burglary, larceny and forgery which were tried in Minneapolis-St. Paul in 1970. In their replication of Uhlman's study, Spohn, Gruhl and Welch (1981) reported that there was a significant race effect on the length of sentences imposed on those who were sent to prison.

The Task Force (1972), as noted earlier, concluded that racial discrimination did indeed exist within the military justice system. They reported a consistent pattern of disparities in the treatment of black soldiers. On the average, black soldiers in the Army spent longer in pretrial confinement for AWOL offenses than did white soldiers (32 days to 27 days).

The Task Force also reported that blacks received longer sentences from all services, even when the effect of prior record was controlled (3.3 months to 3.0 months). Blacks in the Army were more likely to receive a bad conduct discharge unless there was a prior record.

There are several problems with the research of the Task Force. The number of cases is very small. There were no tests of significance or measures of association, nor were any multivariate techniques employed. Finally, while there was a measure of the defendant's prior record, the validity of the findings is weakened by the lack of any measure of the seriousness of the offense. What the results obtained by the Task Force demonstrate is that differences exist in the treatment of whites and blacks, but not necessarily that there were systematic patterns of racial discrimination.

Those associated with the consensus perspective have posited that the major determinants of the outcomes of criminal cases will be the legally relevant factors, most notably the seriousness of the offense and the prior record of the defendant. Support for this perspective, as opposed to that of the conflict perspective, may come as a result either of there being no significant differences in the outcomes of cases involving whites and blacks (i.e., no significant correlation between the race of the defendant and the outcome) or by any significant differences being rendered insignificant when the effects of legally relevant

variables are controlled.

Edward Green (1961) examined the practices of the criminal justice system of Philadelphia for the two years, 1956-1957. He asserted that apparent differences in the treatment of white and black defendants were the result of differing behavioral patterns which left blacks being more likely to be charged with a serious offense and to have a prior record. In a subsequent study (Green, 1964), he sought to ascertain whether the race of the victim affected the disposition of the case. In the case of property crimes, there were no instances of whites robbing blacks. The significant determinants of the sentences, he found, were the type of robbery, the number of charges and prior record. Neither the race of the defendant nor that of the victim was a significant factor, though Green did find a tendency to impose slightly less severe sentences on black intra-racial offenders.

Baab and Ferguson (1968) examined the sentencing practices involving various felonies in 27 counties in Texas during 1966. When the effects of offense severity and prior record were controlled, no significant race effect was detected. Peter Burke and Austin Turk (1975) undertook an analysis of 3941 adults arrested in Indianapolis during 1964. They were unable to find any detectable racial effect, though they acknowledged that some race effect could have been masked by a complex relationship between race and

other factors. What was important, they said, was whether or not the defendant had ever been incarcerated. Occupational status had a significant association, but this diminished when the offense category was controlled.

Chiricos and Waldo (1975) studied the length of sentences imposed on 10,488 imprisoned felons in North Carolina, South Carolina and Florida. No consistent pattern of racial discrimination was detected. This finding runs counter to the findings of the authors in an earlier study (Chiricos, Jackson and Waldo, 1972). It should be noted that in the 1975 study, incarcerated prisoners comprised the sample, whereas court records were used in the 1972 one. It is possible that the stage of the proceedings from which the sample was taken produced less variation in the latter study, thus making it less likely that discrimination would be found.

Race appeared to be unrelated to the disposition of the case, either the verdict, sentence or bail status, in Clarke and Koch's (1976) study of 798 police and court records. Income did have some effect on bail and an indirect effect, through bail, on the disposition. Race had no significant effect, either direct or indirect.

Several studies reported that the effect of race is insignificant after legally relevant variables are controlled. John Hagan (1975b) reported that race and socioeconomic status had indirect effects on disposition

through offense seriousness, prior record and the probation officer's recommendation. In a different study the same year (Hagan, 1975a), the effect of race was entirely indirect--through severity of the offense and prior record. In their study of two juvenile courts (one from the South, the other not), Cohen and Kluegel (1978) concluded that the effect of race was entirely indirect. After controlling for prior record and other legal factors, the race effect disappeared. Spohn, Gruhl and Welch (1981) also reported that the effect of race was insignificant on whether or not the defendant was sent to prison, once the charge and prior record were controlled. This study is a replication of Uhlman's (1977) study (supra). However, as noted above, among those sent to prison, the race effect was significant.

Hagan (1974) reanalyzed the data in several sentencing studies. Bullock (1961) had found race to have a statistically significant effect on the sentences received in burglary and murder cases. Hagan's reanalysis, computing measures of association, found a tau-b score of .012 or higher only in the burglary cases. Thus knowledge of the defendant's race increased the ability to predict outcomes by just over one percent. Whereas Nagel (1969) had found blacks to have a fourteen percent higher rate of imprisonment than whites, Hagan found that much of this difference was due to the intervening effect of the defendant's prior record. When the analysis was run on those with no prior record, race ceased to have a

significant effect on the sentence. Among those with prior records, the difference in the rates of imprisonment actually rose to sixteen percent, demonstrating a statistically significant relationship, as measured by a chi-square test. Hagan noted, however, that the tau-b score indicated that knowledge of the defendant's race increased one's predictive power by only two and one half percent.

Bernstein, Kelly and Doyle (1977) produced the only study in which some form of reverse discrimination appears to have been present. A more severe sentence was positively related to being white and employed for a longer period of time. Here it is important to note that this finding is based on the practice in the final stage of a prosecution. Prior to the imposition of the sentence, there were decisions to fully prosecute the case and not to withhold a guilty verdict. With respect to those earlier outcomes, no significant race effect was detected.

Ronald Perry (1977) studied the military justice system during the same period as did the Task Force and that of the present research. He reported no significant differences between races, either in the imposition of pretrial confinement or in the length of the sentence imposed. The sample in his study consisted of Navy and Marine prisoners; thus his research has some of the same limitations as that of Chiricos and Waldo (1975)--the stage of analysis being examined tends to reduce the amount of variance.

On the average, the Marines appeared to be somewhat tougher in general and on blacks in particular. White seamen convicted of AWOL had an average sentence of 3.80 months, compared to 2.97 months for black seamen. In the Marines, however, whites received an average sentence of 4.43 months, compared to 5.07 months for blacks. Here it should be noted that these are gross averages. There was no control for prior record.

The organizational perspective, it will be recalled, emphasizes the importance of extra-legal factors other than those of the defendant. Some of the major factors which have been associated with the organizational perspective are the individual judge, whether or not the defendant was released on bail and the plea.

The individual judge seems a likely source of variation. After all, it is generally the judge who pronounces the sentence. As such, variations in sentencing represent variations in the actions of judges. Marvin Frankel (1973) has criticized judges as the source of much of the variation in sentencing, referring to the situation as one of "law without order". Variations resulting from the judge can be the result of differences between judges as to their legal philosophies. That the treatment which defendants receive would be a function of the political philosophy of a particular judge is disturbing to some. Even more disturbing is the feeling that judges themselves vary

significantly in the sentences they impose. Some have suggested that psychological factors such as the judge's mood or even what he had for breakfast that morning could affect the sentences adjudged. This has been described, somewhat derisively, as gastronomic, or breakfast, jurisprudence (Aubert, 1983).

Several studies have focused on the issue of judicial variation. Gaudet, Harris and St. John (1933) found significant differences among the judges with respect to the proportion placed on probation in their study of 7442 cases in New Jersey. Somit, Tanenhaus and Wilkie looked at more than two million cases handled by the magistrate's court in New York between 1915 and 1930. They discovered significant variations between judges in the decision to dismiss cases. They also found a considerable amount of variation within the actions of individual judges as well. In Cargan and Coates's (1974) examination of 841 felony cases from Ohio, significant variations were found within the actions of individual judges as well as between judges.

There is evidence that there exist norms of judicial behavior and, furthermore, that judges tend to conform to those norms. Jaros and Mendelsohn (1967) put forth two hypotheses concerning judicial behavior, hypotheses based on conflicting conceptions of judicial behavior. One hypothesis posited that judges act in accordance with role expectations; the other posited that they are bound more by

personal factors. The statistical hypotheses derived from the first states that legally relevant factors will be of the most importance in accounting for variations in sentencing; the latter posits that extra-legal factors will be the more significant. From their observation of traffic cases in Detroit in 1966, the authors concluded that the role-expectation model was confirmed. This particular research does not provide as clear a test of the two views as one might desire since traffic offenses tend to be numerous, relatively minor and noncontroversial. Research on felony offenses would present a better opportunity to test the relative strength of the two hypotheses.

Charles Silberman (1978) has argued that much of the disparity in sentencing is the result of differing jurisdictions, which reflect differing community standards. Within each jurisdiction, he argues, there is pressure on the judges to conform to certain norms concerning the sentences to be imposed. The result is actually a far greater degree of uniformity in sentencing than many would think. He further asserts that 80 to 85 percent of the variance in sentencing could be explained given knowledge of three factors: the severity of the offense, the prior record of the defendant and the victim.

Silberman's research suggests that regional variations may significantly affect the disposition of cases. In a study of 246 Norwegian conscientious objectors, Vilhelm

(1963) observed that the conviction rate varied greatly between geographic regions. Within districts, he noted, the individual judge was a significant source of variation. Other significant factors were the presence of religious belief, occupational status, whether the service was initial or followed a reenlistment, whether or not the person had a criminal record, the presence of emotional factors and whether there was a moral basis to the defense.

Whether or not the defendant was released on bail prior to his trial has been considered to be a significant factor. To some extent pretrial release covaries with the severity of the offense. On the other hand, bail is linked to economic factors. Bail status can have a labelling effect. A person in prison prior to his trial could be perceived by the judge or jury as more guilty than one who was free pending trial. Hagan, Hewitt and Alwin (1979), in their research on 504 felony cases from King County, Washington, during 1973, reported that bail was a significant factor in whether sentences were deferred as well as for incarceration sentences. Released status prior to trial increased the likelihood of a deferred sentence by 30 percent and reduced the chances of incarceration by 25 percent. The plea entered by the defendant was also an important factor. The authors reported that plea and bail significantly mediated the effect of the legally relevant factors. These findings were also reported in Hewitt's (1975) original research.

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The importance of bail was also confirmed in Alan Lizotte's (1978) study of 816 court cases in Chicago during 1971. Bail was a significant factor in the length of sentences imposed. Lizotte's research also provides some support for the conflict perspective, as race and occupational status affected whether or not bail was made. Thus two factors which are associated with the conflict perspective had a significant indirect effect on the disposition of the case through bail.

In the chapters that follow I shall examine the factors which account for variations in the outcomes of court-martial cases. In attempting to ascertain which of the theoretical perspectives best accounts for the variations in the outcomes, I shall be particularly interested in the effect of race on those outcomes.

The research described below is essentially an "outcome" study, of which many have been performed in the areas of the sociology of law and social stratification. Specifically it is modeled on studies of sentencing practices in the civilian criminal justice system. At this time I shall proceed to a description of the methods and techniques employed in the present research.

CHAPTER III

THE TECHNIQUES OF THE ANALYSIS

Introduction

In this chapter I shall describe the various steps undertaken in the data analysis. The major topics to be considered in this chapter are the following: the variables employed in the analyses and any modifications made to them, the statistical techniques, the statistical models examined and the sample selection criteria.

The Variables Employed in the Analysis

The research, as I have previously stated, consists of attempting to discern whether or not racial discrimination existed within the administration of military justice. This is the particular goal of the analysis; a more general goal is to discover, so to speak, the principles of military justice. The principles of military justice, within the context of the present research, concern the factors which are used to distinguish between the punishment imposed at AWOL trials. Thus in the present research, the dependent (or endogenous) variables represent the decisions of military officials which are relevant to the issue of punishment, while the independent variables are the factors which affect those decisions.

There are five decisions which I shall examine in the course of the research. They are (1) the decision whether

or not to impose pretrial confinement, (2) the decision as to the level of court to which the case is referred, (3) the verdict, (4) the sentence adjudged and (5) the commander's decision regarding clemency. The independent variables are characteristics of the defendants, the offense and the setting. There are five general categories of independent variables. They are (1) demographic and socio-economic characteristics of the defendant which existed prior to his entry into the military, (2) characteristics of the defendant's military career, (3) characteristics of the offense, (4) trial related decisions made by the defendant and (5) characteristics of the setting and the results of prior decisions. For the purposes herein, the first and second categories are associated with the conflict perspective, the third with the consensus and the fourth and fifth with the organizational perspective. The factors, or sets of independent variables, are hierarchially ordered as indicated above. This is based on a chronological ordering as the characteristics of the defendant are prior to the military variables, which are prior to the characteristics of the offense, and so on. At this point I shall discuss in more detail the nature and coding of the variables to be employed in the analysis.

The Dependent Variables

The first decision made following an arrest for AWOL concerns whether or not to place the soldier in pretrial

confinement pending trial. As I will explain later, this is an extremely significant decision in a number of respects. This decision has been and continues to be a major source of controversy within the criminal justice system. Critics of the criminal justice system have charged that legal officials too often incarcerate defendants before trial, particularly defendants from the lower socioeconomic classes, and that excessively long times are being spent in pretrial confinement. Thus, they argue, pretrial confinement essentially constitutes a form of punishment, all at a time when the defendant has yet to be convicted of any offense. Because it potentially has a labelling effect, it is included in later analyses as an independent variable.

In the analysis, the decision regarding pretrial confinement has two aspects, the decision to impose confinement and the length of confinement imposed. In this research I shall only be examining whether or not pretrial confinement was imposed. In the vast majority of cases, the defendant did go to trial within two months of his arrest; therefore it was decided that there was insufficient variance in the interval measure of the length of pretrial confinement to warrant its inclusion as an independent variable. Since the unit of analysis is the individual trial and since only a minority of those charged actually go to trial, the practices regarding pretrial confinement reported in this research may not be representative of the practices among all those charged with AWOL. In the

research I shall limit myself to considering the practice of imposing pretrial confinement among those who eventually did go to trial. In the analysis of pretrial confinement, the main test will be between the conflict and consensus models, as the only organizational variables to be included in the analysis involve the unit and the year in which the trial occurred. It would seem that in the decision regarding pretrial confinement there would be a high probability for discrimination as the decision to confine is made by the soldier's company commander and is not made in such a public forum as a military court-martial. On the other hand, there is a higher percentage of black lieutenants and captains than black convening authorities.

The second dependent variable concerns the level of court to which the case is referred. The variable representing this decision, COURT, is coded from 1 to 4, representing summary, special, BCD special and general courts respectively. These are ordered in terms of the severity of the punishment which they may impose. Strictly speaking, this variable is an ordinally measured one since one cannot say that the differences in the severity of punishment between any two courts is the same as the differences in the severity of punishment between any two other courts.

The third dependent variable is the verdict reached in the trial. This variable, VERDICT, will be treated as dichotomous, depending upon whether or not a conviction was

obtained. In reality a defendant may be tried on a number of different charges with more than one specification of the offense for any of the charges, and he may be acquitted of some charges while being convicted of others. Since a mixed verdict carries with it all the consequences of a conviction, i.e., exposure to the risk of punishment, I shall treat a conviction on any charge as resulting in a conviction and thus code the variable affirmatively. VERDICT will be coded '0' only if the soldier is acquitted on all charges.

The fourth dependent variable is the sentence imposed. As I said earlier, there are a variety of punishments within the military justice system. In this research I shall restrict myself to just two: confinement and the punitive discharge. In doing so I am ignoring certain punishments which may be adjudged at a court-martial. Besides confinement and a discharge, a court-martial may sentence a soldier to hard labor without confinement, fine, forfeiture of pay, reduction in rank, restriction, reprimand or admonition. There are obvious disadvantages to omitting forms of punishment other than confinement and discharge from the analyses. A soldier could receive a sentence which resulted in a loss of rank and pay, yet unless he received a sentence to confinement or to a discharge, he would be recorded as having received no punishment in the present research. Such a practice of excluding various forms of punishment obviously requires some justification.

In the present research I am not making any claim to be examining all the punishments imposed at a court-martial, only the two that are the most important. As far as the defendants themselves and the military officials are concerned, confinement and discharge are the only two punishments of any consequence. The remaining punishments are for the most part regarded as almost an afterthought. The only punishments frequently discussed in the opinions of the military appeals courts are confinement and discharge. Furthermore, the several punishments are independent of each other insofar as their being considered either by the sentencing authority or the convening authority. In reaching decisions on the sentence these two bodies are expected to consider (and vote) on each punishment separately.

In another respect the various forms of punishment are not independent. If confinement is approved, the soldier automatically is reduced in rank to E-1, the lowest rank, and he will be denied any pay during the period in which he is in confinement, regardless of any decision concerning reduction in rank and forfeiture of pay made by the sentencing or convening authority. A sentence to a discharge results in an automatic reduction to E-1. Such circumstances make the determination of an index of punishment very problematic in cases involving confinement or discharge. For instance, if a soldier was sentenced to confinement but not to a forfeiture of pay or reduction in

rank, would his sentence be any less severe than that of a soldier sentenced to the same amount of confinement but also to a reduction in rank or forfeiture of pay? As one's pay is a function of rank and time in service, the amount of money lost can vary considerably even when the same sentence is imposed among soldiers of differing ranks and lengths of service. Furthermore, there are no official weights which one can assign to the various forms of punishment so as to permit the establishment of an index of severity of the punishment imposed. The construction of a single measure of punishment for the military justice system portends to be a very complex, and perhaps arbitrary, undertaking. While the development of extremely thorough scales of punishment would most certainly be a welcome development, such a construction is beyond the scope of the present analysis. Finally, though civilian criminal courts frequently impose forms of punishment other than confinement (e.g., fines, orders for restitution), studies of sentencing practices have restricted themselves to confinement. For these reasons I shall restrict my analyses to the punishments of confinement and discharge.

Although I am analyzing those two forms of punishment separately, I would note that in the eyes of military officials as well as in military law, any sentence to a discharge is a more severe sentence than any sentence to confinement, regardless of the length of the confinement. Such a relationship is enhanced by the practice of sending

soldiers sentenced to confinement but not to a discharge to a retraining facility, where they are restored to duty following the completion of a course of study and training. In general, these punishments will be analyzed separately. SENTCHL, the sentence to confinement, is measured in the number of months and thus is an interval level variable.* SENTDIS, the sentence to a discharge, is a dichotomous variable, indicating whether or not the soldier was sentenced to a discharge. The military does have two types of punitive discharge, bad conduct and dishonorable. A dishonorable discharge can only be adjudged at a general court-martial; a bad conduct discharge may be adjudged either at a BCD special or a general court-martial. However there is essentially no difference between the two types, either in terms of the benefits lost or in terms of the soldiers' view of the two. Since combining the two types facilitates the analysis and may well be more faithful to the actual consequences of the decision, it was determined

* An alternative way of treating this decision would be to first distinguish between those who received confinement from those who did not (i.e. jail--no jail) and then perform a subsequent analysis on only those cases in which confinement was adjudged in order to analyze the amount of confinement imposed. This technique has been recommended by some researchers (Spohn, Gruhl and Welch, 1981). However, in the present case I have elected to treat the length of confinement as a single variable. Such a decision is justified because a judge or jury reports only one decision--the sentence, which may or may not contain a sentence to confinement. At any rate, an analysis was performed using the above scheme. The results were not significantly different from those obtained using SENTCHL as the dependent variable; therefore I opted to keep SENTCHL in the models.

that SENTDIS should be treated as a dichotomous variable.

The final outcome to be considered is the action of the convening authority on the case. There are a number of options available to the convening authority with respect to the action which he takes on the case. For instance, he may disapprove, suspend, reduce or approve all or any part of a sentence. In the present research, I shall treat the two variables, CHLCLEM and DISCLEM, which reflect the convening authority's action, as dichotomous variables, depending upon whether or not a sentence to confinement or punitive discharge, as the case may be, is approved. A suspension will be treated in the same manner as if that part of the sentence had been disapproved, as a suspended sentence is remitted if no act of misconduct is committed within a certain period of time. On the other hand, reducing the amount of confinement or the quality of the punitive discharge is treated as if that part of the sentence was approved in its entirety since even a reduced amount of confinement is still a sentence to confinement and thus carries with it all the stigma and many of the problems associated with a somewhat longer sentence. For instance, all soldiers who receive confinement but no discharge are sent to Fort Riley, Kansas, for correctional training, where they all serve the same amount of time before being released.

In performing the analysis, not all cases will be

analyzed for each of the variables. Only those cases in which the defendant is subject to possible punishment will be included in the sample. For instance, while all persons in the sample will be included in the analysis of PTC01, COURT and VERDICT, only those persons convicted will be examined in the analysis of the sentence adjudged. Likewise, only those persons actually receiving a sentence to confinement or a discharge will be examined with respect to the convening authority's final action. In the analysis of punishments the summary court cases will be excluded from the analyses as the only punishment which a summary court can adjudge is for one month, and in fact, this sentence was imposed in very few instances. At this point I shall turn to the independent variables to be employed in the analysis.

The Independent Variables

There are, as I noted above, five categories of independent variables, variables which have been posited potentially to affect the outcomes of decisions within the legal system. To reiterate, these are: demographic and socioeconomic characteristics of the defendant which existed prior to his entry into the military, characteristics of the defendant's military service, characteristics of the offense, decisions made by the defendant during trial, characteristics of the setting and the results of prior decisions. Once again, the soldier's demographic, socioeconomic and military characteristics are associated

with the conflict perspective, the characteristics of the offense with the consensus perspective and the decisions made during the trial, characteristics of the setting and prior outcomes with the organizational perspective.* At this time I shall describe only the original codings of the independent variables and leave to later a discussion of any modifications made to those variables.

Though the demographic characteristics of the defendant are exogenous to the socioeconomic characteristics, these will be analyzed in the same stage, as they are presented to the military officials at the same time, so to speak, and both are exogenous to the military characteristics of the defendants. The defendant's race, represented by the variable RACE, is a dichotomous variable, coded '0' for whites and '1' for blacks. There were too few members of other racial groups tried to warrant their inclusion in the sample.** The age of the soldier at the time of his offense

* As far as the analyses are concerned, the important things are the variables themselves. The theoretical perspectives employed may be regarded, if one wishes, as "flags of convenience" for organizing sets of variables, though the assignment of variables to each of the particular theoretical perspectives has been based on theoretical considerations pertinent to the research. In addition, I was guided by the assignment of variables to theoretical perspectives in prior research on sentencing.

** It should be noted that the concept of race is not a simple one. On one hand it may be a biological concept, on the other a sociological one. Often the two are not coextensive. In many states, a person with even a small percentage of black ancestry would be classified as a black, even though, racially, he might be more white (or other race) than black. In the present research, the data concerning race was taken from the soldier's personnel

(AGEOFF) is an interval level variable, measured in years. The defendant's level of education (EDUC) also is an interval level variable, measured in years of education.

The second set of independent variables contains those which reflect the defendant's military background. Theoretically the most interesting of these variables reflect the soldier's rank. This variable, RANK, is measured on an interval scale with values ranging from '1' for the lowest enlisted grades to '9' for an officer. The length of service (LGHSERV) is measured on an ordinal scale with the following codes:

Code	Value
1	Less than 3 months.
2	3-6 months.
3	7-12 months.
4	13-24 months (1-2 years).
5	25-36 months (2-3 years).
6	37-60 months (3-5 years).
7	61-120 months (5-10 years).
8	More than 120 months (10 years).

The third group of variables represent characteristics of the offense. In the literature on sentencing these variables are termed the legally relevant variables and are the factors asserted by those associated with the consensus perspective to be the major determinants of the outcomes. As I am restricting my analysis to the absence offenses, the

files. The information placed in those files came from the individual's self-reported designation of his race. Thus the concept of race employed herein is the sociological one.

variables will measure the severity of those offenses only. The length of the absence (LGAWOL) is an ordinal level variable which is measured as follows:

Code	Value
0	Less than 1 month.
1	1-3 months.
2	4-6 months.
3	7-12 months.
4	13-18 months.
5	19-24 months.
6	25-36 months.
7	37-60 months (3-5 years).
8	Over 60 months (over 5 years).

The manner of termination (TERM) was treated as a dichotomous variable with '0' given to those cases where the absence was terminated by surrender in all instances and a '1' to those cases where at least one specification was terminated by apprehension. The number of charges (SPEC) is an interval level variable, reflecting the number of absence offenses charged. The soldier's legal record might be thought of as a characteristic of his military background but as it is so often treated as a legally relevant variable, it is included in this group. The variable (PREVCM) is a dichotomous variable indicating whether or not the soldier has been previously convicted at a court-martial. The last offense related variable, DESERTN, indicating whether the soldier was convicted of desertion, is coded '1' if the soldier was so convicted and '0' otherwise.

The fourth set of independent variables refers to decisions made by the defendant at his trial. Here the main

variables are whether the soldier chose to be tried before a judge alone or by a jury (usually a board of officers) and the plea entered in the case. The first variable, FORUM, is dichotomous and is coded '0' for a trial before judge alone and '1' if the soldier elected to be tried by a jury. The plea in the case (PLEA) is also dichotomous, with '0' representing a plea of not guilty to at least one offense and '1' indicating that the defendant pled guilty to all charges.* Closely related to the plea is whether or not the soldier had a pretrial agreement. Such an agreement places a limit on the amount of punishment which may be imposed, but such agreements are possible only if the soldier pleads guilty to all charges. The variable representing this, PTA, is dichotomous and is coded '1' if there is an agreement, regardless of its terms, and '0' otherwise.

The final category of independent variables consists of the characteristics of the setting and the prior outcomes. These variables are extra-legal in that they should not have a major impact on the administration of justice, according to the tenets of the rational-legal model. The representatives of the organizational perspective argue that

* An alternative means of coding the plea would be to distinguish between all those who plead guilty to at least one charge and those who pled not guilty to all charges. Such a coding would certainly separate those who clearly will be convicted and those who might not be found guilty, the coding employed is justified because of the importance stressed on pleading guilty to all charges. Only those who plead guilty to all charges can obtain a pretrial agreement.

these factors, however, do account for a significant proportion of the variations in the outcomes of cases. The variables in this category indicate the judge who presided over the case, the unit having jurisdiction over the soldier and the year in which the trial occurred. There were two major judges at Fort Meade, one who tried special and BCD special courts-martial and one who tried all of the general courts-martial and a smaller number of special and BCD specials. In addition, visiting judges occasionally tried cases, whether special, BCD special or general courts-martial. Any variable representing them would be a nominal level one and thus not very suited to the type of statistical analysis to be undertaken. Therefore it was decided to create dummy variables with the miscellaneous judges to be treated as the residual category. These variables will be referred to as JUDGE A and JUDGE B for the general court-martial and the special court-martial judges respectively.

One of the areas of interest in the analysis of military justice is whether the administration of military justice seemed to change as the war came to an end. The data in the present research, while not being capable of providing a conclusive answer to this question, can nevertheless shed some light on the subject. The American involvement in Vietnam came to an end in January, 1973, and the data in the research cover the years 1972 and 1973. Thus half of the cases occurred while the Americans were still involved in a

combat role, while approximately half took place after the war was concluded. The variable YEAR73 is designed to measure any change between the two periods. Cases which occurred before 1973 were coded '0' on this variable, while those which occurred after 1972 were given a '1'.

I have already noted that a great many of the absence cases were handled by the PCP unit at Fort Meade. In addition, absence offenses constituted a major portion of the caseload of the other units on the post, primarily at the summary and special court-martial level. To see if the unit of the soldier had any impact on the treatment which he received, a number of dummy variables were created to examine the possible effect. It was decided that the PCP unit, being the largest and the one which played the most important role in the handling of AWOL cases, should be the standard by which other units were compared; therefore the PCP unit will be treated as the residual category. Two major units, a cavalry unit and an engineering battalion, having the next most cases were each assigned a dummy variable, CAV and ENGR. In addition, the remaining units were lumped together in the third variable, MISCUNIT.

Techniques of the Analysis

In this section I shall describe the techniques to be employed in the statistical analysis. It will be recalled that the general purpose of the study is to ascertain the determinants of punishment in the military justice system.

In particular I am interested in the question of whether or not there was racial discrimination in the administration of military justice. In selecting the type of statistical analysis to be employed, several factors must be taken into consideration. First, as I shall be examining the relationship between several independent variables and the decisions of military officials, multivariate techniques are called for. In the literature on sentencing and related topics, the most commonly employed techniques are log-linear analysis and multiple regression analysis. At first, log-linear techniques would seem particularly suited to the data as several of the dependent variables (PTC01, VERDICT, SENTDIS, CHLCLEM and DISCLEM) are dichotomous. However the number of independent variables employed would make the use of log-linear techniques extremely cumbersome and would present considerable problems when it came to interpreting the results. If multivariate regression analysis can be employed, it would seem to be a more preferable technique.

OLS (ordinary least squares) regression techniques seem particularly suited to the type of research undertaken herein. OLS regression measures the extent to which changes in an independent variable result in changes in a dependent variable. One of the advantages of regression is that one can measure the effect which one independent variable has on a dependent variable while holding constant the effects of other independent variables. Thus, for example, one could ascertain the effect of one level of rank on the length of

confinement imposed while holding the length of the absence constant.

With respect to the problem of missing data, in those cases where fewer than five percent of the cases were missing for a particular independent variable, the missing cases were assigned the mean value of that independent variable. This is the procedure suggested by Cohen and Cohen (1975). Such recodings were undertaken in the following variables: age, education and length of service. With respect to the length of service, the mean score given was that of the mean score for those of the same rank, providing the person had no prior disciplinary action. In those few cases where there was a prior offense, the mean score for the length of service was used. There are certain disadvantages to this practice.

By substituting the mean for missing data, the possibility exists that the regression coefficients for those variables will be deflated. Thus some factors which in fact are significant will not appear to be significant in the analysis, resulting in a Type II error. However the major focus of the research is on the effect of race, and race is not modified in such a manner. The alternative to this practice would be to exclude those cases where data was missing on any variable, a practice which would result in a reduced sample size. This could be avoided by using the technique of pairwise deletion, but then this technique has

several problems associated with it. If a factor does appear significant in the analyses, one may have confidence that it is truly a significant factor. In analyses such as this, a Type II error is preferable to a Type I error, where nonsignificant factors are reported as being significant.

OLS regression analysis is based upon a number of assumptions about the data. The variables are assumed to be measured on an interval scale; the error terms of those variables are assumed to be uncorrelated with each other, and the relationships between the independent and dependent variables are assumed to be linear and additive. The assumption that the effects of the variables are additive means that there are no significant interactive effects among the independent variables and the dependent variable and that there are no levels of intercorrelation among the independent variables such that multicollinearity exists. These assumptions raise issues for the research which must be considered.

The assumption of linearity means that the relationship between an independent and the dependent variable is constant, regardless of the value of the independent variable. For example, under this assumption, a change in the value of rank from '1' to '2' would have the same effect on the length of confinement adjudged as a change from '5' to '6'. Where such a relationship does not exist, the estimates produced by a regression analysis will not be

accurate. There are a number of ways to rectify the problem of nonlinear relationship, the most common of which involve recoding the independent variable, using the log of the variable or using a quadratic function (e.g. the square) of that variable. The test used⁰ to determine whether a quadratic relationship exists is described in the SPSS "breakdown" procedure and involves the examination of the conditional means, that is, the mean value of the dependent variable at each level of the independent variable. In some cases where the procedure indicated a significant deviation from linearity, control variables were employed and the relationship reexamined. For instance, the relationship between length of the absence and the imposition of pretrial confinement was initially found to be nonlinear, yet when the number of specifications was taken into consideration, the relationship ceased to be significantly nonlinear.

The level of education (EDUC) was⁶ found to have a curvilinear relationship with several of the dependent variables. It was impossible to correct this by recoding the variable, thus a series of dummy variables were created. The dummy variables created are GRADESCH, coded '1' for those with less than a high school education and '0' otherwise, HSSCHOOL, coded '1' for those with exactly a high school education and '0' otherwise, and COLLEGE, coded '1' for those with more than a high school education and '0' otherwise. In testing for the effect of education, it was determined that HSSCHOOL would be the omitted category, even

though the choice of a middle level variable as the omitted category is somewhat unusual. The reason this was done was because the military, as well as those in other social institutions, seem to regard a high school education as almost a "golden mean". Those with less than a high school education are almost always regarded as lacking, while those with some college might well be regarded as highly educated, even educated to a fault.

Another problem with which I was concerned was that of multicollinearity, or an extremely high correlation among the independent variables. Multicollinearity is most likely to exist when one variable is a function of one or more other independent variables. When multicollinearity exists, a solution to the regression equation cannot be reached. From an examination of the correlation matrices, the zero-order correlations did not indicate the presence of intercorrelations sufficient to result in multicollinearity; therefore it was determined that no action needed to be taken in this regard. At any rate, should multicollinearity actually exist, it would be indicated in the regression models.

A major assumption of OLS regression asserts that the relationship between the independent and dependent variables is additive. Thus if as the result of regression analysis, it was ascertained that each month of the absence is associated with a month's confinement and that being

apprehended is associated with two month's confinement, then a person who is apprehended after a three month absence should receive five month's confinement. At the same time a person who surrenders from a four month AWOL would receive a sentence to confinement of four months. In this case there is no significant interaction between the length of the absence and the manner of termination. If there were interactions between the independent variables, the effects would not be additive.

In the present research, a major concern is with the issue of race. If the defendant's race reacts with certain of the other independent variables, the coefficients produced will be incorrect. For instance, if there were to be interactions between race and the length of the absence, the effect of the length of the absence on the dependent variable, e.g. the length of confinement adjudged, would not be the same for whites as it is for blacks. There are two possible ways of dealing with this matter. The first is to include additional variables into the model which represent interaction terms between race and a particular independent variable. Thus a model might look like the following:

$$Y = a + b_1X_1 + b_2X_2 + b_3X_3 + u,$$

where 'Y' represents the dependent variable, 'X1' and 'X2' represent independent variables, 'X3' the interaction between (or product of) X1 and X2 and 'U' the error term. A second way of dealing with possible interactions is to split

the sample. In this case, whites and blacks would be analyzed separately and the coefficients obtained for each race compared to the corresponding coefficients for the other race.

Either running separate runs or including interaction terms in the models is sufficient for dealing with the problem of possible interactions, yet each has its own disadvantages. Including interaction terms in the models decreases the degrees of freedom slightly but does result in somewhat more complicated models. At the risk of rendering the models more complicated, I shall have to test for the presence of interactions with interaction terms.

If there are no significant interactions between race and other independent variables, then the models may properly be run without those terms. To test for the presence of significant interactions, the following test, described in Kerlinger and Pedhazur (1973), will be employed. First the models will be run with just the main effects present. Following this, the models will be run with both the main effects and the interaction terms included. Because the inclusion of interaction terms adds variables to the models, more variance of the dependent is necessarily explained by the model with the interaction terms. However the addition of the interaction terms decreases the degrees of freedom. The question is whether or not the addition of the interaction terms adds significantly to the amount of

variance explained. The null hypothesis in this case is that the model with the interaction terms does not significantly increase the amount of explained variance. If that hypothesis is not rejected the interaction terms may be excluded from the model. The test used to determine whether the interaction terms significantly adds to the amount of explained variance is sometimes referred to as the "increment to R square test". The formula for this is as follows:

$$F_{p-r, n-p-1} = \frac{(R_{(p)} - R_{(r)}) / (p-r)}{(1-R_{(p)}) / (n-p-1)}$$

where 'p' refers to the number of independent variables in the full model, i.e. that with the interaction terms, 'r' to the number of variables in the additive model, i.e. the number of main effects, and 'n' to the sample size. This statistic is distributed as an F statistic. If the statistic is not significant at the .05 level, the null hypothesis is not rejected, and the interaction terms may be omitted.*

In addition to the above, OLS regression assumes that the variables are measured on interval scales. As I noted above, many of the variables in the analysis are measured on ordinal scales or are dichotomous in nature. With respect

* In preliminary analyses, no significant interactions were detected.

ordinal scales or are dichotomous in nature. With respect to the use of ordinal measures, OLS regression is sufficiently robust to accommodate ordinal variables. The use of dichotomous independent variables, such as dummy variables, presents no problems. On the other hand, the use of dichotomous dependent variables in regression may present significant problems. Though not as significantly rigorous as some might like, there is a general rule that, if the dichotomous dependent variable is not extremely skewed, the regression estimates will be robust. While there is no precise figure as to what distribution constitutes extreme skewing, a common practice is to assert that regression may be used if the distribution of the dependent variable is not in excess of 80/20. In the present research, I have adopted this rule. Where the distribution of a dichotomous dependent variable is within the 80/20 range, I shall employ regression analysis. Where the distribution is beyond those bounds, I shall employ another statistical technique, logistic regression analysis, in addition to the OLS regression. Logistic regression is designed for dichotomous dependent variables, and the estimates produced by it are robust. However, unlike OLS regression, logistic regression is a maximum likelihood technique, and the estimates produced are somewhat different from those obtained in OLS regression.

Instead of coefficients which tell how much change in the dependent variable is produced by a change in an independent

give the comparative odds of those with a certain value on an independent variable receiving a particular effect, e.g. being confined, compared to those without that value on the independent variable. For instance, as the result of OLS regression, one might learn that being black as opposed to being white will result in an increased percentage of those being confined. Logistic regression, on the other hand, might tell us that being black increases the odds of receiving confinement, by saying that blacks are, say, 2.1 times more likely to receive confinement than are whites. In those cases where both OLS and logistics regression techniques are being employed, the OLS estimates will be reported if the two sets of coefficients are substantively comparable.*

The Models to be Examined

The models to be examined are presented in stages, depending upon the nature of the independent variables. The first category of independent variables examined are those which represent characteristics of the defendant which existed prior to his entry into the military, i.e. the demographic and socioeconomic characteristics of the soldiers. Following this came the defendant's military

* The only dependent variable with such a highly skewed distribution was VERDICT. Both OLS and logistic regression models were run. No significant differences were found between the two sets of analyses; therefore the OLS estimates will be reported.

characteristics, the characteristics of the offense, trial related decisions of the defendant and the "organizational and treatment" variables in that order. Table 3.1 presents

Table 3.1

Models in the Analyses

Demo-SES Variables	Military Variables	Offense Related	Trial Decisions	Organ. Factors and Prior Decision
Race	Rank	Length	Forum	Unit
Age offense	Len. service	AWOL	Plea	Year
Education		Term.		Judge
		# Charges		Pre-trial Agreement
		Prev. C-M		Clemency recom.
		Desertion conv.		

Dependent Variables

Pretrial confinement *
 Level of court *
 Verdict
 Sentence to confinement *
 Sentence to a discharge
 Confinement clemency
 Discharge clemency

* Used as an independent variable in subsequent models.

the stage model utilized in this research.

In the analysis of pretrial confinement and the level of court only the first three categories will be included along with the unit and year variables from the fifth category. In the analysis of the verdict, the forum and judge

variables will be added. In the analysis of the sentence adjudged and the action taken, all variables will be included in the models. Thus the first perspective examined will be the conflict one. Then the factors posited by those of the consensus perspective to be significant will be added and the effect of the offender related characteristics, controlling for the offense related factors, will be examined. Finally, the factors associated with the organizational perspective will be entered, and the effects of the offender and offense related characteristics, controlling for the effects of the organizational and treatment factors, will be examined. Since there is not an excessively large number of variables in the models, it will not be necessary to trim the models to remove variables which are not significant. This will permit the examination of potential suppressor effects.

Sample Selection Procedures

The population upon which the research is based consists of the cases tried by court-martial at Fort Meade in which the major charge alleged was an absence offense, either AWOL or desertion. Not all of the cases are included in the analysis of each endogenous variable. In order to be included in the analysis of a particular endogenous variable, the defendant in the case must have been subject to the decision represented by the dependent variables. In addition, in order to a case to be included in the

multivariate analyses, the defendant had to be either white or black. In other words, those cases in which the racial group of the defendant was coded 'other' or was missing were excluded from the analyses.

In the analyses of the first three decisions--those involving pretrial confinement, the level of court to which the case was referred and the verdict, all cases in the population are included. For the analyses of the decisions pertaining to the punishment imposed, two groups were dropped: those found not guilty of all charges and those tried by summary court-martial. Those found not guilty were not subject to any punishment and thus were not examined with respect to the sentence adjudged. Those convicted at a summary court-martial could have been sentenced to one month's confinement. In all but a very few of the cases, no confinement was adjudged. Furthermore, the cases tried in the summary courts contained a great deal of missing data, so much so that many of the cases would have been dropped from the analyses, given the nature of the statistical techniques employed. For those two reasons, no further analyses involving summary court-martial cases were undertaken.

All of the cases which resulted in a conviction at a special, BCD special or general court-martial were included in the analysis of the sentence to confinement. With respect to the analysis of a sentence to a discharge, only

cases which resulted in a conviction at a BCD special or general court-martial are analyzed. These latter cases represent the only class of defendants subject to being sentenced to a punitive discharge.

In the analyses of the two clemency decisions, that with respect to confinement and that with respect to a discharge, the samples are reduced further. Only persons receiving a sentence to confinement, regardless of whether or not they were sentenced to a discharge, are included in the analysis of confinement clemency. Similarly, with respect to discharge clemency, only persons sentenced to a discharge, regardless of whether or not they were sentenced to confinement, are included in the sample analyzed. The specific models will be examined during the next two chapters.

CHAPTER IV

THE EMPIRICAL ANALYSIS I: JUDGMENT

Introduction

In this chapter I shall examine the practices which took place in the administration of military justice between the arrest of the defendant and the rendering of the verdict. As I stated earlier, the unit of analysis is the individual court-martial for an absence offense. The dependent variables are the major decisions of military authorities on a case--the decisions regarding pretrial confinement, the level of court and the verdict. The independent variables are the characteristics of the defendants, the alleged offenses and the setting. In addition to examining the effect of the defendant's race, I shall be attempting to ascertain which theoretical perspective--the consensus, conflict or organizational--best accounts for variations in the outcomes of the cases.

The demographic, socioeconomic variables and the characteristics of the soldier's military background constitute the offender related variables which those theorists associated with the conflict perspective have put forth as being significant predictors of the outcomes. Characteristics of the offense and the defendant's prior record make up the legally relevant variables which those theorists associated with the consensus perspective believe to be the major factors in determining the outcomes of

cases. Finally, the characteristics of the setting, such as the unit and the year, and the decisions made at preceeding stages are the variables which those associated with the organizational perspective posit to be significant sources of variation in the outcomes.

Before proceeding to the analysis of the decisions, I shall look at the characteristics of those soldiers whose trials are being examined. In examining each of the various decisions, the processes which lead to the outcome and the significance of the decision will be described. I shall then take up the bivariate correlations between the factors, or independent variables, and the outcomes. Finally, the multivariate model will be presented and discussed.

Characteristics of the Defendants

Table 4.1 presents the means, standard deviations and frequency distributions for all those persons whose major offense was either AWOL or desertion. This table also gives those characteristics for whites and blacks separately. In general, the characteristics of the soldiers are quite similar to those of military offenders described in earlier studies (Stoeffer et al., 1949; Task Force, 1972; Hartnagel, 1974; Bell and Bell, 1977). Military offenders were found to be relatively young, to have low educational levels, low IQ scores and were likely to have been in trouble previously. The defendants in the present research have an average age of just under twenty-one at the time of their

offense. They have, on the average, less than a high school education and an IQ, as measured by the Army's general intelligence test, of 92. These figures would certainly seem to conform to the popular view of the military offender as one who is below average in age, education and IQ score.

One surprising feature of the present group is the high proportion of blacks. Of those whose race could be ascertained, nearly fifty-five percent are black. While the issue of over-representation by blacks in the criminal justice system is well known, the percentage of blacks in the present research must nevertheless be regarded as quite surprising. The figures here are higher than those found either by the Task Force or Hartnagel, which respectively reported the percentage of blacks to be thirty-one and twenty-seven percent. Part of this discrepancy may be due to the fact that many in the present study come from Baltimore, Maryland, Washington, D.C., and Philadelphia, Pennsylvania, all of which are urban areas with large black populations.

Table 4.1
 Characteristics of the Defendants (AWOL only)
 Means and Standard Deviations

Variable	N of Cases	Mean	Standard Deviation
Race	727	0.538	0.499
Ageoff	849	20.993	3.353
Education	849	10.850	1.399
Gradesch	849	0.673	0.470
HSchool	849	0.284	0.451
College	849	0.044	0.204
Rank	849	2.486	1.274
Lghserv *	849	3.763	1.585
Qualserv	849	0.649	0.478
Component	849	1.835	0.371
Length AWOL	849	2.367	2.057
Termination	849	0.316	0.465
Number Charges	849	1.457	0.754
Prior CM	849	0.254	0.434
Prior Offense	849	0.576	0.494
Cavalry	849	0.038	0.191
Engineer	849	0.045	0.207
PCF	849	0.840	0.367
Other Unit	849	0.073	0.260
Forum	777	1.138	0.345
Guilty Plea	849	0.737	0.440
Judge A	849	0.161	0.368
Judge B	849	0.468	0.499
Pre-trial Agree.	849	0.328	0.526
Year73	849	0.499	0.500
Pre-trial Conf.	849	0.545	0.498
Court	849	2.282	0.821
Total Verdict	849	0.939	0.240
Sentence CHL	801	3.276	4.728
Sentence Disch.	180	0.967	0.180
CHL Clemency	550	0.382	0.486
Discharge Clemency	174	0.040	0.197

Table 4.1b
Ages of the Defendants *
(n=849)

Age	Whites	Blacks	Other **	Total
Under 18	16	6	1	23
18-20	120 (1.88)	129 (0.71)	55 (0.12)	304 (2.71)
21-25	159 (14.13)	208 (15.19)	60 (6.48)	427 (35.81)
26-30	32 (18.73)	34 (24.50)	4 (7.07)	70 (56.29)
Over 30	9 (3.77)	14 (4.00)	2 (0.47)	25 (8.24)
	(1.06)	(1.65)	(0.24)	(2.94)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

* Percentages in parentheses.

** Treated as missing values in the analyses.

Table 4.1c
Educational Levels by Race
(n=849)

Level	Whites	Blacks	Other	Total
No high school	36 (4.24)	12 (1.41)	7 (0.82)	55 (6.48)
Some high school	184 (21.67)	227 (26.74)	105 (12.37)	516 (60.78)
High school	94 (11.07)	139 (16.37)	8 (0.94)	241 (28.39)
Some college	22 (2.59)	13 (1.53)	2 (0.24)	37 (4.36)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Table 4.1D
Length of Service, by Race
(n=849)

Length	Whites	Blacks	Other	Total
< 3 months	34 (4.00)	24 (2.83)	8 (0.94)	66 (7.77)
3-6 months	48 (5.65)	61 (7.18)	15 (1.77)	124 (14.61)
7-12 months	61 (7.18)	77 (9.07)	22 (2.59)	160 (18.85)
1-2 years	98 (11.54)	120 (14.13)	44 (5.18)	262 (30.86)
2-3 years	52 (6.12)	70 (8.24)	22 (2.59)	144 (16.96)
3-5 years	21 (2.47)	12 (1.41)	4 (0.47)	37 (4.36)
5-10 years	15 (1.77)	17 (2.00)	5 (0.59)	37 (4.36)
Over 10 years	7 (0.82)	10 (1.18)	2 (0.24)	19 (2.24)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Table 4.1e
Length of AWOL, by Race
(n=849)

Length	Whites	Blacks	Other	Total
Under 1 month	39 (4.59)	49 (5.54)	35 (4.12)	121 (14.25)
1-3 months	112 (13.19)	143 (16.84)	43 (5.06)	298 (35.10)
4-6 months	71 (8.36)	96 (11.31)	24 (2.83)	191 (22.50)
7-12 months	18 (2.12)	35 (4.12)	7 (0.82)	60 (7.07)
13-18 months	11 (1.30)	6 (0.71)	2 (0.24)	19 (2.24)
25-36 months	34 (4.00)	29 (3.42)	4 (0.47)	67 (7.89)
37-60 months	25 (2.94)	18 (2.12)	1 (0.12)	44 (5.18)
Over 60 months	9 (1.06)	4 (0.47)	2 (0.24)	15 (1.77)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Table 4.1f
Manner of Termination, by Race
(n=849)

	Whites	Blacks	Other	Total
Surrender	225 (26.50)	257 (30.27)	99 (11.66)	581 (68.43)
Apprehended	111 (13.07)	134 (15.78)	23 (2.71)	268 (31.57)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Table 4.1g
Number of Charges, by Race
(n=849)

	Whites	Blacks	Other	Total
1	230 (27.09)	259 (30.51)	81 (9.54)	570 (67.14)
2	76 (8.95)	87 (10.25)	34 (4.00)	197 (23.20)
3	23 (2.71)	29 (3.42)	3 (0.35)	55 (6.48)
4	5 (0.59)	12 (1.41)	2 (0.24)	19 (2.24)
5	1 (0.12)	4 (0.47)	2 (0.24)	7 (0.82)
Over 5	1 (0.12)	0 (0.00)	0 (0.00)	1 (0.12)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Table 4.1h
Table of Previous Courts-Martial, by Race
(n=849)

	Whites	Blacks	Other	Total
None	262 (30.86)	274 (32.27)	97 (11.43)	633 (74.56)
A prior CM	74 (8.72)	117 (13.78)	25 (2.94)	216 (25.44)
Total	336 (39.58)	391 (46.05)	122 (14.37)	849 (100.0)

Another reason for the high percentage of blacks may be that they were more willing to serve in the Army than were whites who had gone AWOL. Military service did not seem to be as traumatic an experience for blacks as for whites, the latter of whom had no well defined group of peers awaiting them as did black soldiers. Historically blacks have used the military, and even the enlisted ranks, as a means of upward social mobility. For whites, being a career enlisted soldier was not as likely to be regarded as good a job as it was for black soldiers. Thus if a greater percentage of blacks were to opt to remain in the military than did whites, the above discrepancy might be partially explained.

In looking at the characteristics of whites and blacks, one sees that the two groups are remarkably similar--though blacks did tend to be slightly older and to have more education, while whites had higher IQ scores. Whites tended to have higher ranks than blacks even though they were in the Army for shorter lengths of time. None of the differences were statistically significant however.

Table 4.2 presents the rank distribution, by race, of those in the sample as well as that of the overall Army. While there is no significant difference between the two races of those in the sample, those in the sample do have a higher percentage concentrated at the low ends of the rank spectrum than do those in the Army as a whole. More than half of those tried had ranks of E-2 or less. In the Army

these ranks normally are for those undergoing training. By the time a person has reached his first duty station following training, he could be expected to be a PFC (private first-class, E-3). The only way in which an enlisted soldier can lose rank is as the result of disciplinary proceedings, either a court-martial or Article 15.

The rank distribution of those in the study is not surprising. Many of those who went AWOL did so from training units. Thus the rank of these soldiers would tend to be low. Furthermore, a substantial percentage had been subject to prior disciplinary proceedings, an event which

Table 4.2

Distribution of Rank, by Race

Rank	Whites	Blacks	Total
E-1	78 (23.21)	110 (28.13)	188 (25.86)
E-2	104 (30.95)	131 (33.50)	235 (32.32)
E-3	66 (19.64)	68 (17.39)	134 (18.43)
E-4	62 (18.45)	63 (16.11)	125 (17.19)
E-5	21 (6.25)	11 (2.81)	32 (4.40)
E-6	4 (1.19)	5 (1.28)	9 (1.24)
E-7 and above (inc. officers)	1 (0.30)	3 (0.77)	4 (0.55)
Total	336 (46.22)	391 (53.78)	727 (100.00)

could well have resulted in a reduction in rank.

Whites also had a higher percentage receiving "excellent" ratings from commanders than did blacks, and blacks were more likely to have been subject to prior disciplinary action than were whites. Neither race fitted the conception of military offenders as unwilling soldiers; an overwhelming majority of both races were enlistees rather than draftees. Eighty-six percent of whites and eighty percent of blacks enlisted. In considering these figures, one should bear in mind that they do not reflect the characteristics of those AWOL offenders who either took a discharge, took an Article 15 or were still at large. Secondly, many soldiers, such as myself, were originally drafted, but took an extra year in order to be guaranteed a particular job. In such cases, the draftee is given a discharge, and he reenlists as a volunteer. In the present research, the soldier would be classified as a volunteer.

With respect to the characteristics of the offenses, blacks had fewer soldiers with long absences than did whites. Of the 391 blacks in the study, 70 or 17.9%, were absent more than a year while 96 of 336, or 28.5%, of the whites were absent in excess of twelve months.

Whites and blacks had virtually identical figures regarding the manner in which their absences were terminated. Approximately one-third were terminated by apprehension by military or civilian authorities, while the remaining two-thirds ended in surrender. Just under half of

the black soldiers were charged with more than one absence while approximately two-fifths of the whites were tried for multiple offenses. Blacks were more likely to have been subject to prior disciplinary action than were whites. Nearly thirty percent of the blacks had a prior court-martial conviction while an additional thirty-five percent had received an Article 15. Twenty-two percent of the whites had a prior court-martial conviction, and thirty percent had been subject to nonjudicial punishment.

In summary, while the two races are remarkably similar in several respects, there are some interesting differences. Whites tended to have slightly better military records while blacks tended to have less severe offenses. Just how the military authorities weigh the various factors should account for any relative disparities in the treatment of the two groups which are not accounted for by the direct effect of race itself.

Summary of the Processes

In this section I shall very briefly describe the various outcomes which were examined in the research. I shall look at the frequencies of each of the decisions and discuss how blacks and whites fared at each step. The actual effect of race as a predictor of the outcomes will be taken up in the individual sections, however. In 727 of the 849 cases where a soldier was being tried for an absence offense data concerning the race of the defendant was present. The

remaining 142 will be dropped from the multivariate

Table 4.3			
Imposition of Pretrial Confinement, by Race			
	Whites	Blacks	Total
No PTC	142 (42.26)	167 (42.71)	309 (42.50)
PTC	194 (57.74)	224 (57.29)	418 (57.50)
Total	336 (46.22)	391 (53.78)	727 (100.00)

analyses. Of those 727, 336 were white, and 391 were black.

Table 4.3 gives the figures concerning the imposition of pretrial confinement. Of the 336 whites in the sample, 142, or 42.3%, were not placed in pretrial confinement while 194, or 57.7%, did spend some time in confinement prior to their trial. The percentages for blacks were quite similar. 168, or 43.0%, avoided pretrial confinement while 223, or 57.0%, were sent to the stockade. Thus at the onset there does not appear to be any strong association between the race of the soldier and whether or not pretrial confinement was imposed in his case.

Table 4.4 presents the distribution of soldiers to level of court. Of the 849 in the sample, 71, or 8.4%, were tried by summary court, 597, or 70.3%, by special court, 52, or 6.1%, by BCD special court and 129, or 15.2%, by general court-martial. The larger numbers at the special and general courts are likely due to the fact that many of those originally charged with AWOL or desertion received

Table 4.4
Referral to Court, by Race

Level of Court	Whites	Blacks	Total
Summary	15 (4.46)	17 (4.36)	32 (4.41)
Special	230 (68.45)	296 (75.90)	526 (72.45)
BCD Special	23 (6.85)	24 (6.15)	47 (6.47)
General	68 (20.24) (46.28)	53 (13.59) (53.72)	121 (16.67) (100.00)

administrative discharges. Two groups accounted for the vast majority of courts-martial: those charged with relative short absences who wished to return to duty and thus were tried at special courts-martial and those charged with relatively long absences who were tried by general court-martial, whether or not they wished to return to duty.

In looking at the assignment to court by the race of the defendant, one can see that blacks did not appear to suffer from any significant pattern of discrimination. Despite their larger numbers, fewer blacks were tried by general courts than were whites (53% to 68%), while the percentage of blacks tried by special courts was greater than that of whites tried by this court (75.7% to 68.5%).

Table 4.5 presents the figures for the verdict reached in the trials. It should be noted that a guilty verdict on this variable means that a soldier was convicted on at least one charge. In other words, only those soldiers found not

Table 4.5

Verdict by Race

Verdict	Whites	Blacks	Total
Not guilty	17 (5.06)	15 (3.84)	32 (4.40)
Guilty	319 (94.94)	376 (96.16)	695 (95.60)
Total	336 (94.94)	391 (96.16)	727 (100.00)

guilty on all charges were given a '0' on this variable.

One can see that if a soldier goes to trial there is a very good chance that he will be convicted. 797, or 93.9% of all cases resulted in a guilty verdict, compared to 52, or 6.1%, which resulted in acquittals on all charges. Whites were slightly more likely to be acquitted than were blacks, though the differences are not statistically significant.

Pretrial Confinement: The Decision to Confine

For almost any person facing a criminal charge, the fear of imprisonment produces the greatest anxiety, and soldiers accused of having been AWOL are no exception to this. Military and legal officials may distinguish between sentenced prisoners and those who have yet to be convicted, but for the person in the stockade, any such differences are primarily academic. The possibility of confinement occurs even before the rendering of a verdict or the adjudging of the sentence. It occurs at one of the first points in the process--with the decision regarding pretrial confinement.

Besides the obvious undesirable features of confinement (e.g. the loss of liberty, the degradation of one's esteem), there are several additional negative consequences of pretrial confinement in the military. In the first place, should the soldier be convicted, the time spent in pretrial confinement is neither credited toward the sentence nor does it count as "good time" when calculating the soldier's military obligation. Thus the time is lost, both literally and figuratively.

To use Merton's (1957) terminology, the above constitute some of the manifest consequences of pretrial confinement. In addition, there are consequences which could be considered to be latent. Confinement may have a labelling effect. To some, the mere fact that a person is in jail suggests that his offense is a serious one and that he probably deserves to be in prison. Should those who determine the issues of guilt or innocence and the punishment to be imposed hold such feelings, the fact that the defendant has been in pretrial confinement may well reinforce feelings that the defendant is guilty and deserves to be punished with a sentence to confinement.

The imposition of pretrial confinement can have yet another latent function which works in the following manner. One of the arguments which a defendant in criminal trial puts forth against the imposition of confinement is that he has already been rehabilitated and that confinement is

unnecessary. In the absence of offenses, rehabilitation means that the soldier will not go AWOL again. The fact that the defendant did not go AWOL while awaiting his court-martial, certainly one of the more stressful situations in the military, adds weight to such an argument. The soldier who has spent the time prior to his trial in the stockade can advance no such argument. Nor can the argument that the defendant has been punished enough be considered to be a strong one against the imposition of further confinement in AWOL cases, as the trial in all likelihood takes place within two months of the arrest.

Another consequence of pretrial confinement may affect the likelihood of there being a trial at all. The effect of confinement may have an influence on the soldier's decision as to whether he wishes to return to duty or to seek an administrative discharge. A decision to return to duty is likely to mean additional confinement, and soldiers in pretrial confinement do not receive credit for any confinement which they served. It is not surprising that a soldier awaiting trial in the stockade might eventually tire of his ordeal and opt for a discharge. I witnessed several soldiers go through such a process during my stay in the stockade.

On the other hand, soldiers not confined prior to their trial could carry on more or less as did regular soldiers. Many went home on weekends and some, who lived in Washington

or Baltimore, actually were able to go home in the evenings. Time spent awaiting a court-martial for these soldiers was "good time", and the duty was not hard. These soldiers, having already escaped the imposition of confinement on one occasion, could be, and often were, quite optimistic concerning their chances of escaping confinement following a court-martial. Given the possible consequences of pretrial confinement, it is not at all surprising that critics of the military justice system have expressed considerable concern over the manner in which the decision to impose pretrial confinement was carried out.

The decision to impose pretrial confinement is usually initiated by the soldier's company commander, who also generally acts as the accuser. In non-PCF units the company commander had to secure the concurrence of a JAG officer before any pretrial confinement could be imposed. There are specific grounds which are considered necessary and sufficient for the imposition of pretrial confinement. They are: (1) seriousness of the offense, (2) to prevent the soldier from hurting himself or others or (3) to prevent the soldier from becoming AWOL prior to the disposition of his case. The second ground does not apply to AWOL offenses, and the first was rarely invoked. Thus the normal justification for imposing pretrial confinement in AWOL cases was to prevent the soldier from going AWOL. Thus one would expect that a large proportion of those whose offenses were terminated by apprehension or who were charged with

more than one offense would be placed in pretrial confinement.

As the consequences of pretrial confinement are potentially so severe, it is essential that the decision be carried out fairly. As noted in Chapter II, the Task Force found that blacks were more likely to be confined and to serve longer periods in pretrial confinement than were whites. If military officials are more prone to confine black soldiers than white ones, then one would expect to find a racial effect on the imposition of pretrial confinement after the effects of other variables are controlled. Should there be a "class" effect in addition to or instead of a racial effect, then one would expect factors such as rank and education to be negatively associated with the imposition of confinement.

Pretrial Confinement: Bivariate Correlations

Table 4.6 presents the bivariate correlations between the dependent variables and the factors. Of the 336 whites in the sample, 194 whites, or 57.7%, were placed in pretrial confinement while 142, or 42.3% were permitted to remain free pending their trial. For the 391 blacks 224, or 57.3% were placed in pretrial confinement, while 167, or 42.7% were allowed to remain free pending their trial. As the soldiers in the sample do not necessarily constitute a representative sample of those charged with AWOL or desertion (the majority having been administratively

discharged), one cannot conclude that the percentage of those confined in this group accurately reflects the percentage of those confined overall. Nevertheless, with this in mind, I shall proceed to the analysis of the decision to impose pretrial confinement.

Table 4.6
Bivariate Correlations *
All AWOL Defendants (n=849)

	Grade	High			Lgh.	Lgh.			Prev.	
	Ageoff	School	School	College	Rank	Serv.	AWOL	Term	Spec	CM
Race	.085*	-.045	.081*	-.075*	-.076*	.017	-.102**	.013	.044	.090*
Ageoff	*	-.165**	.132**	.089*	.442*	.553*	.000	-.001	.026	.136**
Gradesch			-.902**	-.306**	-.096**	-.104**	-.004	.042	.020	-.052
Hschool				-.134**	.088*	.107**	-.053	-.062	-.018	.062
College					.027	.003	.127**	.041	-.007	-.018
Rank						.614**	-.106**	-.093**	-.037	-.213**
Lghserv							-.106**	-.124**	-.059**	.154**
Lghawol								.325**	-.213**	.213**
Term									.001	.055
Spec										-.064

	Desertn	Cav	Engr	PCF	Year	Gltyplea	Forum	PTA	JudgeA	JudgeB
Race	-.042	-.007	.017	-.038	-.009	-.120**	.026	-.040	-.002	.017
Ageoff	.003	.141**	.004	-.125**	-.027	.018	-.000	.106**	.054	-.047
Gradesch	.039	-.007	.017	.003	-.026	.006	-.013	-.062	-.082*	-.045
Hschool	-.049	.026	-.010	-.010	.040	.002	.003	.010	.043	.064
College	.019	-.042	-.019	.015	-.029	-.017	.024	.119**	.095**	-.038
Rank	-.112**	.055	.029	-.075*	-.047	.035	-.108**	.124**	-.014	.052
Lghserv	-.074*	.170**	.082*	-.236**	-.022	.049	-.084*	.052	-.011	.024
Lghawol	.412**	-.137**	-.122**	.230**	-.161**	.205**	.351**	.274**	.235**	.392**
Term	.223**	-.121**	-.098**	.214**	-.075*	-.050	.142**	.088*	.095**	-.113**
Spec	-.074*	-.054	.012	-.076*	.038	-.188**	-.035	-.038	.023	.005

Chlrec PTC Court Verd. Sntchl Sntdis Chlclem Disclcm

Race	-.023	-.007	-.088*	.030	-.042	-.082	-.077	-.008
Ageoff	.025	-.051	.050	.012	-.062	-.135	.024	.164
Gradesch	-.061	.089**	-.063	-.084*	.047	.197	-.055	-.112
Hschool	.080	-.070	.004	.095**	-.075*	-.117	.060	.100
College	-.036	-.048	.138**	-.018	.061	-.144	-.007	.036
Rank	.221**	-.184**	-.138**	-.026	-.209**	-.140	.220**	.111
Lghserv	.158**	-.154**	-.111**	.033	-.171**	.051	.141**	.143
Lghawol	-.333**	.326**	.856**	.099**	.552**	.301**	-.096*	-.073
Term	-.150**	.269**	.348**	-.017	.252**	.040	-.088*	-.136
Spec	-.055	.265**	-.090**	.025	.017	-.130	-.094*	.077

	Desertn	Cav	Engr	PCF	Year	Gltyplea	Forum	PTA	JudgeA	JudgeB
Prevcm	.161**	.028	.005	-.035	-.043	.038	.110**	.036	.085*	-.158**
Desertn		-.050	-.054	.110**	-.094**	.038	.256**	.059	.078*	-.227*
Cav			-.043	-.453*	-.043	.062	-.059	-.064	-.003	.062
Engr				-.496**	.114**	-.039	-.039	-.048	.013	-.020
PCF					-.097**	.075*	.017	.137**	.017	-.048
Year						-.110**	-.012	-.062	.068*	.060
Gltyplea							-.037	.336**	.014	-.138**
Forum								.068	.237**	-.280**
PTA									.128**	-.090**
Judge A										-.411**

	Chlrec	PTC	Court	Verdict	Sentchl	Sentdis	Chlclem	Disclcm
Prevcm	-.152**	.149**	.270**	.069*	.250**	.178*	-.131**	.032
Desertn	-.153**	.191**	.449**	.043	.482**	.044	-.018	-.061
Cav	.024	.032	-.091**	.050	-.066	.000	-.067	.000
Engr	.063	-.043	-.137**	-.016	-.073*	.000	.107*	.000
PCF	-.060	.053	.209**	-.004	.132**	.138	-.028	.035
Year	.032	-.015	-.142**	-.079*	-.100**	-.068	.032	.016
Gityplea	-.023	.073	.182**	.417**	.117**	.041	.196**	.067
Forum	-.241**	.133**	.443**	.042	.193**	-.098	-.159**	-.107
PTA	.063	.051	.354**	.159**	.261**	.038	.308**	.046
Judge A	-.129**	.111**	.287**	.032	.208**	-.137	.004	-.011

	Chlrec	PTC	Court	Verdict	Sentchl	Sentdis	Chlclem	Disclcm
Judge B	.280**	-.102**	-.310**	-.125**	-.223**	.028	.064	-.031
Chlrec		-.303**	-.341*	-.033	-.247**	.016	.349**	.526**
PTC			.393	.063	.282**	.037	-.260**	-.219**
Court				.106**	.619**	.089	-.115**	-.135
Verdict					.038	.000	-.145	.000
Sentchl						.121	-.046	-.073
Sentdis							.086	.000
Chlclem								.002

* p less than .05.

** p less than .01.

As shown in Table 4.6, the level of education is the socioeconomic factor most strongly associated with the imposition of pretrial confinement. Those with less than a high school education were more likely to be confined than were those with at least a high school education, and those with exactly a high school diploma were less likely to be confined than were those who had been to college. Younger soldiers were more likely to be confined than were soldiers who were older at the time of their offenses. The defendant's race, however, seemed to bear no relationship whatsoever with the decision to impose pretrial confinement.

Both of the military variables examined showed significant correlations with pretrial confinement. Soldiers of higher rank and longer lengths of service were less likely to be confined than were lower ranking soldiers and those who had not been in the Army long. The two military variables are highly correlated ($r=.614$); therefore it will be interesting to see the effects of each of these variables when the effects of these and other variables are taken into consideration.

The offense related variables appear to be the strongest factors in the model. Pretrial confinement is directly associated with the length of the absence, the number of charges, having been apprehended and having a prior record. Of these, the length of the absence has the strongest zero-order correlation ($r=.326$). Finally, being a member of the

6th Armored Cavalry, widely regarded as the strictest unit on the post, seemed to increase one's chances of being placed in pretrial confinement should one be charged with being AWOL.

If the above patterns hold during the multivariate analysis, the strongest factors in determining whether or not pretrial confinement is imposed will be the offense related factors. Of secondary importance will be the military variables and the variable indicating the soldier's unit.

Pretrial Confinement: The Multivariate Analysis

In analysing the decision to impose pretrial confinement (and in all subsequent decisions), it should be borne in mind that the three perspectives put forth differing forecasts of the factors which will best account for variations in the outcomes of those decisions. In addition, it is important to distinguish between the types of claims advanced by the perspectives. On one hand there is the claim as to the amount of variance explained by variables within the various perspectives. On the other there is the issue of the effect of the variables themselves. A particular variable might have an effect which would tend to support a certain perspective while the total amount of variance explained by the variables in that perspective might well be small. For instance, if rank or education were to be negatively associated with the imposition of

pretrial confinement, the position of the conflict perspective would be confirmed even though the total amount of variance explained by the conflict perspective were much smaller than that explained by the consensus or organizational perspectives.

The view associated with the consensus perspective maintains that the offense related variables--length of the absence, number of charges, manner of termination and prior record of the defendant, should best account for variations in the imposition of pretrial confinement. The view associated with the conflict perspective holds that, notwithstanding the offense related factors, ascribed characteristics of the defendant--his race and rank, will be significant determinants of the outcomes. Finally, the third perspective, that which stresses the importance of characteristics of the organization, posits that factors such as the unit, year and other organizational characteristics significantly affect the administration of justice. The number of variables associated with the organizational perspective is not as great as those associated with either the conflict or consensus perspective or as large as it will be in the analysis of subsequent decisions; therefore it should be expected that the major controversy in the analysis of the early decisions is between the conflict and consensus perspectives.

Table 4.7 contains the reduced form structural equations

for the multivariate analysis of pretrial confinement. In the first stage of the analysis only the characteristics of the defendant are entered. The fact that only two percent of the variance of the dependent variable is explained suggests that none of these variables are strong predictors of the dependent variable. The defendant's race is, in fact, the weakest of the variables, exhibiting virtually no relationship with the dependent variable. The only significant factor is the dummy variable which indicates whether or not the soldier has less than a high school education. Those who do have less than a high school education are more likely to have pretrial confinement imposed than are those with at least a high school diploma.

Table 1.7

Retrial Components

Beta Coefficients

(n=727)

Age	-.001 (.031)	-.026 (.030)	-.006 (.032)	-.0004 (.031)
Age ²	-.004 (.008)	-.015 (.006)	-.001 (.006)	-.003 (.006)
Grade 5C	-.133** (.040)	-.122** (.039)	-.078* (.035)	-.076* (.034)
College	-.058 (.029)	-.087 (.028)	-.171* (.078)	-.161* (.077)
Year		-.071*** (.013)	-.031 (.018)	-.022 (.018)
Unserv		-.026 (.048)	-.016 (.015)	-.017 (.015)
Unempl			.073** (.009)	.081** (.009)
Spec			.222** (.021)	.233** (.021)
Term			.115** (.035)	.158** (.035)
Prover			.104** (.042)	.133** (.041)
Ischult				-.008 (.006)
Govt				.404** (.085)
Entr				-.006 (.073)
Year 73				.051 (.031)
Intercept	.584	.441	.084	.080
R ² square	.022	.065	.280	.304
adj R ² square	.016	.057	.270	.294

Table 1.7a

Referral Contingent
Standardized Coefficients

Race	-.001	-.026	-.006	-.000
Age	-.030	.102	-.005	-.023
Grades	.130	.119	.076	.076
College	-.025	-.038	-.075	-.076
Work		-.185	-.081	-.057
Unserv		-.085	-.033	-.058
Unserv			.312	.342
Spec			.343	.359
Term			.139	.151
Proven			.092	.091
Disc mit				-.004
Case				.154
Hour				-.063
Year 73				.054

The military characteristics of the defendant are entered in the second stage. With the addition of these variables the proportion of variance explained triples--from 2.2% to 6.5%. The defendant's race continues to be a weak predictor--in fact being black has an insignificant but negative effect on pretrial confinement when the military variables are controlled. While having less than a high school education continues to be positively associated with the imposition of pretrial confinement, the strongest variable in the model at this stage is the defendant's rank. The higher the soldier's rank, the less likely he is to be placed in pretrial confinement. While the variables associated with the conflict perspective account for only slightly more than six percent of the variance; however the direction of the relationship, with respect to race, confirms the position of the conflict perspective.

With the introduction of the offense related variables, the variables associated with the consensus perspective, the proportion of explained variance quadruples--from 6.5% to 28.0%. Each of the offense related variables is significant at the .01 level. The single strongest predictor of pretrial confinement is the number of absences charged against the defendant. Each absence increases the likelihood of pretrial confinement being imposed by roughly 22%. The next strongest predictor is the length of the absence, with having been apprehended and having a prior court-martial conviction third and fourth respectively.

Of the significant variables from the previous stage, only whether or not the soldier has less than a high school education continues to be significant, but now it is less significant than before. Having more than a high school education had a significant effect on the dependent variable. Those who had attended college are less likely to be confined. Thus it appears that the defendant's level of education has a negative and linear relationship with the imposition of pretrial confinement once the offense related variables are taken into consideration, a relationship which would be posited by those of the conflict perspective. The defendant's rank, on the other hand, is no longer significant when one includes the offense related factors in the model. It would seem that those with lower levels of education and rank were charged with more serious offenses.

In the final stage the structural variables are included. These are the variables posited by those who adhere to the organizational perspective. In the previous research, the interest has been on the extent to which the organizational variables mediated the effect of the offender related characteristics. However, in this case the relative weakness of the offender related variables, compared with the offense related factors, means that the major interest will be in the extent to which the variables associated with the organizational perspective mediate the effect of the characteristics of the offense. Only being in the 6th Cavalry is significantly associated with the dependent

variable. While not as significant as the number of charges or the length of the absence, being in this unit had roughly the same effect on the likelihood of pretrial confinement being imposed as did having had a prior record or having been apprehended. In addition, the education variables continue to demonstrate a similar pattern as in the previous stage.

In conclusion, the decision to impose pretrial confinement appears to have been based on both legal and extra-legal factors. The length of the absence and the number of charges are important determinants of pretrial confinement, and these are both legally relevant variables. Those soldiers who have been absent a long time, who were facing earlier AWOL charges at the time of their current absence, who were apprehended and who had previously been convicted by a military court-martial all were more likely to be confined than were soldiers who did not meet these conditions.

Extra-legal factors also had a significant impact--in particular, the education variables. The decision regarding pretrial confinement is often made by the soldier's commanding officer who must work with the soldier and have him live in the unit while charges are pending. Besides the possible effect which the soldier might have on others in the unit, the officer must consider the likelihood that the soldier will go AWOL prior to his trial. It could well be

that the soldier's level of education has some bearing on this decision, either by his sharing certain attributes with the officer or, indirectly, through an increased ability to communicate with him. Whatever the case and for whatever reason, it is clear that having more education reduces the likelihood of having pretrial confinement imposed, especially when the military, offense related and organizational variables are taken into account. Soldiers in the 6th Cavalry ran a greater risk of being confined should they go AWOL than did soldiers in other units, a fact which confirms the popular view that discipline in combat units is enforced more strictly than in other units.

The outstanding fact of the research thus far is the lack of a strong relationship between the race of the defendant and the dependent variable. The defendant's race bore virtually no relationship with the imposition of pretrial confinement, either in its total association or its direct effect, indicating that the effect was not suppressed by other variables in the model. It has often been argued that the importance placed on the level of education constitutes a certain form of discrimination; however, given that blacks in the sample did not significantly differ from whites in this respect, it could not be inferred that discriminating on the basis of education was the means that commanders employed to indirectly discriminate against blacks. It is also noteworthy that the defendant's rank ceased to be a significant factor once the offense related variables are

introduced.

In looking at the relative strength of the three perspectives, one sees that the variables put forth by the consensus perspective appear to be dominant. The variables associated with the conflict perspective account for 6.5% of the variance, while those associated with the consensus perspective added 21.5% to the proportion of explained variance. The variables associated with the organizational perspective added only 2.4% to the proportion explained. Therefore in the decision to impose pretrial confinement, the variables associated with the consensus perspective would appear to be the major factors considered by military authorities. The most likely persons to be placed in pretrial confinement were those who went AWOL while facing charges for an earlier absence and those who were absent for relatively long periods of time. The analysis of pretrial confinement probably provides a better test of the conflict verses consensus frameworks as the number of variables associated with the organizational perspective is, as I noted earlier, smaller than the number associated with either of the other perspectives. In future analyses the number of variables will increase and thus provide a better test of the relative strength of the three perspectives.

While the reader should be warned that the subjects in this analysis do not represent a full population of those arrested, the results do portray the military officials at

this one fort as being nondiscriminatory, at least in the treatment of those cases which eventually went to court. At this point I shall turn to those decisions where the sample does approach being a population, that being the level of court to which the case is referred.

From Arrest to Court

Following the decision regarding pretrial confinement, one of the first steps taken is the assignment of defense counsel. In PCF units soldiers processed at the same time, whether confined or not, are assigned defense counsel at the same time. In non-PCF units, those confined actually were likely to receive their assignment of counsel before those who were charged but not confined. In any case, the assignment of defense counsel almost always took place in less than a week from the time that the soldier returned to military control. This practice was enforced quite rigorously in the period in question as the U. S. Court of Military Appeals was very strict about the military's speedy trial rule.

The first action following the arrest taken by the command was the drafting and forwarding of the charges. This was done as soon as some confirmation was received concerning the inception and termination of the alleged absence. In most cases the charges were filed and read to the soldier within ten days of his arrest. In any legal system the nature of the charges to be brought against the

defendant is a factor to be considered. Prosecutors have long tended to draft the most serious charges permitted by the statutes since, as charges are rarely augmented during the course of a case, drafting the most serious charge possible gives the government some room to bargain downward. In the military justice system this was done to some degree, though certainly not to the degree to which it could have been done.

One problematic issue in the absence offenses was whether the defendant would be charged with AWOL or desertion. Desertion can be of several types (e.g. intending to remain away permanently, attempting to avoid hazardous duty or important service), and each carries with it a different maximum punishment. At Fort Meade, the type of desertion charge filed alleged that the soldier absented himself with the intention to remain away permanently. If the offense was terminated by apprehension, the maximum punishment was three years; if terminated by surrender it was two years. The general practice at Fort Meade was to charge those who had been absent for a year or more with desertion and to charge those absent less than a year with AWOL. AWOL, at a general court-martial, carried with it a maximum sentence of one year, whether it was terminated by surrender or apprehension. Desertion could easily have been charged much more often than it actually was, i.e. in cases of multiple absences and when the defendant was absent from Vietnam or shipment to Vietnam. To my knowledge being absent from

Vietnam did not significantly figure into the filing of the charges.

Once the charges have been filed they are forwarded to the special court-martial convening authority, usually the accused soldier's battalion commander. If he decides to refer the case to a summary or special court-martial, to approve a discharge under honorable conditions, to settle the case through nonjudicial punishment or to drop the charges, he may do so, and the case will reach its conclusion without being referred any further. On the other hand, should he contemplate an administrative discharge under less than honorable conditions or a BCD special or general court-martial, he must forward the case to the general court-martial convening authority, usually the commander of a division or a large fort.

Should a general court-martial be contemplated, the case must be investigated at an Article 32 investigation, the military's equivalent of a grand jury. At an Article 32 investigation, the charges are investigated by a JAG officer who examines the evidence against the soldier as well as the soldier's position, if presented. The investigating officer forwards his report to the special court-martial convening authority with his findings and recommendations as to the disposition of the case.

Before the case reaches the general court-martial convening authority, the JAG office will prepare a report,

the pretrial advice, which summarizes and evaluates the evidence, contains a description of the soldier's civilian and military backgrounds and offers a recommendation as to the disposition of the case. Should any pretrial agreement be proposed, it will be considered at this time.

The general court-martial convening authority may exercise any of the options available to the special court-martial convening authority. In addition, he may approve the soldier's request for a discharge and direct that it be characterized as "undesirable".

The importance of the decision as to the level of court to which a case is referred cannot be exaggerated. The level of court determines the maximum punishment which may be imposed should the defendant be convicted. Regardless of the offense, a special court-martial can adjudge no confinement in excess of six months, while the maximum punishment which may be imposed at a general court-martial is determined by the offense(s) of which the soldier is convicted. A soldier tried by a special court-martial for a four year desertion can only be sentenced to six months confinement, while a soldier tried for a two month AWOL at a general court-martial could receive a sentence of a year.

COURT: The Bivariate Correlations

The bivariate correlations between COURT and the

independent variables are presented in Table 4.6. Unlike the case with respect to the imposition of pretrial confinement, the defendant's race is significantly associated with the level of court to which the case is referred. Blacks tended to be tried at lower courts than did whites. This relationship is probably because blacks tended to have slightly shorter absences than did whites. If this should be the case, the significance of the relationship will disappear once the offense related variables are included in the multivariate analysis. While there does not seem to be any strong association between age and the level of court, there is a positive correlation between the level of education and the level of court, a finding that is contrary to the pattern exhibited in the analysis of pretrial confinement.

The military and offense related variables show the same direction of relationship with the level of court as they did with the decision regarding pretrial confinement. The association between the length of the absence and the level of court ($r=.856$) is extremely high. Should this relationship be maintained when the effects of other variables are controlled, this variable will be a major predictor of the level of court.

There is also a significant zero-order correlation between the level of court and having been placed in pretrial confinement. This is not at all surprising, given

their respective correlations with the length of the absence and other offense related and military variables. What will be of interest is whether or not the relationship remains significant during the multivariate analysis.

COURT: The Multivariate Analysis

The examination of the relative strength of the three theoretical orientations will proceed in the manner as was done in the analysis of pretrial confinement. The variables associated with the conflict perspective (i.e. the demographic and socioeconomic and military variables) and those with the consensus perspective (i.e. the characteristics of the offense and the prior record of the soldier) are the same in the analysis of the level of court to which the case is referred. The organization perspective picks up an additional variable, whether or not pretrial confinement was imposed, which, it will be noted, was the endogenous variable in the previous analysis.

The equations for the multivariate analysis of COURT are presented in Table 4.8. In the first stage of the analysis the defendant's race is negatively associated with the level of court. Contrary to the finding in the analysis of pretrial confinement, those who have attended college tended to have their cases referred to a higher level of court than did those who had no college education.

Table 4.8

Court

Metric Coefficients

(n=727)

Race	-.131*	-.172*	-.0344	-.035
	(.060)	(.059)	(.029)	(.029)
Ageoff	.015	.048**	.0144**	.013*
	(.009)	(.010)	(.005)	(.005)
Gradesch	.082	.063	-.064*	-.075*
	(.065)	(.064)	(.032)	(.032)
College	.512**	.460**	.066	.084
	(.145)	(.142)	(.071)	(.071)
Rank		-.155**	-.014	-.008
		(.030)	(.016)	(.016)
Inserv		-.054*	-.021	-.023
		(.025)	(.013)	(.014)
Inscol			.321**	.315**
			(.008)	(.008)
Spec			.102**	.083**
			(.019)	(.021)
Term			.111**	.103**
			(.032)	(.033)
Prevch			.179**	.167**
			(.038)	(.038)
Discunt				.045
				(.061)
Conv				.144
				(.079)
Enrtr				.063
				(.069)
Year73				-.027
				(.029)
PRC01				.094**
				(.032)

Intercept	2.038	1.853	1.203	1.216
R-square	.029	.077	.776	.780
Adj R-square	.023	.069	.773	.776

Table 1.2a

Court

Standardized Coefficients

Race	-.081	-.106	-.023	-.021
Ageoff	.062	.206	.059	.056
Gradesch	.049	.038	-.040	-.015
College	.136	.122	.018	.022
Rank		-.182	-.022	-.013
Pinjury		-.107	-.041	-.046
Uninsol			-.834	.029
Spec			.097	.078
Term			.065	.060
Prevcr			.097	.091
Discunit				.013
Civ				.034
Enr				.011
Year73				-.017
PIC01				.058

With the inclusion of the military variables, race continues to have a significantly negative effect on the level of court. Older defendants and those with some college tend to have their cases referred to higher courts. Both rank and the length of service have negative total effects on the level of court with the former significant at the .01 level. Of the significant variables, the soldier's age at the time of the offense and his rank are the strongest predictors among the demographic, socioeconomic and military variables.

The inclusion of the offense related variables alters the model dramatically. The proportion of the variance explained increases tenfold--from 7.7% to 77.6%. The defendant's race and rank are no longer significant, as more than seventy-eight percent of the effect of race is indirect through the offense related variables, while nearly 88% of the effect of rank is absorbed by those variables. A similar situation exists with respect to those who attended college--more than 85% of the effect of that variable is indirect. Having less than a high school education was a positive but insignificant predictor in the early stages. In this stage, however, the direction of the relationship reverses, and the variable is significant at the .01 level. This would suggest that those charged with more serious offenses tended to have more extreme levels of education, that is, less than high school or some college. But when the severity of the offense is taken into consideration,

having a low educational level tended to have a somewhat mitigating effect, while having attended college had no such effect.

Of the offense related variables, the length of the absence is by far the most significant. While the other offense related variables--the manner of the termination, the number of charges and whether or not the soldier has a prior record, are all significant, their effect is clearly overshadowed by the length of the absence. Since that variable is such a strong factor, one could well conclude that most of the effect of the offense related variables is due to the length of the absence.

The inclusion of the organizational variables has very little effect on the model. The proportion of the variance explained remains virtually the same, increasing by less than one percent. The level of significance of the education variable is reduced somewhat, from .01 to .05, and some of the effect of the offense related variables is absorbed by the inclusion of those variables; however, the length of the absence has the highest proportion of its effect being direct. Whether or not the soldier had pretrial confinement imposed is the only significant factor among the organizational variables, having a positive direct effect on the level of court.

In deciding which level of court to refer a case, the convening authorities certainly appeared to rely very

heavily on characteristics of the offense. Thus the consensus perspective again appears to be the dominant framework. Every variable associated with this perspective was significant at the .01 level, and those four variables were stronger than any variable associated with either the conflict or the organizational perspective.

The Military Court-Martial

Once the convening authority refers the case to trial matters proceeds fairly quickly. The trial will generally take place within two weeks of the referral. The first part of the trial is the Article 39A session, the military's equivalent of an arraignment. However, unlike the process in many civilian trials, the arraignment in a military court-martial usually immediately precedes the trial itself.

During the Article 39A session, the soldier selects the forum by which he will be tried. Enlisted soldiers have three choices: trial before a board of officers, trial before a board of officers and enlisted men and trial by a military judge alone, the last of these becoming an option with the enactment of the Military Justice Act of 1968.

Enlisted soldiers have long had the right to have at least one-third of their jury be composed of enlisted men. Commanders, however, have had the right to select enlisted men on the basis of their experience and training. Thus many of the enlisted men selected for jury duty would be

senior career noncommissioned officers, generally regarded by soldiers as more punitive than officers, particularly in cases involving purely military offenses. For this reason, soldiers rarely opted to have enlisted soldiers on their jury. At Fort Meade only three soldiers exercised their right to have enlisted soldiers on their jury, and one of those was in a rape case, not included in the present research.

A second function of the Article 39A session was the taking of the plea. If the soldier decided to plead guilty to the charge, he would be questioned by the military judge as to his actions in order to establish that he was really guilty of the offense. This was referred to as "making providency". Should the soldier have a pretrial agreement, it was necessary that he make providency in order for the agreement to take effect.

The final major function of the Article 39A session was the raising of any issues by the defense which might affect whether or not the trial would take place. In this respect the Article 39A session most closely resembles a preliminary hearing in the civilian criminal justice system. For instance, if the defense were to raise the issue of a speedy trial, it would be decided at this stage of the proceedings. If none of the issues raised by the defense were to result in a dismissal of the charges, the trial normally proceeds to the fact finding phase.

That portion of the court-martial between the Article 39A session and the rendering of the verdict is really quite similar to a civilian trial. Witnesses are called, examined and cross-examined. Should they desire, the judge or jury, as the case may be, may ask the witnesses questions. Evidence is introduced, and its admissibility ruled upon by the military judge. As is the case in the civilian criminal justice system, the burden of proof is on the government, and the defendant is under no obligation to testify on his own behalf.

Following the presentation of the evidence and testimony, the judge instructs the jury, should there be one present, on the relevant law pertaining to the case. After this the jury retires to consider a verdict. The reaching of a verdict in a court-martial is quite different from the civilian practice. In the latter, unanimity is required, either for conviction or acquittal. In the military, unless the offense carries a maximum punishment of ten years or more, only a two-thirds majority is required. If the offense can result in a sentence of ten or more years, a three-fourths majority is necessary, and a unanimous verdict is necessary only if the death penalty is mandatory upon conviction. Thus the verdict in a military court-martial is usually reached much faster than one in a civilian trial, as the members of the jury usually vote rather quickly. If the requisite votes for conviction are not there, the defendant is acquitted. It might be said that while a

civilian jury deliberates, a military jury votes.

The differences between a civilian trial and a military court-martial tend to make the latter resemble a civil trial more than a criminal one in certain respects. It seems likely that at least some of the differences are due to the character of the military organization. A military court-martial might have to take place when the military is in the field, and the military can ill afford the loss of several officers while they attempt to reach unanimity of opinion concerning the guilt or innocence of the accused. Of the aspects of the military justice system examined thus far, this is the clearest example of an instance in which the rights of a soldier are sacrificed to the exigencies of the military's social function.

The Verdict: Bivariate Correlations

The variables associated with the conflict and consensus perspectives are the same as in the previous analyses. Two variables are added to those associated with the organizational perspective. They are the level of court to which the case was referred, the endogenous variable in the previous analysis, and the forum elected by the defendant, that is whether he chose to be tried by a jury or before a military judge alone.

Before examining the bivariate relations (Table 4.6), I should note that the distribution of verdicts is extremely

skewed. Of 778 cases tried at a special court-martial or above, 729 or 93.7% resulted in convictions while only 49, or 6.3%, resulted in acquittals. This should not be surprising, as a large majority of all criminal trials result in convictions. AWOL cases, given the peculiar character of the offense, should have an even higher rate.

The extremely high conviction rate raises a number of problems for the statistical analysis. One of these is that it becomes unlikely that a good predictive model will be obtained. In looking at the bivariate correlations between the factors and the verdict, one sees that far fewer variables have significant correlations with the dependent variable.

Blacks were slightly more likely to be convicted, but the relationship is not statistically significant. The relationship between age and the verdict is also very weak. High school graduates were more likely to be convicted, while those with less than a high school diploma and those with some college were less likely to be convicted, though only in the former case is the relationship statistically significant.

Neither rank nor the length of service showed any significant correlation with the verdict. Of the offense related variables, only the length of the absence and the presence of a prior record demonstrate any significant correlation, both of these being positively related to the

likelihood of being convicted.

Both of the previous dependent variables, having been placed in pretrial confinement and the level of court, are positively associated with a guilty verdict. In fact, the level of court displays the strongest relationship of all ($r=.106$). This is because no one tried at the BCD special or general courts was acquitted.

The Verdict: The Multivariate Analysis

The results of the multivariate analysis are presented in Table 4.9. As was expected, the variables in the model do not very adequately account for the verdict in the cases at hand. In the entire model, only 3.7% of the variance is explained. None of the socioeconomic or military variables are statistically significant when they are entered into the model.

When the offense related factors are brought in, however, having less than a high school education becomes statistically significant as does the other education variable in the model, having been to college. The length of the absence is the strongest factor encountered thus far and the only one significant at the .01 level. With these variables in the model, 2.5% of the total variance is explained.

Table 4.9

Verdict

Metric Coefficients

(n=127)

Race	.009 (.015)	.006 (.016)	.011 (.016)	.019 (.016)
Ageoff	.0003 (.002)	-.001 (.003)	-.002 (.003)	-.001 (.003)
Gradesch	-.030 (.017)	-.030 (.017)	-.033* (.016)	-.032 (.017)
College	-.062 (.037)	-.060 (.037)	-.073* (.036)	-.081* (.039)
Rank		-.012 (.008)	-.008 (.009)	-.011 (.009)
Litserve		.011 (.007)	.011 (.007)	.014* (.007)
Litaxol			.012** (.004)	-.003 (.008)
Spec			.008 (.010)	-.001 (.011)
Term			-.019 (.017)	-.027 (.017)
Prevcr			.007 (.020)	-.008 (.021)
Year73				-.003 (.016)
PTC01				.014 (.018)
Court				.049* (.023)
Forum				-.012 (.025)
Intercept	.966	.974	.947	.872
R-square	.007	.012	.025	.037
Adj. R-square	.002	.004	.011	.017

Table 4.9a

Verdict

Standardized Coefficients

Race	.021	.016	.028	.048
Ageoff	.006	-.009	-.026	-.013
Gradesch	-.070	-.070	-.077	-.077
College	-.065	-.063	-.076	-.085
Bankla		-.074	-.052	-.070
Linserv		.086	.089	.108
Linscol			.123	-.029
Spec			.030	-.064
Term			-.013	-.064
Prevcr			.015	-.018
Term73				-.008
PIC01				.044
Court				.184
Forum				-.020

The introduction of the variables associated with the organizational perspective increases the proportion of variance explained to 3.7%. The education variables are relatively unaffected by the introduction of these variables, though more than three-fourths of the effect of the length the absence is indirect, probably through the level of court, which is the strongest variable in the model.

The analyses do not appear to offer strong support for any of the theoretical orientations. The fact that the level of court is the strongest single factor does lend some support to the organizational perspective. The small amount of variance explained suggests that additional variables need to be added to the model if one is to explain verdicts. Since the verdict in a trial is more of a "legal" decision than either of the decisions regarding pretrial confinement or the level of court, it would seem likely that decisions regarding the legal aspects of the case, (e.g. information regarding the evidence introduced) would be better candidates for inclusion in a model than were many of those included herein.

It was noted earlier that the verdict would be a difficult decision to work with, and the analysis has confirmed this. Very little of the variance is explained, but then there is very little variance to explain. If a person's case was referred to trial, there was a very high

probability that he would be convicted. This is not surprising given the conviction rate for all crimes in general and the particular characteristics of the absence offenses in particular.

From a factual point of view, AWOL seems to be a matter of one's being at his duty station or not. One would seem to be authorized to be absent or not. Should the soldier not be at his post and not have authorization, he is AWOL. Barring some grossly illegal conduct by the commanders, soldiers reported as AWOL are in all likelihood actually AWOL.

Of those who were acquitted, several escaped convictions because the court determined that the military lacked jurisdiction to try the case. This occurred when a member of the National Guard or Army Reserve was activated because of his having missed too many meetings, but the military could not prove that the accused was aware that he had been ordered into active duty. A couple of soldiers were home awaiting orders, and still a few more escaped a conviction because of speedy trial motions. One soldier ran away from the reception station, and thus never formally became a member of the military. In addition to these reasons, others were acquitted because the evidence against them was flawed in some fashion or another. In about a third of the acquittals it was impossible to ascertain the reason for the acquittal; thus one may conclude that the factual merits

comprised part of the basis for escaping conviction in these cases.

Conclusions

In this chapter I have examined three decisions which take place in the military justice system. These decisions are 1) the decision whether or not to place the soldier in pretrial confinement, 2) the decision as to the level of court which is to be convened and 3) the verdict in the case. In the first two decisions, the offense related factors proved to be dominant, thus providing support to the consensus perspective. The length of the absence must be regarded as the strongest factor of all, with the other offense related factors following. In the decision regarding pretrial confinement, those soldiers who were apprehended or who had gone AWOL while facing charges were particularly likely to be confined, as were those who had been AWOL for a long period of time. In deciding on the level of court, however, the number of charges and the manner of termination, while still significant, were clearly overshadowed by the length of the absence, an extremely strong predictor.

Thus in two of the "gatehouse" decisions, the factors posited by the consensus perspective were dominant. There is relatively little support here for the thesis that blacks suffered from discriminatory practices in these aspects of the military justice system—at least at Fort Meade.

In the third decision, the verdict, it was shown that an extremely high proportion of soldiers were found guilty. Many of the acquittals resulted from technical flaws in the evidence and procedural errors in the handling of the cases. For the overwhelming majority, however, a guilty verdict at their court-martial was virtually a foregone conclusion. In such cases, the problematic issue becomes the punishment to be imposed, and it is this issue to which I shall turn in the next chapter.

CHAPTER V

THE EMPIRICAL ANALYSIS II: PUNISHMENT

Introduction

In the previous chapter I discussed the processes which led to the reaching of the verdict in a military court-martial. Whereas the verdict is often regarded as the climax of the criminal justice system and anything after it anticlimactic, in fact the most problematic part of a criminal trial comes after the verdict is rendered--this being the sentencing phase. The reason for this is that the large majority of those brought to trial are convicted. In military law in general, and in AWOL cases in particular, the conviction rate is extremely high--often in excess of ninety percent. At Fort Meade, nearly 94% of those tried for an absence offense were convicted (see Chapter IV). If a case goes to trial, there is an extremely high probability that a conviction will result. Consequently the sentence is likely to be the major source of variation.

In this section of the research I shall examine the issue of punishment in the military justice system. As the previous chapter, the research in this chapter is restricted to cases involving the absence offenses, AWOL and desertion. However, in this chapter only those cases which were tried at the three higher levels of court--special, BCD special and general, are included in the sample to be analyzed. In addition, only those persons who received a conviction will

be included in the analysis, but as I noted above, this does not decrease the size of the sample significantly. The dependent variables, or decisions of military authorities, are: the sentence to confinement, the sentence to a discharge, the final action regarding a sentence to confinement and the final action regarding a sentence to a discharge.

Considering only the punishments of confinement and the punitive discharge, the following are the maximum punishments authorized at the three courts:

Special courts	Confinement for six months.
BCD special	Bad conduct discharge and confinement for six months.
General courts	Dishonorable discharge and confinement varying by offense.

At a general court-martial, those convicted of AWOL are subject to twelve month's confinement, those convicted of desertion terminated by surrender up to twenty-four months and those convicted of desertion terminated by apprehension up to thirty-six months. The maximum sentence which may be adjudged is calculated cumulatively, that is, as the sum of the maximum punishments which may be imposed for each offence of which the soldier is convicted. Thus at a general court-martial a soldier convicted of one specification terminated by apprehension and one specification of AWOL would face a maximum sentence of forty-eight months. The maximum at a special court, either

regular or BCD, would be six months.

From Verdict to Sentence

In a military court-martial the verdict rarely means the end of the trial. If the defendant is convicted, as nearly 94 percent in my research were, the trial proceeds to a final stage in which the sentence is adjudged. This portion of a trial is commonplace only in the military. In a civilian criminal trial, the judge often pronounces sentence immediately following the rendering of the verdict. Even if he does not adjudge sentence at that time, it is, in any case, almost always the judge who imposes the sentence. In a military court-martial, the sentence is imposed by the military judge only if he has ruled on the verdict. Should a soldier plead guilty, he may select whether the sentence will be adjudged by a jury or by the military judge. Furthermore, in the military a hearing is always held to determine the sentence.

The sentence is determined after a hearing following the rendering of a guilty verdict. This portion of the trial, called "E and M" (for "extenuation and mitigation"), gives the defendant a chance to explain his actions and to make a case for as little punishment as possible. While the prosecutor may present matters in aggravation, at Fort Meade it was unusual for him to introduce much more than the soldier's personnel file and the record of any previous disciplinary actions. Thus "E and M" seemed to belong to

the defense. Often members of the soldier's family testified as to his character and the need for him at home. Character references were also frequently introduced. In addition, the defendant himself often gave testimony regardless of whether or not he testified during the trial. The defendant could choose to present testimony in one of three ways: sworn testimony, which was subject to cross-examination, unsworn testimony not subject to cross-examination and an unsworn statement through his attorney.

Table 5.1 presents the distribution of sentences to confinement adjudged at each of the courts. As I have previously noted, the special courts, both regular and BCD, can adjudge no confinement in excess of six months, while general courts can adjudge any sentence permitted by the offense. As it happened, no confinement in excess of thirty-six months, the maximum sentence for one specification of desertion terminated by apprehension, was adjudged at the general courts, even though lengthier sentences could have been adjudged for those persons convicted of multiple offenses.

Of those who received sentences to confinement, the most common terms imposed were between two and four months. Sentences in this area were received by 342 of the 544 soldiers who received active sentences. Just under eleven percent of the soldiers received sentences in excess of six months, sentences which could be adjudged only at a general

Table 5.1

Sentences to Confinement by Race

Sentence (in mos.)	Whites	Blacks	Total
0	85 (12.80)	90 (13.55)	175 (26.36)
1	18 (2.71)	18 (2.71)	36 (5.42)
2	39 (5.87)	54 (8.13)	93 (14.01)
3	63 (9.49)	79 (11.90)	142 (21.39)
4	29 (4.37)	48 (7.23)	77 (11.60)
5	12 (1.81)	20 (3.01)	32 (4.82)
6	12 (1.81)	14 (2.11)	26 (3.92)
7	3 (0.45)	3 (0.45)	6 (0.90)
8	5 (0.75)	3 (0.45)	8 (1.20)
9	6 (0.90)	7 (1.05)	13 (1.96)
10	9 (1.36)	3 (0.45)	12 (1.81)
12	9 (1.36)	13 (1.96)	22 (3.31)
18	4 (0.60)	2 (0.30)	6 (0.90)
24	8 (1.20)	5 (0.75)	13 (1.96)
36	2 (0.30)	1 (0.15)	3 (0.45)
Total	304 (45.78)	360 (54.22)	664 (100.00)

court-martial.

Of those convicted at the general courts, just under one-sixth (16.3%) received no sentences to confinement, while more than two-thirds received sentences in excess of six months. The modal frequency at the general courts is twelve months (17.1%), which is the maximum punishment for one

specification of AWOL. Nearly twenty percent of those convicted received sentences in excess of twelve months, these sentences being given to those soldier who were convicted of multiple specifications of AWOL or of desertion.

The sentences adjudged at the BCD special courts tended to be somewhat longer than those adjudged at the regular special courts. The most striking differences occurred at the extremes. Nearly thirty-one percent of those convicted at the regular special courts received no sentences to confinement, compared to 13.5 percent of those at the BCD special courts. At the upper end of the sentence range, a quarter of those convicted at the BCD specials received sentences of five or six months, compared to less than eight percent of those convicted at the regular special courts.

Ten soldiers of each race escaped with no confinement, while two whites and one black received sentences of thirty-six months. For both races, the modal sentences were twelve months, though an equal number of whites received sentences of ten months. In all, blacks seemed to receive slightly shorter sentences, on the average, than did whites. Again, however, those differences are not statistically significant.

At the special courts, 32.9% of whites and 27.6% of blacks avoided confinement altogether. Thus whites had a slightly better chance of getting a minimum sentence. At

the upper end of the sentences, 1.8% of each race (nine soldiers) received maximum sentences. For both races the modal sentence was three months. Although the distribution of sentences imposed on blacks was slightly higher than that imposed on whites, there was no statistically significant relationship between the race of the defendant and the length of confinement adjudged at the special courts.

It is apparent, then, that the level of court to which the case is referred is, in all probability, a major determinant of the sentence adjudged. Since the length of the absence is a major determinant of the level of court, one might well conclude that the length of the absence is a strong predictor of the sentence adjudged.

Sentence to Confinement: Bivariate Correlations

Table 4.6 gives the bivariate correlations between the factors and the sentence to confinement. In general, the zero-order correlations between the length of confinement adjudged and the independent variables demonstrate a pattern similar to that between the independent variables and the level of court. The offense related factors appear to be significantly and directly correlated with the length of confinement adjudged. The correlation between the length of the absence and the confinement is quite high ($r=.552$) but not as high as that between the length of the absence and the level of court ($r=.856$). The level of court has the strongest correlation with the length of the sentence

($r=.619$). The examination of the influence of the length of the absence before and after the level of court is taken into consideration (i.e. the comparison of the total effect with the direct effect of the factor) should reveal the effect of the length of the absence on the sentence within levels of court. Not surprisingly, those convicted of desertion received significantly longer sentences than did those convicted of simple AWOL. The only offense related variable not to have a significant zero-order correlation with the sentence is the number of charges.

Higher ranking soldiers and those who had been in the Army longer tended to receive shorter sentences. This also occurred with the earlier dependent variables--pretrial confinement and the level of court.

Turning to the demographic and socioeconomic variables, black soldiers received slightly shorter sentences than did whites, though the differences are not statistically significant. Younger defendants tended to get shorter sentences, but here the differences are significant. The education variables exhibited a nonlinear pattern of association with the sentence imposed. Those who finished high school and had no college received shorter sentences, on the average, than did either those who never completed high school or who had attended college.

Juries tended to impose longer sentences than did judges, a relationship which many would expect in military courts.

On the other hand, those who pled guilty actually received longer sentences than did those who pled not guilty, a correlation which is unexpected. Should this association continue after the level of court and the offense related variables are in the model, it would indeed be unexpected.

There are significant differences in the average sentences of the two judges, differences which could have resulted from one of the judge's presiding only at the special and BCD special courts while the other presided at all three levels. Those who had a pretrial agreement received longer sentences, a correlation which is perhaps linked to the plea and the level of court.

Of the earlier outcomes, both having been placed in pretrial confinement and the level of court had significant zero-order correlations with the sentence, findings that are not at all surprising. It will be of interest to see whether these significant correlations continue throughout the model.

Sentence to Confinement: The Multivariate Analysis

As was the case in the previous analyses, in addition to examining the effect of race, I shall be attempting to ascertain which theoretical orientation--the conflict, consensus or organizational, best accounts for variations in the outcomes. In this chapter, they are the sentences imposed at the trial and the final action of the conveying

authority. The variables associated with the conflict and consensus perspectives will be ^{the} same ones associated with those perspectives in the previous chapter with the single exception of the addition of one variable, indicating whether the soldier was convicted of AWOL or desertion, which is added to the class of offense related variables, variables associated with the consensus perspective. The organizational perspective has an increased number of variables associated with it. They are the forum chosen by the defendant, the plea, the judge and whether there was a pretrial agreement.

In summary, the conflict perspective is associated with the following offender related characteristics: race, age at the time of the offense, education (represented by dummy variables), military rank and length of service. The consensus perspective is associated with the following variables: length of the absence, whether or not the soldier was convicted of desertion, the number of charges, the manner of termination and whether or not the defendant had a prior court-martial conviction. The organizational perspective is associated with the following variables: the year, the judge (represented by dummy variables), the plea, the forum, whether pretrial confinement was imposed, whether there was a pretrial agreement and the level of court to which the case was referred.

Table 5.2

Sentence to Containment

Metric Coefficients

(N=729)

Age	-.331 (.211)	<i>-.312</i> (.205)	-.016 (.166)	-.036 (.165)	-.015 (.158)
Age ²	-.109+ (.053)	.070 (.070)	-.051 (.051)	-.058 (.051)	-.079 (.048)
Arrested	1.055++ (.392)	.113+ (.385)	.379 (.308)	.304 (.307)	.351 (.298)
College	2.182+ (.306)	2.006+ (.309)	.035 (.715)	.061 (.711)	-.294 (.786)
Mar		-.002+ (.175)	-.120 (.154)	-.115 (.153)	-.243 (.148)
Unserv		-.267 (.153)	-.231+ (.130)	-.232 (.129)	-.140 (.124)
Unavail			.592++ (.078)	.495++ (.083)	.363 (.132)
Deserve			5.580++ (.605)	5.800++ (.607)	5.212++ (.589)
Spec			.870++ (.189)	.974++ (.191)	.701++ (.200)
Per			.205 (.314)	.260 (.314)	.051 (.305)
Prevcr			1.526++ (.361)	1.540++ (.352)	1.143++ (.318)
Forced				.779+ (.124)	1.781++ (.143)
Plea				.864+ (.352)	.898 (.358)
Year 73					-.059 (.279)
Year 8					1.122++ (.393)
Year 9					.816 (.311)
FIA					1.331++ (.323)
PIC					-.054 (.317)
Court					2.512++ (.127)
Intercept	4.960	3.894	1.092	1.321	-.1728
R-square	.923	.071	.413	.423	.486
Adj. R-square	.017	.063	.403	.412	.471

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Table 5.23

Exposure to Conflict
Standardized Coefficients

Age	-.052	-.025	-.008	-.005	-.003
Age ²	-.076	-.014	-.036	-.041	-.055
Gradeschool	.104	.094	.037	.030	.035
College	.092	.085	.027	.029	-.011
High		-.177	-.032	-.039	-.047
Unserv		-.087	-.077	-.077	-.137
Unserv ²			.341	.332	.073
Desert			.290	.307	.272
Spec			.138	.154	.111
Term			.020	.025	.005
Proven			.140	.141	.105
For				.056	.128
Alt/plea				.074	.008
Year73					-.005
Year 74					.009
Year 75					.006
PIC					.131
PIC					-.009
Cont					.105

Table 5.2 presents the equations for the multivariate analysis of the sentence to confinement. In the first stage, the socioeconomic variables account for approximately two percent of the variance. The defendant's race is not a significant predictor; in fact, black soldiers tended to receive slightly shorter sentences than did white ones. With respect to the level of education, those with less than a high school education and those with some college received longer sentences than did those with a high school education.

In the second stage, the inclusion of the military variables does not substantially alter the results, though the proportion of variance explained does rise to seven percent. The strongest variable in the model at this time is the rank of the defendant--soldiers with higher ranks tending to receive shorter sentences. On the average, each level of rank is associated with a reduction of nearly three-fourths of a month's confinement. Those who had been in the Army longer tended to receive shorter sentences, but the relationship is not statistically significant at the .05 level.

When the offense related variables are entered, the results are quite similar to those which resulted when these variables were included in the model in the analysis of the level of court. The proportion of variance explained increases dramatically, and the variables which had

heretofore been strongly associated with the dependent variable ceased to be statistically significant. In this case the proportion of variance explained increased from 7% to 41%. The drop in the significance of the socioeconomic and military variables indicates that much of the effect of these variables is indirect. Approximately four-fifths of the effect of rank is indirect, while three-fifths of the effect of having less than a high school education is mediated by the offense related factors.

The most important of the offense related variables is the length of the absence. Following this was whether or not the soldier was convicted of desertion, a variable employed for the first time in this model. Those people convicted of desertion received, on the average, sentences which were five month's longer than did those convicted of simple AWOL.

The number of charges and whether or not the soldier had a prior record were both directly correlated with the sentence and significant at the .01 level. On the average, each additional charge cost the soldier just over one month's confinement, while having a prior court-martial conviction is associated with one and one half month's additional confinement. Those who were apprehended also received longer sentences than did those who surrendered but here the differences were not statistically significant.

The addition of the trial related variables--the forum (judge or jury trial) and the plea--add only one percent to the proportion of variance explained, and these variables do not substantially alter the results from the previous stage. Of these, only the plea is significant. Those who pled guilty actually received longer sentences--in spite of the fact that a plea of guilty is regarded at law and expressed in the Manual for Courts-Martial as a mitigating factor. One should bear in mind that the variables associated with the organizational perspective are not taken into consideration at this point.

With the inclusion of the organizational and treatment variables, there is an increase of six percent in the proportion of variance explained--from 42% to 48%. Of the variables which were significant in the previous stage, the length of the absence and whether or not the soldier pled guilty, lose their statistical significance as predictors of the length of confinement adjudged. Approximately 85% of the effect of the length of the absence is indirect, while roughly three-fourths of the effect of the plea is indirect.

Of the variables associated with the organizational perspective, significant are whether or not the soldier had a pretrial agreement and the level of court. The first of these is related to the plea, as only those who pled guilty to all charges had the possibility of receiving a pretrial agreement. Those who had a pretrial agreement tended to

receive longer sentences than did those who had no such agreement. One possible reason for this may be that the sentencing authority, being aware that the soldier had a pretrial agreement, did not feel reluctant to adjudge a harsh sentence, knowing that the convening authority was likely to reduce or suspend it in accordance with the terms of the pretrial agreement.

The effect of the forum was suppressed in the earlier stage and becomes significant when the organizational and treatment variables are included in the model. Those who selected a jury trial received, on the average, sentences which were 1.9 months longer than did those who opted for a trial by judge alone. This result is consistent with the view held by many that military juries tend to be somewhat harsher than judges.

Another variable linked to the organizational variables is the plea. It was somewhat surprising that those who pled guilty tended to receive longer sentences, especially since a guilty plea is explicitly regarded as a mitigating factor. When the full model is tested, the effect of the plea is diminished considerably as a result of its relationships with the level of court and the existence of a pretrial agreement.

I noted that the length of the absence ceased to have a significant direct effect when the organizational and treatment variables are included in the model. Given its

strength in the previous stages, the sudden drop in its direct effect might seem odd at first; however it will be recalled that the length of the absence was an extremely important predictor of the level of court. Now in this stage, the level of court is a major predictor of the sentence to be imposed. This would suggest a model similar to the following:

where the indirect path is considerably stronger than the direct one.

In conclusion, the major predictors of the length of confinement adjudged were the level of court and the legally relevant, i.e., offense related, factors. The offense related factors, in particular the length of the absence, were strong predictors of the level of the court, and different courts had different levels of punishment authorized. One would expect to find the level of court being a strong predictor of the sentence adjudged. While it is not surprising that the offense related variables and the level of court are significant factors, it is noteworthy that the other factors are relatively so weak. The fact that race has had no significant effect is also important. While blacks do not fare as well within each level of court,

the disparities are not significant, and the fact that they tend to be tried at lower levels of court compensates for any disparities within courts.

Thus with respect to the three theoretical orientations, one sees that the variables associated with the consensus perspective appeared to be dominant until the final stage. The level of court accounts for much of the variation in the length of confinement adjudged. This is not surprising since there are limits on the length of confinement which may be adjudged by the special courts.

Whether or not the soldier was convicted of desertion was the second strongest variable in the full model. It, too, reflects statutory limits on the amount of punishment which may be imposed as a conviction of desertion could result in a maximum sentence of three years while a conviction of AWOL could result in no more than confinement for one year.

In the full model, variables associated with the organizational perspective were the first and third in importance (the level of court and the forum) while variables associated with the consensus perspective were second and fourth in order of importance (whether or not the soldier was convicted of desertion and the number of charges). Although the set of variables associated with the consensus perspective provided a larger increase in the proportion of variance explained than did those associated with the organizational perspective, it is likely that the

order of inclusion is responsible for the differences. Given the relative strength of the individual independent variables, one would have to conclude that the organizational and consensus perspectives are of roughly equal importance in explaining variations in the sentences imposed.

The Sentence to a Discharge

Only those soldiers whose cases were referred to BCD special or general courts-martial faced the possibility of receiving a punitive discharge. The number of soldiers tried at these courts represents a minority of those tried. However, if a soldier was convicted at either of these courts, there was a very strong probability that he would be sentenced to a discharge. Only three soldiers at each court managed to escape without a punitive discharge being adjudged. The distributions are so skewed that the validity of any multivariate analysis would be extremely problematic; therefore none will be attempted. Rather I shall describe

Table 5.3			
Sentence to Discharge, by Race			
	Whites	Blacks	Total
No Discharge	2	4	6
	(2.20)	(5.26)	(3.59)
Discharge	89	72	161
	(97.80)	(94.74)	(96.41)
Total	91	76	161
	(97.80)	(94.74)	(100.00)

some features which the cases have in common.

One of the "received truths" of the military justice system was that, if a soldier wanted an "unusual" sentence, i.e. no discharge or no confinement, he had to choose a jury trial, regardless of his plea. Judges in the military, as is often thought to be the case in the civilian justice system, seem to form their judgments on the basis of a relatively small number of facts. Given the nature of the absence offenses, it seems unlikely that a judge would become sufficiently involved in the individual features of a case to the extent necessary to adjudge a highly unusual and lenient sentence. This view seems to be confirmed at the general courts-martial. All three of the soldiers who escaped a discharge were tried before a jury of officers. At the BCD specials, however, two of the three were tried before a judge alone. Those two cases were somewhat unusual, however, in that one of the soldiers was getting an administrative discharge for a drug habit which he acquired in Vietnam, and the other soldier was convicted of four specifications of "failure to repair" (AWOL less than twenty-four hours). This latter case is especially unusual in that in virtually every other case of such short absences, the punishment imposed would almost certainly have been an Article 15.

The soldier just mentioned was the only one of the six to plead not guilty, thus suggesting another principle which

must be followed if one has much hope of escaping without a discharge--plead guilty. In the Manual for Courts-Martial a guilty plea is explicitly regarded as a mitigating factor, and judges instruct juries accordingly. A guilty plea is taken as a sign of remorse and an indication that the soldier has begun the process of being rehabilitated. In addition, a latent function of a not guilty plea is to portray the soldier as defiant. The military can be a very paternalistic organization, and it can accept some sin--if there is redemption. Prodigal sons must acknowledge the error of their ways.

One characteristic which all six defendants shared was the lack of a prior record, whether a court-martial or Article 15. This fact suggests that not imposing a discharge is extremely rare in any case and virtually unheard of if the soldier is a repeat offender.

Of the three tried by general court-martial, it should be noted that one was an officer, a second lieutenant who had gone AWOL for three months. Had he been an enlisted soldier, his case would likely have been tried by a summary or special court-martial, where no discharge could have been adjudged. An officer, however, can be discharged for any offense of military law. The number of officers tried for AWOL is very small, making each occurrence seem that much more significant.

In conclusion, of the six persons who escaped a punitive discharge, two were tried for offenses which normally would not have resulted in a discharge, and a third was being administratively discharged. Excluding these three cases, this means that out of nearly 180 cases, three soldiers managed to avoid a discharge. The results suggest that a soldier's chances of escaping a punitive discharge are very slim. If he is to have any chance, it seems imperative that he have a clean record, plead guilty and select a jury trial. Even then, those odds are not good.

The Final Action by the Convening Authority

In a civilian criminal trial, the adjudging of the sentence represents the final stage of the proceedings before any appellate decision is rendered. In the military, however, there is one additional stage prior to the appellate review, that being the convening authority's final action. Of the various powers of the convening authority, his function in this respect is perhaps the most significant.

As convening authority, the soldier's commanding officer must review the record of trial and take the final action. He may take any action which does not increase the level of punishment. Should he so desire, he may disapprove the conviction altogether and provide no explanation for his action. The most severe action which the convening authority can take is to approve the adjudged sentence.

Though the judge or jury may recommend that the soldier's punishment be suspended, only the convening authority has the power to suspend the sentence. Because of his role in the administration of military justice, the role of the convening authority has been described as quasi-judicial.

When the judge or jury, as the case may be, adjudges a sentence to confinement, the soldier will normally be taken directly to the stockade even though the convening authority has not yet approved the sentence. One reason for this is that a record of trial and a post-trial review must be prepared. This may take several weeks should the case be a lengthy one. Many commanders are reluctant to have a sentenced soldier in their units pending the action on the case. Unlike the situation with respect to pretrial confinement, time spent prior to the action is credited toward the completion of the sentence.

Following the preparation of the record of trial, the case is reviewed by the staff judge advocate (SJA). If the soldier is sentenced to a discharge, he will be interviewed as to his feelings about the trial and as to whether or not he wishes to return to duty. Following the post-trial review, the SJA forwards the case, along with his review and recommendations to the convening authority for final action.

With the completion of the final action the case is closed except for appellate court actions. If the soldier's confinement is suspended or disapproved, he will be returned

to duty at his old unit or assigned to a new one. If the soldier receives a sentence to confinement but no discharge, he will likely be sent to Fort Riley, Kansas, where he will undergo approximately eight weeks of rehabilitative training. At the conclusion of this training he be released from confinement, assigned a new job and transferred to a new fort. Should the soldier be sentenced to a discharge but not to confinement, he will likely be placed on leave until all appellate actions are completed. Finally, if the approved sentence includes both confinement and a discharge, the soldier will likely be sent to the U.S. Army Disciplinary Barracks at Fort Leavenworth, Kansas, to serve his sentence.

The convening authority's power to grant clemency and to suspend sentences means that he has a function similar to both a judge and a probation officer. A major difference between the convening authority and civilian officials involved in sentencing is that, should the convening authority suspend or disapprove the sentence, he is taking the soldier back into his command, while civilian officials need not have anything further to do with the defendant. Jury members are not members of the defendant's unit, and judges deal with soldiers only in the courtrooms. But the convening authority will probably remain the soldier's commander, and this would seem to be a factor in the decision regarding clemency.

Table 5.4			
Confinement Clemency, by Race			
	Whites	Blacks	Total
No clemency	128	178	306
	(58.45)	(65.93)	(62.58)
Clemency	91	92	183
	(41.55)	(34.07)	(37.12)
Total	219	270	489
	(44.79)	(55.21)	(100.00)

Table 5.4 gives the descriptive statistics for the taking of clemency with respect to confinement. Of the 489 in the sample who received sentences to confinement, 306, or 62.6%, ended up with some active sentence after the convening authority took action on the case, while 183, or 37.1%, had all their confinement either suspended or remitted. Whites were more likely to receive clemency with respect to confinement; 41.6% of the whites had their sentences to confinement either suspended or disapproved, while 34.1% of the blacks received clemency. This finding is the first thus far to suggest the possibility of race discrimination. It will be necessary to examine the multivariate analyses in order to determine whether the disparity is due to discrimination or to other factors. Since blacks did not commit more serious offenses, it is unlikely that any offense related factors can account for the differences. One possibility is that the level of court is a significant intervening factor. Several defendants at general courts-martial had their sentences to confinement deferred, and they were sent home to await their discharges. These

persons would have been considered to have received clemency with respect to confinement. Since a larger percentage of whites were tried at general courts-martial than were blacks, it is possible that differences with respect to the granting of confinement clemency reflect these differences. Whether or not this is the case, or whether there is actually racial discrimination in the granting of clemency will be examined in the multivariate models.

Confinement Clemency: Bivariate Correlations

Table 4.6 presents the bivariate correlations between clemency with respect to confinement and the independent variables. Blacks were less likely to receive clemency, a finding that, for the first time, suggests the possible existence of racial discrimination. Here it will be very important to examine the effects of race in the full model as this will reveal whether there is direct discrimination or whether the disparities are due to other factors. No other demographic or socioeconomic factor, including the education variables, demonstrated any significant association with the granting of clemency.

The soldier's rank did have a significant correlation with confinement clemency. Higher ranking soldiers were more likely to have their sentences suspended. Soldiers with longer service records were also more likely to have their confinement suspended by the convening authority.

Three of the offense related variables showed significant zero-order correlations, these being the length of the absence, the number of charges and the presence of a prior record, all of which were negatively correlated with confinement clemency. Having been apprehended or convicted of desertion did not seem to be associated with clemency.

Those who chose a jury trial or who pled not guilty were less likely to be the beneficiaries of clemency than were those who pled guilty before a judge alone. One might speculate that this is due to either the association of these factors with a pretrial agreement or to the perception that those who pled not guilty or who select a jury trial are not being cooperative.

Those tried before Judge B, who presided at the special and BCD special courts, were more likely to receive clemency than were those tried before Judge A or some other judge. As should be expected, those with a pretrial agreement were significantly more likely to have their confinement suspended or disapproved. Some, though by no means all, of those with pretrial agreements were guaranteed that their confinement would be suspended.

All three of the relevant prior decisions showed significant zero-order correlations with confinement clemency. Those who were placed in pretrial confinement, tried at the higher courts or who received longer sentences were less likely to receive clemency. These variables are

all intercorrelated; therefore the more problematic issue will be the extent to which these associations continue in the full model. Finally, a recommendation by the sentencing authority that the confinement be suspended had a significant zero-order association with confinement clemency.

Confinement Clemency: The Multivariate Analysis

In the analysis of confinement clemency, the variables associated with the conflict and consensus perspectives are the same as employed earlier. The set of variables associated with the organizational perspective is augmented by the addition of two outcome variables, the length of confinement adjudged and whether or not the sentencing authority recommended that the confinement be suspended.

The equations for the multivariate analysis of confinement clemency are presented in Table 5.5. In the first stage of the analysis, when only the demographic and socioeconomic variables are in the model, there is a significant disparity between blacks and whites in which blacks are at a disadvantage. Whites are more likely to receive clemency with respect to confinement than are blacks. The other variables in the model, the age at the time of the offense and the education variables, are not significant. In all, this set of factors does not make a good predictor of clemency, as less than two percent of the variance is explained by these variables.

Table 5.5
Confinement Clerency
Metric Coefficients

(n=189)

Base	-.049*	-.075	-.077	-.057	-.062	-.041
	(.044)	(.043)	(.043)	(.043)	(.040)	(.039)
Areoff	.011	-.003	.004	.002	.008	.006
	(.009)	(.009)	(.009)	(.009)	(.008)	(.009)
Gratesch	-.091	-.088	-.086	-.098*	-.071	-.057
	(.048)	(.047)	(.048)	(.047)	(.044)	(.043)
College	-.118	-.140	-.124	-.112	-.231*	-.208*
	(.116)	(.113)	(.114)	(.112)	(.106)	(.103)
Rank		.095**	.067**	.061*	.034	.028
		(.022)	(.025)	(.025)	(.023)	(.023)
Unserv		.013	.021	.020	.020	.014
		(.018)	(.020)	(.019)	(.018)	(.018)
Unhawl			-.014	-.016	.005	.013
			(.012)	(.012)	(.022)	(.022)
Deserth			.095	.118	.152	.192*
			(.088)	(.087)	(.082)	(.089)
Spec			-.073**	-.049	-.017	.004
			(.027)	(.027)	(.028)	(.028)
Term			-.040	-.023	-.010	.003
			(.046)	(.046)	(.044)	(.043)
Prevcm			-.126*	-.124*	-.104*	-.079
			(.055)	(.055)	(.052)	(.051)
Forum				-.137	-.154*	-.142*
				(.064)	(.063)	(.062)
Plea				.211**	.112*	.130*
				(.055)	(.055)	(.054)
fear/3					.038	.033
					(.040)	(.039)
Judge B					(.062)	(.052)
					(.053)	(.053)
Judge A					.111*	.137*
					(.056)	(.055)
PTC01					-.167**	-.144**
					(.048)	(.047)
PIA					.284**	.260**
					(.041)	(.040)
Court					-.054	.017
					(.064)	(.067)
Sentchl						.007
						(.006)
Chlrec						.118**
						(.025)
Intercept	.261	.280	.370	.363	.327	.170
R-square	.018	.071	.099	.140	.258	.297
Adj. R-square	.010	.060	.078	.117	.228	.265

Table 5.5a
 Confinement Clemency
 Standardized Coefficients

Race	-.092	-.077	-.079	-.059	-.064	-.042
Ageoff	.059	-.015	.021	.013	.044	.032
Gradesch	-.089	-.086	-.084	-.096	-.069	-.056
Collere	-.048	-.057	-.051	-.046	-.095	-.085
Rank		.221	.156	.141	.079	.066
Lynserv		.040	.065	.063	.063	.042
Lthawol			-.064	-.070	.022	.061
Desertn			.052	.064	.083	.105
Spec			-.124	-.082	-.029	.007
Term			-.040	-.023	-.010	-.063
Prevcm			-.121	-.118	-.099	-.075
Forum				-.098	-.110	-.161
Plea				.178	.045	.109
Year73					.039	.034
Julie B					.064	.053
Judge A					.093	.114
PFC01					-.163	-.141
PIA					.323	.300
Court					-.091	-.028
Sentcnl						-.075
Chlrec						.214

When the military variables are included, the proportion of variance explained more than triples, from less than 2% to more than 7%. While blacks are still less likely to receive clemency, the difference is no longer statistically significant once the soldier's rank and length of service are taken into consideration. The strongest, and only significant, variable at this stage of the analysis is the soldier's rank, which is directly correlated with the likelihood of clemency.

The offense related variables do not have the strong effect which they had in earlier analyses. The proportion of variance explained increases only from 7.1% to 9.9%, compared with a jump from 7.7% to 77.6% for the level of court and from 7.1% to 41.3% for the length of confinement adjudged. This is probably because the level of court is largely a function of the length of the absence and other offense related factors, and the level of court determines who the convening authority will be. Thus in deciding whether or not to grant some form of clemency, each convening authority must make his decision from among a group of cases which are not greatly dissimilar in terms of their offense related characteristics.

The defendant's rank continues to be the strongest factor after the offense related variables are entered, though nearly a third of its effect is indirect. Among the offense related factors, the strongest are the number of charges and

the prior record of the defendant. Those soldiers who have a prior conviction or who were convicted of more than one absence offense are significantly less likely to have their sentences to confinement suspended than are those who have no prior record and who were convicted of a single offense. Thus in making their decisions regarding confinement, the convening authorities seem to have been influenced by the belief that those who go AWOL a second or subsequent time are less likely to be rehabilitated.

With the inclusion of the trial related factors, the forum and the plea, the proportion of variance explained rises from 9.9% to 14.0%. The direct effect of rank continues to be diminished, as does that of the number of charges, the latter of which ceases to be statistically significant. The strongest predictor at this stage is the plea. Those who pled guilty were more likely to receive clemency. At first it might seem somewhat surprising that the plea should affect (or be affected by) the number of charges. One reason why approximately a third of the effect of the number of charges is indirect is that in cases where more than one offense is alleged, the evidence for the earlier absences is more likely to be flawed. In such cases, soldiers will often plead guilty to the most recent absence and not guilty to one or more of the others. Given the coding of the variables, these persons are counted as having pled not guilty.

In the fifth stage, the variables associated with the organizational perspective are entered, and their effect here seems to be stronger than in any of the prior models, as the proportion of variance explained increases from 14.0% to 25.8%. The strongest predictor of confinement clemency is whether or not the soldier had a pretrial agreement. This is not surprising since those with a pretrial agreement are guaranteed some sentence less than the maximum. They may have had, for instance, an agreement regarding the discharge, regarding the number and type of charges or regarding the length of confinement to be approved. This factor understandably reduces the direct effect of the plea as only those who pled guilty to all charges would have received a pretrial agreement.

Whether or not the defendant was in pretrial confinement seems to affect the likelihood of clemency. Everything else being equal, those in pretrial confinement were significantly less likely to receive clemency than were those not confined prior to their trial. Here one may speculate that some sort of labelling process, as suggested earlier, was affecting the convening authorities.

Two variables demonstrated suppressor effects. Having been to college and having chosen a trial by judge alone, not significant earlier, are significant this time at the .05 level. Those tried by Judge A, the judge who presided over the general courts-martial, were more likely to receive

clemency. Finally, the level of court does not seem to have a significant effect, confirming my earlier observation regarding the lack of effect of the offense related variables.

In this analysis a final stage, reflecting the decisions made in the sentencing phase of the trial, is added. The addition results in an increase from 25.8% to 29.7% in the proportion of variance explained. The variables added here are the length of confinement adjudged and whether or not the sentencing authority recommended that the convening authority exercise his clemency powers.

While whether or not there was a pretrial agreement remains the strongest predictor of clemency, a recommendation that the convening authority suspend the sentence had a significant impact on the likelihood of clemency. Those convicted of desertion were more likely to receive clemency, perhaps reflecting the fact that in several cases the soldier agreed to plead guilty to desertion in exchange for an agreement to disapprove any confinement and thus be sent home with a discharge. The effect of this variable was suppressed in the earlier stages and is significant only when the final variables are included in the model.

The remainder of the variables tend to have the same effects as in the previous stage. Blacks were less likely to receive clemency, though the difference was not

statistically significant. Those who attended college, chose a jury trial or who were placed in pretrial confinement were less likely to receive clemency, while those with a pretrial agreement, who were convicted of desertion or who pled guilty were more likely to escape without confinement.

In conclusion, in contrast to such decisions as those regarding pretrial confinement, the level of court and the sentence adjudged, the offense related factors do not appear to have dominated the decision regarding confinement clemency. Rather the important factors seem to reflect the decisions made at prior stages. The decision regarding pretrial confinement is made at the time of the arrest. The decision regarding a pretrial agreement is made when the case is referred to trial. The second strongest factor, whether or not the trial judge or the jury recommended that the convening authority suspend or disapprove the confinement, is made at the time that the sentence is adjudged. Thus the clemency decision, more than any other, seems to be one in which the military authorities were influenced by organizational factors and the outcomes of earlier decisions. This could be because the convening authority, while a major force in the military justice system, is somewhat removed from the actual processes of the administration of military justice.

With respect to the three theoretical orientations, the

variables associated with the organizational perspective appear to be dominant. Variables associated with this perspective are the top five in importance. The variables associated with the conflict and consensus perspectives are able to account for only 9.9% of the variance; the addition of the variables associated with the organizational perspective contributes an additional 19.8% to the proportion of variance explained. The decision to grant clemency with respect to confinement is the first outcome in which variables associated with a perspective other than the consensus perspective are dominant. Part of this may be due to the increased number of variables associated with the organizational perspective, and part must be seen as due to the fact that the organizational variables intervened between those associated with the conflict and consensus perspectives and the outcomes. At any rate, it does seem that decisions made prior to the trial, such as whether or not to impose pretrial confinement or to enter into a pretrial agreement, are strong predictors of the decision to grant clemency. In addition to these factors, the recommendation of the sentencing authority regarding clemency is a significant factor in the decision regarding clemency.

Clemency with Respect to a Discharge

In the military justice system there seems to be more possibility for variation among the sentencing authorities than among the convening authorities, especially at the

general court-martial level. While one judge presided over the majority of the general courts-martials, there were a number of visiting judges, and many of the trials were before juries, the members of which served on two-month rotations. Thus the number of persons involved in the sentencing over a period of time could be quite large. This is contrasted with the general court-martial convening authority whose function can be filled by the same person for the better part of three years. Since the results regarding the sentences to a discharge were so uniform when those sentences were imposed by a large number of persons, it should not be surprising to find that the convening authority's actions regarding clemency in discharges should

Table 5.6			
Discharge Clemency, by Race			
	Whites	Blacks	Total
No clemency	85 (95.51)	69 (95.83)	154 (95.65)
Clemency	4 (4.49)	3 (4.17)	7 (4.35)
Total	89 (55.28)	72 (44.72)	161 (10.00)

also tend to be rather uniform.

As shown in Table 5.6, of the 161 soldiers sentenced to be discharged at the BCD special and general courts-martial, all but seven had those discharges approved. As was the case with the soldiers who escaped an adjudged discharge, those who were granted clemency were somewhat unusual. Two soldiers had their discharges disapproved, this being the

most extreme form of clemency as it does not involve the possibility of revocation. In one of the two cases, the judge's instructions were felt by the legal office to be improper, and the soldier was processed for an administrative discharge. In the other case, the soldier was tried at a BCD special court by mistake. When the special court-martial convening authority realized that the case had been forwarded to a BCD special court-martial, he recommended to the general court-martial convening authority that any discharge be suspended.

Five soldiers had their discharges suspended, three of whom had pretrial agreements for suspensions. All had pled guilty to the charges, strongly expressed their desire to return to duty and, interestingly, all surrendered.

While the percentage of cases in which the convening authority suspended discharges might seem unusually low, it should be borne in mind that these defendants were charged with AWOL and desertion, the only offenses in which the crime (not being in the Army) and the punishment (being discharged from the Army) are so intimately related. Most of the defendants wanted to be discharged and were being tried because requests for an administrative discharge had been disapproved.

In conclusion, the factors which seem to affect clemency seem to be similar to those which affected the sentencing authority's decision to impose a discharge in the first

place. A soldier who desired to remain in the military following his court-martial had his best chance if he had a clean record, let it be known that he strongly desired to return to duty and, most importantly, was able to negotiate a pretrial agreement before his trial. If the soldier was unable to obtain a pretrial agreement for a suspended discharge, his chances, slim as they were, were better before a jury of officers than before a military judge.

Conclusions

With respect to the issue of punishment, it is perhaps best to emphasize that two distinct types of punishment are being examined--confinement and a punitive discharge. With respect to the latter, the discharge, one should note that if the soldier has his case referred to a court which can adjudge a punitive discharge, three outcomes are likely to occur. First, he is almost certainly to be convicted; secondly, he will probably be sentenced to a punitive discharge, and finally, that discharge is very likely to be approved by the convening authority. For a soldier to have a chance to avoid a discharge, a number of factors seem to be necessary, and not all of them are within his control at the time of his return to the military. A clean record seems necessary, as is a termination by surrender. The other important factors are, as noted above, obtaining a pretrial agreement (if possible), pleading guilty, and selecting a jury trial should pretrial negotiations are

unsuccessful.

With respect to the issue of confinement, it is important to distinguish between the sentence and the final action. At the sentencing, the judge or jury, as the case may be, has a wide range of punishments from which to choose. Should the sentencing authority desire, it could sentence the soldier to confinement whatsoever, or it could impose an extremely harsh sentence. In reaching its decision as to the amount of confinement to adjudge, the sentencing authorities relied heavily on the offense related characteristics. While significant, the soldier's military characteristics did not have the weight of the offense related factors. In making his decision regarding clemency, a convening authority has already examined the case and relied on the characteristics of the offense to determine which level of court to refer the case. This may account for the lack of weight which these factors had on the commander's decision whether to grant clemency. The organizational variables and the plea of the soldier have a greater effect on the convening authority's decision regarding clemency than they had on earlier decisions. The soldier's best chance for clemency rests with a pretrial agreement for such before the trial begins, as the convening authorities in this study did not appear to be particularly swayed by what the soldier said or did in the trial itself. The one exception to this was whether or not the sentencing authority recommended that clemency be granted. Here it

seemed that the convening authority did listen to the opinions of the judges.

Finally, I should note that in none of the decisions did the defendant's race make a significant difference on the outcome. Blacks tended to have slightly shorter absences and thus were sent to a slightly lower level of court; however they were slightly less likely to receive clemency for any sentences to confinement than were whites, but even here the disparities were not statistically significant.

This concludes the empirical analysis of the outcomes. In the next chapter I shall review the findings of the analyses and discuss some of their implications. It is to this that I now turn.

CHAPTER VI
CONCLUSIONS

Introduction

In this chapter I shall summarize the findings of the empirical research, particularly as they reflect on the theoretical orientations discussed herein. I shall then discuss some areas for future research on the subject of military justice where the shortcomings or limitations of the present research might be avoided. Finally I shall consider the issues of the fairness and justice of the military justice system.

The research has been based on the courts-martial for an absence offense at a single fort, Fort Meade, Maryland. The trials took place during the period from late 1971 to early 1974. The practices at this fort are considered to represent an example of the administration of military justice during the last year of the war in Vietnam and the first year of peace.

The major question to which the research has been addressed may be stated as follows:

After controlling for the legally relevant characteristics of the offense and the defendant's prior record and characteristics of the organization in which the trial took place, does the race of the defendant affect the treatment which he received from officials in the military justice system?

Thus the research is concerned both with the quantum of punishment imposed for violations of military law and with

the relative distribution of that punishment across classes of defendants.

Background of the Problem

In the 1960's and early 1970's the military and its system of justice were facing an unprecedented crisis of legitimacy. While the military justice system has been regarded with considerable skepticism as to the quality of its performance, during the Vietnam War it was confronted with challenges on two fronts. The first of these pertains to the issue of race relations in the military. In this research the specific focus of interest concerns the question of whether or not racial discrimination existed within the military justice system. The second front concerned the military's handling of the problems created by the Vietnam War. The research undertaken herein has focused on the treatment of soldiers who were tried for an absence-offense during this war.

During the Sixties the United States experienced a traumatic upheaval in the area of race relations. In the space of a very few years, America's blacks changed from a group which seemed to begrudgingly accept segregation to a determined and angry people demanding their share of the American pie. After several years of stormy, and sometimes bloody, confrontations, the Congress passed three civil rights bills (1964, 1965, 1968). As a result, segregation and racial discrimination became contrary to the laws and

policies of the United States government. In the ensuing years many became sensitized to the presence of racial discrimination in American society.

One of the areas of American society to undergo increased scrutiny was the criminal justice system. Many felt that blacks fared poorly relative to whites in the legal system. This view was buttressed by several studies of the American criminal justice system. ~~was~~ a system of criminal justice which was often regarded as inferior, the military justice system was viewed by many as one where racial discrimination would likely exist.

The second front which faced the military and its system of justice concerned the Vietnam War and its various ramifications. Not since the Civil War had the American people been so bitterly divided on a single issue. At stake were not just political preferences but rather basic issues of political and social morality. America's youth were clearly the focus of the anti-war movement. At the same time it was America's youth who were filling the ranks of the military and doing the fighting and dying in Vietnam. Not only was the American government losing the battle for the "hearts and minds" of the people in Vietnam, it was also losing the battle for the hearts and minds of the American people. Tens of thousands of draft age young men emigrated to Canada rather than serve in the military, and these were joined by an even larger number of deserters from the armed

forces. In addition to those leaving the country, thousands of young men were committing acts of civil disobedience at home--some by refusing induction and going to jail, others by burning their draft cards and still others by committing a variety of actions which were contrary to the law, violent as well as nonviolent. Despite unprecedented levels of civil disobedience, the number of Americans opposed to any criminal prosecution steadily increased, and amnesty became a major political issue in the early Seventies.

By the beginning of the 1970's the war in Vietnam was grinding to a halt. The draft, which was used to fuel the war machine and to stifle the dissent of America's youth, was ending, and the military of the Seventies would be an all-volunteer peacetime force. The military in this era would have to attempt to set an example for other institutions in a number of respects. With respect to its system of justice, the military could ill afford to maintain its reputation as a harsh dispenser of summary justice. Not only would such an impression discourage recruitment but continued criticisms of its legal system would be detrimental to the goal of increasing the level of professionalism which the military had adopted.

Thus the military justice system during the early 1970's was at a crossroads--between war and peace, between conscription and the all-volunteer force and between the view of the soldier as a footsoldier in the infantry and one

which stressed the professionalism and technical expertise of the modern soldier. During this period the military and its system of justice were frequently examined--by scholarly researchers, by ideological critics and defenders and by a Presidential commission. Several of these researchers concluded that racism did indeed exist within the military and its system of justice. All agreed that if there were any lingering racism either in the military or in its system of justice, it would behoove the military to eliminate it.

The conclusions of the Task Force that racial discrimination did exist within the military and its system of justice increased the pressure on military officials to insure that even the appearance of discrimination did not exist. Several measures were undertaken by the military, including seminars and training sessions on race relations and the appointment of officers whose task it was to oversee the military's efforts at bringing about better race relations and insuring that equality of opportunity did indeed take place. Officers, both in line units and within the military justice system, were well aware of the military's official policy on the issue of race, and they could be sure that any set of discriminatory practices would be brought to the attention of their superiors.

The major emphasis in this research has been on the issue of race, specifically whether or not there were disparities

between races in the administration of military justice at a single fort in the U. S. If there were disparities, it became important to ascertain whether those disparities were due to the defendant's race or to other factors which co-varied with race. If there were no significant disparities, it was also important to examine the factors which accounted for variations in the imposition of punishment within the military justice system. Of particular interest was the question of whether the major sources of variations were legally relevant factors, i.e. the severity of the offense, or extra-legal factors, such as the socioeconomic, military, characteristics of the organization and decisions made at prior stages.

These sets of factors are associated with three theoretical traditions in sociology and criminology which have examined the administration of justice-- the conflict, consensus and organizational perspectives. Those who adhere to the conflict perspective have argued that, despite political and societal goals to the contrary, characteristics of the defendant, such as his race and social class, affect the outcomes of cases. Those associated with the consensus perspective have emphasized the primacy of legally relevant factors in the determination of the outcomes. Still others, who may be identified with the organizational perspective, have isolated a third set of factors, those describing characteristics of the organization in the which processes take place and prior

decisions, such as bail, as being significant predictors of the outcomes.

The analyses undertaken herein consisted of treating decisions made by military authorities as the dependent variables. These decisions were: (1) whether or not to impose pretrial confinement, (2) the level of court to which the case was referred, (3) the verdict, (4) the sentence and (5) the final action by the convening authority.

The independent variables in the research were factors recorded in the soldier's record of trial. Demographic and socioeconomic characteristics of the soldier before his entry into the military and the characteristics of his military service were the characteristics of the offender which those associated with the conflict perspective would argue as being significant predictors of the outcomes. Characteristics of the absence offense and the soldier's prior legal background comprised the offense related factors, the class of factors posited by the consensus perspective as being of primary importance in the administration of justice. Finally, characteristics of the setting in which the court-martial took place and the results of decisions made at prior stages made up the factors associated with the organizational perspective. The independent variables were organized in terms of the theoretical orientation with which a variable was associated. Those variables which best accounted for

variations in the outcomes would provide support for the particular theoretical orientation. §

Before discussing the results of the research, I should emphasize that the study examines only those who went to trial. The Army granted a great many requests for an administrative discharge "for the good of the service". The granting of a discharge generally precluded a court-martial and usually resulted in the soldier's being issued an undesirable discharge, though a few soldiers did receive a general discharge.* As a result of this discharge, the majority of soldiers arrested for AWOL never went to trial. Consequently, most of the cases in the research consisted of those with relatively short absences who wished to return to duty and those with relatively long absences who the military wished to try, whether or not the soldiers wished to return to duty. In general, the former were tried by summary and special courts-martial while the latter went to general courts-martial.

The Findings

Table 6.1 presents the significant factors for each of the five decisions in which a multivariate analysis was performed.

* A general discharge is not an honorable discharge. Rather it is a discharge "under honorable conditions". The recipient of such a discharge is entitled to all veterans' benefits; nevertheless there is widely felt to be some stigma associated with it.

Table 6.1
Table of Significant Factors
Full Models *

Pretrial Confinement	Court	Verdict
# charges	Len. AWOL	-----
Len. AWOL	Prior C-M	Court
Cavalry unit	# charges	Length service
Termination	Termination	College
Prior C-M	Pre-trial conf.	-----

Grade school	Age offense	
College	Grade school	

Dep. Var.	Sentence to Confinement	Confinement clemency
	Court	Pre-trial agreement
	Desertion conviction	Clemency rec.
	Forum	Pre-trial conf.
	# charges	-----
	Pretrial agreement	Judge A
	-----	Plea
	Judge A	Desertion conv.
	Judge B	Forum
		College

* Variables are entered in order of importance.
Those above the line are significant at the .01 level.
Those below the line are significant at the .05 level.

In the decision regarding pretrial confinement, the major factors were those related to the offense. Soldiers who went AWOL while facing charges were, everything else being equal, the most likely to be confined. An almost equally important factor in determining whether or not pretrial confinement would be imposed was the length of the absence. They are the two major factors in the pretrial confinement decision. Of secondary importance were having been in a particular unit, having been apprehended and having a prior

court-martial conviction, the latter two of which are offense related variables. Of lesser significance was the soldier's education. Soldiers with more education were less likely to be placed in pretrial confinement when the effects of other factors were controlled. The soldier's rank was not a statistically significant factor, though higher ranking soldiers were less likely to be placed in pretrial confinement.

The soldier's race had absolutely no effect on the likelihood of his being confined. This is particularly significant as the decision to impose pretrial confinement is made by the soldier's company commander. The commander is the officer who is most closely tied to the soldier, and he must live with the soldier in his unit while the case is being processed. Because of this fact and the consequences of pretrial confinement, it is quite noteworthy that the defendant's race did not have a significant effect. Once again, I should caution that my research sample included only those who went to trial and thus was not necessarily representative of all those charged with an absence offense.

The decision regarding the level of court is one of the most important made in the process even though in itself it does not impose any punishment on the soldier. The referral to a particular level of court is neither a verdict of guilty nor does it mean that any particular sentence will be imposed in the event of a conviction. However the referral

does determine the maximum punishment which can be imposed upon a conviction. This decision, - like that regarding pretrial confinement, is based largely upon the characteristics of the offense.

The length of the absence was an especially important factor in determining to which court the case would be referred. With this variable alone one could explain a very large proportion of the variation in the level of court. The remainder of the offense related variables were all significant at the .01 level, but they were clearly at a lower level of importance than the length of the absence. Those placed in pretrial confinement were also more likely to have their cases referred to a higher level of court, everything else being equal. The final variable of significance was the age of the soldier at the time of his offence, older soldiers being sent to higher courts. Not only was race not a statistically significant factor but blacks were actually more likely to be sent to a lower court. In general, the offense related variables made very good predictors of the level of court while the extra-legal factors had no significant impact on the outcome.

The overwhelming majority of the trials resulted in a conviction. Of those who managed to escape this verdict, most did so because the evidence against them was flawed. The level of court was the best predictor of the verdict, as no one tried at a BCD special or general court-martial was

acquitted. The length of service was also significant, due to several of the acquittals in which the major issue was whether or not the defendant was aware of his having been activated into the Army.

The level of court was the major predictor of the length of confinement adjudged. It mediated a great deal of the effect of the length of the absence, which lost its statistical significance when the court was taken into account. Offense related variables were prominent among the remaining significant variables. Those convicted of desertion, convicted of more than one offense or who had a prior conviction tended to receive longer sentences than did those who did not possess such characteristics. Those who selected a jury trial also tended to receive longer sentences, everything else being equal, as did those with a pretrial agreement. Those tried before either of the two major judges received longer sentences than did those tried before any of the other judges. As in the other decisions, the defendant's race bore virtually no relationship to the sentence adjudged.

Of the 180 persons tried by BCD special and general courts-martial, all but six received a punitive discharge as part of their sentence. Three of those cases were unusual, thus serving to make the odds of a discharge in typical cases even higher. The likelihood of a discharge is probably higher for AWOL cases than for other offenses, as

the soldiers tried at the two higher courts were all absent for more than a year, and often for more than three years. Most of those soldiers did not wish to return to duty; rather they were being tried after their requests for discharges had been denied. For those who did want to return to duty, their best chance lay in pleading guilty and selecting a jury trial. It also seemed necessary that they not have any prior court-martial conviction. Blacks did not appear to have been discriminated against here, as four of the six who avoided a discharge were black.

Those who had a pretrial agreement were the most likely to have their confinement suspended. Next were those in which the sentencing authority made a recommendation that clemency be taken. Having been in pretrial confinement significantly reduced the probability of clemency.

Several variables were significant at the .05 level. Being tried before Judge A, having pled guilty, having been convicted of desertion, selecting a trial before judge alone and having attended college all had positive effects on the likelihood of clemency.

While neither of the major extra-legal variables, the soldier's race and rank, were statistically significant, white soldiers of higher ranks were more likely to receive clemency than were lower ranking blacks. If a discharge were adjudged, the chances are that it would be approved. Those soldiers who managed to have their discharges

suspended all surrendered, pled guilty and had no prior record. In addition, more than half had pretrial agreements. While commanders appeared reluctant to restore to duty those convicted of the more serious offenses, the majority of those tried at general courts-martial did not want to return to duty. For those soldiers the problematic issue was whether or not they would have to serve any time in confinement. Again there does not appear to have been any racial effect regarding discharge clemency, though the distribution of cases is so skewed as to make any interpretation here very questionable.

In conclusion, the defendant's race appeared to be a very insignificant factor. Only at the decision regarding confinement clemency did blacks appear to be at a disadvantage, and the differences even here were insignificant. The offense related factors were dominant in three decisions--pretrial confinement, court and sentence to confinement, and they were important in the decision to impose a discharge. Only in the verdict were the offense related variables not major factors in the outcome, but then the verdict was often based on facts not available in the present research. In three of those decisions--pretrial confinement, the level of court and the sentence to confinement--the offense related factors were clearly the most important. The effect of the military variables must be described as marginal. Of the demographic and socioeconomic variables, the education variables proved to

be of secondary importance while the defendant's race was one of the weakest variables in the models.

A very brief description of the administration of military justice at Fort Meade might be expressed as follows. In the course of processing cases from arrest to final action, fairly objective measures of the seriousness of the offense, i.e. the legally relevant variables, largely determine the early decisions. At the later stages of the process the organizational factors, including the outcomes of earlier decisions, combine with the legally relevant factors to determine the disposition of the case. Throughout the entire process, the defendant's race did not have a significant impact on the administration of justice, and other characteristics of the defendant, such as his rank and education, were only of secondary importance in determining the disposition of the case.

The question which must be addressed at this point is why the above results occurred. Suspicions of racial discrimination in the military justice system were quite widespread, yet among the cases examined herein the defendant's race was among the weakest factors in the models. In examining the results it is important to bear in mind the nature of the sample studied. Notwithstanding any limitations on the generalizability of the findings, the results serve to illuminate the military's attitude toward military offenders during the period examined.

As the war in Vietnam drew to a close, the military was saddled with a large number of soldiers who had gone AWOL and had to be tried by court-martial or otherwise have their cases disposed. It also had to deal with serious criticisms of the administration of justice in general and the treatment of blacks in particular.

It was clear that the official policy of the military forbade any racial discrimination. Discrimination may be either intentional or systematic. Intentional racial discrimination is said to exist when it is race itself which determines the outcome; systematic racial discrimination is said to exist when factors which covary with race are the determinants of the outcomes. Differences in the two are revealed in a multivariate analysis. While both types of discrimination are characterized by initial disparities along some factor (i.e. the dependent variable), in systematic discrimination the disparities disappear after the effects of other factors, held to be relevant to the disposition, are controlled. In intentional discrimination, those disparities continue to exist even after the effects of the relevant factors are taken into consideration. In the research undertaken by the Task Force, the majority opinion concluded that systematic racial discrimination existed; however, it was not able to determine that intentional discrimination existed within the military justice system.

In the analyses of the military justice system undertaken in this research, not only was there no intentional discrimination found, but there was no evidence of the presence of any significant systematic racial discrimination. There did not seem to be any significant disparities between blacks and whites on any of the outcomes at all.

Thus the findings of this research should be said to support the thesis of the consensus perspective primarily and the organizational perspective secondarily. In the early decisions, characteristics of the offense appeared to be the major factors while in the later decisions the structural variables increased in their influence. The major conclusion to be drawn from the study, however, concerns the relative lack of effect which the defendant's race had on the outcome of his case.

Nothing in the study should be taken as concluding that racial discrimination does not exist in the military. It was simply not found to be a significant factor in those aspects of the military justice system which I examined. The avoidance of discrimination may have been facilitated by there not being significant differences between white and black defendants.

Areas for Future Research

I have stated from the beginning that the present

research is not designed to constitute a complete examination of the principles of punishment or the issue of racial discrimination in the entire military or its system of justice. The data available to me necessitated that the present analysis represent an example of the administration of military justice. The fort which I examined was a large one, but no claim can be advanced that the data are representative of the entire military justice system.

The size and location of Fort Meade may be a source of bias. Everett (1973) has acknowledged that the quality of justice at the larger forts may well be superior to that dispensed at smaller, more isolated ones. If this were indeed the case, the practices at Fort Meade, a large fort located near Washington, D.C., might well represent a higher quality of justice than would be found at some other posts. Consequently, it may be the case that discrimination existed at other forts but not at Fort Meade. The research of Perry (1977) is based on data from more than one branch of service and thus should possess a greater degree of generalizability than that undertaken herein. It is noteworthy, then, that he found no significant pattern of discrimination.

The Presidential Task Force examined data from several forts from the four branches of service. Here the majority concluded that systemic discrimination did exist. However no statistical controls were employed nor were any tests of significance used. Thus while it is clear that there were

differences in the treatment of whites and blacks among the soldiers examined by the Task Force, it is impossible to tell whether those differences were statistically significant, nor is it possible to tell whether those differences in treatment reflect racial discrimination or differing patterns of criminal conduct by the soldiers. Since studies employing wider data bases did not find significant patterns of discrimination, one can have somewhat more confidence in the conclusions obtained in the present research. Nevertheless a more complete investigation of the issues examined in this research would obtain data from as broad a base of forts and service branches as possible.

In addition to the above, a more thorough analysis of the military justice system would require data from a broader time period. The research undertaken in this study, taken from slightly more than a two year time frame, was in fact, taken from a broader time range than that of either Perry or the Task Force. The period covered came at a time when the United States was withdrawing from a war and entering a period of peace. During those years the draft was ending, and the size of the military was being reduced. These facts may well have affected the disposition of all cases in general and those involving the absence offenses in particular. The issue of the time frame may be particularly significant since the military justice system undertook some reforms at the end of the 1960's, and many of the critics of

that system of justice were basing their conclusions on events and practices during the early years of the war. Therefore it would certainly be desirable to have data from a broader period of time in order to have a more complete picture of the administration of military justice, especially including the practices which are now taking place.

In order to thoroughly examine the administration of military justice, and in particular the issue of discrimination, it would be necessary to examine more than the absence offenses. Many of the complaints raised by black soldiers and expressed in the report of the Task Force referred more to confrontation offenses than to the absence ones. From my own experiences at the JAG office, it seemed that many of the Article 15's involving offenses such as disobedience of an order or disrespect were confrontations between a white officer or sergeant and a black enlisted man. If racial discrimination exists in the military, it most likely occurs where blacks and whites actually come into conflict with each other, as in the confrontation offenses and the crimes of violence and theft. Soldiers facing AWOL charges were so numerous and so similar in so many respects that it was relatively easy to ignore factors such as race, rank or education in the disposition of the cases. AWOL and desertion cases can be classified according to objective and relatively neutral characteristics, such as the legally relevant variables. A heavy reliance on these

factors, as was apparently the practice at Fort Meade, would improve the efficiency and fairness of the military justice system. If the military is to be free from the presence of discrimination, however, it must be free of it in all classes of offenses, not just in the absence cases.

Finally, a complete examination of the military justice system would include more than the analysis of court cases, the "mansion" decisions. In the present research I examined the imposition of pretrial confinement among those whose cases went to trial. While there is no reason to believe that the race effect would be significantly different for those who did not go to trial, it would nevertheless be useful to examine those cases which did not result in a trial. This would include those cases resulting in Article 15's, administrative discharges and those whose charges were dropped. Of particular interest would be an examination of cases in which the military initiated discharge proceedings against the soldier, many of which occurred following a special court-martial.

In conclusion, a complete analysis of the military justice system would require the examination of more disciplinary proceedings than just courts-martial, more offenses than just AWOL or desertion, a longer time period and data from a broader segment of the military. In fact, it is conceivable that racial discrimination is less likely to occur in the type of cases examined herein than in some

other aspects of the military justice system. Thus if discrimination had been found, one would expect to find it in other areas as well. Its absence in the data examined is nevertheless significant, but the nature of the data does not permit generalization to other areas of military justice with a great deal of confidence. The study does, however, examine the issue in a major area of military justice and help to suggest areas for future research.

Fairness and the Military Justice System

The concept of fairness is a crucial one for any system of justice. Fairness involves treating cases which are alike, i.e. fall into the same category, in a similar manner. If a legal system is unfair, it is a fortiori unjust. In the military justice system as well as in the civilian legal system of the United States, racial discrimination is held to violate the standards of fairness. Any system in which racial discrimination exists as a significant factor can be neither a fair nor a just legal system.

In the analyses undertaken in the present research the defendant's race and rank were never major factors while the offense related variables were consistently among the most important. Higher ranking soldiers did fare somewhat better than did lower ranking ones, but the differences were never statistically significant when other factors were controlled. Those with longer periods of service also fared

somewhat better than did those who had been in the Army for a short length of time but, again, the differences were not significant.

As a result, one would have to conclude that the administration of military justice at Fort Meade during these years did not violate the standards of fairness. This is in contrast to the opinions of those who argued at that time that the military justice system was unfair and that it discriminated against racial minorities and lower ranking soldiers.

There are a number of reasons which may account for the fact that blacks were not discriminated against at the fort which I examined. In fact, in many recent studies of the criminal justice system, the effect of the defendant's race has not been a major factor in accounting for variations in the level of punishment imposed at criminal trials.

One possible explanation lies in the "gatehouse versus mansion" view of the criminal justice system, discussed earlier, which holds that discrimination is most likely to occur at stages other than at the trial, i.e. at the decision to arrest and in the procedural aspects of the case. In the present research, some examination of the "gatehouse" decisions, in particular the decisions regarding pretrial confinement and the referral to court, was performed. In these decisions no discrimination was found. This is not to suggest that discrimination did not exist in

other decisions, such as those regarding administrative discharges and nonjudicial punishment, but these were not examined in the present research. The only area where blacks did seem to be at some disadvantage, albeit not at a statistically significant disadvantage, was that of confinement clemency, which is a "gatehouse" decision even though it occurs after the trial.

It is possible that the military itself is the major cause for the lack of discrimination in its system of justice. The military did undertake a number of steps designed to improve race relations within its organization, and military officials did appear to treat the issue of race as an important one. While, at least at Fort Meade, the military was successful in preventing race from becoming a determinant of the punishment imposed at a court-martial, there were widespread feelings that the military did discriminate in a number of respects. It was the nonjudicial aspects of military life where the Task Force found the most discrimination. The rank structure of the military continues to reflect the racial disparities which have existed throughout American history. The upper levels of the officer corps are dominated by whites, while blacks tend to be more numerous among the noncommissioned officers (Task Force, 1972). Such a fact certainly contributes to the appearance of racism in the military; however, in the day to day practices of military life, it may tend to discourage discrimination as the noncommissioned officers have more

contact with the lower ranking enlisted soldiers than do the majors, colonels and generals.

It might be that in the criminal justice system it is relatively easy to eliminate race as an issue. Some jurisdictions are relying on grids to determine the sentences to be imposed. In such instances, the legally relevant factors are given various weights, and the sentence imposed is determined by a person's place on the grid. The vertical axis might have the offense while the horizontal axis would contain the mitigating or aggravating factors. For example, a first offense of robbery might bring a five year sentence, a second seven, a third ten and so on. Reliance upon such a scheme would insure the lack of a direct racial effect; however, the individualization of punishment based upon the needs of the offender would likely be sacrificed. Such a reliance on objective standards with respect to AWOL cases is particularly easy, due to the nature of the offense. The fact that the offense can be measured in terms of its duration renders it amenable to an ordering not unlike that which occurs with respect to the crime of larceny and the value of the goods stolen. Factors such as the manner of termination and the number of charges are also racially neutral concepts which can easily be employed to aggravate or mitigate the severity of the offense.

There is one feature of the criminal justice system which

makes it more likely that racial discrimination might be eliminated, or at least minimized. The conflict in a criminal trial is not between two individuals or parties but between the state and an individual. In a civil trial, the judgment must favor one party or the other, whereas in a criminal trial this is not the case. Furthermore in many respects the defendants in criminal trials resemble each other in a variety of socioeconomic characteristics. Whether black or white, they tend to be young, undereducated and from poor backgrounds. Those tried in the criminal courts occupy the lowest rung on a society's social ladder. It could well be that whites who break the law lose whatever entitlement they might have had to favorable treatment vis-a-vis blacks. This phenomenon may well have existed to some extent at Fort Meade. One of the judges was said to be less harsh on blacks because he felt that they weren't really smart enough to have known any better. Whites on the other hand, have had the benefit of a society that has discriminated against blacks. If they violate the law, they do so in spite of the advantages which they have had, and this can make them look particularly bad. Were such a situation to exist throughout the criminal justice system, one might find a lack of racial discrimination in criminal trials while racism continued to flourish in other aspects of social life, including the legal system.

Justice and the Military Justice System

To conclude, for the purposes of this study, that the administration of military justice was fair does not imply that it was also just. Besides being a normative inference which is beyond the scope of this or any empirical research, a conclusion that the military justice system is just entails that both its system of laws and its punishments were just. And these are both debatable issues.

Only a very small number of soldiers actually served time in confinement, and most of those who did were returning to duty. Thus the number of soldiers who were imprisoned and then issued a discharge represented a tiny minority of those who were charged with an absence offense. Given the nature of the laws on the books, the military could have been much more harsh than it actually was. Soldiers coming into the Army are led to believe that an absence of thirty days will lead to imprisonment of five years, and many people still believe that deserters can be put to death. In this respect the military justice system was actually far more lenient than either its critics or many of its defenders would have believed.

The fact that such a small number of soldiers were confined must raise questions as to why any were confined at all. Those who were imprisoned after a general court-martial were the ones who were absent the longest or the most often. In terms of the offense related factors, they were the most serious offenders. While the military may

have had a legitimate interest in prosecuting only the most serious offenders, these soldiers were more unlucky than anything else. Had the military arrested them or communicated to them the fact that it was possible to get a discharge, it is likely that many of them would managed to have escaped Fort Leavenworth. Many of them went AWOL because they were unable to adjust to military life. Had they been apprehended after a few months, they might even have been discharged under honorable conditions. What distinguishes these soldiers from some of the luckier ones was they they simply were not caught earlier. Only in the military absence offenses does the crime become more serious the longer the offender evades apprehension. Whether this is just is beyond the scope of this inquiry, but it certainly raises questions about the justice of imprisoning soldiers for going AWOL and then discharging them from the Army following their sentences.

Whether the absence offenses should be subject to a criminal sanction is still another problematic issue. Only in the military is it a crime to quit one's job. While it is certainly true that the military is a unique institution with special needs, nevertheless in modern times the military has more in common with other occupations than it did a century ago. In a time of peace AWOL is not a threat to the national security, and AWOL can, and often is, handled by administrative action--including the discharging of the soldier. The consequences of the administrative

action can be just as damaging to the individual as the consequences of a criminal trial, yet the costs to the military and to the soldier and his family of a criminal trial are considerably greater: If administrative sanctions are not capable of keeping a soldier from going AWOL, criminal sanctions will likely meet with no more success.

Thus by treating the absence offenses as criminal during peacetime, the military causes considerable harm to the soldier and to his family, and undergoes a great deal of expense in bringing the soldier to trial and maintaining him in the stockade; yet all of this probably has very little, if any, effect on the AWOL rate and does little to improve the morale of the soldiers who do not go AWOL. Furthermore the military itself, by prosecuting and imprisoning soldiers for actions which are not crimes outside the military, leads many to conclude that it is a petty and vindictive organization and that its system of justice is an inferior one. Under such circumstances, the wisdom if not the justice of treating AWOL as a criminal offense must certainly be questioned.

The analysis which I have undertaken was somewhat unusual in that relatively little empirical research has been performed on the military justice system. Rarely is found an area of study where there exists such a gap between the level of ideology and that of serious research. To the person familiar only with the conflict over the Vietnam War

and the military's handling of a small number of celebrated trials, "military justice" may well appear to be a contradiction in terms. My research, however, indicates that, at least at this one fort, it was neither necessarily unfair nor excessively harsh in administering justice. Such disparities reflect the gap that exists between critics and defenders of the military justice system.

It is possible that the apparent leniency of the military justice system demonstrated in this research was merely a reaction to an increased workload and the realization that the Vietnam War was grinding to a halt. In fact, a major perspective within the sociology of law, the organizational perspective, might postulate precisely such a set of circumstances. If the organizational perspective is correct in this case, one might expect to find the post-Vietnam military justice system somewhat more harsh.

Clearly more research in the military justice system is needed. My research has been limited by the type of offense examined, the cases included in the sample, the time period and the number of forts. If the military justice system is to be more fully understood, these limitations will have to be remedied. It is doubtful that any thorough analysis of the military justice system could be attempted, as mine was, without any institutional support. The area portends to be a promising one for sociological research, both for reasons intrinsic to the subject matter and because developments in

military law might well shed some light on changes in other areas of the law. One may await such research and hope that in the future the potential for an analysis of the military justice system will be fulfilled.

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