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DISADVANTAGE AND DISCRETION: THE RESULTS FOR ABORIGINAL YOUTH IN RELATION TO THE ADJOURNMENT DECISION

1. INTRODUCTION

It is well known that minority groups such as young Aborigines experience disadvantage in the nature and extent of their contact with the criminal justice system. At those points in the system where discretionary decisions must be made coloured minority groups are likely to be subjected to the more serious of the available outcomes than are members of the mainstream society.

A certain amount of criminological research has concentrated on this problem of apparent discrimination resulting from the exercise of discretion by legal officers (for example Arnold 1971, Chiricos et al 1972, Dannefer and Schutt 1982, Elion and Megargee 1979, Hepburn 1977, Hindelang 1981, Kleck 1981, Stevens and Willis 1980, Unnever et al 1980, Weiner and Willie 1971). However, to date, studies have concentrated on the major points of discretion such as the decision to arrest, the decision regarding Court processing and sentencing, and the decision to parole.

Yet there are other decisions which, although of a more minor nature, also seem to operate differently for minority groups. These additional points of discretion serve to reinforce and compound the apparent disadvantage experienced by such groups in their contact with the justice system.

In this paper, we wish to look at one such 'minor' discretionary point, namely the decision to adjourn an appearance before reaching a final outcome, and to examine its differential application to Aboriginal and non-Aboriginal youths.

To do this, we will use data extracted from the youth offending files maintained by the South Australian Department for Community Welfare. These files detail all appearances which have taken place before Children's Aid Panels and the Children's Court in this State since July 1972. However, to avoid any inconsistencies generated by legislative changes, we will consider only those appearances[1] occurring during the five year period, 1 July 1979-30 June 1984, since the inception of the Children's Protection and Young Offenders Act 1979.

During this five year period, there were 42,884 initial offence-related appearances before Children's Aid Panels and the Children's Court in South Australia. Information on the Aboriginal/non-Aboriginal identity of the appearing individual was unavailable in 381 of these. Of the

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1 For the purposes of this discussion, the term 'appearance' is defined as one involving offence-related matters only and at which a final outcome is reached. These figures therefore do not include appearances relating to care matters, or those appearances which were adjourned with no final decision being made. In addition, only initial appearances relating to fresh offence charges are considered. Consequential apapearances involving such charges as breach of bond, reconsideration of orders etc are omitted.

remaining 42,503 appearances, Aboriginal youths accounted for 3,310 (7.8 per cent).

In a previous article (Gale and Wundersitz 1987) we demonstrated that, at the crucial discretionary stages in the South Australian juvenile justice system, Aboriginal youths seem to be disadvantaged compared with non-Aboriginal youths. They are more likely to be apprehended and are more likely to be apprehended by way of an arrest rather than a report; they are more likely to be directed to appear before the Children's Court, rather than 'diverted' to an informally-structured Children's Aid Panel; and finally, at the disposition stage of a Children's Court hearing, they are more likely to be sentenced to detention in a youth training centre rather than fined or released on bond. That such apparent disadvantage also applies in relation to less critical decisions made by judicial officers can be demonstrated by examining the adjournment decision.

When a child comes before the Children's Court or a Children's Aid Panel in South Australia, the appearance may be adjourned to a later date without the matter being finalised. This decision to adjourn is made by the presiding official - by a judge or magistrate in the case of a Court appearance, or by representatives from the Police Department and the Department for Community Welfare who sit on a Children's Aid Panel. These officials must also decide on the conditions which will be imposed on the individual during the period of adjournment. In South Australia, four options regarding the status of the youth during an adjournment are available to a presiding official. In order of severity these are as follows: firstly, in the case of a simple adjournment, the individual may be released without any conditions or constraints being imposed on him or her; secondly, the individual may be released on bail; thirdly, he or she may be released on bail but with supervision by an officer from the Department for Community Welfare; and fourthly, he or she may be remanded in custody. Obviously, a simple adjournment is the least serious of these outcomes, while a custody adjournment is the most serious since it involves a loss of freedom and temporary confinement to a youth training centre.

In certain circumstances, adjournment may be in the best interests of the youth. For example, a lawyer may request an adjournment to obtain more information about the case and thus provide more effective legal representation. A delay to enable the compilation of a social background report may be beneficial if the report assists in the adjudication of an appropriate outcome. Yet, it could also be argued that any form of adjournment involves at least some disadvantage for the individual concerned, since it means a delay in the finalisation of proceedings and the concomitant trauma of at least one further Court or Aid Panel appearance. When the adjournment involves custodial conditions, then the degree of disadvantage accruing to the individual may be considerable.

This paper demonstrates that proportionately more Aboriginal than non-Aboriginal appearances involve adjournments, and that Aboriginal adjournments are more likely than are non-Aboriginal adjournments to involve the most serious of the four types of adjournment, namely a custody order.

2. TOTAL ADJOURNMENTS

During the five year period under review almost one half (48.4 per cent) of the 3,310 Aboriginal appearances experienced at least one

adjournment before the matter was finalised. In contrast, less than one quarter (20.8 per cent) of the 39,193 non-Aboriginal appearances were adjourned. In effect then, although Aborigines accounted for only 7.8 per cent of all appearances during the five year period, they constituted 16.4 per cent of all adjourned appearances, which is more than double the expected figure.

Furthermore, significantly more Aboriginal than non-Aboriginal appearances recorded multiple adjournments. As Table 1 shows, 31.9 per cent of all Aboriginal appearances recorded two or more adjournments, while 6.6 per cent recorded five or more adjournments. Corresponding figures for the non-Aboriginal appearances were markedly lower; namely, 11.3 per cent and 1.9 per cent respectively.

TABLE 1
Number of adjournments per Aboriginal and non-Aboriginal appearance, 1 July 1978 — 30 June 1984

Number of Adjournments	Aborigines n	Aborigines %	Non-Aborigines n	Non-Aborigines %
0	1707	51.6	31031	79.2
1	547	16.5	3740	9.5
2	415	12.5	2086	5.3
3	269	8.1	1031	2.6
4	154	4.7	575	1.5
5 and over	218	6.6	730	1.9
Total	3310	100.0	39193	100.0

Raw chi square = 1506.9: df = 5: sig. < .001

This finding that Aboriginal youths experience more delays before their cases are finalised is verified by an analysis of the total number of adjournments ordered. During the five year period, some 22,080 adjournments were recorded for those appearances coming before the Children's Court and Children's Aid Panels. Of these, 4180 (18.9 per cent) involved Aborigines. Overall, the average number of adjournments recorded for the 3310 Aboriginal appearances was 1.26; that is, more than one adjournment for every appearance made. In contrast, the average number of adjournments recorded for the 39,193 non-Aboriginal appearances was 0.46; that is, less than one adjournment in every two appearances.

The over-representation of Aboriginal youth is evident in every category of adjournment. To illustrate, 540 (16.3 per cent) of all Aboriginal appearances involved at least one simple adjournment, compared with only 6.2 per cent of all non-Aboriginal appearances. Almost one-third (30.5 per cent) of all Aboriginal appearances involved at least one bail adjournment, while 9.6 per cent recorded three or more such adjournments. The corresponding figures for non-Aboriginal appearances were markedly lower; namely, 14.5 per cent and 3.6 per cent respectively. Overall, the number of supervised bail adjournments which took place was relatively low, yet even here, somewhat more Aboriginal than non-Aboriginal appearances involved one or more such

adjournments; namely, 1.3 per cent compared with 0.5 per cent respectively. Finally, 18.2 per cent of all Aboriginal appearances, compared with only 4.3 per cent of all non-Aboriginal appearances involved at least one custody adjournment. Moreover, 3.4 per cent of all Aboriginal appearances recorded three or more custody adjournments, which is again higher than the corresponding figure of 0.7 per cent recorded for non-Aboriginal appearances.

Not only are proportionately more Aboriginal than non-Aboriginal appearances subject to adjournment in each of the four categories listed, but also, it can be demonstrated that of the four options available, Aboriginal over-representation is most pronounced in relation to custody adjournments. Although Aboriginal youths accounted for 16.4 per cent of all appearances which had at least one adjournment, they made up 26.3 per cent of the 2289 appearances involving at least one custody adjournment. In contrast, they accounted for only 15.1 per cent of those 6677 appearances involving at least one bail adjournment, 18.3 per cent of the 2950 appearances involving at least one simple adjournment and 18.4 per cent of the 245 appearances involving at least one bail with supervision adjournment.

This emphasis on custodial orders for Aboriginal youth can be further illustrated by considering the actual number of adjournments imposed rather than the number of adjourned appearances. Table 2 provides a breakdown of the type of conditions ordered by the presiding officials in the 4180 Aboriginal and 17,900 non-Aboriginal adjournments recorded during the five year period. Over one quarter (26.1 per cent) of all Aboriginal adjournments involved a custody order compared with only 15.9 per cent of all non-Aboriginal adjournments.

TABLE 2
Proportion of total adjournments accounted for by each type of order, 1 July 1978 - 30 June 1984

Number of Adjournments	Aborigines		Non-Aborigines	
	n	%	n	%
Simple	795	19.0	3427	19.2
Bail	2221	53.1	11227	62.7
Bail with Supervision	73	1.8	399	2.2
Custody	1091	26.1	2847	15.9
Total	4180	100.0	17900	100.0

Custody adjournments undoubtedly contribute to the disproportionately high number of Aboriginal youths held in youth training centres at any given time. Not only are they more likely to be sentenced to detention at the final disposition stage of a Children's Court appearance (Gale and Wundersitz 1987), but even during the judicial process leading to the finalisation of an appearance, they are more likely than are non-Aboriginal youths to be held in custody. Under the terms of the legislation, such adjournments may extend for periods of up to 14 days. Thus, in those situations where the youth has experienced four, five or even as many as nine such periods of custody before his or her case is finalised, the length of time spent in a youth training centre may be quite substantial.

3. FACTORS ASSOCIATED WITH THE DECISION TO ADJOURN

Why are there more adjournments in those hearings involving Aboriginal youths than is the case for those involving non-Aboriginal youths? In considering this question, the outcome of two previous discretionary stages of the South Australian juvenile justice system seem to play an important and inter-connected role. One of these is the Screening Panel's decision regarding the appropriateness of a Children's Court or Children's Aid Panel appearance. The other is the decision, made by police officers at the point of apprehension, as to whether to arrest the individual or lodge a report.

(a) Referrals by Screening Panels

The majority of cases in South Australia involving offence matters are referred to a Screening Panel, which has the task of deciding whether an appearance should take place before a Children's Aid Panel or the Children's Court. This decision seems to affect not only the likelihood of a subsequent adjournment, but also the type of adjournment which can be imposed. Data analysis shows that the overwhelming majority of adjournments occur in those appearances which take place before the Children's Court, while adjournments in Children's Aid Panel appearances are extremely infrequent. Of the 22,080 adjournments recorded during the five year survey period, only 317 (1.4 per cent) were adjournments ordered by Children's Aid Panels and all of these were simple adjournments which imposed no conditions or obligations on the individual. The remaining 98.6 per cent of adjournments occurred in appearances coming before the Children's Court and these covered all four categories of adjournment. Clearly then, it is the Court process of adjournment which is the significant issue.

There are several reasons why a Court will order an adjournment, the primary one being the need to obtain further information prior to sentencing. Under the terms of the current legislation, once guilt has been established the Children's Court is empowered to request three types of report; namely, a social background report, a psychiatric report and an assessment panel report. If these are not available at the time of the appearance, the matter may be adjourned pending their preparation. In the case of simple or bail conditions being imposed, a maximum of 21-28 days' adjournment is permitted. In the case of a custody order, a 14 day adjournment is the maximum allowed.

Since Children's Court appearances have a far greater likelihood than do Aid Panel appearances of being adjourned, it follows that the Screening Panel's decision as to whether an appearance should take place before a Court or Aid Panel affects the individual's chances of experiencing an adjourned hearing. The relevance of this finding lies in the fact that Screening Panels direct significantly more Aboriginal than non-Aboriginal appearances to the Children's Court. During the five years under consideration, some 71.3 per cent of the 3310 Aboriginal appearances went to Court, compared with only 37.4 per cent of the 39,193 non-Aboriginal appearances. Moreover, this applied irrespective of the nature of the offence and the number of offence charges, thus indicating that factors other than the offending behaviour itself influence the Screening Panel's decision. Irrespective of what these factors are, the outcomes of these decisions mean that Aboriginal youths are over-

represented in Children's Court appearances where most adjournments take place.

However, the differential treatment accorded Aborigines during the discretionary stage of Screening Panel adjudication cannot, by itself, account for the disproprotionate number of adjournments recorded for Aboriginal appearances. This is demonstrated by the fact that, even within the confines of the Children's Court, the decision to adjourn is differentially applied to Aboriginal appearances. Of the 2361 Aboriginal appearances coming before the Children's Court, over two thirds (67.3 per cent) experienced at least one adjournment compared with only one half (53.7 per cent) of the 14,677 non-Aboriginal Court appearances. More specifically, 30.3 per cent of Aboriginal appearances involved at least one simple adjournment, 42.7 per cent involved at least on bail adjournment, 1.9 per cent involved at least one bail with supervision adjournment, while 25.5 per cent involved at least one custody adjournment. The corresponding figures for non-Aboriginal appearances were generally much lower; namely, 14.4 per cent, 38.6 per cent, 1.4 per cent and 11.5 per cent respectively. Thus, factors additional to the Screening Panel decision must be influencing the differential rate of Aboriginal adjournments.

(b) The police decision to arrest

At the point of apprehension, a police officer must decide whether to arrest the individual or lodge a report, which will subsequently result in the issuing of a summons or notice. This decision seems to relate, both directly and indirectly, to the subsequent likelihood of an appearance being adjourned.

The indirect relationship stems from an earlier finding (Gale and Wundersitz 1987) that the police decision made by the Screening Panel regarding the appropriateness of a Court appearance, which in turn, influences both the likelihood and the nature of a subsequent adjournment. In addition, the police decision exerts a direct effect on adjournments, simply because of the conditions surrounding an arrest-based appearance. A child who has been arrested must appear before a Children's Court within one full working day following the arrest. In most instances, the appearance is scheduled for the next afternoon and because of time restrictions, there will normally be no opportunity for the preparation of social background and other reports. As Seymour (1983: 48) notes: 'In arrest cases it is therefore usual for the matter to be adjourned after a plea has been taken'. In contrast, for 'non-arrest' appearances, some 4-5 weeks may elapse before the hearing takes place which is usually sufficient time for the preparation of the required reports.

During the five year period being considered, information on the mode of apprehension was available for 38,252 appearances. Of these, less than one quarter (21.7 per cent) were brought about by way of arrest. Yet arrest-based appearance accounted for 58.1 per cent of the 9607 appearances which were adjourned. Moreover, arrest appearances accounted for 31.1 per cent of the 2792 appearances which involved a simple adjournment, 63.6 per cent of the 6677 appearances involving a bail adjournment, and a massive 80.3 per cent of the 2289 appearances involving a custody adjournment. Obviously then, the method of apprehension is significantly associated with the likelihood of an adjournment.

The method of apprehension also proved to be related to the type of adjournment ordered by the presiding official. Table 3, which details the total number of adjournments rather than the total number of appearances, shows that of the 8348 adjournments which occurred in non-arrest appearances, over one third (33.5 per cent) were simple adjournments which imposed no conditions or constraints upon the individual, while only a very small proportion (9.2 per cent) involved a custody order. The situation was reversed for those 13,568 adjournments which occurred in arrest-based appearances. Of these, only 9.3 per cent were simple adjournments, while almost one quarter (23.4 per cent) resulted in a custodial order.

The relevance of these findings in helping to explain Aboriginal/non-Aboriginal differences in the number and type of adjournments recorded stems from the fact that a proportionately greater number of Aboriginal than non-Aboriginal appearances are based on arrest. Of the 3151 Aboriginal appearances which took place before Children's Aid Panels and the Children's Court during the five year period and for which relevant data were available regarding the mode of apprehension, 1366 (43.4 per cent) were brought about by way of arrest, compared with only 6930 (19.7 per cent) of the 35,101 non-Aboriginal appearances. Inevitably then, given the link between arrests and adjournments, Aboriginal appearances will not only be more likely to involve adjournments, but in particular, will also involve more custody adjournments than will non-Aboriginal appearances.

TABLE 3
Types of adjournment by the method of apprehension for all adjournments ordered during the period, 1 July 1979 - 30 June 1984

Type of Adjournment	Method of Apprehension: Arrest n	%	Non-Arrest n	%
Simple	1260	9.3	2798	33.5
Bail	8804	64.9	4644	55.6
Bail with Supervision	332	2.4	140	1.7
Custody	3172	23.4	766	9.2
Total	13568	100.0	8348	100.0

Raw chi square = 2305.4; df = 3: sig. < .001

(c) Combined Effect of Police and Screening Panel Discretion

The significance of the combined effect of the police and Screening Panel decisions on the total number of adjournments ordered is exemplified in Table 4. Although an arrest-based Children's Court appearance constituted only one of the possible combinations this category accounted for 61.4 per cent of the 22,080 adjournments which occurred during the five year survey period, including 62.8 per cent of the 4180 Aboriginal adjournments and 61.1 per cent of the 17,900 non-Aboriginal adjournments. Moreover, arrest-based Court appearances accounted for 65.6 per cent of all bail adjournments and 80.5 per cent of all custody adjournments.

TABLE 4
Proportion of adjournments in arrest-based Children's Court appearances, 1 July 1979 - 30 July 1984

Type of Appearance	Aborigines n	Aborigines %	Non-Aborigines n	Non-Aborigines %	Total n	Total %
Arrest-based Court appearance	2626	62.8	10936	61.1	13562	61.4
Non-arrest based Court appearance	1539	36.8	662	37.2	8201	37.2
Children's Aid Panel (arrest & non-arrest)	15	0.4	302	1.7	317	1.4
Total	4180	100.0	17900	100.0	22080	100.0

(Identity: Aborigines / Non-Aborigines)

The final question to consider then is whether the fact that Aborigines are over-represented both in Screening Panel referrals to the Children's Court and in arrest-based appearances can adequately account for the observed Aboriginal/non-Aboriginal differences in the number and type of adjournments, or alternatively, whether significant inter-group discrepancies still persist even when the 'level' of the appearance and the method of apprehension are controlled for.

To test the effect on adjournments of simultaneously controlling for both the 'level' of appearance and the method of apprehension, a single year of data,[2] 1 July 1983-30 June 1984, was subjected to partial correlation, using Goodman and Kruskall's gamma. The results are summarised in Table 5. In each instance, the zero-order gammas, which measure the original strength of association between the number of adjournments per appearance and the Aboriginal/non-Aboriginal identity of the appearing individual, were large, thus indicating strongly significant relationships.[3] However, when the effects of the 'level' of appearance and mode of apprehension were partialled out, in each case the relationship between the likelihood of an adjournment and Aboriginal/non-Aboriginal identity was considerably weakened, as reflected in the reduction in magnitude of the second-order partial gamma values.

2 Because of the size of the files, the computer lacked sufficient space to handle the entire five years of data. Thus, for simplicity, the most recent year of data available was selected for analysis.

3 SPSS, the statistical package used for this analysis, does not contain tests of significance for zero-order or partial gamms. Hence, whether or not a gamma value is statistically signficiant is based on subjective evaluation.

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TABLE 5
Measure of association between the number of adjournments per appearance and identity, controlling for the level of appearance and method of apprehension

	Type of Adjournment				
	Simple	Bail	Bail with supervision	Custody	Total
Zero-order gamma	.62075	.51554	.57017	.61611	.56986
Second-order partial gamma	.36892	.12341	.21551	.24750	.21413

Yet it is only in the case of bail adjournments that the partial gamma value is sufficiently low to suggest that significant inter-group differences no longer exist. In relation to the other three types of adjournments, and to adjournments as a whole, the second-order partial gamma values are still sufficiently large to indicate the retention of a significant relationship between identity and the likelihood of adjournment, independent of the combined effects of the 'level' of appearance and the method of apprehension. Thus, although the two control variables do help to explain the differential adjournment rates recorded for Aboriginal and non-Aboriginal appearances, they do not provide a complete explanation, except possibly in the case of bail adjournments.

In fact, if we revert to the full five year data block and analyse only those children's Court appearances which had arrest as the mode of apprehension we find that Aboriginal youths still experience significantly more adjournments than their non-Aboriginal counterparts. In fact, 75.8 per cent of all Aboriginal arrest-based Court appearances. Although not large, these differences still proved to be statistically significant.

Inter-group differences are particularly evident in the case of custody adjournments. Some 36.2 per cent of all Aboriginal Children's Court appearances brought about by way of arrest recorded at least one custody adjournment, compared with only 21.4 per cent of non-Aboriginal appearances. Clearly then, in the case of these arrest-based Court appearances other, as yet undetected factors, must be influencing the presiding official's decision to order adjournments, and in particular, custody adjournments in proportionately more Aboriginal than non-Aboriginal appearances.

4. CONCLUSION

Not only are Aboriginal youths apparently disadvantaged at each of the major discretionary stages in the South Australian juvenile justice system, but disadvantage is also evident in the apparently less important decisions made by judicial officers during the processing of a case. Adjournments have been largely ignored by researchers investigating the differential treatment of minority groups, yet the consequences of such decisions may have serious implications.

The preceding analysis has shown that proportionately more Aboriginal than non-Aboriginal appearances involve at least one adjournment and that the average number of adjournments is significantly higher for Aboriginal than non-Aboriginal appearances. The most serious form of adjournment, namely a custody adjournment, is imposed more frequently

on Aboriginal than non-Aboriginal youths. This in itself, could help to explain why, at any given time, Aborigines account for such a high proportion of individuals in the State's youth training centre.

The implication of a custody adjournment, whether applied to Aboriginal or non-Aboriginal youths, can be serious. Given a maximum 14 days' duration for each adjournment and given that some youths experienced at least six such adjournments, it is theoretically possible for an individual to spend over 60 days in custody before his/her case is finalised. The fairness of this may be questioned, especially since adjournments may be ordered primarily for administrative purposes, such as the compilation of a social background or assessment panel report. In theory, such reports are designed to help the presiding official reach a decision which will be in the best interests of the child. Yet how beneficial is it to the youth involved when, to provide time for its preparation, that youth may be held in custody for what could be a fairly lengthy period?

The foregoing analysis also attempted to demonstrate the interconnectedness of decisions made at different stages of the juvenile justice system, and to illustrate how the differential treatment of Aborigines at one discretionary level influences and compounds their differential treatment at another level. It was shown that both the Screening Panel's decision regarding referral to the Children's Court or an Aid Panel and the police decision regarding an arrest were significantly associated not only with the likelihood of a subsequent adjournment but also with the type of adjournment order imposed. In particular, appearances which come before the Children's Court by way of arrest are significantly more likely to be adjourned and to involve custody orders than are other appearances. The fact that police arrest proportionately more Aboriginal than non-Aboriginal youths and that Screening Panels send more Aboriginal than non-Aboriginal youths to Court therefore provides at least a partial explanation for the observed inter-group differences in adjournment patterns.

Yet, controlling for the method of apprehension and the 'level' of appearance failed to remove all Aboriginal/non-Aboriginal differences in the adjournment pattern. Judges and magistrates presiding in the Children's Court still order significantly more adjournments, and in particular, more custody adjournments, when processing Aboriginal appearances than is the case for non-Aboriginal appearances. Thus, at the point of adjournment, Aborigines are subjected to differential treatment which is independent of the carry-over effects of the differential treatment received by this minority group during the earlier stages of judicial processing.

The reasons for this have yet to be identified. The obvious explanation is that Aboriginal youths are discriminated against. Yet this may be too simplistic. Factors other than identity must be examined before this claim can be substantiated. For example, our finding (Wundersitz and Gale 1984) that proportionately more Aboriginal than non-Aboriginal youths are charged with multiple offences and have a prior appearance record may contribute to the adjournment decision, as may the fact that proportionately more Aboriginal young offenders are unemployed and come from non-nuclear family situations. Aboriginal youths also have a higher incidence of legal representation than is the case for non-Aboriginal young offenders.

This article has made no attempt to investigate the relevance of these and other factors to the adjournment decision. Its primary aim has been to focus attention on a generally neglected area of decision-making within the juvenile justice system and to bring to the attention of legal practitioners and administrators the fact that Aboriginal youths are treated differently, even allowing for inter-group differences in arrest patterns and Court referrals.

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