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**RACIAL DISPARITY IN THE MILITARY  
JUSTICE SYSTEM—HOW TO FIX  
THE CULTURE**

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HEARING

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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## **RACIAL DISPARITY IN THE MILITARY JUSTICE SYSTEM—HOW TO FIX THE CULTURE**

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
SUBCOMMITTEE ON MILITARY PERSONNEL,  
*Washington, DC, Tuesday, June 16, 2020.*

The subcommittee met, pursuant to call, at 12:00 p.m., in room 2118, Rayburn House Office Building, Hon. Jackie Speier (chairwoman of the subcommittee) presiding.

### **OPENING STATEMENT OF HON. JACKIE SPEIER, A REPRESENTATIVE FROM CALIFORNIA, CHAIRWOMAN, SUBCOMMITTEE ON MILITARY PERSONNEL**

Ms. SPEIER. Good afternoon. The Subcommittee on Military Personnel of the Armed Services Committee will come to order.

I would like to welcome the members who are joining today's hearing remotely. These members are reminded that they must be visible on screen for purposes of advancing their—when joining the proceeding—thank you—establishing and maintaining a quorum, participating in the proceeding, and voting. Members participating remotely must continue to use the software platform's video function while attending the proceedings unless they experience connectivity issues or other technical problems that render the member unable to fully participate on camera. If a member who is participating remotely experiences technical difficulties, please contact the committee staff for assistance, and they will help you get reconnected.

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Members are also advised that I have designated a committee staff member to, if necessary, mute unrecognized members' microphones to cancel any inadvertent background noise that may disrupt the proceedings. Members may use the software platform's chat feature to communicate with staff regarding technical or logistical support issues. Finally, remotely participating members should see a 5-minute countdown clock on the software's platform display, but, if necessary, I will gently remind members when their time is up.

So, welcome, everyone. Today, we will be focusing on racial disparity in the military justice system. We are here to discuss the inequalities and injustices that people of color experience in the military justice system, including those in criminal investigations, courts-martial, and nonjudicial punishment.

The fact that we live in a country with ingrained racial bias in no way excuses or justifies the perpetuation of racism in the United States military. Our service members commit their lives to protect our country. We must commit ourselves to ensure that the military treats service members of color equally and justly.

We will not solve this problem by hiding it or denying it. We will not solve this problem pretending that it is solely the result of uncontrollable societal problems, by pretending that our actions do not contribute to the continuation of injustice, by refusing to seek change because we are so comfortable and confident in, quote, the ways things have always been done, unquote. The way things have always been done is wrong. The results are repugnant. I hope that all our military leaders in the room are prepared to acknowledge the need for a reckoning and prepared further to institute bold measures to fix the inherent bias in the military justice system in America.

GAO's [U.S. Government Accountability Office's] most recent report found that Black service members were more likely to be the subject of recorded investigations and more likely to be tried in general and special courts-martial than their White counterparts. Importantly, GAO found that the results were statistically significant. Racial data on nonjudicial punishment was not uniformly collected.

Protect Our Defenders in their investigation found that Black airmen were twice as likely to face nonjudicial punishment than White airmen.

Yet history provides us some solace. The military led the way in integrating our Black service members long before schools or lunch counters were integrated. In 1948, President Truman signed Executive Order 9981, directing equal treatment for our Black service members in the military. Subsequently, the Army, Navy, Air Force, and Marine Corps complied. Quote: "In 1949, the Air Force issued a, quote, Bill of Rights for Black airmen, and the Navy proposed a recruiting program to enlist Black sailors. The Marine Corps eliminated its segregated training platoons in various post facilities," unquote.

But integration did not equal acceptance. Racism and discrimination, both personal and institutional, continued. People of color who wished to make a career in our military have faced an uphill fight, and we have done too little to assist them.

Seventy-two years after integration, the fight for equality and justice continues. We still struggle to carve out an equal place for people of color, struggle to ensure they have the same opportunities to serve and advance in their careers, and struggle to ensure them equal justice.

We have to look no further than the military leaders in this country, almost exclusively White men. It was heartening to note that General Charles Brown has become the Air Force Chief of Staff just this week; but 72 years?

I would like to hear from the first panel what needs to change, what needs to be done to bring transparency to the system and ensure accountability for every commander who uses the military justice system in a biased and discriminatory manner.

For the second panel, I would like to hear how, as the senior military lawyer for each service, you could educate leaders at all levels to recognize bias in the military justice system, and what you can do to ensure that justice is dispensed fairly and consistently.

Before I introduce our first panel, let me offer Ranking Member Kelly an opportunity to make his opening remarks.

[The prepared statement of Ms. Speier can be found in the Appendix on page 47.]

**STATEMENT OF HON. TRENT KELLY, A REPRESENTATIVE FROM MISSISSIPPI, RANKING MEMBER, SUBCOMMITTEE ON MILITARY PERSONNEL**

Mr. KELLY. Thank you, Chairwoman Speier, and thank the witnesses for being here. Thank you for holding this hearing at such a fitting time. As Americans across this country of all backgrounds are struggling to better understand racial disparity across society at large and to take substantive actions that actually make a difference, this is a fitting time to have this hearing.

I want to welcome both of our panels to today's hearing. We appreciate your attention and commitment to remedy a very grave problem that, if left unchecked, could stand to undermine the readiness of our Armed Forces.

Racial disparity is a very real societal problem, and across various criminal justice systems, when we see lopsided rates of arrests, prosecution, and incarceration, that should concern every American. This country has struggled to confront and fix that problem for decades, and we continue to do so, but as the events of the last several weeks demonstrate, we have a long way to go.

As a former district attorney and city prosecutor, I have seen my share of it, and it is something neither I nor any of us can ever shy away from or get complacent about. This is a problem we all collectively need to confront head on.

Where I think we can and must make a very real difference is in our military. I have served in the military for over 33 years, commanded at the battalion and brigade levels, and I know the very real bond our young warriors share, regardless of background.

I was very proud 2 weeks ago when 371 soldiers from Mississippi in the 155 Armored Brigade Combat Team, all volunteers, answered the call and deployed to Washington for the civil unrest on 3 hours' notice. They were a very diverse group, with 43 percent from either African-American or minority backgrounds. They trained together. They deployed together. And they did their duty as a team together, which is what makes our military so great. They answered the call, did what they were asked to do, and they did it with honor and integrity.

They and all service members place their trust in each other and their leaders, and that is why our military is so formidable. This is in context that lays a bit of the foundation for what makes this disparity in military justice so troubling for me. Leaders need to do the right thing always, treat every soldier, sailor, airman, and Marine with dignity and respect, and protect that trust that binds warriors together.

If racial disparity persists, it always has a negative impact on recruiting, readiness, and the culture of our military. I understand the statistics, the effect, but what we need to understand is the cause, fashion the right remedies, and we need to do it quickly.

Section 5401 of the fiscal year 2020 NDAA [National Defense Authorization Act] tasks the SECDEF [Secretary of Defense], in consultation with the services, to evaluate the causes of racial, ethnic, and gender disparities in the military justice system and to take steps to remedy disparities.

I am interested in hearing from our witnesses today on any ideas for rooting out the cause of this problem and potential solutions and where the Department is in their evaluation of causes and remedies.

I understand the Air Force is initiating an inspector general investigation with panels of experts in support to explore the problem more holistically. I am interested in hearing from all the services about any similar or complementary initiatives.

I do note that the Space Force is not here today. And as a new force, I think they have a chance to get it right from the start. They can be groundbreaking and groundsetting because they start from zero.

Madam Chairwoman, I think this is a great start and I look forward to today's discussion. I want to again thank the witnesses for attending today's hearing and share their collective expertise with us. And I yield back.

Ms. SPEIER. Thank you, Mr. Kelly.

Each witness will have the opportunity to present his or her testimony, and each member will have an opportunity to question the witnesses for 5 minutes. We respectfully ask the witnesses to summarize their testimony in 5 minutes. Your written comments and statements will be made part of the hearing record.

I ask unanimous consent that nonsubcommittee members be allowed to participate and ask questions after all the subcommittee members have had the opportunity to ask questions.

Without objection, so ordered.

Let me welcome our first panel: Retired Colonel Don Christensen, President of Protect Our Defenders; and Ms. Brenda Farrell,

Director of Defense Capabilities and Management Team of the U.S. Government Accountability Office.

Ms. Farrell is joining us via Webex. Welcome.

All right, let us begin with Colonel Christensen.

**STATEMENT OF COL DON M. CHRISTENSEN, USAF (RET.),  
PRESIDENT, PROTECT OUR DEFENDERS**

Colonel CHRISTENSEN. Chairwoman Speier, Ranking Member Kelly, distinguished members of the subcommittee, thank you for the opportunity to appear before you to examine the issue of racial disparities in the military justice system.

Like our country, the military has a long and painful history of mistreating racial minorities. Black service members have continued to be prosecuted and punished at a much greater rate than White counterparts. Moreover, they suffer promotion rates and are—they suffer lower promotion rates and are vastly underrepresented in the officer corps, especially at the general and flag officer ranks.

As part of Protect Our Defenders' ongoing efforts to improve the fairness of the military justice system, in 2016 we filed a series of Freedom of Information Act [FOIA] requests to each service seeking 10 years of data on racial disparities in the military justice process. The data was provided to us in rates per thousand. After eventually receiving the data, we released a study of our findings in June of 2017 that showed widespread racial disparities in all of the services. We examined a total of 32 years of data, and in every single year Black service members were punished at a significantly higher rate than White service members.

Based on our findings, Congress mandated a Government Accountability Office review of the disparities, which was completed in March of 2019. The GAO also found significant racial disparities, but most shockingly, the GAO found that none of the services had done anything to find the causes or solutions for the disparities.

As part of its answer to our 2016 FOIA request, the Air Force stated it had created, quote, "a cross-functional team led by diversity inclusion experts," end quote, to, quote, "collect and analyze the data and recommend policy changes, process modifications, or additional study, as appropriate."

In July of 2017, we filed an additional FOIA request seeking the identities and the qualifications of the team members as well as the team's findings and recommendations in addition to other information. This was the start of a grueling 3-year-long struggle to force the Air Force to meet its FOIA obligations. Thankfully, we were represented by the Yale Veterans Legal Services Clinic, which enabled us to file suit in Federal Court.

Despite numerous efforts by the Air Force to conceal its findings and recommendations of the team, a Federal judge eventually ordered the Air Force to disclose the requested documents under the threat of sanctions. The documents that we received were startling.

The panel in a followup study by Air Force Manpower, or A1, found that the racial disparities were, quote, "consistent and persistent and getting worse." The Air Force admitted that the numbers were, quote, "concerning," and the importance of having, quote, "equitable and consistent disciplinary processes." These find-

ings were made in 2016. And despite concluding that the Air Force, quote, “must clearly address the disparity in some way,” end quote, the Air Force appeared to [fail to] act on the team’s recommendations and address the issues.

Another disturbing finding of our review of the documents is the Air Force legal community’s efforts to discredit the data showing—their own data showing significant racial disparities. Despite the strong conclusions of A1, JA [Air Force Judge Advocate General’s Corps] has attempted to discredit the importance of the data. Specifically, in the background paper that JA created in 2016, they claimed that the disparity between Blacks and Whites that are punished can be the result of a small number of additional actions.

Lieutenant General Rockwell, the Air Force Judge Advocate General, reinforced this message recently in a briefing to the Air Force four-stars, where he told them, quote, “even a few additional disciplinary actions have a far greater impact on the rate per thousand for Black airmen,” end quote, due to their smaller number. General Rockwell then went on to misleadingly illustrate this point by using a ratio of 10 to 1 of White airmen to Black airmen rather than the actual rate of 5 to 1.

The idea that the decades-long disparity can be explained by a few additional disciplinary actions is false, and JA needs to stop this line of argument. The disparity in nonjudicial punishments in calendar year 2019 in the Air Force alone represents an additional 520 Article 15s for Black airmen, not an additional few, as implied by the legal world.

In other words, Black airmen received approximately 1,105 Article 15s last year. If they were punished at the same proportional rate as White airmen, they would have only received 585. The impact of racial disparities across all the services in the last 10 years would easily be in excess of 10,000 additional extra punishments meted out against Black airmen—or Black service members, not a few additional actions. The Air Force needs to focus on finding solutions and causes, not discrediting the significance of its own data.

We released our report May 26 of this year, and it had an immediate impact. I credit Chief Master Sergeant of the Air Force Wright and General Goldfein for acting quickly by ordering an investigation. But what must not be forgotten is the action initiated by the Air Force last week to investigate disparities would not have occurred if they had been successful in keeping this information from being disclosed.

This hearing today would not have been held but for the fact we were willing to force the Air Force to disclose damning information that it wished to keep hidden. This is a reminder of the importance of transparency and why the military must faithfully meet its FOIA obligations. How much further could the Air Force be in addressing racial disparities if it had put the energy into finding solutions in 2016 rather than seeking to cover up its embarrassing failures.

I look forward to any questions you may have.

[The prepared statement of Colonel Christensen can be found in the Appendix on page 49.]

Ms. SPEIER. Thank you, Colonel Christensen.

Before we hear from our next witness, I would like to remind members to turn on their screen. The rules require us to do that. So we will do so. Thank you. All right.

Now we are going to hear from Ms. Brenda Farrell from the GAO that has recently provided the report.

Ms. Farrell.

**STATEMENT OF BRENDA S. FARRELL, DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. FARRELL. Thank you, Madam Chairwoman. Ranking Member Kelly, and members of the subcommittee, thank you for the opportunity to discuss GAO's findings to recommendations about racial disparities in the military justice system.

The Uniform Code of Military Justice, the UCMJ, was established to provide the statutory framework of the military justice system. It contains articles that punish traditional crimes, such as unlawful drug use and assault, as well as unique military offenses, including desertion. Every Active Duty service member of the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard are subject to the UCMJ, with more than 258,000 individuals disciplined from fiscal years 2013 through 2017. A key principle of the UCMJ is that a fair and just system of military law can foster a highly disciplined force.

My statement is based on our report issued in May 2019 on the military services' capabilities to assess racial disparities, among other matters. Let me briefly summarize my written statement. My statement is divided into three parts. The first part addresses the collection of race and ethnic group information in the military services' investigations, military justice, and personnel databases.

Among our findings, we found that the services did not collect information about race and ethnic group in these databases. Thus, they were limited in their ability to identify disparities, which are instances in which a racial or ethnic group was overrepresented. Specifically, the number of potential responses for race and ethnic group within the 15 databases across the services ranges from 5 to 32 options for race and 2 to 25 options for ethnic group, which can complicate cross-service assessments.

To address these inconsistencies, we made recommendations to DOD [Department of Defense] and DHS [Department of Homeland Security], the parent organization for the Coast Guard, to collect and maintain race and ethnic information in the investigative and personnel databases, using the same categories recently established in the uniform standards for the military justice databases. DOD and DHS concurred with these recommendations.

The second part of my statement addresses the extent of racial disparities in investigations, disciplinary actions, and outcomes. Since the services did not collect race and ethnic group data consistently, we analyzed actions initiated and recorded in each service's investigations, military justice, and personnel databases between the years, fiscal years 2013 through 2017.

To help ensure we had consistent profiles for service members, we merged records using unique identifiers, such as Social Security numbers, that were common among a military service's database.

We used OMB's [Office of Management and Budget's] standards to consolidate the various race and ethnic values. We conducted multivariant regression analyses to test the association between a service member's characteristics, such as race and ethnic group, and the odds of a military justice action.

By using this approach with available data, we found an association of disparity at stages of the military justice process, but findings are inconclusive regarding other stages. For example, we found that Black service members were more likely than White service members to be subjects of recorded investigations in the military criminal investigative databases in all of the services. Further, Black service members were more likely than White service members to be tried in general and special courts-martial in the Army, the Navy, the Marine Corps, and the Air Force. Data for the Coast Guard was not available.

The last part of my statement addresses DOD evaluating the causes of disparities. We found that DOD has not comprehensively evaluated the causes of racial disparities in the military justice system. We recommended that they do so to better position them to identify actions to address disparities. DOD concurred.

Madam Chairwoman, in conclusion, we believe that, for the system of military law to be recognized as fair and just by both service members and by the American public, DOD and DHS need to take actions to implement the recommendations in our May 2019 report.

That concludes my statement, and I will be pleased to take questions that you or the others may have.

[The prepared statement of Ms. Farrell can be found in the Appendix on page 58.]

Ms. SPEIER. Ms. Farrell, thank you. You did it with 8 seconds left.

So let us start with Colonel Christensen. You know, I was stunned in reading the report that you found that, in the Air Force, a Black service member was 71 percent more likely to be charged for nonjudicial punishment, I believe, for courts-martial or nonjudicial punishment. In the Army, it was 61 percent. In the Navy, it was 40 percent more likely. In the Marine Corps, it was 32 percent more likely. So, clearly, the Air Force is the grossest outlier, although they all appear to have statistics that bear a high degree of bias.

It appears to me that you had to work very hard to get that FOIA request complied with. How much time did it take for you to actually get that information from the Air Force?

Colonel CHRISTENSEN. Well, that is a great question. So there were two separate FOIA requests. The first one where it just asked for the raw data, we got fairly quickly. The Air Force answered I believe within a month with just raw data. But in that first FOIA request, they talked about establishing this disparity panel to—I thought: Hey, great, they are really going to look at this.

And when we did the follow-up—it has been 3 years since we filed that FOIA request, and we still have not got all the documents that we requested. For example, I have no idea what the qualifications of a single person on that panel were.

And we had to go to Federal court. We filed suit in December of 2017. We did not get a final judgment from the judge until March

of this year. So it was an onerous task. I mean, we were very fortunate to have a great group of Yale law students and Yale law professors who were willing to fight this, but the average person looking for FOIA evidence cannot get that kind of support.

Ms. SPEIER. And so it was over a year and 3 months before you got the data that you requested, and——

Colonel CHRISTENSEN. It was over 3 years.

Ms. SPEIER. Over 3 years.

Colonel CHRISTENSEN. Three years, yes. It was a 3-year struggle. The first request, it took about 6 months for everybody to get the information to us. But when it came to the disparity panel, its findings and its recommendations, that is a 3-year struggle.

Ms. SPEIER. So, after your report came out with the stunning statistics, when did you hear from the Air Force?

Colonel CHRISTENSEN. I have never heard from the Air Force.

Ms. SPEIER. From any of the other services?

Colonel CHRISTENSEN. I have never heard from any of the services. None of the services reached out to us to talk about the report or findings.

Ms. SPEIER. What do you think the military should do to show that it is taking these disparities seriously?

Colonel CHRISTENSEN. Well, I think the first thing we need to realize is that this is information that I know the Air Force has tracked for decades, back to at least the eighties, and nothing was ever done. So there is a long track record of doing nothing.

When our first report came out in 2017, you know, that was an opportunity. It had been put into the public light, got a lot of media coverage. Congress was concerned about it. That was an opportunity to show they were going to do something, but they haven't.

General Goldfein, I think, took the first step by ordering the investigation, but the thing to remember about that investigation, that is an internal Air Force investigation by the IG [inspector general] who works for General Goldfein. They need to be looking at outside sources to come in and talk to them about that, experts on disparity, truly people who understand what the causes are.

And I think one of the things they have to accept, because what we have seen, to the limited degree they have looked at it, they have tried to look at exclusively unconscious bias. They have to accept that there is also actual bias. There are actually people who are prejudiced serving in the military. I don't think it is most. I don't know if it is many, but we do have that. There was a naval officer who just accidentally disclosed his racist beliefs on Facebook by livestreaming a conversation between him and his wife that was horrifically racist. He is an Academy grad and a retired Captain.

We have to accept that this isn't just unconscious bias, that there are people who don't like Black people or other minorities and don't want them in the military, and they have to try to root this out. But leadership needed to stand up decades ago. It needed to stand up in 2016. It needed to stand up in 2017. It needed to stand up in 2019. It has to show that they really care about this.

Ms. SPEIER. Ms. Farrell, what would you want us to make sure that the Department of Defense does, moving forward?

Ms. FARRELL. Thank you, Madam Chairwoman.

As I noted in my statement, we think implementation of our recommendations are key. In fact, I think the recommendations in our report are a roadmap for DOD, with the final chapter being the causes of the disparity and taking steps to make corrections.

I think continued oversight in this area is necessary, especially as my colleague on the panel has noted, these disparities have been lingering for some time. Now we have hard reliable data to help pinpoint where there are differences so that DOD can target where to start looking for the causes of these.

So I think continued oversight is necessary. We noted in the report that the National Defense Authorization Act for Fiscal Year 2020 had provisions that were consistent with several of our recommendations. Some deadlines have been set, in terms of when DOD must begin to look at, say, the causes of disparities, but there is not an end date.

I think it was recognized that more data was needed, and this was going to be a very complex review, but in order to make sure that that report is completed, I think congressional oversight is going to be very important. Thank you.

Ms. SPEIER. Thank you.

Mr. Kelly.

Mr. KELLY. Thank you, Chairwoman Speier.

And, first, the cause of racial disparity across society and across the military service is elusive, except for those who are blatantly racist, and there are those in every organization, including the military.

What recommendations, if any, do you have that would be helpful to the departments in getting after the causation and fashioning of remedies and also understanding the causation that aren't those that are intentional, those cultural or whatever disparities that are caused by culture, what remedies would you all have?

Colonel CHRISTENSEN. Thank you, Ranking Member Kelly. Well, I think General Goldfein has taken a first good step on that by actually getting the input from the rank and file of the services. We have heard from—at Protect Our Defenders, since their first report came out and the second report from, you know, a lot of Black service members who are talking about what they are experiencing.

I think the Air Force particularly is an incredibly White officer corps. The fighter pilot community is less than 3 percent Black. And so I think there is a lack of understanding what the Black service members and other minority service members are facing, the difficulties they face, the lack of mentorship.

In 2015, Air Force Times ran a really good article about promotion failures for Black service members, the failure to get depth in promotes, the failure to get in-residence PME [professional military education]. And so getting the service members at the top to understand that there are issues that are impacting the way Blacks progress throughout the military and other minorities progress is really a key to that.

Mr. KELLY. And, second, I want to understand the significance of years of service on this analysis. As I recall, in the GAO report, you included years of service in your analysis for the Air Force data but not the other services because it closely correlated with rank.

Are we looking at generally a problem that is focused primarily on younger service members across the services, and if so, how does this data compare nationally to trends? And for you, ma'am.

Ms. FARRELL. Thank you for that question. We did do a bivariate regression analysis as well as a multivariate, where we would control for certain characteristics, such as years of service or rank. And each service model was a little bit different. We worked very closely with the services in order to understand what was going on with their particular service.

As far as a comparison between older and younger, we did not develop that particular analysis to target in terms of that. We are aware of some studies that are done in the private sector. But we did not try to make any comparisons of what is going on in the military justice system with what is going on in the civil justice system.

I hope that answers your question.

Mr. KELLY. It does. And back to Colonel Christensen. I want to go back. In my career, when I first got in 30-something years ago, I think I had the first African-American first sergeant in the Mississippi Army National Guard that served under my command. So you rarely saw any senior NCOs [noncommissioned officers]; I can name on one hand the senior O-5, O-6 level officers who were African American in the Mississippi National Guard, which Mississippi is 40 percent African American.

Now, I can't count. And many of those are my soldiers who I mentored—I personally made a difference—who are sergeant majors, sergeant first class, who are first sergeants. The last three brigade commanders that followed me as a brigade commander are all African American—not because they are African American—because they are the best we got, the absolute best. So now it is there.

So you served as part—during the data that we collected from 2010 to 2014, you served in the Air Force in one of the chief legal roles. So what did you see, and what did you do? And now, with the experience you have now, what would you do now different to change the outcome of what happens in the Air Force, to Colonel Christensen?

Colonel CHRISTENSEN. That is a great question. And I agree, the Army actually is further ahead in the officer corps being African American. The Air Force lags behind the rest.

What did I see? Look, I never prosecuted someone that I thought was innocent. Of course, I don't make the prosecution decisions; someone else does, as you know. I don't think it was necessarily a case that innocent people were being brought to trial. What I thought the problem was is that others were getting the benefit of the doubt based upon whether the relationship—implicit bias, explicit bias—whatever it was, they were getting the benefit of the doubt.

So, for example, 2 years ago, the Air Force decided to prosecute a Black NCO for being 6 minutes late to work, literally 6 minutes late to a meeting, excuse me, and he has a court-martial conviction. That is a decision that truly should not have been made. I don't care if it was an Article 15 turndown or not, just the optics of it.

What did I do? Well, one thing I was very concerned about and raised as an issue was the lack of Black JAGs [judge advocates general]. We do not have enough. We have one of the great former ones sitting behind me in Colonel Orr. But when I retired, I believe we had 1 of 124 colonels in the JAG Corps were African American.

So I encouraged the African Americans that worked for me to try to make a career out of it, to be concerned about it. I sat on a promotion—or, excuse me, on a selection board. I encouraged the people who also sat on that selection board to focus on finding good African Americans to come into the JAG Corps because I think part of that experience that they would bring in would be important to help with that bias.

What have I done since? Obviously, filing this report. It was important to me. I knew the data was there, and it troubled me throughout my career. I never saw leadership really address it, and I thought it was important to bring it forward.

Mr. KELLY. Thank you, Chairwoman.

I yield back.

Ms. SPEIER. Thank you, Mr. Kelly.

Were White NCOs that were 6 minutes late court-martialed?

Colonel CHRISTENSEN. I have never seen anybody court-martialed with the sole offense of being 6 minutes late to a meeting other than this African American.

Ms. SPEIER. That is really stunning.

All right. Mrs. Davis, you are recognized for 5 minutes.

Mrs. DAVIS. Thank you. Thank you, Madam Chair.

And to our witnesses, thank you for joining us.

Colonel Christensen, first off, can you talk maybe without getting in the weeds too much a little bit about how you gathered your statistical information? And I just wanted to get a sense of your statistical analysis, whether that was very different from Ms. Farrell's. And then I will ask Ms. Farrell. Just talking about that and whether you think information was concealed and sort of your level of confidence, I guess, with the analysis and whether it revealed sort of really what you are trying to get at here. How do we do that?

Colonel CHRISTENSEN. Thank you, Congresswoman Davis. So, for the initial FOIA request, we requested from each service 10 years of data showing their rate per thousand of court-martial and Article 15 for African Americans, Whites, and other minorities. We received that data from everyone, except for the Navy only gave us 2 years of data. The Coast Guard never responded.

The data we got from the Air Force was the best. I knew their process would track it well. I am very confident that the data that they provide us is accurate. And what we saw out of that data was a historical disparity of racial—where Blacks were prosecuted and given Article 15s at a much greater rate and that it was getting worse, not better. And that is what we saw across all the services.

The Army did not track nonjudicial punishments. The Marine Corps only tracked by convictions. So we don't know how many cases were charged, just convictions. The Marine Corps was interesting, as the more severe the punishment the greater the disparity. So, for example, by the time we got to general courts-martial in the Marine Corps, the disparity was almost 2.6 times greater for Blacks than it was for Whites.

The issue that we dealt with a cover-up was when we did the follow-on about the racial disparity panel that the Air Force said that they had established.

Mrs. DAVIS. And, Ms. Farrell, could you respond to that, and are there some differences or areas, again, that you didn't feel that you were able to get the information and really had some sort of lack of confidence maybe in some of that data?

Ms. FARRELL. Sure. I will be happy to expand upon our methodology. Our methodology was for a different time period than Don's. His was a much longer. Ours focused on the fiscal years 2013 to 2017, which was the latest available data.

We experienced very good cooperation from the Department of Defense. This was a very rigorous analysis, as I noted. We obtained the records, all the records for that period between fiscal year 2013 and 2017, and 3 categories of 15 databases across the services.

There were some places where data was incomplete, and that is the reason we say that we found disparities that were statistically significant at certain stages of the military justice process. But at other stages, the findings are inconclusive, and it is usually inconclusive for two reasons. One, incomplete data. Not that any of the services did not provide the data, but the data was incomplete, such as nonjudicial punishments: the data was incomplete for the Army and the Navy as well as the Coast Guard. So it was very inconclusive.

But we received very good cooperation from DOD. The analysis that GAO did in cobbling all this information together takes time. It is not something that DOD could do routinely in an efficient manner. That is why it is so important for them to carry out the recommendation to adapt their personnel and their investigative databases to have the same uniform standards as the military justice so that, going forward, especially if the causes of disparities are identified and steps are taken to remedy those, you want to be sure you have good data in place in order to be able to find that progress.

Mrs. DAVIS. Yeah. Okay. Thank you. And I hope that, in our next discussion, we will get into those causes, certainly.

But, Colonel Christensen, going back to you very, very quickly, I know you tend to, and really in your analysis felt it was important to, look at legally trained military prosecutors. But I guess within the judicial system, we would probably all agree that there is always—there is some bias there. How do you think that is different?

Colonel CHRISTENSEN. In the military, how could it be different, if I am understanding your question?

Mrs. DAVIS. Yes. Well, I think, rather than leaning on the commanders, the military, legally trained military prosecutors, is that a different kind of bias that they would bring to their positions, recognizing that there is always some implicit bias within the judicial system, of course, as well as in the military as well as in society, but do you see that as different, and why would that recommendation be there?

Colonel CHRISTENSEN. Well, as I agree with Ranking Member Kelly, there is always bias no matter what system we have, and that is unfortunate.

The reason we talked about that is the bias that the command decision who—the commander who has the power to make that decision is he knows the accused. He also knows the person he chose not to prosecute or not to give an Article 15 to whereas, as a prosecutor, I never knew anybody until I walked into court. So I could not have a bias against him one way or the other.

And so that is where I think the key is, is there is an inherent bias in the chain of command when they know the people involved. If they haven't established the same kind of relationships with the African Americans that work for them as they have with the White service members that work for them, I think it is going to have a negative impact.

Mrs. DAVIS. And you feel that the prosecutors wouldn't bring that kind of bias at least in. Maybe, what are other biases that they bring?

Ms. SPEIER. Actually, Mrs. Davis, you have gone over 1 minute 51.

Mrs. DAVIS. Great. All right. Thank you. Thank you, Madam Chair.

Ms. SPEIER. All right. Next we have Ms. Escobar. You are recognized for 5 minutes.

Ms. ESCOBAR. Thank you so much, Madam Chairwoman, and many thanks to our panelists.

You know, Colonel Christensen, it is really interesting that you mentioned the Coast Guard because I just recently read a report about the Coast Guard, which obviously is under the Department of Homeland Security, not DOD.

But the report by the inspector general found that incidents of racial harassment were not—there were no consequences for cadets who used racial slurs against their fellow cadets, absolutely no consequences, and there was a history of this. And so I think one of the things that we are going to need to do is really kind of take a look at really a broad sense of causality, including whether folks are punished for using racial slurs, et cetera.

But to both of you, and I know we are going to get into this more in the next panel, but as we are talking about the causative factors, what would you say, just based on the research that you have done, what are the causative factors in these disparities in the research that you have found?

Colonel CHRISTENSEN. Well, and that is an excellent question, and it goes beyond what my expertise is and what the data that we have is. The data shows this is a problem. And that is what we were hoping that the military, each service would do once the problem was brought publicly to light to them, that they would look for the causes, and we were limited in what access we have on that.

But, just as someone who served for 23 years and has served all that in the military justice world, I do think that the racial make-up, especially of the Air Force leadership, without a doubt has some impact on the disparities that we have.

General Hyten, when he testified at his nomination hearing to become the vice chair, when he became the vice chair, said that basically the issue of race was behind the military, and that when he looked at the service, it was color-blind as he did it.

You know, and that is the problem. You know, there are two four-star African-American generals in the entire DOD. So we really need to focus on the inclusion of all races and their voices in understanding the issues that young Black service members are facing.

Ms. ESCOBAR. Thank you so much.

Ms. Farrell, your thoughts and anything come to mind as you were conducting your research?

Ms. FARRELL. One of our objectives was to determine what steps DOD had taken to determine causes of disparities. And what we found was there have been some steps but not a comprehensive review. By steps, there are climate surveys that gain information on perspectives of service members. But going back to the seventies, the eighties, the nineties, there really hasn't been a focus on the military justice system and causes for disparities.

We, again, think that our report pointing to certain stages of the military process can help prioritize where to start looking for those causes, and that is a recommendation DOD has agreed with. But, also, in the National Defense Authorization Act for 2020, there is a provision consistent with that that by I believe it is this month DOD will proceed with such a study, commence it. Thank you.

Ms. ESCOBAR. Thank you both. I am quickly running out of time. I just wanted to make note for something, about something with my colleagues and with the chairwoman. We have been talking about this issue for the last year and a half, and it really is important in terms of not just African-American service members but Latinos.

And, also, I am very curious about the impact on immigrants in our services, especially when we have a Commander in Chief who [inaudible] on disparate treatment as well.

But one of the things that we have found is, at the highest levels of authority within the military, it is even less diverse, and it may be because of the adverse military judicial system encounters that you all have pointed out. That may be one of the underlying causes.

I know I am just about out of time. Thank you both again for your work, and I yield back.

Ms. SPEIER. Thank you, Ms. Escobar.

Mrs. Luria, you are now recognized for 5 minutes.

Mrs. LURIA. Thank you.

And I want to thank Mr. Christensen and Ms. Farrell for joining us today. And I think that this really highlights something. The saying is that justice is blind, but it is showing that justice is not color-blind.

And having served myself in the military, having been a commanding officer and part of the NJP, nonjudicial punishment, process within the command, I think that, you know, understanding that and the lack of data that has been collected and the lack of reporting requirements that existed, I think that that is very useful for us to hear as a committee to understand the scope of this problem and get after, you know, true core issues of why a disparity could exist.

Ms. Farrell just mentioned in her comments a couple minutes ago the fact that there is command climate data, command climate

survey data as well that I think can be informative on this. You know, it is part of the bigger picture, because we don't necessarily have accurate data for nonjudicial punishment in all parts of the military justice system to go off of.

But, you know, Ms. Farrell, can you elaborate on how command climate data could help inform, you know, what the previous questions you got from Ms. Escobar. Could you envision a way that we could try to incorporate that or require the incorporation of that into the analysis? Because that is taken regularly, it is taken from all commands, and it is taken from the perspectives of people who are not only involved themselves personally in an accusation or going through the nonjudicial punishment process.

So can you elaborate for everyone on how that could maybe be a piece of the data that we need to fully analyze?

Ms. FARRELL. Sure, I would be happy to elaborate. Command climate surveys are required. I believe DOD has gotten much better in the past few years in making sure that they be administered, thanks to a little help from Congress.

They are designed to help an incoming commander understand the working environment and what issues he or she may need to focus on while they have that command. There is usually a standard set of questions that are answered, and then the incoming commander can ask some additional questions.

Climate surveys have been very beneficial to obtain perceptions of service members in many personnel areas. I have worked with them looking at hazing as well as other sexual assault issues. So I think the surveys could be reviewed in order to see if there is something that could be gained.

We do have to be careful about survey fatigue. We hear that from DOD all the time. But this comes down to, where is this issue of racial and ethnic disparities in DOD's priorities? So command climate surveys could have some issues incorporated.

The Status of Forces is another survey of the Active Duty. There is also another one for the Reserve Component and civilians, but that is another one that there are standard questions, but often the questions change. But when an issue is emerging, often DOD uses the Status of Forces Survey to ask a set of questions over a period of a few years to try to dig a little deeper to see what is going on.

So there are survey instruments already in use that could be used to perhaps obtain some more information about this particular issue in the military justice system.

Mrs. LURIA. Well, thank you for that, and I think that, you know, as we look at, you know, how we try to collect data to assess the situation to identify the root causes that we could consider that there is additional data on top of just statistical data about the types of NJP that happen. And I do think it could also be somewhat difficult, and I think we have to be very clear on how we collect that data because, you know, different things stop at different phases within the NJP process. Some of them may never reach captain's mast, for example, or office hours or whatever term the service uses for that process, and some may stop short of that with just assigning extra military instruction and other things.

And I think that there is also an aspect in the NJP process with the attempt to maintain good order and discipline, attempt to use

the process when there is a supposed infraction to improve the performance of the sailor or the soldier with things such as extra military instruction and things like that, which are clearly required to address specifically the issue at hand and are not viewed as punishment but are viewed as, you know, ways to improve their performance and make them better soldiers or sailors.

So I think that, you know, definitely collecting the data is very important, but I appreciate your work in researching this. And I think that we do need to do more to understand the problem more to get at the root causes.

And training is also an issue as well. I think that, as a commanding officer in the Navy, with specifically the Navy legal justice course, and, you know, then there is not really any specific thing that I recall in that training that addressed specifically looking at racial disparities or uniform application of the justice system.

Sorry. I apologize. I have run over, Madam Chair, but thank you again, and I look forward to the next panel as well.

Ms. SPEIER. Thank you, Mrs. Luria.

Now, Ms. Haaland, you are recognized for 5 minutes except you are not there. We will come back to you.

Mr. Cisneros, you are recognized for 5 minutes.

Mr. CISNEROS. Thank you, Madam Chairwoman. And I want to thank our panelists for being here today.

Colonel Christensen, look, I am a product of what used to be the Navy's affirmative action program. I worked through this program called Broadened Opportunity for Officer Selection and Training. It took enlisted personnel, people of color, helped prepare them for college. So it was part of the Navy's process to get more people of color into the officer ranks.

You know, as you stated, Colonel, 78 percent of our military officers are White; 8 percent are African American. It is even lower for Asians and Hispanics. You know, when you talk about the impact of the lack of representation in the officer ranks and how it has disparities in our military justice system, and you also mentioned about, you know, when you were in the Air Force, a lack of diversity in the JAG Corps there.

But, really, what do we need to do as far as recruiting goes to bring these numbers up so that really we are recruiting a more diverse officer corps, really help solve this problem in the criminal justice system in the military of the disparities in it?

Colonel CHRISTENSEN. Thank you, Congressman. Well, I think, you know, prioritizing, definitely, as you talked about, that opportunity to go from a young enlisted Black service member to become an officer, how do we encourage that process.

What are we doing to make sure that the officers have mentorship? And that is so key. How far you progress in the JAG Corps or any other part of the service depends on who you have for mentors. And so do we have people looking out for those young Black officers and making sure that they can progress? Are they getting the opportunities to go to professional military education in residence, which is a key to getting promoted, especially to the general officer or flag officer rank, and then making sure that they are operating in a good environment.

So a story just broke I believe this weekend about the racial problems at West Point and that the cadets there, the African-American cadets, I believe 25 percent of them said that they have been subjected to racial abuse. So we have got to make sure that, at the institutions that are giving us our future leaders, that the people serving and trying to get that commission are treated with respect.

Mr. CISNEROS. Ms. Farrell, you know, in the 2019 GAO report, it recommended that the Army, Navy, and Coast Guard collect data such as, you know, race, ethnicity, gender, offense, and punishment for all nonjudicial punishments.

Can you elaborate on the importance of collecting this data and update the committee on the services' progress in this area?

Ms. FARRELL. Yes. This is an area where the data was inconclusive because those three services had incomplete data to determine the extent of disparities in the nonjudicial punishments.

What happened was, in conducting our data reliability check, we identified the number of nonjudicial cases in the Court of Appeals for the Armed Services and the reports from fiscal year 2013 to 2017 and compared those numbers with the numbers in the services' military justice databases as well as their personnel databases, and we found that, for the Army, roughly 65 percent of the reported cases were not in their databases. And those reported cases are in the report by the way that goes to Congress and the Secretary of Defense. About 8 percent of the cases that were reported in the annual reports were not in the Navy's database, and about 82 percent of the cases for the Coast Guard were reported out but not in their databases.

So we made a recommendation that these three services have complete information on nonjudiciary punishments.

After discussions with them, there was some concerns about how they would do that. So the recommendation is actually to determine the feasibility, including the benefits and the drawbacks of having complete nonjudiciary punishment data.

We know that the Army and the Navy have moved forward and decided that they want to have this information and perhaps you can learn more about that on the next panel.

The Coast Guard plans to make a decision about the feasibility of collecting such data in September of this year.

Mr. CISNEROS. Thank you. I yield back.

Ms. SPEIER. Thank you, Mr. Cisneros.

Ms. Haaland, followed by Mrs. Trahan, and, finally, Mr. Brown.

Ms. Haaland, you are recognized for 5 minutes.

Ms. HAALAND. Thank you, Chairwoman. Chairwoman, I don't have any questions at this time for this panel, but I will be here for the next panel. Thank you. I yield back to you.

Ms. SPEIER. Alright, thank you. Mrs. Trahan, you are recognized for 5 minutes.

Mrs. TRAHAN. Thank you Madam Chair.

So I will just put my bias out there. I don't generally believe that it takes years to change. I do believe that it happens closer to an instant, especially when we have a strong culture and strong leadership, which is something I believe we pride ourselves in. So that

being said, I will just ask the question to Colonel Christensen and Ms. Farrell.

Do you believe convening authority should be left to commanders, or do you think that the current process increases the risk of unconscious or even overt bias within our military justice system?

And I will just add my second question would be, do you believe that if the convening authority were transferred to a separate entity within the Department it could decrease the racial disparity highlighted in these reports?

Colonel CHRISTENSEN. Well, thank you for your question. While that is a core principle of mine, is that the military become a part of the 21st century and have prosecutors make prosecution decisions versus convening authorities, I think the command-controlled system of military justice, as I talked about before, they know the people involved, it is going to cause a bias no matter how good the commander is, no matter how desirous they are of not having a bias, they are going to have a bias because they know the people who are making the, that have been alleged to have committed a crime.

I think that bias is going to carry over throughout the process because of the way the chain of command works. If you have a convening authority system, when you have a convening authority system, they weigh very heavily on the views of the commander who knows the people who have committed the crime. A prosecutor-based system, which is not perfect—no system is—but as I said before, when I prosecuted a case, the first time I laid eyes on the accused is when I came to court. I didn't know who they were; race wasn't an issue unless for some reason it was an identification issue as part of the reporting investigation. And so I think it does not eliminate but reduces the chance that racial biases will impact the decision made by the person deciding whether a case should go to trial or not.

Ms. SPEIER. And her second question? What was your second question, Mrs. Trahan?

Mrs. TRAHAN. Thanks. It was if I—I think Colonel Christensen answered it. But it was if he believes if the convening authority would transfer to a separate entity within the Department it would decrease the racial disparity.

I will ask Ms. Farrell if she has anything to add; otherwise, I do have maybe just another follow-up.

Ms. SPEIER. Go right ahead.

Ms. FARRELL. Thank you. I would say, to answer your question, we need to see DOD's evaluation of the causes of disparities at these different stages in order to pinpoint exactly what needs to be done in terms of correction along the lines that you are talking about.

Mrs. TRAHAN. And so are the commanders today who are holding convening authority, are they receiving training on these issues?

Are we arming them with the tools to recognize racial disparities and ethnic inequities so that they may address them appropriately?

Colonel CHRISTENSEN. Well, that is probably a question better for the other panel to answer. My understanding is the Air Force has said they are now doing that. I don't know. But as the GAO report

found in May of 2019, it doesn't seem like anything had been done by that time to find causes or solutions.

Mrs. TRAHAN. Thank you. I will wait for panel 2. I yield back.

Ms. SPEIER. Thank you, Mrs. Trahan.

Mr. BROWN, you are recognized for 5 minutes.

Mr. BROWN. Thank you, Madam Chair. Thank you for allowing me to waive on to this panel. I am going to have a longer statement to make before the second panel. So I will just jump into some questions for our panelists.

For Colonel Christensen and Ms. Farrell, thank you for being here.

This is the concern I have on looking at what we did in the NDAA to ask GAO to study this issue and then in the NDAA putting to the DOD to come back with an assessment of what the causes are. And here is the concern I have, so I need some help.

Colonel Christensen, you said that you witnessed a case where a Black man was 6 minutes late for formation. He was court-martialed. You never saw that with a White service member. When you talk about implicit racial bias, typically, in that case, if you would have brought to that commander, "Hey, look you just sent to court-martial a Black guy, and in the last month, we have had three White guys, 6 minutes, 7 minutes, 10 minutes late, and you didn't do it," often with implicit bias, that commander might say, "Ah, wow, you are right; let me take a look." It is often benign. It is unknown. When brought to the attention of the offender, if you will, they are willing to make corrective action.

From everything, Mr. Christensen, that you said about your efforts to get information from DOD, their unwillingness to explore the causes of this disparate racial impact in military justice, I am concerned that, in the GAO study, we are putting to the DOD too much responsibility to come up with guidelines for how to address disparities, discover or research the causes of disparity, and develop a uniform set of demographic criteria or classifications so we can better understand it.

Here is my question: What can Congress do today to ensure that DOD is doing these things in the GAO report, that gets beyond the resistance that you and your organization, Colonel Christensen, have seen?

What are some specific things that we should be doing?

Colonel CHRISTENSEN. Well, a great start is what we are doing right now. It is definitely putting the DOD on notice that this is something Congress is concerned about. But I think Congress needs to send a message to the various services that they do not expect that this is going to be a quick solution. So, for example, my understanding is the Air Force IG wants to have the investigation wrapped up by the end of July. That is ridiculous. This is a decades-long problem. You are not going to find problems and solutions and causes in 2 months.

The second thing is the Congress needs to make clear to the DOD that they expect them to be reaching to outside entities to help with the solution: true experts on disparity, true experts on what causes racial bias, true experts on finding racial discrimination. And then, as has been required in the most recent NDAA, that they continue to report back to Congress with the same vigor

that they do with the sexual assault report that is released each year. That has to have the same kind of detail, the same kind of depth to it.

Mr. BROWN. Ms. Farrell.

Ms. FARRELL. Well, I will pick up where Mr. Christensen left off in terms of external reporting. That is one of the recommendations that we have seen progress on in terms of DOD will, is expected to include because of the 2020 National Defense Authorization Act; DOD is expected to include demographic information in its annual reports going forward. So that is going to help with the transparency. But that is still quite a ways off. I think congressional oversight, periodic congressional oversight is going to be necessary. I agree that doing an evaluation of the causes is not something that can be done in just a few months. Having a—prioritizing where DOD is going to look at, which stages, in order to get behind and also bring in consultants is going to be very important.

The NDAA requires DOD to commence the study for evaluating causes this month. There is no end date. Again, it is going to be very important, I think, for the House Armed Services Committee, specifically this subcommittee and others, to have DOD brief or have another hearing to understand what progress they are making toward that final report on the causes.

Mr. BROWN. Thank you. I yield back, Madam Chair. Thank you once again for allowing me to waive on.

Ms. SPEIER. Thank you, Mr. Brown.

You are absolutely right. We need to have another hearing, and I can promise you that there will be one. I want to thank Ms. Farrell and Colonel Christensen for your testimony here this afternoon. Let me just end with this statement, and see if you agree with it.

Conviction rate at special and general courts-martial remain about the same for Black and White service members, yet significantly more of Black service members are brought to court-martial. That appears to show two things: one, that court-martials are not convicting because of race but evidence, and, two, that commanders are preferring charges on more Black service members for reasons other than the strong weight of evidence against them.

I guess finally let me just ask you, is that a fair statement?

Colonel CHRISTENSEN. I do think that is a fair statement. I honestly believe our court members try to do the right thing, and I don't believe I ever saw a single panel where I thought that they were racially driven in their verdict. I do worry, again, that the decision, really what we are talking about is that the White service member gets the benefit of the doubt; their case doesn't go forward, their case is handled at a different level than what the Black service members are.

Ms. SPEIER. Thank you.

Ms. Farrell.

Ms. FARRELL. I did not hear all of that question, but I think you were asking questions related to what GAO identified at the beginning of the military justice process and what we see at the end, and it is quite a different picture. As we have discussed, actions are more likely to be identified at the very beginning of the judicial process when a service member is under investigation, by when we

look at outcomes in terms of convictions and punishments. For convictions, we found that there was no statistically significant difference among races in terms of conviction; and similar results for punishments, no statistically significant difference except for Black service members in the Navy were less likely to be dismissed or discharged after a conviction, so that they are at opposite ends of what we see in terms of disparities in the beginning of the system and where we see them end up at the end.

Ms. SPEIER. Again, thank you both very much for your testimony. We will take a short recess so we can bring our second panel to the table and hear from them.

[Recess.]

Ms. SPEIER. Welcome back everyone. We will bring this hearing to order once again. It is my pleasure now to introduce our next panel. We will start with Lieutenant General Charles Pele, Judge Advocate General for the United States Army; followed by Vice Admiral John Hannink, Judge Advocate General of the U.S. Navy; Lieutenant General Jeffrey Rockwell, Judge Advocate General for the United States Air Force; and, finally, Major General Daniel Lecce, the Staff Judge Advocate to the Commandant of the Marine Corps.

General Pele, we will begin with you.

**STATEMENT OF LTG CHARLES N. PEDE, USA, JUDGE  
ADVOCATE GENERAL, UNITED STATES ARMY**

General PEDE. Madam Chairwoman, Ranking Member Kelly, and members of the committee, thank for this opportunity.

Ms. SPEIER. I am sorry, General, could you move that microphone a little closer to you.

General PEDE. Absolutely. How is that.

Ms. SPEIER. Better. Thank you.

General PEDE. Madam Chairwoman Speier, Ranking Member Kelly, and members of the committee, thank you for this opportunity. We meet on a topic of vital importance to our Army and to our Nation: ensuring that every soldier who swears to defend our Constitution is guaranteed its foundational promise, equal justice under the law. This has been my charter across 32 years of service, and it is the commitment of the Army Judge Advocate General's Corps and the Army leadership.

As recent events made clear, that promise remains unfilled for too many in our Nation. Just 2 days ago, we in our Army celebrated its 245th birthday. Because of the service and sacrifice of many, I believe that today our Army represents our country's best ideals more than ever. Yet I also believe that, like the country we serve, there is still much more that must be done.

Our hearing today reminds us of the origins of our Uniform Code of Military Justice. It was born out of a concern for fundamental fairness for those suspected of a crime. Our code's due process guarantees—zealous defense, impartial judges, and robust appellate review—are its cornerstones. Over the years and thanks to the work of many on this committee, the code has been reformed and improved while its central purposes have been preserved, promoting justice while ensuring discipline. These are the pillars upon which our combat effectiveness rests, and they are the reasons why

our Army is the best in the world. But as good as our justice system is, we can never take for granted its health or its fairness. It requires constant care, by well-trained law enforcement, educated commanders, and qualified attorneys working together with the Congress, we have brought our justice system much closer to the full realization of equal justice for all. But close is never good enough.

In May 2019, the GAO found racial disparities in our justice system. While it reached no conclusion on the causes of these disparities, this report raises difficult questions, questions that demand answers.

Sitting here today, we do not have those answers, so our task is to ask the right questions and find the answers. I am joined by my partner in this effort, the Army's Provost Marshal General, my partner in this effort, Major General Kevin Vereen. General Vereen supervises our military police, our criminal investigators, and our criminal laboratory. Based on the GAO's findings, the effort to examine our system is a shared responsibility—with us and with our commanders. As we assess this issue from investigations to command decisions to the disposition phase, we must do so with a common framework and the right stakeholders.

That effort must start with seeing ourselves. This began last year as we began implementing the GAO's recommendations. We are also working with the other services to execute section 540I of the NDAA. That now visionary statute directs us to identify, investigate, and resolve potential disparities in justice.

Finally, we continue to improve our internal data sharing. Recently, General Vereen and I established a link between his law enforcement database and our justice database, allowing a degree of interoperability and transparency that never existed before.

These efforts began before the recent tragic events and the national conversation that followed our Nation—followed across our Nation, and within our formations. As that conversation demonstrates, data alone cannot tell the full story. We must look beyond the data and ask the difficult questions. General Vereen and I, along with Army leaders, need to look hard at ourselves. With commanders we must look at the causes, and we must understand how preconceptions and prejudice can affect both the investigation and disposition of misconduct. While my experience tells me we have an extraordinarily healthy system of justice, I also recognize we simply do not know what we do not know. And it is our job to discover what needs fixing and to fix it.

To do this, I have directed a comprehensive assessment with the Provost Marshal General to get left of the allegation, left of the disposition decision, to examine why the justice system is more likely to investigate certain soldiers and what our investigations and command decisions tell us about this issue.

Finally, we know that each of us is shaped by our own backgrounds and experiences. As the Secretary, our Chief, and our Sergeant Major recently reminded us and which I echoed in my own message to my corps, leaders of all ranks must listen with compassion and humility.

I believe our justice system is one of the best in the world, but I also know it is not perfect. A justice system must be both just for,

and seen to be just by, all. We have much to learn and more work to do. General Vereen and I, along with the Army leadership, look forward to working with this committee, to understand the problem and to address it. Thank you.

[The prepared statement of General Pedes can be found in the Appendix on page 92.]

Ms. SPEIER. Thank you, General Pedes.

Admiral Hannink.

**STATEMENT OF VADM JOHN G. HANNINK, USN, JUDGE  
ADVOCATE GENERAL, UNITED STATES NAVY**

Admiral HANNINK. Chairwoman Speier, Ranking Member Kelly, thank you for the invitation to testify on the issue of racial disparity in military justice.

The Department of the Navy guidance emphasizes several things about equal opportunity. The first is that sailors and Marines are our most precious resource; second, that unlawful discrimination undermines a unit's ability to function effectively and cannot be tolerated; and, third, that we must overcome any bias or any stereotype that diminishes cohesiveness, camaraderie, or morale.

In a recent message to the fleet, Admiral Gilday, the Chief of Naval Operations, commented on this. He said: In the Navy, we talk a lot about treating people with dignity and respect. In fact, we demand it. It is one of the things that makes us a great Navy.

And then, observing recent events in our Nation, Admiral Gilday added: We can't be under any illusions about the fact that racism is alive and well in our country.

And I can't be under any illusions that we don't have it in our Navy. We cannot have those illusions.

And so the Navy emphatically and unequivocally denounces racism. It is antithetical to our core values of honor, courage, and commitment. It is antithetical to our obligation as service members to support and defend the Constitution and to help protect the rights afforded to all Americans.

The military justice system must operate without discrimination, without racism. All sailors must be able to have confidence in the fairness of the system. A May 2019 GAO report identified some disparities related to race and ethnicity. To summarize those that were identified for the Navy, Black sailors were more likely than White sailors to be the subject of an investigation in the database used by the Naval Criminal Investigative Service and other Navy law enforcement elements. The same for Hispanic service members. Black sailors were also more likely than other White sailors to be tried by a general or special court-martial. So were Hispanic sailors.

When it came to assessing the results of court-martial, there was no significant difference between the conviction rates for Black, Hispanic, or White sailors. And as the GAO witness noted on the last panel, for those found guilty, Black sailors were less likely than White sailors to receive the punishment of discharge or dismissal.

The GAO was correct that there may be disparities at different points in the system, and we appreciate the recommendations they made to help.

When those are combined with the requirements of section 540I of the fiscal year 2020 NDAA, my hope is that will result in improved data collection, a process to determine when that data should be reviewed, and an evaluation to identify the causes of the disparities.

Now, regarding data collection, the Navy and Marine Corps case management system has been updated to collect the race, ethnicity, and gender of victims and accused of each general and special court-martial.

I have more work to do in two areas. The first relates to summary courts-martial because the Navy prosecution offices often are not involved directly in the summary courts-martial, and we are reviewing procedures needed to collect the associated data. And as the GAO witness observed, the second relates to nonjudicial punishment; they recommended the Navy consider how we might maintain nonjudicial punishment information in a database and how to implement this recommendation remains under review.

The Navy is also taking steps to prevent racial bias through training. This is not a panacea, but we can't let up. The Naval Leadership and Ethics Center provides training on unconscious bias for prospective commanding officers, executive officers, and other leaders. The Naval Criminal Investigative Service trains agents on diversity and inclusion, on unconscious bias and cross-cultural communications to prevent racial profiling in investigations.

We also provided training on unconscious bias and inclusion and diversity within the Judge Advocate General's Corps community.

The Navy is committed to ensuring the military justice system is fair for everyone. I look forward to working with you to improve our data collection and to identify, understand, and address these disparities. Thank you.

[The prepared statement of Admiral Hannink can be found in the Appendix on page 97.]

Ms. SPEIER. Thank you, Admiral Hannink.

General Rockwell.

**STATEMENT OF LT GEN JEFFREY A. ROCKWELL, USAF, JUDGE  
ADVOCATE GENERAL, UNITED STATES AIR FORCE**

General ROCKWELL. Madam Chair Speier, Ranking Member Kelly, distinguished members, thank you so much for the opportunity to address the importance of eradicating racial disparity in our military justice system, ensure fairness, inclusion, and diversity for all air and space professionals in the Department of the Air Force. An inclusive and diverse force is absolutely necessary to defend a diverse and inclusive Nation.

Like many of our civilian counterparts, we collect data on race in the military justice process. Our data shows that Black male airmen below the rank of E-5 and with less than 5 years' time in service are almost two times more likely to receive nonjudicial punishment, an Article 15, or face courts-martial. While we review specific cases to ensure there is not disparate treatment based on protected class, we don't have clear answers or underlying reasons as to why the disparity exists.

Like all difficult issues the Nation faces, solutions to address that disparity will require whole-of-government and societal approaches. We are committed to working with you to be part of that solution.

Throughout our history, we have defended the Nation, fought and won our wars because of four simple yet key components: first, the best people; second, the best training; third, the best equipment; and, fourth, the most important element that binds us together—discipline. Discipline lies at the heart of what the Nation expects of its military in the execution of our national defense missions. Discipline must be developed from day one. Discipline must also be earned by the military establishment by treating all of our members with dignity and respect with equal opportunity to meet and exceed standards. We try to do that through inclusion, feedback, mentoring, along with the administration of progressive discipline when airmen make mistakes before they become a disciplinary statistic. As our Secretary and chiefs recently stated, our diversity strengthens us as much as our common mission unifies us. The Department of the Air Force strives to foster a culture of inclusion and respect where every airman and space professional is valued for the talents he or she brings to the department regardless of race, color, or creed.

Our struggle against racism and other forms of discrimination cannot be viewed as finite battles. Rather our approach must be infinite, a constant struggle for betterment. When President Truman signed Executive Order 9981 in 1948, he set in motion racial integration of our Armed Forces. Twenty-five years later, a 1972 task force found intentional and systemic discrimination in the military justice system.

Many of the proposals identified then were adopted. Today, while we believe that we no longer have intentional discrimination in our processes, the fact is that racial disparity in the aggregate persists.

This demonstrates the complex and challenging nature of the issue, symptomatic or indicative of one of many symptoms, a daunting problem but one that should not stop us from exploring what we can do in the disciplinary process to serve as part of the solution set. Addressing it requires a holistic approach.

Every day across the continuum of discipline, we are committed to finding new solutions and approaches. Every air and space professional, military and civilian, from the most senior to most junior, is responsible for fostering and reinforcing a culture of inclusion, dignity, and respect. Like everything we do in the military, this requires a team effort, especially to get to the root causes of this difficult problem.

We can frame an approach by asking ourselves four juxtaposing questions. First, while easy to say our data merely reflects or is perhaps better than the society from where we come, what can we do in the armed services?

Second, while easy to say the specific cases show no actual disparate treatment in the decision made, are we really including, mentoring, and administering progressive discipline equally to all before they become an Article 15 or a court-martial?

Third, while easy to say justice was color-blind in each of the cases, are there administrative and substantive due processes which are discriminatory in treatment or impact?

And, fourth, finally, while easy to say the data shows that the aggregate disparity disappears after the first 5 years in the force, what can we do to eradicate that disparity earlier and altogether?

We look forward to working with the subcommittee on this most important issue.

[The prepared statement of General Rockwell can be found in the Appendix on page 106.]

Ms. SPEIER. Thank you, General Rockwell.  
General Lecce.

**STATEMENT OF MAJGEN DANIEL J. LECCE, USMC, STAFF  
JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE  
CORPS, UNITED STATES MARINE CORPS**

General LECCE. Madam Chair Speier, Ranking Member Kelly, members of the Military Personnel Subcommittee, thank you for your invitation to represent the Marine Corps on the issue of racial disparity in the military justice system.

The Marine Corps is dedicated to ensuring equality throughout its ranks, from the most junior Marine through our senior leadership. Although we have come a long way, we recognize that much must be done. Several months ago, the Commandant sought a way forward to remove the public display of the Confederate battle flag from Marine Corps installations because of its divisiveness and association with hate and discrimination. Three weeks ago, the Marine Corps issued a specific direction to the fleet to remove the Confederate battle flag from all Marine Corps installations across the globe.

In his message to the Marine Corps regarding the Confederate battle flag's removal, the Commandant stated, quote, "Only as a unified force, free of discrimination, racial inequality, and prejudice, can we fully demonstrate our core values, and serve as the elite warfighting organization America requires and expects us to be."

To that end, the Commandant is committed to implementing the findings of the GAO report.

Disparities the GAO highlighted in our administration of the justice system in the Marine Corps require immediate scrutiny and demand action. The implicit trust Marines place on one another makes elimination of racial inequality an imperative. As the Commandant stated, any form of racial inequality, whether it be direct, indirect, intentional, or unintentional, threatens the cohesion of the Marine Corps and must be addressed head on.

The GAO published two recommendations specifically addressed to the Department of the Navy. First, they recommended—they highlighted the need for our personnel, investigation, and military justice databases to use standardized data relating to race, ethnicity, and gender. Second and similarly focused on standardized data collection for our nonjudicial punishments and summary courts-martial. My written statement provides in greater detail the Marine Corps specific actions and intentions stemming from the GAO's recommendation. Improved data collection brought about by

changes within last year will help us to collectively and comparatively assess data to identify racial and ethnic disparities. But we will not wait for better data to address and fight inequality now. How we train, educate, and foster Marines within our Corps is paramount to ensuring the equality across our fighting force and within the military justice system.

Training and education serve as the fundamental components of eliminating racial bias. To this end, the Marine Corps is pursuing inclusion of unconscious bias training curriculum at every level of professional development. Respective commanders and senior enlisted leaders receive training on bias awareness through the Marine Corps University. Unit Marines receive comparable training from small unit leadership. Even our military justices have undergone similar training on unconscious bias within the past year. Such training and decisive senior leader action, such as the Confederate battle flag's removal, may not resolve the disparities overnight, but our commitment and determination to ensuring equality among Marines remains steadfast and enduring.

Thank you, and I look forward to working with you on this important issue.

[The prepared statement of General Lecce can be found in the Appendix on page 112.]

Ms. SPEIER. Thank you, General Lecce.

Thank you all for your testimony.

I would like to start by asking a simple question on transparency. We work for the public. And the fact that, General Rockwell, you fought the FOIA requests from Protect Our Defenders for over 3 years is deeply troubling to me, especially when it was said by the judge that—this was at the aftermath of the Air Force Manpower found that racial disparities are consistent, persistent, and getting worse. And the judge then said, when they attempted to get information about what you were doing about that and you refused, the judge said: This was an exercise which went nowhere.

So tell me and the American people, what was, who was benefited by not being forthright in complying with the FOIA request?

General ROCKWELL. Madam Chair, as you know with FOIA and you know the exemptions under FOIA and you know in this case which FOIA exemption was invoked here, it was the deliberative process pre-decisional.

Ms. SPEIER. But that is always used when people don't want to comply with FOIA.

General ROCKWELL. Yes, ma'am. And when we looked at the underlying root causes, and of course the data was released and the data showed exactly what you explained. The underlying reason, the root causes of the 11 or 12 people on the working group, there were 11 or 12 different answers as to what that root cause was. And that truly, ma'am, did fall into why we protect that.

Ms. SPEIER. Except you didn't do anything about it. That is the problem. You stand up this Air Force Manpower to do this evaluation, they come back with a pretty compelling statement, "consistent, persistent and getting worse," and then you do nothing about it. So how is that deliberative?

General ROCKWELL. Yes, ma'am. Well it is consistent and it has been since we have been collecting the data since 1972. It is per-

sistent because it is consistent. As far as it getting worse, it has pretty much stayed the same at least in the Air Force across this time. But one thing that we do know in the Air Force is to create this zone of innovation, this creative problem solving, these creative solutions, you have to give people, ma'am, the ability to really just look at this issue in different ways.

Ms. SPEIER. I agree with you. I am going to move on. Thank you.

General ROCKWELL. Yes ma'am.

Ms. SPEIER. Admiral Hannink, the request for FOIA, the request was I think from 2006 to 2016. You provided only information and data from 2014 and 2015.

Why did you not provide the entire request?

Admiral HANNINK. Madam Chair, I will have to take that question for the record. I know we switched case management systems in about 2014, and I think it likely was dealing with the data and the amount of good data that we could deliver. But I will get back to you with the final answer.

[The information referred to can be found in the Appendix on page 121.]

Ms. SPEIER. All right. Protect our Defenders, when they came out with the report, found that the Air Force was 71 percent more likely to have Black airmen face court-martial than Whites; Army was 61 percent; Navy was 40 percent; the Marine Corps was 32 percent.

Did any of you reach out to Protect Our Defenders to find out more about their study or how they could be helpful to you in dealing with this problem?

General PEDE.

General PEDE. Ma'am, I can't say today that I know specifically what communications we had with POD [Protect Our Defenders] during that time. I can get that answer back to you, but I can't say right now.

[The information referred to can be found in the Appendix on page 121.]

Ms. SPEIER. Do you have any intention of working with them moving forward?

General PEDE. Ma'am, we have talked with POD. We have digested their materials. We have used it to inform us. But I think we also spent a fair amount of time, an extensive amount of time with GAO and its data request as well. So we have a lot of people asking us for information. So we provide as best we can and certainly in accordance with the rules what we should provide to not only private organizations but certainly governmental organizations.

Ms. SPEIER. Thank you. I am running out of time.

Admiral Hannink, did you reach out to POD to learn more about their process or how they might be helpful?

Admiral HANNINK. Madam Chair, I did not. What I don't know is if anybody from our organization did, but I wish I had acted earlier.

Ms. SPEIER. Thank you. General Rockwell.

General ROCKWELL. No, ma'am. We are very much looking forward, though, to seeing what the field thinks about this, and this is what is behind our IG independent review of this, where we will talk to the very same people in the field that POD has been talking

to, with a multidisciplinary team to get this type of feedback of what exactly is going on and what are those root causes.

Ms. SPEIER. General Lecce.

General LECCE. Madam Chair, I did not, and I think that is an area where we can do better.

Ms. SPEIER. Do any of you think that someone should be court-martialed for being 6 minutes late to a formation meeting?

General ROCKWELL. No, ma'am.

Ms. SPEIER. General Lecce.

General LECCE. Madam Chair, it would depend on the circumstances. If it was in combat, absolutely. I think if it was late for a meeting here in the Pentagon or in this chamber, the answer would be no, ma'am.

Ms. SPEIER. My time has expired.

Ranking Member Kelly.

Mr. KELLY. I think we have to be real dangerous about using partial facts and partial figures. Six minutes late is not a big deal unless it is 6 minutes late delivering ordnance that saves thousands of troops. Six minutes late is not a big deal if it is to a meeting with a subordinate, but it is extremely important if you are meeting with the President of the United States or the Secretary of Defense. Six minutes late if it is one time is not a big deal, 6 minutes late if it is a pattern. So not knowing all the circumstances whether it was one 6-minute thing or the other, I think is very dangerous.

I think Colonel Christensen was very dangerous in saying that lawyers are less culturally biased than commanders. That is a very dangerous assumption when he also said only 1 in 10 JAGs are African American. So we are lesser represented in the JAG Corps, but, therefore, we are culturally superior to the rest of these commanders. I think that is a very dangerous assumption to make.

I think we have to be real careful. Here is what we know. We know E-5s, people with 5 years and below, are treated differently if they are African American when they are in the armed services. We know that. So we know what we gotta get after.

We know that it seems the referral rates when they are tried to the conclusion are the same. So that doesn't necessarily mean that people are being referred that shouldn't, it may actually mean the opposite, but we don't know.

So what we have got to do is, number one, figure out, how do we quit being discriminatory, racially discriminatory to E-5s and below and people with 5 years of service?

What do we need to do to remedy that situation?

Number two is we know we don't have African-American fighter pilots. We know that the promotion rates sometimes are slower to general officer or don't make general officer with African Americans or minorities. We know some of the reasons, and so we have to get after them. Anthony Brown has the ELITE Act, which he is talking about. Let me tell you what, if you are not a fighter pilot, you are probably not going to make general. If you are not a submarine or a surface ship guy or an aviator, you are not going to make admiral. You might. There may be some JAG Corps, some signal, some logistics officers do.

If you are in the Army, if you are not a tanker or infantry or combat arms guy, you are probably not as likely to make general. We know this.

So what are we doing to get African-American kids into those branches where we know promotions happen, where you get the best schools because of the jobs that you do.

What do we do to encourage them? What are we doing as the services to go after and make sure we have aviators who fly in the Navy, who come off the decks of those carriers? What are we doing to make sure that we have African-American pilots who want to be F-35 pilots, which is more likely a quicker track to being promoted to general or anything else?

What are we doing to make sure that African-American soldiers at the E-1 through E-5 level are getting in the right MOSes [military occupational specialties], the right branches where promotions exist?

That is what we need to do.

And I don't mean to preach, but we have to get at the root of this stuff. We have to quit talking about some of these things that may be or might be. What we have to do, if you want to stamp out the problem, you have got to figure out what the problem is; you have to figure out what the root cause is. And I think right now we are failing horribly at that.

So, with that being said, I want everybody here to tell me, what are you doing in your service to figure out what the cause is, therefore that we can make a change and a difference?

General PEDE.

General PEDE. Congressman Kelly, thank you. I think, from a recruiting and promotion perspective, I think there is an intense focus right now, and there has been. Our Chief of Staff, Secretary, instituted an information-age talent management system last year, and that in part is designed to get after natural talent, and talent that implicit bias might prevent from advancing. So I think there is a fair—there is not just a fair amount of emphasis; there is significant emphasis.

As I mentioned in my statement, I have directed with General Vereen a look, a very deliberate assessment of trying to get left of the allegation. What that means is, if we have an overrepresentation coming into the investigative system, how do we get in front of that allegation to figure out what is happening when the soldier gets to the unit such that they get in with let's say the wrong crowd or they start using drugs or they start misbehaving? What is going on there? Or perhaps just to the left of the disposition decision to send someone to trial, is there something going on there?

So we are looking hard at implicit bias.

I take some comfort in this, when we started looking at implicit bias in the arena of sexual assault about 10 years ago, it is now replete through our training, not only commanders but judge advocates throughout, and in my assessment, professional assessment, it has had a significant impact on the understanding of counterintuitive behavior in sexual assault. We know training, education in implicit bias works.

Mr. KELLY. Can you guys answer really quickly just like 15 seconds on what you can do to change that? Because I am out of time.

Admiral HANNINK. Thank you, Ranking Member Kelly.

First and foremost, I think we in the JAG Corps to fit in with the Navy's overall effort in a culture of excellence. It really is about emphasizing signature behaviors that give you the respect that you talked with.

The second thing is we have focused on diversity recruiting. We have a dedicated diversity liaison program, 18 officers, closely affiliated with 13 diversity and educational organizations to try to keep connections so we keep that recruiting pipeline open.

And then, like General Pede talked about, focusing on unconscious bias. The reason that I think it works is because I remember the first time I took unconscious bias training in 2014. It was only later when realized I had an unconscious bias against unconscious bias training. I think it can be effective, and I think we need to keep at it and keep moving that through the force.

Ms. SPEIER. Very quickly, please.

General ROCKWELL. Ranking Member Kelly, we do it exactly the way you said it. You expand the discipline continuum from just courts and Article 15 and you go left. When you expand that zone and you look at that, how you discipline somebody, how you counsel somebody, how do you include somebody, how you give them feedback is the holistic approach we have to take.

General LECCE. Ranking Member Kelly, very quickly, this has to be top-down driven, and the Commandant has done that with his recent action. Everybody has to get it, and it starts from the top and he has driven that down.

We also have done it with our PAC order, prohibited activities and conduct order, that gets after discrimination. That has been on the books for 3 years. It involves an equal opportunity advisor to the commander. It is a commander's program.

Ms. SPEIER. Thank you. Mrs. Davis, you are recognized for 5 minutes.

Mrs. DAVIS. Thank you Madam Chair, and to all of you. We appreciate your joining us today.

I am glad that my colleague, Mr. Kelly, talked about some of the issues that you have already identified, and one of them was about the 5 years. I think that is very important. What I would like to know is about early warning signs. Is there an understanding that we really need to look at that and that some of that information should be collected as well?

Are there counseling sessions? Are there concerns about retribution?

How do we begin to really understand that better and how is that used?

The other thing that I think we are all talking about right now is the element of White privilege. And I wonder to what extent is that an area of discussion that really can be brought in in the military as well?

How is that talked about?

Because as we well know, if you look at the data, there are plenty of ways of seeing and suggesting and really being open about how that affects us all, frankly. And I think we all have in our own experience those examples and how it might have been different if

our son or our daughter was Black or Brown, what does that mean?

I think that is an important discussion to have in the services as well.

And then, finally, I just wonder, once we identify implicit bias, what do we do about it?

If we were to go back into some and looking at the progression of circumstances for someone and the outcomes, what is it about that?

How do we identify it, and what do we do?

Really, talk about that a little bit as well. Thank you.

Ms. SPEIER. Do you want to start, General Lecce?

General LECCE. Madam Congresswoman, again, I believe it starts from the top, and I believe it starts with these honest and candid conversations in a safe environment. You can do this in the military. We believe in the Marine Corps that this is commander driven and commander owned, but you have to begin with those. You have to view diversity within the force as a strength and that begins with the Commandant all the way down to the most junior ranks. You have to accept that as a strength because, at the end of the day, that is what the Marine Corps is about. It is about fighting as a team. Everybody on the team, regardless of gender, ethnicity, or race is very important, and that is the bottom line.

So, as my colleagues have stated here, pathways in mentorship to young people to look at the military, to look at the Marine Corps as a path for them. We have work to do there, but we can do that.

These are things and steps that we are taking now. Thank you.

General ROCKWELL. Ma'am, when I look at the numbers we have right now and I see those numbers and it makes you realize that the numbers are good data, at least from an Article 15 and a court standpoint, it is not evidence. It is not evidence to get to the root causes of the problem. So the last part of your question, how do we train on bias, you look at the way attorneys always look at things. You look to weed out bias to get to the weight, relevance, and credibility of actual evidence.

I think one of the approaches we must take is to develop more data left of Article 15. We don't have that data. We kind of know that is where the problem is. What we don't know and what we can't answer for sure is, are we mentoring everybody the same?

We all feel that we probably aren't based on those biases. But we don't have the specific data to show that.

Once you get that data, of course, you move on to the training, you move on to the speaking of bias, you move on to the training of that, you move on to weeding that out and that all creates an atmosphere of inclusion. You create that atmosphere of inclusion, you just created diversity.

Ms. SPEIER. Thank you.

Admiral Hannink, I think Mrs. Davis has about 15 seconds, but we will extend 15 seconds to each of you to finish your comments.

Admiral HANNINK. The only additional comment I would have is I think the value of unconscious bias training and other decision-making training is that you put yourself in the position where you can take different perspectives and you bring other people onto

your decision-making team as well. And that is very protective for the final decision-maker and everybody on the team.

Ms. SPEIER. General Pele.

General PELE. Yes, ma'am. Thank you. I think you should know as well that the Army not only is focused at the squad level, and the squad level according to our Sergeant Major and our Chief of Staff and Secretary, it is all about the team building, and it is all about inclusion, and it is all about bringing people on to one team so they all feel that they belong. And that gives you a better ability to diagnose where people are going left and right and center. I think that focus by our Army leadership at every echelon all the way down is key to getting after this, especially when it comes to unconscious bias.

Ms. SPEIER. Thank you.

Mrs. DAVIS. Thank you.

Ms. SPEIER. Ms. Haaland, you are recognized for 5 minutes.

Ms. HAALAND. Thank you, Madam Chair.

And thank you, Madam Chair, and thank you, Ranking Member Kelly, for holding this hearing.

And thank you, panelists, for being here.

This is a significant problem that we absolutely need to fix. We must ensure the systems we utilize to administer discipline are fair and just for everyone. In the 1960s, my father served in the Marine Corps and experienced firsthand the maturation of the service into a fully integrated force, along with the racial tensions that flared up during that time. We have progressed since then, but we can all agree we still have a long way to go.

It was disheartening to learn that, despite the data presented in the 2017 Protect Our Defenders report and the 2019 GAO report, the services have responded with little more than unconscious bias training to address widespread racial disparities. Meanwhile, Black service members continue to receive nonjudicial punishment at disproportionately high rates compared to White service members, and I have to believe that this is also a contributing factor to why we don't see service members of color achieve higher ranks, which is an issue this committee has consistently raised and which Ranking Member Kelly so eloquently articulated just a few minutes ago.

General Rockwell, the Air Force spent nearly 3 years' worth of resources, time, and energy refuting the Protect Our Defenders report and preventing the data from being made available to the public, and that time and those resources could have been spent accepting that there is a major problem and tackling it head on. It is clear the racial disparities within our military justice system require more than just a disparity board that met for 90 days to try to resolve it.

One of my questions, I have a few, will all of the work that you have mentioned earlier about addressing these long-term issues, will this include improving the collection of data on race and ethnicity to make it more uniform across services so it is easier to identify problems?

General ROCKWELL. Yes, ma'am, it will. We are making a conscious effort to, again, move left of that Article 15 and court-martial on the continuum and collect data, collect meaningful data of

inclusion and feedback and mentoring. I think that is critical to getting to the root cause of the issue here.

Ms. HAALAND. Thank you. And what is the timeline for actions to be taken, if you could just reiterate that, General Rockwell.

General ROCKWELL. We are doing it now, ma'am. And right now, the projected timeline, with the group that has been put together with our manpower and reserve affairs and personnel that we are a part of, is calendar year 2020.

Ms. HAALAND. Okay. Thank you so much. And last question—well, maybe the last question, General, depending on my time, how will the progress be measured?

General ROCKWELL. I think ultimately you measure progress by eliminating that racial disparity. You get to where we are right now in the Air Force at the E-5 level with 5 years in, where there is no disparity. I think that has to be the ultimate goal of where we should get to.

Ms. HAALAND. Thank you so much. And I have a little bit of time. So I will ask this next question. I understand the inspector general will be leading a review on racial disparities and causal factors, like culture and policies. The scope and demographic makeup of this review panel can certainly make a difference in its effectiveness and what its recommendations look like. Can you describe the makeup of the panel?

General ROCKWELL. I don't have the full details. We have three members on that panel, but it is fundamentally a large panel. It has general officers on it who are Black and African American. It has chiefs on it, senior enlisted, who are African American, and it is multidisciplinary and multidiverse.

Again, the idea is to get left of Article 15, and to get to that, there are so many different factors that need to be looked at. And I think what is going to be key is reaching down into what people feel on the ground, and that is really the focus of what they are trying to get to.

Ms. HAALAND. Thank you so much.

Madam Chair, I yield.

Ms. SPEIER. Thank you, Ms. Haaland.

Mr. Cisneros, you are recognized for 5 minutes.

Mr. CISNEROS. Thank you, Madam Chair.

And thank you all, gentlemen, for being here today. You know, we have a problem in this country with sentencing in the civilian law enforcement there, our criminal justice system. People of color tend to get longer sentences than White individuals do.

Is this something we are looking at in the military as well? We know we have a problem with E-5s and below going to court-martial or receiving NJP more often than White service members do, but are we looking at the sentencing, and really are these individuals of color being sentenced more harshly than their White counterparts?

General ROCKWELL. Sir, I will go first. As we looked at this issue with regard to the GAO report, as a matter of fact, Black airmen are sentenced less severely than White, and that is both with Article 15 punishments and court-martial sentences. I think all that tells us is this issue is much more complex than we can really wrap our hands around.

Mr. CISNEROS. General, and, again, correct me if I'm wrong, but that was for more senior members, E-5 or above E-5, right? I am talking about the more junior ranks.

General ROCKWELL. No, sir. Even the E-1 to E-5 ranks, where you see the racial disparity, when you break it down further in the Air Force, White airmen are actually punished and sentenced more severely than Black airmen.

Ms. SPEIER. Would the gentleman yield?

Mr. CISNEROS. Yes, ma'am.

Ms. SPEIER. In the GAO report, it said that Black and male service members were more likely than White and female service members to be tried in summary courts-martial and to be subject of nonjudicial punishment in the Air Force and the Marine Corps. How does that square with what you said, General?

General ROCKWELL. Yes, ma'am. That is in venue selection. More go to that venue, that court-martial. But at the end of it, when they are actually—if they are convicted and punished, their sentences are less in the Air Force.

And, again, ma'am, I don't know what that means. It is just as you pull apart the data and analyze it, that is what we see in the Air Force. I don't know if that is the case in the other services.

Mr. CISNEROS. You know, if I could for the other services, if I could take those answers for the record.

[The information referred to can be found in the Appendix beginning on page 121.]

Mr. CISNEROS. I have another question regarding the collection of data in regard to NJP and commanding officers. As we are doing the NJP, as you are collecting this data, are we collecting individual data for these commanding officers, looking at their records and trying to find these racial disparities and how they are dishing out punishment? And if so, if we are starting to see these racial disparities in the punishment that they are issuing, are they being counseled at all?

And anybody can take that question. I would like to hear from everybody, if I could.

General PEDE. Congressman, this is General PeDE from the Army. I think the short answer is, if we looked at our data collection today, we do not track that data.

Mr. CISNEROS. I can't hear anything right now.

General PEDE. My mike is activated. Can you hear me okay?

Mr. CISNEROS. I hear you now.

General PEDE. Sir, this is General PeDE from the Army. Sitting here today, we do not track a particular commander's dispositions by command or by race. And so I think, in terms of our reflections on how we get after the notion of potential bias, whether unconscious or deliberate, that is part of I think our assessment.

When General Vereen and I talk about how a law enforcement officer reacts at a scene of domestic violence or how a commander disposes of nonjudicial punishment, I think this is one of the areas that we look at.

I would tell you, though, in practice, as a practicing judge advocate in the field for 32 years, those indicators are evident to any judge advocate or other leader at echelon, whether it is a brigade commander or division commander. They see things in their forma-

tion, especially particular commanders who are doing things that appear to them odd or suspicious or curious. I myself on only one occasion in 32 years remember a commander in such a circumstance as you suggest. It is worth looking at. I think we have to, and I think it is the responsible thing to do in our assessment. Thank you, sir.

Mr. CISNEROS. You know, with that, Madam Chairwoman, I yield back my time, but I would like to hear a response on the record from the other judge advocate generals. Thank you.

[The information referred to can be found in the Appendix beginning on page 121.]

Ms. SPEIER. All right. We will ask that you prepare a response for the record.

Thank you, Mr. Cisneros.

Now Mrs. Trahan is recognized for 5 minutes.

Mrs. TRAHAN. Thank you. Thank you, Madam Chair.

And in case it wasn't clear before, I do want to state for the record that I am grateful for the leadership of Chairwoman Speier and the MILPERS [Military Personnel] Subcommittee because, back in 2012, when addressing sexual assault and harassment reporting, I think it led to substantive changes in the DOD culture. But when it comes to equality and justice, I mean, we are an impatient Nation.

So I am going to ask the same question that I asked before in terms of convening authority, and if you believe convening authority should be left to commanders or do you think that the current process increases the risk of unconscious or even overt bias within our military justice system?

Ms. SPEIER. Mrs. Trahan, can you return to the video portion? We don't see you.

Mrs. TRAHAN. Oh, I am sorry. I am sorry.

Ms. SPEIER. That is all right.

Mrs. TRAHAN. Can you see me now?

Ms. SPEIER. We see you now.

Mrs. TRAHAN. Thank you.

General PEDE. Ma'am, this is General Pedde from the Army. You have probably heard me say this before, but I have complete confidence in our commanders to administer justice fairly and dispassionately, especially at the senior levels.

It is not that I don't have faith in lawyers. I love my Corps. I love the judge advocates we recruit, train, and educate and nurture and culture, but there is no monopoly on bias or unbiased. There is no monopoly on wisdom in your legal branches. I look to the Federal and the State sector. And I am not trying to throw anybody under the bus, but that is a lawyer-controlled system.

And by any measure, whether it is The Sentencing Project or DOJ [Department of Justice] Bureau of Statistics, the racial disparities in those systems are well in excess of what you find in the military services. That is not by way of excuse, but that is a lawyer-controlled system.

So I don't believe the answer is lawyers. I believe the answer is a set of crosschecks and balances between law enforcement, commanders, and lawyers looking at each other in the system and keeping each other honest. Thank you, ma'am.

Mrs. TRAHAN. Anyone else want to comment on that or anyone have a different view? Okay. Then I am going to go to my question.

Given that I am sure you are all looking inward with a lot of urgency, one of the GAO's findings was that, while Black and Hispanic males were more likely than White service men and women to be tried in general and special courts-martial across the services, race was not a statistically significant factor in the likelihood of conviction.

And so I am wondering, what do you believe that data says about the military justice system? Could it indicate that the bias is more prevalent amongst our junior leadership ranks who are recommending service members for NJP or courts-martial than amongst the senior leaders who are ultimately sentencing them?

General ROCKWELL. Congresswoman, I think this goes back to the first question, and you can really dovetail the answer into the first question of what you just asked.

When you look at what a commander does of setting the tone and then the commander setting that command climate, and you look at this issue and you—and we think we know where the answer is, where the targets are, where the targets of opportunity are, that is left of 15, we know then that where this has to happen, where the unconscious bias needs to be eliminated, where the mentoring and the inclusion happens is that first-line E-5 supervisor over those E-4 and below airmen.

And when you look at setting that command climate, knowing the commander has to do that and then letting that supervisor do that, that is where we need to focus the help, the training, the data and everything we need to collect.

Mrs. TRAHAN. Does anybody else want to add anything to General Rockwell's comments?

General LECCE. I think, Madam Congresswoman, I think from the Marine Corps perspective, there are two pieces. The GAO report was pretty clear that, although they showed bias in the data, they cannot conclude unlawful bias because we don't fully understand the data.

So I think, number one, you know, to General Pede's point, we have to kind of get left of the problem and figure out what this data exactly means. But second and more importantly and something that the Commandant has made clear is that commanders have to get after this in setting the tone, training and educating their subordinate personnel about the importance of this, of equality and diversity in the force and how that makes us stronger. And I think that is something that the Commandant himself has really gotten after and that we are taking very seriously in the Marine Corps.

Mrs. TRAHAN. Well, I appreciate all that. I mean, certainly what you want to back up the data with, you know, a root cause analysis along all of those sort of stage gates. And I understand that the Air Force is going to be completing anonymous surveys.

General Rockwell, will those findings of the surveys, will those be public?

General ROCKWELL. Yes, Congresswoman, I imagine they will be. I will defer all that to the IG who is running it so we do get an

independent look at this. Yeah, I can't believe those results will not be open and transparent.

Ms. SPEIER. All right. Mrs. Trahan's time has expired. Thank you.

We will now go to Mr. Brown for 5 minutes.

Mr. BROWN. Thank you, Madam Chair. Again, I want to thank you and the ranking member, Representative Kelly, for allowing me to waive on this afternoon.

I want to thank each of our panelists for testifying today. I want to thank you for your service to our Nation and in our Armed Forces and for your stated commitment to end racial disparities in our military justice system.

We are at a difficult time in our Nation's history; a time when racial injustice is seen in the violence against Black Americans by local law enforcement; a time when persistent racial disparities in health are illuminated by the stark contrast we are witnessing in the disproportionate prevalence of COVID-19 death and infection among Black and Brown Americans; a time when almost every racial disparity experienced in this Nation, in our educational systems, our criminal systems, our workforce, are compounded by this pernicious pandemic.

And, today, we are at a difficult time in America's military. An institution that led this Nation in racial integration almost 75 years ago is now confronted with growing White nationalism in our ranks; an institution that saw the first African-American first captain at West Point 40 years ago, now-retired Army General Vince Brooks, yet it took until last week before we could confirm our first African-American service chief, General Brown of the Air Force, and we still have a military whose 61 four-star flag officers only include 2 African-American officers among them; an institution that benefited from the courageous service of nearly 1,000 pilots during World War II who completed the Tuskegee training program, yet today there are only 446 minority fighter or bomber pilots and navigators in the Armed Forces, less than 2 percent of our pilots are African American; an institution that after World War II, in 1951 began to operate under the UCMJ, which in many ways has been way ahead of the changes, the positive changes in the civilian criminal justice system, in terms of the rights of accused and of defendants, yet today grapples with racial disparities in the disciplinary treatment of men and women in uniform. That is where we are today in our Nation and in our military, and it cannot be where we are tomorrow. We have work to do, and we need to do it now.

Gentlemen, I take a lot of stock in the work of the GAO, and they came back I thought with a thoughtful report and list of recommendations on how we can get better.

And my question is, what more do you need from Congress in order to complete your evaluation of the causes of any disparities in the military justice system, and are you consulting any outside resources that have expertise in this area in order to complete this evaluation? We can start with the Army. We will go down to the Air Force, then the Navy.

Ms. SPEIER. General Peede.

General PEDE. Yes, ma'am, thank you.

Congressman Brown, thank you so much for the question. As to what we need from Congress, I think, as I mentioned in my statement, the care and attention, the desire, the passion you bring to these issues to help us help ourselves, to see ourselves, is critical. So I think that will continue. I know it will. And I want you to know personally I welcome it, and so does the Army leadership.

With respect to outside resources, sir, with respect to causality, we are in the very early stages of figuring out what can cause this. So we are developing a framework, well, this very week and last week to figure that out. I fully expect that that will include outside assistance. Thank you, sir.

Ms. SPEIER. Thank you. Admiral Hannink.

Admiral HANNINK. Sir, I think section 540I of the NDAA was an excellent roadmap. I think that point was emphasized by the witness from the GAO. I think the focus on data collection and then solid assessment, understanding, and then what to do about the disparities is the right way ahead.

I agree with General Pede on outside assistance. I think that it is going to be important this look be deliberate, that it be thoughtful, and it is not going to be over quick. We are going to have to continue this effort, and that is where I think the outside resources can be incredibly helpful.

Ms. SPEIER. General Rockwell.

General ROCKWELL. Sir, I have a lot of faith in what our IG independent review is going to do. I have a lot of faith that they are going to look at this internally and holistically. I also have a lot of faith in our Manpower and Reserve and A1 team, who is leading the effort.

Now, you asked the question about what kind of outside help are we getting. That manpower and personnel team is getting a lot of outside help. So I have quite a bit of faith in that to see what else can we do to get to this elusive solution set here.

Ms. SPEIER. General Lecce.

General LECCE. Mr. Congressman, I don't believe at this time we need any help from Congress, but I appreciate the opportunity to testify here. We just have a lot of work to do. We just have to get after this.

We realize that we are at the beginning. We are working at looking at data. We are trying to understand the data. But there is a lot of hard work that has to be done. And, again, I keep—you know, the Commandant is my boss. I keep mentioning him because he has made this an important plank in his commandancy, and he is driving it. And I think that that is what we need throughout every echelon of the Marine Corps. Commanders need to drive this. They need to make it important. And I think that starts these candid and open conversations about how we get after this. And that is what the Marine Corps is doing.

Mr. BROWN. Thank you, Madam Chair.

Ms. SPEIER. Thank you, Mr. Brown.

Mr. Kelly, do you have any final words?

Mr. KELLY. No, ma'am.

Ms. SPEIER. All right. Generals and Admirals, thank you so much for your participation today and for your commitment to the rule of law.

Let me just end with a few comments. 540I was put into the NDAA not by you, not at your request, but at Congress' request. So, while you are relying on that now to recognize that there is work to be done, it would have been a whole lot better if it had come from you.

General Lecce, you have said it a number of times: it starts at the top. And you are right. And I hope you convey to all of your chiefs of staff how critical this is to the Congress of the United States.

General Pede, you said that, much like sexual assault and sexual harassment in the military, we have to focus on this with the same laser focus that we have provided for that issue, and I agree with you.

We are at a transformational point in this country, civilian- and military-wise. And I think that there is a lot of work to do, there is a lot of data that has to be collected, but we have to make sure it is consistent across all of the services and that there is transparency.

I hope that we don't have to have another hearing where we have outside groups coming to us and saying, "We can't get the information." GAO in a number of circumstances said she couldn't get the information. We have to be forthcoming to the American people.

We intend to continue this work. We will have you back to see how you are doing, in hopes that you are going to be making great strides in dealing with the antiracism that we now have to imbue in society generally.

And, with that, we stand adjourned.

[Whereupon, at 2:22 p.m., the subcommittee was adjourned.]



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# **A P P E N D I X**

JUNE 16, 2020

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

JUNE 16, 2020

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**Statement of  
Representative Jackie Speier  
Military Personnel Subcommittee  
Racial Disparity in the Military Justice System—How to Fix the Culture  
June 16, 2020**

The hearing will now come to order. I want to welcome everyone to this hearing of the Military Personnel subcommittee: Racial Disparity in the Military Justice System.

We are here to discuss the inequalities and injustices that people of color experience in the military justice system, including those in criminal investigations, courts-martial, and nonjudicial punishment.

The fact that we live in a racist country in no way excuses or justifies the perpetuation of racism in the United States' military. Our servicemembers commit their lives to protect our country. We must commit ourselves to ensure that the military treats them equally and justly.

We will not solve this problem by hiding it or denying it. We will not solve this problem pretending that it is solely the result of uncontrollable societal problems, by pretending that our actions do not contribute to the continuation of injustice, by refusing to seek change because we are so comfortable and confident in "the way things have always been done." The way things have always been done is unacceptable, the results are unacceptable. I hope that all our military leaders in the room can accept that as a starting point for the change we must lead. We must seek new solutions.

GAO's most recent report found that Black servicemembers were more likely to be the subject of recorded investigations and more likely to be tried in general and special courts-martial than their white counterparts—importantly, GAO found that these results were statistically significant. Racial data on nonjudicial punishment was not uniformly collected, but Protect Our Defenders in their investigation, found that Black airmen were twice as likely to face nonjudicial punishment than white airmen.

Yet history provides us solace. The military led the way in integrating our black servicemembers. In 1948 President Truman signed Executive Order 9981, directing equal treatment for our Black service members in the military.

Subsequently, the Army, Navy, Air Force and Marine Corps complied: "In 1949, the Air Force issue[d] a "bill of rights" for black airmen, and the Navy proposed a recruiting program to enlist black sailors. The Marine Corps eliminate[d] its segregated training platoons and various on-post facilities."<sup>1</sup>

Integration did not equal acceptance. 71 years later we still struggle to carve out an equal place for people of color, struggle to provide them with the same opportunities to serve and advance in their careers, and struggle to assure them of equal justice.

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<sup>1</sup> [https://archive.defense.gov/home/features/2008/0708\\_integration/military\\_integration\\_timeline.pdf](https://archive.defense.gov/home/features/2008/0708_integration/military_integration_timeline.pdf)

I would like to hear from the first panel what needs to change, what needs to be done to bring transparency to the system and ensure accountability for every commander who uses the military justice system in a biased and discriminatory manner.

From the second panel I would like to hear how, as the senior military lawyer for each service, you can educate leaders at all levels to recognize bias in the military justice system and what you can do to ensure that justice is dispensed fairly and consistently.

Before I introduce our first panel, let me offer Ranking Member Kelly an opportunity to make any opening remarks.



Chairwoman Speier, Ranking Member Kelly and distinguished members of the subcommittee, thank you for the opportunity to appear before you to examine the issue of racial disparities in the military justice system. As a brief introduction, I retired after 23 years service as an Air Force JAG, and during that time, I served almost exclusively in the military justice arena including as a military judge and as the chief prosecutor for the Air Force. For the last five years I have served as the president of Protect Our Defenders, a human rights organization that fights for survivors of military sexual trauma and to reform the military justice process.

Like our country, the military has a long and painful history of mistreating racial minorities. The injustices Black service members faced did not end with President Truman's order ending segregation. In the 72 years since that historic reform, Black service members have continued to be prosecuted and punished at a much greater rate than their White counterparts. Moreover, they suffer lower promotion rates and are vastly underrepresented in the officer corps, especially at the general and flag officer ranks.

As part of Protect Our Defenders' ongoing efforts to improve the fairness of the military justice system, in 2016 we filed a series of Freedom Of Information Act (FOIA) requests to each service seeking 10 years of data concerning racial disparities in the military justice process. The data was provided to us in rates per thousand (RPT). After eventually receiving the data, we released a study of our findings in June 2017 that showed widespread racial disparities in all of the services. We examined in total 32 years of data, and in every single year, Black service members were punished at a significantly higher rate than White service members.

Based on our findings, Congress mandated a Government Accountability Office (GAO) review of disparities that was completed in March 2019. The GAO had greater access to the data than we did through the FOIA process, but nevertheless also found significant racial disparities. Most shockingly, the GAO found that none of the services had done anything to find the causes or solutions for the disparities.

As part of its answer to our 2016 FOIA request, the Air Force stated it had created a "cross functional team led by diversity and inclusion experts" to "collect and analyze the data and recommend policy changes, process modifications or additional study as appropriate." After hearing nothing more about the team or its findings, in July 2017 we filed an additional FOIA request seeking the identities and qualifications of the team members as well as the team's findings and recommendations in addition to other information. This was the start of grueling almost three year long struggle to force the Air Force to meet its FOIA obligations.

Thankfully, we were represented by the Yale Veterans Legal Services Clinic, which enabled us to file suit in federal court. Despite numerous efforts by the Air Force to conceal the findings and recommendations of the team, the federal judge eventually ordered the Air Force to disclose the requested documents under threat of sanctions. The documents we received were startling. The panel and a follow up study by Air Force manpower (A1) found that racial disparities were "consistent" "persistent" and getting worse. The Air Force admitted that the numbers were "concerning" and the importance of having an "equitable and consistent" disciplinary process.

These findings were made in 2016, and despite concluding then that the Air Force "must clearly address the disparity in some way," the Air Force appeared to fail to act on the team's recommendations to address the issue. I say appeared because the Air Force has claimed one thing in federal court and another in press releases in response to our most recent report. Before the federal judge, the Air Force repeatedly claimed the recommendations of the team were never implemented or even briefed to leadership and thus not releasable. The judge found the Air Force's efforts to be a "mystery" and concluded it appeared to be "simply an exercise which went nowhere." However, now after the release of our most recent report, the Air Force claims it did enact at least some of the recommendations of the team in 2017. Such a claim is contradictory to its many assertions in federal court and raises the question of whether the Air Force's lack of candor occurred before the federal judge or before the American people.

Another disturbing finding from our review of the documents is the Air Force legal community's (JA) efforts to discredit the data showing significant racial disparities. Despite the strong conclusions of Air Force A1, JA has attempted to discredit the importance of its own data. Specifically, in a background paper JA claimed the disparity between the rate Blacks and Whites are punished can be a result of a small number of additional actions. Lt Gen Rockwell, the Air Force TJAG reinforced that message recently in a briefing to the Air Force four stars where he told them that "even a few additional disciplinary actions have a far greater impact on the RPT for Black Airmen" due to their smaller number. Rockwell then went on to misleadingly illustrate his point by using a ratio of 10 to 1 of White airmen to Black airmen when the actual ratio is 5 to 1.

The idea that that the decades long disparities can be explained by a few additional disciplinary actions is false, and JA needs to stop this line of argument. The disparity in nonjudicial punishments in CY19 in the Air Force alone represents an additional 520 Article 15s for Black airmen, not a few additional as implied by JA. In other words, Black airmen received approximately 1105 Article 15s last year. If they were punished at the same proportionate rate as White Airmen, they would have received only 585. The impact of the racial disparities across all the services in the last 10 years would easily be in excess of 10,000 extra punishments meted out against Black service members, not a few additional disciplinary actions. The Air Force needs to focus on finding solutions and causes, not discrediting the significance of its own data.

We released our most recent report on May 26<sup>th</sup> of this year, and it had immediate impact. I credit CMSAF Wright and General Goldfein for acting quickly by ordering an investigation. I stand ready to work with the Air Force and all of the services to find real solutions to the barriers that minority members face. But what must not be forgotten is the action initiated by the Air Force last week to investigate disparities would not have occurred if they had been successful in keeping this information from being disclosed. This hearing would not have been held today but for the fact we were willing to force the Air Force to disclose damning information that it wished to keep hidden. This is a reminder of the importance of transparency and why the military must faithfully meet its obligations under FOIA. How much further could the Air Force be in addressing racial disparities if it had put energy into finding solutions rather than seeking to cover up its embarrassing failures?

I look forward to any questions you may have.

### ***Biography***

#### **DON M. CHRISTENSEN, COLONEL, USAF (Ret.)**

**Col Don Christensen**, USAF (*ret.*) is President of Protect Our Defenders. In his role as President, Col Christensen has appeared regularly in broadcast and print media to advocate for rights of crime victims, including appearances on CNN, CBS, NBC, ABC, MSNBC, Fox News, and the BBC, in addition to the *New York Times*, the *Washington Post*, the *Los Angeles Times*, *USA Today*, *Time*, and *Newsweek*. He also serves as a *pro bono* attorney for victims of military sexual assault in EEO complaints, law suits under the Federal Tort Claims Act, and as a special victims counsel. He served as chief prosecutor for the United States Air Force between 2010 and 2014. Before that he served alternatively as trial counsel, defense counsel, and as a military judge for every year of his 23-year career in the United States Air Force.

Christensen has served as an Assistant Staff Judge Advocate, Area Defense Counsel, Circuit Defense Counsel, Deputy Chief Circuit Defense Counsel, and Deputy Staff Judge Advocate, as a deployed Staff Judge Advocate, Chief Circuit Trial Counsel, and Staff Judge Advocate and as a Military Judge. He has tried over 150 courts-martial as a trial and defense counsel and has presided over 100 trials as a military judge.

He was born in Sturgis, South Dakota and received his law degree from Marquette University Law School. A third generation Air Force officer, he received his commission as a second lieutenant through ROTC and entered active service on 15 July 1991. Christensen is licensed to practice law before the Supreme Court of Wisconsin.

#### **EDUCATION**

- 1988 Bachelor of Science degree, *summa cum laude*, in history and speech communications, Black Hills State College
- 1991 Juris Doctor degree, Marquette University Law School
- 1996 Squadron Officer School (in residence) Air University, Maxwell AFB, Alabama
- 2002 Air Command and Staff College (correspondence) Air University, Maxwell AFB, Alabama
- 2008 Air War College (correspondence) Air University, Maxwell AFB, Alabama

#### **ASSIGNMENTS**

1. Jul 1991 - Mar 1994, Assistant Staff Judge Advocate, 28<sup>th</sup> Bomb Wing, Ellsworth AFB, SD
2. Mar 1994 - Jul 1995, Area Defense Counsel, USAF Judiciary, Central Circuit, Ellsworth AFB, SD
3. Jul 1995 - Jan 1998, Assistant Staff Judge Advocate, Ogden Air Logistics Center, Hill AFB, UT

4. Jan 1998 - Feb 2000, Circuit Defense Counsel, USAF Judiciary, Western Circuit, Travis AFB, CA
5. Feb 2000 - Sep 2000, Deputy Chief Circuit Defense Counsel, USAF Judiciary, Western Circuit Travis AFB, CA
6. Nov 2000 - Mar 2001, Staff Judge Advocate, 332nd Air Expeditionary Group, Ahmed Al Jaber AB, Kuwait
7. Oct 2000 - Jul 2002, Deputy Staff Judge Advocate, 436th Airlift Wing, Dover AFB, DE.
8. Jul 2002 – Jul 2005, Chief Circuit Trial Counsel, USAF Judiciary, European Circuit, Ramstein AB, Germany
9. Jul 2005 – Jul 2008, Staff Judge Advocate, 325th Fighter Wing, Tyndall AFB FL.
10. Jul 2008 – Jul 2010, Military Judge, USAF Trial Judiciary, McChord AFB WA.
11. Jul 2010 – July 2014 Chief, Government Trial and Appellate Counsel Division, Joint Base Andrews MD

#### **AWARDS AND DECORATIONS**

Legion of Merit

Meritorious Service Medal with five oak leaf clusters

Air Force Commendation Medal

Air Force Achievement Medal

Air Force Outstanding Unit Award with valor device and four oak leaf clusters

Air Force Organizational Excellence Award with four oak leaf clusters

National Defense Service Medal with one bronze star device

Armed Forces Expeditionary Medal

Global War on Terrorism Service Medal

Air Force Overseas Service Long Tour Ribbon

Air Force Expeditionary Service Ribbon with gold border

Small Arms Expert Ribbon

#### **EFFECTIVE DATES OF PROMOTION**

Second Lieutenant	18 May 1991
First Lieutenant	15 July 1991
Captain	15 January 1992
Major	1 August 1999
Lieutenant Colonel	1 July 2005
Colonel	1 May 2010

**DISCLOSURE FORM FOR WITNESSES  
COMMITTEE ON ARMED SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**INSTRUCTION TO WITNESSES:** Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 116<sup>th</sup> Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants), or contracts or payments originating with a foreign government, received during the current and two previous calendar years either by the witness or by an entity represented by the witness and related to the subject matter of the hearing. As a matter of committee policy, the House Committee on Armed Services further requires nongovernmental witnesses to disclose whether they are a fiduciary (including, but not limited to, directors, officers, advisors, or resident agents) of any organization or entity that may have an interest in the subject matter of the hearing. Committee policy also requires nongovernmental witnesses to disclose the amount and source of any contracts or grants (including subcontracts and subgrants), or payments originating with any organization or entity, whether public or private, that has a material interest in the subject matter of the hearing, received during the current and two previous calendar years either by the witness or by an entity represented by the witness.

Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number), will be made publicly available in electronic form not later than one day after the witness's appearance before the committee. Witnesses may list additional grants, contracts, or payments on additional sheets, if necessary. Please complete this form electronically.

**Hearing Date:** June 16, 2020

**Hearing Subject:**

Racial Disparity in the Military Justice System - How to Fix the Culture

**Witness name:** Don Christensen

**Position/Title:** President

**Capacity in which appearing:** (check one)



Individual



Representative

**If appearing in a representative capacity, name of the organization or entity represented:**

Protect Our Defenders

**Federal Contract or Grant Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) or grants (including subgrants) with the federal government, received during the current and two previous calendar years and related to the subject matter of the hearing, please provide the following information:

**2020**

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

**2019**

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

**2018**

Federal grant/ contract	Federal agency	Dollar value	Subject of contract or grant
N/A			

**Foreign Government Contract or Payment Information:** If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts or subgrants) or payments originating from a foreign government, received during the current and two previous calendar years and related to the subject matter of the hearing, please provide the following information:

2020

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
N/A			

2019

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
N/A			

2018

Foreign contract/ payment	Foreign government	Dollar value	Subject of contract or payment
N/A			

**Fiduciary Relationships:** If you are a fiduciary of any organization or entity that may have an interest in the subject matter of the hearing, please provide the following information:

Organization or entity	Brief description of the fiduciary relationship
President	President

**Organization or Entity Contract, Grant or Payment Information:** If you or the entity you represent before the Committee on Armed Services has contracts or grants (including subcontracts or subgrants) or payments originating from an organization or entity, whether public or private, that has a material interest in the subject matter of the hearing, received during the current and two previous calendar years, please provide the following information:

2020

Contract/grant/ payment	Entity	Dollar value	Subject of contract, grant or payment
N/A			

2019

Contract/grant/ payment	Entity	Dollar value	Subject of contract, grant or payment
N/A			

2018

Contract/grant/ payment	Entity	Dollar value	Subject of contract, grant or payment
N/A			



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United States Government Accountability Office

Testimony

Before the Subcommittee on Military  
Personnel, Committee on Armed  
Services, House of Representatives

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## MILITARY JUSTICE

### DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities

Statement of Brenda S. Farrell, Director  
Defense Capabilities and Management

## GAO Highlights

Highlights of GAO-20-048T, a testimony before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives

### Why GAO Did This Study

The Uniform Code of Military Justice (UCMJ) was established to provide a statutory framework that promotes fair administration of military justice. Every active-duty servicemember is subject to the UCMJ, with more than 250,000 individuals disciplined from fiscal years 2013-2017, out of more than 2.3 million unique active-duty servicemembers. A key principle of the UCMJ is that a fair and just system of military law can foster a highly disciplined force.

This statement provides information on: 1) the collection of race and ethnicity information in the military services' databases; 2) the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system; and 3) steps taken by DOD to study any identified disparities. This statement is based on GAO-19-344 issued on May 30, 2019. As part of that work, GAO analyzed data from the investigations, military justice, and personnel databases from the military services, including the Coast Guard, from fiscal years 2013-2017 and interviewed agency officials.

### What GAO Recommends

GAO made 11 recommendations in prior work, including that the military services develop the capacity to present consistent race and ethnicity data, and DOD and the Coast Guard include demographic information in military justice annual reports and evaluate the causes of disparities. DOD and the Coast Guard generally concurred. Progress has been made in addressing some of the recommendations. Continued attention is needed to ensure that the remainder of these recommendations are addressed.

View GAO-20-048T. For more information, contact Theresa S. Fawell at (202) 512-3804 or [teresa@gao.gov](mailto:teresa@gao.gov).

June 16, 2020

## MILITARY JUSTICE

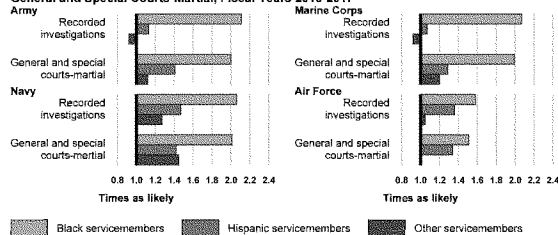
### DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities

### What GAO Found

In May 2019, GAO found that the military services did not collect consistent information about race and ethnicity in their investigations, military justice, and personnel databases. Thus, the military services are limited in their ability to identify disparities (i.e., instances in which a racial or ethnic group was overrepresented) in the military justice system. The military services were not required to, and thus did not, report demographic information that would provide greater visibility into potential disparities in their annual military justice reports.

GAO's analysis of available data identified disparities in how likely servicemembers of different races were to be subjects of investigations recorded in military criminal investigative organization databases and tried in general and special courts-martial in particular. For example, in three military services, Black servicemembers were about twice as likely as White servicemembers to be tried in general and special courts-martial. Racial disparities generally were not present in convictions or punishments. These findings show an association for disparities at particular stages of the military justice process, but are inconclusive regarding other stages. However, GAO's findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information and supporting statistics.

#### Likelihood That Servicemembers Were Subjects of Recorded Investigations and Tried in General and Special Courts-Martial, Fiscal Years 2013-2017



Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-048T

Note: These analyses, taken alone, should not be used to make conclusions about the presence of unlawful discrimination. These multivariate regression analysis results estimate whether a racial group is more likely or less likely to be the subject of an investigation or a trial in general or special courts-martial after controlling for race, gender, rank, and education, and in the Air Force, years of service. GAO made all racial comparisons to White servicemembers, and grouped individuals of Hispanic ethnicity together, regardless of race. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

The Department of Defense (DOD) has taken some steps to study disparities but has not comprehensively evaluated the causes of racial disparities in the military justice system. Doing so would better position DOD to identify actions to address disparities and to help ensure the military justice system is fair and just.

United States Government Accountability Office

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Madam Chairwoman Speier, Ranking Member Kelly, and the Members of the Subcommittee:

Thank you for providing me with the opportunity to discuss GAO's findings and recommendations about racial disparities in the military justice system.<sup>1</sup> Recent events, such as the killings of Ahmaud Arbery and George Floyd, have raised public awareness and activism about racial bias. Although those cases did not involve military personnel, these concerns about racial bias carry over to the military justice system. The Uniform Code of Military Justice (UCMJ) was established to provide the statutory framework of the military criminal justice system.<sup>2</sup> The UCMJ contains articles that punish traditional crimes such as unlawful drug use and assault as well as unique military offenses including desertion, failure to obey orders or regulations, and misbehavior before the enemy, among others. The Military Justice Review Group elaborated on the purpose of the UCMJ, stating that its current structure and practice embodies a single overarching principle: a system of military law can foster a highly disciplined force if it is fair and just, and is recognized as such by both members of the armed forces and by the American public.<sup>3</sup> Every active-duty servicemember of the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard is subject to the UCMJ, with more than 258,000 individuals disciplined from fiscal years 2013-2017, out of more than 2.3 million unique active-duty servicemembers.

In response to a provision in House Report 115-200, accompanying a bill for the National Defense Authorization Act for Fiscal Year 2018, in May 2019, we issued a report that focused on differences in information the military services collect about the race and gender of servicemembers convicted of violations of the UCMJ as well as the extent that disparities

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<sup>1</sup>For purposes of this statement, we use the term disparities to describe instances in which a racial group was overrepresented among the servicemembers who were investigated or disciplined for violations of the Uniform Code of Military Justice (UCMJ).

<sup>2</sup>10 U.S.C. §§801-946a.

<sup>3</sup>Military Justice Review Group, *Report of the Military Justice Review Group Part I: UCMJ Recommendations*, at 18 (Dec. 22, 2015). The Military Justice Review Group was established at the direction of the Secretary of Defense to conduct a comprehensive review of the UCMJ and the military justice system.

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may exist in the military justice system.<sup>4</sup> My statement today is based on that report and addresses (1) the collection of race and ethnicity information in the military services' investigations, military justice, and personnel databases, (2) the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system, and (3) steps taken by DOD and the military services to study any identified disparities. Our full report also discusses reporting of data that provides visibility into disparities challenges in other areas, such as gender disparities and collection of gender information.

For our May 2019 report, to assess the collection of race and ethnicity information in the military services' investigations, military justice, and personnel databases, we interviewed agency officials and reviewed service guidance, user manuals, and other documentation. Our review identified the types of data officials are required to collect and to maintain, as well as internal procedures the military services follow to input information about race and ethnicity into these databases. We analyzed the data we received from the investigations, military justice, and personnel databases to determine the completeness of the race and ethnicity information recorded in each of the databases.

To assess the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system, we analyzed military justice actions initiated and recorded in each military service's investigations, military justice, and personnel databases between fiscal years 2013 through 2017—the most recent data available at the time of our review. To prepare the data for our analyses and to help ensure that we had consistent profiles for the race and ethnicity of servicemembers, we merged records using unique identifiers, such as a social security number or a DOD employee identification number, that were common among a particular military service's databases. Based on discussions with service officials, we treated the personnel databases as the authoritative sources for servicemembers' demographic and administrative data.

In addition, as part of our data preparation, we consolidated the various race and ethnicity values in the service personnel databases to the five

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<sup>4</sup>GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, GAO-19-344 (Washington, D.C.: May 30, 2019). In this report, we made 11 recommendations intended to help DOD and the Coast Guard improve their capabilities to assess racial and gender disparities.

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groups for race and the two groups for ethnicity established by Office of Management and Budget (OMB) standards.<sup>5</sup> When military service personnel databases included different or additional possible options for race and ethnicity than the groups established by the OMB standards, we consolidated the options in accordance with the definitions for each race and ethnicity option listed in the OMB standards. We grouped individuals of Hispanic ethnicity together, regardless of their racial identification, so that we could compare those of Hispanic ethnicity to other racial groups. Throughout this statement, we refer to the combined race and ethnicity values as race.

We conducted multivariate regression analyses to test the association between servicemember characteristics, such as race and ethnicity, and the odds of a military justice action. Our multivariate regression analyses controlled for attributes such as race, gender, rank, years of service, and education. We conducted data reliability assessments on the datasets we received from the databases in our review. We examined the documentation related to the databases, conducted electronic tests on the data we received, and discussed data reliability with database managers. We found the variables we ultimately reported on to be sufficiently reliable for the purposes of our analysis.

Our analyses of these data, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. Further, we did not identify the causes of any racial disparities, and the results of our work alone should not be used to make conclusions about the military justice process.

To assess the extent to which disparities in the military justice system had been studied by DOD, we conducted a literature review, reviewed prior GAO reports, and asked DOD and service officials to identify publications relevant to disparities in military justice. We reviewed those publications that assessed racial, ethnic, or gender disparities among servicemembers in the military justice system. More detailed information on our objectives,

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<sup>5</sup>Office of Management and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58,782 (Oct. 30, 1997). In 2016, the Office of Management and Budget issued a proposed revision to the standards. See *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*, 81 Fed. Reg. 67,398 (Sept. 30, 2016). As of June 2020, the Office of Management and Budget had not issued the revised standards.

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scope, and methodology for our prior work can be found in the issued report.<sup>6</sup>

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In creating the military justice system, Congress established three types of military courts, called the summary, special, and general courts-martial, to adjudicate UCMJ violations. Each of these types of military courts respectively is intended to deal with progressively more serious offenses, and each court-martial type may adjudicate more severe maximum punishments as prescribed under the UCMJ.<sup>7</sup> In addition, an accused servicemember can receive nonjudicial punishment under Article 15 of the UCMJ, by which a commander can punish a servicemember without going through the court-martial process.

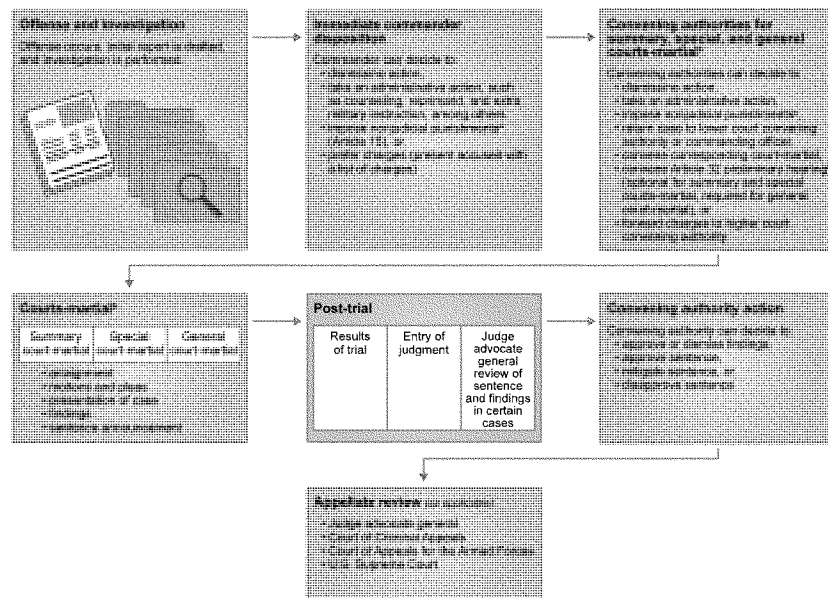
There are several steps in the discipline of a servicemember who allegedly commits a crime under the UCMJ, which are summarized in figure 1 below.

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<sup>6</sup>GAO-19-344.

<sup>7</sup>In addition to the maximum punishments that may be adjudicated by each type of court-martial, various relevant executive orders prescribe a maximum punishment for each offense.

Figure 1: Overview of the Typical Military Justice Process



Source: GAO analysis of the Rules for Courts-Martial and Manual for Courts-Martial. | GAO-20-648T

<sup>a</sup>Nonjudicial punishments are used to discipline minor offenses committed by enlisted servicemembers or officers.<sup>b</sup>Summary courts-martial are a non-criminal forum used to adjudicate noncapital offenses committed by enlisted servicemembers. Special courts-martial are used to adjudicate any noncapital and some capital offenses committed by enlisted servicemembers or officers. General courts-martial are used to adjudicate any offenses committed by enlisted servicemembers or officers, including capital offenses. A capital offense means an offense for which death is an authorized punishment under the UCMJ and the Manual for Courts-Martial.<sup>c</sup>A preliminary hearing is required before referral of charges to a general court-martial, unless waived by the accused, and is intended to determine issues such as whether there is probable cause to believe that the accused committed the offense charged.

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The military justice process begins once an offense is alleged and an initial report is made, typically to law enforcement, an investigative entity, or the suspect's chain of command. The commanding officer, law enforcement, or a military criminal investigative organization (MCIO) will conduct an inquiry or investigation into the accusation and gather all reasonably available evidence. Investigations are recorded in MCIO databases when a servicemember is the subject of a criminal allegation; for the purposes of our report, we say the servicemember had a "recorded investigation" to describe these cases.<sup>8</sup> Following an investigation, the first step toward initiation of a court-martial is when the accused is presented with a list of charges signed by the accuser under oath, which is called preferral of charges. After charges are preferred, the charges are forwarded to an officer with sufficient legal authority to convene a court-martial, also known as the "convening authority." The convening authority in receipt of preferred charges may, among other actions, refer the case to its own court or forward the case to a superior commander for disposition. Once referred to a general or special court-martial, an accused servicemember may be tried by a military judge alone or by a military judge with a military jury. In summary courts-martial, a single commissioned officer who is not a military judge adjudicates minor offenses and a sentence. Convictions at the general and special court-martial level are subject to a post-trial process and may be appealed to higher courts in cases where the sentence reaches a certain threshold.

The military justice system, like the civilian criminal justice system, provides avenues for accused servicemembers to raise allegations of discrimination, improprieties in investigations, improprieties in disposition, and improprieties in the selection of the military jury at the court-martial proceeding, before a judge and on appellate review.

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<sup>8</sup>Investigations are recorded in the MCIO databases when a servicemember is the subject of a criminal allegation; for purposes of this report, we say the servicemember had a "recorded investigation" to describe these cases. To conduct our analyses, we used data from the databases used by the Army's Criminal Investigation Command, which included cases investigated by military police and Criminal Investigation Command; by the Navy and Marine Corps Naval Criminal Investigative Service, which included cases investigated by the Naval Criminal Investigative Service and military police; by the Air Force's Office of Special Investigations, which included only Office of Special Investigations cases; and by the Coast Guard Investigative Service, which included only Coast Guard Investigative Service cases.

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The Military Services  
Do Not Collect,  
Maintain, and Report  
Consistent  
Information about  
Race and Ethnicity,  
Limiting the Ability to  
Assess Data to  
Identify Any  
Disparities

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The Military Services Do  
Not Collect and Maintain  
Consistent Data for Race  
and Ethnicity

The military services do not collect and maintain consistent information regarding race and ethnicity in their investigations, military justice, and personnel databases. Specifically, the number of potential responses for race and ethnicity within the 15 databases across the military services ranges from 5 to 32 options for race and 2 to 25 options for ethnicity, which can complicate cross-service assessments. For example, the Army's personnel database maintains 6 options for race and 23 options for ethnicity,<sup>9</sup> whereas the Coast Guard's personnel database maintains 7 options for race and 3 for ethnicity.<sup>10</sup> Table 1 below summarizes how the databases used by the military services vary in how the servicemember's race is entered and the number of potential race options.

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<sup>9</sup>The six options for race available within the Army's personnel database include American Indian or Alaska Native, Asian/Pacific Islander, Black, Other, Unknown, and White. The options for ethnicity include Aleut, Chinese, Cuban, Eskimo, Filipino, Guamanian, Indian, Japanese, Korean, Latin American with Hispanic Descent, Melanesian, Mexican, Micronesian, None, Other, Other Asian Descent, Other Hispanic Descent, Other Pacific Island Descent, Polynesian, Puerto Rican, United States/Canadian Indian Tribes, Unknown, and Vietnamese.

<sup>10</sup>The options for race in the Coast Guard's personnel database include American Indian/Alaska Native, Asian, Black or African American, Declined to Respond, Native Hawaiian/Pacific Islander, White, and every potential mixed racial group from the provided races. Additionally, this database has three options for ethnicity: declined to respond, Hispanic or Latino, and Not Hispanic or Latino.

**Table 1: Collection of Data on Servicemembers' Race in Military Services' Investigations, Military Justice, and Personnel Databases**

Service	Database	Race information	
		Entry method	Number of potential race options
Army	Army Law Enforcement Reporting and Tracking System (I)	Manual input (drop down)	8 options
	Military Justice Online (MJ)	Auto-populated from Total Army Personnel Database	6 options
	Army Courts-Martial Information System (MJ)	Manual input (drop down)	8 options
	Total Army Personnel Database (P)	Manual input (drop down)	6 options
Navy and Marine Corps Shared	Consolidated Law Enforcement Operations Center (I)	Manual input (drop down)	6 options
Navy	Case Management System (MJ)	Manual input (drop down)	7 options
	Navy Personnel Database (P)	Manual input (drop down)	32 options
Marine Corps	Case Management System (MJ)	Manual input (drop down)	7 options
	Marine Corps Total Force System (P)	Manual input (drop down)	6 options
Air Force	Investigative Information Management System (I)	Auto-populated from Defense Enrollment Eligibility Reporting System	7 options
	Automated Military Justice Analysis and Management System (MJ)	Auto-populated from Military Personnel Data System	5 options
	Military Personnel Data System (P)	Manual input (drop down)	7 options
Coast Guard	Field Activity Case Tracking System (I)	Manual input (drop down)	6 options
	Law Manager (MJ)	N/A; does not track race	N/A; does not track race
	Direct Access (P)	Manual input (drop down)	7 options

Legend: (I)=investigations database; (MJ)=military justice database; (P)=personnel database; N/A=not available

Source: GAO analysis of each military service's investigations, military justice, and personnel database information. | GAO-20-648T

Table 2 shows that the military services' databases also vary in how information about servicemembers' ethnicity is entered into the databases and the number of potential ethnicity options that are collected.

**Table 2: Collection of Data on Servicemembers' Ethnicity in Military Services' Investigations, Military Justice, and Personnel Databases**

Service	Database	Ethnicity information	
		Entry method	Number of potential ethnicity options
Army	Army Law Enforcement Reporting and Tracking System (I)	Manual input (drop down)	3 options
	Military Justice Online (MJ)	N/A; collected as part of race field	N/A
	Army Courts-Martial Information System (MJ)	N/A; collected as part of race field	N/A
	Total Army Personnel Database (P)	Manual input (drop down)	23 options
Navy and Marine Corps Shared	Consolidated Law Enforcement Operations Center (I)	Manual input (drop down)	3 options
Navy	Case Management System (MJ)	N/A; collected as part of race field	N/A
	Navy Personnel Database (P)	Manual input (drop down)	23 options
Marine Corps	Case Management System (MJ)	N/A; collected as part of race field	N/A
	Marine Corps Total Force System (P)	Manual input (drop down)	25 options
Air Force	Investigative Information Management System (I)	Manual input (drop down)	3 options
	Automated Military Justice Analysis and Management System (MJ)	Auto-populated from Military Personnel Data System	3 options
	Military Personnel Data System (P)	Manual input (drop down)	23 options
Coast Guard	Field Activity Case Tracking System (I)	Manual input (drop down)	2 options
	Law Manager (MJ)	N/A; does not track ethnicity	N/A
	Direct Access (P)	Manual input (drop down)	3 options

Legend: (I)=Investigations database; (MJ)=military justice database; (P)=personnel database; N/A=not available

Source: GAO analysis of each military service's investigations, military justice, and personnel database information. | GAO-20-648T

Although the data collected and maintained was not consistent within and across the military services, each of the military services' databases maintained race and ethnicity data for at least 99 percent of the servicemembers, with the exception of the Coast Guard.<sup>11</sup> The Coast Guard did not track information about race or ethnicity in its military justice database, Law Manager.<sup>12</sup> Coast Guard officials stated that this is because Law Manager was designed to determine the status of court-martial cases, and captures attributes that are needed to generate

<sup>11</sup>According to officials from all of the military services, the information about race and ethnicity in their databases is self-reported by individual servicemembers, and there is no way to verify whether the reported information is accurate.

<sup>12</sup>The military services differ regarding whether their databases require the collection of information about race and ethnicity.

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relevant UCMJ documents, such as court pleadings. Demographic information such as race and ethnicity is not included in these official documents, so this information is not input into Law Manager. Further, four of the databases we reviewed—including both of the Army's military justice databases, and the Navy and the Marine Corps' military justice databases—collect information on race and ethnicity in a combined data field as shown in table 2 above, whereas the other databases collect and maintain race and ethnicity information in two separate fields. These inconsistencies limit the military services' ability to collectively or comparatively assess these demographic data to identify any racial or ethnic disparities in the military justice system within and across the services.<sup>13</sup>

**Recommendations to collect and maintain race and ethnicity information in investigations and personnel databases.** To address these inconsistencies, in our May 2019 report, we made four separate recommendations to each of the military departments and to the Secretary of Homeland Security for the Coast Guard. We recommended that these entities develop the capability to present servicemembers' race and ethnicity data in their investigations and personnel databases using the same categories of race and ethnicity established in the uniform standards for the military justice databases that were issued in December 2018.<sup>14</sup> As part of these uniform standards, the military services were directed to collect data related to race and ethnicity in their military justice databases, to collect race and ethnicity data in separate data fields, and to standardize the reporting of the data into categories identified in the standards.<sup>15</sup> However, DOD applied these December 2018 standards

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<sup>13</sup>We were able to analyze data across the investigations, military justice, and personnel databases by merging data from these databases, but this took multiple, detailed steps and would not be an efficient approach for routine analyses.

<sup>14</sup>On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016. Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 §§5001-5542 (Dec. 23, 2016).

<sup>15</sup>The standards provide that the military services may have their military justice databases capture expanded ethnic or racial categories; however, for reporting purposes, expanded categories will aggregate to those categories listed in the standards. For race, the military services will choose from six designations: (1) American Indian/Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, (5) White, or (6) Other. For ethnicity, the services will choose from two options: (1) Hispanic or Latino, or (2) Not Hispanic or Latino. These categories are consistent with the OMB standards for collecting and presenting such data. The military services are to implement the Secretary's direction no later than December 23, 2020.

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only to the military justice databases and not to the investigations and personnel databases. DOD officials stated that the investigations and personnel databases do not fall under the charter of the DOD General Counsel, which issued the standards for the military justice databases.

DOD and the Department of Homeland Security (DHS) concurred with these four recommendations. As of October 2019, officials from each of the military departments said that they were working to implement the uniform standards for race and ethnicity and the ability to aggregate the data, and they expected to implement these categories in December 2020. Similarly, as of May 2019, the Coast Guard expected to implement such modifications by September 2020.

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**The Military Services Have  
Not Consistently Reported  
Data That Provides  
Visibility about Racial  
Disparities**

Although some military services report demographic information about the subjects of military justice actions internally, the military services have not externally reported data that provides visibility into, or would enable an analysis of, the extent of racial or ethnic disparities in the military justice system. Officials from all of the military services told us that they compile internal quarterly or monthly staff judge advocate reports, which include the total number of each type of court-martial handled by their legal offices and of nonjudicial punishments. According to military service officials, the Air Force and the Army reports include demographic information about servicemembers involved in these cases, such as the total number of each type of case broken out by the subject's race and ethnicity. However, the Navy, Marine Corps, and Coast Guard reports do not include this demographic information, and there was no requirement to do so at the time of our May 2019 report.

Regarding external reporting, the UCMJ directs the Court of Appeals for the Armed Forces, the Judge Advocates General, and the Staff Judge Advocate to the Commandant of the Marine Corps to submit annual reports on the military justice system to the Congressional Armed Services Committees, the Secretary of Defense, the secretaries of the military departments, and the Secretary of Homeland Security.<sup>16</sup> These reports are to include information on the number and status of pending

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<sup>16</sup>The reporting requirement for information about the number and status of pending cases is in UCMJ Article 146a, and requires different reports from each of the military services. The Military Justice Act of 2016 amended this reporting requirement as of June 8, 2018. The previous requirement, which had been in UCMJ Article 146 required one combined annual report. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps are the senior officials within each military service responsible for the overall supervision and administration of military justice within their respective services.

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cases handled in the preceding fiscal year, among other information. The annual reports include the total number of cases each military service handled for each type of court-martial and for nonjudicial punishments. However, prior to our review, these annual reports did not include demographic information about servicemembers who experienced a military justice action, such as breakdowns by race, because the reporting requirement did not direct the military services to include such information.

**Recommendation to require military services to include data about race and ethnicity in annual reports about military justice actions.** In our May 2019 report, we recommended that the Joint Service Committee on Military Justice, which is responsible for reviewing the UCMJ annually, consider an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race and ethnicity, for all types of courts-martial. DOD concurred with this recommendation.<sup>17</sup>

According to a memorandum from the Joint Service Committee on Military Justice, in September 2019 the committee proposed an action item as part of its annual review. Specifically, the committee was considering an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race and ethnicity, for all types of courts-martial. However, in December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to include data on race, ethnicity, and gender in the annual military justice reports.<sup>18</sup> We believe that this statutory change meets the intent of our recommendation. By requiring the military services to report this information, servicemembers and the public will have greater visibility into potential disparities, which will help build confidence that DOD is committed to a military justice system that is fair and just.

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<sup>17</sup>The Joint Service Committee on Military Justice is a committee comprised of representatives from each service's legal office, and is responsible for reviewing the *Manual for Courts-Martial* and the UCMJ on an annual basis. DOD Instruction 5500.17, *Role and Responsibilities of the Joint Service Committee on Military Justice (JSC)* (Feb. 21, 2018).

<sup>18</sup>Pub. L. No. 116-92, §540(b)(1) (Dec. 20, 2019).

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**DOD Has Not Identified When Disparities Should Be Examined Further**

DOD has not issued guidance that establishes criteria to specify when any data indicating possible racial or ethnic disparities in the investigations, trials, or outcomes of cases in the military justice system should be further reviewed, and to describe what steps should be taken to conduct such a review if it were needed. While equal employment opportunity enforcement is a very different context than the military justice system, other federal agencies have developed such criteria in the equal employment opportunity context that can indicate when disparities should be examined further. For example, the Department of Justice, the Department of Labor, the Equal Employment Opportunity Commission, and the Office of Personnel Management use a "four-fifths" test to determine when differences between subgroups in the selection rates for hiring, promotion, or other employment decisions are significant.<sup>19</sup> These criteria, though inexact, provide an example of the type of criteria that DOD could consider using as a basis for determining when disparities among racial groups in the military justice process could require further review or analysis.

**Recommendation to issue guidance to establish criteria that determines when racial and ethnic disparities should be reviewed.** In our May 2019 report, we recommended that the Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of Homeland Security, issue guidance that establishes criteria to specify when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed, and that describes the steps that should be taken to conduct such a review.<sup>20</sup> In commenting on a draft of our report, DOD partially concurred with this recommendation, agreeing with the content, but requesting that we modify the recommendation to direct it to more appropriate entities. That change was made before our report was issued.

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<sup>19</sup>According to the Equal Employment Opportunity Commission, under the four-fifths test, a selection rate for any race, sex, or ethnic group that is less than four-fifths or 80 percent of the rate for the group with the highest selection rate will be regarded as substantially different. This is considered a rule of thumb and not a legal definition, but is considered a practical means of keeping the attention of enforcement agencies on discrepancies. It establishes a numerical basis for drawing an initial inference and requiring additional information. Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*, 44 Fed. Reg. 11,996 (Mar. 2, 1979).

<sup>20</sup>GAO-19-344.

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In October 2019, DOD officials said that the department was exploring the feasibility of conducting relevant research to inform implementation of this recommendation. At that time, they estimated that this research might be concluded in March 2021. In December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to issue guidance consistent with our recommendation.<sup>21</sup> DOD was directed to commence or carry out these activities by June 2020. We believe that issuing guidance that establishes criteria for determining when data indicating possible racial disparities in the investigations, trials, or outcomes of cases in the military justice system should be further examined, and describes the steps that should be taken to conduct such further examination, would better position DOD and the services to monitor the military justice system to help ensure that it is fair and just, a key principle of the UCMJ.

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**Racial Disparities  
Exist in Military  
Justice Investigations,  
Disciplinary Actions,  
and Case Outcomes**

Racial disparities exist in investigations, disciplinary actions, and punishment of servicemembers in the military justice system. Our analysis of available data from fiscal years 2013 through 2017, which controlled for attributes such as race, gender, rank, education, and years of service, found racial disparities were more likely in actions that first brought servicemembers into the military justice system, but we identified

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<sup>21</sup>Pub. L. No. 116-92, §540(b)(2).

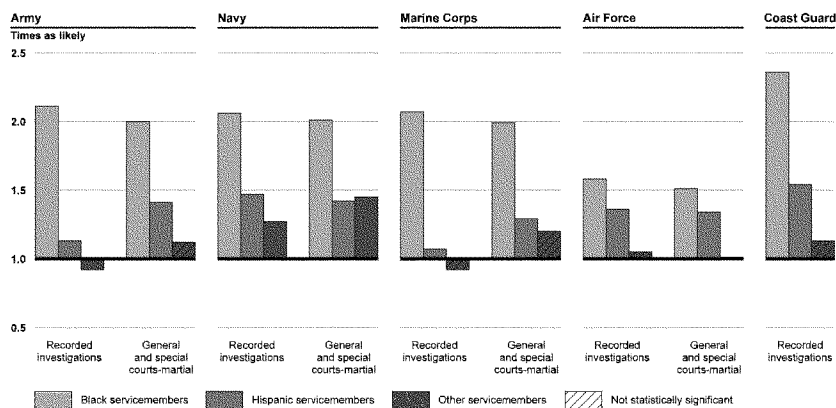
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	fewer statistically significant racial disparities in case outcomes—convictions and punishment severity. <sup>22</sup>
<b>Black and Hispanic Servicemembers Were More Likely to Be Subjects of Recorded Investigations and Tried in General and Special Courts-Martial</b>	Black and Hispanic servicemembers were more likely than White servicemembers to be the subjects of recorded investigations in all of the military services, and were more likely to be tried in general and special courts-martial in the Army, the Navy, the Marine Corps, and the Air Force, as shown in figure 2 below. We could not analyze Coast Guard cases due to the small number of general and special courts-martial adjudicated in the Coast Guard from fiscal years 2013 through 2017.

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<sup>22</sup>Our findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. We conducted multivariate regression analyses, which analyzed the degree to which one racial group was more likely or less likely than another racial group to be the subject of recorded investigations while controlling for race, gender, rank, and education. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4) at the request of Air Force officials. In the Army, we could not control for education, but we were able to control for age. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. A multivariate regression analysis allows us to test the association between a servicemember's race and the odds of a particular military justice action, while holding other servicemember attributes, such as rank, education, and gender, constant. For the purposes of consistency, in our multivariate regression analyses, we made all racial comparisons with White servicemembers as the reference category. For purposes of this report, we use the term "likelihood" when discussing the odds ratios from the results of our regression analyses. Odds ratios that are statistically significant and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be subject to a particular military justice action. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of GAO-19-344 for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and Appendixes IV through VIII for the demographic breakdowns of the modeled attributes in each of the military services.

**Figure 2: Likelihood of Recorded Investigations for Alleged Uniform Code of Military Justice Violations and Trial in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017**



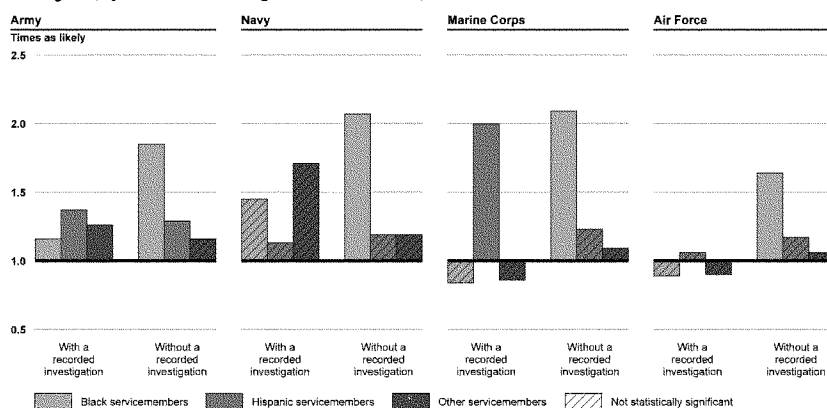
Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-648T

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be the subject of an investigation recorded in the services' military criminal investigative organizations databases for alleged violations of the Uniform Code of Military Justice, or to be tried in general and special courts-martial, after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. In the Army, we could not control for education, but we were able to control for age. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be the subject of a recorded investigation or to be tried in general or special courts-martial. Not statistically significant means that we could not conclude there was an association between race and the likelihood of a recorded investigation or a trial in general and special courts-martial. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

When separating general and special court-martial cases into those that either were or were not preceded by an investigation recorded in an MCIO database, we found fewer statistically significant racial disparities in most of the military services in general and special courts-martial that

were preceded by a recorded investigation.<sup>23</sup> However, as shown in figure 3 below, statistically significant racial disparities were also present in general and special courts-martial that did not follow a recorded investigation in all military services included in this analysis, which would include cases where the investigation was performed by the servicemember's command.

**Figure 3: Likelihood of Trial in General and Special Courts-Martial Following a Recorded Investigation and without a Recorded Investigation, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017**



Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-648T

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the

<sup>23</sup>Investigations are recorded in the MCIO databases when a servicemember is the subject of a criminal allegation made by another; for purposes of this report, we say the servicemember had a "recorded investigation" to describe these cases. For additional explanation of the databases we used to analyze investigations, please see appendix I in GAO-19-344. As discussed in figure 3 of GAO-19-344, the majority of general and special courts-martial, ranging from 53 percent to 74 percent, had a recorded investigation, while the remaining general and special courts-martial cases, ranging from 26 percent to 47 percent, would have been investigated by other sources, such as local civilian law enforcement, command investigations, or in the case of the Air Force, their military law enforcement forces.

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reference category to be tried in general and special courts-martial following an investigation recorded in the services' military criminal investigative organizations databases and without an investigation recorded in the services' military criminal investigative organizations databases, after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. In the Army, we could not control for education, but we were able to control for age and investigative entity. In the Navy and the Marine Corps, we also controlled for type of offense, investigative entity, and composition of the deciding panel. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be tried in general and special courts-martial following a recorded investigation and without a recorded investigation. Not statistically significant means that we could not conclude there was an association between race and the likelihood of trial in general and special courts-martial following a recorded investigation and without a recorded investigation. We made all racial comparisons with White servicemembers as the reference category. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

Specifically, as shown in figure 3 above, we found that:

**General and special courts-martial following a recorded investigation.** Black, Hispanic, and servicemembers in the Other race category in the Army, and Hispanic servicemembers in the Marine Corps were more likely than White servicemembers to be tried in general and special courts-martial following a recorded investigation, after controlling for other attributes.<sup>24</sup> We generally found fewer statistically significant differences compared to the results of our analyses for all special and general courts martial.

**General and special courts-martial without a recorded investigation.** Black servicemembers in all of the military services were more likely than White servicemembers to be tried in general and special courts-martial without a recorded investigation after controlling for other attributes. These differences were consistent with the differences we identified for general and special courts-martial overall, as shown in figure 2 above. Hispanic servicemembers in the Army were more likely than White servicemembers to be tried in general and special courts-martial without a recorded investigation, but we found no statistically significant differences

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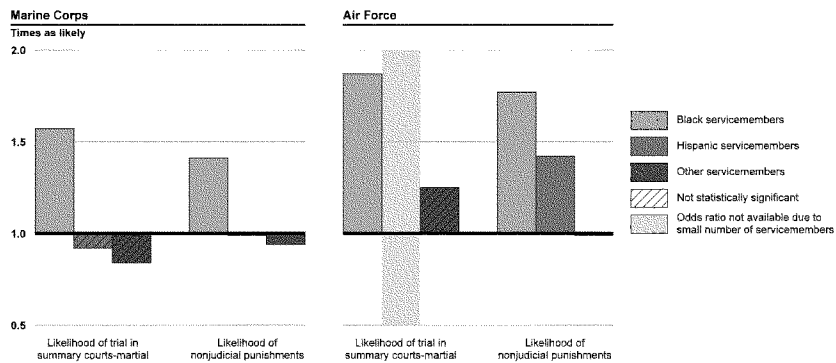
<sup>24</sup>We conducted multivariate regression analyses, which analyzed the degree to which one racial or ethnic group was more likely or less likely than another racial or ethnic group to be tried in general and special courts-martial that followed a recorded investigation while controlling for race, gender, rank, and education. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4). In the Army, we could not control for education, but we were able to control for age. A multivariate regression analysis examines several variables to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendixes II through VI of GAO-19-344 for the demographic breakdowns of the modeled attributes in each of the military services.

in the likelihood of Hispanic servicemembers to be tried in general and special courts-martial without a recorded investigation in the Marine Corps, the Navy, or the Air Force.

**Black Servicemembers Were More Likely to Be Subject to Summary Courts-Martial and Nonjudicial Punishment in the Air Force and Marine Corps, and the Other Services Lack Data**

Black servicemembers were more likely than White servicemembers to be tried in summary courts-martial and to be subjects of nonjudicial punishment in the Air Force and the Marine Corps, as shown in figure 4. The Army and the Navy did not maintain complete summary court-martial or nonjudicial punishment data, and the Coast Guard had too few summary courts-martial for us to analyze, and did not maintain complete nonjudicial punishment data.

**Figure 4: Likelihood of Trial in Summary Courts-Martial and Nonjudicial Punishments in the Air Force and the Marine Corps, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017**



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be tried in summary courts-martial or subject to nonjudicial punishments after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be subject to trial in summary courts-martial or nonjudicial punishment. Not statistically significant means that we could not conclude there was an association.

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between race and the likelihood of trial in summary courts-martial or nonjudicial punishment. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

We could not determine whether disparities existed among servicemembers tried in summary courts-martial or subject to nonjudicial punishments in the Army and the Navy because the Army and the Navy did not collect complete summary courts-martial or nonjudicial punishment data in their investigations, military justice, or personnel databases. Specifically, as part of our data reliability checks, we identified the total number of summary courts-martial that the Army and the Navy reported in the Court of Appeals for the Armed Forces annual reports for fiscal years 2013 through 2017, and compared these totals to the number of cases we identified in their military justice databases.<sup>25</sup> While our comparisons are not exact, due to differences in the dates we used to count the number of cases, we found that approximately 60 percent of the Army's reported summary courts-martial cases and less than 50 percent of the Navy's reported summary courts-martial cases were included in their military justice databases.<sup>26</sup>

The absence of complete summary court-martial data in the military justice databases of the Army and the Navy limits these services' visibility into any disparities that may exist among servicemembers involved in these types of military justice proceedings. On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016.<sup>27</sup> As part of these uniform standards, the military services were directed to collect certain information about all cases in their military

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<sup>25</sup>According to Army and Navy officials, the total numbers of summary courts-martial included in the Court of Appeals for the Armed Forces annual reports are taken from their internal monthly and quarterly staff judge advocate reports that were discussed earlier in this report.

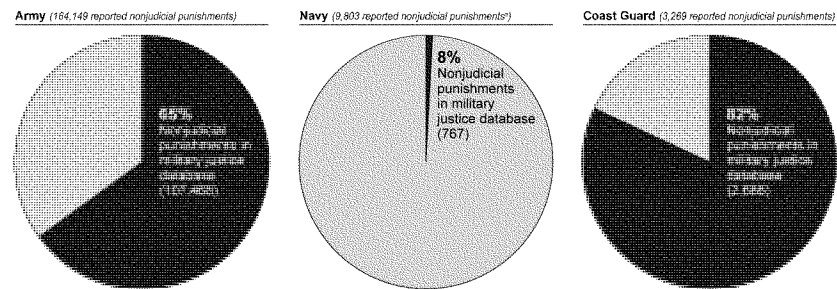
<sup>26</sup>We could not compare the total number of cases that we identified in the military justice databases precisely against the reported number of cases because we counted cases based on the date of referral, whereas the cases reported in the Court of Appeals for the Armed Forces annual report are based on the judgment date. However, we combined the total number of cases over a 5-year period, which made differences in which particular fiscal year a case was counted less important for these purposes. We found that while the total number of cases were different, the totals we computed provided a basis for comparison that allowed us to confirm that the military justice databases did not have complete data about summary courts-martial, as Army and Navy officials had told us.

<sup>27</sup>Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 §§5001-5542 (Dec. 23, 2016).

justice databases, which a DOD official said includes summary court-martial cases. The DOD General Counsel directed that military services are to implement the Secretary's direction no later than December 23, 2020.

Similarly, we identified the total number of nonjudicial punishments that the Army, the Navy, and the Coast Guard reported in the Court of Appeals for the Armed Forces annual reports for fiscal years 2013 through 2017, and compared these totals to the number of cases we identified in their military justice and personnel databases.<sup>28</sup> As shown in figure 5 below, we found that 65 percent of the Army's reported nonjudicial punishments, 8 percent of the Navy's reported nonjudicial punishments, and 82 percent of the Coast Guard's reported nonjudicial punishments were recorded in their military justice databases.

**Figure 5: Army, Navy, and Coast Guard Reported Nonjudicial Punishments Compared to Nonjudicial Punishments in Military Justice Databases, Fiscal Years 2013–2017**



Source: GAO analysis of Court of Appeals for the Armed Forces annual reports for fiscal years 2013-2017 and Army, Navy, and Coast Guard military justice databases. | GAO-20-648T

Note: Nonjudicial punishments are reported as a combined number for the Navy and the Marine Corps in the Court of Appeals for the Armed Forces annual reports.

<sup>28</sup>To calculate this reported figure for the Navy, we subtracted the number of Marine Corps nonjudicial punishment cases we identified in the Marine Corps personnel database from the reported totals.

<sup>29</sup>Nonjudicial punishments are reported as a combined total for the Navy and the Marine Corps in the Court of Appeals for the Armed Forces annual reports. As a result, to calculate this reported figure for the Navy, we subtracted the number of Marine Corps nonjudicial punishment cases that we had identified in the Marine Corps personnel database from the reported totals.

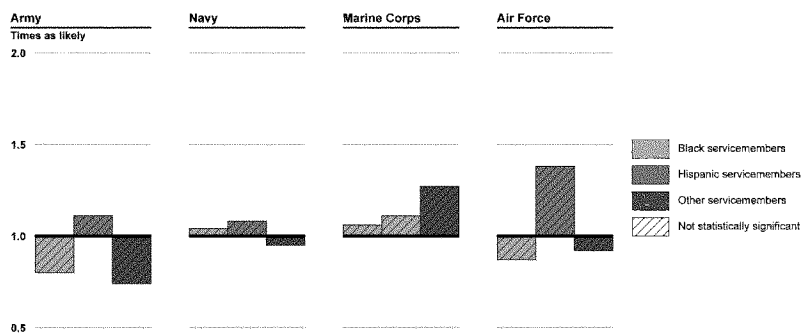
**Recommendation to include benefits and drawbacks of collecting and maintaining complete information for nonjudicial punishment.** In our May 2019 report, we made separate recommendations to the Army, the Navy, and the Coast Guard to consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the military service's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. DOD and DHS concurred with these recommendations. As of October 2019, Army and Navy officials said that they were developing the capability to collect data on race, ethnicity, gender, offense and punishment imposed for nonjudicial punishments. They expected to complete this action in December 2020. As of May 2019, the Coast Guard stated that it would consider the feasibility of collecting and maintaining complete information for all nonjudicial punishments cases through a military justice and personnel work group. The estimated completion date for this action had not been determined at that time.

**Few Statistically Significant Racial Disparities Exist in Likelihood of Conviction or Severity of Punishment, but the Coast Guard Does Not Collect and Maintain Complete Data**

We identified fewer statistically significant racial disparities in case outcomes—convictions and punishment severity. Among the servicemembers convicted in general and special courts-martials, we found no statistically significant differences regarding the likelihood of conviction among racial groups in the Army, the Navy, the Marine Corps, and the Air Force, while controlling for other attributes, as shown in figure 6 below.<sup>29</sup>

<sup>29</sup>We conducted multivariate regression analyses, which analyzed the degree to which one racial group was more likely or less likely than another racial group to be convicted in general and special courts-martial, while controlling for race, gender, education, rank, and offense type. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4) and composition of the deciding panel. In the Army, we could not control for education, but we were able to control for age and composition of the deciding panel. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. Not identifying any statistically significant findings means that we could not conclude there was an association between race and the likelihood of an outcome, in this case, conviction in general and special courts-martial. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of GAO-19-344 for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and see Appendixes IV through VII for the demographic breakdowns of the modeled attributes in each of the military services.

**Figure 6: Likelihood of Conviction in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017**



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be convicted in general and special courts-martial after controlling for race, gender, rank, education, and offense type. We also controlled for years of service among the lower enlisted ranks (E1-E4) and composition of the deciding panel in the Air Force. In the Army, we could not control for education, but we were able to control for age and composition of the deciding panel. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be convicted in general and special courts-martial. Not statistically significant means that we could not conclude there was an association between race and the likelihood of conviction in general and special courts-martial. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

In the military services that maintained complete punishment data—the Army, the Navy, the Marine Corps, and the Air Force—we found that minority servicemembers were either less likely to receive a more severe punishment in general and special courts-martial compared to White servicemembers, or there were no statistically significant differences in punishments among racial groups.<sup>30</sup> Specifically, as shown in figure 7, Black servicemembers were less likely to receive a more severe

<sup>30</sup>Not identifying any statistically significant findings means that we could not conclude there was an association between race and the likelihood of an outcome, in this case, punishment severity.

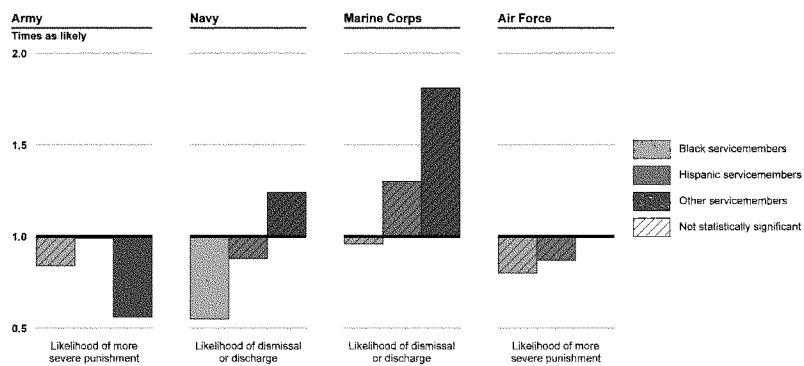
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punishment in general and special courts-martial compared to White servicemembers in the Navy, but there was no statistically significant difference for Black servicemembers in the Marine Corps, the Army, and the Air Force.<sup>31</sup> Additionally, there were no statistically significant differences for Hispanic servicemembers in the Navy, the Marine Corps, the Army, or the Air Force.

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<sup>31</sup>To assess punishment severity in the Navy and the Marine Corps, we conducted multivariate regression analyses to analyze the degree to which one racial or ethnic group was more likely or less likely than another group to receive a more severe punishment in general and special courts-martial while controlling for race, gender, education, rank, and offense type. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. See Appendix I in GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of that report for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and see Appendixes V and VI for the demographic breakdowns of the modeled attributes in the Navy and the Marine Corps. To assess punishment severity in the Army and the Air Force, we conducted ordered logistic regression analyses to analyze the degree to which one racial or ethnic group was more likely or less likely than another group to receive a more severe outcome in general and special courts-martial, while controlling for race, gender, education, rank, composition of the deciding panel, and offense type. In the Air Force, we controlled for years of service among the lower enlisted ranks (E1-E4). In the Army, we could not control for education, but we were able to control for age. Using the three punishment groups listed in table 8 in Appendix I of GAO-19-344, based on discussions with service officials, we determined that a sentence resulting in a dismissal or discharge was the most severe punishment outcome. An ordered logistic regression is an extension of the logistic regression model that applies to dependent variables where there are more than two response categories. See Appendix I in GAO-19-344 for a more detailed explanation of how we conducted our ordered logistic regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendixes IV and VII for the demographic breakdowns of the modeled attributes in the Army and the Air Force.

**Figure 7: Likelihood of Dismissal or Discharge in General and Special Courts-Martial in the Navy and Marine Corps, and of More Severe Punishment in the Army and the Air Force, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017**



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results for the Navy and the Marine Corps demonstrate the degree to which a racial group is more likely or less likely than the reference category to be dismissed or discharged after conviction in general and special courts-martial after controlling for race, gender, rank, education, and offense type. These partial ordered logistic regression analysis results for the Army and the Air Force demonstrate the degree to which a racial group is more likely or less likely than the reference category to receive a more severe punishment after conviction in general and special courts-martial after controlling for race, gender, offense type, and composition of the deciding panel. We also controlled for education and years of service among the lower enlisted ranks (E1-E4) in the Air Force. In the Army, we also controlled for age and rank. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be dismissed or discharged after conviction in general and special courts-martial, or receive a more severe or less severe punishment, respectively, than the reference category. Not statistically significant means that we could not conclude there was an association between race and the likelihood of dismissal or discharge, or receive a more severe punishment, after conviction in general and special courts-martial. Punishment severity in the Air Force, ordered from most to least severe, was (3) any type of dismissal or discharge (regardless of any confinement); (2) confinement without dismissal or discharge, and (1) all other possible sentencing options. In the Army, it was (3) any type of dismissal or discharge or confinement of more than 2 years, (2) confinement of less than 2 years without dismissal or discharge, and (1) all other possible sentencing options. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

We could not determine disparities in case outcomes—convictions and punishment severity—in the Coast Guard's general and special courts-

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martial for fiscal years 2013 through 2017 because the Coast Guard did not collect and maintain complete conviction and punishment data in its military justice database.<sup>32</sup> Specifically, 16 percent of all Coast Guard cases were missing conviction and punishment data. When broken down by court-martial type, 20 percent of general court-martial cases, 15 percent of special court-martial cases, and 4 percent of summary court-martial cases were missing conviction and punishment data. Coast Guard officials acknowledged that incomplete conviction and punishment data entry is a consistent problem. They said that data entry had improved recently. On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016.<sup>33</sup> As part of these uniform standards, the military services were directed to collect information about the findings for each offense charged, and the sentence or punishment imposed. The DOD General Counsel directed that the military services are to implement the Secretary's direction no later than December 23, 2020.

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**DOD and the Military Services Have Conducted Some Assessments of Military Justice Disparities, but Have Not Studied the Causes of Disparities**

DOD and the military services have taken some steps to study racial disparities in the military justice system over the last several decades, but they have not comprehensively studied the causes of any disparities. We previously reported in 1995 on DOD studies on discrimination and equal opportunity, and found DOD and the military services conducted seven

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<sup>32</sup>Although we could not analyze Coast Guard cases due to the small number of general and special courts-martial adjudicated in the Coast Guard from fiscal years 2013 through 2017, case outcomes could potentially be analyzed in the Coast Guard using a longer period of time than that used in our review.

<sup>33</sup>The Coast Guard is a voting member of the Joint Service Committee on Military Justice, and according to Coast Guard officials, they participated in the Joint Service Committee's subcommittee that developed the recommendations leading to the issuance of these standards. A Coast Guard official told us that they consider these standards to be binding on the Coast Guard.

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reviews of racial disparities in discipline rates between 1974 and 1993.<sup>34</sup> Since our 1995 report through 2016, DOD and military service assessments of military justice disparities have been limited. Officials in the Office of Diversity, Equity and Inclusion noted DOD has not conducted any department-wide assessments of racial disparities in military justice during this period. The military services' diversity offices also were not able to identify any service-specific reviews of disparities in military justice.

However, DOD has conducted climate surveys to address servicemembers' perceptions of bias. In addition, the military services have some initiatives to examine and address disparities in military justice. For example, the Air Force routinely analyzes military justice data using a rates-per-thousand analysis to identify whether certain demographic groups are tried by courts-martial or subject to nonjudicial punishments at higher rates than others.<sup>35</sup> These Air Force analyses found that Black servicemembers were more likely than White servicemembers to be subject to courts-martial and nonjudicial punishments from fiscal years 2013 through 2017, which is consistent with what we found.<sup>36</sup> However, the other services do not routinely conduct such analyses.

Officials from DOD and the military services acknowledged that they do not know the cause of the racial disparities that have been identified in the military justice system. This is because they have not conducted a comprehensive evaluation to identify potential causes of these disparities

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<sup>34</sup>GAO/NSIAD-95-103. For example, studies conducted in the 1970s and 1980s showed no disparities in discipline rates between Black and White servicemembers and found no evidence that minority groups received courts-martial or nonjudicial punishment out of proportion to certain types of violations. Studies published by the Navy and the Defense Equal Opportunity Management Institute in the 1990s found that Black servicemembers were overrepresented in the populations of servicemembers receiving judicial and nonjudicial punishments. See Appendix I of GAO/NSIAD-95-103 for a summary of each of the studies' findings and recommendations.

<sup>35</sup>A rates-per-thousand analysis computes the number of servicemembers within a demographic group that are subject to a particular military justice action, divided by the total number of servicemembers of that demographic group, multiplied by 1,000.

<sup>36</sup>In addition, in 2017, the Air Force assembled a working group called the Disciplinary Actions Analysis Team to examine the barriers certain demographic groups face to career success, including barriers to training opportunities, promotion, and retention. The working group was in the early stages of organizing and had not published any findings or recommendations for service leadership at the time our May 2019 report was issued.

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and make recommendations about any appropriate corrective actions to remediate the cause(s) of the disparities.

**Recommendation to identify causes of racial disparities in the military justice system.** In our May 2019 report, we recommended that the Secretary of Defense, in collaboration with the Secretaries of the military services and the Secretary of Homeland Security, conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address the causes of these disparities as appropriate. DOD partially concurred with this recommendation, agreeing with the content, but requesting that we modify the recommendation to direct it to more appropriate entities. We made that change before the report was issued.

In October 2019, DOD officials said that the department was exploring the feasibility of conducting a research project to delve into the differences in military justice data to inform implementation of this recommendation. At that time, they estimated that this research might be concluded in March 2021. In December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to conduct an evaluation consistent with our recommendation.<sup>37</sup> DOD was directed to commence or carry out these activities by June 2020. We believe that conducting a comprehensive analysis into the causes of disparities in the military justice system, would better position DOD and the military services to identify actions to address disparities, and thus help ensure that the military justice system is fair and just, a key principle of the UCMJ.

In conclusion, our analysis of available data identified racial disparities in all of the military services for servicemembers with recorded investigations, and for four of the military services for trials in special and general courts-martial, but these disparities generally were not present in the convictions or punishments of cases. These findings show an association for disparities at particular stages of the military justice process, but are inconclusive regarding other stages for the period covered by our analysis. However, our findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. The absence of complete nonjudicial punishment data in the Army, the Navy, and the Coast Guard

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<sup>37</sup>Pub. L. No. 116-92, §540(b)(3).

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limits their visibility into the vast majority of legal punishments imposed on servicemembers under the UCMJ every year. Without such data, these three military services will remain limited in their ability to assess or identify disparities among populations subject to this type of punishment.

Our May 2019 report included several recommendations with specific actions that can be taken to better position DOD and the military services to identify and address disparities, such as (1) developing the capability to present race and ethnicity data from the military services' personnel and investigations databases using the same categories as the military justice databases; (2) establishing criteria to determine when possible disparities among racial or ethnic groups should be further reviewed, and describing the steps that should be taken in such a review; and, importantly, (3) conducting a comprehensive evaluation of the causes of these disparities and taking steps to address them. To help build confidence that DOD is committed to a military justice system that is fair and just, and for the system of military law to be recognized as fair and just by both members of the armed forces and by the American public, DOD and the military services need to take actions to address these recommendations.

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Madam Chairwoman Speier, Ranking Member Kelly, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have at this time.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Brenda S. Farrell, Director, Defense Capabilities and Management, who may be reached at (202) 512-3604 or farrellb@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Kimberly C. Seay, Assistant Director; Christopher Allison; Renee S. Brown; Vincent M. Buquicchio; Christopher Gezon; Won (Danny) Lee; Serena C. Lo; Dae B. Park; Samuel J. Portnow; and Clarice Ransom.



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**Brenda S. Farrell**

Brenda S. Farrell is a Director in GAO's Defense Capabilities and Management team. She oversees a portfolio of audits on military and civilian personnel issues, including medical readiness, sexual assault, pilot workforce management, the personnel security clearance process, and whistleblower protections.

Since beginning her career at GAO in 1981, Brenda has conducted and led audits covering a broad range of defense and national security issues. She became a director in her current team in April 2007.

Brenda received a bachelor's degree in sociology from the University of Louisville, and in 2001 earned a master's degree in national resources strategy from the National Defense University, Industrial College of the Armed Forces. In March 2007, she graduated from the CAPSTONE program at the National Defense University for newly appointed general and flag officers.

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RECORD VERSION

STATEMENT BY

LIEUTENANT GENERAL CHARLES N. PEDE  
THE JUDGE ADVOCATE GENERAL  
UNITED STATES ARMY

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL  
COMMITTEE ON ARMED SERVICES  
UNITED STATES HOUSE OF REPRESENTATIVES

ON RACIAL DISPARITY IN THE MILITARY JUSTICE SYSTEM – HOW TO FIX THE  
CULTURE

SECOND SESSION, 116TH CONGRESS

JUNE 16, 2020

NOT FOR PUBLICATION UNTIL RELEASED BY THE  
COMMITTEE ON ARMED SERVICES

Madam Chairwoman Speier, Ranking Member Kelly, and members of the committee, thank you for the opportunity to appear before you today. We meet on a topic of vital importance, not just for the Army but for the Nation we serve: Ensuring that every Soldier who has sworn to defend our Constitution is guaranteed its foundational promise: equal justice – for all – under the Law. This has been my charter across my 32 years of service, and it is the commitment of the Army Judge Advocate General's Corps.

As recent events make clear, that promise remains unfulfilled for too many in our nation. On June 14, 2020, our Army celebrated its 245th birthday. Because of the service and sacrifice of many, I believe that, today, our Army represents our country's best ideals more than ever. Yet, I also believe that, like the country we also serve, there is still much more that must be done.

Our hearing today reminds us of the origins of our Uniform Code of Military Justice – it was born out of a concern for fundamental fairness for those suspected or accused of a crime. Our Code's due process guarantees – zealous defense, impartial judges, and robust appellate review – are its cornerstones. Over the years, and thanks to the work of many on this committee, the Code has been reformed and improved while its central purposes have been preserved: promoting justice while ensuring discipline. These are the pillars upon which our combat effectiveness rests, and they are the reasons why our Army is the best in the world.

But as good as our justice system is, we can never take for granted its health and its fairness. It requires constant care – by well-trained law enforcement and by educated commanders, who are advised by qualified, certified attorneys. Working together – along with this committee and the Congress – we have brought our Army and the other Services much closer to the full realization of the principle of equal justice for all.

But close is not good enough. In May 2019, the GAO found racial disparities in our military justice system. While it reached no conclusion on the causes of these disparities, this report raises difficult questions – questions that demand answers.

Sitting here today, we do not have those answers. So our task is to ask the right questions, and find the answers. I am joined by my partner in this effort, the Army's Provost Marshal General, Major General Kevin Vereen. General Vereen supervises our

military police, our criminal investigators, and our criminal laboratory. Based on the GAO's findings, the effort to examine our system is a shared responsibility – with us and in support of commanders. As we assess this issue – from investigations to command decisions to the disposition phase – we must do so with a common framework and the right stakeholders.

That effort must start with seeing ourselves. The Army is implementing the May 2019 GAO recommendations. We are also working with the other Services and DoD to execute Section 540I of the 2020 NDAA. That statute establishes a common construct among the Services and DoD to collect data on the demographics of accused Soldiers and victims and, using that information, to identify, investigate, and resolve a potential disparity in justice. Finally, we continue to improve our internal data sharing. For example, MG Vereen and I recently established a link between his law enforcement database and our military justice database – allowing a degree of interoperability that did not exist before.

These efforts began before the recent tragic events in our country, and the important national conversation that those events started across our Nation and within our formation. As that conversation has demonstrated, data alone cannot tell the full story. We must look beyond the data and ask the difficult questions.

General Vereen and I, along with Army leaders, need to look hard at ourselves. With commanders, we must look at the causes, and we must understand how preconceptions and prejudice can affect both the investigation and disposition of misconduct. While my experience tells me we have an extraordinarily healthy system of justice, I also recognize we simply do not know what we do not know – and it is our job to discover what needs fixing, and to fix it.

Finally, we know that each of us is shaped by our own backgrounds and experiences. As the Secretary, our Chief, and the Sergeant Major recently reminded us, and which I echoed in my own message to my Corps, leaders of all ranks must listen, with compassion and humility.

I believe our justice system is one of the best in the world, but I also know it is not perfect. A justice system must be both just for, and seen to be just by, all. We have much to learn, and more work to do. General Vereen and I, along with the Army

leadership, look forward to working with this Committee to understand the problem, and to address it. Thank you.

**The Judge Advocate General  
U.S. Army  
Lieutenant General Charles N. Pede**

Lieutenant General Charles N. Pede graduated from The University of Virginia receiving a commission through R.O.T.C. He thereafter attended the University of Virginia Law School. Lieutenant General Pede holds a LL.M in Military Law and a Masters Degree in National Security and Strategic Studies. He attended the Judge Advocate Officer Basic and Graduate Courses, the Army Command and General Staff College, and the Industrial College of the Armed Forces.

Lieutenant General Pede most recently served as the Assistant Judge Advocate General for Military Law and Operations at Headquarters, Department of the Army in the Pentagon, Washington, DC. His previous assignments include: Trial Defense Counsel, Mannheim Field Office, Germany; Chief, Criminal Law, and Chief, Administrative & International Law, 21st Theater Army Area Command, Mannheim, Germany and Army Forces-Turkey; Chief, Military Justice, 10th Mountain Division (Light Infantry), Fort Drum, New York and OPERATION RESTORE HOPE, Mogadishu, Somalia; Professor of Law, Criminal Law Department, The Judge Advocate General's Legal Center and School, Charlottesville, Virginia; Assignments Officer, Office of The Judge Advocate General; Assistant Executive Officer, Office of The Judge Advocate General, Washington, DC; Staff Judge Advocate, 10th Mountain Division (Light Infantry), Fort Drum, New York and Joint Task Force Mountain and Combined Joint Task Force-180, OPERATION ENDURING FREEDOM, Afghanistan; Legislative Counsel, Office of the Chief Legislative Liaison, Pentagon, Washington, DC; Chief, Criminal Law Division, Office of The Judge Advocate General; Staff Judge Advocate, United States Forces Iraq, OPERATION IRAQI FREEDOM, Baghdad, Iraq; Chief, Criminal Law Division, Office of The Judge Advocate General; Executive Officer to The Judge Advocate General of the Army, Washington, DC; Commander, United States Army Legal Services Agency and Chief Judge, United States Army Court of Criminal Appeals, Fort Belvoir, Virginia; and Commander of The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

Lieutenant General Pede's awards include the Defense Superior Service Medal, the Legion of Merit with three Oak Leaf Clusters, the Bronze Star with Oak Leaf Cluster, and the Meritorious Service Medal with six Oak Leaf Clusters. He is also entitled to wear the Parachutist Badge and the Army Staff Identification Badge.

Lieutenant General Pede is married and has one son.

**NOT FOR PUBLICATION  
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**STATEMENT OF  
VICE ADMIRAL JOHN G. HANNINK, U.S. NAVY  
JUDGE ADVOCATE GENERAL  
BEFORE THE  
SUBCOMMITTEE ON MILITARY PERSONNEL  
OF THE  
HOUSE ARMED SERVICES COMMITTEE  
ON  
RACIAL DISPARITY  
IN THE  
MILITARY JUSTICE SYSTEM**

**16 June 2020**

**NOT FOR PUBLICATION  
UNTIL RELEASED BY THE  
HOUSE ARMED SERVICES COMMITTEE**

Chairwoman Speier, Ranking Member Kelly, and distinguished Members of the Military Personnel Subcommittee, thank you for the opportunity to testify on the issue of racial disparity in the military justice system. This is an important issue because it deals with treating people right. Treating people how they deserve to be treated.

The Navy is comprised of men and women who work together to accomplish the mission. Navy guidance emphasizes that in working together, every individual Sailor is entitled to be treated with dignity and respect, and to work in an environment free from unlawful discrimination. The Chief of Naval Operations (CNO) emphasized this in a recent message to the Navy: “[I]n the Navy, we talk a lot about treating people with dignity and respect – in fact, we demand it. It’s one of the things that makes us a great Navy . . . .”<sup>1</sup> Then, observing recent events in our nation, the CNO remarked that “we can’t be under any illusions about the fact that racism is alive and well in our country. And I can’t be under any illusions that we don’t have it in our Navy.”<sup>2</sup> In addition to this message to the Navy, the CNO recently directed his staff to begin crafting an order that would prohibit the Confederate Battle Flag from all public spaces and work areas aboard Navy installations, ships, aircraft and submarines. The order is meant to ensure unit cohesion, preserve good order and discipline, and uphold the Navy’s core values of Honor, Courage, and Commitment.

The Navy emphatically and unequivocally denounces racism. It is antithetical to our core values. It is also antithetical to our duties and obligations as servicemembers to support and defend the Constitution – and to help protect the rights afforded to all Americans by our Constitution.

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<sup>1</sup> [https://www.navy.mil/submit/display.asp?story\\_id=113160](https://www.navy.mil/submit/display.asp?story_id=113160)

<sup>2</sup> *Id.*

The military justice system is a foundational part of the overall military environment, so it too must operate without unlawful discrimination. As the Manual for Courts-Martial states, the purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.<sup>3</sup> To do these things, Sailors – regardless of race or ethnicity – must be able to have full confidence in the fairness of the system.

#### **The GAO Report – Findings on Disparity**

In May 2019, the Government Accountability Office (GAO) released a report covering its analysis of investigative and disciplinary data held by the military services for fiscal years 2013 through 2017. Controlling for attributes like rank and education, the GAO identified some disparities related to race and ethnicity.

For the Navy, the GAO found that Black servicemembers were twice as likely as White servicemembers to be the subject of an investigation in the database used by the Naval Criminal Investigative Service (NCIS) and some other Navy law enforcement personnel. The GAO also compared data for Hispanic servicemembers (regardless of race) to data for White servicemembers, finding that Hispanic servicemembers were approximately one-and-one-half times as likely as White servicemembers to be the subject of such an investigation. The GAO also analyzed data related to the likelihood of servicemembers being tried by a General or Special Court-Martial. The results were very similar. Again, Black servicemembers were twice as likely as White servicemembers to face such a court-martial, and Hispanic servicemembers

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<sup>3</sup> MANUAL FOR COURTS MARTIAL (2019 ed.) Part I, Para 3 (“Nature and Purpose of military law”).

approximately one-and-one-half times more likely than White servicemembers to face such a court-martial.

The GAO also analyzed race and ethnicity data directly related to two aspects of the court-martial process: the likelihood of conviction and the likelihood of receiving a Dismissal or Discharge as part of the sentence. Related to convictions at Navy courts-martial, the GAO found that race and ethnicity were not statistically significant factors. As I understand the report, this means that GAO could not conclude whether there was an association between race and the likelihood of a conviction. Related to sentences, the GAO found that Black servicemembers were approximately half as likely as White servicemembers to receive the serious punishment of a Discharge or Dismissal, and could not identify a statistically significant difference between Hispanic and White servicemembers. The GAO report did not attempt to identify the cause or causes of the disparities noted, and emphasized that the analysis should not be used to make conclusions about the presence or absence of unlawful discrimination.

#### **The GAO Report – Findings on Data**

The GAO report determined that the military services do not collect and maintain consistent information about race and ethnicity in their investigations, military justice, and personnel databases. The GAO noted that consistent data could enable DoD and the services to evaluate the causes of disparities, and better position them to address the causes and help ensure that the military justice system is fair and just.

#### **The GAO Report – Recommendations for Navy**

The GAO report made two recommendations specific to the Navy, and two recommendations applicable to the DoD working in collaboration with all the military services.

Recommendation 4: Standardize race and ethnicity data. GAO recommended that the Secretary of the Navy develop the capability to include race and ethnicity data in investigation and personnel databases. The race and ethnicity categories should comply with the December 2018 uniform standards for the military justice databases, either by (1) modifying the Navy's investigations and personnel databases to collect and maintain the data in accordance with the uniform standards, (2) developing the capability to aggregate the data into the race and ethnicity categories established in the uniform standards, or (3) implementing another method identified by the Navy.

Related to this recommendation, military justice databases are being updated consistent with Section 540I(b)(1) of the National Defense Authorization Act for Fiscal Year 2020. Section 540I(b)(1) requires the collection of data on the race, ethnicity, and gender of the victim and the accused for each court-martial, and the reporting of this data in each military service's Annual Report on Military Justice.

The updated Navy and Marine Corps Case Management System (CMS) database includes dropdown list menus for race and ethnicity categories that are consistent with the Secretary of Defense-issued uniform standards. My office has issued guidance mandating that Navy Region Legal Service Offices enter into CMS the required data for all general and special courts-martial completed on or after June 17, 2020. Additionally, my office is reviewing the process by which information concerning summary courts-martial is reported, so that we can fully meet the Section 540I requirements with regard to all three levels of courts-martial.

Regarding other databases, the Naval Criminal Investigative Service is updating its Consolidated Law Enforcement Operations Center database, which tracks investigations, to include racial and ethnic categories consistent with the Secretary of Defense-issued uniform

standards. The Navy Personnel Command database has not been updated, as DoD Manual 1336.05, Enclosure 13, requires the use of 32 “race codes.”<sup>4</sup> These include not only the race categories used by the uniform standards (American Indian/Alaskan Native; Asian; Black; Native Hawaiian/Pacific Islander; and White), but also a range of categories using a combination of these races. More review is needed to ensure data can be collected or aggregated appropriately.

Recommendation 9: Nonjudicial punishment data. The GAO recommended the Secretary of the Navy consider the feasibility of collecting and maintaining complete information for nonjudicial punishment (NJP) cases in one database, such as information on race, ethnicity, gender, offense, and punishment imposed. As the wording of this recommendation suggests, the Navy does not have a comprehensive database for NJP cases. Recent efforts to build this capability as part of a “cradle to grave” justice information system have not come to fruition, but those efforts continue. Pending development of such a comprehensive database, we are reviewing the process by which data concerning NJP cases are reported, to identify options for meeting this recommendation.

Recommendations 7 and 11: Enabling and conducting future studies. GAO recommended that the Secretary of Defense, in collaboration with the Secretaries of the military services, establish criteria to specify when data indicating possible disparities in the military justice system should be further reviewed. GAO also recommended that these officials (1) conduct an evaluation to identify the causes of any disparities, and (2) take steps to address those causes as appropriate. I fully support these initiatives.

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<sup>4</sup> DoD Manual (DoDM) 1336.05, Defense Manpower Data Center Domain Values for Military Personnel Data Extract, Encl 13 (“Race Code”), July 28, 2009, Incorporating Change 1, February 26, 2013.

**Other Actions**

Since the January 2019 effective date of the Military Justice Act of 2016, the Navy JAG Corps has provided training to convening authorities on the newly established non-binding disposition guidance contained in the Manual for Courts-Martial. This guidance helps convening authorities exercise their responsibility in a reasoned and structured manner, consistent with the principle of fair and evenhanded administration of law. In addition to providing commanders with appropriate considerations, the guidance provides inappropriate considerations that must never influence a commander's decision-making in military justice cases. Among the inappropriate considerations are the "accused's race, ethnicity, religion, gender, sexual orientation, national origin, or lawful political association, activities, or beliefs."

Training is also an important component of Navy efforts to eliminate racial bias. Prospective Commanders and Senior Enlisted Advisors receive training on bias awareness at the Naval Leadership and Ethics Center. On the law enforcement side, I understand that NCIS basic students receive Cross Cultural Communication training, in which students learn to identify racial profiling, the negative impacts that it may have on effective law enforcement, and what to do if they become aware that a fellow special agent might be racially profiling individuals. Similarly, the Navy JAG Corps is committed to educating its personnel on the concept of unconscious bias so they can be aware of this phenomenon and take steps to address it when making decisions. Specifically related to courts-martial, the military judges of the Navy-Marine Corps Trial Judiciary participated in a block of instruction on unconscious bias in February 2020 at the Joint Military Judges Annual Training. Similar training is on the agenda for February 2021.

**Conclusion**

The Navy is committed to ensuring that all Sailors are treated with dignity and respect, and have a workplace free from unlawful discrimination. As part of this effort, the Navy is dedicated to ensuring the military justice system is fair and just for everyone regardless of race or ethnicity. I look forward to working with you and others in efforts to improve our data collection, and to better identify, understand, and address the causes of racial disparities in the military justice system.

**Vice Admiral John G. Hannink**  
**Judge Advocate General**  
**Judge Advocate General's Corps**

Vice Adm. John G. Hannink is a 1985 graduate of the U.S. Naval Academy. He completed pilot training at Naval Air Station Kingsville, Texas. While assigned to Sea Control Squadron (VS) 33, he deployed to the Western Pacific and Indian Ocean onboard USS Nimitz (CVN 68). He served as the squadron's public affairs officer, quality assurance officer and nuclear safety officer.

Hannink then entered the Navy's Law Education Program, and graduated from Baylor Law School in 1994. He later earned a Master of Laws in International Law from George Washington University Law School.

Hannink has completed several assignments within Naval Legal Service Command (NLSC) and the Office of the Judge Advocate General (OJAG). NLSC assignments include personal representation attorney and prosecutor at Naval Station San Diego, and commanding officer of Region Legal Service Office Southeast. OJAG assignments include general litigation attorney, and executive assistant to the deputy judge advocate general and the judge advocate general.

He also served as assistant judge advocate general (Operations and Management) and chief of staff, Region Legal Service Offices.

Hannink's staff and operational experience includes deputy staff judge advocate (SJA) for U.S. 5th Fleet, SJA for U.S. 2nd Fleet, special assistant to the Secretary of the Navy, deputy legal counsel to the Chairman of the Joint Chiefs of Staff, special counsel to the Chief of Naval Operations, and SJA for U.S. Pacific Command. He also served as a fellow on the Chief of Naval Operations Strategic Studies Group, Newport, Rhode Island.

Hannink served from 2015-2018 as the deputy judge advocate general of the Navy and commander, Naval Legal Service Command. As commander, Naval Legal Service Command, he led the judge advocates, enlisted legalmen and civilian employees of 14 commands worldwide, providing prosecution and defense services, legal assistance services to individuals and legal support to shore and afloat commands.

Hannink is the 44th judge advocate general of the Navy. Hannink is the principal military legal counsel to the Secretary of the Navy and Chief of Naval Operations. He also leads the 2,300 attorneys, enlisted legalmen and civilian employees of the worldwide Navy JAG Corps community.

Hannink is a member of the state bar of Texas. His military awards include the Defense Superior Service Medal, the Legion of Merit and the Meritorious Service Medal.

Updated: 17 September 2018

DEPARTMENT OF THE AIR FORCE PRESENTATION  
TO THE SUBCOMMITTEE ON MILITARY PERSONNEL  
COMMITTEE ON ARMED SERVICES  
UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: RACIAL DISPARITIES IN MILITARY JUSTICE

STATEMENT OF:

LIEUTENANT GENERAL JEFFREY A. ROCKWELL  
THE JUDGE ADVOCATE GENERAL, UNITED STATES  
AIR FORCE

June 16, 2020

NOT FOR PUBLICATION UNTIL RELEASED BY THE  
COMMITTEE ON ARMED SERVICES  
UNITED STATES HOUSE OF REPRESENTATIVES

Madam Chair Speier, Ranking Member Kelly, distinguished members of the Subcommittee; thank you for the opportunity to address the importance of eradicating racial disparity in our military justice system and ensuring a fair and just system for all of our Air and Space Professionals in the Department of the Air Force.

During this important time in America, we are committed across our Air and Space Forces to address issues of racism, and the importance of diversity and inclusion. A diverse and inclusive force is absolutely necessary to defend a diverse and inclusive Nation.

As The Judge Advocate General of the Department of the Air Force, it is my responsibility to ensure that it maintains a fair and equitable military justice system, to include eliminating racism and any discriminatory practices in the administration of military justice. Like many of our civilian counterparts, we collect data on race as part of the military justice process. Our data shows that black male Airmen below the rank of E-5 and with less than 5 years of time in service are statistically almost two times more likely to receive non-judicial punishment or face court-martial than similarly situated white Airmen. While we review specific cases to ensure there is not disparate treatment in those cases based on protected class, we do not have clear answers or underlying reasons as to why that disparity exists, or what may be causal before the Airman becomes part of the military justice system. Like all difficult issues the Nation faces, solutions to address that disparity will require a whole of government, organizational and societal approach. We are committed to working with you to ensure that our military justice system is fair and just, and being part of the solution.

**I. History and Purpose of Military Justice and Discipline.** Throughout our history, we have defended the Nation, and fought and won our wars because of four simple yet key components: first, the best people; second, the best training; third, the best equipment; and fourth, the most important element that binds together the other three—discipline. Discipline lies at the heart of what the Nation expects of its military in the execution of our national defense mission. Discipline must be developed from day one. Discipline must also be earned by the military establishment by treating all of our Air and Space Professionals with dignity and respect, with equal opportunity to meet, and exceed, standards. We try to do that from day one through inclusion, feedback, mentoring, and the administration of progressive discipline when Airmen

make mistakes, before they become a disciplinary statistic. As our Secretary stated last week, “Our diversity strengthens us just as much as our common mission unifies us. The Department of the Air Force strives to foster a culture of inclusion and respect where every Airman and Space Professional is valued for the talents he or she brings to the Department regardless of race, color or creed.”

Our struggle against racism and other forms of discrimination cannot be viewed as finite battles; rather our approach must be infinite, a constant struggle for betterment. When President Harry S. Truman signed Executive Order 9981 in 1948, he set in motion racial integration of our Armed Forces. Twenty five years later, a 1972 Air Force Task Force found intentional and systemic discrimination in the military justice system. The 1972 study made numerous recommendations to address the racial disparity, many of which were adopted. Today, while we believe that we no longer have intentional discrimination in our processes, the data still shows a disparity in black, male Airmen below the rank of E-5 and with less than 5 years of time in service. The fact that disciplinary racial disparity in the aggregate has persisted despite the adoption of significant institutional changes demonstrates the complex and challenging nature of the issue, symptomatic or indicative of one of many symptoms. The problem is daunting and complex; but that should not stop us from asking and exploring what we can do in military justice and the disciplinary process to serve as part of the solution set.

Judge advocates, as members of both the professions of law and of arms, are duty-bound and committed to the principles that have enabled our country’s system of laws and our military to thrive. We are duty-bound to a constitutionally sound and fair military justice system. We are committed to uphold the purpose of the military justice system and military law as captured in the Preamble to the Manual for Courts-Martial: “to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.” These first three – ‘promoting justice, maintaining good order and discipline, and promoting efficiency and effectiveness’ – although sometimes competing are inexorably linked. The three come together to provide what the Nation asks of us, to ‘thereby strengthen the national security of the United States.’ These principles guide us.

**II. Military Justice Data.** The Air Force draws military justice data from our Automated Military Justice Analysis and Management System (AMJAMS). AMJAMS was designed to assist in highlighting and eliminating excessive delays and in monitoring the current status of military justice actions from inception to conclusion, and has been used to collect detailed information on offenses and processing timelines as well as demographic information on the participants in the judicial and non-judicial punishment process. It does not track administrative actions, such as Letters of Counseling, Admonishment or Reprimand, or administrative discharges. While AMJAMS accurately captures the raw data associated with military justice actions, which can be useful in assessing overall trends and processing times, it cannot explain what factors are causing any particular trend observed in the data, to include whether Air and Space Professionals are being treated in the same manner before disciplinary actions result in non-judicial punishment or court-martial. Addressing these issues requires a holistic approach.

**III. Holistic approach.** Every day, across the entire continuum of discipline, we are committed to finding new solutions and approaches to our challenges. Every Air and Space professional, military and civilian, from the most senior to the most junior, is responsible for fostering and reinforcing a culture of inclusion, dignity and respect. Like everything we do in the military, this requires a team effort and holistic approach to get to root causes. We can frame the approach by asking ourselves four juxtaposing questions: (1) while easy to say the data merely reflects the society from where we come, what can we do in the armed services?; (2) while easy to say the specific cases show no actual disparate treatment in decision, are we including, mentoring and administering progressive discipline equally to all before they become part of the military justice system?; (3) while easy to say justice was color blind in each of the cases, are there administrative and substantive due process issues, both regulatory and in law, which are discriminatory in treatment or impact?; and (4) while easy to say the data shows that the aggregate disparity disappears after the first five years of service in the force, what can we do to eradicate that disparity altogether?

We look forward to working with the Subcommittee on this most important issue.

### **Lieutenant General Jeffrey A. Rockwell**

Lt. Gen. Jeffrey A. Rockwell is The Judge Advocate General, Headquarters U.S. Air Force, Arlington, Virginia. In that capacity, General Rockwell serves as the Legal Adviser to the Secretary and Chief of Staff of the Air Force, and all officers and agencies of the Department of the Air Force. He directs all judge advocates in the performance of their duties and is responsible for the professional oversight of more than 2,200 judge advocates, 350 civilian attorneys, 1,400 enlisted paralegals and 500 civilians in the Total Force Judge Advocate General's Corps worldwide, overseeing military justice, operational and international law, and civil law functions at all levels of Air Force command.

General Rockwell entered the Air Force through the Direct Appointment Program in June 1987. He has served as the Deputy Judge Advocate General, Commander of the Air Force Legal Operations Agency, and as a Staff Judge Advocate five times. He has written on several national security law matters, advancing Department of Defense and United States government interests on a variety of topics to include: Military Justice; United States government liability for civilian use of the Global Positioning System; customary international law; European Union law; rule of law development in Romania; the Solidarity movement in Poland; an interagency legal capability for rule of law development and State-Building; and the politics of strategic aircraft modernization. He has also authored several chapters in the DoD Law of War Manual, the Army Operational Law Handbook, and the Air Force Operations and the Law Handbook, in addition to contributing to the Tallinn Manual on International Law Applicable to Cyber Operations, and current efforts to publish manuals on international law applicable to military uses of outer space.

#### **EDUCATION**

1984 Bachelor of Science, Accounting, summa cum laude, West Virginia University  
 1987 Juris Doctor, West Virginia University  
 1992 Squadron Officer School, Maxwell Air Force Base, Ala., by correspondence  
 1994 Air Command and Staff College, Maxwell AFB, Ala., by seminar  
 1996 Master of Laws, Air and Space Law, Dean's Honours List, McGill University, Montreal, Canada  
 2001 Air War College Maxwell AFB, Ala., by correspondence  
 2007 Master of Science, National Security Strategy, National War College, Fort McNair, Washington, D.C.

#### **ASSIGNMENTS**

June 1987 – January 1989, Assistant Staff Judge Advocate, 437th Air Base Group, Charleston Air Force Base, S.C.  
 January 1989 – September 1992, Deputy Staff Judge Advocate, 406th Tactical Fighter Training Wing, Zaragoza Air Base, Spain  
 September 1992 – June 1994, Labor Counsel, General Litigation Division, Air Force Legal Services Agency, Washington, D.C.  
 June 1994 – August 1995, Trial Attorney, General Litigation Division, Air Force Legal Services Agency, Washington, D.C.  
 August 1995 – August 1996, LL.M. Student, McGill University, Montreal, Canada  
 August 1996 – June 1998, Deputy Chief, Operations Law, International and Operations Law Division, Washington D.C.  
 June 1998 – June 2001, Staff Judge Advocate to the Defense Attaché and Commander-in-Chief, Pacific Command Representative to Australia, U.S. Embassy, Canberra, Australia  
 June 2001 – July 2003, Staff Judge Advocate, 48th Fighter Wing, RAF Lakenheath, U.K.  
 July 2003 – July 2004, Director of Staff, 48th FW, RAF Lakenheath, U.K.  
 July 2004 – July 2005, Chief, Military Justice Division, Air Force Legal Services Agency, Washington, D.C.  
 July 2005 – July 2006, Executive to The Judge Advocate General, Headquarters U.S. Air Force,

Arlington, Va.

July 2006 – June 2007, Student, National War College, Fort McNair, Washington, D.C.

June 2007 – June 2008, Staff Judge Advocate, Air Force Special Operations Command, Hurlburt Field, Fla.

June 2008 – July 2012, Staff Judge Advocate, U.S. Air Forces in Europe, Ramstein AB, Germany

July 2012 – May 2013, Staff Judge Advocate, Air Force Space Command, Peterson AFB, Colo.

May 2013 – May 2014, Commander, Air Force Legal Operations Agency, Joint Base Andrews, Md.

May 2014 – May 2018, Deputy Judge Advocate General, Headquarters U.S. Air Force, Arlington, Va.

May 2018 – present, The Judge Advocate General, Headquarters U.S. Air Force, Arlington, Va.

#### **MAJOR AWARDS AND DECORATIONS**

Distinguished Service Medal

Legion of Merit with oak leaf cluster

Defense Meritorious Service Medal

Department of State Meritorious Honor Award

Meritorious Service Medal with four oak leaf clusters

Air Force Commendation Medal with oak leaf cluster

#### **EFFECTIVE DATES OF PROMOTION**

First Lieutenant 29 June 1987

Captain 29 Dec. 1987

Major 1 April 1995

Lieutenant Colonel 1 Aug. 2000

Colonel 1 April 2005

Major General 22 May 2014

Lieutenant General 18 May 2018

(Current as of January 2019)

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HOUSE ARMED SERVICES COMMITTEE

**STATEMENT  
OF  
MAJOR GENERAL DANIEL J. LECCE  
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS  
BEFORE THE  
HOUSE ARMED SERVICES COMMITTEE  
SUBCOMMITTEE ON MILITARY PERSONNEL  
CONCERNING  
“RACIAL DISPARITY IN UCMJ ACTIONS”  
ON  
16 JUNE 2020**

NOT PUBLIC UNTIL RELEASED BY THE  
HOUSE ARMED SERVICES COMMITTEE

## INTRODUCTION

Madam Chair Speier, Ranking Member Kelly, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today.

### RACIAL DISPARITY AND COLLECTING DEMOGRAPHIC INFORMATION IN UCMJ ACTIONS

In May 2019, the Government Accountability Office (GAO) released a report entitled, “DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities.” While this report found that race and gender were not statistically significant factors in the likelihood of conviction in general and special courts-martial, it did find disparities in the criminal investigation and charging processes. These disparities in our administration of justice warrant the Marine Corps’ immediate scrutiny and demand continuing action. The trust Marines place in one another on a daily basis make the elimination of racial inequality an imperative. As the Commandant of the Marine Corps recently explained, any form of racial inequality – whether it be direct or indirect, intentional or unintentional – threatens cohesion in the Marine Corps and must be addressed head-on. “Only as a unified force, free from discrimination, racial inequality, and prejudice can we fully demonstrate our core values, and serve as the elite warfighting organization America requires and expects us to be.” To that end, the Marine Corps is committed to implementing the findings of the GAO report.

#### GAO Report Findings and Recommendations

The study made eleven separate recommendations, two of which require Department of the Navy action. First, (Recommendation Four) the GAO highlighted the need for the Department to “develop the capability to present servicemembers’ race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established by the December 2018 uniform standards for the military justice databases[.]” The second recommendation

(Recommendation Nine) stated “the Secretary of the Navy should consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Navy’s databases,” to include data on the servicemembers’s race, ethnicity, gender, offense, and punishment imposed.

***GAO Report – Recommendation Four***

With respect to Recommendation Four, Marine Corps Judge Advocate Division has modified our service-wide military justice case management system to capture GAO-recommended demographic data. Data collected and maintained in the Case Management System (CMS) includes information relevant to the court-martial process from the inception of charges to the final appeal. Marine Corps Judge Advocate Division has updated the data fields in CMS to record the race, ethnicity, and gender of both the accused and the victim in accordance with the uniform definitions of race and ethnicity established by the Office of Management and Budget Statistical Policy Directive No. 15, entitled Race and Ethnic Standards for Federal Statistics and Administrative Reporting. The Marine Corps will start reporting this information in its annual military justice report as required by Article 146a of the Uniform Code of Military Justice and the General Counsel of the Department of Defense’s Memorandum of 8 June 2020, which implements section 5401(b)(1) of the National Defense Authorization Act for Fiscal Year 2020.

***GAO Report – Recommendation Nine***

With respect to Recommendation Nine, the Marine Corps Total Force System collects information on nonjudicial punishments, to include race, gender, and ethnicity. However, in order to obtain data regarding the specific offenses and punishments imposed, each individual case file must be examined. Additionally, a departmental instruction requires General Court-Martial Convening Authorities to submit a quarterly report of military justice actions taken, including summary courts-martial and nonjudicial punishments to Marine Corps Judge Advocate Division.

Currently, these reports do not collect demographic information. However, pending the development of a comprehensive database, we are considering modifying the reporting system to require inclusion of demographic data consistent with the Secretary of Defense-issued uniform standards and OMB standards.

Better data collection brought about by changes within the last year will help us to collectively and comparatively assess data to identify any racial disparities. But we will not wait for better data to address and fight racial inequality now.

#### **Ongoing Actions**

Since the January 2019 effective date of the Military Justice Act of 2016, the Marine Corps has provided training to convening authorities on the newly established non-binding disposition guidance contained in the Manual for Courts-Martial. This guidance provides convening authorities appropriate and inappropriate factors to consider when disposing of allegations under the UCMJ to ensure these commanders exercise authority in a reasoned and structured manner, consistent with the principle of fair and equitable administration of law. Among the inappropriate considerations are the “accused’s race, ethnicity, religion, gender, sexual orientation, national origin, or lawful political association, activities, or beliefs.”

Training and education also serve as fundamental components for how the Marine Corps strives to eliminate racial bias in its military justice system. The Marine Corps is pursuing the inclusion of an unconscious bias curriculum at every level of professional development, from the most junior Marine to senior leadership. Prospective commanders and senior enlisted leaders receive training on bias awareness through Marine Corps University. Our trial military judges also participated in a block of instruction on unconscious bias in February 2020 at the Joint Military Judges Annual Training, which is also on the agenda for the February 2021 training.

In addition to training, we must also strive to eliminate divisive symbols. To this end, the Commandant directed the removal of the Confederate battle flag from our installations. This removal applies to personal clothing and apparel, coffee mugs, posters, bumper stickers, and the front porches and yards of public private venture housing. Prohibiting the display of the Confederate battle flag supports the Marine Corps' core values, reinforces unit cohesion and security, and preserves good order and discipline. But as our Commandant recently explained, it is not enough to remove symbols that cause division – rather, we also must strive to eliminate division itself.

#### **CONCLUSION**

The Marine Corps is fully committed to implementing the recommendations of the GAO report and any future efforts to address racial disparity in the uniform code of military justice. I look forward to working with Congress to meet our shared goal.

**Major General Daniel J. Lecce**  
**Staff Judge Advocate to the Commandant of the Marine Corps**

Major General Daniel J. Lecce was born and raised in Pittsburgh, Pennsylvania. He is a 1984 graduate of the University of Pittsburgh and was commissioned a Second Lieutenant in the United States Marine Corps in 1986. He received his Juris Doctorate from the University of Pittsburgh School of Law in 1987.

He first served at Camp Pendleton, California, where he was assigned as civil law attorney and trial counsel. He later served as the Commanding Officer, Headquarters and Service Company, Marine Corps Base, Camp Pendleton. He was transferred to the 3rd Force Service Support Group, Okinawa, Japan, in 1992 and served as a legal assistance attorney and trial counsel. Major General Lecce next served as an Assistant Professor, United States Naval Academy (Leadership and Law), from 1993 to 1996. He was selected and attended the Judge Advocate General of the Army School from which he received a Masters of Law in Operational and International Law in 1997.

In 1997 Major General Lecce was transferred to 1st Force Service Support Group at Camp Pendleton, California, where he served as Senior Defense Counsel and Officer-in-Charge of Legal Assistance. In 1999 he deployed as the Staff Judge Advocate, 15th Marine Expeditionary Unit, and participated in the United Nations' Operation Stabilise (East Timor) and Operation Southern Watch (Persian Gulf). He was later transferred to Norfolk, Virginia, and served as Deputy Staff Judge Advocate, United States Marine Corps Forces, Atlantic, from 2000-2003.

In 2003, Major General Lecce was selected and served as the Commanding Officer, B Company, Marine Security Guard Battalion (United Arab Emirates) responsible for all Marine detachments posted at United States embassies and consulates throughout the Middle East and the Indian subcontinent. He left command in 2005 to serve as the Branch Head, Operational and International Law, Office of the Staff Judge Advocate to the Commandant, Headquarters, U.S. Marine Corps. In 2006 Major General Lecce was selected as the Marine Fellow to Johns Hopkins University School of Advanced International Studies. He graduated with a Masters of International Public Policy in 2007 and was designated a Regional Area Officer (Middle East/North Africa).

He was assigned as the Staff Judge Advocate, 2d Marine Aircraft Wing, in 2007. In 2009 Major General Lecce deployed with II Marine Expeditionary Force (Forward) in support of Operation Iraqi Freedom. After returning to the United States in 2010, Major General Lecce served as the Commanding Officer, Marine Corps Base, Camp Lejeune. After command, he served as the Staff Judge Advocate to the Combatant Commander, United States Southern Command (SOUTHCOM).

He assumed duties as the Assistant Judge Advocate General, Military Justice, in June 2014, overseeing all courts-martial appellate litigation within the Department of the Navy and military justice policy for the Navy. In July 2018, Major General Lecce was promoted to his current rank and assumed the billet of Staff Judge Advocate to the Commandant of the Marine Corps.

His personal awards include the Defense Superior Service Medal, the Legion of Merit, the Meritorious Service Medal, and the Navy-Marine Corps Commendation Medal.



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**WITNESS RESPONSES TO QUESTIONS ASKED DURING  
THE HEARING**

JUNE 16, 2020

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## **RESPONSES TO QUESTIONS SUBMITTED BY MS. SPEIER**

General PEDE. After the publication of the Protect Our Defenders (POD) report in May 2017, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) met with the Services to direct a review of the POD report and directed the Services to provide race and ethnicity data to USD(P&R) to attempt to replicate the POD analysis. The Services complied and immediately identified that POD had not requested, nor included in their report, the investigative data that preceded the courts-martial data that is critical to understanding where disparities originate, are alleviated, or are exacerbated. Any study that starts at the decision to refer a court-martial, including POD's study, is incomplete and inadequate to understand the issue. As the USD(P&R) review progressed, the FY18 NDAA House Report 115–200 published on July 7, 2017 directed GAO to assess disparities in the military justice system. The Services discussed with GAO the need for a more comprehensive data collection that included personnel, law enforcement and judicial data that allowed for a multi-variate analysis and began cooperating fully with GAO to obtain a more accurate picture of our system. GAO is best positioned to provide neutral, independent, expert analysis. Importantly, the GAO study identified that the disparity for Black service members did begin earlier in the process, at the investigative or accusatory stage, and that the disparity was alleviated during the court-martial process, providing the Services with a better understanding of the issue to inform ongoing efforts for further study. [See page 29.]

Admiral HANNINK. This FOIA request, submitted in March 2016 by Protect Our Defenders, requested information pertaining to the race and rank of personnel who went to court-martial or received non-judicial punishment (NJP) in the preceding ten years. The Navy's court-martial tracking system, which manages data for all courts-martial tried by Navy Region Legal Service Office Trial Departments, did not include service members' race until October 1, 2014. Therefore, in response to the request, the Navy provided a spreadsheet of race and rank data for courts-martial tried from October 1, 2014 to April 19, 2016. Additionally, during the requested period, Navy summary courts-martial (SCM) and NJPs were tracked using a Quarterly Criminal Activity, Disciplinary Infractions, and Courts-Martial Report (QCAR). From 2006 to 2016, the QCAR tracked only the number of SCM and NJPs with no additional details. Since then, the Secretary of the Navy has directed collection of additional demographic data for all SCM conducted on or after June 17, 2020 and NJPs imposed on or after October 1, 2020. [See page 29.]

## **RESPONSES TO QUESTIONS SUBMITTED BY MR. CISNEROS**

General PEDE. The Army maintains demographic data on courts-martial, including sentencing. Utilizing the available data, the GAO report found that Black, Hispanic, and male Servicemembers were more likely than White or female members to be the subjects of investigations recorded in the databases used by military criminal investigative organizations and that they were also more likely to be tried by courts-martial. While the disparities identified by the GAO carried over into the decision by a commander to refer a case to court-martial, race was not a factor in predicting conviction or severity of sentence. Per the recommendations in the GAO report, the Army is working to improve data collection to more fully understand the disparities that were identified. To accomplish these efforts, the Secretary of the Army directed a holistic review and assessment of our military justice system in relation to these issues. One subset of this holistic review involves examining our Special and General Court-Martial decisions and results. We will provide our answers and recommendations to the Secretary of the Army no later than 1 February 2021. [See page 36.]

General PEDE. While the Army collects demographic data on Soldiers receiving non-judicial punishment, it does not track this data by individual commanders and does not use non-judicial punishment data as a metric to evaluate the fairness of individual commanders. While we acknowledge that both explicit and implicit bias can exist in command punishment decisions, the circumstances of every unit and command discipline decision are unique and cannot be simply extrapolated into an

assessment of individual commanding officer fairness. To better assess bias in commander decisions, the Army has numerous avenues for those who experience disparity in treatment or perceive disparity to make a complaint against a commanding officer. These complaints are elevated to higher command channels for evaluation and action. The Secretary of the Army has directed a holistic review and assessment of our military justice system. As part of this assessment, we will evaluate a number of commanding officer decision points in order to identify any disparity in cases where a commander has significant discretion. Also, as a part of this holistic review, the Army G-1 will examine the racial and ethnic breakdown of the Army's commanders at all levels. [See page 37.]

Admiral HANNINK. The Navy is committed to identifying racial disparities in the military justice system, including any disparities in approved sentences. The May 2019 Government Accountability Office (GAO) report titled "DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities" analyzed courts-martial sentencing data across all services. For the Navy, the GAO found that Black service members were approximately half as likely as White service members to receive a discharge or dismissal. In addition, the GAO could not identify a statistically significant difference between Hispanic and White service members in sentencing data at general or special courts-martial in the Navy. In accordance with Section 540I of the FY20 NDAA, the Navy began collecting race, ethnicity, and gender information of the accused and victims for all courts-martial conducted on and after 17 June 2020. With the continuous collection of courts-martial data, the Navy will be equipped to evaluate whether racial, ethnic, or gender disparities exist (including disparities in sentencing) and to take appropriate action if warranted. [See page 36.]

Admiral HANNINK. The Navy has not previously collected comprehensive race and ethnicity data for nonjudicial punishment cases conducted by Commanding Officers. The Navy is in the process of evaluating the best way to collect and utilize race and ethnicity data related to nonjudicial punishment. [See page 37.]

General ROCKWELL. Since 1974, the Air Force has collected and compared data for sentencing for similar offenses. The recent GAO Report on racial disparities provided an independent analysis of our data. The GAO Report determined White servicemembers in the Air Force are more likely to be convicted, whereas Black servicemembers in the Air Force are slightly less likely to be convicted, but the GAO found the disparities were not statistically significant. Not identifying any statistically significant findings means the GAO could not conclude whether there was an association between race and the likelihood of an outcome. The GAO also measured whether race was a factor in whether a servicemember received a more severe punishment. In doing so, they considered a sentence as severe if it included a dismissal or discharge, or confinement for two or more years. The GAO found Black servicemembers are slightly less likely to receive a more severe punishment compared to their share of the convicted service population in the Army, Navy and Air Force, but found no statistically significant differences. To address potential disparities in sentencing, or any barrier to the goal of ensuring a fair and impartial military justice system, Commanders and Judge Advocates candidly review all cases (NJPs, courts, discharges, trends, responses, etc.), at least quarterly, in open and transparent status of discipline meetings. Each case is independently reviewed for legal sufficiency at multiple levels of command, from installation to MAJCOM. These statistics are also reviewed periodically at the headquarters level. Airmen accused of committing a crime are entitled to, and receive, independent and zealous representation by defense counsel. Approximately 97% of Airmen are represented in NJP proceedings and in trial by courts-martial. Engaged and involved defense counsel aggressively raise any issues that have adversely affected their clients, to include racial or other discrimination, if discovered and supported by evidence. [See page 36.]

General ROCKWELL. Yes. The Air Force collects demographic data on all non-judicial punishment actions, but does not collect the demographic data in such a way that allows for the analysis of individual Commanding Officers who impose non-judicial punishment actions. Although the demographic information we collect is not collected with the specific intent to measure the fairness of a particular Commanding Officer, the information shared at the Status of Discipline Meetings presents the opportunity for supervisory and peer review. Typically, each Commanding Officer briefs the underlying facts and demographic data of each non-judicial punishment action they imposed during the relevant time period. We are examining whether tracking the demographics of those who administer and receive administrative disciplinary actions will provide additional insight into whether corrective administrative actions are issued in a fair and equitable manner. [See page 37.]

General LECCE. The Marine Corps does not have any independently-collected data or analyses regarding racial disparities in sentencing for similar offenses. The Government Accountability Office's (GAO) May 2019 Report included a multivariable regression analysis of the likelihood, based upon race, of receiving a sentence of either a dismissal or a discharge (which the GAO regarded as the most severe punishment outcome) at a Special or General Court-Martial. That analysis (Table 35 in the GAO report) did not indicate a statistical significance for receiving either a dismissal or a discharge between the following categories of Marines: Black, Hispanic, Other, Unknown race, and White. However, the GAO Report did not analyze other aspects of sentencing such as length of confinement, forfeitures, or fines. The Marine Corps is committed to gathering data which will enable the identification of demographic disparities in the military justice system, to include disparities in sentencing. As required by Section 540I(b)(1) of the National Defense Authorization Act for Fiscal Year 2020, the Marine Corps is now collecting and maintaining race, ethnicity, and gender data within its case management system for all general and special courts-martial completed on or after 17 June 2020. This data will enable the Marine Corps to conduct future analyses. Additionally, the Marine Corps is working with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, which is currently conducting an evaluation of racial, ethnic, and gender disparities in sexual assault cases. [See page 36.]

General LECCE. The Marine Corps does retain demographic data on service members who receive non-judicial punishment. However, the Marine Corps does not have a database that collates non-judicial punishment data by commanding officer. As such, non-judicial punishment data is not being used to determine whether specific commanding officers impose non-judicial punishment in a disparate manner across different demographics. Despite the inability to analyze non-judicial punishment data by commanding officer, the Marine Corps regularly utilizes anonymous command climate surveys as a means to identify commanding officers who may be conducting command functions, to include non-judicial punishment, in a disparate manner. [See page 37.]

