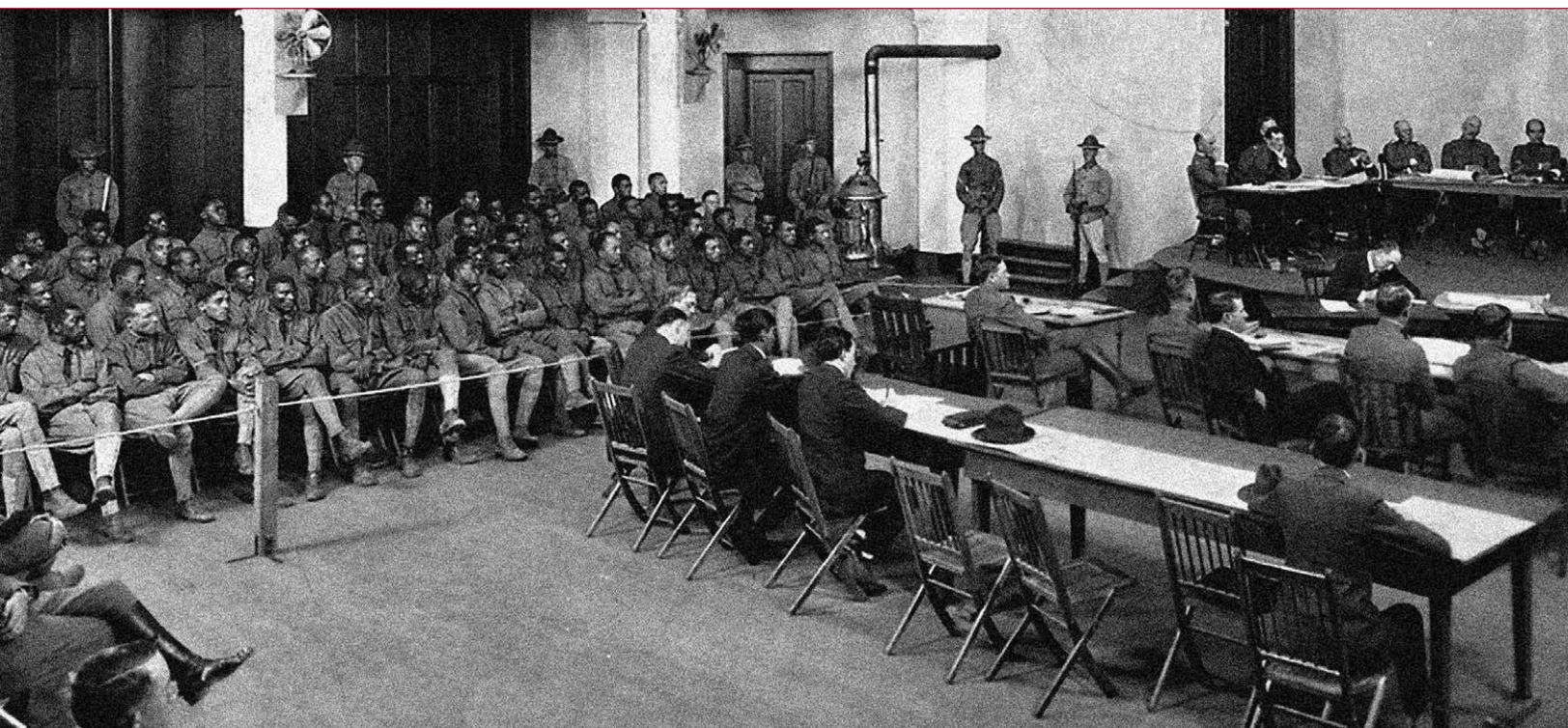




Federal Lawsuit Reveals Air Force Cover Up: Racial Disparities in Military Justice Part II

May 2020



Photograph of the November 1917 court-martial of 64 black soldiers represented by a single defense attorney. 13 were sentenced to death and executed less than two weeks after the sentence was announced. During World War II, 78% of the American soldiers executed in Europe by the Army were black. While strides have been made, the military has a long history of denying black service members equal treatment under the law. With this historical backdrop in mind, the military's failure to find the causes and solutions for racial disparities is all the more troubling.

Protect Our Defenders (POD) is the only national organization solely dedicated to ending the epidemic of rape and sexual assault in the military and to combating a culture of pervasive misogyny, sexual harassment, and retribution against victims. We honor, support, and give voice to survivors of military sexual assault and sexual harassment –service members, their families, veterans, and civilians.

Protect Our Defenders deploys a multifaceted effort towards reform. Every day, through policy reform, advocacy, research, and pro bono legal services, we work to provide those who serve in our military a safe and respectful environment free from harassment and sexual assault, and to create a justice system that can fairly and effectively adjudicate these crimes.

These efforts are directly informed by our work with survivors, their families, and current and former military members, and are grounded in our core values.

For more information visit our website: www.protectourdefenders.com

Protect Our Defenders is a non-profit 501(c)(3) charitable organization.
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*“The Officer Corps ‘must be
population they are leading.’”*

sufficiently representative of the

— Congressional Black Caucus

2017



General Mark Welsh, the Air Force Chief of Staff, and the senior leadership of the Air Force, September 16, 2015

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ACKNOWLEDGEMENTS

Colonel Don Christensen, USAF (Ret.), President of Protect Our Defenders, and Jennifer Wells, Consultant Researcher, co-authored this report.

Col Christensen served as Chief Prosecutor for the United States Air Force between 2010 and 2014. Over the course of his 23-year career in the Air Force, Col 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. Col Christensen has been the President of Protect Our Defenders since 2014. Jennifer Wells is a research consultant with ten years of public health experience. Her work has focused on mental health and violence. She contributed to Protect Our Defenders' 2017 Racial Disparities in Military Justice report. She received her MPH in Epidemiology from Columbia University.

We would like to thank the Yale Veterans Services Legal Clinic, which is part of the Jerome N. Frank Legal Services Organization at Yale Law School, for filing Freedom of Information Act lawsuits on behalf of Protect Our Defenders. The Clinic represents veterans and organizations like POD and CVLC in national litigation, regulatory and legislative reform efforts. Michael J. Wishnie, William O. Douglas Clinical Professor of Law and Counselor to the Dean at Yale Law School and Supervising Attorney, along with VLSC Clinical Fellows Aaron Wenzloff and Renee Burbank, worked with eight students and members of the clinic who helped to prepare the case: Meghan Brooks, Chandini Jha, Alyssa Peterson, Kathryn Pogin, Giovanni Sanchez, Jenna Rowan, Sebastian Bates, and Matthew Handley.

Connecticut Veterans Legal Center (CVLC), a legal services organization based in West Haven, works to help Connecticut's veterans recovering from homelessness and mental illness overcome legal barriers to housing, healthcare and income. POD is grateful for CVLC's partnership in forcing the military to meet its FOIA obligations. This project could not have been done without the support of the Yale Veterans Legal Services Clinic and CVLC.

A number of Protect Our Defenders' staff members and consultants also contributed to the writing, researching, and editing of the report, including Gillian Chandler, Amanda Daily, Katherine "Kate" Helete, Adelaide Kahn, and Brian Purchia.

EXECUTIVE SUMMARY

In 2017, Protect Our Defenders (POD) published a groundbreaking report that brought substantial and persistent racial disparities in the military justice system to light. POD's report, based on information obtained through a series of Freedom of Information Act (FOIA) requests, led Congress to mandate an investigation into racial disparities and data collection in the U.S. military.

The subsequent investigation by the U.S. Government Accountability Office (GAO) confirmed widespread racial disparities first identified by POD. The [2019 GAO report](#) concluded that the military failed to identify and address the causes of such disparities. In 2020, Congress directed the DoD to transform how the military tracks, monitors, investigates, and addresses racial disparities in the justice system.

In response to POD's initial FOIA request in 2016 and its subsequent report, the U.S. Air Force claimed it was taking a series of steps to identify and address racial disparity within its justice system. This included, according to the Air Force, conducting an internal investigation and establishing an expert working group to put forward recommendations.

Documents obtained by POD through litigation show that the working group touted by the Air Force met only briefly and made only superficial recommendations, none of which have apparently been implemented by Air Force leadership. Instead, **the Air Force has engaged in a multi-year effort to keep the findings and recommendations of its working group hidden, forcing POD to file suit in federal court.**

In quashing the Air Force's attempts to conceal information about the findings and recommendations of its own disparity working group, **a U.S. District Court in Connecticut referred to the Air Force's investigation as a "mystery," questioned whether it conducted any "real governmental decision making process," and accused it of trying to change its story and "plug gaps" over time.**

The Air Force's ongoing failure to address the disparities identified by POD and the GAO is particularly troubling because POD's 2017 analysis and [reporting by USA Today](#) found that the Air Force has the highest racial disparities of any military service branch for court-martial and non-judicial punishments. Collecting, analyzing, and reporting reliable data on race and ethnicity is essential to assessing and eradicating racial disparities in the military justice system. For over 25 years, prior to the recent disclosures, no data regarding the demographics of servicemembers involved in the military justice system had been made public. The Air Force's responses to POD's lawsuit underscores the importance of transparency and constant Congressional oversight in beginning to address inequities within the military justice system.

RESULTS OF RACIAL DISPARITIES IN MILITARY JUSTICE REPORT: THREE YEARS OUT

1 Congress mandated the GAO to complete the nation's first report to Congress to analyze data on racial disparities in the U.S. military justice system. The 2019 report found:

- a) Consistent with POD's report, Black servicemembers are twice as likely to be investigated compared to White servicemembers in each branch.
- b) Some service databases do not collect racial or ethnic background, and the Coast Guard does not collect race as a demographic category at all.
- c) The Army, Navy, and Coast Guard do not collect race, ethnicity, or gender for non-judicial punishments.
- d) Only half of military databases allow an unknown/unspecified gender to be recorded other than male/female, and the Coast Guard does not allow queries based on gender.
- e) Despite knowing the disparities exist, the DoD did not seek to identify or remedy causes.

2 The GAO confirmation of POD's report led to legislation in the National Defense Authorization Act (NDAA) FY2020, requiring the DoD to:

- a) Set guidelines for when the data indicates bias, and investigate and address causes of any bias.
- b) Include the data in annual military justice reports to Congress.
- c) Track race, gender, and ethnicity in the military justice system.

3 The Air Force created a Disparity Working Group then concealed its findings:

- a) The Air Force's disparity working group conducted a superficial review and its recommendations were ignored by the Air Force leadership.
- b) The Air Force fought for almost three years to hide the findings and recommendations of the disparity working group, including the admission that racial disparity is consistent, persistent, and getting worse.

SUMMARY

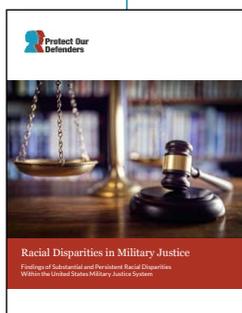
In 2017, POD released a [report](#), *Racial Disparities in Military Justice*, that broke two and half decades of silence in which no DoD data on the treatment of servicemembers of color in the justice system had been published or analyzed. POD brought evidence of persistent Black-White disparities to the attention of Congress, the DoD, and the nation. Six weeks later, Congress mandated a GAO investigation. The resulting GAO report confirmed POD's findings with extensive research and analysis. In 2020, Congress passed legislation that requires the DoD to transform how it monitors and addresses racial disparities for its servicemembers. The legislation for the first time mandates transparency and oversight of racial disparities in the military.

HISTORICAL BACKGROUND

Literature on racial disparities in the military justice system is limited in both academic and military publications. The DoD published reports in the 1970s and 1980s that found no racial disparities present in its justice system. In 1992, the Navy conducted a study, but according to the [GAO](#), “failed to surface any racial or ethnic bias in the administration of discipline.” That same year, a study from the Defense Equal Opportunity Management Institute (DEOMI) found racial disparities and recommended that if the Secretary of Defense “decides that finding the causes of the disparity in punishment rates between Black and White servicemembers is important, research should continue.” Yet no research followed. A 1995 [GAO](#) report only summarized all previous reports. The 2019 GAO report found that no DoD or other governmental report on the subject has since been published.

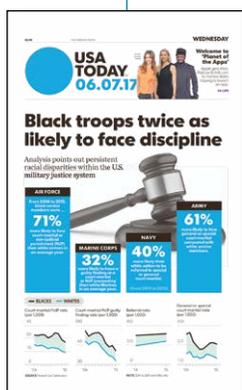
RACIAL DISPARITY REPORT IMPACT TIMELINE

MARCH 7, 2016: POD submitted requests under FOIA to obtain data on the race and rank of each servicemember involved in military justice and discipline proceedings. Given the established evidence of disparities in the civilian justice system, the absence of publicly available demographic data from the military and cases witnessed by POD staff, POD submitted the requests to determine whether and to what extent disparities existed in the military justice system. In the months that followed, POD received reports from all branches of the military except the Coast Guard.



JUNE 7, 2017: POD released *Racial Disparities in Military Justice*, analyzing a decade of previously unpublished data. POD found that between 2006-2015, Black servicemembers were more likely than White servicemembers to face military justice or disciplinary action. These disparities had largely failed to improve or had worsened in recent years. Findings for other racial groups varied, with some evidence that non-Black people of color may have higher military justice or disciplinary involvement than White servicemembers. The report concluded that the persistence of racial disparities within military justice and disciplinary proceedings, particularly among Black servicemembers compared to White servicemembers, may indicate racial bias or discrimination among decision makers in the justice system. Furthermore, POD identified gaps in data collection methods within and across the branches. The report called on each branch of the military to collect and publish uniform racial and ethnic data and investigate underlying causes of disparities.

The report made four recommendations: 1) Each branch of the service should collect and publish consistent racial and ethnic data regarding military justice involvement and outcomes, 2) Research should be conducted to assess the underlying causes of existing racial and ethnic discrepancy within military disciplinary and justice systems and to explore steps that can be taken to address inequities, 3) Data should also be tracked for victims of crimes to assess whether there might be bias regarding victims of particular races or ethnicities, and 4) The military justice process should be reformed to empower legally trained military prosecutors, instead of the commander of the accused, to determine when to refer a case to court-martial, thereby reducing the potential for bias based on familiarity, friendship, race, or ethnicity.



Widespread national media attention followed the report's release. The findings were featured on the front page of [USA Today](#) and on an episode of [The View](#), as well as other national publications (see [Appendix H](#) for list of publications).

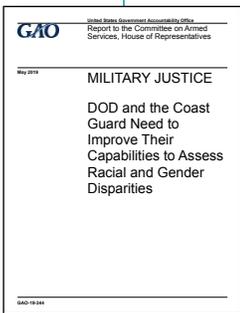
Influenced by POD's report, Rep. Robert Brady (PA-1) drafted an amendment to the NDAA FY2018 for the House Armed Services Committee (HASC) to require an investigation into the demographic data collection among the branches and the racial disparities.

JULY 14, 2017: Six weeks after *Racial Disparities in Military Justice* was released, Congress mandated an investigation into racial disparities and data collection in the military. POD's report was cited in House Report 115-200. Congress passed a provision in NDAA FY2018 directing the U.S. Government Accountability Office (GAO) to conduct an investigation. GAO was directed to report back to Congress on the following: 1) How the military justice system records and maintains data on the race and gender of servicemembers, 2) Reasons for any differences in collection and maintenance among the branches, 3) Recommendations for improving data collection, and 4) To provide additional data and analysis so that HASC can determine if there are disparities in prosecution of cases under the Uniform Code of Military Justice (UCMJ).

JULY 17, 2017: 23 members of the Congressional Black Caucus (CBC) send a letter to the Acting Inspector General for the DoD to call his attention to POD's report. The CBC calls the report "deeply troubling" and requests the Acting Inspector General review the report and evaluate the disparities black service members face. The CBC also calls for a "greater commitment to and emphasis on the diversity of the officer corps."



MAY 30, 2019: Less than two years after POD's report, the GAO released a 182-page report on military justice, reinforcing and expanding on POD's findings and recommendations. The GAO cited POD as the impetus for the investigation and instructed the DoD to improve its capability to assess racial and gender disparities.



The GAO obtained DoD data beyond what had been available to POD from 2013-2017 and conducted analyses that adjusted for sociodemographic variables. The GAO found that Black servicemembers were twice as likely to be investigated compared to White servicemembers across each branch. Black and Hispanic servicemembers were also more likely than White servicemembers to be tried in general and special courts martial in the Army, Navy, Marine Corps, and Air Force.¹

The report found many issues related to the collection and reporting of data that prevents efforts to address disparities. The investigation found that some service databases do not collect racial or ethnic background, and only half of military databases allow an unknown/unspecified gender to be recorded other than male/female. The Coast Guard does not collect race as a demographic category at all, nor does it allow queries based on gender. For non-judicial punishments, the Army, Navy, and Coast Guard do not collect race, ethnicity, or gender. Furthermore, there are no consistent reporting guidelines for internal or external reports on disparities. Without data, the existence of disparities cannot be proven, and without uniform monitoring and reporting, progress cannot be tracked.

Strikingly, **the GAO concluded that the DoD is unaware of the causes of their disparities.** The report found that the DoD has not done any evaluations to investigate the causes of disparities, nor has it made any recommendations to improve either its data or the disparities.²

The GAO incorporated two of POD's four recommendations to the Secretary of Defense and Homeland Security (see [Appendix G](#) for full list of GAO recommendations). These included:

- The Army, Air Force, Navy, and Coast Guard should modify their data collection and databases to use uniform categories of race and ethnicity.
- The Secretary of Defense should ensure its annual review of the UCMJ includes demographic reporting including gender, race, and ethnicity for all types of courts-martial.
- Metrics should be established for determining when data on disparities merit further review.

- The Army, Navy, and Coast Guard should determine feasibility of collecting demographic information on all non-judicial punishments (NJPs).
- The Coast Guard database should be modified so it can query and report on gender.
- The Secretary of Defense and Homeland Security should evaluate causes of disparities and take steps to address disparities.

As a result of POD's report, the Office of Diversity Management and Equal Opportunity (ODEI) initiated a review of disparities intended to precede a research study due in 2019. No such report appears to have been made public.

JANUARY 2020: In line with the GAO's recommendations, the NDAA FY2020 included a measure to track race, gender, and ethnicity in the military justice system. The data must be included in annual military justice reports. The DoD must set guidelines for when the data indicates bias and investigate and address causes of any bias.

SUMMARY

Two and a half years after the 2017 POD report, uniform racial demographic data and transparency has now been mandated by Congress.

POD's groundbreaking report on racial disparities immediately garnered national attention in the media and Congress. As a result, Congress directed the GAO to undertake the first governmental review of the issue in decades. POD's report was the catalyst leading to reform of military racial disparity tracking and resulted in a Congressional mandate requiring the military to make data on ethnic, racial, and gender disparities in the justice process publicly available for the first time. **Since the report was published, it has been cited numerous times in op-eds, speeches and military journals (see [Appendix H](#))**, ensuring the issue will continue to receive the attention it deserves.



POD FEDERAL LAWSUIT REVEALS AIR FORCE COVER-UP

While POD's Disparity Report received widespread coverage, the Air Force's claim to have established a racial disparity team and its subsequent efforts to conceal information about the team's findings have not been previously exposed or analyzed. A three-year effort by POD found that the creation of the disparity team appeared to be an attempt to deflect from the Air Force's abysmal record.

The Air Force's own data revealed that racial disparity in the military justice system is a long-term problem, yet the Air Force took no action to address the issue until POD filed a FOIA request in 2016 for demographic data on all servicemembers involved in justice proceedings. Within days of receiving the request, the Air Force claimed it was taking a series of steps to study and address racial disparity within its justice system. This included, [according to the Air Force](#), conducting an internal investigation and establishing a "cross functional team led by diversity and inclusion experts" to put forward policy changes.

However, instead of working seriously to address the disparities, the Air Force does not appear to have taken any substantive action. Documents eventually obtained by POD show that the Air Force acknowledged a "persistent" and "consistent" racial disparity in military justice. Yet when pressed for more information, the Air Force claimed that the touted expert team was an informal working group.³ The group met for 90 days, kept few official records,⁴ and made superficial recommendations which were never formally briefed to leadership, or acted upon.⁵

The Air Force has concealed records and discredited its own statistics,⁶ with leadership later doubting that disparities were as severe as their own data reveals,⁷ contrary to conclusions reached by the GAO's and POD's investigations. Four years after the Air Force [admitted](#) the need to examine racial disparities, no recommendations have been formally made nor have any changes been implemented. A U.S. District Court in Connecticut called the Air Force's investigation a "mystery," questioned whether it conducted any "real governmental decision making process," and accused it of trying to change its story and "plug gaps" over time.

POD FEDERAL DISTRICT COURT LAWSUIT TIMELINE

● **MARCH 7, 2016:** POD submits FOIA request to the Air Force, seeking demographic information on disciplinary and military justice proceedings. POD requested rates per thousand by race and rank of the subject (defendant) for all General Courts-Martial, Special Courts-Martial, Summary Courts-Martial, and Article 15 nonjudicial punishment (NJP) for each year over the past 10 years.

● **APRIL 14, 2016:** One month later, the Air Force responds to POD with the requested data and a brief memo: *"As part of the strategic imperative of diversity the Air Force is conducting a thorough analysis of demographic trends in military justice across the entire Air Force. A cross functional team led by diversity and inclusion experts will collect and analyze the data and recommend policy changes, process modifications or additional study as appropriate."*

● **APRIL 25, 2016:** According to released documents, the Air Force directed a "deep dive" study and convened a disparity working group (see Background Slide in [Appendix C](#)).

● **JUNE 6, 2017:** POD releases its disparity report. *USA Today* conducts an independent review and features both on its front page.

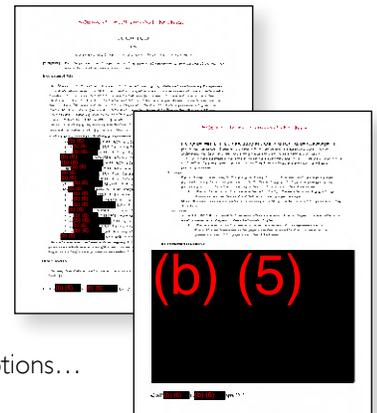


Background

- **16 Apr 16** - Protect our Defenders FOIA request for rate per thousand (RPT) by race, rank on Art 15, court-martial data over past 10 yrs
- **25 Apr 16** - SAF/MR directed "deep dive" by AF/IA1 & AF/JA
 - Working group convened and met over next 90 days
- **6 Jun 17** - POD released Race and Justice Report
- **21 Jun 17** - OUSD P&R tasked SAF/MR to provide detail on race & rank of all CMs/NJP for each year over past 11 years
- **26 Sep 17** - SAF/MR directed AFBAWG-Disciplinary Actions Analysis Team
 - First meeting: 19 Oct

Breaking Barriers ... Since 1947

- **JUNE 21, 2017:** Office of the Undersecretary of Defense (OUSD) tasks the Air Force to provide detail on race and rank of all Article 15s and courts-martial for the last 11 years.
- **JULY 2017:** After having heard no further information about the team, POD submitted a FOIA request for records related to the cross-functional team and analysis referenced in the Air Force's April 2016 memo. As part of a larger request for records related to sexual assault cases, POD requested any and all information regarding the creation and performance of the Air Force's diversity team. Requested information included:
 - If and when the diversity team was created.
 - The names of the members who are on the diversity team.
 - The qualifications of each member of the diversity team.
 - Any findings by the diversity team.
 - Any recommendations by the diversity team.
 - Whether witnesses were called to testify in front of the diversity team.
- **OCTOBER 2, 2017:** After receiving no response from the Air Force to the FOIA request, POD's counsel inquired about the status of its request. The Air Force responded that the request was being processed. No additional information was received.
- **DECEMBER 13, 2017:** After it became clear that the Air Force was failing to meet its legal obligations under FOIA, POD and Connecticut Veterans Legal Clinic (CVLC), represented by the Yale Law School Veterans Legal Services Clinic, filed a lawsuit (see [Appendix E](#)). The lawsuit requested in part that the court order the DoD to search, disclose, and release full requested records regarding race in the military justice system.⁸
- **MARCH 22-28, 2018:** Three months after the lawsuit was filed, the Air Force released a heavily redacted "Talking Paper on Air Force Military Justice System Diversity Efforts" regarding its findings. The Air Force withheld the names of all team members of the "working group" and qualifications of the members of the group. The Talking Paper stated that the Air Force's data, compiled for POD, "show persistently higher court martial and non-judicial punishment (Article 15) rates per thousand for Blacks than Whites or Others."⁹ After reviewing the rates, the Air Force said they had executed a "deeper dive study to uncover and resolve any underlying issues." The deeper dive was "later combined with an ongoing AF/AI deep dive into demographics of enlisted promotions... the combined study began its staffing/review process in September 2016."¹⁰
- **JULY 27, 2018:** The Air Force further responded to Yale and POD's lawsuit, but refused to provide critical records on the diversity team. The Air Force claimed, "There was no formalized process for creating the working group" and there was no charter. Members were "informally invited" and no "appointment letters" were created. One email provided said that it was "unclear whether all of the data produced was reviewed by the entire working group." The group met only for three months, from April 2016 to June 2016.
- **OCTOBER 5, 2018:** The DoD files a motion for summary judgment in furtherance of the Air Force's efforts to conceal details of its racial disparity working group. POD files its motion in opposition on October 30th.



JULY 12, 2019: A U.S. District Court in Connecticut rejects multiple DoD arguments (see court order in [Appendix E](#)) denying its motion for summary judgment. The DoD argued that they did not improperly withhold the names of the working group and its recommendations (see redacted slides in [Appendix C](#)).

The court agreed with POD that the DoD “improperly limited the searches” for emails. The court declared that the DoD did not provide any evidence to indicate that all shared network drives were searched, that only four of the 19 Working Group members were asked to search their emails, and that two of those who did search did not cover the full time period.

Judge Vanessa Bryant denied that the DoD justified protection of withheld information. She disagreed that some of the materials were “pre-decisional” and therefore not subject to disclosure under FOIA because there was no evidence to conclude that the materials were used for any decisions or policy making;

“There is nothing in the record establishing any of the recommendations were adopted.”

“Defendants [DoD] have not provided the Court with sufficient information to determine whether the withheld information in the Talking Paper is part of any real government decision making process rather than simply an exercise which went nowhere.”

The judge ordered the DoD to conduct the additional searches after concluding that the DoD’s attempt to search for records related to the working group was not “reasonably” conducted to “uncover all responsive materials.” The Court also ordered the DoD to release professional biographies of the staff judge advocates, who refer cases to court martial.

According to Kathryn Pogin, a law student intern with Veterans Legal Service Clinic, “The Court recognized that many of the government’s attempts to hide behind exemptions were inappropriate under FOIA.” Pogin also notes that the Court determined “the public has the right to know the military is failing to live up to its promise of equal treatment to servicemembers and veterans. Transparency is crucial to accountability.”

DECEMBER 13, 2019: POD received 15 documents from its FOIA request comprising the Air Force’s 2017 response, including a “Background Paper on Racial Disparities in Military Justice Statistics.” The majority of the paper argued that the Rate Per Thousand (RPT), the statistic that the Air Force has used for decades to measure the number of servicemembers in the justice system, is not a valid statistic for measuring disparities. The RPT is a proportion that measures the number of individuals of a racial group who face a justice or disciplinary action divided by the total number of service members of that racial group currently serving. The paper warned of the “danger” in “reaching conclusions based solely on the RPTs.” The paper says that RPTs are only “marginally useful to gauge discrimination” and that they provide a “distorted-data-snapshot.” The paper does not suggest an alternate metric. It is important to note that the GAO report released in 2019 analyzed the raw data from which RPTs are derived and still found persistent and widespread disparities.¹¹

The paper contradicted the message of several slides from PowerPoint presentations that were also provided as part of the FOIA request. The presentation, “Race and Military Justice Way Forward AF/AI Vector Brief,” dated November 15, 2017, included slides that were redacted in key places. The slides confirmed, “Data analysis shows persistent difference between Black/African American and White discipline rates.”

70
A1V Critical Questions

1) a) Do we have racial disparities in our justice system or not? b) If the answer is yes, then what are we doing to identify their origins and to counter them?

a) Yes – the data reflects a persistent and consistent racial disparity
b) See response to Question 2

One slide asked the following questions:

“Do we have racial disparities in our justice system or not? If the answer is yes, then what are we doing to identify their origins and to counter them?”

Yes – the data reflects a persistent and consistent racial disparity”

What do we need to do going forward? How do we ensure that our processes/systems match our core values? [ANSWER and RECOMMENDATIONS REDACTED]”

70
A1V Critical Questions (Cont'd)

2) What do we need to do going forward? How do we ensure that our processes/systems match our core values?

Race & Justice Working Group Recommendations	Proposed OPR(s)	AF/A1 Coord.	SAF/MR Decision
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PRE-DECISIONAL Breaking Barriers ... Since 1947

Another presentation, “Racial Disparities in Air Force Justice Statistics,” dated August 24, 2017, opened with the following message:

“Any numbers, such as those outlined in this brief, that suggest our military justice system, or any Air Force process, might be biased, are concerning. A fair and timely justice system—in fact and in perception—addresses allegations of misconduct, deters wrongdoing, delivers a disciplined force, and earns and maintains the trust of Airmen, Congress, the American people and our mission partners. The Air Force is committed to promoting diversity within the workplace, and providing an inclusive and rewarding environment for all of our Airmen. We recognize there is still work to do in this area. As part of our strategic imperative of inclusion, the Air Force conducted an initial analysis over the past year of demographic trends in military justice across the entire Air Force, to include breakouts of minority trends across different communities (e.g. Major Commands, career fields, installations). At this time, the data have been gathered and analyzed and the cross-functional study team developed recommendations that are currently in staffing to senior leadership for consideration. We will continue to monitor demographic trends in military justice measures and conduct deep dive studies as needed to identify issues and develop recommendations.”

70
USAF D&I Perspective on Justice Demographic Disparities

➤ Are we saying that the conclusions they initially derived with RPT analysis are no longer valid and that we do not actually have significant disparities? If not, what are they?

➤ The rate per thousand of Black/African American Airmen receiving discipline at the E-2 level is double that of other demographics [REDACTED]

[REDACTED]

We must address disparities where they exist – serving Airmen and the American people expect us to ensure fairness for all Airmen, and they deserve that we do so

Breaking Barriers ... Since 1947

A later slide asked the following questions:

“Are we saying that the conclusions they initially derived with RPT analysis are no longer valid and that we do not actually have significant disparities? If not, what are they?”

The rate per thousand of Black/African American Airmen receiving discipline at the E-2 level is double that of other demographics” [ANSWER AND REMAINDER OF SLIDE IS REDACTED]

POD further learned from the documents that eight of the 19 original members of the working group were no longer in the Air Force. POD’s counsel negotiated with the Air Force to narrow search terms to produce meaningful data results and search by names of members. The Air Force agreed to the new terms.

FEBRUARY 28, 2020: On behalf of the Air Force, the DoD made a motion to reconsider the judge’s prior ruling denying summary judgment and, in a last ditch effort to prevent POD from receiving the requested documents, claimed the documents were merely pre-decisional and that there were no emails or official records to turn over.

The court denied the DoD's motion for reconsideration in a stinging rebuke of the Air Force. The court stated, the "motion is groundless and fundamentally fails to comply with the standards governing motions for reconsideration." In a strongly worded opinion, the court ordered the DoD to produce all requested documents within 96 hours under penalty of sanctions:

No further delay in the production of documents is warranted and the remaining documents are sufficiently limited as to warrant immediate production. Defendants shall produce all documents that were subject to the motion for reconsideration within 96 hours under penalty of sanctions.

IT IS SO ORDERED

/s/
Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: February 28, 2020

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"Defendants represent that the Talking Paper was never presented to senior Air Force officials. So what concrete deliberative decision-making process the Working Group and its Talking Paper were a part of is somewhat a mystery."

Now, on reconsideration, Defendants submit a supplemental declaration ... attesting that the recommendations "were provided to the Office of the Secretary of Defense ("OSD") for consideration of whether there should be changes in these policies or practices,

however, it is difficult to determine whether OSD was officially briefed due to the passage of time and changes in personnel."... It constitutes an attempt to relitigate or plug gaps in the original argument.

"The issue remains Defendants failure to provide the Court with sufficient information to determine whether the withheld information in the Talking Paper was part of any real governmental decision making process in the first instance."

MARCH 2, 2020: The Air Force released its full unredacted Talking Paper but was unable to meet the deadline for the remaining documents. The Talking Paper only addressed Article 15s without any analysis of courts-martial disparities. The sole recommendations were a few sentences about additional training on unconscious bias.¹²

The Air Force provided the text of this previously redacted slide:

"Are we saying that the conclusions they initially derived with RPT analysis are no longer valid and that we do not actually have significant disparities? If not, what are they?"

The rate per thousand of Black/African American Airmen receiving discipline at the E-2 level is double that of other demographics"
[FOLLOWING ANSWER PREVIOUSLY REDACTED]

"If this were the case for Airmen that were female, versus male, we were (sic) would have concerns about what is making the difference, and investigate--we clearly must address this disparity in the same way..."

There needs to be focus and action related to processes that are happening prior to Airmen entering into the Article 15 and Court Martial processes. Strenuous review needs to take place to truly measure how different demographics of Airmen are receiving punishments/corrective actions prior to legal infractions occurring. One of the most important questions that we must be able to answer in the affirmative is: Are we being equitable and consistent with, and for, all Airmen at all points through these disciplinary processes?"

CONCLUSION

POD's initial FOIA request seeking racial disparity data almost immediately resulted in the Air Force creating its racial disparity working group in an apparent effort to mitigate its dismal record. Even though the working group found "consistent" and "persistent" racial disparities, the Air Force does not appear to have acted in any way on the recommendations of the working group.¹³ Despite the fact that the working group consisted of members who worked for the Chief of Staff, Air Force leadership apparently showed little interest in its results. If they did, they chose not to implement any reforms. Instead, the service engaged in a multi-year effort to keep the findings and recommendations from the working group hidden. It remains to be asked why the Air Force fought so hard to keep the information from the public, and at what level were those efforts being directed.

As stated in POD's 2017 report, which still holds true today, "when objective evidence demonstrates that the military justice system is fraught with prejudice and bias that system cannot effectively deliver justice."

RECOMMENDATIONS

Congress should hold hearings on the military's failure to disclose documents required under FOIA and ways to enforce compliance and in a timely manner moving forward. As Judge Bryant noted, **"FOIA was enacted to promote honest and open government."**¹⁴ The military should not be able to keep information from the public simply because it is embarrassing or exposes systemic failures. POD was fortunate to have the representation of the Yale Veterans Law Clinic during this litigation. It should not take multiple years, excessive effort, and a team of lawyers and law students to force the military to meet its legal requirements.

Congress should hold annual hearings on racial disparities in the military justice system to ensure the military is actively identifying causes of the disparities and implementing solutions. Congressional oversight is key to ensuring the military is taking this issue seriously and improving fairness of the justice process.

FOOTNOTES

- 1 For explanation of GAO methods for categorizing race and ethnicity, and demographic variables controlled for, see <https://www.gao.gov/assets/700/699380.pdf>
- 2 GAO Report page 66: "Officials from DoD and the military services acknowledged that they do not know the cause of the racial and gender 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 and make recommendations about any appropriate corrective actions to remediate the cause(s) of the disparities." Page 68: "Finally, DoD recently conducted a study of racial and gender disparities in the military justice system, and expects to complete its report in 2019. However, this study will not assess the causes of the racial and gender disparities identified in the military justice system."
- 3 Supplemental Declaration of Colonel Sean Jones, July 27, 2018: "There was no formalized process for creating the working group. HAF/AIDV, AF/JA, and SAF/MR took initial steps to create a charter for the working group. However, they did not finalize the charter. Nor were appointment letters created or issued to members of the working group. Instead, members were selected based on their positions and informally invited to be part of the working group." Full document available in Appendix.
- 4 Ibid.
- 5 From Memorandum of Decision, July 2019: "Plaintiffs further speculate without citing any facts in support that the Talking Paper recommendations may still have been informally or partially adopted, and thus constitute working law, despite having not been officially briefed or adopted by senior Air Force officials." Full document available in Appendix.
- 6 Race in Justice Talker: "Particularly, one must rely on faulty logic to state that RPTs indicating racial disparity constitute conclusive evidence that the military justice system itself is racially biased...RPTs tend to skew data." Available in Appendix.
- 7 Email from Acting Assistant Secretary of the Air Force Daniel Sitterly, August 25, 2017: "We want to emphasize that while using Rates Per Thousand is one indicator of trends, they do not provide the full picture, and must be put in context. Using this analytical tool can dramatically distort the snapshot of a given demographic category..."
- 8 The lawsuit involved numerous failures by the services to adequately answer the FOIA requests by POD and CVLC. The Air Force's refusal to meet its FOIA obligations with respect to the disparity working group was one of many issues in the lawsuit.
- 9 In the Talking Paper, the Air Force claimed there is "no evidence of selective prosecution" according to a May 2016 internal call for data related to a court member challenge on race under U.S. v. Batson and motions for selective prosecutions. However, this claim is dubious as neither would be appropriate criteria for evaluating systemic racial disparities. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court found it to be a violation of equal protection for a prosecutor to use a peremptory challenge to remove a juror based on the juror's race. A *Batson* challenge has nothing to do with whether an accused was selectively prosecuted only whether a juror was improperly removed from a panel. Next, the Air Force claims to have gleaned something from a review of motions for selective prosecution or a lack thereof. The Air Force doesn't make it clear which. Regardless, this would be a poor indicator of whether there is a racial bias in the system as a whole. An individual accused has a "heavy burden" of proving selective prosecution based on race. The law presumes convening authorities acted properly, and the accused somehow would have to prove the convening authority intentionally selected the accused to be prosecuted based on race, a virtual impossibility absent an admission from the convening authority. See generally, *United States v. Garwood*, 20 M.J. 148 (C.M.A. 1985). These motions are almost impossible to win and a lack of successful motions in individual cases proves nothing when it comes to whether disparity exists in the system as a whole. The paper also proposes that the disparities result from a change in timeliness metric goals. They identified a correlation between disparity rates and the length of time in which Commanders were supposed to review and decide a case. They proposed that if Commanders had several fewer days to decide, they may be more subject to unconscious bias. The Air Force provided no evidence to suggest that the correlation was causative nor was any evidence provided to show that any changes reached statistical significance.
- 10 AF/A1 is part of the Chief Of Staff's Air Staff, responsible for manpower and personnel issues and works directly for the Air Force Chief of Staff.
- 11 Protect Our Defenders also received the raw numbers of courts-martial held and force strength from the Air Force and so POD was able to independently verify the RPTs provided for their analyses in their 2017 report.
- 12 AF Diversity Team Talking Paper recommendations: "Provide tailored training in leadership preparation courses regarding unconscious bias and its potential implications for commanders' and supervisors' roles and strategies for reducing/managing unconscious bias in these contexts. Incorporate into Wing/CC and SJA preparation courses recommendations on how to reframe Status of Discipline (SOD) briefings as a forum for learning and discussing all three pillars of quality justice (i.e. fast, firm and fair) and to ensure that SOD slides do not inadvertently exacerbate any unconscious biases. Incorporate unconscious bias concepts more comprehensively and organically into education and training provided to emerging leaders and JA professionals. Continue to monitor demographic trends in military justice measures and conduct deep dive studies as needed to uncover issues and identify recommendations.
- 13 Unredacted slides received on February 17, 2020: 1) Standardize, institutionalize unconscious bias training in Commander; First Sgt, Judge Advocate and Supervisor courses ; 2) Revise Status of Discipline briefings to include more comprehensive diversity information on RPT (i.e. not just by race) to enhance value to commanders; 3) Conduct associated studies based on initial working group recommendations: racial disparity in admin separations; unconscious bias training effects on enlisted NJP/CMs; Monitor trends and within 12 months, assess results to identify emerging and best practices in mitigating disparities in military justice.
- 14 Cited in July 12, 2019 Memorandum of Decision

APPENDIX

- A. LINKS TO POD AND GAO REPORTS
- B. REPRESENTATIVE REDACTED AND UNREDACTED SLIDES
- C. LINKS TO FULL SLIDE DECKS PROVIDED BY AIR FORCE TO POD THROUGH FOIA
- D. MOTION FOR RECONSIDERATION
- E. LAWSUIT, FOIA REQUESTS, AND JUDGE'S ORDERS
- F. NDAA PROVISIONS
- G. GAO RECOMMENDATIONS
- H. LIST OF MEDIA COVERAGE
- I. DECLARATION OF RITA SOTA
- J. DECLARATION OF SEAN JONES
- K. REDACTED AND UNREDACTED TALKING PAPERS
- L. 17 JULY 2017 CONGRESSIONAL BLACK CAUCUS (CBC) LETTER TO THE DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL (DODIG)
- M. 25 AUGUST 2017 SITTERLY EMAIL

APPENDIX A: LINKS TO POD AND GAO REPORTS



[POD Report: Racial Disparities in Military Justice: Findings of Substantial and Persistent Racial Disparities Within the United States Military Justice System](#)

[GAO Report: Military Justice: DoD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities](#)

APPENDIX B: REPRESENTATIVE REDACTED AND UNREDACTED SLIDES

Slides with Findings



USAF D&I Perspective on Justice Demographic Disparities

- Are we saying that the conclusions they initially derived with RPT analysis are no longer valid and that we do not actually have significant disparities? If not, what are they?
 - The rate per thousand of Black/African American Airmen receiving discipline at the E-2 level is double that of other demographics.
- [REDACTED]

We must address disparities where they exist – serving Airmen and the American people expect us to ensure fairness for all Airmen, and they deserve that we do so

Breaking Barriers ... Since 1947



USAF D&I Perspective on Justice Demographic Disparities

- Are we saying that the conclusions they initially derived with RPT analysis are no longer valid and that we do not actually have significant disparities? If not, what are they?
 - The rate per thousand of Black/African American Airmen receiving discipline at the E-2 level is double that of other demographics. If this were the case for Airmen that were female, versus male, we were would have concerns about what is making the difference, and investigate – we clearly must address this disparity in the same way. (We need to understand from A1PF or the SMEs in A9 if they agree with the JA analysis regarding the validity of rates per thousand)
- There needs to be focus and action related to processes that are happening prior to Airmen entering into the Article 15 and Court Martial processes. Strenuous review needs to take place to truly measure how different demographics of Airmen are receiving punishments/corrective actions prior to legal infractions occurring. One of the most important questions that we must be able to answer in the affirmative is: Are we being equitable and consistent with, and for, all Airmen at all points through these disciplinary processes?

We must address disparities where they exist – serving Airmen and the American people expect us to ensure fairness for all Airmen, and they deserve that we do so

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Racial Disparities in Air Force Justice Statistics

Air Force Official Talking Points on Military Justice Demographic Statistics

- Any numbers, such as those outlined in this brief, that suggest our military justice system, or any Air Force process, might be biased, are concerning.
- A fair and timely justice system – in fact and in perception – addresses allegations of misconduct, deters wrongdoing, delivers a disciplined force, and earns and maintains the trust of Airmen, Congress, the American people and our mission partners. The Air Force is committed to promoting diversity within the workplace, and providing an inclusive and rewarding environment for all of our Airmen.
- We recognize there is still work to do in this area. As part of our strategic imperative of inclusion, the Air Force conducted an initial analysis over the past year of demographic trends in military justice across the entire Air Force, to include breakouts of minority trends across different communities (e.g. Major Commands, career fields, installations). At this time, the data have been gathered and analyzed and the cross-functional study team developed recommendations that are currently in staffing to senior leadership for consideration.
- We will continue to monitor demographic trends in military justice measures and conduct deep dive studies as needed to identify issues and develop recommendations.

We strive for systems that are fair and impartial; there is always room to improve

PRE-DECISIONAL *Breaking Barriers ... Since 1947*



A1V Critical Questions

- 1) a) Do we have racial disparities in our justice system or not? b) If the answer is yes, then what are we doing to identify their origins and to counter them?
 - a) Yes – the data reflects a persistent and consistent racial disparity
 - b) See response to Question 2

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Slides with Recommendations

A1V Critical Questions (Cont'd)

2) What do we need to do going forward? How do we ensure that our processes/systems match our core values?

Race & Justice Working Group Recommendations	Proposed OPR(s)	AF/A1 Coord	SAF/MR Decision
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PRE-DECISIONAL *Breaking Barriers ... Since 1947*

A1V Critical Questions (Cont'd)

2) What do we need to do going forward? How do we ensure that our processes/systems match our core values?

Race & Justice Working Group Recommendations	Proposed OPR(s)	AF/A1 Coord	SAF/MR Decision
Standardize, institutionalize unconscious bias training in Commander, First Sgt, Judge Advocate, Supervisor courses	A1	Concur / Non-concur	Yes / No
Revise Status of Discipline briefing format to include additional demographic info (not just race); balance effectiveness, fairness & timeliness	A1, JA	Concur / Non-concur	Yes / No
Conduct associated studies based on initial working group recommendations: racial disparity in admin separations; unconscious bias training effects on enlisted NJP/CMS	A1, JA	Concur / Non-concur	Yes / No
Monitor trends and within 12 months, assess results to identify emerging and best practices in mitigating disparities in military justice	AFBAWG-DAAT	Concur / Non-concur	Yes / No

PRE-DECISIONAL *Breaking Barriers ... Since 1947*

Race and Justice Working Group

Issue: Persistent, consistent higher NJP, Courts-Martial rates for Blacks than Whites/Others

Objectives / Background	Analysis
<p>Line of Effort: Conduct a review of military justice rates with regard to demographic impact</p> <p>Background:</p> <ul style="list-style-type: none"> 18 Apr 16 - Protect our Defenders FOIA request for rate per thousand (RPT) by race, rank on Art 15, CMS data over past 10 yrs 25 Apr 16 - SAF/MR-directed "deep dive" by AF/A1 & AF/JA -- Working group convened and met over next 90 days 6 Jun 17 - POD released Race and Justice Report 21 Jun 17 - OUSD P-R tasked SAF/MR to provide detail on race & rank of all CMs/NJP for each year over past 11 years 	<ul style="list-style-type: none"> From 2006-2016, avg annual rate of 2.39% of approx. 288,470 enlisted personnel received disciplinary action (6,894 per year) -- 0.25% CMs (721 per yr); 2.14% NJP (6,173 per yr) Insight 1: Compared difference between Black & White discipline RPT Insight 2: Compared NJP & Courts Martial rates by race to enlisted/officer race composition across select AFSCs & MAJCOMs Insight 3: Compared statistical analysis on types of offenses and punishments/sentencing by race Insight 4: Compared correlation between changes in NJP timeliness metric and amount of racial difference in RPT
Findings / Conclusions	Working Group Recommendations
<p>Findings:</p> <ul style="list-style-type: none"> Persistent racial disparity identified in enlisted NJP RPT -- From 2011-16, the data reflected the greatest disparity since 1980 -- Specific root causes are unknown at this time <p>Conclusions:</p> <ul style="list-style-type: none"> All MAJCOM/DRU enlisted NJP patterns reflect some level of racial disparity, some AFSCs had lower (e.g. 3S0X1s) and others higher (e.g. 3P0X1s) 	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Breaking Barriers ... Since 1947

Race and Justice Working Group

Issue: Persistent, consistent higher NJP, Courts-Martial rates for Blacks than Whites/Others

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<p>Line of Effort: Conduct a review of military justice rates with regard to demographic impact</p> <p>Background:</p> <ul style="list-style-type: none"> 18 Apr 16 - Protect our Defenders FOIA request for rate per thousand (RPT) by race, rank on Art 15, CMS data over past 10 yrs 25 Apr 16 - SAF/MR-directed "deep dive" by AF/A1 & AF/JA -- Working group convened and met over next 90 days 6 Jun 17 - POD released Race and Justice Report 21 Jun 17 - OUSD P-R tasked SAF/MR to provide detail on race & rank of all CMs/NJP for each year over past 11 years 	<ul style="list-style-type: none"> From 2006-2016, avg annual rate of 2.39% of approx. 288,470 enlisted personnel received disciplinary action (6,894 per year) -- 0.25% CMs (721 per yr); 2.14% NJP (6,173 per yr) Insight 1: Compared difference between Black & White discipline RPT Insight 2: Compared NJP & Courts Martial rates by race to enlisted/officer race composition across select AFSCs & MAJCOMs Insight 3: Compared statistical analysis on types of offenses and punishments/sentencing by race Insight 4: Compared correlation between changes in NJP timeliness metric and amount of racial difference in RPT
Findings / Conclusions	Working Group Recommendations
<p>Findings:</p> <ul style="list-style-type: none"> Persistent racial disparity identified in enlisted NJP RPT -- From 2011-16, the data reflected the greatest disparity since 1980 -- Specific root causes are unknown at this time <p>Conclusions:</p> <ul style="list-style-type: none"> All MAJCOM/DRU enlisted NJP patterns reflect some level of racial disparity, some AFSCs had lower (e.g. 3S0X1s) and others higher (e.g. 3P0X1s) 	<ul style="list-style-type: none"> Standardize, institutionalize unconscious bias training in Commander, First Sgt, Judge Advocate and Supervisor courses (OPR: A1) Revise Status of Discipline briefings to include more comprehensive diversity information on RPT (i.e. not just by race) to enhance value to commanders (OPR: A1, JA) Continue to monitor/demographics trends in mil justice and conduct deep dive studies -- Analyze demographic trends in admin separations (OPR: A1, JA) -- Assess post-implementation of unconscious bias training via annual review of enlisted NJP rates by race and rank (OPR: A1, JA)

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APPENDIX C: LINKS TO FULL SLIDE DECKS PROVIDED BY AIR FORCE TO POD THROUGH FOIA

[Redacted Slides with Findings](#)

[Unredacted Slides with Findings](#)

[Redacted Slides with Recommendations](#)

[Unredacted Slides with Recommendations](#)

[Cleaned Slide Showing Disparities Increasing](#)

[Unredacted Recommendations, Received May 2020](#)

APPENDIX D: MOTION FOR RECONSIDERATION



[Motion for Reconsideration](#)

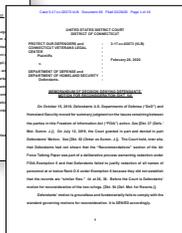
APPENDIX E: LAWSUIT, FOIA REQUESTS, AND JUDGE'S ORDERS



[Lawsuit filed by POD with the assistance of Yale Veterans Legal Clinic and Connecticut Veterans Legal Center, FOIA requests included](#)

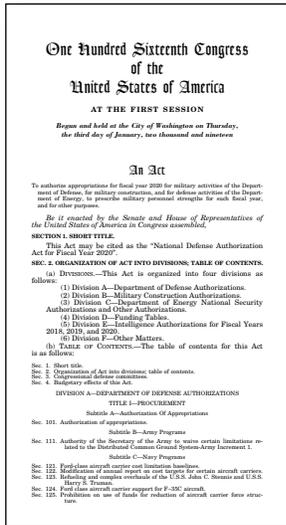


[Judge's Order Denying Summary Judgement](#)



[Judge's Order Denying Reconsideration](#)

APPENDIX F: NDAA PROVISIONS



A requirement to track race, ethnicity and gender of courts-martial. The Secretary of Defense is required to identify causes of disparity and to “take steps to address causes.” This is a clear response to the Disparity Report and these were POD recommendations contained in the report.

NDAA Division A Title V Subtitle D Section 540I “Assessment of Racial, Ethnic, and Gender Disparities in the Military Justice System”

Amendment 120 to H.R. 2500

Sponsor: Elijah Cummings (D-MD) (deceased)

APPENDIX G: GAO RECOMMENDATIONS

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard modifies the Coast Guard’s military justice database so that it can query and report on gender information. (Recommendation 1)

The Secretary of the Army should 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 in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Army’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 included in the uniform standards, or (3) implementing another method identified by the Army. (Recommendation 2)

The Secretary of the Air Force should 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 in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Air Force’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 included in the uniform standards, or (3) implementing another method identified by the Air Force. (Recommendation 3)

The Secretary of the Navy should 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 in 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 included in the uniform standards, or (3) implementing another method identified by the Navy. (Recommendation 4)

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard develops the capability to present servicemembers’ race and ethnicity data in its investigations and personnel

databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Coast Guard'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 included in the uniform standards, or (3) implementing another method identified by the Coast Guard. (Recommendation 5)

The Secretary of Defense should ensure that the Joint Service Committee on Military Justice, in its annual review of the UCMJ, considers an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race, ethnicity, and gender, for all types of courts-martial. (Recommendation 6)

The Secretary of Defense, in collaboration with the Secretaries of the military services and the Secretary of Homeland Security, should 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. (Recommendation 7)

The Secretary of the Army 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 Army's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 8)

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, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 9)

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard considers the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Coast Guard's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 10)

The Secretary of Defense, in collaboration with the Secretaries of the military services and the Secretary of Homeland Security, should 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. (Recommendation 11)



APPENDIX H: LIST OF MEDIA COVERAGE

[Huff Post: Even In The Military, Black People Are Punished Disproportionately, Report Shows](#)

[McClatchy: Black troops far more likely to face military punishment in every service branch](#)

[Newsweek: Is the military racist? Black Troops Punished Far More Than White Service Members, Study Finds](#)

[NY Daily News: Black troops up to two times more likely to face disciplinary action, study shows](#)

[NBC: Black Troops More Likely to Face Military Punishment Than Whites, New Report Says](#)

[USA Today: Black troops as much as twice as likely to be punished by commanders, courts](#)

[VICE: The Vice Morning Bulletin](#)

[The View: Black Troops More Likely to Be Punished](#)

[MSNBC: Is the military racist?](#)

[USA Today: White House aide Omorosa Manigault tackling Pentagon racial bias in military justice](#)

[The Guardian: A fallen black soldier being disrespected? That's not an aberration in America](#)

[Washington Post: Trump's Black History Month proclamation implies racism in the military is in the past. It's not](#)

[The St. Louis American: Racial disparity in military justice process must be addressed](#)

[US Naval Institute: Implicit Bias Affects Military Justice](#)

[Memorial Day: America's strained salute to its black veterans](#)

[Military Times: This report says black and Hispanic service members are more likely to face trial](#)

[Stars & Stripes: Blacks and Hispanics face military trials at disproportionate rates, GAO report to Congress says](#)

[Business Insider: Black and Hispanic service members more likely to face trial, but likelihood of conviction is nearly the same for all troops](#)

[Marine Times: Armed forces to track race, ethnicity and gender of criminal suspects](#)

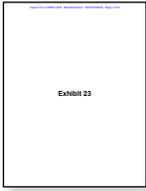
[Stars & Stripes: Lawmakers order military courts to track race of accused troops amid bias concerns](#)

[The Washington Informer: National Defense Authorization Act Right Step to Eliminate Racism, Sexual Assault in the military](#)

[US Army: Hohenfels Community honors the past and secure the future during African American History Month](#)

- News Article
- Opinion Piece
- Academic Paper

APPENDIX I: DECLARATION OF RITA SONO



Declaration of Rita Sono

APPENDIX J: DECLARATION OF SEAN JONES



Declaration of Sean Jones

APPENDIX K: UNREDACTED AND REDACTED TALKING PAPERS



Redacted Talking Papers



Unredacted Talking Papers

APPENDIX L: 17 JULY 2017 CONGRESSIONAL BLACK CAUCUS (CBC) LETTER TO THE DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL (DODIG)



July 2017 Congressional Black Caucus (CBC) letter to the Department of Defense Office of the Inspector General (DoDIG)

APPENDIX M: 25 AUGUST 2017 SITTERLY EMAIL



August 2017 Sitterly Email



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