

**NOT FOR PUBLICATION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

**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**

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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”¹ 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.”² 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.

¹ https://www.navy.mil/submit/display.asp?story_id=113160

² 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.³ 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

³ 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.”⁴ 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.

⁴ 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.