



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 26th 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.