

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:

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AIR FORCE

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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.