Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Exploring the Race, Ethnicity, and Gender of Military Panels at Courts-Martial

Defense Advisory Committee

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EXPLORING THE RACE, ETHNICITY, AND GENDER OF MILITARY PANELS AT COURTS-MARTIAL

THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

July 29, 2024

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
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The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to provide you with our report *Exploring the Race, Ethnicity, and Gender of Military Panels at Courts-Martial* in accordance with section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended. This report is the first known analysis of the demographics of military personnel who are chosen by convening authorities to be part of venires, as well as the demographics of those members who are ultimately selected to serve on courts-martial panels in contested sexual assault offense cases.

The DAC-IPAD makes 14 findings and 4 recommendations in this report relating to the representation of minorities and women on details and panels in sexual assault offense cases in fiscal years 2021 and 2022. The findings provide important baseline data to understand the impact of recent changes in law and policy to the panel selection process. The recommendations provide guidance on how the Department of Defense should improve its data collection and continue to assess the demographics of panel members.

The members of the DAC-IPAD would like to express our sincere gratitude and appreciation for the opportunity to make use of our collective experience and expertise in this field to develop recommendations to improve the military justice system.
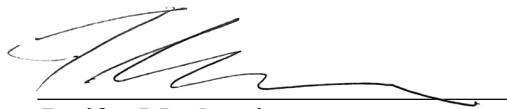
Respectfully submitted,

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Karla N. Smith, Chair

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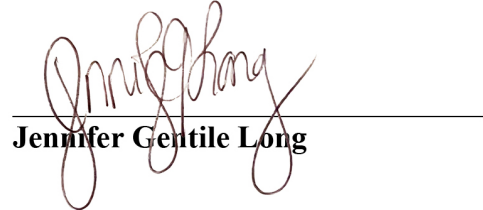
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CONTENTS

APPENDIXES

EXECUTIVE SUMMARY

In response to concerns heard about the lack of diversity on military juries, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) undertook a multiyear study of the demographics of panel members serving on contested sexual assault courts-martial. This report is the first known analysis of the race, ethnicity, and gender of military personnel who are chosen by a convening authority to be part of the venire—a process known as detailing—as well as the demographics of those members who are ultimately selected to serve on the courts-martial panel.

In completing its study, the DAC-IPAD was guided by the following research questions:

- How do the demographics of Service members detailed to sexual assault courts-martial panels compare with overall Service demographics?
- What are the demographics of Service members who are detailed to sexual assault courts-martial panels but excused owing to challenges for cause, peremptory strikes, or randomization?
- Are minority Service members excluded from sexual assault courts-martial panels at higher rates than white Service members in sexual assault cases?

To answer these questions, the DAC-IPAD examined 260 cases from fiscal years (FYs) 2021 and 2022 from the Army, Navy, Marine Corps, and Air Force/Space Force[1] in which an accused was tried by a court-martial with members and a finding was made on any offense under Article 120, 120b, or 120c of the Uniform Code of Military Justice (UCMJ). The Committee recorded the demographic information for the 4,376 panel members detailed to and/or impaneled on these courts-martial, aggregating the race and ethnicity information provided by the Services into two blended race/ethnicity categories: "white, not Hispanic" and "minority race and/or Hispanic."

On the basis of its analysis of the data, the DAC-IPAD makes 14 findings and 4 recommendations in this report relating to the representation of minorities and women on details and panels in sexual assault offense cases in FY21 and FY22. Among its key findings on the representation of minorities:

- In the Army, the representation of racial and/or ethnic minorities on details and panels was similar to their overall representation in the Army; these differences are not statistically significant.
- In the Air Force, the representation of racial and/or ethnic minorities on details was lower than their overall representation in the Air Force. The representation of racial and/or ethnic minorities on panels was higher than their overall representation. These differences are not statistically significant.
- In the Navy, the representation of racial and/or ethnic minorities on details and panels was lower than their overall representation in the Navy; these differences are statistically significant.
- In the Marine Corps, the representation of racial and/or ethnic minorities on details and panels was lower than their overall representation in the Marine Corps; these differences are not statistically significant.

Among its key findings on the representation of women:

- In the Army and Air Force, the representation of women on details and panels was greater than their overall representation in their respective Services. The differences for details are statistically significant, but not the differences for panels.

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1 All references to the Air Force in this report include the Space Force. The data in the report for the Air Force are presented for FY21 cases only.

- In the Marine Corps, the representation of women on details was greater than their representation in the Service. The representation of women on panels was lower than their overall representation. These differences are not statistically significant.
- In the Navy, the representation of women on details and panels was lower than their representation in the Service; these differences are statistically significant.
- In all the Services, women were impaneled at lower rates than men; these differences are all statistically significant.

The DAC-IPAD's study is of particular importance during this critical period of change. As part of the National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), Congress amended Article 25, UCMJ, to require by 2024 the random selection of panel members to the maximum extent possible.[2] In September 2023, the Court of Appeals for the Armed Forces issued its opinion in *United States v. Jeter*, which held that a convening authority could not—even in good faith—use race as a criterion for selection to make the members panel more representative of the accused's race.[3] In addition, in December 2023 the DAC-IPAD released a report that made recommendations to remove subjectivity and the potential for bias in the process used by the convening authority to determine the eligibility of panel members.[4]

Given the dynamic nature of this area of law, this report provides important baseline data on panel member demographics to facilitate future comparisons. The DAC-IPAD recommends that within the next five years, the Department of Defense conduct another comprehensive study to assess the racial, ethnic, and gender diversity of panel members detailed and impaneled on all courts-martial.

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2   National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263 [FY23 NDAA], § 543, 136 Stat. 2395 (2022).

3   *U.S. v. Jeter*, 84 M.J. 68 (C.A.A.F. 2023).

4   Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System (Dec. 2023) [DAC-IPAD Randomizing Report]. Copies of all DAC-IPAD reports can be found on the DAC-IPAD website at https://dacipad.whs.mil.

FINDINGS AND RECOMMENDATIONS

Finding 1 (*on conviction rates*): In contested courts-martial tried before a military panel during FY21 and FY22, the vast majority of sexual assault offense cases resulted in an acquittal on the sexual assault offense.

Recommendation 66 (*on continuing to measure conviction rates*): As required by the DoD Performance Measures and Data Collection Categories published pursuant to Section 547(c) of the FY22 National Defense Authorization Act, the Department of Defense should measure and report the prosecution and conviction rates for sexual assault offenses for both contested and uncontested cases (disaggregated by judge-alone and panel cases) to determine the effects of recent changes in law and policy on case adjudication outcomes. The Department of Defense should compare the prosecution and conviction rates for sexual assault offenses with those for other offenses.

Finding 2 (*on enlisted accused and forum selection*): During FY21 and FY22, nearly all contested courts-martial for sexual assault offenses tried before a military panel involved an enlisted accused. Enlisted accused rarely selected an all-officer panel.

Finding 3 (*on data limitations*): The DAC-IPAD faced challenges in obtaining standardized and complete racial and ethnic data from the Services. The DAC-IPAD concurs with the Government Accountability Office's recent finding that data limitations hinder the Department of Defense's ability to understand potential racial and ethnic disparities in the military justice system.

Recommendation 67 (*on data collection*): The DAC-IPAD reiterates its previous recommendations that the Secretary of Defense direct the Military Departments to record, using standardized categories, the race and ethnicity of the accused, victim, military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general court-martial convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges involved in every case investigated by military law enforcement in which a Service member is the subject of an allegation of a contact or penetrative sexual offense.

Finding 4 (*on representation of minorities on details*): In sexual assault offense cases, the representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Army was similar to their representation in the Army as a whole. The representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Air Force and Marine Corps was lower than their representation in their respective Services. The representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Navy was lower than their overall representation in the Navy. For the Navy, this difference is statistically significant.

- In the Army, racial and/or ethnic minorities constituted 45.3% of Service members detailed to courts-martial panels, while their overall representation in the Army was similar at 46.0%. This difference is not statistically significant.
- In the Navy, racial and/or ethnic minorities constituted 43.3% of Service members detailed to panels, lower than their overall representation in the Navy (53.4%). This difference is statistically significant.
- In the Marine Corps, racial and/or ethnic minorities constituted 40.2% of Service members detailed to panels, a lower percentage than their overall representation in the Marine Corps (43.1%). This difference is not statistically significant.
- In the Air Force, racial and/or ethnic minorities constituted 37.1% of Service members detailed to panels, a lower percentage than their overall representation in the Air Force (39.4%). This difference is not statistically significant.

Finding 5 (*on rate of impanelment for minorities*): For sexual assault offense cases in the Air Force and Navy, racial and/or ethnic minority Service members on details were more likely to be impaneled than white, not Hispanic Service members. In the Army, racial and/or ethnic minority Service members on details were as likely to be impaneled as white, not Hispanic Service members. In the Marine Corps, racial and/or ethnic minority Service members on details were less likely to be impaneled than white, not Hispanic Service members.

- In the Army, the rate at which white, not Hispanic Service members were impaneled (48.7%) was nearly identical to the rate at which minority Service members were impaneled (48.6%). This difference is not statistically significant.
- In the Navy, minority members were impaneled at a higher rate (45.3%) than white, not Hispanic Service members (43.6%). This difference is not statistically significant.
- In the Marine Corps, minority members were impaneled at a lower rate (43.8%) than white, not Hispanic Service members (46.4%). This difference is not statistically significant.
- For the Air Force, the rate at which white, not Hispanic members were impaneled (41.4%) was less than the rate at which minority members were impaneled (47.2%). This difference is not statistically significant.

Finding 6 (*on representation of minorities on panels*): For sexual assault offense cases, the representation of racial and/or ethnic minorities on panels in the Army and Air Force was similar to their representation in their respective Services. In the Navy and the Marine Corps, the representation of racial/and or ethnic members on panels was lower than their representation in their respective Services. For the Navy, this difference is statistically significant.

- In the Army, the representation of racial and/or ethnic minorities on panels (45.2%) was similar to their representation in the Service (46.0%). This difference is not statistically significant.
- In the Navy, the representation of minority members on panels was 44.3%, lower than their representation in the Service (53.4%). This difference is statistically significant.
- In the Marine Corps, the representation of minority members on panels was 38.8%, also lower than their overall representation in the Service (43.1%). This difference is not statistically significant.
- In the Air Force, the representation of minority members on panels was 40.2%, higher than their representation in the Service (39.4%). This difference is not statistically significant.

Finding 7 (*on use of peremptory challenges for members not impaneled*): For contested courts-martial involving sexual assault offenses, peremptory challenges were not used disproportionately to exclude minority members; in three of the four Services, white, not Hispanic Service members were excused because of peremptory challenges at higher rates than minority Service members.

- In the Army, 18.3% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.0% of racial and/or ethnic minority Service members. This difference is not statistically significant.

- In the Navy, 18.2% of white, not Hispanic Service members were excused because of peremptory challenges, higher than the rate for racial and/or ethnic minority groups (12.9%). This difference is not statistically significant.

- In the Marine Corps, 15.6% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups. This difference is not statistically significant.

- In the Air Force, 17.5% of white, not Hispanic members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups. This difference is not statistically significant.

Finding 8 (*on representation of minorities on panels when accused was a minority*): In sexual assault cases in the Army and Air Force, panels had a greater representation of racial and/or ethnic minority Service members when the accused was a minority than when the accused was a white, not Hispanic Service member. In the Navy, panels had a similar representation of racial and/or ethnic minority Service members when the accused was a minority and when the accused was a white, not Hispanic Service member. Finally, in the Marine Corps, panels had a lower representation of racial and/or ethnic minority Service members when the accused was a racial and/or ethnic minority Service member than when the accused was a white, not Hispanic Service member. Except for the Army, these differences are not statistically significant.

- In the Army, in cases in which the accused was a white, not Hispanic Service member, the typical panel was composed of 59.6% white, not Hispanic members and 40.4% racial and/or ethnic minority members. In cases in which the accused was a racial and/or ethnic minority, the typical panel was composed of 51.0% white, not Hispanic members and 49.0% racial and/or ethnic minority members. This difference in average percentages across race and/or ethnicity of the accused Service member is statistically significant.

- In the Navy, in cases with a white, not Hispanic accused, the typical panel was composed of 52.2% white, not Hispanic members and 47.8% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 52.7% white, not Hispanic members and 47.3% racial and/or ethnic minority members. This difference is not statistically significant.

- In the Marine Corps, in cases with a white, not Hispanic accused, the typical panel was composed of 54.1% white, not Hispanic members and 45.9% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 65.7% white, not Hispanic members and 34.3% racial and/or ethnic minority members. This difference is not statistically significant.

- In the Air Force, in cases with a white, not Hispanic accused, the typical panel was composed of 64.2% white, not Hispanic members and 35.8% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 55.3% white, not Hispanic members and 44.7% racial and/or ethnic minority members. This difference is not statistically significant.

Finding 9 (*on patterns of results*): In sexual assault offense cases in all the Services, the patterns of results are the same (1) when the analysis grouped all individuals together, and (2) when the analysis examined the specific details and panels to which individuals were assigned.

Recommendation 68 (*on future study*): To further understand the potential impacts of *United States v. Jeter*, as well as future randomization practices, the Department of Defense should conduct a comprehensive study within the next five years, using the same methodology as the DAC-IPAD's, to assess the diversity of panel members detailed and impaneled on all courts-martial. The Services should provide the race and ethnicity for all Service members included in that study. In addition, to understand the potential underrepresentation of specific racial and/or ethnic groups, the Department of Defense should conduct a parallel study in which it does not aggregate racial and/or ethnic minorities into one category.

Finding 10 (*on representation of women on details*): In sexual assault offense cases in the Army and Air Force, the representation of women detailed to courts-martial was greater than their overall representation in their respective Services. In the Marine Corps, the representation of women detailed to courts-martial was slightly higher than their overall representation in the Service. In the Navy, the representation of women detailed to courts-martial was lower than their representation in the Service. The differences in all Services other than the Marine Corps are statistically significant.

- In the Army, women constituted 21.2% of details, compared with their overall Service representation of 15.6%. This difference is statistically significant.
- In the Navy, women constituted 16.0% of details, which was lower than their overall Service representation of 20.7%. This difference is statistically significant.
- In the Marine Corps, women constituted 10.5% of details, which was greater than their overall Service representation of 9.4%. This difference is not statistically significant.
- In the Air Force, women constituted 31.0% of details, compared with their Service representation of 21.5%. The difference is statistically significant.

Finding 11 (*on rate of impanelment for women*): In sexual assault offense cases in all the Services, women were impaneled at lower rates than men; these differences are statistically significant in all the Services.

- In the Army, women were impaneled at a rate of 37.8%; men, at 51.6%. This difference is statistically significant.
- In the Navy, women were impaneled at a rate of 26.5%; men, at 49.9%. This difference is statistically significant.
- In the Marine Corps, women were impaneled at a rate of 29.9%; men, at 48.7%. This difference is statistically significant.
- In the Air Force, women were impaneled at a rate of 33.1%; men, at 48.1%. This difference is statistically significant.

Finding 12 (*on representation of women on panels*): In sexual assault offense cases, the representation of women on panels in the Army and Air Force was greater than their overall Service representation. In both the Navy and the Marine Corps, the representation of women on panels was less than their representation in their respective Services; in the Navy, this difference is statistically significant.

- In the Army, the representation of women on panels was 16.4% while their overall representation was 15.6%. This difference is not statistically significant.
- For the Navy, the representation of women on panels was 9.2% while their overall representation was 20.7%. This difference is statistically significant.
- In the Marine Corps, the representation of women on panels was 6.7% while their overall representation was 9.4%. This difference is not statistically significant.
- In the Air Force, the representation of women on panels was 23.6% while their overall representation was 21.5%. This difference is not statistically significant.

Finding 13 (*on use of challenges for members not impaneled*): In sexual assault offense cases in the Army, Air Force, and Navy, men and women were excused because of challenges for cause in similar percentages; in the Marine Corps, a higher percentage of women were excused than men because of challenges for cause. Across the Services, men and women were excused because of peremptory challenges in similar percentages.

- In the Army, 65.6% of women were excused because of challenges for cause, the same percentage as men. 17.8% of women were excused because of peremptory challenges, compared with 17.3% of men. These differences are not statistically significant.
- In the Navy, 61.7% of women were excused because of challenges for cause, compared with 61.9% of men. 13.8% of women were excused because of peremptory challenges, compared with 16.7% of men. These differences are not statistically significant.
- In the Marine Corps, 76.6% of women were excused because of challenges for cause, compared with 54.1% of men. 10.6% of women were excused because of peremptory challenges, compared with 17.3% of men. These differences approach but do not reach statistical significance. The small numbers of female Service members means that the tests of statistical significance may not be reliable.
- In the Air Force, 59.4% of women were excused because of challenges for cause, compared with 55.8% of men. 18.8% of women were excused because of peremptory challenges, compared with 16.7% of men. These differences are not statistically significant.

Finding 14 (*on patterns of results*): In all the Services, the patterns of results are the same for gender (1) when the analysis grouped all individuals together and (2) when the analysis examined the specific details and panels to which individuals were assigned.

Recommendation 69 (*on future study*): The Department of Defense should conduct a comprehensive study within the next five years, using the same methodology as the DAC-IPAD's, to assess the gender of panel members detailed and impaneled on all courts-martial. The Services should provide the gender for all Service members included in that study.

INTRODUCTION

The DAC-IPAD has long been concerned about the fairness, and perception of fairness, of the military justice system, including the fairness of panels that determine the guilt of accused Service members.[5] In 2022, the Committee received public comments from Service members who expressed concern about military panels' lack of diversity. One African American Service member accused of a sexual offense noted that his panel consisted of all white males,[6] an experience that resonated with that of Committee members who had participated in courts-martial.[7] The Committee also heard that women were systematically excluded from serving on panels, often owing to their training as victims' advocates or their own experience with sexual assault.[8]

The concerns raised to the DAC-IPAD about the potential underrepresentation of minorities on military panels mirror concerns about the diversity of civilian juries.[9] Researchers investigating civilian judicial systems have found that jury diversity has many benefits. For example, diverse juries "had longer deliberations, discussed more case facts, made fewer inaccurate statements, and were more likely to correct inaccurate statements" than homogeneous juries.[10] In addition, diverse juries bolster public perceptions of the legitimacy and fairness of the criminal justice system;[11] conversely, homogeneous juries are perceived less positively by the public.[12]

In response to these concerns, the Case Review Subcommittee undertook a multiyear study of the demographics of military panel members serving on contested sexual assault courts-martial in fiscal years 2021 and 2022. This report is the first known analysis of the race, ethnicity, and gender of military personnel who are chosen by a convening authority to be part of the venire—a process known as detailing—as well as of the demographics of those members who are ultimately selected to serve on the panel.[13]

The analysis of the demographic composition of military details and panels is of particular importance during this critical period of change. As part of the National Defense Authorization Act for Fiscal Year 2023, Congress amended Article 25, Uniform Code of Military Justice, to require by 2024 the random selection of panel members

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5   *See* DAC-IPAD, Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offense in the Military Recommendation 38 (Dec. 2020) [DAC-IPAD Report on Racial and Ethnic Data].

6   *See Transcript of DAC-IPAD Public Meeting* 368 (Sept. 21, 2022) (public comment of Mr. Arvis Owens). Transcripts of all DAC-IPAD public meetings can be found on the DAC-IPAD website at https://dacipad.whs.mil.

7   *See Transcript of DAC-IPAD Public Meeting* 76–78 (Dec. 6, 2022) (comments of Committee members Mr. William E. Cassara and Dr. Jenifer Markowitz); *id.* at 62–64 (comment of Judge Reggie B. Walton).

8   *See Transcript of DAC-IPAD Public Meeting* 132 (Dec. 6, 2022) (testimony of Mr. Ryan Guilds).

9   Ashish S. Joshi & Christina T. Kline, *Lack of Jury Diversity: A National Problem with Individual Consequences*, Diversity & Inclusion, Spring 2015, at 3–4.

10 Sonia Chopra, *Preserving Jury Diversity by Preventing Illegal Peremptory Challenges: How to Make a Batson/Wheeler Motion at Trial (and Why You Should)*, The Trial Lawyer, Summer 2014, at 13 (*citing* Samuel Sommers, *On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psychol. 597 (2006)).

11 Leslie Ellis & Shari Seidman Diamond, *Race, Diversity and Jury Composition: Battering and Bolstering Legitimacy*, 78 Chicago-Kent L. Rev. 1033 (2003).

12 Joshi & Kline, *supra* note 9, at 4.

13 Congress directed the Comptroller General to submit to Congress a report on racial disparities in all facets of the military justice system, including panel selection. *See* National Defense Authorization Act for Fiscal Year 2022 [FY22 NDAA], Pub. L. No. 117–81, § 549F, 135 Stat. 1692 (2021). The Government Accountability Office completed a study in May 2024 but did not include any data or analysis on the demographics of military panels. United States Government Accountability Office, Military Justice: Increased Oversight, Data Collection, and Analysis Could Aid Assessment of Racial Disparities (May 2024) [GAO Report on Military Justice, Increased Oversight].

to the maximum extent possible.[14] In September 2023, the Court of Appeals for the Armed Forces issued its opinion in *United States v. Jeter*, which held that a convening authority could not—"even in good faith"—"use race as a criterion for selection to make the members panel more representative of the accused's race."[15] In addition, in December 2023 the DAC-IPAD released a report—undertaken in conjunction with this study—that made recommendations to remove subjectivity and the potential for bias from the process used by the convening authority to determine the eligibility of panel members.[16] In the context of these recent changes in law and policy, as well as the potential for additional changes, this report provides important baseline data on panel member demographics to facilitate future comparisons.

The first chapter of this report provides an overview of the panel selection process. The second chapter details the Committee's methodology for reviewing FY21 and FY22 sexual assault case documents and collecting and analyzing demographic information. The third, fourth, and fifth chapters provide the study's results and analysis, with a particular focus on the following questions:

- How do the demographics of Service members detailed to sexual assault courts-martial panels compare with overall Service demographics?
- What are the demographics of Service members who are detailed to sexual assault courts-martial panels but excused owing to challenges for cause, peremptory strikes, or randomization?
- Are minority Service members excluded from sexual assault courts-martial panels at higher rates than white Service members?

The DAC-IPAD notes several points about this study. First, all results and findings in this report are based on demographic data the DAC-IPAD received from the Services. The DAC-IPAD excluded any Service members whose race and/or ethnicity was unknown from its analysis.[17] Moreover, because victims may have been civilians, the Committee was unable to collect and analyze information relating to the race or ethnicity of the victim for this report. Given that studies from the civilian sector suggest that criminal justice responses to sexual offenses differ depending on the victim–accused racial/ethnic dyad,[18] the Committee acknowledges the importance of including this information in future studies. In addition, for reasons discussed in the methodology, the DAC-IPAD aggregated and coded the information provided by the Services into two blended race/ethnicity categories: "white, not Hispanic" and "minority race and/or Hispanic."[19] As a result, the DAC-IPAD was unable to analyze the potential underrepresentation of specific racial and/or ethnic groups on details and panels that may be masked by this aggregation. Finally, the DAC-IPAD did not examine the specific reasons why particular members were not impaneled; the DAC-IPAD makes no value judgment as to why these members were excused.

As its recommendations make clear, the Committee believes it is vital that the Services continue to analyze the demographics of military panel members, as well as other key participants in the court-martial process. These continuing analyses will facilitate a better understanding of the effects of *Jeter*, randomization, and any other changes on the fairness, and perception of fairness, of the military justice system.

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14   FY23 NDAA, *supra* note 2, § 543.

15   *U.S. v. Jeter*, 84 M.J. 68 (C.A.A.F. 2023).

16   DAC-IPAD Randomizing Report, *supra* note 4.

17   *See infra* Chapter 3 for a full discussion of missing data.

18   Eryn Nicole O'Neal, Laura O. Beckman, and Cassia Spohn, *The Sexual Stratification Hypothesis: Is the Decision to Arrest Influenced by the Victim/Suspect Racial/Ethnic Dyad?*, 34 J. of Interpersonal Violence 1287 (2016); *see also* DAC-IPAD Report on Racial and Ethnic Data, *supra* note 5, at 17.

19   *See infra* Chapter 3.

CHAPTER 1. OVERVIEW OF THE PANEL SELECTION PROCESS

The DAC-IPAD has written extensively about the history and background of the court-martial panel member selection process, most recently in its December 2023 report *Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System*.[20] To provide context for this study's methodology, this chapter provides another overview of court-martial member selection and describes recent changes to the process, including to the law governing the use of race and gender when selecting a panel.

I. THE ROLE OF THE CONVENING AUTHORITY IN PANEL MEMBER SELECTION

When commanders convene a court-martial, they must detail Service members to serve as panel members. Article 25, UCMJ, dictates that the convening authority shall detail members that, "in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament."[21]

To accomplish this task, subordinate commanders typically provide a list of nominees to the convening authority's staff judge advocate. The staff judge advocate then prepares a package for the convening authority: it includes the list of nominees, member questionnaires for each nominee, and a roster of every eligible Service member under that command. Using this information, the convening authority selects Service members to detail to the court-martial; this second list may include Service members who were not nominated by the subordinate commanders and Service members from other commands.

The staff judge advocate then drafts a court-martial convening order (CMCO), which creates the court-martial and details the selected members to the court-martial panel.[22] The CMCO may be amended before trial to remove members who are no longer available.[23]

In all noncapital cases, the accused may elect to be tried by a court-martial composed of a military judge alone or by a court-martial composed of a military judge and members. In those cases when an enlisted accused elects trial by court-martial composed of a military judge and members, the accused may request that the panel be composed of all officers or that the panel include at least one-third enlisted representation.[24] Depending on the request, the convening authority may need to (1) detail additional members and relieve those previously detailed to ensure the proper proportion of officers and enlisted members, (2) withdraw the charges and refer them to a court-martial that includes the proper proportion of officers and enlisted members, or (3) advise the court-martial to proceed in the absence of officers or enlisted members if eligible personnel cannot be detailed because of physical conditions or military exigencies.[25]

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20 *See* DAC-IPAD Randomizing Report, *supra* note 4, at Chapter 2; *see also* DAC-IPAD, APPELLATE REVIEW STUDY 23 (March 2023).

21 10 U.S.C. § 825(e)(2) (Art. 25(e)(2), UCMJ).

22 *See* MANUAL FOR COURTS-MARTIAL, UNITED STATES (2024 ed.) [2024 MCM], Rule for Court-Martial (R.C.M.) 504(a); *id*. at R.C.M. 503(a)(1).

23 Pursuant to recent changes to R.C.M. 911, prior to the assembly of the court-martial, the military judge randomly assigns numbers to the members detailed by the convening authority. The military judge will then require a certain number of detailed members to be present at an initial session according to their randomly assigned number; the other detailed members are temporarily excused, allowing them to perform their regular military duties until they are notified to appear in court. Previously, all detailed members that had not been excused were required to appear at the initial session. *Id*. at R.C.M. 911.

24 *Id*. at R.C.M. 903(a)(1); 10 U.S.C. § 825(c)(2) (Art. 25(c)(2), UCMJ).

25 2024 M.C.M, R.C.M. 503(a)(2) (Discussion).

II.   THE USE OF RACE AND GENDER IN PANEL MEMBER SELECTION

The Court of Military Appeals—the predecessor court to the Court of Appeals for the Armed Forces (CAAF)—held that an accused does not have a right to a court-martial panel drawn from a representative cross-section of the population; indeed, Article 25, UCMJ, which outlines specific criteria for the convening authority to consider when deciding who is best qualified to serve on a panel, contemplates this very result.[26] Accordingly, an accused Service member does not have a constitutional or statutory right to have members of their race or gender included on their court-martial panel.[27] While the Fifth Amendment protects against "intentional racial discrimination through exclusion[,] . . . the mere fact a court-martial panel fails to include minority representation violates neither the Fifth Amendment" nor the UCMJ.[28]

Under previous precedent established in *United States v. Crawford*, the convening authority was permitted to depart from Article 25 factors in one particular situation: "when seeking *in good faith* to make the panel more representative of the accused's race or gender."[29] The Court of Military Appeals stated that if such a step constitutes discrimination, "it is discrimination in favor of, not against, an accused."[30] Therefore, until September 2023, if an accused was Black, a convening authority could intentionally select Black Service members to serve on the court-martial panel. Similarly, if the accused was female, the convening authority could intentionally select female Service members to serve on the panel.[31] In testimony received by the DAC-IPAD in September 2023—prior to the CAAF decision in *United States v. Jeter*—several former general courts-martial convening authorities stated that they considered the demographics of Service members during panel selection to promote those panels' diversity, though they did not comment on whether they did so based on the accused's race or gender.[32]

However, in the case *United States v. Jeter*, decided in September 2023, the CAAF found that *Crawford* was abrogated by the Supreme Court's 1986 holding in *Batson v. Kentucky*.[33] In addition to noting that the *Crawford* holding was "unmoored from any statutory authority,"[34] the CAAF, relying on the Supreme Court's conclusion that "a person's race simply is unrelated to his fitness as a juror,"[35] held that "it is impermissible to exclude *or intentionally include* prospective members based on their race."[36] As a result, whenever an accused makes a prima facie showing that race played a role in the panel selection process, a presumption will arise that the panel was not properly constituted, which the government may then seek to rebut.[37] Given the CAAF's similar jurisprudence on the use of race and the use of gender in member selection, it is likely that the *Jeter* decision will be extended to prohibit the intentional inclusion of women on court-martial panels.

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26   *U.S. v. Santiago-Davila*, 26 M.J. 380, 389 (C.M.A. 1988) (noting that "Article 25 of the Uniform Code contemplates that a court-martial panel will not be a representative cross-section of the military population"); *U.S. v. Smith*, 27 M.J. 242, 248 (C.M.A. 1988).

27   *U.S. v. Bess*, 80 M.J. 1, 7 (C.A.A.F. 2019) (citing *Powers v. Ohio*, 499 U.S. 400, 404 (1991)).

28   *Bess*, 80 M.J. at 4.

29   *U.S. v. Reisbeck*, 77 M.J. 154, 164 (C.A.A.F. 2018) (emphasis added) (discussing *U.S. v. Crawford*, 35 C.M.R. 3, 13 (C.M.A. 1964)).

30   *Crawford*, 35 C.M.R. at 13.

31   *Reisbeck*, 77 M.J. at 163; *see also U.S. v. Smith*, 27 M.J. 242, 248 (C.M.A. 1988).

32   *See Transcript of DAC-IPAD Public Meeting* 125–26 (Sept. 19, 2023) (testimony of Major General Kenneth T. Bibb); *id.* at 128 (testimony of Major General David N. Hodne).

33   *U.S. v. Jeter*, 84 M.J. 68, 70 (C.A.A.F. 2023).

34   *Id.* at 72.

35   *Id.* (citing *Batson v. Kentucky*, 476 U.S. 79, 87 (1986)).

36   *Jeter*, 84 M.J. at 73 (emphasis added).

37   *Id.* at 70.

III.   VOIR DIRE

After assembly of the court-martial, the military judge and counsel examine the venire through voir dire, the purpose of which is "to obtain information for the intelligent exercise of challenges" of members.[38] "Voir dire protects an accused's right to an impartial trier of fact by exposing possible biases, both known and unknown, on the part of potential jurors."[39] Under Rule for Courts-Martial (R.C.M.) 912, "a member shall be excused for cause whenever it appears that the member . . . [s]hould not sit as a member in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality."[40] This rule encompasses both actual bias and implied bias.[41] Actual bias is a standard viewed "through the eyes of the military judge or court members"[42] that asks whether a challenged member's bias is "such that it will not yield to the evidence presented and the judge's instructions."[43] Implied bias, on the other hand, is a standard viewed through the eyes of the public, and the criterion is whether the system's appearance of fairness would be questioned if the challenged member served on the panel.[44]

Under the liberal grant mandate, military judges must err on the side of granting an accused's challenge for cause when the judge finds the question to be a close one.[45] The liberal grant mandate is a response to two unique aspects of the military justice system: the small number of peremptory challenges in courts-martial (generally limited to one per side) as compared with those in most civilian courts, and the perils associated with the convening authority's broad power to appoint panel members.[46]

After challenges for cause have been exercised, the court uses a computer program to assign each remaining member a random number. The parties may then choose to exercise their peremptory challenge. Generally, the parties do not need to provide a reason for their peremptory challenge, although both civilian and military jurisdictions have adopted procedures to prohibit the use of peremptory challenges to exclude a person from the venire on the basis of race or gender.[47] In federal civilian practice the objecting party must make a prima facie case of purposeful discrimination, but in the military no prima facie showing is required; the challenging party must then articulate a reasonable racially neutral explanation for the challenge.[48] After the challenged members are excused, the military judge impanels the required number of members in the order established by the random number generator.

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38   2024 MCM, *supra* note 22, R.C.M. 912 (Discussion).

39   *U.S. v. Commisso*, 76 M.J. 315, 321 (C.A.A.F 2017) (citing *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 (1984)).

40   2024 MCM, *supra* note 22, R.C.M. 912(f)(1)(N).

41   *U.S. v. Napoleon*, 46 M.J. 279, 283 (C.A.A.F. 1997).

42   *U.S. v. Warden*, 51 M.J. 78, 81 (C.A.A.F. 1999).

43   *Napoleon*, 46 M.J. at 283.

44   *U.S. v. Peters*, 74 M.J. 31, 34 (C.A.A.F. 2015).

45   *U.S. v. Keago*, No. 23-0021, 2024 C.A.A.F LEXIS 256 (C.A.A.F. May 9, 2024) (citing *U.S. v. Cay*, 64 M.J. 274, 277 (C.A.A.F. 2007)).

46   *U.S. v. James*, 61 M.J. 132, 139 (C.A.A.F. 2005).

47   *Batson v. Kentucky*, 476 U.S. 79 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1993); *U.S. v. Norfleet*, 53 M.J. 262, 272 (C.A.A.F 2000).

48   *Norfleet*, 53 M.J. at 272.

IV. IMPENDING CHANGES AND RECOMMENDATIONS RELATING TO PANEL MEMBER SELECTION

In 2021, the Independent Review Commission on Sexual Assault in the Military (IRC) issued a report aimed at reducing distrust in the commander-centric military justice system.[49] Among its suggestions for change, the IRC recommended that Article 25 be modified to establish random selection of panel members, "taking into account practical realities of location and availability."[50] The IRC noted that such a change would "enhance the perception and reality of a fair and impartial panel." The IRC was not the first to reach this conclusion—as detailed in the DAC-IPAD's report on randomization, other commissions have made similar recommendations, dating back to the inception of the UCMJ.[51] Shortly after the release of the IRC Report, Congress, as part of the FY23 NDAA, amended Article 25 to require the random selection of panel members "to the maximum extent possible," but did not eliminate the requirement that the convening authority select and detail those members who are, "in his opinion, best qualified."[52] Congress directed the President to prescribe regulations implementing this change by December 2024.

In December 2023, the DAC-IPAD released a report with 10 recommendations aimed at improving trust and ensuring transparency in the panel selection process.[53] One of those recommendations was that Congress take the additional step of eliminating from Article 25 the requirement that the convening authority select and detail the subjectively "best qualified" members and, instead, implement a randomized court-martial panel selection process using limited objective criteria to determine members' eligibility.[54] The Committee also recommended that Congress remove the qualifying words "to the maximum extent possible" from the FY23 NDAA's randomization requirement.[55] As of the date of this report, the DAC-IPAD's recommendations on panel selection have not been adopted.

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49   Independent Review Commission on Sexual Assault in the Military, Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military 17 (July 2021) [IRC Report].

50   *Id*. at 54.

51   *See* DAC-IPAD Randomizing Report, *supra* note 4, at Chapter 3.

52   FY23 NDAA, *supra* note 2, § 543.

53   *See* DAC-IPAD Randomizing Report, *supra* note 4, at 7.

54   *Id*. at Recommendation 53 (recommending that Congress remove the "best qualified" requirement); Recommendation 59 (recommending that Congress retain the requirement that no accused Service member be tried by a court-martial in which any member is junior to the accused in rank or grade); Recommendation 60 (recommending Congress amend Article 25 to add a two-year time-in-service requirement for court-martial panel member eligibility).

55   *Id*. at Recommendation 54.

CHAPTER 2. METHODOLOGY

On March 1, 2023, the Department of Defense's Defense Legal Services Agency requested from the Services all FY21 and FY22 cases with charges preferred and tried to findings, dismissed, or resolved by any alternate means, including the following documents relevant to this study:

- Excel spreadsheet identifying all cases with charges preferred;
- Court-martial convening orders;
- Transcripts of voir dire and panel selection proceedings;
- Statements of Trial Results; and
- Entries of Judgment.

The DAC-IPAD staff received and examined the documents on a rolling basis throughout the spring and summer of 2023 and identified 283 contested cases that met the following criteria:

- The accused was tried by a court-martial with members; and
- A finding was made on any Article 120, 120b, or 120c, UCMJ, offense ("sexual assault offense").[56]

The staff, who had to rely entirely on the information provided by the Services, could not independently verify that the cases provided by the Services constituted the entire universe of cases meeting the above criteria.

After review and consultation with the Services,[57] the staff excluded 23 of the 283 cases because certain documents or audio files were not available. For the remaining cases, the Army, Navy, and Marine Corps provided the staff with the records of trial for further review.[58] For the Air Force cases, the DAC-IPAD staff was able to complete an analysis only of FY21 cases because of complications in receiving documents and because of the time required to listen to audio files.[59] All findings for the Air Force in this report are based on an analysis of FY21 data only.

**TABLE 1. NUMBER OF CONTESTED SEXUAL ASSAULT COURTS-MARTIAL
TRIED IN FY21 AND FY22 REVIEWED AND INCLUDED IN STUDY**

Military Service	Number of Courts-Martial
Army	124
Navy	48
Marine Corps	39
Air Force/Space Force*	49
Total	260

*FY21

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56   These cases include any attempt, conspiracy, or solicitation to commit any of these designated offenses.

57   Coast Guard cases were not analyzed for this study because too few courts-martial were held to make reliable and sound findings.

58   The Air Force provided requested documents rather than full records of trial. For cases resulting in acquittals, the DAC-IPAD also requested audio files to record necessary information.

59   The DAC-IPAD will issue a supplemental report on the Air Force FY22 cases.

Case Data

The DAC-IPAD staff first recorded information about the characteristics of the court-martial—information it categorized as "case data." These data included the following:

- The finding—whether a conviction or acquittal—on any Article 120, UCMJ, rape and sexual assault offense; any Article 120b, UCMJ, rape or sexual assault of a child offense; or any Article 120c, UCMJ, other sexual misconduct offense;[60] and

- For those cases resulting in a guilty verdict on any Article 120 or 120b offense, whether the finding of guilty was for a penetrative offense.

Case data also included information relating to the accused and to the structure of the court-martial, including

- The rank of the accused; and

- Whether the accused, if an enlisted member, requested an all-officer panel or a panel with enlisted representation.

Individual Data

After compiling the case data, the DAC-IPAD staff examined the record of trial for information related to panel members. The staff compared the names listed on the convening orders with the names of the detailed members listed in the trial transcripts or described in the audio files. Service members were identified as detailed members at a court-martial if their names were included on the convening order and they appeared on the record at the court-martial.

For cases with a guilty finding on a sexual assault offense, the records of trial generally contained a written transcript. The staff reviewed the voir dire proceedings and determined whether the detailed members were impaneled or excused. For those excused, the staff recorded the basis for excusal—whether that was a challenge for cause, a peremptory challenge, the order established by the random number generator, or some other reason.

In cases resulting in a full acquittal on all charges and cases resulting in a sentence of less than six months' confinement, the records of trial generally did not contain a written transcript of the trial proceedings.[61] To determine which members were detailed, impaneled, or excused in these cases, the DAC-IPAD staff requested audio recordings from the Services, listened to the audio portion on voir dire, and confirmed the names heard against the written convening orders in the record of trial. The staff also recorded the basis for the excusal.

In total, the staff reviewed 260 cases—comprising 4,376 detailed panel members—and recorded 43,000 data points to shape the findings in this report. The DAC-IPAD staff conducted extensive quality control on the data to ensure that the information recorded was accurate and complete before requesting race and ethnicity data from the Services.

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60   If the accused was convicted of *any* Article 120, 120b, or 120c, UCMJ, offense, the case was considered a guilty verdict regardless of other sexual assault offenses that may have resulted in an acquittal. If no sexual assault offense resulted in a guilty finding, the case was considered an acquittal even if a finding of guilty on a non-sexual offense occurred. Although the DAC-IPAD has previously tracked case data in sexual assault cases, this project was dedicated to research questions related to panel selection and not offense-based data for all sexual assault courts-martial.

61   A complete record of proceedings and testimony is required only in cases with a "sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." 10 U.S.C. § 854 (Art. 54, UCMJ).

Race and Ethnicity: Aggregation and Coding for Analysis

After recording the data points described above, the DAC-IPAD requested from each Service the race, gender, and ethnicity of the panel members identified in the source documents. The staff requested that the categories of race and ethnicity be compliant with the minimum categories set forth in the 1997 Office of Management and Budget (OMB) Statistical Policy Directive No. 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting."[62] The race and ethnicity categories applicable at the time—prior to their revision in March 2024[63]—were "American Indian or Alaska Native," "Asian," "Black or African American," "Native Hawaiian or Other Pacific Islander," and "White." The two minimum OMB ethnicity standards were "Hispanic or Latino" and "Not Hispanic or Latino."

Despite the DAC-IPAD's request, the race and ethnicity data provided by the Services did not comply with the OMB minimum categories. The Services' responses differed substantially; at one extreme, one Service provided up to 70 variations of race and ethnicity categories.[64] As a result, the staff could not compare or analyze race and ethnicity data across Services without recoding it into simpler categories.[65]

In addition, across the Services, not all detailed members could be found in the personnel databases,[66] and some members' race and/or ethnicity were described as "unknown," "other," "declined to respond," or "group not on list."[67] The Air Force had the most panel members with missing race and ethnicity at 23.7%, and the Army had the least at 6.9%.

The problem of missing race and ethnicity data in studies of the demographic composition of juries is not unique to the military, and researchers vary in how they approach this issue.[68] For this report, the DAC-IPAD excluded Service members with unknown demographic data from the overall calculations. Through this approach, the DAC-IPAD assumed that these individuals were equally distributed among demographic groups.[69] The DAC-IPAD chose to not include missing data as a category because such an approach would maximize estimates of underrepresentation.[70]

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62   *See* Office of Management and Budget, Statistical Policy Directive No. 15: Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 782 (Oct. 30, 1997) [OMB Directive 15].

63   In March 2024, OMB approved changes to the federal government's standards on race and ethnicity. These changes were based on OMB's "Initial Proposals to Updating OMB's Race and Ethnicity Statistical Standards," in which OMB recommended that questions about race and ethnicity be asked in one question for federal statistical assessment because "[e]vidence suggests that the use of separate race and ethnicity questions confuses many respondents who instead understand race and ethnicity to be similar, or the same concepts. For example, a large and increasing percentage of Hispanic or Latino respondents on the decennial census and American Community Survey (ACS) over the past several decades are either not reporting a race or are selecting Some Other Race (SOR); this is after responding to the ethnicity question" (88 Fed. Reg. 5375, 5379 (Jan. 27, 2023)). *See also* Office of Management and Budget, Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22, 182 (Mar. 29, 2024).

64   *See* Appendix A of Appendix G.

65   For a recent report on the issues associated with the Services' collection of race and ethnicity data, see GAO Report on Military Justice, Increased Oversight, *supra* note 13.

66   Service members may have not been found in databases because they changed their last name, because their names were spelled incorrectly on convening orders or in trial transcripts, or other reasons. The DAC-IPAD does not know why race and/or ethnicity of personnel is missing from databases.

67   For a complete understanding of the exclusion of detailed personnel due to data issues, see Appendix B in the Demographic Data on Military Courts-Martial Panels produced by Dr. William Wells, located in Appendixes F through I.

68   *See* Mary R. Rose & Jeffrey B. Abramson, *Data, Race and the Courts: Some Lessons on Empiricism from Jury Representation Cases*, Mich. St. L. Rev. 911, 923 (2011).

69   *Id.* at 923–25.

70   *Id.* Each approach has limitations: groups may be over or underrepresented using either approach.

Information on the members with missing data and an in-depth explanation of the treatment of missing data can be found in the additional data reports located in Appendixes F through I.

TABLE 2. DETAILED SERVICE MEMBERS EXCLUDED FROM ANALYSIS BECAUSE OF MISSING RACE AND/OR ETHNICITY INFORMATION

Military Service	Members Excluded	%
Army (N=1965)	136	6.9
Navy (N=859)	126	14.7
Marine Corps (N=661)	99	15.0
Air Force/Space Force (N=891)*	211	23.7
Total (N=4,376)	572	13.1

*FY21

Information about gender was missing for Service members less often than information on race and ethnicity.

TABLE 3. DETAILED SERVICE MEMBERS EXCLUDED FROM ANALYSIS BECAUSE OF MISSING GENDER INFORMATION

Military Service	Members Excluded	%
Army (N=1965)	90	4.6
Navy (N=859)	36	4.2
Marine Corps (N=661)	21	3.2
Air Force/Space Force (N=891)*	120	13.5
Total (N=4,376)	267	6.1

*FY21

To allow for an analysis that would address the core research questions, the staff, along with professional criminologist Dr. William Wells,[71] aggregated and coded the information provided by the Services into two blended race/ethnicity categories:[72] "white, not Hispanic" and "minority race and/or Hispanic."[73] This aggregation was particularly important to capture the military's Hispanic population, since the data provided did not always include information about the race of these Service members. For example, if a Service member was listed as Hispanic and their race was unknown, they were considered a minority for purposes of this study. However, if a Service member's

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71   Dr. William Wells is Director of the Center for Intelligence and Crime Analysis and a professor in the Department of Criminal Justice and Criminology at Sam Houston State University.

72   This aggregation facilitated consistency in methodology across Services. In addition, without aggregation, the small numbers of Service members belonging to certain demographic groups would have prohibited further analysis. *See* Appendix A of Appendixes F through I for a complete list of the different race and ethnicity categories provided by each Service. The appendixes in the Service data reports also provide information on how racial and ethnic information was recoded for this analysis.

73   Although this approach was not based on the March 2024 revisions to OMB Directive 15 (*supra* note 62), it is largely consistent with the revised directive, which combines race and ethnicity for statistical assessment.

race was listed as white but their ethnicity was unknown, they were excluded from this study because they could have been an ethnic minority.[74]

Dr. Wells obtained information on the race and ethnicity of the overall military community from the Services or the Defense Manpower Data Center.[75] This information was used to make comparisons between the demographics of details and panels and the demographics of the military as a whole. Dr. Wells could not rely on DoD's demographics profile of the military community because that report does not contain information on both the race and ethnicity of Service members by Service.[76] For overall gender demographics, Dr. Wells relied on DoD's demographic report.

The results in this report include information about statistical significance. Tests of statistical significance are used to provide information about the magnitude of differences between groups and the strength of relationships between variables. It is important to understand that tests of statistical significance represent just one piece of information that can be used when drawing conclusions about the demographic composition of details and panels, including under- and overrepresentation. In the analyses and results described in the following chapters, the DAC-IPAD examined the universe of cases selected for study from FY21 and FY22, so the findings reflect the patterns among that specific population of cases regardless of tests of statistical significance.

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74 For an in-depth discussion on the issue of the disproportionate number of missing cases for the Hispanic population, see Rose & Abramson, *supra* note 68, at 923.

75 *See* Appendix J for the overall race and ethnicity information relied upon by Dr. Wells. As explained in the methodology, Dr. Wells excluded from his calculations any Service members with unknown demographic data. The Defense Manpower Data Center is the central source for identifying and providing information on personnel during and after their affiliation with DoD.

76 Department of Defense, 2022 Demographics: Profile of the Military Community (2022).

CHAPTER 3. RESULTS AND ANALYSIS OF CASE DATA

This section provides information on the 260 contested cases examined for this study involving sexual assault offenses tried before members.[77] All cases in this study were completed in FY21 or FY22 and predate important structural changes to the military justice system, including the establishment of the Offices of Special Trial Counsel, as well as changes to the court-martial panel selection process resulting from *Jeter* and randomization.

I.   COURTS-MARTIAL CONVICTION RATES

Of the 260 contested cases tried before members, 92 cases (35.5%) resulted in a finding of guilty on a sexual assault offense (if the courts-martial resulted in a conviction on *any* sexual assault offense, the result was considered a finding of guilty); 167 cases (64.5%) resulted in an acquittal on all sexual assault offenses charged (though the accused may have been convicted of a non–sexual assault offense). The Air Force and the Marine Corps had the highest rates of acquittals on all sexual assault offenses, at 75.0% and 74.4%, respectively.

TABLE 4. CONTESTED COURTS-MARTIAL RESULTS ON ARTICLES 120, 120b, AND 120c, UCMJ, CHARGED OFFENSES IN FY21 AND FY22

Military Service	Guilty	%	Acquitted	%
Army (N=124)	51	41.1	73	58.9
Navy (N=48)	19	39.6	29	60.4
Marine Corps (N=39)	10	25.6	29	74.4
Air Force/Space Force (N=48)*	12	25.0	36	75.0
Total (N=259)	92	35.5	167	64.5

*FY21. One case dismissed prior to verdict.

Of the 92 cases that resulted in a finding of guilty on a sexual assault offense, 63 cases (68.5%) involved a guilty finding on a penetrative sexual assault offense.

TABLE 5. GUILTY FINDINGS ON A PENETRATIVE SEXUAL ASSAULT OFFENSE IN CONTESTED COURTS-MARTIAL IN FY21 AND FY22

Military Service	Yes	%	No	%
Army (N=51)	38	74.5	13	25.5
Navy (N=19)	11	57.9	8	42.1
Marine Corps (N=10)	7	70.0	3	30.0
Air Force/Space Force (N=12)*	7	58.3	5	41.7
Total (N=92)	63	68.5	29	31.5

*FY21

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77   All data on individual courts-martial by Service are available in Appendixes F through I.

Finding 1 (*on conviction rates*): In contested courts-martial tried before a military panel during FY21 and FY22, the vast majority of sexual assault offense cases resulted in an acquittal on the sexual assault offense.

This finding on low conviction rates for sexual assault offenses echoes previous DAC-IPAD observations and findings. A review of adjudication outcomes for all adult-victim penetrative sexual offense cases tried in FY16 through FY18—including guilty pleas—found that conviction rates for the penetrative sexual offenses charged ranged between 28.2% and 36.8%, and more than 30% of cases ended in an acquittal *on all charges*.[78] A follow-up study of 235 adult-victim penetrative sexual offense cases tried to verdict in FY17 found that 91 (38.7%) of the cases resulted in a conviction on the penetrative sexual offense, and 144 (61.3%) of the cases resulted in an acquittal on the penetrative sexual offense.[79] In a June 2023 report, the DAC-IPAD "attribute[d] these extremely low conviction rates (and high rates of acquittal) to the frequency with which penetrative sexual offense cases that do not meet the standard of proof required at trial are systematically referred to a court-martial."[80]

The DAC-IPAD's current and previous analyses of conviction rates are based on cases that predate two significant changes to the military justice system. The first change was the establishment of the Offices of Special Trial Counsel pursuant to the National Defense Authorization Act for Fiscal Year 2022.[81] This legislation mandated the transfer of prosecutorial discretion from commanders to independent, specialized counsel for certain covered offenses, including rape and sexual assault.[82]

The second change was the implementation of the revised Appendix 2.1 Disposition Guidance in the 2024 Manual for Courts-Martial.[83] The revised guidance dictates that a special trial counsel and convening authority "should not refer a charge to a court-martial unless the admissible evidence will probably be sufficient to obtain and sustain a finding of guilty when viewed objectively by an unbiased factfinder."[84] Prior to this change, the disposition guidance—which did not mirror federal practice—listed sufficiency of the evidence as only one of 14 factors to consider when deciding whether the interests of justice and good order and discipline are served by trial by a court-martial.[85] The revision to Appendix 2.1 followed the DAC-IPAD's recommendation that the Secretary of Defense "establish uniform prosecution standards aligned with the prosecution principles contained in the United States Justice Manual."[86] The DAC-IPAD made this recommendation after it concluded that a lack of uniform prosecution standards directly contributed to dismissals and acquittals in sexual offense cases.[87]

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78   DAC-IPAD, Court-Martial Adjudication Data Report 25 (Nov. 2019).

79   DAC-IPAD, Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017 11 (Finding 90) (Oct. 2020) [DAC-IPAD Report on Investigative Case File Reviews].

80   DAC-IPAD, Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, Manual for Courts-Martial 15 (June 2023) [DAC-IPAD Report on Reforming Pretrial Procedures].

81   FY22 NDAA, *supra* note 13, § 531.

82   The covered offenses fall under the following punitive articles in the UCMJ: Art. 117a (wrongful broadcast or distribution of intimate visual images), Art. 118 (murder), Art. 119 (manslaughter), Art. 119a (death or injury of an unborn child), Art. 120 (rape and sexual assault generally), Art. 120a (mails: deposit of obscene matter), Art. 120b (rape and sexual assault of a child), Art. 120c (other sexual misconduct), Art. 125 (kidnapping), Art. 125b (domestic violence), Art. 130 (stalking), Art. 132 (retaliation), Art. 134 (child pornography), and Art. 134 (sexual harassment).

83   2024 MCM, *supra* note 22, Appendix 2.1.

84   *Id*. at Appendix 2.1, § 2.3 (Referral).

85   Manual for Courts-Martial, United States (2019 ed.), at Appendix 2.1, para. 2.1(h).

86   DAC-IPAD Report on Reforming Pretrial Procedures, *supra* note 80, at 2.

87   *Id*. at 23.

The DAC-IPAD recommends that the Department of Defense continue to analyze case adjudication outcomes for sexual offense cases.

> **Recommendation 66 (*on continuing to measure conviction rates*):** As required by the DoD performance measures and data collection categories published pursuant to Section 547(c) of the FY22 NDAA,[88] the Department of Defense should measure and report the prosecution and conviction rates for sexual assault offenses for both contested and uncontested cases (disaggregated by judge-alone and panel cases) to determine the effects of recent changes in law and policy on case adjudication outcomes. The Department of Defense should compare the prosecution and conviction rates for sexual assault offenses with those for other offenses.

II.   OFFICER VS. ENLISTED ACCUSED AND FORUM SELECTION

In all Services except the Air Force, over 90% of the accused were from enlisted ranks. The Air Force prosecuted the highest percentage of officers (14.3%), while 85.7% of its cases involved an enlisted member.

TABLE 6. NUMBER OF OFFICER AND ENLISTED ACCUSED IN CONTESTED SEXUAL ASSAULT COURTS-MARTIAL TRIED IN FY21 AND FY22

Military Service	Officer Panel	%	Enlisted Panel	%
Army (N=124)	11	8.9	113	91.1
Navy (N=48)	1	2.1	47	97.9
Marine Corps (N=39)	1	2.6	38	97.4
Air Force/Space Force (N=49)*	7	14.3	42	85.7
Total (N=260)	20	7.7	240	92.3

*FY21

Out of the 260 cases involving an enlisted or officer accused, 35 cases (13.5%) involved all-officer panels, and 225 cases (86.5%) involved panels with enlisted representation. Of the 240 enlisted accused, the vast majority elected to be tried by a panel with enlisted representation. Only 15 enlisted accused chose to be tried by an all-officer panel.

TABLE 7. FORUM SELECTION BY ENLISTED ACCUSED

Military Service	Officer Panel	%	Enlisted Panel	%
Army (N=113)	8	7.1	105	92.9
Navy (N=47)	3	6.4	44	93.6
Marine Corps (N=38)	0	0.0	38	100.0
Air Force/Space Force (N=42)*	4	9.5	38	90.5
Total (N=240)	15	6.3	225	93.8

*FY21

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88   FY22 NDAA, *supra* note 13, Section 547(c): Plan for Assessing Effects of Changes of Law, *available at* https://dacipad.whs.mil/reading/case-review-subcommittee.

Finding 2 (*on enlisted accused and forum selection*): During FY21 and FY22, nearly all contested courts-martial for sexual assault offenses tried before a military panel involved an enlisted accused. Enlisted accused rarely selected an all-officer panel.

III. RACIAL DISPARITIES

Given that the focus of this study is the demographic makeup of panels, the DAC-IPAD did not conduct an in-depth analysis of the demographic information of the accused. Nor did it collect the demographic information of subjects of investigations to compare against the demographic information of those prosecuted. Regardless, the DAC-IPAD observes that in all four Services, racial and/or ethnic minorities are overrepresented as accused when compared with their overall representation in their Service.[89]

**TABLE 8. AGGREGATED RACE AND ETHNICITY OF ACCUSED SERVICE MEMBERS
COMPARED WITH ACTIVE DUTY SERVICE MEMBER REPRESENTATION**

Military Service	Accused Service Members	%	Active Duty Service Members	%
Army				
White, not Hispanic Service Members	49	40.5	248,054	54.0
Racial and/or Ethnic Minority Service Members	72	59.5	211,193	46.0
Navy				
White, not Hispanic Service Members	12	27.9	139,698	46.6
Racial and/or Ethnic Minority Service Members	31	72.1	160,362	53.4
Marine Corps				
White, not Hispanic Service Members	16	41.0	98,495	56.9
Racial and/or Ethnic Minority Service Members	23	59.0	74,575	43.1
Air Force/Space Force*				
White, not Hispanic Service Members	23	48.9	180,953	60.6
Racial and/or Ethnic Minority Service Members	24	51.1	117,535	39.4

*FY21

This observation builds on previous studies—conducted by both the DAC-IPAD and other entities—that noted racial disparities in the administration of military justice. The DAC-IPAD previously analyzed 1,904 cases documenting investigations of adult penetrative sexual offenses from fiscal year 2017. As part of that study, the Committee found that the data "may suggest that Blacks are disproportionately affected by allegations of sexual offenses at the investigative stage."[90]

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89   For detailed information on the demographics of the active duty Service members included here, see Appendix J. Accused members whose race and/or ethnicity was unknown are not included in this analysis. For the Army, three accused members were missing race and/or ethnicity; for the Navy, five; and for the Air Force, two.

90   DAC-IPAD Report on Investigative Case File Reviews, *supra* note 79, at note 148 and Appendix F.

In addition, the DAC-IPAD has reviewed reports issued by other organizations on the subject of racial disparities in the military justice system.[91] Among these was a 2017 report by the nonprofit group Protect Our Defenders, which concluded that Black Service members were between 1.29 and 2.61 times more likely than white Service members to face military justice or disciplinary action for an offense under the UCMJ.[92] In another report issued in 2019, the Government Accountability Office (GAO) found that Black and Hispanic Service members were more likely than white Service members to be the subjects of recorded investigations in all the Services and were more likely to be tried in general and special courts-martial in the Army, Navy, Marine Corps, and Air Force.[93] In August 2022, the Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems (IRT) released a report finding that "[s]ignificant racial disparities exist across the investigative and military justice systems," particularly "along the continuum where there is significant discretion and limited oversight or procedural protections."[94] Finally, in May 2024 GAO reported that both the Army and the Air Force had identified potential racial and ethnic disparities in criminal investigations, finding that minority Service members were more likely to be subjects of criminal investigations than were white, not Hispanic Service members.[95]

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91 *See* DAC-IPAD Report on Racial and Ethnic Data, *supra* note 5.

92 Protect Our Defenders, Racial Disparities in Military Justice i (2017).

93 United States Government Accountability Office, Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities 38 (May 2019).

94 Department of Defense, Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems 20 (Aug. 31, 2022).

95 GAO Report on Military Justice, Increased Oversight, *supra* note 13, at 35.

CHAPTER 4. RESULTS, FINDINGS, AND ANALYSIS OF THE RACE AND/OR ETHNICITY OF DETAILED AND IMPANELED MEMBERS

The DAC-IPAD examined the demographics of military panels to assess whether convening authorities were excluding minorities or women during the detailing process, to evaluate whether peremptory strikes and/or challenges for cause were being employed against minorities or women at higher rates than against white, male panel members, and to better understand the perception that military panels are not diverse through an analysis of empirical data. While these questions appear simple, the data collected and analyzed in this report are complicated and do not lend themselves to easy conclusions.

The information on race and ethnicity is separated into three parts. Part I provides the aggregated results for the 260 cases examined in this study;[96] the results do not reflect the demographic composition of individual courts-martial or particular commands or regions. Section A compares the representation of minority Service members detailed to courts-martial with their overall representation in their respective Services. Section B compares the rate of impanelment of minorities with the rate of impanelment of white, not Hispanic Service members on details. Section C compares the representation of minority Service members on courts-martial panels with their overall representation in their respective Services. Section D describes the rates of challenges for cause and peremptory challenges against minority Service members.

Part II provides individual information about the demographics of military panels for each of the 260 courts-martial analyzed for this study. This part does not aggregate information across all courts-martial but summarizes the characteristics unique to each case. This analysis was conducted in addition to the aggregate analysis presented in Part I so the DAC-IPAD could determine whether the aggregated data were skewed by any outlier cases. It also provides the individual perspective of the accused and victim regarding the composition of the detailed and impaneled members on their court-martial.

Finally, Part III provides the Committee's analysis of the aggregated data.

All data and findings presented below are based on an analysis of contested sexual assault offense cases at courts-martial with members as factfinders. The data for the Army, Navy, and Marine Corps are presented for FY21 and FY22 cases; the data for the Air Force are presented for FY21 cases only.

It is important to note that Service members whose race and ethnicity were unknown were excluded from this study and their demographic information is not included in the results and analysis presented in this chapter.[97] For some of the Services—especially the Air Force—the proportion of Service members with unknown race and ethnicity was significant. Depending on the race and ethnicity of the members with unknown demographic information, the

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96   The percentages and numbers in this section are based on all courts-martial information in the aggregate and by Service. These numbers do not include personnel or overall demographic information when race and ethnicity were unknown.

97   For more detailed information on unknown percentages by Service, *see supra* Chapter 2.

representation of minorities on details and panels could either increase or decrease.[98] The DAC-IPAD acknowledges this limitation and its effect on the Committee's ability to make definitive conclusions.

The difficulty the DAC-IPAD faced when collecting race and ethnicity data is consistent with GAO's May 2024 observation that the Services "do not systematically collect and maintain data on the race and ethnicity of service members selected to serve on court-martial panels."[99] GAO further noted that "[d]ata limitations hinder the military departments' and DOD's visibility over and ability to respond to requests for information on segments of the military justice process that could provide important context about racial and ethnic disparities in military justice and discipline processes."[100]

> **Finding 3 (*on data limitations*):** The DAC-IPAD faced challenges in obtaining standardized and complete racial and ethnic data from the Services. The DAC-IPAD concurs with GAO's recent finding[101] that data limitations hinder DoD's ability to understand potential racial and ethnic disparities in the military justice system.

> **Recommendation 67 (*on data collection*):** The DAC-IPAD reiterates its previous recommendations[102] that the Secretary of Defense direct the Military Departments to record, using standardized categories, the race and ethnicity of the accused, victim, military police and criminal investigators, trial counsel, defense counsel, victims' counsel, staff judge advocates, special and general court-martial convening authorities, preliminary hearing officers, military court-martial panels, military magistrates, and military trial and appellate court judges involved in every case investigated by military law enforcement in which a Service member is the subject of an allegation of a contact or penetrative sexual offense.

I. AGGREGATE RESULTS OF RACE AND ETHNICITY OF DETAILED AND IMPANELED MEMBERS

A. The Representation of Racial and/or Ethnic Minority Service Members on Details Compared with Their Overall Active Duty Service Representation

This section provides information on the representation of minority Service members detailed to courts-martial by convening authorities compared with the overall representation of minorities in each Service.

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98   The percentage of Service members with missing race and ethnicity ranged from 6.9% to 23.7%. For example, the Navy had personnel listed as White (E) Other – "Not Assoc with any Group"; these Service members were excluded from analysis because the staff could not discern the meaning of this category. The Marine Corps had many "White Unknown" entries, which were excluded because the staff did not know if those members were Hispanic. The Air Force had a substantial number of personnel whose race and/or ethnicity was simply "unknown." The Army had the least number of "unknown" entries.

99   GAO Report on Military Justice, Increased Oversight, *supra* note 13, at 24.

100 *Id*. at 22.

101 *Id*.

102 DAC-IPAD Report on Racial and Ethnic Data, *supra* note 5, Recommendations 34, 36, 37.

Figure 1. Percentage of Detailed Racial and/or Ethnic Minority Service Members and Overall Service Representation
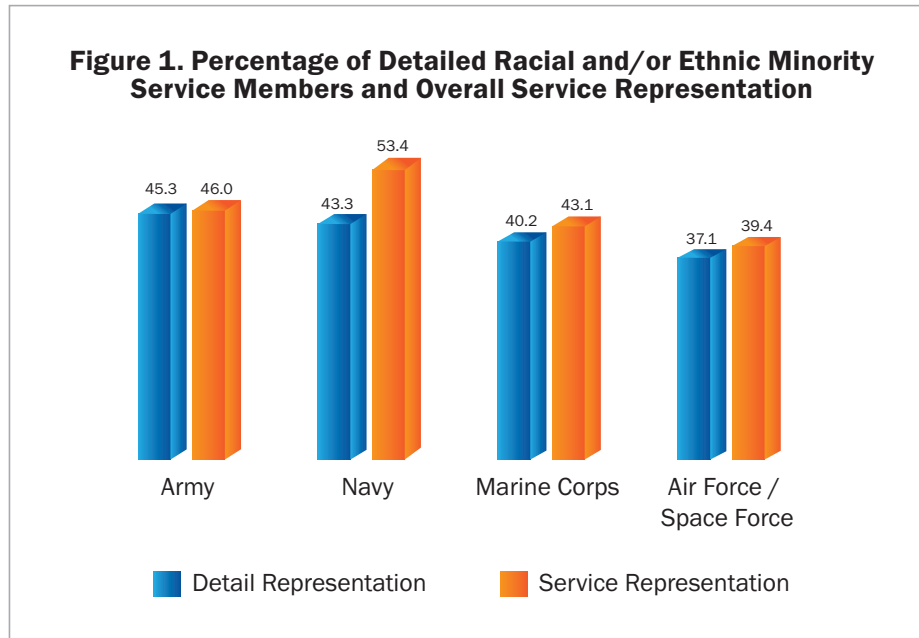
In the Army, minority military members constituted 45.3% of Service members detailed to courts-martial panels, while their overall representation in the Army was similar at 46.0%.

The representation of racial and/or ethnic minorities on details in the Air Force and the Marine Corps was lower than their representation in their respective Services. In the Air Force, racial and/or ethnic minorities constituted 37.1% of Service members detailed to panels, a lower percentage than their overall representation in the Air Force (39.4%). In the Marine Corps, racial and/or ethnic minorities constituted 40.2% of Service members detailed to panels, a lower percentage than their overall representation in the Marine Corps (43.1%).

In the Navy, racial and/or ethnic minorities constituted 43.3% of Service members detailed to panels, lower than their overall representation in the Navy (53.4%). This is statistically significant.

> **Finding 4 (*on representation of minorities on details*):** In sexual assault offense cases, the representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Army was similar to their representation in the Army as a whole. The representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Air Force and Marine Corps was lower than their representation in their respective Services. The representation of racial and/or ethnic minorities among those Service members detailed to courts-martial in the Navy was lower than their overall representation in the Navy. For the Navy, this difference is statistically significant.

- In the Army, racial and/or ethnic minorities constituted 45.3% of Service members detailed to courts-martial panels, while their overall representation in the Army was similar at 46.0%. This difference is not statistically significant.
- In the Navy, racial and/or ethnic minorities constituted 43.3% of Service members detailed to panels, lower than their overall representation in the Navy (53.4%). This difference is statistically significant.

- In the Marine Corps, racial and/or ethnic minorities constituted 40.2% of Service members detailed to panels, a lower percentage than their overall representation in the Marine Corps (43.1%). This difference is not statistically significant.
- In the Air Force, racial and/or ethnic minorities constituted 37.1% of Service members detailed to panels, a lower percentage than their overall representation in the Air Force (39.4%). This difference is not statistically significant.

B. The Rate of Impanelment for Minorities vs. White, Not Hispanic Service Members

After the military judge decides challenges for cause and peremptory challenges, and after excess members are excused according to the order determined by the random number generator, the remaining members are considered impaneled for purposes of the courts-martial. This section compares the rate of impanelment of minorities with the rate of impanelment of white, not Hispanic Service members to determine whether the groups are being impaneled at similar rates. In other words, once detailed, are certain members more or less likely to be selected?

Figure 2. Rate of Impanelment for Racial and/or Ethnic Minority vs. White, not Hispanic Service Members
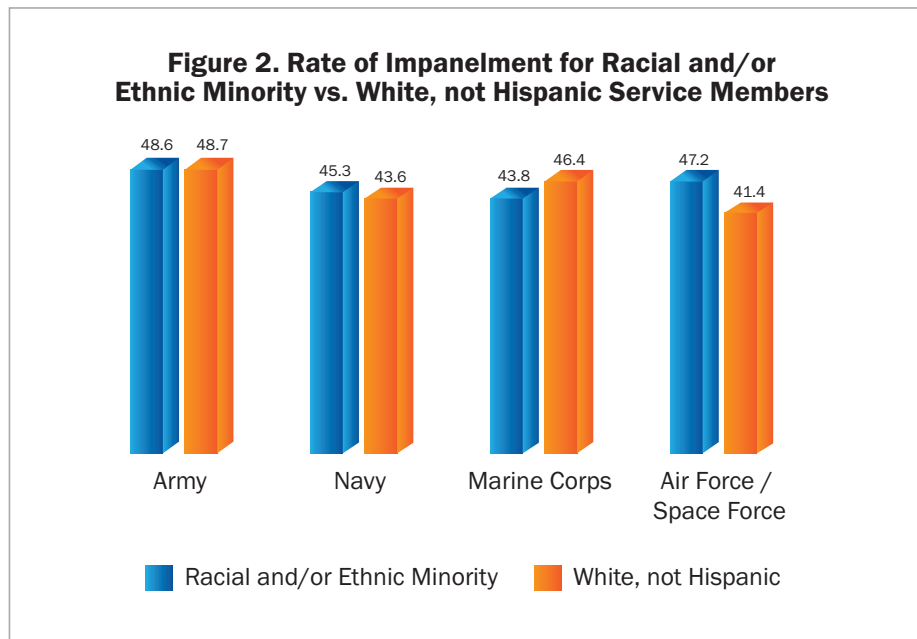
At Army courts-martial, the rate at which white, not Hispanic Service members were impaneled (48.7%) was nearly identical to the rate at which minority Service members were impaneled (48.6%).

In the Navy, minority members were impaneled at higher rates (45.3%) than white, not Hispanic Service members (43.6%).

In the Marine Corps, minority members were impaneled at a lower rate (43.8%) than white, not Hispanic Service members (46.4%).

For the Air Force, the rate at which white, not Hispanic members were impaneled (41.4%) was less than the rate at which minority members were impaneled (47.2%).

> **Finding 5 (*on rate of impanelment for minorities*):** For sexual assault offense cases in the Air Force and Navy, racial and/or ethnic minority Service members on details were more likely to be impaneled than white, not Hispanic Service members. In the Army, racial and/or ethnic minority Service members on details were as likely to be impaneled as white, not Hispanic Service members. In the Marine Corps, racial and/or ethnic minority Service members on details were less likely to be impaneled than white, not Hispanic Service members.

- In the Army, the rate at which white, not Hispanic Service members were impaneled (48.7%) was nearly identical to the rate at which minority Service members were impaneled (48.6%). This difference is not statistically significant.
- In the Navy, minority members were impaneled at a higher rate (45.3%) than white, not Hispanic Service members (43.6%). This difference is not statistically significant.
- In the Marine Corps, minority members were impaneled at a lower rate (43.8%) than white, not Hispanic Service members (46.4%). This difference is not statistically significant.
- For the Air Force, the rate at which white, not Hispanic members were impaneled (41.4%) was less than the rate at which minority members were impaneled (47.2%). This difference is not statistically significant.

C. The Representation of Racial and/or Ethnicity Minority Service Members on Panels Compared with Their Overall Service Representation

The Committee also analyzed the representation of minorities on panels compared with their overall representation in their respective Services. This section presents the results of this analysis.

Figure 3. Percentage of Impaneled Racial and/or Ethnic Minority Service Members and Overall Service Representation
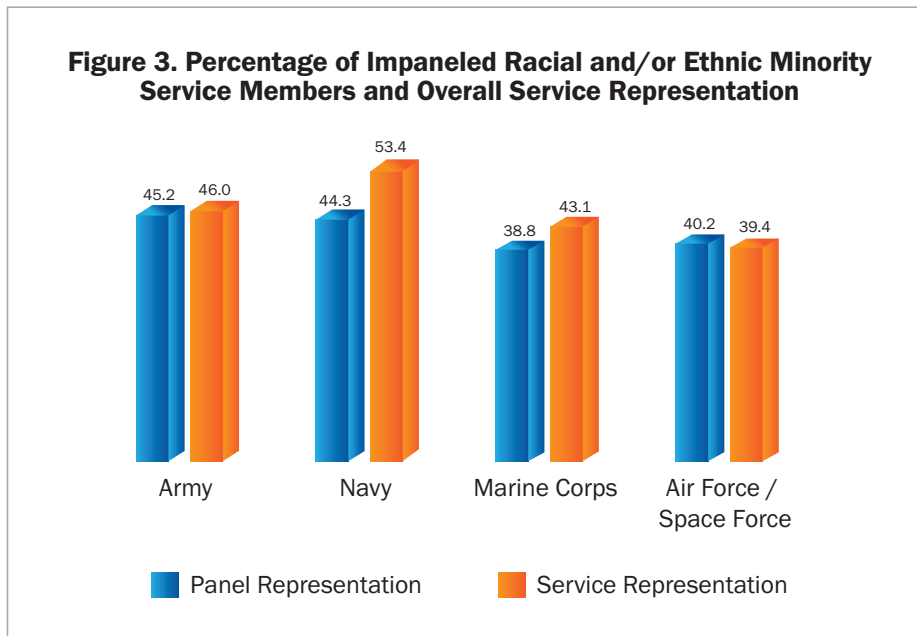
In the Army, the representation of racial and/or ethnic minorities on panels (45.2%) was slightly lower than their representation in the Service (46.0%). In the Navy, the representation of minority members on panels was 44.3%, lower than their representation in the Service (53.4%). In the Marine Corps, the representation of minority

members on panels was 38.8%, also lower than their overall representation in the Service (43.1%). Finally, in the Air Force, the representation of minority members on panels was 40.2%, slightly higher than their representation in the Service (39.4%).

> **Finding 6 (*on representation of minorities on panels*):** For sexual assault offense cases, the representation of racial and/or ethnic minorities on panels in the Army and Air Force was similar to their representation in their respective Services. In the Navy and the Marine Corps, the representation of racial/and or ethnic members on panels was lower than their representation in their respective Services. For the Navy, this difference is statistically significant.

- In the Army, the representation of racial and/or ethnic minorities on panels (45.2%) was similar to their representation in the Service (46.0%). This difference is not statistically significant.
- In the Navy, the representation of minority members on panels was 44.3%, lower than their representation in the Service (53.4%). This difference is statistically significant.
- In the Marine Corps, the representation of minority members on panels was 38.8%, also lower than their overall representation in the Service (43.1%). This difference is not statistically significant.
- In the Air Force, the representation of minority members on panels was 40.2%, higher than their representation in the Service (39.4%). This difference is not statistically significant.

D. The Rate of Challenges for Cause and Peremptory Challenges Against Minority Members Not Impaneled

Multiple studies examining jury selection in state and federal courts have documented the exclusion of racial minorities through the exercise of peremptory challenges. For example, a study of jury selection in 11 capital cases in Wake County, North Carolina, between 2008 and 2019 found that prosecutors used peremptory challenges to strike Black venire members at a significantly higher rate than white venire members.[103] Another study of venire members from 89 criminal trials in Mississippi between 1992 and 2012 found that Black venire members were 4.51 times as likely to receive a peremptory challenge from the prosecution, while white venire members were 4.21 times as likely as Black venire members to receive a peremptory challenge from the defense.[104]

To identify any similar trends in the military justice system, the DAC-IPAD collected data on the basis for excusing detailed members from panels. This section analyzes the rates of peremptory challenges, challenges for cause, and randomization against minority Service members and compares them with the rates of peremptory challenges, challenges for cause, and randomization against white, not Hispanic Service members.[105] This analysis includes only the individuals who were not impaneled. Thus, the percentages are based only on the group of individuals who were not impaneled, not the full set of personnel detailed to a court-martial.

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103 Catherine M. Grosso & Barbara O'Brien, *Revised Report on Wake County Jury Selection Study*, Sept. 11, 2022, at 12, https://www.aclu.org/wp-content/uploads/publications/revised_death_qualification_jury_study_report_w_apps_11_september_2022.pdf. The study found that prosecutors used peremptory challenges to remove 51% of eligible Black venire members compared with 25% of eligible white venire members.

104 Whitney DeCamp & Elise DeCamp, *It's Still about Race: Peremptory Challenge Use on Prospective Jurors*, 57 J. of Rsch. in Crime & Delinquen. 3 (2020). The authors noted that "previous analyses of these data have already shown that the defense's strikes do not completely reverse the effects of the prosecution's peremptory challenges." *Id*. at 22.

105 Due to the small number of Service members excused for other reasons, the information is contained in Appendixes F through I.

The results for the Army show similar rates of excusal for the two demographic groups (the differences are not statistically significant):

- 65.8% of white, not Hispanic Service members were excused because of challenges for cause, compared with 65.5% of Service members from racial and/or ethnic minority groups.
- 18.3% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.0% of racial and/or ethnic minority Service members.
- 15.6% of white, not Hispanic Service members were excused because of randomization, compared with 17.4% of racial and/or ethnic minority Service members.

In the Navy (the differences are not statistically significant):

- 58.9% of white, not Hispanic members were excused because of challenges for cause, lower than the rate for Service members from racial and/or ethnic minority groups (65.3%).
- 18.2% of white, not Hispanic Service members were excused because of peremptory challenges, higher than the rate for racial and/or ethnic minority groups (12.9%).
- 16.0% of white, not Hispanic Service members were excused because of randomization, compared with 14.1% of racial and/or ethnic minority Service members.

In the Marine Corps (the differences are not statistically significant):

- 58.9% of white, not Hispanic Service members were excused for challenges for cause, compared with 57.5% of Service members from racial and/or ethnic minority groups.
- 15.6% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups.
- 19.4% of white, not Hispanic Service members were excused because of randomization, compared with 20.5% of racial and/or ethnic minority Service members.

The Air Force also showed similar rates of excusal for the two demographic groups (the differences are not statistically significant):

- 58.2% of white, not Hispanic members were excused because of challenges for cause, compared with 59.4% of Service members from racial and/or ethnic minority groups.
- 17.5% of white, not Hispanic members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups.
- 13.9% of white, not Hispanic members were excused because of randomization, compared with 12.8% of racial and/or ethnic minority Service members.

Figure 4. Percentage of Race and Ethnicity of Detailed Service Members not Impaneled: Challenge for Cause

	Army	Navy	Marine Corps	Air Force / Space Force
White, not Hispanic	65.8	58.9	58.9	58.2
Racial and/or Ethnic Minority	65.5	65.3	57.5	59.4
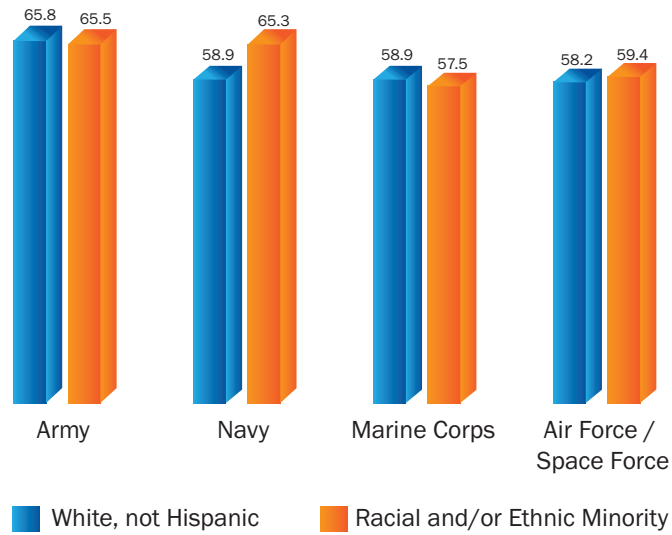
Figure 5. Percentage of Race and Ethnicity of Detailed Service Members not Impaneled: Peremptory Challenge

	Army	Navy	Marine Corps	Air Force / Space Force
White, not Hispanic	18.3	18.2	15.6	17.5
Racial and/or Ethnic Minority	16.0	12.9	16.5	16.5

Figure 6. Percentage of Race and Ethnicity of Detailed Service Members not Impaneled: Randomization

	Army	Navy	Marine Corps	Air Force / Space Force
White, not Hispanic	15.6	16.0	19.4	13.9
Racial and/or Ethnic Minority	17.4	14.1	20.5	12.8

■ White, not Hispanic   ■ Racial and/or Ethnic Minority

Finding 7 (*on use of peremptory challenges for members not impaneled*): For contested courts-martial involving sexual assault offenses, peremptory challenges were not used disproportionately to exclude minority members; in three of the four Services, white, not Hispanic Service members were excused because of peremptory challenges at higher rates than minority Service members.

- In the Army, 18.3% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.0% of racial and/or ethnic minority Service members. This difference is not statistically significant.

- In the Navy, 18.2% of white, not Hispanic Service members were excused because of peremptory challenges, higher than the rate for racial and/or ethnic minority groups (12.9%). This difference is not statistically significant.

- In the Marine Corps, 15.6% of white, not Hispanic Service members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups. This difference is not statistically significant.

- In the Air Force, 17.5% of white, not Hispanic members were excused because of peremptory challenges, compared with 16.5% of Service members from racial and/or ethnic minority groups. This difference is not statistically significant.

II.   INDIVIDUAL RESULTS ON RACE AND ETHNICITY

A. Representation of Race and Ethnicity of Members Impaneled and Race and Ethnicity of the Accused

The DAC-IPAD analyzed courts-martial data to determine the representation of racial and/or ethnic minorities differentiated by whether the accused was a white, not Hispanic Service member or a racial and/or ethnic minority. This section presents the results of that analysis. For the Navy and Marine Corps, the Committee urges caution when drawing conclusions about the results, given the small number of white, not Hispanic accused.

**TABLE 9. REPRESENTATION OF RACE AND ETHNICITY BY SERVICE MEMBERS
IMPANELED AND THE RACE AND ETHNICITY OF THE ACCUSED (ARMY)**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percentage of Panel Composed of White, not Hispanic Service Members	59.6% (SD[106] = 20.4)	51.0% (SD = 24.1)
Average Percentage of Panel Composed of Racial and/or Ethnic Minority Service Members	40.4% (SD = 20.4)	49.0% (SD = 24.1)

In the Army, panels had a greater representation of racial and/or ethnic minority members when the accused was a racial and/or ethnic minority Service member than a white, not Hispanic Service member. In cases in which the accused was a white, not Hispanic Service member, the typical panel was composed of 59.6% white, non-Hispanic members and 40.4% racial and/or ethnic minority members. In cases in which the accused was a racial and/or ethnic minority, the typical panel was composed of 51.0% white, not Hispanic members and 49.0% racial and/or ethnic minority members. This difference in average percentages across race and/or ethnicity of the accused Service member is statistically significant.

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106 SD is an abbreviation for standard deviation. The standard deviation here helps analysts understand how the demographic composition of individual panels differs from the average percentage. The value captures how cases are concentrated around, or spread out, from the average. When the value of the standard deviation is small in relation to the value of the average, the individual values are similar to the average value. When the value of the standard deviation is large in relation to the value of the average, the individual values are less similar to the average value, or the individual values are concentrated near the ends of the distribution of values. The standard deviation is a single value that summarizes the differences between each panel and the average panel.

**TABLE 10. REPRESENTATION OF RACE AND ETHNICITY BY SERVICE MEMBERS
IMPANELED AND THE RACE AND ETHNICITY OF THE ACCUSED (NAVY)**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percentage of Panel Composed of White, not Hispanic Service Members	52.2% (SD = 18.4)	52.7% (SD = 19.7)
Average Percentage of Panel Composed of Racial and/or Ethnic Minority Service Members	47.8% (SD = 18.4)	47.3% (SD = 19.7)

In the Navy, panels had a similar representation of racial and/or ethnic minority Service members when the accused was a racial and/or ethnic minority Service member and when the accused was a white, not Hispanic Service member.[107] In cases with a white, not Hispanic accused, the typical panel was composed of 52.2% white, not Hispanic members and 47.8% racial and/or ethnic minority members.[108] In cases with a racial and/or ethnic minority accused, the typical panel was composed of 52.7% white, not Hispanic members and 47.3% racial and/or ethnic minority members. This difference in average percentages across race/ethnicity of the accused Service member is small and is not statistically significant.

**TABLE 11. REPRESENTATION OF RACE AND ETHNICITY BY SERVICE MEMBERS
IMPANELED AND THE RACE AND ETHNICITY OF THE ACCUSED (MARINE CORPS)**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percentage of Panel Composed of White, not Hispanic Service Members	54.1% (SD = 20.9)	65.7% (SD = 20.2)
Average Percentage of Panel Composed of Racial and/or Ethnic Minority Service Members	45.9% (SD = 20.9)	34.3% (SD = 20.2)

In the Marine Corps, panels had a lower representation of racial and/or ethnic minority members when the accused was a racial and/or ethnic minority Service member than when the accused was a white, not Hispanic Service member. In cases with a white, not Hispanic accused, the typical panel was composed of 54.1% white, not Hispanic members and 45.9% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 65.7% white, not Hispanic members and 34.3% racial and/or ethnic minority members. This difference in average percentages across race/ethnicity of the accused Service member approaches but does not reach statistical significance. There were 16 cases with a white, not Hispanic accused Service member and 23 cases with a racial and/or ethnic minority accused Service member. It is challenging for tests of statistical significance to detect significant differences when the numbers of cases are small.

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107 Five cases were missing racial and/or ethnic demographic information of the accused. When the sample of cases is small, it may not be possible to accurately extrapolate results and conclusions to a larger number of cases.

108 The five cases in which racial and/or ethnic demographic information about the accused was missing are excluded from the results.

**TABLE 12. REPRESENTATION OF RACE AND ETHNICITY BY SERVICE MEMBERS
IMPANELED AND THE RACE AND ETHNICITY OF THE ACCUSED (AIR FORCE)**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percentage of Panel Composed of White, not Hispanic Service Members	64.2% (SD = 26.0)	55.3% (SD = 18.9)
Average Percentage of Panel Composed of Racial and/or Ethnic Minority Service Members	35.8% (SD = 26.0)	44.7% (SD = 18.9)

In the Air Force FY21 data, in cases with a white, not Hispanic accused, the typical panel was composed of 64.2% white, not Hispanic members and 35.8% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 55.3% white, not Hispanic members and 44.7% racial and/or ethnic minority members. This difference in average percentages across race and/or ethnicity of the accused Service member is not statistically significant.

> **Finding 8 (*on representation of minorities on panels when accused was a minority*):** In sexual assault cases in the Army and Air Force, panels had a greater representation of racial and/or ethnic minority Service members when the accused was a minority than when the accused was a white, not Hispanic Service member. In the Navy, panels had a similar representation of racial and/or ethnic minority Service members when the accused was a minority and when the accused was a white, not Hispanic Service member. Finally, in the Marine Corps, panels had a lower representation of racial and/or ethnic minority Service members when the accused was a racial and/or ethnic minority Service member than when the accused was a white, not Hispanic Service member. Except for the Army, these differences are not statistically significant.

- In the Army, in cases in which the accused was a white, not Hispanic Service member, the typical panel was composed of 59.6% white, not Hispanic members and 40.4% racial and/or ethnic minority members. In cases in which the accused was a racial and/or ethnic minority, the typical panel was composed of 51.0% white, not Hispanic members and 49.0% racial and/or ethnic minority members. This difference in average percentages across race and/or ethnicity of the accused Service member is statistically significant.

- In the Navy, in cases with a white, not Hispanic accused, the typical panel was composed of 52.2% white, not Hispanic members and 47.8% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 52.7% white, not Hispanic members and 47.3% racial and/or ethnic minority members. This difference is not statistically significant.

- In the Marine Corps, in cases with a white, not Hispanic accused, the typical panel was composed of 54.1% white, not Hispanic members and 45.9% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 65.7% white, not Hispanic members and 34.3% racial and/or ethnic minority members. This difference is not statistically significant.

- In the Air Force, in cases with a white, not Hispanic accused, the typical panel was composed of 64.2% white, not Hispanic members and 35.8% racial and/or ethnic minority members. In cases with a racial and/or ethnic minority accused, the typical panel was composed of 55.3% white, not Hispanic members and 44.7% racial and/or ethnic minority members. This difference is not statistically significant.

B. Individual Results of Race and Ethnicity of Detailed and Impaneled Members

The section below provides information on the race and/or ethnicity composition of individual military panels. This information is not aggregated across all courts-martial but summarizes the characteristics unique to the 260 individual cases. The DAC-IPAD conducted this analysis to determine whether the aggregated data masked patterns about specific details and panels. This analysis also provides the individual perspective of the accused and victim regarding the demographic composition of the detailed and impaneled members on their court-martial. The individual courts-martial results do not include those with unknown race and/or ethnicity information.

i. Army

Analysis of Detailed Members in Army Cases

Figure 7 shows that across the 124 Army cases, the *average* percentage of detailed members who were white, not Hispanic was 55.6%, and the *average* percentage of detailed members who belonged to racial and/or ethnic minority groups was 44.4%.[109] The difference between the average percentage of details composed of racial and/or ethnic minority Service members (44.4%) and the representation of racial and/or ethnic minority Service members in the Army (46.0%) is not statistically significant.

Figure 7. Racial/Ethnic Composition of Details: 124 Army Cases

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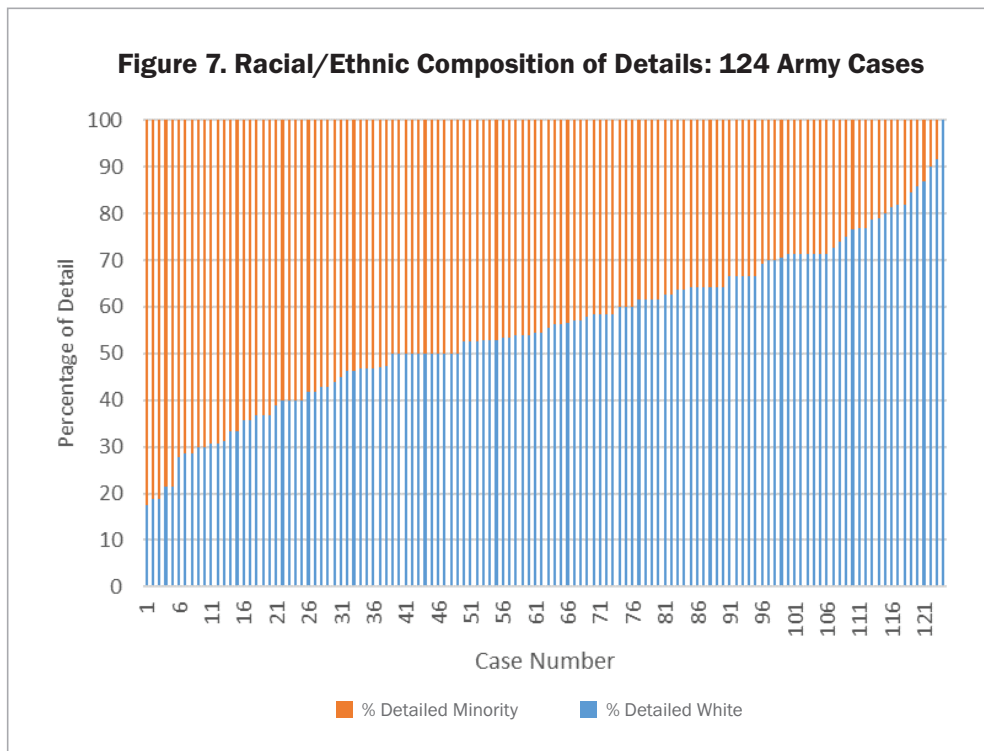
109 The 136 Service members who were missing data on their race and/or ethnicity were excluded from the results.

- In 75 of the 124 cases (60.4% of cases), white, not Hispanic Service members made up more than half of the detailed members.
- In 38 of the 124 cases (30.6%), more than half of the detailed members were racial and/or ethnic minority Service members.
- There were 11 (8.9%) cases in which half of the detail was composed of white, not Hispanic Service members and half of the detail was composed of racial and/or ethnic minority Service members.
- In 34 of the 124 cases (27.4%), more than two-thirds of the detailed members were white, not Hispanic Service members. There was 1 case in which all detailed members were white, not Hispanic Service members.
- In 13 of the 124 cases (10.5%), fewer than one-third of the detailed members were white, not Hispanic Service members.

Analysis of Impaneled Members in Army Cases

Figure 8 shows that across the 124 Army panels, the *average* percentage of panels that were composed of white, not Hispanic members was 55.3%, and the *average* percentage of panels that were composed of racial and/or ethnic minority members was 44.7%.[110] The difference between the average percentage of panels composed of racial and/or ethnic minority Service members (44.7%) and the representation of racial and/or ethnic minority Service members in the Army (46.0%) is not statistically significant.

Figure 8. Racial/Ethnic Composition of Panels: 124 Army Cases

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110 The 71 Service members who were missing data on their race and/or ethnicity were excluded from the results.

- In 63 of 124 panels (50.8%), more than half of the panel was composed of white, not Hispanic members, including 8 panels in which all members were white, not Hispanic Service members.
- In 48 of 124 panels (38.7%), more than half of the panel was composed of members belonging to racial and/or ethnic minority groups, including 1 panel in which all members belonged to racial and/or ethnic minority groups.

ii. Navy

Analysis of Detailed Members in Navy Cases

Figure 9 demonstrates that across the 48 Navy cases, the *average* percentage of detailed members who were white, not Hispanic was 56.6%, and the *average* percentage of detailed members who belonged to racial and/or ethnic minority groups was 43.4%.[111] The difference between the average percentage of details composed of racial and/or ethnic minority Service members (43.4%) and the representation of racial and/or ethnic minority Service members in the Navy (53.4%) is statistically significant.

Figure 9. Racial/Ethnic Composition of Details: 48 Navy Cases
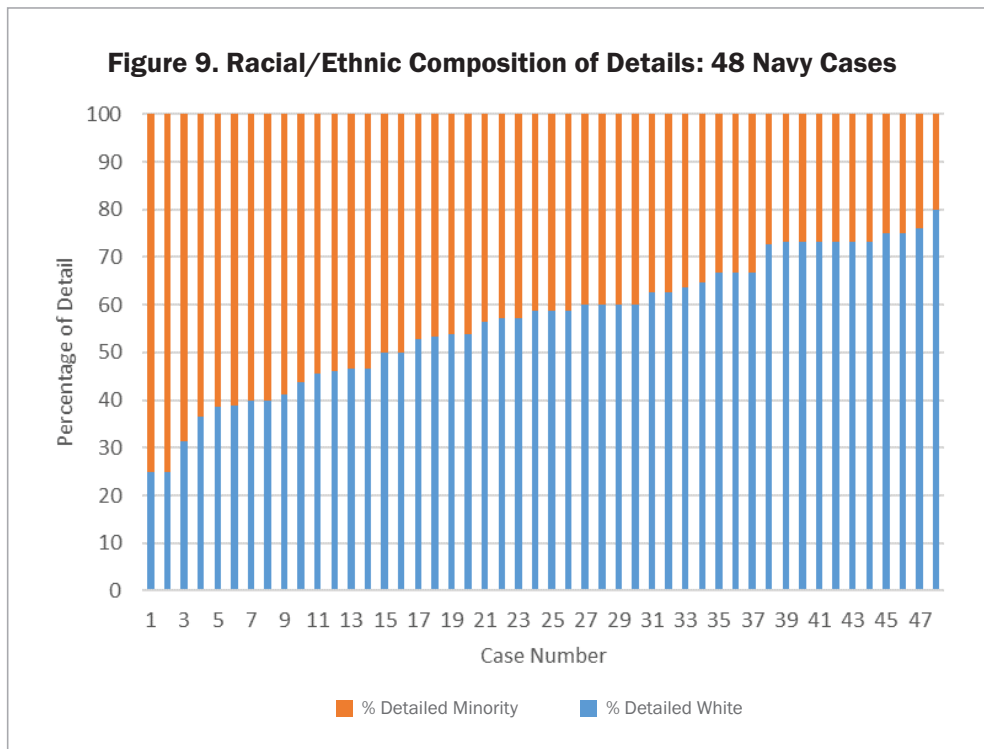
- In 32 of the 48 cases (66.6% of cases), white, not Hispanic Service members made up more than half of the detailed members.
- In 14 of the 48 cases (29.2%), Service members belonging to racial and/or ethnic minority groups made up more than half of the detailed members.

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111 The 126 Service members who were missing data on their race and/or ethnicity were excluded from the results.

- There were 2 cases (4.2%) in which half of the detail was composed of white, not Hispanic Service members and half of the detail was composed of racial and/or ethnic minority Service members.
- In 14 of the 48 cases (29.2%), more than two-thirds of the detailed members were white, not Hispanic Service members.
- In 3 of the 48 cases (6.3%), fewer than one-third of the detailed members were white, not Hispanic Service members.

Analysis of Impaneled Members in Navy Cases

Figure 10 shows that across the 48 Navy panels, the *average* percentage of panels that were composed of white, not Hispanic members was 54.3%, and the *average* percentage of panels that were composed of racial and/or ethnic minority groups members was 45.7%.[112] The difference between the average percentage of panels composed of racial and/or ethnic minority Service members (45.7%) and the representation of racial and/or ethnic minority Service members in the Navy (53.4%) is statistically significant.
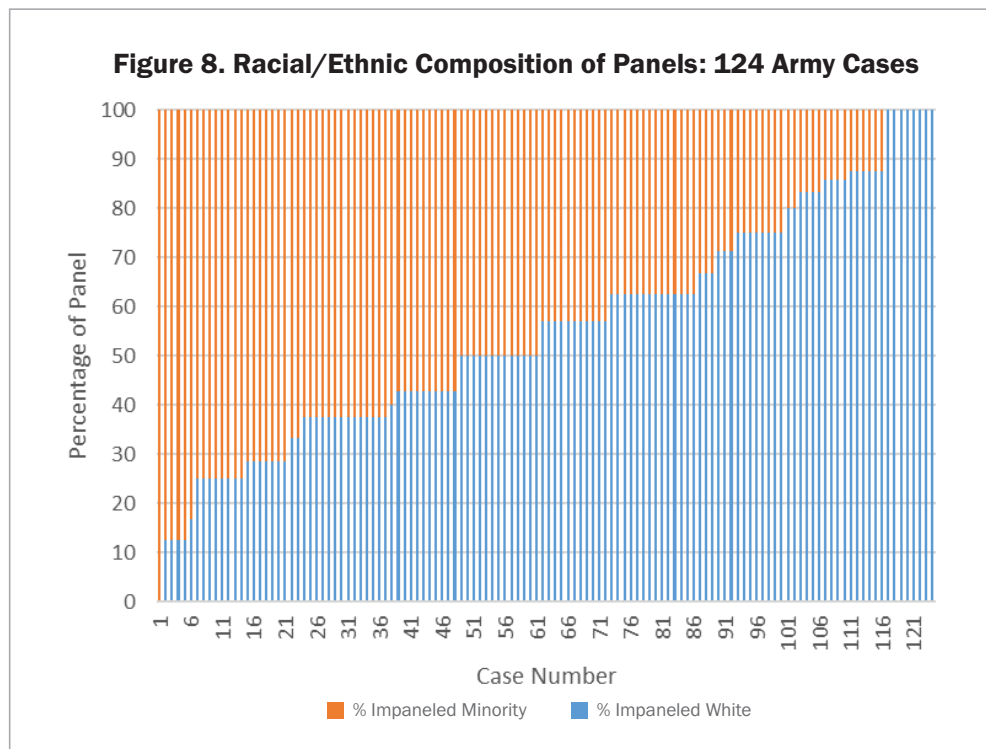

Figure 10. Racial/Ethnic Composition of Panels: 48 Navy Cases
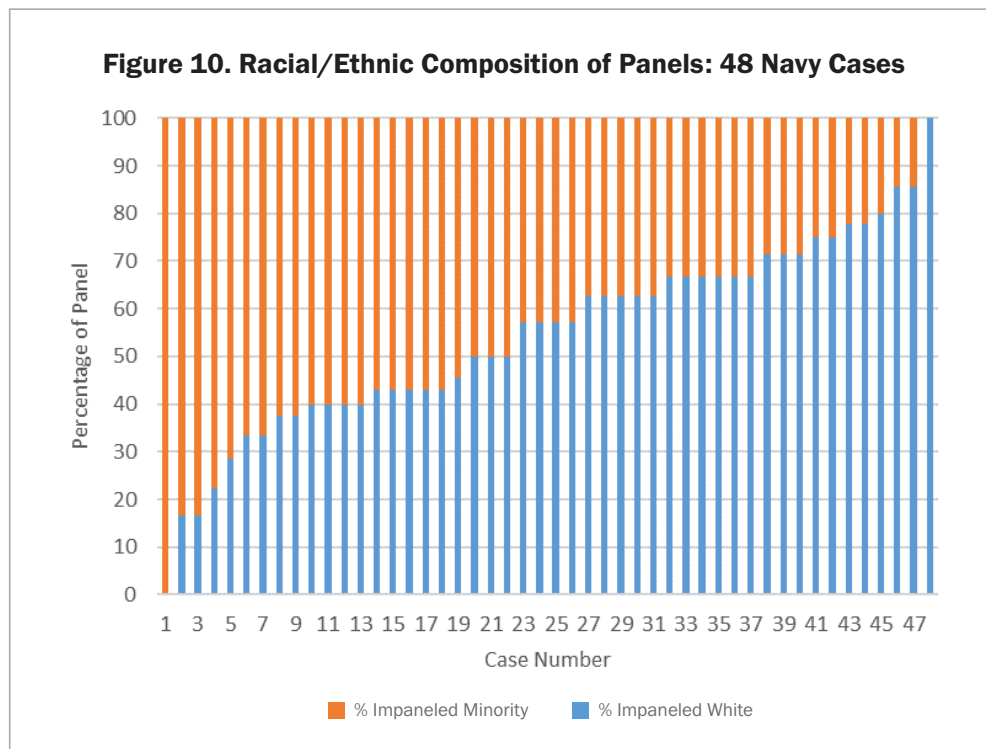
- In 26 of 48 panels (54.2%), more than half of the panel was composed of white, not Hispanic members, including 1 panel in which all members were white, not Hispanic.
- In 19 of 48 panels (39.6%), more than half of the panel was composed of members belonging to racial and/or ethnic minority groups, including 1 panel in which all members belong to a racial and/or ethnic minority group.

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112 The 68 individual impaneled Service members who were missing data on their race and/or ethnicity were excluded from the results.

- There were 3 panels (6.3%) in which half of the detail was composed of white, not Hispanic Service members and half of the detail was composed of racial and/or minority Service members.

iii. Marine Corps

Analysis of Detailed Members in Marine Corps Cases

Figure 11 shows that across the 39 Marine Corps cases, the *average* percentage of detailed members who were white, not Hispanic was 59.9%, and the *average* percentage of detailed members who belonged to racial and/or ethnic minority groups was 40.2%.[113] The difference between the average percentage of details composed of racial and/or ethnic minority Service members (40.2%) and the representation of racial and/or ethnic minority Service members in the Marine Corps (43.1%) is not statistically significant.


Figure 11. Racial/Ethnic Composition of Details: 39 Marine Corps Cases
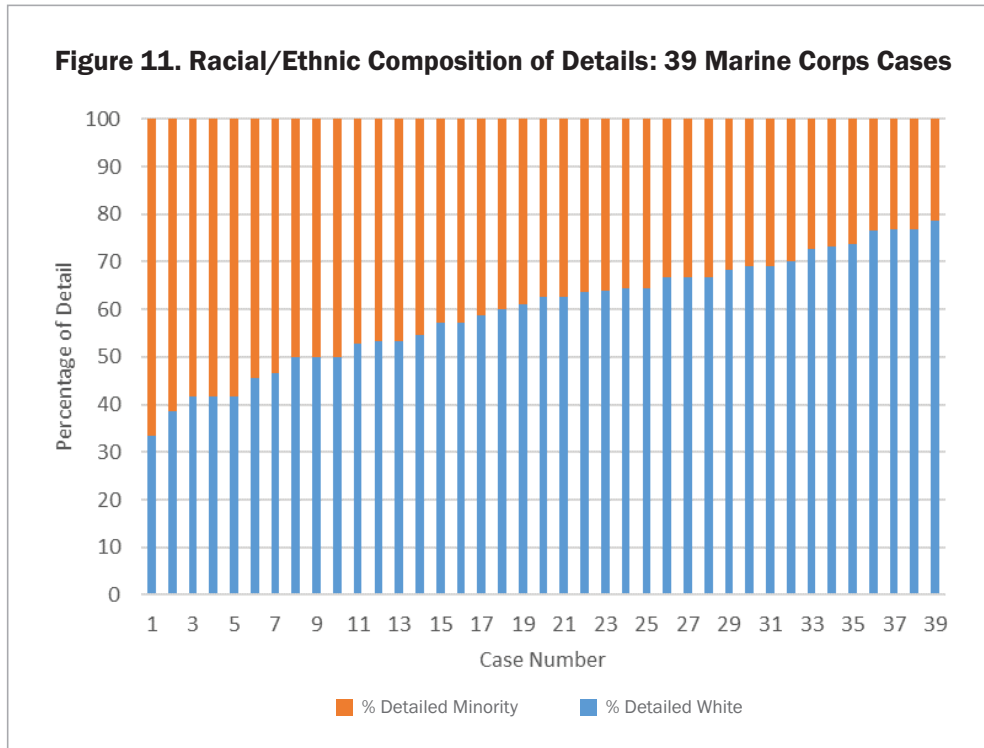
- In 29 of the 39 cases (74.4%), white, not Hispanic Service members made up more than half of the detailed members.
- In 7 of the 39 cases (17.9%), Service members belonging to racial and/or ethnic minority groups made up more than half of the detailed members.
- There were 3 cases (7.7%) in which half of the detail was composed of white, not Hispanic Service members and half of the detail was composed of racial and/or ethnic minority Service members.

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113 The 99 Service members who were missing data on their race and/or ethnicity were excluded from the results.

- In 14 of the 39 cases (35.9%), more than two-thirds of the detailed members were white, not Hispanic Service members.
- In 11 of the 39 cases (28.2%), fewer than one-third of the detailed members were racial and/or ethnic minority Service members.

Analysis of Impaneled Members in Marine Corps Cases

Figure 12 shows that across the 39 Marine Corps panels, the *average* percentage of panels that were composed of white, not Hispanic members was 60.9%, and the *average* percentage of panels that were composed of racial and/or ethnic minority members was 39.1%.[114] The difference between the average percentage of panels composed of racial and/or ethnic minority Service members (39.1%) and the representation of racial and/or ethnic minority Service members in the Marine Corps (43.1%) is not statistically significant.


Figure 12. Racial/Ethnic Composition of Panels: 39 Marine Corps Cases

- In 23 of 39 panels (60.0%), more than half of the panel was composed of white, not Hispanic members, including 4 panels in which all members were white, not Hispanic members.
- In 9 of 39 panels (23.1%), more than half of the panel was composed of members belonging to racial and/or ethnic minority groups, including 1 panel in which all members belonged to a racial and/or ethnic minority group.
- There were 7 panels (18.0%) in which half of the detail was composed of white, not Hispanic Service members and half of the panel was composed of racial and/or ethnic minority Service members.

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114 The 99 Service members who were missing data on their race and/or ethnicity were excluded from the results.

iv. Air Force

Analysis of Detailed Members in Air Force Cases

Figure 13 shows that across the 49 Air Force cases, the *average* percentage of detailed members who were white, not Hispanic was 63.1%, and the *average* percentage of detailed members who belonged to racial and/or ethnic minority groups was 36.9%.[115] The difference between the average percentage of details composed of racial and/or ethnic minority Service members (36.9%) and the representation of racial and/or ethnic minority Service members in the Air Force (39.4%) is not statistically significant.

Figure 13. Racial/Ethnic Composition of Details: 49 Air Force Cases
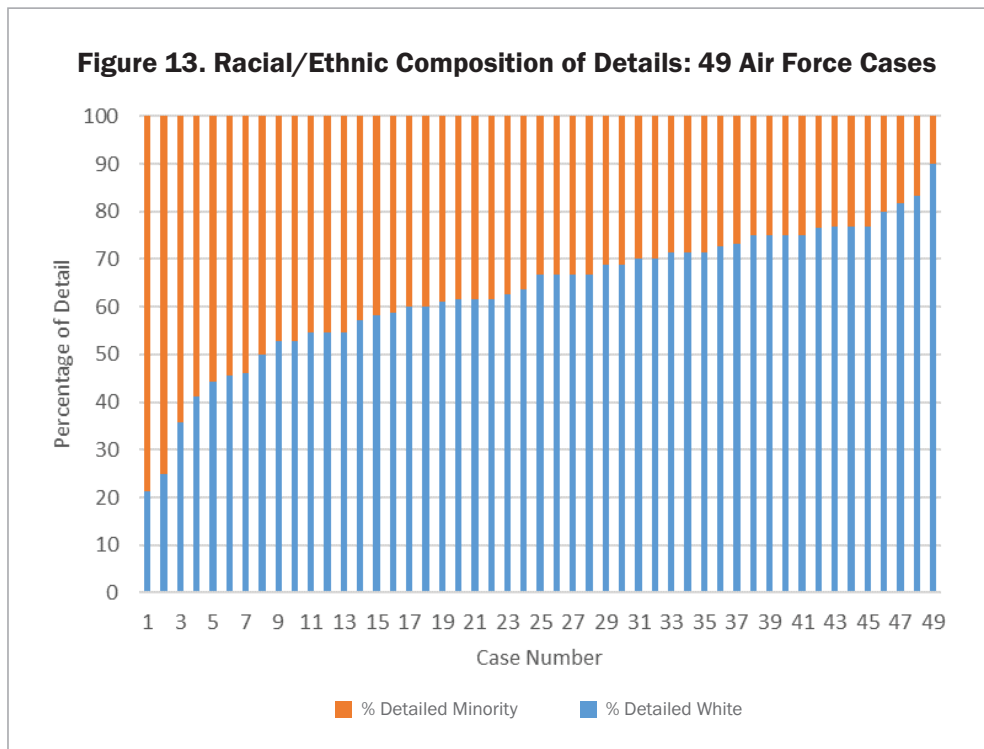
- In 41 of the 49 cases (83.7%), white, not Hispanic Service members made up more than half of the detailed members.
- In 7 of the 49 cases (14.3%), Service members belonging to racial and/or ethnic minority groups made up more than half of the detailed members.
- There was 1 case (2.0%) in which half of the detail was composed of white, not Hispanic Service members and half of the detail was composed of racial and/or ethnic minority Service members.
- In 25 of the 49 cases (51.0%), more than two-thirds of the detailed members were white, not Hispanic Service members.
- In 2 of the 49 cases (4.1%), fewer than one-third of the detailed members were white, not Hispanic Service members.

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115 The 211 Service members who were missing data on their race and/or ethnicity were excluded from the results.

Analysis of Impaneled Members in Air Force Cases

Figure 14 shows that across the 49 Air Force panels, the *average* percentage of panels that were composed of white, not Hispanic Service members was 59.7%, and the *average* percentage of panels that were composed of racial and/or ethnic minorities was 40.3%.[116] The difference between the average percentage of panels composed of racial and/or ethnic minority Service members (40.3%) and the representation of racial and/or ethnic minority Service members in the Air Force (39.4%) is not statistically significant.
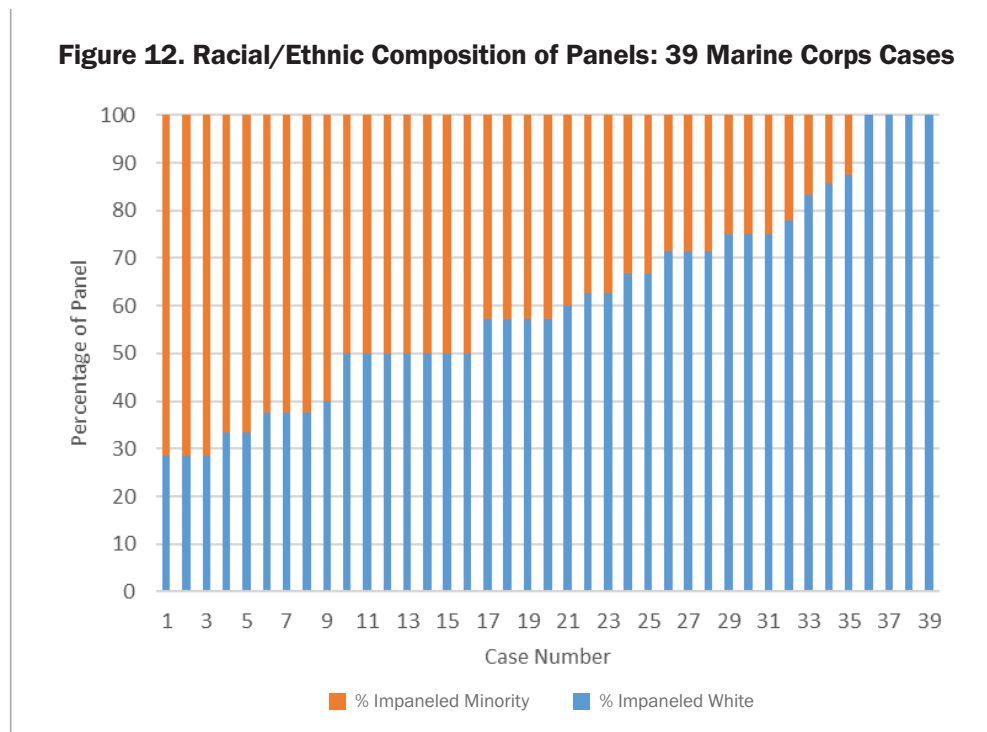

Figure 14. Racial/Ethnic Composition of Panels: 49 Air Force Cases
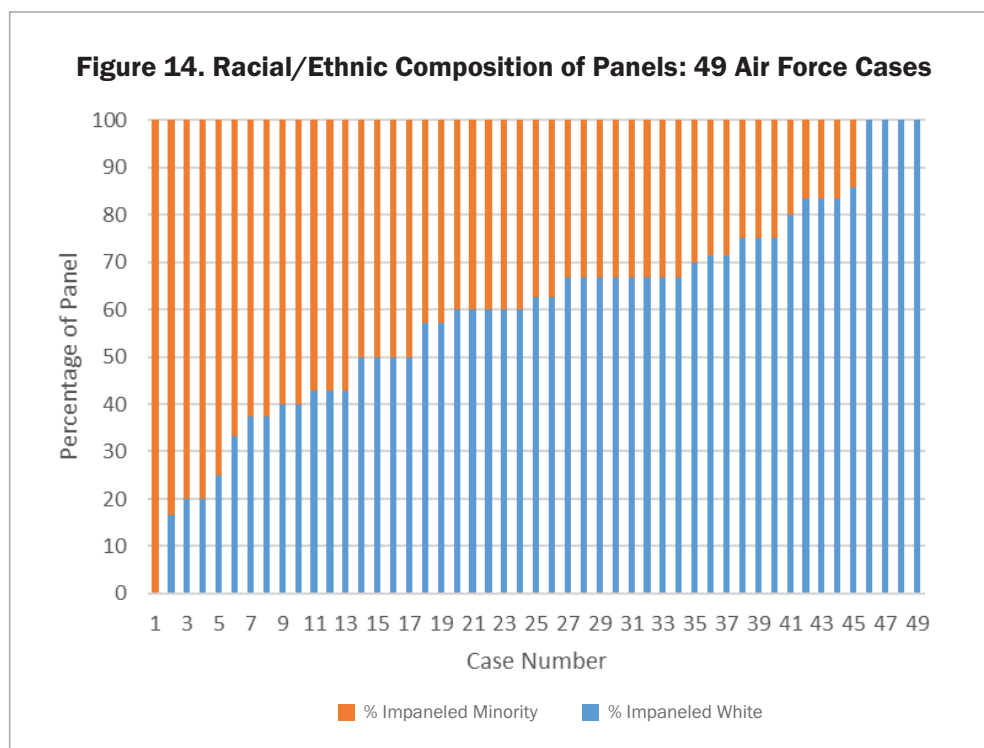
- In 32 of 49 panels (65.3%), more than half of the panel was composed of white, not Hispanic members, including 4 panels in which all members were white, not Hispanic Service members.
- In 13 of 49 panels (26.5%), more than half of the panel was composed of Service members belonging to racial and/or ethnic minority groups, including 1 panel in which all members belonged to a racial and/or ethnic minority group.
- There were 4 panels (8.2%) in which half of the panel was composed of white, not Hispanic Service members and half of the panel was composed of racial and/or ethnic minority Service members.

Finding 9 (*on patterns of results*): In sexual assault offense cases in all the Services, the patterns of results are the same (1) when the analysis grouped all individuals together and (2) when the analysis examined the specific details and panels to which individuals were assigned.

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116 The 94 impaneled Service members who were missing data on their race and/or ethnicity were excluded from the results.

III.   ANALYSIS

Diversity of Details

In sexual assault offense cases adjudicated by military panels in FY21 and FY22, the DAC-IPAD finds that the representation of racial and/or ethnic minorities on both details and panels in the Army, Air Force, and Marine Corps was similar to their representation in their respective Services.[117] Any differences are not statistically significant. For the same period in Navy cases, the representation of racial and/or ethnic minorities on details and panels was lower than their overall representation in the Navy. These differences are statistically significant.

These findings indicate that the initial detailing of diverse Service members is a crucial determinant of a diverse final panel. Diverse panels in the military, and diverse juries in the civilian world, rely on a diverse venire. This conclusion is well illustrated in the Navy: when the details had a lower representation of racial or ethnic minorities compared with their overall population in the Service, the final panels were also less diverse than their overall Service representation. This occurred even though minorities were impaneled at a higher rate than white, not Hispanic members, and even though the final panel was more diverse than the original detail of members. In contrast, in the other Services, when the detail reflected representation of racial and/or ethnic minorities similar to their overall representation in their Service, the final panels generally maintained that representation.

Figure 15. Percentage of Detailed vs. Impaneled Racial and/or Ethnic Minority Service Members

	Detailed	Impaneled
Army	45.3	45.2
Navy	43.3	44.3
Marine Corps	40.2	38.8
Air Force / Space Force	37.1	40.2
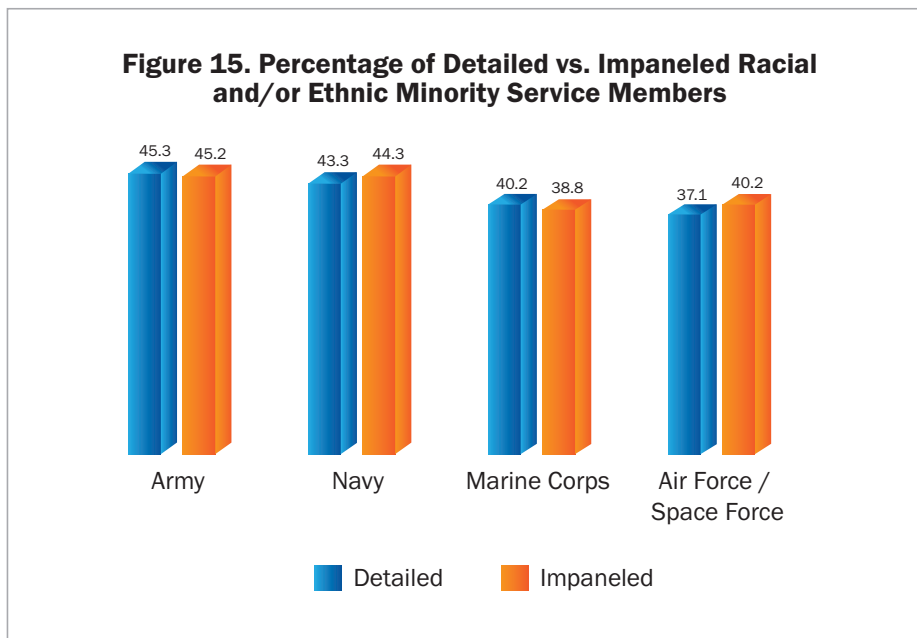
The cases analyzed for this study were tried prior to the CAAF decision in *Jeter*, and thus before convening authorities were prohibited from taking race and ethnicity into account for purposes of inclusion when detailing Service members to courts-martial. Although the DAC-IPAD cannot confirm if race and/or ethnicity was

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117 Note that this finding for the Air Force is based on FY21 data only.

considered in these particular cases, the Committee did receive testimony suggesting that prior to *Jeter*, GCMCAs did take into account race and gender when detailing members to courts-martial.[118]

As race is not a factor for consideration under Article 25, UCMJ, any changes to the Article 25 criteria are related only tangentially to the racial and ethnic composition of details. However, it may be that the demographics of military details and panels do not change after *Jeter*, because the Article 25 criteria are what is actually driving the makeup of panels. The DAC-IPAD, and other committees, have recommended more robust randomization processes for panel selection and the removal of the subjective Article 25 criteria to increase transparency and eliminate the perception that the convening authorities' power to detail Service members to courts-martial is unfair. Given the impact of jury composition on the perception of a fair trial, it is important that the public and Service members be made aware that panels generally contain a representative proportion of minority Service members; if the DAC-IPAD's recommended changes for randomization are not adopted, such education will become even more important.

> **Recommendation 68 *(on future study)*:** To further understand the potential impacts of *United States v. Jeter*, as well as future randomization practices, the Department of Defense should conduct a comprehensive study within the next five years, using the same methodology as the DAC-IPAD's, to assess the diversity of panel members detailed and impaneled on all courts-martial. The Services should provide the race and ethnicity for all Service members included in that study. In addition, to understand the potential underrepresentation of specific racial and/or ethnic groups, the Department of Defense should conduct a parallel study in which it does not aggregate racial and/or ethnic minorities into one category.

Perceptions of Diversity

The DAC-IPAD heard from Service members who expressed concerns about the lack of racial and ethnic diversity on courts-martial panels. But the data indicate that courts-martial in all Services except the Navy had representative, or close to representative, panels.

Despite this seeming contradiction, the perception among Service members about lack of diversity should not be discounted. First, this data represents only a two-year period. Second, the DAC-IPAD recognizes that the number of Service members on details and panels is small. In the courts-martial analyzed for this study, details typically contained between 14 and 20 Service members, and most courts-martial panels consisted of 8 members.[119] Even if minorities were represented on a panel at a rate similar to their representation in their respective Services, the absolute number of minority members on the panel would be small: for example, a panel with 45% minority representation would contain only 3 members who belong to minorities.[120] Perhaps exacerbating the perception of

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118 *Transcript of DAC-IPAD Public Meeting* 125–26 (Sept. 19, 2023) (testimony of Major General Bibb) ("My understanding is, as a courts-martial convening authority, I could consider the demographics as a whole of the panel. And while I didn't eliminate anybody just because of their race or their sex or other factors that can be seen by the panel, I think it's incredibly important to have a fair system. It's also incredibly important to have the perception of a fair system. . . . And so, I would look at that [race]. It wouldn't be my primary criteria, but as I would glance through it, I would make sure I had the right balance.); *id.* at 130 (testimony of Rear Admiral Brian K. Penoyer) ("In other words, I suspect, like, for instance, in the pools that we were all creating, we may have had greater diversity than you get through any other system.").

119 *See* Appendixes F through I.

120 *Transcript of DAC-IPAD Public Meeting* 83 (Dec. 6, 2023) (comments of Ms. Jennifer Long) ("When we're down to eight, then maybe you're seeing two women or minority representation . . . when we are talking about 20 percent or 30 percent . . . and my take-away was that might really influence perception because the true numbers may be very low, and that's not always captured when we're looking at data or different tables.").

lack of diversity is that without polling the panel, an accused may find it difficult to ascertain if a panel member is a minority; a similar scenario was presented in *U.S. v. Bess*.[121]

In addition, as discussed in the methodology, the DAC-IPAD aggregated all racial and ethnic minority groups into one category. While the data indicate that panels were representative of this *aggregated* minority group in all Services except the Navy, a limitation of this report is that it does not address whether the accused's *particular* race and/ or ethnicity was represented on their panel. For some accused, it may be that their panel is not representative of their race and/or ethnicity. In addition, the DAC-IPAD cannot address all perceptions about specific demographic representation on panels—that is, whether an accused's or the public's perception of what representation should look like is reflected on a panel.

Finally, the individual courts-martial data demonstrate that across all Services, some panels were entirely composed of white, not Hispanic members. In the Army, 8 panels (6.5%) were entirely composed of white, not Hispanic members. Both the Air Force and Marine Corps had 4 entirely white, not Hispanic panels, comprising 8.2% and 10.3% of all courts-martial panels analyzed, respectively. Interestingly, in the Navy, the only Service in which the representation of minority members on panels was lower than their overall representation in the Service *and* the only Service for which the difference was statistically significant, only one court-martial panel (2.1%) was entirely composed of white, not Hispanic members.

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121 *U.S. v. Bess*, 80 M.J. 1, 4 (C.A.A.F. 2020) (noting that in response to defense counsel's observation that there was no African American representation on the panel, the military judge stated, "I can't speak to the racial makeup of our panel. I agree with you that I don't see anyone who I think is obviously of the same race as your client, but then again, I would not have known, frankly, that he is of the race he is, absent reviewing materials of the previous case and how his identification was made.").

CHAPTER 5. RESULTS, FINDINGS, AND ANALYSIS OF THE GENDER OF DETAILED AND IMPANELED MEMBERS

The U.S. military is predominately male: across the Department of Defense, men constitute 82.5% of the population, and women 17.5%.[122] Given these statistics, court-martial panels are likely to have more male than female members. Still, the DAC-IPAD received testimony that women, even when detailed to a court-martial, are impaneled at lower rates than their male counterparts.[123] The DAC-IPAD therefore decided to study the representation of women on details and panels in order to better understand this perception.

The results and analysis of the DAC-IPAD's study of gender are presented in three parts. Part I provides the aggregated information for the 260 cases examined for this study. Section A compares the representation by gender of Service members detailed to courts-martial with their overall representation in their respective Services. Section B describes the rates of impanelment for men and women. Section C compares the representation by gender of Service members impaneled with their overall representation in their respective Services.[124] Section D looks at the rates of challenges for cause and of peremptory challenges against female Service members. Part II provides characteristics about the gender composition for each of the 260 courts-martial panels. Finally, Part III provides the Committee's analysis of these results.

All data and findings presented below are based on an analysis of contested sexual assault offense cases at courts-martial with members as factfinders. The data for the Army, Navy, and Marine Corps are presented for FY21 and FY22 cases; the data for the Air Force are presented for FY21 cases only. It is important to note that Service members whose gender was unknown were excluded from this study and their demographic information is not included in the results and analysis presented in this chapter.[125] It also should be noted that data on gender was missing from the information provided by the Services less often than data on race and/or ethnicity.[126]

I.   AGGREGATE RESULTS OF GENDER OF DETAILED AND IMPANELED MEMBERS

A. The Representation of Women on Details Compared with Their Overall Active Duty Service Representation

In the Army and the Air Force, the representation of women detailed to courts-martial was greater than their representation in their respective Services. In the Army, women constituted 21.2% of details, compared with their overall Service representation of 15.6%. The difference between the representation of female Service members on

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122 According to DoD, the percentage of women increased slightly from 2021 (17.3%) to 2022 (17.5%). *Defense Department Reports Shows Decline in Armed Forces Population While Percentage of Military Women Rises Slightly* (Nov. 6, 2023), *available at* https://www.defense.gov/News/Releases/Release/ Article /3580676.

123 *Transcript of DAC-IPAD Public Meeting* 131–32 (Dec. 6, 2022) (testimony of Mr. Ryan Guilds, Survivors United) (noting that women are systematically excluded and that it "comes from being a uniformed victim advocate from experiencing a sexual assault or simply not being identified and placed on a potential panel"); *id*. at 169 (testimony of Colonel Carole Brewer, Chief of the Army's Special Victims' Counsel Program) ("From my experience in the courtroom there are definitely fewer women on panels than we'd like.").

124 The results in this section are based on all courts-martial information in the aggregate and by Service. The results do not include Service members whose race and ethnicity were unknown.

125 For more information on unknown gender percentages for detailed panel members by Service, see *supra* Chapter 2.

126 *Supra* Chapter 3.

details and their overall representation in the Army is statistically significant. In the Air Force, women constituted 31.0% of details, compared with their Service representation of 21.5%. The difference between the representation of female Service members on details and their overall representation in the Air Force is statistically significant.

In the Marine Corps, women constituted 10.5% of details, which was slightly greater than their overall Service representation of 9.4%. This difference was not statistically significant. Finally, in the Navy, women constituted 16.0% of details, which was lower than their overall Service representation of 20.7%. This is statistically significant.

Figure 16. Percentage of Detailed Female Service Members and Overall Service Representation

Finding 10 (*on representation of women on details*): In sexual assault offense cases in the Army and Air Force, the representation of women detailed to courts-martial was greater than their overall representation in their respective Services. In the Marine Corps, the representation of women detailed to courts-martial was slightly higher than their overall representation in the Service. In the Navy, the representation of women detailed to courts-martial was lower than their representation in the Service. The differences in all Services other than the Marine Corps are statistically significant.

- In the Army, women constituted 21.2% of details, compared with their overall Service representation of 15.6%. This difference is statistically significant.
- In the Navy, women constituted 16.0% of details, which was lower than their overall Service representation of 20.7%. This difference is statistically significant.
- In the Marine Corps, women constituted 10.5% of details, which was greater than their overall Service representation of 9.4%. This difference is not statistically significant.
- In the Air Force, women constituted 31.0% of details, compared with their Service representation of 21.5%. The difference is statistically significant.

B. The Rate of Impanelment for Female vs. Male Service Members

The information below tracks whether women on details were impaneled at lower rates than their male counterparts. In other words, once detailed by the convening authority, are women more likely or less likely to be impaneled?

In all the Services, women were impaneled at lower rates than men, and across the Services this difference was statistically significant. In the Army, women were impaneled at a rate of 37.8%; men, at 51.6%. In the Navy, women were impaneled at a rate of 26.5%; men, at 49.9%. In the Marine Corps, women were impaneled at a rate of 29.9%; men, at 48.7%. In the Air Force, women were impaneled at a rate of 33.1%; men, at 48.1%.

**Figure 17. Rate of Impanelment for
Female vs. Male Service Members**

Finding 11 (*on rate of impanelment for women*): In sexual assault offense cases in all the Services, women were impaneled at lower rates than men; these differences are statistically significant in all the Services.

- In the Army, women were impaneled at a rate of 37.8%; men, at 51.6%. This difference is statistically significant.
- In the Navy, women were impaneled at a rate of 26.5%; men, at 49.9%. This difference is statistically significant.
- In the Marine Corps, women were impaneled at a rate of 29.9%; men, at 48.7%. This difference is statistically significant.
- In the Air Force, women were impaneled at a rate of 33.1%; men, at 48.1%. This difference is statistically significant.

C. The Representation of Women on Panels Compared with Their Overall Service Representation

The table below describes the representation of women who were impaneled compared with the representation of women in their respective Services.

Even though in the Army and the Air Force men on details were more likely to be impaneled than women on details, the representation of women on panels in both Services was greater than their overall Service representation. In the Air Force, their representation on panels was 23.6% while their overall representation was 21.5%. In the Army, the representation of women on panels was 16.4% while their overall representation was 15.6%. In both the Navy and the Marine Corps, the representation of women on panels was less than their representation in their respective Services. For the Marine Corps, the representation of women on panels was just 6.7% while their overall representation was 9.4%. For the Navy, the representation of women on panels was 9.2% while their overall representation was 20.7%, and this difference is statistically significant.

Figure 18. Percentage of Impaneled Female Service Members and Overall Service Representation

Army: 16.4 / 15.6
Navy: 9.2 / 20.7
Marine Corps: 6.7 / 9.4
Air Force / Space Force: 23.6 / 21.5

Panel Representation — Service Representation

Finding 12 (*on representation of women on panels*): In sexual assault offense cases, the representation of women on panels in the Army and Air Force was greater than their overall Service representation. In both the Navy and the Marine Corps, the representation of women on panels was less than their representation in their respective Services; in the Navy, this difference is statistically significant.

- In the Army, the representation of women on panels was 16.4% while their overall representation was 15.6%. This difference is not statistically significant.
- For the Navy, the representation of women on panels was 9.2% while their overall representation was 20.7%. This difference is statistically significant.
- In the Marine Corps, the representation of women on panels was 6.7% while their overall representation was 9.4%. This difference is not statistically significant.
- In the Air Force, the representation of women on panels was 23.6% while their overall representation was 21.5%. This difference is not statistically significant.

D. The Rate of Challenges for Cause and Peremptory Challenges Against Male and Female Members Not Impaneled

The DAC-IPAD collected data on the basis for excusing men and women from panels. The analysis reported in this section examined only the group of individuals who were not impaneled; the reasons for excusal across men and women were compared.[127] Among members who were excused, men and women were excused due to peremptory challenges and challenges for cause in similar percentages.[128] The exception is in the Marine Corps, in which 76.6% of women but only 54.1% of men were excused because of challenges for cause.

Figure 19. Percentage of Detailed Service Members not Impaneled, by Gender: Challenge for Cause

	Female	Male
Army	65.6	65.6
Navy	61.7	61.9
Marine Corps	76.6	54.1
Air Force / Space Force	59.4	55.8

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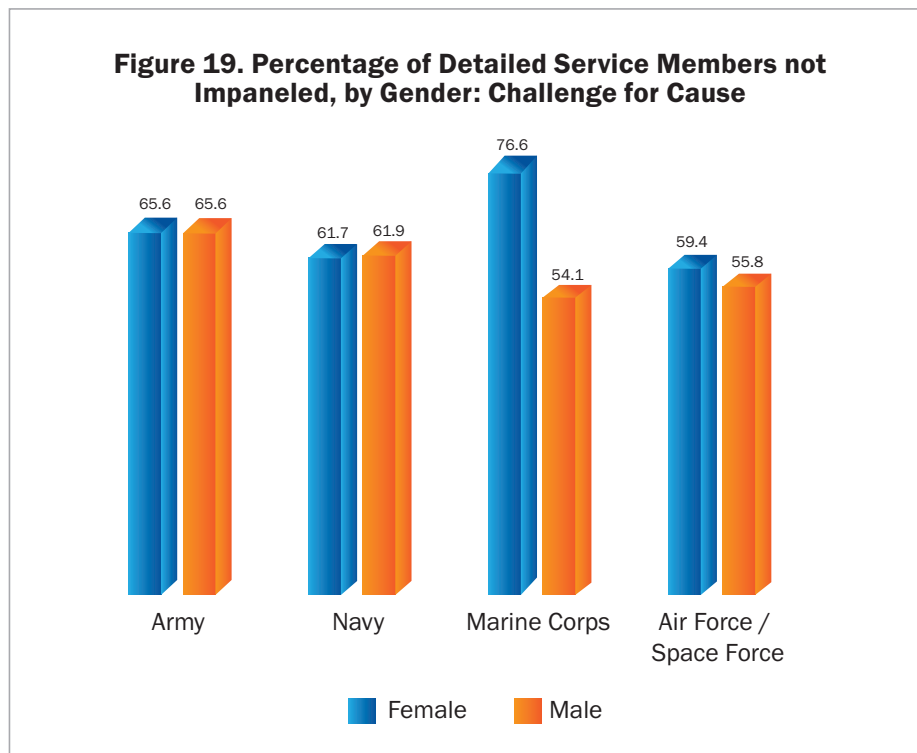
127 Figures 19 and 20 present information about the Service members who were detailed to courts-martial but were not selected to serve on a panel; the individuals who were impaneled are *not* included in the data summarized in these figures. The information in these figures does not account for differences in rates of impanelment between male and female Service members. In other words, the starting point of these comparisons is only the group of detailed Service members who had been excused.

128 For information about other excusal reasons, including randomization, *see* Appendix F through I.

**Figure 20. Percentage of Detailed Service Members not
Impaneled, by Gender: Peremptory Challenge**

	Army	Navy	Marine Corps	Air Force / Space Force
Female	17.8	13.8	10.6	18.8
Male	17.3	16.7	17.3	16.7

Finding 13 (*on use of challenges for members not impaneled*): In sexual assault offense cases in the Army, Air Force, and Navy, men and women were excused because of challenges for cause in similar percentages; in the Marine Corps, a higher percentage of women were excused than men because of challenges for cause. Across the Services, men and women were excused because of peremptory challenges in similar percentages.

- In the Army, 65.6% of women were excused because of challenges for cause, the same percentage as men. 17.8% of women were excused because of peremptory challenges, compared with 17.3% of men. These differences are not statistically significant.

- In the Navy, 61.7% of women were excused because of challenges for cause, compared with 61.9% of men. 13.8% of women were excused because of peremptory challenges, compared with 16.7% of men. These differences are not statistically significant.

- In the Marine Corps, 76.6% of women were excused because of challenges for cause, compared with 54.1% of men. 10.6% of women were excused because of peremptory challenges, compared with 17.3% of men. These differences approach but do not reach statistical significance. The small numbers of female Service members means that the tests of statistical significance may not be reliable.

- In the Air Force, 59.4% of women were excused because of challenges for cause, compared with 55.8% of men. 18.8% of women were excused because of peremptory challenges, compared with 16.7% of men. These differences are not statistically significant.

II. INDIVIDUAL RESULTS ON GENDER

The section below provides information on the gender composition of individual military panels. This information is not aggregated across all courts-martial but summarizes the characteristics unique to the 260 individual cases. The DAC-IPAD conducted this analysis to determine whether the aggregated data masked patterns about specific details and panels. This analysis also provides the individual perspective of the accused and victim regarding the gender composition of the detailed and impaneled members on their court-martial. The individual courts-martial results do not include those with unknown gender.

A. Army

Figure 21 shows that across the 124 Army cases,[129] the *average* percentage of detailed members who were male was 79.4%, and the *average* percentage of detailed members who were female was 20.6%.[130] The difference between the average percentage of details composed of female Service members (20.6%) and the representation of female Service members in the Army (15.6%) is statistically significant.

Figure 21. Gender Composition of Details: 124 Army Cases

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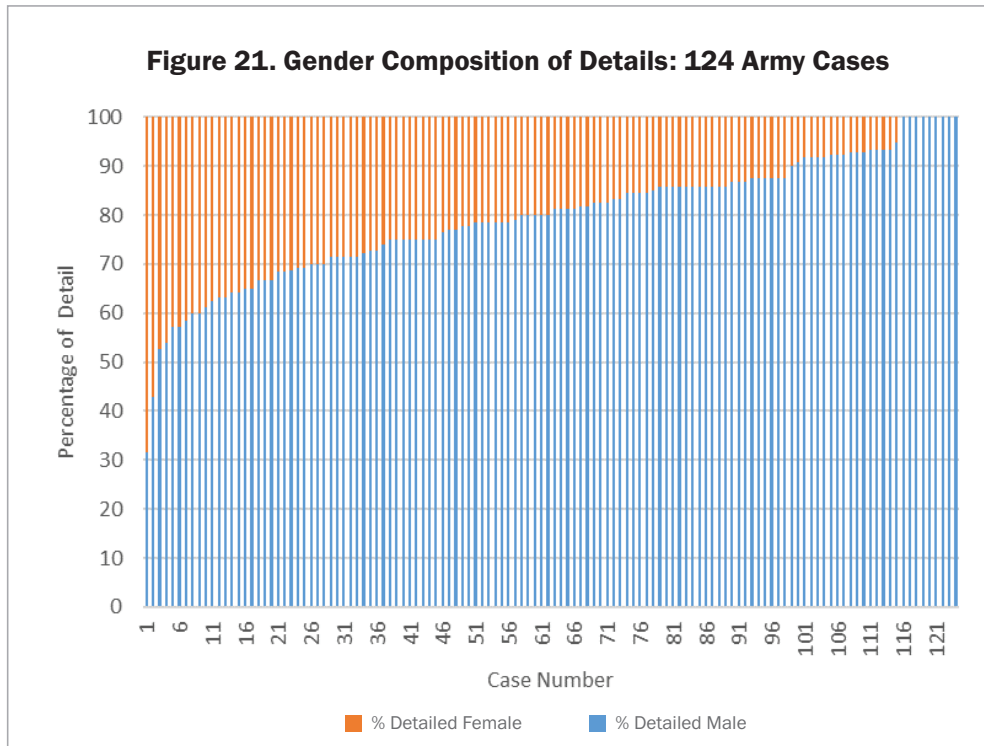
129 The 90 Service members who were missing data on their gender were excluded from the results.

130 The average percentage is similar to the overall aggregate finding of 21.2%.

Figure 22 shows that across the 124 Army panels,[131] the *average* percentage of panels that were composed of female Service members was 16.1%, and the *average* percentage of panels that were composed of male Service members was 83.9%. The difference between the average percentage of female Service members in panels (16.1%) and the overall representation of women in the Army (15.6%) is not statistically significant.
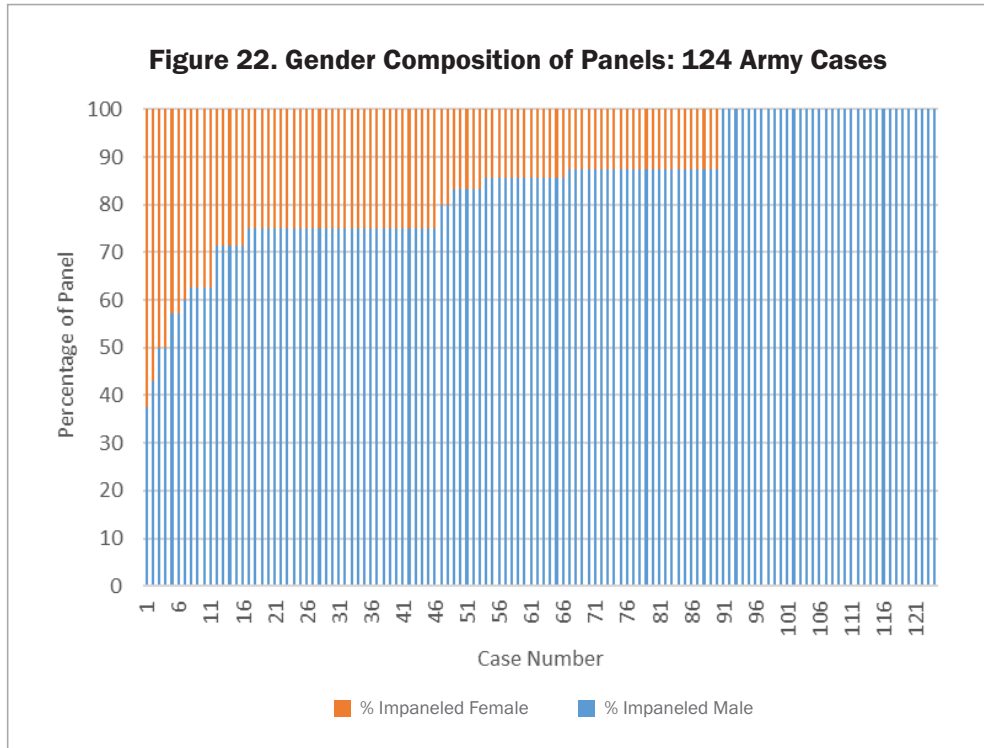
Figure 22. Gender Composition of Panels: 124 Army Cases

B. Navy

Figure 23 shows that across the 48 Navy cases,[132] the *average* percentage of detailed members who were male was 83.8%, and the *average* percentage of detailed members who were female was 16.2%.[133] The average percentage of details composed of female Service members (16.2%) is less than the representation of females in the Navy (20.7%); this difference is statistically significant.[134]

Figure 23. Gender Composition of Details: 48 Navy Cases

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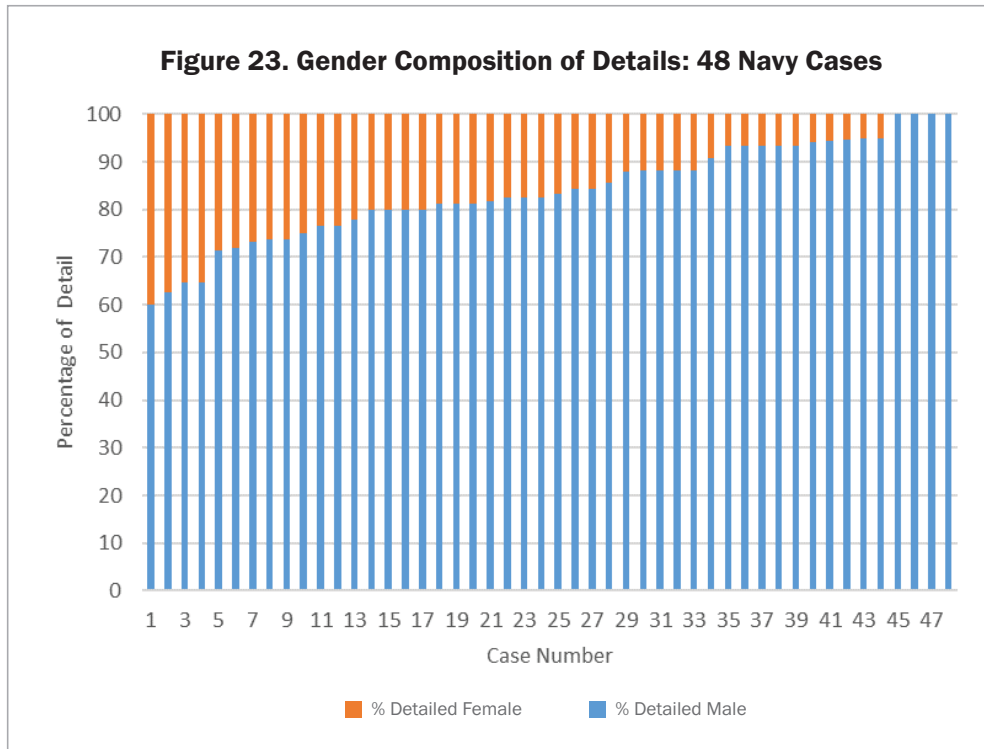
132 The 36 Service members who were missing data on their gender were excluded from the results.

133 This pattern is consistent with aggregated results.

134 This pattern is consistent with aggregated results.

Figure 24 shows that across the 48 Navy cases,[135] the *average* percentage of panels that were composed of female Service members was 8.9%, and the *average* percentage of panels that were composed of male Service members was 91.1%. The difference between the average percentage of panels composed of female Service members (8.9%) and the representation of females in the Navy (20.7%) is statistically significant.[136]

Figure 24. Gender Composition of Panels: 48 Navy Cases

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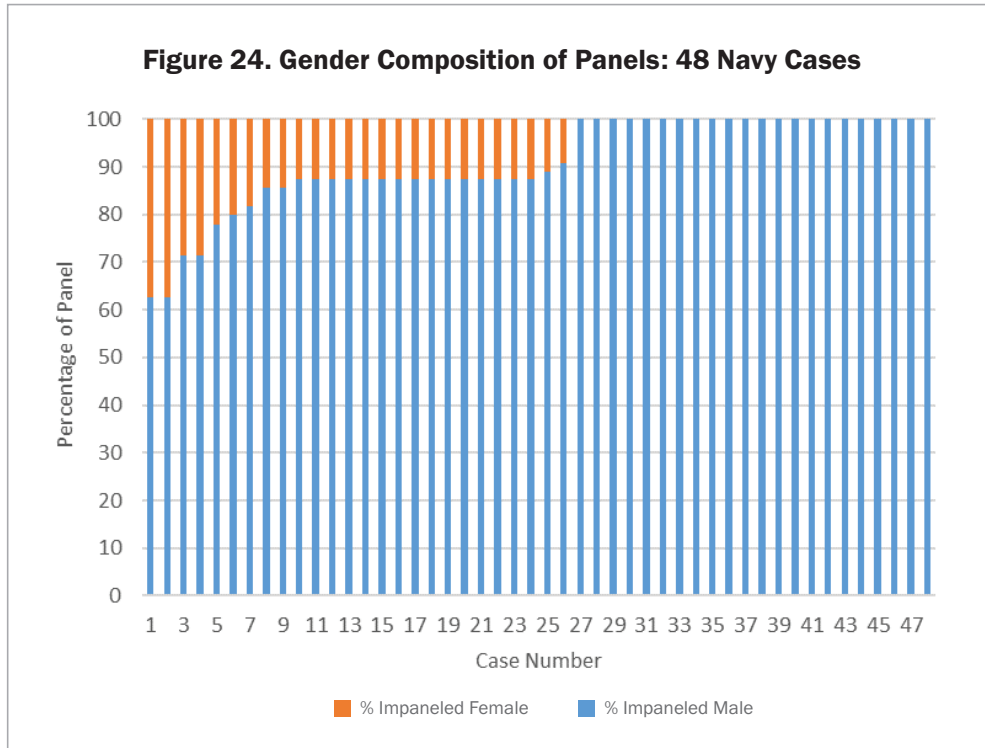
135 The 13 impaneled Service members who were missing data on their gender were excluded from the results.

136 This pattern is consistent with aggregated results.

C. Marine Corps

Figure 25 shows that across the 39 Marine Corps cases,[137] the *average* percentage of detailed members who were male was 89.5%, and the *average* percentage of detailed members who were female was 10.5%.[138] The average percentage of details composed of female Service members (10.5%) is similar to the representation of females in the Marine Corps (9.4%); this difference is not statistically significant.[139]

Figure 25. Gender Composition of Details: 39 Marine Corps Cases

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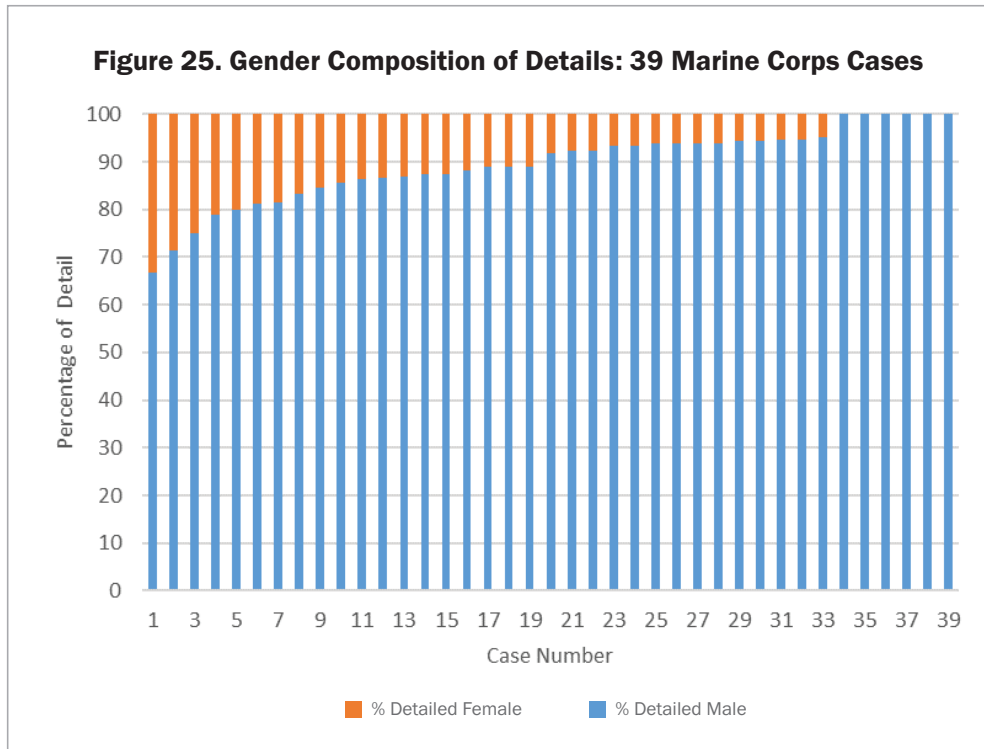
137 The 21 Service members who were missing data on their gender were excluded from the results.

138 This is identical to the aggregate data.

139 This pattern is consistent with aggregated results.

Figure 26 shows that across the 39 Marine Corps cases,[140] the *average* percentage of panels that were composed of female Service members was 6.2%,[141] and the *average* percentage of panels that were composed of male Service members was 93.8%. The average percentage of panels composed of female Service members (6.2%) is less than the representation of females in the Marine Corps (9.4%); this difference is not statistically significant.
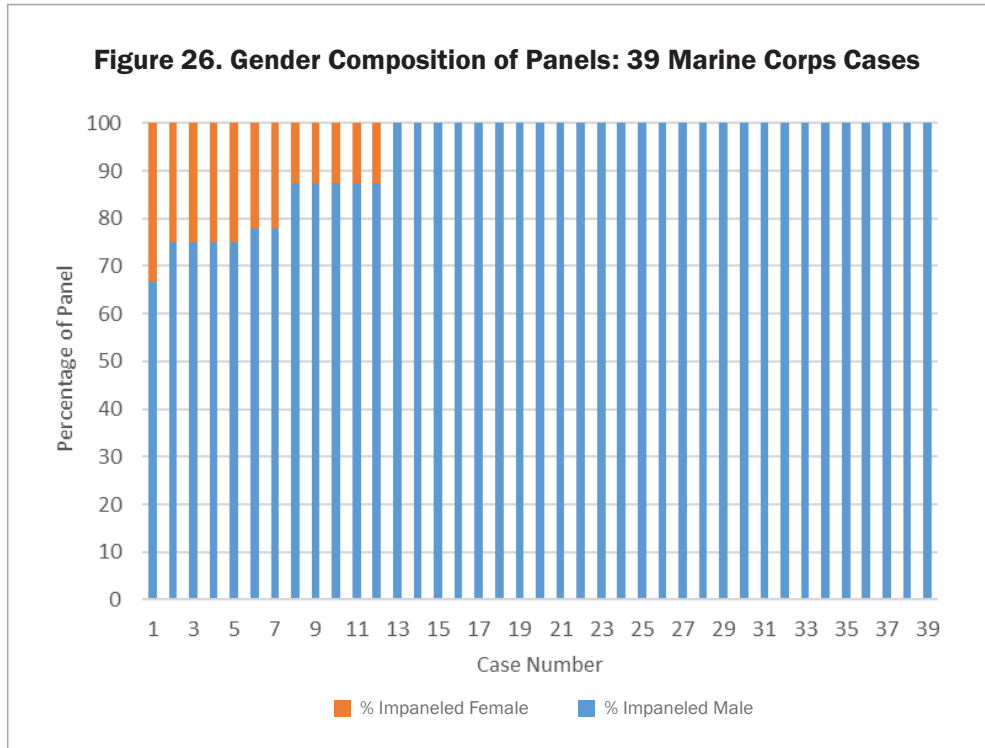
Figure 26. Gender Composition of Panels: 39 Marine Corps Cases

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D. Air Force

Figure 27 shows that across the 49 Air Force cases,[142] the *average* percentage of detailed members who were male was 69.0%, and the *average* percentage of detailed members who were female was 31.0%. The average percentage of details composed of female Service members (31.0%) is greater than the representation of females in the Air Force (21.5%); this difference is statistically significant.[143]

Figure 27. Gender Composition of Details: 49 Air Force Cases

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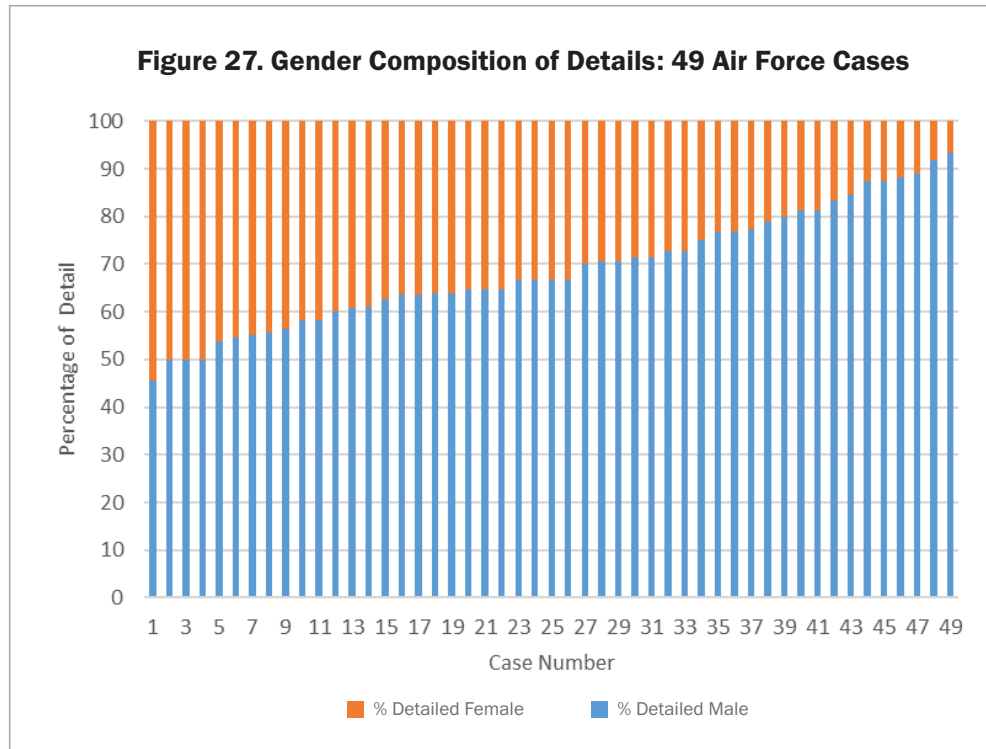
142 The 120 Service members who were missing data on their gender were excluded from the results.

143 This pattern is consistent with aggregated results.

Figure 28 shows that across the 49 Air Force cases,[144] the *average* percentage of panels composed of female Service members was 24.0%,[145] and the *average* percentage of panels composed of male Service members was 76.0%. The difference between the average percentage of panels composed of female Service members (24.0%) and the representation of females in the Air Force (21.5%) is not statistically significant.
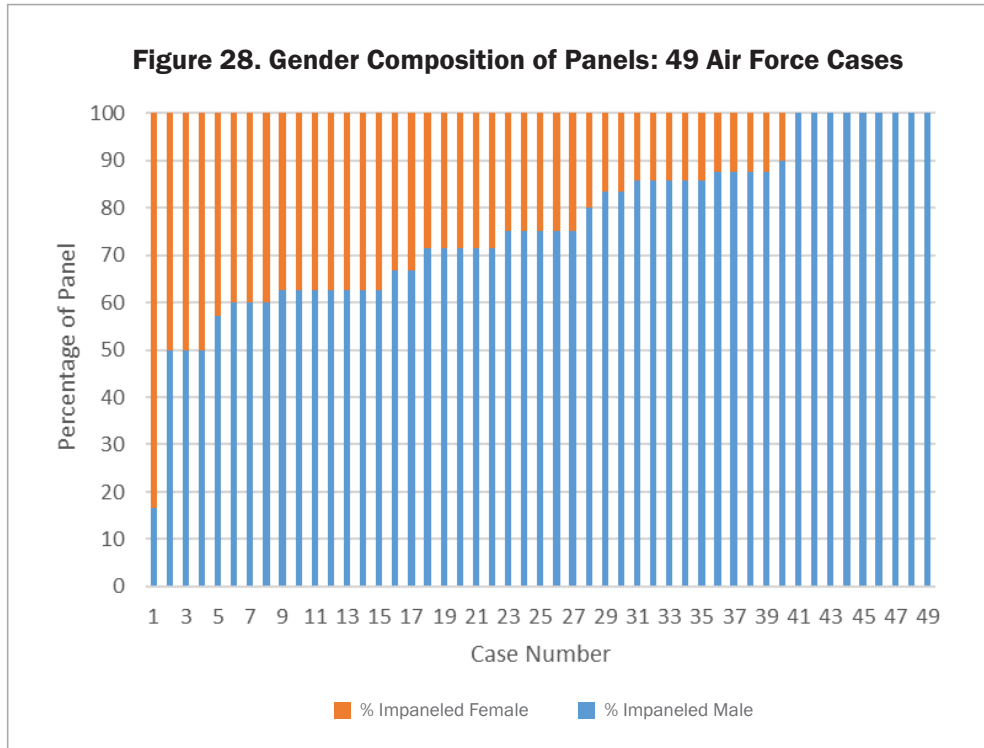
Figure 28. Gender Composition of Panels: 49 Air Force Cases

Finding 14 (*on patterns of results*): In all the Services, the patterns of results are the same for gender (1) when the analysis grouped all individuals together and (2) when the analysis examined the specific details and panels to which individuals were assigned.

144 The 55 impaneled Service members who were missing data on their gender were excluded from the results.

145 The average percentage is similar to the aggregate finding of 23.6%.

III. ANALYSIS

Diversity of Details

In sexual assault cases in FY21 and FY22, women were less likely to be impaneled than men, even when their representation on details was greater than or similar to their overall representation in their Service. This was true across all the Services and was statistically significant. As a result, women were less represented on panels than on details.

Figure 29. Percentage of Detailed vs. Impaneled Female Service Members
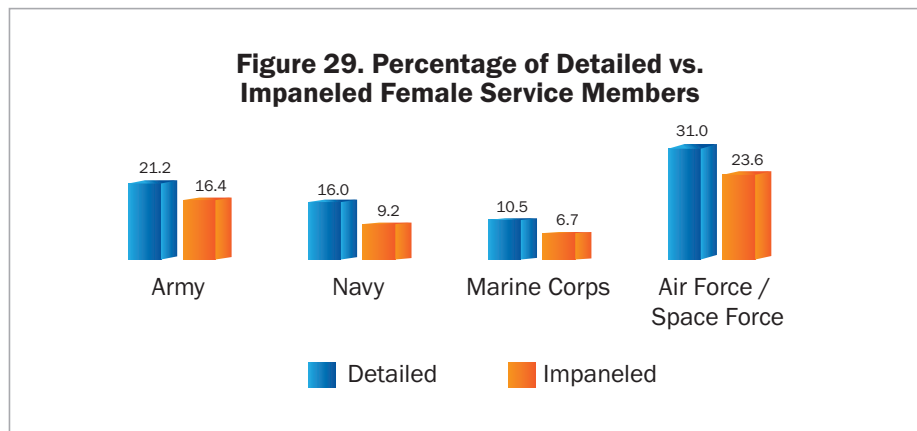
In the previous chapter, the Committee recognized that the initial detailing of racial and/or ethnic minorities was of particular importance because when the representation of racial and/or ethnic minorities on the detail was similar to their overall representation in their Service, the final panels generally maintained that representation.[146] This trend was also true for women in the Army and Air Force—when the representation of women detailed to courts-martial was greater than their overall representation in their Service, the representation of women on panels was also greater.

> **Recommendation 69 (*on future study*):** The Department of Defense should conduct a comprehensive study within the next five years, using the same methodology as the DAC-IPAD's, to assess the gender of panel members detailed and impaneled on all courts-martial. The Services should provide the gender for all Service members included in that study.

Perception of Diversity

The DAC-IPAD is aware of the perception among Service members that women are more likely than men to be excused after challenges for cause, because of past sexual assault experiences or their interactions with sexual assault victims. Since the DAC-IPAD did not record the specific reasons why particular members were not impaneled, the DAC-IPAD cannot determine whether this perception is accurate. However, the data results do confirm that across the Services, women are less likely than men to be impaneled, and those results are statistically significant.

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146 In three out of four Services, minorities were either more likely to be impaneled than or equally as likely to be impaneled as were white, not Hispanic members. In the Marine Corps, minorities were less likely to be impaneled and they were underrepresented on panels.

Based on information provided to the DAC-IPAD,[147] the Committee is interested in studying whether the liberal grant mandate may be influencing the excusal of women because of their experience with sexual assault. Even though CAAF has held that a "prior experience with or connection to the crime in question is not per se disqualifying,"[148] the liberal grant mandate requires that judges excuse members if there is a "close" question of implied bias—that is, the system's appearance of fairness would be questioned if the challenged member served on the panel. The Committee heard testimony from former military judges that they are particularly sensitive to challenges for cause for implied bias,[149] especially in light of the practice of appellate courts to provide less deference in analyzing implied bias than actual bias.[150] As recently as May 2024, the CAAF overturned a sexual assault conviction after finding that the military judge erred in denying two challenges for cause when two members presented close cases of implied bias and should have been excused under the liberal grant mandate.[151] In a dissent, Judge Maggs noted the "vague and questionable standards" for implied bias, writing that military judges must "rely on nothing more than intuition" in assessing the implied bias standard.[152]

Given that the DAC-IPAD has not yet studied the liberal grant mandate, and that panel selection is a dynamic area of law—the FY23 NDAA requirement for randomization will not take effect until December 2024—the DAC-IPAD believes that any findings and recommendations on the liberal grant mandate would be premature at this time.

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147 *See, e.g.*, Letter from Mr. Ryan Guilds to the DAC-IPAD, May 30, 2023, at p. 4, *available at* DAC-IPAD Randomizing Report, *supra* note 4, Appendix C (writing that on the basis of implied bias, defense counsel typically challenge "[t]hose who have been sexually assaulted or know someone who has; [t]hose who have previously served as a victim's advocate or victim's counsel; [and] [t]hose who have been involved with certain sexual assault trainings or programs[.] . . . The exclusion of these types of individuals"—due to the liberal grant mandate—"disproportionately affects women and often results in an all-male panel.").

148 *U.S. v. Terry*, 64 M.J. 295, 305 (C.A.A.F. 2007). In this case, the trial judge denied two challenges for cause for members whose partners had been sexually assaulted. The CAAF found the panel member whose wife was raped by her stepfather was properly denied. The CAAF found that another panel member whose girlfriend was sexually assaulted was wrongfully impaneled given that he had a "connection to this victim and this crime appear noteworthy and lasting even after their relationship ended."

149 *See Transcript of DAC-IPAD Public Meeting* 98–99 (Feb. 22, 2023) (testimony of retired Lieutenant Colonel Stefan Wolfe on the liberal grant mandate) ("If you don't find actual bias and you don't find implied bias, so therefore you're finding there's nothing wrong with panel member but you determine it's a close call[.] . . . [B]ut it's a judge-made law that kicks people in close calls even though the judge does not find that the panel member is a problem. And these are closely reviewed by the CCAs"); *id*. at 95 (testimony of Lieutenant Colonel Michael Libretto on the issue of sexual assault victims and victim advocates being challenged for cause) ("So I believe that military judges, myself included, were very sensitive to that issue and combined with what we know as the liberal grant mandate, tended to not necessarily per se disqualify those with those types of experiences or work . . . , but it certainly made our hair stand up.").

150 *U.S. v. Keago*, No. 23-0021, 2024 C.A.A.F LEXIS 256 (C.A.A.F. May 9, 2024)*; see also U.S. v. Terry*, 64 M.J. 295, 302 (C.A.A.F. 2007) (because the implied bias test is objective, appellate courts provide less deference to the military judge in such cases than in instances of actual bias).

151 In *Keago*, two of the three challenged members revealed during voir dire that their mother and wife had been sexually assaulted. The CAAF found them to be wrongly impaneled owing to their misperceptions of the accused's fundamental constitutional rights at courts-martial.

152 *Keago*, No. 23-0021, 2024 C.A.A.F LEXIS 256, at *5.

APPENDIX A. DAC-IPAD AUTHORIZING STATUTES AND OTHER LEGISLATIVE REQUIREMENTS AND GUIDANCE TO THE COMMITTEE

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES. (PUBLIC LAW 113–291; 128 STAT. 3374; 10 U.S.C. 1561 NOTE)

(a) ESTABLISHMENT REQUIRED.—

    (1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the "Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces" (in this section referred to as the "Advisory Committee").

    (2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the "judicial proceedings panel".

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

    (1) IN GENERAL.—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

    (2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

    (1) IN GENERAL.— Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

    (2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

(f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting "annually thereafter" after "reports".

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SEC. 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(a)(2) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking "not later than" and all that follows and inserting "not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.".

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) AUTHORITIES.—

    "(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

    "(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out

this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.".

SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.

(a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

(1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.

(2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).

(3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

(b) COVERED INDIVIDUAL DEFINED.—In this section, the term "covered individual" means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020

SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(f)(1) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended by striking "five"' and inserting "ten".

Joint Explanatory Statement:

The conferees request the DAC-IPAD review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases in which the evidence in the victim's case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.

Further, the conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. The conferees are concerned by reports that some military judges have interpreted Rule for Courts-Martial (RCM) 1001(c) too narrowly, limiting what survivors are permitted to say during sentencing hearings in ways that do not fully inform the court of the impact of the crime on the survivor.

Therefore, the conferees request that, on a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, the DAC-IPAD assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under RCM 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

(a) IN GENERAL.—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.

(b) SECRETARY OF DEFENSE AND RELATED ACTIVITIES.—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:

    (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—

        (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;

        (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.

    (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—

        (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and

        (B) describes how such a review should be conducted.

    (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—

        (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;

        (B) take steps to address the causes of such disparities, as appropriate.

(c) DAC-IPAD ACTIVITIES.—

    (1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:

        (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year addressed.

        (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigative files, charge sheets, records of trial, and personnel records.

(B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

(4) DEFINITIONS.—In this subsection:

(A) The term "independent committee DAC-IPAD" means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374), commonly known as the "DAC-IPAD".

(B) The term "case" means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.

(C) The term "completed", with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

(D) The term "contact sexual assault offense" means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(E) The term "penetrative sexual assault offense" means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

H. Rept. 116-120 on H.R. 2500

Title V—Military Personnel Policy Items of Special Interest

Appointment of Guardian ad Litem for Minor Victims

The committee is concerned for the welfare of minor, military dependents who are victims of an alleged sex-related offense. The committee acknowledges the Department of Defense's continued efforts to implement services in support of service members who are victims of sexual assault and further, to expand some of these services to dependents who are victims. However, the committee remains concerned that there is not an adequate mechanism within the military court-martial process to represent the best interests of minor victims following an alleged sex-related offense.

Therefore, not later than 180 days after the date of the enactment of this Act, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the Committees on the Armed Services of the Senate and the House of Representatives a report that evaluates the need for, and the feasibility of, establishing a process under which a guardian ad litem may be appointed to represent the interests of a victim of an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) who has not attained the age of 18 years.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2023

SEC. 549B. REPORT ON SHARING INFORMATION WITH COUNSEL FOR VICTIMS OF OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (referred to in this section as the "Advisory Committee") shall submit to the Committees on Armed Services of the Senate and the House of Representatives and each Secretary concerned a report on the feasibility and advisability of establishing a uniform policy for the sharing of the information described in subsection (c) with a Special Victims' Counsel, Victims' Legal Counsel, or other counsel representing a victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) An assessment of the feasibility and advisability of establishing the uniform policy described in subsection (a), including an assessment of the potential effects of such a policy on—

(A) the privacy of individuals;

(B) the criminal investigative process; and

(C) the military justice system generally.

(2) If the Advisory Committee determines that the establishment of such a policy is feasible and advisable, a description of—

(A) the stages of the military justice process at which the information described in subsection (c) should be made available to counsel representing a victim; and

(B) any circumstances under which some or all of such information should not be shared.

(3) Such recommendations for legislative or administrative action as the Advisory Committee considers appropriate.

(c) INFORMATION DESCRIBED.—The information described in this subsection is the following:

(1) Any recorded statements of the victim to investigators.

(2) The record of any forensic examination of the person or property of the victim, including the record of any sexual assault forensic exam of the victim that is in possession of investigators or the Government.

(3) Any medical record of the victim that is in the possession of investigators or the Government.

(d) SECRETARY CONCERNED DEFINED.—In this section, the term "Secretary concerned" has the meaning in section 101(a)(9) of title 10, United States Code.

APPENDIX B. DAC-IPAD CHARTER AND MEMBERSHIP BALANCE PLAN

Charter
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

1. <u>Committee's Official Designation</u>: The committee shall be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).

2. <u>Authority</u>: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App) and 41 C.F.R. § 102-3.50(a), established this non-discretionary Federal advisory committee.

3. <u>Objectives and Scope of Activities</u>: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, based on its ongoing review of cases.

4. <u>Description of Duties</u>: Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and the House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA. The DAC-IPAD will also focus on matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD, as the DAC-IPAD's sponsor.
Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019, and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

    (1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual.

    (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).

    (3) The percentage of investigations of sexual offenses that involved suspicion of or adverse action against a covered individual as described in paragraphs (1) and (2).

    The term "covered individual" means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term "suspected of," when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

Charter
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

Pursuant to the National Defense Authorization Act for Fiscal Year 2020 ("the FY 2020 NDAA") (Public Law 116-92) Joint Explanatory Statement, the conferees request the DAC-IPAD:

(1) Review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases when the evidence in the victim's case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.

(2) On a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under Rule for Courts-Martial (RCM) 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

The Joint Explanatory Statement summarized the conferees' concern as follows: [T]he conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. The conferees are concerned by reports that some military judges have interpreted RCM 1001(c) too narrowly, limiting what survivors are permitted to say during sentencing hearings in ways that do not fully inform the court of the impact of the crime on the survivor.

5. Agency or Official to Whom the Committee Reports: The DAC-IPAD reports to the Secretary of Defense and the Deputy Secretary of Defense, through the GC DoD, who may act upon the DAC-IPAD's advice and recommendations in accordance with DoD policy and procedures.

6. Support: The DoD, through the Office of the GC DoD, provides support for the Committee's functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act ("the Sunshine Act") (5 U.S.C. § 552b), governing Federal statutes and regulations, and DoD policy and procedures.

7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs for the DAC-IPAD, to include travel, meetings, and contract support, are approximately $2,600,000. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.

8. Designated Federal Officer: The DAC-IPAD's Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD civilian officer or employee, or active duty member of the Armed Forces, designated in accordance with established DoD policy and procedures.

The DAC-IPAD's DFO is required to attend all DAC-IPAD and subcommittee meetings for the entire duration of each meeting. However, in the absence of the DAC-IPAD's DFO, a properly approved Alternate DFO, duly designated to the DAC-IPAD in accordance with DoD policy and procedures, shall attend the entire duration of all DAC-IPAD and subcommittee meetings.

The DFO, or Alternate DFO, calls all DAC-IPAD and subcommittee meetings; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or Alternate DFO, determines adjournment to be in the public's interest or required by governing regulations or DoD policy and procedures.

Charter
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

9. <u>Estimated Number and Frequency of Meetings</u>: The DAC-IPAD shall meet at the call of the DFO, in consultation with the DAC-IPAD's Chair and the GC DoD. The estimated number of meetings is at least one per year.

10. <u>Duration</u>: The need for this advisory committee is on a continuing basis through February 28, 2026; however, the DAC-IPAD is subject to renewal every two years.

11. <u>Termination</u>: In accordance with sections 546(e)(1) and (2) of the FY 2015 NDAA, as modified by section 535 of the FY 2020 NDAA, the DAC-IPAD will terminate on February 28, 2026, ten years after the DAC-IPAD was established, unless the DoD renews the DAC-IPAD in accordance with DoD policy and procedures.

12. <u>Membership and Designation</u>: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD will be composed of no more than 20 members who must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as DAC-IPAD members.

Authority to invite or appoint individuals to serve on the DAC-IPAD rests solely with the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time. DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. DAC-IPAD members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD Appointing Authority shall appoint the DAC-IPAD's leadership from among the membership previously appointed to serve on the DAC-IPAD in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, which shall not exceed the member's approved appointment.

All members of the DAC-IPAD are expected to exercise their best judgment on behalf of the DoD, without representing any particular point of view and to discuss and deliberate in a manner that is free from conflicts of interest. Except for reimbursement of official DAC-IPAD related travel and per diem, DAC-IPAD members serve without compensation.

13. <u>Subcommittees</u>: The DoD, when necessary and consistent with the DAC-IPAD's mission and DoD policy and procedures, may establish subcommittees, task forces, or working groups ("subcommittees") to support the DAC-IPAD. Establishment of subcommittees shall be based upon a written determination, including terms of reference (ToR), by the DoD Appointing Authority or the GC DoD.

All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and DoD policy and procedures. If a subcommittee's duration exceeds that of the DAC-IPAD, and the DoD does not renew the DAC-IPAD, then the subcommittee terminates when the DAC-IPAD does.

Charter
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

Subcommittees shall not work independently of the DAC-IPAD and shall report all of their recommendations and advice solely to the DAC-IPAD for its thorough deliberation and discussion at a properly noticed and open meeting, subject to the Sunshine Act. Subcommittees have no authority to make decisions and recommendations, orally or in writing, on behalf of the DAC-IPAD. Neither the subcommittee nor any of its members may provide updates or report directly to the DoD or to any Federal officer or employee, whether orally or in writing, on behalf of the DAC-IPAD. If a majority of DAC-IPAD members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same FACA notice and openness requirements governing the DAC-IPAD's operations.

Individual appointments to serve on DAC-IPAD subcommittees, which may be no more than 15 members, shall be approved by the DoD Appointing Authority for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on a subcommittee without prior approval from the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members. The DoD Appointing Authority shall appoint subcommittee leadership from among the membership previously appointed to serve on a subcommittee in accordance with DoD policy and procedures, for a term of service of one-to-two-years, with annual renewal, not to exceed the member's approved appointment.

All members of a subcommittee are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner free from conflicts of interest. Except for reimbursement for official travel and per diem related to the DAC-IPAD or its subcommittees, subcommittee members shall serve without compensation.

14. Recordkeeping: The records of the DAC-IPAD and its subcommittees shall be managed in accordance with General Records Schedule 6.2, Federal Advisory Committee Records, or other approved agency records disposition schedule, and the appropriate DoD policy and procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. § 552).

15. Filing Date: February 16, 2022

Membership Balance Plan
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. <u>Authority</u>: The Secretary of Defense, pursuant to Section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by Section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix.) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), as a non-discretionary advisory committee.

2. <u>Mission/Function</u>: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, based on its ongoing review of cases.

   Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, shall submit to the Secretary of Defense through the General Counsel of the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA.

   Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

   1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
   2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
   3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

   The term "covered individual" means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term 'suspected of,' when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

3. <u>Membership Criteria and Points of View</u>: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD shall be composed of no more than 20 members. DAC-IPAD members must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual

Membership Balance Plan
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve on the DAC-IPAD or any of its subcommittees.

The DoD, in evaluating potential candidates for the DAC-IPAD, considers the candidate's educational, experiential, and professional credentials with respect to the subject matters anticipated to be tasked to the DAC-IPAD. The DoD has found that viewing the complex issues facing the DoD through a multidisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which subsequent policy decisions are based.

Membership shall be fairly balanced to provide variety of background, experience, and thought in support of the DAC-IPAD's mission. The DAC-IPAD's membership balance is not static and the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") may change the membership based upon work assigned to the DAC-IPAD by the DoD Appointing Authority or the GC DoD, as the DAC-IPAD's Sponsor.

DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD, unless otherwise provided for by statute or Presidential directive, does not use representative members on DoD Federal advisory committees. Each member, based upon their own individual experiences, exercises their own best judgment concerning matters before the DAC-IPAD, does not represent any particular point of view, and discusses and deliberates in a manner free from conflicts of interest.

4. Other Balance Factors: N/A

5. Candidate Identification Process: In accordance with DoD policy, the DoD GC shall nominate to the DoD Appointing Authority a slate of highly qualified individuals who represent a diverse and inclusive range of viewpoints, backgrounds, and experiences to serve as Committee members. To identify potential candidates, the DoD GC will request recommendations from senior career and political officials within the DoD. The DoD, in selecting potential candidates for the DAC-IPAD, reviews the expertise and professional credentials of individuals with extensive professional experience in the areas described in section 3 above.

Once potential candidates are identified, the DAC-IPAD Designated Federal Officer (DFO), in consultation with other senior DoD officers and employees, reviews the credentials of each individual and narrows the list of candidates for consideration by the GC DoD. In reviewing the list of potential candidates for nomination to the DoD Appointing Authority, the GC DoD strives to provide a membership that delivers diversity of background, experience, and thought in support the DAC-IPAD mission.

Before formal nomination to the DoD Appointing Authority, the list of candidates is reviewed by the DoD Office of General Counsel and the DoD Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the DAC-IPAD's statute, charter, and membership balance plan. Following this review, the DoD ACMO prepares the appropriate DoD Appointment Approval Instrument for the Director of Administration and Management, who submits it to the DoD Appointing Authority for approval.

Membership Balance Plan
Defense Advisory Committee on Investigation,
Prosecution, and Defense of Sexual Assault in the Armed Forces

Following approval by the by the DoD Appointing Authority, the candidates must complete appointment paperwork and training, to include any financial disclosure or other ethics requirements stipulated by the Office of Government Ethics for advisory committee members. All DAC-IPAD members are appointed for a term of service of one-to-four years with annual renewals. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, including its subcommittees. Membership vacancies for the DAC-IPAD will be filled in the same manner as described above.

6. <u>Subcommittee Balance</u>: The DoD, as necessary and consistent with the DAC-IPAD's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the DAC-IPAD ("subcommittees").

Individuals considered for appointment to any DAC-IPAD subcommittee may come from members of the DAC-IPAD itself or from new nominees, as recommended by the GC DoD and based upon the subject matters under consideration. Pursuant to DoD policy and procedures, the GC DoD shall follow the same procedures described above in section 5 to nominate new members for appointment.

Subcommittee members shall be appointed for a term of service of one-to-four years, with annual renewals. However, no member will serve more than two consecutive terms of service on a subcommittee unless previously approved by the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

7. <u>Other</u>: As nominees are considered for appointment to the DAC-IPAD, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.

8. <u>Date Prepared</u>: February 16, 2022

APPENDIX C. COMMITTEE MEMBERS

Marcia Anderson was the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin starting in 1998 until her retirement in 2019. In this role she was responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson recently retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army's Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman in the history of the U.S. Army to achieve the rank of major general. Her service culminated with an assignment at the Pentagon as the Deputy Chief, Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of $8 billion that supported more than 225,000 Army Reserve soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.

Martha Bashford served in the New York County District Attorney's Office starting in 1979 until her retirement in 2020. At the time of her retirement, she was the chief of the New York County District Attorney's Office Sex Crimes Unit, which was the first of its kind in the country. She served in this role starting in 2011. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI's Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (*summa cum laude*) and received her J.D. degree from Yale Law School in 1979. She is a Fellow in both the American College of Trial Lawyers and the American Academy of Forensic Sciences.

William E. Cassara is a former Army prosecutor, defense counsel, and appellate counsel, with more than 30 years of military law experience. Mr. Cassara holds a law degree from the University of Baltimore and an undergraduate degree in business administration from Florida State University. He is a former professor at the University of Baltimore School of Law and the University of South Carolina School of Law. Mr. Cassara has been in private military law practice since 1996 focusing on court-martial appeals, discharge upgrades, security clearances, and all other administrative military law matters.

Margaret "Meg" Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the U.S. Department of Defense. She has served as co-chair of the American Bar Association's Criminal Justice Section Victims Committee, as co-chair of the Oregon Attorney General's Crime Victims' Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General's Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.

Suzanne Goldberg has served in the U.S. Department of Education's Office for Civil Rights since day one of the Biden-Harris administration as Acting Assistant Secretary (January–October 2021) and Deputy Assistant Secretary for Strategic Operations and Outreach. Goldberg brings extensive experience in civil rights leadership, with expertise in gender and sexuality law, and many years as a university administrator and faculty member. Before joining the U.S. Department of Education, Goldberg was the inaugural Executive Vice President for University Life at Columbia University and on the faculty of Columbia Law School, where she is on a public service leave from her role as the Herbert and Doris Wechsler Clinical Professor of Law at Columbia Law School. She founded the Law School's Sexuality and Gender Law Clinic, the first of its kind in the nation, and was co-founder and co-director of the Law School's Center for Gender and Sexuality Law. Goldberg earlier served as a senior staff attorney with Lambda Legal, a national legal organization committed to the full recognition of the civil rights of LGBT people and people living with HIV. Goldberg holds a law degree with honors from Harvard University and a bachelor's degree with honors from Brown University and was a Fulbright Fellow at the National University of Singapore.

Judge Paul W. Grimm is a Professor of the Practice and Director of the Bolch Judicial Institute at Duke Law School. Prior to joining Duke Law School, Judge Grimm served as a federal judge for 25 years. In 2012 he was appointed as a District Judge for the United States District Court for the District of Maryland. Previously, he was appointed to the Court as a Magistrate Judge in February 1997 and served as Chief Magistrate Judge from 2006 through 2012. In September 2009, he was appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure. Additionally, Judge Grimm is an adjunct professor of law at the University of Maryland School of Law, where he teaches evidence, and also has taught trial evidence, pretrial civil procedure, and scientific evidence. He also has been an adjunct professor of law at the University of Baltimore School of Law, where he taught a course regarding the discovery of and pretrial practices associated with electronically stored evidence.

Before joining the Court, Judge Grimm was in private practice in Baltimore for 13 years, during which time he handled commercial litigation. He also served as an Assistant Attorney General for the State of Maryland, an Assistant State's Attorney for Baltimore County, Maryland, and a Captain in the United States Army Judge Advocate General's Corps. While on active duty in the Army, Judge Grimm served as a defense attorney and prosecutor while assigned to the JAG Office at Aberdeen Proving Ground, Maryland, and thereafter as an action officer in the Office of the Judge Advocate General of the Army (Administrative Law Division), The Pentagon. In 2001, Judge Grimm retired as a Lieutenant Colonel from the United States Army Reserve.

Judge Grimm received his undergraduate degree from the University of California, Davis (summa cum laude), his J.D. from the University of New Mexico School of Law (magna cum laude, Order of the Coif), and his LLM from Duke Law School.

A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., U.S. Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers. He is a member of the Judicial Conference of the United States' Advisory Committee on Evidence Rules and the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.

Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory Committee member of the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member of the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and Fels School of Government.

Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical-forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.

Sergeant Major Ralph Martinez, US Army, retired, completed 34 years of active duty in the U.S. Army. During his career SGM Martinez held several key leadership positions at major commands which include the United States Army Forces Command, United States Central Command, United States European Command, and United States Army Africa Command. He completed five combat deployments in support of Operations Enduring Freedom and Iraqi Freedom and deployed in support of Operation Joint Forge. SGM Martinez's last assignment on active duty was to serve as the nineth U.S. Army Chaplain Corps Regimental Sergeant Major (RSGM). During his tenure as the RSGM he played a significant role in the start of the Army's Spiritual Fitness Initiative. He is a graduate of the Executive Leaders Course, U.S. Army War College and earned the Bachelor of Science in Liberal Studies with a concentration in Leadership from Purdue University Global. Since retiring, SGM Martinez has been employed by CACI International as a Senior Advisor/Consultant currently supporting Department of the Army, G-6 and serves as Board Member on the U.S. Army Chaplain Corps Regimental Association.

Jennifer O'Connor is Vice President and General Counsel of Northrop Grumman Corporation. Prior to joining Northrop Grumman, Ms. O'Connor served as the General Counsel for the Department of Defense. In that role, she was the chief legal officer of the Department and the principal legal advisor to the Secretary of Defense. Earlier in her career, she served in numerous positions and agencies throughout the federal government. Her past positions include service in the Obama administration as Deputy Assistant to the President and Deputy White House Counsel responsible for the litigation, oversight, and investigations portfolios; as Senior Counsel at the Department of Health and Human Services; and as Counselor to the Commissioner of the Internal Revenue Service. Ms. O'Connor also worked in the Clinton administration as Deputy Assistant Secretary for Policy at the Department of Labor, Special Assistant to the President in the Office of the White House Deputy Chief of Staff; as Special Assistant to the President in the Office of Cabinet Affairs; and as Deputy Director of the White House Office of Management and Administration. Ms. O'Connor received a bachelor of arts degree from Harvard University, a masters in public administration from Columbia University's School of International Public Affairs, and a J.D. degree from Georgetown University.

BGen James (Jim) Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of "don't ask, don't tell," for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired in 2014 after 49 years of federal service.

Sergeant Lisa Shepperd is a twelve-year veteran of the Prince George's County Police Department, with nine years of extensive investigative experience. During her tenure with the Prince George's County Police Department, she has handled hundreds of investigations including investigations into sexual assault and child sexual abuse. This includes writing and obtaining legal authority for several hundred search warrants, obtaining and determining probable cause for more than 100 arrest warrants, and conducting countless victim, witness, and suspect interviews. Her experience extends to both patrol and investigative best practices and includes the handling of domestic violence, child abuse, sexual assault, serial rape cases, and homicide cases. Sergeant Shepperd successfully worked with local prosecutors to prepare court cases and has testified in a wide variety of cases resulting in numerous convictions.

Judge Karla N. Smith was appointed to the Circuit Court for Montgomery County, Maryland in December 2014 by Governor Martin O'Malley. Judge Smith served on the District Court of Maryland from August 2012 until her appointment to the Circuit Court. In addition, Judge Smith serves as the Judiciary's representative on the State Council on Child Abuse and Neglect; the Operations Subcommittee of the Judiciary Committee on Equal Justice; and she represents the Circuit Court on the Montgomery County Domestic Violence Coordinating Council (DVCC).

Prior to her appointment, Judge Smith worked as a prosecutor for over 15 years. For five years, Judge Smith served as the Chief of the Family Violence Division of the Montgomery County State's Attorney's Office. Additionally, she sat on the Montgomery County Child Fatality Review Team; the Multidisciplinary Case Review Team for Child Abuse and Neglect; the Elder and Vulnerable Adult Abuse Task Force, which she chaired; the Interagency Sex Offender Management Team; Domestic Violence Case Review Team; and the Montgomery County Teen Dating Taskforce. It was during this time that Judge Smith was integral to the development of the Montgomery County

Family Justice Center and the drafting and passage of a criminal child neglect statute that was signed into law in 2011.

Judge Smith received her Bachelor of Arts degree from the University of Maryland and her Juris Doctor from the University of Virginia. A life-long resident of Montgomery County and a product of Montgomery County Public Schools, Judge Smith currently lives in Bethesda with her husband and three sons.

Cassia Spohn is a Regents Professor in the School of Criminology and Criminal Justice at Arizona State University and an Affiliate Professor of Law at ASU's Sandra Day O'Connor College of Law. She is a Fellow of the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Western Society of Criminology. She is the recipient of numerous academic awards, including the University of Nebraska Outstanding Research and Creative Activity Award, the W.E.B. DuBois Award for Contributions to Research on Crime and Race/Ethnicity, the Lifetime Achievement Award from the American Society of Criminology's Division on Corrections and Sentencing, and Arizona State University's Faculty Achievement Award for Defining-Edge Research in the Social Sciences. Dr. Spohn's research interests include the correlates of federal and state sentencing outcomes, prosecutorial decision making, the intersections of race, ethnicity, gender, crime and justice, and sexual assault case processing decisions. She is the author of eight books, including *How Do Judges Decide: The Search for Fairness and Justice in Punishment and Policing* and *Prosecuting Sexual Assault: Inside the Criminal Justice System*. She is the author of more than 140 peer-reviewed publications. She currently is working on a National Science Foundation–funded project evaluating the impact of Arizona's recent ban on peremptory challenges and a series of papers on the imposition of life sentences in the U.S. district courts.

Meghan Tokash is a trial attorney with the Human Trafficking Prosecution Unit, Criminal Section, Civil Rights Division at Department of Justice. Prior to her current position, she served as an Assistant United States Attorney at the Department of Justice. Previously, she served as a special victim prosecutor in the U.S. Army Judge Advocate General's Corps for eight years, litigating cases related to homicide, rape, sexual assault, domestic violence and child abuse. She worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office. She deployed to Iraq as the senior trial counsel for U.S. Forces Iraq, and prosecuted special victim cases across U.S. Army Europe and U.S. Army Central Command. Ms. Tokash was an attorney advisor for the Judicial Proceedings Panel prior to her 2017 appointment by Secretary of Defense Ash Carter to serve on the Defense Advisory Committee on the Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces. In 2021, Ms. Tokash served on the 90-day Independent Review Commission on Sexual Assault in the Military that was established by Secretary of Defense Lloyd Austin at the direction of President Biden.

Judge Walton was born in Donora, Pennsylvania. In 1971, he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007, Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management.

Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.

APPENDIX D. COMMITTEE PROFESSIONAL STAFF

PROFESSIONAL STAFF

Mr. Louis P. Yob, Director

Ms. Meghan Peters, Deputy Director

Ms. Jennifer D. Campbell, Chief of Staff

Ms. Stacy A. Boggess, Senior Paralegal

Ms. Breyana N. Franklin, Communication Specialist

Ms. Theresa A. Gallagher, Attorney-Advisor

Ms. Nalini Gupta, Attorney-Advisor

Ms. Amanda L. Hagy, Senior Paralegal

Mr. Michael D. Libretto, Attorney-Advisor

Mr. R. Chuck Mason, Attorney-Advisor

Ms. Marguerite McKinney, Management & Program Analyst

Mr. Blake A. Morris, Paralegal

Ms. Stayce D. Rozell, Senior Paralegal

Ms. Terri A. Saunders, Attorney-Advisor

Ms. Rebekah S. Stuyvesant, Administrative Officer

Ms. Kate Tagert, Attorney-Advisor

Ms. Eleanor Magers Vuono, Attorney-Advisor

COMMITTEE CONSULTANTS

Dr. Alice Falk, Technical Editor

Ms. Laurel Prucha Moran, Graphic Designer

Dr. William "Bill" Wells, Criminologist

APPENDIX E. COMMITTEE REQUESTS FOR INFORMATION

DEPARTMENT OF DEFENSE – DEFENSE LEGAL SERVICES AGENCY REQUESTS FOR INFORMATION SUBMITTED TO ORGANIZATIONS WITHIN THE DEPARTMENT OF DEFENSE AND THE MILITARY SERVICES

RFI 2023-1: Request for Information from the Military Services regarding case documents for all specified cases completed in FY21 and FY22.

Department of Defense – Defense Legal Services Agency

Request for Information

1 March 2023

FY21 and FY22 Case Adjudication Documents

I. Purpose

1. The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) requests the below information to facilitate its statutory requirement to review cases involving allegations of sexual misconduct on an ongoing basis for purposes of providing advice to the Secretary of Defense and to Congress.

2. The Military Justice Review Panel (MJRP) requests the below information to facilitate its statutory requirement to conduct independent periodic reviews and assessments of the operation of the Uniform Code of Military Justice.

II. Authority

1. The DoD General Counsel (GC) is the Chief Legal Officer of the DoD (10 U.S.C. § 140), appointed by the President with the advice and consent of the United States Senate.

2. The DoD GC advises the Secretary of Defense regarding all legal matters and services performed within, or involving, the DoD; the GC also serves as the Director of the Defense Legal Services Agency (DLSA) and provides support to the DAC-IPAD and MJRP.

3. The DAC-IPAD was established pursuant to § 546 of the National Defense Authorization Act for Fiscal Year 2015, as amended.

4. The MJRP (Article 146, UCMJ) was established pursuant to § 5521 of the National Defense Authorization Act for Fiscal Year 2017, as amended.

5. COL Jeff Bovarnick, U.S. Army, DLSA, is the Director of the DAC-IPAD and the MJRP and requests the assistance of the Military Services to provide the requested information by the suspense date indicated below.

III. Suspense

Suspense	RFI	Proponent – Military Services
17 Mar 2023	Spreadsheet Data	Excel worksheets for all FY21 and FY22 cases preferred and tried to findings, dismissed, or resolved by any alternate means in FY21 and FY22.
31 Mar 2023	Documents	Case documents (PDF) for all cases preferred and tried to findings, dismissed, or resolved by any alternate means in FY21 and FY22.

DLSA Request for Information

FY21 and FY22 Case Adjudication Documents

IV. Information Requested

Military Services identify and provide case documents for all specified cases completed in FY21 and FY22 in two phases as described below in subparagraphs 1 and 2.

1. Spreadsheet Data for Completed Cases – FY21 and FY22   **(S: 17 March 2023)**

Military Services use their respective case management systems, identify ALL cases involving a preferred charge under the punitive articles of the UCMJ and tried to findings, dismissed, or resolved by any alternate means in FY21 and FY22. Provide an Excel worksheet for each fiscal year with the following columns:

1	DoD_ID#
2	Name_Last
3	Name_First
4	Name_M.I.
5	Article 32 held (Y/N)
6	Court_Type (GCM, SPCM, SCM)
7	Composition (MJ alone, Members, Officer/Enlisted)
8	AltDisp (Y/N)
9	e-ROT (Y/N)

2. Documents for Completed Cases – FY21 and FY22   **(S: 31 March 2023)**

For cases identified in subparagraph 1, provide the e-ROT for each case.

If an e-ROT does not exist, provide electronic copies (PDF) of the following documents, as applicable (including Service-equivalent documents if the specified form is not used):

1	DD Form 458, *Charge Sheet*
2a	DD Form 457, *Preliminary Hearing Officer's Report* (include continuation sheets, but not exhibits); or 2b
2b	Article 32 Waiver Request (if no Article 32 before a GCM referral)
3	Article 34 Pretrial Advice and/or SJA recommendations on alternate disposition
4	Documents memorializing the Convening Authority's referral or non-referral decision (e.g., record of withdrawal and dismissal of charges; record of the approved dismissal or discharge in lieu of trial)
5	*Pretrial Agreement* – Parts I & II
6	Court-Martial Convening Order(s)
7	Transcript of voir dire and panel selection proceedings
8	DD Form 2707-1, *Report of Result of Trial*
9	*Statement of Trial Results*
10	*Convening Authority Action*
11	*Entry of Judgment*

APPENDIX F. DEMOGRAPHIC DATA ON MILITARY COURTS-MARTIAL PANELS (ARMY)

Overview of Army Case-Level Data
June 18, 2024

Dr. William Wells, Director, Center for Intelligence and Crime Analysis and
Professor, Criminal Justice and Criminology, Sam Houston State University, Texas

INTRODUCTION

The purpose of this report is to summarize information about the race, ethnicity, and gender of service members detailed to courts-martial and impaneled in a sample of Army cases. The complete research methods used to collect the data presented here are described in the consolidated DAC-IPAD report that describes the larger project within which this report is imbedded.

Section 1 presents information about 124 contested sexual assault courts-martial, including demographic information of the accused service members, case outcomes, and the type of forum requested. Section 2 summarizes information about service members detailed in the case, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented in section 2 describe individuals involved in the cases and are aggregated together. In other words, all individuals from the cases are grouped together. Section 3 summarizes the demographic characteristics of the specific details and panels.

The research questions to be answered with the analyses and results described below are:

1. What are the representations of white, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do the representations in questions #1 and #2 compare to their overall representations in the Army?

The analyses and results described in section 2 and section 3 of this report address the core research questions.

Section 1. 124 Contested Sexual Assault Courts-Martial

TABLE 1.1 CASE FISCAL YEAR

	Frequency	Percentage
2021	72	58.1
2022	52	41.9
Total	124	100

TABLE 1.2 GENDER OF ACCUSED

	Frequency	Percentage
Male	119	96.0
Female	2	1.6
Unknown/Missing	3	2.4
Total	124	100

TABLE 1.3 RACE AND ETHNICITY OF ACCUSED[1]

	Frequency	Percentage
White, not Hispanic	49	39.5
Black, not Hispanic	37	29.8
Hispanic	27	21.8
Asian or Pacific Islander	6	4.8
American Indian or Alaskan Native	2	1.6
Unknown/Missing	3	2.4
Total	124	100

TABLE 1.4 RACE AND ETHNICITY OF ACCUSED AGGREGATED INTO TWO CATEGORIES

	Frequency	Percentage
White, not Hispanic	49	39.5
Racial and/or Ethnic Minority	72	58.1
Unknown/Missing	3	2.4
Total	124	100

TABLE 1.5 RANK OF ACCUSED

	Frequency	Percentage
Enlisted	113	91.1
Officer	11	8.9
Total	124	100

TABLE 1.6 CASE ADJUDICATION ON ARTICLE 120 OFFENSE

	Frequency	Percentage
Acquitted	73	58.9
Guilty	51	41.1
Total	124	100

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1   The Services provided race and ethnicity data that combined race and ethnicity together in a single variable.

TABLE 1.7 IF GUILTY OF ARTICLE 120 OFFENSE, GUILTY OF PENETRATIVE OFFENSE

	Frequency	Percentage
Yes	38	74.5
No	13	25.5
Total	51	100

TABLE 1.8 FORUM SELECTION BY ENLISTED ACCUSED[2]

	Frequency	Percentage
Requested an enlisted panel	105	92.9
Requested an officer panel	8	7.1
Total	113	100

TABLE 1.9 THE CASE INVOLVED AN ALL OFFICER PANEL[3]

	Frequency	Percentage
Yes	19	15.3
No	105	84.7
Total	124	100

Section 2. Individuals within 124 Contested Sexual Assault Courts-Martial

The information in section 2 describes the service members detailed in the cases, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented here about individuals involved in the cases are derived from the set of 124 cases and are aggregated together. In other words, the information in this section groups together all individuals regardless of the case in which they were involved. Individuals are the unit of analysis.

To reiterate, the research questions to be answered through the analyses described in section 2 and in section 3 are:

1. What are the representations of White, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do those representations in questions #1 and #2 compare to their overall representations in the Army?

Ideally, question #3 would utilize, as a point of comparison, the representation of demographic groups within specific units or on the installations from which the details were selected, but these more specific unit and installation demographic data were not available. The alternative is to compare the representations of demographic characteristics on details and panels to the overall representations in the Army as a whole. It is important to note that the analysis in section 2 groups all individuals in the sample of cases together and does not examine the distinct

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2   Enlisted accused may select either an enlisted or officer panel.

3   Officers must be tried by an officer panel. There were 11 officer accused and 8 enlisted accused who selected an officer panel.

details and distinct panels. Thus, section 2 does not provide insights into the composition of individual details and individual panels. Section 3 entails an analysis of individuals assigned to the specific details and specific panels.

The descriptive information in section 2 reports the number and percentage of individuals with missing data on their race and/or ethnicity and gender. The purpose of presenting the counts and percentages of missing data is to provide complete information about the data that were collected, including cases with missing data. Cases with missing data were excluded from analyses that estimated differences between groups and that involved tests of statistical significance. Missing data on race, ethnicity, and gender presents analytic challenges because excluding cases with missing data may generate patterns of results and statistical tests that are biased. Imputing missing data for race, ethnicity, and gender presents challenges because commonly used imputation methods require additional information that is not available in the current project (see also Rose, 2021; Rose, Casarez, and Gutierrez, 2018). The challenges of missing demographic data that are unique to studies of jury composition have been described by Rose and Abramson (2011) (see also Rose, 2021; Rose et al., 2018). Missing demographic data for potential jurors and those selected to serve on juries in the civilian criminal justice system is not an uncommon problem (Rose & Abramson, 2011; Rose, Casarez, & Gutierrez, 2018). Rose et al. (2018) describe the assumptions associated with two methods of handling missing demographic data: 1) exclude cases with missing demographic data from analyses and 2) use the total numbers of cases, including those with missing data, as the denominator in calculations of proportions and percentages. When cases with missing data are excluded from analyses, it is assumed that missing data are distributed randomly across different demographic groups, such as men and women, or Hispanic and not Hispanic individuals. This assumption implies there are no patterns to the missing data that would bias results. An alternative approach, and one that includes cases with missing data, is to include all cases in the denominator when calculating proportions and percentages. The assumption with this approach is that no cases with missing data belong to the other demographic groups of interest, such as men and women, or Hispanic and not Hispanic individuals. According to Rose et al. (2018, p. 393), "this approach generates under-representation levels that are at their maximum." Rose (2021), Rose and Abramson (2011), and Rose et al. (2018) discuss the way survey designs used as part of civilian jury selection processes may produce missing data that are different for Hispanic and not Hispanic individuals and how this may impact results and conclusions about jury composition. It is not possible for the current project to understand how the processes of recording the race, ethnicity, and gender of service members may generate patterns of missing data that are unevenly distributed across race, ethnicity, and gender. For this reason and to avoid producing estimates of underrepresentation that are at their maximum, we exclude individuals with missing data from analyses.

TABLE 2.1 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS[4]

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	248,054	54.0
Racial and/or ethnic Minority Service Member	211,193	46.0

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4   Data in Table 2.1 about race and ethnicity were obtained from the *Active Component Demographics* report (United States Army DCS, n.d.). Race and/or ethnicity data listed as "unknown/other" were excluded from counts used to calculate percentages in Table 2.1. Data for gender in Table 2.1 were obtained from the Department of Defense *2022 Demographics Profile of the Military Community* (United States Department of Defense, n.d., p. 19). One case with "unknown" information about gender was excluded from the counts used to calculate percentages in Table 2.1.

Total	459,247	100
Gender		
Male	389,820	84.4
Female	71,836	15.6
Total	461,656	100

Table 2.1 shows 54.0% of active duty personnel in the Army in FY 2022 were White, not Hispanic service members and 46.0% of active duty personnel were racial and/or ethnic Minority service members. Nearly 85% of active duty personnel were male and 15.6% were female.

TABLE 2.2 DETAILED SERVICE MEMBERS' RACE AND ETHNICITY[5]

	Frequency	Percentage
White, not Hispanic	1001	50.9
Black, not Hispanic	431	21.9
Hispanic	266	13.5
Asian or Pacific Islander	116	5.9
American Indian or Alaskan Native	15	0.8
Unknown/Missing	136	6.9
Total	1965	100

TABLE 2.3 DETAILED SERVICE MEMBERS' RACE AND ETHNICITY AGGREGATED INTO TWO CATEGORIES[6]

	Frequency	Percentage
White, not Hispanic Service Members	1001	50.9
Racial and/or Ethnic Minority Service Members	828	42.1
Unknown/Missing	136	6.9
Total	1965	100

The measurement of race and/or ethnicity of detailed and impaneled service members used in the analysis relies on data about individuals that were provided by the Services. The summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members. The data provided by the Services about the Army combined together information about race and ethnicity (see Table 2.2). These data were then re-coded in a way that allows for the creation of a variable with two demographic categories to be used in the analysis: White, not Hispanic service members and racial and/or ethnic Minority service members (see Table 2.3).

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5   Appendix A provides a detailed listing of the race and ethnicity categories provided by the Services.

6   Appendix B provides a detailed listing of how each category provided by the Services was coded into two categories. Appendix B also provides information about cases with "unknown/missing" data. The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

Tables 2.2 and 2.3 show the race and ethnicity of service members detailed to courts martial. Table 2.2 presents information about race and ethnicity using categories provided by the Services and Table 2.3 presents this information after aggregating the groups into two categories. The decision to aggregate specific demographic categories into two broader categories was influenced by multiple considerations. First, the primary interest was in understanding the representation of racial and/or ethnic Minority service members detailed to courts-martial and impaneled rather than in examining patterns across more specific racial and ethnic groups. Combining together specific categories that represent racial and/or ethnic Minority service members allowed for a comparison to White, not Hispanic service members and, thus, meet the core research purpose. In other words, the research questions were not focused on comparisons between specific racial and/or ethnic minority groups. Second, creating an aggregated measure with two broad categories allowed for consistency across the Services. The Services provided racial and ethnic demographic data in different formats and using a broad measure allowed for a consistent measure to be used, which, in turn, allowed for the same comparisons to be made for each service branch. Last, using an aggregated measure reduced the number of cases that were excluded because of missing data. For instance, if demographic data showed a service member was Black, but their ethnicity was unknown, then this individual was considered to be a racial and/or ethnic Minority service member. If the analysis examined more disaggregated groups such as Black, not Hispanic or examined only Hispanic ethnicity then this individual would be excluded from the analyses. The Army provided data in a different format that the other Services so this last consideration was only relevant to the other Services. There is a tradeoff when racial and ethnic demographic categories are aggregated together. The limitation is that we are not able to identify and understand differences that may exist for specific racial and ethnic Minority service members, such as Hispanic service members and Black, not Hispanic service members, and Asian service members.

Table 2.3 shows nearly 7% of individuals were missing data on race and/or ethnicity, 50.9% of individuals were White, not Hispanic service members, and 42.1% were racial and/or ethnic Minority service members.

TABLE 2.4 DETAILED SERVICE MEMBERS' GENDER

	Frequency	Percentage
Male	1478	75.2
Female	397	20.2
Unknown/Missing	90	4.6
Total	1965	100

Table 2.4 shows the representation of male and female service members detailed to courts-martial. Less than 5% of service members detailed to courts-martial were missing information about gender. Approximately 75% of service members detailed to courts-martial were men and 20.2% were women.

TABLE 2.5 DETAILED SERVICE MEMBERS WHO WERE IMPANELED

	Frequency	Percentage
Impaneled	960	48.9
Not impaneled	1005	51.1
Total	1965	100

Table 2.5 presents information about the numbers and percentages of service members who were impaneled and not impaneled. Slightly less than half of the service members who were detailed to courts-martial were impaneled (48.9%) and 51.1% were not impaneled.

TABLE 2.6 IMPANELED DECISION BY RACE AND/OR ETHNICITY [7]

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	487 (48.7%)	402 (48.6%)	889 (48.6%)
Not Impaneled	514 (51.3%)	426 (51.4%)	940 (51.4%)
Total	1001 (100%)	828 (100%)	1829 (100%)

Table 2.6 provides an understanding about whether there are differences in the rates of being impaneled between White, not Hispanic service members and racial and/or ethnic Minority service members. The results show 48.7% of White, not Hispanic service members were impaneled and 48.6% of service members from racial and/or ethnic Minority groups were impaneled. The difference across the two groups of service members is small and not statistically significant ($\chi^2 = 0.0$, df = 1, p = .97).

TABLE 2.7 RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS[8]

	Frequency	Percentage
White, not Hispanic Service Members	487	50.7
Racial and/or Ethnic Minority Service Members	402	41.9
Unknown/Missing	71	7.4
Total	960	100

Table 2.7 reports race and ethnicity demographic information about only those service members who were impaneled. This provides an understanding of the representation of White, not Hispanic service members on panels and the representation of racial and/or ethnic Minority service members on panels. Half of impaneled service members were White, not Hispanic (50.7%), 41.9% were racial and/or ethnic Minority service members, and 7.4% of the impaneled service members were missing information about their race and/or ethnicity.

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7   Table 2.6 excludes 136 individuals (6.9% of detailed service members) with missing race and/or ethnicity information. Among this group, 71 (52.2%) of the service members were impaneled and 65 (47.8%) of the service members were not impaneled.

8   Appendix B also provides information about cases with "unknown/missing" data. The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

**TABLE 2.8 REASON FOR EXCUSAL BY RACE AND ETHNICITY OF DETAILED
SERVICE MEMBERS, AMONG THOSE NOT IMPANELED[9]**

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Challenge for cause	338 (65.8%)	279 (65.5%)	617 (65.6%)
Peremptory challenge	94 (18.3%)	68 (16.0%)	162 (17.2%)
Randomization	80 (15.6%)	74 (17.4%)	154 (16.4%)
Other reason	2 (0.4%)	5 (1.2%)	7 (0.7%)
Total	514 (100%)	426 (100%)	940 (100%)

Table 2.8 shows the reasons used to excuse detailed members from panels. The patterns show similarities in challenges across the two demographic groups. For example, 65.8% of White, not Hispanic service members were excused because of for-cause challenges and 65.5% of service members from racial and/or ethnic Minority groups were excused because of for-cause challenges. In addition, 18.3% of White, not Hispanic service members were excused because of peremptory challenges and 16.0% of racial and/or ethnic Minority service members were excused because of peremptory challenges. The differences in reasons for being excused are not statistically significant (χ^2 = 3.12, df = 3, p = .37). In addition, there is a not a statistically significant difference when only including the peremptory challenges and for cause challenges in the comparison (χ^2 = .55, df = 1, p = .46).

TABLE 2.9 IMPANELED DECISION BY GENDER[10]

	Female Service Members	Male Service Members	Total
Impaneled	150 (37.8%)	763 (51.6%)	913 (48.7%)
Not Impaneled	247 (62.2%)	715 (48.4%)	962 (51.3%)
Total	397 (100%)	1478 (100%)	1875 (100%)

Table 2.9 presents information about the percent of female service members who were impaneled and the percent of male service members who were impaneled. This information allows for an understanding of differences in rates of being impaneled for women and men. The results shows 37.8% of female service members across the 124 Army cases were impaneled compared to 51.6% of male service members. This difference is statistically significant (χ^2 = 23.96, df = 1, p < .05).

TABLE 2.10 GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
Male	763	79.5
Female	150	15.6
Unknown/Missing	47	4.9
Total	960	100

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9   Table 2.8 excludes information about 65 individuals who were not impaneled and were missing information about their race and/or ethnicity. Among this group, 39 (60.0%) were excused by a challenge for cause, 17 (26.2%) were excused because of a peremptory challenge, 8 (12.3%) were excused through randomization, and 1 (1.5%) was excused for some other reason.

10 Table 2.9 excludes 90 service members with missing information about their gender. Among this group, 47 (52.2%) of the service members were impaneled and 43 (47.8%) of the service members were not impaneled.

Table 2.10 summarizes the numbers and percentages of male and female service members who were impaneled. This provides an understanding of the representation of female service members on panels and the representation of male service members on panels. Nearly 80% of impaneled service members were men, 15.6% were women, and 4.9% of the impaneled service members were missing information about their gender.

TABLE 2.11 REASON FOR EXCUSAL BY GENDER OF DETAILED SERVICE MEMBERS, AMONG THOSE NOT IMPANELED [11]

	Female Service Members	Male Service Members	Total
Challenge for cause	162 (65.6%)	469 (65.6%)	631 (65.6%)
Peremptory challenge	44 (17.8%)	124 (17.3%)	168 (17.5%)
Randomization	40 (16.2%)	116 (16.2%)	156 (16.2%)
Other reason	1 (0.4%)	6 (0.8%)	7 (0.7%)
Total	247 (100%)	715 (100%)	962 (100%)

Table 2.11 summarizes information about the group of detailed service members who were not impaneled, and the reasons used to excuse those members from panels. The patterns show similarities in reasons for excusal across female and male service members. For example, 17.8% of female service members were excused because of peremptory challenges and 17.3% of male service members were excused because of peremptory challenges. The same percentage of male and female service members were excused because of randomization (16.2%). The differences between males and females are not statistically significant (χ^2 = .50, df = 3, p = .92). In addition, there is a not a statistically significant difference when only including the peremptory challenges and for cause challenges were used for the comparison (χ^2 = .02, df = 1, p = .89). Even though females are excused at a higher rate than males, the reasons for excusing females and males are used in similar proportions.

TABLE 2.12 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	162	8.2
Racial and/or Ethnic Minority Female Service Members	224	11.4
White, not Hispanic Male Service Members	839	42.7
Racial and/or Ethnic Minority Male Service Members	604	30.7
Unknown / Missing	136	6.9
Total	1965	100

Table 2.12 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were detailed. This provides an understanding of the intersection of race and/or ethnicity with gender among those detailed. Approximately 43% of detailed service members were White, not Hispanic male service members, 30.7% of detailed service members were racial and/or ethnic Minority male service members, 11.4% of detailed service members were racial and/or ethnic Minority female service members, and 8.2% of impaneled

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11   Table 2.11 excludes 43 individuals who were not impaneled and were missing information about their gender. Among this group, 25 (58.1%) were excused by a challenge for cause, 11 (25.5%) were excused because of a peremptory challenge, 6 (14.0%) were excused through randomization, and 1 (2.3%) was excused for some other reason.

service members were White, not Hispanic female service members. Race, ethnicity, and/or gender information was missing for 6.9% of service members detailed to courts-martial.

TABLE 2.13 IMPANELED DECISION BY RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS[12]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Impaneled	47 (29.0%)	97 (43.3%)	440 (52.4%)	305 (50.5%)	889 (48.6%)
Not Impaneled	115 (71.0%)	127 (56.7%)	399 (47.6%)	299 (49.5%)	940 (51.4%)
Total	162 (100%)	224 (100%)	839 (100%)	604 (100%)	1829 (100%)

Table 2.13 shows White, not Hispanic female service members were impaneled at the lowest rate (29.0%), followed by racial and/or ethnic Minority female service members (43.3%). Male service members were impaneled at higher rates: 50.5% of racial and/or ethnic Minority male service members were impaneled and 52.4% of White, not Hispanic male service members were impaneled. The relationship in Table 2.13 is statistically significant (χ^2 = 33.23, df = 3, p < .05).

TABLE 2.14 RACE, ETHNICITY, AND GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	47	4.9
Racial and/or Ethnic Minority Female Service Members	97	10.1
White, not Hispanic Male Service Members	440	45.8
Racial and/or Ethnic Minority Male Service Members	305	31.8
Unknown/Missing	71	7.4
Total	960	100

Table 2.14 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were impaneled. This provides an understanding of the intersection of race and/or ethnicity with gender among those impaneled. Approximately 45% of impaneled service members were White, not Hispanic males, slightly less than one-third of impaneled service members were racial and/or ethnic Minority male service members, 10.1% of impaneled service members were racial and/or ethnic Minority female service members, and 4.9% of impaneled service members were White, not Hispanic female service members.

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12   Table 2.13 excludes 136 service members with missing information about their race, ethnicity, and gender. Among this group, 71 (52.2%) of the service members were impaneled and 65 (47.8%) of the service members were not impaneled.

TABLE 2.15 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[13]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Challenge for cause	75 (65.2%)	83 (65.4%)	263 (65.9%)	196 (65.6%)	617 (65.6%)
Peremptory challenge	23 (20.0%)	20 (15.7%)	71 (17.8%)	48 (16.1%)	162 (17.2%)
Randomization	17 (14.8%)	23 (18.1%)	63 (15.8%)	51 (17.1%)	154 (16.4%)
Other reason	0 (0%)	1 (0.8%)	2 (0.5%)	4 (1.3%)	7 (0.7%)
Total	115 (100%)	127 (100%)	399 (100%)	299 (100%)	940 (100%)

Table 2.15 shows the reasons for excusal among 940 service members who were not impaneled. The pattern shows the rates at which reasons for excusal are used are similar across race, ethnicity, and gender. For example, a challenge for cause is used to excuse approximately 65% of service members within each of the four demographic groups. Peremptory challenges are also used at similar rates across the groups. The relationship in Table 2.15 is not statistically significant when examining all four categories of reasons for excusal (χ^2 = 4.17, df = 9, p = .90) and when only examining for cause challenges and peremptory challenges (χ^2 = .77, df = 3, p = .86).

MILITARY JUDGES

TABLE 2.16 MILITARY JUDGES' RACE AND ETHNICITY

	Frequency	Percentage
White, not Hispanic	78	62.9
Black, not Hispanic	9	7.3
Hispanic	3	2.4
Asian or Pacific Islander	10	8.1
Unknown/Missing	24	19.3
Total	124	100

TABLE 2.17 MILITARY JUDGES' GENDER

	Frequency	Percentage
Male	77	62.1
Female	27	21.8
Unknown/Missing	20	16.1
Total	124	100

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13 Table 2.15 excludes 65 individuals who were not impaneled and were missing information about their race, ethnicity, and gender. Among this group, 39 (60.0%) were excused by a challenge for cause, 17 (26.2%) were excused because of a peremptory challenge, 8 (12.3%) were excused through randomization, and 1 (1.5%) was excused for some other reason.

Tables 2.16 and 2.17 present information about the race, ethnicity, and gender of judges in the sample of 124 Army cases. Race and ethnicity information was not available for 19.3% of judges and gender information was not available for 16.1% of judges. A larger majority of judges were White, not Hispanic (62.9%), followed by Asian or Pacific Islander judges (8.1%). Table 2.17 shows 62.1% of the sample were male judges and 21.8% were female judges.

LEAD DEFENSE COUNSEL[14]

TABLE 2.18 LEAD DEFENSE COUNSEL RACE AND ETHNICITY

	Frequency	Percentage
White, not Hispanic	66	75.9
Black, not Hispanic	9	10.3
Asian or Pacific Islander	5	5.7
Unknown/Missing	7	8.0
Total	87	100

TABLE 2.19 LEAD DEFENSE COUNSEL GENDER

	Frequency	Percentage
Male	54	62.1
Female	31	35.6
Unknown/Missing	2	2.3
Total	87	100

Tables 2.18 and 2.19 summarize race, ethnicity, and gender information for lead defense counsel in the 124 cases. Race and ethnicity information was missing for 8.0% of lead defense counsel and gender information was missing for 2.3% of lead defense counsel. Approximately three-quarters of defense counsel were White, not Hispanic (75.9%), followed by Black, not Hispanic lead defense counsel (10.3%). Table 2.19 shows that nearly three-quarters of lead defense counsel were men (62.1%) and 35.6% of lead defense counsel were women.

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14 A total of 37 cases had civilian defense counsel or military lead defense counsel with demographics not known to the Services.

LEAD TRIAL COUNSEL

TABLE 2.20 LEAD TRIAL COUNSEL RACE AND ETHNICITY

	Frequency	Percentage
White, not Hispanic	92	74.2
Black, not Hispanic	12	9.7
Hispanic	5	4.0
Asian or Pacific Islander	1	0.8
American Indian or Alaskan Native	6	4.8
Unknown/Missing	8	6.4
Total	124	100

TABLE 2.21 LEAD TRIAL COUNSEL GENDER

	Frequency	Percentage
Male	85	68.5
Female	32	25.8
Unknown/Missing	7	5.6
Total	124	100

Tables 2.20 and 2.21 present demographic information about lead trial counsel. Similar to lead defense counsel, nearly three-quarters of lead trial counsel were White, not Hispanic service members (74.2%), followed by Black, not Hispanic service members (9.7%). Four percent of lead trial counsel were Hispanic service members, 4.8% were American Indian or Alaskan Native service members, one lead trial counsel was a Hispanic service member, and race and/or ethnicity information was not available for 8 individuals (6.4%). Table 2.21 shows 68.5% of lead trial counsel were male service members, 25.8% were female service members, and 5.6% were missing information about their gender.

COMPARISONS

To place in context the demographic patterns of service members detailed to courts-martial and those impaneled, the analysis compared the demographic characteristics of those detailed and impaneled to the overall demographic characteristics of the Services. The demographic characteristics of the Army for FY2022 are presented below, in Table 2.22. The data about race and ethnicity used to produce the values in Table 2.22 were obtained from the Army's Active Components Demographics Data as of 31 October 2022 report (United States Army DCS, n.d., p. 19). To create the two categories in Table 2.22, the following categories were combined to create the "racial and/ or ethnic Minority Service Member" category: Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander, and Black not Hispanic. The counts of "White, not Hispanic" category reported in Table 2.22 match the counts reported in the Army's Active Components Demographics Data as of 31 October 2022 report. Counts of people in the "unknown / other" category reported in the Army's Active Components Demographics Data as of 31 October 2022 report were excluded from the counts and from the calculation of percentages reported in Table 2.22. Information about gender in Table 2.22 was taken from the counts and percentages reported in the Department of Defense 2022 Demographics Profile of the Military Community report (United States Department of Defense, n.d.). As noted above, the summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members.

TABLE 2.22 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS

	Frequency	Percentage
Race and ethnicity		
White, not Hispanic	248,054	54.0
Racial and/or ethnic Minority	211,193	46.0
Total	459,247	100
Gender		
Male	389,820	84.4
Female	71,836	15.6
Total	461,656	100

Table 2.22 shows that 54.0% of active-duty personnel in the Army in FY2022 were White, not Hispanic service members and 46% were racial and/or ethnic Minority service members. A large majority of active-duty personnel were men (84.4%) and 15.6% were women.

TABLE 2.23 SERVICE MEMBERS' RACE AND ETHNICITY

	Detailed	Impaneled	Army
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
White, not Hispanic Service Members	1,001 (54.7%)	487 (54.8%)	248,054 (54.0%)
Racial and/or Ethnic Minority Service Members	828 (45.3%)	402 (45.2%)	211,193 (46.0%)
Total	1,829 (100%)	889 (100%)	459,247 (100%)

Table 2.23 presents race and/or ethnicity information about those detailed to courts-martial, those impaneled, and the overall population of active duty personnel in the Army. This table allows for an understanding of representation on details and panels in relation to the overall Army demographics. Individuals with missing race and/or ethnicity data were excluded from the results in Table 2.23. The percent of detailed members who were racial and/or ethnic Minority service members (45.3%) is similar to their representation in the Army (46.0%). A one-sample t-test was used to compare the percentage of those detailed who are racial and/or ethnic Minority service members to the representation of racial and/or ethnic Minority service members in the Army. There is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on details and their representation in the Army overall (t = -.63, df = 1,828, p = .53). The percent of impaneled members who were racial and/or ethnic Minority service members is also similar to their representation in the Army. The one-sample t-test shows there is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on panels and their representation in the Army overall (t = -.47, df = 888, p = .64).

TABLE 2.24 SERVICE MEMBERS' GENDER

	Detailed	Impaneled	Army
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent
Male	1,478 (78.8%)	763 (83.6%)	389,820 (84.4%)
Female	397 (21.2%)	150 (16.4%)	72,478 (15.6%)
Total	1,875 (100%)	913 (100)	461,656 (100)

Table 2.24 presents gender information about those detailed to courts-martial, those impaneled, and the overall population of the Army. Like Table 2.23, this table allows for an understanding of representation on details and panels in relation to the overall Army demographics. Individuals with missing data about their gender were excluded from the results in Table 2.24. Table 2.24 shows females are overrepresented among those detailed to courts-martial compared to their representation in the Army (21.2% of details and 15.6% in the Army). A one-sample t-test was used to compare the percentage of those detailed who are female service members to the representation of female service members in the Army. The difference between the representation of female service members on details and their representation in the Army overall is statistically significant (t = 5.91 df = 1,874, p < .05). In terms of representation on panels, female service members are represented on panels in a similar percentage to their overall representation in the Army (16.4% of panels and 15.6% in the Army). There is not a statistically significant difference between the representation of females on panels and their representation in the Army (t = .68 df = 912, p = .50).

Section 3. 124 Contested Sexual Assault Courts-Martial

Information in section 3 summarizes the characteristics of details and panels. The analyses in section 2 grouped all individuals together and ignored the specific detail and panel to which each individual was assigned. Section 3 examines the demographic characteristics of each detail and each panel. This approach provides the opportunity to study and summarize the characteristics of each detail and panel, which gets overlooked when individuals from all details and panels are grouped together. Section 3 provides an understanding of the variation that exists within and across the details and panels.

TABLE 3.1 NUMBER OF MEMBERS DETAILED TO INDIVIDUAL COURTS-MARTIAL

	Frequency	Percentage
10 Members	3	2.4
12 Members	4	3.2
13 Members	5	4.0
14 Members	53	42.7
15 Members	7	5.6
16 Members	19	15.3
17 Members	1	.8
18 Members	5	4.0
19 Members	4	3.2
20 Members	13	10.5
21 Members	5	4.0
23 Members	2	1.6
24 Members	1	.8
25 Members	1	.8
28 Members	1	.8
Total	124	100

Table 3.1 presents information about the number of members detailed to the cases. Over 40 percent of the cases (53 / 124, 42.7%) had 14 members detailed to the court-martial; the next most commonly occurring number of members detailed to the court-martial was 16, occurring 19 times (15.3% of the cases).

TABLE 3.2 NUMBER OF MEMBERS IMPANELED

	Frequency	Percentage
4 Members	4	3.2
5 Members	1	.8
6 Members	2	1.6
7 Members	9	7.3
8 Members	108	87.1
Total	124	100

Table 3.2 describes the number of members impaneled in each case. Nearly 90 percent of cases involved panels of 8 service members (108 / 124; 87.1%); the next most frequently occurring panel size was 7 members, occurring in 9 out of 124 cases (7.3%).

RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS IN 124 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.3 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Service Members	55.6%	16.9%	17.4%	100%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Service Members	44.4%	16.9%	0%	82.6%

FIGURE 3.1

Race/Ethnicity Composition of Details: 124 Army Cases
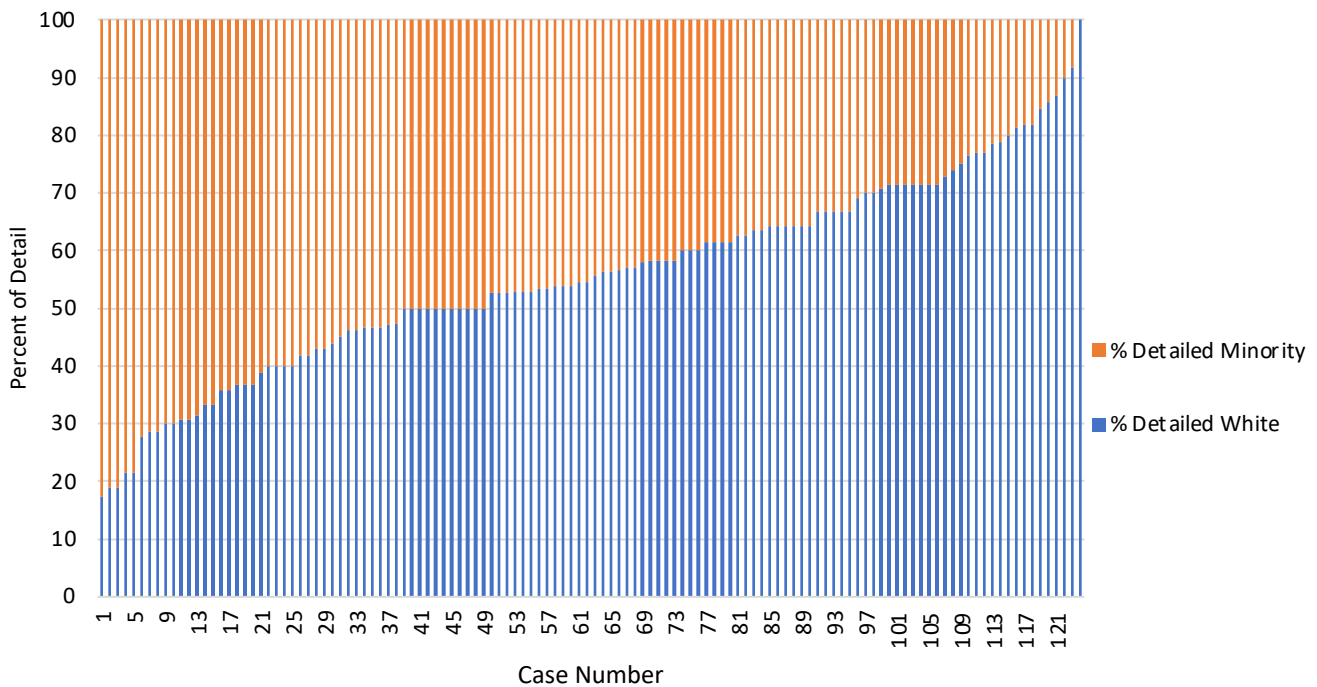
Table 3.3 presents the average percentage of details that were comprised of White, not Hispanic service members and the average percentage of details that were comprised of racial and/or ethnic Minority service members. These represent averages for details associated with the 124 Army cases. The 136 individual service members who were missing data on their race and/or ethnicity were excluded from the results in Table 3.3. Table 3.3 shows that, across the 124 cases, the average percent of detailed members that were White, not Hispanic service members was 55.6%; the average percent of detailed members that were racial and/or ethnic Minority service members was 44.4%. A

one-sample t-test was used to determine if there was a statistically significant difference between the average percent of details comprised of racial and/or ethnic Minority service members (44.4%) and the representation of racial and/or ethnic Minority service members in the Army (46.0%). The difference is not statistically significant (t = -1.04, df = 123, p = .30). This pattern is consistent with results reported in Table 2.23.

Figure 3.1 illustrates the composition of each detail in terms of race and ethnicity. The details show the following patterns:

- In 75 of the 124 cases (60.4% of cases), White, not Hispanic service members made up more than half of the detailed members.

- In 38 of the 124 cases (30.6%), more than half of the detailed members were racial and/or ethnic Minority service members.

- There were 11 cases in which half of the detail was comprised of White, not Hispanic service members and half of the detail was comprised of racial and/or ethnic Minority service members.

- In 34 of the 124 cases (27.4%), more than two-thirds of the detailed members were White, not Hispanic service members. There was one case in which all detailed members were White, not Hispanic service members.

- In 13 of the 124 cases (10.5%), fewer than one-third of the detailed members were White, not Hispanic service members.

RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS IN 124 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.4 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Panel Comprised of White, not Hispanic Service Members	55.3%	23.4%	0%	100%
Percent of Panel Comprised of Racial and/or Ethnic Minority Service Members	44.7%	23.4%	0%	100%

FIGURE 3.2
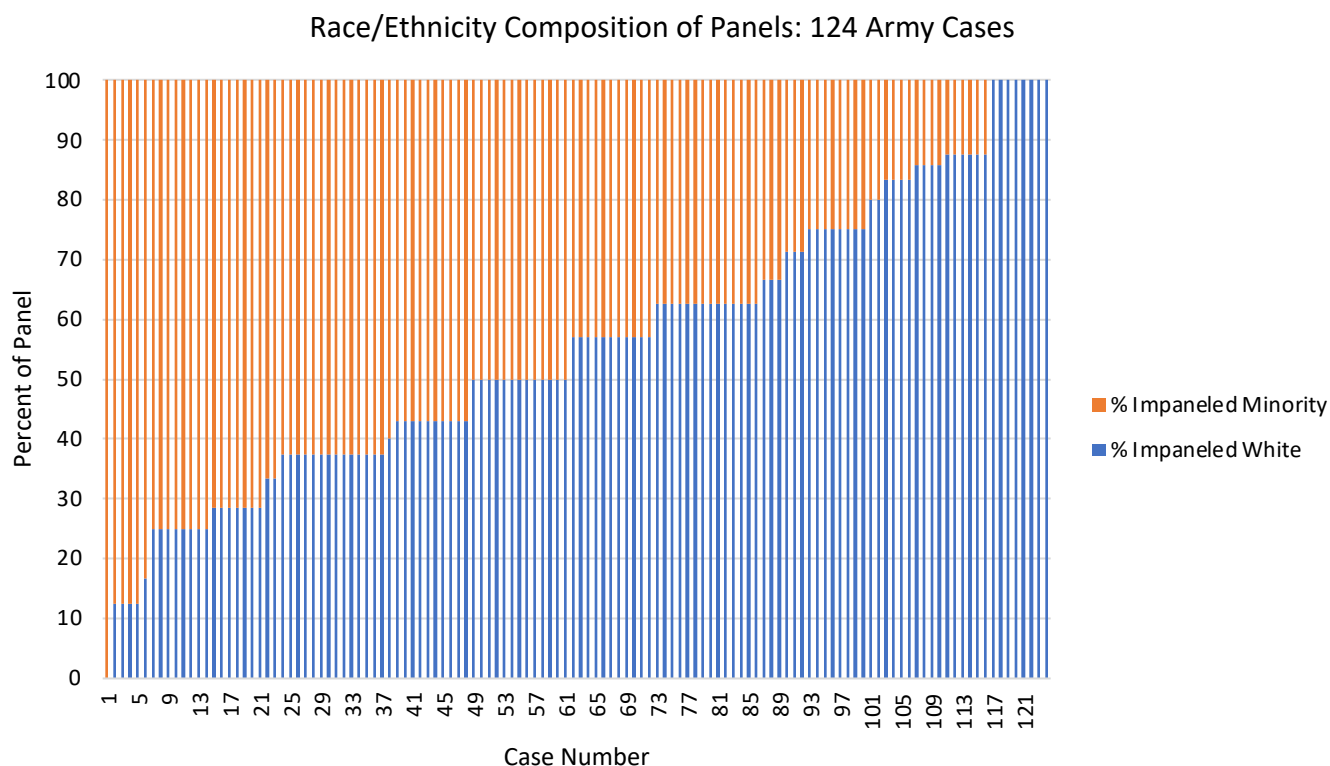
Race/Ethnicity Composition of Panels: 124 Army Cases

Table 3.4 presents the average percentage of panels that were comprised of White, not Hispanic service members and the average percentage of panels that were comprised of racial and/or ethnic Minority service members. These represent averages for panels associated with the 124 Army cases. The 71 individual service members who were missing data on their race and/or ethnicity were excluded from the results in Table 3.4. Table 3.4 shows that, across the 124 panels, the average percent of panels that were comprised of White, not Hispanic service members was 55.3%, the average percent of panels comprised of racial and/or ethnic Minority service members was 44.7%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of panels comprised of racial and/or ethnic Minority service members (44.7%) and the representation of racial and/or ethnic Minority service members in the Army (46.0%). The difference is not statistically significant (t = -.62, df = 123, p = .54). This pattern is consistent with results reported in Table 2.23.

Figure 3.2 illustrates the composition of each panel in terms of race and ethnicity. The panels show the following patterns:

• In 63 of 124 panels (50.8%), more than half of the panel was comprised of White, not Hispanic service members, including 8 panels in which all members were White, not Hispanic service members.

• In 48 of 124 panels (38.7%), more than half of the panel was comprised of racial and/or ethnic Minority service members, including 1 panel in which all members were racial and/or ethnic Minority service members.

GENDER OF DETAILED SERVICE MEMBERS IN 124 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.5 REPRESENTATION OF GENDER OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of Female Service Members	20.6%	12.5%	0%	68%
Percent of Detailed Members Comprised of Male Service Members	79.4%	12.5%	32%	100%

FIGURE 3.3
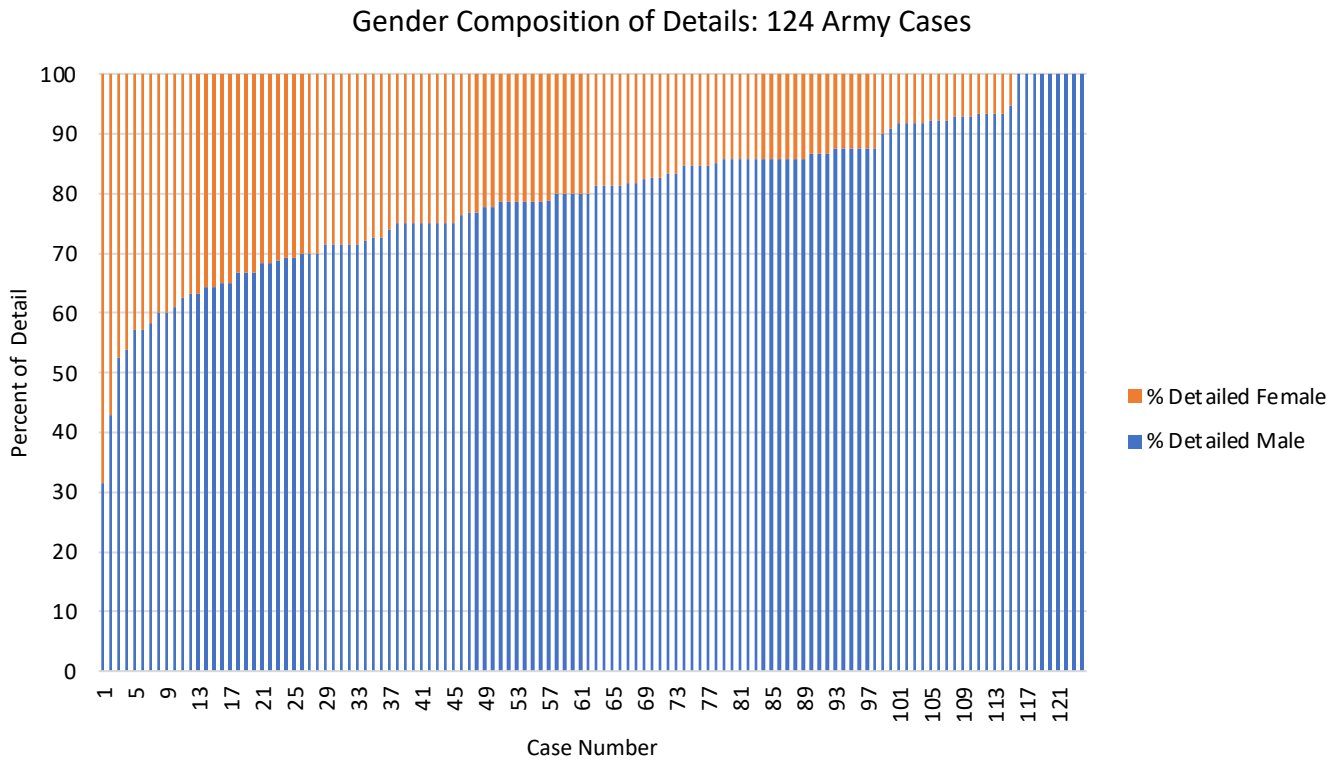
Gender Composition of Details: 124 Army Cases

Table 3.5 shows that, across the 124 cases, the average percent of details that were comprised of female service members was 20.6%, the average percent of detailed members comprised of male service members was 79.4%. The 90 individual service members who were missing data on their gender were excluded from the results in Table 3.5. A one-sample t-test shows the average percent of details comprised of female service members (20.6%) is greater than the representation of females in the Army (15.6%); this difference is statistically significant (t = 4.46, df = 123, p < .05). This pattern is consistent with results reported in Table 2.23. Figure 3.3 shows the representation of male service members and female service members on each detail.

GENDER OF IMPANELED SERVICE MEMBERS IN 124 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.6 REPRESENTATION OF GENDER OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of Female Service Members	16.1%	13.5%	0%	63%
Percent of Impaneled Members Comprised of Male Service Members	83.9%	13.5%	38%	100%

FIGURE 3.4
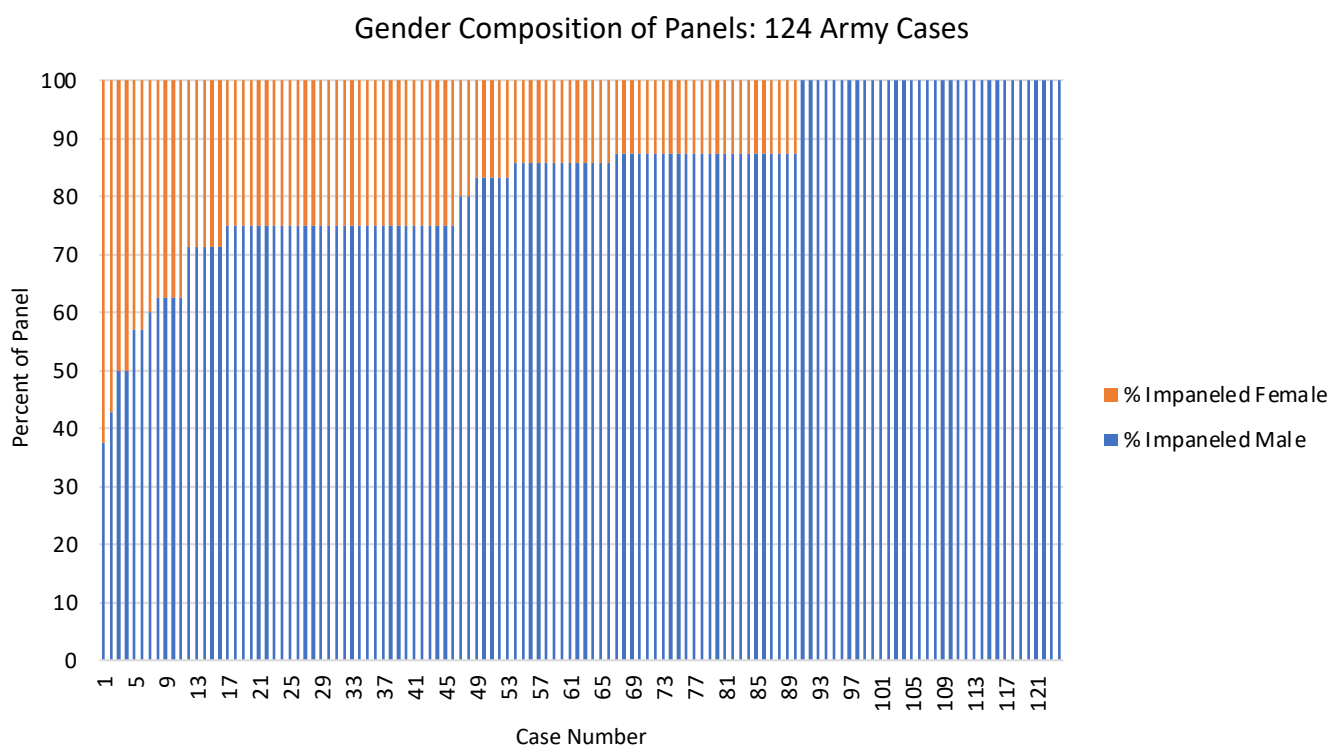
Gender Composition of Panels: 124 Army Cases

Table 3.6 shows that, across the 124 panels, the average percent of panels that were comprised of female service members was 16.1%, the average percent of panels comprised of male service members was 83.9%. The 47 service members who were impaneled and were missing data on their gender were excluded from the results in Table 3.6. A one-sample t-test shows the average percent of panels comprised of female service members (16.1%) is not statistically different from the representation of females in the Army (15.6%) (t = .42 df = 123, p = .68). This pattern is consistent with results reported in Table 2.23. Figure 3.4 shows the representation of male service members and female service members on each panel.

**TABLE 3.7 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE
MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percent of Panel Comprised of White, not Hispanic Service Members	59.6% (SD = 20.4)	51.0% (SD = 24.1)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 59.6% White, not Hispanic service members and 40.4% racial and/or ethnic Minority service members (Table 3.7). In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 51.0% White, not Hispanic service members and 49.0% racial and/or ethnic Minority service members. This difference in average percentages across race and/or ethnicity of the accused service member is statistically significant (t = 2.05, df = 119, p < .05).

**TABLE 3.8 REPRESENTATION OF GENDER OF SERVICE MEMBERS
IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percent of Panel Comprised of Male Service Members	84.7% (SD = 11.8)	83.0% (SD = 14.7)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 84.7% male service members and 15.3% female service members. In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 83.0% male service members and 17.0% female service members. This difference in average percentages across race/ethnicity of the accused service member is not statistically significant (t = .64, df = 119, p = .52).

**TABLE 3.9 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE
MEMBERS IMPANELED AMONG OFFICER AND ENLISTED PANELS**

	All Officer Panel	Enlisted Panel
Average Percent of Panel Comprised of White, not Hispanic Service Members	63.0% (SD = 19.1)	53.9% (SD = 23.8)

In cases with an all officer panel, the typical panel was comprised of 63.0% White, not Hispanic service members and 37.0% racial and/or ethnic Minority service members (Table 3.9). In cases with an enlisted panel, the typical panel was comprised of 53.9% White, not Hispanic service members and 46.1% racial and/or ethnic Minority service members. This difference in average percentages across panel type is not statistically significant (t = -1.58, df = 122, p = .12). It is important to note there is a relatively small number of cases with all officer panels (n = 19).

**TABLE 3.10 REPRESENTATION OF GENDER OF SERVICE MEMBERS
IMPANELED AMONG OFFICER AND ENLISTED PANELS**

	All Officer Panel	Enlisted Panel
Average Percent of Panel Comprised of Male Service Members	79.5% (SD = 14.4)	84.7% (SD = 13.2)

In cases with an all officer panel, the typical panel was comprised of 79.5% male service members and 20.5% female service members (Table 3.10). In cases with an enlisted panel, the typical panel was comprised of 84.7% male service members and 15.3% female service members. This difference in average percentages across panel type is not statistically significant ($t = 1.56$, $df = 122$, $p = .12$). As indicated above, it is important to note there is a relatively small number of cases with all officer panels ($n = 19$).

**TABLE 3.11 REPRESENTATION OF RACE, ETHNICITY, AND GENDER
OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Female Service Members	8.7%	8.5%	0%	40.0%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Female Service Members	11.9%	8.9%	0%	55.6%
Percent of Detailed Members Comprised of White, not Hispanic Male Service Members	46.9%	17.6%	6.3%	100%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Male Service Members	32.5%	14.7%	0%	69.6%

Table 3.11 shows that White, not Hispanic female service members represent the smallest average percentage of details (8.7%) followed by racial and/or ethnic Minority female service members (11.9%). White, not Hispanic male service members represent the largest average percentage of those detailed (46.9%), followed by racial and/or ethnic Minority male service members (32.5%).

**TABLE 3.12 REPRESENTATION OF RACE, ETHNICITY, AND
GENDER OF SERVICE MEMBERS IMPANELED**

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of White, not Hispanic Female Service Members	5.4%	8.6%	0%	37.5%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Female Service Members	10.7%	11.5%	0%	62.5%
Percent of Impaneled Members Comprised of White, not Hispanic Male Service Members	49.8%	22.5%	0%	100%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Male Service Members	34.0%	20.7%	0%	87.5%

Table 3.12 shows that White, not Hispanic female service members represent the smallest average percentage of panels (5.4%) followed by racial and/or ethnic Minority female service members (10.7%). White, not Hispanic male service members represent the largest average percentage of panels (49.8%), followed by racial and/or ethnic Minority male service members (34.0%).

REFERENCES

United States Army Deputy Chief of Staff (DCS). (n.d.). *Active Components Demographics: Data as of 31 October 2022.* United States Department of Defense. https://api.army.mil/e2/c/downloads/ 2022/11/15/62a2d64b/active-component-demographic-report-october-2022.pdf.

United States Department of Defense. (n.d.). *2022 Demographics: Profile of the Military Community.* United States Department of Defense. https://download.militaryonesource.mil/ 12038/MOS/Reports/2022-demographics-report.pdf.

Rose, M.R. (2021). *Final Report on New Jersey's Empirical Study of Jury Selection Practices and Jury Representativeness: Prepared for the New Jersey Supreme Court.* https://www.njcourts.gov/sites/default/files/jurors/maryrosefinalreport.pdf

Rose, M.R., & Abramson, J.B. (2011). Date, race, and the courts: Some lessons on empiricism from jury representation cases. *Michigan State Law Review, 2011,* 912-963.

Rose, M.R., Casarez, R.S., & Gutierrez, C.M. (2018). Jury pool underrepresentation in the modern era: Evidence from federal courts. *Journal of Empirical Legal Studies, 15,* 378-405.

APPENDICES

Two appendices are presented below to show: 1) the racial and ethnic demographic information about detailed service members that was provided by the Services and 2) the way this demographic information was used to create two groups of service members: White, not Hispanic service members and racial and/or ethnic Minority service members.

Appendix A shows information about service members' race and ethnicity. This information about race and about ethnicity was provided by the Services and allowed for the creation of a simplified variable with the two primary demographic categories of interest: White, not Hispanic service members and racial and/or ethnic Minority service members. Appendix B shows how each combination was recoded into two race and ethnicity categories. Those two categories were used in the analyses reported above.

Appendix A

Detailed service members' race and ethnicity information provided by the Services.

	Frequency	Percent
[blank]	1	0.1
Am. Indian or Alaska Native	15	0.8
Asian or Pacific Islander	116	5.9
Black, non-Hispanic	4	0.2
Black, not Hispanic	427	21.7
Hispanic	7	0.4
Hispanic, Latino	259	13.2
Unable to locate	89	4.5
Unknown/Other	46	2.3
White, non-Hispanic	14	0.7
White, not Hispanic	987	50.2
Total	1965	100.0

Appendix B

Detailed service members' race and ethnicity variable recoded into an aggregated measure with three categories.

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Unknown/ Missing	Total
Am. Indian or Alaska Native	0	15	0	15
Asian or Pacific Islander	0	116	0	116
Black, non-Hispanic	0	4	0	4
Black, not Hispanic	0	427	0	427
Hispanic	0	7	0	7
Hispanic, Latino	0	259	0	259
White, non-Hispanic	14	0	0	14
White, not Hispanic	987	0	0	987
[blank]	0	0	1	1
Unknown/Other	0	0	46	46
Unable to locate	0	0	89	89
Total	1001	828	136	1965

APPENDIX G. DEMOGRAPHIC DATA ON MILITARY COURTS-MARTIAL PANELS (NAVY)

Overview of Navy Case-Level Data
June 18, 2024

Dr. William Wells, Director, Center for Intelligence and Crime Analysis and
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INTRODUCTION

The purpose of this report is to summarize information about the race, ethnicity, and gender of service members detailed to courts-martial and impaneled in a sample of Navy cases. The complete research methods used to collect the data presented here are described in the consolidated DAC-IPAD report that describes the larger project within which this report is imbedded.

Section 1 presents information about 48 contested sexual assault courts-martial, including demographic information of the accused service members, case outcomes, and the type of forum requested. Section 2 summarizes information about service members detailed in the case, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented in section 2 describe individuals involved in the cases and are aggregated together. In other words, all individuals from the cases are grouped together. Section 3 summarizes the demographic characteristics of the specific details and panels.

The research questions to be answered with the analyses and results described below are:

What are the representations of white, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

1. What are the representations of male and female service members on details and on panels?

2. How do the representations in questions #1 and #2 compare to their overall representations in the Navy?

3. The analyses and results described in section 2 and section 3 of this report address the core research questions.

Section 1. 48 Contested Sexual Assault Courts-Martial

TABLE 1.1 CASE FISCAL YEAR

	Frequency	Percentage
2021	34	70.8
2022	14	29.2
Total	48	100

TABLE 1.2 GENDER OF ACCUSED

	Frequency	Percentage
Male	48	100
Total	48	100

TABLE 1.3 RACE OF ACCUSED

	Frequency	Percentage
White	16	33.3
Black	12	25.0
Asian	3	6.3
Native Hawaiian or Pacific Islander	1	2.1
American Indian or Alaskan Native	5	10.4
Multiple Races	6	12.5
Unknown/Missing	5	10.4
Total	48	100

TABLE 1.4 ETHNICITY OF ACCUSED

	Frequency	Percentage
Hispanic or Latino	8	16.7
Not Hispanic or Latino	37	77.1
Unknown/Missing	3	6.3
Total	48	100

TABLE 1.5 RACE AND ETHNICITY OF ACCUSED AGGREGATED INTO TWO CATEGORIES

	Frequency	Percentage
White, not Hispanic	12	25.0
Racial and/or Ethnic Minority	31	64.6
Unknown/Missing	5	10.4
Total	48	100

TABLE 1.6 RANK OF ACCUSED

	Frequency	Percentage
Enlisted	47	97.9
Officer	1	2.1
Total	48	100

TABLE 1.7 CASE ADJUDICATION ON ARTICLE 120 OFFENSE

	Frequency	Percentage
Acquitted	29	60.4
Guilty	19	39.6
Total	48	100

TABLE 1.8 IF GUILTY OF ARTICLE 120 OFFENSE, GUILTY OF PENETRATIVE OFFENSE

	Frequency	Percentage
Yes	11	57.9
No	8	42.1
Total	19	100

TABLE 1.9 FORUM SELECTION BY ENLISTED ACCUSED[1]

	Frequency	Percentage
Requested an enlisted panel	44	93.6
Requested an all officer panel	3	6.4
Total	47	100

TABLE 1.10 THE CASE INVOLVED AN ALL OFFICER PANEL[2]

	Frequency	Percentage
Yes	4	8.3
No	44	91.7
Total	48	100

Section 2. Individuals within 48 Contested Sexual Assault Courts-Martial

The information in section 2 describes the service members detailed in the cases, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented here about individuals involved in the cases are derived from the set of 48 cases and are aggregated together. In other words, the information in this

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1   Enlisted accused may select either an enlisted or officer panel.

2   Officers must be tried by an officer panel. There was one officer accused and three enlisted accused who selected an officer panel.

section groups together all individuals regardless of the case in which they were involved. Individuals are the unit of analysis.

To reiterate, the research questions to be answered through the analyses described in section 2 and in section 3 are:

1. What are the representations of White, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do those representations in questions #1 and #2 compare to their overall representations in the Navy?

Ideally, question #3 would utilize, as a point of comparison, the representation of demographic groups within specific units or on the installations from which the details were selected, but these more specific unit and installation demographic data were not available. The alternative is to compare the representations of demographic characteristics on details and panels to the overall representations in the Navy as a whole. It is important to note that the analysis in section 2 groups all individuals in the sample of cases together and does not examine the distinct details and distinct panels. Thus, section 2 does not provide insights into the composition of individual details and individual panels. Section 3 entails an analysis of individuals assigned to the specific details and specific panels.

The descriptive information in section 2 reports the number and percentage of individuals with missing data on their race and/or ethnicity and gender. The purpose of presenting the counts and percentages of missing data is to provide complete information about the data that were collected, including cases with missing data. Cases with missing data were excluded from analyses that estimated differences between groups and that involved tests of statistical significance. Missing data on race, ethnicity, and gender presents analytic challenges because excluding cases with missing data may generate patterns of results and statistical tests that are biased. Imputing missing data for race, ethnicity, and gender presents challenges because commonly used imputation methods require additional information that is not available in the current project (see also Rose, 2021; Rose, Casarez, and Gutierrez, 2018). The challenges of missing demographic data that are unique to studies of jury composition have been described by Rose and Abramson (2011) (see also Rose, 2021; Rose et al., 2018). Missing demographic data for potential jurors and those selected to serve on juries in the civilian criminal justice system is not an uncommon problem (Rose & Abramson, 2011; Rose, Casarez, & Gutierrez, 2018). Rose et al. (2018) describe the assumptions associated with two methods of handling missing demographic data: 1) exclude cases with missing demographic data from analyses and 2) use the total numbers of cases, including those with missing data, as the denominator in calculations of proportions and percentages. When cases with missing data are excluded from analyses, it is assumed that missing data are distributed randomly across different demographic groups, such as men and women, or Hispanic and not Hispanic individuals. This assumption implies there are no patterns to the missing data that would bias results. An alternative approach, and one that includes cases with missing data, is to include all cases in the denominator when calculating proportions and percentages. The assumption with this approach is that no cases with missing data belong to the other demographic groups of interest, such as men and women, or Hispanic and not Hispanic individuals. According to Rose et al. (2018, p. 393), "this approach generates under-representation levels that are at their maximum." Rose (2021), Rose and Abramson (2011), and Rose et al. (2018) discuss the way survey designs used as part of civilian jury selection processes may produce missing data that are different for Hispanic and not Hispanic individuals and how this may impact results and conclusions about jury composition. It is not possible for the current project to understand how the processes of recording the race, ethnicity, and gender of service members may generate patterns of missing data that are unevenly distributed across race, ethnicity, and gender. For this reason

and to avoid producing estimates of underrepresentation that are at their maximum, we exclude individuals with missing data from analyses.

TABLE 2.1 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS[3]

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	139,698	46.6
Racial and/or ethnic Minority Service Member	160,362	53.4
Total	300,060	100
Gender		
Male	269,712	79.3
Female	70,353	20.7
Total	340,065	100

Table 2.1 shows 46.6% of active duty personnel in the Navy in FY 2022 were White, not Hispanic service members and 53.4% of active duty personnel were racial and/or ethnic Minority service members. Men comprised 79.3% of active duty personnel and 20.7% of active duty personnel were female.

TABLE 2.2 DETAILED SERVICE MEMBERS' RACE[4]

	Frequency	Percentage
White	538	62.6
Black	127	14.8
Asian	40	4.7
Native Hawaiian or Other Pacific Islander	11	1.3
American Indian or Alaskan Native	19	2.2
Multiple races	43	5.0
Unknown/Missing	81	9.4
Total	859	100

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3   Data in Table 2.1 about race and ethnicity were provided by the Services and are for FY 2022. Race and/or ethnicity data listed as "unknown" (n = 40,005, 11.7%) were excluded from counts used to calculate percentages in Table 2.1. Data for gender in Table 2.1 were obtained from the Department of Defense *2022 Demographics Profile of the Military Community* (see Table, 2.13, p. 19; United States Department of Defense, n.d.).

TABLE 2.3 DETAILED SERVICE MEMBERS' ETHNICITY[4]

	Frequency	Percentage
Hispanic or Latino	93	10.8
Not Hispanic or Latino	79	9.2
Not Associated with Any Group	547	63.7
Unknown/Missing	140	16.3
Total	859	100

TABLE 2.4 DETAILED SERVICE MEMBERS' RACE AND ETHNICITY AGGREGATED INTO TWO CATEGORIES[5]

	Frequency	Percentage
White, not Hispanic Service Members	415	48.3
Racial and/or Ethnic Minority Service Members	318	37.0
Unknown/Missing	126	14.7
Total	859	100

The measurement of race and/or ethnicity of detailed and impaneled service members used in the analysis relies on data about individuals that were provided by the Services about the Navy. The summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members. The Services provided data about the Navy that separated race from ethnicity (see Tables 2.2 and 2.3). It was necessary to combine race and ethnicity into a single variable (see Appendix A). These data were then re-coded in a way that allows for the creation of a variable with two demographic categories to be used in the analysis: White, not Hispanic service members and racial and/or ethnic Minority service members (see Table 2.4).

Tables 2.2, 2.3, and 2.4 show the race and ethnicity of service members detailed to courts martial. Table 2.2 presents information about race provided by the Services and Table 2.3 presents information about ethnicity. Table 2.4 presents information about race and/or ethnicity after aggregating the groups into two categories. The decision to aggregate specific demographic categories into two broader categories was influenced by multiple considerations. First, the primary interest was in understanding the representation of racial and/or ethnic Minority service members detailed to courts-martial and impaneled rather than in examining patterns across more specific racial and ethnic groups. Combining together specific categories that represent racial and/or ethnic Minority service members allowed for a comparison to White, not Hispanic service members and, thus, meet the core research purpose. In other words, the research questions were not focused on comparisons between specific racial and/or ethnic minority groups. Second, creating an aggregated measure with two broad categories allowed for consistency across the Services. The Services provided racial and ethnic demographic data in different formats and using a broad measure allowed for a consistent measure to be used, which, in turn, allowed for the same comparisons to be

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4   See Appendix A for a listing of race and ethnicity combined into a single variable, using the data provided by the Services.

5   See Appendix B to understand how race and ethnicity data were aggregated together into this variable in Table 2.4. Appendix B also provides information about cases with "unknown/missing" data. The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

made for each service branch. Last, using an aggregated measure reduced the number of cases that were excluded because of missing data. For instance, if demographic data showed a service member was Black, but their ethnicity was unknown, then this individual was considered to be a racial and/or ethnic Minority service member. If the analysis examined more disaggregated groups such as Black, not Hispanic or examined only Hispanic ethnicity then this individual would be excluded from the analyses. The Army provided data in a different format that the other Services so this last consideration was only relevant to the other Services. There is a tradeoff when racial and ethnic demographic categories are aggregated together. The limitation is that we are not able to identify and understand differences that may exist for specific racial and ethnic Minority service members, such as Hispanic service members and Black, not Hispanic service members, and Asian service members.

Table 2.4 shows 14.7% of individuals were missing data on race and/or ethnicity, 48.3% of individuals were White, not Hispanic service members, and 37.0% were racial and/or ethnic Minority service members.

TABLE 2.5 DETAILED SERVICE MEMBERS' GENDER

	Frequency	Percentage
Male	691	80.4
Female	132	15.4
Unknown/Missing	36	4.2
Total	859	100

Table 2.5 shows the representation of male and female service members detailed to courts-martial. Approximately 4% of service members detailed to courts-martial were missing information about gender; 80.4% of service members detailed to courts-martial were men and 15.4% were women.

TABLE 2.6 DETAILED SERVICE MEMBERS WHO WERE IMPANELED

	Frequency	Percentage
Impaneled	393	45.8
Not impaneled	466	54.2
Total	859	100

Table 2.6 presents information about the numbers and percentages of service members who were impaneled and not impaneled. Less than half of the service members who were detailed to courts-martial were impaneled (45.8%) and 54.2% were not impaneled.

**TABLE 2.7 RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS
WHO WERE IMPANELED AND WHO WERE NOT IMPANELED[6]**

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	181 (43.6%)	144 (45.3%)	325 (44.3%)
Not Impaneled	234 (56.4%)	174 (54.7%)	408 (55.7%)
Total	415 (100%)	318 (100%)	733 (100%)

Table 2.7 provides an understanding about whether there are differences in the rates of being impaneled between White, not Hispanic service members and racial and/or ethnic Minority service members. The results show 43.6% of White, not Hispanic service members were impaneled and 45.3% of service members from racial and/or ethnic Minority groups were impaneled. The difference across the two groups of service members is not statistically significant (χ^2 = .20, df = 1, p = .65).

TABLE 2.8 RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS[7]

	Frequency	Percentage
White, not Hispanic Service Members	181	46.1
Racial and/or Ethnic Minority Service Members	144	36.6
Unknown/Missing	68	17.3
Total	393	100

Table 2.8 reports race and ethnicity demographic information about *only* those service members who were impaneled. This provides an understanding of the representation of White, not Hispanic service members on panels and the representation of racial and/or ethnic Minority service members on panels. White, not Hispanic represented 46.1% of panel members and racial and/or ethnic Minority service members represented 36.6% of panel members. Information about race and/or ethnicity was not available for 17.3% of impaneled service members.

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6 Table 2.7 excludes 126 individuals (14.7% of detailed service members) with missing race and/or ethnicity information. Among this group, 68 (54.0%) of the service members were impaneled and 58 (46.0%) of the service members were not impaneled.

7 The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

**TABLE 2.9 RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS
NOT IMPANELED AND REASON FOR EXCUSAL[8]**

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Challenge for cause	136 (58.9%)	111 (65.3%)	247 (61.6%)
Peremptory challenge	42 (18.2%)	22 (12.9%)	64 (16.0%)
Randomization	37 (16.0%)	24 (14.1%)	61 (15.2%)
Other reason	16 (6.9%)	13 (7.6%)	29 (7.2%)
Total	231 (100%)	170 (100%)	401 (100%)

Table 2.9 shows the reasons used to excuse detailed members from panels and allows for comparisons across the two demographic categories. For example, 58.9% of White, not Hispanic service members were excused because of for-cause challenges while 65.3% of service members from racial and/or ethnic Minority groups were excused because of for-cause challenges. In addition, 18.2% of White, not Hispanic service members were excused because of peremptory challenges while 12.9% of racial and/or ethnic Minority service members were excused because of peremptory challenges. The differences in reasons for being excused are not statistically significant (χ^2 = 2.64, df = 3, p = .45). In addition, there is a not a statistically significant difference when only including the peremptory challenges and for cause challenges in the comparison (χ^2 = 2.32, df = 1, p = .13).

TABLE 2.10 IMPANELED DECISION BY GENDER[9]

	Female Service Members	Male Service Members	Total
Impaneled	35 (26.5%)	345 (49.9%)	380 (46.2%)
Not Impaneled	97 (73.5%)	346 (50.1%)	443 (53.8%)
Total	132 (100%)	691 (100%)	823 (100%)

The relationship between gender and whether the service member was impaneled is statistically significant (χ^2 = 24.44, df = 1, p < .05). Male service members were more likely to be impaneled (49.9%) than female service members (26.5%).

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8   Table 2.9 excludes information about 58 individuals who were not impaneled and were missing information about their race and/or ethnicity, and an additional 7 service members who were not impaneled and were missing information about the reason for being excused. One (of the 58) service members was missing information about race and ethnicity, and was missing information about the reason for excusal. Among the group of 57 individuals missing information about race and ethnicity, 33 (57.9%) were excused by a challenge for cause, 12 (21.1%) were excused because of a peremptory challenge, 7 (12.3%) were excused through randomization, and 5 (8.8%) were excused for some other reason.

9   Table 2.10 excludes 36 service members with missing information about their gender. Among this group, 13 (36.1%) of the service members were impaneled and 23 (63.9%) of the service members were not impaneled.

TABLE 2.11 GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
Male	345	87.8
Female	35	8.9
Unknown/Missing	13	3.3
Total	393	100

Table 2.11 summarizes the numbers and percentages of male and female service members who were impaneled. This provides an understanding of the representation of female service members on panels and the representation of male service members on panels. Men comprised 87.8% of service members impaneled, women made up 8.9% of the service members who were impaneled, and data were not available for 3.3% of impaneled service members.

TABLE 2.12 GENDER OF DETAILED SERVICE MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[10]

	Female Service Members	Male Service Members	Total
Challenge for cause	58 (61.7%)	211 (61.9%)	269 (61.8%)
Peremptory challenge	13 (13.8%)	57 (16.7%)	70 (16.1%)
Randomization	12 (12.8%)	51 (15.0%)	63 (14.5%)
Other reason	11 (11.7%)	22 (6.5%)	33 (7.6%)
Total	94 (100%)	341 (100%)	435 (100%)

The relationship between gender and the reason for excusal is not statistically significant (χ^2 = 3.3, df = 3, p = .35). The percentage of female and male service members excused because of for cause challenges is nearly identical (61.7% and 61.9%). The percentages of female and male service members excused through peremptory challenges are similar (13.8% and 16.7%). When only including the peremptory challenges and for cause challenges in the comparison, there is a not a statistically significant difference (χ^2 = .30, df = 1, p = .58).

TABLE 2.13. RACE, GENDER, AND ETHNICITY OF DETAILED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	57	6.6
Racial and/or Ethnic Minority Female Service Members	63	7.3
White, not Hispanic Male Service Members	358	41.7
Racial and/or Ethnic Minority Male Service Members	255	29.7
Unknown/Missing	126	14.7
Total	859	100

Table 2.13 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were detailed. This provides an understanding of the intersection of race and/or ethnicity with gender

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10   Table 2.12 excludes 23 individuals who were not impaneled and were missing information about their gender. Among this group, 11 (47.8%) were excused by a challenge for cause, 6 (26.1%) was excused because of a peremptory challenge, 5 (21.7%) were excused through randomization, and 1 (4.3%) was excused for some other reason. Table 2.12 also excludes 8 people missing information about the reason for being excused. Three of these service members are female (37.5%) and five are male (62.5%).

among those detailed. Approximately 41% of those detailed were White, not Hispanic male service members, 29.7% of detailed service members were racial and/or ethnic Minority male service members, 7.3% of detailed service members were racial and/or ethnic Minority female service members, and 6.6% of impaneled service members were White, not Hispanic female service members. Race, ethnicity, and/or gender information was missing for 14.7% of service members detailed to courts-martial.

TABLE 2.14 IMPANELED DECISION BY RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS [11]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Impaneled	12 (21.1%)	17 (27.0%)	169 (47.2%)	127 (49.8%)	325 (44.3%)
Not Impaneled	45 (78.9%)	46 (73.0%)	189 (52.8%)	128 (50.2%)	408 (55.7%)
Total	57 (100%)	63 (100%)	358 (100%)	255 (100%)	733 (100%)

Table 2.14 shows White, not Hispanic female service members were impaneled at the lowest rate (21.1%), followed by racial and/or ethnic Minority female service members (27.0%). Male service members were impaneled at higher rates than female service members: 49.8% of racial and/or ethnic Minority male service members were impaneled and 47.2% of White, not Hispanic male service members were impaneled. The relationship in Table 2.11 is statistically significant (χ^2 = 24.49, df = 3, p < .05).

TABLE 2.15 RACE, ETHNICITY, AND GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	12	3.1
Racial and/or Ethnic Minority Female Service Members	17	4.3
White, not Hispanic Male Service Members	169	43.0
Racial and/or Ethnic Minority Male Service Members	127	32.3
Unknown/Missing	68	17.3
Total	393	100

Table 2.15 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were impaneled. This provides an understanding of the intersection of race and/or ethnicity with gender among those impaneled. Forty-three percent of impaneled service members were White, not Hispanic males, 32.3% of impaneled service members were racial and/or ethnic Minority male service members, 3.1% of impaneled service members were White, not Hispanic female service members, and 4.3% of impaneled service members were racial

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11   Table 2.14 excludes 126 service members with missing information about their race, ethnicity, and gender. Among this group, 68 (54.0%) of the service members were impaneled and 58 (46.0%) of the service members were not impaneled.

and/or ethnic Minority female service members. Table 2.15 shows 17.3% of service members impaneled were missing data on gender, race, and/or ethnicity.

TABLE 2.16 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[12]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Challenge for cause	29 (65.9%)	26 (57.8%)	107 (57.2%)	85 (68.0%)	247 (61.6%)
Peremptory challenge	6 (13.6%)	5 (11.1%)	36 (19.3%)	17 (13.6%)	64 (16.0%)
Randomization	5 (11.4%)	7 (15.6%)	32 (17.1%)	17 (13.6%)	61 (15.2%)
Other reason	4 (9.1%)	7 (15.6%)	12 (6.4%)	6 (4.8%)	29 (7.2%)
Total	44 (100%)	45 (100%)	187 (100%)	125 (100%)	401 (100%)

Table 2.16 shows the reasons for excusal among 401 service members who were not impaneled. There is not a statistically significant relationship between the reasons for excusal and race, ethnicity, and gender (χ^2 = 10.98, df = 9, p = .28). In addition, there is not a statistically significant relationship when only including for case challenges and peremptory challenges (χ^2 = 3.43, df = 3, p = .33).

MILITARY JUDGES

TABLE 2.17 MILITARY JUDGES' RACE

	Frequency	Percentage
White	41	85.4
Asian	4	8.3
Unknown/Missing	3	6.3
Total	48	100

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12   Table 2.16 excludes 58 individuals who were not impaneled and were missing information about their race, ethnicity, and gender. Among this group, 33 (56.9%) were excused by a challenge for cause, 12 (20.7%) were excused because of a peremptory challenge, 7 (12.1%) were excused through randomization, 5 (8.6%) were excused for some other reason, and 1 (1.7%) was missing information about the reason for being excused. Table 2.16 also excludes 7 individuals who were missing information about the reason for being excused. Among these 7 individuals, 1 was a White, not Hispanic female service member, 1 was a racial and/or ethnic Minority female service member, 2 were White, not Hispanic male service members, and 3 were racial and/or ethnic Minority male service members.

TABLE 2.18 MILITARY JUDGES' ETHNICITY

	Frequency	Percentage
Not Hispanic or Latino	46	95.8
Unknown/Missing	2	4.2
Total	48	100

TABLE 2.19 MILITARY JUDGES' GENDER

	Frequency	Percentage
Male	27	56.3
Female	19	39.6
Unknown/Missing	2	4.2
Total	48	100

Tables 2.17, 2.18, and 2.19 present information about the race, ethnicity, and gender of judges in the 48 Navy cases. A large majority of judges were White service members (85.4%), four judges were Asian service members (8.3%) and race data were missing for three judges (6.3%). Nearly all judges were not Hispanic; Hispanic ethnicity information was not available for two judges (4.2%). A majority of judges were male (56.3%); 39.6% of judges were female and gender information was not available for two judges (4.2%).

LEAD DEFENSE COUNSEL[13]

TABLE 2.20 LEAD DEFENSE COUNSEL RACE

	Frequency	Percentage
White	34	81.0
Black	2	4.8
Unknown/Missing	6	14.3
Total	42	100

TABLE 2.21 LEAD DEFENSE COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	4	9.5
Not Hispanic or Latino	32	76.2
Unknown/Missing	6	14.3
Total	42	100

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13 A total of 6 cases had civilian defense counsel or lead military defense counsel with demographics not known to the Services.

TABLE 2.22 LEAD DEFENSE COUNSEL GENDER

	Frequency	Percentage
Male	24	57.1
Female	12	28.6
Unknown/Missing	6	14.3
Total	42	100

Tables 2.20, 2.21, and 2.22 summarize race, ethnicity, and gender information for lead defense counsel in the 48 Navy cases. Race information was missing for 14.3% of lead defense counsel. A large majority of lead defense counsel were White personnel (81.0%) and 4.8% of lead defense counsel were Black personnel. Information about Hispanic ethnicity was missing for 14.3% of lead defense counsel. Nearly three-quarters (76.2%) of lead defense counsel were not Hispanic and 9.5% were Hispanic service members. Table 2.22 shows that 57.1% of lead defense counsel were male service members and 28.6% of lead defense counsel were female service members. Gender information was missing for 14.3% of lead defense counsel.

LEAD TRIAL COUNSEL

TABLE 2.23 LEAD TRIAL COUNSEL RACE

	Frequency	Percentage
White	37	77.1
Black	1	2.1
Asian	1	2.1
Multiple Races	2	4.2
Unknown/Missing	7	14.6
Total	48	100

TABLE 2.24 LEAD TRIAL COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	5	10.4
Not Hispanic or Latino	33	68.8
Unknown/Missing	10	20.8
Total	48	100

TABLE 2.25 LEAD TRIAL COUNSEL GENDER

	Frequency	Percentage
Male	34	70.8
Female	8	16.7
Unknown/Missing	6	12.5
Total	48	100

Tables 2.23, 2.24, and 2.25 present demographic information about lead trial counsel. Over three-quarters of lead trial counsel were White service members (77.1%), one lead trial counsel was a Black service member, one lead trial counsel was an Asian service member, two service members who were lead trial counsel identified as multi-racial, and information about race was missing for 14.6% of lead trial counsel. Over two-thirds of lead trial counsel were not Hispanic service members (68.8%) and 10.4% of lead trial counsel were Hispanic service members; information about Hispanic ethnicity was missing for 20.8% of lead trial counsel. Table 2.25 shows 70.8% of lead trial counsel were male service members, 16.7% were female service members, and 12.5% of lead trial counsel were missing information about their gender.

COMPARISONS

To place in context the demographic patterns of service members detailed to courts-martial and those impaneled, the analysis compared the demographic characteristics of those detailed and impaneled to the overall demographic characteristics of the Services. The demographic characteristics of the Navy for FY2022 are presented below, in Table 2.26. The data about race and ethnicity used to produce the values in Table 2.26 were provided by the Services. To create the two categories in Table 2.26, the following categories were combined to create the "racial and/or ethnic Minority Service Member" category: Hispanic, American Indian / Alaskan Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and Multi-Racial. The counts of "White, not Hispanic" category reported in Table 2.26 match the counts provided by the Services. Counts of people in the "unknown" race and "unknown" Hispanic ethnicity categories reported by the Services were excluded from the counts and from the calculation of percentages reported in Table 2.26. Information about gender in Table 2.26 was taken from the counts and percentages reported in the Department of Defense *2022 Demographics Profile of the Military Community* report (United States Department of Defense, n.d.). As noted above, the summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members.

TABLE 2.26 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	139,698	46.6
Racial and/or ethnic Minority Service Member	160,362	53.4
Total	300,060	100
Gender		
Male	269,712	79.3
Female	70,353	20.7
Total	340,065	100

Table 2.26 shows that 46.6% of active-duty personnel in the Navy in FY2022 were White, not Hispanic service members and 53.4% were racial and/or ethnic Minority service members. More than three-quarters of active-duty personnel were men (79.3%) and 20.7% were women.

TABLE 2.27 SERVICE MEMBERS' RACE AND ETHNICITY

	Detailed	Impaneled	Navy
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
White, not Hispanic Service Members	415 (56.6%)	181 (55.7%)	139,698 (46.6%)
Racial and/or Ethnic Minority Service Members	318 (43.3%)	144 (44.3%)	160,362 (53.4%)
Total	733 (100%)	325 (100%)	300,060 (100%)

Table 2.27 presents race and/or ethnicity information about those detailed to courts-martial, those impaneled, and the overall population of active duty personnel in the Navy. This table allows for an understanding of representation on details and panels in relation to the overall Navy demographics. Individuals with missing race and/or ethnicity data were excluded from the results in Table 2.27. The percent of detailed members who were racial and/or ethnic Minority service members (43.3%) less than their representation in the Navy (53.4%). A one-sample t-test was used to compare the percentage of those detailed who are racial and/or ethnic Minority service members to the representation of racial and/or ethnic Minority service members in the Navy. There is a statistically significant difference between the representation of racial and/or ethnic Minority service members on details and their representation in the Navy overall (t = -5.47, df = 732, p < .05). The percent of impaneled members who were racial and/or ethnic Minority service members (44.3%) is also lower than their representation in the Navy (53.4%). The one-sample t-test shows there is a statistically significant difference between the representation of racial and/or ethnic Minority service members on panels and their representation in the Navy (t = -3.30, df = 324, p < .05).

TABLE 2.28 SERVICE MEMBERS' GENDER

	Detailed	Impaneled	Navy
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
Male	691 (84.0%)	345 (90.8%)	269,712 (79.3%)
Female	132 (16.0%)	35 (9.2%)	70,353 (20.7%)
Total	823 (100%)	380 (100%)	340,065 (100%)

Table 2.28 presents gender information about those detailed to courts-martial, those impaneled, and the overall population of the Navy. Like Table 2.27, this table allows for an understanding of representation on details and panels in relation to the overall Navy demographics. Individuals with missing data about their gender were excluded from the results in Table 2.28. Table 2.28 shows females are underrepresented among those detailed to courts-martial compared to their representation in the Navy (16.0% of service members detailed and 20.7% in the Navy). A one-sample t-test was used to compare the percentage of those detailed who are female service members to the representation of female service members in the Navy. The difference between the representation of female service members on details and their representation in the Navy overall is statistically significant (t = -3.64 df = 822, p < .05). In terms of representation on panels, female service members are underrepresented compared to their overall representation in the Navy (9.2% of panels and 20.7% in the Navy). There is a statistically significant difference between the representation of females on panels and their representation in the Navy (t = -7.74 df = 379, p < .05).

SECTION 3. 48 CONTESTED SEXUAL ASSAULT COURTS-MARTIAL

Information in section 3 summarizes the *characteristics of details and panels*. The analyses in section 2 grouped all individuals together and ignored the specific detail and panel to which each individual was assigned. Section 3 examines the demographic characteristics of each detail and each panel. This approach provides the opportunity to study and summarize the characteristics of each detail and panel, which gets overlooked when individuals from all details and panels are grouped together. Section 3 provides an understanding of the variation that exists within and across the details and panels.

TABLE 3.1. NUMBER OF MEMBERS DETAILED TO INDIVIDUAL COURTS-MARTIAL

	Frequency	Percentage
8 Members	1	2.1
11 Members	1	2.1
14 Members	1	2.1
15 Members	5	10.4
16 Members	3	6.3
17 Members	16	33.3
18 Members	6	12.5
19 Members	5	10.4
20 Members	3	6.3
21 Members	1	2.1
22 Members	1	2.1
23 Members	2	4.2
25 Members	1	2.1
26 Members	1	2.1
28 Members	1	2.1
Total	48	100

Table 3.1 presents information about the number of members detailed to the cases. The majority of cases (35 / 48; 72.9%) had between 15 service members and 19 service members detailed to the court-martial. One case involved a detail of 8 service members and another involved a detail of 28 service members.

TABLE 3.2 NUMBER OF MEMBERS IMPANELED

	Frequency	Percentage
4 Members	2	4.2
8 Members	35	72.9
9 Members	7	14.6
10 Members	2	4.2
11 Members	2	4.2
Total	48	100

Table 3.2 describes the number of members impaneled in each case. Nearly three-quarters of cases involved panels of 8 service members (35 / 48; 72.9%); the next most frequently occurring panel size was 9 service members, occurring in 7 out of 48 cases (14.6%).

RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS IN 48 SEXUAL ASSAULT COURTS-MARTIAL

**TABLE 3.3 REPRESENTATION OF RACE AND ETHNICITY OF
SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Service Members	56.6%	14.1%	25.0%	80.0%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Service Members	43.4%	14.1%	20.0%	75.0%

FIGURE 3.1

Race/Ethnicity Composition of Details: 124 Army Cases
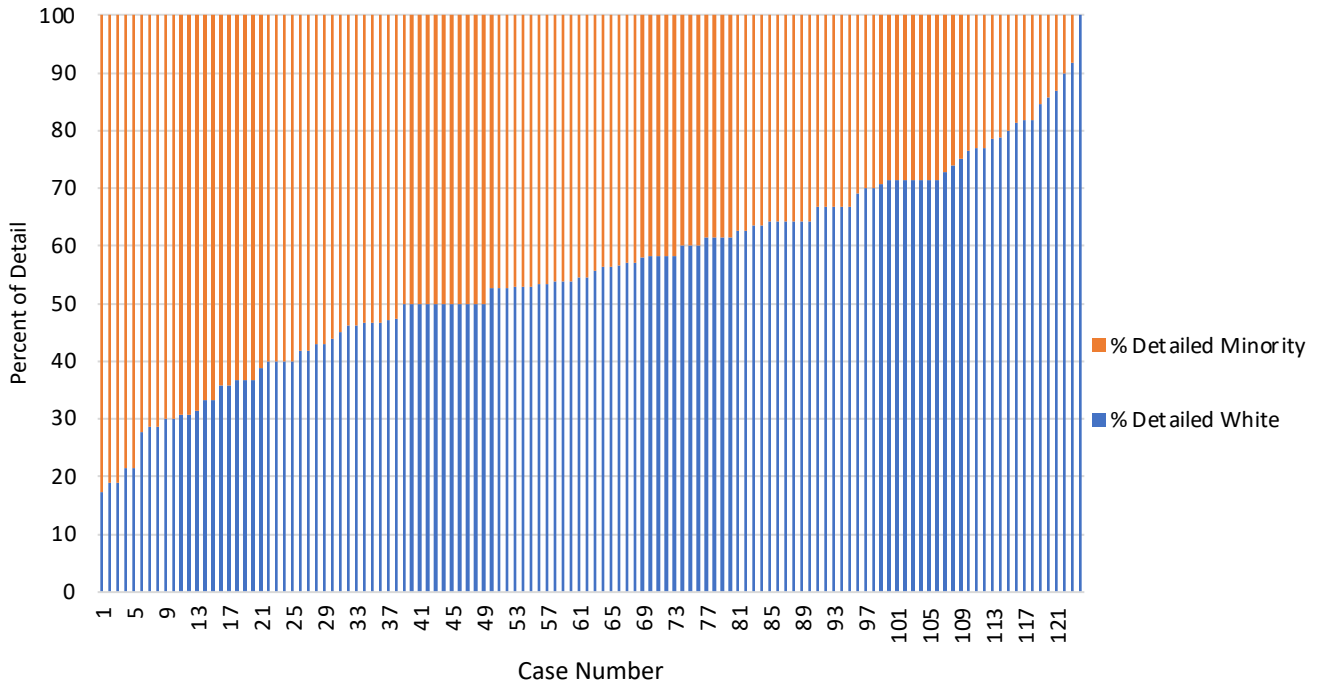
Table 3.3 presents the average percentage of details that were comprised of White, not Hispanic service members and the average percentage of details that were comprised of racial and/or ethnic Minority service members. These

represent averages for details associated with the 48 Navy cases. The 126 individual service members who were missing data on their race and/or ethnicity were excluded from the results in Table 3.3. Table 3.3 shows that, across the 48 cases, the average percent of detailed members that were White, not Hispanic service members was 56.6%; the average percent of detailed members that were racial and/or ethnic Minority service members was 43.4%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of details comprised of racial and/or ethnic Minority service members (43.4%) and the representation of racial and/or ethnic Minority service members in the Navy (53.4%). The difference is statistically significant (t = -4.94, df = 47, p < .05). This pattern is consistent with the pattern of results in Table 2.27.

Figure 3.1 illustrates the composition of each detail in terms of race and ethnicity. The details show the following patterns:

- In 32 of the 48 cases (66.6% of cases), White, not Hispanic service members made up more than half of the detailed members.

- In 14 of the 48 cases (29.2%), racial and/or ethnic Minority service members made up more than half of the detailed members.

- There were 2 cases (4.2%) in which half of the detail was comprised of White, not Hispanic service members and half of the detail was comprised of racial and/or ethnic Minority service members.

- In 14 of the 48 cases (29.2%), more than two-thirds of the detailed members were White, not Hispanic service members.

- In 3 of the 48 cases (6.3%), fewer than one-third of the detailed members were White, not Hispanic service members.

RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS IN 48 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.4 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Panel Comprised of White, not Hispanic Service Members	54.3%	20.3%	0%	100%
Percent of Panel Comprised of Racial and/or Ethnic Minority Service Members	45.7%	20.3%	0%	100%

FIGURE 3.2
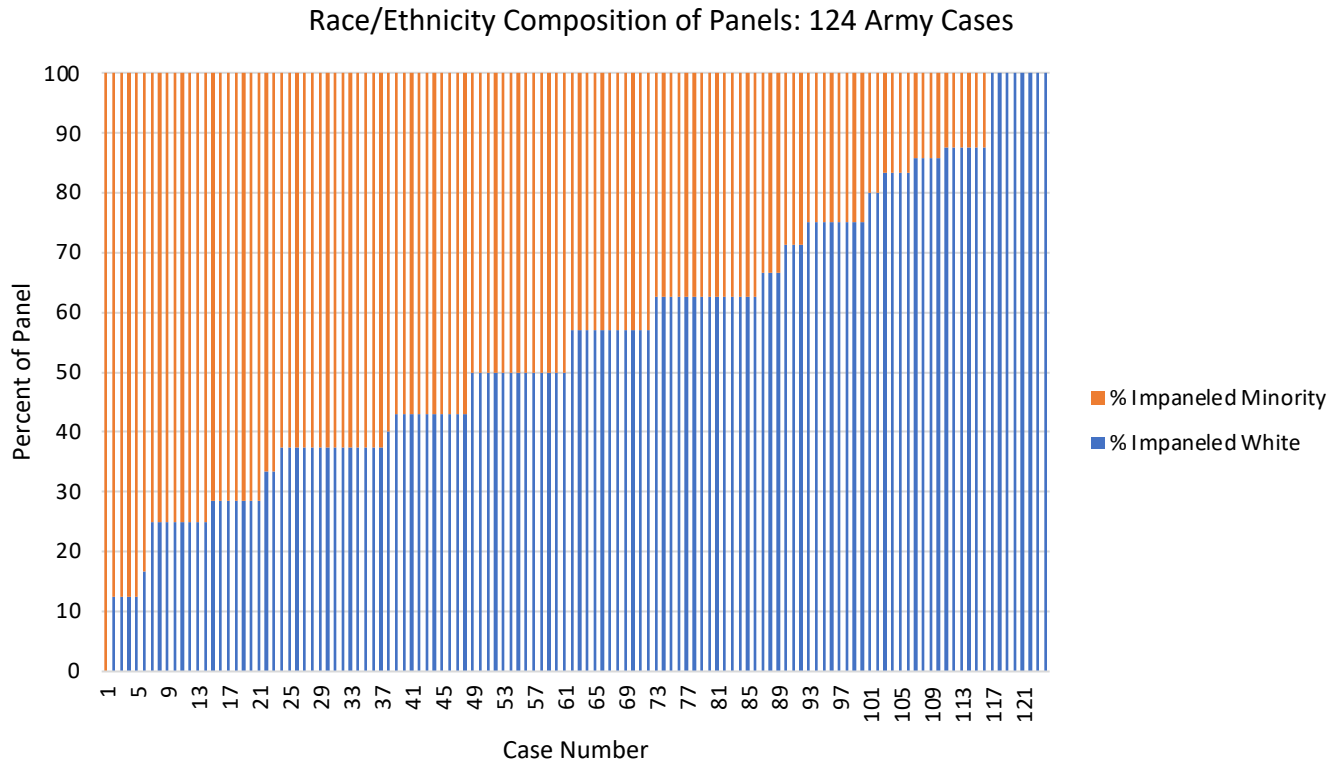
Race/Ethnicity Composition of Panels: 124 Army Cases

Table 3.4 presents the average percentage of panels that were comprised of White, not Hispanic service members and the average percentage of panels that were comprised of racial and/or ethnic Minority service members. These represent averages for panels associated with the 124 Army cases. The 68 individual service members who were impaneled and missing data on their race and/or ethnicity were excluded from the results in Table 3.4. Table 3.4 shows that, across the 48 panels, the average percent of panels that were comprised of White, not Hispanic service members was 54.3%, the average percent of panels that were comprised of racial and/or ethnic Minority service members was 45.7%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of panels comprised of racial and/or ethnic Minority service members (45.7%) and the representation of racial and/or ethnic Minority service members in the Navy (53.4%). The difference is statistically significant (t = -2.64, df = 47, p < .05). This pattern is consistent with the pattern of results in Table 2.27.

Figure 3.2 illustrates the composition of each panel in terms of race and ethnicity. The panels show the following patterns:

- In 26 of 48 panels (54.2%), more than half of the panel was comprised of White, not Hispanic service members, including 1 panel in which all members were White, not Hispanic service members.

- In 19 of 48 panels (39.6%), more than half of the panel was comprised of racial and/or ethnic Minority service members, including 1 panel in which all members were racial and/or ethnic Minority service members.

- There were 3 panels (6.3%) in which half of the detail was comprised of White, not Hispanic service members and half of the detail was comprised of racial and/or Minority service members.

**TABLE 3.5 REPRESENTATION OF GENDER OF SERVICE
MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of Female Service Members	16.2%	10.2%	0%	40.0%
Percent of Detailed Members Comprised of Male Service Members	83.8%	10.2%	60.0%	100%

FIGURE 3.3

Gender Composition of Details: 124 Army Cases
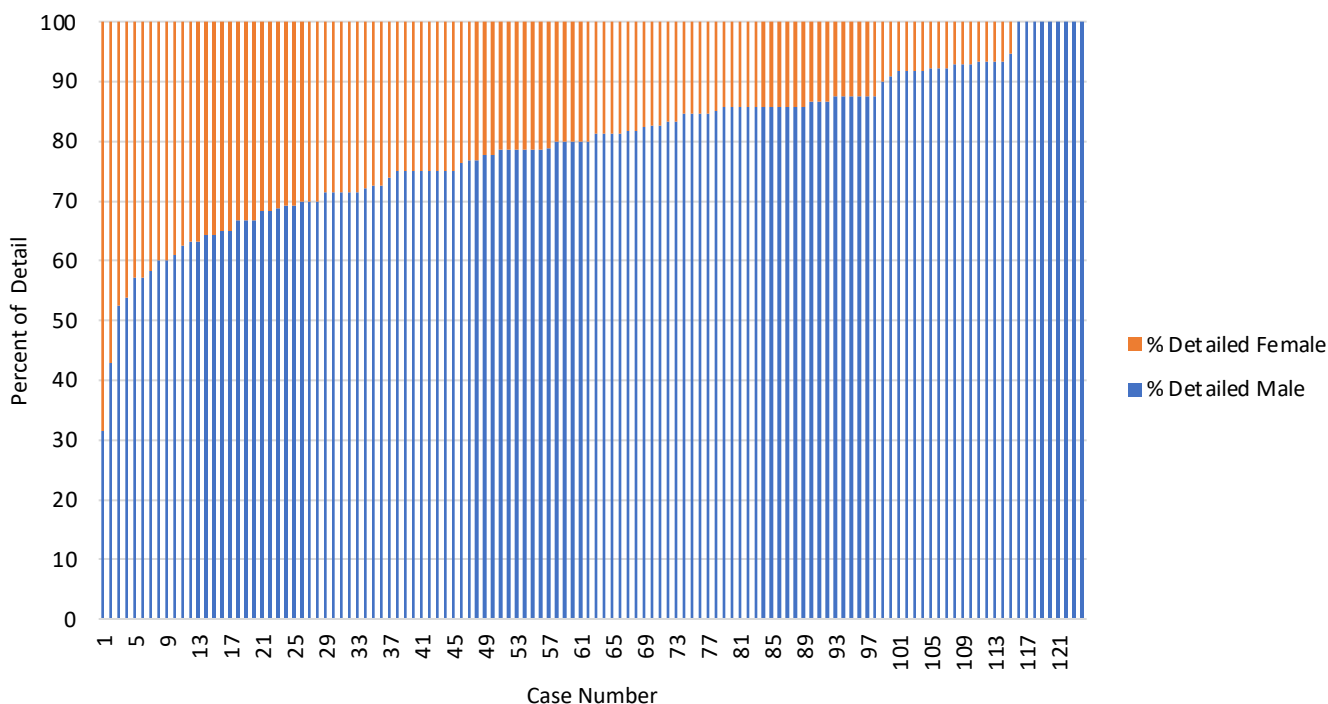
Table 3.5 shows that, across the 48 panels, the average percent of details that were comprised of female service members was 16.2%, the average percent of detailed members comprised of male service members was 83.8%. The 36 individual service members who were missing data on their gender were excluded from the results in Table 3.5. A one-sample t-test shows the average percent of details comprised of female service members (16.2%) is less than the representation of females in the Navy (20.7%); this difference is statistically significant ($t = -3.07$, $df = 47$, $p < .05$). This pattern is consistent with results reported in Table 2.28. Figure 3.3 shows the representation of male service members and female service members on each detail.

TABLE 3.6 REPRESENTATION OF GENDER OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of Female Service Members	8.9%	10.1%	0%	37.5%
Percent of Impaneled Members Comprised of Male Service Members	91.1%	10.1%	62.5%	100%

FIGURE 3.4

Gender Composition of Panels: 124 Army Cases
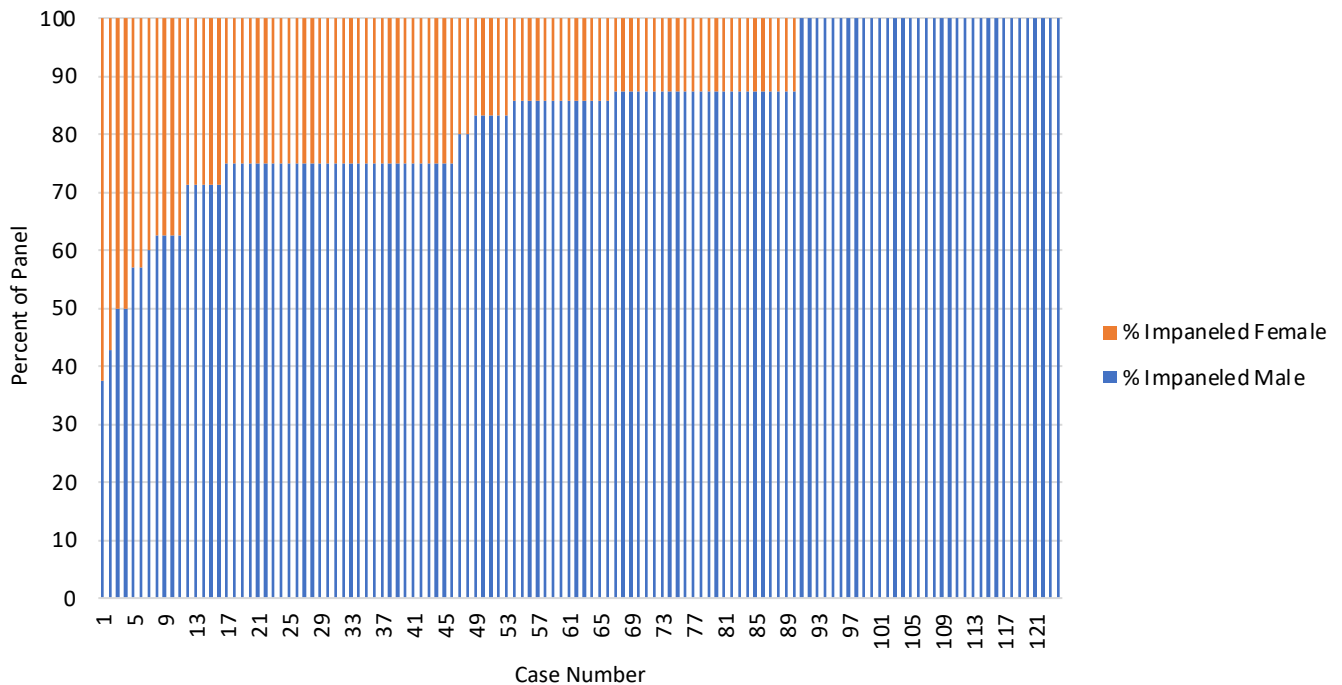
Table 3.6 shows that, across the 48 panels, the average percent of panels that were comprised of female service members was 8.9%, the average percent of panels comprised of male service members was 91.1%. The 13 service members who were impaneled and were missing data on their gender were excluded from the results in Table 3.6. A one-sample t-test shows the average percent of panels comprised of female service members (8.9%) is statistically different from the representation of females in the Navy (20.7%) (t = -8.07, df = 48, p < .05). This pattern is consistent with results reported in Table 2.28. Figure 3.4 shows the representation of male service members and female service members on each panel.

TABLE 3.7 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED

	Accused – White, not Hispanic	Accused – Minority Service Member
Average Percent of Panel Comprised of White, not Hispanic Service Members	52.2% (SD = 18.4)	52.7% (SD = 19.7)

Five cases with missing racial and/or ethnic demographic information about the accused are excluded from the results in Table 3.7. There were 12 cases in which a White, not Hispanic service member was the accused, so caution is required when drawing conclusions about the findings in Table 3.7. In a small sample of cases, results and conclusions may not be accurate when extended to larger numbers of cases. Table 3.7 shows that in cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 52.2% White, not Hispanic service members and 47.8% racial and/or ethnic Minority service members (Table 3.7). In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 52.7% White, not Hispanic service members and 47.3% racial and/or ethnic Minority service members. This difference in average percentages across race/ethnicity of the accused service member is small and is not statistically significant ($t = -.07$, $df = 41$, $p = .95$).

TABLE 3.8. REPRESENTATION OF GENDER OF SERVICE MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED

	Accused – White, not Hispanic	Accused – Minority Service Member
Average Percent of Panel Comprised of Male Service Members	90.3 (SD = 8.5)	91.1 (SD = 11.3)

Five cases with missing racial and/or ethnic demographic information about the accused are excluded from the results in Table 3.7. There were 12 cases in which a White, not Hispanic service member was the accused, so caution is required when drawing conclusions about the findings in Table 3.7. In a small sample of cases, results and conclusions may not be accurate when extended to larger numbers of cases. In cses with an accused service member who was White, not Hispanic, the typical panel was comprised of 90.3% male service members and 9.7% female service members. In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 91.1% male service members and 8.9% female service members. This difference in average percentages across race and/or ethnicity of the accused service member is not statistically significant ($t = -.22$, $df = 41$, $p = .83$).

The demographic composition of details and panels were not compared across all officer panels and enlisted panels because there were only four all officer panels in the Navy data.

**TABLE 3.9 REPRESENTATION OF RACE, ETHNICITY, AND GENDER
OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Female Service Members	8.1%	7.6%	0%	37.5%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Female Service Members	8.6%	7.8%	0%	33.3%
Percent of Detailed Members Comprised of White, not Hispanic Male Service Members	48.5%	14.5%	18.2%	73.3%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Male Service Members	34.8%	14.1%	8.0%	62.5%

Table 3.9 shows that White, not Hispanic female service members and racial and/or ethnic Minority female service members represent the lowest and similar average percentages of details (8.1% and 8.6%). White, not Hispanic male service members represent the largest average percentage of details (48.5%), followed by racial and/or ethnic Minority male service members (34.8%).

**TABLE 3.10 REPRESENTATION OF RACE, ETHNICITY, AND
GENDER OF SERVICE MEMBERS IMPANELED**

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of White, not Hispanic Female Service Members	3.5%	6.2%	0%	16.7%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Female Service Members	5.2%	7.7%	0%	22.2%
Percent of Impaneled Members Comprised of White, not Hispanic Male Service Members	50.8%	19.9%	0%	87.5%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Male Service Members	40.5%	21.5%	0%	100%

Table 3.10 shows that White, not Hispanic female service members represent the smallest average percentage of panels (3.5%) followed by racial and/or ethnic Minority female service members (5.2%). White, not Hispanic male service members represent the largest average percentage of panels (50.8%), followed by racial and/or ethnic Minority male service members (40.5%).

REFERENCES

United States Department of Defense. (n.d.). *2022 Demographics: Profile of the Military Community.* United States Department of Defense. https://download.militaryonesource.mil/ 12038/MOS/Reports/2022-demographics-report.pdf.

Rose, M.R. (2021). *Final Report on New Jersey's Empirical Study of Jury Selection Practices and Jury Representativeness: Prepared for the New Jersey Supreme Court.* https://www.njcourts.gov/sites/default/files/jurors/maryrosefinalreport.pdf

Rose, M.R., & Abramson, J.B. (2011). Date, race, and the courts: Some lessons on empiricism from jury representation cases. *Michigan State Law Review, 2011*, 912-963.

Rose, M.R., Casarez, R.S., & Gutierrez, C.M. (2018). Jury pool underrepresentation in the modern era: Evidence from federal courts. *Journal of Empirical Legal Studies, 15*, 378-405.

APPENDICES

Two appendices are presented below to show: 1) the racial and ethnic demographic information about detailed service members that was provided by the Services and 2) the way this demographic information was used to create two groups of service members: White, not Hispanic service members and racial and/or ethnic Minority service members.

Appendix A shows information about race and about ethnicity combined into a single variable. This information about race and about ethnicity was provided separately by the Services, and we combined these together to demonstrate the intersection of race and ethnicity together. This information allowed for the creation of a simplified variable with the two primary demographic categories of interest: White, not Hispanic service members and racial and/or ethnic Minority service members. Appendix B shows how each combination was recoded into two race and ethnicity categories. Those two categories were used in the analyses reported above.

Appendix A

Detailed service members' race and ethnicity information provided by the Services, combined into a single variable.

	Frequency	Percent
A and C Other - Group Not on List	2	0.2
A and E Latin Amer-Hispanic Descent	1	0.1
A and E Not Assoc with any Group	9	1.0
A and E Other Hispanic Descent	3	0.3
A and E US/Canadian Indian Descent	4	0.5
A, B, C and E Vietnamese	1	0.1
A, C, and D Not Assoc with any Group	1	0.1
A, B and E Not Assoc with any Group	2	0.2
A, C and E Puerto Rican	1	0.1
A, D and E Not Assoc with any Group	1	0.1
Am Indian or Alaskan Native(A) Latin Amer-Hispanic Descent	1	0.1
Am Indian or Alaskan Native(A) Mexican	1	0.1
Am Indian or Alaskan Native(A) Not Assoc with any Group	6	0.7
Am Indian or Alaskan Native(A) Not_Hispanic_Latino	1	0.1
Am Indian or Alaskan Native(A) Unknown	1	0.1
Am Indian or Alaskan Native(A) US/Canadian Indian	7	0.8
AMERICAN INDIAN OR ALASKA NATIVE Not_Hispanic_Latino	2	0.2
Asian Not_Hispanic_Latino	1	0.1
Asian(B) Chinese	3	0.3
Asian(B) Filipino	18	2.1
ASIAN(B) Filipino	1	0.1
Asian(B) Korean	2	0.2
Asian(B) Not Assoc with any Group	6	0.7
Asian(B) Other - Group Not on List	1	0.1

Asian(B) Other Hispanic Descent	5	0.6
Asian(B) Other Pacific Island Descent	1	0.1
Asian(B) Vietnamese	2	0.2
B and C Not Assoc with any Group	1	0.1
B and D Filipino	2	0.2
B and D Latin Amer-Hispanic Descent	1	0.1
B and E Filipino	1	0.1
B and E Japanese	1	0.1
B and E Not Assoc with any Group	1	0.1
B, C and D Unknown	1	0.1
Black or African American(C) Asian Indian	1	0.1
Black or African American(C) Latin Amer-Hispanic Descent	1	0.1
Black or African American(C) Not Assoc with any Group	105	12.2
Black or African American(C) Other - Group Not on List	9	1.0
Black or African American(C) Other Hispanic Descent	3	0.3
Black or African American(C) Puerto Rican	2	0.2
Black or African American(C) Unknown	2	0.2
Black or African American(C) US/Canadian Indian Descent	1	0.1
BLACK_OR_AFRICAN_AMERICAN Not_Hispanic_Latino	2	0.2
BLACK_OR_AFRICAN_AMERICAN Unknown	1	0.1
C and D Mexican	1	0.1
C and D Other - Group Not on List	1	0.1
C and E Not Assoc with any Group	2	0.2
C and E Other - Group Not on List	4	0.5
C, D and E Not Assoc with any Group	1	0.1
D and E Other - Group Not on List	1	0.1
Declined to Respond(F) Latin Amer-Hispanic Descent	1	0.1
Declined to Respond(F) Mexican	3	0.3
Declined to Respond(F) Not Assoc with any Group	8	0.9
Declined to Respond(F) Other - Group Not on List	7	0.8
Declined to Respond(F) Other Asian	2	0.2
Declined to Respond(F) Other Hispanic Descent	5	0.6
Declined to Respond(F) Puerto Rican	1	0.1
Declined to Respond(F) Unknown	6	0.7
Declined to Respond(F) US/Canadian Indian Descent	1	0.1
Deline to Respond (F) Mexican	2	0.2
Deline to Respond (F) Not Assoc with any Group	4	0.5
Deline to Respond (F) Other - Group Not on List	1	0.1
Deline to Respond (F) Other Hispanic Descent	1	0.1
Deline to Respond (F) Unknown	1	0.1
Hawaiian or Pacific Island(D) Filipino	3	0.3

Hawaiian or Pacific Island(D) Guamanian	2	0.2
Hawaiian or Pacific Island(D) Not Assoc with any Group	5	0.6
Native Hawaiian or Other Pacific Island Hispanic_Latino	1	0.1
Other_Hispanic_Descent HISPANIC_OR_LATINO	1	0.1
Unknown Unknown	4	0.5
UNKNOWN Unknown	20	2.3
UNKNOWN UNKNOWN	13	1.5
White Hispanic_Latino	2	0.2
WHITE HISPANIC_OR_LATINO	1	0.1
WHITE Not _Hispanic or Latino	1	0.1
White Not Hispanic_Latino	1	0.1
White Not_Hispanic_Latino	12	1.4
WHITE Not_Hispanic_Latino	3	0.3
WHITE NOT_HISPANIC_OR LATINO	3	0.3
WHITE Unknown	1	0.1
WHITE UNKNOWN	1	0.1
White(E) Cuban	2	0.2
White(E) Hispanic or Latino	2	0.2
White(E) HISPANIC_OR_LATINO	1	0.1
White(E) Latin Amer-Hispanic Descent	15	1.7
White(E) Mexican	7	0.8
White(E) Not Assoc with any Group	395	46.0
White(E) Other - Group Not on List	42	4.9
White(E) Other - Hispanic Descent	4	0.5
White(E) Other Asian	1	0.1
White(E) Other Hispanic Descent	17	2.0
White(E) Puerto Rican	7	0.8
White(E) Unknown	18	2.1
White(E) US/Canadian Indian Descent	2	0.2
Total	859	100

Appendix B

Detailed service members' race and ethnicity variable recoded into an aggregated measure with three categories.

	White, not Hispanic Service Members	Racial and/ or Ethnic Minority Service Members	Unknown/ Missing	Total
A and C Other - Group Not on List	0	2	0	2
A and E Latin Amer-Hispanic Descent	0	1	0	1
A and E Not Assoc with any Group	0	9	0	9
A and E Other Hispanic Descent	0	3	0	3
A and E US/Canadian Indian Descent	0	4	0	4
A, B, C and E Vietnamese	0	1	0	1
A, C, and D Not Assoc with any Group	0	1	0	1
A, B and E Not Assoc with any Group	0	2	0	2
A, C and E Puerto Rican	0	1	0	1
A, D and E Not Assoc with any Group	0	1	0	1
Am Indian or Alaskan Native(A) Latin Amer-Hispanic Descent	0	1	0	1
Am Indian or Alaskan Native(A) Mexican	0	1	0	1
Am Indian or Alaskan Native(A) Not Assoc with any Group	0	6	0	6
Am Indian or Alaskan Native(A) Not_Hispanic_Latino	0	1	0	1
Am Indian or Alaskan Native(A) Unknown	0	1	0	1
Am Indian or Alaskan Native(A) US/Canadian Indian Descent	0	7	0	7
AMERICAN INDIAN OR ALASKA NATIVE Not_Hispanic_Latino	0	2	0	2
Asian Not_Hispanic_Latino	0	1	0	1
Asian(B) Chinese	0	3	0	3
Asian(B) Filipino	0	18	0	18
ASIAN(B) Filipino	0	1	0	1
Asian(B) Korean	0	2	0	2
Asian(B) Not Assoc with any Group	0	6	0	6
Asian(B) Other - Group Not on List	0	1	0	1
Asian(B) Other Hispanic Descent	0	5	0	5
Asian(B) Other Pacific Island Descent	0	1	0	1
Asian(B) Vietnamese	0	2	0	2
B and C Not Assoc with any Group	0	1	0	1
B and D Filipino	0	2	0	2
B and D Latin Amer-Hispanic Descent	0	1	0	1
B and E Filipino	0	1	0	1
B and E Japanese	0	1	0	1
B and E Not Assoc with any Group	0	1	0	1

B, C and D Unknown	0	1	0	1
Black or African American(C) Asian Indian	0	1	0	1
Black or African American(C) Latin Amer-Hispanic Descent	0	1	0	1
Black or African American(C) Not Assoc with any Group	0	105	0	105
Black or African American(C) Other - Group Not on List	0	9	0	9
Black or African American(C) Other Hispanic Descent	0	3	0	3
Black or African American(C) Puerto Rican	0	2	0	2
Black or African American(C) Unknown	0	2	0	2
Black or African American(C) US/Canadian Indian Descent	0	1	0	1
BLACK_OR_AFRICAN_AMERICAN Not_Hispanic_Latino	0	2	0	2
BLACK_OR_AFRICAN_AMERICAN Unknown	0	1	0	1
C and D Mexican	0	1	0	1
C and D Other - Group Not on List	0	1	0	1
C and E Not Assoc with any Group	0	2	0	2
C and E Other - Group Not on List	0	4	0	4
C, D and E Not Assoc with any Group	0	1	0	1
D and E Other - Group Not on List	0	1	0	1
Declined to Respond(F) Latin Amer-Hispanic Descent	0	1	0	1
Declined to Respond(F) Mexican	0	3	0	3
Declined to Respond(F) Not Assoc with any Group	0	0	8	8
Declined to Respond(F) Other - Group Not on List	0	0	7	7
Declined to Respond(F) Other Asian	0	2	0	2
Declined to Respond(F) Other Hispanic Descent	0	5	0	5
Declined to Respond(F) Puerto Rican	0	1	0	1
Declined to Respond(F) Unknown	0	0	6	6
Declined to Respond(F) US/Canadian Indian Descent	0	1	0	1
Deline to Respond (F) Mexican	0	2	0	2
Deline to Respond (F) Not Assoc with any Group	0	0	4	4
Deline to Respond (F) Other - Group Not on List	0	0	1	1
Deline to Respond (F) Other Hispanic Descent	0	1	0	1
Deline to Respond (F) Unknown	0	0	1	1
Hawaiian or Pacific Island(D) Filipino	0	3	0	3
Hawaiian or Pacific Island(D) Guamanian	0	2	0	2
Hawaiian or Pacific Island(D) Not Assoc with any Group	0	5	0	5
Native Hawaiian or Other Pacific Island Hispanic_Latino	0	1	0	1
Other_Hispanic_Descent HISPANIC_OR_LATINO	0	1	0	1
Unknown Unknown	0	0	4	4
UNKNOWN Unknown	0	0	20	20
UNKNOWN UNKNOWN	0	0	13	13
White Hispanic_Latino	0	2	0	2

WHITE HISPANIC_OR_LATINO	0	1	0	1
WHITE Not _Hispanic or Latino	1	0	0	1
White Not Hispanic_Latino	1	0	0	1
White Not_Hispanic_Latino	12	0	0	12
WHITE Not_Hispanic_Latino	3	0	0	3
WHITE NOT_HISPANIC_OR LATINO	3	0	0	3
WHITE Unknown	0	0	1	1
WHITE UNKNOWN	0	0	1	1
White(E) Cuban	0	2	0	2
White(E) Hispanic or Latino	0	2	0	2
White(E) HISPANIC_OR_LATINO	0	1	0	1
White(E) Latin Amer-Hispanic Descent	0	15	0	15
White(E) Mexican	0	7	0	7
White(E) Not Assoc with any Group	395	0	0	395
White(E) Other - Group Not on List	0	0	42	42
White(E) Other - Hispanic Descent	0	4	0	4
White(E) Other Asian	0	1	0	1
White(E) Other Hispanic Descent	0	17	0	17
White(E) Puerto Rican	0	7	0	7
White(E) Unknown	0	0	18	18
White(E) US/Canadian Indian Descent	0	2	0	2
Total	415	318	126	859

APPENDIX H. DEMOGRAPHIC DATA ON MILITARY COURTS-MARTIAL PANELS (MARINE CORPS)

Overview of Marine Corps Case-Level Data
June 18, 2024

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INTRODUCTION

The purpose of this report is to summarize information about the race, ethnicity, and gender of service members detailed to courts-martial and impaneled in a sample of Marine Corps cases. The complete research methods used to collect the data presented here are described in the consolidated DAC-IPAD report that describes the larger project within which this report is imbedded.

Section 1 presents information about 39 contested sexual assault courts-martial, including demographic information of the accused service members, case outcomes, and the type of forum requested. Section 2 summarizes information about service members detailed in the case, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented in section 2 describe individuals involved in the cases and are aggregated together. In other words, all individuals from the cases are grouped together. Section 3 summarizes the demographic characteristics of the specific details and panels.

The research questions to be answered with the analyses and results described below are:

1. What are the representations of white, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do the representations in questions #1 and #2 compare to their overall representations in the Marine Corps?

The analyses and results described in section 2 and section 3 of this report address the core research questions.

Section 1. 39 Contested Sexual Assault Courts-Martial

TABLE 1.1 CASE FISCAL YEAR

	Frequency	Percentage
2021	27	69.2
2022	12	30.8
Total	39	100

TABLE 1.2 GENDER OF ACCUSED

	Frequency	Percentage
Male	39	100
Total	39	100

TABLE 1.3 RACE OF ACCUSED

	Frequency	Percentage
White	28	71.8
Black	10	25.6
Asian or Pacific Islander	1	2.6
Total	39	100

TABLE 1.4 ETHNICITY OF ACCUSED

	Frequency	Percentage
Hispanic or Latino	13	33.3
Not Hispanic or Latino	25	64.1
Unknown/Missing	1	2.6
Total	39	100

TABLE 1.5 RACE AND ETHNICITY OF ACCUSED AGGREGATED INTO TWO CATEGORIES

	Frequency	Percentage
White, not Hispanic	16	41.0
Racial and/or Ethnic Minority	23	59.0
Total	39	100

TABLE 1.6 RANK OF ACCUSED

	Frequency	Percentage
Enlisted	38	97.4
Officer	1	2.6
Total	39	100

TABLE 1.7 CASE ADJUDICATION ON ARTICLE 120 OFFENSE

	Frequency	Percentage
Acquitted	29	74.4
Guilty	10	25.6
Total	39	100

TABLE 1.8 IF GUILTY OF ARTICLE 120 OFFENSE, GUILTY OF PENETRATIVE OFFENSE

	Frequency	Percentage
Yes	7	70
No	3	30
Total	10	100

TABLE 1.9 FORUM SELECTION BY ENLISTED ACCUSED[1]

	Frequency	Percentage
Requested an enlisted panel	38	100
Requested an all officer panel	0	0
Total	38	100

TABLE 1.10 THE CASE INVOLVED AN ALL OFFICER PANEL[2]

	Frequency	Percentage
Yes	1	2.6
No	38	97.4
Total	39	100

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1   Enlisted accused may select either an enlisted or officer panel.

2   Officers must be tried by an officer panel. There was one officer accused and no enlisted accused who selected an officer panel.

Section 2. Individuals within 39 Contested Sexual Assault Courts-Martial

The information in section 2 describes the service members detailed in the cases, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented here about individuals involved in the cases are derived from the set of 39 cases and are aggregated together. In other words, the information in this section groups together all individuals regardless of the case in which they were involved. Individuals are the unit of analysis.

To reiterate, the research questions to be answered through the analyses described in section 2 and in section 3 are:

1. What are the representations of White, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do those representations in questions #1 and #2 compare to their overall representations in the Marine Corps?

Ideally, question #3 would utilize, as a point of comparison, the representation of demographic groups within specific units or on the installations from which the details were selected, but these more specific unit and installation demographic data were not available. The alternative is to compare the representations of demographic characteristics on details and panels to the overall representations in the Marine Corps as a whole. It is important to note that the analysis in section 2 groups all individuals in the sample of cases together and does not examine the distinct details and distinct panels. Thus, section 2 does not provide insights into the composition of individual details and individual panels. Section 3 entails an analysis of individuals assigned to the specific details and specific panels.

The descriptive information in section 2 reports the number and percentage of individuals with missing data on their race and/or ethnicity and gender. The purpose of presenting the counts and percentages of missing data is to provide complete information about the data that were collected, including cases with missing data. Cases with missing data were excluded from analyses that estimated differences between groups and that involved tests of statistical significance. Missing data on race, ethnicity, and gender presents analytic challenges because excluding cases with missing data may generate patterns of results and statistical tests that are biased. Imputing missing data for race, ethnicity, and gender presents challenges because commonly used imputation methods require additional information that is not available in the current project (see also Rose, 2021; Rose, Casarez, and Gutierrez, 2018). The challenges of missing demographic data that are unique to studies of jury composition have been described by Rose and Abramson (2011) (see also Rose, 2021; Rose et al., 2018). Missing demographic data for potential jurors and those selected to serve on juries in the civilian criminal justice system is not an uncommon problem (Rose & Abramson, 2011; Rose, Casarez, & Gutierrez, 2018). Rose et al. (2018) describe the assumptions associated with two methods of handling missing demographic data: 1) exclude cases with missing demographic data from analyses and 2) use the total numbers of cases, including those with missing data, as the denominator in calculations of proportions and percentages. When cases with missing data are excluded from analyses, it is assumed that missing data are distributed randomly across different demographic groups, such as men and women, or Hispanic and not Hispanic individuals. This assumption implies there are no patterns to the missing data that would bias results. An alternative approach, and one that includes cases with missing data, is to include all cases in the denominator when calculating proportions and percentages. The assumption with this approach is that no cases with missing data belong to the other demographic groups of interest, such as men and women, or Hispanic and not Hispanic

individuals. According to Rose et al. (2018, p. 393), "this approach generates under-representation levels that are at their maximum." Rose (2021), Rose and Abramson (2011), and Rose et al. (2018) discuss the way survey designs used as part of civilian jury selection processes may produce missing data that are different for Hispanic and not Hispanic individuals and how this may impact results and conclusions about jury composition. It is not possible for the current project to understand how the processes of recording the race, ethnicity, and gender of service members may generate patterns of missing data that are unevenly distributed across race, ethnicity, and gender. For this reason and to avoid producing estimates of underrepresentation that are at their maximum, we exclude individuals with missing data from analyses.

TABLE 2.1 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS[3]

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	98,495	56.9%
Racial and/or ethnic Minority Service Member	74,575	43.1%
Total	173,070	100%
Gender		
Male	158,137	90.6%
Female	16,440	9.4%
Total	174,577	100%

Table 2.1 shows 56.9% of active duty personnel in the Marine Corps in FY 2022 were White, not Hispanic service members and 43.1% of active duty personnel were racial and/or ethnic Minority service members. Men comprised 90.6% of active duty personnel and 9.4% of active duty personnel were female.

TABLE 2.2 DETAILED SERVICE MEMBERS' RACE5

	Frequency	Percentage
White	490	74.1
Black	69	10.4
Asian	23	3.5
Asian or Pacific Islander	1	0.2
Native Hawaiian or Other Pacific Islander	10	1.5
American Indian or Alaskan Native	8	1.2
Unknown/Missing[4]	60	9.1
Total	661	100

3　Data in Table 2.1 about race and ethnicity were provided by the Services and are for FY 2022. Race and/or ethnicity data listed as "unknown" (n = 1,507, 0.9%) were excluded from counts used to calculate percentages in Table 2.1. Data for gender in Table 2.1 were obtained from the Department of Defense *2022 Demographics Profile of the Military Community* (see Table, 2.13, p. 19; United States Department of Defense, n.d.).

4　This includes two individuals with race listed as "Hispanic."

TABLE 2.3 DETAILED SERVICE MEMBERS' ETHNICITY[5]

	Frequency	Percentage
Hispanic or Latino	127	19.2
Not Hispanic or Latino	421	63.7
Unknown/Missing	113	17.1
Total	661	100

**TABLE 2.4 DETAILED SERVICE MEMBERS' RACE AND
ETHNICITY AGGREGATED INTO TWO CATEGORIES[6]**

	Frequency	Percentage
White, not Hispanic Service Members	336	50.8
Racial and/or Ethnic Minority Service Members	226	34.2
Unknown/Missing	99	15.0
Total	661	100

The measurement of race and/or ethnicity of detailed and impaneled service members used in the analysis relies on data about individuals that were provided by the Services about the Marine Corps. The summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members. The Services provided data about the Marine Corps that separated race from ethnicity (see Tables 2.2 and 2.3). It was necessary to combine race and ethnicity into a single variable (see Appendix A). These data were then re-coded in a way that allows for the creation of a variable with two demographic categories to be used in the analysis: White, not Hispanic service members and racial and/or ethnic Minority service members (see Table 2.4).

Tables 2.2, 2.3, and 2.4 show the race and ethnicity of service members detailed to courts martial. Table 2.2 presents information about race provided by the Services and Table 2.3 presents information about ethnicity. Table 2.4 presents information about race and/or ethnicity after aggregating the groups into two categories. The decision to aggregate specific demographic categories into two broader categories was influenced by multiple considerations. First, the primary interest was in understanding the representation of racial and/or ethnic Minority service members detailed to courts-martial and impaneled rather than in examining patterns across more specific racial and ethnic groups. Combining together specific categories that represent racial and/or ethnic Minority service members allowed for a comparison to White, not Hispanic service members and, thus, meet the core research purpose. In other words, the research questions were not focused on comparisons between specific racial and/or ethnic minority groups. Second, creating an aggregated measure with two broad categories allowed for consistency across the Services. The Services provided racial and ethnic demographic data in different formats and using a broad measure allowed for a consistent measure to be used, which, in turn, allowed for the same comparisons to be made for each service branch. Last, using an aggregated measure reduced the number of cases that were excluded

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5   See Appendix A for a listing of race and ethnicity combined into a single variable, using the data provided by the Services.

6   See Appendix B to understand how race and ethnicity data were aggregated together into this variable in Table 2.4. Appendix B also provides information about cases with "unknown/missing" data. The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

because of missing data. For instance, if demographic data showed a service member was Black, but their ethnicity was unknown, then this individual was considered to be a racial and/or ethnic Minority service member. If the analysis examined more disaggregated groups such as Black, not Hispanic or examined only Hispanic ethnicity then this individual would be excluded from the analyses. The Army provided data in a different format that the other Services so this last consideration was only relevant to the other Services. There is a tradeoff when racial and ethnic demographic categories are aggregated together. The limitation is that we are not able to identify and understand differences that may exist for specific racial and ethnic Minority service members, such as Hispanic service members and Black, not Hispanic service members, and Asian service members.

Table 2.4 shows 15.0% of individuals were missing data on race and/or ethnicity, 50.8% of individuals were White, not Hispanic service members, and 34.2% were racial and/or ethnic Minority service members.

TABLE 2.5 DETAILED SERVICE MEMBERS' GENDER

	Frequency	Percentage
Male	573	86.7
Female	67	10.1
Unknown/Missing	21	3.2
Total	661	100

Table 2.5 shows the representation of male and female service members detailed to courts-martial. Approximately 3% of service members detailed to courts-martial were missing information about gender; 86.7% of service members detailed to courts-martial were men and 10.1% were women.

TABLE 2.6 DETAILED SERVICE MEMBERS WHO WERE IMPANELED

	Frequency	Percentage
Impaneled	308	46.6
Not impaneled	353	53.4
Total	661	100

Table 2.6 presents information about the numbers and percentages of service members who were impaneled and not impaneled. Less than half of the service members who were detailed to courts-martial were impaneled (46.6%) and 53.4% were not impaneled.

TABLE 2.7 RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS
WHO WERE IMPANELED AND WHO WERE NOT IMPANELED[7]

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	156 (46.4%)	99 (43.8%)	255 (45.4%)
Not Impaneled	180 (53.6%)	127 (56.2%)	307 (54.6%)

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7   Table 2.7 excludes 99 individuals (15.0% of detailed service members) with missing race and/or ethnicity information. Among this group, 53 (53.5%) of the service members were impaneled and 46 (46.5%) of the service members were not impaneled.

Total	336 (100%)	226 (100%)	562 (100%)

Table 2.7 provides an understanding about whether there are differences in the rates of being impaneled between White, not Hispanic service members and racial and/or ethnic Minority service members. The results show 46.4% of White, not Hispanic service members were impaneled and 43.8% of service members from racial and/or ethnic Minority groups were impaneled. The difference across the two groups of service members is not statistically significant (χ^2 = .38, df = 1, p = .54).

TABLE 2.8 RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS[8]

	Frequency	Percentage
White, not Hispanic Service Members	156	50.6
Racial and/or Ethnic Minority Service Members	99	32.1
Unknown/Missing	53	17.2
Total	308	100

Table 2.8 reports race and ethnicity demographic information about only those service members who were impaneled. This provides an understanding of the representation of White, not Hispanic service members on panels and the representation of racial and/or ethnic Minority service members on panels. White, not Hispanic represented 50.6% of panel members and racial and/or ethnic Minority service members represented 32.1% of panel members. Information about race and/or ethnicity was not available for 17.2% of impaneled service members.

**TABLE 2.9 RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS
NOT IMPANELED AND REASON FOR EXCUSAL[9]**

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Challenge for cause	106 (58.9%)	73 (57.5%)	179 (58.3%)
Peremptory challenge	28 (15.6%)	21 (16.5%)	49 (16.0%)
Randomization	35 (19.4%)	26 (20.5%)	61 (19.9%)
Other reason	11 (6.1%)	7 (5.5%)	18 (5.9%)
Total	180 (100%)	127 (100%)	307 (100%)

Table 2.9 shows the reasons used to excuse detailed members from panels and allows for comparisons across the two demographic categories. For example, 58.9% of White, not Hispanic service members were excused because of for-cause challenges while 57.5% of service members from racial and/or ethnic Minority groups were excused because of for-cause challenges. In addition, 15.6% of White, not Hispanic service members were excused because of peremptory challenges while 16.5% of racial and/or ethnic Minority service members were excused because of peremptory challenges. The differences in reasons for being excused are not statistically significant (χ^2 = .16, df

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8   The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

9   Table 2.9 excludes information about 46 individuals who were not impaneled and were missing information about their race and/or ethnicity. Among this group, 23 (50.0%) were excused by a challenge for cause, 8 (17.4%) were excused because of a peremptory challenge, 9 (19.6%) were excused through randomization, and 6 (13.0%) were excused for some other reason.

= 3, p = .98). In addition, there is a not a statistically significant difference when only including the peremptory challenges and for cause challenges in the comparison (χ^2 = .07, df = 1, p = .79).

TABLE 2.10 GENDER OF DETAILED SERVICE MEMBERS WHO WERE IMPANELED[10]

	Female Service Members	Male Service Members	Total
Impaneled	20 (29.9%)	279 (48.7%)	299 (46.7%)
Not Impaneled	47 (70.1%)	294 (51.3%)	341 (53.3%)
Total	67 (100%)	573 (100%)	640 (100%)

The relationship between gender and whether the service member was impaneled is statistically significant (χ^2 = 8.55, df = 1, p < .05). Male service members were more likely to be impaneled (48.7%) than female service members (29.9%).

TABLE 2.11 GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
Male	279	90.6
Female	20	6.5
Unknown/Missing	9	2.9
Total	308	100

Table 2.11 summarizes the numbers and percentages of male and female service members who were impaneled. This provides an understanding of the representation of female service members on panels and the representation of male service members on panels. Men comprised 90.6% of service members impaneled, women made up 6.5% of the service members who were impaneled, and data were not available for 2.9% of impaneled service members.

TABLE 2.12 GENDER OF DETAILED SERVICE MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[11]

	Female Service Members	Male Service Members	Total
Challenge for cause	36 (76.6%)	159 (54.1%)	195 (57.2%)
Peremptory challenge	5 (10.6%)	51 (17.3%)	56 (16.4%)
Randomization	3 (6.4%)	65 (22.1%)	68 (19.9%)
Other reason	3 (6.4%)	19 (6.5%)	22 (6.5%)
Total	47 (100%)	294 (100%)	341 (100%)

The relationship between the service member's gender and the reason for being excused from the panel is statistically significant (χ^2 = 9.73, df = 3, p < .05). Female service members are more likely to be excused with a for cause

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10 Table 2.10 excludes 21 service members with missing information about their gender. Among this group, 9 (42.9%) of the service members were impaneled and 12 (57.1%) of the service members were not impaneled.

11 Table 2.12 excludes 12 individuals who were not impaneled and were missing information about their gender. Among this group, 7 (58.3%) were excused by a challenge for cause, 1 (8.3%) was excused because of a peremptory challenge, 2 (16.7%) were excused through randomization, and 2 (16.7%) were excused for some other reason.

challenge (76.6% compared to 54.1%), male service members are more likely to be excused with a peremptory challenged (17.3% compared to 10.6%), and male service members are more likely to be excused by randomization (22.1% compared to 6.4%). When only including the peremptory challenges and for cause challenges in the comparison, the test approaches, but not reach statistical significance (χ^2 = 2.89, df = 1, p = .09).[12]

TABLE 2.13 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	29	4.4
Racial and/or Ethnic Minority Female Service Members	32	4.8
White, not Hispanic Male Service Members	307	46.4
Racial and/or Ethnic Minority Male Service Members	194	29.3
Unknown/Missing	99	15.0
Total	661	100

Table 2.13 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were detailed. This provides an understanding of the intersection of race and/or ethnicity with gender among those detailed. Approximately 46% of those detailed were White, not Hispanic male service members, 29.3% of detailed service members were racial and/or ethnic Minority male service members, 4.8% of detailed service members were racial and/or ethnic Minority female service members, and 4.4% of impaneled service members were White, not Hispanic female service members. Race, ethnicity, and/or gender information was missing for 15.0% of service members detailed to courts-martial.

**TABLE 2.14 RACE, ETHNICITY, AND GENDER OF DETAILED
SERVICE MEMBERS WHO WERE IMPANELED [13]**

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Impaneled	7 (24.1%)	11 (34.4%)	149 (48.5%)	88 (45.4%)	255 (45.4%)
Not Impaneled	22 (75.9%)	21 (65.6%)	158 (51.5%)	106 (54.6%)	307 (54.6%)
Total	29 (100%)	32 (100%)	307 (100%)	194 (100%)	562 (100%)

Table 2.11 shows White, not Hispanic female service members were impaneled at the lowest rate (24.1%), followed by racial and/or ethnic Minority female service members (34.4%). Male service members were impaneled at higher rates: 45.4% of racial and/or ethnic Minority male service members were impaneled and 48.5% of White, not Hispanic male service members were impaneled. The relationship in Table 2.11 is statistically significant (χ^2 = 8.08, df = 3, p < .05).

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12 This additional test was performed because of the low numbers of female service members excused because of randomization and other reasons.

13 Table 2.14 excludes 99 service members with missing information about their race, ethnicity, and gender. Among this group, 53 (53.5%) of the service members were impaneled and 46 (46.5%) of the service members were not impaneled.

TABLE 2.15 RACE, ETHNICITY, AND GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	7	2.3
Racial and/or Ethnic Minority Female Service Members	11	3.6
White, not Hispanic Male Service Members	149	48.4
Racial and/or Ethnic Minority Male Service Members	88	28.6
Unknown/Missing	53	17.2
Total	308	100

Table 2.15 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were impaneled. This provides an understanding of the intersection of race and/or ethnicity with gender among those impaneled. Approximately 48% of impaneled service members were White, not Hispanic males, 28.6% of impaneled service members were racial and/or ethnic Minority male service members, 3.6% of impaneled service members were racial and/or ethnic Minority female service members, and 2.3% of impaneled service members were White, not Hispanic female service members. Table 2.15 shows 17.2% of service members impaneled were missing data on gender, race, and/or ethnicity.

TABLE 2.16 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[14]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Challenge for cause	18 (81.8%)	16 (76.2%)	88 (55.7%)	57 (53.8%)	179 (58.3%)
Peremptory challenge	4 (18.2%)	1 (4.8%)	24 (15.2%)	20 (18.9%)	49 (16.0%)
Randomization	0 (0%)	3 (14.3%)	35 (22.2%)	23 (21.7%)	61 (19.9%)
Other reason	0 (0%)	1 (4.8%)	11 (7.0%)	6 (5.7%)	18 (5.9%)
Total	22 (100%)	21 (100%)	158 (100%)	106 (100%)	307 (100%)

Table 2.16 shows the reasons for excusal among 307 service members who were not impaneled. The pattern shows for cause challenges are used more frequently to excuse female service members than male service members. Small numbers of White, not Hispanic female service members and racial and/or ethnic Minority female service members make it difficult to draw conclusions about differences across the groups. For example, a total of ten female service members were excused through peremptory challenges, randomization, and other reasons. A test of statistical significance was not performed because low numbers within some cells in Table 2.16 mean results may not be reliable.

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14 Table 2.16 excludes 46 individuals who were not impaneled and were missing information about their race, ethnicity, and gender. Among this group, 23 (50.0%) were excused by a challenge for cause, 8 (17.4%) were excused because of a peremptory challenge, 9 (19.6%) were excused through randomization, and 6 (13.0%) were excused for some other reason.

MILITARY JUDGES

TABLE 2.17 MILITARY JUDGES' RACE

	Frequency	Percentage
White	36	92.3
Black	1	2.6
Asian or Pacific Islander	1	2.6
Unknown/Missing	1	2.6
Total	39	100

ABLE 2.18 MILITARY JUDGES' ETHNICITY

	Frequency	Percentage
Hispanic or Latino	1	2.6
Not Hispanic or Latino	33	84.6
Unknown/Missing	5	12.8
Total	39	100

TABLE 2.19 MILITARY JUDGES' GENDER

	Frequency	Percentage
Male	27	69.2
Female	12	30.8
Total	39	100

Tables 2.17, 2.18, and 2.19 present information about the race, ethnicity, and gender of judges in the 39 Marine Corps cases. A large majority of judges were White service members (92.3%), one judge was a Black service member, and one judge was an Asian service member; race data was missing for one judge. Nearly all judges were not Hispanic; one judge was Hispanic and Hispanic ethnicity information was not available for five judges. Over two-thirds of judges were male service members (69.2%) and 30.8% of judges were female service members.

LEAD DEFENSE COUNSEL[15]

TABLE 2.20 LEAD DEFENSE COUNSEL RACE

	Frequency	Percentage
White	30	85.7
American Indian or Alaskan Native	2	5.7
Unknown / Missing	3	8.6
Total	35	100

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15   A total of 4 cases had civilian defense counsel or military lead defense counsel with demographics not known to the Services.

TABLE 2.21 LEAD DEFENSE COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	3	8.6
Not Hispanic or Latino	28	80.0
Unknown/Missing	4	11.4
Total	35	100

TABLE 2.22 LEAD DEFENSE COUNSEL GENDER

	Frequency	Percentage
Male	24	68.6
Female	8	22.9
Unknown/Missing	3	8.6
Total	35	100

Tables 2.20, 2.21, and 2.22 summarize race, ethnicity, and gender information for lead defense counsel in the 39 Marine Corps cases. Race information was missing for 8.6% of lead defense counsel. A large majority of lead defense counsel were White personnel (85.7%) and 5.7% of lead defense counsel were American Indian or Alaskan Native personnel. Information about Hispanic ethnicity was missing for 11.4% of lead defense counsel. Eighty percent of lead defense counsel were not Hispanic and 8.6% were Hispanic service members. Table 2.22 shows that 68.6% of lead defense counsel were male service members and 22.9% of lead defense counsel were female service members. Gender information was missing for 8.6% of lead defense counsel.

LEAD TRIAL COUNSEL

TABLE 2.23 LEAD TRIAL COUNSEL RACE

	Frequency	Percentage
White	35	89.7
Black	1	2.6
Unknown / Missing	3	7.7
Total	39	100

TABLE 2.24 LEAD TRIAL COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	1	2.6
Not Hispanic or Latino	29	74.4
Unknown/Missing	9	23.1
Total	39	100

TABLE 2.25 LEAD TRIAL COUNSEL GENDER

	Frequency	Percentage
Male	34	87.2
Female	2	5.1
Unknown/Missing	3	7.7
Total	3.9	100

Tables 2.23, 2.24, and 2.25 present demographic information about lead trial counsel. Approximately 90% of lead trial counsel were White service members (77.1%), one lead trial counsel was a Black service member, and information about race was missing for three lead trial counsel. Nearly three-quarters of lead trial counsel were not Hispanic service members and one lead trial counsel was a Hispanic service members; information about Hispanic ethnicity was missing for 23.1% of lead trial counsel. Table 2.25 shows 87.2% of lead trial counsel were male service members, 5.1% were female service members, and 7.7% of lead trial counsel were missing information about their gender.

COMPARISONS

To place in context the demographic patterns of service members detailed to courts-martial and those impaneled, the analysis compared the demographic characteristics of those detailed and impaneled to the overall demographic characteristics of the Services. The demographic characteristics of the Marine Corps for FY2022 are presented below, in Table 2.26. The data about race and ethnicity used to produce the values in Table 2.26 were provided by the Services. To create the two categories in Table 2.26, the following categories were combined to create the "racial and/or ethnic Minority Service Member" category: Hispanic, American Indian / Alaskan Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and Multi-Racial. The counts of "White, not Hispanic" category reported in Table 2.26 match the counts provided by the Services. Counts of people in the "unknown" race and "unknown" Hispanic ethnicity categories reported by the Services were excluded from the counts and from the calculation of percentages reported in Table 2.26. Information about gender in Table 2.26 was taken from the counts and percentages reported in the Department of Defense 2022 Demographics Profile of the Military Community report (United States Department of Defense, n.d.). As noted above, the summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members.

TABLE 2.26 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	98,495	56.9
Racial and/or ethnic Minority Service Member	74,575	43.1
Total	173,070	100
Gender		
Male	158,137	90.6
Female	16,440	9.4

Total	174,577	100

Table 2.26 shows that 56.9% of active-duty personnel in the Marine Corps in FY2022 were White, not Hispanic service members and 43.1% were racial and/or ethnic Minority service members. Approximately 90% of active-duty personnel were men (79.3%) and 9.4% were women.

TABLE 2.27 SERVICE MEMBERS' RACE AND ETHNICITY

	Detailed	Impaneled	Marine Corps
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
White, not Hispanic Service Members	336 (59.8%)	156 (61.2%)	98,495 (56.9%)
Racial and/or Ethnic Minority Service Members	226 (40.2%)	99 (38.8%)	74,575 (43.1%)
Total	562 (100%)	255 (100%)	173,070 (100%)

Table 2.27 presents race and/or ethnicity information about those detailed to courts-martial, those impaneled, and the overall population of active duty personnel in the Marine Corps. This table allows for an understanding of representation on details and panels in relation to the overall Marine Corps demographics. Individuals with missing race and/or ethnicity data were excluded from the results in Table 2.27. The percent of detailed members who were racial and/or ethnic Minority service members (40.2%) is similar to their representation in the Marine Corps (43.1%). A one-sample t-test was used to compare the percentage of those detailed who are racial and/or ethnic Minority service members to the representation of racial and/or ethnic Minority service members in the Marine Corps. There is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on details and their representation in the Marine Corps overall (t = -1.39, df = 561, p = .16). The percent of impaneled members who were racial and/or ethnic Minority service members (38.8%) is lower than their representation in the Marine Corps (43.1%). The one-sample t-test shows there is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on panels and their representation in the Marine Corps (t = -1.40, df = 254, p = .16).

TABLE 2.28 SERVICE MEMBERS' GENDER

	Detailed	Impaneled	Marine Corps
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
Male	573 (89.5%)	279 (93.3%)	158,137 (90.6%)
Female	67 (10.5%)	20 (6.7%)	16,440 (9.4%)
Total	640 (100%)	299 (100%)	174,577 (100%)

Table 2.28 presents gender information about those detailed to courts-martial, those impaneled, and the overall population of the Marine Corps. Like Table 2.27, this table allows for an understanding of representation on details and panels in relation to the overall Marine Corps demographics. Individuals with missing data about their gender were excluded from the results in Table 2.28. Table 2.28 shows the percentage of females detailed to courts martial is similar to their representation in the Marine Corps. A one-sample t-test was used to compare the percentage of those detailed who are female service members to the representation of female service members in the Marine Corps. The difference between the representation of female service members on details and their representation in the Marine Corps is not statistically significant (t = .88, df = 639, p = .38). In terms of representation on panels,

female service members are underrepresented compared to their overall representation in the Marine Corps (6.7% of panels and 9.4% in the Marine Corps). The difference approaches, but does not reach statistical significance (t = -1.87 df = 298, p = .06).

Section 3. 39 Contested Sexual Assault Courts-Martial

Information in section 3 summarizes the characteristics of details and panels. The analyses in section 2 grouped all individuals together and ignored the specific detail and panel to which each individual was assigned. Section 3 examines the demographic characteristics of each detail and each panel. This approach provides the opportunity to study and summarize the characteristics of each detail and panel, which gets overlooked when individuals from all details and panels are grouped together. Section 3 provides an understanding of the variation that exists within and across the details and panels.

TABLE 3.1. NUMBER OF MEMBERS DETAILED TO INDIVIDUAL COURTS-MARTIAL

	Frequency	Percentage
8 Members	1	2.6
12 Members	1	2.6
13 Members	4	10.3
15 Members	6	15.4
16 Members	7	17.9
17 Members	5	12.8
18 Members	4	10.3
19 Members	6	15.4
21 Members	2	5.1
22 Members	1	2.6
24 Members	1	2.6
28 Members	1	2.6
Total	39	100

Table 3.1 presents information about the number of members detailed to the cases. The large majority of cases (28 / 39; 71.8%) had between 15 service members and 19 service members detailed to the court-martial. One case involved a detail of 8 service members, and another involved a detail of 28 service members.

TABLE 3.2 NUMBER OF MEMBERS IMPANELED

	Frequency	Percentage
4 Members	2	5.1
7 Members	1	2.6
8 Members	31	79.5
9 Members	5	12.8
Total	39	100

Table 3.2 describes the number of members impaneled in each case. Nearly 80 percent of cases involved panels of 8 service members (31 / 39; 79.5%); the next most frequently occurring panel size was 9 jurors, occurring in 5 out of 39 cases (12.8%).

RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS IN 39 SEXUAL ASSAULT COURTS-MARTIAL

**TABLE 3.3 REPRESENTATION OF RACE AND ETHNICITY OF
SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Service Members	59.9%	11.8%	33.3%	78.6%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Service Members	40.2%	11.8%	21.4%	66.7%

FIGURE 3.1

Race/Ethnicity Composition of Details: 39 Marines Corps Cases

Table 3.3 presents the average percentage of details that were comprised of White, not Hispanic service members and the average percentage of details that were comprised of racial and/or ethnic Minority service members. These represent averages for details associated with the 39 Marine Corps cases. The 99 individual service members who were missing data on their race and/or ethnicity were excluded from the results in Table 3.3. Table 3.3 shows that, across the 39 cases, the average percent of detailed members that were White, not Hispanic service members was 59.9%; the average percent of detailed members that were racial and/or ethnic Minority service members was 40.2%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of details comprised of racial and/or ethnic Minority service members (40.2%) and the representation of racial and/or ethnic Minority service members in the Marine Corps (43.1%). The difference is not statistically significant (t = -1.55, df = 38, p = .13). This pattern is consistent with the pattern of results in Table 2.27.

**FIGURE 3.1 ILLUSTRATES THE COMPOSITION OF EACH DETAIL IN TERMS OF
RACE AND ETHNICITY. THE DETAILS SHOW THE FOLLOWING PATTERNS:**

- In 29 of the 39 cases (74.4% of cases), White, not Hispanic service members made up more than half of the detailed members.

- In 7 of the 39 cases (17.9%), more than half of the detailed members were racial and/or ethnic Minority service members.

- There were 3 cases (7.7%) in which half of the detail was comprised of White, not Hispanic service members and half of the detail was comprised of racial and/or ethnic Minority service members

- In 14 of the 39 cases (35.9%), more than two-thirds of the detailed members were White, not Hispanic service members.

- In 11 of the 39 cases (28.2%), fewer than one-third of the detailed members were racial and/or ethnic Minority service members.

RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS IN 39 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.4 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Panel Comprised of White, not Hispanic Service Members	60.9%	21.1%	28.6%	100%
Percent of Panel Comprised of Racial and/or Ethnic Minority Service Members	39.1%	21.1%	0%	71.4%

FIGURE 3.2

Race/Ethnicity Composition of Panels: 39 Marines Corps Cases

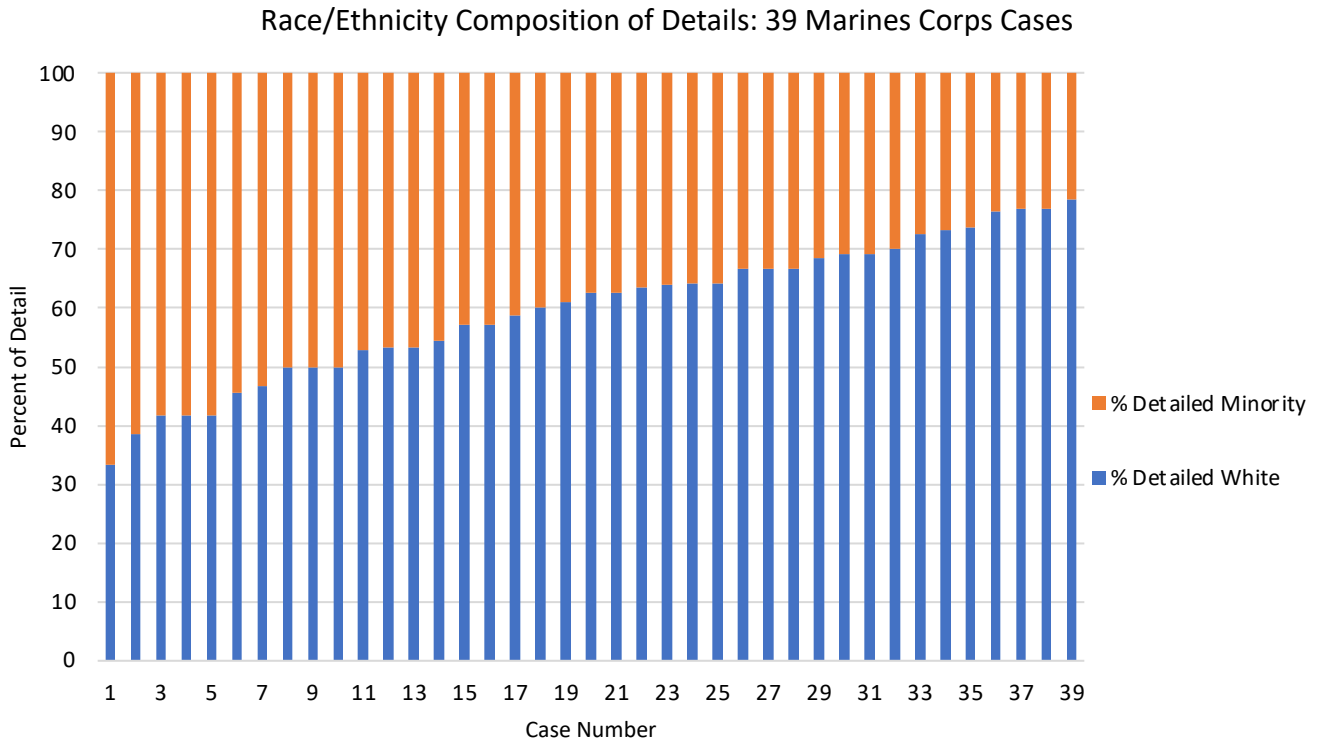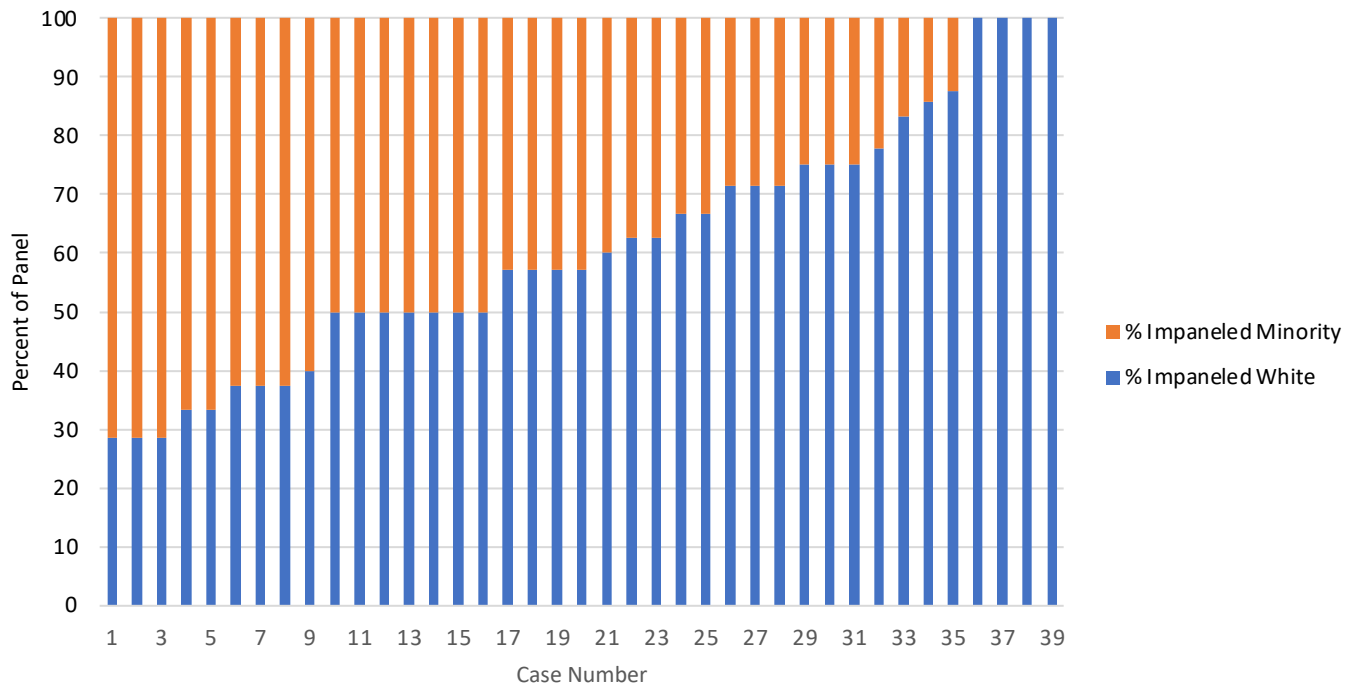Table 3.4 presents the average percentage of panels that were comprised of White, not Hispanic service members and the average percentage of panels that were comprised of racial and/or ethnic Minority service members. These represent averages for panels associated with the 39 Marine Corps cases. The 53 individual service members who were impaneled and missing data on their race and/or ethnicity were excluded from the results in Table 3.4. Table 3.4 shows that, across the 39 panels, the average percent of panels that were comprised of White, not Hispanic service members was 60.9%, the average percent of panels that were racial and/or ethnic Minority service members was 39.1%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of panels comprised of racial and/or ethnic Minority service members (39.1%) and the representation of racial and/or ethnic Minority service members in the Marine Corps (43.1%). The difference is not statistically significant (t = -1.19, df = 38, p = .24). This pattern is consistent with the pattern of results in Table 2.27.

Figure 3.2 illustrates the composition of each panel in terms of race and ethnicity. The panels show the following patterns:

- In 23 of 39 panels (60.0%), more than half of the panel was comprised of White, not Hispanic service members, including 4 panels in which all members were White, not Hispanic service members.

- In 9 of 39 panels (23.1%), more than half of the panel was comprised of and/or ethnic Minority service members, including 1 panel in which all members were racial and/or ethnic Minority service members.

- There were 7 panels (18.0%) in which half of the detail was comprised of White, not Hispanic service members and half of the panel was comprised of racial and/or ethnic Minority service members.

**TABLE 3.5 REPRESENTATION OF GENDER OF SERVICE
MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of Female Service Members	10.5%	8.0%	0%	33.3%
Percent of Detailed Members Comprised of Male Service Members	89.5%	8.0%	66.7%	100%

FIGURE 3.3

Gender Composition of Details: 39 Marines Corps Cases
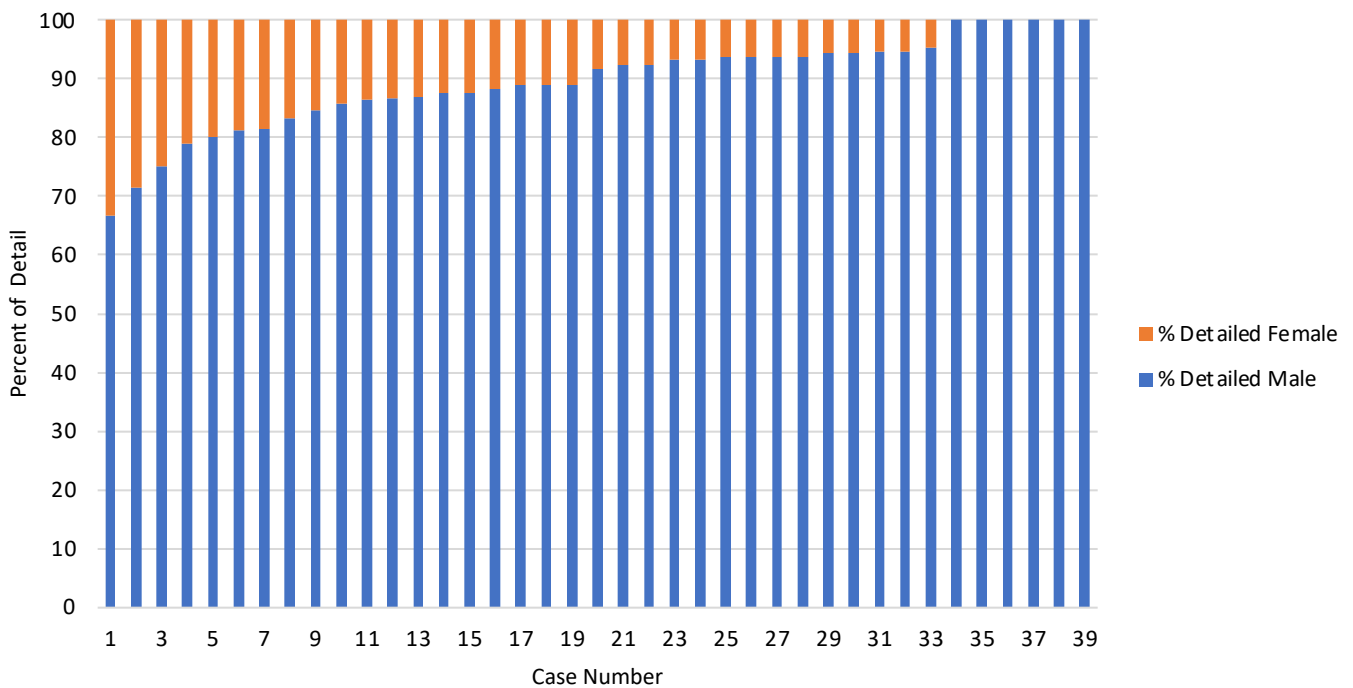
Table 3.5 shows that, across the 39 panels, the average percent of details that were comprised of female service members was 10.5%, the average percent of detailed members comprised of male service members was 89.5%. The 21 individual service members who were missing data on their gender were excluded from the results in Table 3.5. A one-sample t-test shows the average percent of details comprised of female service members (10.5%) is greater than the representation of females in the Marine Corps (9.4%); this difference is not statistically significant (t = .87, df = 38, p = .39). This pattern is consistent with results reported in Table 2.28. Figure 3.3 shows the representation of male service members and female service members on each detail.

TABLE 3.6 REPRESENTATION OF GENDER OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of Female Service Members	6.2%	10.1%	0%	33.3%
Percent of Impaneled Members Comprised of Male Service Members	93.8%	10.1%	66.7%	100%

FIGURE 3.4

Gender Composition of Panels: 39 Marines Corps Cases
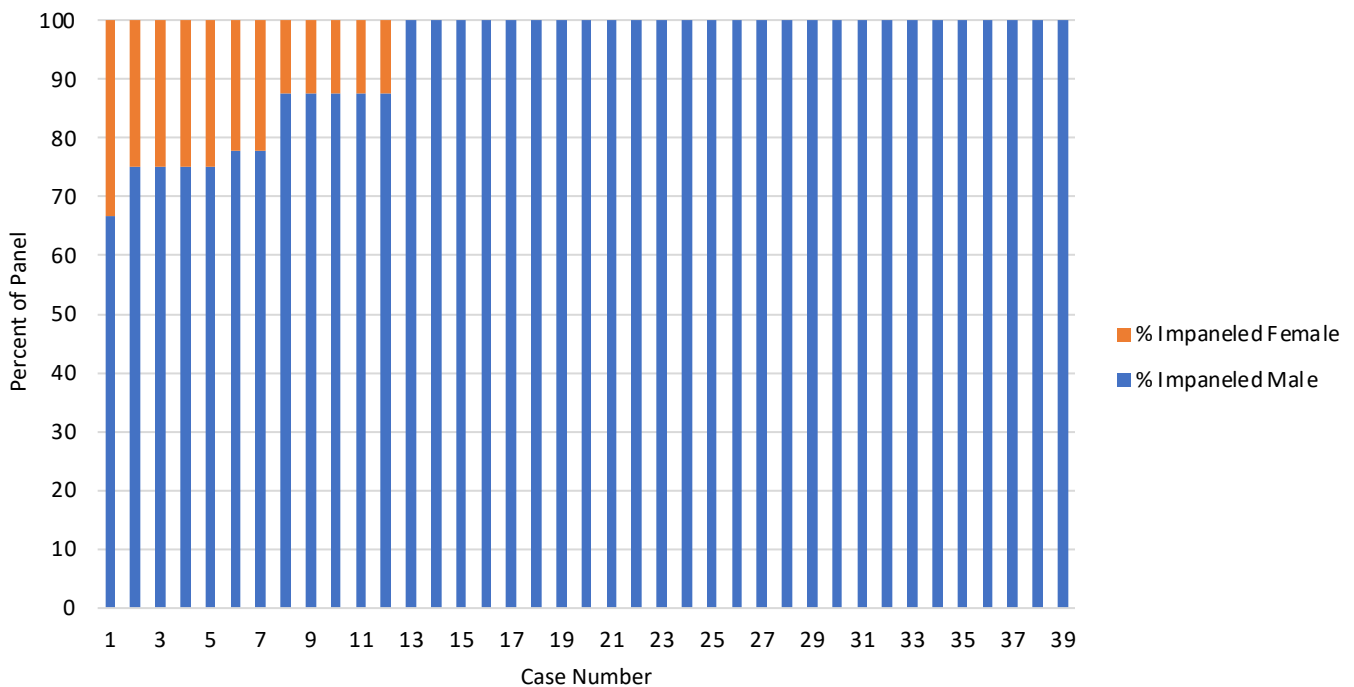
Table 3.6 shows that, across the 39 panels, the average percent of panels that were comprised of female service members was 6.2%, the average percent of panels comprised of male service members was 93.8%. The 9 service members who were impaneled and were missing data on their gender were excluded from the results in Table 3.6. A one-sample t-test shows the difference between the average percent of panels comprised of female service members (8.9%) and the representation of females in the Marine Corps (9.4), approaches but does not meet statistical significance (t = -2.00, df = 38, p = .05). This pattern, including the test result that approaches statistical significance, is consistent with results reported in Table 2.28. Figure 3.4 shows the representation of male service members and female service members on each panel.

**TABLE 3.7 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE
MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percent of Panel Comprised of White, not Hispanic Service Members	54.1% (SD = 20.9)	65.7% (SD = 20.2)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 54.1% White, not Hispanic service members and 45.9% racial and/or ethnic Minority service members (Table 3.7). In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 65.7% White, not Hispanic service members and 34.3% racial and/or ethnic Minority service members. This difference in average percentages across race/ethnicity of the accused service member approaches, but does not reach statistical significance (t = -1.74, df = 37, p = .09). There were 16 cases with a White, not Hispanic accused service member and 23 cases with a racial and/or ethnic Minority accused service member. It is challenging for test of statistical significance to detect significant differences with small numbers of cases.

**TABLE 3.8. REPRESENTATION OF GENDER OF SERVICE MEMBERS
IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED**

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percent of Panel Comprised of Male Service Members	91.8% (SD = 10.4)	95.3% (SD = 9.9)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 91.8% male service members and 8.2% female service members. In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 95.3% male service members and 4.7% female service members. This difference in average percentages across race/ethnicity of the accused service member is not statistically significant (t = -1.08, df = 37, p = .29). There were 16 cases with a White, not Hispanic accused service member and 23 cases with a racial and/or ethnic Minority accused service member. It is challenging for test of statistical significance to detect significant differences with small numbers of cases.

The composition of panels was not compared across all officer panels and enlisted panels because there was only one all officer panel in the Marines Corps data.

**TABLE 3.9. REPRESENTATION OF RACE, ETHNICITY, AND GENDER
OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Female Service Members	5.4%	6.6%	0%	23.1%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Female Service Members	5.5%	5.5%	0%	15.4%

Percent of Detailed Members Comprised of White, not Hispanic Male Service Members	54.4%	12.1%	33.3%	76.9%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Male Service Members	34.7%	11.0%	7.7%	58.3%

Table 3.9 shows that White, not Hispanic female service members and racial and/or ethnic Minority female service members represent the lowest and similar average percentages of details (5.4% and 5.5%). White, not Hispanic male service members represent the largest average percentage of details (54.4%), followed by racial and/or ethnic Minority male service members (34.7%).

TABLE 3.10. REPRESENTATION OF RACE, ETHNICITY, AND GENDER OF SERVICE MEMBERS IMPANELED

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of White, not Hispanic Female Service Members	2.3%	5.7%	0%	22.2%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Female Service Members	4.0%	8.2%	0%	33.3%
Percent of Impaneled Members Comprised of White, not Hispanic Male Service Members	58.6%	20.4%	14.3%	100%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Male Service Members	35.1%	21.0%	0%	71.4%

Table 3.10 shows that White, not Hispanic female service members represent the smallest average percentage of panels (2.3%) followed by racial and/or ethnic Minority female service members (4.0%). White, not Hispanic male service members represent the largest average percentage of panels (58.6%), followed by racial and/or ethnic Minority male service members (35.1%).

REFERENCES

United States Department of Defense. (n.d.). *2022 Demographics: Profile of the Military Community.* United States Department of Defense. https://download.militaryonesource.mil/ 12038/MOS/Reports/2022-demographics-report.pdf.

Rose, M.R. (2021). *Final Report on New Jersey's Empirical Study of Jury Selection Practices and Jury Representativeness: Prepared for the New Jersey Supreme Court.* https://www.njcourts.gov/sites/default/files/jurors/maryrosefinalreport.pdf

Rose, M.R., & Abramson, J.B. (2011). Date, race, and the courts: Some lessons on empiricism from jury representation cases. *Michigan State Law Review, 2011,* 912-963.

Rose, M.R., Casarez, R.S., & Gutierrez, C.M. (2018). Jury pool underrepresentation in the modern era: Evidence from federal courts. *Journal of Empirical Legal Studies, 15,* 378-405.

APPENDICES

Two appendices are presented below to show: 1) the racial and ethnic demographic information about detailed service members that was provided by the Services and 2) the way this demographic information was used to create two groups of service members: White, not Hispanic service members and racial and/or ethnic Minority service members. Racial and ethnic demographic information provided by the Services was used to create a variable with two categories because the purpose of the analysis was to determine if there were disparities between racial and/or ethnic characteristics.

Appendix A shows information about race and about ethnicity combined into a single variable. This information about race and about ethnicity was provided separately by the Services, and we combined these together to demonstrate the intersection of race and ethnicity together. This information allowed for the creation of a simplified variable with the two primary demographic categories of interest: White, not Hispanic service members and racial and/or ethnic Minority service members. Appendix B shows how each combination was recoded into two race and ethnicity categories. Those two categories were used in the analyses reported above.

Appendix A

Detailed service members' race and ethnicity information provided by the Services, combined into a single variable.

	Frequency	Percent
AMERICAN INDIAN OR ALASKA NATIVE NOT_HISPANIC_LATINO	7	1.1
AMERICAN_INDIAN_OR_ALASKA_NATIVE NOT_HISPANIC_OR_LATINO	1	0.2
ASIAN HISPANIC_OR_LATINO	1	0.2
ASIAN NOT_HISPANIC_LATINO	19	2.9
ASIAN NOT_HISPANIC_OR_LATINO	1	0.2
ASIAN OR PACIFIC ISLANDER NOT_HISPANIC_OR_LATINO	1	0.2
ASIAN UNKNOWN	2	0.3
BLACK HISPANIC_OR_LATINO	1	0.2
BLACK NOT_HISPANIC_OR_LATINO	2	0.3
BLACK OR AFRICAN AMERICAN HISPANIC_LATINO	7	1.1
BLACK OR AFRICAN AMERICAN NOT_HISPANIC_LATINO	45	6.8
BLACK OR AFRICAN AMERICAN UNKNOWN	12	1.8
BLACK UNKNOWN	2	0.3
HISPANIC HISPANIC_OR_LATINO	2	0.3
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND HISPANIC_LATINO	2	0.3
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND NOT_HISPANIC_LATINO	5	0.8
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND UNKNOWN	1	0.2
NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER HISPANIC_OR_LATINO	1	0.2
NATIVE_HAWAIIAN_OR_OTHER__PACIFIC_ISLANDER NOT_HISPANIC_OR_LATINO	1	0.2
UNKNOWN RACE HISPANIC_LATINO	15	2.3
UNKNOWN RACE NOT_HISPANIC_LATINO	3	0.5
UNKNOWN RACE UNKNOWN	18	2.7
UNKNOWN UNKNOWN	22	3.3
WHITE HISPANIC_LATINO	88	13.3
WHITE HISPANIC_OR_LATINO	10	1.5
WHITE NOT_HISPANIC_LATINO	303	45.8
WHITE NOT_HISPANIC_OR_LATINO	32	4.8
WHITE UNKNOWN	55	8.3
WHITE WHITE	1	0.2
White(E) Not assoc with any group	1	0.2
Total	661	100.0

Appendix B

Detailed service members' race and ethnicity variable recoded into an aggregated measure with three categories.

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Unknown/ Missing	Total
AMERICAN INDIAN OR ALASKA NATIVE NOT_HISPANIC_LATINO	0	7	0	7
AMERICAN_INDIAN_OR_ALASKA_NATIVE NOT_HISPANIC_OR_LATINO	0	1	0	1
ASIAN HISPANIC_OR_LATINO	0	1	0	1
ASIAN NOT_HISPANIC_LATINO	0	19	0	19
ASIAN NOT_HISPANIC_OR_LATINO	0	1	0	1
ASIAN OR PACIFIC ISLANDER NOT_HISPANIC_OR_LATINO	0	1	0	1
ASIAN UNKNOWN	0	2	0	2
BLACK HISPANIC_OR_LATINO	0	1	0	1
BLACK NOT_HISPANIC_OR_LATINO	0	2	0	2
BLACK OR AFRICAN AMERICAN HISPANIC_LATINO	0	7	0	7
BLACK OR AFRICAN AMERICAN NOT_HISPANIC_LATINO	0	45	0	45
BLACK OR AFRICAN AMERICAN UNKNOWN	0	12	0	12
BLACK UNKNOWN	0	2	0	2
HISPANIC HISPANIC_OR_LATINO	0	2	0	2
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND HISPANIC_LATINO	0	2	0	2
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND NOT_HISPANIC_LATINO	0	5	0	5
NATIVE HAWAIIAN OR OTHER PACIFIC ISLAND UNKNOWN	0	1	0	1
NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER HISPANIC_OR_LATINO	0	1	0	1
NATIVE_HAWAIIAN_OR_OTHER__PACIFIC_ISLANDER NOT_HISPANIC_OR_LATINO	0	1	0	1
UNKNOWN RACE HISPANIC_LATINO	0	15	0	15
UNKNOWN RACE NOT_HISPANIC_LATINO	0	0	3	3
UNKNOWN RACE UNKNOWN	0	0	18	18
UNKNOWN UNKNOWN	0	0	22	22
WHITE HISPANIC_LATINO	0	88	0	88
WHITE HISPANIC_OR_LATINO	0	10	0	10
WHITE NOT_HISPANIC_LATINO	303	0	0	303
WHITE NOT_HISPANIC_OR_LATINO	32	0	0	32
WHITE UNKNOWN	0	0	55	55
WHITE WHITE	0	0	1	1
White(E) Not assoc with any group	1	0	0	1
Total	336	226	99	661

APPENDIX I. DEMOGRAPHIC DATA ON MILITARY COURTS-MARTIAL PANELS (AIR FORCE)

Overview of Air Force Case-Level Data
June 18, 2024

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INTRODUCTION

The purpose of this report is to summarize information about the race, ethnicity, and gender of service members detailed to courts-martial and impaneled in a sample of Air Force cases. The complete research methods used to collect the data presented here are described in the consolidated DAC-IPAD report that describes the larger project within which this report is imbedded.

Section 1 presents information about 49 contested sexual assault courts-martial, including demographic information of the accused service members, case outcomes, and the type of forum requested. Section 2 summarizes information about service members detailed in the case, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented in section 2 describe individuals involved in the cases and are aggregated together. In other words, all individuals from the cases are grouped together. Section 3 summarizes the demographic characteristics of the specific details and panels.

The research questions to be answered with the analyses and results described below are:

1. What are the representations of white, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do the representations in questions #1 and #2 compare to their overall representations in the Air Force?

The analyses and results described in section 2 and section 3 of this report address the core research questions.

Section 1. 49 Contested Sexual Assault Courts-Martial

TABLE 1.1 CASE FISCAL YEAR[1]

	Frequency	Percentage
2021	49	100
Total	49	100

TABLE 1.2 GENDER OF ACCUSED

	Frequency	Percentage
Male	48	98.0
Female	1	2.0
Total	49	100

TABLE 1.3 RACE OF ACCUSED

	Frequency	Percentage
White	25	51.0
Black	15	30.6
Asian	1	2.0
American Indian or Alaskan Native	1	2.0
Multiple Races	4	8.2
Unknown/Missing	3	6.1
Total	49	100

TABLE 1.4 ETHNICITY OF ACCUSED

	Frequency	Percentage
Hispanic or Latino	4	8.2
Not Hispanic or Latino	44	89.8
Unknown/Missing	1	2.0
Total	49	100

TABLE 1.5 RACE AND ETHNICITY OF ACCUSED AGGREGATED INTO TWO CATEGORIES

	Frequency	Percentage
White, not Hispanic	23	46.9
Racial and/or Ethnic Minority	24	49.0
Unknown/Missing	2	4.1
Total	49	100

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1   Fiscal Year 2022 data has not been received.

TABLE 1.6 RANK OF ACCUSED

	Frequency	Percentage
Enlisted	42	85.7
Officer	7	14.3
Total	49	100

TABLE 1.7 CASE ADJUDICATION ON ARTICLE 120 OFFENSE

	Frequency	Percentage
Acquitted	36	73.5
Guilty	12	24.5
Dismissed[2]	1	2.0
Total	49	100

TABLE 1.8 IF GUILTY OF ARTICLE 120 OFFENSE, GUILTY OF PENETRATIVE OFFENSE

	Frequency	Percentage
Yes	7	58.3
No	5	41.7
Total	12	100

TABLE 1.9 FORUM SELECTION BY ENLISTED ACCUSED[3]

	Frequency	Percentage
Requested an enlisted panel	38	90.5
Requested an officer panel	4	9.5
Total	42	100

TABLE 1.10 THE CASE INVOLVED AN ALL OFFICER PANEL[4]

	Frequency	Percentage
Yes	11	22.4
No	38	77.6
Total	49	100

2   This case was included because members were impaneled before the case was dismissed.

3   Enlisted accused may select either an enlisted or officer panel.

4   Officers must be tried by an officer panel. There were seven officers accused and four enlisted accused who selected an officer panel.

Section 2. Individuals within 49 Contested Sexual Assault Courts-Martial

The information in section 2 describes the service members detailed in the cases, the service members impaneled, military judges, lead defense counsel, and lead trial counsel. The data presented here about individuals involved in the cases are derived from the set of 49 cases and are aggregated together. In other words, the information in this section groups together all individuals regardless of the case in which they were involved. Individuals are the unit of analysis.

To reiterate, the research questions to be answered through the analyses described in section 2 and in section 3 are:

1. What are the representations of White, not Hispanic service members and the representations of racial and/or ethnic Minority service members on details and on panels?

2. What are the representations of male and female service members on details and on panels?

3. How do those representations in questions #1 and #2 compare to their overall representations in the Air Force?

Ideally, question #3 would utilize, as a point of comparison, the representation of demographic groups within specific units or on the installations from which the details were selected, but these more specific unit and installation demographic data were not available. The alternative is to compare the representations of demographic characteristics on details and panels to the overall representations in the Air Force as a whole. It is important to note that the analysis in section 2 groups all individuals in the sample of cases together and does not examine the distinct details and distinct panels. Thus, section 2 does not provide insights into the composition of individual details and individual panels. Section 3 entails an analysis of individuals assigned to the specific details and specific panels.

The descriptive information in section 2 reports the number and percentage of individuals with missing data on their race and/or ethnicity and gender. The purpose of presenting the counts and percentages of missing data is to provide complete information about the data that were collected, including cases with missing data. Cases with missing data were excluded from analyses that estimated differences between groups and that involved tests of statistical significance. Missing data on race, ethnicity, and gender presents analytic challenges because excluding cases with missing data may generate patterns of results and statistical tests that are biased. Imputing missing data for race, ethnicity, and gender presents challenges because commonly used imputation methods require additional information that is not available in the current project (see also Rose, 2021; Rose, Casarez, and Gutierrez, 2018). The challenges of missing demographic data that are unique to studies of jury composition have been described by Rose and Abramson (2011) (see also Rose, 2021; Rose et al., 2018). Missing demographic data for potential jurors and those selected to serve on juries in the civilian criminal justice system is not an uncommon problem (Rose & Abramson, 2011; Rose, Casarez, & Gutierrez, 2018). Rose et al. (2018) describe the assumptions associated with two methods of handling missing demographic data: 1) exclude cases with missing demographic data from analyses and 2) use the total numbers of cases, including those with missing data, as the denominator in calculations of proportions and percentages. When cases with missing data are excluded from analyses, it is assumed that missing data are distributed randomly across different demographic groups, such as men and women, or Hispanic and not Hispanic individuals. This assumption implies there are no patterns to the missing data that would bias results. An alternative approach, and one that includes cases with missing data, is to include all cases in the denominator when calculating proportions and percentages. The assumption with this approach is that no cases with missing data belong to the other demographic groups of interest, such as men and women, or Hispanic and not Hispanic individuals. According to Rose et al. (2018, p. 393), "this approach generates under-representation levels that are at their maximum." Rose (2021), Rose and Abramson (2011), and Rose et al. (2018) discuss the way survey designs

used as part of civilian jury selection processes may produce missing data that are different for Hispanic and not Hispanic individuals and how this may impact results and conclusions about jury composition. It is not possible for the current project to understand how the processes of recording the race, ethnicity, and gender of service members may generate patterns of missing data that are unevenly distributed across race, ethnicity, and gender. For this reason and to avoid producing estimates of underrepresentation that are at their maximum, we exclude individuals with missing data from analyses.

TABLE 2.1 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS[5]

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	180,953	60.6
Racial and/or ethnic Minority Service Member	117,535	39.4
Total	298,488	100
Gender		
Male	251,618	78.5
Female	68,803	21.5
Total	320,421	100

Table 2.1 shows 60.6% of active duty personnel in the Air Force in FY 2022 were White, not Hispanic service members and 39.4% of active duty personnel were racial and/or ethnic Minority service members. Men comprised 78.5% of active duty personnel and 21.5% of active duty personnel were female.

TABLE 2.2 DETAILED SERVICE MEMBERS' RACE[6]

	Frequency	Percentage
White	523	58.7
Black	103	11.6
Asian	67	7.5
Native Hawaiian or Other Pacific Islander	2	0.2
American Indian or Alaskan Native	9	1.0
Multiple races	5	0.6
Unknown/Missing	182	20.4
Total	891	100

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5   Data in Table 2.1 about race and ethnicity were provided by the Services and are for FY 2022. Race and/or ethnicity data listed as "declined/2 or more/ unknown" (n = 29,752, 9.1%) were excluded from counts used to calculate percentages in Table 2.1. Data for gender in Table 2.1 were obtained from the Department of Defense *2022 Demographics Profile of the Military Community* (see Table, 2.13, p. 19; United States Department of Defense, n.d.).

TABLE 2.3 DETAILED SERVICE MEMBERS' ETHNICITY[6]

	Frequency	Percentage
Hispanic or Latino	73	8.2
Not Hispanic or Latino	444	49.8
None	148	16.6
Unknown/Missing	226	25.4
Total	891	100

**TABLE 2.4 DETAILED SERVICE MEMBERS' RACE AND
ETHNICITY AGGREGATED INTO TWO CATEGORIES[7]**

	Frequency	Percentage
White, not Hispanic Service Members	428	48.0
Racial and/or Ethnic Minority Service Members	252	28.3
Unknown/Missing	211	23.7
Total	891	100

The measurement of race and/or ethnicity of detailed and impaneled service members used in the analysis relies on data about individuals that were provided by the Services. The summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members. The Services provided data for the Air Force that separated race from ethnicity (see Tables 2.2 and 2.3). It was necessary to combine race and ethnicity into a single variable (see Appendix A). These data were then re-coded in a way that allows for the creation of a variable with two demographic categories to be used in the analysis: White, not Hispanic service members and racial and/or ethnic Minority service members (see Table 2.4).

Tables 2.2, 2.3, and 2.4 show the race and ethnicity of service members detailed to courts martial. Table 2.2 presents information about race using categories provided by the Services and Table 2.3 presents information about ethnicity. Table 2.4 presents information about race and/or ethnicity after aggregating the groups into two categories.

The decision to aggregate specific demographic categories into two broader categories was influenced by multiple considerations. First, the primary interest was in understanding the representation of racial and/or ethnic Minority service members detailed to courts-martial and impaneled rather than in examining patterns across more specific racial and ethnic groups. Combining together specific categories that represent racial and/or ethnic Minority service members allowed for a comparison to White, not Hispanic service members and, thus, meet the core research purpose. In other words, the research questions were not focused on comparisons between specific racial and/or ethnic minority groups. Second, creating an aggregated measure with two broad categories allowed for consistency across the Services. The Services provided racial and ethnic demographic data in different formats and using a broad measure allowed for a consistent measure to be used, which, in turn, allowed for the same comparisons to be made

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6   See Appendix A for a listing of race and ethnicity combined into a single variable, using the data provided by the Services.

7   See Appendix B to understand how race and ethnicity data were aggregated together into this variable in Table 2.4. Appendix B also provides information about cases with "unknown/missing" data. The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

for each service branch. Last, using an aggregated measure reduced the number of cases that were excluded because of missing data. For instance, if demographic data showed a service member was Black, but their ethnicity was unknown, then this individual was considered to be a racial and/or ethnic Minority service member. If the analysis examined more disaggregated groups such as Black, not Hispanic or examined only Hispanic ethnicity then this individual would be excluded from the analyses. There is a tradeoff when racial and ethnic demographic categories are aggregated together. The limitation is that we are not able to identify and understand differences that may exist for specific racial and ethnic Minority service members, such as Hispanic service members and Black, not Hispanic service members, and Asian service members.

Table 2.4 shows 23.7% of individuals were missing data on race and/or ethnicity, 48.0% of individuals were White, not Hispanic service members, and 28.3% were racial and/or ethnic Minority service members.

TABLE 2.5 DETAILED SERVICE MEMBERS' GENDER

	Frequency	Percentage
Male	532	59.7
Female	239	26.8
Unknown/Missing	120	13.5
Total	891	100

Table 2.5 shows the representation of male and female service members detailed to courts-martial. Close to 15% of service members detailed to courts-martial were missing information about gender (13.5%). Approximately 60% of service members detailed to courts-martial were men and 26.8% were women.

TABLE 2.6 DETAILED SERVICE MEMBERS WHO WERE IMPANELED

	Frequency	Percentage
Impaneled	390	43.8
Not impaneled	501	56.2
Total	891	100

Table 2.6 presents information about the numbers and percentages of service members who were impaneled and not impaneled. Less than half of the service members who were detailed to courts-martial were impaneled (43.8%) and 56.2% were not impaneled.

TABLE 2.7 RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS
WHO WERE IMPANELED AND WHO WERE NOT IMPANELED[8]

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	177 (41.4%)	119 (47.2%)	296 (43.5%)
Not Impaneled	251 (58.6%)	133 (52.8%)	384 (56.5%)
Total	428 (100%)	252 (100%)	680 (100%)

Table 2.7 provides an understanding about whether there are differences in the rates of being impaneled between White, not Hispanic service members and racial and/or ethnic Minority service members. The results show 41.4% of White, not Hispanic service members were impaneled and 47.2% of service members from racial and/or ethnic Minority groups were impaneled. The difference across the two groups of service members is not statistically significant (χ^2 = 2.22, df = 1, p = .14).

TABLE 2.8 RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS[9]

	Frequency	Percentage
White, not Hispanic Service Members	177	45.4
Racial and/or Ethnic Minority Service Members	119	30.5
Unknown/Missing	94	24.1
Total	390	100

Table 2.8 reports race and ethnicity demographic information about *only* those service members who were impaneled. This provides an understanding of the representation of White, not Hispanic service members on panels and the representation of racial and/or ethnic Minority service members on panels. White, not Hispanic represented 45.4% of panel members and racial and/or ethnic Minority service members represented 30.5% of panel members. Information about race and/or ethnicity was not available for 24.1% of impaneled service members.

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8   Table 2.7 excludes 211 individuals (23.7% of detailed service members) with missing race and/or ethnicity information. Among this group, 94 (44.5%) of the service members were impaneled and 117 (55.5%) of the service members were not impaneled.

9   The larger DAC-IPAD report that describes this project does not report counts and percentages for cases with unknown / missing data.

TABLE 2.9 REASON FOR EXCUSAL BY RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS, AMONG THOSE NOT IMPANELED [10]

	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Challenge for cause	146 (58.2%)	79 (59.4%)	225 (58.6%)
Peremptory challenge	44 (17.5%)	22 (16.5%)	66 (17.2%)
Randomization	35 (13.9%)	17 (12.8%)	52 (13.5%)
Other reason	26 (10.4%)	15 (11.3%)	41 (10.7%)
Total	251 (100%)	133 (100%)	384 (100%)

Table 2.9 shows the reasons used to excuse detailed members from panels. The patterns show similarities in challenges across the two demographic groups. For example, 58.2% of White, not Hispanic service members were excused because of for-cause challenges and 59.4% of service members from racial and/or ethnic Minority groups were excused because of for-cause challenges. In addition, 17.5% of White, not Hispanic service members were excused because of peremptory challenges and 16.5% of racial and/or ethnic Minority service members were excused because of peremptory challenges. The differences in reasons for being excused are not statistically significant (χ^2 = .23, df = 3, p = .97). In addition, there is a not a statistically significant difference when only including the peremptory challenges and for cause challenges in the comparison (χ^2 = .07, df = 1, p = .79).

TABLE 2.10 IMPANELED DECISION BY GENDER [11]

	Female Service Members	Male Service Members	Total
Impaneled	79 (33.1%)	256 (48.1%)	335 (43.5%)
Not Impaneled	160 (66.9%)	276 (51.9%)	436 (56.5%)
Total	239 (100%)	532 (100%)	771 (100%)

The relationship between gender and whether the service member was impaneled is statistically significant (χ^2 = 15.23, df = 1, p < .05). Male service members were more likely to be impaneled (48.1%) than female service members (33.1%).

TABLE 2.11 GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
Male	256	65.6
Female	79	20.3
Unknown/Missing	55	14.1
Total	390	100

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10   Table 2.9 excludes information about 117 individuals who were not impaneled and were missing information about their race and/or ethnicity. Among this group, 57 (48.7%) were excused by a challenge for cause, 19 (16.2%) were excused because of a peremptory challenge, 20 (17.1%) were excused through randomization, and 21 (17.9%) were excused for some other reason.

11   Table 2.10 excludes 120 service members with missing information about their gender. Among this group, 55 (45.8%) of the service members were impaneled and 65 (54.2%) of the service members were not impaneled.

Table 2.11 summarizes the numbers and percentages of male and female service members who were impaneled. This provides an understanding of the representation of female service members on panels and the representation of male service members on panels. Men comprised 65.6% of service members impaneled, women made up 20.3% of the service members who were impaneled, and data were not available for 14.1% of impaneled service members.

TABLE 2.12 GENDER OF DETAILED SERVICE MEMBERS NOT
IMPANELED AND REASON FOR EXCUSAL[12]

	Female Service Members	Male Service Members	Total
Challenge for cause	95 (59.4%)	154 (55.8%)	249 (57.1%)
Peremptory challenge	30 (18.8%)	46 (16.7%)	76 (17.4%)
Randomization	13 (8.1%)	46 (16.7%)	59 (13.5%)
Other reason	22 (13.8%)	30 (10.9%)	52 (11.9%)
Total	160 (100%)	276 (100%)	436 (100%)

The relationship between gender and the reason for excusal approached, but did not reach statistical significance (χ^2 = 6.6, df = 3, p = .08). Male service members were excused by randomization at double the rate of female service members (16.7% compared to 8.1%). In addition, when only including the peremptory challenges and for cause challenges in the comparison, there is a not a statistically significant difference (χ^2 = .04, df = 1, p = .84).

TABLE 2.13 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	122	13.7
Racial and/or Ethnic Minority Female Service Members	90	10.1
White, not Hispanic Male Service Members	306	34.3
Racial and/or Ethnic Minority Male Service Members	162	18.2
Unknown/Missing	211	23.7
Total	891	100

Table 2.13 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were detailed. This provides an understanding of the intersection of race and/or ethnicity with gender among those detailed. Approximately 34% of those detailed were White, not Hispanic male service members, 18.2% of detailed service members were racial and/or ethnic Minority male service members, 10.1% of detailed service members were racial and/or ethnic Minority female service members, and 13.7% of impaneled service members were White, not Hispanic female service members. Race, ethnicity, and/or gender information was missing for 23.7% of service members detailed to courts-martial.

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12   Table 2.12 excludes 65 individuals who were not impaneled and were missing information about their gender. Among this group, 33 (50.8%) were excused by a challenge for cause, 9 (13.8%) were excused because of a peremptory challenge, 13 (20.0%) were excused through randomization, and 10 (15.4%) were excused for some other reason.

TABLE 2.14 IMPANELED DECISION BY RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE MEMBERS[13]

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Impaneled	39 (32.0%)	31 (34.4%)	138 (45.1%)	88 (54.3%)	296 (43.5%)
Not Impaneled	83 (68.0%)	59 (65.6%)	168 (54.9%)	74 (45.7%)	384 (56.5%)
Total	122 (100%)	90 (100%)	306 (100%)	162 (100%)	680 (100%)

Table 2.14 shows White, not Hispanic female service members were impaneled at the lowest rate (32.0%), followed by racial and/or ethnic Minority female service members (34.4%). Male service members were impaneled at higher rates: 54.3% of racial and/or ethnic Minority male service members were impaneled and 45.1% of White, not Hispanic male service members were impaneled. The relationship in Table 2.14 is statistically significant (χ^2 = 17.64, df = 3, p < .05).

TABLE 2.15 RACE, ETHNICITY, AND GENDER OF IMPANELED SERVICE MEMBERS

	Frequency	Percentage
White, not Hispanic Female Service Members	39	10.0
Racial and/or Ethnic Minority Female Service Members	31	7.9
White, not Hispanic Male Service Members	138	35.4
Racial and/or Ethnic Minority Male Service Members	88	22.6
Unknown/Missing	94	24.1
Total	390	100

Table 2.15 summarizes the numbers of service members belonging to different gender, race, and ethnic demographic groups who were impaneled. This provides an understanding of the intersection of race and/or ethnicity with gender among those impaneled. Approximately 35% of impaneled service members were White, not Hispanic males, 22.6% of impaneled service members were racial and/or ethnic Minority male service members, 10.0% of impaneled service members were White, not Hispanic female service members, and 7.9% of impaneled service members were racial and/or ethnic Minority female service members. Table 2.15 shows 24.1% of service members impaneled were missing data on gender, race, and/or ethnicity.

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13 Table 2.14 excludes 211 service members with missing information about their race, ethnicity, and gender. Among this group, 94 (44.5%) of the service members were impaneled and 117 (55.5%) of the service members were not impaneled.

**TABLE 2.16 RACE, ETHNICITY, AND GENDER OF DETAILED SERVICE
MEMBERS NOT IMPANELED AND REASON FOR EXCUSAL[14]**

	White, not Hispanic Female Service Members	Racial and/or Ethnic Minority Female Service Members	White, not Hispanic Male Service Members	Racial and/or Ethnic Minority Male Service Members	Total
Challenge for cause	51 (61.4%)	35 (59.3%)	95 (56.5%)	44 (59.5%)	225 (58.6%)
Peremptory challenge	17 (20.5%)	9 (15.3%)	27 (16.1%)	13 (17.6%)	66 (17.2%)
Randomization	5 (6.0%)	6 (10.2%)	30 (17.9%)	11 (14.9%)	52 (13.5%)
Other reason	10 (12.0%)	9 (15.3%)	16 (9.5%)	6 (8.1%)	41 (10.7%)
Total	83 (100%)	59 (100%)	168 (100%)	74 (100%)	384 (100%)

Table 2.16 shows the reasons for excusal among 384 service members who were not impaneled. There is not a statistically significant relationship between the reasons for excusal and race, ethnicity, and gender (χ^2 = 9.37, df = 9, p = .40). In addition, there is not a statistically significant relationship when only including for case challenges and peremptory challenges (χ^2 = .35, df = 3, p = .95).

MILITARY JUDGES

TABLE 2.17 MILITARY JUDGES' RACE

	Frequency	Percentage
White	46	93.9
Unknown/Missing	3	6.1
Total	49	100

TABLE 2.18 MILITARY JUDGES' ETHNICITY

	Frequency	Percentage
Hispanic or Latino	1	2.0
Not Hispanic or Latino	46	93.9
Unknown/Missing	2	4.1
Total	49	100

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14   Table 2.16 excludes 117 individuals who were not impaneled and were missing information about their race, ethnicity, and gender. Among this group, 57 (48.7%) were excused by a challenge for cause, 19 (16.2%) were excused because of a peremptory challenge, 20 (17.1%) were excused through randomization, and 21 (17.9%) were excused for some other reason.

TABLE 2.19 MILITARY JUDGES' GENDER

	Frequency	Percentage
Male	42	85.7
Female	5	10.2
Unknown/Missing	2	4.1
Total	49	100

Tables 2.17, 2.18, and 2.19 present information about the race, ethnicity, and gender of judges in the 49 Air Force cases. All of the judges for whom race data were available were White; race data were missing for three judges (6.1%). Nearly all judges were not Hispanic; one judge was Hispanic (2.0%) and ethnicity information was not available for two judges (4.1%). A larger majority of judges were male (85.7%); 10.2% of judges were female and gender information was not available for two judges (4.1%).

LEAD DEFENSE COUNSEL[15]

TABLE 2.20 LEAD DEFENSE COUNSEL RACE

	Frequency	Percentage
White	25	71.4
Black	3	8.6
Asian	1	2.9
Unknown/Missing	6	17.1
Total	35	100

TABLE 2.21 LEAD DEFENSE COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	3	8.6
Not Hispanic or Latino	18	51.4
Unknown/Missing	14	40.0
Total	35	100

TABLE 2.22 LEAD DEFENSE COUNSEL GENDER

	Frequency	Percentage
Male	22	62.9
Female	10	28.6
Unknown/Missing	3	8.6
Total	35	100

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15   A total of 14 cases had civilian defense counsel or military lead defense counsel with demographics not known to the Services.

Tables 2.20, 2.21, and 2.22 summarize race, ethnicity, and gender information for lead defense counsel in the 49 Air Force cases. Race information was missing for 17.1% of lead defense counsel. A large majority of lead defense counsel were White personnel (71.4%), followed by Black personnel (8.6%), and Asian personnel (2.9%). Information about Hispanic ethnicity was missing for 40.0% of lead defense counsel. Slightly more than half (51.4%) of lead defense counsel were not Hispanic and 8.6% were Hispanic service members. Table 2.22 shows that 62.9% of lead defense counsel were male service members and 28.6% of lead defense counsel were female service members. Gender information was missing for 8.6% of lead defense counsel.

LEAD TRIAL COUNSEL

TABLE 2.23 LEAD TRIAL COUNSEL RACE

	Frequency	Percentage
White	34	69.4
American Indian or Alaskan Native	1	2.0
Unknown/Missing	14	28.6
Total	49	100

TABLE 2.24 LEAD TRIAL COUNSEL ETHNICITY

	Frequency	Percentage
Hispanic or Latino	6	12.2
Not Hispanic or Latino	27	55.1
Unknown/Missing	16	32.7
Total	49	100

TABLE 2.25 LEAD TRIAL COUNSEL GENDER

	Frequency	Percentage
Male	33	67.3
Female	6	12.2
Unknown/Missing	10	20.4
Total	49	100

Tables 2.23, 2.24, and 2.25 present demographic information about lead trial counsel. Close to 70% of lead trial counsel were White service members (69.4%) and one lead trial counsel was an American Indian or Alaskan Native service member; 28.6% of lead trial counsel did not have information about their race. Over half of lead trial counsel were not Hispanic service members (55.1%) and 12.2% of lead trial counsel were Hispanic service members; information about Hispanic ethnicity was missing for over one-third of lead trial counsel (32.7%). Table 2.25 shows 67.3% of lead trial counsel were male service members, 12.2% were female service members, and 20.4% of lead trial counsel were missing information about their gender.

COMPARISONS

To place in context the demographic patterns of service members detailed to courts-martial and those impaneled, the analysis compared the demographic characteristics of those detailed and impaneled to the overall demographic characteristics of the Services. The demographic characteristics of the Air Force for FY2022 are presented below, in Table 2.26. The data about race and ethnicity used to produce the values in Table 2.26 were provided by the Services. To create the two categories in Table 2.26, the following categories were combined to create the "racial and/ or ethnic Minority Service Member" category: Hispanic, American Indian / Alaskan Native, Asian / Pacific Islander / Hawaiian, and Black not Hispanic. The counts of "White, not Hispanic" category reported in Table 2.26 match the counts provided by the Services. Counts of people in the "declined / 2 or more / unknown" category reported by the Services were excluded from the counts and from the calculation of percentages reported in Table 2.26. Information about gender in Table 2.26 was taken from the counts and percentages reported in the Department of Defense *2022 Demographics Profile of the Military Community* report (United States Department of Defense, n.d.). As noted above, the summary DAC-IPAD report that describes the overall project and summarizes results across the Services includes information about the data sources and data collection methods used to measure the race and ethnicity of service members.

TABLE 2.26 RACE, ETHNICITY, AND GENDER OF ACTIVE DUTY SERVICE MEMBERS

	Frequency	Percentage
Race and/or Ethnicity		
White, not Hispanic Service Member	180,953	60.6
Racial and/or ethnic Minority Service Member	117,535	39.4
Total	298,488	100
Gender		
Male	251,618	78.5
Female	68,803	21.5
Total	320,421	100

Table 2.26 shows that 60.6% of active-duty personnel in the Air Force in FY2022 were White, not Hispanic service members and 39.4% were racial and/or ethnic Minority service members. More than three-quarters of active-duty personnel were men (78.5%) and 21.5% were women.

TABLE 2.27 SERVICE MEMBERS' RACE AND ETHNICITY

	Detailed	Impaneled	Air Force
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
White, not Hispanic Service Members	428 (62.9%)	177 (59.8%)	180,953 (60.6%)
Racial and/or Ethnic Minority Service Members	252 (37.1%)	119 (40.2%)	117,535 (39.4%)
Total	680 (100%)	296 (100%)	298,488 (100%)

Table 2.27 presents race and/or ethnicity information about those detailed to courts-martial, those impaneled, and the overall population of active duty personnel in the Air Force. This table allows for an understanding of

representation on details and panels in relation to the overall Air Force demographics. Individuals with missing race and/or ethnicity data were excluded from the results in Table 2.27. The percent of detailed members who were racial and/or ethnic Minority service members (37.1%) is similar to their representation in the Air Force (39.4%). A one-sample t-test was used to compare the percentage of those detailed who are racial and/or ethnic Minority service members to the representation of racial and/or ethnic Minority service members in the Air Force. There is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on details and their representation in the Air Force overall (t = -1.26, df = 679, p = .21). The percent of impaneled members who were racial and/or ethnic Minority service members (59.8%) is also similar to their representation in the Air Force (60.6%). The one-sample t-test shows there is not a statistically significant difference between the representation of racial and/or ethnic Minority service members on panels and their representation in the Air Force (t = .28, df = 295, p = .78).

TABLE 2.28 SERVICE MEMBERS' GENDER

	Detailed	Impaneled	Air Force
	Frequency (Percent)	Frequency (Percent)	Frequency (Percent)
Male	532 (69.0%)	256 (76.4%)	251,618 (78.5%)
Female	239 (31.0%)	79 (23.6%)	68,803 (21.5%)
Total	771 (100%)	335 (100%)	298,488 (100%)

Table 2.28 presents gender information about those detailed to courts-martial, those impaneled, and the overall population of the Air Force. Like Table 2.27, this table allows for an understanding of representation on details and panels in relation to the overall Air Force demographics. Individuals with missing data about their gender were excluded from the results in Table 2.28. Table 2.28 shows females are overrepresented among those detailed to courts-martial compared to their representation in the Air Force (31.0% of details and 21.5% in the Air Force). A one-sample t-test was used to compare the percentage of those detailed who are female service members to the representation of female service members in the Air Force. The difference between the representation of female service members on details and their representation in the Air Force overall is statistically significant (t = 5.70 df = 770, p < .05). In terms of representation on panels, female service members are represented on panels in a similar percentage to their overall representation in the Air Force (23.6% of panels and 21.5% in the Air Force). There is not a statistically significant difference between the representation of females on panels and their representation in the Air Force (t = .90 df = 334, p = .37).

Section 3. 49 Contested Sexual Assault Courts-Martial

Information in section 3 summarizes the *characteristics of details and panels*. The analyses in section 2 grouped all individuals together and ignored the specific detail and panel to which each individual was assigned. Section 3 examines the demographic characteristics of each detail and each panel. This approach provides the opportunity to study and summarize the characteristics of each detail and panel, which gets overlooked when individuals from all details and panels are grouped together. Section 3 provides an understanding of the variation that exists within and across the details and panels.

TABLE 3.1. NUMBER OF MEMBERS DETAILED TO INDIVIDUAL COURTS-MARTIAL

	Frequency	Percentage
9 Members	1	2.0
10 Members	1	2.0
13 Members	1	2.0
14 Members	4	8.2
15 Members	2	4.1
16 Members	9	18.4
17 Members	6	12.2
18 Members	7	14.3
19 Members	4	8.2
20 Members	5	10.2
21 Members	1	2.0
22 Members	3	6.1
23 Members	1	2.0
25 Members	2	4.1
26 Members	1	2.0
39 Members	1	2.0
Total	49	100

Table 3.1 presents information about the number of members detailed to the cases. The majority of cases (31 / 49; 63.3%) had between 16 service members and 20 service members detailed to the court-martial. One case involved a detail of 9 service members, and another involved a detail of 39 service members.

TABLE 3.2 NUMBER OF MEMBERS IMPANELED

	Frequency	Percentage
4 Members	3	6.1
8 Members	40	81.6
9 Members	3	6.1
10 Members	2	4.1
11 Members	1	2.0
Total	49	100

Table 3.2 describes the number of members impaneled in each case. Over 80 percent of cases involved panels of 8 service members (40 / 49; 81.6%).

RACE AND ETHNICITY OF DETAILED SERVICE MEMBERS IN 49 SEXUAL ASSAULT COURTS-MARTIAL

**TABLE 3.3. REPRESENTATION OF RACE AND ETHNICITY OF
SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Service Members	63.1%	14.3%	21.4%	90.0%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Service Members	36.9%	14.3%	10.0%	78.6%

FIGURE 3.1

Race/Ethnicity Composition of Details: 49 Air Force Cases

Table 3.3 presents the average percentage of details that were comprised of White, not Hispanic service members and the average percentage of details that were comprised of racial and/or ethnic Minority service members. These represent averages for details associated with the 49 Air Force cases. The 211 individual service members who were missing data on their race and/or ethnicity were excluded from the results in Table 3.3. Table 3.3 shows that, across the 49 cases, the average percent of detailed members that were White, not Hispanic service members was 63.1%; the average percent of detailed members that were racial and/or ethnic Minority service members was 36.9%. A

one-sample t-test was used to determine if there was a statistically significant difference between the average percent of details comprised of racial and/or ethnic Minority service members (36.9%) and the representation of racial and/or ethnic Minority service members in the Air Force (39.4%). The difference is not statistically significant (t = -1.23, df = 48, p = .23). This pattern is consistent with results reported in Table 2.27.

Figure 3.1 illustrates the composition of each detail in terms of race and ethnicity. The details show the following patterns:

- In 41 of the 49 cases (83.7% of cases), White, not Hispanic service members made up more than half of the detailed members.

- In 7 of the 49 cases (14.3%), racial and/or ethnic Minority service members made up more than half of the detail.

- There was 1 case (2.0%) in which half of the detail was comprised of White, not Hispanic service members and half of the detail was comprised of racial and/or ethnic Minority service members.

- In 25 of the 49 cases (51.0%), more than two-thirds of the detailed members were White, not Hispanic service members.

- In 2 of the 49 cases (4.1%), fewer than one-third of the detailed members were White, not Hispanic service members.

RACE AND ETHNICITY OF IMPANELED SERVICE MEMBERS IN 49 SEXUAL ASSAULT COURTS-MARTIAL

TABLE 3.4 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Panel Comprised of White, not Hispanic Service Members	59.7%	22.5%	0%	100%
Percent of Panel Comprised of Racial and/or Ethnic Minority Service Members	40.3%	22.5%	0%	100%

FIGURE 3.2

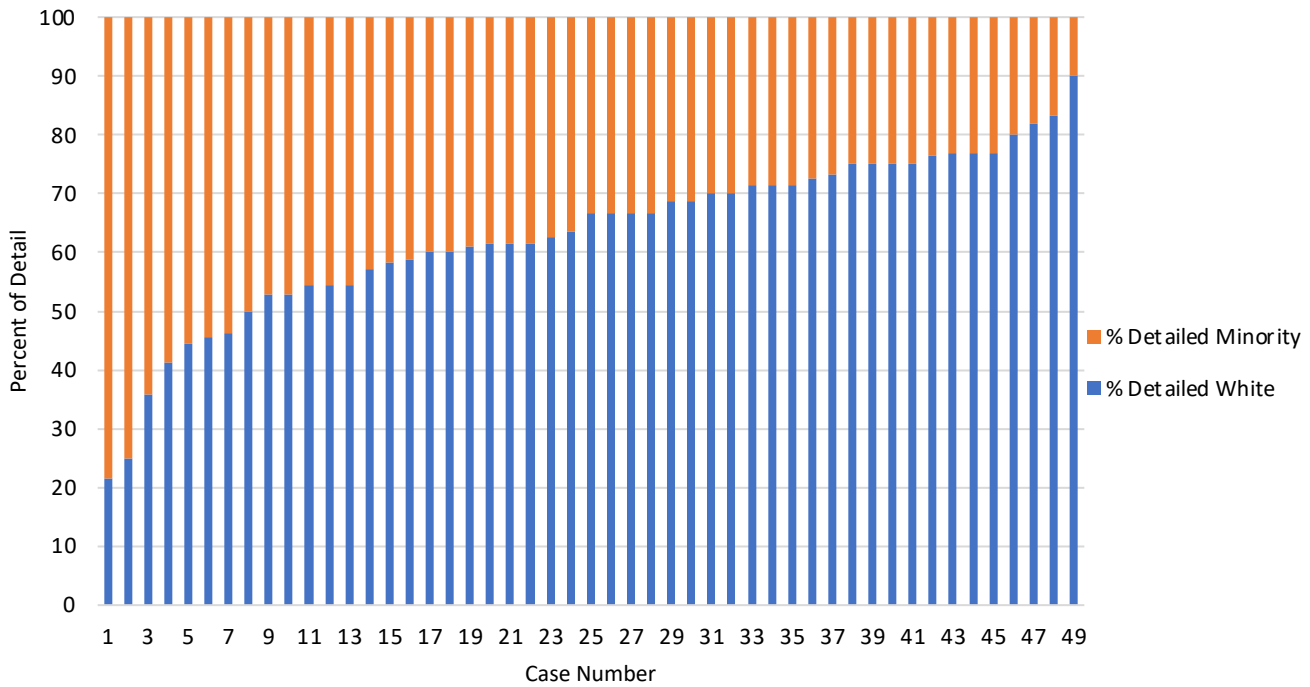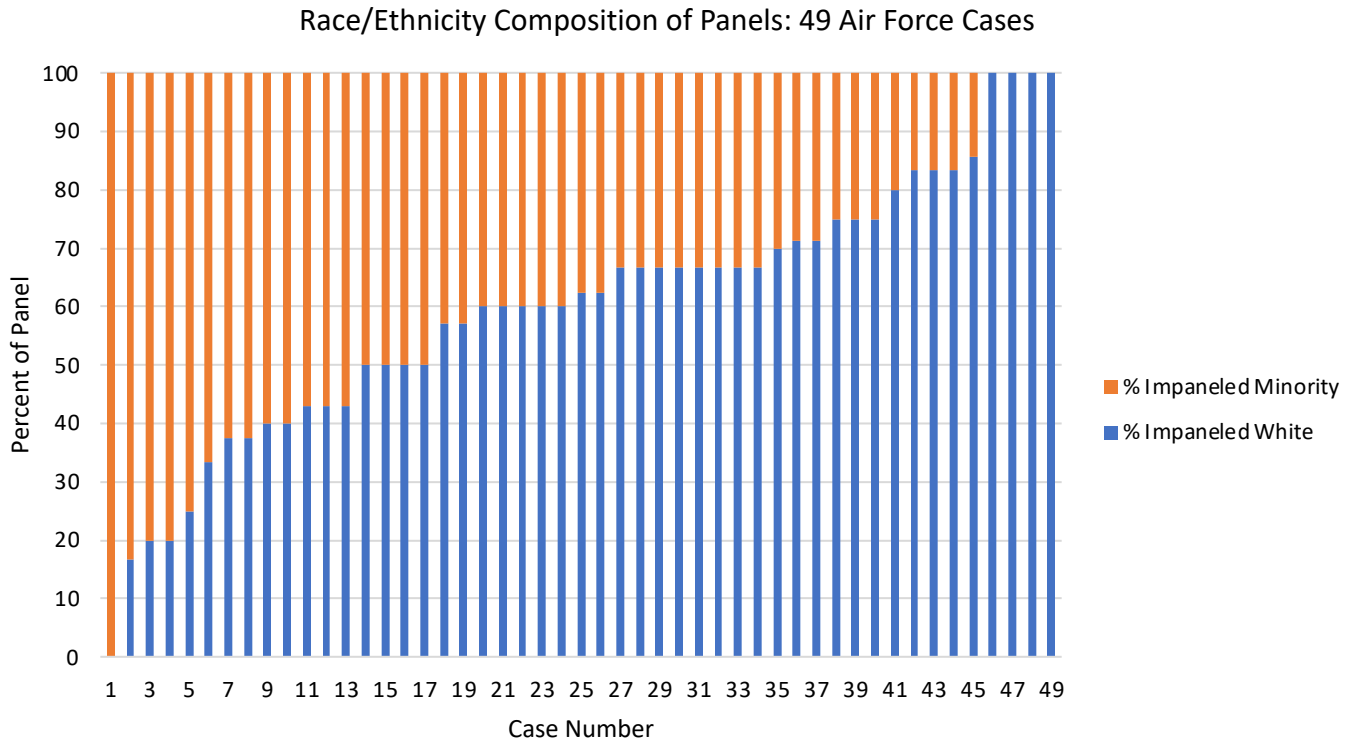### Race/Ethnicity Composition of Panels: 49 Air Force Cases

Table 3.4 presents the average percentage of panels that were comprised of White, not Hispanic service members and the average percentage of panels that were comprised of racial and/or ethnic Minority service members. These represent averages for panels associated with the 49 Air Force cases. The 94 individual service members who were impaneled and missing data on their race and/or ethnicity were excluded from the results in Table 3.4. Table 3.4 shows that, across the 49 panels, the average percent of panels that were comprised of White, not Hispanic service members was 59.7%, the average percent of panels comprised of racial and/or ethnic Minority service members was 40.3%. A one-sample t-test was used to determine if there was a statistically significant difference between the average percent of panels comprised of racial and/or ethnic Minority service members (40.3%) and the representation of racial and/or ethnic Minority service members in the Air Force (39.4%). The difference is not statistically significant (t = .28, df = 48, p = .78). This pattern is consistent with results reported in Table 2.27.

Figure 3.2 illustrates the composition of each panel in terms of race and ethnicity. The panels show the following patterns:

- In 32 of 49 panels (65.3%), more than half of the panel was comprised of White, not Hispanic service members, including 4 panels in which all members were White, not Hispanic service members.

- In 13 of 49 panels (26.5%), more than half of the panel was comprised of racial and/or ethnic Minority service members, including 1 panel in which all members were racial and/or ethnic Minority service members.

- There were 4 panels (8.2%) in which half of the panel was comprised of White, not Hispanic service members and half of the panel was comprised of racial and/or ethnic Minority service members.

TABLE 3.5 REPRESENTATION OF GENDER OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of Female Service Members	31.0%	12.1%	6.7%	54.5%
Percent of Detailed Members Comprised of Male Service Members	69.0%	12.1%	45.5%	93.3%

FIGURE 3.3

Gender Composition of Details: 49 Air Force Cases

Table 3.5 shows that, across the 49 panels, the average percent of details that were comprised of female service members was 31.0%, the average percent of detailed members comprised of male service members was 69.0%. The 120 individual service members who were missing data on their gender were excluded from the results in Table 3.5. A one-sample t-test shows the average percent of details comprised of female service members (31.0%) is greater than the representation of females in the Air Force (21.5%); this difference is statistically significant (t = 5.49, df = 48, p < .05). This pattern is consistent with results reported in Table 2.28. Figure 3.3 shows the representation of male service members and female service members on each detail.

TABLE 3.6 REPRESENTATION OF GENDER OF SERVICE MEMBERS ON PANELS

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of Female Service Members	24.0%	17.5%	0%	83.3%
Percent of Impaneled Members Comprised of Male Service Members	76.0%	17.5%	16.7%	100%

FIGURE 3.4
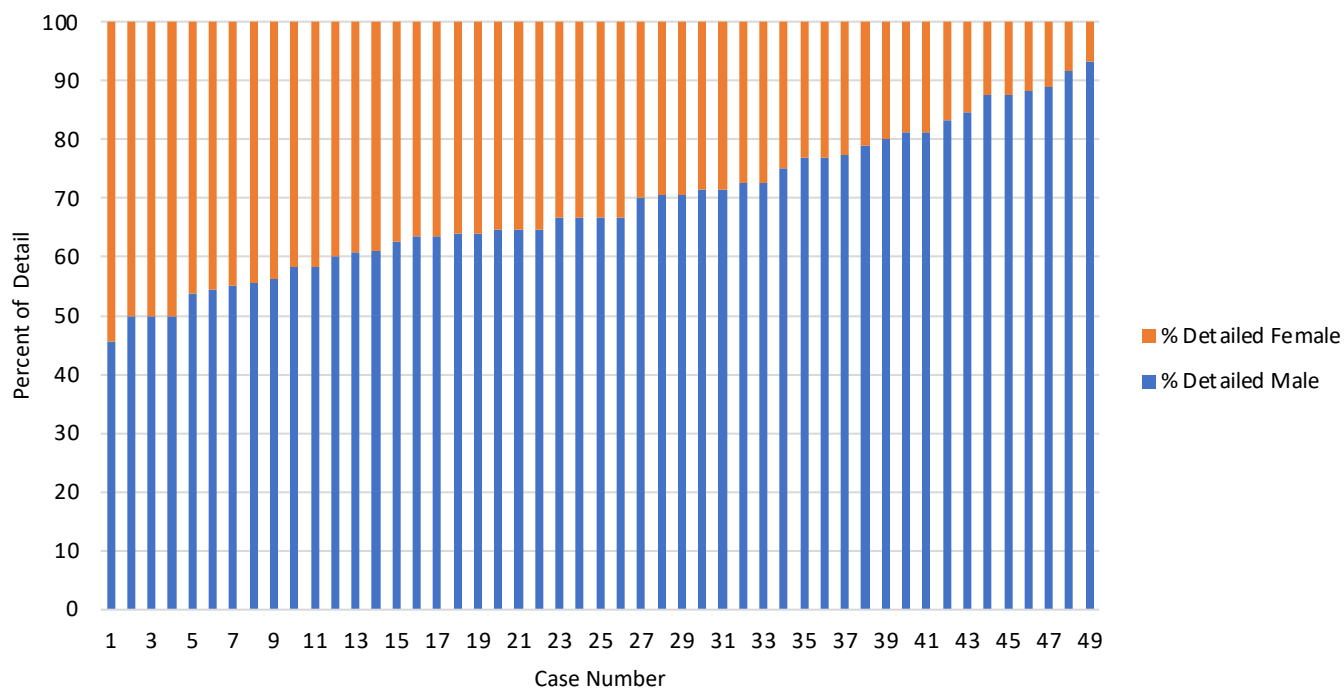

Gender Composition of Panels: 49 Air Force Cases
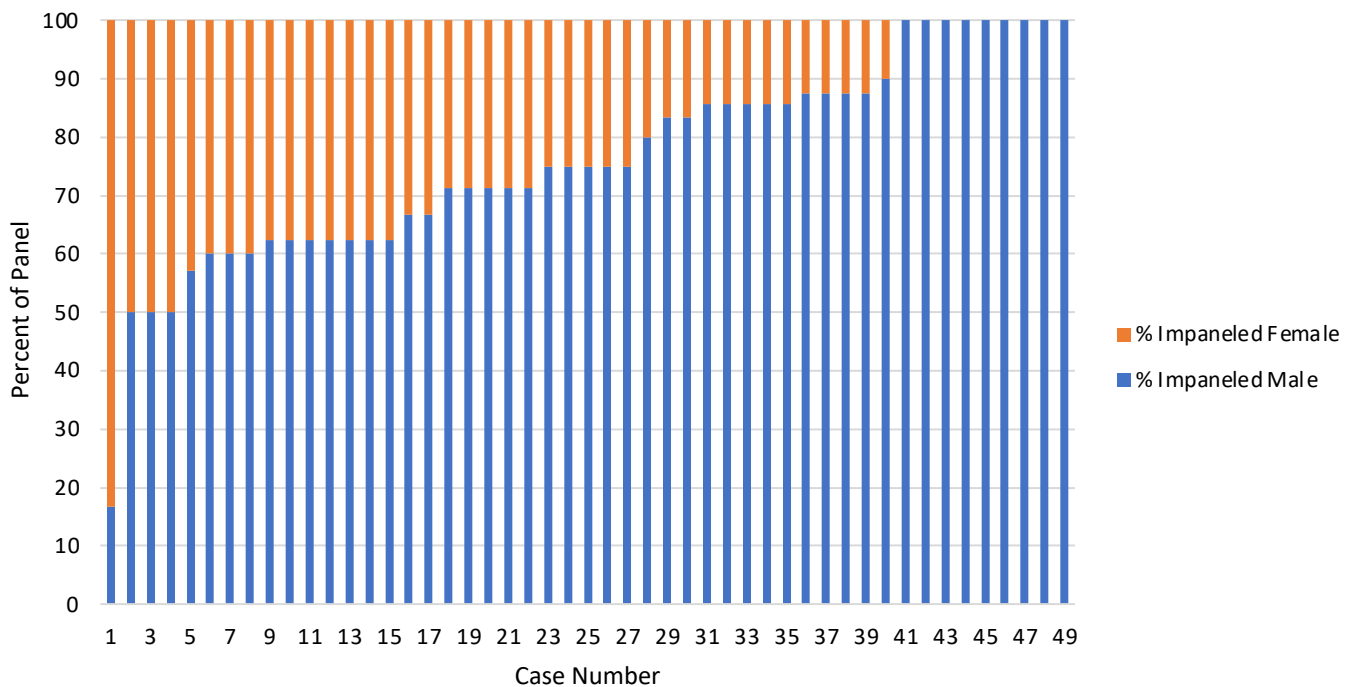
Table 3.6 shows that, across the 49 panels, the average percent of panels that were comprised of female service members was 24.0%, the average percent of panels comprised of male service members was 76.0%. The 55 service members who were impaneled and were missing data on their gender were excluded from the results in Table 3.6. A one-sample t-test shows the average percent of panels comprised of female service members (24.0%) is not statistically different from the representation of females in the Air Force (21.5%) (t = 1.02, df = 48, p = .32). This pattern is consistent with results reported in Table 2.28. Figure 3.4 shows the representation of male service members and female service members on each panel.

TABLE 3.7 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Services Member
Average Percent of Panel Comprised of White, not Hispanic Service Members	64.2% (SD = 26.0)	55.3% (SD = 18.9)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 64.2% White, not Hispanic service members and 35.8% racial and/or ethnic Minority service members (Table 3.7). In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 55.3% White, not Hispanic service members and 44.7% racial and/or ethnic Minority service members. This difference in average percentages across race and/or ethnicity of the accused service member is not statistically significant ($t = 1.36$, df = 45, $p = .18$).

TABLE 3.8 REPRESENTATION OF GENDER OF SERVICE MEMBERS IMPANELED AND RACE AND ETHNICITY OF THE ACCUSED

	Accused – White, not Hispanic Service Members	Accused – Racial and/or Ethnic Minority Service Members
Average Percent of Panel Comprised of Male Service Members	76.6 (SD = 15.7)	75.5 (SD = 18.7)

In cases with an accused service member who was White, not Hispanic, the typical panel was comprised of 76.6% male service members and 23.4% female service members. In cases with an accused racial and/or ethnic Minority service member, the typical panel was comprised of 75.5% male service members and 24.5% female service members. This difference in average percentages across race and/or ethnicity of the accused service member is not statistically significant ($t = .22$, df = 45, $p = .83$).

TABLE 3.9 REPRESENTATION OF RACE AND ETHNICITY OF SERVICE MEMBERS IMPANELED AMONG OFFICER AND ENLISTED PANELS

	All Officer Panel	Enlisted Panel
Average Percent of Panel Comprised of White, not Hispanic Service Members	67.0% (SD = 22.2)	57.6% (SD = 22.4)

In cases with an all officer panel, the typical panel was comprised of 67.0% White, not Hispanic service members and 33.0% racial and/or ethnic Minority service members (Table 3.9). In cases with an enlisted panel, the typical panel was comprised of 57.6% White, not Hispanic service members and 42.4% racial and/or ethnic Minority service members. This difference in average percentages across panel type is not statistically significant ($t = -1.23$, df = 47, $p = .23$). The estimate of panel composition across panel type and the statistical test may not be reliable due to the small number of cases with all officer panels (n = 11).

**TABLE 3.10 REPRESENTATION OF GENDER OF SERVICE MEMBERS
IMPANELED AMONG OFFICER AND ENLISTED PANELS**

	All Officer Panel	Enlisted Panel
Average Percent of Panel Comprised of Male Service Members	73.5% (SD = 11.7)	76.7% (SD = 18.9)

In cases with an all officer panel, the typical panel was comprised of 73.5% male service members and 26.5% female service members (Table 3.10). In cases with an enlisted panel, the typical panel was comprised of 76.7% male service members and 23.3% female service members. This difference in average percentages across panel type is not statistically significant (t = .53, df = 47, p = .60). The estimate of panel composition across panel type and the statistical test may not be reliable due to the small number of cases with all officer panels (n = 11).

**TABLE 3.11 REPRESENTATION OF RACE, ETHNICITY, AND GENDER
OF SERVICE MEMBERS DETAILED TO COURTS-MARTIAL**

	Average	Std. Deviation	Minimum	Maximum
Percent of Detailed Members Comprised of White, not Hispanic Female Service Members	17.7%	9.6%	0%	36.4%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Female Service Members	13.4%	7.9%	0%	30.8%
Percent of Detailed Members Comprised of White, not Hispanic Male Service Members	45.4%	16.8%	11.1%	80.0%
Percent of Detailed Members Comprised of Racial and/or Ethnic Minority Male Service Members	23.5%	12.0%	0%	57.1%

Table 3.11 shows that racial and/or ethnic Minority female service members represent the smallest average percentage of details (13.4%), followed by White, not Hispanic female service members (17.7%). White, not Hispanic male service members represent the largest average percentage of details (45.5%), followed by racial and/or ethnic Minority male service members (23.5%).

**TABLE 3.12. REPRESENTATION OF RACE, ETHNICITY, AND
GENDER OF SERVICE MEMBERS IMPANELED**

	Average	Std. Deviation	Minimum	Maximum
Percent of Impaneled Members Comprised of White, not Hispanic Female Service Members	13.3%	14.3%	0%	42.9%
Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Female Service Members	11.0%	13.1%	0%	50.0%
Percent of Impaneled Members Comprised of White, not Hispanic Male Service Members	46.4%	25.2%	0%	100%

Percent of Impaneled Members Comprised of Racial and/or Ethnic Minority Male Service Members	29.3%	20.0%	0%	80%

Table 3.12 shows that racial and/or ethnic Minority female service members represent the smallest average percentage of panels (11.0%), followed by White, not Hispanic female service members (13.3%). White, not Hispanic male service members represent the largest average percentage of panels (46.4%), followed by racial and/or ethnic Minority male service members (29.3%).

REFERENCES

United States Department of Defense. (n.d.). *2022 Demographics: Profile of the Military Community.* United States Department of Defense. https://download.militaryonesource.mil/ 12038/MOS/Reports/2022-demographics-report. pdf.

Rose, M.R. (2021). *Final Report on New Jersey's Empirical Study of Jury Selection Practices and Jury Representativeness: Prepared for the New Jersey Supreme Court.* https://www.njcourts.gov/sites/default/files/jurors/maryrosefinalreport.pdf

Rose, M.R., & Abramson, J.B. (2011). Date, race, and the courts: Some lessons on empiricism from jury representation cases. *Michigan State Law Review, 2011*, 912-963.

Rose, M.R., Casarez, R.S., & Gutierrez, C.M. (2018). Jury pool underrepresentation in the modern era: Evidence from federal courts. *Journal of Empirical Legal Studies, 15*, 378-405.

APPENDICES

Two appendices are presented below to show: 1) the racial and ethnic demographic information about detailed service members that was provided by the Services and 2) the way this demographic information was used to create two groups of service members: White, not Hispanic service members and racial and/or ethnic Minority service members. Racial and ethnic demographic information provided by the Services was used to create a variable with two categories.

Appendix A shows information about race and about ethnicity combined into a single variable. This information about race and about ethnicity was provided separately by the Services, and we combined these together to demonstrate the intersection of race and ethnicity together. This information allowed for the creation of a simplified variable with the two primary demographic categories of interest: White, not Hispanic service members and racial and/or ethnic Minority service members. Appendix B shows how each combination was recoded into two race and ethnicity categories. Those two categories were used in the analyses reported above.

Appendix A

Detailed service members' race and ethnicity information provided by the Services, combined into a single variable.

	Frequency	Percent
American Indian None	1	0.1
American Indian Not Hispanic or Latino	2	0.2
American Indian/Alaskan Native American Indian	2	0.2
American Indian/Alaskan Native None	2	0.2
American Indian/Alaskan Native Not Hispanic or Latino	1	0.1
Asian Black Other	1	0.1
Asian Declined to Respond	7	0.8
Asian Filipino	4	0.4
Asian Hispanic or Latino	1	0.1
Asian None	2	0.2
Asian Not Hispanic or Latino	51	5.7
Asian Other	1	0.1
Asian Other Asian	1	0.1
Asian/Native Hawaiian/Pacific Islander Not Hispanic or Latino	1	0.1
Black Declined to Respond	8	0.9
Black Hispanic or Latino	5	0.6
Black None	28	3.1
Black Not Hispanic or Latino	54	6.1
Black Other	8	0.9
Black/White Hispanic or Latino	1	0.1
Declined to Respond Declined to Respond	26	2.9
Declined to Respond Hispanic or Latino	18	2.0
Declined to Respond Mexican American	2	0.2
Declined to Respond None	4	0.4

Declined to Respond Not Hispanic or Latino	6	0.7
Declined to Respond Other	4	0.4
Declined to Respond Puerto Rican	1	0.1
Declined to Respond Spanish Descent	1	0.1
Native American Not Hispanic or Latino	1	0.1
Native American/Pacific Islander Not Hispanic or Latino	2	0.2
Native Hawaii/Pacific Islander Other Pacific Islander	1	0.1
Native Hawaiian/Pacific Islander None	1	0.1
Unknown Unknown	120	13.5
White Declined to Respond	47	5.3
White Hispanic or Latino	34	3.8
White Latin American	1	0.1
White Latino	1	0.1
White Mexican American	6	0.7
White None	110	12.3
White Not Hispanic or Latino	318	35.7
White Other	4	0.4
White Puerto Rican	2	0.2
Total	891	100.0

Appendix B

Detailed service members' race and ethnicity variable recoded into an aggregated measure with three categories.

	White, not Hispanic Service Members	Racial and/ or Ethnic Minority Service Members	Unknown/ Missing	Total
American Indian None	0	1	0	1
American Indian Not Hispanic or Latino	0	2	0	2
American Indian/Alaskan Native American Indian	0	2	0	2
American Indian/Alaskan Native None	0	2	0	2
American Indian/Alaskan Native Not Hispanic or Latino	0	1	0	1
Asian Black Other	0	1	0	1
Asian Declined to Respond	0	7	0	7
Asian Filipino	0	4	0	4
Asian Hispanic or Latino	0	1	0	1
Asian None	0	2	0	2
Asian Not Hispanic or Latino	0	51	0	51
Asian Other	0	1	0	1
Asian Other Asian	0	1	0	1
Asian/Native Hawaiian/Pacific Islander Not Hispanic or Latino	0	1	0	1

Black Declined to Respond	0	8	0	8
Black Hispanic or Latino	0	5	0	5
Black None	0	28	0	28
Black Not Hispanic or Latino	0	54	0	54
Black Other	0	8	0	8
Black/White Hispanic or Latino	0	1	0	1
Declined to Respond Declined to Respond	0	0	26	26
Declined to Respond Hispanic or Latino	0	18	0	18
Declined to Respond Mexican American	0	2	0	2
Declined to Respond None	0	0	4	4
Declined to Respond Not Hispanic or Latino	0	0	6	6
Declined to Respond Other	0	0	4	4
Declined to Respond Puerto Rican	0	1	0	1
Declined to Respond Spanish Descent	0	1	0	1
Native American Not Hispanic or Latino	0	1	0	1
Native American/Pacific Islander Not Hispanic or Latino	0	2	0	2
Native Hawaii/Pacific Islander Other Pacific Islander	0	1	0	1
Native Hawaiian/Pacific Islander None	0	1	0	1
Unknown Unknown	0	0	120	120
White Declined to Respond	0	0	47	47
White Hispanic or Latino	0	34	0	34
White Latin American	0	1	0	1
White Latino	0	1	0	1
White Mexican American	0	6	0	6
White None	110	0	0	110
White Not Hispanic or Latino	318	0	0	318
White Other	0	0	4	4
White Puerto Rican	0	2	0	2
Total	428	252	211	891

APPENDIX J. MILITARY SERVICES' DEMOGRAPHIC DATA

DEMOGRAPHIC DATA PROVIDED BY THE INDIVIUDAL MILITARY SERVICES AND THE DEFENSE MANPOWER DATA CENTER

Army: Data Provided by the Army

Active Component Demographics
Data as of 31 October 2022

The total number of Soldiers in the Active Component is 463,083. Males account for 84.3% and Females account for 15.7% of the total. The Racial/Ethnic distribution of the Army is as follows – White, Not Hispanic: 53.6%, Black, Not Hispanic: 20.3%, Hispanic: 17.6%, Asian or Pacific Islander: 6.9%, American Indian or Alaskan Native: 0.9%, and Unknown/Other: 0.8%.

Strength by Category and GENDER

Strength by Category and Race/Ethnicity
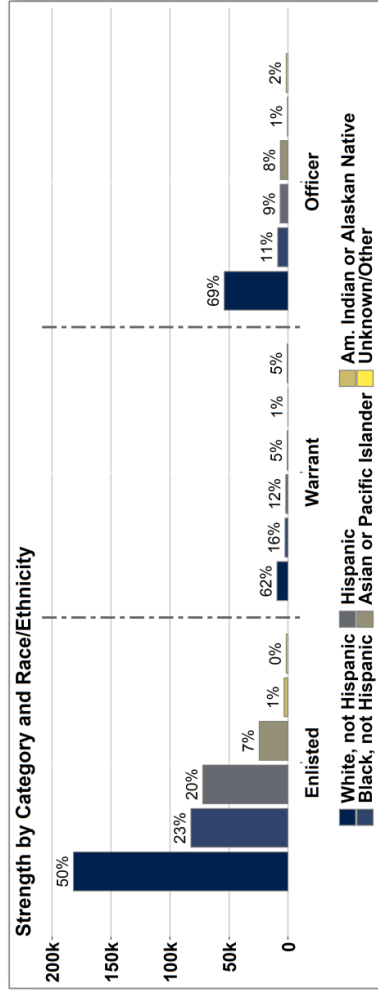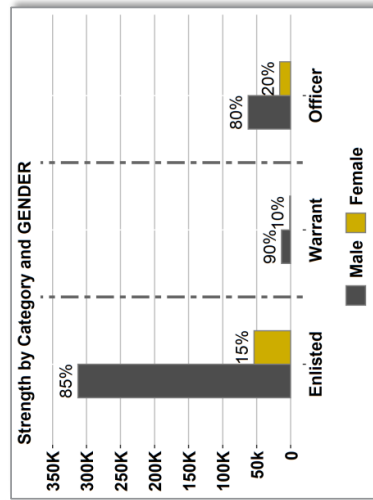
Grade	Inventory	Gender		Race/Ethnicity					
		Male	Female	Hispanic	Am. Indian or Alaskan Native	Asian or Pacific Islander	White, not Hispanic	Black, not Hispanic	Unknown/ Other
Enlisted Subtotal	365,440	311,495	53,945	72,147	3,372	24,348	181,800	82,246	1,527
Enlisted %	79%	85%	15%	20%	1%	7%	50%	23%	0%
Officer Subtotal	78,147	62,134	16,013	6,749	567	6,453	54,123	8,685	1,570
Officer %	17%	80%	20%	9%	1%	8%	69%	11%	2%
Warrant Officer Subtotal	15,131	13,611	1,520	1,836	78	734	9,358	2,425	700
Warrant Officer %	3%	90%	10%	12%	1%	5%	62%	16%	5%
USMA Cadet Subtotal	4,365	3,365	1,000	549	37	449	2,773	518	39
USMA Cadet %	1%	77%	23%	13%	1%	10%	64%	12%	1%
Active Component Total	463,083	390,605	72,478	81,281	4,054	31,984	248,054	93,874	3,836
Active Component %		84.3%	15.7%	17.6%	0.9%	6.9%	53.6%	20.3%	0.8%

Navy: Data Provided by the Defense Manpower Data Center

Active Duty Navy Race by Hispanic Indicator
Data as of: September 2022
Source: Active Duty Military Personnel Master File

Race	Hispanic		Non-Hispanic		Unknown		Total
	N	%	N	%	N	%	N
American Indian/Alaskan Native	1,722	29.2%	3,636	61.7%	539	9.1%	5,897
Asian	850	4.1%	18,808	90.0%	1,238	5.9%	20,896
Black or Afriacn American	5,679	9.4%	42,688	70.6%	12,064	20.0%	60,431
Native Hawaiian or other Pacific Islander	582	14.2%	3,096	75.4%	428	10.4%	4,106
White	43,213	20.2%	139,698	65.2%	31,283	14.6%	214,194
Multi-racial	3,655	16.8%	15,601	71.5%	2,562	11.7%	21,818
Unknown	4,001	31.4%	3,120	24.5%	5,602	44.0%	12,723
Total	59,702	17.6%	226,647	66.6%	53,716	15.8%	340,065

Marine Corps: Data Provided by the Defense Manpower Data Center

Active Duty Marine Corps Race by Hispanic Indicator
Data as of: September 2022
Source: Active Duty Military Personnel Master File

Race	Hispanic		Non-Hispanic		Unknown		Total
	N	%	N	%	N	%	N
American Indian/Alaskan Native	624	29.1%	1,524	70.9%	0	0.0%	2,148
Asian	177	2.8%	6,060	97.2%	0	0.0%	6,237
Black or Afriacn American	1,318	6.9%	17,821	93.1%	0	0.0%	19,139
Native Hawaiian or other Pacific Islander	213	11.1%	1,699	88.9%	0	0.0%	1,912
White	41,617	29.7%	98,495	70.3%	0	0.0%	140,112
Multi-racial	422	15.8%	2,257	84.2%	0	0.0%	2,679
Unknown	843	35.9%	1,507	64.1%	0	0.0%	2,350
Total	45,214	25.9%	129,363	74.1%	0	0.0%	174,577

Air Force: Data Provided by the Air Force

Active Component Demographics
Data for FY2022

Grade	Inventory	Male	Female	Hispanic	Am. Indian / Alaskan Native	Asian / Pacific Islander / Hawaiian	White, Not Hispanic	Black, Not Hispanic	Declined / 2 or More / Unknown
						(Race/Ethnicity)			
E1	8873	7036	1837	2027	34	556	4130	1547	579
E2	8032	6349	1683	1995	55	497	3783	1314	388
E3	46145	35206	10939	10302	160	2983	22653	7598	2449
E4	61936	48026	13910	12874	241	3425	31328	10868	3200
E5	60416	48096	12320	10937	221	2997	33469	9041	3751
E6	44857	37162	7695	6813	169	1961	26708	5922	3284
E7	25913	20609	5304	3516	95	1162	15612	3464	2064
E8	4788	3671	1117	614	20	181	2781	781	411
E9	2613	2104	509	263	4	61	1588	482	215
Enlisted Subtotal	**263573**	**208259**	**55314**	**49341**	**999**	**13823**	**142052**	**41017**	**16341**
Enlisted %	**80%**	**79%**	**21%**	**19%**	**0%**	**5%**	**54%**	**16%**	**6%**
O1	6790	4919	1871	675	12	356	3285	353	2109
O2	8005	5910	2095	855	27	436	4212	443	2032
O3	21847	16516	5331	1991	62	1289	13107	1205	4193
O4	14685	11331	3354	1083	64	750	9357	823	2608
O5	9917	8140	1777	601	30	412	6273	397	2204
O6	3423	2841	582	173	11	103	2667	204	265
Officer Subtotal	**64667**	**49657**	**15010**	**5378**	**206**	**3346**	**38901**	**3425**	**13411**
Officer %	**20%**	**77%**	**23%**	**8%**	**0%**	**5%**	**60%**	**5%**	**21%**
Active Component Total	**328240**	**257916**	**70324**	**54719**	**1205**	**17169**	**180953**	**44442**	**29752**
Active Component %		**79%**	**21%**	**17%**	**0%**	**5%**	**55%**	**14%**	**9%**

APPENDIX K. ACRONYMS AND ABBREVIATIONS

CAAF	Court of Appeals for the Armed Forces
CMCO	court-martial convening order
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
FY	fiscal year
GAO	Government Accountability Office
IRC	Independent Review Commission on Sexual Assault in the Military
IRT	Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems
MCM	Manual for Courts-Martial
NDAA	National Defense Authorization Act
OMB	Office of Management and Budget
R.C.M.	Rule for Courts-Martial
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code

APPENDIX L. SOURCES CONSULTED

1. Legislative Sources

5 U.S.C. App. §§ 1–16 (Federal Advisory Committee Act)

10 U.S.C. §§ 801 – 946a (Uniform Code of Military Justice)

National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117–81, 135 Stat. 1692 (2021)

National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395 (2022)

2. Judicial Decisions

    a. U.S. Supreme Court

McDonough Power Equipment Inc. v. Greenwood, 464 U.S. 548 (1984)

Batson v. Kentucky, 476 U.S. 79 (1986)

Powers v. Ohio, 499 U.S. 400 (1991)

J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1993)

    b. U.S. Court of Appeals for the Armed Forces and Predecessor Court

U.S. v. Crawford, 35 C.M.R. 3 (C.M.A. 1964)

U.S. v. Santiago-Davila, 26 M.J. 380 (C.M.A. 1988)

U.S. v. Smith, 27 M.J. 242 (C.M.A. 1988)

U.S. v. Napoleon, 46 M.J. 279 (C.A.A.F. 1997)

U.S. v. Warden, 51 M.J. 78 (C.A.A.F. 1999)

U.S. v. Norfleet, 53 M.J. 262 (C.A.A.F 2000)

U.S. v. James, 61 M.J. 132 (C.A.A.F. 2005)

U.S. v. Cay, 64 M.J. 274 (C.A.A.F. 2007)

U.S. v. Terry, 64 M.J. 295 (C.A.A.F. 2007)

U.S. v. Peters, 74 M.J. 31 (C.A.A.F. 2015)

U.S. v. Commisso, 76 M.J. 315 (C.A.A.F 2017)

U.S. v. Reisbeck, 77 M.J. 154 (C.A.A.F. 2018)

U.S. v. Bess, 80 M.J. 1 (C.A.A.F. 2019)

U.S. v. Jeter, 84 M.J. 68 (C.A.A.F. 2023)

U.S. v. Keago, No. 23-0021, 2024 C.A.A.F LEXIS 256 (C.A.A.F. May 9, 2024)

3. Rules and Regulations

Manual for Courts-Martial, United States (2019 ed.)

Manual for Courts-Martial, United States (2024 ed.)

4. Federal Policy

Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 782 (October 30, 1997)

Initial Proposals to Updating OMB's Race and Ethnicity Statistical Standards, 88 Fed. Reg. 5375, 5379 (January 27, 2023)

Office of Management and Budget, Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22, 182 (March 29, 2024)

5. Meetings and Hearings

Transcript of DAC-IPAD Public Meeting (September 21, 2022)

Transcript of DAC-IPAD Public Meeting (December 6, 2022)

Transcript of DAC-IPAD Public Meeting (September 19, 2023)

Transcript of DAC-IPAD Public Meeting (December 6, 2023)

6. Reports

a. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) Reports

DAC-IPAD, *Court-Martial Adjudication Data Report* (November 2019)

DAC-IPAD, *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017* (October 2020)

DAC-IPAD, *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offense in the Military* (December 2020)

DAC-IPAD, *Appellate Review Study* (March 2023)

DAC-IPAD, *Report on Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, Manual for Courts-Martial* (June 2023)

DAC-IPAD, *Randomizing Court-Martial Panel Member Selection: A Report on Improving an Outdated System* (December 2023)

b. Department of Defense Reports

Department of Defense, *2022 Demographics: Profile of the Military Community* (2022)

Department of Defense, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (August 2022)

c. Other Government Reports

Government Accountability Office, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities* (May 2019)

Independent Review Commission on Sexual Assault in the Military Report, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military* (July 2021)

Government Accountability Office, *Military Justice: Increased Oversight, Data Collection, and Analysis Could Aid Assessment of Racial Disparities* (May 2024)

d. Nonprofit Reports

Protect Our Defenders, *Racial Disparities in Military Justice* (2017)

7. Scholarly Articles

Sonia Chopra, *Preserving Jury Diversity by Preventing Illegal Peremptory Challenges: How to Make a Batson/Wheeler Motion at Trial (and Why You Should)*, The Trial Lawyer (Summer 2014)

Whitney DeCamp & Elise DeCamp, *It's Still about Race: Peremptory Challenge Use on Prospective Jurors*, 57 Journal of Research in Crime & Delinquency 3 (2020)

Leslie Ellis & Shari Seidman Diamond, *Race, Diversity and Jury Composition: Battering and Bolstering Legitimacy*, 78 Chicago-Kent Law Review 1033 (2003)

Catherine M. Grosso & Barbara O'Brien, *Revised Report on Wake County Jury Selection Study* (September 11, 2022)

Ashish S. Joshi & Christina T. Kline, *Lack of Jury Diversity: A National Problem with Individual Consequences*, Diversity & Inclusion (Spring 2015)

Eryn Nicole O'Neal, Laura O. Beckman, and Cassia Spohn, *The Sexual Stratification Hypothesis: Is the Decision to Arrest Influenced by the Victim/Suspect Racial/Ethnic Dyad?*, 34 Journal of Interpersonal Violence 1287 (2016)

Mary R. Rose & Jeffrey B. Abramson, *Data, Race and the Courts: Some Lessons on Empiricism from Jury Representation Cases*, Michigan State Law Review 911 (2011)

Samuel Sommers, *On Racial Diversity and Group Decision-Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 Journal of Personality & Social Psychology 597 (2006)

8. Press Releases

Press Release, Defense Department Reports Shows Decline in Armed Forces Population While Percentage of Military Women Rises Slightly (November 6, 2023)

9. Letters, Emails, and Other Media

Letter from Mr. Ryan Guilds to the DAC-IPAD (May 30, 2023)