

UNITED STATES DEPARTMENT OF DEFENSE

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DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,
PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN
THE ARMED FORCES (DAC-IPAD)

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PUBLIC MEETING

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FRIDAY
OCTOBER 23, 2020

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The Committee met via Teleconference,
at 11:00 a.m. EDT, Ms. Martha Bashford, Chair,
presiding.

PRESENT:

Ms. Martha S. Bashford, Chair
Maj. Gen. Marcia M. Anderson, USA (Ret.)
Hon. Leo I. Brisbois
Hon. Paul W. Grimm
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Brig. Gen. James R. Schwenk, USMC (Ret.)
Dr. Cassia C. Spohn

Ms. Meghan A. Tokash

Hon. Reggie B. Walton

STAFF:

Col. Laura J Calese, JAGC, U.S. Army, Director

Ms. Julie Carson, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Mr. Dwight Sullivan Designated Federal Official

Ms. Alice Falk, Technical Editor

Ms. Nalini Gupta, Attorney-Advisor

Mr. Chuck Mason, Attorney-Advisory

Ms. Eleanor Vuono, Attorney-Advisor

1 P-R-O-C-E-E-D-I-N-G-S

2 11:01 a.m.

3 MR. SULLIVAN: Good morning. I am
4 Dwight Sullivan, the Designated Federal Officer
5 of the Defense Advisory Committee on
6 Investigation, Prosecution and Defense of Sexual
7 Assault in the Armed Forces, colloquially known
8 as the DAC-IPAD. Welcome to the public meeting
9 of the DAC-IPAD, which is now open. Ms.
10 Bashford, you have the con.

11 CHAIR BASHFORD: Thank you, Mr.
12 Sullivan. Good morning to everybody. I'd like
13 to welcome the members and everybody in
14 attendance today to the 19th Public Meeting of
15 the Defense Advisory Committee on Investigation,
16 Prosecution and Defense of Sexual Assault in the
17 Armed Forces or DAC-IPAD. In accordance with the
18 current Department of Defense guidelines for
19 operations during the COVID-19 pandemic, today's
20 meeting is being held via teleconference.

21 Please note that non-DAC-IPAD
22 attendees will be muted by our teleconference

1 administrator in compliance with DoD's legal
2 guidance and to prevent background noise for
3 disruptions during the meeting. Committee
4 members and staff, I ask you to please keep your
5 phones muted, as well, when you're not speaking.
6 Additionally, in case the current conference line
7 fails, we will break for 10 minutes and move to
8 an alternative line.

9 The alternative line dial-in
10 information will be posted on the DAC-IPAD
11 website with instructions for rejoining the
12 committee. Dale has emailed this to us, as well.
13 I just want to take one moment, even though we
14 have a quorum, just to see if anybody who did not
15 answer has jumped on. Judge Grimm?

16 HON. GRIMM: Yes, thank you very much,
17 Madam Chair.

18 CHAIR BASHFORD: Mr. Markey? Dr.
19 Markowitz? Ms. Cannon? Ms. Garvin? Chief
20 McKinley? We've added Judge Grimm. The DAC-IPAD
21 was created by the Secretary of Defense in 2016
22 in accordance with the National Defense

1 Authorization Act for Fiscal Year 2015 as
2 amended. Our mandate is to advise the Secretary
3 of Defense on the investigation, prosecution and
4 defense of allegations of sexual assault and
5 other sexual misconduct involving members of the
6 armed forces.

7 Today the committee will receive a
8 presentation from its professional staff on the
9 Congressionally-mandated requirement for the
10 committee to review and assess the race and
11 ethnicity of members of the armed forces
12 investigated for, charged with and convicted of
13 sexual offenses under the Uniform Code of
14 Military Justice.

15 This requirement was part of the
16 December 2019 National Authorization Act for
17 Fiscal Year 2020, but given the national
18 conversation regarding race and ethnicity since
19 then, and considering some complexities involved
20 in collecting and analyzing data for race and
21 ethnicity in criminal cases involving sexual
22 assault, I asked that we convene an open session,

1 present the data collected thus far, and
2 determine a path ahead.

3 Thus, the purpose and organization of
4 this meeting is somewhat different than the
5 committee's usual process. Today's presentation
6 will include an overview of the previous studies
7 of racial and ethnic disparities in military
8 justice, a discussion of the Congressional
9 directive for the current DAC-IPAD study, an
10 explanation of the methodology for the
11 committee's review, and a presentation of the
12 data that has been collected from the military
13 services for this purpose.

14 The presentation will be followed by
15 committee discussion and deliberation on
16 development of potential findings,
17 recommendations and guidance for the report. Two
18 weeks from now, we will hold an administrative
19 session, followed by a public meeting on November
20 6th, where we will solidify and approve our
21 observations, findings and recommendations
22 concerning the NDAA tasking to review and assess

1 race and ethnicity in the context of sexual
2 assault in the armed forces.

3 This meeting is being transcribed, and
4 a complete written transcript will be posted on
5 the DAC-IPAD website. If a meeting attendee
6 would like to make a public comment, please
7 submit your name and the phone number you are
8 calling from to Mr. Dale Trexler at
9 dale.l.trexler.civ@mail.mil no later than 1:00
10 p.m. Eastern time. Comments will be heard at the
11 discretion of the Chair. Written public comments
12 may be submitted at any time for committee
13 consideration.

14 Before I hand it over to the
15 professional staff, I request that committee
16 members signal when they have a question or wish
17 to speak by just stating your name and then
18 waiting to be acknowledged. This process will
19 both help us identify who's speaking when
20 multiple people speak at the same time, and will
21 also be very helpful to the court reporter in
22 identifying speakers.

1 Thank you again for your attendance
2 today, and with that, I will turn the floor over
3 to the leaders of DAC-IPAD Racial and Ethnic
4 Disparities Research and Writing Team, Ms.
5 Eleanor Vuono, Mr. Chuck Mason, and Ms. Nalini
6 Gupta, to begin their presentation. Thank you.

7 MS. VUONO: Good morning. This is
8 Eleanor Vuono. Thank you all for your attendance
9 today. The purpose of today's meeting is to give
10 you an in-progress report on the race and
11 ethnicity project underway at the DAC-IPAD. This
12 is in response to the Congressional tasking, and
13 just a correction, for Fiscal Year 2020, National
14 Defense Authorization Act.

15 As you know, in the FY20 NDAA,
16 Congress included Section 540I, with the
17 requirement for the DAC-IPAD to review and assess
18 by fiscal year race and ethnicity in three
19 categories involving sexual offenses. First,
20 members of the armed forces accused of a
21 penetrative or contact sexual offense in an
22 unrestricted report, including an unrestricted

1 report involving a spouse or intimate partner.

2 Of that group of cases, the race and
3 ethnicity against whom charges were preferred for
4 a penetrative or contact sexual offense. Then
5 third, of those cases, the service members
6 convicted of a penetrative or contact sexual
7 offense. This Congressional tasking was limited
8 to cases involving adult victims of penetrative
9 or contact sexual offenses. For your
10 information, Section 540I of the legislation is
11 located at Tab 2 of your meeting materials.

12 We have divided today's presentation
13 into four sections. First, Nalini Gupta will
14 describe the history of studies on racial and
15 ethnic disparities in the military justice
16 system. She also will update the committee on
17 the implementation of Article 140a of the UCMJ
18 and the Department of Defense's new data
19 collection and reporting requirements that got
20 underway in June of this year.

21 Next, I will explain the methodology
22 for this particular report and the requests for

1 information we sent to the services. Third,
2 Chuck will present the data results from the
3 service responses to our RFIs. This will be a
4 focused data presentation that includes the FY18
5 demographic data for the Department of Defense,
6 followed by the data results we received from the
7 services for the race and ethnicity of military
8 subjects in the three categories requested by
9 Congress. That is the unrestricted reports,
10 preferrals and convictions.

11 Finally, I will conclude the meeting
12 by asking the DAC-IPAD members to think about
13 questions, observations, proposed recommendations
14 for how the DAC-IPAD or the military justice
15 review panel or the Department of Defense should
16 address race and ethnicity in the military
17 justice system moving forward. Again, our goal
18 today is to inform your deliberations in November
19 on these important issues.

20 The information you receive today will
21 generate your thinking about the findings,
22 observations and recommendations you want to

1 discuss at the November 6th public meeting. Just
2 a quick admin note, for today's meeting, Nalini
3 and Chuck and I, we will each pause after each of
4 our presentations to give you a chance to ask
5 questions. Again, just to remember to state your
6 name for the court reporter if you have a
7 question.

8 First we'll turn the phone over to
9 Nalini Gupta, who will speak with you about
10 historical studies and the path forward on race
11 and ethnicity data collection in the Department
12 of Defense.

13 MS. GUPTA: Thank you, Eleanor, and
14 good morning, everyone. This is Nalini Gupta.
15 As Eleanor mentioned, I want to take a couple of
16 minutes to talk about how we got to where we are
17 in studying race and ethnicity in the military
18 justice system. If you rewind back to 1972, the
19 then-Secretary of Defense established a path for
20 us to look at the nature and extent of racial
21 discrimination in the administration of military
22 justice.

1 The task force released a four-volume
2 report finding a clear disparity in disciplinary
3 rates between Black and White servicemen. They
4 noted, however, that its analysis was hampered by
5 the inadequacy of data on race and ethnicity, and
6 one of its recommendations was that DoD establish
7 a uniform system for the collection of this type
8 of data.

9 I bring up this recommendation not
10 only because of the DAC-IPAD's interest in data,
11 but also because this has been a consistent
12 recommendation since 1972. There were multiple
13 studies in the '80s, '90s and 2000s that made
14 similar findings about the inadequacy of data on
15 race and ethnicity in the military.

16 If you fast-forward to more recent
17 times, there are two studies I'd like to draw
18 your attention to. The first is the 2017 report
19 by the non-profit Protect Our Defenders, which
20 found that Black service members were more likely
21 than White service members to face military
22 justice or disciplinary action.

1 Depending on the military service and
2 the type of actions taken, POD found that in an
3 average year, the disparities ranged from 1.29 to
4 2.61 times more likely. In conducting this
5 study, POD relied on data from the services from
6 2006 to 2015, and noted significant
7 inconsistencies across the data received,
8 including in how the services categorized racial
9 groups and whether they treated Hispanic as a
10 race or as an ethnicity.

11 The second study I'd like to discuss
12 is a 2019 GAO report on racial and ethnic
13 disparities based on data from FY13 to '17. GAO
14 conducted a multivariate analysis to test the
15 association between characteristics such as race
16 and ethnicity and the odds of military justice
17 action taken, while holding constant attributes
18 such as rank and education and other things.

19 GAO found that Black and Hispanic
20 service members were more likely than White
21 service members to be the subject of recorded
22 investigations in all of the services. And

1 depending on the service, this ranged from 1.07
2 to 2.36 times more likely. GAO also found that
3 Black and Hispanic service members were more
4 likely than White service members to be tried in
5 general and special court martials in four of the
6 services, the Army, Navy, Marine Corps and Air
7 Force. On the other hand, GAO found that race
8 was not a specifically significant factor in the
9 likelihood of conviction in general and special
10 court martial in the Army, Navy, Marine Corps and
11 Air Force.

12 The GAO report from 2019 echoed the
13 report of the task force from 1972, almost 50
14 years earlier, noting that the services do not
15 collect consistent information about race and
16 ethnicity, which limits the ability to identify
17 disparities. As one example that GAO pointed
18 out, they noted that the number of potential
19 responses for race within 15 databases across the
20 military services ranged from five to 32 options.
21 The GAO made 11 recommendations, many of which
22 were geared towards including data collection.

1 Given this history, I'd like to now
2 give you a sense of the future of race and
3 ethnicity data collection in the military justice
4 system. And with the data is two developments
5 I'd like to focus on. The first is one you all
6 are intimately familiar with, and that's the
7 requirement of Article 140a. As you may recall,
8 in December of 2018, the DoD General Counsel
9 promulgated the Uniform Standards for the
10 Collection of Military Justice Data, which is to
11 be implemented no later than December 23rd of
12 this year, 2020.

13 Under these requirements, each service
14 must operate a military justice case processing
15 and management system that is capable of
16 collecting 155 specific data points. While the
17 services are required to collect information on
18 the race and ethnicity of the accused as two of
19 these data points using specific categories,
20 there is no similar requirement to collect any
21 information on the race or ethnicity of the
22 victims.

1 Just to underscore another limit of
2 140a, the GAO report found that the Article 140a
3 uniform standards only applied to the services'
4 military justice databases, and not to their
5 investigation and personnel databases since those
6 databases do not fall under the charter of the
7 DoD General Counsel. So even though the services
8 were directed to standardize reporting of race
9 and ethnicity data using specific categories in
10 their military justice databases, these same
11 categories do not have to be used in their
12 services investigation and personnel database.

13 The second development I'd like to
14 draw your attention to is the FY20 NDAA, which
15 was the same piece of legislation that tasked the
16 DAC-IPAD with this race and ethnicity study.
17 Based on the recommendations of the 2019 GAO
18 report, the FY20 NDAA also tasked the military
19 services to record the race, ethnicity and gender
20 of the victim and accused for every court martial
21 it conducts and include this data in their annual
22 military justice report.

1 In June of this year, the General
2 Counsel of the DoD issued a memorandum to the
3 services instructing them to collect race and
4 ethnicity of the victim and accused for each
5 court martial convened on or after June 17, 2020.
6 The notable gap in this memorandum is that it
7 does not include any requirement that the
8 services collect race and ethnicity data for
9 cases that do not reach the court martial stage
10 of the military justice process.

11 That's the background I have for you
12 today. Does anyone have any questions before I
13 turn it back to Eleanor to discuss the
14 methodology? Okay, Eleanor, it's on to you.
15 Thank you.

16 MS. VUONO: Great, thanks Nalini.
17 Turning now to the methodology for the current
18 DAC-IPAD report. In August, Chair Bashford sent
19 a request for information, 18A, to the Service
20 Judge Advocates General, asking the services to
21 provide their race and ethnicity data for contact
22 and penetrative sexual offense cases completed in

1 Fiscal Year 2019. So that's all cases completed
2 between October 1, 2018 and September 30, 2019.

3 A copy of RFI 18A is at Tab 3 of your
4 meeting materials if you want to take a look at
5 that. In that request, the DAC-IPAD asked the
6 services to give us the data in a standardized
7 format for each of the three Congressionally-
8 mandated categories on three separate Excel
9 spreadsheets. First, every unrestricted report
10 of a contact or penetrative sexual offense
11 completed in FY19.

12 Second, out of that first group of
13 cases, a separate spreadsheet with every case
14 that had a contact or penetrative sexual offense
15 charge preferred against a service member. The
16 third spreadsheet was from those cases with a
17 preferral, each conviction for a contact or
18 penetrative sexual offense. As you know, by law
19 every "unrestricted report" of a contact or
20 penetrative sexual offense must be investigated
21 by the military criminal investigative
22 organization.

1 When we use the phrase completed for
2 the question we asked is completed in FY19, we
3 used the definition in the legislation.

4 "Completed means a case tried to verdict,
5 dismissed without further action, dismissed and
6 then resolved by non-judicial or administrative
7 proceedings, or no legal action taken at all."
8 We did not ask the services for their source
9 documents for this report.

10 Instead, we asked them to report to
11 the DAC-IPAD the race and ethnicity information
12 they had in their various databases, including
13 their MCIO databases and their military justice
14 databases. All of the requested information for
15 this report is limited to cases completed in
16 FY19. FY19 was chosen partly because Congress
17 asked for this report on a very short one-year
18 timeline, but also it was a recognition of the
19 data collection limitations, the ones that
20 existed in the services up until now.

21 As all of you know, the DAC-IPAD case
22 review project investigated penetrative sexual

1 offenses closed in FY2017. That's the report
2 that we just provided or just issued. In that
3 most recent study, the DAC-IPAD found it very
4 difficult to assess demographic data like race
5 and ethnicity because information in the
6 investigative files, it was often incomplete, and
7 because the services record this information
8 differently, if at all.

9 But as Nalini just explained, we
10 anticipate the possibility for more comprehensive
11 assessments in future years, once the new DoD
12 collection methods are implemented and based on
13 the questions the DAC-IPAD may decide to
14 recommend for future study. That's the summary
15 of the methodology that we used. Before I turn
16 the phone over to Chuck to explain to you the
17 answers and the data that we received, do you
18 have any questions about the methodology of the
19 report?

20 Hearing none at this point, and of
21 course, you'll have a chance to ask questions
22 throughout, Chuck will now present to you the

1 data results we received from the Services.

2 MR. MASON: Good morning, everybody.

3 If you'd like to look at Tab 4 in your materials,
4 that will begin the data presentation of
5 information that I'm going to be providing to
6 you. First, though, I'd like to just go over a
7 few issues that will help frame the rest of our
8 discussion. You heard that the RFI was based on
9 three questions, a very limited question that
10 Congress asked, which was the race and ethnicity
11 of the subject, and then it was unrestricted
12 report of a sexual offense, the preferred
13 charges, and then convicted sexual offense.

14 So you have three buckets of
15 information and Congress is looking just for that
16 potential raw number if you read the stricter
17 sense of the language. However, Congress didn't
18 define for us what race and ethnicity categories
19 we should be utilizing. Just as background, race
20 is used more as a social definition. It's not an
21 attempt to define biologically, anthropologically
22 or genetically.

1 Ethnicity is a separate and distinct
2 concept, and it generally looks at Hispanic or
3 not Hispanic traditionally where they they've
4 then expanded the definition or the title
5 Hispanic or Latino and not Hispanic or Latino.
6 Generally speaking, individuals of Cuban,
7 Mexican, Puerto Rican, South or Central America
8 or other Spanish culture descent, regardless of
9 their race, would be considered Hispanic or
10 Latino.

11 Now both of these categories,
12 regardless of how they're recorded in any system,
13 and this goes from the census all the way down to
14 our government, it's a self-reporting
15 determination. When you fill out the paperwork,
16 you set what your race is. You're going to set
17 what your ethnicity is. Limitations that we have
18 in this study that we have tried to address and
19 acknowledge is that this information is self-
20 reported by the service.

21 It is not document-based like the case
22 adjudication and case review process which you're

1 all familiar with. We didn't request the
2 documentation, as Eleanor said, based on the
3 timeline that we were working with and the
4 understanding that the baseline definitions are
5 sufficiently different among the services that
6 even if you had the source documents, it's just
7 going to still be (audio interference) The next
8 one is --

9 PARTICIPANT: If everyone could please
10 go on mute unless you are speaking, please.

11
12 MR. MASON: The next statement is that
13 because it isn't document-based like the other
14 studies, we aren't able to verify information.
15 So one, it's self-reported and two, we're taking
16 it as face value from the services that this is
17 the correct answer. Third, the services do not
18 utilize the same racial and ethnic categories, as
19 we said, and as Nalini said, in some systems
20 within the government, there's up to 35 different
21 categories.

22 Specific to this request and this RFI,

1 we actually are crossing from MCIOs to the
2 military justice system within the service. So
3 automatically, we're introducing the possibility
4 that there's going to be a disconnect because we
5 are using two different systems to try to get to
6 an answer. We had to do that because Congress
7 asked a question that is kept in two different
8 systems. So those are all indications that we
9 have with this data that you're going to see.

10 One question that you may have is if
11 you look at the RFIs, why did we ask for so many
12 data fields if the main question is the subject's
13 race and ethnicity? It was done for multiple
14 reasons. Primarily, we wanted to fully inform
15 and develop the response that we receive from the
16 service, if possible.

17 Additionally, it was a way for us to
18 try to verify the responses that we were getting
19 specific to this RFI that would also be in the
20 FY19 case adjudication responses or possibly FY18
21 cases that we received previously to see if there
22 was any overlap. So it was one, internal quality

1 control, and two, to better develop the overall
2 picture for your use in determining how you want
3 to proceed with this topic in the future.

4 The other question you may have is why
5 do we not have the more complex multivariate
6 analysis that are seeing in both the case review
7 and case adjudication reports? One, it goes to
8 the validity of the data in having common
9 definitions across the spectrum. Second, it is
10 completeness of data. We don't know that we have
11 everything, and there is a chance that on a
12 sensitive topic, you don't want to make a
13 conclusion if you don't have all of the data
14 behind it to back it up.

15 Third, you do get into some very small
16 numbers, which you will see as we go through the
17 services. For example, the Coast Guard had one
18 conviction in their RFI response to us. When you
19 start getting into these smaller numbers, you
20 don't have a large enough sample to do some of
21 the more complex analysis. These are all issues
22 that can be addressed in future studies and

1 future research, which we will get to at the very
2 end of the data presentation.

3 Based on that, I would invite your
4 attention to the first table. All the tables in
5 the reading say Table X and then there's a title,
6 Service Response to RFI. The X's will be
7 replaced by the proper numbering system once
8 they're placed into the report. But I wanted you
9 to have at least the ability to see what we're
10 doing right now. Looking at the service response
11 to the RFI, you can see that we received over
12 2,800 cases where subjects were identified on a
13 sexual offense unrestricted report and
14 investigated.

15 Of those 2,800 roughly, 500 cases
16 involved a subject that had a charge or charges
17 preferred for a sexual offense. And then 129 of
18 those 500 cases resulted in a conviction. Now we
19 asked for cases to be recorded as convictions for
20 a sexual offense. If we've learned anything with
21 respect to the case adjudication, sometimes they
22 get reported as a conviction for a sexual offense

1 when in reality, a charge is preferred that way,
2 but the conviction is for something that is a
3 non-sexual offense, like assault and battery.

4 Based on that it's coded as a
5 conviction, but when we look at the
6 documentation, we see that that's not the case.
7 Why I'm bringing that up for your attention now
8 is if you look at the 500 cases where it says
9 charges were preferred, this is not -- because of
10 the limitations I said, but if you look at FY18,
11 the case adjudication report, the total number of
12 cases where charges were preferred was 574. So
13 we've gone from 574 in FY18 to 500 in FY19. That
14 could be problematic.

15 But if you've looked at the historical
16 decline, since FY16, we have been dropping in
17 cases each fiscal year. There was a 10 percent
18 decline and then a 17 percent decline, and then
19 in this most recent year, if you use these
20 numbers and accept them as they were reported, it
21 would be a 13 percent decline. So that number
22 seems pretty good when you think about what we've

1 seen on the other projects that we've done.

2 Where there's a difference, it goes
3 back to how it's reported as whether it's a
4 sexual offense conviction or not. If you look at
5 that number that says 129, well, in FY18 we
6 recorded 106 convictions for sexual offense at
7 court martial. Lower numbers in FY18 compared to
8 what's in the FY19, but we can account that there
9 is probably going to be some variance in maybe
10 the convictions that are reported here are
11 reported convictions for any offense and not just
12 a sexual offense.

13 Without having the actual record of
14 trial, the charge sheets, to look at them and try
15 to track it through the system to see what
16 happened, we can't say that 129 is a hard and
17 fast, accurate number. But we're going to use it
18 for the purposes of this discussion because it
19 was what was reported to us.

20 Looking at Table X, Racial and Ethnic
21 Categories, this is where it really gets
22 difficult for the analysis that we're trying to

1 do. I have included two tables there, Race,
2 which is the American Indian/Alaska Native,
3 Asian/Native Hawaiian/Pacific Islander,
4 Black/African American, Mixed, White, and
5 Unknown. Then Ethnicity is Hispanic or Latino,
6 Not Hispanic or Latino, Unknown.

7 Now these fields or these categories
8 have some history in the OMB Directive 15 from
9 1977. In 1977, they essentially established that
10 there would be four categories for race. What
11 they did is American Indian and Alaska Natives
12 have always been that one category. Asian or
13 Pacific Islander was the second category. Third
14 was Black, fourth was White, and then you would
15 have unknown. But you have four categories.

16 For ethnicity, it would've been
17 Hispanic or Not Hispanic. And then for
18 ethnicity, we have in 1977, Hispanic or Not
19 Hispanic. I apologize if I said that point. In
20 1997, OMB Directive 15 was updated, and this
21 directly impacts our reporting that we're going
22 to be getting to. In 1997, the American

1 Indian/Alaska Native remained as one category.
2 However, Asian or Pacific Islander was then
3 separated into Asian as one category, Native
4 Hawaiian/Pacific Islander as a second category.

5 Then they had Black and White, and
6 they added in a new concept of two or more races
7 or mixed. Additionally, for the ethnicity they
8 added in Latino on the end of Hispanic or Not
9 Hispanic to flesh out that category further. Why
10 this is interesting today, when we go through the
11 services you will see that only one service is
12 using the OMB standard as of 1997, which is not
13 the standard that we're using today because two
14 services, it appears, have not broken the Asian
15 and Pacific Islander into two different
16 categories like OMB did in 1997.

17 For our purposes, we have Asian,
18 Native Hawaiian and Pacific Islander are all one
19 category because two of the services are
20 utilizing that, and in order to make the analysis
21 work, I then had to take the services' responses
22 and make them fit these new categories so that we

1 were talking apples to apples at the 1,000-foot
2 level.

3 I know that is all very confusing. It
4 becomes clearer on the next slide, which is going
5 to be the Racial Composition. Now you can look
6 at these two slides and the racial composition
7 for FY 2018 and the ethnic composition for FY
8 2018. You may question why are we using '18 and
9 not '19? Well, Department of Defense has not
10 published the demographic report for FY 2019 yet.

11 We wanted to use FY 2018 because that
12 was the most recent year that was published in
13 order to give context to the racial and ethnic
14 composition of the services. We are not trying
15 to draw a direct correlation or direct connection
16 between FY18 and '19. The assumption is that the
17 services' composition has not drastically changed
18 in one fiscal year.

19 But we're doing this so you can just
20 get an idea of the overall picture before we get
21 into the responses from the RFI to FY19.
22 Additionally, when you look at these two charts,

1 the first column is Armed Forces. Armed Forces
2 is the term that we are utilizing to reflect
3 Department of Defense and the Coast Guard. A lot
4 of times you will see data reported as just
5 Department of Defense and then the Coast Guard as
6 a separate category.

7 We have throughout combined the armed
8 forces, which is Army, Navy, Marine Corps and Air
9 Force, to include the Coast Guard so that we have
10 one baseline and then each service against that.
11 If you're looking at the first chart, you can
12 start with Armed Forces 69 percent White. That's
13 the largest category. As you go across, you will
14 see the Army was 68 percent White, Navy 62
15 percent, Marine Corps 80 percent, Air Force 72,
16 Coast Guard 75. We broke down the racial
17 composition for each service against the baseline
18 of the armed forces in FY18.

19 The second slide is the Ethnic
20 Composition, and it does the Hispanic or Latino,
21 not Hispanic or Latino, and then Unknown. The
22 one thing that's interesting in this in FY18, the

1 Marine Corps did not report any unknown. So
2 everybody in FY18 for the DoD report had either
3 answered Hispanic or Latino or not Hispanic or
4 Latino. I think it's fairly unusual to see that,
5 based on the data that we're going to get to in a
6 moment.

7 Just keep those charts. They're there
8 for frame of reference. When you get to the next
9 page, which is going to be Page 3 in Tab 4, it
10 takes you to the Race Categories. This chart is
11 an attempt to show you that the Army, on the RFI
12 response, they provided eight different
13 categories for race in addition to unknown. As I
14 said, we are utilizing the five categories in
15 addition to unknown.

16 So I tried to make an illustration
17 that shows you how these categories have come
18 together. The best way to look at this one is
19 American Indian and Alaska Native, since that
20 hasn't changed, you just have a straight line
21 across to American Indian or Alaska Native. The
22 next is Asian, Asian/Pacific Islander, and then

1 Native Hawaiian or Other Pacific Islander. Why
2 there are three categories in that column is
3 because on the Air Force response, those were
4 three possible entries in the RFI that we
5 received.

6 With the assumption that we are
7 combining them into one, you'll see three lines
8 now making those three categories are counted and
9 recorded as one for our purposes. Additionally,
10 on all of the charts you're going to notice that
11 Mixed and Other are combined into Mixed. We
12 didn't separate them out to have Mixed and Other.
13 It's a little bit of a misnomer to say that Mixed
14 means that everybody in that category is more
15 than one race.

16 What we're saying is if somebody said
17 they were one race, but it wasn't one of the main
18 categories, or they're two or more, those are all
19 grouped together as Mixed for the ease of the
20 discussion. When you look to the bottom of that
21 page and you see the Ethnicity Categories RFI
22 response, you can see that the Army was utilizing

1 Hispanic or Latino, Not Hispanic or Latino, Not
2 of Hispanic Origin, and Unknown.

3 So for some reason in their systems,
4 and it may be because the MCIOs were using one
5 and military justice was using another. But we
6 pulled the Not Hispanic or Latino and the Not of
7 Hispanic Origin and combined them into one. Now
8 as difficult as it might be to get your head
9 wrapped around how these were put together, it
10 gets more complicated as we go.

11 If you go to the next page, you will
12 see the top chart is the Army Racial and Ethnic
13 Composition. Earlier we showed you all of the
14 services against the Armed Forces. Now just
15 because we're going to be talking solely about
16 the Army for the next couple of pictures or
17 couple of graphs, we wanted to give you a
18 refresher of what was the Army's racial and
19 ethnic composition in FY18.

20 You can see by looking at race, 68
21 percent of the racial population of the Army was
22 White. Four percent were unknown, six percent

1 were Asian/Native Hawaiian/Pacific Islander. You
2 have American Indian/Alaska Native, and then you
3 have 21 percent Black or African American. When
4 you look to the right and you look at ethnicity,
5 84 percent are not Hispanic or Latino, 15 percent
6 are Hispanic or Latino, and then it says zero
7 percent for ethnicity. That will be revised for
8 publication to show less than one percent. It is
9 more than zero, but Excel made it zero and I just
10 haven't made that change yet.

11 When we do our graphic design with
12 Laurel, who is our staff on that, we will make
13 fix that for the future. So now look directly
14 below that. Race of the Subject in FY19. What
15 you're looking at here are the actual responses
16 as received from the Army to the RFI. You can
17 see that there are, quote-unquote, three buckets,
18 the first being Sexual Offense Unrestricted
19 Report, the second Sexual Offense Preferred, and
20 the third Sexual Offense Convicted.

21 The raw numbers are just that: raw
22 numbers in each group. The percentage is that

1 raw number as a percentage. Where this is
2 important is when you look at Sexual Offense
3 Preferred, it isn't a percentage of the first set
4 of numbers. The percentage is based on that
5 bucket of information. So for example, if you
6 look at the top chart, 68 percent of the Army is
7 recorded as White in FY18. In the response that
8 we got on FY19 for those subjects with a sexual
9 offense unrestricted report against them, 63
10 percent of those subjects were White.

11 When you go to the next category over,
12 Sexual Offense Preferred, of the cases where
13 charges were preferred against a subject, 57
14 percent of the subjects were White. When you
15 take one more step to the right with Sexual
16 Offense Convicted, of the cases where the subject
17 was convicted, 65 percent were White. You do a
18 little bit of a V there.

19 You go from 63 percent to 57 percent
20 proportion to 65 percent proportion. We don't
21 know why. We're not saying that that's a
22 problem. We're saying it's something that we

1 have observed. It's the same thing for the
2 discussion if you look at Black/African American.
3 They were at 29 percent of the reported cases, 37
4 percent of the preferred cases with a subject
5 that was Black or African American, and then 31
6 percent of the convictions. So you have a
7 reverse V at that point.

8 Again, we're not saying that you're
9 more likely to be preferred or more likely to be
10 charged. We're not making that determination.
11 We're saying this is observed in raw numbers, and
12 that with additional data, additional research,
13 we could try to figure out why that's happening.
14 Then we could look at what is the proportion of
15 the population versus how many are being
16 reported. Then the proportions of those that are
17 -- what is the White component of preferred
18 against reported? There are so many other
19 questions you could ask, but without additional
20 data, you can't actually get the answer at this
21 point. We're just giving you the raw numbers,
22 proportions for each group as an observation.

1 The next slide that's on Page 5 is the
2 Army's Ethnicity of the Subject. When you're
3 looking at the ethnicity, what you're going to
4 see is that it is fairly consistent. There's
5 really a three percent variance in proportion up
6 and down between the categories. There is
7 nothing really outstanding in just a basic
8 observation. Then with further analysis we might
9 be able to find a trend or see something within
10 that data, but we're not at the point of being
11 able to do that based on all of our limitations.

12 The next one is the Navy. When you're
13 looking at the Navy, it's the same format that we
14 just did for the Army. We're going to start out
15 with the Race Categories and the Ethnicity
16 Categories. Now this is the first service of the
17 two where they are still using the Asian, slash,
18 Pacific Islander definition that was in the 1977
19 OMB rather than the split of Asian is one
20 category, Native Hawaiian/Pacific Islander as a
21 second category that was in the 1997 OMB
22 directive.

1 For our purposes, this grouping that
2 the Navy and the Marine Corps, as you'll see, are
3 utilizing is the common denominator that we had
4 to settle on for all the services for the
5 discussion. With the addition of adding Native
6 Hawaiian to the category Asian/Native
7 Hawaiian/Pacific Islander, so it accurately
8 reflected what the other services were also
9 titling that category as.

10 This is one of the first breaks now
11 where the Army gives you many more choices than
12 what the Navy and the Marine Corps are doing, and
13 the Navy and Marine Corps are using the
14 categories essentially from 1977 versus 1997.
15 Additionally, the Navy's ethnicity categories for
16 Hispanic, Not Hispanic and Unknown, they are just
17 lacking the term Latino, so we added that on.
18 All of that being said, these are based on the
19 responses in the spreadsheets that were provided
20 to us.

21 It is entirely possible that when you
22 go into their actual tracking system, they may

1 have Native Hawaiian as an option, and it may be
2 added to the Asian/Pacific Islander category, and
3 it's just not being shown to us. So we're
4 working on the assumption that the categories
5 that were given to us are how they report it in
6 their system.

7 There is the potential that there's a
8 disconnect, and future research would suggest
9 that we would like to see the actual system, the
10 actual source material, whether it's coming from
11 a personnel system or it's coming from a paper
12 that was filled out by the MCIO. Whatever it is
13 that feeds into their military justice system, we
14 would like to see the beginning stages of that.

15 But if you take those race categories,
16 ethnicity categories, they're the same that we
17 settled on for the Army. You go to the next
18 page, which is Page 7, and the first one is the
19 Racial and Ethnic Composition of the Navy in
20 FY18. Again, it's there for background material
21 to inform the next two charts you're going to see
22 for the Navy. When you look at race of the

1 subject based on the RFI, something that pops out
2 and is an observation that we would want to do
3 more research to find out why, but Black/African
4 American individuals as a subject for an
5 unrestricted report were 29 percent of the
6 responses we received.

7 When you go to preferred cases, they
8 were 28 percent of the cases. However, when you
9 go to convictions, they're 44 percent of the
10 convictions. With respect to White at 57 percent
11 to 59 percent to 56 percent. That's a fairly
12 consistent number. The Black proportion has gone
13 up, and there are no individuals of Asian/Native
14 Hawaiian/Pacific Islander, Mixed or Unknown or
15 American Indian/Alaska Native that had a
16 conviction against them.

17 All of that comes with the caveat that
18 we are talking about extremely small numbers.
19 We're talking about nine individuals total
20 convicted of a sexual offense based on the RFI
21 response. It would be dangerous to draw
22 conclusions off of such a small number in the

1 grand scheme of what we're doing. We would not
2 want to say that the armed forces have a problem
3 based on a result of nine cases ultimately. Just
4 keep that in the back of your mind as we're going
5 through this, that there are limitations to what
6 we're trying to determine.

7 When you go to the next page and you
8 look for ethnicity of the subject, Not Hispanic
9 or Latino climbs over the three groups
10 proportion-wise from 71 percent to 75 percent to
11 100 percent of the convictions. Again, we're
12 talking nine convictions, but we would like more
13 information to figure out what were these cases.
14 What were the underlying charges? Are we talking
15 about multiple victims? There are so many
16 possible questions you could ask with additional
17 data.

18 The basic observation is Not Hispanic
19 or Latino proportion increases until they are 100
20 percent of the convictions in FY19 for the Navy.
21 The Marine Corps is going to be, which is the
22 next page, Page 9, is going to look very similar

1 to the Navy because they are using the same
2 categories. The same discussion that we had over
3 race categories and the Asian, slash, Pacific
4 Islander, adding in the Native Hawaiian to the
5 category in order to meet the common denominator
6 and then adding Latino to Hispanic or Not
7 Hispanic categories holds true for these, as
8 well.

9 When you go to the next page, which is
10 Page 10, we're looking at the same format that
11 we've done. What is the racial composition and
12 the ethnic composition of the Marine Corps in
13 FY18. Again, I draw your attention to they have
14 zero Unknown in the FY18 category for ethnic
15 composition. However, when you look at the next
16 chart, Race of the Subject for the RFI, there are
17 11 or two percent of the proportion for the
18 unrestricted report have an Unknown ethnicity.

19 What this tells us is that the
20 reporting system that was utilized in reporting
21 the data to the Department of Defense for their
22 demographic report has different data than the

1 MCIO and the military justice system has, or in
2 FY19 all of a sudden they now have unknowns that
3 they didn't have in '18. A couple of questions
4 you could raise from that -- are the systems
5 sufficiently different that they aren't tracking
6 with the same validity the answers? Or was there
7 a change between FY18 and FY19 where more
8 individuals decided that they weren't going to
9 provide what their ethnicity was? I'm sorry,
10 that was race of the subject. I apologize.

11 If you go to the next slide, there are
12 30 individuals that were unknown ethnicity in the
13 Marine Corps. So it's a larger number than what
14 I was saying for subject. I misspoke. Going
15 back to race of the subject though, what you see
16 is the proportion of White for the unrestricted
17 report were 70 percent in FY19. However, we
18 provided that chart to show you FY18. In the
19 demographic report, 80 percent of the population
20 was reported as White. So there was a slight
21 difference there.

22 For the preferred cases, White went to

1 75 percent and then convictions 69 percent. So
2 again you've got that reverse V. With the Blacks
3 for race in the Marine Corps, you go from 21
4 percent of the unrestricted report proportion to
5 21 percent of the preferred cases proportion to
6 31 percent of the convictions that were reported.
7 Again, you do not have any American Indian,
8 Asian, mixed or unknown convictions, only Black
9 and White subjects were convicted in the data
10 that was reported to us.

11 The next slide on page 11 and this
12 chart is the Ethnicity of the Subject, and it's
13 what I was just discussing with you. The Unknown
14 category in the reported doesn't necessary match
15 up with what the DoD reported numbers were. In
16 this case, the Hispanic or Latino proportion
17 grows in each bucket, from 26 percent to 33
18 percent to 44 percent. That wasn't something
19 that we saw in the Army and Navy reported
20 numbers, and it's not something that you're going
21 to see in the Air Force or Coast Guard numbers as
22 well.

1 We are looking at these as individual
2 services, but that would be a question for
3 further research of how do these issues play out
4 when you try to compare the services against each
5 other? Again, with agreed definitions and
6 comprehensive data, you'd be able to do a more
7 thorough analysis.

8 If you go to the next page, page 12,
9 this is where it really gets interesting. It
10 shows you the extremes as to how the services are
11 attempting to record race and ethnicity. When
12 you look at what the Navy and the Marine Corps,
13 as I presented to you, are using essentially the
14 OMB groups without breaking apart to the
15 Asian/Native Hawaiian. You look at the Air
16 Force, they have 19 categories, plus unknown.

17 We had to take those 19 categories and
18 get them to the common denominators or the common
19 categories that we were looking at for the
20 analysis. You will see it is an I chart with the
21 lines going in every direction to explain how we
22 got there. When you look at the Air Force

1 ethnicity categories on the next page, you will
2 see the same dilemma, which is they have 15
3 categories for ethnicity and two unknown
4 categories.

5 Now the two unknowns can be explained
6 by having different databases that were merged.
7 That's a possibility. What you're seeing also on
8 this chart is that it has American Indian, and
9 then in parens it has an N. And then Cuban has
10 an H. The assumption is that American Indian is
11 Not Hispanic or Latino, but Cuban would be
12 Hispanic or Latino, and that tracks. Where it
13 gets a little bit more difficult though is they
14 do say like, none would be Not Hispanic or
15 Latino.

16 For our purposes, we considered none
17 as unknown. If you're only, according to the
18 government, supposed to have Hispanic or Latino
19 or Not Hispanic or Latino, so none would be
20 slightly ambiguous. So we viewed that as
21 Unknown. That would be the same thing for Other.
22 Rather than saying Other is Not Hispanic or

1 Latino, we classified that as Unknown, because if
2 you look two boxes down, there is Other Hispanic
3 and Other Asian. So they do have ways of getting
4 them into Not Hispanic or Latino.

5 The point of those two tables is to
6 show how complex this issue is and how the
7 services do not agree on what constitutes the
8 race categories. In order to do research on
9 this, it would really benefit anybody that's
10 doing the research to have the services reporting
11 the same terms, the same categories throughout.

12 When you get to the next page, page
13 14, you're going to have the same slide that we
14 showed you for the others, Racial and Ethnic
15 Composition for FY18, just as a throwback, or to
16 give you some awareness of what was reported the
17 prior fiscal year. Then when you look at the
18 next one, the next table is the Race of the
19 Subject for the Air Force based on the RFI
20 responses. A couple things that step out or you
21 can make observations on this chart, that White
22 individuals were 60 percent of the reported

1 cases. They were 51 percent of the subjects in
2 the preferred cases, and they were 52 percent of
3 the subjects in the convicted cases.

4 You have a slight decline, or a very
5 short V in that distribution. When you look at
6 Black/African American, you go from 21 percent to
7 29 percent to 35 percent, so you have an actual
8 slight incline between those three groups. This
9 is probably the best example to show you, there
10 is an incline, but when you look at those charts
11 and actually look at the decline, how the
12 distribution is set up when you put charts
13 against each other.

14 It's a little confusing in that sense,
15 but that's why the requests that you had in the
16 past of having both raw numbers and percentages
17 really works in this case because it makes a
18 point that we are going 21 percent, 29 percent,
19 35 percent. Again, we're not saying how that's
20 happening or why that's happening. It is just
21 what was reported to us.

22 The other observation that I would

1 draw your attention to on this one is this is the
2 first service where we have seen subjects of each
3 category reported in the convicted space other
4 than American Indian/Alaska Native. In the
5 others you've seen Black/African American and
6 White as primarily convictions. The Air Force
7 has a wider distribution in the representation of
8 which subjects were convicted absent American
9 Indian or Alaska Natives being in that category.

10 When you go to the next slide, which
11 is Ethnicity of the Subject, you're going to see
12 that the Unknown category has the potential of
13 skewing the numbers here. I wanted to report it
14 the way that we received it. For the Air Force,
15 on the Unrestricted Report, which the assumption
16 is that they're coming from the MCIOs, 64 percent
17 of the subjects it was not noted what their
18 ethnicity was in the investigation. Then when
19 you get to preferred, the unknowns dropped from
20 that 64 percent of proportion to 42 percent.
21 Then it dropped to 29 percent.

22 That is something for future study to

1 figure out is there a disconnect between those
2 two reporting systems as to why there would be
3 such a high unknown proportion in the
4 unrestricted report subjects? Additionally, if
5 you look in Hispanic or Latino, they as a
6 proportion went from eight percent to 15 percent
7 to 16 percent, so it's a higher proportion of the
8 preferred and convicted against proportion in the
9 unrestricted reports.

10 Again, Not Hispanic or Latino also
11 climbed. The reason why I'm saying they're
12 observations, we don't know if that Unknown, the
13 large Unknown proportion in the first bucket, how
14 that might be skewing the numbers. Where I would
15 look at this as saying there's something that
16 we're observing, but because we don't know the
17 validity of the data, we don't know what we're
18 actually seeing.

19 Without further research, we couldn't
20 make a statement that says you're more likely to
21 be convicted if you're Hispanic, because had such
22 a large number of Unknowns to begin with. If you

1 go to the next page it's the last service, so
2 we're at the Coast Guard. We're in the home
3 stretch now. If you look at the RFI response,
4 they have six categories plus Unknown. What I
5 would like to highlight just in that response is
6 they are using the OMB standard from 1997. They
7 have the truest representative sample as what you
8 would see in the census every 10 years.

9 Unfortunately, because we've already
10 defined that common denominator, we ended up
11 combining the Asian/Native Hawaiian/Pacific
12 Islander into the one category so that it matched
13 with the other services for discussion purposes.
14 With respect to ethnicity, they were sort of an
15 outlier in that they had Hispanic or Latino and
16 Not Hispanic or Latino, but then they also added
17 in American Indian/Alaskan Native and they added
18 in Non-Hispanic.

19 I would think if you get into the
20 data, you're actually able to tell that there was
21 a coding mistake with respect to American
22 Indian/Alaskan Native and being Not Hispanic or

1 Latino. There were, I believe, five entries
2 where race and ethnicity appeared to be swapped
3 when they were put into the system. How that
4 information was transposed between where it was
5 put into their systems and how it got to us, I
6 don't know, but it was pretty apparent when you
7 look at the spreadsheet that it was just a swap.

8 In the appendix that is attached to
9 this report, when we get to that point, there
10 will be a footnote or an explanation that this
11 was observed in our data, and in order to clarify
12 the analysis, we did account for that and we
13 switched the categories in those entries for
14 those purposes. However, and this accounts for
15 everything that we've discussed up to this point,
16 I would propose that the committee consider
17 including all of the raw data as it came to us
18 from the services, minus any PII, anything that
19 would identify who these individuals are, that it
20 be stripped down but it be in the response that
21 we received from them so that if somebody would
22 like to look at how we got from A to Z, they

1 would have that data available to them.

2 My best way of explaining this is it's
3 how we show our work. We don't want to appear
4 that we're hiding anything, so if we show what we
5 received and how that translated into our data
6 tables, it would make it easier for the reader to
7 understand how we're making the observations that
8 we're making. Then ultimately any findings or
9 recommendations that would come out of the DAC-
10 IPAD would be based on the data that was
11 received.

12 I digress by doing that. I should
13 finish off with the Coast Guard quickly in that
14 the Racial and Ethnic Composition on the next
15 page, which is page 17, it just shows you what
16 was recorded in the DoD demographic report in
17 FY18. What you see for Race of the Subject is
18 White subjects were 76 percent, and then 95
19 percent, and because there was only one
20 conviction for the Coast Guard, we know that the
21 accused in the Coast Guard that was convicted was
22 White.

1 When you look at Ethnicity of the
2 Subject, the same trend is there and you can see
3 that they were White, Not Hispanic/Latino. So
4 when you're looking at filling out, say for the
5 census, that in theory is how that person would
6 check their answers when the government was
7 asking the question. Now the next page, it would
8 be at the tail-end of your read-ahead, is
9 something that is a complete disconnect from what
10 we have been doing up to this point.

11 All of the data that I just provided
12 to you, all of the charts and the analysis that
13 we have done, are based on the numbers that were
14 provided to us based on the question that
15 Congress asked. What is the subject in those
16 three scenarios? Their race and their ethnicity.
17 However, we've looked at that question as limited
18 in that it is a question that can be asked, and
19 you're getting a basic answer. However, we asked
20 those additional questions with regard to the
21 age, the pay grade, the sex, to see if we could
22 develop a picture a little bit broader.

1 The other component that we added in
2 was the victim. We are not reporting any of that
3 because one service didn't provide any victim
4 data. Another service may have provided just
5 cases, maybe the first victim in the case, not if
6 there were multiple victims. Other services it
7 appears have included the subject and then a
8 separate entry for each of the victims. So what
9 we've attempted to do is to just get an idea if
10 this is possible, is we tried to find the
11 subject/victim correlation.

12 Now this is a sample. This is not one
13 particular service. It's not multiple services.
14 It's not anything that I want to say this is the
15 armed forces as a whole. This is a hypothetical
16 sample of trying to connect subject to victim in
17 order for you as members to see if this is
18 something we would want to try to study in the
19 future.

20 When you look at the first chart,
21 Racial Composition: Subject/Victim Correlation -
22 Sexual Offense Unrestricted Report, what you're

1 looking at is along the bottom, you have a sixth
2 column, American Indian/Native American. We'll
3 use that as our first discussion. In that, when
4 you have an American Indian or Native American
5 identified subject, what was the race of the
6 victim? In this case, we would say American
7 Indian/Native American subject, 29 percent of the
8 time, the victim was also American Indian or
9 Native American, 71 percent of the time the
10 victim was White.

11 You can do that same observation
12 across the spectrum. You can look at
13 Asian/Native Hawaiian/Pacific Islander. When the
14 subject was Asian/Native Hawaiian/Pacific
15 Islander, in 19 percent of the cases, the victims
16 were Asian/Native Hawaiian/Pacific Islander, 13
17 percent were Black/African American, six percent
18 were Mixed, 56 percent were White, and then 6
19 percent, we don't know what the racial
20 composition of the victims were, so it is
21 Unknown.

22 Where this information has some

1 limitations at the level that we're at right now,
2 and where you could go with it, would be if you
3 had the valid data in the first place. You would
4 then also be able to look and differentiate when
5 it is a single subject with a single victim
6 versus a single subject with multiple victims.
7 You could look single subject with pay grades of
8 victims or if they're civilian/military, again,
9 the sex of the victims versus the sex of the
10 subject.

11 There are multiple ways you could pull
12 strings. Going to the next level of analysis,
13 which we have not attempted to do with the case
14 adjudication, would be to say the race of the
15 subject, the race of the victim, the type of
16 offense, the racial composition of the members of
17 the court martial if they existed. Or you could
18 say the racial composition of the military judge
19 if it were a judge alone case. You could start
20 taking these data points and trying to do that
21 multivariate analysis that we have done in the
22 past to see if there are any trends in that if

1 one service might be doing something differently,
2 or one service is providing a different level or
3 a more diverse member pool for the court martial
4 to pull from.

5 I mean there are so many unknowns, but
6 without having the common language to begin with,
7 it's hard to get to that point. But we take all
8 of that discussion and we look at the next for
9 Sexual Offense Preferred, and you can see
10 American Indian/Native American, you don't have
11 any cases where they were preferred. We don't
12 know any known victims of American Indian/Native
13 American based on this sample and this
14 hypothesis, who have any cases preferred against
15 them, the subject.

16 And then in this case, Asian/Native
17 Hawaiian/Pacific Islander, 100 percent of the
18 cases that were preferred, the victims were
19 Black/African American. You start to see what
20 does this mean? Then when you get to conviction,
21 the convictions that you see in this sample are
22 Black/African American and White subjects, and

1 then you look at the racial composition of their
2 victims.

3 In discussing this with Dr. Spohn and
4 Dr. Wells, Dr. Spohn made the comment that this
5 might be something that could fit into what she
6 had called the sexual stratification hypothesis.
7 Those are words to me, but it is a concept to
8 her. I think, Dr. Spohn, if you at some point in
9 our conversation today would like to enlighten
10 everybody on that, that's where it could go with
11 this type of data going forward.

12 But based on the data that we have
13 now, these three charts are hypothetical. It's
14 where we could get. Where we're comfortable at
15 this point is the presentation that I gave up to
16 this point, which is very limited in scope to the
17 question that Congress asked, which is the race
18 and ethnicity in those three categories of the
19 subject. All the other information that we
20 gathered can be in the appendix if you would
21 like. It doesn't have to be included, either.
22 You're going to see all of it, and you can

1 determine what you feel is important to hang your
2 observations on and findings and recommendations.
3 But the information is there for you to peruse as
4 you get further into this process.

5 With that, that is a quick overview of
6 the data that we have for you as you try to
7 figure out where this report can go. Are there
8 any questions that I can attempt to answer for
9 you based on what I've just presented?

10 DR. SPOHN: Chuck, this is Cassia
11 Spohn. I don't really have a question. You and
12 I talked about these things yesterday. But I
13 think it's really important to look at the race
14 of victims because research shows that if we're
15 looking at capital punishment and sexual assault,
16 that the race of the victim is actually a
17 stronger predictor of outcomes than is the race
18 of the subject. When you look at the interaction
19 or the correlation between the race of the
20 subject and the victim, there is more explanatory
21 data there.

22 I think these findings are intriguing

1 and I would encourage us to at least make a
2 recommendation that someone follow up on this,
3 because I do think it's important. Thank you.

4 MR. MASON: Yes, ma'am. This is Chuck.
5 I would say that this ties back to what Nalini
6 and Eleanor started the conversation with today,
7 is that 140a standard is recording one thing.
8 OGC's guidance is recording something that's
9 slightly different. There's a disconnect between
10 the two. One is capturing at court martial, but
11 not capturing at investigative because of where
12 the authority lies. So what we're able to say is
13 this is information we would love to have, but if
14 the services don't collect it in a way that it
15 can be utilized, there's still going to be the
16 unknown that can't be addressed. Any other
17 questions?

18 MS. LONG: Chuck, this is Jen Long.

19 MR. MASON: Go ahead.

20 MS. LONG: My question is because of
21 the relative small number of actual cases we're
22 working with, is it possible to do a case-by-case

1 analysis where we're looking through the cases to
2 determine more than just a case review by really
3 even trying to have decision-makers, if they're
4 still there, talk about the decision or really
5 making sure we're looking through at every single
6 part of the case from beginning to end? Like in
7 much more care, I would say, than the original
8 case review.

9 Looking at the video or listening to
10 things, looking at trial transcripts or whatever
11 we have of those, looking at motions to really
12 try and be able to say with certainty, since this
13 universe is so small and we could get to a true
14 understanding of what happened? Or is that not
15 consistent with research best practices, or we're
16 not able to do it based on the resources we have?

17 MR. MASON: This is Chuck. I would
18 say, I don't want to tell you you can't do
19 anything, because you are the members. We work
20 for you, and we try to get the material that you
21 feel would be beneficial to make determinations
22 and to provide your advice to the Secretary of

1 Defense, which is the charter. So what I would
2 say is if it's something that you believe in and
3 you would like to see happen, there is no harm in
4 saying we would like to do this.

5 Whether it's an observation, it's a
6 recommendation to the DAC-IPAD or it's a
7 recommendation to the Secretary of Defense -- it
8 could be a recommendation to the military justice
9 review panel that's being stood up. There are
10 many ways that you could go with that. If it's
11 something that you would like to keep internal,
12 we could say we're looking at a total of 106
13 cases where there were convictions. Can we look
14 at those in greater detail?

15 Because of the way this information
16 was presented to us through the RFI, we do have
17 the ability to track down these individual cases.
18 We can tell you when we do the analysis where the
19 PII, who that actual case involves. It's
20 obviously stripped out in anything that we share
21 with the public, but we do have it as part of our
22 exchange of information with the services.

1 Now the ownership of all that
2 information are the services. If we were then to
3 go back and say you've identified these cases and
4 we would like to have access to them, you always
5 run the potential of a service saying we're not
6 really comfortable doing that or yes, absolutely,
7 here is the information, but we retain ownership
8 of it. If there was a FOIA request, you would go
9 back to the service for that information. That's
10 how we've operated in the past. If it's
11 something you would like to see, I'm taking notes
12 as we talk, it's definitely something that we can
13 explore to see how we would do it. And then we
14 would work with Dr. Wells as our criminologist,
15 how to frame the research questions to get to the
16 answers that would be beneficial for your use.
17 Any additional questions?

18 CHAIR BASHFORD: Yeah, this is Martha
19 Bashford, Chuck. I think we're starting off from
20 a bad premise. We don't know if there's any
21 disparities in restricted reports versus
22 unrestricted reports. We don't know if there's

1 any disparities in the nature of the reporting
2 itself as opposed to -- does reporting
3 necessarily correlate specifically with
4 occurrences or not? Right from the get-go we may
5 be getting flawed information.

6 I don't really know how to account for
7 that or to note that if, in fact, it is flawed.
8 The one thing I do see though, across everything
9 there does seem to be some disparity between
10 population and ultimate results.

11 MR. MASON: Yes, ma'am. We've had lots
12 of internal discussion as we were working through
13 this process, from the first RFI to how we
14 revised it and how we added information. Part of
15 where we have struggled is we would like to get
16 to those answers, but we know that the question
17 that was asked was so narrowly focused that we
18 want to give Congress their answer. But we also
19 want to be able to tell Congress that they might
20 be ahead of the game in their question, that
21 they're asking a question that is being impacted
22 by a law that they had passed that is not fully

1 implemented yet.

2 This question might be better a year
3 from now or two years from now as the services
4 have an opportunity to actually record this
5 information in their systems and to report it out
6 accurately. That they've agreed to a standard
7 and using that standard. We do know that the
8 initial premise is flawed.

9 We know that there are many more
10 questions that should be asked if you're going to
11 do this type of analysis that's limiting it to
12 just this one snapshot runs the risk of doing a
13 disservice to the accused. It does a disservice
14 to the victim, it does a disservice to the
15 military justice system. It really isn't a fair
16 analysis for all parties involved. So by having
17 this additional background information, the valid
18 data that we can work from, we could provide
19 better answers.

20 All of that doesn't take away from the
21 fact, though, that with this basic information
22 that we have that was presented, that yes, we are

1 seeing, observing some disparities there, but we
2 don't know why. Even at its most basic form,
3 we're still getting information that will help
4 us, and us being the DAC-IPAD, make the
5 determination of how to do this research going
6 forward and how to bring everybody onto the same
7 page.

8 If you've identified the problems that
9 we've talked about and we're going to have to
10 include them in the narrative and explain why
11 there are problems and what those limitations
12 are. I hate doing a data presentation where I'm
13 constantly saying to you, there's a limit. This
14 isn't what it could be. But the DAC-IPAD has
15 done such an amazing job with establishing our
16 standards that we're document-based and we verify
17 information, and that the case review and case
18 adjudication projects have had that standard,
19 that it's a little difficult to now do one where
20 we're saying we're just accepting the answers
21 that we got as being the truth.

22 So there is a big caveat to this

1 report, but it shows that this report could be so
2 much more in the future if the DAC-IPAD wants to
3 go down that road. Any additional questions or
4 comments before I turn it back to Eleanor? Okay.
5 Well with that, I will hand it back over to
6 Eleanor to lead the next part of our
7 conversation.

8 MS. VUONO: Great, thanks Chuck. This
9 has really been the perfect segue to the fourth
10 and wrap-up session for this particular meeting.
11 What Chuck has done is he's really shown us, he's
12 raised all of these questions for you to consider
13 for future study. One of the things we want to
14 focus your work on for the next two weeks before
15 the November 6th meeting is: what are those
16 questions that come to mind?

17 As you view these data results, you're
18 going to receive sometime next week a draft
19 report, we ask that you will look at those, the
20 data that's included, the draft report, and think
21 about what questions, what observations, what
22 recommendations you will want to make at the

1 public meeting for your next deliberation on
2 November 6th.

3 Already you've already raised some of
4 those questions, and we've focused on, for
5 example, the victim/subject pairing, perhaps a
6 deeper dive into convictions. There are a few
7 more I may throw out here just for your
8 consideration, some questions to get you started
9 as you think about this before your deliberations
10 in November.

11 First, should the DAC-IPAD incorporate
12 reviews of race and ethnicity data in all of the
13 future reports? Is that something you want as a
14 feature? What specific studies of race and
15 ethnicity do you want to undertake in future DAC-
16 IPAD projects? I've heard and we've written down
17 the need for data on victim/subject pairings, how
18 that should be collected and assessed. Other
19 questions, what, if any, studies should be done
20 on the racial makeup of the MCIOs?

21 Perhaps the prosecutors or convening
22 authorities, of the judges, the panels of members

1 who hear courts martial? Are there studies or
2 should there be studies on racial disparities
3 between those who plead guilty versus those who
4 go to trial? What about racial disparities
5 between convictions in the penetrative versus the
6 contact sexual offenses? Those are just some of
7 the things that might come to mind.

8 You'll certainly come up with more,
9 and we look forward to hearing those and having
10 that conversation with you at the next public
11 meeting on November 6th. Before we wrap up
12 today's meeting and I turn this over to Colonel
13 Calese for any comments, are there any other
14 questions about the information that we've
15 presented today? And of course, we are really
16 thankful and grateful to all of you for your
17 time, because this is such an important subject.
18 If not, I'm turning it over I guess to Colonel
19 Calese.

20 COL. CALESE: Thanks much, Eleanor.
21 First and foremost, I want to thank the race and
22 ethnicity team that's been working so hard on

1 this. And I also want to put out a big thank you
2 to our service representatives who are on this
3 call. They have done all kinds of very helpful
4 collaborative work, explaining some of the
5 limitations that they have, helping us frame and
6 get as much data as we can. I think it's really
7 important that we all put this in context.

8 We're pulling together race and
9 ethnicity, very tough questions, with brand-new
10 laws and policies on how we're going to collect
11 that data, and we're trying to braid that and
12 translate into the expertise that every single
13 one of our committee members have in particular
14 with sexual assault. So how we try to pull that
15 data is really tough, and my hat is off to the
16 race and ethnicity team and those services for
17 doing that.

18 It's also off to you, Chair Bashford,
19 for your wisdom in having us go ahead and convene
20 in advance of deliberating on this paper so that
21 we could put this data out and give everybody an
22 opportunity to look at some things. As you well

1 know, what you'll be getting from us next from
2 the staff are some proposed ways ahead for the
3 paper.

4 Essentially, that is what -- before I
5 turn this over to you, Ms. Bashford, or when I
6 turn this over to you, if you would, some of the
7 things I think as a staff we would like to hear
8 are: how do we capture exactly what the DAC-IPAD
9 would like us to produce in terms of this race
10 and ethnicity report? Is it something you'd
11 like, like Eleanor said, we should include in our
12 annual reports that we look at? Are there things
13 that we can systemically look at, definitely
14 taking into account the victim side and the
15 correlation between the victim and the accused,
16 as Dr. Spohn has pointed out.

17 But this is an opportunity if you
18 could now to think about those, voice them on
19 this call if you can. If not, we'll give you
20 some information on how to feed those to the team
21 so that we can capture them appropriately and get
22 that out for everybody for our deliberations on

1 the 6th of November. Finally, I have confirmed
2 with Mr. Trexler that we do not have any public
3 comments. Ms. Bashford, it's over to you.

4 CHAIR BASHFORD: People have been kind
5 of quiet on this call so far. There's a lot to
6 absorb. But since we are going to have to
7 deliberate on this in just two weeks, I would
8 really encourage people if you have any thoughts
9 now to voice them. If not, please email Colonel
10 Calese with ideas. We've got half an hour that
11 was still allotted to this, and as I said, people
12 have been rather subdued today. I encourage
13 anybody who has any comments to please make them.

14 HON. GRIMM: Grimm.

15 CHAIR BASHFORD: Please, go ahead.

16 HON. GRIMM: My first comment is simply
17 to thank the staff for the fabulous work that
18 they have done. Obviously we would have no way
19 of being able to get our heads around what kind
20 of data we need or want or what we think is the
21 best path going forward without that assistance.
22 Walking through the charts and explaining it was

1 exceptional.

2 I can just say that from my personal
3 viewpoint, I would feel helped as we make a
4 decision as a committee next month with a
5 breakdown that the staff has done for us many
6 times in the past, which would include possible
7 outcomes, possible recommendations that we could
8 make. We could recommend this, this, this, this,
9 and this is possible, the bang for the buck that
10 we get from each of those recommendations.

11 For example, we now know that not
12 having the same number of categories identical
13 throughout creates certain systemic problems in
14 trying to understand it. We now know that if we
15 had information about victims, that we could do
16 better correlation. We know that if we had the
17 raw data, we could do independently and analyze
18 what it says and determine whether we believe
19 that there has been a coding error or something
20 of that nature.

21 It would help me as a non-
22 statistician, we have Dr. Spohn, we have others

1 on our committee who are researchers, who know
2 this much better than I do. But from someone
3 who's a generalist, but who has to make decisions
4 all the time about technical, scientific or
5 specialized areas, having a range of options that
6 we might want to pursue and what we get from each
7 one or what we are not able to -- you know, if we
8 do this, this is what we can do with this
9 information, but we can't do this.

10 That would help very much making sure
11 that we track through there and figure out what
12 is going on and if there are limitations on what
13 we could do, yes, if we had this we could do
14 this, we would not be able to do this. But to
15 get from here to there would involve this much
16 more level of complexity or cost or burden or
17 whatever, or would require a statutory change or
18 something of that nature.

19 To me, that kind of analysis that
20 helps us to rank or value the options would be
21 enormously helpful.

22 CHAIR BASHFORD: Any other comments,

1 suggestions, questions?

2 MR. SULLIVAN: This is Dwight Sullivan.
3 If I could ask Chuck two questions?

4 CHAIR BASHFORD: Please.

5 MR. SULLIVAN: Chuck, these questions
6 are interrelated, so it may help if I ask them
7 both and then you can give me a combined response
8 to both. So it seems to me that when you break
9 down the services individually, the numbers are
10 so small, as you pointed out, for some of the
11 services. I think it would be helpful to have
12 some sort of indication of statistical
13 significance of the variances as the case moves
14 from one of the three phases to the next.

15 Secondly, the opening charts had
16 combined data for the armed forces as a whole,
17 and I don't see anything in here that sums up the
18 data in the three categories for the armed forces
19 as a whole. I was wondering if that was going to
20 be produced in the final report, which would also
21 help to iron out some of those variances that
22 arise just because of the small numbers. Over.

1 MR. MASON: The first one with the
2 smaller numbers and the statistical significance,
3 we didn't go down that road because we've had the
4 limitations with the data to begin with. We were
5 just looking at these are the raw numbers as
6 recorded and that are proportioned within that
7 response. We didn't get into if there is a
8 statistically significant variation between them.
9 That is something that we would like to do once
10 we have the standardized data across the services
11 so that we can actually draw those correlations.

12 The way the response is being couched
13 right now is Congress asked for raw numbers, and
14 we're going to give raw numbers. But those raw
15 numbers do not tell the complete story, that you
16 need to have additional analysis if you're going
17 to try to do this type of research question.

18 The second issue with respect to the
19 armed forces, in those first two charts, because
20 we used the Department of Defense demographic
21 report, we wanted to show what the complete armed
22 services, the five services together, what that

1 number is. But then because we weren't going to
2 get into the statistically significant
3 components, the advanced bivariate and
4 multivariate analysis, we didn't try to do the
5 raw numbers for all of the responses.

6 That being said, and unfortunately the
7 staff had to sit through it already, I made 80-
8 some charts leading up to today. I've done a lot
9 of different trying to look at things to see if
10 there's something that we can explain it and
11 something that is worthwhile and does a holistic
12 view, the complete universe of cases. The data
13 just doesn't lend itself at this point to do
14 that.

15 But much like how we have done it with
16 the case adjudication report and the case review
17 report, that would be our goal going forward, is
18 that when we have more comprehensive valid data,
19 we would be able to do the overall viewpoint
20 analysis.

21 MR. SULLIVAN: Thank you.

22 CHAIR BASHFORD: Any other comments or

1 suggestions? At the risk of beating a dead
2 horse, I think we should really stress that for
3 almost 50 years now, since the 1972 report,
4 people have been saying the exact same thing
5 about the lack of clear and consistent data,
6 which we have said any number of times as well.
7 But I think it bears repeating every time.

8 COL. CALESE: This is Colonel Calese.
9 Judge Grimm, sir, I acknowledge that having that
10 breakdown of possible outcomes and
11 recommendations, and bringing those back to you,
12 we'll certainly be working on that. At the risk,
13 ma'am, of putting Dr. Spohn on the hook here,
14 ma'am, you had mentioned in the course of this
15 discussion the race of the victim is a stronger,
16 I believe you said indicator -- there's something
17 that you said. Could you expand on that so that
18 maybe we can look at how to explore some of that
19 in this menu of recommendations going forward?
20 Over.

21 DR. SPOHN: Sure. What I was referring
22 to is there's a substantial amount of work

1 primarily on the imposition of the death penalty
2 that illustrates that the race of the defendant
3 very often does not have a statistically
4 significant effect on the decision to impose the
5 death penalty. The race of the victim typically
6 does, with those who kill Whites being
7 substantially more likely than those who kill
8 individuals of other races to be sentenced to
9 death.

10 The race of the offender/victim pair
11 is also a significant predictor, such that Blacks
12 who are convicted of murdering Whites have the
13 highest likelihood of being sentenced to death.
14 Now in the context of sexual assault, Chuck
15 mentioned the sexual stratification hypothesis,
16 which really dates back to the 1970s. It's an
17 argument that response to sexual assault is
18 predicated on the race of the suspect and the
19 race of the victim.

20 Again, the argument is that Blacks who
21 sexually assault Whites have the highest
22 likelihood of being charged, successfully

1 prosecuted and sentenced more punitively.

2 Whereas, Blacks who sexually assault other Blacks
3 have the lowest likelihood of receiving those
4 more punitive outcomes. So I think that it is
5 important to think not only about the race of the
6 suspect or the subject, but also the race of the
7 victim.

8 And I noticed in the charts, I mean it
9 does appear, although this wasn't a focus of the
10 analysis that Mr. Mason presented, that the
11 typical victim in each of these outcomes that we
12 looked at, the typical victim was White. And I
13 think that deserves some more explanation.

14 COL. CALESE: Thank you, ma'am.

15 CHAIR BASHFORD: Colonel, so I'm going
16 to request that everybody, to the extent that you
17 can, if you have other comments to make, please
18 email Colonel Calese and please email Julie
19 Carson in advance so they can try to get a little
20 bit more focus with input from us. Colonel
21 Calese, do you have anything else to add today?

22 COL. CALESE: No, ma'am, I do not. I

1 believe we can conclude if you want to turn
2 things over to Mr. Sullivan or make any closing
3 comments yourself.

4 CHAIR BASHFORD: The only closing
5 comment I want to make is that this was a heroic
6 effort as far as the services and once again, the
7 staff, in a very compressed time frame when,
8 let's not forget, we were also getting the data
9 report to press. Congratulations to all involved
10 in both topics. And Mr. Sullivan, I think it's
11 time to bring us home.

12 MR. SULLIVAN: This meeting is
13 officially closed.

14 CHAIR BASHFORD: Thanks to everyone.

15 COL. CALESE: Thank you.

16 (Whereupon, the above-entitled matter
17 went off the record at 12:43 p.m.)
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In the matter of: Public Meeting

Before: DAC-IPAD

Date: 10-23-20

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