

Study on the Race, Ethnicity, and Gender of Military Panel Members

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Overview

- Background on DAC-IPAD
- Legal changes impacting panel selection & perceptions of panel diversity.
- FY21-22 Results
 - Race, ethnicity, and gender of detailed members
 - Race, ethnicity, and gender of impaneled members

Statutory Authority and Mission

- Section 546 of the National Defense Authorization Act for FY15, as amended:

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.

- The Committee can make recommendations for systemic change when, in the DAC-IPAD members' collective judgment, it will improve the investigation, prosecution, and defense of sexual misconduct.

Selecting Topics for Review

- Congressional Taskings
- Requests from the DoD General Counsel
- Committee Decision

Select Reports

- *Report on Randomizing Panel Member Selection*, December 2023
- *Report on Sharing Information with Victims*, December 2023
- *Report on Reforming Pretrial Procedures*, June 2023
- *Report on Victim Impact Statements*, March 2023
- *Appellate Review Study*, March 2023
- *Report on SVC Tour Lengths and Reporting Structure*, August 2022
- *Report on Investigative Case File Reviews*, October 2020

Recent Changes to Panel Selection

- Independent Review Commission Report Recommendation: Amend Article 25, UCMJ to establish random selection of panel members.
- FY23 NDAA: Requires by December 2024 the random selection of panel members “to the maximum extent possible.”
- DAC-IPAD *Randomization* Report Recommendations:
 - Eliminate requirement that convening authority detail those members he considers “best qualified.”
 - Implement a randomized panel selection process.

Law Governing Use of Race and Gender

- No right to a court-martial panel drawn from a representative cross-section of the population.
 - Fifth Amendment protects against intentional racial discrimination through exclusion but does not guarantee minority representation on panel.
- *U.S. v. Jeter* (C.A.A.F. 2023):
 - Abrogated *U.S. v. Crawford* (C.M.A. 1964)
 - No longer permissible for convening authority to use race to make panel more representative of accused's race.

DAC-IPAD Interest in Panel Selection

- DAC-IPAD public comments on racially homogenous juries
- Research on benefits of minority representation in civilian juries
- Dynamic area of law: important to establish baseline to assess impact of *Jeter* and NDAA randomization requirement
- No public information on the race and/or ethnicity of panel members exists.

Methodology

- DAC-IPAD staff reviewed the following FY21-22 documents and recorded the following data points:
 - Convening orders (*information on detailed members*)
 - Transcripts/Trial Audio (*impaneled members, reasons for exclusion, information on court personnel*)
 - Randomization documents (*exclusion*)
 - Entry of judgment (*outcome of case, forum, and accused information*)

**Results: Demographics of Courts-Martial
Panel Members by Military Service
of the Accused**

Analysis Plan

Core questions:

- What are the representations of white, not Hispanic service members and racial and/or ethnic minority service members on details and on panels?
- What are the representations of male and female service members on details and on panels?
- How do those representations compare to their overall representations in the services?

Analysis Plan

Measuring the demographic characteristics of service members:

- Obtained information from the Army about race and about ethnicity combined.
- For the other branches, this information about race and ethnicity was separated.
- We created a simplified measure to use in analyses: 1) White, not Hispanic Service Member and 2) Racial and/or Ethnic Minority Service Member

Analysis Plan

- Step 1: Summarized characteristics of cases, including the accused and case outcomes
- Step 2: Grouped together all individuals detailed and all individuals impaneled across all courts-martial cases, for each service
 - Summarized the characteristics of individuals detailed and impaneled
 - Does not allow for an understanding of specific details and panels
- Step 3: Case-level analysis of details and panels
 - Summarized information about the average detail and the average panel, in terms of the representation of race and/or ethnicity and in terms of gender
 - For example: what is the representation of racial and/or ethnic minority service members on the typical panel?

Data Overview

	Contested Sexual Assault Courts-Martial	Detailed Service Members
Army	124	1,965
Air Force	49	891
Navy	48	859
Marine Corps	39	661

Sexual assault cases closed in FY21 and FY22, except for the Air Force. The Air Force provided data for cases closed in FY21 and the DAC-IPAD will issue findings on FY22 later.

Active-Duty Service Member Demographic Characteristics: Army

	Frequency	Percentage
White, not Hispanic Service Members	248,054	54.0
Racial and/or Ethnic Minority Service Members	211,193	46.0

	Frequency	Percentage
Male Service Members	390,605	84.3
Female Service Members	72,478	15.7

Race and Ethnicity of Detailed and Impaneled Service Members (Army)

Detailed Service Members

	Frequency	Percentage
White, not Hispanic Service Members	1001	54.7
Racial and/or Ethnic Minority Service Members	828	45.3
Total	1829	100

Impaneled Service Members

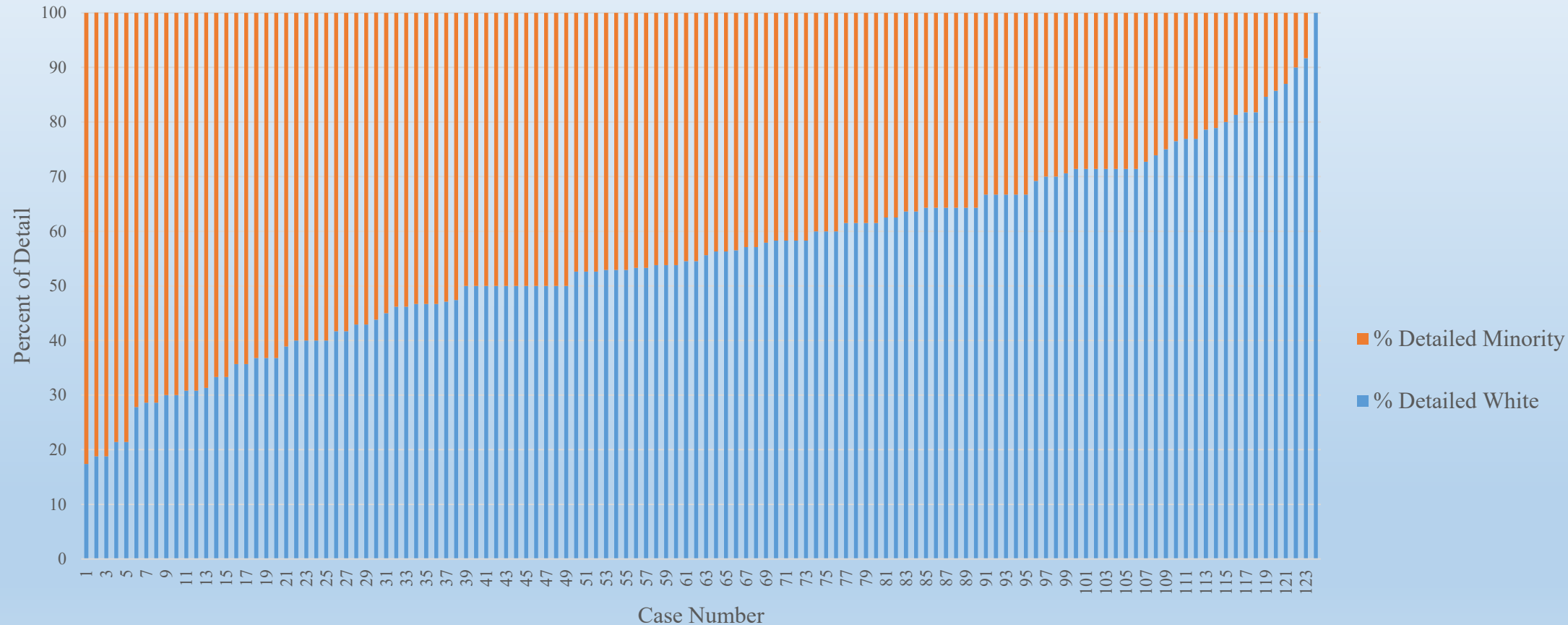
	Frequency	Percentage
White, not Hispanic Service Members	487	54.8
Racial and/or Ethnic Minority Service Members	402	45.2
Total	889	100

Race and Ethnicity of Impaneled Service Members (Army)

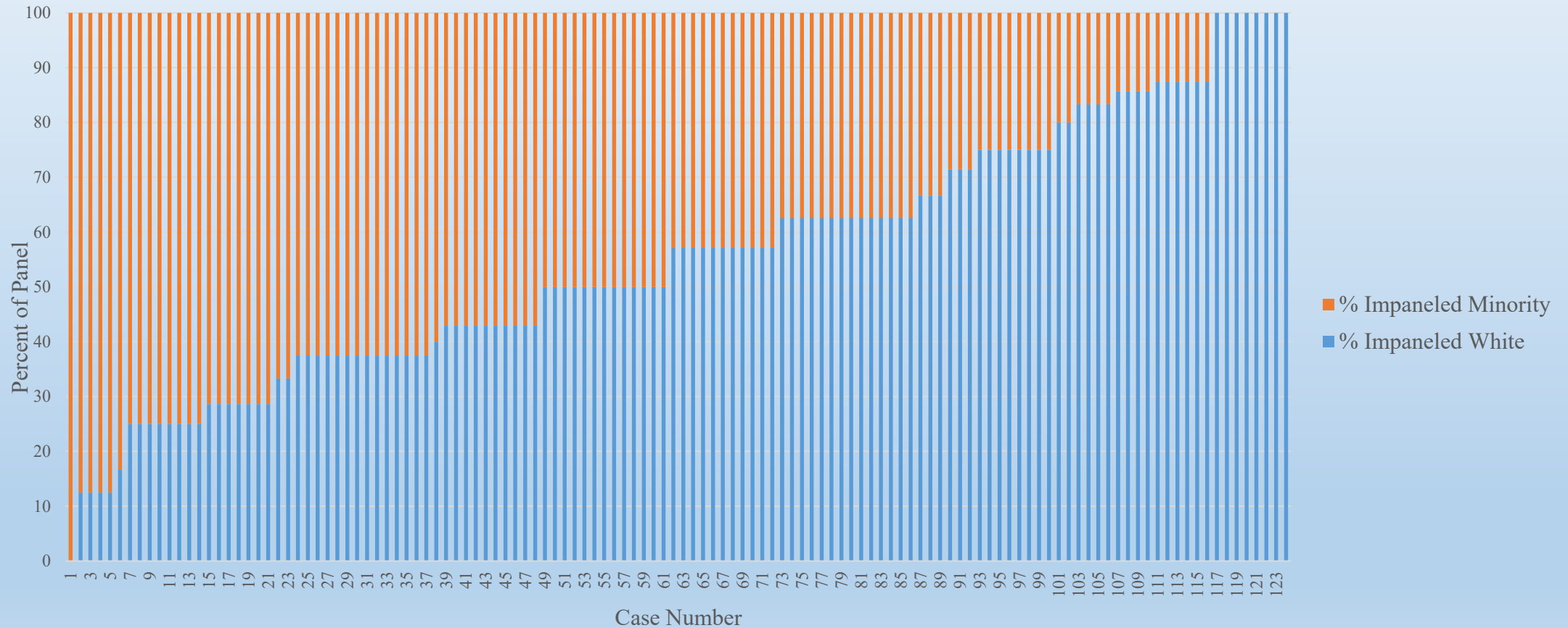
	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	487 (48.7%)	402 (48.6%)	889 (48.6%)
Not Impaneled	514 (51.3%)	426 (51.4%)	940 (51.4%)
Total	1001 (100%)	828 (100%)	1829 (100%)

The rate at which white, not Hispanic service members are impaneled is nearly identical to the rate at which racial and/or ethnic minority service members are impaneled.

Representation of Race and Ethnicity of Service Members Detailed to Courts-Martial (Army)



Representation of Race and Ethnicity of Service Members Impaneled (Army)



Race and Ethnicity of Service Members Impaneled by Race and Ethnicity of the Accused (Army)

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

Panels have a greater representation of racial and/or ethnic minority service members when the accused is a racial and/or ethnic minority service member. This difference is statistically significant.

Gender of Detailed and Impaneled Service Members (Army)

Detailed Service Members

	Frequency	Percentage
Male Service Members	1478	78.8
Female Service Members	397	21.2
Total	1875	100

Impaneled Service Members

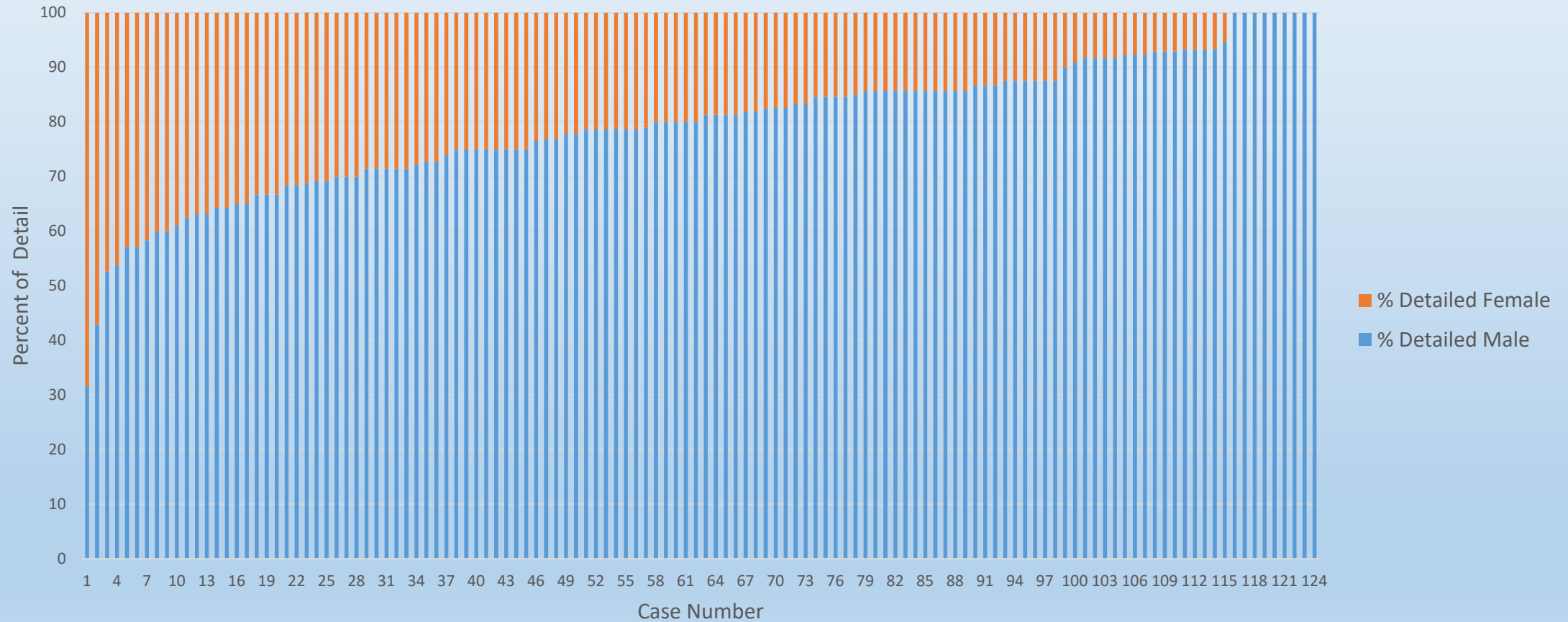
	Frequency	Percentage
Male Service Members	763	83.6
Female Service Members	150	16.4
Total	913	100

Gender of Impaneled Service Members (Army)

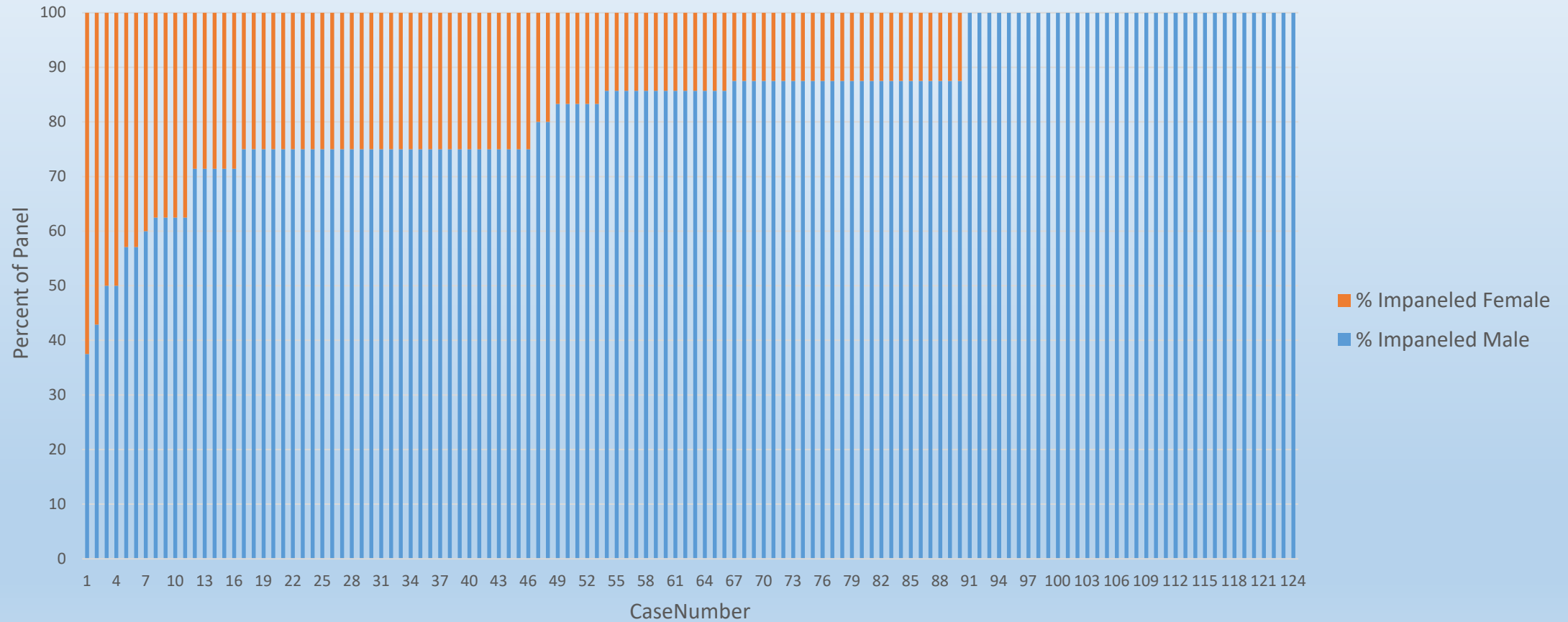
	Female	Male	Total
Impaneled	150 (37.8%)	763 (51.6%)	913 (48.7%)
Not Impaneled	247 (62.2%)	715 (48.4%)	962 (51.3%)
Total	397 (100%)	1478 (100%)	1875 (100%)

Females are impaneled at a lower rate than males (37.8% compared to 51.6%). This difference is statistically significant.

Representation of Gender of Service Members Detailed to Courts-Martial (Army)



Representation of Gender of Service Members Impaneled (Army)



Active-Duty Service Member Demographic Characteristics: Air Force

	Frequency	Percentage
White, not Hispanic Service Members	180,953	60.6
Racial and/or Ethnic Minority Service Members	117,535	39.4

	Frequency	Percentage
Male Service Members	251,618	78.5
Female Service Members	68,803	21.5

Race and Ethnicity of Detailed and Impaneled Service Members (Air Force)

Detailed Service Members

	Frequency	Percentage
White, not Hispanic Service Members	428	62.9
Racial and/or Ethnic Minority Service Members	252	37.1
Total	680	100

Impaneled Service Members

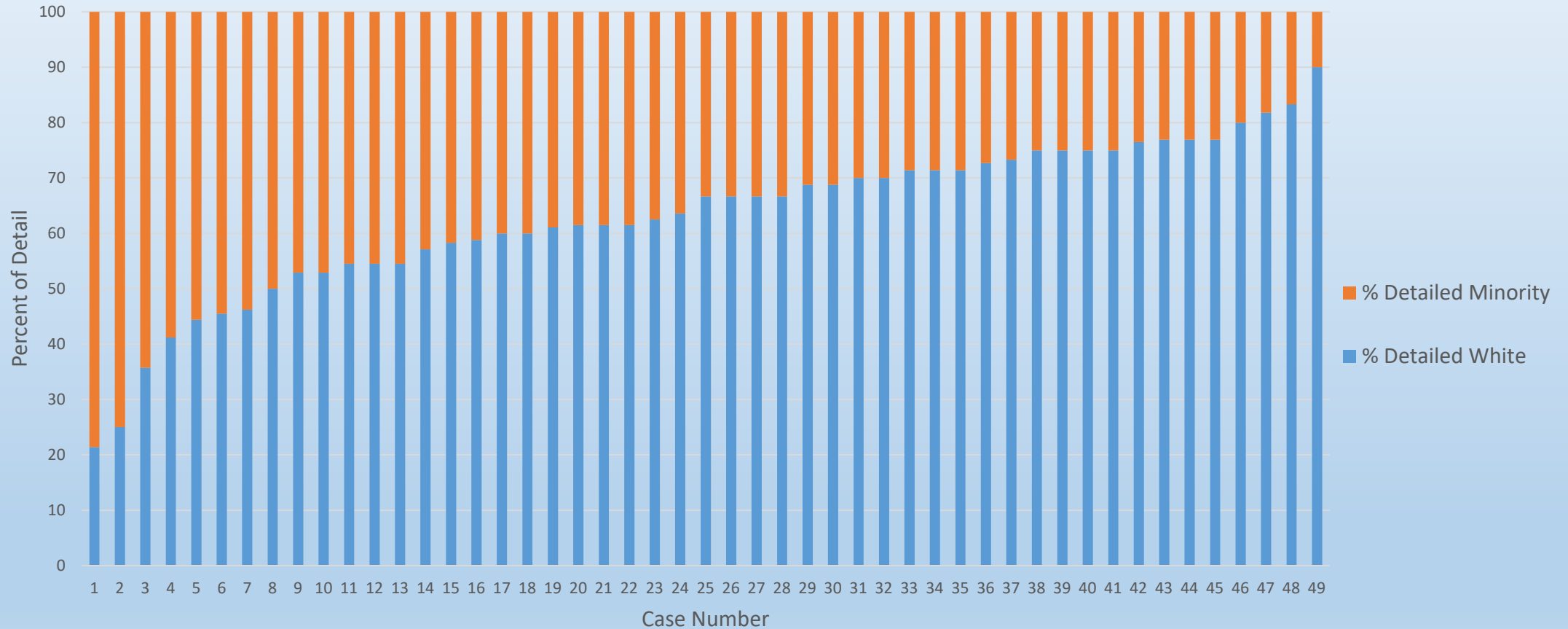
	Frequency	Percentage
White, not Hispanic Service Members	177	59.8
Racial and/or Ethnic Minority Service Members	119	40.2
Total	296	100

Race and Ethnicity of Impaneled Service Members (Air Force)

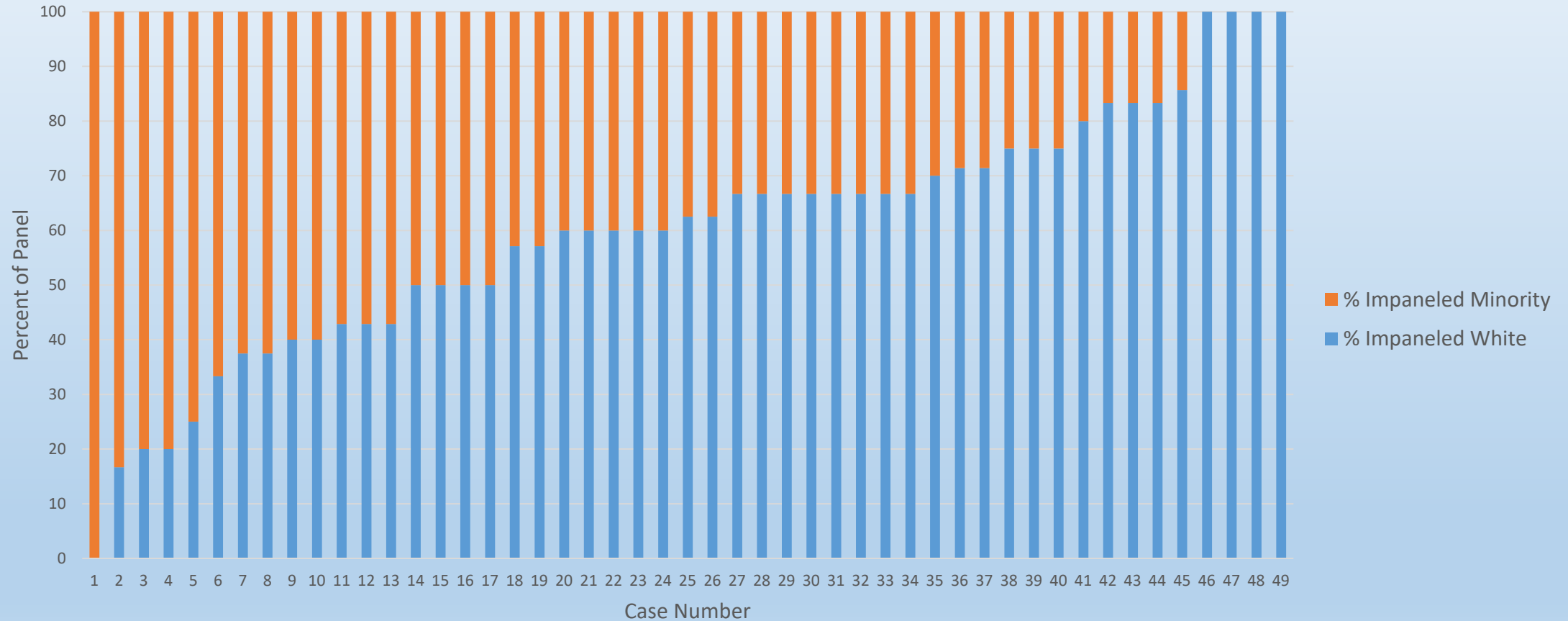
	White, not Hispanic Service Members	Racial and/or Ethnic Minority Service Members	Total
Impaneled	177 (41.4%)	119 (47.2%)	296 (43.5%)
Not Impaneled	251 (58.6%)	133 (52.8%)	384 (56.5%)
Total	428 (100%)	252 (100%)	680 (100%)

The rate at which white, not Hispanic service members are impaneled is greater than the rate at which racial and/or ethnic minority service members are impaneled. This difference is not statistically significant.

Representation of Race and Ethnicity of Service Members Detailed to Courts-Martial (Air Force)



Representation of Race and Ethnicity of Service Members Impaneled (Air Force)



Race and Ethnicity of Service Members Impaneled by Race and Ethnicity of the Accused (Air Force)

	Accused – White, not Hispanic	Accused – Racial and/or Ethnic Minority Service Member
Average Percent of Panel Comprised of White, not Hispanic Service Members	64.2% (SD = 26.0)	55.3% (SD = 18.9)

FY21 data show panels have a greater representation of racial and/or ethnic minority service members when the accused is a racial and/or ethnic minority service member than when the accused is a white, not Hispanic service member. This difference is not statistically significant.

Gender of Detailed and Impaneled Service Members (Air Force)

Detailed Service Members

	Frequency	Percentage
Male Service Members	532	69.0
Female Service Members	239	31.0
Total	771	100

Impaneled Service Members

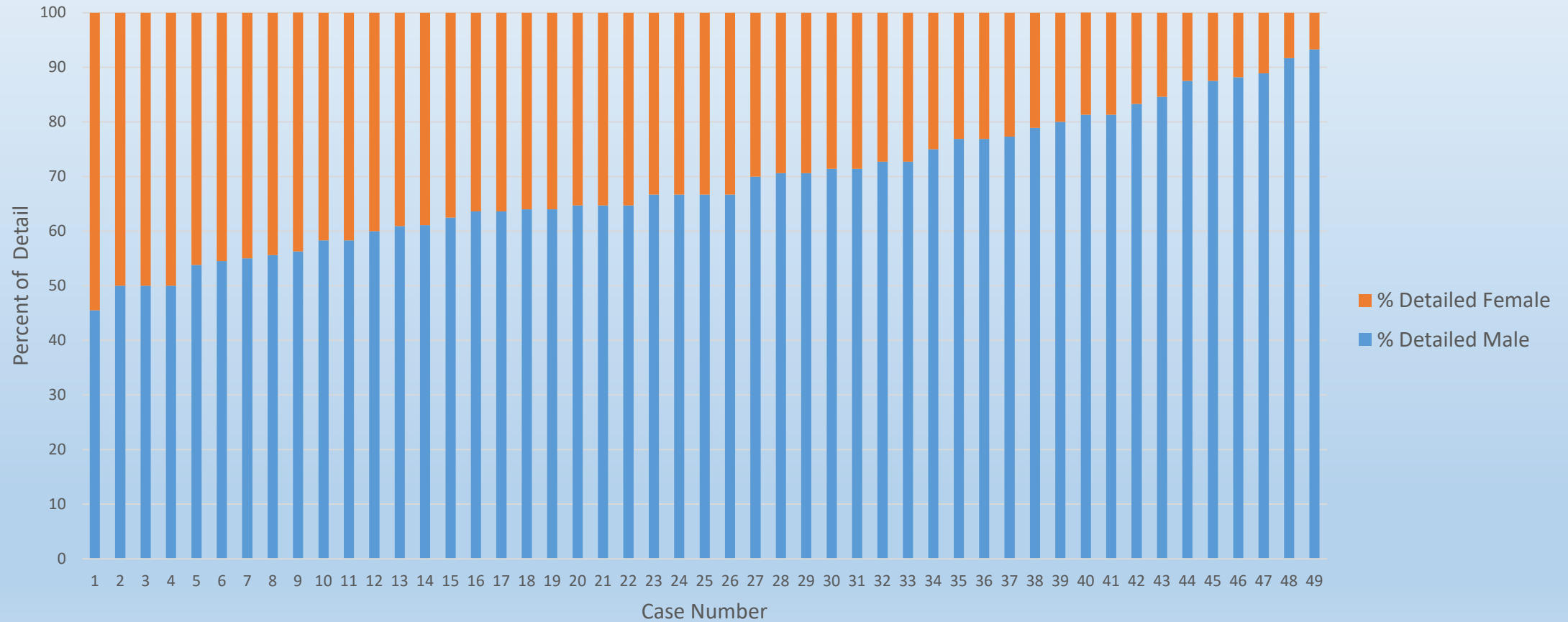
	Frequency	Percentage
Male Service Members	256	76.4
Female Service Members	79	23.6
Total	335	100

Gender of Impaneled Service Members (Air Force)

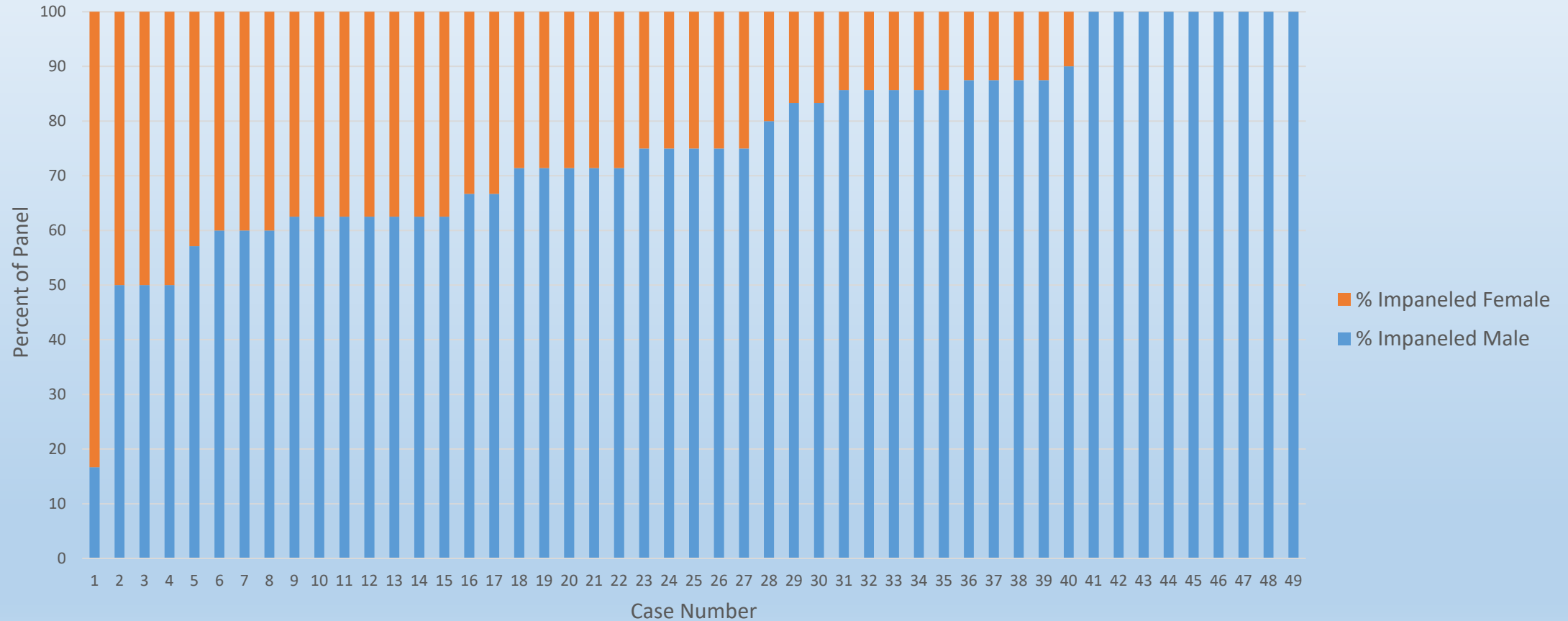
	Female	Male	Total
Impaneled	79 (33.1%)	256 (48.1%)	335 (43.5%)
Not Impaneled	160 (66.9%)	276 (51.9%)	436 (56.5%)
Total	239 (100%)	532 (100%)	771 (100%)

Females are impaneled at a lower rate than males (33.1% compared to 48.1%). This difference is statistically significant.

Representation of Gender of Service Members Detailed to Courts-Martial (Air Force)



Representation of Gender of Service Members Impaneled (Air Force)



Active-Duty Service Member Demographic Characteristics: Navy

	Frequency	Percentage
White, not Hispanic Service Members	139,698	49.6
Racial and/or Ethnic Minority Service Members	142,199	50.4

	Frequency	Percentage
Male Service Members	269,712	79.3
Female Service Members	70,353	20.7

Race and Ethnicity of Detailed and Impaneled Service Members (Navy)

Detailed Service Members

	Frequency	Percentage
White, not Hispanic Service Members	415	56.6
Racial and/or Ethnic Minority Service Members	318	43.4
Total	733	100

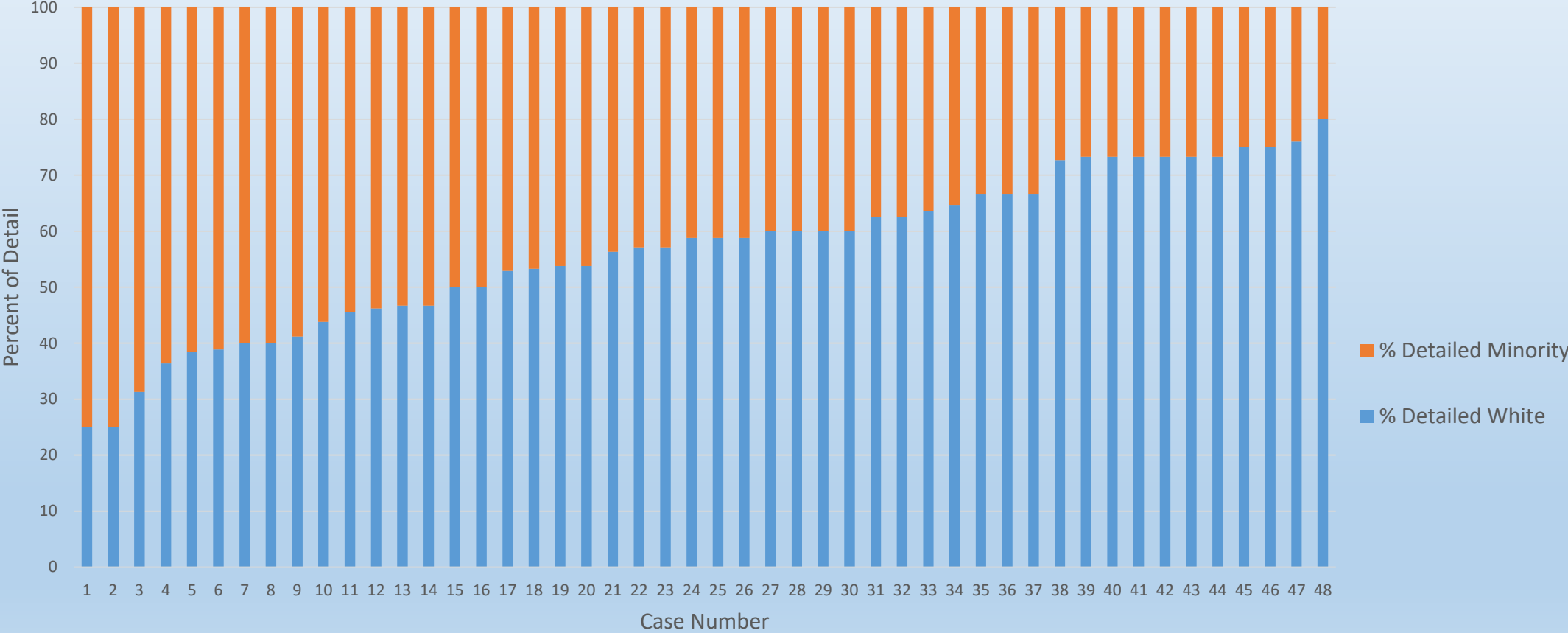
Impaneled Service Members

	Frequency	Percentage
White, not Hispanic Service Members	181	55.7
Racial and/or Ethnic Minority Service Members	144	44.3
Total	325	100

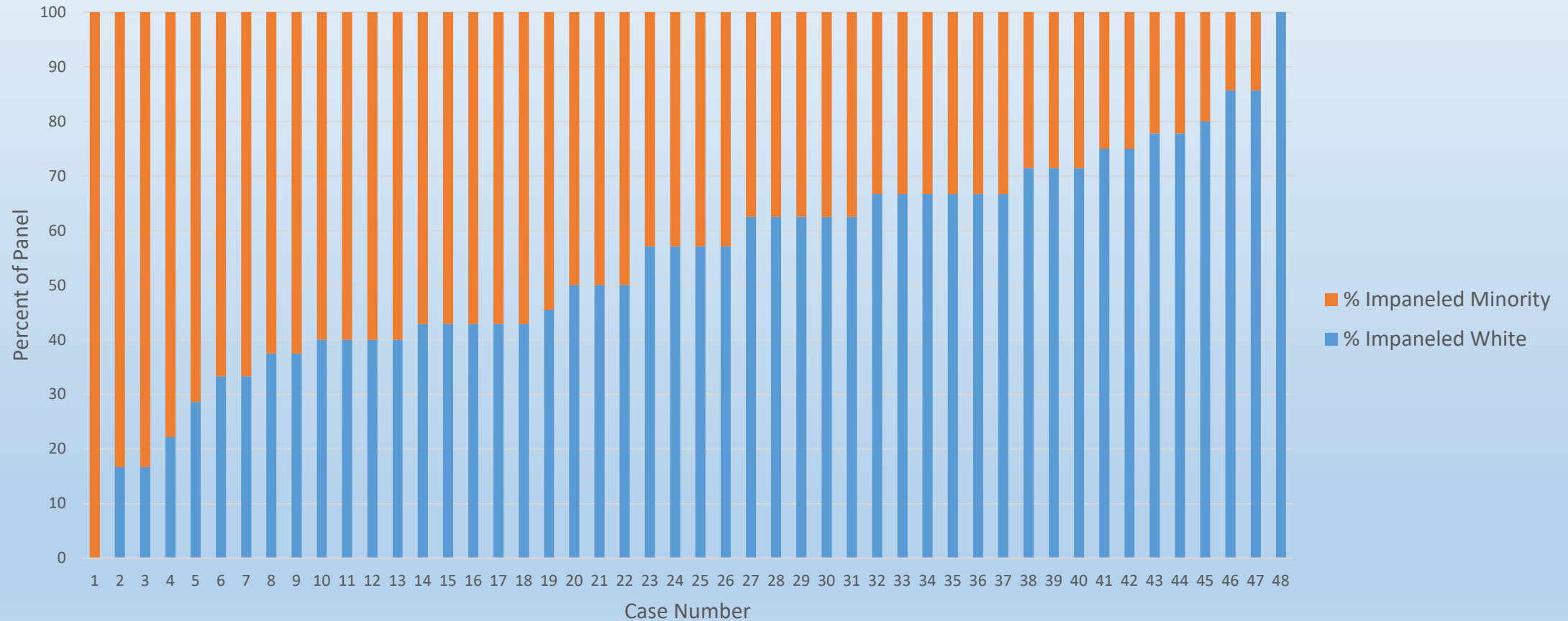
Race and Ethnicity of Impaneled Service Members (Navy)

	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%)

Representation of Race and Ethnicity of Service Members Detailed to Courts-Martial (Navy)



Representation of Race and Ethnicity of Service Members Impaneled (Navy)



Race and Ethnicity of Service Members Impaneled by Race and Ethnicity of the Accused (Navy)

	Accused – White, not Hispanic	Accused – Racial and/or Ethnic Minority Service Member
Average Percent of Panel Comprised of White, not Hispanic Service Members	52.2% (SD = 18.4)	52.7% (SD = 19.7)

Gender of Detailed and Impaneled Service Members (Navy)

Detailed Service Members

	Frequency	Percentage
Male Service Members	691	84.0
Female Service Members	132	16.0
Total	823	100

Impaneled Service Members

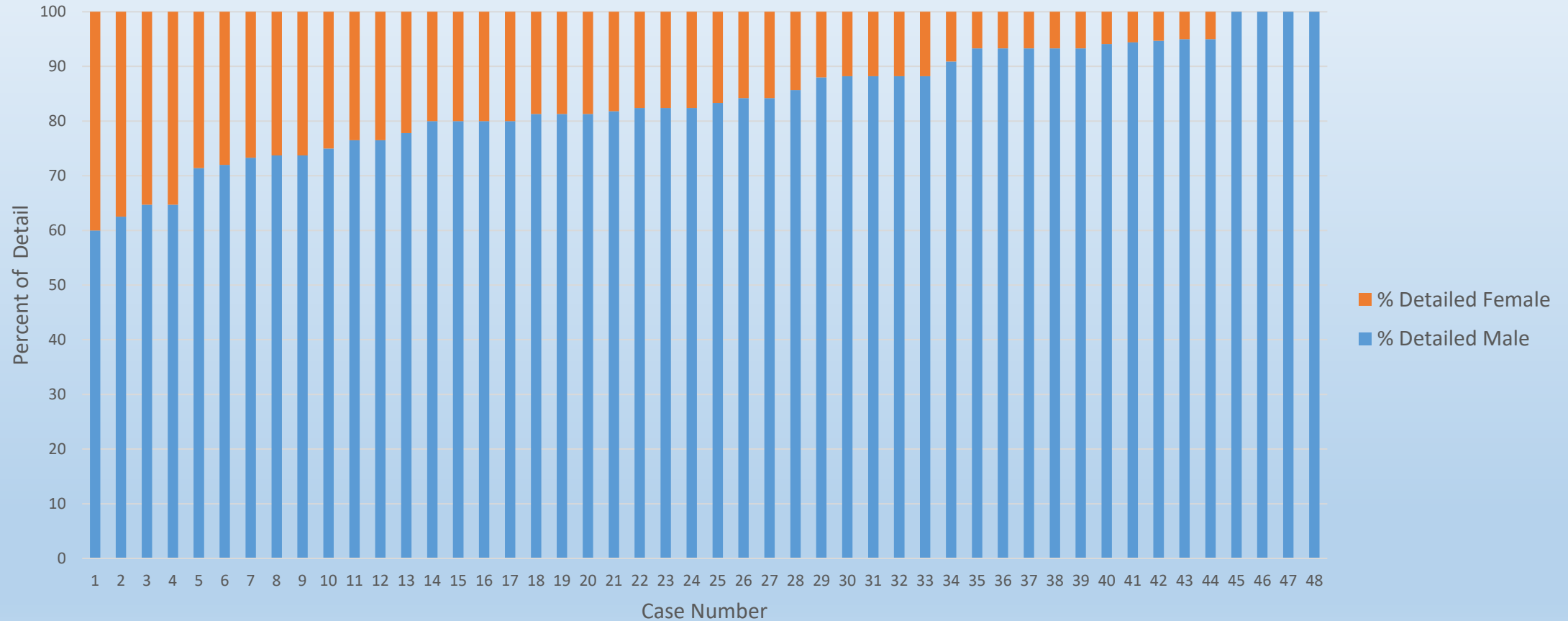
	Frequency	Percentage
Male Service Members	345	90.8
Female Service Members	35	9.2
Total	380	100

Gender of Impaneled Service Members (Navy)

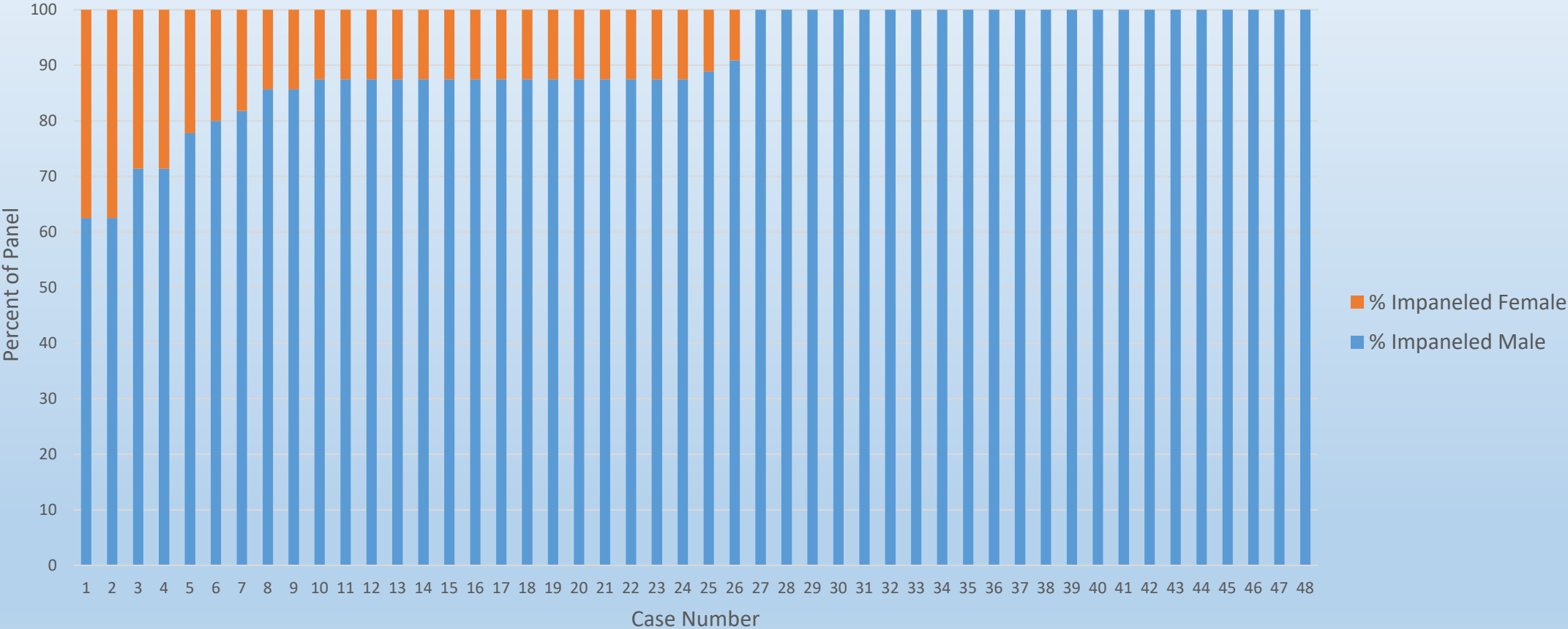
	Female	Male	Total
Impaneled	35 (26.5%)	345 (49.9%)	380 (46.2%)
Not Impaneled	97 (73.5%)	346 (50.1%)	443 (53.8%)
Total	132 (100%)	691 (100%)	823 (100%)

Females are impaneled at a lower rate than males (26.5% compared to 49.9%). This difference is statistically significant.

Representation of Gender of Service Members Detailed to Courts-Martial (Navy)



Representation of Gender of Service Members Impaneled (Navy)



Active-Duty Service Member Demographic Characteristics: Marine Corps

	Frequency	Percentage
White, not Hispanic Service Members	98,495	57.6
Racial and/or Ethnic Minority Service Members	72,318	42.3

	Frequency	Percentage
Male Service Members	158,137	90.6
Female Service Members	16,440	9.4

Race and Ethnicity of Detailed and Impaneled Service Members (Marines Corps)

Detailed Service Members

	Frequency	Percentage
White, not Hispanic Service Members	336	59.8
Racial and/or Ethnic Minority Service Members	226	40.2
Total	562	100

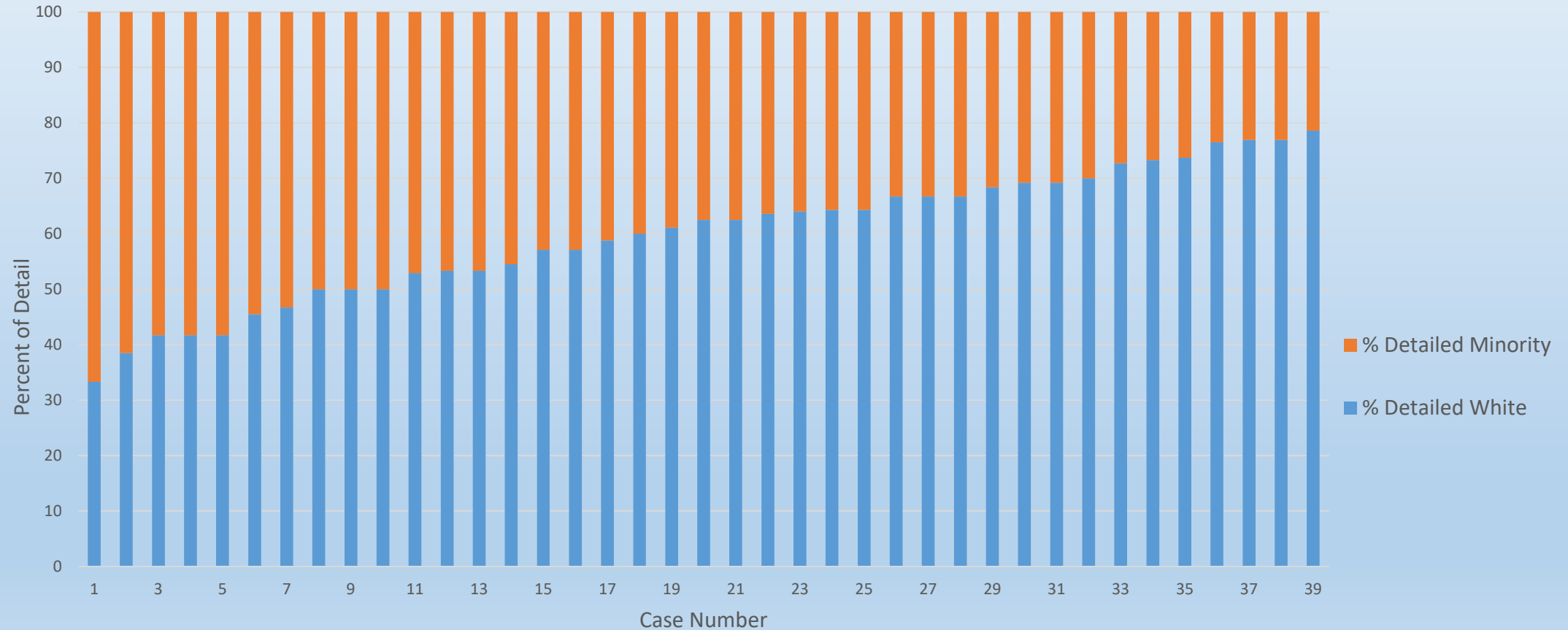
Impaneled Service Members

	Frequency	Percentage
White, not Hispanic Service Members	156	61.2
Racial and/or Ethnic Minority Service Members	99	38.8
Total	255	100

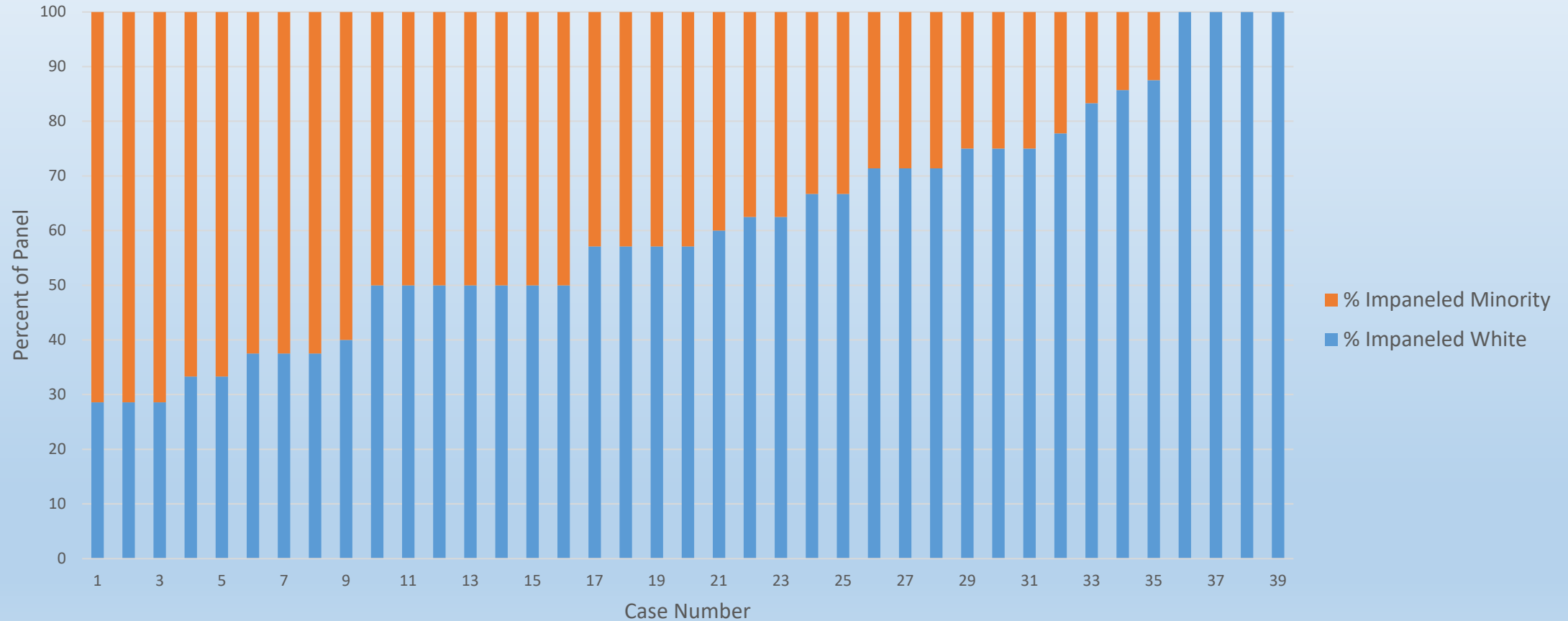
Race and Ethnicity of Impaneled Service Members (Marine Corps)

	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%)
Total	336 (100%)	226 (100%)	562 (100%)

Representation of Race and Ethnicity of Service Members Detailed to Courts-Martial (Marine Corps)



Representation of Race and Ethnicity of Service Members Impaneled (Marine Corps)



Race and Ethnicity of Service Members Impaneled by Race and Ethnicity of the Accused (Marine Corps)

	Accused – White, not Hispanic	Accused – Racial and/or Ethnic Minority Service Member
Average Percent of Panel Comprised of White, not Hispanic Service Members	54.1% (SD = 20.9)	65.7% (SD = 20.2)

Panels have a lower representation of racial and/or ethnic minority service members when the accused is a racial and/or ethnic minority service member than when the accused is a white, not Hispanic service member. This difference is not statistically significant.

Gender of Detailed and Impaneled Service Members (Marine Corps)

Detailed Service Members

	Frequency	Percentage
Male Service Members	573	89.5
Female Service Members	67	10.5
Total	640	100

Impaneled Service Members

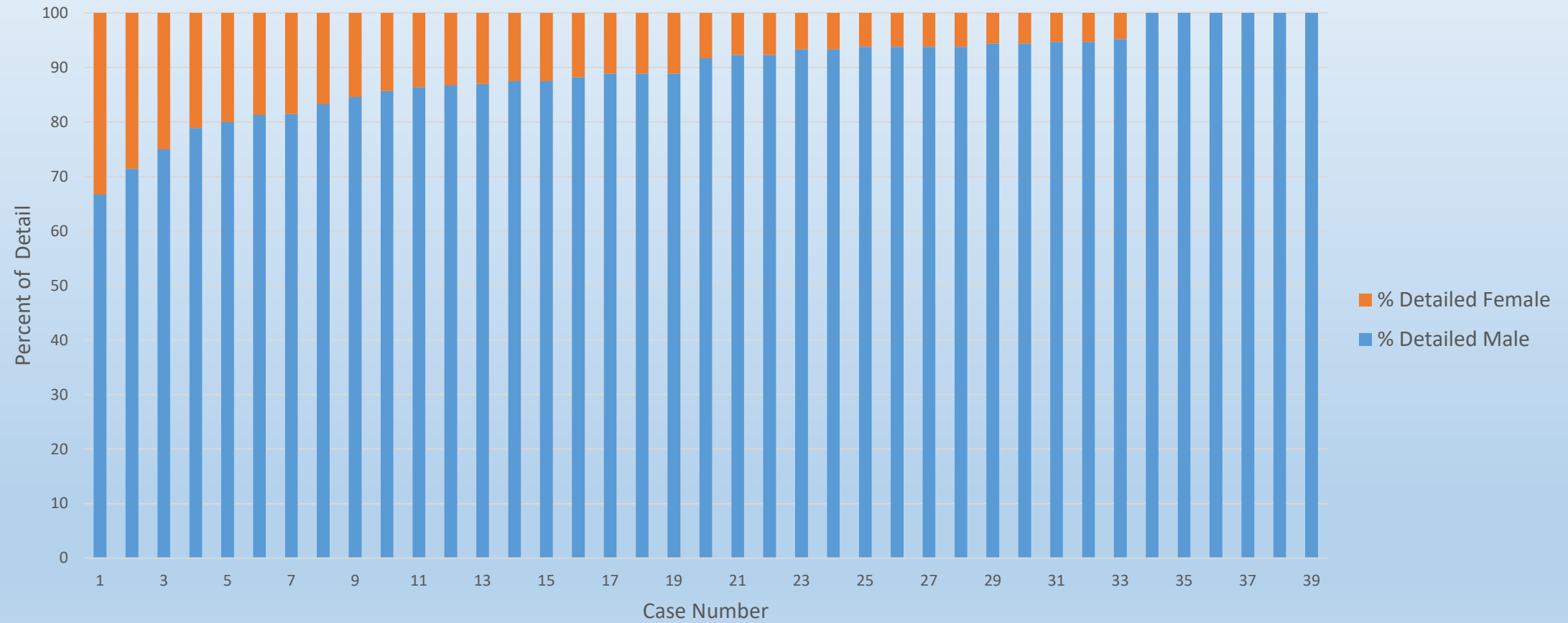
	Frequency	Percentage
Male Service Members	279	93.3
Female Service Members	20	6.7
Total	299	100

Gender of Impaneled Service Members (Marine Corps)

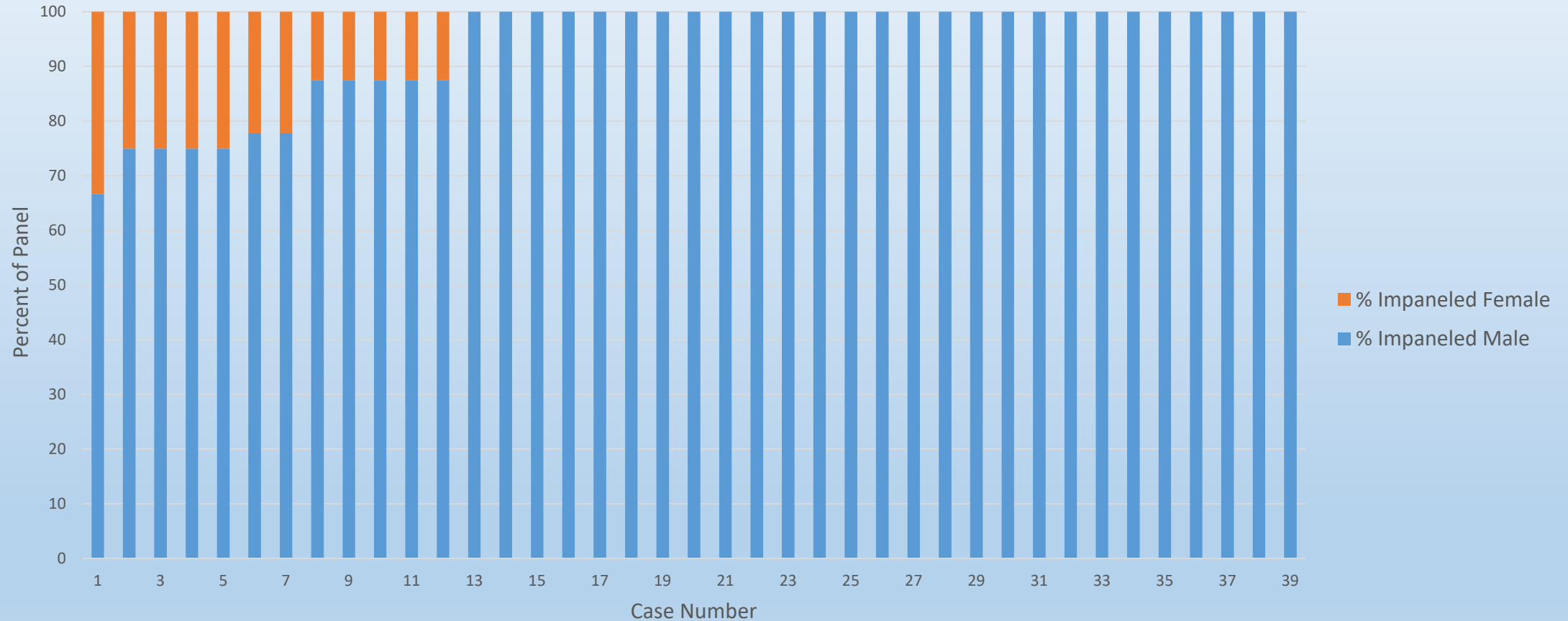
	Female	Male	Total
Impaneled	20 (29.9%)	279 (48.7%)	299 (%)
Not Impaneled	47 (70.1%)	294 (51.3%)	341 (5%)
Total	67 (100%)	573 (100%)	640 (100%)

Females are impaneled at a lower rate than males (29.9% compared to 48.7%). This difference is statistically significant.

Representation of Gender of Service Members Detailed to Courts-Martial (Marine Corps)



Representation of Gender of Service Members Impaneled (Marine Corps)



Take-Aways: Race and/or Ethnicity

- The representation of racial and/or ethnic minorities among those servicemembers detailed to courts-martial in the Army is almost identical to their representation in the Service. The representation of racial and/or ethnic minorities among those servicemembers detailed to courts-martial in the Air Force and Marine Corps is slightly lower than their representation in the respective Service. The representation of racial and/or ethnic minorities among those servicemembers detailed to courts-martial in the Navy is lower than their representation in Service.
- After challenges, racial and/or ethnic minorities were represented on panels in the Army and Air Force at similar percents to their representation in the respective Service. Racial/and or ethnic members were represented on panels in the Navy and Marine Corps at lesser percents than their representation in the respective Service.
- In the Army and Air Force, panels have, on average, a greater representation of racial and/or ethnic minority Servicemembers when the accused is a racial and/or ethnic minority as compared to when the accused is not a racial and/or ethnic minority. In the Army this is statistically significant. In the Navy, the representation of racial and/or ethnic minority servicemembers is nearly identical when the accused is a racial and/or ethnic minority servicemember and when the accused is a white, not Hispanic servicemember. In the Marine Corps, panels have a lower representation of racial and/or ethnic minority servicemembers when the accused is a racial and/or ethnic minority as compared to when the accused is not a racial and/or ethnic minority (but this difference is not statistically significant).

Take-Aways: Gender

- Women comprise a greater percentage of details in the Army and Air Force than their demographic representation in Service. Women comprise a slightly greater percentage of details in the Marine Corps compared to their overall representation in Service. In the Navy, women comprise a slightly lower percentage of details than their representation in Service.
- Across all Services, women are impaneled at lower rates than males. In all Services, the relationship between gender and whether a servicemember is impaneled is statistically significant.
- Despite being impaneled at lower rates than males, the representation of women in the Air Force and Army on panels is slightly greater than their representation in Service.
- In the Marine Corps and the Navy, the representation of women on panels is lower than their overall representation in Service.

Questions?