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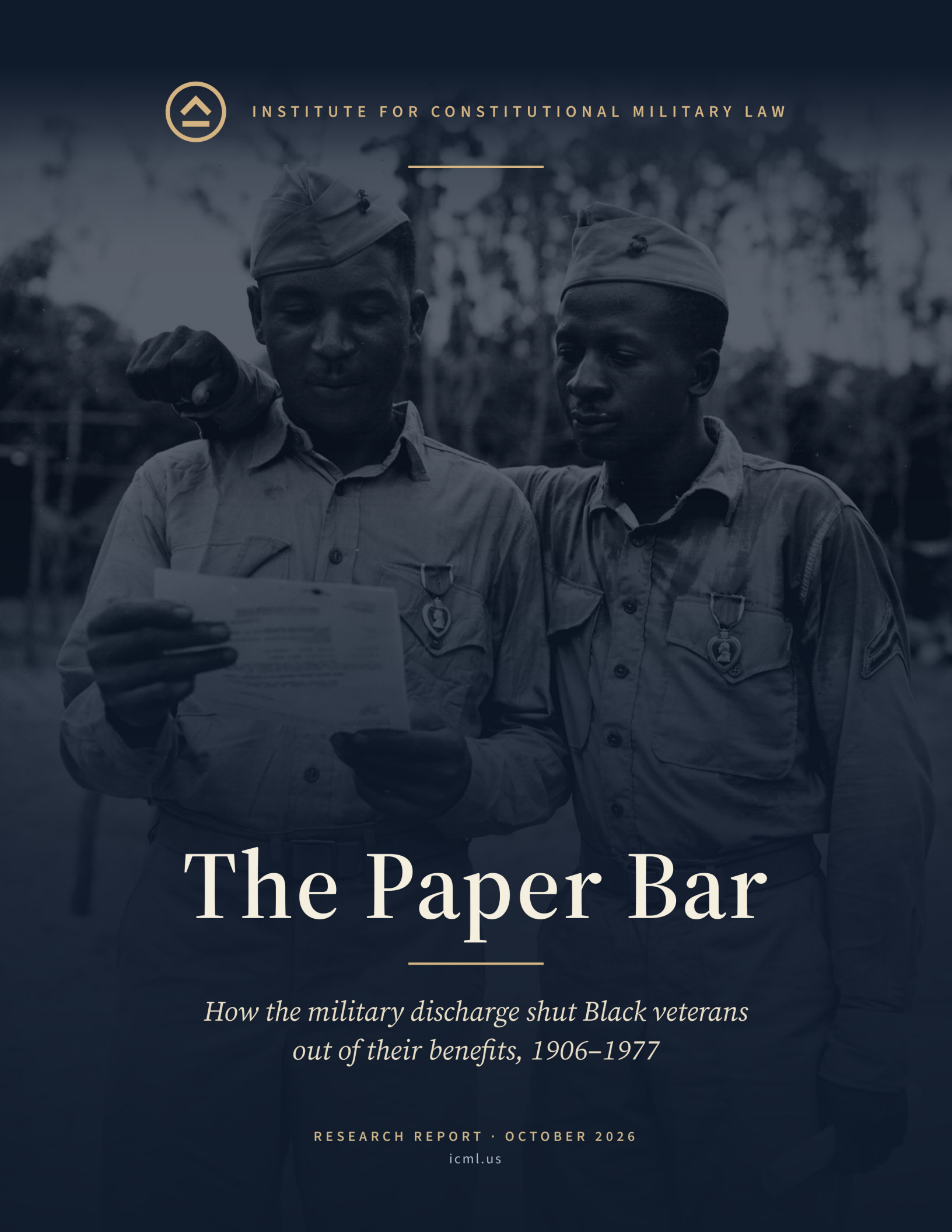

The Paper Bar

How the military discharge shut Black veterans out of their benefits, 1906–1977

RESEARCH REPORT · OCTOBER 2026

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Staff Sgt. Timerlate Kirven and Cpl. Samuel J. Love Sr., the first Black Marines decorated by the Second Marine Division, received the Purple Heart for wounds at Saipan, 1944. National Archives, 535872. The photograph is a work of the United States government and is in the public domain.

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I

The gate

An enlisted service member's military career can end in one of two ways. One is by court-martial, a military criminal trial, which can result in a dishonorable discharge. The other is through administrative separation, ordered by a commander without a trial. An administrative separation cannot be dishonorable, but it can be "other than honorable." Whether Dishonorable or Other Than Honorable, stigmatizing discharges follow the veterans who receive them for life, and can block a veteran's access to the benefits they earned through service.

For most of the twentieth century, those benefits were decided by the Veterans Administration (the VA), which became the Department of Veterans Affairs in 1989. When Congress passed the Servicemen's Readjustment Act of 1944, known as the GI Bill, it made "a discharge or release from active service under conditions other than dishonorable" the "prerequisite to entitlement to veterans' benefits."[1] The House Committee on Military Affairs read those words as extending the benefits "on as broad a base as possible."[2] The less-than-honorable administrative discharges fell between those words. What began in 1893 as the administrative discharge "Without Honor" was by the Second World War the "Blue" administrative discharge, during Vietnam the "Undesirable" administrative discharge, and today is the "Other Than Honorable" administrative discharge, each the progeny of the last, renamed but never abolished.[3] None was honorable, and none was the dishonorable discharge only a court-martial can impose. When it came to benefits, the VA decided, by its own regulation, which side of Congress's line these discharges fell on, and it still does.[4] Today it labels the service either "honorable for VA purposes" or "dishonorable for VA purposes." So a veteran separated with an Other Than Honorable discharge who was never tried by court-martial, and never given a dishonorable discharge, can still be found by the VA to have served "dishonorably" and denied benefits. The Board of Veterans' Appeals has upheld that finding at least 32 times since 2017.[5]

That is the gate this report follows. No statute ever said that Black veterans could not have the benefits of their service. None had to. The military's characterization of their service has been the deciding factor in who gets through. The government's own records show the gate closing on Black veterans in three ways. They were given less-than-honorable discharges more often. The boards created to correct those discharges upgraded them less often. And to this day the VA relies on those uncorrected records to deny them the benefits of their service.

1. Servicemen's Readjustment Act of 1944, § 1503, 58 Stat. 284, 301, https://perma.cc/S23N-32KP.
2. H.R. Rep. No. 1510, 79th Cong. (1946), p. 8, https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=660%3Bownerid=34138922-671.
3. War Department, Adjutant General's Office, Circular No. 9 (Mar. 15, 1893), in General Orders and Circulars, Adjutant General's Office, 1893 (first authorizing the discharge "without honor"); 32 C.F.R. Part 41, Enlisted Administrative Separations, 41 Fed. Reg. 9088 (Mar. 3, 1976) ("Under Other Than Honorable Conditions (Undesirable Discharge)"); 85 Fed. Reg. 41,471, 41,474 (July 10, 2020) (other than honorable is "the terminology that has been used since 1977"); Department of Defense Instruction 1332.14, Enlisted Administrative Separations, para. 4.3.b.(2)(c) (Aug. 1, 2024) (current authority for the other than honorable characterization in administrative separations), https://hdl.handle.net/2027/uc1.b3017078?urlappend=%3Bseq=431, https://perma.cc/6W8C-V5T6, https://perma.cc/BPA3-EPS4.
4. 38 C.F.R. § 3.12(a), (d), (e), as amended by 89 Fed. Reg. 32,361 (Apr. 26, 2024) (effective June 25, 2024); see also Veterans' Administration Instruction No. 1 (Oct. 30, 1944), discussed in note 22, https://perma.cc/5Q2Z-TXEX.
5. Board of Veterans' Appeals decisions from November 2017 through April 2026 upholding a VA finding that an administrative other than honorable or undesirable discharge was dishonorable for VA purposes include Bd. Vet. App. Dkt. Nos. 200319-77671 (Apr. 14, 2026); 250313-524949 (Apr. 8, 2026); 250224-522866 (Apr. 2, 2026); 240719-476691 (Dec. 22, 2025); 230310-329847 (Sept. 19, 2025); 240625-450199 (Aug. 12, 2025); 240415-433714 (June 23, 2025); 230427-342257 (Apr. 1, 2025); 210707-172013 (Dec. 20, 2024); 220225-223189 (Oct. 23, 2024); 21-00 462 (Sept. 18, 2024); 17-53 036 (Mar. 22, 2023); 18-39 023 (Mar. 1, 2023); 18-47 844 (Feb. 23, 2023); 17-31 472 (Jan. 25, 2023); 04-25 220A (Nov. 20, 2022); 10-18 365A (Nov. 17, 2022); 17-43 060 (Nov. 3, 2022); 200610-238660 (Aug. 18, 2022); 13-29 083 (Dec. 8, 2021); 10-30 701 (Nov. 18, 2021); 190422-56296 (Oct. 27, 2021); 17-64 511 (Oct. 21, 2021); 15-06 765A (Oct. 15, 2021); 16-25 099 (Oct. 8, 2021); 190322-170151 (Aug. 19, 2021); 14-41 885 (Feb. 24, 2021); 16-44 024 (Jan. 4, 2021); 16-10 622 (Dec. 11, 2018); 13-22 204 (Nov. 5, 2018); 17-56 788 (Oct. 26, 2018); 08-31 173 (Nov. 24, 2017). Each began as a determination by a VA regional office. Determinations that were never appealed to the Board, the Department's most formal level of appeal, do not appear here. The phrases "honorable for VA purposes" and "dishonorable for VA purposes" both appear in, e.g., Dkt. No. 210707-172013 (Dec. 20, 2024).

II

Brownsville, 1906–1973

First Sergeant Mingo Sanders gave the Army more than twenty-five years. He enlisted in 1881 and served his whole career in Company B of the Twenty-Fifth Infantry, one of the Army's regiments of Black soldiers. He served in Cuba in the Spanish-American War and later in the Philippines, more than three years abroad in all. Before 1906 he was discharged and reenlisted six times. Every one of those discharges rated his character very good or excellent, and four of the certificates called him "honest and faithful." The seventh, his final, ended "without honor."[6]

In August 1906 shots were fired in the streets of Brownsville, Texas, and the town blamed the Black soldiers at Fort Brown. The Army investigated and could not name a single man who fired. Assuming the soldiers were shielding the guilty, it punished them all. On November 9, 1906, by President Theodore Roosevelt's direction, Special Orders 266 discharged 167 of them "without honor" and declared them "forever debarred from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government."[7] No one was charged. No one was tried. Sanders was among them.

Private Dorsie W. Willis of Company D was one of the 167. He never got over the discharge, or its derogatory label. Sixty-six years later he could still recite the discharge from memory. It had cost him a lifetime of opportunities.[8] In 1913 Willis went to work shining shoes in a Minneapolis barbershop, and he stayed there fifty-nine years, until he retired in 1972 at eighty-six. In 1972 he told a reporter, "I did figure the world owed me an opportunity to earn a living myself. But they took that away from me. That dishonorable discharge kept me from improving my station. Only God knows what it did to the others."[9]

After John D. Weaver's 1970 book, *The Brownsville Raid*, brought the case back into public view, the Army on September 22, 1972, changed Special Orders 266 to read "honorably discharged" and added one sentence.[10] "No back pay, allowances, benefits or privileges shall accrue by reason of the issuance of this order to any heirs or descendants."[11] By then almost every man it named was dead. The order restored honor to the dead and provided nothing for the families. Four months later, Representative Augustus F. Hawkins reported that even Dorsie Willis, one of the two men still living, was having trouble getting his benefits.[12]

Congress acted the next year. Section 7 of Public Law 93-177 paid $25,000 to each surviving Brownsville soldier the Army had not cleared in 1910 and $10,000 to each unremarried widow who applied within five years.[13] Children, other heirs and widows who had remarried received nothing. And the

6. War Department summary of the service of 1st Sgt. Mingo Sanders, his discharge certificates, and his testimony, S. Doc. No. 402, 60th Cong., 1st Sess., pt. 4, pp. 284–85, 302–05 (1908), https://hdl.handle.net/2027/hvd.32044019901776?urlappend=%3Bseq=295%3Bownerid=27021597766869793-303.
7. Special Orders 266, War Department, Nov. 9, 1906, as quoted in the Army's amending order, 119 Cong. Rec. 6832–33 (Mar. 7, 1973); Message of President Theodore Roosevelt to the Senate, S. Doc. No. 155, 59th Cong., 2d Sess. (1906), reprinted in S. Doc. No. 402, 60th Cong., 1st Sess., pt. 1, p. 5 (1908) ("a successful conspiracy of silence for the purpose of shielding those who took part"); the order itself is reprinted at S. Doc. No. 402, pt. 4, pp. 892–93, https://hdl.handle.net/2027/hvd.32044021104138?urlappend=%3Bseq=43.
8. "At 86, Black Resentful of Army Action in Texas Raid," New York Times, Dec. 31, 1972, p. 29; Los Angeles Times, Dec. 2, 1972, pt. I, p. 15 (the jobs it cost him), https://nyti.ms/4iiLhxj.
9. New York Times, supra note 8 (the quotation, and his fifty-nine years at the barbershop). A Senate committee report quoted the same words the next year. Senate Committee on Veterans' Affairs report, 119 Cong. Rec. 27583 (Aug. 2, 1973), https://perma.cc/R2GL-RL55.
10. Order of the Secretary of the Army amending Special Orders 266, Sept. 22, 1972, 119 Cong. Rec. 6832–33. On the book's role, see John D. Weaver, *The Brownsville Raid* (New York: W. W. Norton, 1970); Senate report, supra note 9; remarks of Rep. Augustus F. Hawkins, 119 Cong. Rec. 37114 (1973), https://perma.cc/C4EE-6GN2.
11. Order of Sept. 22, 1972, supra note 10 (the added sentence).
12. Letter of Rep. Augustus F. Hawkins to the Secretary of the Army, Feb. 2, 1973, 119 Cong. Rec. 6832; Senate report, supra note 9 (two men still living), https://perma.cc/C4EE-6GN2, https://perma.cc/R2GL-RL55.
13. Act of Dec. 6, 1973, Pub. L. No. 93-177, § 7(a)–(c), 87 Stat. 694, 696–97. Ten widows were known to the VA in August 1973, Senate report, supra note 9; the Institute has found no record that any of them applied, https://perma.cc/49LE-US9E.

law written to make amends described the men as "dishonorably discharged."[14] None had been. Read literally, the statute covered no one. The government paid Dorsie Willis anyway, in January 1974.[15] It had taken sixty-seven years.

Brownsville set the pattern this report follows. The discharge without honor was administrative, arguably unconstitutional, demonstrably unjust, and issued by order without trial. It closed the doors the government controlled, from reenlistment to civil employment to the benefits of service. And when the government finally corrected the record in 1972, it changed only the paper. It denied back pay and benefits to the soldiers' heirs, and it kept unchanged the power it had given itself to discharge a soldier without honor and without trial. That power would be used again, and it would fall hardest on Black soldiers.

14. Pub. L. No. 93-177, § 7(a), 87 Stat. 696, https://perma.cc/49LE-US9E.
15. "Dorsie Willis, Brownsville Massacre Survivor," United Press International photograph and caption, Minneapolis, Jan. 10, 1974 (Chapman University Digital Commons). Willis died less than four years later, in August 1977, at ninety-one. "Dorsie W. Willis, 91, Victim of Army Bias," New York Times, Aug. 25, 1977, https://perma.cc/6WGG-3JMN, https://nyti.ms/4zkA6vz.

PRIVATE DORSIE W. WILLIS · COMPANY D, TWENTY-FIFTH INFANTRY

"That dishonorable discharge kept me from improving my station. Only God knows what it did to the others."

Minneapolis, February 11, 1973. Sixty-six years after Brownsville, Willis, 87, is congratulated on his honorable discharge by Maj. Gen. DeWitt Smith Jr. and Col. William Baker, his wife at his side.

Minneapolis, January 1974. Dorsie Willis, 87, and his wife, sixty-seven years after Brownsville.

Quotation from "At 86, Black Resentful of Army Action in Texas Raid," New York Times, Dec. 31, 1972, p. 29. Photographs are original Associated Press Wirephoto prints in the collection of the ICML Archive. LINK

FIRST SERGEANT MINGO SANDERS · COMPANY B, TWENTY-FIFTH INFANTRY

“I wanted to present to him my discharge, and I also told him that I was innocent of the affray at Brownsville.”

Did you ever have any trouble while you were in the service, trouble of any kind?

No, sir.

Were you ever court-martialed?

No, sir.

Ever reprimanded?

No, sir.

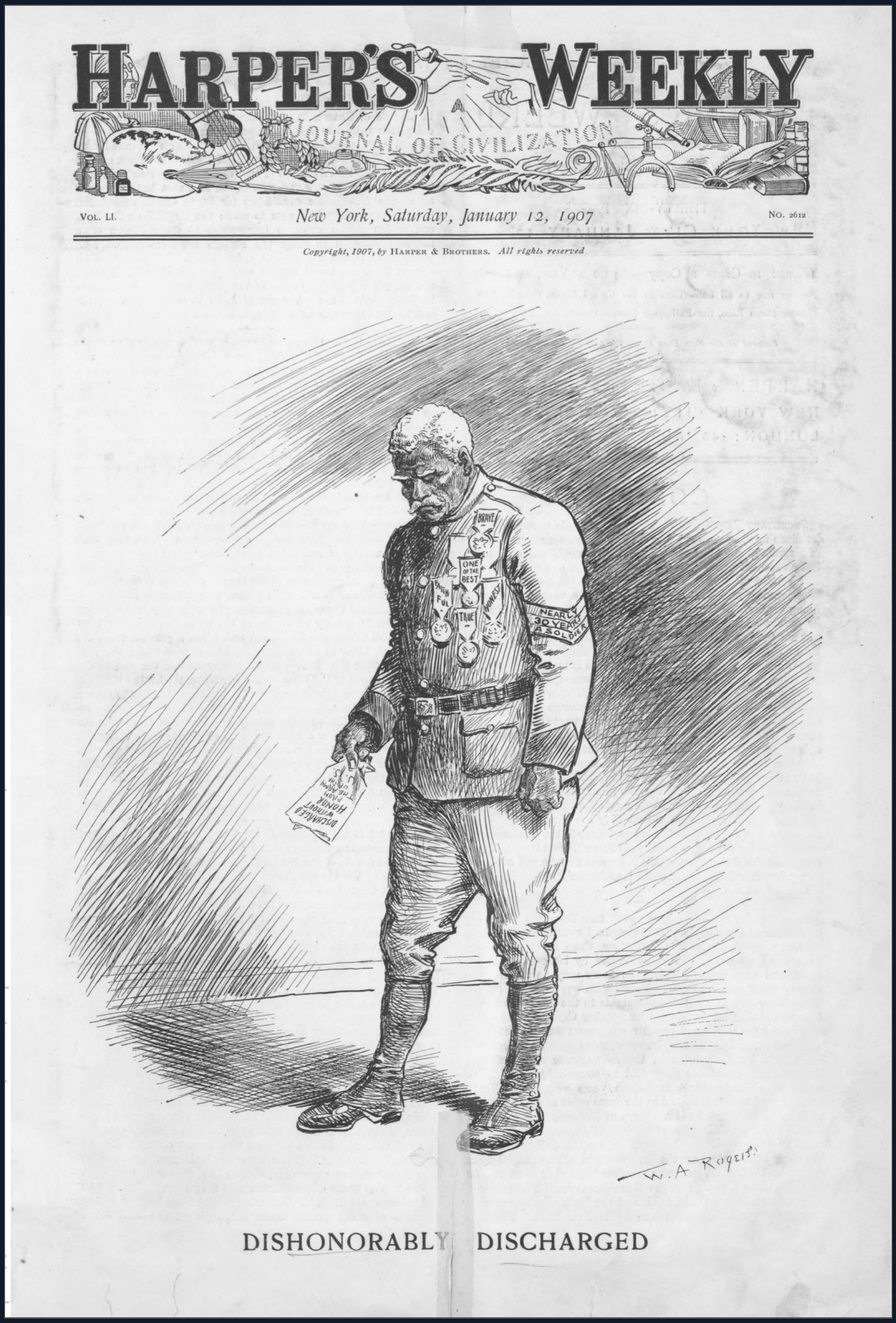
Ever found fault with in any way?

None as I knows of.

HIS DISCHARGES, AS THE WAR DEPARTMENT RECORDED THEM

1886	Very good
1891	Very good
1896	Excellent. A faithful and reliable soldier
1899	Excellent
1902	Excellent
1905	Excellent. Service honest and faithful
1906	**Discharged without honor, Special Orders No. 266**

Testimony of Mingo Sanders before the Senate Committee on Military Affairs, and his discharge certificates, S. Doc. No. 402, 60th Cong., 1st Sess., pt. 4, pp. 284–85, 302–05 (1908). LINK



Harper's Weekly, January 12, 1907. Cover drawing by W. A. Rogers of First Sergeant Mingo Sanders, Twenty-Fifth Infantry, "nearly 30 years a soldier," after his discharge without honor. The cover does not print his name; the Cleveland Gazette named him, January 25, 1919, p. 1. HathiTrust. LINK

III

World War II and the blue discharge

The discharge without honor that fell on the soldiers of the Twenty-Fifth Infantry never went away. It simply changed color. By the Second World War it was printed on blue paper, and the War Department's own manual described the blue certificate as the form for men "discharged without honor, but not under dishonorable conditions."[16] "Although paper of a blue color was not employed until 1918," the House Committee on Military Affairs later reported, "the practice of issuing discharges of this character is one of long standing in the War Department." The Army called the blue discharge "neither honorable nor dishonorable." Representative B. W. Kearney of New York told the House in 1944 that "it really is a discharge without honor."[17] Many were issued under Section VIII of the Army's discharge regulation and, from July 1944, under its successor, for men with "undesirable habits or traits of character."[18]

With the GI Bill of 1944, Congress made benefits turn on a discharge being "under conditions other than dishonorable."[19] The Senate committee that adopted those words meant, according to a 1956 study printed for the House, that a blue discharge for "relatively minor offenses" should not bar benefits unless the offense was serious enough "to constitute dishonorable conditions."[20] A man whose own discharge said it was not dishonorable might have thought himself covered. "He soon discovers his mistake," the House committee reported. "The Army may say his discharge is neither honorable nor dishonorable, but the Veterans' Administration (with the approval of the Army) says, in many instances, that it is really dishonorable after all, and he is not entitled to education or other benefits."[21] The line was drawn by the VA, with the Army's approval. Its Instruction No. 1, issued October 30, 1944, listed the discharges Congress had barred and then added a proviso of its own. "Provided, however, That where service was otherwise honest, faithful, and meritorious a discharge or separation other than dishonorable because of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions."[22] That forgave a minor offense in otherwise honest, faithful and meritorious service, and left every other blue discharge for the VA to judge for itself. The committee called the arrangement a "squeeze play" between the War Department and the VA, and said the VA was "exercising something like court-martial jurisdiction, only without court-martial judicial procedure."[23] Veterans issued administrative less-than-honorable discharges had already been judged once by their commanders, without a trial. Now the VA judged them again, without a trial, this time with the benefits of their service at stake.

The blue discharge did not fall evenly. On October 20, 1945, the Pittsburgh Courier opened a campaign against it. It charged the Army with "issuing the blue discharge to Negroes in proportionately higher numbers than white dischargees," and warned that the discharge was "the faucet to the wells of prejudice in the Army's pattern of segrega-

16. War Department, TM 12-235, Enlisted Personnel Discharge and Release from Active Duty (Jan. 1, 1945), pp. 2, 4–5, https://perma.cc/ZT98-8JHB.
17. H.R. Rep. No. 1510, 79th Cong., 2d Sess. (Jan. 30, 1946) (House Comm. on Military Affairs, Blue Discharges), pp. 1, 3, 5, 8 (quoting Rep. Kearney), https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=653%3Bownerid=34138922-664.
18. Army Reg. 615-360, sec. VIII (Nov. 26, 1942); Army Reg. 615-368, Enlisted Men—Discharge—Undesirable Habits or Traits of Character (Mar. 7, 1945); William B. Foster et al., *Physical Standards in World War II*, pp. 102, 104 (1967), https://perma.cc/B88U-KJ9E.
19. See note 1.
20. President's Commission on Veterans' Pensions, Discharge Requirements for Veterans' Benefits, Staff Report No. XII, H. Comm. on Veterans' Affairs Print No. 292, 84th Cong., 2d Sess., pp. 13–14 (1956) (summarizing S. Rep. No. 755, 78th Cong., 2d Sess. (Mar. 18, 1944)), https://perma.cc/MWA4-VRU4.
21. H.R. Rep. No. 1510, p. 8, https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=660%3Bownerid=34138922-671.
22. Veterans' Administration Instruction No. 1 (Oct. 30, 1944), as quoted at 91 Cong. Rec. A4778 (Nov. 8, 1945) and in the Pittsburgh Courier, Nov. 3, 1945, https://perma.cc/92WF-TEEE.
23. H.R. Rep. No. 1510, p. 9, https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=661%3Bownerid=34138922-672.

tion." It charged that prejudiced officers were treating Black soldiers' "bona-fide resentment to racist treatment" as a sign of "traits of character which serve to render his retention in the service undesirable." On the same front page it told soldiers, "Warning: All Soldiers! Do not accept the Blue Discharge as a quick means of getting out of the Army. You will be losing Army benefits and benefits under the GI Bill of Rights."[24] By November the Courier counted 47,000 blue discharges in the Army alone, about 10,000 of them held by Black veterans, and said it was fighting for "the 37,000 white veterans involved as well as for those of the 10,000 Negroes involved."[25] The campaign ran from October 20, 1945, to February 9, 1946.[26]

The government was told, in writing, at every level. The Courier wired the Secretary of War. It brought a brief to Attorney General Tom Clark, who agreed to study it. The brief argued that the VA had written into its instruction "a condition of qualification which was neither written or implied in the law as passed by Congress."[27] On November 8, 1945, Senator Edwin C. Johnson of Colorado placed the Courier's articles in the Congressional Record. "There ought not be a twilight zone between innocence and guilt," he said.[28] The articles he placed in the Record included War Department figures, as the Courier reported them, for blue discharges in the Army from December 1, 1941, to June 30, 1945. Of 48,603, they showed 10,806 issued to Black soldiers, 22 percent.[29] In those years Black soldiers were between 6 and 10 percent of the Army's enlisted men.[30]

So by the end of 1945 the same two facts were in the Congressional Record. The administrative blue discharge could cost a man his GI Bill benefits, and Black soldiers received blue discharges in disproportionate numbers. The 1944 Act itself had created a board to review discharges, the forerunner of today's discharge review boards.[31] In 1946 the House committee found it no cure. "A later after-correction, even if it comes, is often poor recompense for an initial injustice."[32] The committee said the VA "should be estopped from passing moral verdicts on the history of any soldier," and recommended an automatic review of every blue discharge issued since the emergency began, restoring them to honorable "in all cases where the records admit of any doubt."[33] It also asked the Army to consider a new system of discharges with no blue discharge. Under its plan, no soldier could lose his benefits by discharge without a court-martial or a board hearing with counsel.[34] The Army's review board was already studying every blue discharge, and it had changed about a third of those it reached to honorable.[35] In 1947 the Army removed the blue discharge and put the general and undesirable discharges in its place.[36]

24. John H. Young III, "Courier Launches Probe of Army's Blue Discharges," Pittsburgh Courier, Oct. 20, 1945, pp. 1, 4 (continued as "Courier Exposes Use of Army's Blue Discharges"). The Congressional Record reprint of this article omits the words "to Negroes" and "white.", https://perma.cc/Z53A-L6XA.
25. John H. Young III, "Blue Discharges Reach Senate" (subhead "Courier Articles Put Into Record"), Pittsburgh Courier, Nov. 17, 1945, pp. 1, 5, https://perma.cc/3DGT-UXC8.
26. Pittsburgh Courier, Oct. 20, Oct. 27, Nov. 3, Nov. 10, Nov. 17 and Dec. 1, 1945, and Jan. 12 and Feb. 9, 1946.
27. Pittsburgh Courier, Nov. 3, 1945, pp. 1, 5 (the brief); 91 Cong. Rec. A4778 (reprinting it in different words, "neither written nor implied by Congress"); Pittsburgh Courier, Nov. 10, 1945, p. 5, and Nov. 17, 1945, p. 1 (the telegram to the Secretary of War), https://perma.cc/AQ4N-BGLL.
28. 91 Cong. Rec. A4778 (Nov. 8, 1945), https://perma.cc/92WF-TEEE.
29. Id. (War Department figures, "Negro 10,806 / Others 37,797"); the 22 percent is computed from those figures. The House committee gave a larger total, 51,936 blue discharges issued from December 7, 1941, to June 30, 1945. H.R. Rep. No. 1510, p. 3. Neither source says how its count was made, https://babel.hathitrust.org/cgi/pt?id=mdp.35112102287911&seq=655.
30. Ulysses Lee, T*he Employment of Negro Troops*, United States Army in World War II, p. 415, table 11 (Office of the Chief of Military History, 1966) (quarterly Black and total enlisted strength of the Army, Dec. 1941 to Dec. 1945, from Strength of the Army, STM-30), https://perma.cc/AVJ8-8YEA.
31. Servicemen's Readjustment Act of 1944, § 301, 58 Stat. 284, 286–87; see S. Doc. No. 196, 79th Cong., p. 16 (1946) (board appointed by the Secretary of War in September 1945 under § 301), https://perma.cc/S23N-32KP.
32. H.R. Rep. No. 1510, p. 6, https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=658%3Bownerid=34138922-669.
33. H.R. Rep. No. 1510, pp. 9, 13 (recommendation 1), https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=661%3Bownerid=34138922-672.
34. H.R. Rep. No. 1510, pp. 12, 14 (recommendation 8), https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=666%3Bownerid=34138922-677.
35. H.R. Rep. No. 1510, p. 5; S. Doc. No. 196, 79th Cong., p. 16 (1946), https://hdl.handle.net/2027/mdp.35112102287911?urlappend=%3Bseq=657%3Bownerid=34138922-668.
36. Constitutional Rights of Military Personnel: Hearings Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 87th Cong., 2d Sess., p. 854 (1962) (Army answer: the blue discharge was replaced in 1947 by "two types of administrative discharges," the general and the undesirable), p. 362 (VA testimony that the undesirable discharge still required "an affirmative determination by the VA"), https://perma.cc/J8WE-ERUK.

IV

The undesirable discharge, 1947–1970

After the war the blue discharge was split, not retired. The Army began issuing both general discharges, a step below honorable, and undesirable discharges, a step even lower, on a test basis in June 1946 and dropped the blue discharge on July 1, 1947. The general discharge, "under honorable conditions," passed the VA's gate. The undesirable discharge left the decision to the VA.[37]

John Henry Harmon III was drafted on October 31, 1952, a few months out of Bucknell University, where he had been president of the campus chapter of the NAACP.[38] The Army made him a cook and rated his service excellent.[39] One day in May 1953 his commanding officer woke him and told him to dress, and five armed men from the Army's Counterintelligence Corps took him for questioning. "They kept asking me how long I'd been a Communist?" he later told a reporter.[40] What the Army held against him was nearly all from his life before he was drafted, among it his work for the Detroit Urban League and his ties to his own father and stepmother. On June 2, 1954, without a charge or a trial, it gave him an undesirable discharge. In April 1956, while his suit was pending, the Army's review board changed it to a general discharge, which carried his veterans' benefits. Harmon would not settle for a general discharge and kept fighting for an honorable one.[41]

The discharge had followed him home. He worked as a bellhop, a shipping clerk and a waiter. Hired as a temporary clerk at the Post Office, he was publicly stripped of his badge and fired, and only later, he said, learned that the reason was his Army discharge.[42] Harmon was Black.[43] The Afro-American reported his view that Army intelligence was "so ignorant of the race question" that it believed everyone in the struggle for civil rights "was a potentially dangerous enemy of the country."[44] The courts never took up that question. In 1958 the Supreme Court held that the Secretary of the Army had exceeded his power, because "the type of discharge to be issued is to be determined solely by the soldier's military record in the Army."[45]

Harmon won because he had a record rated excellent, a lawyer willing to take the case and four years to spend in court. The case was decided on the Army's power, not on race. But it shows what the undesirable discharge was in these years, a mark issued without trial that a man carried into every job he sought.

The undesirable discharge, like the blue, was issued administratively, without court-martial, and it carried the same consequence at the VA. The VA measured that consequence itself. In 1962 Senator

37. U.S. War Dep't, Army Reg. 615-360, Enlisted Men: Discharge, General Provisions (May 14, 1947), and Army Regs. 615-368 and 615-369 (May 14, 1947), listed in Monthly Catalog of United States Government Publications, No. 630, pp. 917–18 (July 1947); Constitutional Rights of Military Personnel: Hearings Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 87th Cong., 2d Sess., p. 854 (1962) (Army answer: general and undesirable discharges "were introduced on a test basis" on June 1, 1946, and "on July 1, 1947, the entire system was changed by eliminating the 'blue discharge'"), pp. 361–62 (VA testimony that for benefits a general discharge is indistinguishable from an honorable one, and that the undesirable discharge requires "an affirmative determination by the VA"), https://hdl.handle.net/2027/uiuo.ark:/13960/t1jh3rf3q?urlappend=%3Bseq=163.
38. L'Agenda (Bucknell Univ. yearbook), p. 74 (1952); Harmon v. Brucker, 243 F.2d 613 (D.C. Cir. 1957) (induction date), https://perma.cc/XC7B-GU56.
39. Id. (service record marked "excellent"); "Court Rules For Harmon," The Item (Sumter, S.C.), Mar. 4, 1958, p. 14 (cook), https://perma.cc/XC7B-GU56.
40. Id. (interview), https://www.newspapers.com/article/the-item-court-rules-for-harmon/207293106/.
41. Harmon v. Brucker, supra note 38 ("On June 2, 1954, he was discharged as undesirable."); see id. (Bazelon, J., dissenting) (Urban League camp); "Court Rules For Harmon," supra note 39 ("He had worked for the Detroit Urban League"); Harmon v. Brucker, 355 U.S. 579 (1958). On the 1956 change to a general discharge, see 243 F.2d 613 and id. (Bazelon, J., dissenting) (Apr. 11, 1956), and "Court Rules For Harmon," supra note 39 ("With his general discharge, he already was entitled to all other veterans' benefits"), https://www.newspapers.com/article/the-item-court-rules-for-harmon/207293106/.
42. "Court Rules For Harmon," supra note 39 (interview), https://www.newspapers.com/article/the-item-court-rules-for-harmon/207293106/.
43. Interview of Ralph Dwan by Kristin Moe, Apr. 15, 2008, Ruth Ann Overbeck Capitol Hill History Project, Tape 1, Side 2, pp. 12–14 (Harmon's law partner: "this African American lawyer"), https://perma.cc/ESH2-5C2Q.
44. "Harmon tells how Army abused him," Afro-American, Mar. 15, 1958, p. 27 (paraphrasing Harmon).
45. Harmon v. Brucker, 355 U.S. 579, 583 (1958) (per curiam), https://perma.cc/728C-A4RY.

Sam J. Ervin Jr. held hearings on the constitutional rights of military personnel, and an official of the VA's Department of Veterans' Benefits gave the agency's figures. From 1955 to 1961 the VA denied an average of 1,843 disability claims a year because the veteran's discharge barred him. He also described from memory a small study the agency had made some years earlier. "[A]pproximately 8 percent of the cases given an undesirable discharge in this sample group were held to be entitled to benefits by the VA."[46] For the other 92 percent of that small sample, the administrative discharge had closed the gate.

What the government did not measure for these decades is as telling as what it did. No published figure from the 1950s or 1960s that the Institute has found breaks down undesirable discharges by race. When the Defense Department's Task Force on the Administration of Military Justice gathered its evidence in 1972, the earliest departmental study of race and military discipline it listed was dated 1970.[47] As late as 1977, asked how its regular review boards had reached minority veterans, the Army answered that the data were "not maintained under normal procedures."[48] For a quarter century the gate operated, and no government count, by race, of whom it stopped has been found.

46. Constitutional Rights of Military Personnel: Hearings Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 87th Cong., 2d Sess., pp. 360, 362–63 (Mar. 2, 1962) (testimony of Charles Peckarsky, Department of Veterans' Benefits, VA, recalling the figure from a study made "about 7 or 8 years ago" on "a very small sampling"), https://perma.cc/J8WE-ERUK.
47. Report of the Task Force on the Administration of Military Justice in the Armed Forces, vol. II, pp. 124–29 (1972) (list of resource materials; the earliest departmental study of race and discipline listed is Assistant Secretary of Defense (M&RA), "Analysis of Disciplinary Acts Affecting First-Term Negro and Caucasian Servicemen" (1970), at p. 126), https://hdl.handle.net/2027/osu.32437122158971?urlappend=%3Bseq=136.
48. Upgrading of Discharges Under Special Programs: Hearings, 95th Cong., p. 110 (1977), https://hdl.handle.net/2027/pur1.32754078064197?urlappend=%3Bseq=116%3Bownerid=37613187-115.

V

Vietnam: the Defense Department finds the disparity

Ronald Eugene Henry enlisted in the Marine Corps on July 31, 1968. He was seventeen years and twenty days old.[49] He reached the 1st Marine Division in Vietnam on April 26, 1969, and six weeks later he was sent for a psychological evaluation "for reported anxiety related to racial problems."[50] That summer a summary court-martial, the lowest level of military trial, reduced him to private for striking a corporal in the head with a length of chain, and in September he went absent without leave twice. The absences were referred to a special court-martial, a mid-level trial that could impose a bad-conduct discharge. In early October he struck a noncommissioned officer in the face with a rifle, breaking his nose. He said the man had swung a whiskey bottle at him. Assault charges were added. Before the court-martial met, on November 12, 1969, he signed a request for an undesirable discharge "to Escape Trial by Court-Martial." He was eighteen. He later said, and a federal judge found, that he signed believing he had no other option. His appointed lawyer testified that Henry had pressed for the discharge himself.[51]

The form told him what he was giving up. He "may be deprived virtually of all rights as a veteran under both Federal and State Legislation," it said, and "may expect to encounter substantial prejudice in civilian life." He was discharged on November 25, 1969.[52]

He spent the next twenty-seven years trying to undo it. The Naval Discharge Review Board turned him down in 1971. He received a presidential pardon in 1975 and a clemency discharge in 1976, and the undesirable discharge stayed. In 1977 the special review program described in Section VI turned him down, citing the rifle assault. The review board refused him again in 1980, and the Board for Correction of Naval Records in 1982 and again in 1987.[53] In 1991 a federal judge ordered the discharge upgraded to honorable. The order was vacated, the correction board denied him twice more, and in 1995 the court ordered the upgrade again. "Plaintiff has now waited twenty-five years for an upgrade," the court wrote.[54] The next year the court of appeals reversed. It noted that the correction board had concluded that service in Vietnam "may have been somewhat more difficult for Mr. Henry and other blacks," but had noted his lawyer's testimony that race played "no part, or a negligible part," in his offenses. The denial stood.[55]

Henry's discharge was one of thousands like it. In April 1972, about two and a half years after he signed, the Defense Department set out to count them.

The report of the Department of Defense's Task Force on the Administration of Military Justice in the Armed Forces is dated November 30, 1972. It

49. Henry v. Department of the Navy, 886 F. Supp. 686, 692 (E.D. Ark. 1995); Henry v. Department of the Navy, 755 F. Supp. 1442, 1443 (E.D. Ark. 1991) (enlistment date), https://perma.cc/43Y5-ZRFB, https://perma.cc/Q89D-CQFV.
50. 755 F. Supp. at 1443, https://perma.cc/Q89D-CQFV.
51. Id. at 1443–46; Henry v. U.S. Department of the Navy, 77 F.3d 271, 273 (8th Cir. 1996), https://perma.cc/Z6TV-T2AN.
52. 886 F. Supp. at 689–90 (quoting the request Henry signed); 755 F. Supp. at 1446 (discharge date), https://perma.cc/43Y5-ZRFB, https://perma.cc/Q89D-CQFV.
53. 755 F. Supp. at 1446–48, https://perma.cc/Q89D-CQFV.
54. 755 F. Supp. at 1451; Henry v. Department of the Navy, 985 F.2d 569 (8th Cir. 1992) (table); 886 F. Supp. at 687–88, 693, https://perma.cc/Q89D-CQFV, https://perma.cc/43Y5-ZRFB.
55. 77 F.3d at 272–74, https://perma.cc/Z6TV-T2AN.

examined the separations of enlisted men released from the armed forces in fiscal year 1971, 919,349 of them.[56] Most left with an honorable discharge, "eighty-five percent or above for black personnel, ninety percent or above for white personnel."[57] The question was the rest.

The Task Force answered it in a single paragraph. "In all services, blacks receive a lower proportion of honorable discharges and a higher proportion of general and undesirable discharges than whites with similar educational levels and aptitude. Thus, the disparity cannot be explained by aptitude or lack of education."[58] The Department had tested two common explanations, education and aptitude, and neither accounted for the difference. Across all services, 92.7 percent of white enlisted men separated that year received an honorable discharge, against 86.1 percent of Black enlisted men, and the gap held in every band of aptitude scores. Put the other way, 7.3 percent of white enlisted men left with less than an honorable discharge, against 13.9 percent of Black enlisted men, nearly twice the rate. The undesirable discharge, the one that could cost a veteran his benefits, went to 5.2 percent of Black enlisted men and 2.6 percent of white enlisted men. Black enlisted men were about 10 percent of those separated that year and 18 percent of those given undesirable discharges.[59]

The disparity ran through the whole system. In the Task Force's sample of military installations, Black enlisted men were 21.2 percent of those placed in pretrial confinement, against 15.8 percent of the men at those installations and 13.1 percent of the armed forces, and they were held the longest of any group, an average of 34.5 days. Tried by court-martial, "23.4% of the blacks, as compared to only 16.9% of the whites, received a punitive discharge." Black service members received 87, or 40.7 percent, of the punitive discharges adjudged.[60]

The Task Force knew what undesirable discharges meant after service. "The undesirable discharge may disqualify the recipient for benefits administered by the individual service and the Veterans Administration. Moreover, many employers refuse to hire job applicants who possess less than honorable discharges. In practical effect, such a discharge becomes a burdensome cross to bear."[61]

It recommended a remedy. Persons who had received a discharge other than honorable, "the basis for which may have been racial discrimination," should be encouraged to apply for review, and the discharge review and correction boards should modify the discharge where racial discrimination was found to be "a precipitating or substantially contributing factor."[62] Half its members went further, and recommended that administrative discharges no longer be characterized at all, because "statistics show disparity on the basis of race now exists in the furnishing of different kinds of administrative discharges."[63] A man separated without trial would then leave with no grade on his discharge.

The boards it would have sent those veterans to were measured in the same report. In the first quarter of 1972, the discharge review boards granted relief to 289 of 936 white applicants, 30.9 percent, and to 55 of 269 Black applicants, 20.4 percent. In the Army the figures were 15.6 percent and 5.0 percent.[64] The correction boards granted

56. Report of the Task Force on the Administration of Military Justice in the Armed Forces, vol. I, p. 1 (established April 5, 1972), p. 33 (Dept. of Defense, Nov. 30, 1972), https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=59%3Bownerid=115643525-65.
57. Id. vol. I, p. 9, https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=35%3Bownerid=115643525-39.
58. Id. vol. I, p. 33. The administrative-discharge study is vol. IV, § 5, pp. 147–58. One exception is noted at vol. IV, p. 149, among low-aptitude Army personnel, https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=59%3Bownerid=115643525-65.
59. Id. vol. IV, § 5, Tab B, Tables S-1 and S-2, pp. 159–60 (all services, numbers and percentages by race and AFQT score, FY 1971), https://hdl.handle.net/2027/osu.32437122158823?urlappend=%3Bseq=169.
60. Id. vol. I, pp. 28–32 (pretrial confinement at 28–29), https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=54%3Bownerid=115643525-58.
61. Id. vol. I, p. 109; see also vol. II, p. 32 ("may well disqualify," "most employers"), https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=135, https://hdl.handle.net/2027/osu.32437122158971?urlappend=%3Bseq=42.
62. Id. vol. I, pp. 119–20 (Recommendation H.5), https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=145%3Bownerid=115643525-157.
63. Id. vol. I, pp. 117–18 (Recommendation H.1), https://hdl.handle.net/2027/osu.32437122159177?urlappend=%3Bseq=143%3Bownerid=115643525-155.
64. Id. vol. IV, § 6, Table S-1, p. 288; Table A-1, p. 289 (Army), https://hdl.handle.net/2027/osu.32437122158823?urlappend=%3Bseq=298.

relief to 10 of 102 white applicants and to one of 39 Black applicants.[65] The Task Force called it "a noticeable difference in the incidence of relief granted to white over black applicants."[66]

By the end of 1972, then, the Department of Defense had found in its own records that Black service members received worse discharges than white service members of the same education and aptitude, that those discharges could cost them their veterans' benefits, and that the boards meant to correct them corrected them less often for Black veterans. It had written down the remedy. The administrative discharge, and the benefits bar that followed it, remained.

65. Id. vol. IV, § 6, Table S-2, p. 292, https://hdl.handle.net/2027/osu.32437122158823?urlappend=%3Bseq=302.
66. Id. vol. IV, p. 287, https://hdl.handle.net/2027/osu.32437122158823?urlappend=%3Bseq=297.

VI

1977: the correction and the bar

In 1977 the government tried again to repair the Vietnam-era discharge. On January 19, his last full day in office, President Ford directed further action under his clemency program. On April 5, under President Carter, the Department of Defense opened a Special Discharge Review Program that upgraded administrative other than honorable discharges under revised standards.[67] By then the undesirable discharge was taking a new name. A 1976 Defense Department rule called it a discharge "Under Other Than Honorable Conditions (Undesirable Discharge)," and the VA dates the Other Than Honorable name to 1977. In July 1977 the Army told Congress that it estimated "18% or 31,141 of the UD [undesirable discharge] holders from the Vietnam era were minorities."[68]

The Army gave Congress one table on how the program reached Black veterans, in a written answer to a member of Congress in July 1977. For the regular review boards, it said, the data were "not maintained under normal procedures." For the special program to that date, it reported that 316 of 1,541 undesirable discharges held by Black veterans had become honorable, about 20 percent, against 1,525 of 4,752 held by white veterans, about 32 percent. Most of the rest became general discharges. Counted together, the program upgraded about 95 percent of both groups' undesirable discharges. The difference was in how far.[69] The figures are partial. They cover only the cases decided by that summer, the Army did not say whether they included any service but its own, and they do not match the 62.1 percent upgrade rate it reported for the program on the same page.

Congress answered the upgrades within months. Public Law 95-126, enacted October 8, 1977, announced its purpose in its title, "To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era."[70] An upgrade under the special program brought no benefits by itself. Each case had to go back to a board for a second review, under standards the statute required to be "historically consistent" with the old ones.[71] The law applied "retroactively to deny benefits."[72] It forbade the VA to give these veterans "any unique or special advantage."[73] It did let the VA treat their disabilities from service.[74]

It was Brownsville again. The government changed the paper and withheld what the paper was supposed to bring. The upgraded discharge said general, or honorable. For benefits, the law made it pass a second review under the old standards.

67. See Pub. L. No. 95-126, § 1(a), 91 Stat. 1106, 1106–07 (Oct. 8, 1977) (referring to the President's directive of Jan. 19, 1977, and the Department of Defense special discharge review program implemented on or after Apr. 5, 1977); Eligibility for Veterans' Benefits Pursuant to Discharge Upgradings: Hearing Before the S. Comm. on Veterans' Affairs, 95th Cong., pp. 603–04 (1977) (President Ford's directive; President Carter's approval, announced Mar. 28, 1977). The 1977 program followed President Ford's clemency program for Vietnam-era deserters and draft evaders, Proclamation No. 4313, 88 Stat. 2504 (Sept. 16, 1974), and President Carter's pardon of draft evaders, Proclamation No. 4483, 42 Fed. Reg. 4391 (Jan. 24, 1977), https://perma.cc/RLP4-RNGA, https://perma.cc/9L8B-LR75, https://perma.cc/4D6L-5HQJ.

68. Upgrading of Discharges Under Special Programs: Hearings Before the Select Subcomm. of the H. Comm. on Veterans' Affairs, 95th Cong., pp. 106, 110 (1977) (Army answers to Rep. Hammerschmidt, July 14, 1977), https://hdl.handle.net/2027/pur1.32754078064197?urlappend=%3Bseq=116%3Bownerid=37613187-115.

69. Upgrading of Discharges Under Special Programs, at 109–10. The percentages are computed from the Army's table, which does not state the services or period it covers and does not reconcile with the 62.1 percent program-wide upgrade rate the Army reported on the same page. Upgrades of either kind were 1,459 of 1,541 for Black veterans and 4,497 of 4,752 for white veterans, https://hdl.handle.net/2027/pur1.32754078064197?urlappend=%3Bseq=116%3Bownerid=37613187-115.

70. Pub. L. No. 95-126, 91 Stat. 1106 (long title, which continues "to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits"), https://perma.cc/RLP4-RNGA.

71. Id. § 1(a), 38 U.S.C. § 3103(e)(1)–(2) (now § 5303(e)), https://perma.cc/RLP4-RNGA.

72. Id. § 5, 91 Stat. 1108–09, https://perma.cc/RLP4-RNGA.

73. Id. § 4, 91 Stat. 1108, https://perma.cc/RLP4-RNGA.

74. Id. § 2, 91 Stat. 1107–08, https://perma.cc/RLP4-RNGA.

VII

What the government knew, and when

1893 A War Department circular creates the administrative discharge "without honor."

1906 Special Orders 266 discharges 167 Black soldiers of the Twenty-Fifth Infantry without honor, without trial, and bars them from reenlistment and federal employment.

1918 The Army begins printing the discharge without honor on blue paper, and the "blue discharge" takes its name from the color.

1944 The GI Bill conditions benefits on a discharge "under conditions other than dishonorable." The VA's Instruction No. 1 sets out its own test of which discharges qualify.

1945 The Pittsburgh Courier charges the Army with issuing blue discharges "to Negroes in proportionately higher numbers." Its brief goes to the Attorney General. War Department figures, as the Courier reported them in the Congressional Record, show 10,806 of 48,603 blue discharges issued to Black soldiers, 22 percent.

1946 The House Committee on Military Affairs reports that the VA treats many blue discharges as dishonorable and denies the GI Bill, recommends review of every blue discharge, and proposes a system of discharges with no blue discharge.

1947 The Army drops the blue discharge and issues general and undesirable discharges in its place.

1962 At Senator Sam J. Ervin Jr.'s hearings on the constitutional rights of military personnel, a VA official recalls an agency study in which about 8 percent of a sample of undesirable discharges were held entitled to benefits.

1972 The Army corrects the Brownsville discharges to honorable and bars back pay, allowances, benefits or privileges to the soldiers' heirs and descendants.

1972 The Department of Defense Task Force finds that Black service members receive worse administrative discharges than whites of the same education and aptitude, that such discharges "may disqualify" them from VA benefits, and that the review boards relieve them less often. It recommends review where racial discrimination contributed.

1973 Congress pays $25,000 to the one surviving Brownsville soldier it covers, and the statute describes the men as "dishonorably discharged."

1976 A Defense Department rule calls the undesirable discharge "Under Other Than Honorable Conditions."

1977 The Army tells Congress that minorities hold 18 percent of Vietnam-era undesirable discharges, and that its special program has made honorable about 20 percent of Black veterans' undesirable discharges it has decided, against about 32 percent of white veterans'. Congress enacts a law "to deny entitlement to veterans' benefits" to veterans who would otherwise have gained them solely through the special program's upgrades.

Timeline sources are cited in Sections I through VI.

VIII

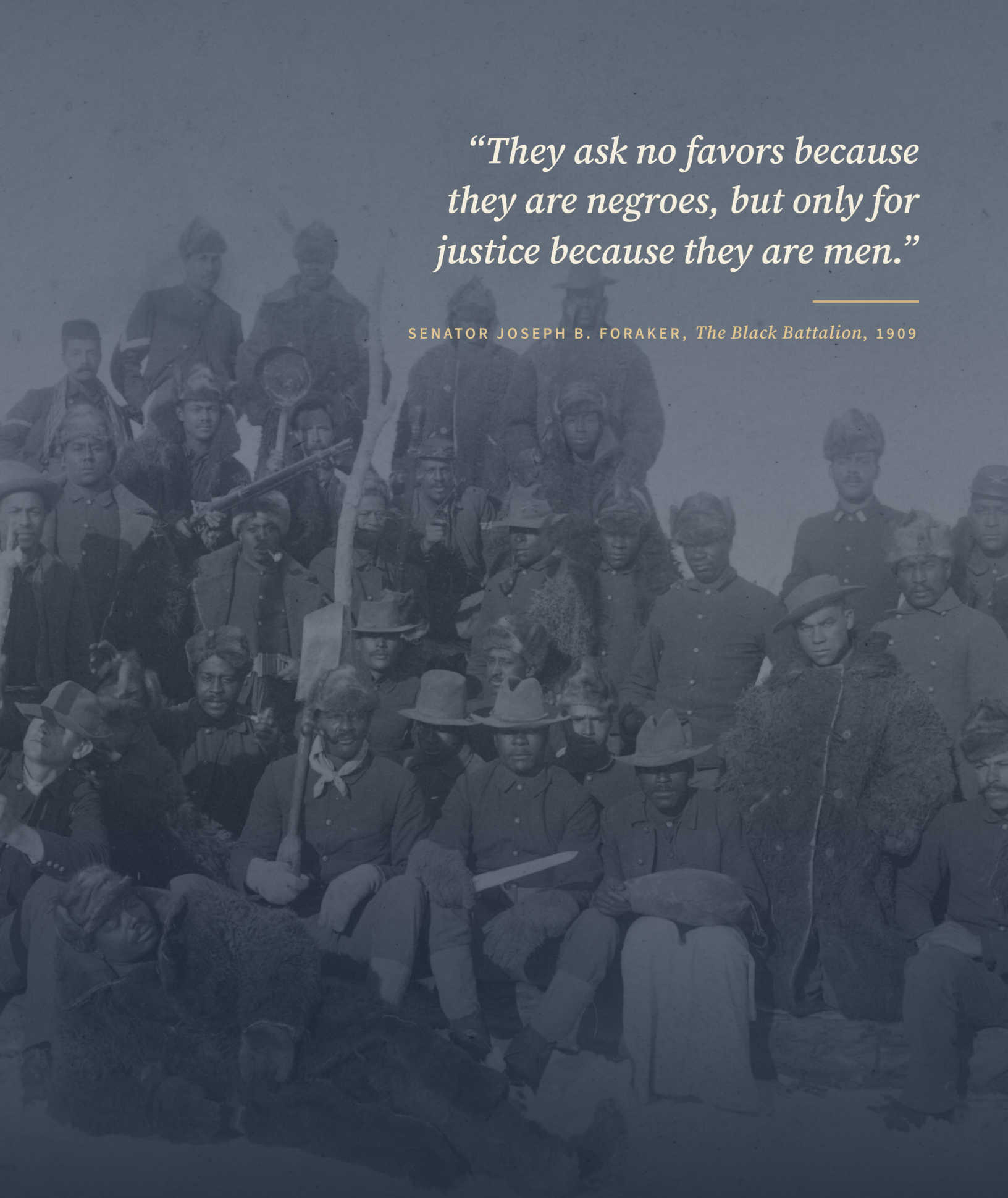
The rule that outlived every correction

Each time the government confronted the paper bar, it repaired the paper. It changed the Brownsville discharges to honorable in 1972. It gave blue-discharge holders a review board.[75] It upgraded Vietnam-era discharges in 1977. Each time, something stopped the remedy short of the people the discharge had harmed. The Army's order shut out the soldiers' heirs. The 1973 statute paid one surviving soldier, offered $10,000 to each unremarried widow who applied, and wrongly called the men dishonorably discharged. The 1977 statute was written "to deny entitlement to veterans' benefits" to veterans who would otherwise have gained them "solely by virtue of" the upgrades.

And each time, the mechanism was left standing. Today, service members can still be separated administratively, without court-martial, with an Other Than Honorable characterization of service. The 1977 limits remain in the law that governs veterans' benefits today, now at section 5303 of title 38 of the United States Code, the veterans' benefits title.[76]

The records gathered here show that the government did not need a rule against Black veterans. It needed only the discharge, a decision made by military commanders without trial, and a benefits system that judged a soldier's service again, without a trial, and most often agreed with the commander. It was told in 1945 and again in 1972 that Black service members received these discharges more often, and in 1972 that the boards granted them relief less often, and in 1977 that the special review made their discharges honorable less often. The corrections it made each time were real, and each time the bar outlived them.

75. See note 31.
76. 38 U.S.C. § 5303(e) (formerly § 3103(e), added by Pub. L. No. 95-126, 91 Stat. 1106 (1977); renumbered by Pub. L. No. 102-40, § 402(b)(1), 105 Stat. 238 (1991)), https://perma.cc/828H-HPQA.



“They ask no favors because they are negroes, but only for justice because they are men.”

SENATOR JOSEPH B. FORAKER, *The Black Battalion*, 1909

Soldiers of the Twenty-Fifth Infantry, the Brownsville regiment, Fort Keogh, Montana, 1890. Library of Congress.

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