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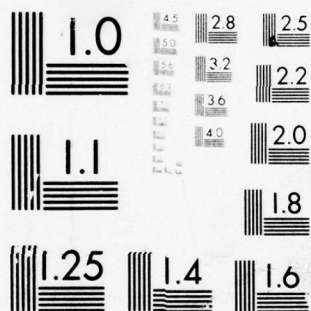
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THE ARMY ADMINISTRATIVE DISCHARGE SYSTEM

A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE

by

RAYMOND A. GOSSELIN, MAJ, USA
B.A., St. Anselm's College, 1960

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This study attempts to determine if there is a need for change in the Army administrative discharge system. The study examines the administrative discharge system and contrasts it with the punitive discharge system. The examination focusses primarily on the perceptions of agencies and individuals from both government and public sectors and emphasizes the impact of the Vietnam War and its aftermath upon those perceptions.

Investigation reveals that the administrative discharge system has deficiencies which have resulted in the inequitable treatment of soldiers. Although contentions of inequity may be rejected by proponents of the current system, the Army Discharge Review Board and the federal courts have validated many of these contentions. Moreover, recent Congressional legislation has affected the discharge review process as it is conducted by the military services of the Department of Defense thus creating an expensive, time-consuming workload and raising doubts concerning the practicality of the administrative discharge system in its present form.

This study concludes that there is a need for change in the Army administrative discharge system. The proposed changes attempt to eliminate the causes of inequity and render the system compatible with the changing discharge review process.

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The opinions and conclusions expressed herein are those of the individual student author and do not necessarily represent the views of either the U.S. Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

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ABSTRACT

THE ARMY ADMINISTRATIVE DISCHARGE SYSTEM, by Major Raymond A. Gosselin, USA, 65 pages.

This study attempts to determine if there is a need for change in the Army administrative discharge system. The study examines the administrative discharge system and contrasts it with the punitive discharge system. The examination focuses primarily on the perceptions of agencies and individuals from both government and public sectors and emphasizes the impact of the Vietnam War and its aftermath upon those perceptions.

Investigation reveals that the administrative discharge system has deficiencies which have resulted in the inequitable treatment of soldiers. Although contentions of inequity may be rejected by proponents of the current system, the Army Discharge Review Board and the federal courts have validated many of these contentions. Moreover, recent Congressional legislation has affected the discharge review process as it is conducted by the military services of the Department of Defense thus creating an expensive, time-consuming workload and raising doubts concerning the practicality of the administrative discharge system in its present form.

This study concludes that there is a need for change in the Army administrative discharge system. The proposed changes attempt to eliminate the causes of inequity and render the system compatible with the changing discharge review process.

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The Army Administrative Discharge System

CHAPTER 1

INTRODUCTION

Contractual Service.

Article I of the Constitution of the United States empowered Congress to raise and support armies. Volunteers provided the prime source of manpower for the military during the early years of the country, and a soldier assumed the burden of military service for a period of time in return for some form of remuneration. This source of manpower was insufficient during the American Revolution and was augmented by the states' militias. Thus conscription became a method by which regular military forces were expanded. The first conscription law in American history was enacted by the Confederate Congress in April, 1862.¹ This experience with conscription served as the basis for the United States' adoption of selective service during World War I.² Selective service proved effective in raising large military forces during the conflicts of the twentieth century and in sustaining a standing Army during peacetime.

Complaints concerning inherent inequities in deferments from the draft were often voiced by the public. Deferments were given to members

¹John R. Graham, A Constitutional History of the Military Draft (Minneapolis: Ross Haines, Inc., 1971), pp. 24,100.

²Encyclopedia International, 1963 ed., s.v. "Selective Service," by John D. Hayes.

of the Reserves, the National Guard, college students, married men, and those persons engaged in critical occupations or with hardships.³ The crescendo of dissatisfaction with the draft was reached during the Vietnam War. The selective service system became a casualty of that War and was virtually dismantled by the mid 1970's.

Whether a person entered the Army as a volunteer or was drafted, he entered into a contractual agreement which required adherence. The essential element of the contract was that the individual must serve for a specified period of time unless sooner discharged by proper authority. Until World War II, a provision existed in Army Regulations that allowed a soldier to purchase his discharge for a price determined by years service and geographical location at the time of discharge. For example, a soldier with one year service and stationed in the United States could purchase his discharge for \$120.00.⁴ With the termination of that regulatory provision, a discharge prior to completion of a specified period of time has been reserved for situations that precluded completion of service. Such situations may entail circumstances involving physical disability or personal hardship which is not related to a soldier's conduct or performance. Conversely, situations include circumstances involving misconduct or unsuitability. This latter category of discharge can be accomplished either in a punitive manner or in an administrative manner.

³Ibid.

⁴Army Regulation 615-360, Enlisted Men: Discharge; Release from Active Duty, 26 November 1942, p. 13.

Punitive Discharge.

The punitive discharge is an element of the sentence of a court-martial and the discharge itself is a punishment.⁵ Before pursuing the nature of the punitive discharge, it is important to examine the court-martial which is the only mechanism that can adjudge such a punishment. The court-martial is an integral part of military law and has its basis in English common law.⁶ Prior to World War II, military law was fundamental. During World War II, however, civilian legal organizations and other interested groups pressured Congress to examine closely the military judicial system.⁷ As a result, a series of revisions ensued that culminated in the establishment of the "Uniform Code of Military Justice" (UCMJ) in 1950 under Public Law 506.⁸ In 1956, the Code was further revised and codified and eventually became a part of Title 10, United States Code.⁹

The UCMJ contains a listing of punitive articles which describe offenses punishable under the Code. These offenses fall into two broad categories. The first category comprises offenses such as murder, robbery, assault, and rape that are punishable under both civilian and

⁵U.S., President, Executive Order 11476, Manual for Courts-Martial, United States, 1969, (revised edition), 19 June 1969, p. 25-3. (hereafter cited as U.S., Manual for Courts-Martial).

⁶Daniel Walker, Military Law (New York: Prentice-Hall, 1954), p. 108.

⁷*Ibid.*, p. 109.

⁸William B. Aycock and Wurfel W. Seymour, Military Law Under the Uniform Code of Military Justice (Chapel Hill, NC: University of North Carolina Press, 1955), p. 15.

⁹U.S., Manual for Courts-Martial, p. A2-1.

military jurisdictions. The second category comprises lesser offenses such as desertion, disobedience of orders, misbehavior before the enemy and other such offenses that are inherent only with the military.¹⁰ Conviction of and punishment of soldiers for violations of the UCMJ are normally provided by a court-martial except in cases where the offense is not sufficiently serious to warrant trial by court-martial. Although there is no minimum punishment, maximum punishment is governed by a precise set of rules in the UCMJ which are prescribed by the President of the United States under the authority derived from Article 56 of the UCMJ.¹¹ Constraints for adjudging a punitive discharge are included in the rules for maximum punishment.¹²

A punitive discharge may be either "dishonorable" or "bad conduct." The dishonorable discharge originated from the Articles of War and has traditionally operated as a punishment--a complete expulsion from the Army. Its significance, from a purely professional military perspective, is perhaps best exemplified by William Winthrop in his compendium on military law: "The dishonorable discharge expels the offender with disgrace from the Army and remands him to the status of a civilian."¹³ The dishonorable discharge carries a stigma and is described in the Manual for Courts-Martial as a punishment for offenders who should be discharged under conditions of dishonor because of the serious nature of the offense.

¹⁰ Walker, Military Law, p. 111.

¹¹ U.S., Manual for Courts-Martial, p. A2-20.

¹² Ibid., p. 25-10.

¹³ William Winthrop, Military Law, 2 vols. (Washington: W. H. Morrison, 1886), 1:611.

The bad conduct discharge, on the other hand, originated during World War II and probably from the same set of circumstances that prompted a revision of the military judicial system. Although not formally introduced to the Army until 1949, its origin may be traced to a report made to the Secretary of War in 1946 by the War Department Advisory Committee on Military Justice. The Committee recommended that an additional discharge be introduced for cases of unfitness so that the dishonorable discharge could be "reserved for exceptionally grave and heinous offenses."¹⁴ Thus the bad conduct discharge was and still is construed as a less severe punishment than a dishonorable discharge.

The military judicial system has many checks and balances or safeguards. Before a court-martial sentence can be decided, a two-thirds majority of the court must agree on the sentence. The punitive discharge element of a sentence cannot be executed until the following has been accomplished:

1. The convening authority, the person authorized to convene the court-martial, must first approve the sentence.
2. The case must then be reviewed by the Court of Military Review which is a panel of not less than three appellate military judges who may be either commissioned officers or civilians and must be members of a bar of a Federal Court or of the highest court of a state.
3. The case may then be further reviewed by the Court of Military Appeals if such a review is requested by the Judge Advocate General or upon petition of the accused. The Court of Military Appeals

¹⁴U.S., War Department Advisory Committee on Military Justice. Report to the Secretary of War on Military Justice, 1946. p. 13.

consists of three civilian judges appointed by the President and with the consent of the Senate for a term of fifteen years.¹⁵

The provisions of the UCMJ emphasize that the punitive discharge is a serious punishment and that adequate safeguards have been developed and included to protect the rights of the soldier.

Administrative Discharge.

In contrast to the punitive discharge, the administrative discharge is designed to remove a soldier from the Army with no intent to punish.

An administrative discharge is not intended as a form of punishment but is simply a technique by which the Army removes from its rolls those individuals who have demonstrated that they are not capable of serving effectively. Any administrative discharge which does more than intended by the foregoing is not proper and equitable.¹⁶

The foregoing is a portion of the Secretary of the Army's philosophy under which the Army Discharge Review Board operates.¹⁷ This guidance succinctly describes the intent of the administrative discharge.

Title 10, United States Code, authorizes the Secretary of the Army to establish policies for the discharge of soldiers prior to the completion of their term of service.¹⁸ The Department of the Army

¹⁵U.S., Manual for Courts-Martial, p. 20-1.

¹⁶Discharge Upgrading Newsletter, Atlanta, Southern Center for Military and Veterans Rights, 30 November 1977, p. 11. quoting the President's Guidance--Army Discharge Review Board Standing Operating Procedure, 1975, p. 20e.

¹⁷The Army Discharge Review Board, under the provisions of Title 10, United States Code, is empowered to change, correct or modify any discharge of a former Army member except a discharge resulting from the sentence of a general court-martial.

¹⁸Army Regulation 635-200, Personnel Separations, Enlisted Personnel, 21 November 1977, p. 2-1.

publishes these policies in regulations which provide guidance for commanders in dealing with administrative discharges.

Early Army regulations concerning administrative discharges were general in nature. For example, Army Regulation 615-360, issued in December 1922, mentioned the areas of inaptness and undesirable habits or traits of character without fully defining these terms. Since the standards were not prescribed, these vague areas were subject to a commander's perception of acceptable standards. Yet, there were safeguards in the system; the case of an individual recommended for discharge was reviewed by a board consisting of three commissioned officers. If the board upheld the recommendation, the case was then forwarded to a higher authority for final determination.¹⁹

Under the administrative discharge system existing in 1922, a soldier could receive either an honorable discharge or a blue discharge. The issuance of a particular type of discharge was predicated upon the character of service. The terms excellent, very good, good, fair, and poor were those authorized for designating character of service. If the character was judged to be excellent, very good or good, an honorable discharge was awarded. If the character was judged to be fair or poor, a blue discharge was awarded. Consequently, an honorable discharge signified honest and faithful service, while a blue discharge signified service that was not honest and faithful. Although the regulation recognized the potential impact of a blue discharge, it contained only three lines of guidance advising the commander to exercise his

¹⁹Army Regulation 615-360, Enlisted Men; Discharge, 6 December 1922, p. 4.

discretionary authority with great care in order to preclude injustice to the soldier.²⁰

As the years passed, there were changes to the administrative discharge system in the areas of procedures, rehabilitation, standards, discretionary authority, and methodology for appraising service. The administrative discharge, however, remained an either-or (italics mine) situation, i.e., service was honest and faithful or not honest and faithful. In 1947, the blue discharge was replaced by two other types-- the general discharge and the undesirable discharge. This action resulted from severe congressional criticism charging that the blue discharge was not sufficiently precise to determine the character of service.²¹ When considering that the honorable, blue, and dishonorable discharges were the only types of discharges, the relative confusion over the blue discharge is obvious.

While the honorable discharge signifies completely honorable service, the general discharge signifies that the service is under honorable conditions but does not meet the high standards required for an honorable discharge. On the other hand, the undesirable discharge signifies that the service is under other than honorable conditions.²² Consequently, the undesirable discharge carries a stigma similar to the one associated with the punitive discharge. In January 1977, the term

²⁰ Ibid., p. 3.

²¹ William K. Laray, "Due Process of Law and the Less than Honorable Discharge of Enlisted Personnel" (thesis, The Judge Advocate General's School, U. S. Army, 1964) p. 35, citing Hearings Before the Subcommittee on Constitutional Rights of the Committee of the Judiciary, United States Senate, 87th Congress, 2d session (1962), On the Constitutional Rights of Military Personnel, p. 854.

²² Army Regulation 635-200, p. 1-5.

undesirable was replaced with the term under conditions other than honorable. Since the term undesirable was only recently changed, it is important in this discussion because it is a symptom of the problem that will be examined.

The administrative discharge system does have safeguards, although they are not nearly as comprehensive as those provided under the punitive system. Of particular interest is the review system which usually does not extend beyond an authority at the same installation where the recommendation for discharge was initiated. Thus the highest level of review is one that may occur subsequent to the soldier's discharge if he initiates a request for review by the Army Discharge Review Board.

Impact of Discharges.

For the purpose of the following discussion, discharges have been categorized as "good" (honorable and general) or "bad" (dishonorable, bad conduct, and undesirable or discharge under conditions other than honorable).

The veteran with the good discharge is not affected in the same manner as the veteran with the bad discharge. Accordingly, this discussion is restricted to the impact involving bad discharges. Perhaps the most subtle impact is one of personal stigmatization. What about the father whose children become inquisitive about his experiences in the Army? He cannot proudly reveal his bad discharge and exhort his children to emulate his performance while in the Army; and he is not likely to use his Army discharge as an object lesson to his children. Assuming that this veteran became a responsible member of society, such an episode will probably be devastating to his pride. In fact many

Individuals appearing before the Army Discharge Review Board indicate that their appearance is motivated by a desire to remove the blemish of a bad discharge from an otherwise good pre-service and post-service record.

The stigma of a bad discharge can also affect a veteran's successful return to his community. Most people recognize when a soldier returns to his community before completing his total years of service, and they ask questions. Why did he serve only 18 months of a three-year enlistment? Why is he reluctant to discuss his military service? Why do his parents avoid the subject? The answers to these questions are eventually ascertained and become a source of embarrassment to the individual and his family.

The bad discharge also has an impact upon a veteran's employment. A prospective employer is traditionally concerned with the references of a prospective employee. Essentially, the employer wants some assurance that the person he hires can perform the job and is responsible. A veteran with a good discharge can provide documentary evidence that he served his country honestly and faithfully and has the potential to be a good employee. A veteran with a bad discharge does not have the same advantage.

Another major area of concern for the veteran is his entitlement to Veteran's benefits. Honorable and general discharges normally qualify the veteran for federal benefits, but the dishonorable discharge is an automatic disqualifier. The bad conduct and the undesirable discharges, however, are not clearly defined as to the qualification for federal benefits; therefore, the Veterans Administration must render a determination in each case. The facts in each case must clearly

establish that a veteran was discharged under conditions that do not constitute dishonor.²³

In order to gain an appreciation for the magnitude of these benefits, a review of the more familiar benefit programs is necessary.

Dependency and Indemnity Compensation. This program authorizes payments to dependents of service personnel or veterans who die from a disease or injury incurred or aggravated while on active duty. Although the rate of compensation varies according to the person's rank, the minimum monthly payment in 1977 is \$260.²⁴

Non-Service Connected Death Pension. This program authorizes payments to dependents of veterans whose deaths were non-service connected but who had served during specified war periods to include the Korean war and the Vietnam Conflict. The monthly payments in 1977 vary from a high of \$149 to a low of \$57.²⁵

Vocational Rehabilitation. This program entitles a veteran to vocational rehabilitation if he has suffered a service connected disability for which the Veterans Administration determines that rehabilitation is essential in overcoming the handicap of the disability. The participation in this program may extend to four years. The maximum payable monthly rate in 1977 is \$329 for an individual with two dependents and \$24 per month for each additional dependent.²⁶

²³U.S., Veterans Administration, Federal Benefits for Veterans and Dependents, VA IS-1 Fact Sheet, 1 January 1977, p. iv.

²⁴Ibid., p. 36.

²⁵Ibid., p. 40.

²⁶Ibid., pp. 18-20.

Educational Assistance. This is perhaps the most widely known benefit program. Although it was changed in January 1977 to a contributory plan, it remains the most attractive of the federal benefits. It entitles an eligible veteran to educational assistance for a period up to and including 45 months contingent upon the amount of service time, the years in which the service occurred, and the sub-programs of education or training. The highest payable monthly rate in 1977 is \$396 for a veteran with two dependents and \$24 per month for each additional dependent.²⁷

There are numerous other federal benefits which in combination with those discussed above represent an important opportunity for the veteran (See appendix 1 for a listing of these benefits). Beyond the federal benefits, many states have their individual benefits programs for veterans which vary in accordance with a state's desire and ability to fund. The most common benefits entail unemployment compensation, employment and reemployment rights and assistance, and vocational training programs. In the final analysis, all benefits, federal and state, provide a crucial opportunity for many veterans in terms of enhancing their existence and for subsequent contribution to society.

Statement of the Problem.

The impact of a bad discharge, whether punitive or administrative, on a veteran and his family is monumental. Disparities have developed in the safeguards for both the punitive and the administrative discharge systems. Yet, the administrative discharge can be as devastating as the punitive discharge. This situation raises the following questions:

²⁷Ibid., pp. 12-16.

1. Does the administrative discharge system insure equity?
2. If the administrative discharge system does not insure equity, are there facets of the system that preclude equity?
3. What alternatives exist?

Scope, Design and Limitations.

Although the administrative discharge system is common to all the military services and deals with both officers and enlisted personnel, this study discusses only the Army system and how it pertains to enlisted personnel. It examines the background of the administrative discharge system and contrasts that system with the punitive discharge system. An examination of the administrative discharge system against the background of historical events suggests a need to change the system. This study outlines some possible conceptual changes to the administrative discharge system, but it does not involve a detailed consideration of the entire spectrum of arguments that could be raised. Finally, this study does not attempt to be a panacea. It only serves to evaluate, inform, and present alternatives to the current administrative discharge system.

CHAPTER 2

THE ADMINISTRATIVE DISCHARGE SYSTEM

The administrative discharge system for enlisted personnel is governed by the guidance contained in Army Regulation 635-200, Personnel Separations, Enlisted Personnel. Although many reasons for administrative discharge exist, this study deals with four distinct categories: discharges for the good of the service, discharges for misconduct and unsuitability, expeditious discharges, and trainee discharges.

Discharge for the Good of the Service.

An enlisted person who has been charged with an offense which, under the Uniform Code of Military Justice, is punishable by a bad conduct discharge or a dishonorable discharge may request to be discharged for the good of the service.¹ In order to place this situation into perspective, one must remember that a conviction by court-martial may result in a reduction in rank, forfeiture of pay, incarceration, and a punitive discharge. Conversely, discharge "for the good of the service" can result in a reduction in rank and the issuance of a discharge under other than honorable conditions. Comparison of the possible consequences under each course of action indicates that the latter course of action is preferable to a soldier. The situation, however, is not that simple.

Commanders having the authority to approve a request for a discharge "for the good of the service" are constrained by the guidance contained in Army Regulation 635-200.

¹ Army Regulation 635-200, p. 10-1.

The discharge authority should not be used when the nature, gravity, and circumstances surrounding an offense require a punitive discharge and confinement, nor when the surrounding facts do not establish a serious offense, even though the punishment in the particular case, under the Uniform Code of Military Justice, may include a bad conduct or dishonorable discharge. Consideration should be given to the member's potential for rehabilitation and his entire record should be reviewed prior to taking action. . . . Use of this discharge authority is appropriate and encouraged when the commander determines that the offense charged is sufficiently serious to warrant elimination from the service and the individual has no rehabilitation potential.²

This guidance reveals that the commander has considerable latitude in exercising his authority. Furthermore, the guidance indicates that a commander can base his decision on his perception of the facts in any situation. Therefore, the guidance seems a detriment to developing uniformity throughout the Army.

Regulatory provisions pertaining to a discharge "for the good of the service" provides safeguards. Commanders are responsible for insuring that a soldier is not coerced into submitting a request for discharge. Additionally, the soldier has the right to consult with a legally qualified counsel who is responsible for advising the soldier concerning the elements of the offense, burden of proof, possible defenses, possible punishments, and the provisions governing discharge for the good of the service. Furthermore, the soldier is advised that a discharge "for the good of the service" normally results in the issuance of a discharge under conditions other than honorable, the probable loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the character of the discharge.³

²Ibid., p. 10-2.

³Ibid., p. 10-5.

The choice between standing trial and requesting a discharge "for the good of the service" is obviously not a simple choice for a soldier to make. Although the safeguards appear adequate, they cannot provide an absolute guarantee of equity. Inequity may occur simply by failure to consider extenuating or mitigating circumstances. For example:

If the Veteran applied for a hardship discharge or compassionate reassignment which was denied and then got in trouble as a result, the approach should be to document the validity of the family problem that made it necessary that the GI be reassigned or discharged.⁴

The preceding situation pertains to a soldier who perceives that he has a serious family problem such as the serious illness of a member of his immediate family. The Army, however, perceives that insufficient grounds exist to warrant approving a hardship discharge. The soldier's perception persuades him that his presence at home is of paramount importance. He goes AWOL and is later apprehended. Prolonged absence without leave is punishable with a punitive discharge. If the soldier is returned to his home station, there is a possibility that he may opt for an administrative discharge and receive a discharge under other than honorable conditions. Why? The soldier may be confronted with confinement as a result of his court-martial and this will preclude his presence at home. Since a difference of opinion existed concerning the family problem, he may have no assurance as to the degree of extenuation this problem will provide. The probability of this dilemma increases when the soldier is not returned to his home station because authorities

⁴David F. Addlestone, Susan H. Hewman, American Civil Liberties Union Practice Manual on Military Discharge Upgrading (New York: Literature Department, American Civil Liberties Union, 1975), p. 49.

at the new station may be totally unaware of the circumstances surrounding his AWOL. Perhaps there is some important information available at his old station that was inadvertently omitted from the soldier's records. Moreover, the new station is a station that is designated as one to which AWOL soldiers are returned. Thus there is a tendency to treat all AWOL soldiers alike. This normally occurs because the authorities are no longer sensitive to the problem of each soldier. The soldier who is a problem has become commonplace and the processing becomes automatic.

The American Civil Liberties Union Manual describes several situations which contribute to inequitable treatment of soldiers by the military. These are:

1. Coercion.

2. Assignment to work details or other meaningless work out of the GI's normal military occupational specialty. Some detail work is performed with other GI's convicted and sentenced to hard labor without confinement, which is not the proper way to treat people pending trial or discharge action.

3. Poor advice, e.g., "UD (Undesirable Discharge) anyway"; "the UD will automatically become a general discharge in six months," "it will be easy to change this type of discharge." Bad advice can come from lawyers, commanders, or stockade personnel.

4. Lack of concern on the part of the JAG (Judge Advocate General). Often the JAG will say in response to a letter: "I handled 350 cases while I was there and. . . ."

5. Thought a federal conviction, which a court-martial is, would be worse than a UD. Many GI's were so advised.⁵

These situations are exceptions and not the general rule. Yet, they have occurred with sufficient frequency that the Army Discharge

⁵Ibid., p. 53.

Review Board has specific guidance in this area as indicated in the following quote:

. . . Compliance with both the spirit and intent of the regulation is a necessary prerequisite to a fair and equitable processing of administration and/or command action. Too frequently, it is clear from timing, the presence or absence of comments, and other instances that the administrative processing is simply either by rote or is accomplished in such a way as to be prejudicial to the opportunity for fair consideration. The circumstances rarely lend themselves to clear perception since it is in their nature that they are concealed simply because of the appearance of "normality." It is incumbent upon board members to insure that arbitrary and capricious action has not been the net result of simple "by rote" processing of administrative separation documents.⁶

Discharges for Misconduct and Unsuitability.

Misconduct.

Discharge for misconduct is an action taken against a soldier when there is evidence of habits and traits that render him unfit for military service. Indicators consist of unsuccessful attempts to rehabilitate or to develop the person into a satisfactory soldier; or the circumstances are such that rehabilitation is impracticable or the soldier is not amenable to rehabilitation measures.⁷ A soldier may be subject to discharge for misconduct under specific conditions. These conditions include frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug abuse, an established pattern of shirking, an established pattern showing dishonorable failure to pay debts, an established pattern showing dishonorable failure to support dependents, and failure to comply with orders or

⁶ Discharge Upgrading Newsletter, 30 November 1977, p. 8.

⁷ Army Regulation 635-200, p. 14-1.

judgments of a civil court concerning support of dependents. Homosexual acts are included in this list of conditions.⁸

Homosexuality is a multifaceted subject. Greater social tolerance and increasing litigation concerning homosexual rights render homosexuality a controversial issue. The governing principle in the military is that the homosexual will be discharged. When reviewing homosexual cases, the Army Discharge Review Board is primarily concerned that the discharge process and the type of discharge furnished is based upon a rational application of the regulatory provisions. It insures that injustice has not been perpetrated by someone's moral outrage, i.e., a bad discharge based on moral outrage instead of the discharge being based on the entire period of service.

Commanders having the authority to approve a discharge for misconduct are constrained by explicit guidance and a myriad of safeguards. Before any discharge action can be taken, several preliminary actions are required. The soldier must be counseled, and each formal counseling session must be recorded so that documentation exists as to the scope of the counseling. Rehabilitation attempts are made which include reassignment to a different unit. Also, a complete medical examination and a mental status evaluation is administered. The mental status evaluation is particularly important because it could reveal a personality disorder or a psychiatric condition which would preclude discharge for misconduct. A personality disorder would result in an individual receiving a discharge for unsuitability. An individual with a psychiatric condition would be processed through medical channels

⁸Ibid., p. 14-2.

and given a medical discharge.⁹ The salient point is that the discharge for unsuitability and the medical discharge cannot result in a bad discharge.

The administrative procedures involved in a discharge for misconduct are exhaustive. The soldier has the right to consult with counsel, present his case before a board of officers, submit statements in his own behalf, and be represented by counsel at any hearing. Additionally, he has the right to waive any or all of the preceding rights except to consult with counsel.¹⁰ If the soldier waives his right to a hearing, the commander exercising discharge authority has several options. He may approve or disapprove the discharge; he may return the case to a subordinate commander for additional investigation; or he may convene a special board to weigh the case and to provide recommendations.¹¹ If the soldier opts for a hearing before a board of officers, he receives a complete administrative hearing which is designed to reveal all the issues in the case.¹²

Unsuitability.

Discharge for unsuitability is an action taken against a soldier when there is evidence that he is unlikely to develop sufficiently to participate in further military training or to become a satisfactory soldier.¹³ A soldier may be subject to discharge for unsuitability

⁹Ibid., pp. 1-18, 1-19.

¹⁰Ibid., p. 1-8.

¹¹Ibid., p. 14-3.

¹²Ibid., pp. 1-10 thru 1-12.

¹³Ibid., p. 13-1.

under specific conditions. These conditions include inaptitude, personality disorders, apathy, alcoholism, and homosexuality. Inaptitude consists of a lack of adaptability or inability to learn. Personality disorders consist of those personality deficiencies or situational maladjustments that are chronic and interfere with the soldier's ability to adequately perform his duties. Apathy consists of defective attitudes and an inability to expend effort constructively. Alcoholism is used as the basis for a discharge for unsuitability only when the major reason for discharge is noneffective duty performance caused by a lack of cooperation or lack of success in an alcoholic rehabilitation program. If alcoholism results in a severe disciplinary problem, it may become a basis for a discharge for misconduct. Homosexuality, as opposed to homosexual acts which are the basis for a discharge for misconduct, consists of homosexual tendencies, desires, or interests without overt acts.¹⁴

The administrative procedures involved in a discharge for unsuitability are not dramatically different from those involved in a discharge for misconduct. The principal differences are that the discharge for unsuitability may be approved at a lower command level (battalion) and a bad discharge cannot be issued.

Although safeguards for the soldier exist, the American Civil Liberties Union Manual contains approximately 100 pages of arguments and issues based on regulatory, legal, and equitable factors. The Army Discharge Review Board, however, provides the best source of concepts for dealing with weaknesses in the discharges for misconduct and

¹⁴Ibid., p. 13-2.

unsuitability. These concepts reveal the narrow line that exists between personality disorders and habits and traits as well as the occasional inability of commanders to differentiate. Difficulties often exist in ascertaining the difference between an inept person and a shirker. The inept person attempts to be a good soldier but fails. The shirker is capable of succeeding but makes no effort and fails. The difference is obvious in this context; however, it may not be obvious in real situations where job pressures or obstinancy clouds the judgment of officials. Homosexuality is an emotionally charged subject which can evoke emotional rather than rational responses. The concepts of the Army Discharge Review Board are often philosophical; however, they are revealing (See appendix 3 for several of these concepts and appendix 4 for statements made by veterans who appeared before the Army Discharge Review Board).

The Discharge.

The poignant difference between the discharge for misconduct and the discharge for unsuitability is the type of discharge given. The discharge for misconduct may be accompanied by an honorable discharge, a general discharge, or a discharge under conditions other than honorable. The discharge for unsuitability can only be accompanied by an honorable or general discharge. Although a discharge under conditions other than honorable is normally furnished for misconduct, the governing regulation stipulates that the soldier's entire record must be reviewed to ascertain the type of discharge that is appropriate. Favorable and unfavorable information must be weighed. The discharge authority must consider such factors as promotions and personal decorations as well as reductions and disciplinary actions. The type of discharge furnished thus reflects

the character of service as perceived by the discharge authority.¹⁵ Since the action is designed to remove an unfit soldier from the service, difficulty may exist in overcoming the generalized impression of unfit. Thus any circumstances that would tend to negate this impression must be obvious. Additionally, the possibility of mistakingly or callously categorizing an unsuitable soldier as an unfit soldier can have dire consequences.

The Expeditious Discharge Program.

The Expeditious Discharge Program was implemented throughout the Army in June 1975. It applies only to soldiers who have completed at least six months service but not more than thirty-six months. The Program provides for the expeditious discharge of substandard, non-productive soldiers before a board or punitive action becomes necessary. The purpose of this policy is to relieve unit commanders of the administrative burden associated with the administrative board and the court-martial actions previously discussed in this study.¹⁶ The Program is not designed, however, as a subterfuge for precluding a sincere effort in producing a good soldier. Nor is it designed as a subterfuge for precluding board action or punitive action if warranted by the circumstances.¹⁷

Under this program, a soldier can be discharged only with his consent, and he may be issued nothing lower than a general discharge.¹⁸

¹⁵Ibid., 1-6, 1-7.

¹⁶Ibid., p. 5-12.

¹⁷Ibid.

¹⁸Ibid., p. 5-13.

The fact that a soldier cannot receive a bad discharge is very significant. From previous discussion, one sees that administrative board action leading to a discharge for misconduct often results in the issuance of a bad discharge and the process contains many safeguards to protect the rights of the soldier. Yet, these safeguards are not included in the expeditious discharge process because a bad discharge cannot be issued. These factors constitute a tacit acknowledgement that the bad discharge has a punitive effect and the administrative discharge is not intended to punish a soldier.¹⁹

The Trainee Discharge Program.

The Trainee Discharge Program is similar to the Expeditious Program. It applies to those soldiers who have 179 days or less service. The specific purpose of this program is to provide for the early identification of trainees who demonstrate that they are unqualified for retention in the Army. Under this program, a soldier can be issued nothing lower than an honorable discharge.²⁰

Since the principles involved in this program are identical to those principles included in the Expeditious Discharge Program, further discussion would be superfluous. Nevertheless, the existence of this program reinforces the view that the administrative discharge resulting in a bad discharge is punitive. The program adds a new dimension because an early discharge renders a soldier ineligible for those Veterans Administration benefits that require 180 days of active service for the

¹⁹ Army Discharge Review Board Standing Operating Procedure, p. 20e.

²⁰ Army Regulation 635-200, p. 5-16.

soldier to qualify. Yet, this feature is justifiable because the time element plays an important part in most contracts.

Summary.

The foregoing discussion examined some procedural aspects of the administrative discharge system. Furthermore, it examined the methods and the reasons for which soldiers are discharged from the service. The discussion also addressed perceptions of some soldiers, some commanders, the Army Discharge Review Board, and the American Civil Liberties Union. These perceptions reveal both the strengths and weaknesses of the administrative discharge system. This system cannot be considered either totally adequate or totally inadequate. Nevertheless, facts exist concerning weaknesses to warrant further exploration for possible changes.

CHAPTER 3

THE NEED FOR CHANGE

Perception.

A brief comparison of the administrative discharge system and the punitive discharge system reveals inequities. Some inequities were acknowledged in 1966 by Senator Sam J. Ervin, Jr., Chairman of the Senate Subcommittee on Constitutional Rights. Senator Ervin observed that the undesirable discharge was characterized by the same stigma as the dishonorable discharge, and for the purposes of veterans benefits and other rights it was treated in the same manner as a bad conduct discharge.¹ The overwhelming argument, however, is that those safeguards established for the punitive discharge system are much more comprehensive than those provided for the administrative discharge system. This basic inequity is a major cause for concern because therein lies a potential for abuse. If the intent is to punish an individual, it is reasonable to assume that the least restrictive course of action will be sought. The emphasis is obviously on the possibility for abuse of the administrative discharge system rather than the probability for abuse. Nevertheless, the mere existence of such a potential for abuse reveals an inherent weakness in the administrative discharge system and a need to change it.

¹ U.S., Congress, Senate, Committees on the Judiciary and Armed Forces, Bills to Improve the Administration of Justice in the Armed Forces, Hearings before the Subcommittee on Constitutional Rights and a Special Subcommittee of the Committee on Armed Forces. 89th Cong., 2d sess., 1966, p. 121.

The abuse consists of military commanders who rationalize the use of the administrative discharge system as a means to punish. Ironically, Brigadier General Kenneth J. Hodson, the Assistant Judge Advocate General for Military Justice, Department of the Army, while testifying before the Senate Subcommittee on Constitutional Rights in 1966, stated:

I have a feeling that there is a growing tendency in the United States, in the last 23-30 years, to treat everybody as equals with respect to income, right to schooling, right to a happy life regardless of whether the person works for it or not. In the Armed Services, we still are following a policy that a man earns the reward he gets.²

General Hodson's words are certainly not to be construed as advocating a pragmatic judicial philosophy. His statement simply dramatizes a type of mind-set that might be perverted, intentionally or inadvertently, by individuals whose actions affect the adjudication of administrative discharges.

Punitive Effect.

The purpose of the administrative discharge system is to remove from the Army those soldiers who cannot serve effectively. The administrative discharge is not intended as a form of punishment. The foregoing constitutes a basic tenet for the Army Discharge Review Board; therefore, this tenet serves as a valid instrument for assessing the existing administrative discharge system.

The administrative discharge system can produce suffering, pain, and loss; and the bad administrative discharge is the instrument that fosters these results. It affects the veteran's pride and renders him vulnerable to job discrimination. It may even affect his social acceptability and deprive him of federal and state benefits. The loss may even

²Ibid., p. 388.

be subtle. For example, a soldier who is discharged from the service with a bad administrative discharge is automatically reduced to the lowest enlisted pay grade of E1.³ Thus a soldier in the pay grade of E5 can be reduced to the pay grade of E1. Assume that this soldier dies shortly after his discharge and the Veterans Administration ascertains that his death is attributed to an injury he suffered while on active duty. Further, the Veterans Administration rules that the circumstances surrounding his discharge do not constitute dishonor. Thus his widow is eligible for monthly Dependency and Indemnity Compensation payments. The amount of the monthly payment is directly related to the veteran's pay grade at the time of discharge. The widow receives monthly payments in the amount of \$260. Had the veteran been discharged as an E5, the widow would have received monthly payments in the amount of \$300.⁴ Ironically, the same scenerio applies to a soldier in the pay grade of E5 who receives a bad conduct discharge.⁵

The type of discharge issued under the administrative discharge system is essentially a function of the discharge authority's assessment of the quality of the soldier's service. This causal relationship directly affects the soldier. The good discharge entitles the soldier to a certificate describing his period of service as honest and faithful and does not carry a stigma. Conversely, the bad discharge entitles the soldier to a certificate describing his period of service in terms designed to stigmatize. Thus the administrative discharge system can be

³Army Regulation 600-200, March 1965, p. 7-88.

⁴VA IS-1 Fact Sheet, 1 January 1977, pp. 36-37.

⁵Army Regulation 600-200, March 1965, p. 7-87.

considered as a retributive system in that it operates as a reward-punishment mechanism. Such a system provides for much more than the removal of a soldier from the Army.

The Vietnam War.

The Vietnam War was an unprecedented and traumatic event in the history of the United States. It was highly publicized in the media, and the horrors of the War were brought into the living room on a daily basis via descriptive television broadcasts. As the War continued, evidence indicated that a military victory could not be achieved. That realization prompted an ignominious withdrawal of our military forces. The many controversies born during the Vietnam War did not end with the withdrawal of United States forces. The Vietnam War suggested that there was a need for reappraisal of United States foreign policy as well as the development of solutions to many other problems caused by the War. The aftermath of the Vietnam War produced an impetus for a change in the administrative discharge system.

Society became concerned with the lingering problem of prisoners-of-war, the missing-in-action, and those persons the War had left handicapped. There was vocal concern for the draft evaders and the military deserters by "a society that has perhaps been immobilized in its opposition but certainly never mobilized in support of the war effort."⁶ This new societal concern gained sufficient force to prompt a Presidential Proclamation which was the beginning of what is now called the Clemency Program.

⁶Paul Starr, The Discarded Army (New York: Charter House, 1973) p. 31.

Clemency Program.

On 16 September 1974 President Gerald Ford issued a proclamation which outlined a program to afford reconciliation to Vietnam draft evaders and military deserters. The rationale for this decision is expressed in Presidential Proclamation 4313:

In furtherance of our national commitment to justice and mercy, these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their community, and their families, upon agreement to a period of alternative service in the national interest, together with an acknowledgement of their allegiance to the country and its Constitution.

Desertion in time of war is a major, serious offense; failure to respond to the country's call for duty is also a serious offense. Reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation's wounds and to heal the scars of divisiveness.⁷

The Program which the President suggested generally provided for the following:

1. Draft Evaders. Individuals who violated the Military Selective Service Act could be exempted from prosecution and punishment if they turned themselves in to a United States Attorney prior to 31 January 1975, executed an agreement acknowledging allegiance to the United States, and pledged to and satisfactorily completed a specified period of alternative service.

2. Military Deserters. Members of the Armed Forces who had been administratively classified as deserters could be exempted from prosecution and punishment if they turned themselves in to a designated

⁷Washington, D.C., The Adjutant General, United States Army, "Letter of Instruction - Implementation of Presidential Proclamation No. 4313, 16 September 1974," 18 September 1974, Annex A, p. A-1.

representative of the Military Department from which absented and fulfilled the other conditions for alternative service.⁸

The implementation procedures were relatively complex and provided for a series of alternatives. In essence, however, individuals received an undesirable discharge which, upon satisfactory completion of alternative service, could be replaced with a clemency discharge. The clemency discharge certificate was designed to be innocuous by containing neutral wording:

Clemency Discharge from the Armed Forces of the United States of America. This is to certify that _____ was discharged from the United States _____ on _____. This certificate is issued on _____ in recognition of satisfactory completion of alternative service pursuant to Presidential Proclamation No. 4313.⁹

Since the Clemency Program had received national attention, there was little doubt as to the significance of a clemency discharge. Moreover, the recipients of clemency discharge were not entitled to federal benefits. In retrospect, the military deserter may have been more stigmatized than the draft evader.

Special Discharge Review Program.

The issue of clemency for draft evaders and military deserters gave rise to an argument for special consideration for another category of individual. In the context of a spirit of reconciliation and mercy for evaders and deserters, attention was also directed to the problems of Vietnam veterans. This group received national attention during the 1976 Presidential campaign when Jimmy Carter addressed the American Legion Convention in Seattle, Washington, on 24 August 1976:

⁸ Ibid., pp. A-1, A-2.

⁹ U.S., Department of Defense Form 1953, 1 October 1974.

. . . Where I come from most of the men who went off to fight in Vietnam were poor. They did not want to move to Canada. They didn't know where Sweden was. They didn't have the money to hide from the draft in college. Many of them thought it was a bad war, but they went anyway. A lot of them came back with scarred minds and bodies or with missing limbs. They suffered under the threat of death. And they still suffer from the indifferences of many of their fellow Americans. The Vietnam veterans are our nation's greatest unsung heroes.¹⁰

It was soon obvious that Jimmy Carter's concern included those veterans with less than honorable discharges. With guidance from the White House, the Secretary of Defense announced on 28 March 1977 a special program for the review of certain administrative discharges received during the Vietnam War. The program included provisions which allowed the participation of Vietnam War deserters who had not taken advantage of the Clemency Program. The program excluded those soldiers who were discharged for reasons involving violence and criminal intent. The Special Discharge Review Program introduced new criteria for upgrading discharges.¹¹

The public furor raised previously by the Clemency Program was mild in comparison to that which developed as a result of this special program. Some observers felt that President Carter should have declared a general amnesty, while others condemned his action. Much of the reaction was an emotional outpouring with little effect other than individual catharsis. Nevertheless, Congress became involved. Representative Robin Beard of Tennessee became the House leader for the special program's

¹⁰ Jimmy Carter, A Government as Good as Its People (New York: Simon and Schuster, 1977), p. 151.

¹¹ The existing criteria is based on an adherence to law, to the principles expressed in the governing regulations, and to philosophical principles of equity. The special criteria exceeded the foregoing parameters. Appendix 2 contains a memorandum providing new guidance to the members of the Army Discharge Review Board.

opponents. Because the Congress could not directly negate the President's prerogative, Representative Beard directed his opposition through Congress' control over money and appropriations. He sent a letter to each member of the House of Representatives asking support for an effort to stop federal benefits for those whose discharges were upgraded under the new criteria. Concurrently, the House and Senate Veterans Affairs Committees held hearings concerning the Special Discharge Review Program. Several bills were introduced denying payment of Veterans Administration benefits to all veterans who received upgraded discharges under the special program; or, requiring a separate Veterans Administration review of all upgraded discharges.¹²

Congress finally approved legislation concerning the Special Discharge Review Program. The legislation produced three significant results. First, it required a special study of all discharges upgraded under the Special Discharge Review Program. Only those veterans who would have been upgraded under normal discharge review policies would be eligible for veterans benefits. Second, it required the establishment of a special discharge review program for veterans of earlier wars who received undesirable discharges. Third, it required the establishment of uniform discharge review standards for veterans of all periods.¹³ This legislation was obviously a compromise measure that considered all the views that had been expressed and perhaps the President realized this fact when he signed the bill into law.

¹²"Upgraded Discharges," Washington (D.C.) Army Times, 27 June 1977, p. 59.

¹³"Hill OK's Legislation Barring Benefits to Most Deserters," Washington (D.C.) Army Times, 10 October 1977, p. 6.

The Clemency Program and the Special Discharge Review Program created an atmosphere in which the administrative discharge review system was closely scrutinized and dramatically revised. Yet, the administrative discharge system remained unchallenged.

An Innovative Proposal.

Although the administrative discharge system remained unchallenged by the legislation, one person did challenge the status quo of the system. In an interview with the Army Times, Assistant Secretary of the Army Robert L. Nelson commented upon the need to reappraise the administrative discharge system. He contended that there was strong justification for discontinuing all types of discharges except the honorable, bad conduct, and dishonorable. He alluded to the large percentage of discharges that were being upgraded through the discharge review program. He also stated that a revised discharge system "would recognize the good soldier but would take the Army out of the business of characterization or 'branding in perpetuity' individuals who are not suited or fail to measure up the standards of military service."¹⁴

Nelson's views represent an innovative proposal because he focussed his attention on the administrative discharge system rather than exclusively on the effects of that system. He identified certain facets of the administrative discharge system which he considers to be the cause of the problem. When considering the amount of work placed upon the military departments by the Presidential programs and by Congress, there is little surprise that Nelson felt that some modification to the administrative discharge system was necessary. A better solution

¹⁴"DA Eyes Dropping Bad Paper," Washington (D.C.) Army Times, 21 November 1977, p. 1.

can be reached by changing the administrative discharge system in a manner that would eliminate those practices which foster contentions of inequity.

CHAPTER 4

CHANGES TO THE ADMINISTRATIVE DISCHARGE SYSTEM

The administrative discharge system has been controversial for a number of years, and the Vietnam War precipitated a chain of events that established a need for a revision of the administrative discharge system. President Ford's Clemency Program and President Carter's Special Discharge Review Program created an atmosphere in which Congress passed new legislation forcing a reassessment of the discharge review process as well as requiring a special review program for veterans of earlier wars. These events suggest efforts to resolve a problem caused by the administrative discharge system. The efforts have been concentrated on the results of the system instead of the system itself. Thus the problem will continue to exist unless the administrative discharge system is changed.

Safeguards.

The safeguards provided for in the administrative discharge system have been compared with those safeguards provided for in the military judicial system. This comparison revealed that the safeguards for the latter system are comprehensive and that the review process occurs prior to the soldier's discharge if a court-martial sentenced him to a punitive discharge. Perhaps making the review process a part of the administrative discharge procedure would reduce or eliminate the need for a post-service discharge review system by assuring that the propriety and equity of the discharge is established by an impartial authority.

The Court of Military Review provides a good model for a similar reviewing body that could be created for the purpose of reviewing the cases of any soldiers recommended for a bad administrative discharge. The review process should be governed by a criteria mutually acceptable to the Department of Defense and Congress, thus assuring uniformity.

In order for a reviewing body to conduct a thorough and competent review of any case, it must have access to all the facts. This would necessitate a verbatim transcript of the administrative board proceedings, and current Army Regulations do not require such a transcript. Consequently, an additional workload may be incurred and probably require an increase in court reporters trained to record proceedings and prepare transcripts. The governing review criteria might entail the establishment of new board procedures which could require an increase in legal or paralegal personnel.

Any increase in personnel staffing normally signifies an increase in costs which would demand new appropriations, and increases in the defense budget are never popular. Moreover, in 1977, Congress removed six million dollars from the defense budget. This money had funded 450 legal positions used to process AWOL's.¹ Whether or not Congress would consider funding for the costs incurred in this change to the administrative discharge system remains a question.

Veterans Administration Benefits.

Because the Veterans Administration benefits play a prominent role in a discussion of administrative discharges, the relevance of these benefits in today's Army should be examined.

¹"GAO Would Allow Troops to Buy Their Way Out of Service," Washington (D.C.) Army Times, 16 January 1978, p. 3.

Since the earliest wars with the Indians, the federal government has traditionally provided some sort of compensation for veterans.² The current concept of relief, such as compensation for injuries, allotments for dependents, life insurance, medical treatment, and others, dates from World War I. This concept was expanded on 22 June 1944 when Congress approved the Servicemen's Readjustment Act, commonly called the "G.I. Bill of Rights." Under this Act, the benefits were increased to include such programs as college and vocational training, unemployment payments, and home, farm, and business loans.³ In 1956, the President's Commission on Veterans' Pensions observed that the average veteran was concerned with readjustment benefits as an aid to getting started in civilian life. The veteran also felt that he was entitled to educational benefits at the government's expense, if the draft had interrupted his schooling.⁴

The purpose of compensation is justified. Persons who were drafted or who volunteered for military service during periods of conflict sustained losses and privations, including disruptions of family life, employment, and education. Moreover, soldiers faced the possibility of physical and emotional disability and even loss of life. Without the draft in 1978, some may argue that the benefits far exceed the concept of compensation and relief. Others have observed that the

² Encyclopedia International, 1963 ed., s.v. "Welfare Legislation in the United States," by Morton Rothstein.

³ Encyclopedia International, 1963 ed., s.v. "Veterans Administration, United States," by Stuart Gerry Brown.

⁴ Paul Starr, The Discarded Army (New York: Charter House, 1973) p. 41., citing the President's Commission on Veterans' Pensions, Staff Report (March 1956) 4: 137-8.

"Veterans Administration represents the most highly elaborate form the welfare state has reached in America."⁵

The military services in 1978 are comprised of volunteers. Thus any disruption of civilian life is a voluntary act. Volunteers for the military service in the late 1970's have an unprecedented opportunity for training in many specialties that have a marketable value in civilian industry and business. If a person does not have the requisite qualifications nor the aptitude nor the desire to enlist for training in a marketable skill, he may select training in a combat skill or decide simply not to join the military service. Therefore, the individual has the freedom of choice.

The preceding discussion raises the question of whether or not the Veterans Administration benefits have a viable role in the Army of 1978. Many of the benefits available to veterans are consistent with the concept of relief. There is a wide range of medical care for service connected disabilities, vocational rehabilitation for the handicapped, and financial compensation for the disabled. Conversely, there are other programs such as the Contributory Educational Assistance Program and the program for home loans for veterans that do not seem to be consistent with the concept of relief.

The Contributory Educational Assistance Program replaced the G.I. Bill Educational Program for those persons who entered the service subsequent to 31 December 1976. This program entails a voluntary contribution by the soldier of \$50 to \$75 per month to a maximum cumulative total of \$2,700. When the participant elects to use the benefit, the

⁵Ibid., p. 48.

Veterans Administration matches the contribution at the rate of two dollars for every dollar contributed. The payments are made on a monthly basis for the number of months that the soldier contributed, or for 36 months, whichever is less.⁶ Although this program is designed to be less expensive to the government than the non-contributory G.I. Bill Educational Program, the costs could be high. For example, the Department of Defense recently estimated that it needs 400,000 enlistees annually to sustain the military force of the United States.⁷ While this estimate is subject to revision as time passes, it provides some information upon which to base potential costs of the Contributory Educational Assistance Program.

If only 75 per cent of the estimated 400,000 enlistees participated in the program at the rate of \$50 per month, the Veterans Administration's share of the contribution would be \$360 million annually. Because the program envisions a three-year period, the costs would increase as successive periods began to overlap. There are also inherent administrative costs associated with such a program that must be considered.

The program for G.I. home loans for veterans is the other program that may exceed the concept of relief. It features a moderate interest rate, no down payment unless required by the lending institution, and a long repayment period.⁸ To estimate the costs of this program is difficult because of the fiscal variances and the elusive

⁶U.S., Veterans Administration, Federal Benefits for Veterans and Dependents, VA IS-1 Fact Sheet, 1 January 1977, p. 17.

⁷"Brook, Nunn at Odds over All-Vol Progress," Washington (D.C.) Army Times, 21 November 1977, p. 20.

⁸VA IS-1 Fact Sheet, p. 23.

administrative costs; however, the very nature of the program seems to be beyond the concept of relief.

Because the issue of compensation appears to be a matter of perception, it is difficult to conclude whether or not these programs have a place in today's all volunteer force. Nevertheless, one could consider the proposition that the elimination of these programs would minimize the loss to those soldiers who fail to qualify for Veterans Administration benefits.

Discharge Purchase.

The General Accounting Office (GAO) has advanced an interesting concept in discharges. In a recent study involving the problem of unauthorized absence, commonly called AWOL, the GAO criticized the manner in which the military services are handling the problem. One of the alternatives that the GAO proposed is to allow a soldier to buy his way out of the service, and this would allow the government to recover some of its investments such as recruiting and training costs.⁹ This is not a revolutionary concept because there once existed a provision in the Army regulations that permitted the purchase of a discharge.¹⁰

In a separate study, the GAO reported that an extra cost of \$276 million had been incurred in the last six years because soldiers did not complete their term of service, and an extra cost of \$1.4 billion was incurred for recruiting and advertising.¹¹ Although the GAO has

⁹Washington (D.C.) Army Times, 16 January 1978, p. 3.

¹⁰U.S., Army Regulation 615-360, Enlisted Men, Discharge; Release from Active Duty, 26 November 1942, p. 13.

¹¹"Volunteers Cost Forces \$18 Billion," Kansas City (MO) The Kansas City Times, 7 February 1978, p. 12A.

indirectly, yet effectively, rebutted the financial wisdom of its proposal to allow soldiers to purchase their discharge, the proposal could have merit in a limited application to soldiers on a second or subsequent enlistment. For whatever price deemed appropriate by the Department of Defense, these soldiers could terminate their contract without retribution. Overall, this provision would not do much to improve the administrative discharge system.

The Characterization Principle.

Assistant Secretary of the Army Nelson, who questioned the validity of the existing administrative discharge system, stated that there were strong justifications for discontinuing all discharges except honorable, bad conduct, and dishonorable. He based his argument on the fact that approximately 40 per cent of the less-than-honorable discharges were being upgraded.¹² Nelson also acknowledged the problem of stigmatization, referring to it as "branding in perpetuity individuals who are not suited or fail to measure up to the standards of military service."¹³

Nelson suggested the possibility of replacing the general discharge and the bad administrative discharge by statements of service.¹⁴ Such a statement of service would be devoid of any characterization of service. While this appears to be a reasonable solution to the problem of stigmatization, it is not a complete solution. Although a statement of service would eliminate the direct branding effect, retention of the

¹²Washington (D.C.) Army Times, 21 November 1977, p. 1.

¹³Ibid., p. 22.

¹⁴Ibid.

honorable discharge would allow it to serve as discriminator or yardstick against which a statement of service could be compared. It would be obvious to anyone that a statement of service is not an honorable discharge. Moreover, there is the possibility that a statement of service could develop a bad connotation and be construed as being the opposite of an honorable discharge. Since Nelson has challenged the method of discharge characterization, perhaps the principle of characterization of administrative discharges should be challenged on the basis of equity and practicality.

In analyzing the procedures for administrative board actions vis-a-vis the simple procedures for the Trainee and Expeditious Discharge Programs, one can appreciate the relative burden placed upon the Army in administering board actions. A great burden is also placed upon the discharge review system.

. . . The recent experience with the Special Discharge Review Program (SDRP) and the requirement for a quantum augmentation of Discharge Review Board personnel again has highlighted the disproportionate manyear effort being devoted to the review of "bad paper." The potential projected backlog as a result of recent Congressional action on S. 1307 and the continuing number of less than honorable discharges being awarded dwarfs the recent SDRP efforts. . .¹⁵

Another example of this burden follows.

The Army moved Wednesday to upgrade from general to honorable the military discharges of thousands of former soldiers who were released from the service because of "personality disorders." The change is designed to ensure that persons are

¹⁵ Discharge Upgrading Newsletter, Atlanta, Southern Center for Military and Veterans Rights, 27 January 1978, p. 2. citing an undated memorandum from Assistant Secretary of the Army Robert L. Nelson to the Director of the Army Staff, subject: Administrative Discharge System. S. 1307 is the legislation requiring the establishment of a special discharge review program for veterans of earlier wars.

not stigmatized simply "because of a medical evaluation". . .
The move was prompted by a lawsuit. . .¹⁶

The discharge situation is a revolving door procedure which appears ludicrous and which must be corrected.

The principle of characterization and the Veterans Administration benefits appear to be closely related; however, a critical look at the basis for eligibility for benefits indicates otherwise. The basis for eligibility is found in Public Law 346 commonly called the Serviceman's Readjustment Act of 1944. Section 300 of this law specifies that certain conditions will bar all rights of a person under any law administered by the Veterans Administration. These conditions are:

The discharge or dismissal by reason of the sentence of a general court martial.

The discharge of a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority.

Discharge as a deserter.

Discharge of an officer by the acceptance of his resignation for the good of the service.¹⁷

Section 1503 of Public Law 346 stipulates that a discharge or release from active service under conditions other than dishonorable will be a prerequisite to entitlement to veterans benefits.¹⁸

Title 38, United States Code, which incorporates Public Law 346, includes additional conditions serving as a bar to benefits. Section 3504 specifies that any person shown by evidence satisfactory to the

¹⁶ "Army to Upgrade Discharges Based on 'Personality'," Kansas City (MO) The Kansas City Times, 10 February 1978, p. 8A.

¹⁷ Elmer A. Lewis, Laws Relating to Veterans (Washington: Government Printing Office, 1948), p. 641.

¹⁸ Ibid., p. 657.

Veterans Administration to be guilty of mutiny, treason, sabotage, or rendering assistance to the enemy will forfeit entitlement to benefits.¹⁹ Section 3505 provides that any person convicted of subversive activities will also forfeit entitlement to benefits.²⁰

Section 14.01 of the Department of Veterans Benefits Manual serves as the Veterans Administration's guide on character of discharge determinations. The guide concludes that an honorable discharge or a general discharge entitle a person to benefits unless there is a bar to benefits under Title 38, United States Code, Section 3103.²¹ Section 3103 is a reiteration of Section 300, Public Law 346. The guide also states that a dishonorable discharge deprives a person from benefits unless the veteran was insane when committing the acts for which discharged.²² The bad administrative discharge and the bad conduct discharge are considered to be under other than honorable conditions and require a formal finding by the Veterans Administration to determine eligibility for benefits.²³

The Veterans Administration has a discretionary role in ascertaining eligibility for benefits in those cases not specifically provided for by law. Thus the criteria for determining that which constitutes dishonor may very well exceed the specific conditions contained in the law. This discretionary role is a source of discontent for many veterans who feel that the Veterans Administration is capricious in rendering findings

¹⁹U.S., Title 38, United States Code, sec. 3504.

²⁰Ibid., sec. 3505.

²¹U.S., Veterans Administration, Department of Veterans Benefits Manual M21-1, 24 January 1977, p. 14-1.

²²Ibid.

²³Ibid.

in these cases not specifically governed by law. Yet, the issue at hand is the relationship between the characterization of administrative discharges and the Veterans Administration benefits. The evidence strongly indicates that the conditions under which a soldier is discharged remains the key to eligibility for Veterans Administration benefits.

Since the role of characterization in administrative discharges is not singularly important to benefits eligibility, the role seems to be one of selective stigmatization. Thus elimination of characterization would remove the Army from the odious and self-defeating practice of stigmatization. Yet, can the administrative discharge system function without the principle of characterization? From a conceptual perspective, it can; however, there might be legal, administrative, and philosophical issues that will arise. These issues can be resolved if a positive approach is taken. The manner in which the following concept is accepted or rejected remains a function of one's perception as to the need for change.

The first change involves the discharge certificate. Title 10, United States Code, Section 3811 prescribes that a discharge certificate will be given to each lawfully inducted or enlisted member of the Army upon discharge from the Service.²⁴ The issuance of a discharge certificate without characterization serves the intended purpose of providing proof that an individual has been discharged from the Armed Forces. In order to provide equity, this concept must, of course, be adopted by all branches under the Department of Defense.

The second change involves the Veterans Administration benefits. Since the eligibility for benefits is determined by the conditions under

²⁴Army Regulation 635-200, p. 1-4.

which a soldier is discharged, the most important factor to the Veterans Administration is the assurance that these conditions are documented. Therefore, the Department of Defense and the Veterans Administration must agree on a procedure whereby the Veterans Administration can have sufficient information upon which to determine eligibility for benefits. This procedure will then serve as the basis for adjusting current administrative discharge procedures.

Consideration must be given to the impact of an altered administrative discharge system. Since the punitive nature of characterization will be eliminated, administrative board procedures should be simplified. The principal concern should be to ensure that a soldier is given the opportunity to rebut any of the information that is contained in the discharge documentation. This will provide the Veterans Administration with the Army's case as well as the soldier's case. The new system could improve the Army's image by terminating a procedure that many have perceived as vindictive. Finally, the revolving door syndrome of discharge review can be drastically curtailed. Nevertheless, the Army Discharge Review Board will still function because it will review bad conduct discharges as well as proceed to reduce the workload involving the review of discharges from earlier wars.

Instituting a revised administrative discharge system will not be simple. Many arguments and problems will emerge. Perhaps one of the greatest problems will be the question of retroactive application, and the answer to this question and many others will require much study. Also, the Army leadership must acknowledge that the administrative discharge system is not intended to be retributive. Rewards for excellent

conduct and performance can be administered outside of the administrative discharge system, and punishment must remain an instrument of the Uniform Code of Military Justice.

CHAPTER 5

SUMMARY AND CONCLUSIONS

The United States Army can be perceived as both an organization and a society. As an organization, it is comprised of many elements or units that support the Army's objective of a strong national defense. The soldiers within these units are expected to contribute to the attainment of their units' goals. Whenever a soldier becomes unproductive or becomes a liability to the organization, there must be a concentrated effort to assist that soldier in becoming productive. If the soldier fails to respond to the organization's efforts, the soldier must be released from the organization. The administrative discharge system is the instrument used by the Army to accomplish the removal of such a soldier.

As a society within the framework of a national society, the Army is responsible for maintaining law and order in its structure. Whenever a soldier violates the law, the military judicial system is used to solve the problem. If the offense is serious, the soldier must be tried by court-martial and if found guilty, the punishment must be consistent with the nature of the offense. The soldier may be removed from the Army by a punitive discharge. This instrument of removal is governed by a detailed set of rules embodied in the Uniform Code of Military Justice.

The military justice system may be used to punish the soldier, which might include the soldier's removal from the Army. The administrative discharge system is designed to be used to remove an unproductive

soldier from the Army. The distinction between the purpose of the two systems seems obvious, and therefore the administrative discharge system should not be used as an instrument of punishment.

The Vietnam War resulted in a series of events which created renewed interest in the problems inherent in the administrative discharge system. The Special Discharge Review Program in particular, caused Congress to reevaluate the discharge review process. Congress directed the Department of Defense to produce uniform standards for reviewing discharges and to conduct a special discharge review program for veterans of earlier wars.

The actions taken to revise the discharge review process have raised certain questions. Does Congressional intervention in the discharge review process signify consequences of the administrative discharge system far more serious than the mere removal of soldiers from the military organization? What does this intervention portend for the Army? Assistant Secretary of the Army Robert L. Nelson has provided insight into the possible answers to these questions. He indicates that the Army is in the business of characterizing discharges which equates to "branding in perpetuity individuals who are not suited or fail to measure up to the standards of military service." He is also concerned with the massive workload being created in the area of discharge review.

His observations and concern merit serious consideration. The problems caused by stigmatization were addressed in a recent federal court decision.

. . . The discharge policies involving personality (formerly called "character and behavior") disorders were overhauled

as a result of an agreement settling a lawsuit against the Army. . . .

Under the court settlement, the Army agreed to review the applications for upgraded discharges with "compassion" and grant honorable discharges except where there are specific reasons for not doing so. . . .

In the court action, attorneys for two former soldiers who sued the Army had argued that general discharges for personality disorders stigmatize people and unfairly handicap them in job hunting and career advancement. They said many state and local governments refuse to hire veterans without honorable discharges.¹

Beyond the problem of stigmatization, the lawsuit settlement evinced Nelson's concern for increased workloads. The Army indicated that over 56,000 soldiers have been separated with general discharges for personality disorders since 1958. Moreover, the Army is attempting to contact nearly 12,000 veterans who had been previously denied relief in their request for upgrade because of personality disorders.² The retroactive application of new criteria is indeed creating a massive workload.

The inequities of the administrative discharge system and particularly the consequences of the bad administrative discharge, have created public concern. The recent lawsuit settlement concerning personality disorders is only one more indictment of the characterization principle. The piecemeal approaches to solving a problem is merely creating additional problems involving additional workloads and the possible conclusion that the Army, and perhaps the other military services, is reluctant to terminate a vindictive practice. This study proposes a change which involves eliminating the principle of characterization.

¹"'Personality Disorder' Discharges Upgraded," Washington (D.C.) Army Times, 27 February 1978, p. 37.

²Ibid.

In the interest of equity and practicality, the Army must focus its efforts on the cause of the problem and not its effects. The proposal to eliminate the characterization of administrative discharges may elicit strong criticisms from factions within the Army, the Department of Defense, the Veterans Administration, and even Congress. Nevertheless, the need to change the system transcends the need to avoid a major controversy.

APPENDIXES

APPENDIX 1

FEDERAL BENEFITS

The following is a list of federal benefits extracted from VA IS-1 Fact Sheet, 1 January 1977, Federal Benefits for Veterans and Dependents. Short, descriptive titles are used and are intended to provide a basic insight into the comprehensive nature of the benefits. Each title contains the page number where it may be found in the cited reference.

Automobiles or Other Conveyances (for disabled veterans). p. 1.

Compensation (for service-connected disabilities). pp. 1-2.

Annual Clothing Allowance (based on use of prosthetic and other orthopedic appliances). p. 2.

Pension (for nonservice-connected disabilities). pp. 1-6.

Hospitalization. p. 6.

Medical Care for Dependents or Survivors. p. 7.

Nursing Home Care. p. 7.

Alcohol and Drug Treatment. p. 8.

Domiciliary Care (because of permanent disability). p. 9.

Outpatient Medical Treatment. pp. 9-10.

Outpatient Dental Treatment. p. 10.

Prosthetic Appliances. p. 11.

Aid for the Blind. p. 11.

Educational Assistance. pp. 12-22.

GI Loans for Homes, Condominiums, and Mobile Homes. pp. 23-28.

Wheelchair Homes (home adapted for wheelchair use). p. 29.

GI Life Insurance. pp. 30-33.

Servicemen's Group Life Insurance. pp. 33-34.

Veterans Group Life Insurance. pp. 34-35.

Veterans Mortgage Life Insurance (for totally disabled veterans with special adapted housing grants). p. 35.

Dependency and Indemnity Compensation. p. 36-37.

Nonservice-Connected Death Pension. pp. 40-42.

Reimbursement of Burial Expenses (\$800.00 maximum). pp. 42-43.

Burial Flags. pp. 43-44.

Burial in National Cemeteries. p. 44.

Headstone or Grave Marker. p. 45.

Presidential Memorial Certificate. pp. 45-46.

Memorial Markers and Memorial Plots (nonrecovered remains). p. 46.

Reemployment Rights. pp. 46-48.

Unemployment Compensation (governed by state laws). p. 48.

Job Finding Assistance. p. 48.

Employment in the Federal Government (promotion of opportunities for disabled veterans and Vietnam era veterans). p. 49.

There are various non-Veterans Administration benefits available which combine programs administered by the many federal and state agencies.

APPENDIX 2

SPECIAL DISCHARGE REVIEW PROGRAM

The following is extracted from a memorandum from the President, Army Discharge Review Board, to all the presiding officers of the Army Discharge Review Board (29 March 1977).

. . . Specifically, under this program, former service members who received UD's or GD's during the period 4 Aug 64 - 28 Mar 73 are eligible for review. Individuals who received UD's during the RVN era will have their discharges upgraded if they meet any one of the following criteria:

- a. Wounded in combat in RVN.
 - b. Received a military decoration, other than a service medal.
 - c. Successfully completed an assignment in SE Asia or in the Western Pacific in support of operations in SE Asia.
 - d. Completed alternate service or was excused from completion of alternate service under the clemency program instituted 16 Sep 74.
 - e. Received an HD from a previous tour of military service.
3. Individuals may also qualify for upgrading whenever the Board believes such upgrading is appropriate. . . Factors to be considered in this regard include:

- a. Age, general aptitude, and length of service at time of discharge.
- b. Education level at time of discharge.
- c. Whether entered the military from a deprived background.
- d. Possible personal distress which may have contributed to the acts which led to discharge.
- e. Whether entered military service upon waiver of normally applicable entrance standards.

f. Whether the actions which led to discharge were alleged at the time to have been motivated by conscience.

g. Whether was discharged for abuse of drugs or alcohol and, if so, any contributing or extenuating circumstances.

h. Record of good citizenship since discharge.

. . . This program is being implemented in the spirit of forgiveness and compassion in which the President has sought to bind up the divisions of the Vietnam era. Any upgrading obtained under this program will be an act of forgiveness, and prospective in its effect.

WILLIAM E. WEBER
Colonel, IN
President

APPENDIX 3

DISCHARGE REVIEW CONCEPTS

The following concepts are extracted from the 30 November 1977 issue of the Discharge Upgrading Newsletter which cites the Army Discharge Review Board Standing Operating Procedure.

. . . Character and Behavior versus Habits and Traits. Too frequently the line of demarcation between separation for character and behavior disorders (honorable type discharge) vis-a-vis separation for habits and traits (usually under other than honorable conditions) is not clearly substantiated. Many times the decision to board as "unfit" versus "unsuitable" was more influenced by the character and personality of the commander and circumstances than it was by the character and personality of the individual being separated. The panel in considering whether or not the proper method was used in eliminating the individual from the service must decide the cause/effect relationship, the individual's behavioral capabilities, and his behavioral pattern. In essence, the panel must ascertain whether or not the infractions of discipline were acts of commission or of omission. A key question that may be used by the panel in arriving at this determination is to decide whether or not the individual was simply incapable of proper performance. Coupled with this must be a determination as to the nature of the offense and the time/space circumstances under which the offense was committed.

. . . Would but Couldn't; Could but Wouldn't. This area of consideration very closely relates to the preceding paragraph. Some individuals are error prone; others clearly mistakes of the procurement process and should never have been inducted or enlisted into the Army. These men could properly be called victims of the trauma associated with attempting to meet critical personnel requirements during RVN within the political, economic, and social constraints that detracted from efficient operation. It is inevitable that some of these men would have had difficulty with the military system. Key to consideration of their cases is the determination as to whether or not they were sincerely trying to conform versus whether or not there was deliberate intent not to conform. The panel may grant relief if, in its opinion, the man intended to be a good soldier but simply could not.

. . . Homosexuality. Individuals afflicted with this problem are clearly unfit for a military environment. They are unfit not so much from the standpoint of not being able to perform adequately their military duties, but because their impact on military society is so traumatic. It is their effect on the command because of the nature of their affliction which makes it mandatory that they be severed from the military service. Many times such individuals have otherwise been exemplary soldiers. Nonetheless, the panel in considering appeals from individuals separated by reason of "homosexuality" must affirm Army regulations in this area. However, the panel must insure that it was compliance with the regulations which produced the character of discharge and not the emotions generated in the command because of the nature of the offense. Of equal importance, the panel must give consideration to the manner in which the behavior of the individual concerned was brought to the attention of the command. As an example, those individuals whose aberration becomes known because they have sought help must clearly be separated, but the nature of their separation must not be a punishment.

APPENDIX 4

CONTENTIONS

Contentions used in the context of this study represent arguments used by former soldiers who have appealed their discharge to the Army Discharge Review Board. The Army Discharge Review Board prepared an informal list of contentions which represented a condensed version of frequently used arguments. This list was used by the author in 1977 when he served as the Secretary/Recorder to the Army Discharge Review Board Panel located in Atlanta, Georgia.

My Commanding Officer refused to listen to my problem or give me help to resolve my personal problems which consisted of. . . so I went AWOL to take care of them.

My Commanding Officer and the JAG told me that if I went to trial for my offenses I would go to jail for a very long time. I was afraid and I didn't want to go to jail or serve any more time in the stockade, so I asked to be let out.

The only reason I took the UD was that I was told by. . . that it would be automatically upgraded after six months.

The only counseling I got was in a room with. . . other guys and the lawyer talked to us but never spoke to me personally. All he did was to instruct us on how to fill out the forms and never helped us decide what to do.

I asked for time off so that I could be with my wife while she had the baby but my Company Commander refused, so I went AWOL.

My Company Commander told me I was going to get a General Discharge but when I was getting ready to leave, they gave me a UD.

No one told me what the impact of the UD would be.

I applied for a hardship discharge but when they turned me down, I couldn't perform as a soldier because my family's problems came first.

I was separated as unfit without having had a chance to see a psychiatrist or have a mental status evaluation.

I wanted to make a statement in defense of my actions, but they didn't give me a chance.

I asked to go in front of a board but they didn't let me.

These contentions are not all inclusive but they demonstrate incidents that have occurred. Also, caution must be exercised not to misinterpret the significance of this appendix. These incidents occurred and were substantiated by the evidence of record. Yet they do not indicate that most officials involved in the administrative discharge system are guilty of these actions. These incidents merely emphasize that the potential for abuse is real.

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