"When we assumed the soldier, we did not lay aside the citizen."

George Washington's June 26, 1775, letter to the Provincial Congress Issued just 12 days after the birth of the U.S. Army, and 4 days prior to the drafting of the Articles of War (Forerunner to the UCMJ) (Exhibit 2).

Summary

Department of Defense (DoD) Separation documents governs the service members' return to civilian life. Most notably, DD Form 214. This official record has been referred to as the service members "Passport to Civilian Life" *Sims v. Fox 492 F.2d 1088 (5th Cir. 1974) at 1091.* Indeed the DD Form 214 has obtained this name because separated service members and employers use it as a universal job reference. The exact form and format of the separation documents are not defined by statute. Rather, that detail is left to DoD Instruction Number 1336.01 (Exhibit 3)

The nature and manner by which a service member is discharged has life-long and far-reaching effects. Consider *Kauffman v. Secretary of the Air Force, 415 F.2d 991 (D.C. Cir. 1969) at 995.*

> First, the deprivation of liberty under an invalid conviction is a grievous injury, but a military discharge under other than honorable conditions imposes a lifelong disability of greater consequence for persons unlawfully convicted by courts martial.

This imposition of a life-long disability is not limited to an other-than-honorable discharge. But it also extends to "Honorable" discharges that the Department of Defense sees fit to 'colorize' with additional and segregating information. These 'colorized' separations have the effect to prompting post separation discrimination.

Further still are the various administrative discharge processes that result in veterans, who having committed no crime under military law, are punished with a life-long stigma. In its current form, the most damaging of these discharges are the much-maligned "Personality Disorder Discharges"

Segregating Information

The Department of Defense has explicitly known since the early 1970's that its practice of putting information identifying medically separated and medically retired service members as "disabled" on DD Form 214 to be a problematic violation of the service member's right to privacy. *See MEMORANDUM for the Secretary of Defense dated 1 August 1972. (Exhibit 4). See also Letter from Michael Alba, Lt. Col., USAF Congressional Inquiry Division, Office of the Legislative Liaison to then Sen. Robert Morgan (Exhibit 5).*

Indeed there existed clear, specific, concerns relating to the practice of placing information that <u>might</u> indicate a mental disability as early as June 11, 1956. *See DoD Instruction, 1336.3 II.(D) (Exhibit 6).*

Further, the Nixon Administration was –deeply- concerned about the possible invasion of privacy issues DD Form 214 posed to separating service members. Secretary Melvin Laird stated the concern thusly:

> I continue to be concerned that practices which make possible public disclosure of some of the underlying reasons for administrative discharges may be inconsistent with our policy directive on invasion of privacy, and could have an unjust and unfair impact on some discharged personnel. *Need for and Uses of Data Recorded on DD Form 214 Report of Separation From Active Duty (Exhibit 7 at p. 5)*

Page 7 of Exhibit 7 also contains the following quote from the Assistant Secretary of Defense:

> The presence of this information can be a cause of undesirable discrimination against the individual by private employers or other persons in civilian life. The Department does not intend or desire such result, whatever the circumstances of an individual's separation from active duty.

The American's with Disabilities Act

Passed in 1990 and expanded in scope in 2008 by amendment, the American's with Disabilities Act establishes certain federally protected civil rights to disabled individuals. In particular, the prohibition against

discrimination in applications for employment and hiring practices shall apply to all persons with disability either real or *presumed*.

Congress has found:

> *(1)* physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of disability or are regarded as having a disability also have been subjected to discrimination. *42 USC § 12101 (a)(1). (Emphasis added)*

Note the first phrase. Congress has acknowledged that each person, whether or not a veteran, has a right to participate fully in all aspects of civil society.

Congress continues:

> (2) Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem. *42 U.S.C. § 12101 (a)(2).*

The placement of the word "disability", or descriptions of mental or physical disability, or coded information that which conveys that information, on the DD Form 214 is in effect an offer of collusion[1] to discriminate against the veteran that is extended to the veteran's future employers. The allurement[2] of which is made all too seductive by the civil immunity espoused to the prevaricator[3] under the color of *Golding v. U.S. 48 Fed. Cl. 697 (Fed. Cl. 2001)*. and *10 U.S.C. §§ 1201—1222. Ref. 18 U.S.C. § 241.*

The offer of collusion is in the act of making the discriminatory information available on Copy 4. The allurement occurs when the stigmatizing information is placed side-by-side with information an employer has legitimate cause to know. While the act of prevarification occurs when the personnel separation NCO advises the veteran that they will "need" Copy 4 to obtain VA benefits and/or employment and action on the part of government and civilian employers that demand Copy 4 as a condition of the employment screening process.

Admittedly, for reasons necessary to maintain a fit, and viable military service DoD is permitted to discriminate against the admission of the disabled to the uniformed ranks. The reason is strait forward. Being exceptionally physically, and mentally fit is an essential task of warfare. It isn't that DoD does something *explicitly* unlawful when it records the Narrative Reason for Separation, the SPD Code, the Separation Authority, or recounts a disability rating in the remarks section of the DD Form 214. Instead, these actions place an overwhelming temptation to biased employers and private investigators to use this information to discriminate against the disabled veteran. As detailed below, DoD is fully aware of this outcome of its actions. As such, the Office of the Secretary of Defense has taken excessive liberty with his authority to issue a discharge certificate, again, this is discussed below.

DoD contends that when a veteran requests Copy 4 of their DD Form 214 they are authorizing the release of disability information to themselves, 32 C.F.R. § 45.3(a)(3)(b)(1)(A). What is subsequently forgotten is employers later demand proof of the Character of Discharge as a condition of employment. This information is only found on Copy 4. Thus Copy 4 is required for gainful employment. In the alternatives given to the separating service member, there is substantial duress.

The choice given to the veteran at the time of signing the DD Form 214, amounts to a decision between self imposed destitution by accepting only DD 214 Copy 1 - a version unacceptable to civilian employers since it lacks the Character of Discharge. *Rew v. Ward 402 F.Supp. 331 (D.C.N.M 1975).* Or, refuse to sign and condemn

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[1] Collusion n. (15c) 1. An agreement to defraud another or to do or obtain something forbidden by law. *Blacks Law Dictionary 300, (Bryan A. Garner ed., West 2009).*

[2] Allurement. (1873) *Torts*. An attractive object that tempts a trespassing child to meddle when the child ought to abstain. SEE ATTRACTIVE-NUISANCE DOCTRINE. *Blacks Law Dictionary, 89 (Bryan A. Garner ed., West 2009).*

[3] Prevaricator *n*. [Latin] 2. *Roman Law* One who betrays another's trust, such as an advocate who aids the opposing party by betraying the client. *Blacks Law Dictionary, 1307 (Bryan A. Garner ed., West 2009).*

ones self to an indefinite and unenlisted period of peonage[4] under his commanding officers heel.[5] Who put in that situation, and while denied the benefit of counsel, wouldn't accept a segregating and discriminatory Member Copy 4 of the DD 214 on the spurious hope to escape the deleterious circumstances of their discharge?[6] A forced choice between destitution, peonage, or segregation is not the action of a thankful democracy.

Of Truth and Injustice

The court of claims and various Boards for Correction of Military Records have limited their jurisdiction to assessment of what is in error or unjust. It is this last question that is substantially problematic. The Boards have consistently ruled that in order for something to be 'unjust' it must be 'untrue'. I argue the alternative. What is factually "true" can never-the-less still be "unjust".

Consider for the moment a person discharged from military service with the phrase "Negro" placed on their DD Form 214. How would that affect the veterans' employability in the segregated south? Even a mostly anonymous internet based job would be foreclosed in such circumstances. Clearly such an imposition would be beyond the Secretary's authority to issue a military discharge certificate. *Harmon v. Brucker 355 U.S. 579 (1958).* In terms of the discriminatory effect of the information, there is no difference between that situation and the present practice of placing disability related information on a veterans separation document.

"Stigma Plus"

For a stigma to have significance it must do more than shock the conscience or label a person a member of a specific group. Something material or a property right must be lost by the assignment of the stigma. Most notably, the ability of the stigmatized individual to earn a living is typically affected.

Starting in 2009 the Bureau of Labor Statistics started keeping separate unemployment data for disabled individuals. Thus it is now possible to compare this information with data already being tracked for veterans of various eras. Note that for both adult males and adult females the disabled population is almost exactly twice the able bodied population. Using this information, it is now possible to project the unemployment rates for the disabled population associated with each demographic group.[7]

Reported National Unemployment Rate		**Reported Disabled Unemployment**
Adult Males	9.70%	18.80%
Adult Femaies	8.10%	16.20%

Reported National Unemployment Rate		**Projected Disabled Unemployment**
Adverage	9.70%	19.40%
Whites	8.80%	17.60%
Blacks	15.70%	31.40%
Hispanics	12.60%	25.20%
Asians	8.70%	17.40%

[4] Peonage n. (1844) Illegal and involuntary servitude in satisfaction of a debt. *Blacks Law Dictionary 1249, (Bryan A. Garner Ed., West 2009).*

[5] The service member is not discharged until both the DD 214 is complete and 2400 HRS on the effective date of discharge has passed. Until both requirements have been met, service member is still subject to UCMJ action. *Harmon v. Brucker, 355 U.S. 579.*

[6] The separating service member is certainly mindful that should he refuse to sign his commanding officer is well within his authority to have the Provost Marshal arrest the dischargee and forcibly return him to training under threat of UCMJ action.

[7] Data obtained and extrapolated from Exhibit 19

Reported Veterans Unemployment		Projected Disabled Unemployment
Average	8.10%	16.20%
Gulf War II	11.60%	23.20%
Gulf War I	6.10%	12.20%
WWII, Korea, Vietnam	15.20%	30.40%
Other Periods	8.40%	16.80%

These numbers however only show part of the picture. *The Bureau of Labor Statistics, Current Population Survey, August 2009 veterans supplement, chart 10* (Exhibit 20) shows the following information veterans employment information as a percentage of population.

Employment Participation Rates		"Real" Unemployment Rate	Reported Unemployment
Less than 30%	77.30%	22.7%	9.10%
30%-50% Disabled	75.70%	24.3%	11.40%
60%-90% Disabled	55.8%	44.2%	9.1%
Disabled, Total	70%	30.0%	10.40%
Not Disabled	81.90%	18.1%	9.70%

Notice that all categories of disability have substantially higher levels of "real" unemployment than the non-disabled population. Note also that the "real" unemployment rate of veterans is twice what the "reported" unemployment rate is.

Notice also that the "real" unemployment numbers for veterans differs greatly from the unemployment rate reported by that Bureau of Labor Statistics.

The difference between the two numbers can be readily explained. The "real" unemployment rate includes those veterans those are in educational programs, are homemakers, or have given up on finding work, or who are not eligible for unemployment compensation for other reasons. *Hidden, are the numbers of disabled veterans that are substantially and materially underemployed.*

What is particularly interesting is that the "real" unemployment rate for veterans rated 60% or higher is significantly lower than the "real" unemployment rate for veterans with total disability. *This suggests something is fundamentally flawed with the way the VA disability rating tables are calculated and/or the manner in which total disability awards are granted.*

Regardless, what is clear is that having the label "disabled" brings with it substantial stigma in the civilian market place that impacts the disabled individuals earning potential. Placing the label of disability on either Copy 1, or Copy 4 of the DD Form 214 only serves to further segregate the disabled veteran from the rest of the working population.

"Right to Due Process"

Much has been written about the right to due process pertaining to the method and nature of separation from military service. Indeed no service member may be separated or retired from service for reason of physical disability without a full and fair hearing if he demands it. *Casey v. U.S. No. 528-80C (Cl. Ct. 1985), 10 U.S.C.A. § 1214., 53A Am. Jur. 2d § 189.*

Casey v. U.S. No. 528-80C (Cl. Ct. 1985) states: *"An administrative discharge is void if it ignores procedural rights or regulations, exceeds applicable statutory authority or violates minimal concepts of basic fairness" (emphasis added).* I contend, that the current and historical manner of discharge for disabled veterans is unjust as it violates the minimal concepts of basic fairness espoused by Casey.

The Department of the Army recently responded to a Senatorial inquiry regarding the Board of Corrections for Military Records adherence to *Casey v. US.*

> …However, it is noted that the Army's discharge processes have changed since the discharge in 1976 giving rise to Casey v. US 8 Cl.Ct. 234 (1985). The Army's discharge processes conform to constitutional, statutory, and Department of Defense guidance. Furthermore since this litigation the Department of Defense revised the Certificate of Release or Discharge from Active Duty, DD Form 214, to limit release of any stigmatizing information to only authorized individuals. (Exhibit1)

The above US Army response to inquiry ignores a significant fact. Specifically, a Memorandum published by then Deputy Assistant Secretary of Defense (Manpower and Reserve Affairs), titled "Discontinuation of the Use of Certain Information of Separation Documents Issued to Individuals," and dated March 27, 1974.

The net effect of this Memorandum was to remove the offending information from the DD Form 214 in the interest of protecting civil liberties. However, contrary to DoD's own directives and counsel regarding its own assessment of the sensitive and discriminatory nature of the information, DoD –CANCELED- this Memorandum's controlling effect on January 6, 1989 with DoD Instruction 1336.1 (Exhibit 8). By doing so, the offending information was once again placed onto DD Form 214 Copy 4, where it has remained since. Note the year, 1989. The stigmatizing information was returned to DD Form 214 –after- Casey v. US.

Additionally, the ABCMR response ignores the practice of placing the veterans disability rating in the "remarks" section (Block 18) of Copy 1. *Ref DoD INSTURCTION 1336.01 Enclosure 3 § 3 PREPERATION (g). (Aug. 20, 2009) (Exhibit 3)* This practice continues despite the long-standing recognition that a "disability" or a "presumed disability" is itself stigmatizing. (Exhibit 9, block 18) *Ref ADA, and ADAAA*.

There is the question, "Who is an 'Authorized Individual'?". If the stigma of disability is boldly proclaimed in Block 18 of Copy 1 i.e. 'the sanitized copy' hasn't DoD made that available to everyone with a cause, unfounded or not, to know the service member's disability stigma?

The answer to this question can be found by reviewing *DoD Instruction 1336.01 Enclosure 4* (Exhibit 3). Whereas, it can be noted that Block 28 – Narrative Reason for Separation is made widely available as it is contained on all copies of DD Form 214 save Copy 1.

Therefore we can conclude through, DoD's conduct in handling stigmatizing information, that ANYONE that wants to look at a veterans' DD Form 214 is "Authorized" to know stigmatizing information. At least as far as disability information is concerned.

The Global War on Terror

Since the start of the Global War on Terror in 2001, the DoD generally, and in particular the Department of the Army, saw an marked increase in the number of veterans discharged for reason of personality disorder. This resulted in a 165% increase in the number of personality disorder discharges over the three-year period covering fiscal years 2006 – 2009. *Statement of Paul Sullivan, H.R. Comm. of Vet. Affairs, Sep. 30, 2010*. These personality disorder discharges carry with them a hefty additional price tag. Veterans discharged with this particular Narrative Reason for Separation are not entitled to receive Disability Retirement benefits from DoD and have very limited recourse to the Department of Veteran's Affairs. Thus, in financially lean years DoD has a substantial financial incentive to discriminate against disabled veterans generally, and mentally ill veterans in particular. This has caused considerable gnashing of teeth in Congress. See, *"The True Cost of War" a Full Comm. Hearing by H.R. Comm. Sep. 30, 2010*

Indeed, at least as far as the Army is concerned, segregation of the disabled appears to be intentional. *Administrative Military Discharge Process, AR 635-200 Ch. 1 § 1-1(c)(1)* states the following:

> (1) The acquisition of military status involves a commitment to the United States, the Army, one's fellow citizens, and soldiers, to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment. (Emphasis added)

Rhetorically, is the soldier wounded in combat with the enemy a *failure* if is wounds render him disabled? Is the solider that is injured in a training accident such as a parachute malfunction, or a life-fire exercise accident a *failure* for risking is life each day of training? What of the National Guardsmen that contracts respiratory illness after responding to a hurricane? Is she a *failure*? Finally what about the medic, who after being hit by an IED, sees too much carnage on the front lines and develops both Traumatic Brain Injury and/or PTSD. Is he a *failure*? No.

No reasonable person would find that a volunteer that sacrifices his mind and/or his body in the defense of Democracy has failed that democracy. **Yet, here before you stands just such a preposition. I am a soldier**

injured in Honorable Service, who was kicked out for "failing to meet medical standards". Then segregated and branded for all employers to see. (Exhibit 9, Block 18)

Motive

Is money the motive? Sadly, yes. DoD already knows what the potential remedies are to the discrimination issue and the associated problems with each. But for want of just $1,000,000 failed to correct the problem through computerization in the 1970's. *See Memorandum for the Secretary for Defense, Dated 26 September 1973 (Exhibit 10).*

If DoD was unwilling to invest a scant $1,000,000 with the support of Congress in 1973 to protect the civil rights of its separating service members, rights each one of its members are sworn to defend, why then should we believe the same Department of Defense would not make a similar choice when much more money can be saved by discriminating against just one service member? (The savings come by eliminating higher risk individuals from the DoD's retiree medical care "Tricare" program and by lowering the amount of disability severance pay awards.)

Be mindful again of the following Army Regulation, *"Soldiers who do not conform to required standards of discipline and performance and Soldiers who do not demonstrate potential for further military service should be separated in order to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance."*

Such a callous disregard for human dignity is not cut from the cloth of liberty[8], but is instead reminiscent of the totalitarian states counted as enemies. The very notion that the enlisted man "owes" a lifetime debt of subservience for failing to meet the military's standards violates a long list of anti-slavery legislation that begins with *lex Poetelia*[9] *which is further echoed with US Const. art. I § 8 Clause IV & amend. XIII Ref 11 U.S.C. Chap. 7.*

Likewise, *Feres v. U.S. 240 U.S. 135 (1950)* does not apply here. The Feres Doctrine essentially bars a service member from collecting damages for personal injuries sustained during the course of performing their official duties. This is not a personal injury case, and the discrimination that occurs, occurs against a civilian post separation. As such it is not part of the veterans official duties. See, *Parker v. U.S., 611 F. 2d. 1007 (1980).* Also, it is unconscionable to argue that "good order and discipline" is achieved by discriminating against civilians.

History

Why hasn't something been done before now? Actually, something was. But the solution was undone by DoD in 1989.

Originally, congressman John Seiberling investigated and exposed the pattern of DoD lead discrimination on the house floor on November 28, 1973 (Exhibit 11). I am told there where similar investigations on the Senate Floor by the Honorable Sam Ervin. But at this time, I cannot substantiate that rumor due to the lack of computerization of that portion of the Congressional Record.

On March 27, 1974 Congressman Edward Koch went to the house floor to declare "A Victory against SPN's" and announced that then Secretary of Defense Schlesinger has voluntarily agreed to remove stigmatizing information from the DD Form 214, and to reissue redacted DD 214's to any service member that requests it. (Exhibit 12)

This interchange on the house floor where reflected in the following Memoranda by the Department of Defense:

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[8] Liberty (14c) 1. Freedom from arbitrary or undue external restraint, esp. by a government. *Blacks Law Dictionary 1001, (Bryan A. Garner Ed., West 2009).*

[9] *Lex Poetelia* [Latin] *Roman Law.* A law abolishing a creditor's right to reduce his debtor to slave-like treatment. This law was enacted sometime before 300 AD. *Blacks Law Dictionary 995 (Bryan A. Garner Ed., West 2009).* See also*, lex Poetelia Papiria de Nexis*. Circa 326 B.C.E. *Livy 8.28*. The Roman Law translates: "No man (shall) be kept in irons or in the stocks, except such as have been guilty of some crime, and then only until they have worked out their sentence; and, further, that the goods and not the person of the debtor shall be the security for the debt."

Deputy Assistant Secretary of Defense (Military Personal Policy) Memorandum, "Recommendation Concerning Request/Decline from Showing Offer of Narrative Reason for Separation": January 25, 1978

Deputy Assistant Secretary of Defense (Military Personal Policy) Memorandum, "Discontinuation of the Use of Certain Information on Separation Documents Issued to Individuals." March 27, 1974

Deputy Assistant Secretary of Defense (Military Personal Policy) Memorandum, "Discontinuation of the Use of Certain Information on Separation Documents Issued to Individuals." May 13, 1974

The above documents are not currently available to the public and a pending FOIA request for them produced no responsive documents.[10] Thus, it is very likely that all copies where spoliated in 1989 when their controlling authority was discontinued. They are known now only through references made by other documents.

Then, as I mentioned above, and as Exhibit 8 clearly shows, the practice of placing stigmatizing information on DD Form 214 Copy 4 was resumed on January 6, 1989. Bear in mind the date…this was a lame duck executive change made in the last two weeks of the Ronald Regan Administration. Exhibit 8 was the supplanted by Exhibit 3 on August 20, 2009.

However, this was not the first time that the issue came before Congress. In 1949 when the Uniform Code of Military Justice was under consideration by the Senate a suggestion was made that the bill be amended such that only an Honorable Discharge may be issued without court marshal proceedings.[11]

Secrecy is a Fraud

But aren't the new "SPD codes" secret? Can't DoD simply resort to their use exclusively? Actually, the key codes are widely available on the Internet. It is a simple matter of putting "SPN Code" "SPD Code" or "Code DD 214" in the search area of any public search engine to locate a list of them (Exhibit 14). The most current list of the codes is included (Exhibit 15), and was obtained by a simple search of USASearch.gov (Exhibit 16). Private investigative firms even advertize their knowledge of the codes and their ability and willingness to "help" a potential employee obtain their DD 214 for the express purpose of letting an employer see the SPN/SPD codes for discriminatory purposes. (Exhibit 17).

Indeed, Casey v. U.S elaborates exactly on this point:

> …Even if the codes are "for official use only," one has the distinct impression that the codes are widely disseminated. In any event, in view of the huge number of people in this country that have at one time or another in their life been associated with the armed forces of this country, this Court cannot give credence to the defendant's argument. The truth of the matter is that military separation codes are known, understood and available to the part of society that count-i.e., prospective employers…

If these SPD codes where launch codes to our nuclear missile stockpile would DoD hand simply hand one of them out to *every* separating service member moments before they leave the long arm of the Uniform Code of Military Justice? No. That would be silly. But isn't that what DoD is doing when they say the codes are secret? They are declaring something secret, then giving the "secret" to everyone with an interest in knowing the secret? Surely, the guardians' of our nations most dear secrets have thought this through. The "Secrecy" is a fraud.

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[10] FOIA received from the Department of the Army on December 20, 2010 and assigned case number 11-F-0335 by Curtis Gibbens of the Office of Freedom of Information Department of Defense 1155 Defense Pentagon Washington, DC 20301-1155 FAX: (703) 696-4506

[11] Letter from Senator McCarran, as Chairman of the Committee on Judiciary to Senator Millard E. Tydings, April 30, 1949, quoted in Hearings on S. 857 and H.R. 4080 Before a Subcommittee of the Senate Committee An Armed Services, 81st Cong., 1st Sess. (1949).

Known effects are intended effects

DoD will argue that "Segregation" "Stigmatization", "Peonage" or "Punishment" is not the intended outcome of the process. Intended or not the 'effect' of segregation, punishment, and stigmatization has been known, or at least should have been known since 1956. (Exhibit 6).

More to the point the following interchange occurred in an ABC News Special called "The Paper Prison":

Frank Reynolds:
Isn't the Army really using an SPN number to punish a man?

Col. Victor DeFiori:
That's not the intent, no, sir.

Frank Reynolds:
Is that the effect?

Col. Victor DeFiori:
It's not the intent. It may be the effect.

Paul Altmeyer, Transcript ABC News Close up: The Paper Prison: Your Government Records. American Broadcasting Companies, Inc. Broadcast Date: Thursday April 25, 1974 at 22 (Exhibit 18)

In *Plessy v Fergusnon, 163 U.S. 537 (1896)* segregation was upheld as constitutional on the grounds that discrimination was not the intended outcome of the segregation. That such separate status can remain "equal status". Is that concept still good law? No. But isn't that argument at the heart of the respondent's likely defense? That their separation of Honorable discharges is acceptable because they don't intend to discriminate –even when discrimination is the known outcome of such conduct?

Exactly at what point does a known outcome of an action become the intended outcome of the action? Is it the first time that outcome is discovered, and the action is knowingly repeated? Twice? Ten times? Two hundred? How about over the millions of instances since DoD first identified the problem in 1956?

This attitude is not without its own history either. Article 4 of the Additional Articles of War of 1775 provided :

> In all cases where a commissioned officer is cashiered for cowardice or fraud, it be added in the punishment that the crime, name, place of abode, and punishment of the delinquent be published in the newspapers, in and about the camp, and of that colony from which the offender came, or usually resides; after which it shall be deemed scandalous in any officer to associate with him.

Thus it can be clearly showed that while Congress did intend for those convicted by a Court's Marshal (i.e. the meaning of use of cashiered), Congress has from the outset intended that ONLY those convicted by a Court's Marshal be stigmatized. The stigmatization of General, Dishonorable, and 'colorized' Honorable discharges is purely the invention of a DoD that has roguishly taken upon itself more power over a service member's civilian life than Congress has expressly given.

Conclusion

While the Department of Defense is certainly free to define standards of military fitness in a manner according to law, according to the essential functions and common tasks of military life, and to continue or decline enlistment accordingly, it is an unearned and unusual, if not cruel, punishment for the Department of Defense to

hand the veteran his passport to civilian life with a blacklist[12] born by the veteran's own hand. See *Sims v. Fox 492 F.2d 1088 at 1091 (5th Cir. 1974).*

This is not an indictment of the military's right to maintain records on its own personnel. This is not a challenge to the lawfulness of the Disability retirement and Separation Process of 10 U.S.C. § 1168 or 10 U.S.C. §§ 1201—1222. Nor is it a challenge to the military's right to separate those later found unsuitable for military service by reason of a well-documented and established personality disorder. The key issue is that this is a matter is how the form and format of execution, violates the spirit of the ADA and ADAAA and the un-American manner in which DoD's policies echo segregation and involuntary servitude, and how that loss of rights undermines Constitutional Authority.

[12] Blacklist vb. (18c) To put the name of (a person) on a list of those who are to be boycotted or punished. *Blacks Law Dictionary 192, (Bryan A. Garner Ed., West 2009).*