DEPARTMENT OF DEFENSE

TASK FORCE ON
THE ADMINISTRATION OF MILITARY JUSTICE
IN THE ARMED FORCES
U.S.

REPORT OF THE TASK FORCE

ON THE ADMINISTRATION OF MILITARY JUSTICE

IN THE ARMED FORCES

VOLUME I

November 30, 1972
November 30, 1972

Honorable Melvin R. Laird
Secretary of Defense
Washington, D. C. 20301

Dear Mr. Secretary:

Submitted herewith is a report of the Task Force on the Administration of Military Justice in the Armed Forces which you commissioned on April 5, 1972.

Our recommendations are set forth concisely at pages 112-127. The deliberations and findings upon which those recommendations are based are necessarily lengthy, and we, therefore, summarize them here.

We were asked:

-- To determine the nature and extent of racial discrimination in the administration of military justice

-- To assess the impact of factors contributing to disparate punishment

-- To judge the impact of racially-related practices on the administration of military justice and respect for law, and

-- To recommend ways to strengthen the military justice system and "enhance the opportunity for equal justice for every American service man and woman."

Assumed as facts, based upon your charge to us, were the existence of racial and ethnic discrimination in military justice, and the disparity in punishment rates between minority and majority servicemen.

To accomplish our assignment, your Task Force, a diverse collection of civilians and military officers, held numerous hearings during the past eight months, visited military installations throughout the world, and interviewed service men and women of all ranks.

...
The Task Force concluded that the military services are influenced by broad societal practices, including racial discrimination. Military justice was viewed as an integral component of the whole military system.

Since 1969 the armed services have been in the forefront of efforts to eliminate unlawful discrimination, and the services have made notable strides toward the achievement of equal opportunity within their ranks. We know of few other institutions which have equalized their record. These strides are worthy of note in view of the degree to which segregation was historically entrenched in the military institution.

Although desegregation of the armed services was decreed by the 1968 Presidential Order, the Task Force affirms that vestiges of discrimination remain in the military system. Two types of racial discrimination were identified -- intentional and systemic.

The first, intentional discrimination, the Task Force defines as the policy of a military authority or action of an individual or group of individuals which is intended to have a negative effect on minority individuals or groups without having such an effect on others.

The second, systemic discrimination, the Task Force defines as neutral practices or policies which disproportionately impact harmfully or negatively on minorities. The Task Force believes that even though no major segment of military society is free from the effect of systemic discrimination, the latter is capable of being eliminated by the Secretary of Defense and the Service Secretaries through the vigorous implementation of established policies all along the line.

The Task Force report identifies and discusses pre-service and service environmental practices and factors which contribute to disparity in punishment rates (but not in quantum of punishment) between majority and minority servicemen. Greater societal racism was identified as the most potent pre-service factor affecting the administration of justice and respect for law by minority servicemen. The Task Force finds that racial discrimination in the military system is not specifically a Negro, Mexican-American, Puerto Rican, or white problem. Rather it is also a problem of a racist society. Minority and majority preserve racial and ethnic attitudes are enormously important factors. Fear, mistrust and suspicion influence the fair administration of military justice and do contribute to racial animosity and tension. Other pre-service factors identified by the Task Force include educational, economic, and language disadvantages, as well as coerced induction in lieu of a civilian jail term.

Post-entry or military environment factors which are correctable include unfairness in testing, assignment and promotion practices, minority officer shortage, insufficient funding and support for DoD equal opportunity and human relations' programs, unfairness and the perception of unfairness concerning military justice.

Other practices which adversely influence military minority attitudes include off-base housing and recreation segregation, over-regulation of individual personal appearance and group expression, policies which unnecessarily limit communication to the English language, peer group pressure resulting in social polarization and "reverse discrimination."

The Task Force found that, despite their differing perspectives on military life and the system of military justice, there was a pattern of agreement in the attitudes of many enlisted men of all races and ethnic identities toward the essential fairness or unfairness of the system. These attitudes reflected a need for further and continuing education in the military justice system.

We view this as being due to both "actual" and "perceived" discrimination in the military society and its related system of justice. It is seen that the perceptions of unfairness are as corrosive an influence on the attitudes of servicemen toward the military justice system as is actual unfairness, and must be cured. At the same time, the nation has a right to expect compliance and obedience to lawful authority by men and women charged with the country's defense.

There does exist a need in the armed forces for a system of justice which is administered fairly. Justice and discipline are inextricable, and the latter cannot exist without the former. A country that fails to require its military forces to preserve discipline and obedience to lawful authority could soon find itself defenseless. Thus, this report should not be construed as compromising the necessary high standards of discipline and performance to which all service men and women must adhere. This, the Task Force is persuaded, can be achieved without the sacrifice of justice.

The achievement of a fair and just administration of law in the armed forces is a delicate task but an absolutely vital one. Discrimination or unfair treatment has no place in the armed forces.

Because of the broad scope of our inquiry and the differing perspective of individual Task Force members, we do not suggest that there is complete unanimity on all matters in this report. Reflecting in addenda statements, set out at pages 129-132, are views of several members, which were considered by the Task Force but not accepted.

Despite our lack of unanimity on a relatively few aspects of this study, we are able to report broad consensus on substantially every
recommendation. We do not summarize our recommendations here, for they should be read in the context of our findings. They all have a bearing on racial discrimination, or perceptions thereof, in the military system. They are designed to remove conditions giving rise to perceptions of unfairness and to eliminate discrimination and the opportunity to discriminate. Our recommendations go to the overall fairness of treatment without regard to racial or ethnic identity.

We sincerely trust that our efforts, reflected in the report, will assist the military community and society at large to more effectively direct their efforts toward the elimination of discrimination from our land.

Respectfully submitted,

NATHANIEL R. JONES  C. E. HUTCHIN, JR.

Co-Chairmen
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PREFACE

"To Redeem A Promise . . ."

Early in the eighth decade of the twentieth century, the business of the Revolution of 1776 remains incomplete. Americans who are women, who are poor, who are members of racial and ethnic minorities must still wait until some future time to realize fully the promise of equality. The tensions due to this gap between promise and practice are everywhere felt in our society. Under these circumstances, it is probably too much to expect that somehow the military, as an institution, would have escaped. In any case, it has not. Worldwide, from service bases, camps, stations, aircraft carriers, brigs and stockades come echoes of discontent -- a discontent which is voiced in many terms, but which raises questions as to fairness of treatment in the military system. These sentiments cut across racial lines, but they are especially present among some minority group service men and women who share with many of their white counterparts the lack of confidence in the military justice system, and who, further, are actuated by the desire to hurdle the barriers of racism they perceive in the military and in the larger society.

"Perceive" is a crucial term since a distinction must be drawn between what some service personnel view as unfair and racially discriminatory, and what is unfair and racially discriminatory in fact.
Notwithstanding the realization that not all perceived discriminatory treatment is discriminatory in fact, none but the most unfair can turn a blind eye to the "perception" of racism in the military and the military justice system.

The inequality experienced today is part of the legacy of our nation's past. It is also, more specifically, the harvest of the military's own history of racial exclusion, followed by racial segregation and discrimination. It is, as well, intimately linked to and reinforced by social conditions existing in the larger society. White and non-white alike are preconditioned before coming into the service.

Racial bias in military justice should not come as a surprise. Several years ago, the President's Commission on Civil Disorders (Kerner Commission) told the nation that America is a country separate and unequal. Legal and social science literature is replete with documentation of racism in the administration of justice in the civilian sector of society. In a society permeated by racism, it is again too much to expect that any institution of that society -- including the military -- is going to completely transcend discrimination. It is, in some measure, going to reflect it.

However, since the military is not just a reflection of the larger society, it would be incorrect to ascribe all the inequalities of treatment within the military to preservice factors. Some of the responsibility must rest upon the way in which the military as a discrete institution treats the men and women in its ranks. Additionally, it is not unfair to expect a higher level of performance from the military in the area of fairness, since, more so than most civilian institutions, it has an hierarchal command structure with attendant discipline, designed to implement orders from the top down. In many areas where the services truly desire change, they are in the best position to mandate it -- a potential, which, in the past, has not always been fully explored.

Increasingly, since President Truman's Executive Order desegregating the services in 1948, the military has seized the initiative and has used powers readily at its disposal in an attempt to eradicate inequalities in the services -- or at least their manifestations. The appointment of this Task Force itself represents an honest recognition of a serious problem and a highly significant effort to address and correct the problem forthrightly. The work of the Task Force has been carried out in full awareness of the urgency of the questions involved -- an urgency which, most would agree, has increased during our short tenure. After a period of intensive study, we offer our analyses and recommendations in the following pages, not as a panacea, for we know there are no easy answers, but in the hope they will serve as a blueprint for racial justice and greater overall fairness in the military justice system. They bring the American military and the American nation closer to redeeming yesterday's promise of equality.
A. Background

On April 5, 1972, the Honorable Melvin R. Laird, Secretary of Defense, established the Task Force on the Administration of Military Justice in the Armed Forces. He specified that its membership should include both members of the military and civilians; government employees and private citizens. He gave the Task Force a broad four-part charge of responsibility:

"To identify the nature and extent of racial discrimination in the administration of military justice in the armed forces.

"To identify and assess the impact of factors contributing to the disparity in punishment rates between racially identifiable groups as they relate to (1) circumstances prior to entry to active duty and (2) post-entry environment and conditions.

"To identify and assess the impact of racially related patterns or practices reflecting adversely upon the fair administration of justice or respect for the law. Particular emphasis will be given to circumstances preceding the initiation of charges against the individual.

"To make such recommendations to the Secretary of Defense as may be deemed appropriate to eliminate existing deficiencies and/or enhance the opportunity for equal justice for every American serviceman and servicewoman."
For some time, the need for a study like that which Secretary Laird outlined had been growing clearer. The Department's own studies were turning up evidence of minority servicemen receiving punishments at a rate disproportionate to their numbers. A year earlier, the National Association for the Advancement of Colored People (NAACP) had submitted a sober and searching report to the Secretary on its inquiry into the problems of Negro servicemen in West Germany. Congressmen, including members of the Congressional Black Caucus in a March 1970 meeting with the President, were bringing to the attention of the executive branch increasing reports of minority group members' problems with the system of military justice. In response to the President's direction to take a fresh look at the question of racial discrimination in the military justice system, the Task Force was formed.

The Task Force believes it is important to distinguish clearly at the outset between what we were not asked to do and what we were asked to do.

We were not asked to substantiate the existence of racial discrimination in the administration of justice in the armed forces. We believe its existence was assumed in the Secretary's charge.

Neither were we asked to verify the disparity in punishment rates between majority and minority servicemen: that fact had already been established.

Nor were we asked to prove that racially related practices in the services have an adverse effect on the administration of justice and respect for the law. That connection, too, is presumed.

We were asked, rather, to identify the nature and extent of racial discrimination; to assess the impact of factors in the civilian environment and the military environment on the disparity in punishment rates; to identify and assess the impact of racially related patterns or practices on the administration of justice and respect for the law.

And, we were asked to make recommendations to strengthen the military justice system and to enhance the opportunity for equal justice for every American serviceman and servicewoman.

As co-chairmen of the Task Force, Secretary Laird named C. E. Hutchin, Jr., First Army Commander, and Nathaniel R. Jones, General Counsel of the National Association for the Advancement of Colored People.

To serve with them, he appointed:

James V. Bennett, Director, U.S. Bureau of Prisons from 1937 to 1964; The Honorable C. Stanley Blair, United States District Judge for the District of Maryland; W. Baywood Burns, Director of the National Conference of Black Lawyers; The Honorable John Carro, Judge, Criminal Court, City of New York; Major General James S. Cheney, The Judge Advocate General of the Air Force; Jean J. Couturier, Executive Director of the National Civil Service League; Adolph Holmes, Deputy Executive Director, Programs and Field Operations, National Urban League, Inc.; The Honorable Joseph C. Howard, Chairman of the Judicial Council of the National Bar Association and Associate Judge, Supreme Bench of Baltimore City; Ms. Patricia Ann King, Deputy Director, Office of Civil Rights, U.S. Department of Health,
In its work the Task Force was assisted by a staff of military men and civilians headed by Lieutenant Colonel Matthew B. O'Donnell, United States Army, Executive Secretary of the Task Force. Most of them military lawyers, the members of the staff made it possible for the Task Force to function. More important, they made their considerable experience in the workings of both the military and the military justice system available to the Task Force. They were responsive to our needs for information and guidance and were tireless in seeing to it that the often difficult work of the Task Force was accomplished with a maximum of military efficiency and a minimum of the disruption so often attendant on the deliberations of a large group. To Colonel O'Donnell and his staff who are listed below, we extend our appreciation and sincere thanks for a job well done.

WJC William N. Earley
Judge Advocate
United States Air Force

Major John H. Lewis, Jr.
Equal Opportunity Officer
United States Army

Major Charles A. Cushman
Judge Advocate
United States Marine Corps

Captain James J. Blumens
Judge Advocate
United States Air Force

Captain John B. Prosser
Judge Advocate
United States Air Force

Captain Johnny V. Flores
Spanish-Speaking Representative
United States Army

Lieutenant Robert P. Kyle
Judge Advocate
United States Army

Lieutenant David M. Shaw
Judge Advocate
United States Navy

 Lieutenant Gerald T. Hoff
 Judge Advocate
 United States Navy
B. Profile of the military justice system

The following discussion briefly outlines the basic elements of the military justice system and attempts to put the work of the Task Force in perspective by examining the extent to which the system is used.

1. General overview

The present Uniform Code of Military Justice (UCMJ) is only the most recent example of military codes which go back through recorded history. While there were many written military laws in ancient Europe, the code of 1532 of Emperor Charles V is considered the model for the existing military codes of Continental Europe. The first American Articles of War were enacted in 1775 and were modeled on the British Articles. Noteworthy revisions were those of 1806, 1916 and 1948. The Uniform Code of Military Justice was enacted by Congress on May 5, 1950, to become applicable May 31, 1951. It was significantly amended in 1968.

The UCMJ classifies courts-martial by punishment limits into general, special and summary courts-martial. The general court-martial is of unlimited jurisdiction, may impose any penalty up to and including death, and is used for trying the most serious offenses. It also provides the greatest procedural rights for an accused, including, but not limited to, complete pretrial investigation (Article 32), legal advice prior to referral for trial, independent military judge, qualified legal counsel at the trial, automatic appeal, appellate representation (if the sentence exceeds certain limits) and automatic review. The special court-martial is limited in the punishment it may impose -- generally bad conduct.
discharge, confinement at hard labor for not more than six months, forfeiture of two-third's pay for not more than six months and reduction to the lowest enlisted grade. The summary court-martial is the lowest level of court. It cannot try officers nor can it impose punishment exceeding confinement at hard labor for thirty days, forfeiture of two-third's pay for one month, or reduction to lowest enlisted grade (for persons above the grade of E-4, a summary court may not adjudge confinement, hard labor or reduction of more than one enlisted grade). There are few procedural safeguards in a summary court, but an accused can be tried only with his consent.

The members of general and special courts-martial and the summary court-martial officer are appointed by the officer who refers the case to trial. This officer is called the convening authority. The convening authority selects members of his command who are best qualified 'by reason of age, education, training, experience, length of service and judicial temperament . . . 'The convening authority also announces the appointment of the trial and defense counsel and designates the military judge.

The fourth level of punishment is that imposed by a commanding officer or officer-in-charge nonjudicially under Article 15, UCMJ. Article 15 actions are for minor offenses -- usually violations of military discipline. The maximum punishment generally authorized by Article 15, UCMJ, and the Manual for Courts-Martial 1969 (Rev.), is correctional custody for thirty days, forfeiture of one-half of one month's pay per month for two months, reduction to the lowest enlisted grade for persons in the grade of E-4 and below and one grade for persons above E-4. Considerably less punishment may be imposed by an officer below the rank of major (lieutenant commander). Certain other punishments are authorized for use against officers. Appeal may be taken to the next superior authority, who must in most cases refer the case to a judge advocate for consideration and advice before taking action.

2. General statistics

At the outset, it might be useful to establish certain base figures for the purposes of subsequent comparisons and for perspective.

-- The great preponderance of all service men and women, regardless of race, leave the service with an honorable discharge. The magnitude of this honorable service is eighty-five percent or above for black personnel, ninety percent or above for white personnel.

-- Since the introduction of the UCMJ in 1950, there has been a perceptible decline in the rate at which service personnel become involved in courts-martial and a corresponding drop in the judicial level at which their cases are handled. The following selected figures show the change over the years:

1/ There are six types of discharges: dismissal (for officers), dishonorable and bad conduct discharges which are imposed as punishment by court-martial; and honorable, general under honorable conditions and undesirable discharges which are administrative in nature.
pattern reflecting disproportionate numbers of black servicemen involved in military justice actions.

-- Quantitative aspects of the military justice system reveal:

<table>
<thead>
<tr>
<th>Number of Actions for Fiscal Year 1972</th>
<th>Rate Per 1000 (Jan-Jun 72)</th>
</tr>
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<tbody>
<tr>
<td>General Court-Martial</td>
<td></td>
</tr>
<tr>
<td>Army</td>
<td>1,877</td>
</tr>
<tr>
<td>Navy</td>
<td>203</td>
</tr>
<tr>
<td>Air Force</td>
<td>172</td>
</tr>
<tr>
<td>Marine Corps</td>
<td>670</td>
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<tr>
<td></td>
<td>2,927</td>
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<tr>
<td>Special Court-Martial</td>
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<td>Army</td>
<td>15,239</td>
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<tr>
<td>Navy</td>
<td>3,675</td>
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<tr>
<td>Air Force</td>
<td>2,082</td>
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<tr>
<td>Marine Corps</td>
<td>5,125</td>
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<td></td>
<td>28,751</td>
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<tr>
<td>Summary Court-Martial</td>
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<td>Army</td>
<td>12,134</td>
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<td>Navy</td>
<td>4,695</td>
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<tr>
<td>Air Force</td>
<td>164</td>
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<tr>
<td>Marine Corps</td>
<td>6,141</td>
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<tr>
<td></td>
<td>23,134</td>
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<tr>
<td>Nonjudicial Punishment</td>
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<td>Army</td>
<td>217,245</td>
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<tr>
<td>Navy</td>
<td>60,049</td>
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<td>Air Force</td>
<td>34,734</td>
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<tr>
<td>Marine Corps</td>
<td>50,728</td>
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<tr>
<td></td>
<td>362,736</td>
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</table>

-- Regardless of race, a serviceman with less than a high school education runs a substantially higher chance of getting into trouble with a court-martial (in the Army, for example, 68.5% of the accused are in this category) than their percentage of total strength would warrant (16.5% in the Army).

-- The enlisted components of the services were 12.1% black on December 31, 1971, compared to 7.5% in 1949, 9.2% in 1962 and 10.0% in 1966. Because of the past method of classifying ethnicity, similar figures for other minority groups are not available.

-- Based upon statistics available to the Task Force, variations between black and white disciplinary involvement rates follow throughout most if not all of the military justice indicators. And while the figures fluctuate between and within various units, there is a discernible

1/ All-service statistics
2/ Army statistics
FINDINGS

In this section, each of the first three of the Secretary's four questions, or assignments, to the Task Force will be taken up in order. The fourth, our recommendations for action to correct deficiencies and enhance the opportunity for equal justice in the armed services, will be dealt with in the following section.

A. Regarding the nature and extent of racial discrimination in the administration of military justice in the armed forces

The product of any group, such as this Task Force, which is assigned to examine a problem, is ordained by the very nature of the assignment to concentrate on what is wrong, what is causing the problem. In discharging such a responsibility, the Task Force is aware that, in what follows, it has not avoided the negative tone that inescapably accompanies a negative emphasis. To the extent that the nature of our work caused us to emphasize what is wrong with the military system and the system of military justice, the Task Force wishes at the outset to emphasize several positive conclusions.

The first conclusion is that there does exist a need in the armed forces for a system of justice, administered fairly, effectively, and promptly, to preserve and inspire adherence by all of its members to the limitations imposed upon them by law. In the end, this system must support and insure the proper control of this armed force, collectively and individually, responsive and obedient to lawful authority. The nation has a right to demand compliance with this system by the men and women designated to assume the responsibility for the country's defense. These are, in the main, young Americans who are, in an all too brief a period of time, expected to be strenuously trained, equipped and taught to use dangerous and deadly weapons, deployed in foreign environments, separated from the restraining and congenial influences of family and friends, and subjected to the greatest variety of hazards, personal strains and stresses, and the simultaneous, but often unfamiliar, requirement of teamwork and unselfish sacrifice.

The fair application and administration of justice in the military is absolutely essential to the country, to the armed forces, and to the individual serviceman.

Reference to the interests of the country and the armed forces is not in any way incompatible with justice for the individual. There can be no real and lasting discipline for American servicemen that does not rest upon a fair and just administration of our law as it impacts upon the individual. So no need is seen to consider the sacrifice of justice for the sake of discipline. The two are, for American servicemen, inextricable, and the latter cannot exist without the former. That is not to say, however, that the fundamental need for discipline of the armed forces can be ignored or glossed over. The services simply cannot function without it, and the country that fails to require its military forces to preserve discipline, that is, responsiveness and obedience to its lawful authority, will soon find itself defenseless, its forces turned into uncoordinated gangs and individuals. Apart from failure in its mission,
the nation to the inequality of racial segregation in its public schools, the Army, Navy, Air Force and Marine Corps, with strong leadership from their civilian superiors, were at work responding to a Presidential order to tear down the barriers of racial segregation. In the intervening twenty-four years, the armed services have continued with that task, making strides against segregation and discrimination which, though they have not received the attention they deserve, have nevertheless contributed significantly to making both the services and society at large more sensitive to the need for racial harmony and equal justice.

The fourth conclusion is that the commitment of the Department of Defense and of the several services to racial justice has had beneficial effects on the larger society. One of them, the Task Force believes, is the good effect the example of that commitment has had on the racial attitudes of the men and women who have served in the military. Though it was beyond the scope of our responsibility to measure it, the Task Force, nevertheless, has speculated during its deliberations on the thousands of Americans whose attitudes were changed for the better by the opportunity to serve within the environment created by that commitment.

Our conversations with many commanders and other officers, both senior and junior, military lawyers and physicians, and with enlisted men of all grades demonstrated that that commitment endures.

Our fifth conclusion is that the military does not stand apart from the society it serves and is not immune from the forces at work in that society. As long as there is racial discrimination in American society —
and the Task Force believes this has been proven and demonstrated beyond a doubt -- there will be racial discrimination in the military. Society, and some of those in the military, may, from time to time, wish to consider the armed services as another world apart from the life of the larger society. The military is, in many ways, distinct from the larger society. It does possess its own codes, practices and beliefs which have arisen out of its special mission. Nonetheless, it shares with the larger society certain basic values. It is not exempt from the strains of racial and ethnic discrimination which run in the larger society. Particularly in regard to the relations among races and between majority and minority groups, what is sown in the larger society is reaped in the military society.

In searching out the root causes of racial discrimination in the military and in its system of justice and in formulating action to correct the problem, the Task Force came to understand that it could not responsibly address itself solely to the system of military justice or the military system. We believe that much of what we found must be properly referred to society at large for corrective action.

Just as the military system is not entirely independent of, or isolated from, the larger society, the military justice system does not function separate and apart from the larger military system. The one is part of the other, serving the needs of the services in much the same way that transportation, logistics, weaponry or materiel serve them. To the extent that the larger system discriminates against its own personnel on the basis of race and ethnicity, the smaller system plays its role in effecting that discrimination. Thus, we conceive of the military justice system as the center inextricable circle of three concentric circles. The three -- society, the military system and the military justice system -- are linked by function, by mission and by accountability. They also, in our judgment, are commonly affected by racial and ethnic discrimination.

The Task Force believes that the military system does discriminate against its members on the basis of race and ethnic background. The discrimination is sometimes purposeful; more often, it is not. Indeed, it often occurs against the dictates not only of policy but in the face of determined efforts of commanders, staff personnel and dedicated service men and women.

There is a paradox here that the Task Force has noted. How can there be serious signs of racial and ethnic discrimination in an institution which, as we have said earlier, has worked long and actively against it? How can such signs be seen when, as we observed so often, people in authority are directed by policies that explicitly ban racial and ethnic discrimination in the armed forces?

The answer is not as neat as we might wish it. Part of it is, in our judgment, that the military in its own right continues to pursue certain policies and practices which have the effect of disproportionately impacting on racial and ethnic minorities.
A greater part of the answer, however, lies in the nature and form of racial discrimination extant in our society and, as a result, in the military system.

The essential nature and underlying causes of discrimination against people of color in this country -- in its historical, psychological, cultural, social and economic aspects -- are still only partially understood by scholars and scientists. But the manifestations of racial discrimination are being identified more clearly each day in our schools, our courts, our industries and our neighborhoods. We are learning, for instance, that where once we acknowledged only one manifestation of discrimination, we must acknowledge another, subtly interrelated to the first, but nonetheless discernibly different.

The first is intentional discrimination. It is the manifestation with which we are familiar because our attention has been drawn to it most often. The person, persons or groups practicing it do so with the intent of demeaning, harming, disfavoring or disadvantaging another person, persons or groups who have race or ethnicity in common. It takes the form of the shouted epithet; segregation of buses or schools, whether by official decree or otherwise; exclusion of individuals or groups from membership in clubs or organizations; the denial of housing choice. It has many expressions but is identified most clearly in an act. We have defined it as a policy of an authority -- especially in the context of our study, a military authority -- or action of an individual or group of individuals which is intended to have a negative effect on minority individuals or groups without having such an effect on others.

It is against this manifestation of discrimination -- racial, ethnic, religious -- that our country has made some strides. Where once it was practiced openly and without apology, it has increasingly become the subject of ethical, moral and legal sanctions. It is this kind of discrimination which the armed forces were among the very first to attack. Neither society nor the military has succeeded in eradicating this manifestation of discrimination. The Task Force believes that what progress has been made calls not for a slackening of the effort against it but, rather, for a re-doubling.

The second manifestation of discrimination is less clear and familiar, at least to non-minority Americans. It is not identified as much by an act as it is by the result of an act or acts or of inaction. It need not be intentional; indeed, a harmful effect may not have been intended. Regardless of whether it can be traced to a single individual, regardless of whether it has its root in a recent event or in history, it nevertheless works to the detriment of minorities and the equality of their opportunities. We have labeled it systemic discrimination and defined it as policies or practices which appear to be neutral in their effect on minority individuals or groups but which have the effect of disproportionately impacting upon them in harmful or negative ways.

Understanding the nature of systemic discrimination, we believe, is the key to resolving the paradox of the failure of the military's efforts to eradicate racial and ethnic discrimination from the armed forces. Not
unlike other institutions in society concerned with the elimination of such discrimination -- religion and government, for example -- the military has concentrated on the manifestation which it could identify, that is, on intentional discrimination.

It has, for example, forbidden the use of racial epithets, a form of intentional discrimination. But it has not seen the systemic form of discrimination which is manifested in some of its apparently neutral policies governing the testing of service men and women, the recruitment of minority men and women into its officer corps, or in the assumptions which govern the operation of the various human relations and equal opportunity programs. These policies can characterize a minority serviceman as inferior just as brutally as does a racial or ethnic slur. Like other institutions, the military is now called upon to acknowledge systemic discrimination and move against it.

Racial and ethnic discrimination exist in both its intentional and systemic manifestations in the military. Both forms have direct and unwholesome effects upon the military system and on the system of military justice. The thrust of our inquiry and deliberations has been to trace those effects and to develop and set forth realistic ways in which the Department of Defense can act to treat racial discrimination -- first, as it manifests itself in the military justice system and the military as a whole; second, at its root causes in our larger society. It should be noted that we recognize that many of the recommendations we will call for, though made to the Secretary according to our charge, will require the support of the Congress, the Executive Branch and the country at large.

Most of those recommendations go to systemic racial or ethnic discrimination. We will, later in this report, illustrate ways in which we found intentional racial or ethnic discrimination taking place in the armed forces. Our recommendations include steps to be taken against it. We deplore this condition and hope for its early disappearance entirely from the military scene. However, we have not devoted to it or to its elimination the weight or focus of attention which we have given to the second, or systemic, form of discrimination.

With important exceptions which we will note, intentional discrimination, though not condoned, is frequently practiced by some commanders and is not always within the direct reach of either the service secretaries or the Secretary of Defense.

Systemic discrimination is lodged in some of the policies and practices of the Department and the services. Those policies can be changed. It is our intent to obtain the force of our deliberations and our recommendations on those sources of greatest harm which are most susceptible to beneficial action.

We have not inquired into the motivation of makers or executors of military policies which are the sources of systemic discrimination. We have been content to study the results of those policies and practices in terms of their effects on minority servicemen. In taking this tack, we echo the trend of recent court decisions in cases involving discriminatory action. If the net effect of the action, or inaction, is to
discriminate against individuals or groups, the question of intent or motivation need not be considered. The Task Force concludes that systemic racial discrimination exists throughout the armed services and in the military justice system. No command or installation — and, more important, no element of the military system — is entirely free from the effects of systemic discrimination against minority servicemen as individuals and as groups.

It is in the policies and practices governing testing, job assignment, promotions and the human relations programs of the several services that the extremely harmful and discriminatory effects were clearly manifested. These will serve as the principal examples of systemic racial and ethnic discrimination which we encountered. We have chosen to treat them in the next section's discussion of post-entry factors contributing to a disparity in treatment of minority servicemen by the military justice system.

It is enough here to convey our strong conviction of the interrelatedness of these policies and their profound effect upon the lives and military careers of minority-group men and women. The network of effect is as easy to state as it is hard to live with for the many who must live with it. For many, though not all, it means that a black, Chicano, Puerto Rican, or other minority man or woman comes into the service and is given a series of tests which, we suspect, at best, do a poor job of measuring his basic intelligence and an even worse job of establishing his natural aptitudes. Partly on the basis of those tests, he is given an assignment in which his chances of either rising in the military profession or securing marketable skills to support himself on return to civilian life are markedly reduced. Then, for the period of his service, the human relations program, which is intended to ease his way through an admittedly difficult and demanding system, proves in many, but not all, cases to be more rhetorical than real.
D. Regarding the impact of factors contributing to disparity in punishment rates

1. Disparity

Throughout our consideration of this question, the Task Force and the staff were hampered by the inadequacy or unavailability of statistical information regarding race and ethnicity as it is kept by the services. The problem is especially difficult in the case of Spanish-surnamed Americans.

We wanted to look at distinct Latin sub-groups: native-born Mexican-Americans, Puerto Ricans, Cubans and foreign-born Mexican-Americans. We were confronted with the fact that the services lump all such important categories into the Caucasian grouping. While, anthropologically, this is an accurate distinction, it serves to confound accurate statistical consideration of problems of race and ethnicity.

Similarly, the problems of American Indians are difficult to look at, in terms of statistics, when that group of service men and women is lumped together in a category designated "other." And it is difficult to consider statistical measurements regarding the many Filipino servicemen, when they are obscured in the Malayan category.

We have addressed one of our recommendations to this problem. We trust that the Department of Defense will take early action to analyze and improve its method of reporting on personnel by race and ethnic identity.

In the meantime, we have been forced to base our statistical consideration of the disparities in punishment rates essentially on the disparity between blacks and whites. We are regretfully aware that this has caused our work to be less far-ranging than we had intended it to be.

The following summary of the several statistical studies compiled by the staff will suffice to demonstrate, we believe, that there is a clearly discernible disparity in disciplinary rates between black and white servicemen. These statistical studies do not contain information as to the reasons or bases for such disparity, e.g., discrimination or the commission of more offenses. Data regarding military justice actions were reported by selected commands and installations, in the United States and overseas, representing all four services, for a one-month period, except that the Air Force provided information on all courts-martial convened, worldwide, for a three-month period. A more detailed treatment of the statistics and the explanations of the samples and techniques involved is contained in Volumes III and IV.

a. Incident reports

This study was based on 777 reported incidents (involving alleged violations of the UCMJ other than as the result of motor vehicle accidents) from the Army and 330 reports from the Marine Corps. In both the Army and the Marine Corps (the only services reporting enough incidents to permit statistically reliable analysis), the percentage of reports of incidents involving black servicemen exceeded their percentage of the population at the installations from which the reports were gathered. In the Army, where blacks comprise 21% of the population at the installations reporting, they accounted for 36.1% of such reports. In the Marine Corps, they constitute
16.2% of the population of the installations reporting and accounted for 23.3% of such reports.

In the Army, when type of offense is controlled, blacks were involved in 35.8% of the incidents describing major military or civilian offenses, and 31.1% of the incidents describing confrontation or status offenses. Although constituting 21.0% of the population of the reporting installations, blacks were reported in only 16.0% of the incidents describing drug-related and 18.7% of the unauthorized absence offenses. There is no noticeable disproportion in other military or civilian class offenses.

In the Army, when type of offense is not focused on, there appears to be no disparity between the races in the disposition of incidents. When type of offense is controlled, however, differences appear. Of the whites reported for major military and civilian crimes, 23.3% were counseled, compared to only 8.3% of the blacks reported for the same type of offense.

In the Marine Corp, 19.2% of the incidents involving whites resulted in nonjudicial punishment, while only 10.4% of the incidents attributed to blacks suffered similar disposition.

b. Short-term AWOL's

Reporting installations contributed 811 absences of one to three days. In the Army (the only service with a sample of sufficient size), 27.8% of 5% reported absences were attributed to black soldiers. Of the black absentees, 71.7% received nonjudicial punishment, while only 63.1% of the white absentees were similarly treated. This disparity persisted when previous offense record was controlled.

In the Army (and there is no indication to the contrary in the rudimentary samples from the other services), there is no significant difference between racially identifiable groups in the amount of punishment dispensed for short-term unauthorized absences. Slight differences in average amount or term and frequency in one component of punishment are offset by equally slight differences in other components.

c. Article 15 punishment

Information on 4,082 instances of nonjudicial punishment was reported. A greater number of black enlisted men receive nonjudicial

1/In military usage, counseling embraces a wide range of action which a commander can take, short of punishment, to correct behavior.
punishment (23.6%) than their proportionate number at installations participating in the study (15.0%) or their proportionate number within the armed forces (13.1% of all enlisted men as of June 30, 1972). This disparity holds true in each service.

Proportionately more blacks receive punishment for major military or civilian and confrontation or status-type offenses, whereas whites receive a higher proportion of Article 15’s for drug-related and other military and civilian-type offenses. A higher percentage of black (53.7%) and Spanish Surnamed (55.9%) than white (46.0%) personnel had prior military justice records.

Insofar as statistics can measure the relationship of the severity of the offense to the punishment imposed, there is no discernible disparity in the quantum of punishment between white and minority servicemen for like infractions of the Uniform Code.

d. Pretrial confinement

Information on 1,136 servicemen in pretrial confinement was received. A greater number of black enlisted servicemen (21.2%) were placed in pretrial confinement than their proportionate number at installations participating in the study (15.0%) or their proportionate number within the armed forces (13.1%), and again, this disparity held true within each service. Blacks also have the longest average length of confinement of any racial/ethnic group identified (34.5 days); almost five days longer than the average for whites. The longer duration of confinement for blacks remains when type of offense and prior military justice record are controlled. For example, blacks with no prior record placed in confinement for alleged commission of an unauthorized absence offense remained there for 31.9 days, whereas whites similarly situated remained for 26.9 days.

Proportionately more minority group personnel are placed in pretrial confinement (39.8% of all blacks and 35.2% of all Spanish Surnamed) for alleged commission of offenses which tend to directly confront or challenge military authority or are equivalent to civilian felony offenses (as compared to 15.4% of the whites). More whites, on the other hand, are placed in pretrial for alleged commission of unauthorized absence and drug-related offenses.

The pretrial confinement status of a greater number of all minority group (36.7%), as compared to white (26.8%), personnel are terminated as the result of trial by court-martial. Blacks are less likely to be released for discharge in lieu of trial, which discharge must be requested by the serviceman, than whites or other minority group individuals. Of particular note is that whites are over twice as likely to be released without subsequent disciplinary or judicial action than blacks. Of the 298 servicemen so released, two hundred (67.1%) were white Army personnel, and thirty-one (10.4%) were white Navy personnel. In the great majority of these cases (231, or 77.5%), the alleged offense committed was an unauthorized absence. In the Army, 73 or 45.6% of the 379 whites confined for such absences were released without subsequent action, whereas only 27 or 27.8% of the 97 blacks similarly situated
were so released. The same disparity exists in the Navy, and to a lesser extent in the Air Force and Marine Corps, but the number of cases in the two latter named services is extremely small. Looking only at those individuals within this group who had no prior military justice record, 105 or 46.9% of 224 whites, as compared to thirteen or 23.6% of fifty-five blacks, were released without action. Thus, neither the type of offense nor a prior record can explain this disparity.

e. Court-Martial

A total of 2,158 charges were referred to trial at the reporting installations. Of the 1,471 servicemen tried, 34.3% were black. Blacks represented 11.5% of the entire armed forces population (both officer and enlisted), as of June 30, 1972. In each service, a disproportionate number of blacks were tried in relation to their population within that service. In 1,371, or 93.2%, of the cases, the accused was found guilty of at least one offense. Of the one hundred cases resulting in acquittal or dismissal of all charges, forty-nine of the accused were white and forty-eight were black. This represents 5.8% of all whites and 9.5% of all blacks tried.

Of the offenses tried by court-martial in all services at the selected installations during the reporting period, 802, or 37.2%, were alleged against black servicemen. This was 48.1% of the 69% major military or civilian crimes, 23.4% of the 209 drug-related offenses, 38.7% of the 413 confrontation or status offenses, 42.1% of the 114 other military or civilian offenses, and 28.9% of the 731 unauthorized absence offenses.

In the Army, which reported 515 offenses, 36.7% of the offenses were alleged against blacks. Not guilty pleas were entered in 47.6% of the offenses charged to blacks, compared to 33.5% of those alleged against whites. Acquittal resulted in 47.6% of the contested offenses alleged against blacks, but only 22.0% of the contested offenses charged to whites.

Unlike the other services who reported from specified installations for only one month, the Air Force reported for all bases for three months. Of the 1,121 offenses, which the Air Force reported, 41.6% were alleged against black airmen. Not guilty pleas were entered to 56.7% of the offenses alleged against blacks, compared to 45.9% of those charged to whites. Of these contested offenses, acquittal resulted in 27.4% of those charged to blacks and 24.2% of those charged to whites.

The Marine Corps provided data on 436 offenses, of which 30.0% were charged to blacks. Not guilty pleas were entered in 39.7% of the offenses charged to blacks, compared to only 16.7% of those charged to whites. Unlike the other services, only 25.0% of the contested offenses charged to blacks resulted in acquittal, while 50.0% of contested offenses involving white defendants resulted in acquittal.

In general and special court-martial cases, quantum of punishment is approximately the same between blacks and whites when considering forfeiture of pay, confinement, restriction, and extra duties, but 23.4% of the blacks, as compared to only 15.9% of the whites, received a punitive discharge as part of the sentence. Blacks received eighty-seven,
or 40.7%, of the punitive discharges adjudged. The quantum of punishment for whites in summary courts-martial is slightly greater when considering forfeiture of pay, confinement, reduction, and restriction, than for blacks. For example, forfeitures were adjudged in 88.9% of the cases involving white accused (compared to 83.3% for blacks), at an average of $137.50 for one month ($130.43 for blacks); confinement for one month was adjudged in 39.4% of the cases involving white defendants (compared to 35.7% for blacks).

f. Service correctional facilities

Ninety-eight (47.3%) of a random sample of 207 servicemen imprisoned at the US Disciplinary Barracks, Fort Leavenworth, Kansas, were black enlisted men (blacks represented 13.1% of all enlisted men in the armed forces, as of June 30, 1972). Black prisoners had received longer sentences to confinement at hard labor (2.9 years) than white (1.9 years) and had a larger percentage of sentences including total forfeitures (88.7% to 76.0%) and dishonorable discharges (58.2% to 43.8%). Black prisoners also had slightly higher percentages of prior Article 15's (65.3% to 57.3% for whites), summary courts-martial (11.2% to 8.3% for whites) and special courts-martial (21.4% to 19.8% for whites).

Of the 3,448 Army enlisted men sent to the US Army Correctional Training Facility, Fort Riley, Kansas, as the result of conviction by court-martial during Fiscal Year 1972, 35.9% were black (blacks represented 17.1% of all Army enlisted men, as of June 30, 1972). Propor-
tionately, a greater number of whites (85.8%) had no previous convictions before trial for the offenses for which they were confined than blacks (76.9%).

Of the 784 airmen who, as the result of conviction by court-martial, entered the Retraining Division, 3320th Retraining Group, Lowry Air Force Base, Colorado, between June 4, 1971 and May 30, 1972, 43.2% were black. (Blacks represented 12.6% of all Air Force enlisted men, as of June 30, 1972.) Black retrainees had higher percentages of prior Article 15's (34.5% to 24.6% for whites) and court-martial convictions (7.4% to 4.0% for whites), and a lower percentage with a general prior service record characterized as "satisfactory" (49.1% to 61.4% for whites). Proportionately, a greater number of black airmen successfully completed the retraining program and were returned to duty (73.6% to 66.3% for whites). Of those not returned to duty, 57.3% of the whites received undesirable or punitive discharges, as compared to 57.4% of the blacks.

g. Administrative discharges

Examined in this study were the separations of 919,349 enlisted males who were released from the armed forces during Fiscal Year 1971. In all services, blacks receive a lower proportion of honorable discharges and a higher proportion of general and undesirable discharges than whites with similar educational levels and aptitude. Thus, the disparity cannot be explained by aptitude or lack of education.

The services differ markedly in the frequency of use of similar provisions for administrative separation. The Army uses character or behavior disorders to account for 72.0% of its separations with general
discharges. This is almost twice the proportion of any other service and over five times the proportion of the Navy general discharges issued for character or behavior disorders. Drug abuse accounts for 23.8% of the general discharges granted by the Navy, but for only 1.0%, 5.0%, and 3.7% of the general discharges issued by the Army, Marine Corps and Air Force, respectively. Similar variations occur in the dispensation of undesirable discharges.

Several reasons for separation are invoked more frequently against personnel of a particular race. In all services, and most noticeably in the Navy, drug abuse accounts for proportionately more of both general and undesirable discharges for whites than for blacks of similar education and aptitude. In all services, and most noticeably in the Air Force, discreditable incidents account for proportionately more of both general and undesirable discharges for blacks than for whites of similar education and aptitude.

Other reasons vary from service to service in comparative impact. In the Army, character and behavior disorders account for proportionately more of the general discharges issued to whites than blacks of similar education and aptitude, but motivational problems were cited in proportionately more of the general discharges issued to blacks. In the Navy, inaptitude results in proportionately more general discharges for blacks. In the Air Force, proportionately more general discharges are issued to blacks for motivational problems than to whites of similar aptitudes and education. In the Army, Navy and Air Force, proportionately more undesirable discharges are issued to whites than blacks for shirking, while in all services the good of the service is cited in proportionately more of the undesirable discharges issued to blacks.

The services evidence no uniformity in the type of discharge certificate awarded for a particular reason for separation. Discharges for the good of the service in lieu of trial by court-martial from the Army and Marine Corps seldom result in anything but an undesirable discharge. But the majority of discharges for the same reason from the Navy and Air Force are either honorable or general. One in four discharges for the good of the service from the Navy results in an honorable discharge.

General discharges are given by the Army in over 90% of the separations for character or behavior disorders. No other service approaches this allocation. Honorable discharges are given by the Navy, Marine Corps and Air Force in 77.1%, 49.7% and 63.2%, respectively, of their separations for character or behavior disorders.

Similar disparities in the characterization of discharge certificates issued for the same reason among the services exist for motivational problems and discreditable incidents. Such lack of uniformity vitiates the ultimate classification of service as honorable, general, or undesirable.

There is some disparity between the races in the type of discharge issued, although it varies depending on the service involved and the reason for discharge. In the Army, Navy and Air Force, whites receive
a higher proportion of honorable discharges than blacks when separation is effected for character or behavior disorders, motivational problems and inaptitude. There is less disparity between the races in the reasons for which an undesirable discharge may be given. Only in the Navy discharges for the good of the service and Air Force discharges for discreditable incidents and drug abuse do whites receive a noticeably higher proportion of honorable discharges than blacks.

2. Impact of factors contributing to disparity in punishment rates

Identifying and assessing the factors, both prior to and after entry into the services, which account for the disparities noted above, involve a considerably more difficult, in some cases impossible, task.

The structure of the Secretary's charge implies that there are separate factors having impact on the disparity in punishment between minority and majority servicemen, on the one hand, and on administration of military justice and respect for law, on the other.

We were unable to discern such a separation. The factors we found impacting adversely on equal punishment we also found impacting adversely upon the administration of justice and respect for the law. For that reason, we found it impossible to treat the discussion as though these factors were separable.

So we have departed, in the discussion which follows, from the structure of our charge to discuss the "racially-related patterns or practices" referred to in the third of the Secretary's questions alongside the factors, both prior to and following entry into the service, which are referred to in the second question.

a. Preservice factors and their impact on disparate punishment rates

The Task Force did not undertake a searching sociological inquiry into the preservice environments from which blacks, Mexican-Americans, Puerto Ricans and other minority servicemen come into the armed forces. It does not have sociological expertise, in the formal sense, among its membership.

It does, however, have among its members blacks and a Puerto Rican. Among them, there is first-hand knowledge of the environments from which minority group servicemen come; of the strengths and weaknesses, hopes and fears they bring with them; of the experience with a majority culture that they have had.

The Task Force had, too, the incalculable advantage of direct and open discussions with minority and non-minority servicemen at bases all over the world.

It is upon these resources we draw for this section of our report, approaching our work not as an engineer does with a slide rule, attempting to quantify the preservice environment, but much as a physician would approach the diagnosis of a complex illness.

The Task Force identifies the following factors as having the greatest impact on the observed disparity in punishment rates for minority servicemen.
(1) Racism

Rather than define racism here, we hope to communicate our meaning by referring to racism as that force in a white-dominated society which is driving the country closer and closer to the Kerner Commission's prediction of "two societies -- one black, one white; separate and unequal," as that social phenomenon which has delayed the Supreme Court-ordered integration of the nation's public schools for eighteen years.

It is, in our judgment, the most potent of all the pre-entry factors which have been dealt with in this discussion. It accounts for many of the other factors which measure the disparity between blacks and other minority groups, on the one hand, and whites on the other; for the severe disadvantages which the bulk of minority recruits bring to the service with them.

The effects of racism on minority people and groups are well documented, and the Task Force will not attempt to recite them here. We are, however, struck by one impact of racism for which there is no Kerner report; that is the severe disadvantage it works upon the white man or woman coming into the service. We do not refer exclusively to the "poor white" but to the non-poor white, as well, whatever his social and economic class.

It is clear to us that many white individuals entering the military service come with severe disabilities resulting from being raised in a racist society. What those disabilities are, exactly, is not as well documented in their case as it is in the case of the young black citizen. Perhaps this fact reflects the fascination of even well-intentioned American scholars for the victim, rather than the perpetrator of racial discrimination.

The point which the Task Force wishes to make here is that the overall problem of racial discrimination in the military and the effect of that problem on military justice is not a Negro problem, a Mexican-American or a Puerto Rican or a white problem. It is the problem of a racist society.

To view it other than what it is will be a mistake of serious proportions.

(2) Educational disadvantage

It was agreed by all segments of those we interviewed -- commanders, other officers, senior non-commissioned officers and junior enlisted men -- that a correlation exists between preservice educational deprivation and job assignments. We constantly sought answers to the question of why the nonjudicial punishment, court-martial and less than honorable discharge rates for blacks are disproportionate. We often were led back to the factor of preservice educational opportunity, or the lack of it, and the fact that job assignments in the military are heavily predicated on test scores. The picture we see is of large numbers of men who are products of an educational system with one set of quality standards for whites and another lower set for blacks and other people of color. They enter the service handicapped by poor preparation for work and for participation in a system built largely
on majority values and controlled by whites.

The frustration flowing from the consequences of educational disadvantage and some military rating practices have a deleterious effect on morale and discipline. An added factor is that persons bearing these frustrations are concentrated in certain units. This, in the Task Force's judgment, is nothing short of storing dynamite.

Those serving in these kinds of units, having been deprived educationally, disadvantaged systemically, and now dissatisfied with unrewarding aspects of their duties, are more likely to be charged with offenses and attract nonjudicial punishment and courts-martial, thus becoming candidates for less than honorable discharges. Without any intervening corrective action by the services, these men may well return to their respective communities frustrated and even more crippled than when they entered the service.

The effect of unequal education has been recognized. For instance, the United States Supreme Court, and every other court that has ordered the desegregation of public schools, has first made a finding that the aggrieved black petitioners and members of their class were being denied their right to an equal education under the United States Constitution.

The threshold tests administered by the military, the statistics we have gathered and the observations we have made during our tours buttress the conclusions of the courts with respect to the quality of education offered to a substantial number of non-whites. It is painfully clear that many minority persons enter the military service with severe disabilities resulting from unequal educational opportunity.

(3) Economic disadvantage

So many reams of statistics have been adduced to document the relative economic disadvantage of blacks and Mexican-Americans in this country that the Task Force opts to avoid a further replication of them. Instead we turn to the Reverend Theodore Hesburgh, President of the University of Notre Dame and former Chairman of the United States Commission on Civil Rights, for a characteristically trenchant rendition of the situation in human terms:

Ninety-six percent of the jobs paying above $15,000 annually in America are held by white men, which says something about women's inequality too. There are always twice as many unemployed blacks as whites, and black teenagers are about twenty-five percent unemployed and often unemployable, mainly because they went to ghetto schools or dropped out of them. Those blacks who are employed make on the average about half as much as whites. Most black mothers of families must also work to supplement the family income. Even those liberal white institutions for the working man -- the labor unions in the construction trades -- have had a miserable record in granting equal access to work.

Because of the numbers involved and the available facts, I have mainly spoken here of blacks, but we learned a few years ago in a Southwest Chicano hearing of the Civil Rights Commission that the average family income of Chicano migrant farm workers in Texas was $1,400 a year. The condition of their housing, educational, health and social services was far worse than that of most blacks. American Indians, we are learning, are equally far below the miserably low scale of Chicano farm workers. 1/

The Task Force is, of course, aware that blacks, if not Chicano, are making gains in overcoming economic disadvantages. We note, too, that those gains are still largely in absolute terms. The gaps between average black income and average white income are much as they were a decade ago. In the decade since the 1960 census, where black family median income was 51% of the figure for whites, the gap has narrowed by 1/10% to 61%.

(4) The Vietnam War

The Vietnam War is another contemporary development which ranks as a preservice factor of great importance, yet is one which is difficult, if not impossible, to accurately assess in absolute terms. It will be years before there is anything like a thorough examination of the impact that this conflict has had on Americans of all races and classes. We will limit ourselves to the observation that Vietnam has been a part of our time and has influenced, in no small measure, the actions and attitudes of all service members.

(5) Language

This factor, in our judgment, has two aspects. The first is the readily observable difficulty which servicemen have whose primary language is other than English, most usually Spanish. That difficulty is expressed, clearly, in the trouble Spanish-speaking soldiers, sailors, airmen, and Marines have in taking tests, understanding orders, or following written instructions given in English or in communicating freely with English-speaking colleagues. It also has a cultural dimension for some Spanish-speaking servicemen. Given the frustrations of dealing, for most of the day, in a language that is not entirely native to him, conversing in Spanish with Spanish-speaking colleagues is not only a source of pleasure but a reassurance of his group identity. When he is forbidden to do so, the result can be both a frustration and an insult to his cultural heritage.

The second dimension of the language issue relates to blacks and to non-blacks who are accustomed to speaking something other than standard English. It is our view that the problem, in this case, comes not so much from understanding standard English when it is spoken to such a person, but rather in communicating a response. Manners of speech in non-standard English, whether those of the urban black or rural white, can be construed as manifestations of dullness or disrespect by those not familiar with the speech pattern in question. We are not unmindful that a serviceman's use of non-standard English

can sometimes be an effort to establish a conversation, and thus a relationship, on his own grounds.

(6) Coerced induction

The Task Force notes a practice by civilian authorities, sometimes in league with service recruiters, that amounts to coercing into the military service young men having trouble with the law. In such instances, enlistment is posed as an alternative to a jail term or other punishment. The services do, under certain circumstances, accept as service members persons who have had previous difficulty with the law but who make a disclosure of this fact and obtain a waiver. We endorse practices which make the rehabilitative features of military service available to deserving men and women, but we condemn achievement of service enlistment by judicial pressure on a candidate who did not really wish to serve.

b. Post-entry factors and their impact on disparity of punishment rates

In our earlier consideration of the nature and extent of racial discrimination in the military system, we spoke of the four principal manifestations of systemic racial discrimination which we identified: the policies and practices governing testing, job assignment, promotion and equal opportunity programs. They are, in our judgment, the four leading factors in the serviceman's post-entry environment which contribute to the disparity in punishment rates between minority and non-minority servicemen. They will be discussed here along with three other manifestations of systemic racial discrimination we have found to militate against equality in the imposition of punishment. They are the scarcity of minority officers, the present policy of selecting members of a court-martial from among officers and senior non-commissioned officers and the absence of a specific penalty for discriminatory acts or practices.

(1) Testing, job assignment, and promotion

Minority servicemen told us, again and again, during our visits that they are not promoted at the same rate as their non-minority counterparts. In inquiring into the "hows" and the "whys" of this complaint, the Task Force discovered a singular example of what, earlier, is defined as systemic racial discrimination. We discovered policies and practices which appear to be neutral in their effect on minority individuals or groups but which have the effect of disproportionately impacting upon them in harmful ways.
The military personnel assignment and promotion system places heavy emphasis on tests, especially at the entry level. To a great extent this is because the armed services, unlike civilian employers, prefer to take in all enlisted personnel at the entry level and qualify them through basic training and either technical schooling or on-the-job training. The Armed Forces Qualification Test (AFQT) has served as the initial screening device to classify mental aptitude of the applicant into one of five categories, of which only the top four (scores thirty to one hundred) are considered acceptable for induction (with certain exceptions not here pertinent). Before taking the AFQT, or shortly thereafter, the applicant takes an aptitude test. This aptitude test measures abilities in certain job-related areas and, in conjunction with the AFQT, determines eligibility for enlistment and, depending on the requirements of the service, the career field to which the applicant will subsequently be assigned.

The AFQT has been criticized for being culturally biased, based upon the large number of minority servicemen who score poorly. In the view of its critics, the AFQT tests more for understanding of majority cultural norms than for mental aptitudes. The same criticism has been leveled, with somewhat more validity, at the various aptitude tests which more directly affect career field and job assignments. The Task Force has also heard the AFQT defended as being the best known way to measure adaptability to military training. In both tests, however, the ability to perform well in a testing environment, i.e., a pencil and paper test, is necessary for success. This may help to explain the relatively poor performance by minority servicemen, who, as a group, tend to have a poorer educational background. We do not attempt to resolve this controversy, so complex are the ramifications of these contentions.

We do, however, make three observations about the testing, assignment and promotion policies of the armed forces.

First, although we recognize that the AFQT is but one of several means of measuring aptitude and determining job assignments, the AFQT is a significant factor in determining entrance into the armed services and eligibility for acceptance into formal training in the so-called hard-core specialties; certainly in accord with the aptitude test, it is the only conclusive factor, other than the requirements of the service. To this extent, these tests seem to have achieved a position of primacy in this area beyond what may have been intended by the services’ policy-makers.

Second, these pencil and paper tests do not take into consideration post-testing performance, and the most important determination about a serviceman’s future career (both in and out of the service) is made almost solely on the basis of the results of these tests: where he will be placed, how and whether he will be promoted during his hitch, and whether what he will learn in the service will be saleable for his post-service career.
This is by no means a minor consideration to the man or to the service. The assignment of job category is made at the outset of the man's career. Whether a person is assigned to one of the "soft-core" military specialties or whether he is given the opportunity to learn one of the more profitable and prestigious "hard-core" jobs which the military has to offer rests upon the limited predictive capability of these tests. Since opportunities for promotion are, in most cases, greater in the "hard-core" areas, his progress in his military career is, likewise, limited.

The plight of the minority serviceman is best stated in the words of a black sergeant:

When you come in, you take the AFQT. If you haven't had a good background and a good high school or college education, or experience in electronics, into supply and transportation and other "soft-core" areas you go.

I graduated from high school in 1955. I got a sub-standard education compared to the white NCO's my age. They can progress because their better education put them into another career field, where the progressor rate is faster. No matter how hard I study, I can't advance now.

On a promotional exam for the few slots that do open up in my field -- which is top heavy with black and white NCO's -- I have to score damn near perfect. In the administration field, which I am in, my score has got to be phenomenal, or I am out of it, in terms of promotion. That is what is killing us. 1/

educational opportunities, the minority serviceman comes into the service where he is immediately evaluated and classified by tests he is ill-equipped to master, and, thereafter, his duties and career progression are, to a large extent, forecast, forestalled and foredoomed. The human consequences of these policies are aptly and eloquently stated by the words of the black sergeant referenced to above.

(2) Equal opportunity programs

Among the first materials the Task Force considered were briefings by each of the services on their equal opportunity and human relations programs. Similarly, among the first items on our agenda during travels to installations in this country and abroad were briefings by officers of the command in question concerning equal opportunity programs and actions taken to achieve greater equality and racial or ethnic harmony.

These programs were also the subject of many of our conversations with officers and enlisted men in the many informal sessions which were arranged for Task Force members at each installation. The Task Force was impressed by the concern of a number of individual commanders and their staffs for achieving equal opportunity.

The Task Force regards the equal opportunity and human relations programs as potentially, among the most important at the services' disposal in combatting racial discrimination and insuring equality of opportunity for all its personnel.

We regard them, as well, as important tools in achieving racial harmony in the services. The Task Force found examples of racial harmony; we also discerned varying levels of racial tension. We foresee that eruptions of racial tensions such as those occurring recently will continue unless aggressive corrective action is taken. We were, therefore, disturbed to discover the gap between the importance the Department of Defense apparently attaches to equal opportunity and human relations programs and the importance it accords them when it comes to supporting them with money, manpower and good management. We concur in the observation we heard repeatedly from service personnel in our informal discussions with them: equal opportunity programs, service-wide, are, at this point at least, more rhetorical than real. That observation underlines the way in which the Department's inconstant support is undermining the credibility of equal opportunity programs among military personnel and adding to existing problems of racial hostility.

The current position of the Equal Opportunity Office within the Department of Defense suggests the priority the program is given. This in turn shapes the attitudes of the civilian community and many commanders and results in the degree of pessimism voiced by personnel in both majority and minority groups. For the program to achieve the credibility that it must have for effective implementation, the office charged with administering it within the Department of Defense should be elevated so that the person occupying the office would have both the visibility required to affirm the Department's commitment and the direct access to the Secretary, to permit him to personally recom-
mend policy. Many of the problems subsequently discussed could be alleviated by increasing the prestige of this important office.

The establishment of the Defense Race Relations Institute was a significant step towards achieving equal opportunity. In discussions with us, some of the students at the Institute raised issues that go to the question of management and require a close look by the Institute and the services. The most important are the selection of personnel to attend the Institute and the utilization of graduates. Although the criteria for attendance are published, they are not being followed in all cases, particularly when it comes to selecting a person who has volunteered for the program or has indicated a willingness to work in the area. We foresee a problem in the immediate future of getting truly dedicated personnel to work in the equal opportunity/human relations field. It is not eased by the fact that many who would like to serve are forced to be concerned for career advancement and loss of proficiency, including pay, in technical areas. The lack of a specific block of instruction at the Institute on the history of discrimination in the military and on the administration of military justice was noted. Also lacking was instruction on methods of handling grievances, conflicts management, and problems in communication. The Task Force believes that the race relations education program is so essential that there must be a greater effort to provide necessary support for the resources needed for program implementation at the Defense Race Relations Institute and the Marine Corps Human Relations Institute.

Failure to relate equal opportunity programs to other staff functions was also an area of concern to us. In those units that had incorporated the program, the effectiveness was evident; however, most staff decisions were considered beyond the purview of the equal opportunity section. A lack of participation by women was also apparent in the administration of the program.

All the services are apprised of the statement of human goals formulated by the Department of Defense and the equal opportunity/human relations program that has evolved from it. However, until firm guidance on staffing and program objectives is given, goals will not be attained service-wide.

There is, for example, a clear need for more coordination among and within the services. Lessons learned from both success and failure should be published routinely, particularly between units of different services in the same geographical area.

We witnessed the direct involvement of a number of commanders, though by no means all. Positive leadership is always a key to program success. However, it appears that equal opportunity programs are not always receiving good management. Management of programs often is left to the equal opportunity officer without command-assigned goals. Some commanders do not get involved unless and until there is a crisis. Lack of positive indicators to measure program success is also a failure of management. In too many cases a reduction in racial incidents or complaints is the only indicator being used. Many of the surface irritants
Marginal placement on page 55. and 56 are charts showing service population by race, and enlisted grade distribution of all services by race.

The degree of implementation and effectiveness of the equal opportunity programs observed vary among and within the services. One of the most glaring shortcoming we have was the multitude of different star concepts employed in the administration of the program. A lack of firm evidence from the services' own commanders of help in establishing different priorities. Consequently, there is no structured guidance within the organization as to how to administer the program.

Lack of minority officers

(3) Lack of minority officers.

It is not necessary to belabor the point of these statistics that the armed forces comprise an institution of society which is largely white at top and middle but is becoming increasingly diverse racially toward the bottom. Nor does it force the policy to ignore the efforts of the Department and services to recruit minority officers. Our purpose is to point out the effect of minority officer's attitudes toward an officer corps which is easily observed to be almost entirely white at the top and in the middle but is becoming increasingly diverse racially toward the bottom. This leads to a purely "ad hoc" arrangement.

Reproduction on pages 55, 56, and 57 are charts showing service population by race, and enlisted grade distribution of all services by race.

SERVICE POPULATION (OFFICER AND ENLISTED) BY RACE (30 JUN 72)

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<tr>
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<th>WHITE</th>
<th>BLACK</th>
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<th>TOTAL</th>
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<tr>
<td></td>
<td>#</td>
<td>%</td>
<td>#</td>
<td>%</td>
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<tr>
<td>Army</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officer</td>
<td>122,290</td>
<td>95.7</td>
<td>4,788</td>
<td>3.9</td>
</tr>
<tr>
<td>Enlisted</td>
<td>557,061</td>
<td>81.8</td>
<td>116,025</td>
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<td>Navy</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Officer</td>
<td>72,154</td>
<td>98.7</td>
<td>660</td>
<td>.9</td>
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<tr>
<td>Enlisted</td>
<td>386,426</td>
<td>87.4</td>
<td>31,825</td>
<td>7.3</td>
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<td>Air Force</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Officer</td>
<td>118,671</td>
<td>97.8</td>
<td>2,124</td>
<td>1.7</td>
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<tr>
<td>Enlisted</td>
<td>539,599</td>
<td>86.6</td>
<td>75,628</td>
<td>12.6</td>
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<td>Marine Corps</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Officer</td>
<td>29,264</td>
<td>98.1</td>
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<tr>
<td>Enlisted</td>
<td>151,543</td>
<td>85.0</td>
<td>24,439</td>
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<td>All Services</td>
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<td></td>
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<tr>
<td>Officer</td>
<td>331,279</td>
<td>97.2</td>
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<td>2.3</td>
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<td>Enlisted</td>
<td>1,610,589</td>
<td>84.9</td>
<td>248,717</td>
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### Table: Enlisted Grade Distribution

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<tr>
<th></th>
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<th>31 May 72</th>
<th>31 March 72</th>
<th>30 June 72</th>
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<tbody>
<tr>
<td></td>
<td>Navy</td>
<td>Army</td>
<td>Navy</td>
<td>Army</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Negroid</td>
<td>Total</td>
<td>Negroid</td>
</tr>
<tr>
<td>E-9</td>
<td>3,092</td>
<td>7.0</td>
<td>3,424</td>
<td>7.3</td>
</tr>
<tr>
<td>E-8</td>
<td>11,051</td>
<td>1.9%</td>
<td>8,970</td>
<td>3.5%</td>
</tr>
<tr>
<td>E-7</td>
<td>12,041</td>
<td>19.6%</td>
<td>37,912</td>
<td>6.0%</td>
</tr>
<tr>
<td>E-6</td>
<td>910,669</td>
<td>23.6%</td>
<td>25,971</td>
<td>6.7%</td>
</tr>
<tr>
<td>E-5</td>
<td>160,052</td>
<td>19.9%</td>
<td>25,777</td>
<td>10.0%</td>
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<tr>
<td>E-4</td>
<td>1,029,800</td>
<td>13.5%</td>
<td>123,059</td>
<td>13.4%</td>
</tr>
<tr>
<td>E-3</td>
<td>40,666</td>
<td>12.8%</td>
<td>25,236</td>
<td>9.1%</td>
</tr>
<tr>
<td>E-2</td>
<td>63,393</td>
<td>17.3%</td>
<td>31,392</td>
<td>12.3%</td>
</tr>
<tr>
<td>E-1</td>
<td>57,512</td>
<td>18.3%</td>
<td>21,289</td>
<td>16.5%</td>
</tr>
</tbody>
</table>

**Percentage is of total, same service, same grade.**

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### Note

The data in the charts can be used to better understand the distribution of both the military system and the minority justice system. The data, however, must be viewed with caution. These findings must be viewed in the context of the findings of the story are extremely equivocal to the proportion of minority officers in the services, as a whole. Our conversations with enlisted men convince us that this is a point of irritation with minority personnel and causes a lot of problems which does not contain a proportion of minority officers anywhere near the proportion of minority officers in the story, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole. Our conversations with minority personnel are certainly equivocal to the proportion of minority officers in the services, as a whole.
the low number of minority officers in the services, is not being served
to any real degree for young minority servicemen.

Until the proportion of minority members in the officer corps
approximates that of minority strength in the ranks, the sources of dis-
trust and disaffection mentioned above will continue.

(4) Other racially related patterns and practices

A fourth set of post-entry factors has its impact on both
the disparity in punishment rates between majority and minority personnel
and on the administration of justice and respect for the law.

(a) Racially segregated housing

Although segregation of on-base housing in all the
services is a thing of the past, the racial segregation of off-base housing
is a persistent problem which has not been dealt with satisfactorily by
existing military practices.

It has its roots, of course, in racially discriminatory
practices of civilian landlords in communities surrounding military in-
stallations, in this country and abroad. Blacks, especially, mentioned
the problem of not being able to find adequate housing for their families
near their assignments. Consequently, they often are forced to live in
segregated neighborhoods, less desirable than where they would prefer and
frequently inconveniently located from the military installation. Exist-
ing policies and practices of base commanders, especially overseas, are
not effectively coping with the problem of segregated housing.

<table>
<thead>
<tr>
<th>White Total</th>
<th>Officer</th>
<th>Enlisted</th>
<th>Officer - Enlisted Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army</td>
<td>129,629</td>
<td>70,146</td>
<td>1.843</td>
</tr>
<tr>
<td>Air Force</td>
<td>123,638</td>
<td>77,792</td>
<td>1.613</td>
</tr>
<tr>
<td>Marine Corp</td>
<td>122,670</td>
<td>77,632</td>
<td>1.573</td>
</tr>
<tr>
<td>All Services</td>
<td>129,629</td>
<td>70,146</td>
<td>1.843</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th>Officer</th>
<th>Enlisted</th>
<th>Officer - Enlisted Ratio</th>
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</thead>
<tbody>
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<td>1.843</td>
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<tr>
<td>All Services</td>
<td>129,629</td>
<td>70,146</td>
<td>1.843</td>
</tr>
</tbody>
</table>
(b) Racially segregated recreation

Off-base recreational and leisure facilities such as clubs and bars continue to be closed to minority servicemen, especially blacks, in many areas. This form of racial discrimination and segregation seems to be more prevalent overseas.

The Task Force was encouraged to see examples of vigorous action against this kind of discrimination but notes that, especially in the Far East, efforts of this kind are running into trouble. Some black men, for so long forced to patronize black-only establishments, have come to feel comfortable in them. They are resisting desegregation on the grounds that command concern comes pretty late in the day, now that the original segregation has already taken place, now that blacks have come to enjoy "their" bars and clubs.

(c) "Dapping"

Dapping is the practice current among many young blacks, in the service and out, of slapping and grabbing one another's hands in a complicated greeting symbolic of racial solidarity. Nearly everywhere the Task Force went, dapping and military reaction to it were subjects brought to our attention as a source of irritation.

The Task Force noticed dapping has become a source of considerable friction both between the black serviceman and his white counterparts and between him and the military system. It seems to provoke a reaction of white anger out of proportion to its own importance.

In some places white servicemen have developed a "power" salute or "power check" of their own. Dapping has resulted in incidents which lead to involvement with the military justice system.

In several instances, the Task Force noted the existence of unit policies forbidding dapping. The reason given for the policy was to prevent the practice from slowing mess lines. If that was indeed the reason, then any activity slowing down mess lines ought to be the subject of the regulatory policy, not just dapping. By singling out a characteristic practice of a racial group, such policy is intentionally discriminatory and should be prohibited.

(d) The speaking of English

We have spoken earlier of the special problems which Spanish-speaking soldiers have and our impression that speaking Spanish serves both real and symbolic needs. We noted the practice in several places of prohibiting the use of any language other than English. That is a poor policy and an expression of intentional discrimination which should not be tolerated. Beyond the obvious need of the services to have all military personnel communicate in English in daily military business, there is no acceptable reason for prohibiting the use of languages other than English among men and women who speak them.

(e) Hostile separation

The Task Force saw some evidence of blacks separating themselves from their non-black comrades in hostile ways, going beyond
affirming their racial and cultural solidarity. Many of our recommend-
dations are aimed at removing the basic causes of such hostile separation.
While those recommendations are being debated and, it is hoped, imple-
mented, we would recommend as an antidote the work of the several
Brotherhood Associations we saw or heard about.

We were impressed with the efforts, such as cultural
fairs and discussion programs which, though black in genesis and exe-
cution, were intended to increase and improve communication and under-
standing among racial groups. We believe the services should foster
and encourage such efforts.

(f) "Reverse discrimination"

White servicemen frequently spoke of commanders
practicing "reverse discrimination," that is, being more lenient in
their treatment of blacks through fear of being thought white racists
or of running afoul of service guidelines and policies against racial
discrimination.

Though we have no way of knowing how many officers
practice reverse discrimination, to the extent that it is practiced it
has an adverse impact on the achievement of the racial equality policies
of the services, on morale and on the respect for law and for the opera-
tion of the military justice system.

In pursuing the goal of equal treatment among his men,
a commander is free to treat men with differing needs differently, a
necessary precondition to fairness. He is not free, however, to prefer

one group of men above another. The commander who allows a serviceman
to escape punishment because he is black demonstrates as complete a
lack of understanding of service directives concerning equal opportunity
as does the commander who is lenient with a serviceman because he is
white. To the extent that commanders indulge in such behavior because
they are afraid of getting in trouble with higher authority, their very
fitness to command is brought into serious question.

(5) Disproportionate commission of offenses

The statistics with which this section opened demonstrated
that blacks tend to be reported for certain kinds of offenses -- such as
assault, robbery, larceny, and those involving disrespect and disobe-
dience -- disproportionate to their numbers in the services. Whites, on
the other hand, have a disproportionate representation in those offenses
relating to drugs and unauthorized absences.

Why is this so? The Task Force could not find a satisfac-
tory answer to that question. Instead, it has identified what it believes
to be three elements of an answer.

First, in the course of our conversations with black and
Spanish-speaking servicemen throughout the world, we became convinced
that the black or Spanish-speaking enlisted man is often singled out for
punishment by white authority figures where his white counterpart is not.
There is enough evidence of intentional discrimination by individuals to
convince the Task Force that such selective punishment is in many cases
racially motivated.
Second, we note that there is an allied form of discrimination which may not be entirely racial. We call it cultural discrimination. It appears that the Spanish-speaking serviceman, like his black comrade, is the subject of disproportionate attention from authority figures. Cultural discrimination, like racial discrimination, seems related to the minority serviceman's "differentness" but, in this case, his cultural differentness is registered by language, whether it be Spanish or the non-standard English spoken by many blacks, cultural symbols, such as Afro hair styles or black power bracelets, or cultural practices, such as "dapping" or "hopping."

The Task Force cannot quantify the extent to which both racial and cultural discrimination account for charging blacks with serious offenses disproportionate to their numbers in the services. If we could, however, we are still of the opinion that such forms of discrimination would not account for all of the disproportionate commission of offenses by blacks which our statistics show.

The third element is attitudinal. Blacks and whites both bring with them to the service attitudes which interact in the structured, often highly pressured military environment. While we do not intend to characterize all blacks or all whites as having a single set of attitudes, we have noted patterns in each group which we believe pertain both to the question of disproportionate charging of blacks with certain crimes and to the rising tension between the two races to which we alluded earlier.

Among blacks, there tends to remain the mistrust, fear, and suspicion of both white people and a white society which 300 years of inferior treatment have ingrained in them. And there is a new attitude which we believe would not have been so clearly observed ten years ago as it is today. It is an attitude on the part of many young black men and women of increasing pride in their blackness and rising defiance of white efforts, both real and perceived, to relegate blacks to inferior roles.

Among whites, we also noted a tendency which has historical roots towards mistrust, fear, and suspicion of blacks. This is part of the burden the white man brings to the service, a legacy of this country's racism. This attitude of mistrust, fear and suspicion has denied to whites as well as to blacks the necessary prerequisite of understanding and communication, the access to and correspondence with one another in everyday, familiar surroundings.

There is a new attitude to be observed among many whites, too. It is too facile to characterize it as "white backlash." Yet it has some of the earmarks of that attitude: a perception, unfounded in most cases, that blacks are getting preferential treatment because they are blacks; a disposition toward resistance to what is felt to be unreasonable black demands; a conviction that blacks are trying "to take over." Ironically, this resistance is sometimes couched in symbolic terms that imitate black symbols of solidarity: calls for "white power" and "white power check" salutes.

The interaction of these attitudes seems to create situations in which some black servicemen feel impelled to confrontations with
whites and with white authority. The result often is the commission of an act which is an offense within the purview of the military justice system.

The upshot is to swell what the Task Force regretfully concludes is a rising tide of racial tension and confrontation in the armed services.

C. Regarding the impact of racially related patterns or practices having an adverse effect upon the fair administration of justice and respect for the law

Our findings regarding racially related patterns and practices have been set forth in the discussion in the preceding section. The systemic racial discrimination found in the military system and society as a whole constitutes the most striking pattern of racially related practices which we detected; it has the most adverse effect upon the fair administration of justice for many, but not all, minority persons. It accounts, as we have said repeatedly, for the more frequent involvement of some minority personnel with the military justice system by creating circumstances which have the apparent effect of offering few viable alternatives to a confrontation with that system.

The Task Force believes that systemic racial discrimination in the military system not only tends to weaken the fair administration of justice, but plays a salient role in forming the attitudes of minority service men and women toward the military justice system. We must, however, emphasize again our belief that all of the factors, pre-service and post-entry, intentional as well as systemic, combine to contribute to the disparity in punishment rates for minority servicemen and to the weakening of military justice and respect for the law.

We have, as we were directed to do, looked at the military justice system from the perspective of the minority service person; his involvement with that system, and with the larger military system. Our recommendations are, naturally, influenced by that perspective.
We would point out, however, that blacks, whites and browns, each from their own perspective, tended to come together in identifying what, in their minds, is wrong with the military justice system. The comments established a pattern of remarkable consistency of viewpoint.

It is worthwhile to call attention to these patterns, for they have influenced our thinking and our conclusions and recommendations. We emphasize that what we set forth here are not our findings but the perceptions of the men and women we spoke to concerning the military justice system and their attitude of respect, or disrespect, toward the law.

-- Several times we were told that there is a double standard for punishing NCO's and junior enlisted men for the same offenses. What a private will be "hung" for, a sergeant will be let off with a warning or no formal action at all.

-- Commanders make courts-martial come out the way they want them to, by exercising their authority as commanders. This perception leads to suspicion of the system of justice, in general, and the reliability of military lawyers. We have frequently heard military lawyers referred to as "company men."

-- The role of the senior NCO in the chain of command -- and the way the commanding officer backs him up -- allows him to control the military justice system. It is he who has the discretion to report or not report an offense. He makes that judgment largely on the basis of factors, including his own racial attitudes, other than those of necessary discipline or justice.

-- The enlisted man's guilt is predetermined, especially in the case of Article 15 proceedings. This feeling is intensified by the practice, where it exists, of advance written recommendation of what the punishment should be.

-- The selection of members of courts-martial is rigged. Because only senior NCO's usually serve from among the enlisted ranks, the accused's right to have a third of the court selected from among enlisted men is not worth exercising.

The following lengthy discussion concerns what we found to be the outstanding problems in the administration of military justice; all have a specific bearing on racial discrimination to the extent that they result in disproportionate or unequal treatment of servicemen because of their race or ethnicity. It is our judgment, however, that in the final analysis these factors, conditions and practices are also directly related to overall fairness of treatment without regard to race. Whichever way they are considered, the net effect of our recommendations in each case will be the same: to correct a practice that is generally unfair or inequitable, to improve and strengthen the system of military justice and "to enhance the opportunity for equal justice for every American serviceman and servicewoman."
1. Nonjudicial punishment

Punishment without resort to the judicial process of the military justice system is permitted through the use of Article 15 of the Uniform Code of Military Justice. Article 15 provides commanders the means to punish for minor offenses and infractions of discipline and allows them fairly wide latitude and discretion.

This discretionary area provides the greatest opportunity for the practice of racial discrimination. Many blacks feel -- and our statistics confirm -- that they receive nonjudicial punishment disproportionate to their numbers in the military.

Our concern with Article 15, or nonjudicial punishment, falls generally into four broad areas: lack of uniformity among and within the services in its use and review of its use; inappropriateness of some punishments; underutilization of alternative measures which might obviate the need for nonjudicial punishment; and the breadth of discretion.

a. Uniformity

Historically, there has been a basis for different procedures in the various services under Article 15. Notwithstanding, the Task Force believes that the procedures among the services should be made as uniform as possible. For example, all services should grant the person a personal hearing before the commander imposing the punishment and allow him to be accompanied to the proceedings by a personal representative, whether or not he is a lawyer, to assist him. Hearings should be open and witnesses should be called where there are disputed questions of fact. The present policy of permitting a person to consult legally-qualified military counsel before deciding whether to demand trial instead of accepting an Article 15 and before submitting an appeal is good and should be continued.

b. Retention of records

The services vary in their policies governing how long the evidence of nonjudicial punishment remains in a person's record. Because retention of this information has a serious impact upon the individual, the Task Force believes that the services should reexamine their retention policies to minimize their adverse effect and should adopt a uniform policy with respect to retention of records.

c. Discretion

The Code requires a review of Article 15 punishment only when it is appealed, and even then only when certain punishments are imposed. The Task Force believes there should be some form of mandatory review. At a minimum, there should be: a periodic monitoring of the administration of nonjudicial punishments to determine whether the service person is being punished for an offense recognized by the Code; that punishment is not legally excessive; that established procedural safeguards
were followed; and that every person punished is advised of his right to appeal. To make this review meaningful, there must also be a procedure whereby the facts and circumstances of each case are clearly set out as a matter of record.

In considering why so few people appeal Article 15 punishments, the Task Force identified three deterrents to appeal: the feeling among some service men and women that it is useless to do so; an allied feeling that it can provoke retaliation from the commander; and the present statutory provision whereby persons submitting an appeal may be required to undergo the punishment pending action on their appeal. The Task Force believes these deterrents could be dealt with by publishing the results of favorable appeals, educating commanders concerning statutory rights to appeal and by the adoption of a liberal policy of staying punishment until appeals have been acted on.

The Task Force recognizes that publishing the results of non-judicial punishment, a practice followed by most of the services, may exert a restraining influence on the use of discretion because it subjects decisions of the commander to scrutiny of his officers and men. We also heard the practice criticized for being an undue invasion of privacy and because it is not entirely possible to publish all the factors underlying the decision in a given case.

While we approve the intent of the publication policy, we note there are acceptable alternatives to posting. For instance, by permitting such spectators as minority affairs personnel at Article 15 proceedings, commanders could achieve effective publication of the results and the reasons underlying their decisions. Such a policy, coupled with the increased procedural due process safeguards which we recommend, would help to ensure both the substance and appearance of fairness. If such improvements are adopted, the Task Force would then recommend that the services reexamine the policy of publishing the results of nonjudicial punishment proceedings.

d. Appropriateness of punishments

One of the commander's most difficult decisions in administering an Article 15 is to determine the appropriate punishment. He is told by the Manual for Courts-Martial that, in determining punishment, he should consider the "age, experience, intelligence and prior disciplinary and military record of the offender as well as all other facts and circumstances of the case."

The Task Force heard recurring complaints that, in administering nonjudicial punishment, commanders do not always heed the Manual's implied advice to tailor the punishment to fit the offense and the offender. This was felt to be the case particularly in regard to reduction in grade, a punishment which has serious financial consequences for the individual being punished. The Task Force believes commanders should, before imposing reductions, calculate the amount of money a man will lose by virtue of the reduction and the time it will take him to regain his former grade. This would give the commander a better understanding of the severity of the punishment he intends to impose.
The Task Force also believes that forfeiture of pay and reduc-
tion in grade should not be imposed in a single Article 15 action, since
both involve a loss of income.

The Air Force, we note, requires a commander to state for the
record his reasons for failing to suspend a reduction in grade on a
first offender. We approve that policy and urge its adoption by all
services.

The Task Force found that correctional custody is not a widely
used punishment. We believe that correctional custody is a more viable
rehabilitative tool than confinement, and for this reason we encourage
its use rather than resort to court-martial.

e. Underutilization of alternative measures

A commander has at his disposal a range of disciplinary alterna-
tives which can be used both as an alternative to nonjudicial punishment
and as a means of obviating the need for such punishment. Among them
are counseling a man to discover the source of poor behavior and attempt
a solution; giving warnings in the form of administrative admonitions;
and issuing reprimands for unacceptable behavior.

2. The summary court-martial

The summary court-martial occupies a unique position in the hierarchy
of the military justice system; it falls between nonjudicial punishment,
on the one hand, and, on the other, the special and general court-martial,
which deal with more serious crimes in a sophisticated context of
procedural protection of rights.

Under the statutory concept of a summary court-martial, a single,
impartial commissioned officer acts both as judge and finder of fact.
The proceedings are not adversary in nature, and the accused is not
entitled to counsel. He does, however, have the unequivocal and
absolute right to refuse trial by summary court-martial. (As the
result of a recent Supreme Court ruling, it is possible that the
right to counsel will be extended to summary courts.) The accused
is served with a formal, written charge sheet; is given a reasonable
opportunity to prepare his case; may invoke the usual rules of evi-
dence; is entitled to public trial; and may confront witnesses against
him.

The summary court-martial is an alternative to trial by special
court-martial. But it provides only limited procedural protections
to the accused person, while subjecting him to the possibility of
a court-martial conviction. At the same time, with the major except-
tion of adjudging confinement at hard labor, an Article 15 proceeding
by a field grade officer can achieve virtually the same degree of punish-
ment as a summary court-martial. If an offense is serious enough to warrant
confinement at hard labor, the special court-martial provides a better
forum for trial and gives the accused a greater procedural protection
than does the summary court.
In sum, virtually every case now being tried by summary court-martial could be handled appropriately by either nonjudicial punishment or trial by special court-martial. Although a minority of the Task Force believes that the summary court-martial still serves a valid purpose and provides a useful array of options for the benefit of an accused, the majority believes that elimination of the summary court would achieve three important results. First, the ends of justice would be better served. Second, fewer persons would have their records marred by court-martial convictions. Third, trial by special court-martial would involve adequate procedural protection of the rights of the individual accused.

Therefore, the Task Force believes that the services should undertake to decrease the use of the summary court-martial, with a view toward its eventual abolishment. Pending this, the Task Force suggests several modifications to ensure fairness, and the appearance of fairness, in the operation of summary courts-martial:

- Only judge advocates should be appointed to sit as summary-court officers;
- Counsel should be detailed to represent the accused and the government;
- The nature of the summary court-martial should be an adversary proceeding;
- Because of the shortage of judge advocates aboard ship, further study should be conducted to determine whether the Navy can comply with the above three points at sea;

The evidence of conviction by summary court-martial should be removed from the accused's field file upon reenlistment or release from active duty; and summary courts-martial should be empowered to impose correctional custody.

3. Correctional facilities

We heard considerable criticism of pretrial confinement in the course of our visits. The person authorizing confinement — usually the immediate commander — was often accused of abusing his discretion and practicing racial discrimination. The disproportionate number of black servicemen in pretrial confinement contributed to this belief. Commanders, on the other hand, often felt that requirements governing pretrial confinement were too strict and that the restrictions on placing an individual in pretrial confinement worked to erode discipline. This criticism was based on a misunderstanding by some commanders of the real basis for ordering pretrial confinement.

We believe that procedures concerning pretrial confinement should be improved and standardized to limit the abuse of discretion and to enhance the perception of fairness. Pretrial confines should be credited, if subsequently found guilty, for time spent in confinement.

Persons placed in pretrial confinement for less serious offenses should be segregated from those persons placed in pretrial confinement for more serious offenses to minimize the debilitating effects of such
commingling of minor offenders. All confines should be served with a copy of any letter requesting or granting permission for pretrial confinement over thirty days.

Headquarters, United States Army Europe (USAREUR) has established worthwhile programs to alleviate pretrial confinement problems. USAREUR requires that, in each case, the confinement be approved by the general court-martial convening authority or his designee (usually the staff judge advocate), and that the staff judge advocate must be notified (if he is not the designee). The confinement order must accompany the accused to the confinement facility and must show the name, rank and position of the person approving confinement and the name and rank of the staff judge advocate involved.

Further, USAREUR requires that, before an accused may be placed in pretrial confinement, a qualified judge advocate defense counsel be appointed for and talk with him. This defense counsel must verify, in writing, that he has interviewed the accused before the latter may be admitted to the stockade.

Prisoners are not accepted for pretrial confinement in USAREUR unless this completed counsel form, a properly executed confinement order and a fully completed checklist for use by the military magistrate accompany the prisoner to the confinement facility. This checklist contains background data on the individual, including facts and circumstances concerning the incident forming the basis for the present confinement. A military magistrate (a field grade judge advocate officer appointed by the Judge Advocate, USAREUR, and supported by the full authority of the Commander-in-Chief, USAREUR) then personally interviews each soldier placed in pretrial confinement within the first seven days, and reviews the circumstances of confinement, including whether defense counsel has, in fact, been appointed for and talked with the accused. The military magistrate, after considering all the facts and circumstances of the case, may order the prisoner released, if he determines that continued pretrial confinement is not warranted.

These procedures have helped to alleviate many of the problems associated with pretrial confinement in USAREUR and might well contribute to the resolution of similar problems elsewhere in the armed forces.

The Task Force observed certain recurring problems in the administration of correctional facilities. Placing prisoners in administrative or disciplinary segregation is a source of frequent complaint. Administrative segregation is the restriction of the movement and activity of prisoners for the purpose of control, security or the prevention of injury to prisoners or others. This physical separation from other prisoners is not a form of punishment. Disciplinary segregation, on the other hand, is a form of punishment for the more serious infractions of rules or in cases where lesser disciplinary measures have been ineffective. Present service policies and procedures governing the imposition of administrative and disciplinary segregation do not provide, in our judgment, sufficient legal protection and should be reformed.

Another criticism dealt with the processing of prisoner complaints
about the correctional facility or treatment encountered there. Although current policies concerning the processing of prisoner complaints appear to be conceptually adequate, some contended that confinement personnel failed to handle their complaints properly. Measures must be taken by the various services to ensure that their confinement authorities discharge their duties in accordance with existing regulations.

We believe that inmate councils should be established at correctional facilities, when feasible, to increase the potential for dialogue between supervisors and prisoners. Such councils would provide avenues for presenting grievances and should contribute to reducing the level of tension and anxiety prevailing at many correctional facilities.

The inspection of prisoner mail also is an irritant to prisoners. Detailed regulations cover this topic thoroughly. However, the Task Force believes that measures should be taken to ensure that no prisoner mail, either incoming or outgoing, is read by correctional facilities personnel, that incoming mail is opened only for purposes of inspecting for contraband, and that outgoing mail is sealed and not inspected. Such measures would guard against the introduction of contraband (such as stationery soaked in LSD) into a correctional facility, yet preserve, so far as possible, the prisoner's privacy.

The prison libraries we observed were particularly inadequate. Such libraries should be adequately stocked and should include reading material for minority groups, especially those who speak Spanish. Books on minority affairs, history, culture and entertainment should be available at all correctional facilities. Also, copies of the Manual for Court-Martial should be maintained together with prominently displayed information on where to obtain additional desired legal materials.

More training for supervisory confinement personnel is desirable. Frequently, those persons charged with the supervision of prisoners and the administration of correctional facilities have insufficient knowledge of penology and human relations. Courses designed to instruct in these areas should be made a mandatory part of all confinement personnel training.

Increased emphasis on the rehabilitative rather than on the punitive aspects of correctional treatment is mandatory. Generally speaking, local stockades or correctional facilities provide no real program for rehabilitation.

Each service should take the necessary steps to ensure that rehabilitation, education and training are given maximum emphasis for all confineries of correctional facilities, including pretrial confineries, and should explore the feasibility of a supervised probationary system for sentenced prisoners.

4. Increased stature of counsel and judicial functions

   a. Military counsel

Many enlisted men voiced a lack of confidence in military defense counsel. They believe that defense counsel are not truly representing the interests of the accused, but rather are serving the commander. The Task Force found that there were many dedicated, able and enthusiastic
judge advocate defense counsel who defend their clients to the utmost of their ability; yet this perception of duplicity exists.

One way to correct this situation is to accord to defense counsel, as well as to trial counsel, the total indicia of professionalism that is rightfully theirs. An accused cannot be expected to walk into the office of his defense counsel -- an office which is poorly furnished, inadequately lighted, shared with others, which has an inadequate reference library, and which is located in close proximity to that of the trial counsel -- and feel that he will receive the services of a true professional. It is essential that the individual client perceive that his attorney is, in fact, a professional. Defense counsel must be provided with adequate facilities, separate and apart from those of the trial counsel. They must have access to an adequate reference library. We believe that the dignity of and respect for the law must be enhanced. Distinctive court houses should be built on military installations with court rooms which contribute to a judicial atmosphere and an aura of professionalism.

Another criticism frequently encountered by the Task Force was that the military justice system is all white. There are approximately forty-five black and thirty Mexican-American or Puerto Rican judge advocates presently on active duty. This represents slightly less than two percent of the total service judge advocate strength. The services have recognized the need for more minority lawyers, but, despite their intensified efforts, they have been unable to successfully obtain such lawyers in sufficient numbers. The services should explore the feasibility of contracting with minority law firms or with minority groups, such as the National Association for the Advancement of Colored People, NAACP Legal Defense Fund, Inc., National Bar Association, National Urban League, Inc., National Conference of Black Lawyers, Mexican-American Legal Defense Fund, Puerto Rican Bar Association, and Puerto Rican Legal Defense Fund, to supply lawyers for use by the services as defense counsel. We believe more minority defense counsel would reduce the perception of racial bias, as well as increase the level of understanding with minority accused. As an interim measure, military defense counsel should be educated and trained to permit them to better relate to minority clients and witnesses. Qualified minority attorneys could instruct non-minority counsel on communicating with minority personnel. Adequate funds should be made available to the services for the express purpose of recruiting minority lawyers. All necessary measures should be taken to acquire men and women, of all races, who possess high professional ability to serve as military lawyers.

b. Military Judges

The Uniform Code of Military Justice, enacted in 1950, provided the law officer -- as he was then denominated -- with more judicial authority and responsibility than he was accorded before, but it still left him far short of equality with a civilian judge. For example, he could not sentence the accused or rule on challenges, and his rulings
on the interlocutory questions of sanity and of a motion for a finding of not guilty were not final, as are those of a civilian judge. The law officer had no judicial existence until a case was referred to his court for trial. Thus, he could neither authorize the taking of depositions nor entertain any motions before trial. There was also no express provision empowering the law officer to issue search warrants. The president of the court retained certain ministerial functions which identified him, rather than the law officer, as the presiding official. Thus, the president would call the court to order, prescribe the uniform to be worn, set the date and time of trial, grant continuances and announce recesses and adjournments.

In the Military Justice Act of 1968, Congress changed the law officer's title to that of "military judge" and provided him with more judicial authority. It is clear now that the military judge, not the president of the court, is the presiding officer. The military judge now sets the date and time of the trial, establishes the uniform, calls the court to order, grants continuances and announces recesses and adjournments. More importantly, he is now authorized to rule finally on challenges, motions for findings of not guilty and legal questions involving the defense of insanity; to convene sessions for the purpose of ruling on motions and disposing of other legal matters before the court members assemble; and, with the consent of the accused, to conduct a trial without members.

The military judge, however, still lacks some of the authority of a federal judge. For example, although he may sentence an accused in the case of a trial by military judge alone, he may not do so in a trial with members. Furthermore, even in those cases where he can sentence, he may not suspend the execution of any part of the sentence. This fact was cited as a disability many times by personnel interviewed by the Task Force. Similarly, the power to defer service of sentence to confinement pending completion of appellate review, in accordance with Article 57 of the Code, lies with the convening authority and not with the military judge. Even though the military judge may now entertain motions before the court is assembled, he still has no visibility until the case has been referred to trial by the convening authority and, accordingly, cannot act with respect to the case until that time. The military judge has no habeas corpus authority to direct the release of a prisoner from pretrial confinement, nor does he have the inherent power to issue warrants based on probable cause.

A military judge seldom has the accouterments equivalent to those of a civilian judge. Military judges should be provided with chambers commensurate with their positions, wear judicial robes, and preside in courtrooms having a completely judicial atmosphere.

The concept of casting the military judge in the image of a civilian judge is good, and its fulfillment should continue to be sought. This practice not only helps to ensure a fair and impartial trial, but also correctly presents the appearance of such fairness and impartiality.
c. Illegal command influence

We heard statements from several witnesses and numerous comments from service personnel on the problem of illegal command influence, or the appearance of such influence, in trials by court-martial. The increasing complexity of the court-martial system has made many commanders wary of involving themselves too deeply in it. To the extent that the court-martial represents the "ultimate weapon" to maintain discipline, the commander has a legitimate concern with the functions of a court-martial; but the commander must resist from trying to influence what then becomes the course of justice, and not of discipline. The Task Force deplores illegal command influence where it does exist, and urges the elimination of its appearance. There are critics who recommend total civilianization of the military justice system. In order to bring about immediate corrective action, the Task Force recommends certain specific reforms. If these reforms are inadequate to eradicate illegal command influence, or its appearance, demands for more radical reforms will persist, including total civilianization.

The most direct and immediate means of limiting the effectiveness of the defense counsel is through the application of unlawful command influence. Although by no means a universal complaint, some defense counsel have stated to the Task Force that they have been harassed by their commanders and even, in some cases, by their staff Judge Advocates when they have zealously defended cases of particular interest to the command. Some defense counsel felt that, because they had conducted successful defenses in a number of cases of special interest to the commander, they were reassigned to less desirable duties within the office of the staff judge advocate. Undoubtedly, such pressure has occurred from time to time, but it appears not to be pervasive.

One attempt to exercise the specter of command influence was the Military Justice Act of 1968, which removed the general court-martial judge from command channels and made him responsible only to the particular service Judge Advocate General. The defense counsel, as well as the special court-martial judge, should also be removed from all possibilities of control by the commander. All military judges should be taken out of the command chain and made responsible through separate channels to the appropriate Judge Advocate General. All judge advocate defense counsel should be placed under the direction of the appropriate Judge Advocate General or, in the case of the Marine Corps, the Director, Judge Advocate Division, Headquarters, United States Marine Corps. Under such a concept, the circuit trial judiciary officer could be the chief administrative officer for his circuit, assigning judges, defense counsel made available and members for all cases, and supervising the special court-martial judges within his circuit. There could be in each circuit a circuit defense counsel who supervises and rates the defense counsel under him. This person, in turn, could be supervised by the chief of the Defense Appellate Division in the Office of the Judge Advocate General. The judges could be supervised by the chief of
the appropriate trial judiciary. All of these officers would thus be removed from control of commanders whose cases they try, thereby virtually eliminating the possibility of any unlawful command influence.

To further improve the quality of justice at the local level, and aid in reducing the suggestion of illegal command influence, all special court-martial convening authorities should obtain the consideration and advice of a judge advocate before referring any charge for trial and, again, before taking any action on the results of such trial. Additionally, the services should have the authority to invoke participation of non-military personnel in the trial or disposition of special cases or issues of peculiar sensitivity.

5. Selection of court members

Selection of members of courts-martial has been criticized on several counts: court members are not selected on a random basis; the composition of the court is weighted heavily in favor of senior officers or senior noncommissioned officers; selection is made by the convening authority; there is an insufficient number of peremptory challenges available to the defense.

The present method of selection is not random, as that term is commonly understood. The Uniform Code of Military Justice requires the convening authority to select as members of a court-martial those members of the armed forces, who, in his opinion, are best qualified for that duty by reason of "age, education, training, experience, length of service, and judicial temperament." It provides, further, that any commissioned officer on active duty is eligible to serve on any court-martial; that any warrant officer on active duty may serve on a court-martial to try persons other than commissioned officers; and that any enlisted man on active duty, if he is not a member of the same unit as the accused, may serve on a court trying enlisted men, if enlisted men are requested by the accused. As a practical matter, most courts are made up of commissioned officers only. Even in the relatively rare case in which the accused requests enlisted men, senior noncommissioned officers are most often selected.

Some critics attack this procedure as violating the trial by jury clause of the Sixth Amendment or the due process clause of the Fifth Amendment. Proponents of the present system, bolstered by decisions of the Supreme Court, contend that the Sixth Amendment right to a jury trial, by implication, does not apply to trials by court-martial and that the existing system does not result in a denial of due process.

The Task Force believes that it is not necessary to reach the constitutional question; it is enough to say that in the interests of fairness, as well as the appearance of fairness, it would be wise to adopt some form of random selection. To be truly random, no eligible class of persons should be arbitrarily excluded from consideration. This does not mean, however, that certain classes could not be excepted on a rational basis.

At a minimum, the convening authority should play no part in the selection process. A list of names from whom the court members
would be drawn should be obtained by some method of random selection.
From this master list a specified number of names (e.g., ten for a general court-martial and five for a special court-martial) would be selected, on a random basis, as the prospective panel. The military judge would examine each prospective member as to possible grounds for disqualifications.
Those apparently qualified would be seated as members, subject to voir dire and challenge by counsel for either side. The Task Force believes this procedure -- or one similar to it -- would go far toward removing the aura of unfairness that surrounds the military court-martial without in any way weakening the administration of military justice.

Finally, on the question of challenges, the Task Force believes that the Uniform Code of Military Justice should be changed to permit additional peremptory challenges by both sides and to permit the defense to have a greater number than the prosecution. This would be consistent with the practice prevailing in many civilian jurisdictions.

6. Shortages of judge advocate personnel

The military justice system faces a worsening manpower crisis which, in the judgment of the Task Force, has harmful results throughout the system. Throughout the services, there is a serious shortage of judge advocate positions in the vital, so-called middle-management ranks of major (or lieutenant commander) and lieutenant colonel (or commander). In these ranks there is a fifty percent shortage of authorized strength servicewide.

Thus, the wealth of military legal experience in judge advocate ranks possessed by World War II and Korean War officers is rapidly disappearing to the detriment of the services, the military justice system and service men and women. With time and the retirement of senior officers, shortage of skilled manpower will become more acute.

The Task Force believes it witnessed tangible examples of the shortage. Many of the complaints we heard from enlisted personnel that the military justice system is unfair might not have been voiced if there were enough judge advocates to hear out and help men and women in trouble with that system. Some of the criticism of judge advocates as "uninterested," "unresponsive," and "company men" is attributable, in our judgment, to the fact they are limited in the amount of time they can spend with their clients.

Some junior judge advocates doubt their commanders give sufficient weight to policy advice from their staff judge advocates.

If this is so, the situation will become more aggravated as staff judge advocate positions are filled increasingly by junior officers.

More serious, however, is the effect this manpower shortage has in keeping judge advocates from filling what we consider to be one of their most important functions: preventing the individual's involvement in the military justice system. We believe that preventive law, legal assistance and training of troops in military justice would pay substantial dividends to the services in reducing courts-
martial, improving relationships among groups and eliminating problems
that are detrimental to morale and efficiency.

Occupied as he is with "firefighting," the Judge advocate has no time
to invest in fire prevention. The traditional role of the civilian lawyer
as problem solver, counselor, preventer of confrontation and avoider of
litigation is one which is especially important in the military, one
which is not being performed.

The Task Force believes that resolution of this worsening manpower
 crisis is urgent and requires immediate attention and a long-range pro-
gram of rebuilding and maintenance of the Judge advocate ranks. We rec-
ommend that the Department of Defense develop programs -- and propose legisla-
tion where necessary -- which will attract, retain and promote young men
and women of ability of all races as Judge advocates in the various
services.

7. Court-martial reviews

Historically, military codes were written to be administered by laymen
rather than by lawyers; today, courts-martial are almost totally managed
by lawyers. Yet, many of these lawyer functions have been engrained onto
a system that retains its historic reliance on the commander as a quasi-
judicial functionary. Clearly, some of the safeguards that were consid-
ered necessary to prevent illegal influence of the court-martial by the
commander would not be required in a system administered largely by law-
yers and, if some anachronisms were removed -- especially that of exten-
sive review of decisions by Judge advocates -- the efforts of the military

lawyer might be channeled into more productive areas.

The Uniform Code of Military Justice establishes mandatory review
of court-martial convictions at several different stages. The convening
authority of a general court-martial must refer the record of each trial
to his staff Judge advocate for review. If the case results in a
sentence which affects a general or flag officer, or extends to death,
dismissal of a commissioned officer, cadet, or midshipman, dishonorable
or bad conduct discharge, or confinement at hard labor for one year or
more, it must be reviewed by an appropriate Court of Military Review.
Cases in which the sentence affects a general or flag officer, or
extends to death, are also automatically reviewed by the United States
Court of Military Appeals. A different system of review is established
for summary courts-martial and those special courts-martial in which a
bad conduct discharge is not adjudged. There, after action by the con-
vening authority, the case is automatically reviewed by a Judge advocate
on the staff of the officer exercising general court-martial jurisdic-
tion. There is no requirement, however, that the record of trial be
transcribed verbatim, so the review is by nature limited. There
is no further review by a Court of Military Review or the Court of
Military Appeals.

With respect to trials by general court-martial and by special court-
martial in which a bad conduct discharge is adjudged, the present system
of appellate review uses precious time and resources and is believed,
at least by some, to result too frequently in perfunctory action. Such
an elaborate scheme of appellate review is unnecessary. This is especially true in view of the requirement for a military judge, lawyer defense counsel, and a verbatim record of trial.

A more efficient system, which would still protect the rights of the accused, would be to limit the action of the convening authority to one of clemency consideration and, except in capital cases, leave to the trial defense counsel the responsibility of submitting an assignment of errors -- an appeal -- to an appropriate Court of Military Review.

The summary court-martial and the special court-martial in which a bad conduct discharge is not adjudged present particular problems with respect to reviews. The summarized record of trial provides a less than adequate vehicle for review. Not all summary and special court-martial convening authorities have a judge advocate on their staff. There are ways, however, by which the review of these cases may be made meaningful. The Task Force recommends that the special court-martial convening authority have available a judge advocate to advise him both before and after trial. The accused at a special court-martial should be able, through counsel, to appeal his conviction, assigning specific errors. If he does appeal, the record of trial, or at least those portions relating to the assigned errors, should be transcribed verbatim. The appeal would then be considered, as presently, by a judge advocate assigned to the staff of the general court-martial convening authority. If the accused does not appeal, the record, in

summarized form, would be examined by a judge advocate at the higher headquarters, strictly on the question of jurisdiction. As in the case of the general court-martial, the review of the convening authority would be limited to clemency considerations.

This then is our concept, in outline form, of how reviews of court-martial convictions may be made more meaningful. It is recognized that many details would have to be considered before such a plan could be implemented. We would leave that essentially mechanical process to the services.

8. Article 13A, Uniform Code of Military Justice

Article 13A, Uniform Code of Military Justice -- called the general article -- had its genesis in the Articles of War, the precursor of the Uniform Code of Military Justice. It was adopted from the British Articles of War during Revolutionary times and, historically, was a vehicle for permitting punishment for civilian-type offenses, which could not be tried by court-martial except in a limited number of cases. It provides:

Though not specifically mentioned in The Code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to The Code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

Article 13A does not delineate specific offenses, such as drunken-
ness, improper uniform or indecent acts, although the Manual for Courts-Martial, which is an executive order, does give examples of acts or omissions which might violate Article 134 and provides model specifications for alleging various offenses thereunder.

The historical reason for having a general article -- to try civilian offenses -- is no longer valid, as the Uniform Code of Military Justice includes clearly defined civilian-type offenses in its punitive articles.

Additionally, concern has been expressed in some quarters that the vagueness and breadth of language in this article makes it overly subject to abuse.

The Task Force believes that offenses currently tried under the first two clauses of the Article should be codified as specific punitive articles. This would require legislation. The third clause -- "crimes and offenses not capital" -- should continue to be used to charge violations of federal and state criminal statutes.

9. Military justice training

Despite the fact that courses of instruction in military justice are conducted at all the installations the Task Force visited, we found a significant number of enlisted persons, white and non-white, who do not have a fundamental understanding of their rights and responsibilities under the Uniform Code of Military Justice. Nor were we always satisfied that officers, especially the younger ones, understood their duties under the Code. Clearly, the military justice system cannot function properly in the face of widespread ignorance of its content, requirements and operation.

Remedial action is called for.

In order that young service men and women better appreciate their newly assigned responsibilities, the Task Force believes a concentrated orientation program should be established for all persons at the outset of their service. We envision training that would focus both on military justice and human relations. The content and procedure of military law would be explained, but the thrust of the instruction would be to inform the individual that he is stepping into a different world with different rules, and what might have been acceptable conduct in civilian life may well be a criminal act in the military.

Such instruction, we think, would lay the foundation of knowledge that is essential both to lawful conduct by the service person and to his smoother transition from civilian to military life.

Additionally, the armed forces should be required to standardize and increase the quality, the amount and the regularity of military justice training. It is fundamental to the whole system of military justice that all servicemen understand their rights and responsibilities under the Code; that officers clearly understand their duties and responsibilities, particularly as they relate to the processing of court-martial charges.

Too often, the instruction that could lead to such understanding is too little, too low in quality, too infrequent and too dependent on the policies followed in a particular command.

For these reasons, a uniform, mandatory course of instruction in military justice should be given to all servicemen annually.
10. Regulation of personal appearance, worship and self-expression

In the course of our visits to installations throughout the world, we encountered problems of genuine concern relating to military regulation of personal appearance, personal worship and to both the substance and the symbols of self-expression.

Today self-expression is often manifested in the wearing of distinctive clothing, jewelry, or in some cases hair styles which symbolize an individual or group point of view.

Neither the freedom to express one's self, especially in the choice of one's religion, nor the question of military regulation of such expressions is a frivolous matter or concern unrelated to the military or the military justice system. Indeed, the Task Force found in this area the sources of some of the most keenly expressed complaints it encountered.

Access to the written and spoken word cropped up as one aspect of the curtailment of self-expression and the effort of some commanders to restrict it is a source of irritation and complaint. One commander objected to the presence of a book about Ernesto "Che" Guevara in the stockade library. He threatened to remove it and others like it and expressed a similar dissatisfaction concerning the display in personal living areas of posters and pictures with political overtones. Another commander, in Asia, imposed a ban on the recorded speeches of Malcolm X and warned local merchants against selling the record.

Restrictions on the free exercise of religion, though somewhat less marked, was a problem in some commands. The Task Force found no lack of respect for or interference with the practice of either Christianity or Judaism. It did, however, encounter an instance in which Black Muslims were denied copies of the Holy Koran while in confinement.

Free association with other persons or groups is, in our judgment, a problem of considerable proportions. The Task Force repeatedly received complaints that groups of minority persons were dispersed when they attempted to fraternize both on and off base. Some installations have gone so far as to promulgate regulations against the assembly of more than a specified number of persons which, it is charged, are selectively enforced against blacks. (Regulations aimed at stopping the practice of dapping, discussed elsewhere in this report, are also a part of this problem.) In at least one case, interracial association has been thwarted by placing off limits the only interracially harmonious gathering place in an otherwise racially polarized military area.

Personal appearance, however, must be considered the single greatest source of irritation, frustration and low morale we encountered, if sheer volume of complaints is any measure. The Task Force is mindful that the question of hair length or style, which dominated these complaints, or of the wearing of jewelry and other insignia is not solely a question of hair, beards, mustaches, ornaments or jewelry or even of personal appearance. Self-expression through these media is inextricably bound up with the media themselves.
The regulation of these aspects of personal appearance was a cause of deep discontent both with the regulated and the regulators. Both officers and enlisted personnel complained of the amount of time and energy expended in efforts to explain the rationale of haircut regulations to personnel and to obtain compliance with standards. Blacks object to the restrictions which they feel impose undue limitation on their freedom of expression. Young whites, too, adopt hair styles to reflect their own attitudes and thoughts in our evolving society. Both groups are irritated by regulations which they feel make them appear unfashionable.

Further difficulty is occasioned by the diversity of regulations in the several services. These differences are frequently irritating to those who are in a service with strict haircut policies. The armed forces should reexamine haircut standards with the goals of decreasing irritants, increasing the attractiveness of a military career, and adopting a single haircut standard, easily interpreted by servicemen and commanders alike and enforceable from a practical standpoint.

Group identification and cultural affinity is expressed by servicemen in ways other than haircuts, beards or mustaches. Personal attitudes are embodied in the ornaments and jewelry worn by service members, such as peace symbols, black liberation badges, slave bracelets, buttons and stickers, peace rings and other paraphernalia worn as a sign of sharing a common faith, opinion or interest. They are symbolically espousing a group affiliation philosophy. The traditional masonic ring, as well as college and fraternity rings, although seldom mentioned in this context, serve the same purpose. Lately, as a consequence of the conflict in Vietnam, there has been widespread use of the POW bracelet, each one depicting the name of an individual American serviceman held prisoner in North Vietnam. The reasons for wearing jewelry or ornaments are as varied as the currents of thought prompting their use.

We do not question that the armed services face a serious problem when trying to establish guidelines regulating the substantive or symbolic freedom of speech exercised by its members, and we recognize the need for our military forces to operate free from religious, racial or political coloration, which may be periled when expressions of thought and opinion go beyond accepted norms. Permitting the expression of diverse viewpoints, whether in writing, orally or by symbolism may well increase the morale of members of the armed forces. The heterogeneity of cultures and backgrounds in the military service produces a reflection of the aspirations and ethics of the nation. Certainly, it is desirable that the military maintain this makeup. The integrity of the uniform promotes and enhances the traditional apolitical stance of the military service. To the extent that items expressing cultural or fraternal pride do not cover, obscure, replace or detract from the various elements of a properly worn uniform, they should not be forbidden. We believe that black power bracelets are no more or less offensive than are college or fraternity rings, but necklaces, medallions or pendants
which are worn outside the uniform detract from the integrity of the uniform itself. These items should be worn inside the uniform so that they will not detract from the uniform and its emblems.

Repression often fuels dissension and division. Lack of appreciation of and over-reaction to the exercise of the right of free expression are not conducive to respect, trust, and confidence in command. When, for example, blacks are punished for wearing black power bracelets, they believe that the commander is bigoted against blacks and that his actions confirm this belief.

Uniformity must be stressed here. We suggest that personal expressions should not be interpreted differently from one service to another. The regulations in this area should be both clear and liberal. Implementation should, and must be, uniform among the services.

Although all military personnel must realize that there are certain restrictions and limitations upon their freedom of action that are inherent in their status as service men and women, the friction and conflict caused by regulations about cultural identity and personal self-expression would be greatly minimized if the military would also fully realize that the service person is an individual and allow him or her all personal liberty consistent with the existence of the military in a free society.

11. Status of Forces Agreements

In the absence of an agreement providing to the contrary, members of the armed forces of the United States are subject to the laws of the foreign country in which they are stationed.

The United States has negotiated Status of Forces Agreements (SOFAs) with most of the foreign countries in which a significant number of United States military personnel are stationed. These agreements define the rights and obligations of the visiting forces and their individual members in foreign countries.

The criminal jurisdiction arrangement under the SOFAs recognizes two broad categories of offenses: offenses subject to exclusive jurisdiction, which are those offenses punishable by the laws of one state, but not by the laws of the other state; and offenses subject to concurrent jurisdiction, which are those offenses punishable by the laws of both states.

In general, Status of Forces Agreements provide that the United States has the primary right to exercise jurisdiction over all offenses arising out of any act or omission done in the performance of official duty and offenses solely against the security, property or person of the United States forces or its members. In all other cases subject to concurrent jurisdiction, the host country retains the primary right to exercise jurisdiction over United States servicemen.

During our trips, the Task Force found widespread ignorance as to the exercise of jurisdiction by foreign governments. Many enlisted men felt that their constitutional rights were violated by the foreign courts or that they were tried by foreign courts solely as a result of a Status
of Forces Agreement.

In order to protect the rights of our servicemen, we believe that in addition to a foreign attorney, a military legal adviser should be provided to an accused in all cases in which a foreign government exercises its jurisdiction to try a serviceman in its courts. Such a situation would provide the accused with someone who speaks his own language and has a direct and immediate interest in his specific case. We feel that trial observers should be trained to be alert to the exercise of any racial discrimination on the part of foreign authorities. To remedy the misapprehensions of many servicemen, all services must increase education and training concerning SOFA's, especially emphasizing the rights and responsibilities of the individual servicemen under such treaties.

If American military authorities assume custody of an accused, they are obligated by the SOFA to make him available to the foreign authorities for investigation and criminal proceedings. In addition to breaching an international agreement, the inability or unwillingness of the United States to insure the presence of U.S. military personnel for trial or for the commencement of a sentence could ultimately lead to pretrial confinement by foreign authorities in every case. This would impose severe unwarranted hardship on some servicemen and their families.

The United States has taken the position that confinement is not required in every assumption of custody of an accused and that military authorities may exercise their discretion as to the type of restraint required to ensure the presence of an accused at trial. We approve of such a position and encourage all services to use, to the maximum extent practicable, a form of restraint other than pretrial confinement when a case involves the exercise of jurisdiction by a foreign government.

Regardless of whether jurisdiction may also be invoked by foreign authorities, in most cases in which disciplinary action under the Code could be taken, military commanders in some services complete all pretrial action, including the referral of charges and any necessary investigation. There are several reasons given for this procedure: being prepared for trial provides a persuasive argument in negotiations with foreign authorities for a waiver of their right to exercise jurisdiction; if jurisdiction is subsequently waived, U.S. military authorities are in a good position to accord the accused his right to a speedy trial; information derived from the investigation is often beneficial to the accused in his trial by foreign authorities; and court-martial charges are an additional basis for pretrial confinement of the accused in U.S. confinement facilities.

Decisions of the Comptroller General hold that when a U.S. serviceman is in pretrial confinement for commission of an offense subject to foreign jurisdiction, he is not entitled to pay and allowances while in confinement and charged by foreign authorities. These decisions hold that the fact that the place of confinement is a U.S. military facility and that charges under the Code have been preferred against him do not change the individual's non-pay status. Accordingly, the individual is
not credited with pay and allowance for the period of confinement, 
unless he is subsequently acquitted.

The Task Force feels that such a situation is both improper and 
in equitable. We, therefore, recommend that appropriate action be 
taken to pay an accused who is in pretrial confinement as a result 
of an exercise of jurisdiction by a foreign government.

12. Americans of Spanish descent in the armed forces

Americans of Spanish descent are the second largest minority in 
the United States. There are in this country some seven million 
Mexican-Americans, another four million Puerto Ricans and an additional 
five hundred thousand Cubans, Central and South Americans and Dominicans. 
But, in the personnel statistics of the armed forces, they do not 
exist.

The Task Force, elsewhere, has called attention to the unsatis-
factory manner in which the services keep track of their personnel 
by racial and ethnic identification. This failing has particularly 
serious consequences for Americans of Spanish descent because it leads 
directly to both a failure to perceive that they have problems in the 
military and to a distorted understanding of what those problems are.

The Task Force repeats here its strong conviction that the services 
should change their present, outdated racial classification and 
personnel data-gathering systems to encompass Mexican-Americans, Mexicans, 
Puerto Ricans, Cubans, Central and South Americans as separate categories 
which will, additionally, make further distinctions for Mexican-
Americans and Puerto Ricans born in this country.

An example of the disadvantage the existing system works on men 
and women of Spanish descent in the armed forces is found in the 
instability of the Task Force to make a meaningful determination of how 
equal opportunity and human relations programs impact on them. As a 
result, it is difficult to point to a single program in this vein 
which has been developed to the special requirements of this large 
group.

It need hardly be pointed out that, in such a delicate and subtle 
area as human relations or equal opportunities for minority groups, the 
program developed to fit the culture, language and heritage of one 
group cannot be expected to deal with the cultural, linguistic and 
social problems of a distinctly different group. In fact, it is con-
ceivable that the application of such a program could have counter-
productive effects.

Human relations and equal opportunity programs sensitive to the 
requirements of Americans of Spanish descent should be developed and 
taught with the full participation of Spanish-Americans.

The Task Force, elsewhere, has dwelt on the difficulties which 
language often poses to the Spanish-American service man or woman, 
especially when attempts to regulate the speaking of a language other 
than English go beyond reasonable, duty-related bounds. The problem of 
language has other manifestations as well. For instance, the Task Force
heard complaints about the difficulties caused by the lack of Spanish-speaking doctors, other medical personnel and military lawyers. The barrier to communications generally posed by differences in languages is particularly harmful in these areas.

Another example of language-related problems is the difficulty which men and women whose first language is Spanish have in scoring as well as they could on tests. Such tests could, and should, be administered in Spanish.

The paucity of statistics relative to Spanish-speaking service personnel prevents the Task Force from making meaningful findings and recommendations in this area, and hampers the services in developing programs for their benefit.

13. Administrative discharges

Although there is a widespread use of the administrative discharge in the services to separate from the service with an appropriately characterized discharge (honorable, general, undesirable), those individuals who are either unfit or unsuitable for military service, prior to the conclusion of their term of service, the procedures and effects of such an elimination are much misunderstood.

The stigma of a less than honorable discharge has long been recognized. It has, in fact, severe consequences for the person receiving it. The undesirable discharge is virtually indistinguishable in the public mind from a punitive discharge (bad conduct or dishonorable discharge) and has the added disadvantage of not containing a stated reason for the discharge except to the extent that the Separation Program Number (SPN) appearing in the accompanying DD Form 214 may reflect it. The undesirable discharge may disqualify the recipient for benefits administered by the individual service and the Veterans Administration. Moreover, many employers refuse to hire job applicants who possess less than honorable discharges. In practical effect, such a discharge becomes a burdensome cross to bear, and, for this reason, its issuance should result only after compliance with the most stringent procedures designed to safeguard the rights of the respondent.

Many minority servicemen feel that administrative eliminations are used unfairly to separate minority group members who are believed by their commanders to be "outsized" or "militant." A number of minority servicemen reported that they had observed such instances and that frequently the "victims" had become so harassed by the command that they are willing to let themselves be separated, without contesting the elimination.

The Task Force believes that the administrative discharge has impacted to the detriment of minority group servicemen. In all services, black service members received in Fiscal Year 1971 a lower proportion of honorable discharges and a higher proportion of general and undesirable discharges than whites of similar aptitude and education. Our statistical study graphically demonstrated this dramatic disparity.

Although the Task Force is divided on whether to retain the present system of characterizing administrative discharges, we believe that in
any event changes should be made in the administrative elimination procedures to provide for greater protection of the serviceman's fundamental rights. Some administrative system is necessary to discharge unsuitable or unfit service members prior to the expiration of their enlistment. The question is whether the less than honorable discharge should be used as a means of characterizing the type of service performed by those persons eliminated from the service for cause (as contrasted to those who are honorably discharged after successfully completing their obligated tour of duty).

Some argue that to further burden individuals who have demonstrated great difficulty in conforming to military service norms does an injustice to them and to society at large when they return to civilian life and find themselves virtually unemployable. This would have particular application to minority group individuals. Because of prior deprivation, educationally and economically, most often caused by racial discrimination, the minority group member is at a competitive disadvantage from the outset. With the addition of a less than honorable discharge, or even a general discharge, the opportunities for gainful employment markedly diminish. A procedure originally designed to separate those persons who do not contribute to the efficient functioning of the armed forces has become, in reality, a punitive sanction for the individual involved, but with little positive benefit accruing to the services from the unfavorable discharge characterization.

Others believe that the services need to retain the present system of characterized discharges, although they feel there should be additional procedural safeguards for the respondent. The honorable discharge represents a reward for achievement; a sought-after incentive -- a positive stimulus -- a desirable way of influencing behavior. The present system is a necessary method to differentiate between those who behaved in a manner acceptable to the service -- completed their term of service honorably -- and those who failed to do so.

Having found that statistics show disparity on the basis of race now exists in the furnishing of different kinds of administrative discharges, half of the members of the Task Force recommend that the present characterization of administrative discharges be eliminated. The other half believes that the honorable discharge should be retained, although some would accept a course of action that would retain the honorable discharge but substitute the furnishing of an uncoded certificate of service in all administrative separations not meriting an honorable discharge. A majority of the members of the Task Force believe that if the honorable discharge is eliminated, the manner in which that would be accomplished would require serious and intensive study and that, pending completion of such a study, uncoded certificates of service should be furnished in all separations not meriting an honorable discharge.

These then are our findings. In the section following, we set forth our recommendations which, we believe, will "eliminate existing deficiencies" and "enhance the opportunity for equal justice for every American serviceman and servicewoman."
3 RECOMMENDATIONS

The following recommendations represent in almost all instances the consensus of the Task Force. They are based on the statistical and attitudinal data gathered by and for the Task Force, visits by Task Force members to service installations, statements from witnesses appearing before the Task Force, the perceptions and experiences of all the Task Force members, and the collective judgment of the members of the Task Force on how to strengthen the fundamental fairness and integrity of the military justice system. A detailed discussion of each recommendation is found in an appropriate background paper in Volume II. With these precepts in mind, the Task Force recommends that with respect to:

Preservice educational factors:
A. Because many minority persons who enter the services do so with severe disabilities resulting from unequal educational opportunities, the Secretary of Defense use his influence to urge other agencies and units of the Government to assist in facilitating access to improved educational opportunities for all racial and ethnic minority-group Americans, through any and all constitutionally acceptable means.

Regarding the military system:
B. Equal opportunity programs:
1. The position of Deputy Assistant Secretary of Defense (Equal Opportunity) be upgraded to that of Assistant Secretary of Defense, Equal Opportunity.
2. Staffing for equal opportunity/human relations positions be authorized in appropriate manning documents of each of the services.

3. Career fields in equal opportunity/human relations be established for enlisted personnel.
4. Servicewomen and staff agencies, such as inspector general, staff judge advocate and provost marshal sections be included as active participants in equal opportunity and human relations programs.
5. Instructions be provided for all personnel — officer and enlisted of all grades — on equal opportunity programs and human relations.
6. The services and their subordinate commands develop plans to include affirmative action, specific guidelines on program management techniques to assess programs, goals to be achieved, and timetables for their accomplishment.
7. Coordination be established among and within the services on matters of routine, so that lessons learned in the management of programs may be used to assist in obtaining program goals, service-wide.
8. The Secretary of Defense publish formal, detailed guidance on the Race Relations Education Program, to include a suggested basic curriculum and minimum number of hours of instruction to be presented at the unit level, proper utilization of instructors trained at the Defense Race Relations Institute and Marine Corps Human Relations Institute, and implement programs to ensure adequate availability of instructor personnel.
9. The curricula of the Defense Race Relations Institute and the Marine Corps Human Relations Institute be expanded to include instruction on problems of discrimination in the administration of military justice and techniques in handling grievances, conflicts management, and problems in communication.
10. The Defense Race Relations Institute and Marine Corps Human Relations Institute be provided adequate resources to continue their present programs and to develop new programs.

C. Job Assignments and Testing:
1. Aptitude tests continue to be reevaluated with a view towards finding a method of better predicting the eventual job performance, particularly of minority recruits and all servicemen classified as Category IV personnel, and more valid, objective methods for evaluating job performance be sought, so that more valid aptitude tests can be developed.

2. To the maximum extent possible, job assignments be based on validated aptitude tests and indicated interest; persons be assigned to low-status or less desirable jobs only on a volunteer, or short-term, rotating basis, where feasible; all career specialties be structured to achieve maximum equality in opportunity for upward mobility; and jobs with limited opportunities for promotion be analyzed and functionally related to other jobs in different, traditional lines, in order to establish career indices characterized by upward and lateral mobility.

3. School selections, promotions and other favorable personnel actions be keyed not to any one test or form of test, recognizing that there are many ways to evidence potential for advancement, including on-the-job learning and demonstrated development.

D. Regulation of personal appearance:
1. Haircut standards be reexamined in all of the armed services, with an eye towards improving morale among present members, increasing the attractiveness of the services to potential enlistees and improving job performance through the removal of petty grievances.

2. Consideration be given to developing new military headgear, compatible with haircut standards.

3. Regulations concerning the wearing of ornaments and jewelry be made uniform throughout the services, to the extent of permitting these items to be worn so that they do not cover, obscure, replace, or detract from the various elements of a properly worn uniform.

E. Detection and Elimination of Discrimination:
1. A specific punitive article proscribing discriminatory acts and practices be included in the Uniform Code of Military Justice in order to provide a more visible focus on detection and elimination of discrimination.

2. Racial and ethnic identity codes be updated and a uniform system of data gathering be established to acquire data on a racial and ethnic basis concerning the military justice system and in other areas impacting on military justice, such as promotions, job assignments and administrative discharges.

F. Americans of Spanish Descent and Other Minorities in the Armed Forces:
1. Racial and ethnic classifications be changed immediately to provide the specific classification "Americans of Spanish Descent" to denote Mexicans, Puerto Ricans, Cubans, Central and Latin Americans, or others of Spanish-speaking origin, with a distinct and separate classification from Mexican-Americans and Puerto Ricans who are also native Americans.

2. Programs be developed emphasizing equal opportunity and human relations
and be specifically oriented towards the culture and heritage of Americans of Spanish descent.

3. Specific data be gathered and developed identifying the number and location of Chicano, Puerto Ricans, and Cubans, and others of Spanish descent, presently in the services, and programs be established to achieve their fair representation at all levels in the armed services.

4. Greater efforts be made to recruit Americans of Spanish descent, particularly doctors, psychiatrists, lawyers, judges, teachers, and persons with expertise in the Spanish language and culture.

5. Additional ROTC programs be established with emphasis on recruiting Americans of Spanish descent.

6. Service tests be administered by persons familiar with the language and be written in the language of the person taking the test, thereby making it possible for test results to reveal the individual's full capabilities.

7. Curricula and programs be established to educate military personnel as to the culture and heritage of Chicano, Puerto Rican and other Americans of Spanish descent, and Americans of Spanish descent be integrated into programs such as the human relations program.

8. Programs in English language orientation be established for all persons experiencing difficulty in communications.

9. Any service regulations or policies which preclude the speaking of Spanish be abolished.

10. With respect to other minorities who may be disadvantaged in their service in the armed forces as a result of cultural or language difficulties, actions and remedial measures comparable to those set forth in paragraphs 1 through 9 above be taken or adopted as may be appropriate to the situation of the minorities concerned.

G. Future monitoring procedures:

1. The Secretary of Defense appoint a continuing committee to assist in implementing the approved recommendations of the Task Force, to review from time to time the progress made in identifying and eliminating all vestiges of racial discrimination and to point out measures that will accelerate equal opportunity programs; and the committee include representatives of the military justice system, manpower and equal opportunity elements, and persons representative of civilian and minority points of view, and have authority to conduct studies and make recommendations where appropriate.

2. The Department of Defense establish a uniform system for the collection of statistical information, by race, ethnic group and sex, in order to establish a common data base for studies and monitoring efforts, especially in the areas of military justice, equal opportunity and personnel; and the DoD racial code be modified to make the reporting categories consistent with those of similar reporting systems of other governmental agencies.

H. Administrative discharges:

1. Having found that statistics show disparity on the basis of race now exists in the furnishing of different kinds of administrative
discharges, half the members of the Task Force recommend that the present characterization of administrative discharges be eliminated. The other half believe that the honorable discharge should be retained, although some would accept a course of action that would retain the honorable discharge but substitute the furnishing of an uncoded certificate of service in all administrative separations not meriting an honorable discharge. A majority of the members of the Task Force believe that if the honorable discharge is eliminated, the manner in which that would be accomplished would require serious and intensive study and that, pending completion of such a study, uncoded certificates of service should be furnished in all separations not meriting an honorable discharge.

2. The procedure for processing service personnel for elimination with other than an honorable discharge be revised to:

a. Ensure that the prospective discharges is fully advised as to the potential consequences of the receipt of a discharge other than an honorable discharge, with an accurate and realistic appraisal of the possibility that such a discharge would never be changed to a discharge of a more creditable nature; and

b. Strengthen the administrative due process safeguards presently accorded in the administrative discharge system by:

(1) Requiring a legally-qualified officer to sit as a member of any administrative elimination board, ruling on all legal questions.

(2) Requiring that the serviceman consult with counsel at the outset of any processing for elimination.

(3) Giving the respondent a right to legal counsel furnished by the government throughout the proceedings.

(4) Providing for participation by legally-qualified officers in review procedures.

c. Provide to the extent practicable that the composition of administrative elimination boards be designed to include minority membership.

d. Provide for the conditional suspension of administrative discharges and a probationary period, including reassignment to a new unit, for persons recommended for an administrative discharge, requiring the discharge authority, when he does not suspend the discharge and place the serviceman on probation, to state in writing his reasons therefor.

3. The Department of Defense encourage legislation and other appropriate means which will prohibit the inquiry by civilian employers as to the character of a serviceman's or servicewoman's discharge from the service, such means to include a recommendation that the Equal Employment Opportunity Commission declare such an inquiry to be a discriminatory practice.

4. The feasibility of establishing a procedure of substituting an uncoded certificate of service after an appropriate period of time for those who have, in the past, been awarded other than honorable discharges be explored.

5. All persons who have received a discharge other than honorable, the basis for which may have been racial discrimination, be encouraged to submit their case for review; the Discharge Review Boards and Boards for the Correction of Records receive and review cases submitted to them.
where racial discrimination was alleged to or may have been a precipitating factor in the ultimate awarding of the other than honorable discharge; and in such cases where racial discrimination is found to exist as a precipitating or substantially contributing factor, the discharge be appropriately modified.

Regarding the military justice system:

1. Nonjudicial punishment:

1. Commanders utilize normal aspects of command, such as counseling, administrative admonitions, reprimands, criticisms, censures, and the administrative withholding of privileges, to ensure that all preliminary rehabilitative measures have been exhausted prior to the imposition of punishment under Article 15.

2. Nonjudicial punishment procedures be standardized among the services, insofar as practicable.

3. A serviceman have the right to obtain the advice of legally-qualified military counsel before deciding whether to demand trial in lieu of nonjudicial punishment (except in those situations when the exigencies of the service limit the availability of counsel).

4. The individual receive a personal hearing before the commander contemplating the imposition of punishment, except when prevented by the exigencies of the service.

5. A person at an Article 15 hearing have the right to be accompanied by an available personal representative, who may but need not be a lawyer, to advise him and to make a statement on his behalf.

6. All Article 15 hearings be open to spectators, except where security interests dictate otherwise, but that the individual have the right to confer privately with the commander imposing punishment, to relate matters of a personal nature.

7. When there are controverted questions of fact, witnesses be called if present on the same ship, camp, station, or otherwise available.

8. Forfeitures and reduction not be imposed at a single Article 15 action since both carry a loss of income; commanders take into consideration the effect which any monetary loss will have upon the offender and his family; commanders who impose a reduction in grade upon a first offender as a part of nonjudicial punishment, and who do not suspend the reduction, state for the record their reasons for not doing so; and the increased use of correctional custody as a form of nonjudicial punishment be encouraged, with the necessary funding for manpower and facilities being provided.

9. Punishment under Article 15 be stayed upon the filing of an appeal, provided the appeal is made at time of imposition of punishment or within a reasonable time thereafter.

10. Every person receiving nonjudicial punishment be properly advised of his right to appeal from imposition of the punishment and the length of time an Article 15 remains in the individual's field personnel file be standardized.

11. Periodic monitoring of the administration of nonjudicial punishment be provided.
J. Summary courts-martial:

The services undertake to decrease the use of the summary court-
martial, with a view towards its eventual abolition and the establish-
ment of other procedures to deal with those cases in which the individual
demands trial when offered punishment under Article 15.

K. Correctional Facilities:

1. Procedures concerning the admission of an accused into pretrial con-
fine ment and retention therein in each service be standardized with a
view towards limiting the opportunity for the abuse of discretion and
enhancing the perception of fairness, such procedures to include the
appointment of both a qualified judge advocate defense counsel to talk
with each accused prior to his entry into pretrial confinement or shortly
thereafter, and a legal officer, independent of the confining command,
authorized to review the pretrial confinement and release the accused
from confinement as the circumstances warrant; the confinee be served
with a copy of any letter requesting or granting permission for pretrial
confinement in excess of thirty days; persons placed in pretrial confine-
ment for less serious offenses be segregated from those placed in pretrial
confinement for more serious offenses; and the accused, if found guilty,
be credited for time spent in pretrial confinement.

2. Confinement supervisory personnel be adequately trained in penology
and human relations.

3. Necessary measures be taken to ensure that prisoner complaints are
processed correctly; uniform procedures be established to ensure that a
prisoner is accorded due process before being placed in disciplinary or
administrative segregation; and inmate councils be established, when
feasible, to improve communications between supervisors and prisoners.

b. Correctional facility libraries be adequately stocked with literature,
including literature for minority groups and copies of the Manual for
Courts-Martial, together with information on how to obtain additional
desired legal references.

5. Adequate measures be adopted to ensure that no prisoner mail, either
incoming or outgoing, will be read by correctional facilities personnel,
that incoming mail be opened only for purposes of inspection for contra-
band, and that outgoing mail be sealed and not inspected.

6. Rehabilitative, educational and training efforts be undertaken
to the maximum feasible extent for all confinements of correctional facili-
ties, including pretrial confinements, and the feasibility of a supervised
probationary system for sentenced prisoners be explored.

L. Increased stature of counsel and judicial functions:

1. There be provided:

a. Distinctive courthouses on military installations with adequate
courtroom and judge’s chambers.

b. Adequate legal facilities and services to military judges and
military counsel, including proper office equipment, adequate legal
libraries, private offices for defense counsel and trial counsel,
separated so that they will not appear to be working out of the same
organization, and necessary logistical and administrative support
(e.g., paralegal representation and enlisted investigative assistants).

3. The senior circuit judge appoint members of court and detail the military judge and defense counsel made available to him.

4. Members of the trial judiciary be placed under the direction of the appropriate Judge Advocate General.

5. All judge advocate defense counsel be placed under the direction of the appropriate Judge Advocate General or, in the case of the Marine Corps, the Director, Judge Advocate Division, Headquarters, United States Marine Corps.

6. In view of the critical need for more minority lawyers, the feasibility of contracting for a pool of minority civilian defense counsel from which the military could draw, as needed, be explored; and adequate funds be made available to the services for the express purpose of expanding their efforts in recruiting minority lawyers.

7. Military counsel be provided with additional training in human relations and in communicating with minority persons.

8. All special court-martial convening authorities obtain the consideration and advice of a judge advocate before referring any charge for trial and before taking action on the record of such trial.

9. Permit the services to invoke participation of non-military personnel in the trial or disposition of special cases or issues of peculiar sensitivity.

M. Selection of court members:

1. Court members be selected on a random basis.

2. Additional peremptory challenges to the court members be permitted by both prosecution and defense, with the defense having a greater number than the prosecution.

N. Court-martial reviews:

1. In other than capital cases, automatic review of all general courts-martial and special courts-martial in which a bad conduct discharge is
approved by the convening authority be eliminated, except for a clemency
review by the convening authority, providing instead for review by the
appellate judiciary of only those cases appealed by the accused.
2. The accused have the right to appeal in all special courts-martial
and a verbatim record of trial be prepared in those cases in which the
accused indicates an appeal will be made.

0. Article 134:
Offenses currently tried under the first two clauses of Article 134
be codified as specific punitive articles.

P. Military justice training:
1. A more meaningful and effective orientation program concerning the
military environment, its laws, practices and differences from most
civilian environments be provided early in the enlistment of every
serviceman.
2. Necessary measures be taken to increase, standardize and make more
meaningful military justice training, by including periodic uniform
refresher courses of instruction in military justice, such courses to be
given to all servicemen, including personnel who administer the military
justice system, ROTC cadets, cadets and midshipmen at the service academies,
and OCS students.

Q. Status of Forces Agreements:
1. A military adviser be provided to the accused in all cases in which
foreign governments exercise their jurisdiction to try a military service-
man in their courts.

2. Necessary action be taken to pay an accused who is in pretrial con-
finement as a result of an exercise of jurisdiction by a foreign govern-
ment.
3. All services be encouraged to:
   a. Use to the extent practicable a form of restraint other than
pretrial confinement, when a case involves the exercise of jurisdiction
by a foreign government.
   b. Increase education and training concerning Status of Forces
Agreements, especially emphasizing the rights and responsibilities of
the individual serviceman under such treaties.
   c. Take measures to ensure that all military trial observers are
alert to the exercise of racial discrimination on the part of foreign
jurisdictions.
   d. Explore means to expedite and increase communications with
accused persons in foreign jails.
We regret that the Task Force cannot speak with but a single voice. Where our differences are fundamental, however, they must be recorded -- even at the cost of unanimity.

While each of us has personal reservations about the scope, wisdom, justification, and practicality of various portions of the report, we shall in the interest of consensus forego specific dissent on these points. We content ourselves with an independent statement of fundamental positions, on matters within the scope of our charter, which differ from those of the majority.

We differ over the nature and extent of racial discrimination in the military services. The heart of our difference is definitional. We cannot accept the proposition that any demonstrable disparities between or among identifiable groups within the military services perforce exist solely because of racial or ethnic discrimination in the military system. The majority apparently concludes otherwise. It attributes such disparities largely to "systemic discrimination." We believe that such differences and disparities are attributable to many causes. We believe that it remains necessary to hold an individual personally responsible for his misconduct, and that this must be so for majority and minority alike. Such responsibility cannot be rationed out on the
basis of quota or proportion. As we see it, racial discrimination is
but one cause of demonstrable disparities — and we see such discrimina-
tion reflected far less frequently in the military justice system than
the majority concludes.

Having indicated the fundamental area in which we are divided from
the majority, we now emphasize the far more important areas of agreement
which unite us with them.

We are in complete accord that racial and minority discrimination
is present in the military establishment, just as it is in the civilian
society. Its presence in any degree denigrates the individual, reflects
adversely upon the service, and makes the military mission more difficult
of accomplishment. It contravenes both law and policy. The lack of
equal opportunity — quite apart from racial discrimination — has the
same deleterious effect. We agree also that there is a widespread
belief among many servicemen that there is systemic or other racial
discrimination in the service, and that this perception is seriously
corrosive of the attitude of these servicemen toward military justice.

We join in general support of the recommendations in the report
because we believe that, if adopted, they will lessen the opportunity
for racial discrimination, reduce the perception of unfairness,
enhance equal opportunity, and assure fundamental fairness in the
treatment of all service personnel.

ADDENDUM OF

BRIGADIER GENERAL CLYDE R. MANN, U.S. MARINE CORPS

I regret that I cannot join in all of the majority views expressed
in the report of this Task Force. Accordingly, the following comments,
observations, and reservations are submitted.

At the outset I state that notwithstanding laws, policies and per-
sonal efforts by many responsible officials to prevent discrimination,
I believe that discrimination based upon racial or ethnic origins does
exist within the armed services. I do not share the opinion that such
discrimination is systemic or institutional. I believe that such dis-

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heard several persons criticize such tests as being discriminatory. To my knowledge, however, the Task Force has never been presented even one copy of any such test and it has not studied the validity of such tests. In view of the criticism received, the validity of such tests should be questioned and a recommendation should be made that they be reexamined to clearly establish their validity or invalidity. The evidence presented to the Task Force does not, in my opinion, justify the concluded condemnation.

The recommendations of the Task Force were made without regard to the real life problems of implementing them. There has not been any realistic consideration of the manpower and budgetary requirements to support the additional judge advocates, paralegal, and investigative personnel which will be required to implement such recommendations. In my opinion, a personnel and budgetary "impact statement" should have been prepared.

Discrimination, real and perceived, must be eliminated. To that end, I support many of the recommendations of the Task Force.

In conclusion, I solicit all who may read this report to join with us in a renewed, more dedicated effort to eliminate racial and ethnic discrimination of every kind wherever it exists.