

***“Bad Papers”:  
The Invisible and Increasing Costs of War for Excluded Veterans***

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One of the most invisible and devastating costs of the post 9/11 wars for United States veterans is the denial of benefits and services to a growing portion of former service members who are most in need of support. An increasing percentage of veterans have been discharged from the military in such a way as to leave them effectively ineligible to receive Veterans Affairs (VA) healthcare, veteran benefits such as education and housing support, and other resources. Colloquially referred to as “bad papers,” these discharges have seen a sharp spike since 9/11, with almost six percent of the entire veteran population of this era excluded from care in comparison with one percent of such discharges among post-WWII veterans.<sup>3</sup> These military discharges are often the result of minor disciplinary infractions that are actually symptomatic of trauma sustained during military service.<sup>4</sup> An example of a “bad paper” discharge would be a service member suffering from Post Traumatic Stress or Traumatic Brain Injury who is administratively discharged by his or her Commanding Officer for self-medication with drugs or alcohol. Another example would be a less than honorable discharge given to a survivor of sexual assault who is deliberately but inaccurately given a “Personality Disorder” diagnosis, considered a mental health condition that pre-exists their military recruitment. Until recently, when this practice was brought to light (it has since been discouraged), the military commonly used this mechanism to quickly remove and punish rape victims. In both examples, although these veterans’ injuries were incurred through military service, neither veteran is currently able to access VA healthcare, disability, or other forms of support.

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<sup>3</sup> Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Ploughshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard.

<sup>4</sup> 62 percent, or 57,141 of the 91,764 service members separated for misconduct from fiscal years 2011 through 2015 had been diagnosed within the two years prior to separation with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), or certain other conditions that could be associated with misconduct. Of the 57,141 service members, 23 percent, or 13,283, received an “Other Than Honorable” characterization of service, making them potentially ineligible for some or all government veteran benefits. US Government Accountability Office. (2017, May 16). *DOD Health: Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury are Considered in Misconduct Separations* (GAO-17-260). Washington, DC: U.S. Government Printing Office.

“Bad paper” discharges, in particular Other Than Honorable discharges, have become a tool that Commanding Officers utilize to expeditiously “get rid of” service members exhibiting symptoms of what are often more deeply-seated physical and mental health conditions related to their military service, in lieu of giving these service members access to long-term physiologic and psychological rehabilitation. At the same time the Department of Defense is distributing “bad paper” discharges in this manner, the VA reviews veterans’ discharge statuses for eligibility. And, not coincidentally, veterans with “bad papers” are among those veterans with higher needs for postwar assistance, being over-represented in studies on veteran Post Traumatic Stress Disorder,<sup>5</sup> Traumatic Brain Injuries,<sup>6</sup> suicide,<sup>7</sup> drug and alcohol abuse,<sup>8</sup> military sexual assault/trauma,<sup>9</sup> and related problems of incarceration<sup>10</sup> and homelessness.<sup>11</sup> Advocacy by veteran and legal groups,<sup>12</sup> a national spotlight focused on veteran suicide, and media coverage of the excluded population<sup>13</sup> have all led to the VA’s admission of its improper exclusion of “bad paper” veterans and announcement of its intention to expand services. As recently as March 2017,

<sup>5</sup> Seamone, E. R. (2013). Dismantling America's Largest Sleeper Cell: The Imperative to Treat, Rather than Merely Punish, Active Duty Offenders with PTSD Prior to Discharge from the Armed Forces. *Nova Law Review*, 37(3), 479.

<sup>6</sup> Seamone, E. R., McGuire, J., Sreenivasan, S., Clark, S., Smee, D., & Dow, D. (2014). Moving Upstream: Why Rehabilitative Justice in Military Discharge Proceedings Serves a Public Health Interest. *American Journal of Public Health*, 104(10), 1805-1811.

<sup>7</sup> Reger, M. A., Smolenski, D. J., Skopp, N. A., Metzger-Abamukang, M. J., Kang, H. K., Bullman, T. A., ... Gahm, G. A. (2015). Risk of Suicide Among US Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation From the US Military. *JAMA Psychiatry*, 72(6), 561–569.

<sup>8</sup> Tsai, J., Kaspro, W. J., & Rosenheck, R. A. (2014). Alcohol and drug use disorders among homeless veterans: Prevalence and association with supported housing outcomes. *Addictive Behaviors*, 39, 455-460.

<sup>9</sup> Human Rights Watch. (2016, May 19). *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*. Retrieved from <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>

<sup>10</sup> Bronson, J., Carson, A., Noonan, M., & Berzofsky, M. (2015, December). *Veterans in Prison and Jail, 2011–12*. Retrieved from U.S. Department of Justice: <https://www.bjs.gov/content/pub/pdf/vpjl112.pdf>

<sup>11</sup> Gundlapalli, A. V., Fargo, J. D., Metraux, S., Carter, M. E., Samore, M. H., Kane, V., & Culhane, D. P. (2015). Military misconduct and homelessness among US veterans separated from active duty, 2001-2012. *JAMA: Journal of the American Medical Association*, 314(8), 832-834; Metraux, S., Clegg, L. X., Daigh, J. D., Culhane, D. P., Kane, V. (2013). Risk Factors for Becoming Homeless Among a Cohort of Veterans Who Served in the Era of the Iraq and Afghanistan Conflicts. *American Journal of Public Health*, 103(S2), S255-S261.

<sup>12</sup> Human Rights Watch. (2016, May 19). *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*. Retrieved from <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>; Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Ploughshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard.

<sup>13</sup> Philipps, D. (2013, May 21). Locked Away: Army Struggles With Wounded Soldiers. *Colorado Springs Gazette*; Philipps, D. (2013, May 20). Left Behind: No Break for the Wounded. *Colorado Springs Gazette*; Philipps, D. (2013, October 7). Pattern of Misconduct: Psychological Screenings Prompt Call for More Reforms. *Colorado Springs Gazette*; Phillipps, D. (2016, March 30). Report Finds Sharp Increase in Veterans Denied V.A. Benefits. *The New York Times*; Penaloza, M. (2013, December 12). Filling The Gaps For Veterans With Bad Discharges. *National Public Radio: Special Series: Veterans and Other than Honorable Discharges*. Retrieved from <http://www.npr.org/2013/12/12/250289588/filling-the-gaps-for-veterans-with-bad-discharges>

Secretary of Veterans Affairs Shulkin stated he would expand emergency mental health and crisis care to veterans with Other Than Honorable discharges.<sup>14</sup>

While Shulkin's announcement represents a watershed moment in which policy has the potential to change for excluded veterans, this paper argues that reforms currently on the table are far too limited, focusing solely on emergency mental health services and simply codifying a number of things the VA already informally does for veterans experiencing mental health crises. Legislation under consideration separates mental from physical health, neglecting this population's need for primary care and pain management, as well as housing and other social services. Much more expansive changes are necessary. The armed services must alter the way it discharges people – for example, de-incentivizing Commanding Officers from giving administrative discharges. Changes must also be made to the VA's criteria for assistance, which are much more stringent than Congressionally-stated policies for veterans' care.<sup>15</sup> This report provides background on the issue of "bad papers," describes several life stories of veterans who are living with "bad papers" and excluded from benefits, and examines current policy reforms intended to ameliorate the effects of "bad paper" discharges – showing how they don't go nearly far enough.

### ***Background: "Bad Paper" Discharges***

This report focuses on the category of Other Than Honorable discharges, the main type whose use has grown dramatically during the post-9/11 wars. Other Than Honorable discharges are often the result of minor disciplinary infractions that are actually manifestations of stressors occurring during military service. They are one of five basic types of discharge the Department of Defense administers to service members who have served more than a few months in the military (see Figure 1).<sup>16</sup> Termed Characters of Discharge [COD], these categories are then used by the VA for eligibility determination and can affect veterans' post-service employment prospects. The three categories known as "bad paper" discharges include, first, Other Than Honorable (OTH) discharges; these fall in the category of an administrative discharge and are given by a Commanding Officer without the legal representation or medical evaluation that might accompany Bad Conduct or Dishonorable Discharges. An OTH is the most severe form of disciplinary discharge that can be given to a service member without a court martial and it significantly impacts veterans' ability to receive benefits and reintegrate into the civilian community. Two additional discharges, Bad Conduct (BC) and Dishonorable Discharge (DD), are considered

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<sup>14</sup> VA Office of Public and Intergovernmental Affairs. (2017, March 8). *VA Secretary Announces Intention to Expand Mental Health Care to Former Service Members* [Press release]. Retrieved from <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2867>

<sup>15</sup> House Prints, 112<sup>th</sup> Congress. (2011). *TITLE 38—United States Code Veterans' Benefits as Amended Through P.L. 112-7, Enacted March 31, 2011 and the Servicemembers Civil Relief Act as Amended Through P.L. 112-7, Enacted March 31, 2011*. Washington, DC: U.S. Government Printing Office.

<sup>16</sup> A sixth type of discharge, Entry-level Separation, can occur within the first six months of service.

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punitive and result from a court martial, and exclude veterans from benefits. Finally, it is worth noting that even veterans with Honorable discharges can be denied benefits for various reasons.<sup>17,18</sup>

**Figure 1. Types of Military Discharge and Consequences for VA Benefits Eligibility**

VA Benefits	Discharged with Most Benefits Eligibility		"Bad paper" Discharges			
	Administrative Discharge		Other Than Honorable	Punitive Discharge (Court Martial)		
	Honorable	General		Bad Conduct		Dishonorable
				Special	General	
Healthcare	Eligible*	Eligible*	COS Determination	COS Determination	Not Eligible	Not Eligible
Education (ie. GI Bill)	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible
Disability Compensation	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Dependency and Indemnity Compensation	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Survivor Pension	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Burial Benefits	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Special Housing	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Vocational Rehabilitation	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Disabled Automotive	Eligible	Eligible	COS Determination	COS Determination	Not Eligible	Not Eligible
Reenlistment Right	Eligible*	Eligible*	COS Determination	COS Determination	Not Eligible	Not Eligible

\* - May not qualify due to DD Form 214 Narrative / Reenlistment Code

COS - Character of Service (Although VA is obligated to assist with the COS determination, prior service members with OTH or Bad Conduct (Special) Characterizations are often turned away when initially seeking VA benefits.)

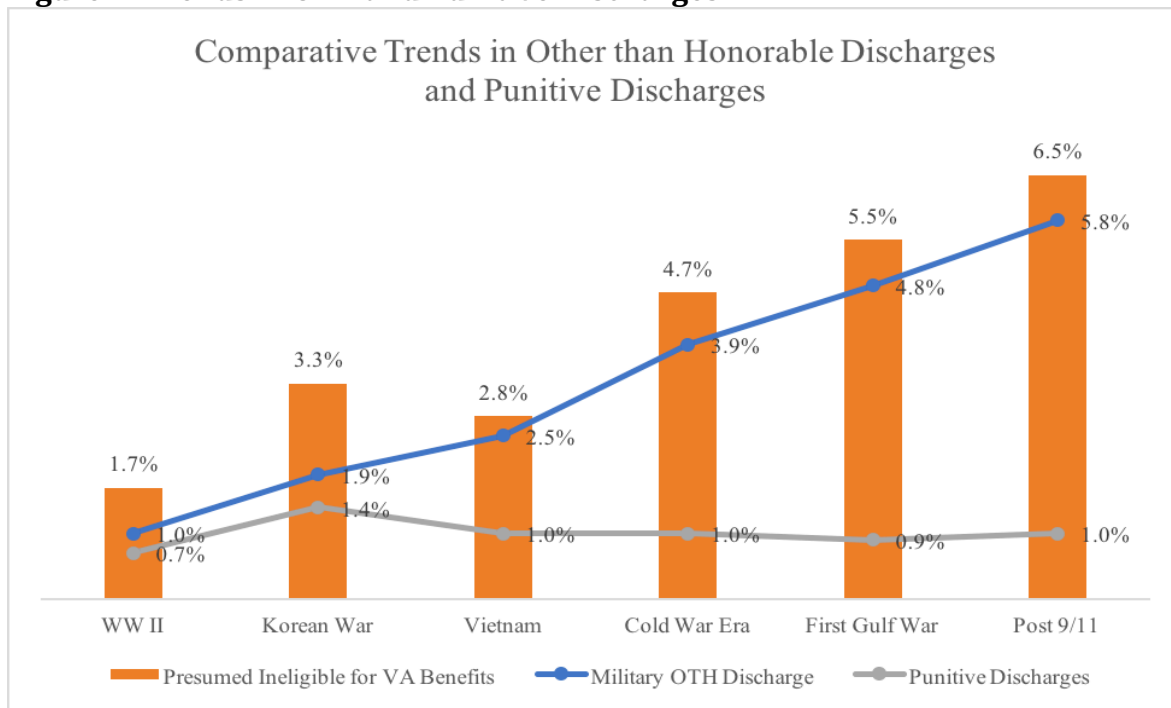
<sup>17</sup> A veteran may become ineligible for benefits with an Honorable discharge if he/she fails to meet the minimum requirements as specified under Title 38—U.S.C., Veterans’ Benefits, such as length of service, time on Active Status (this excludes members of the Reserve, or National Guard that do not participate on Active Duty), pre-existing conditions such as physical and/or mental health.

<sup>18</sup> For additional information on “Veterans’ Benefits” and establishing “Veteran” status see Moulta-Ali, U., & Panangala, S. V. (2015, March 6). *Veterans’ Benefits: The Impact of Military Discharges on Basic Eligibility* (CRS R43928). Washington, DC: Congressional Research Service; and Szymendera, S. D. (2016, May 25); *Who is a “Veteran”?*—*Basic Eligibility for Veterans’ Benefits* (R42324). Washington, DC: Congressional Research Service.

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A 2016 study by not-for-profit veteran advocacy organizations, Swords to Plowshares, the National Veterans Legal Service Program, and the Veterans Legal Clinic at the Legal Service Center of Harvard Law School revealed a trend of a growing percentage of OTH discharges by the United States Armed Forces.<sup>19</sup> Although the percentage of punitive discharges has remained steady, the percentage of OTH discharges being issued has grown steadily since WWII from 1.0 percent to 2.5 percent during Vietnam, and to a concerning 5.8 percent of post-9/11 prior service members (see Figure 2).<sup>20</sup> Including those with other forms of discharge brings that figure to more than 6.5 percent of post-9/11 former service members who are presumed ineligible for benefits by the VA. This percentage is up from 1.7 percent during WWII, from 2.8 percent during the Vietnam era. All together, 6.5 percent of post-9/11 ex-service members totals nearly 125,000 people.<sup>21</sup>

**Figure 2. Trends in OTH and Punitive Discharges**



<sup>19</sup> Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Plowshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard; P. Sullivan, personal communication, July, 2016; U.S. Department of Veterans Affairs. *Veterans Benefits Administration: Applying for Benefits and Your Character of Discharge*. Retrieved from [www.benefits.va.gov/benefits/character\\_of\\_discharge.asp](http://www.benefits.va.gov/benefits/character_of_discharge.asp)

<sup>20</sup> Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Plowshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard.

<sup>21</sup> Ibid.; P. Sullivan, personal communication, July, 2016; U.S. Department of Veterans Affairs. *Veterans Benefits Administration: Applying for Benefits and Your Character of Discharge*. Retrieved from [www.benefits.va.gov/benefits/character\\_of\\_discharge.asp](http://www.benefits.va.gov/benefits/character_of_discharge.asp)



Although by law, Congress denies veterans' services only to those "discharged under dishonorable conditions," the VA has interpreted the intent of the law as excluding anyone with Dishonorable discharges *as well as* all veterans with Bad Conduct or OTH discharges, regardless of whether or not these latter discharges were related to any action understood as "dishonorable."<sup>22</sup> All of these former service members are presumed ineligible for benefits until they go through a lengthy process, called a "character of service determination," that can take months or even years, and offers a less than 13 percent chance of success in eventually leading to eligibility within the VA system.<sup>22</sup> Veterans can also take on the arduous task of trying to upgrade their character of discharge status through a Department of Defense process known as the Military Discharge Review Board. However, this process has proven to be even lengthier and costlier due to legal fees, and has an even smaller chance of success.

One particularly devastating element of this problem has been documented by Human Rights Watch, which issued a 2016 report that describes the military's practice of discharging many victims of Military Sexual Trauma (MST) with a narrative on their discharge paperwork that the victims had pre-existing mental health conditions such as "Personality Disorders."<sup>23</sup> This practice not only creates additional stigma for these service members as survivors, but it makes them ineligible for compensation for service-related sexual trauma and for access to appropriate mental health services for MST, PTSD, depression, or anxiety.<sup>24</sup> In recent years, congressional hearings in 2007 and 2010 and growing public attention to the practice of these misdiagnoses has prompted their decline.<sup>25</sup> However, thousands of sexual assault survivors are still plagued to this day by a "Personality Disorder" discharge that has proven virtually impossible to correct on their military records. Moreover, these and other types of questionable mental health discharges have not disappeared completely – they are still in use today. The narrative portion of military discharge paperwork is often abused; for instance, Commanding Officers might enter "patterns of misconduct" for someone who has reported sexual assault.

### ***Living with "Bad Papers"***

The following is a brief summary of some of the experiences of three post-9/11 "bad paper" veterans, based on research on the effects of the character of discharge on

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<sup>22</sup> House Prints, 112<sup>th</sup> Congress. (2011). *TITLE 38—United States Code Veterans' Benefits as Amended Through P.L. 112-7, Enacted March 31, 2011 and the Servicemembers Civil Relief Act as Amended Through P.L. 112-7, Enacted March 31, 2011*. Washington, DC: U.S. Government Printing Office.

<sup>23</sup> Human Rights Watch. (2016, May 19). *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*. Retrieved from <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>

<sup>24</sup> *Post-Traumatic Stress Disorder (PTSD) and Personality Disorders: Challenges for the U.S. Department of Veterans Affairs*, Senate, 110th Cong. (2007) (Testimony of Paul Sullivan).

<sup>25</sup> *Ibid.*; *Personality Disorder Discharges: Impact on Veterans' Benefits*, Senate, 111th Cong. (2010) (Testimony of Paul Sullivan).

administratively discharged veterans.<sup>26</sup> Names and dates have been changed to protect the veterans' identities.

Bill, a male non-commissioned officer in the United States Marine Corps with numerous medals and commendations, found himself being discharged from the military soon after returning from combat in Iraq in the mid-2000s. Bill's daily life in Iraq included endless rounds of night raids, security patrols, detonating Improvised Explosive Devices, and hostile fire, as well as a sense of moral conflict over what he calls "senseless violence and weapons of mass destruction that never were." He attributes his subsequent PTSD and memory loss to combat operations and to the military's administration to him and other soldiers of long-term doses of medications such as Dexedrine,<sup>27</sup> Methacholine,<sup>28</sup> antimalarial medications, and other medications not individually prescribed or monitored for adverse or side effects. While on leave, Bill was named by another Marine for using an illegal drug. Although testing negative for this drug, Bill eventually signed a confession to using an illegal substance after being interrogated without an attorney present and threatened with 50 years in prison.

Although Bill's confession was processed as a "minor disciplinary infraction," a term used in the military to label misconduct, the Commanding Officer issued him an OTH discharge and Bill's military career came to an abrupt end. A month after his discharge, he went to fill out benefits paperwork at the VA and was first asked what kind of discharge he received. As soon as he answered, he was told he could not be helped.<sup>29</sup> Devastated by the denial, Bill walked away from the VA. With poor job prospects, in part as a result of the character of discharge, he was soon unable to pay his rent and eventually moved in with his mother and became financially dependent on family to survive. He began working three jobs to put himself through school. Over a decade since being discharged, he still speaks with great anger and passion about how the military tried to take his "honor" by giving him an OTH discharge. After a decade, as well, of battling physical and mental health symptoms of TBI, PTSD, and the unknown residual consequences of medications given to him during his combat deployment, Bill became more aware of his rights and challenged the VA system once again. He was finally awarded 60 percent disability for service-connected health issues.

George, a male Iraq War veteran serving with the United States Army, was discharged after multiple alcohol-related infractions during his time in service. A combat

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<sup>26</sup> Tayyeb, A. R. (2017). *The Effects of the Military Character of Discharge on Reintegration into the Civilian Community: A Phenomenological Study* (Doctoral Dissertation). University of San Diego.

<sup>27</sup> Dexedrine is an amphetamine, a central nervous system stimulant, reportedly used by military personnel during combat operations to fight fatigue and increase alertness.

<sup>28</sup> Methacholine is an inhaled chemical test for those with asthma seeking to join the military service.

<sup>29</sup> Initial denial of care due to characterization of discharge (presumptive ineligibility) and failure to aid the veteran to initiate eligibility review by VA staff is one major flaw in VA intake process. These are both detrimental to veterans accessing benefits.

soldier, George had difficulty transitioning back into normal life once he returned from his last deployment. After a final incident that was the result of a night of excessive drinking, George said he was “made an example of” for others in his unit and was given an OTH discharge from the military. With his unit getting ready for post deployment leave, George was given 24 hours to pack his belongings, and processed out of the Army. Facing what he calls a “dishonorable discharge” and a bus ticket home, George sank into years of depression, anxiety, alcohol and drug abuse, homelessness, and brief periods of incarceration related to his alcohol and drug abuse. Still struggling with what he calls his “demons,” George has been unable to hold onto steady housing or a steady minimum wage job, stating, “employers just throw my application in the garbage once they see my discharge. I can’t even say I’m a veteran because they’ll want to see my DD214.”<sup>30</sup> The DD214 document indicates the type of discharge a service member received. Although undiagnosed by the military, George claims his health issues, including PTSD, are service-related. However, he has been unable to receive any health services from the VA to date.

Donna, a female veteran, survived multiple sexual assaults from her fellow soldiers while serving in the US Army. Donna was discharged from the military with a General Discharge, Under Honorable Conditions, with a narrative summary that described her as having a “Personality Disorder.” Donna explained that she was ostracized after reporting her first sexual assault. Given this, she did not report the second incident and sought mental health care through the military. Donna recalls being called into the office of her Commanding Officer, who had discovered the details of her sexual assault, details she had only shared with her military healthcare provider. Although a documented top performer in her unit until her sexual abuse report to her command, Donna underwent what she calls “mental abuse” by senior enlisted personnel and officers, leading to a denial of a transfer request and an early separation from the military after new, suddenly much lower performance marks. Donna qualified for VA benefits because of her “general” character of discharge, but she recalls her experience seeking mental health assistance from the VA as being “more traumatic” than her sexual assault, as she was referred to an all-male combat veterans-with-PTSD support group. Donna sought out civilian mental healthcare, but her experiences in the military left her with chronic PTSD and severe depression. To date, she remains isolated and unable to leave her home.

Unfortunately, these stories are not exceptional. Service members are often punished without legal representation for various minor infractions and misconduct such as physical altercations, changes in behavior like aggressiveness, being late to assigned duty, unauthorized absences, excessive use of alcohol, and use of illegal substances, even though these behaviors are often correlated with the psychological and physical trauma of

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<sup>30</sup> Certificate of release or discharge from active duty – DD FORM 214. A certificate given to service members upon discharge from the military. Among other information this form contains items such as years of service, Character of Discharge, Narrative reason for discharge, discharge code, and reentry code. This form serves as proof of service when seeking veteran benefits.



experiencing war or military sexual assault. These kinds of discharges bring with them a lifetime denial of benefits and care, and associated stigma.

Why does this happen? One answer, both in the post-9/11 wars and in the past, has been that Commanding Officers are held accountable for being “100 percent mission capable and ready” at all times, rigidly reinforcing the perspective that service members playing out even the minor consequences of life stressors, traumatic events, and combat are a detriment to mission readiness.<sup>31</sup> In addition, administrative separations have been an easily accessible tool to remove unwanted service members without a lengthier court martial process,<sup>32</sup> or to downsize military units. It is beyond the scope of this report to suggest why various forms of expedient, “bad paper” discharges are being administered more now than in the past; this topic merits further research. Up to now, there has been little research on this population of veterans and how and why these discharges happen.

Former service members are often unprepared to transition into civilian life, as most recently reported by the University of Southern California Center for Innovation and Research on Veterans and Military Families.<sup>33</sup> Prior service members with “bad papers” are faced with even greater odds against a successful transition. “Bad paper” veterans lose their military career alongside benefits such as education, housing, job training, health care, and military pension. In addition, prior service members must face the life-long personal and social shame of having received a non-honorable discharge. This often leads to self-isolation from peers and family, entry level occupations with little to no growth opportunity, lack of appropriate healthcare, substance abuse, and decline in both physical and mental health.<sup>34</sup> It can even, in some cases, lead to such dire consequences as homelessness or suicide.

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<sup>31</sup> Personal communication; Philipps, D. (2013, February 19). Other Than Honorable. *Colorado Springs Gazette*.

<sup>32</sup> US Government Accountability Office. (2017, May 16). *DOD Health: Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury are Considered in Misconduct Separations* (GAO-17-260). Washington, DC: U.S. Government Printing Office; U.S. Government Accountability Office. (1978, April 28). *Eliminate Administrative Discharges In Lieu Of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed*. Retrieved from <http://www.gaonet.gov/assets/130/122449.pdf>

<sup>33</sup> Castro, C. A., Kintzle, S., & Hassan, A. (2014, September). *The State of the American Veteran: The Los Angeles County Veterans Study*. University of Southern California School of Social Work. Retrieved from [http://cir.usc.edu/wp-content/uploads/2013/10/USC010\\_CIRLAVetReport\\_FPpgs.pdf](http://cir.usc.edu/wp-content/uploads/2013/10/USC010_CIRLAVetReport_FPpgs.pdf); Kintzle, S., Rasheed, J. M., & Castro, C. A. (2016, April). *The State of the American Veteran: The Chicagoland Veterans Study*. University of Southern California School of Social Work. Retrieved from [http://cir.usc.edu/wp-content/uploads/2016/04/CIR\\_ChicagoReport\\_double.pdf](http://cir.usc.edu/wp-content/uploads/2016/04/CIR_ChicagoReport_double.pdf); Castro, C. A., & Kintzle, S. (2017, May). *The State of the American Veteran: The San Francisco Veterans Study*. University of Southern California School of Social Work. Retrieved from [http://cir.usc.edu/wp-content/uploads/2017/05/USC-CIR-SF-VET-2017\\_FINAL-Pgs.pdf](http://cir.usc.edu/wp-content/uploads/2017/05/USC-CIR-SF-VET-2017_FINAL-Pgs.pdf)

<sup>34</sup> Tayyeb, A. R. (2017). *The Effects of the Military Character of Discharge on Reintegration into the Civilian Community: A Phenomenological Study* (Doctoral Dissertation). University of San Diego.

## *Current policy shifts*

On March 7, 2017, while testifying before the House Veterans Affairs Committee, Department of Veterans Affairs Secretary David Shulkin announced he would expand emergency mental health and crisis care to veterans with Other Than Honorable discharges. Colorado Congressman Mike Coffman had recently introduced a bill – H.R. 918 – directing the Secretary of Veterans Affairs to do just this. The VA’s press release following Shulkin’s announcement outlines three services the current proposal will provide to “bad paper” veterans: treatment at a VA emergency department for health concerns, access to Vet Centers (counseling locations) for combat veterans and survivors of military rape, and access to the VA’s Veteran Crisis Line (a toll free suicide hotline).<sup>35</sup> However, a close inspection reveals that these are each things the VA already does. Vet Centers have been open to veterans with “bad papers” since they opened in 1979. Those Centers, however, do not provide psychiatric, emergency, or neurological treatment. Secondly, VA emergency rooms are already available to non-veterans as a matter of “humanitarian care.” Finally, Crisis Line counselors currently do not ask those who call to reveal the character of their military discharge.<sup>36</sup> New regulations announced by the VA in March 2017 could add additional screening requirements that would force veteran patient-centered services that may not at this time ask for the Character of Discharge to begin asking. This would not only deter veterans from accessing these services, but it might also force a VA department to deny services that “bad paper” veterans previously accessed, albeit informally.

Legislation currently in committee focuses on mental health services for all veterans, including those with “bad paper” discharges, in particular those who were deployed to combat theaters or who survived military sexual assault. Stopping at the provision of mental health services neglects the population’s need for primary care, as well as pain management or even housing resources for veterans whose health is impacted by their homelessness. While this emphasis on mental health likely comes from growing public and legislative concern over veteran suicide, separating mental from physical health is problematic. Moreover, carving out just some veterans – those who were deployed to a combat theater or who survived sexual assault – for this care is internally contradictory, as a 2015 Department of Defense study of nearly four million US service members and veterans found no relationship between deployments to Iraq and Afghanistan and increased risk of suicide, at least among those still in the military (the only population examined in that study). Subgroups at highest risk for suicide in this study were those who

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<sup>35</sup> VA Office of Public and Intergovernmental Affairs. (2017, March 8). *VA Secretary Announces Intention to Expand Mental Health Care to Former Service Members* [Press release]. Retrieved from <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2867>

<sup>36</sup> Adams, B. (2017, March 15). VA Plans to Help ‘Bad Paper’ Veterans Don’t Go Far Enough. *Military Times*. Retrieved from <http://www.militarytimes.com/articles/commentary-va-plans-to-help-bad-paper-veterans-dont-go-far-enough>

had served in the military for less than a full enlistment (especially those who served less than a year) and Marines who did not deploy and separated early.<sup>37</sup>

While risk for suicidality cannot necessarily be predicted from one's combat experience, other conditions that may manifest in misconduct and a "bad paper" discharge can, such as PTSD or TBI. Counterintuitively, combat seems to be a reliable indicator for veteran *ineligibility* for benefits. One study showed that "Marine combat veterans with PTSD diagnoses were eleven times more likely to get misconduct discharges, because their behavior changes made them unable to maintain military discipline."<sup>38</sup> Failure of current VA regulations to properly address and assess military conduct that led to the discharge, has resulted in greater disparity of VA eligibility between military services. In 2007, the VA excluded Marines at more than ten times the rate of Airmen, when Marines' death rate (via more intense combat exposure) in Iraq was 23 times that for Airmen in that same year.<sup>39</sup> As a result, fully 12 percent of Marine veterans discharged between 2001 and 2013 would have been turned away from a VA hospital, while only 1.7 percent of Airmen would be turned away in that same period.<sup>40</sup> Current legislation does not address this difference between military services, as well as the variability within the VA as to whether benefits are approved or denied once an individual submits for a "character of service" or "character of discharge determination."

In a legislative hearing on the bill to improve "bad paper" veteran care (H.R. 918), the VA was urged to recognize that "physical and mental health conditions do not only occur because of being in a war zone and active combat. Mental health conditions can occur because of participation in training, humanitarian missions, assistance in natural disaster and recovery efforts, and an assaultive environment (such as acts of prejudice and discrimination) within the military structure."<sup>41</sup> A recent white paper examining the bills before Congress to increase access of veterans currently excluded from the VA points in

<sup>37</sup> Reger, M. A., Smolenski, D. J., Skopp, N. A., Metzger-Abamukang, M. J., Kang, H. K., Bullman, T. A., ...Gahm, G. A. (2015). Risk of Suicide Among US Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation From the US Military. *JAMA Psychiatry*, 72(6), 561–569.

<sup>38</sup> Blecker M., Stichman, B., Nagin, D., & Ensign, D. (2015, December 19). *Petition for Rulemaking to Amend 38 C.F.R. §§ 3.12(a), 3.12(d), 17.34, 17.36(d) Regulations Interpreting 38 U.S.C. § 101(2) Requirement for Service 'Under Conditions Other Than Dishonorable.'* Swords to Plowshares; Highfill-McRoy, R. M., Larson, G. E., Booth-Kewley, S., & Garland, C. F. (2010, October 25). Psychiatric Diagnoses and Punishment for Misconduct: the Effects of PTSD in Combat-Deployed Marines. *BMC Psychiatry*, 10(88).

<sup>39</sup> Preston, S., & Buzzell, E. (2006, August 26). Mortality of American Troops in Iraq. *University of Pennsylvania Population Studies Center Working Paper Series*; Tanielian, T., & Jaycox, L. (2008). *Invisible Wounds of War: Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*. Santa Monica, CA: RAND Center for Military Health Policy Research.

<sup>40</sup> Blecker M., Stichman, B., Nagin, D., & Ensign, D. (2015, December 19). *Petition for Rulemaking to Amend 38 C.F.R. §§ 3.12(a), 3.12(d), 17.34, 17.36(d) Regulations Interpreting 38 U.S.C. § 101(2) Requirement for Service 'Under Conditions Other Than Dishonorable.'* 84. Swords to Plowshares.

<sup>41</sup> *Legislative Hearing on Pending Legislation: H.R. 918, 'Veterans Urgent Access to Mental Health Care Act'*, 115<sup>th</sup> Cong. (2017, March 25) (Statement for the Record of Ali R. Tayyeb).

particular to how the imposition of eligibility criteria (such as service in a combat theater) could in practice “create bureaucratic hurdles that historically have prevented similar Congressional directives from having a meaningful impact.”<sup>42</sup> In regards to the three resources – emergency care, Vet Centers, and the Crisis hotline – listed in the VA’s March 2017 press release, the Crisis hotline does not currently ask suicidal veterans whether they were deployed to a combat zone before taking their calls. Therefore one must ask: Would the VA’s new eligibility criteria serve to exclude these veterans based on a screening criteria of combat zone deployment? In addition, would this regulation deter veterans who had not deployed to combat zones from seeking assistance because they would presume they were ineligible to receive such services?

While the new legislation also focuses on survivors of sexual assault who have been inappropriately discharged and denied benefits, this seeming progress belies some troubling facts. Most military sexual violence (85 percent in 2014) goes unreported.<sup>43</sup> Though we might expect the number of reports to have risen given the public and legislative pressure to reform how sexual assault is reported and addressed within the military, the total number of victim reports in 2015 was lower than in 2014.

Despite recent reforms, sexual assault victims continue to face retaliation, making it plausible that the number of unreported sexual assaults will continue to outpace reported crimes.<sup>44</sup> A 2016 DoD study found that one third of victims were discharged within seven months of reporting sexual assault,<sup>45</sup> and victims reported a higher number of less than fully honorable discharges as compared to all service members.<sup>46</sup> Most striking among the numbers in this report: of those sexual assault victims who were separated, 25 percent

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<sup>42</sup> Monalto, D., & Adams, B. (2017, March 13). *White Paper: Legislation to Ensure Veterans’ Access to Mental Health Care*, 1. Swords to Plowshares, Legal Services Center of Harvard Law School.

<sup>43</sup> Protect Our Defenders. (2016, September). Facts on United States Military Sexual Violence. Retrieved from <http://www.protectourdefenders.com/factsheet/>. Importantly, VA Guidelines have relaxed the evidentiary requirements for PTSD claims related to sexual assault, instead looking for “markers” such as statements from friends or family, documented change in behavior, medical records, and many other sources, that can prove sexual assault even if it went unreported. At the same time, we flag the issue of under-reporting and retaliation as linked to a broader context in which reporting this crime can be used as a weapon against victims in a variety of ways beyond the deprivation of VA benefits.

<sup>44</sup> For example, the National Defense Authorization Act for 2017 now includes specific protections against retaliation for those reporting sexual assault; in addition, there is a new unit in the DOD Inspector General focusing specifically on retaliation for sexual assault.

<sup>45</sup> Protect Our Defenders. (2016, September). Facts on United States Military Sexual Violence. Retrieved from <http://www.protectourdefenders.com/factsheet/>; US Department of Defense Inspector General. (2016, May 9). *Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault*. Alexandria, VA: Author.

<sup>46</sup> US Department of Defense Inspector General. (2016, May 9). *Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault*. Alexandria, VA: Author; Human Rights Watch. (2016, May 19). *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*. Retrieved from <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>

were separated for some type of misconduct.<sup>47</sup> In fact, both men and women are subjected to Military Sexual Trauma – indeed, because the population of service members is disproportionately male, there are more male victims of unwanted sexual contact than female, although men report at much lower rates.<sup>48</sup> Yet women comprise a disproportionate number of sexual assault victims (23 percent of female veterans screening positive for rape in the military, in comparison to 1.2 percent of men), especially those reported, discharged, and included in this particular study.<sup>49</sup>

Finally, while the provision of mental health services to sexual assault survivors is important, stopping at mental health neglects the other areas of veterans’ lives affected by sexual assault. A recent study found that 40 percent of female homeless veterans had survived sexual assault during military service.<sup>50</sup> VA reforms under consideration would provide those among this population with OTH discharges with valuable psychological care, yet it would leave the problem of homelessness and other social and economic issues untouched.

### ***Thinking beyond current VA reforms***

Shulkin’s March 2017 statement represents an opening to reverse the exclusion of veterans suffering from conditions often brought on by military service. At present, however, reforms under consideration fall short of actually making the VA accessible to “bad paper” veterans, some of whom may be most in need of VA services. To put things in perspective, if employees in the civilian sector (including employees of the federal government) are injured, they are legally entitled to workers’ compensation even if they are fired for cause. The equivalent VA compensation program is only available to qualifying veterans. Opening disability claims to “bad paper” veterans is not even on the table of current policy debates, despite a discharge process the VA and the DoD both admit is problematic. Furthermore, no reforms are in place to change the obfuscatory processes involved in upgrading Characterization of Discharge or changing VA review processes. If the screening and upgrade processes remain the same, veterans will continue to find

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<sup>47</sup> US Department of Defense Inspector General. (2016, May 9). *Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault*. Alexandria, VA: Author. This data set also includes a number of cases that followed discharges within only a month following a report of sexual assault, thus likely making the numbers of reporters separated with misconduct even higher if one followed the cases further in time. Thanks to Bradford Adams and Sara Darehshori for assistance in interpreting these numbers.

<sup>48</sup> Sexual Assault Prevention and Response Office. (2015, April). *DOD Sexual Assault Prevention and Response Fact Sheet*. Washington, DC: Author. DOD estimates 8,500 women and 10,500 men experienced unwanted sexual contact in 2014.

<sup>49</sup> Military Sexual Trauma Support Team. (2012). *Military Sexual Trauma Screening Report, FY 2011*. Washington, DC: Department of Veterans Affairs.

<sup>50</sup> Protect Our Defenders. (2016, September). Facts on United States Military Sexual Violence. Retrieved from <http://www.protectourdefenders.com/factsheet/>



themselves unfairly excluded from healthcare, disability, education, and other benefits they were promised upon enlisting.

It also bears noting that current legislative reform discussions are almost entirely based on reform of VA policy and practice. Yet the VA does not administer discharges – the DoD does. DoD practices of giving “bad paper” discharges in lieu of appropriately addressing contributory factors to the behaviors leading to discharge remain an ongoing and significant precursor to many challenges these veterans face. The Congressionally mandated Department of Defense Task Force on Mental Health reported in 2007 that, “returning service members were pressured by commanders and peers to accept an administrative discharge so they could be expeditiously cleared from the unit and replaced with a fully functional person.”<sup>51</sup> A recent Human Rights Watch Report found that although the use of Personality Disorder discharges declined in 2010 after government studies revealed improprieties, these and other questionable mental health discharges are still widely used today.<sup>52</sup> Even more recently, the May 2017 GAO report found that “the Army and Marine Corps may not have adhered to their own screening, training and counseling policies related to PTSD and TBI,” including failing to train officers to identify mild TBI symptoms that can be associated with misconduct. This report also identified a lack of counseling among service members receiving “bad paper” discharges about their potential ineligibility for VA benefits.<sup>53</sup> Reforms of the VA do not call into question DoD attitudes toward its labor force as a population that DoD may subject to physical and psychological harm without providing even a minimum level of access to healthcare to tend the wounds of war or the occupational hazards of their work more generally.

## **Conclusion**

As H.R. 918 is currently written, it will perpetuate the denial of specialty care to a vulnerable veteran population and add unnecessary regulations that might even create more barriers to care. The VA already provides crisis management for mental health conditions for veterans with Other Than Honorable discharges. This report and others from various veteran advocacy organizations continue to ask for the *removal* of barriers for veterans to access appropriate care. Veterans are a unique population, often presenting specific physical and mental health conditions. The VA’s imposition of certain standards for administering benefits based on Character of Discharge – standards that are in fact more

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<sup>51</sup> Glantz, A. (2009). *The war comes home: Washington’s battle against America’s veterans*, 87. Berkeley: University of California Press.

<sup>52</sup> Human Rights Watch. (2016, May 19). *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*. Retrieved from <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>

<sup>53</sup> US Government Accountability Office. (2017, May 16). *DOD Health: Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury are Considered in Misconduct Separations* (GAO-17-260). Washington, DC: U.S. Government Printing Office.

# COSTS OF WAR



stringent than Congress requires – unnecessarily limits veteran access to services that can only be provided by the VA.

With “bad papers” comes a lifetime of judgement and substandard care. A momentary lapse in judgement, self-medication to mediate the effects of war, surviving and reporting rape, or suffering from mental health conditions should not exclude veterans from the very organization established to help them return home. The VA’s denial of care to “bad paper” veterans has effectively passed the burden and significant cost of caring for this population onto informal family networks, local charitable organizations, and state and municipal resources.<sup>54</sup> Beyond the moral imperative to care for those who serve and/or are wounded, it is plausible that more expeditious and appropriate access to VA care would be less costly to taxpayers than the current arrangement. The percentage of “bad paper” discharges is rising, which could be an ominous indicator of a permanent underclass of former service members locked permanently out of the VA for minor transgressions or even fabricated mental health diagnoses. It is time for the VA to move beyond exclusivity and optimize holistic veteran care to support psychological, physical, and sociocultural well-being for former service members, many of whom suffer from conditions brought on by their military service.

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<sup>54</sup> Penaloza, M. (2013, December 12). Filling The Gaps For Veterans With Bad Discharges. *National Public Radio: Special Series: Veterans and Other than Honorable Discharges*. Retrieved from <http://www.npr.org/2013/12/12/250289588/filling-the-gaps-for-veterans-with-bad-discharges>