Soldiers for Justice: The Role of the Tuskegee Airmen in the Desegregation of the American Armed Forces

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Often noted for their heroic prowess as pilots in World War II, the Tuskegee Airmen served just as nobly fighting racial segregation within the Army. Considered exemplary in its integration today, the armed forces were a testing ground for integration in the middle of the twentieth century. Black officers and enlisted men, putting themselves in harm’s way for a segregated United States, rebuked the notion of separate but equal, thereby slowly paving the way for integration in the military, and eventually, the nation. In this Article, F. Michael Higginbotham examines the history of segregation in the United States Armed Forces as well as the role and contribution of black soldiers, most notably the American Army Air Corps personnel, in the legal challenges and protests that led the battle to desegregate the armed forces.

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* This article is dedicated to my father, Robert McCoy Higginbotham, my uncle, Mitchell Louis Higginbotham, and other members of the Tuskegee Airmen whose stories of bravery abroad, and courage at home, instilled in me pride and hope for a better tomorrow.

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It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement; and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold timid souls who know neither victory nor defeat.  

Theodore Roosevelt

INTRODUCTION

In the book *The Greatest Generation*, Tom Brokaw examines the lives of some who fought in World War II. The courage they heroically displayed, the sacrifices they willingly made, and the hardships they quietly endured, led him to conclude that these men collectively were members of the “greatest generation.” Brokaw noted, however, that despite their accomplishments, these men served in a racially-segregated military and lived in a racially-segregated society that dismally failed to address the color divide. Although the “greatest generation” was unable to eliminate the racial divide, these men did begin the process.

Many legal historians and civil rights proponents are familiar with President Harry Truman’s executive order of 1948, issued six years prior to *Brown v. Board of Education*, requiring the desegregation of the armed forces. Few, however, are aware of the events that paved the way for this historic legislation.

During the 1940s, members of the armed forces frequently challenged the military’s racial segregation practices. Many of these challenges occurred within the Army Air Corps and were initiated by the legendary Tuskegee Airmen. While their

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3 See id. at 183-84.
7 Originally named the Army Signal Corps, the Air Corps Act of 1926 changed the name to the Air Corps. The Air Corps thus became the aviation arm of the U.S. Army. In 1947, the Army Air Corps became a separate branch of the armed forces known as the Air
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outstanding combat record in Europe⁹ did much to dispel notions of the racial inferiority of black officers and to demonstrate that integration would not compromise efficiency, the Tuskegee Airmen’s civil rights protests served more directly to pressure the military to begin desegregation efforts, even as World War II raged on. At the risk of their military standing and physical well-being, black soldiers integrated base facilities.¹⁰ Through protests, they sought the enforcement and expansion of already existing desegregation policies to include a complete and total ban of all racial segregation practices in the military. As the war came to an end and other

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⁸ In 1940, President Franklin D. Roosevelt directed the Army Air Corps to build an all black flying unit. See BERNARD C. NALTY, STRENGTH FOR THE FIGHT: A HISTORY OF BLACK AMERICANS IN THE MILITARY 141-45 (1986). Consequently, the 99th Pursuit Squadron was created. Initially, the new aviation training base was located in central Alabama. It was subsequently moved to Tuskegee, Alabama. See id. at 53. Tuskegee Army Air Field proved to be an ideal training base because it already had a civilian pilot-training center. The Tuskegee Airmen were named after the air field located at Tuskegee University in Tuskegee, Alabama, where they did their initial flight training. See MARY PENICK MOTLEY, THE INVISIBLE SOLDIER: THE EXPERIENCE OF THE BLACK SOLDIER, WORLD WAR II, at 194 (1975).

⁹ The military record of the Tuskegee Airmen is legendary. According to the personal record of Lieutenant Colonel Walter Downs, the Tuskegee Airmen of the 332nd Fighter Group:

[D]estroyed 111 enemy planes in the air and damaged 25. It destroyed 150 enemy aircraft on the ground; damaged 123. The group also destroyed 57 locomotives, damaged 67; destroyed 58 boxcars, damaged 506; sank one destroyer; sank 16 barges and boats, damaged 24 others; destroyed 2 oil and ammunition dumps, one radar installation, 6 motor transports, 3 gun implacements, 15 horse drawn vehicles, damaged 7 tanks on flat cars; destroyed 3 power transformers, damaged 2; and damaged 23 buildings and factories . . . flew 1,267 mission [sic] in the 12th Airforce, 6,381 sorties. In the Strategic Air Command they flew 311 missions and 9,852 sorties. Their total missions flown were 1,578; sorties flown 15,553 . . . . The pilots of the 332nd received: 865 Legion of Merit, 95 Distinguished Flying Crosses, 1 Silver Star, 14 Bronze Stars, 744 Air Medals and clusters, 8 Purple Hearts, and a Presidential Citation for the group.

MOTLEY, supra note 8, at 195-96.

As a result of their enviable military record, the War Department was forced to reexamine the role of blacks in the armed forces. The report on Participation of Negro Troops in the Post-War Military Establishment concluded that “blacks with the same training and aptitude as whites performed satisfactorily.” Colonel (Ret.) Alan L. Gropman, USAF, Tuskegee Airmen, AIR FORCE MAG., Mar. 1996, at 54.

¹⁰ See ALAN M. OSUR, BLACKS IN THE ARMY AIR FORCES DURING WORLD WAR II, at 86-107 (1977) (noting that many soldiers, particularly in the Army Air Corps, refused to obey segregation practices at base facilities and openly attacked discrimination).
concerns, such as rebuilding Europe, became paramount, the Tuskegee Airmen kept pressure on the military to begin implementation of desegregation plans.\textsuperscript{11} While many books have been written about integration in the military,\textsuperscript{12} none involve an analysis of the legal challenges and political protests within the Army Air Corps leading up to the executive order to integrate the armed forces.\textsuperscript{13} Today, many leaders in the United States point to the military as one of the earliest and best examples of racial desegregation.\textsuperscript{14} Without the efforts of the Tuskegee Airmen, however, the military would have been much slower to act and much less prepared for the consequences of integration. This Article examines the role and contribution of black American Army Air Corps personnel in the battle to desegregate the armed forces.

Part I of this Article discusses the history of racial segregation in the military. This part examines the motives of the military and civilian leaders in requiring segregation, as well as the political and military interests favoring desegregation. Part II addresses the desegregation lawsuits brought by military personnel. This part examines the substantive barriers and limitations on judicial review that resulted in the failure of these legal challenges to segregation. Part III examines the desegregation protests of Army Air Corps personnel. It traces the evolution of the military climate and the focus of the protests. Part IV identifies the punishments received by protesters, including reduction in military standing, physical injuries, fines, incarceration, and civilian sanctions. Part V argues that despite the physical and economic risks, the protesters facilitated the integration of the armed forces by enforcing existing desegregation regulations and encouraging the complete integration of the military.

\textsuperscript{11} See NALTY, supra note 8, at 228-32.


\textsuperscript{13} Several excellent books have been written about the Tuskegee Airmen. See LEROY A. BATTLE, EASIER SAID: THE AUTOBIOGRAPHY OF LEROY A. BATTLE (1995); CHARLES FRANCIS, THE TUSKEGEE AIRMEN (1988); ROBERT ROSE, LONELY EAGLES (1980); JAMES WARREN, THE FREEMAN FIELD MUTINY (1991).

\textsuperscript{14} For example, Retired General Colin Powell has been vociferous on this topic, stating: "I wish that there were other activities in our society and in our nation that were as open as the military to upward mobility, to achievement, to allowing [blacks] in," and "[t]he military had given African-Americans more equal opportunity than any other institution in American society . . . ." LT. COL. (RET.) MICHAEL LEE LANNING, THE AFRICAN-AMERICAN SOLDIER: FROM CRISPUS ATTUCKS TO COLIN POWELL 284-85 (1997); see also MOSKOS & BUTLER, supra note 12, at 114-18 (describing Powell's efforts to merge African-American society and military success).
I. THE HISTORY OF RACIAL SEGREGATION IN THE MILITARY

A. Pre-World War II

Black Americans have participated in every war in which the United States has fought. These men and women served, however, in racially segregated units.

See LANNING, supra note 14, at 292; OSUR, supra note 10, at 1. For an excellent account of the role that African-Americans have played in this country's wars, see BLACKS IN THE MILITARY: THE ESSENTIAL DOCUMENTS (Bernard C. Nalty & Morris J. MacGregor eds., 1981); RUTH D. WILSON, JIM CROW JOINS UP: A STUDY OF THE NEGROES IN THE ARMED FORCES OF THE UNITED STATES (1944).

Black participation in the American Revolution was widespread because slaves and free blacks saw the revolution as an opportunity not only to demonstrate their patriotism, but also to win their freedom or the freedom of a family member.

Christopher "Crispus" Attucks was the first martyr of the Revolutionary War. See WILLIAM C. NELL, THE COLORED PATRIOTS OF THE AMERICAN REVOLUTION 3 (1855). He was killed in the Boston Massacre on March 5, 1770, while leading a mob of patriots against the British. See id. at 15-16. In 1775, Judge Dawes was quoted as saying that "[t]he provocation of that night must be numbered among the master-springs which gave the first motion to a vast machinery,—a noble and comprehensive system of national independence." Id. at 17.

Although other black soldiers fought at Bunker Hill, Peter Salem is acclaimed for shooting and killing Pitcairn, the British officer who caused the first bloodshed at Lexington. See id. at 21. Salem was presented to General Washington as having been the man who killed Pitcairn. See id.

There were many black regiments during the Revolutionary War, including the men of the Rhode Island Free Black Regiment who played a major role in the war. See id. at 126. The entire regiment was comprised of black soldiers. See id. The regiment's stellar performance at Red Bank proved that black soldiers possessed valor, courage, and zeal. See id. At Red Bank, "four hundred black men met and repulsed, after a terrible and sanguinary struggle, fifteen hundred Hessian troops, headed by Count Donop." Id. Among the most notable characteristics of the Rhode Island Free Black Regiment was its devotion to its officers. See id. at 127. In an attack on the American lines near Croton River, Colonel Greene, the commander of the regiment, was killed after enemy swords plunged through the bodies of his "faithful guard of blacks, who hovered over him to protect him, and every one of whom was killed." Id.

The War of 1812, like other wars in which America was engaged, utilized and benefitted from the service of black men. Black slaves and freed men enlisted their service in hopes of gaining "impartial liberty." JOSEPH T. WILSON, THE BLACK PHALANX 83 (1968). However, at the beginning of the war, "the effort to admit [blacks] into the ranks of the Army, even in separate organizations, was futile." Id. at 80.

Despite being rejected by the Army, blacks found another venue wherein they could demonstrate their patriotism—the Navy. See id. at 78. Blacks were seemingly easily integrated into the Naval forces; "together with others of various nationalities, [blacks] achieved many victories for the navy . . . ." Id. A letter written by Nathaniel Shaler, commander of the private-armed schooner Governor Tompkins, described the valor of the black officers aboard his ship: "My officers conducted themselves in a way that would have
commanded by white officers. Most often, black soldiers were excluded from skilled leadership positions and served overwhelmingly in labor and service capacities. To discourage black participation, the military placed a strict cap on the number of black enlistments.

The military rested its segregation policy on four grounds: (1) segregation was necessary for internal stability of the Army; (2) segregation was an efficient way to isolate poorly educated and undertrained black soldiers; (3) segregation was the only way to provide equal treatment and opportunity for black troops; and (4) segments of American society opposed integration, fearful that the military should not be too far ahead of the rest of the country in protecting the civil rights of blacks. Specifically, the Army leadership believed the military was not the proper place for social experimentation and that it would integrate when the rest of the country integrated. This segregation policy severely limited the number of blacks in the military and excluded them altogether from the Marines and Air Corps, as well as from any service in the Navy except that of mess hall attendant.

Most black leaders did not openly attack the policy of segregation. Instead, they saw the best hope for expanding military opportunity in the addition of more, albeit segregated, black units. While segregation was abhorrent to most in the black community, the attitude of many blacks to segregation in the military was reflected in a more permanent service done honor to a more permanent service . . . .” Id. at 80.

The creation of organized black troops began with General Andrew Jackson’s proclamation encouraging free black men of Louisiana to defend their country. See id. at 81. Perhaps more importantly, the proclamation established monetary compensation and a system of rank within black battalions and regiments. See id. at 81-82. As a result, the Louisiana legislature enacted legislation authorizing two black regiments. See id. at 82.

Black soldiers helped save New Orleans from falling under British control. See id. at 85. In fact, with the aid of the newly created black regiments, “seven hundred of the British were killed; fourteen hundred were wounded and four hundred were taken prisoners. The American Army was so well protected that only four were killed and thirteen wounded.” Id.

The stellar performance of the black regiments in Louisiana did not go unnoticed. In a speech to his congressional colleagues, the Honorable Robert C. Winthrop stated, “I believe that I shall be borne out in saying, that no regiments did better service, at New Orleans, than did the black regiments . . . .” Id. at 86.

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18 See MITCHELL, supra note 16, at 324.
19 See MACGREGOR, supra note 12, at 227-29.
21 See DALFIUME, supra note 6, at 26.
22 See id. at 30-32.
23 See id. at 8-43.
in W.E.B. Dubois’ 1917 comment that when it came to military service in wartime, blacks should not “bargain with our loyalty.”

B. **World War II**

As the United States prepared to enter World War II, black leaders saw an opportunity to change the policy of segregation in American society. Three fundamental differences between World War I and World War II created a political and social environment that was ripe for change. First, President Franklin Delano Roosevelt needed the black vote to win an unprecedented third term, thereby placing black Americans in the unfamiliar position of being able to demand political concessions. Second, Eleanor Roosevelt, President Roosevelt’s wife and a staunch civil rights advocate, openly argued that black soldiers were the subjects of discrimination. Finally, the rise of Adolph Hitler, whose philosophy of Aryan superiority was opposed by the United States, provided the civil rights movement with a compelling argument for desegregation. Black leaders knew it would be hypocritical to ask black men to serve and die in a foreign land, only to return to a segregated society. They therefore pushed for desegregation at home in exchange for service abroad.

When World War II began in Europe in 1939, only 3640 black soldiers were in uniform. By the time Pearl Harbor was bombed, that number had increased to 97,725. By the end of 1942, the number of black soldiers had swelled to 467,833 men. Despite this increase, the Army pledged to maintain the practice of segregation and to keep the proportion of blacks in uniform the same as the proportion of blacks in the general population. Thus, the military continued deliberately to relegate the vast majority of black soldiers to manual labor positions in support and supply units. The primary tasks of the service troops included road building, stevedoring, laundering, and fumigating.

The military’s policies of parity in population percentage and racial segregation were difficult to maintain. Despite the cap on enlisted black soldiers, the Army did not have enough segregated facilities to house and train the unprecedented number of

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24 Karst, supra note 17, at 516-17.
26 See DALFIUME, supra note 6, at 48 n.1.
27 See NALTY, supra note 8, at 136-37.
28 See id.
29 See DALFIUME, supra note 6, at 44.
30 See id.
31 See id.
32 See id. at 44-47.
33 See id. at 320-23.
34 See id.
black recruits.\textsuperscript{35} In addition to these logistical problems, most of the war was waged while black soldiers, a valuable and powerful resource, remained on the sidelines.\textsuperscript{36} As in earlier wars, black soldiers were denied the right to fight until their manpower became a necessity.\textsuperscript{37} Black infantry units were assigned to combat duty late in the war but only when necessary to replace white units who had lost large numbers of soldiers.\textsuperscript{38}

Nonetheless, the military leadership, along with many others, believed that the military was neither capable of solving the social problems of the United States \textsuperscript{39}

\textsuperscript{35} See BLACKS IN THE MILITARY, supra note 15, at 20. The Army never came near its own policy of enlisting enough black men to meet its own self-imposed ten percent guideline. See DALFIUME, supra note 6, at 46. In fact, the draft boards began to turn away black volunteers because there were not enough segregated facilities or divisions for minorities. Whites perceived the draft boards’ actions as favoring black candidates. Blacks noted the irony that the military’s policy of segregation was causing more whites to serve and die in the military. See id. at 71.

\textsuperscript{36} See DALFIUME, supra note 6, at 97.

\textsuperscript{37} See MARY FRANCES BERRY & JOHN W. BLASSINGAME, LONG MEMORY: THE BLACK EXPERIENCE IN AMERICA 324 (1982). For example, the Air Corps had planned to institute a policy similar to that of the Army, whereby it would assign the few black officers in its ranks to posts in Africa. Generally, these posts were not involved in combat. Accordingly, the Air Corps was to assign the all black 99th Fighter Squadron to patrol missions on the West Coast of Africa. These plans were abandoned, however, when the invasion of North Africa in November 1942 created a sudden demand for more fighters. See MITCHELL, supra note 16, at 326.

\textsuperscript{38} See MITCHELL, supra note 16, at 326.

\textsuperscript{39} See NALTY, supra note 8, at 129-130. The road to the integration of the Army Air Corps was a slow and arduous trek. Opposition to integration could be found at the highest levels of military command. For instance, Major General George Van Horn Mosely, the principal assistant to General Douglas MacArthur in the early 1930s, justified the exclusion of blacks from the Air Corps. See id. at 129. “Segregation, conceded [Mosely], determined how the Army would use its manpower, and this was both legal and proper.” Id. at 129. Moreover, in Mosely’s opinion the Army Air Corps had emerged only recently as a combat arm, and Congress had made no provision for black squadrons. Indeed, congressional action, unlikely though it seemed, might not of itself be enough to create black aviation units. After all, Mosely asked, could enough educated and technically skilled black men be found to operate a unit that normally attracted college-trained individuals as pilots and persons with great mechanical aptitude or experience to maintain and service the aircraft? Obviously, the general thought that such men were not available. Id. at 129-30.

Mosely’s opinion reflects the mindset of military command that blacks lacked not only the intelligence but also the necessary technical and cognitive skills to succeed. During World War II, General George C. Marshall expressed that “he would insist upon fairer treatment for blacks, but only within the framework of segregation, for he felt that to abandon segregation would disrupt the fabric of the Army, alienate civil society, and make
victory all the more difficult to attain.” *Id.* at 147.

The characterization of black airmen as either incompetent or ineffective was used to further rationalize racist policies. At the height of the Sicilian Campaign in World War II, Colonel William W. Momyer, commander of the group to which the black 99th Fighter Squadron was attached, declared that “it is my opinion that [blacks] are not of the fighting caliber of any squadron in this Group. They have failed to display the aggressiveness and desire for combat that are necessary to a first-class fighting organization.” *Id.*

Brigadier General Edwin J. House, Colonel Momyer’s supervisor, also trumpeted the failure of the “Tuskegee experiment,” stating that “the consensus of opinion seems to be that the negro type has not proper reflexes to make a first-class fighter pilot.” *Id.* Major General John K. Cannon, superior to both Colonel Momyer and Brigadier General House, provided a ringing endorsement for their views and advised Lieutenant General Carl Spaatz, the senior airman in the theater that “the pilots of the 99th Fighter Squadron lacked stamina . . . as well as aggressiveness and discipline.” *Id.*

Black soldiers fared no better than black airmen in the eyes of the military hierarchy. In late 1944, American forces encountered a costly and protracted stalemate along the French and German border that created the need for the incorporation of black infantry replacements into white rifle companies. *See id.* at 176. It was the conclusion of Lieutenant General John C. H. Lee, General Dwight D. Eisenhower’s logistical support deputy for American forces in Europe, that “[w]hite and black troops, therefore, would fight shoulder to shoulder to bring about victory.” *Id.* at 176. Opposition to the integration of personnel was imminent. *See id.* Lieutenant General Walter Bedell Smith, Eisenhower’s Chief of Staff, expressed his concern that “abandoning segregation in these special circumstances would encourage the black press and the various civil rights organizations in their attempt to banish racial segregation from the entire Army.” *Id.* at 176-77. Famed military leader Lieutenant General George S. Patton, Jr., agreed with Smith’s sentiments. *See id.* at 177. Patton was known to have few words of praise for black soldiers. *See id.* “Not even the 761st Tank Battalion could impress him, despite its accomplishments, for he was convinced that blacks lacked the reflexes for armored combat. As for assigning black riflemen to infantry outfits, he warned that southern-born white soldiers would object to serving alongside blacks.” *Id.*

One of the most ardent detractors of racial integration was President Roosevelt’s Secretary of War, Henry L. Stimson. *See id.* at 138. Allegations by the black press “that Stimson considered blacks too stupid to fight” were only minimally exaggerated. *Id.* at 168. Stimson vehemently opposed anti-discrimination policies and had never accepted the notion of a black commissioned officer. *See id.* at 138. Although “confident of the superiority of the white race,” Stimson grudgingly conceded to some reform “not out of any sense of justice but because he had come to believe that [Philip] Randolph and the other [civil rights] leaders were trying to head off a communist takeover of the civil rights movement.” *Id.* at 140. As far as the black pilots of the Tuskegee experiment were concerned, Stimson expected [them] to make little or no contribution to victory over the Axis powers. He looked upon the program as a concession to a politically active minority rather than a useful element in the nation’s war effort. He had written off the black officers trained at Fort Des Moines in an earlier war as failures, an embarrassment to themselves and the service, and he believed the black aviators also would fail.

*Id.* at 145.
Unfortunately, Stimson's prejudices accurately reflected the deep-seated bias of a core of World War II-era military officers with respect to black soldiers and airmen. If one phrase could summarize the Army's attitude toward blacks, it might well be "You know how niggers are." These words prefaced explanations by white officers that blacks could not be believed, that they had to be cursed at and hounded, and that they were oblivious to racial slurs, "nigger" for one. Many white officers did not credit blacks with intelligence, let alone hopes or ambitions or indeed feelings of any sort. As a result, these insensitive commanders made no effort to discover the state of morale within their units, confident that a stirring speech or a pat on the back by a white man would be enough to motivate the black soldier. Most of the time, they were the kind of leaders who deliberately avoided contact with those they led.

There were a number of civilian opponents to integration of the armed forces in addition to those anti-integration forces already entrenched in the military hierarchy. Subsequent to World War I, southern politicians were fervently against integration of the armed forces.

Demagogues such as Senator James Vardaman and Governor Theodore Bilbo of Mississippi prepared to show black soldiers returning home from the war that their place in southern society had not changed. Black soldiers back from Europe were accused of being "French woman ruined," and many were watched closely for any signs of a belligerent attitude. Soldiers had their uniforms torn off, and many were beaten for no other reason than to make sure they knew their place in southern society. The South was not a friendly place for these soldiers . . . .


Anti-integration sentiment persisted even at the onset of World War II. For instance, a debate ensued in 1940 over the proposed language of the Selective Service Act. See NALTY, supra note 8, at 136-37. Civil rights leaders, both black and white, called for the inclusion of a clause prohibiting racial discrimination but were met with considerable opposition. See id. Senator Tom Connally, a Texas Democrat, spoke for the anti-integration forces in the Congress and stated that such a clause would only serve the purpose of "knuckling under to a few blacks 'who want continually to agitate, disturb, stir up discussion, and raise the devil about what they speak of as their political social rights.'" Id. Connally warned that such a concessionist approach "had produced outrages like the Brownsville and Houston riots in which disciplined regulars, rather than easily influenced draftees, had succumbed to the schemes of 'agitators, social climbers, and others.'" Id. Despite Connally's warnings, Congress voted to include the anti-discrimination clause in its enactment of the Selective Service Act of 1940. See id.

40 See DALFIUME, supra note 6, at 44-47. There are four reasons for the military's policy of segregation. First, civilian society was segregated. Second, blacks had long suffered from the inferior education systems that they attended, which caused them to score consistently lower than their white counterparts. Third, the military utilized recruits according to their capabilities; therefore, recruits with lower scores were discriminated against in the forms of enlistment denials and assignments to menial tasks. Finally, the military shunned any
integration would lead to inefficiency, reduce combat effectiveness, and increase racial tension.\textsuperscript{41}

1. Combat

Black troops finally arrived on the front lines of Italy in 1944.\textsuperscript{42} Because their arrival was prompted by combat necessity, many white officers remained skeptical of the capabilities of black soldiers.\textsuperscript{43} However, the Battle of the Bulge\textsuperscript{44} proved to be the moment that black leaders had anxiously anticipated. Late in 1944, the United States Army suffered a crucial turn of events that would create an opportunity for black soldiers to serve in combat. White troops had sustained heavy losses that the Army was unable to fully replace with white soldiers.\textsuperscript{45} The Army announced that it would accept black reinforcements.\textsuperscript{46} Thousands of black soldiers volunteered for the assignment, many taking demotions in rank.\textsuperscript{47} Blacks would still serve in all black units, but they would fight alongside the white troops.\textsuperscript{48} For the first time, black and white soldiers were committed to combat within the same division.\textsuperscript{49} The Battle of the Bulge is the only example of authorized integrated combat in the Army during World War II.\textsuperscript{51}

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\textsuperscript{41} See DAVID G. MANDELBAUM, SOLDIER GROUPS AND NEGRO SOLDIERS 93 n.11 (1952).

\textsuperscript{42} See DALFIUME, supra note 6, at 97. Regimental combat teams from the 92nd Division landed in Italy. See MACGREGOR, supra note 12, at 43.

\textsuperscript{43} See MITCHELL, supra note 16, at 326.

\textsuperscript{44} The “Battle of the Bulge,” which lasted from December 16, 1944, to January 28, 1945, was the largest land battle of World War II. The battle occurred in the Ardennes region, where Luxembourg, Germany, and Belgium meet. See PETER ELSTOB, HITLER’S LAST OFFENSIVE 15 (1971). More than one million men participated, including some 600,000 Germans, 500,000 Americans, and 55,000 British. Infantry shortages compelled the Army to transfer “physically qualified men from the Communications Zones’ all-black units into combat troops.” BINKIN, supra note 20, at 20. During the “Battle of the Bulge,” all-black units were “integrated” with all-white units in the 11 divisions of the U.S. First and Seventh armies. See LEE NICHOLS, BREAKTHROUGH ON THE COLOR FRONT 69 n.5 (1954). For more information on the battle in general, see DONALD M. GOLDSTEIN, ET AL., NUTS! THE BATTLE OF THE BULGE (1994).

\textsuperscript{45} See MANDELBAUM, supra note 41, at 99.

\textsuperscript{46} See id.

\textsuperscript{47} See id. at 99-100.

\textsuperscript{48} See id.; BINKIN, supra note 20, at 20-21.

\textsuperscript{49} See MANDELBAUM, supra note 41, at 96.

\textsuperscript{50} See id.

\textsuperscript{51} See id.
Contrary to the military’s expectations, there were several successes in this battle that resulted in over 7000 medals being awarded to black troops. The remarkable performance of these men earned them the deserved praise of military leaders. In particular, Generals Dwight Eisenhower and George Patton hailed the performance of blacks serving under their command. The black infantry had finally been permitted to prove themselves on the battlefield.

By the end of the war, blacks were serving in every major branch of the armed forces. The Twenty-Fourth Infantry performed a vital role in the Pacific campaign. The Ninety-Second Infantry fought throughout Europe, while the Army Air Corps, which had one of the worst records of racial discrimination, had black pilots flying bomber support missions deep into Germany. Over 909,000 black soldiers faithfully served their country, undeterred by the discriminatory practices of the military. For the first time in the history of the United States, the stage was set for the desegregation of the armed forces.

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52 See id. at 97.
53 See BINKIN, supra note 20, at 20-21; DALFIUME, supra note 6, at 99-100. After the Battle of the Bulge, white soldiers, both infantry and officers, were surveyed to ascertain their perceptions of the performance of black soldiers. Before the battle, only 33% of white soldiers surveyed approved of placing black troops into combat situations. After the battle, that figure rose to 77%. Furthermore, 84% of white officers and 81% of white sergeants reported that black soldiers had performed well. See BINKIN, supra note 20, at 20-21.
55 See id. at 502-15.
56 See id.
57 After World War II, the Army War College initiated a study of the role of blacks in the armed forces at the request of the War Department. The goal of the War Department was to expand the participation of blacks in the military. See GROPMAN, supra note 12, at 47. The 1945 study repudiated an earlier 1925 study that revealed that blacks “possessed smaller brains than whites and were predisposed to lack physical courage.” Id. at 32. Despite this repudiation, the 1945 study maintained that “the Army increased opportunities for blacks to help meet manpower requirements but . . . they should always be commanded by whites and should serve in segregated units.” Id. at 41-45.

Despite the 1925 report, the Army Air Corps began to accept black applicants in 1941. From this first class of aviation cadets sprang four squadrons with 200 pilots. See id. at 194. Of these squadrons, “[t]he 99th Squadron and the 332nd Group, made up of the 100th, 301st and 302nd Squadrons, performed in a creditable manner in the Mediterranean Theater.” OSUR, supra note 10, at 39. The Tuskegee Airmen also performed exceptionally well in the European Theater. In fact, white bomber crews called the airmen “The Black Redtail Angels” “because of the identifying red paint on their tail assemblies and because of their reputation for not losing bombers to enemy fighters as they provided fighter escort to bombing missions over strategic targets in Europe.” Tuskegee Airman: Still Flying High, EBONY, Nov. 1994, at 63.
58 See BLACKS IN THE MILITARY, supra note 15, at 163.
59 See BINKIN, supra note 20, at 24.
2. Politics

With World War II fast approaching, black leaders realized the hypocrisy of asking black men to serve and die in a foreign country only to return to a segregated homeland.60 Faced with this dilemma, black soldiers had to decide if they should fight overseas under existing conditions or concentrate first on the struggle for equality on the home front. Persuaded by black newspaper headlines urging a positive attitude towards the war, black leaders pushed for desegregation in America in exchange for service abroad.61

One of the most popular black weekly newspapers, the Pittsburgh Courier, lobbied for the right of African-Americans to enlist in the Army under the same conditions as whites, and demanded equal pilot training facilities for black pilots in the Army Air Corps.62 The Courier promoted the “Double V” campaign which encouraged blacks to fight for victory simultaneously at home and abroad.63 The newspaper displayed the extremely popular “Double V” symbol throughout its pages in advertisements for the NAACP, in photographs, and in text.64 The public sent many requests to the Courier for “Double V” paraphernalia.65 According to Roi Ottley, a writer and journalist, the campaign gained the support of “nearly every newspaper and pulpit.”66 The campaign carried the Courier’s message that blacks “would be less than men if, while we are giving up our property and sacrificing our lives, we do not agitate, contend, and demand those rights guaranteed to all freemen . . . this would be neither patriotism nor common sense.”67

Other black-owned publications delivered the same message. The first editorial published in Crisis, a widely subscribed newspaper published by the NAACP,

60 See MACGREGOR, supra note 12, at 9.
61 See id.
63 See Edgar T. Rouzeau, Black America Wars on Double Front for High Stakes, PITTSBURGH COURIER, Feb. 7, 1942, at 14; George S. Schuyler, The Courier’s Double V for a Double Victory Campaign Gets Country-Wide Support, PITTSBURGH COURIER, Feb. 14, 1942, at 1; see also MACGREGOR, supra note 12, at 17. In fact the “Double V” symbol was based on a resolution adopted by the NAACP in 1941, which stated:
Though thirteen million American Negroes have more often than not been denied democracy, they are American citizens and will as in every war give unqualified support to the protection of their country. At the same time we shall not abate one iota our struggle for full citizenship rights here in the United States. We will fight but we demand the right to fight as equals in every branch of military, naval and aviation service.
64 See JAMES & BRIETMAN, supra note 62, at 41.
65 See id.
67 Id.
exclaimed "Now Is The Time Not To Be Silent." The editor reasserted the faithfulness of black Americans, and argued that the sacrifices should be for a "new world which not only shall not contain a Hitler, but no Hitlerism. And for thirteen millions of American Negroes that means a fight for a world in which lynching, brutality, terror, humiliation and degradation through segregation and discrimination, shall have no place—either here or there." Desegregation activists incorporated the need to fight for equal rights with a belief that their participation in the war effort would be rewarded after their return home. The Courier's war correspondents encouraged black soldiers to "insist on combat duty [because] ... only those who spill their blood are in a position to demand rights." In a New York survey, forty-six percent of the blacks polled believed they would be treated better because of their participation in the war.

Initially, black leaders vigorously protested racism in the armed forces in an attempt to achieve military integration. When these efforts failed, blacks redefined their goals. They yearned for social as well as military equality, and they began to view equal participation in the war effort as a means of achieving their goal. They hoped to fulfill the responsibilities of citizenship through military service. With their duty satisfied, blacks would be in a position to claim the equal rights guaranteed to every citizen.

Seeing the conflict rapidly approaching, black leaders, such as A. Philip Randolph of the Brotherhood of Sleeping Car Porters and Walter White of the
NAACP, realized that ensuring full black participation in the war effort would strengthen claims for equal treatment and desegregation. Unlike their cooperative attitude toward segregation in World War I, black Americans grew tired of waiting for change. This time they would demand change.\textsuperscript{78}

In October 1940, President Franklin Roosevelt agreed to meet with Randolph, White, and others to discuss their demands for desegregation.\textsuperscript{79} Although Roosevelt fiercely resisted outright integration, he issued a “revised racial policy for the armed services” that outlined three key principles on the position of black servicemen.\textsuperscript{80} First, blacks in the military should equal their proportion in the general population (because blacks represented ten percent of the population, they should constitute ten percent of the military).\textsuperscript{81} Second, black units should exist in all branches of the

Brotherhood of Sleeping Car Porters. See Jervis Anderson, A. Philip Randolph: A Biographical Portrait (1973). The Brotherhood was one of the first labor unions open to black Americans. Between 1940 and 1950, it would be the “principal sustenance of black mass politics in America.” Id. at 6.

Randolph is perhaps best known for his efforts in desegregating the military. In 1941, Randolph organized the March on Washington Movement in response to government policy prohibiting the employment of black Americans in the defense industry. Randolph’s threat to march on Washington pressured President Franklin Roosevelt to draft Executive Order No. 8802 in 1941, which established the Fair Employment Practices Commission. In recognition of his labor and civil rights efforts, Harvard University honored Randolph with a Doctor of Laws degree in 1971. See id. at 247-59.

\textsuperscript{77} Walter F. White was born in Atlanta, Georgia, in 1893. From 1931 until the time of his death in 1955, Walter White served as the Executive Secretary of the National Association for the Advancement of Colored People (NAACP). See Walter White, A Man Called White: The Autobiography of Walter White 3, 75-83 (1948).

Walter White’s history with the NAACP was long standing. In 1918, White was appointed Assistant Secretary under the executive leadership of James Weldon Johnson. At the time of his appointment, White was the Secretary of the Atlanta branch of the NAACP. As Assistant Secretary, White investigated the “rash” of lynchings—known as the “Red Summer”—that plagued southern blacks during the summer and autumn of 1919. In particular, White inquired into the Phillips County, Arkansas, riot which resulted in a congressional investigation. In that case, the Supreme Court reversed the death sentences of six black men and ruled that “a trial in a mob-dominated court resulting in a miscarriage of justice constitutes a failure to provide due process of law.” Charles Flint Kellogg, NAACP: A History of the National Association for the Advancement of Colored People 244 (1967).

White also investigated the “work-or-fight” laws which were the result of wartime labor shortages. These compulsory work laws affected anyone an employer “wanted to retain or hire at low wage.” Kellogg, supra, at 270. Consequently, police action was taken against blacks who refused to work at low wages.

\textsuperscript{78} See Dalfiume, supra note 6, at 37.

\textsuperscript{79} See id.

\textsuperscript{80} Nalty, supra note 8, at 139; see also LEE, supra note 54, at 74-75.

\textsuperscript{81} See Dalfiume, supra note 6, at 49.
armed services. Finally, blacks should be allowed to attend Officer Candidate schools and flight schools.

The revised policy allowed blacks to enter fields previously reserved for whites. Black pilots, officers, tank commanders, and non-commissioned officers began to appear with increasing frequency in the Army. As a result, the number of blacks in the Army rose significantly in a two-year period.

Notably, the President's order was not the result of a new and equitable government position. Rather, the initiative was Roosevelt's attempt to garner the much needed support of black voters and a reflection of his understanding that the country would need all of its citizens for the upcoming war. Roosevelt, however, had no intention of altering the long and established practice of racial segregation in the military.

Bitterly disappointed by the scope of Roosevelt's concessions and frustrated with the continued exclusion of blacks from the war industries, Randolph threatened a "March on Washington" in January of 1941. Randolph encouraged thousands of blacks to march on the nation's capital to lobby for racial integration and equal opportunities in military employment. Randolph agreed to cancel the march if Roosevelt took action to forbid discrimination in the war industries. Roosevelt issued Executive Order 8802, which established the Fair Employment Practices Commission, an organization set up by Roosevelt to ensure blacks equal access to wartime training, jobs, and "fair employment." However, because the order did not extend to the military, the armed services remained segregated.

Despite these advances, the desegregation movement was far from its ultimate goal. As the United States prepared to enter the war, social views and military policy remained racially discriminatory. The military remained racially segregated and blacks were predominantly assigned to unskilled labor positions such as cooks.

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82 See id.
83 See id.
84 From the beginning of World War II in Europe to Pearl Harbor, the active Negro enlisted strength of the Army increased more than 25 fold, from 3640 men on August 31, 1939, to 97,725 on November 30, 1941. By the end of December 1942, Negro enlisted strength had risen to 467,883. See Lee, supra note 54, at 88; see also Dalfiume, supra note 6, at 44.
85 See blacks in the military, supra note 15, at 140.
88 See Smith, supra note 86, at 24.
89 See id. at 25.
91 See MacGregor, supra note 12, at 16.
porters, and laundry attendants. A survey taken early in the war showed that the sentiment of enlisted men was consistent with military policy; ninety percent of white Army enlisted men opposed integration. Interestingly, fifty percent of black troops agreed, believing it a necessary evil to prevent racial friction.

It is important to note the new attitude with which blacks approached their participation in World War II. Unlike the earlier responses that stressed cooperation, the new attitude was one of confrontation. Robert Mullen summarized the change in attitude:

"Whereas W. E. B. DuBois’s “Close Ranks!” editorial had reflected the view of most black leaders in World War I. That blacks must drop their own demands for the duration of the war and put country ahead of self—in World War II blacks were in the main unwilling to defer their demands until the end of the war."

The lack of equal treatment, and the demeaning personal discrimination that blacks suffered at the hands of whites, led many black Americans to view supporters of racial segregation and supporters of Aryan supremacy as one in the same. The double standard under which blacks were being asked to fight caused

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92 See id. at 63.
93 See id. at 78.
94 See id.
95 ROBERT W. MULLEN, BLACKS IN AMERICA’S WARS: THE SHIFT IN ATTITUDES FROM THE REVOLUTIONARY WAR TO VIETNAM 54 (1973).
96 See JACK D. FONER, BLACKS AND THE MILITARY IN AMERICAN HISTORY 142-43 (1974). The dominant voice behind segregation and the separate but equal doctrine was the white supremacist. See CELESTE MICHELLE CONDIT & JOHN LOUIS LUCAITES, CRAFTING EQUALITY: AMERICA’S ANGLO-AFRICAN WORD 129 (1993). The central principle of white supremacy is the belief that blacks are racially inferior. See id. at 103. The white supremacist characterized blacks as barbarians and refused to recognize any value in black culture. See id. at 131. Thus, segregation was necessary in order to protect and preserve white culture. See id. at 130.

The dominant voice behind Nazism was the Aryan supremacist, who believed that Germans were superior and destined to rule the world. See ROBERT A. BRADY, THE SPIRIT AND STRUCTURE OF GERMAN FASCISM 50 (1969). Aryans were the source of all cultural achievement. See KLAUS P. FISCHER, NAZI GERMANY: A NEW HISTORY 167 (1995). Other racial groups, including blacks, Gypsies, and Jews, were incapable of creating their own culture. See id. To preserve German blood, and thus the superior German culture, Gypsies and Jews were subjected to the final solution. The approximately 500 offspring of black French troops and German mothers were forced to register with health authorities and were subsequently sterilized. See id. at 387.

World War II placed a spotlight on the contradictory U.S. goals of fighting racism in Germany while defending segregation at home. See SEAN DENNIS CASHMAN, AFRICAN-AMERICANS AND THE QUEST FOR CIVIL RIGHTS, 1900-1990, at 72 (1991). Grandfather clauses, lynching, and segregation in the United States were equated with the persecution of Jews in Nazi Germany. It seemed ludicrous to fight “against park benches marked ‘Jude’
double standard under which blacks were being asked to fight caused many of them to question their role in the war effort. One well-publicized incident in the South exposed the inconsonance of the military's position toward black soldiers. In that incident, black soldiers were refused service in a restaurant that willingly served Nazi prisoners of war.

The new attitude of blacks was a response to the marginal post-World War I desegregation successes. Black soldiers returning to the United States from World War I battles in Europe found that little had changed. In the post-war depression, anxious white job seekers contested blacks' new footholds in industry. Several whites awaiting the arrival of returning veterans at railway stations assaulted black soldiers, stripping them of their uniforms. One white protester from New Orleans was quoted as saying, "You niggers were wondering how you are going to be treated after the war. Well, I'll tell you, you are going to be treated exactly like you were before the war; this is a white man's country and we expect to rule it."

On the eve of World War II, there were only twelve black units and several small detachments in the Army. Thus, it appeared that military policies concerning the utilization of blacks in World War I generally would continue in World War II. During the next several years, however, over 2.5 million blacks would register for the draft and be inducted into the armed forces.

Despite the increase in numbers, segregated units continued to be the accepted practice. While the military appeared willing to accept segregation, some black military personnel were not. They were prepared to challenge such practices in the courtroom and in the Officer's Club.

in Berlin" while supporting “park benches marked 'colored' in Tallahassee, Florida.” Id. (quoting Crisis). Therefore, challenges to the Nazi emphasis on racism would help invalidate the racial doctrines followed in the United States. See id. at 79.

97 See MULLEN, supra note 95, at 58-59.
98 See id. at 59.
99 When the United States entered World War I, the military removed its restrictions on black enlistments. See LANNING, supra note 14, at 130. However, the advancements made during World War I were minimal. Several of the advancements resulted from the appointment of Emmet J. Scott, who had worked with Booker T. Washington, as special advisor on black affairs. See id. at 132. Scott established programs that eventually led to officer training at black colleges and universities. Scott also used his influence to increase commission opportunities for black enlisted personnel. See id. In 1917, the Army even opened a training camp for African-American officer candidates. See id.
100 See Karst, supra note 17, at 517.
101 See LANNING, supra note 14, at 149-50.
102 See id. at 150.
103 Id. at 150-51.
104 See LEE, supra note 54, at 42-45.
105 See DALFIUME, supra note 6, at 34.
106 See BINKIN, supra note 20, at 19; MACGREGOR, supra note 12, at 15.
II. DESEGREGATION LAW SUITS

A. Indirect Legal Challenges

Despite integration efforts by the NAACP, the War Department refused to desegregate. Indeed, even the federal courts upheld segregation and the use of quotas in the military. During the many years of the military’s segregation policies, no legal challenges were ever successful. Only one case attempted to overturn the quota system for black enlistment in the Army. Ultimately, desegregation of the armed forces was rejected by both the district court and the court of appeals. Although a segregation challenge would have been brought but for President Truman’s 1948 executive order, it is important to consider why litigation involving the military materialized only once in the nearly eighty years in which separate black units existed.

The single courtroom event challenging segregation in the armed forces occurred in 1942. Winfred William Lynn, a black man residing in New York, refused to report for active duty in the U.S. Army claiming that his induction into segregated units violated Section 4(a) of the Selective Training and Service Act of 1940. Mr. Lynn’s refusal was consistent with the growing discontent and frustration in the black community. While a few blacks had been jailed for refusing induction prior to Lynn filing suit, most black complainants were simply ignored. Thus, this case began a two year saga of the only legal challenge to the Jim Crow practices of the military in World War II.

Lynn enlisted for the draft in 1942. When he was notified by his local draft board that he had been classified IA, the classification for immediate enlistment, Lynn wrote the following reply:

107 See DALFIUME, supra note 6, at 45. William Hastie, civilian assistant to the Secretary of War, wrote, “The traditional mores of the South have been widely accepted and adopted by the Army as the basis of policy and practice affecting the Negro soldier.” Id. The War Department never seriously considered proposals for integration and thought them to be dangerous. See id.; see also NALTY, supra note 8, at 145.

108 See Karst, supra note 17, at 518.

109 See United States v. Lynn, 140 F.2d 397 (2d Cir. 1944).

110 See id.

111 See id. at 398.


113 The term “Jim Crow,” which originated from a popular minstrel show song and dance, became associated with the many laws throughout the United States in the early twentieth century designed to separate whites and blacks. See C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 7 (1982).

114 See MacDonald, supra note 112, at 268-70; PHILLIP MCGUIRE, TAPS FOR A JIM CROW ARMY: LETTERS FROM BLACK SOLDIERS IN WORLD WAR II, at xliii (1983).

115 See Lynn, 140 F.2d at 398.
Gentlemen: I am in receipt of my draft-reclassification notice. Please be informed that I am ready to serve in any unit of the armed forces of my country which is not segregated by race. Unless I am assured that I can serve in a mixed regiment and that I will not be compelled to serve in a unit undemocratically selected as a Negro group, I will refuse to report for induction.\textsuperscript{116}

Despite his protest, Lynn received notification to report for induction on September 18, 1942.\textsuperscript{117} The local draft board had received a requisition from the New York City Director of Selective Service which informed the board that “your Quota for this Call is the first 90 White men and the first 50 Negro men who are in Class 1A.”\textsuperscript{118} According to military procedures at the time, the government selected the number of men to be drafted each month.\textsuperscript{119} In turn, this number was broken down among all the local boards.\textsuperscript{120} These boards allocated the formal requisition to produce the desired number of black and white men.\textsuperscript{121} When September 18th arrived, Lynn refused to report for duty, claiming that he was unlawfully selected for induction into the Army as a member of a “Negro quota” in violation of the Selective Training and Service Act of 1940.\textsuperscript{122}

In early November 1942, Lynn was indicted by a federal grand jury on charges of failure to comply with the induction order.\textsuperscript{123} He pled not guilty and was granted a writ of habeas corpus on the grounds that he was illegally detained.\textsuperscript{124} After several delays, on December 9, 1942, Federal District Court Judge Mortimer Byers dismissed the writ because Lynn failed to prove that he was inducted in a racially discriminatory way.\textsuperscript{125}

After the dismissal of the writ, Lynn’s attorneys informed him that he could raise the question of discrimination more fully if he actually went into the Army.\textsuperscript{126} Following this advice, Lynn informed the local board of his decision to be inducted.\textsuperscript{127} Lynn reported for induction on December 19, 1942, and was sent to Camp Upton for training.\textsuperscript{128}

Lynn appealed the dismissal of his case before the United States Court of Appeals for the Second Circuit. The court upheld the decision of the district court,

\textsuperscript{116} MacDonald, \textit{supra} note 112, at 268.
\textsuperscript{117} See Lynn, 140 F.2d at 398.
\textsuperscript{118} Id.
\textsuperscript{119} See id.
\textsuperscript{120} See id.
\textsuperscript{121} See id.
\textsuperscript{122} See id.
\textsuperscript{123} See MacDonald, \textit{supra} note 112, at 269.
\textsuperscript{124} See id.
\textsuperscript{125} See Lynn, 140 F.2d at 398.
\textsuperscript{126} See id.
\textsuperscript{127} See id. at 398-99.
\textsuperscript{128} See id. at 399.
even though it conceded that Lynn had produced sufficient evidence to proceed on his claim against the Army. Judge Swan, writing for the majority, found that "the requisition was a direct cause of [Lynn's] induction into the Army and constituted sufficient proof of the allegation in his petition that he was inducted as 'a member of a Negro quota.'" According to the court, being part of a quota did not necessarily involve racial discrimination.

The question presented was whether Lynn was inducted or directed to report for induction ahead of white men whose draft numbers were lower than his own. Lynn argued that the existence of separate quotas for black and white inductees made it impossible for him to have been inducted fairly. The Army had discriminated against Lynn because he was called for induction either before or after he would have been in the absence of the separate quotas. Furthermore, Lynn claimed that "the practice of calling for specified numbers of whites and Negroes for induction during a given month is contrary to the statute." The court rejected Lynn’s arguments. According to the majority, even if Lynn was inducted out of turn, there was nothing to suggest that he would not have been inducted by the time of the hearing or that being inducted sooner would have made it unlawful for the Army to "have" him at the current time. Accordingly, the court concluded that Lynn failed to prove that the requisition calling for his induction caused him to be drafted earlier than he would have been under different circumstances. Judge Swan reasoned:

Reading the [Selective Training and Service Act of 1940] as a whole and in the light of the Army’s long established practice of segregating enlisted men into separate white and colored units, we believe that requisitions calling for a specified number of whites and a specified number of Negroes for induction during a given month and based on relative racial

\[\text{See id. at 398.}\]
\[\text{Id. at 399.}\]
\[\text{See id.}\]
\[\text{See id.}\]
\[\text{See id.}\]
\[\text{See id.}\]
\[\text{See id.}\]
\[\text{The statute read:}\]
\[\text{(a) The selection of men for training and service under section 3 [section 303 of this appendix] (other than those who are voluntarily inducted pursuant to this Act) shall be made in an impartial manner, under such rules and regulations as the President may prescribe, from the men who are liable for such training and service and who at the time of selection are registered and classified but not deferred or exempted: Provided, That in the selection and training of men under this Act, and in the interpretation and execution of the provisions of this Act, there shall be no discrimination against any person on account of race or color.}\]
\[\text{Id.}\]
\[\text{See id.}\]
proportions of the men registered with a local board and subject to call for induction, is a necessary and permissible administrative procedure, and the regulations which sanction it are not violative of the Act.\footnote{Id. at 400.}

The court reasoned that calling Lynn out of order based upon a racial quota was not racially discriminatory.\footnote{See id.} He may have been inducted later than he should have, but “the fact that the Army should have had him sooner [does not] make unlawful its having him now.”\footnote{Id. at 399.} Interpreting the language of the Act, the court noted that “the Army’s history of separate regiments of whites and Negroes must not be overlooked.”\footnote{Id.} Examining the legislative history behind the non-discrimination language, the court found that the Act implicitly incorporated the long-established practice of quotas.\footnote{See id. at 400.} Based upon this interpretation, the court refused to outlaw quotas because to do so would “frustrate, or at least impede, the development of an effective armed force.”\footnote{Id. at 399-400.} Indeed, Judge Swan recognized the Army’s history of segregating black and white soldiers when he wrote that Lynn “does not contend, and could not successfully do so, that after selectees are lawfully inducted under [the Act] they may not be segregated into white and colored regiments.”\footnote{163 U.S. 537 (1896).}

Citing \textit{Plessy v. Ferguson},\footnote{Lynn, 140 F.2d at 401.} the court ruled that separate quotas based proportionately on race did not “constitute the prohibited ‘discrimination.’”\footnote{See id.} The Act provided that blacks must be given equal opportunities in the areas of volunteering, induction, training, and service but did not state that selection based on race or color was discriminatory.\footnote{Id.} Thus, racial quotas did not constitute prohibited racial discrimination.

The court supported its logic by basing the Army’s right to segregate black and white servicemen on the discriminatory quota procedures. The decision ended with a clear message: “If the Congress had intended to prohibit separate white and Negro quotas and calls we believe it would have expressed such intention more definitely than by the general prohibition against discrimination appearing in Section 4.”\footnote{Id.} Based on this analysis, the court construed Section 4 of the Act narrowly—racial discrimination was prohibited by the Act; racial segregation was not. The court of appeals maintained that segregation within the Army was not discriminatory and that

\footnote{Id. at 400.}
\footnote{See id.}
\footnote{Id. at 399.}
\footnote{Id.}
\footnote{See id. at 400.}
\footnote{Id.}
\footnote{Id. at 399-400.}
\footnote{163 U.S. 537 (1896).}
\footnote{Lynn, 140 F.2d at 401.}
\footnote{See id.}
\footnote{Id.}
quotas did not violate the congressional intent of the Act. Thus, Section 4 merely meant that the military could not completely exclude blacks based solely on race.

In his dissent, Judge Clark reasoned that the validity of the induction system rested upon the institution of segregation. Responding to the government’s argument that Congress did not intend to abolish segregation when it passed Section 4(a), Judge Clark wrote:

I find it difficult to think of more apt language to express the Congressional intent; the suggestion that Congress should have said something more, or amended the statute, means in effect that it should be watchful to see how a statute is violated and then expressly negative such violation or be assumed to sanction it.

Moreover, Judge Clark interpreted the notion of “equal facilities and accommodations” to include “equal calls to service.” Believing the majority opinion had incorrectly interpreted the statute, Judge Clark wrote:

But I do not think the supposition can be accepted as being in accord with habits and thoughts of patriotic citizens during the present crisis or permitted by the statute, which requires that there be no discrimination for color, not that there be no legally disadvantageous discrimination.

Judge Clark concluded that the legislative history revealed exactly the opposite intent—the statute in fact was aimed at preventing the Army from calling men out of order to satisfy an artificial quota. He noted:

[I]n the final analysis the case for the validity of the call here rests upon the policy of segregation, where equal facilities are afforded, as sanctioned by various Supreme Court decisions. But actually these precedents call for the contrary result. It must not be overlooked that they do insist upon equal accommodations which must here mean equal calls to service. However undesirable the colored people may regard service in segregated units, they are justified in asserting that it is less degrading than no service at all or service delayed, if not belittled, in the light of their available man power.

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147 See id. at 400.
148 See id. at 402 (Clark, J., dissenting).
149 Id. (Clark, J., dissenting).
150 Id. at 403 (Clark, J., dissenting).
151 Id. (Clark, J., dissenting).
152 See id. (Clark, J., dissenting).
153 Id. (Clark, J., dissenting) (citations omitted).
Judge Clark believed that Lynn was right in his claim against the Army. According to him, the quota system was discriminatory, resulting in black men being called in advance of white inductees. The case was immediately appealed to the United States Supreme Court. On May 29, 1944, the Court denied Lynn’s petition for writ of certiorari on the ground that the case was moot.\[154\] At the time of the petition, Lynn was no longer in the custody of Colonel Downer, the respondent, but was serving with his unit overseas in the Pacific.\[155\]

Although Colonel Downer no longer had custody over Lynn, under Rule 21 of the Federal Rules of Civil Procedure, the Court could have added Lynn’s current commanding officer to the petition because Lynn was still in the “custody” of the Army.\[156\] According to Rule 81(a)(2), the Federal Rules of Civil Procedure are specifically applicable to habeas corpus proceedings.\[157\] As Dwight MacDonald writes, “Habeas corpus is the only part of civil law that still applies to persons serving in the armed forces. If the military authorities can escape its control simply by passing the ‘body’ from one colonel to another, it is in effect nullified in the military sphere.”\[158\] Lynn petitioned the Supreme Court for a rehearing but the petition was denied in 1945.\[159\]

By denying certiorari, the Court evaded the explosive issues of segregation in the armed forces and discrimination in the induction policies of the Army. The only case to challenge such practices within the military had not changed the system. As of 1945, racial segregation and discrimination were still military policy.

B. Limitations on Judicial Review

To fully understand the Supreme Court’s position regarding the civil rights of black soldiers, it is necessary to examine the Court’s interpretation of its appellate jurisdiction over the military justice system, which has extremely limited jurisdiction. Beginning with *Dynes v. Hoover*\[160\] in 1857, the Court established that it will only grant habeas corpus review of military actions when it is clear the court-martial was without jurisdiction in the matter.\[161\] A civil court may provide redress when a court-martial decides a case without jurisdiction or inflicts a punishment forbidden by law even if it is approved by officers with power of review. Otherwise:

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\[155\] See id. at 757.

\[156\] See FED. R. CIV. P. 21.

\[157\] See FED. R. CIV. P. 81(a)(2).

\[158\] Dwight MacDonald, *The Supreme Court’s New Moot Suit*, THE NATION, July 1, 1944, at 14.

\[159\] See Lynn, 323 U.S. at 817.

\[160\] 61 U.S. 65 (1857).

\[161\] See id. at 82-83.
The civil courts would virtually administer the rules and articles of war, irrespective of those to whom that duty and obligation has been confided by the laws of the United States, from whose decisions no appeal or jurisdiction of any kind has been given to the civil magistrate or civil courts.\footnote{162}

Except with regard to civilians, over whom the military has no jurisdiction, the Court has abided by the rule set forth in Dynes.\footnote{163}

The Court further defined the limitations of its appellate jurisdiction over the military in the case of Burns v. Wilson.\footnote{164} Burns was a consolidation of two cases from the Air Force in which the petitioners alleged they had been denied due process of law.\footnote{165} Petitioners claimed their detention was unlawful because their confessions were tainted.\footnote{166} The Court ignored the main issue of due process and resolved the case on the scope of the federal judiciary’s appellate jurisdiction over military tribunals.\footnote{167} In a plurality opinion, the Court stated that “in military habeas corpus inquiry, the scope of the matters open for review has always been more narrow than in civil cases.”\footnote{168} The only issue when deciding whether to grant habeas corpus relief is whether the military tribunal has fully and fairly dealt with the petitioner’s claims.\footnote{169}

In Burns, the Court denied the requested relief, holding that the military tribunal had heard all of the claims that the petitioners raised on appeal.\footnote{170} In the Court’s view, the recently promulgated Uniform Code of Military Justice was the response to the injustices of the old system and was adequate to ensure due process of law.\footnote{171}

\footnote{162}Id. In addition, the Court stated: [B]ut we repeat, if a court-martial has no \textit{jurisdiction over the subject-matter of the charge} it has been convened to try, or shall inflict a punishment forbidden by the law, though its sentence shall be approved by the officers having a revisory power of it, civil courts may, on an action by a party aggrieved by it, inquire into the want of the court’s jurisdiction, and give him redress.

\textit{Id.}

\footnote{163}See \textit{Ex parte} Milligan, 71 U.S. 2, 3 (1866) (discussing the rule of law that military tribunals have no authority over civilians where civil courts are open and functioning).

\footnote{164}346 U.S. 137 (1953).

\footnote{165}See id. at 138.

\footnote{166}See id. Note that future Justice Thurgood Marshall assisted defense counsel with their brief. See id. at 137.

\footnote{167}See id. at 146-48.

\footnote{168}Id. at 139.

\footnote{169}See id. at 142-44.

\footnote{170}See id. at 142.

Furthermore, a review of the allegations and the record revealed that the military court addressed the issues and found no legal violations. It is obvious that even after World War II, the Court gave deference to the military and was reluctant to enforce the civil rights of black servicemen.

C. Summary

It would be unfair to state that the Court displayed an utter contempt for a black serviceman’s civil rights. Under Burns, “The military courts, like state courts, have the same responsibilities as do the federal courts to protect a person from a violation of his constitutional rights.” However, by asserting in dicta that no plaintiff could successfully challenge the segregation policy upon constitutional grounds, the Court signaled its likely outcome in any future case on the subject. Due to jurisdictional limitations, blacks in the armed forces seeking desegregation could not expect relief from courts outside of the military.

It is not farfetched to believe, however, that the rest of the federal judiciary would have reached the same result as the Court did in Lynn. At this time, the Equal Protection Clause was not binding upon the federal government. Even if it was (discussing Chief Justice Vinson’s failure to mention that the recently promulgated Uniform Code of Military Justice was not in effect when these two Air Force personnel were tried and convicted, despite his reliance on it to support his holding).

172 See Burns, 346 U.S. at 142-45 (discussing the premise that federal courts are not to grant a writ “simply to re-evaluate the evidence”). The Court stated:

[I]n military habeas corpus cases, . . . it would be in disregard of the statutory scheme if the federal civil courts failed to take account of the prior proceedings—of the fair determinations of the military tribunals after all military remedies have been exhausted. Congress has provided that these determinations are ‘final’ and ‘binding’ upon all courts. Id. at 142.

173 Id. at 142.

174 In Bolling v. Sharpe, 347 U.S. 497 (1954), the Supreme Court held that racial segregation in the public education of children was not reasonably related to any proper governmental objective. See id. at 500. Thus, segregation of black children in the District of Columbia, even if they were provided with equal physical facilities, was a burden constituting an arbitrary deprivation of their liberty in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. The petitioners contended that, as black children, the plaintiffs were refused admission to a public school because it was open only to white children. Initially, the petitioners brought suit in the District Court for the District of Columbia. The court dismissed their complaint and the Supreme Court granted certiorari before judgment in the court of appeals. See id. at 498.

The Supreme Court found that while the Fifth Amendment, which was applicable to the District of Columbia, did not contain an equal protection clause as did the Fourteenth Amendment, which was applicable to the states, the concepts of equal protection and due process were not mutually exclusive. See id. at 499. While “equal protection” is a more explicit safeguard than “due process,” they are not always interchangeable phrases. In
binding, the constitutional requirement under \textit{Plessy} was "separate but equal" equipment and accommodations.\textsuperscript{175} Limitations on assignments and training opportunities for blacks would have been considered the reasonable corollary to the military's professional judgment that blacks were inferior soldiers. Furthermore, the Court would have deferred to the military's determination that the intermingling of

\textit{Buchanan v. Warley}, 245 U.S. 60 (1917), the Court held that a statute that limited the right of a property owner to convey his property to a person of another race was unreasonable discrimination and a denial of due process of law. The Court determined the discrimination to be so unjustifiable that it violated due process.

The Court in \textit{Bolling} further held that "liberty," under the law, extends to the full range of conduct that the individual is free to pursue, and it cannot be restricted except for proper governmental interests. \textit{See Bolling}, 347 U.S. at 499-500. Because segregation in public schools is not reasonably related to any proper governmental objective, it imposes a burden on black children in the District of Columbia that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.

Finally, the Court held that, in view of its decision that the Constitution prohibits the states from maintaining racially segregated public schools, "it would be unthinkable that the same Constitution would impose a lesser duty on the federal government." \textit{Id.} at 500. Therefore, racial segregation in the public schools of the District of Columbia was a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.


The "separate but equal" doctrine, which existed from 1896 to 1954, was adopted by the Supreme Court in \textit{Plessy}. \textit{See RONALD ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE} § 18.8(c), at 92-93 (2d ed. 1992). Under the separate but equal doctrine, separate facilities and services could be afforded to racial minorities provided that the facilities and services were equal to those afforded to whites. \textit{See id.} at 92. Validating the racial segregation of blacks and whites, the Court in \textit{Plessy} refused to recognize that the "enforced separation of the two races [would stamp] the colored race with a badge of inferiority." \textit{Plessy}, 163 U.S. at 551 (Harlan, J., dissenting).

Unfortunately, the Court in \textit{Plessy}'s validation of the "separate but equal" doctrine became a means of maintaining a caste system based on race. \textit{See ROBERT WEISBROT, FREEDOM BOUND} 3-5 (1990). Separate but equal was used to uphold racial segregation in public schools, state institutions, and privately owned businesses. \textit{See ROTUNDA & NOWAK, supra,} § 18.8(c), at 95. Southern states were able to uphold racial distinctions in virtually every aspect of life. \textit{See JOHN R. HOWARD, THE SHIFTING WIND} 298 (1999). From doorways to stairways, restrooms to park facilities, drinking fountains to telephone booths, and taxicabs to cemeteries, segregationist policies codified blacks' position as inferior members of American society. \textit{See WEISBROT, supra,} at 5.

In theory, "separate but equal" mandated that blacks and whites would have access to equal facilities and services. \textit{See HOWARD, supra,} at 292. In operation, "separate but equal" meant that blacks could be subjected to the daily humiliation of second-class educational opportunities, medical care, and public accommodations. \textit{See WEISBROT, supra,} at 5. Therefore, \textit{Plessy} and the "separate but equal" doctrine represent "an untenable statement of the law that set in motion an era of oppression from which our nation still has not fully recovered." A. Leon Higginbotham, Jr., \textit{The Life of the Law: Values, Commitment, and Craftsmanship}, 100 HARV. L. REV. 795 (1987).
blacks and whites would damage morale, efficiency, discipline, and mutual trust among servicemen. Although this policy was rooted in interracial hostility rather than fact, "[i]n determining the question of reasonableness [the government] is at liberty to act with reference to the established usages, customs and traditions of the people." Although civil rights litigants made some progress against segregation in higher education by the 1940s, other cases clearly showed that the Court was prepared to give great deference to military judgment about military necessity, particularly in wartime. Thus, while the plaintiff in Lynn may have been trying to lay the groundwork for a later constitutional challenge to military segregation, the interaction of Plessy with the limited jurisdiction doctrine hindered the likelihood that relief through civilian courts would succeed.

III. DESEGREGATION PROTESTS

A. Military Climate and the Risk of Protest

Military personnel paid a high price for opposing racially discriminatory treatment and policies. Two famous incidents involving black protests and self defense resulted in either discharge, incarceration, or capital punishment for black soldiers.

The first incident occurred in Brownsville, Texas, in 1906. Soldiers of the Twenty-Fifth Infantry allegedly rioted against white residents of Brownsville, who were discriminating against black soldiers. An investigation failed to identify the soldiers involved in the incident, yet President Theodore Roosevelt dishonorably discharged three entire companies, totaling 167 men. Some of these men had twenty-seven years of service and six of them were recipients of the Medal of Honor. Less than a year later, fourteen of the servicemen were readmitted,

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176 Plessy, 163 U.S. at 550.
177 See Korematsu v. United States, 323 U.S. 214 (1944).
178 See BINKIN, supra note 20, at 14-15.
179 See id.
180 See id. The Medal of Honor is the nation's highest military honor. See ELLIOT V. CONVERSE III ET AL., THE EXCLUSION OF BLACK SOLDIERS FROM THE MEDAL OF HONOR IN WORLD WAR II 16 (1997). Established by law during the Civil War, the Medal of Honor is bestowed upon those who distinguish themselves by their bravery in combat. See IRVIN H. LEE, NEGRO MEDAL OF HONOR MEN 3 (1967) (discussing the heroic acts of African-American Medal of Honor recipients). Only a fraction of the total Medals of Honor conferred upon American heros have been awarded to blacks. See Joseph L. Galloway & Peter Cary, Debt of Honor, U.S. NEWS & WORLD REP., May 6, 1996, at 28, 36. During the Civil War, 20 blacks earned Medals of Honor. See id. During the Indian Campaigns, 13 blacks earned Medals of Honor. See LEE, supra, at 127-29 (listing the names of African-American Medal of Honor recipients and the dates on which the medals were issued from 1864 through 1966). Blacks were also the recipients of six Medals of Honor during the Spanish American War, two Medals of Honor during the Korean War, and 20 Medals of Honor during the Vietnam War. See Galloway & Cary, supra, at 36.
obviously a recognition that the black soldiers had been treated unfairly.\textsuperscript{181}

A second incident occurred in Houston, Texas, in 1917. Black soldiers there were subjected to the scorn of certain racist civilians and police officers living near the military base, just like those at Brownsville. Not only were they segregated on trolleys, black soldiers were also spat upon, called derogatory names, assaulted, and incarcerated in the city jail.\textsuperscript{182} In response to these incidents, soldiers of the Twenty-Fourth Infantry broke into the base armory, seized weapons, and attacked some of the townspeople including several of the racist police officers.\textsuperscript{183} Seventeen people were

There was no African-American recipient of the Medal of Honor for World War I until 72 years after that war ended. See \textit{Lanning}, \textit{supra} note 14, at 143. The “long overdue” Medal of Honor was posthumously awarded to Corporal Freddie Stowers on April 24, 1991. See \textit{id}. Corporal Stowers died leading his men against German machine guns, “propelling them forward with his last breath.” \textit{Id}. at 143-44.

There was also no African-American recipient of the Medal of Honor for World War II until more than 50 years after that war ended. See \textit{Galloway & Cary}, \textit{supra}, at 36. However, there was no written policy indicating that race played a role in the award of the Medal of Honor. See \textit{Converse et al.}, \textit{supra}, at 58. The policy for awarding the Medal of Honor required that, under circumstances involving “actual conflict,” an individual must “distinguish himself conspicuously” by his “gallantry and intrepidity at the risk of his life” or by “the performance of more than ordinarily hazardous service.” \textit{Id}. at 38 (quoting Army Regulation 600-45, at para. 7, Aug. 8, 1932; Army Regulation 600-45, para. 9, Sept. 22, 1943). The process usually started with a recommendation from a “company, battalion, or regimental commander.” \textit{Id}. at 44. Next, the process required that the recommendation pass through each headquarters until it ultimately reached the War Department, which had final authority over whether or not the Medal of Honor would be awarded. See \textit{id}.

Although the policy and process seemed neutral, researchers were unable to locate a single written recommendation of a Medal of Honor for any African-American soldier during World War II. See \textit{id}. at 53. Unfortunately, the military policy of racial segregation, the effect of this policy on black troops, the limited opportunities for black troops to serve in combat, and the racial prejudice of some officers commanding black troops guaranteed that no blacks would receive the Medal of Honor during this era. See \textit{Converse}, \textit{supra}, at 182. In October 1996, the U.S. Congress finally corrected this wrong and authorized the award of Medals of Honor to seven African-American soldiers for their uncommon acts of bravery during World War II. See \textit{Lanning}, \textit{supra}, note 14, at 186. All of the medals, with the exception of one, were awarded posthumously. See \textit{id}. at 187. The lone survivor, First Lieutenant Vernon J. Baker, received his Medal of Honor for leading his company in an attack against a German stronghold, assisting in the withdrawal and evacuation of the wounded, and advancing a battalion through enemy minefields and gunfire. See \textit{Converse}, \textit{supra}, at 169-70.

\textsuperscript{181} See \textit{Binkin}, \textit{supra} note 20, at 15-16; \textit{Nalty}, \textit{supra} note 8, at 96. In 1972, the Department of the Army exonerated the records of the remaining 153 soldiers, changing their dishonorable discharges to honorable discharges. Congress, in 1973, awarded the last living soldier of the Brownsville riot a $25,000 pension, including medical benefits. See \textit{Binkin}, \textit{supra} note 20, at 15-16.

\textsuperscript{182} See \textit{Dalfiume}, \textit{supra} note 6, at 11.

\textsuperscript{183} See \textit{id}.
killed.\textsuperscript{184} In response to the deaths, the military indicted 118 soldiers.\textsuperscript{185} This time, military justice was swift, deadly, and severely prejudiced. Thirteen soldiers were tried, convicted, and hung for murder and mutiny before their appeal could be heard.\textsuperscript{186} Six additional soldiers were hung at a later date.\textsuperscript{187} Moreover, approximately sixty-three soldiers received sentences of life imprisonment.\textsuperscript{188}

During World War I, violence between white and black soldiers occurred often in Europe. Usually this violence erupted from the animosity of white American soldiers who disapproved of the free interaction between blacks and French civilians, especially black soldiers dating French women.\textsuperscript{189} After several riots, the Army altered its policy and implemented guidelines to prevent future racial altercations, including the removal of inefficient military leaders, reaffirming the non-discrimination policy, and increasing the presence of military police in places where black and white soldiers were on leave.\textsuperscript{189} The Army wanted to ensure that racial tensions never again reached such levels, at least in the European theater of operations.

Unfortunately, the new policy was completely ineffective. The shortcomings became perfectly clear in the early stages of American involvement in World War II. On June 24, 1943, in the village of Bamber Bridge, Lancashire, England, a group of black airmen, along with their English female dates, stood in front of a bar.\textsuperscript{191} Offended by interracial dating, American officers witnessing this social interaction immediately notified the military police that the black airmen were disturbing the peace.\textsuperscript{192} Two military police officers arrived in front of the bar and began arresting the black airmen.\textsuperscript{193} The black airmen refused arrest.\textsuperscript{194} The police mistakenly believed that the villagers resented the presence of blacks and appreciated the effort to arrest the black airmen.\textsuperscript{195} The English civilians and soldiers began verbalizing their support of the black airmen to the police.\textsuperscript{196} Despite this support, the police drew their weapons in order to convince the black airmen to comply with their demands, but a black noncommissioned officer convinced the police to put their weapons back in their holsters and drive away.\textsuperscript{197}

\textsuperscript{184} See id.
\textsuperscript{185} See id.
\textsuperscript{186} See BINKIN, supra note 20, at 16.
\textsuperscript{187} See id. at 16.
\textsuperscript{188} See id. at 17. The reports as to how many soldiers received sentences of life imprisonment are conflicting. See id.
\textsuperscript{189} See NALTY, supra note 8, at 114.
\textsuperscript{190} See OSUR, supra note 10, at 102.
\textsuperscript{191} See NALTY, supra note 8, at 154.
\textsuperscript{192} See id.
\textsuperscript{193} See id.
\textsuperscript{194} See id.
\textsuperscript{195} See id.
\textsuperscript{196} See id.
\textsuperscript{197} See id.
Subsequently, the two police officers returned to the pub with additional officers and attempted to make arrests. They tried to frighten the black airmen by shouting, cursing, and using billy clubs. Instead of surrendering, the black airmen fought back with bricks and bottles until the military police officers shot and seriously injured two black airmen. The uninjured black airmen returned to their base and explained to other members of their unit what had happened.

Shortly thereafter, a detachment of military police arrived in front of the black compound. Convinced that the military police were preparing to attack the compound, the black airmen began to arm themselves. Shots were fired and, while there were no deaths, three blacks, three military policemen, and one white officer were wounded.

There were two separate court-martials that tried the black airmen who were believed to have taken part in the incident. A total of thirty-two black airmen were convicted in these proceedings. Four men received dishonorable discharges and others in the group received sentences of up to seven years incarceration in a military prison. Eventually, reviewing authorities took into account the racial slurs used by the military police, as well as their willingness to resort to violence, and reduced all thirty-two sentences to no more than thirteen months so that all men eventually returned to military service.

B. Integration or Confrontation

1. Seeds of Protest

While the new military policies to prevent racially motivated incidents were ineffective in Europe, the regulations were even more problematic on Army bases located in the United States. Clashes among black and white soldiers and civilians increased.

Typical of these confrontations was one that occurred in Florida. In May 1945, at MacDill Field, Tampa, Florida, an intoxicated black soldier and a white saleswoman became involved in a verbal confrontation at the Base Exchange (BX). A white soldier intervened on behalf of the saleswoman and an altercation between

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198 See id.
199 See id.
200 See id.
201 See id.
202 See id. at 155.
203 See id.
204 See id.
205 See id.
206 See id.
207 See id.
208 See OSUR, supra note 10, at 103.
the two soldiers ensued. The BX was located in the black section of the base and a large number of black military personnel witnessed the brawl. Military police (MPs) were called to diffuse the incident. Fearful of what the white MPs would do to the intoxicated black soldier, the crowd of onlookers refused to obey orders to disperse. The crowd became disorderly by shouting and several black soldiers wandered around the base brandishing weapons for several hours.

MacDill Field had several additional problems that contributed to racial tension between black and white soldiers. Most notably, the base consisted of a large number of northern blacks who refused to tolerate incidents of racial hostility and discrimination, no matter how subtle the remark or deed. Additionally, black military personnel were dissatisfied with the employment of white civilians at the BX that served black military personnel and they vehemently protested the “gate pass system” imposed by the base command. While this system was intended to control venereal disease on the base, it applied only to black soldiers on their return from passes into Tampa. The ineptitude of the white officers appointed to command the black units was an additional problem.

This racial incident, as well as other similar incidents

209 See id.
210 See id.
211 See id.
212 See id.
213 See id.
214 See id.
215 See id.
216 See id.
217 See id. The white officers assigned to black units tended to be officers who were not wanted in white units. See BINKIN, supra note 20, at 22. Many of these officers viewed the assignment to a black unit as punishment and a mark of disgrace. See id. at 22-23. The Army worsened matters by selecting officers who were born and trained in the South. See id. at 23. Such selections were based on the misguided belief that blacks preferred to be commanded by southern white officers. See OSUR, supra note 10, at 89.

218 Similar serious disorders occurred in the spring and summer of 1943 at Camp Van, Mississippi; Camp Stewart, Georgia; Lake Charles, Louisiana; Marc Field and Camp San Luis Obispo, California; Fort Bliss, Texas; Camp Phillips, Kansas; Camp Beckinridge, Kentucky; and Camp Shenango, Pennsylvania. See LEE, supra note 54, at 366-79.

One of the most famous incidents involved a celebrated black college athlete who would later become the first black to play major league baseball. On the evening of July 6, 1944, after undergoing examinations at McCloskey General Hospital, 2nd Lt. Jack R. Robinson of the 761st Tank Battalion at Camp Hood, Texas, boarded a bus in Temple, Texas, bound for the base. He stopped at the black officers’ club, where he stayed for several hours.

The practice at most military facilities during that time was to allow 10 to 15 black soldiers to board the bus first. They were directed to the back, as the front seats were reserved for whites. At Camp Hood, however, because the base was so big and the bus circuit around it so long, drivers regularly forced black passengers off the bus whenever additional seats were needed for whites.
encouraged local base commanders to actively seek ways of reducing racial

When Robinson boarded the bus to return to the Central Bus Station at Fort Hood, it is unclear whether he boarded the bus alone or in the company of a fair skinned black woman, who was the wife of Lt. Gordon Jones of the 761st. Robinson claimed to have boarded the bus and, spotting Mrs. Jones sitting towards the middle of the bus, took a seat beside her. Passengers claimed they boarded the bus together. There was further speculation that, due to her light-skinned complexion, Mrs. Jones was mistaken for a white woman thereby causing whites on the bus to become angry.

Whatever the case, the bus driver, Milton N. Renegar, stopped the bus and ordered Robinson to move to the back of the bus. Though the driver insisted, Robinson would not budge and white passengers became offended. The driver and several passengers told authorities that Robinson upset them because he used vulgar and insulting language. In Robinson’s statement to the MPs, he explained that the driver told him if he did not move to the rear of the bus, the driver would cause trouble for him. Furthermore, one of the passengers, a white woman named Elizabeth Poitevint, indicated that she was going to press charges against Robinson. Robinson responded that he did not care what they did and refused to give the driver his identification card. The driver left to notify the dispatcher and, upon his return, told the passengers that this “nigger” was making trouble, but it would be taken care of. When Robinson heard the driver call him a “nigger,” he told the driver to “stop fuckin’ with him.” At that point, the driver called the MPs. Robinson explained to the MPs that, beyond telling Mrs. Poitevint that he did not care if she pressed charges against him, he spoke to no one but the driver, but if any of the MPs called him a “nigger,” he would speak to them in the same manner.

Robinson was taken into custody and an investigation ensued. Captain Gerald M. Bear, an assistant provost marshal on the base and the officer in charge that evening, completely ignored what happened on the bus and accused Robinson of “using vile and vulgar language,” constantly interrupting, and showing no respect for authority. A Private by the name of Muckelrath, who volunteered as a witness, complained that Robinson verbally insulted him for no reason. Seeking to offer support for Muckelrath, an MP testified that Muckelrath approached the pickup and asked him if he “gott that nigger lieutenant.” Robinson immediately called Muckelrath a “son of a bitch” and told him not to call him a “nigger” anymore. Robinson further stated that he was an officer and, God damn him, Mucklerath better address him as one, or words to that effect.

Captain Bear assumed he had an open and shut case and filed three separate insubordination charges against Robinson for a general court-martial. Subsequently, an additional charge of drunkenness was added. Robinson’s commander, Colonel Bates, refused to sign the necessary papers to allow a court-martial. In response, Robinson was transferred to another unit whose commander was willing to issue such authorization. The drunkenness charge was dropped and, of the original three charges, only two charges relating to conduct after the incident on the bus were accepted. As a result, Robinson was forced to defend himself on the narrow issues of insubordination and showing disrespect to an officer. However, while Captain Bear asserted that Robinson had disobeyed specific orders, he could provide no evidence of such behavior. The hearing took place on August 2, 1944, and lasted four hours. Robinson was acquitted of all charges. He later stated that he hoped it would be clear that his acquittal resulted from an obvious attempt to frame him. After several transfers, Robinson was relieved from active duty on November 28, 1944. See DAVID FALKNER, GREAT TIME COMING: THE LIFE OF JACKIE ROBINSON, FROM BASEBALL TO BIRMINGHAM (1995); ARNOLD RAMPERSAID, JACKIE ROBINSON: A BIOGRAPHY (1997).
discrimination, as it became increasingly evident that blacks would not tolerate inequalities and, if pushed to the limit, they would protest either peacefully or violently. During the summer of 1944, the War Department issued Directive AR 210-10, which stated that recreational facilities could not be segregated by race, although they could be assigned by unit. In issuing this directive, the War Department intended to reduce racial protests by black servicemen and to reduce criticism by the black press. Rather than reduce protests, this directive was used by black servicemen to desegregate facilities not in compliance with it. Many military personnel, including base commanders, were opposed to integrated recreational facilities and were reluctant to implement desegregation policies. Thus, it was not long before black military personnel sought their own enforcement of the Directive.

2. Tuskegee Airmen Protests

On August 3, 1944, twelve black officers at the air field in Tuskegee, Alabama, decided to challenge the segregation policies practiced at the base restaurant. The restaurant was divided into two dining areas, one for blacks and one for whites. Although there was some tension when the black officers were served lunch, no violence was reported. With this action, the restaurant was integrated and black officers ate in both dining rooms; however, white officers refused to patronize the club and either brought their lunches or ate in town. The black officers were not officially reprimanded.

Another significant racial protest against segregation occurred on April 5, 1945, at Freeman Field, Indiana. The 477th Bombardment Group was sent to Freeman

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219 See MACGREGOR, supra note 12, at 45 n.79.
220 See id.
221 See NALTY, supra note 8, at 157.
222 See id. at 157-58.
223 See OSUR, supra note 10, at 94-95. See generally WARREN, supra note 13. Protests also occurred against racially discriminatory practices outside of the military bases. For example, Lieutenant Nora Green, a black nurse stationed at the Tuskegee Army Air Corps base in 1944, received orders to prepare for overseas service. Before departure, she went on a shopping tour in Montgomery, Alabama. On her return trip to Tuskegee, she boarded a bus and was assaulted by the white driver following a dispute over the denial of a seat she had reserved in advance. See WILLIAM DUDLEY, WORLD WAR II, OPPOSING VIEWPOINTS (1997) (citing ROI OTTLEY, BLACK SUPPORT FOR THE WAR IS IMPEDED BY AMERICA'S RACISM 191 (1943)).
224 See OSUR, supra note 10, at 94-95.
225 See id.
226 See id. at 95.
227 See id.
228 See id.
Field after previous training in Michigan and Kentucky. Segregation on the base had recently become more rigid and widespread. For example, the base command implemented a policy that created one club for supervisory officers and one club for trainees. Since most of the black soldiers of the 477th were in "training," the policy effectively created two officers’ clubs: one for black officers and one for white officers.

On April 1, 1945, Colonel Robert Selway, the Commander of the 477th, attempted to implement a much broader regulation that specifically addressed the base’s policy on club assignments. This policy was designed to get around the War Department Directive AR 210-10, which stated that there would be no discrimination relative to recreational facilities on any Army, Navy, or Marine Corps installation in the United States. The policy “[took] advantage of the loophole in the directive” that allowed facilities to be designated by unit or organization. In essence, the result was de facto segregation.

Responding to this blatant disregard for the spirit of the military policy, thirty-six black officers attempted to enter the “supervisory” officers’ club on the evening of April 5th. These men were promptly arrested. The next afternoon, twenty-one additional black officers attempted to enter the club and were arrested. Colonel Selway and Major General Frank O.D. Hunter, First Army Air Corps Commander, held these men under arrest while awaiting further legal advice from Headquarters at Mitchell Field, New York.

On April 9th, Air Inspector, Colonel Torgilis Wood was asked to give a legal opinion on the regulations. He stated that the April 1st regulation prepared by Selway was “inexact and ambiguous as to its meaning and purpose.” Therefore, all but three men were released on April 9th. Lieutenants Shirley Clinton, Roger Terry, and Marsden Thompson were charged with conduct unbecoming of an officer and for jostling an officer as they walked into the club.

A new base regulation was issued to specify clearly which Army Air Corps personnel were allowed to use the facilities on the base. On April 13th, blacks at

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229 See id. at 111.
230 See id. at 114.
231 See id.
232 Id.
233 See id. at 114-15.
234 See id.
235 See id. at 115.
236 See id.
237 See id.
238 Id.
239 See id.
240 See id.
241 See id. The preparation of Base Regulation 85-2 stemmed from a recommendation by Air Inspector, Colonel Torgilis Wood. Legal officers had determined that the April 1 order was ambiguously worded, and Colonel Wood suggested that a more concise regulation
the base were asked to read the regulation and indicate that they understood it. All black officers refused to abide by this request. The officers were arrested and flown to Godman Field, Kentucky, while both officers' clubs were closed at Freeman Field. Disagreement within the Army about what to do with these men led to the release of the officers and the dismissal of the charges. The Office of the Secretary of War presented the following official statement concerning the release of the black officers:

There is reasonable doubt that these officers fully understood the implications of their action nor is it certain, because of their recent arrival at Freeman Field, that they had been adequately apprized of existing regulations. For these reasons, it was determined that they should be released from arrest and suitable orders were accordingly issued for their restoration to duty following the administration of an appropriate reprimand.

It was clear from this statement that the War Department was not prepared to defend a blatant violation of its own directive. However, the Army could not allow the incident to end without punishment. The three officers charged with jostling the Assistant Provost Marshall were tried before the courts-martial; two of the officers, Lieutenants Clinton and Thompson, were found not guilty. Despite the fact that was needed to effectuate the desired level of separation. See id.

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242 See id. at 115-16. The new base regulation included an endorsement that required Air Force personnel to signify that they did "read and fully understand the above order." Id. at 115.

243 See Interview with Mitchell Louis Higginbotham, Ambassador at Large, Tuskegee Airmen, Inc. (Nov. 25, 1997) (on file with author). After the Freeman Field incident, all black military personnel were required to sign the agreement. Over 400 blacks lined up outside the administrative office and were called in one by one to sign the document. Mitchell Higginbotham, a lieutenant and one of the 400 in line, explained the anxiety that some of the men felt as they waited:

Many of us were uncertain as to what we should do, whether we should sign the agreement or refuse. A refusal would certainly bring additional charges and disciplinary action. One of the men in line wanted to see what others were doing and he slipped out of line and went around the back of the building to peep through a window in order to see how many men were actually signing the agreement. As he ran back he explained to the rest of the people in line that all he could see were assholes and elbows. That of course meant that people were signing the agreement.

Id. Despite the report of the signings, 101 refused to sign, including all of the black officers involved in the incident. See id.

244 See OSUR, supra note 10, at 116.

245 See id. at 119.

246 Id.

247 See NALTY, supra note 8, at 160.
he was entitled to enter the officers' club based upon his unit designation as well as his officer rank, Lieutenant Roger Terry was found guilty of "offering violence against a superior officer" and fined $150 with the added condition that he would never be promoted to a higher rank. The confrontation was over. The Army arrested 104 black officers for committing a capital offense in war time resulting in only one officer being found guilty and convicted.

Black airmen at MacDill Army Field were not satisfied with effectively integrating the base restaurant. They remained frustrated with their second rate quarters, and the fact that their assignments required minimal skill. On October 27, 1946, more than 200 black enlisted airmen rioted in response to the unsatisfactory conditions on the base. This protest was the largest in Air Corps history.

In furtherance of the protest, the black enlisted airmen attempted to take control of the base. They took the weapons from the white guards at the main gate and captured the white officer commanding the black detachment. The demonstrators threatened to destroy the housing facilities for the white officers and refused to listen to the non-flying officers commanding the housekeeping units in which the blacks served. The white general officer who commanded the operational forces at the base, however, was able to persuade the demonstrators to disband voluntarily without any further confrontation. Despite the fact that no injuries occurred, eleven black

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248 Id.
249 As a result of their willingness to take this bold stance against segregationist policies, these officers ultimately received letters of reprimand that served to blemish their military records. Fifty years passed before their records were entirely absolved. In 1995, at the Tuskegee Airmen annual banquet, Air Force Chief of Staff General Ronald R. Rogleman announced that the Air Force had removed the letters of reprimand from the permanent military records of a number of the airmen involved in the Freeman Field incident. See Tuskegee Airmen Absolved of 50-Year-Old Reprimands at Atlanta Dinner, JET, Oct. 16, 1995, at 58 [hereinafter Tuskegee Airmen Absolved].

Leroy Gillead, one of the officers who received a reprimand, still refuses to apply for clemency because he believes that he should not have to right a wrong. Gillead believes it is up to the government, the wrongdoer, to correct its mistake without any additional action by the victims. See id.; see also Letter from Leroy F. Gillead to President Bill Clinton (Sept. 1, 1997) (on file with author).
250 See NALTY, supra note 8, at 230; see also GROPMAN, supra note 12, at 64-67; MACGREGOR, supra note 12, at 209.
251 See GROPMAN, supra note 12, at 64-67.
252 See id.
253 See id.
254 See NALTY, supra note 8, at 230.
255 See id.
256 See id.; MACGREGOR, supra note 12, at 209.
Airmen were charged with violations of the military code, and nine were sentenced to several years in prison on conviction of mutiny.\textsuperscript{257} One airman received a dishonorable discharge.\textsuperscript{258}

IV. PUNISHMENT

Many Tuskegee Airmen paid a high price for activities relating to the protests over racial segregation in the Army Air Corps.\textsuperscript{259} First, protesters jeopardized their military standing, including promotion potential, reduction in rank, and discharge or withdrawal. Second, protesters risked physical injury, fines, and incarceration. Finally, protesters risked civilian sanctions including economic and employment consequences.

A. Military Standing

Many Tuskegee Airmen suffered disciplinary actions due to their desegregation protest activities. Disciplinary actions took the form of absence of promotion or military discharge.

1. Absence of Promotion

Although sixty-one black officers were arrested for participating in the Freeman Field, only three were charged with violating the military code. These three had pushed their way into the officers' club through a line of military police.\textsuperscript{260} Of the

\begin{footnotes}
\item[257] See NALTY, supra note 8, at 230; see also GROPMAN, supra note 12, at 67.
\item[258] See GROPMAN, supra note 12, at 67. A similar incident occurred in January, 1947, at Fort Worth Army Air Field in Texas and resulted in the court-martial of one airman. See id. at 68-69.
\item[259] Most protests were planned in advance. On occasion, however, protests would occur spontaneously. One such protest occurred in Walterboro, South Carolina, near Walterboro Army Air Corps Base. Several Tuskegee Airmen involved in the Freeman Field incident were transferred to South Carolina where they heard about a popular night club that also served as the base officers' club; they decided to visit the club one Saturday night. In the paper Saturday morning, an editorial reported that the blacks who protested against segregation in Kentucky and Indiana were coming to protest racial segregation in South Carolina when, in fact, the black Airmen were not thinking about protesting but only socializing in the black section of the racially segregated officers' club. When the Airmen read the editorial that blacks were coming in to protest, several Airmen said, "let's do it." If the papers say we are going to protest, then let's protest. That night, the black officers were admitted to the club without incident, although no white officers were present in the club. Subsequently, the club was moved off base to a private country club where black officers were more easily denied admission due to its remote location and greater civilian control. See Interview with Mitchell Louis Higginbotham, supra note 243.
\item[260] See NALTY, supra note 8, at 160.
\end{footnotes}
three officers charged, two were acquitted of conduct unbecoming an officer, and one was convicted of jostling an officer. Included in the punishment for the convicted officer was the stipulation that he never be promoted to a higher rank.

Additionally, one hundred Tuskegee Airmen received letters of reprimand for their participation in the Freeman Field protest. A letter of reprimand was one of the strongest administrative actions a commander could impose on a service member and was considered in postponing or preventing promotion to higher rank.

2. Military Discharge or Withdrawal

Four dishonorable discharges were given by court-martial to black military personnel involved in the Lancashire incident. Fortunately, these sentences were later reduced to one year imprisonment due to mitigating circumstances, such as the racial slurs used by military police to provoke the black soldiers. One dishonorable discharge was granted in the MacDill incident. The Freeman Field incident resulted in only one felony conviction.

B. Physical Injuries, Fines, and Incarceration

1. Physical Injuries

Three black soldiers were injured by gunshot wounds during the Lancashire incident and several others suffered cuts and bruises from being beaten with billy clubs.

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261 See id.
262 See id.
263 See Anthony Millican, Justice may be Served at Last, L.A. TIMES, July 26, 1992, at B3.
264 See Tuskegee Airmen Absolved, supra note 249, at 58.
265 A letter of reprimand is an administrative action intended to admonish military personnel concerning unbecoming behavior. A letter of reprimand is distinct from and less serious than a court-martial or “non judicial punishment,” as described in 10 U.S.C. § 815. See Hoskins v. United States, 40 Fed. Cl. 259, 261 n.1 (1998). In Hoskins, the defendant received two letters of reprimand, one scolding him for drunk driving, the other for beating his wife. See id.; see also Holley v. United States, 124 F.2d 1462, 1464 (Fed. Cir. 1997) (stating that the letter of reprimand informed the defendant that his future in the military was in question because of alleged drug activity); United States v. Calhoun, 1997 WL 517008 *1 (A.F. Ct. Crim. App. 1997) (involving a defendant who argued that a letter of reprimand he received for sleeping with a 15-year old minor was inappropriate because it was written for the purpose of providing adverse information against him at his court-martial instead of its proper purpose of correcting or improving his behavior.).
266 See NALTY, supra note 8, at 155.
267 See id.
268 See GROPMAN, supra note 12, at 67.
269 See Christopher John Farley, Winning the Right to Fly, TIME, Aug. 28, 1995, at 64.
Several Airmen were injured with cuts and bruises in the MacDill incident. No physical injuries were reported in the protests at Freemen Field or Tuskegee Field.

2. Fines

One airman was fined $150 for shoving the Provost Marshall at Freeman Field. That airman was also convicted by court-martial.

3. Incarceration

Most of the protests resulted in arrest and several hours or days in a holding cell. Protestors convicted of military code violations faced the possibility of long term imprisonment or death.

One hundred one airmen were held in the brig for three days after the Freeman Field incident and three others were held in solitary confinement; none, however, received prison terms for involvement in this protest. Other airmen were not so fortunate. Thirty-two airmen were imprisoned for up to thirteen months each for involvement in the Lancashire incident. Nine airmen were convicted of mutiny and served several years in prison, some up to twenty-five years at hard labor, for involvement in the MacDill protest.

C. Civilian Sanctions

As a result of reprimands, convictions for violating the military code, and dishonorable discharges, many Tuskegee airmen experienced harsh treatment in the civilian job market. Some lost employment placement, educational opportunities, or professional licenses. While these lost opportunities are difficult to quantify, there are several examples of specific losses. The Airmen convicted of violating the military code during the Freemen Field incident were required to disclose this fact to prospective employers and state licensing agencies.

270 See NALTY, supra note 8, at 154-155.
271 See id. at 160.
273 See NALTY, supra note 8, at 155, 159.
274 See id. at 104-05, 155, 230.
276 See NALTY, supra note 8, at 155, 161, 230.
277 See id. at 155.
278 See GROPMAN, supra note 12, at 67.
279 See Farley, supra note 269, at 62.
280 See id. at 64.
281 See Grant Willis, Crusader: Black Flier Trying to Clear Record After 47 Years, L.A.
V. ANALYSIS

Although the avenue for court-ordered desegregation had been closed by the *Lynn* decision, members of the Tuskegee Airmen decided to pursue an alternative approach. They sought through protests to encourage the military to desegregate under its own volition.

The protests accomplished three goals. First, they served as a policing mechanism for the identification of segregation practices not in compliance with military policy. Second, they served as a catalytic mechanism for encouraging the military to continue to expand its desegregation efforts. Finally, the protests served as a political mechanism to emphasize the commitment to integration by a large segment of military personnel.

A. Encouraging Desegregation

During the early years of the war, civilian agitation, along with military protests, forced the War Department to reconsider its racial segregation policies and practices.282 After careful study, the Department concluded that racial segregation in general would be maintained, but that recreational facilities on military bases would not be racially segregated.283 The Department hoped this would reduce the dissatisfaction of black personnel over the quality of segregated social facilities and, consequently, reduce the likelihood of continued protests.284

Despite this change, recreational facilities on military bases remained segregated by unit, but not by race.285 Because most units remained racially segregated, the change in policy did not create much integration.286 Additionally, as long as entire bases remained racially segregated, there were few incidents.287 The policy did, however, result in several situations in which black officers who were stationed at locations with white officers, were entitled to use recreational facilities previously designated for whites only.288 When this occurred, sometimes the facilities were integrated without incident.289 More often, however, one of two things happened: either the white officers refused to use the facilities, resulting in their use only by blacks, or the base commander failed to enforce the new directive, resulting in denial of access to black officers.290 Such denials resulted in new protests and increased

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282 See MACGREGOR, supra note 12, at 45 n.79; NALTY, supra note 8, at 156.
283 See MACGREGOR, supra note 12, at 45 n.79.
284 See id.
285 See NALTY, supra note 8, at 157-59.
286 See id. at 160.
287 See id. at 144-46.
288 See id. at 157, 159.
289 See id. at 161.
290 See id. at 157-59.
confrontations involving the Tuskegee Airmen. Recreational facilities were particularly important because black military personnel rarely had access to such facilities in nearby communities and because of the symbolism of inferiority that such segregation conveyed.

B. Supporting Desegregation

The extent and degree of protests clearly served to galvanize support for desegregation and made black military personnel aware of segregation policies and practices. Meetings were held to discuss and debate the appropriate response. As black military personnel became more aware of the extent and degree of incidents of racial discrimination, the number and size of the protests increased. As these protests increased, members of the press, politicians, and the clergy became aware of desegregation activities. As awareness spread, support for protest efforts increased from black communities, the black press, and black politicians. In addition, members of the NAACP provided legal advice.

Military personnel played an impressive role in desegregation protests. Despite the risks involved, most of the Tuskegee Airmen actively participated in the protests. More than 100 officers participated in the incident at Freeman Field, and more than 200 enlisted men participated in the protest at MacDill Field.

C. Policing Desegregation

Many base commanders and other high ranking military personnel remained opposed to desegregation. As a result, there was widespread resistance to the integration of recreational facilities on military bases. After the War Department prohibited segregation by race in recreational facilities, many base commanders ignored the directive or were slow to implement it.

As the Tuskegee Airmen were moved to different bases for training, they would ascertain whether base practices were consistent with the desegregation directive. Those practices in violation of the desegregation directive would be challenged.

291 See id. at 157-58, 229.
292 See id. at 157, 159.
293 See Slater, supra note 275, at A1.
294 See NALTY, supra note 8, at 229-30; Slater, supra note 275, at A1.
295 See NALTY, supra note 8, at 156-57.
296 See id.
297 See id. at 159, 229-30.
298 See id. at 157-59.
299 See id.
300 See id. 157-58.
301 See id. 159.
Many of the protests were a direct result of identifying violations and requesting a change which was ignored or denied.\textsuperscript{302} Based upon these protests, the War Department reviewed its desegregation policy.\textsuperscript{303} Secretary of War Henry Stimson specifically reiterated the military policy that recreational facilities on military bases, including officers’ clubs, could not be segregated on the basis of race.\textsuperscript{304} Even with this high level declaration, however, some base commanders failed to comply with the policy.\textsuperscript{305}

D. Summary

While the Tuskegee Airmen desegregation protests did not result in the immediate and complete integration of the armed forces, the protests did serve to facilitate integration. The protests continued efforts begun before the war by civil rights leaders and helped to demonstrate the commitment and resolve within the black community to the goal of integration. Many blacks viewed the military as the symbol of the nation.\textsuperscript{306} As the military went, so would the rest of the country. Thus, the armed forces became a critical battleground in the struggle for racial equality, and the Tuskegee Airmen were the primary soldiers fighting in this battle during World War II.

CONCLUSION

Early in the summer of 1948, the Democratic National Convention, at the urging of young liberals such as Hubert Humphrey, passed a military desegregation plank over the wishes of party leaders.\textsuperscript{307} Immediately, the southern “Dixiecrat” delegates walked out and nominated Governor Strom Thurmond as their candidate for president.\textsuperscript{308} It became clear to President Truman and Clark Clifford, his campaign advisor, that black voters would be crucial to any chance for re-election.\textsuperscript{309} Moreover, integration was now merging with the demands of the escalating Cold War—the United States had become a leading protagonist in an ideological struggle in which the sympathies of the undeveloped and mostly non-white third world would soon assume a special importance.\textsuperscript{310} Inasmuch as integration of the military had become an almost universal demand of the black community, integration became an important defense issue.\textsuperscript{311}

\textsuperscript{302} See id. at 158.
\textsuperscript{303} See id. at 156.
\textsuperscript{304} See id. at 157-58.
\textsuperscript{305} See id. at 158-59.
\textsuperscript{306} See id. at 141-42, 148-49.
\textsuperscript{307} See DALFIUME, supra note 6, at 157.
\textsuperscript{308} See id.
\textsuperscript{309} See id.
\textsuperscript{310} See id.
\textsuperscript{311} See MACGREGOR, supra note 12, at 90-91.
These considerations prompted President Truman to issue Executive Order 9981 on July 26, 1948, which stated in part:

It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.\footnote{312}

This universal demand for integration, recognized by President Truman, manifested itself in many ways. One of the most visible and powerful manifestations during World War II was the Tuskegee Airmen desegregation protests. The protests served to galvanize support for desegregation and highlight the degree to which blacks were committed to this goal. A goal that Truman increasingly found difficult to ignore.

Of all the service branches, the Air Force was the first to integrate in 1949, soon followed by the Navy.\footnote{313} The Army and the Marines, even though under the

\footnote{312} Exec. Order No. 9981, 13 Fed. Reg. 4313; see also DALFIUME, supra note 6, at 171-73. There was some initial confusion surrounding the intent of the Order. It did not specifically outlaw segregation immediately. In fact, because it mandated only “equality of treatment,” separate but equal could still exist under the Order’s language. Truman soon made it clear, however, that he intended to wipe out segregation. A special executive committee, the Fahy Commission, was formed to oversee the process of integration.

The military establishment reacted slowly and reluctantly to the Order. The Department of Defense did not capitulate to the inevitability of integration until April, 1949. The Navy, Air Force, and Marines soon submitted desegregation plans that received the approval of the Defense Department and the Fahy Commission. President Truman appointed Charles H. Fahy, former Solicitor General, to head the Committee on Equality of Treatment Opportunity, which was responsible for determining the most efficient methods for implementing and enforcing the newly announced policy of integration. With the assistance of the several branches of the armed forces and the Secretary of Defense, the Fahy Commission developed programs embodying the spirit of Executive Order 9981. See BLACKS IN THE MILITARY, supra note 15, at 243. By August, 1949, the Air Force had integrated 797 units without a single report of racial conflict. In contrast, the Army, the largest and most tradition-bound of the services, fought the concept of integration as long as possible. As late as November 30, 1949, an internal Army report concluded that “it was obvious that large Negro units had not done well and that the greatest degree of success in combat was achieved when Negroes were used in small units in close proximity.” MACGREGOR, supra note 12, at 91-92.

\footnote{313} See BLACKS IN THE MILITARY, supra note 15, at 250-54. The Department of Defense had an exacting definition of integration: it considered a unit to be segregated if more than 49% of its members were black. See id. By June, 1952, the personnel of the last all black unit in the Air Force was integrated throughout that service. See WALTER J. BOYNE, BEYOND THE WILD BLUE: A HISTORY OF THE UNITED STATES AIR FORCE, 1947-1997, at
Department of the Navy, did not integrate as quickly. Nevertheless, by October 30, 1954, the armed forces announced that the last segregated unit had been abolished. The announcement occurred only five months after the decision in *Brown v. Board of Education*.

Although the leaders of the Air Force should be commended for responding first to President Truman’s integration order, much of the credit belongs to the members of the Tuskegee Airmen for entering the civil rights arena and challenging the military’s policy of racial segregation. The Tuskegee Airmen kept the pressure for integration on the Army Air Corps during World War II and began desegregation efforts long before desegregation became mandated by the Supreme Court. The Tuskegee Airmen proved the power of unified black protest against *de facto* segregation. Protest was the main tool used to show military leaders the extent of the opposition to racial segregation and discrimination and the divisiveness of their “separate but equal” policies.

Most of the Tuskegee Airmen volunteered for military service. The most

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314 Integration in the Army did not begin until July, 1951, with the integration of blacks into all units of the 24th Infantry. The Marine Corps announced its general policy on racial integration on December 13, 1951. See MACGREGOR, *supra* note 12, at 442, 464.

315 See *id.* at 473.

316 See *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (holding that state educational facilities separated on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment).

317 The following is an example of how one could become a member of the Tuskegee Airmen. Herman “Ace” Lawson, who eventually became one of the top pilots in the 99th Pursuit Squadron, and is now a city councilman in Sacramento, California, received the run-around upon application for pilot training. He learned to fly initially in gliders and, as the only black in a class of 20 in the commercial pilot training program, received his pilot’s license while at Fresno State College. After seeing an advertisement that the Air Corps examining board would be interviewing students, Lawson joined his white college buddies, who were going down to sign up. After standing in line for nearly an hour for his interview, he came face to face with a white major, who bluntly questioned his presence in line. Lawson said he would never forget the look in the major’s eyes when he was told, “Get the hell out of here boy, the Army isn’t training night fighters!” See Hermon Lawson, *Ace Recalls His Induction*, TUSKEGEE AIRMEN, INC., NEWSLETTER, Nov. 1996, Vol. II, No. 10, at 2. Unfortunately, Lawson was not aware that the laws of his country that established segregation also prohibited him from joining the Air Corps. Finally, after some period of time and much frustration, the word came that blacks would be accepted, and Ace applied. He waited for five months, with no word. He wrote his congressman, senator, and even President Roosevelt. Finally, after two more months, he received word to report for duty and was accepted for aviation cadet training. At the time, he was a school photographer at Fresno State College, with about $1000 worth of camera equipment stored in the trunk of his 1935 Plymouth convertible. He was so eager to report that he left the equipment and his Plymouth sitting at the railroad depot, and immediately departed for March Field for induction before the Air Corps changed its mind. To this day, he has seen neither the equipment, nor the car. See *id.*
common reasons for enlistment were educational opportunities, love for flying, and the desire to serve one's country.

Once in the military, however, many Tuskegee Airmen were not willing to accept racial discrimination and segregation. Additionally, after the military instituted ordinances forbidding certain types of racial segregation, the Tuskegee Airmen valiantly, relentlessly, and unselfishly sought to enforce those policies. Primarily through protests, they kept the pressure on the military to keep its word and enlarge its commitment to racial equality. Despite risks of bodily harm, demotion, discharge, and civilian employment difficulties, the Tuskegee Airmen helped to begin a desegregation plan that today serves as an example for the rest of American society to emulate.\footnote{See \textsc{Christopher Edley}, \textsc{Not All Black and White} 122, 184 (1996).}

The armed forces have achieved greater integration and better race relations at a faster rate than the rest of American society. Many say that we should look to the armed forces, particularly the Army, as a model that American civil society should follow. According to the Pentagon, in 1994, minorities, mostly blacks, comprised 29.2\% of the active duty personnel in the four armed services. The Army was the leader of the four services with blacks comprising 39.5\% of personnel, followed by the Navy with 29.3\%, the Marines with 28.6\% and, lastly, the Air Force lagging behind with 22.5\%. See Steve A. Holmes, \textit{Time and Money: Producing Racial Harmony in the Military}, \textit{N.Y. Times}, May 5, 1995, at A1. As of 1994, minorities comprised 5.8\% of all male generals and admirals on active duty. This number is often compared to the 1.1\% of minority representation among male senior-level managers at the country's largest corporations. See \textit{id}.

Since 1973, the Army has expanded its black population from 17\% of enlisted personnel to 30\%, which is nearly triple the civilian black population. Its number of officers has risen from 3\% to 9\% in 1996. See Leon Wynter, \textit{Business & Race}, \textit{Wall St. J.}, Nov. 6, 1996, at B1. Blacks currently make up 30\% of all the Army's sergeants, and one in nine members of the officer's corps is black. As of 1995, the Army employed 24 of the 328 generals in the active service, five of whom were four-star generals and 12 of whom were three-star generals. Hispanics, however, continue to lag behind in the Army and comprise only 5.4\% of all active duty personnel with only 11 generals and admirals in all four services. See \textit{id}.

The success of blacks in the military over the past 20 years has been no accident. During the 1970s, the Army was notorious for its terrible race relations. However, the Army has since led the way in providing greater opportunities for blacks and other minorities to advance and succeed in military life.

When promoting, the Army, like many other affirmative action programs in the country, establishes an estimated goal that is hoped to be filled by minorities. However, this goal is by no means a quota and no timetables are ever created. It is also crucial to note that the goal is created based upon the current pool of qualified blacks rather than the proportion of blacks in the entire organization, much less in the general population. See \textit{id}. By not lowering standards for minorities, this method helps minimize white animosity against blacks who are promoted and creates a true sense of achievement based upon merit alone. Promotion is based upon success with previous assignments, physical standards, evaluation ratings, education and likelihood of promotion to the next level above the one under consideration. If there are no qualified blacks or other minorities for a particular position,
one will not be promoted regardless of the estimated goal.

The Army does not rely upon lowering its standards in order to create a desirable racial mix, but instead targets its resources into creating a larger pool of qualified blacks from whom to choose. The Army compensates for black educational deficiencies by providing specialized remedial training that emphasizes basic skills in reading and mathematics. The Army also runs management training schools for soldiers who wish to be promoted to sergeant. The Army will also pay up to 75% of tuition for soldiers who want to earn a college degree. The Army relies heavily upon recruitment efforts through ROTC programs at historically black colleges and universities such as Howard and Emory in order to maintain an adequate pool of candidates at all times. As a result, the proportion of blacks assigned to combat arms has been reduced from 32% in 1980 to 24% in 1994. See MOSKOS & BUTLER, supra note 12. The Army has identified four long-term goals and programs that will result in even further advancement of blacks in the military: raising recruits to enlistment levels; preparing soldiers to become competitive candidates for non-commissioned officer positions; raising black undergraduates to off-commission standards; and raising high school graduates to West Point standards. See id.

As mentioned earlier, blacks comprise 30% of all Army sergeants; therefore, it is likely that a new recruit will be under the supervision of a black officer who may serve as a role model and mentor. Mentoring between blacks at all levels is very important. The officer mentor program, ROCKS, established in 1974 in honor of Brigadier General Roscoe O. Carwright, has a membership of over 1000 black Army officers. See Steve Sailor, Where the Races Relate, NAT’L REV., Nov. 27, 1995, at 41. Its primary focus is to provide mentoring and guidance for black junior officers to enable them to work and advance within the military system. ROCK also fundraises for ROTC scholarships and provides guest speakers at historically black universities and colleges.

Providing opportunities for blacks and other minorities in the military is only half the equation in establishing a working and effective armed force. Race relations among soldiers is also crucial and cannot be compromised. The Army treats good race relations as a means to readiness and combat effectiveness, not as an end in itself. See MOSKOS & BUTLER, supra note 12, at 51. Thus, the Army has established a number of methods to minimize the outbreak of racial incidents and bias both among the enlisted and officers.

All racial issues fall under Army Regulation 600-20. A soldier who wishes to hold membership within a racist or extremist organization may do so, but he will be required to attend counseling on the incompatibility of membership with the military. Also, the soldier’s membership will disenable him to be promoted to a higher rank. Although a soldier is allowed to be a member of a racist or extremist group, he is not allowed to participate in rallies, meetings or fundraising of any sort. See id. at 53.

Throughout the Army, one Equal Opportunity Advisor is assigned for every 1500 soldiers. Equal Opportunity Advisors are responsible for monitoring any and all racial incidents. The Advisors also evaluate the patterns of race in assignments and promotions. Advisors attend to interracial awareness including the celebration of Black History month. Additionally, the Advisors are responsible for keeping records of all racial incidents, including those not reported to the higher chain of command. The position of an Equal Opportunity Advisor is never permanent, rather, officers of all races rotate this responsibility. Approximately half of the Advisors are white, one-third are black and the rest are of other minority backgrounds. See id. at 55. Advisors are trained at the Defense Equal Opportunity Management Institute (DEOMI), which was established in 1971. The
In addition to the normal rigors of military training, the Tuskegee Airmen were subjected to racial discrimination and segregation. In response to their protests, many Airmen received disciplinary action. Although too late for some, the military finally admitted the injustices suffered by the Airmen. In 1995, the Secretary of the Air Force agreed, upon written request, to overturn the reprimands for the protesters involved in the Freeman Field incident and to remove the reprimands from the Airmen’s permanent military records. This should be done for all military personnel involved in desegregation protests, particularly for the protests that occurred after the issuance of the non-discrimination directive.

Institute works with a budget of over two million dollars and has a staff of 65 military officers and 35 civilian workers. Its purpose is to produce equal opportunity advisors for the armed forces as well as to foster equal opportunity training throughout the military. See id. at 57.

In addition to Equal Opportunity Advisors, the Army also holds every sergeant responsible for the race relations within his individual unit. A sergeant’s inability to maintain a bias-free environment is a direct reflection on his performance and serves as an impediment to advancement. Sergeants are trained by the Army to conduct seminars on race and sex, to monitor commendations and disciplinary proceedings, as well as to investigate complaints of bias. See Holmes, supra, at A1.

The Army has, indeed, improved its race relations and its avenues of opportunity for minorities since the 1970s. The Army has relied on an enormous amount of financial commitment as well as a commitment to self-evaluation for its success. The current trend of upward mobility of blacks also stems from the large number of black enlisted personnel which is unequaled in any other American institution. Another advantage of the military is the extreme importance placed on discipline. A soldier who displays racial bias hurts not only the morale and effective functioning of the unit but also permanently damages his own personal career. The Army’s unique circumstances enable it to surpass any other American institution in equal opportunity based on merit alone. While it may serve as a positive model for the rest of the country, the Army can do so only if it continues to further its efforts toward full and complete racial equality.

319 See NALTY, supra note 8, at 153, 155-56.
320 See Tuskegee Airmen Absolved, supra note 249, at 60.
321 See id. at 58.
322 See id. at 60.
323 Recently, several people have been considered for presidential pardons of activities engaged in while on active duty military service. All cases considered for pardon have involved racially discriminatory treatment. See AP, First Black West Point Graduate Receives Presidential Pardon: Dishonorable Discharge in 1882 was Result of Bias-Tainted Court-martial, BALTIMORE SUN, Feb. 20, 1999, at 3A, available in 1999 WL 5173006 (documenting the case of Henry O. Flipper, the first black commissioned officer in the Army who was court-martialed for conduct unbecoming an officer, a charge the Army’s Judge Advocate General later concluded was racially motivated); Earl Ofari Hutchinson, Revisiting the Port Chicago Mutiny, NEW PITTSBURGH COURIER, Sept. 13, 1997, at A6, available in 1997 WL 11700069 (discussing the case of the Port Chicago “Mutiny” in which 50 black soldiers were charged with mutiny when they refused to return to work because they were not granted the same 30 day leave as their white counterparts after a
The military men known as the Tuskegee Airmen deserve credit not only for serving their country with distinction in battle, but also for entering the civil rights arena and paving the way for later desegregation efforts. The price these men paid for their patriotism was high; consequently, the debt owed to them is immense. Perhaps journalist John H. Young, III, said it best in his poem about the Tuskegee Airmen:

Hats off to the men who tried.
Hats off to the men who cried.
Hats off to the men who died.

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deadly blast that killed 320 navy seamen); Marjorie Miller, *U.S. Scholar's Passport Home is a Pardon; Britain: Exiled American Says He Didn't Dodge Draft in '61 but Demanded Respect*, L.A. TIMES, Oct. 31, 1999, at A1, available in 1999 WL 2619061 (reporting on the case of Preston King who refused to submit to an Army physical until an all-white draft board addressed him as "mister" in the same fashion as the white draftees were addressed and whose student deferral to attend the London School of Economics was abruptly revoked upon the draft board’s discovery that King was black).


325 John H. Young, III, *These Are Our Finest*. 