



The Newsletter of the
Military Law Task Force of
the National Lawyers Guild

On Watch

Volume XX, Number 2

May/June 2008

INSIDE

Outsourcing Illegal Wars: A Brief Introduction to Private Military Contractors

Montse Ferrer
Cornell Law School

Page 5

GI Rights Network Conference

Page 8

'Winter Soldier' And The MLTF

Page 10

Send submissions, comments or questions to:
info@nlgmltf.org

On Watch Editors

Chris Ford
Kathleen Gilberd
Jeff Lake

Editorial Coordinators:

Jeff Lake
Kathleen Gilberd

Production Editor

Rena Guay

Membership dues are \$25/year and include a subscription to *On Watch*. Subscription only is \$15/year.

Military's Proffered Protections to Victims of Sexual Assault Laced With Loopholes

BY BRIDGET WILSON

Perhaps no empire is better at creating piles of paper than the military. The new Sexual Assault Prevention and Response Program is no exception. One of the promises of this heavily papered program is the option of "confidential" reporting of sexual assaults by victims in a manner that will enable that individual to disclose the details of the sexual assault to specified individuals and receive medical treatment,

counseling and advocacy without automatically triggering the official investigative process. DOD Directive 6495.01, October 6, 2005, Subj.: Sexual Assault Prevention and Response (SAPR) Program, 4.6. This differs from "unrestricted" reporting in which the sexual assault will be reported to law enforcement and command authorities. DOD Directive 6495.01, October 6, 2005, Encl. 2, E2.1.2.

(Continued on page 2)

MLTF Transitions

The Military Law Task Force's chairperson, Marti Hiken, has recently resigned for personal and health reasons. After a long period of relative inactivity, the MLTF was rebuilt five years ago. Marti was the main force behind that process and has been MLTF's mainstay since then. She has our appreciation and thanks.

This has required a few changes, and the MLTF steering committee will be making several more in the coming months. We have replaced our San Francisco phone number and physical and email addresses with the following:

Please note new contact info

Telephone: **619-463-2369**

Email: info@mltf.info

Postal Mail: **730 N. First Street, San Jose, CA 95112**

The website remains the same: www.NLGMLTF.org.

For the next six months, Kathy Gilberd and James Branum will serve as interim co-chairs. Kathy will answer phone calls and e-mail, and we do not expect any change in our ability to respond to inquiries. Notes to Marti can be sent in care of the new MLTF e-mail address.

(Continued on page 9)



Under restricted reporting, any details provided to a Sexual Assault Response Coordinator (SARC) or the Victim's Advocate (VA) or Health Care Provider (HCP) will not be reported to law enforcement to initiate an official investigative process without the victim's consent or an exception to the Directive. Id., E2.1.9. The DOD Directive also includes other specifics on the "confidential reporting program for victims of sexual assault". Id., Encl. 3.

This policy reflects a change of philosophy in how to handle reports of sexual assault by creating a system that lets victims choose to withhold information about assaults from law enforcement and command authorities. The Department of Defense Directive, Instructions and Memoranda, which implement and describe this overall policy, acknowledge the potential negative impact of restricted reporting on investigations and holding perpetrators accountable. However, after examining the risks of confidential reporting, the military decided for policy reasons that such risks are outweighed by the ability to offer support for sexual assault victims and allow them to report the crimes which they otherwise would not report out of fear of the involvement of law enforcement or command authorities. Id. at E3.1.1.

The Department of Defense Directive is consistent with the rationale given in an earlier policy memorandum issued in March 2005. The stated reason for the confidentiality policy is to ensure that victims of sexual assault are protected, to maintain dignity and respect and provide support, advocacy and care. Assuring privacy and confidential disclosure is described as a method for addressing sexual assault, "the most under-reported violent crime in our society at large and in the military." Department of Defense Memorandum, March 16, 2005, Subj.: Confidentiality Policy for Victims of Sexual Assault (JFT-SAPR-009).

Policy Is a Response to Reports of Sexual Assault in Combat Zones and at Air Force Academy

This regulatory scheme was created in response to several public scandals about sexual assault in recent years, including reports of sexual assault on female troops in Iraq and Afghanistan, and reports of sexual assaults at the Air Force Academy in which victims were reluctant to report or found themselves being punished for "collateral misconduct" when they did report. There were numerous circumstances in which victims of sexual assault were retaliated against for raising their complaints. These policies reflect the struggle of addressing sexual assault in an institution that is 85-percent male, given that the vast majority of sexual assault victims are female.

Under the confidential reporting known as "Restricted Reporting," service members may *only* report the assault to a SARC, VA or Health Care Practitioner (HCP). That is an important limitation. For example, an ambiguous reference to reporting to chaplains points out some of the limitations of this "confidential" program. Under the restricted reporting option an individual could lose the protections of restricted reporting by discussing the sexual assault with anyone other than the persons designated in the regulation, that is the SARC, the VA or the HCP.

Beware: Reports to Chaplains of Sexual Assaults May Not Be Privileged

Chaplains are not among the persons designated to receive reports of sexual assault. The policy states in pertinent part:

"However, consistent with current policy, they may also report the assault to a chaplain. Although a report to a chaplain is not a restricted report under the policy or the provisions of this Directive, it is a communication that may be protected under the Military Rules of Evidence (MRE) or applicable statute and regulations. The restricted reporting process does not affect any privilege recognized under the MRE. This Directive and its policy on Restricted Reporting

PAID SPONSORSHIP ADVERTISEMENT

PARALEGAL COUNSELOR

**KATHLEEN M.
GILBERD**

MILITARY ADMINISTRATIVE LAW

Military Discharge Upgrading

Available for Consultations
with Attorneys

**619-234-1883 (o)
858-254-6815 (c)**

kmg@kathleengilberd.com

8030 La Mesa Blvd. No. 270, La Mesa, CA 91941



is [sic] in addition to the current protections afforded privileged communications with a chaplain, and does not alter or affect those protections." DoD D 6495.01, E3.1.6.2.

That convoluted discussion is likely to mislead many service members into believing that chaplains are safe persons with whom to discuss the sexual assault, including giving the chaplain information that they were in violation of regulations, such as those prohibiting underage drinking, when the assault occurred.

This provision of the regulation does not make clear the distinction between privileged and confidential information and its uses in proceedings other than courts martial. The Military Rules of Evidence govern courts martial, the military version of criminal trial courts. However, the Military Rules of Evidence do not strictly apply to administrative proceedings. Administrative proceedings include many actions that can be taken to a service member's detriment in which that service member may not invoke the protections of privilege, such as privileged communications with clergy. For example, administrative separation boards to remove an individual from the service may not be barred from considering information that would be protected from disclosure in a court martial under Military Rule of Evidence 503, Communications to Clergy. Reading the rule itself might mislead an individual to believe that it provides more protection than it actually does. MRE 503 states, in part:

"(a) General Rule of Privilege. A person has a privilege to refuse to disclose or to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience."

Attorneys who have litigated the issue of clergy communications privilege know that the privilege may be challenged in a court of law on the grounds that the communication was not confidential because it was not made in the clergyman's capacity as a "spiritual advisor." It is not difficult to imagine that an individual who is not seeking any "spiritual advice" would speak to a chaplain about sexual assault incorrectly believing the conversation is covered by the "restricted reporting" policies.

Beware: Some Chaplains May Inform On Service Members

Nor is it unknown for some chaplains to breach the confidence of a service member who has disclosed that s/he has behaved contrary to military regulations. As a result, military commands can use that improperly disclosed, otherwise "privileged information" against a service member to discharge that service member administratively or take other detrimental "administrative" actions against him or her.

Many of the Constitutional legal protections that we expect in courts do not accrue to individuals involved in administrative proceedings, including those in the Armed Forces. Accordingly, in addition to privileged information, evidence that is the fruit of illegal searches, or otherwise in violation of the service member's rights, might be used in administrative proceedings to the detriment of the service member.

In addition, the SAPRO regulations include an extensive list of exceptions to the confidentiality of information, which threatens to eviscerate the protections asserted. One of the exceptions included in that laundry list is that "regardless of whether the member elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with DOD 6025.18-R, DOD Health Information Privacy Regulation, January 24, 2003." This regulation, promulgated in response to the Health Insurance Portability and Accountability Act ("HIPAA"), 29 U.S.C. § 1191c, includes permitting disclosures of confidential information for "specialized government functions." DOD 6025.18-R, Jan. 24, 2003, C7.11. Standard Uses and Disclosures for Specialized Government Functions at C7.11.1, Armed Forces Personnel, Parts C711.11.R-C7.111.

Service Members' Protected Fitness Information Subject to Disclosure

The general rule on disclosures for specialized government functions under DoD 6025.18-R states:

"General Rule. A covered entity (including a covered entity not part of or affiliated with the Department of Defense) may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to ensure proper execution of the military mission."

Among those permitted determinations and disclosures are determinations of fitness for duty, C7.11.1.3.1, determining a member's fitness to perform any particular mission, assignment, order, or duty, including compliance with any actions required as a precondition to perform such mission, assignment, order or duty (C7.11.1.3.2) and to carry out any other activity necessary to the proper execution of the mission of the Armed Force (C7.11.1.3.5.). It is foreseeable that a victim who is a pilot or navigator in an air wing could have his or her "restricted report" given to the commanding officer under this exception, regardless of the victim's choice of reporting option.

For that reason, the question arises whether the exceptions incorporated into the SAPRO regulations leave mili-



tary authorities in precisely the same position they were in prior to this volume of new regulations, able to make a claim of appropriate disclosure out of concern for “military necessity.” The exceptions appear to swallow the confidentiality rules.

Information From “Independent” Source Not Protected and Could Be Used Against Victim

Further, when information about sexual assault comes to a commander’s attention from a source independent of the restricted reporting avenues, that commander *shall* report the matter to law enforcement and an official investigation may be initiated based on that independently-acquired information. Who or what is an “independent” source is not defined. DoD D 6495.01, E3.1.11. Should any sexual assault victim think that he or she will be protected from prosecution for collateral misconduct, the directive makes clear that is not the case, stating: “Covered communications that have been disclosed may be used in disciplinary proceedings against the defendant or the victim, even if such communications were improperly disclosed.” E3.1.12.

Restricted reporting does not create any actionable rights for the alleged offender or victim, or constitute a grant of immunity for actionable conduct by the offender or the *victim*. Any communications that have been disclosed may be used in disciplinary proceedings against either the offender or the victim, even if the communications were improperly disclosed. DoD D 6495.01 at E3.1.12. That, coupled with the mission and national security exceptions under the DoD’s confidentiality regulations, DoD 6025.18-R, raises serious concerns about whether the option of restricted reporting is illusory, or, worse, simply serves to interfere with the prosecution of perpetrators without really protecting the victims of sexual assault.

As is always true in law and regulation, the devil is in the details. For example, it is unclear under the regulation

whether disclosing a sexual assault to your boyfriend or girlfriend, who then angrily confronts a commanding officer or a presumed perpetrator, would eviscerate the limited protections the victim obtains through restricted reporting. The regulations make no specific reference to waiver. But if the victim is limited to whom s/he can make a “restricted” report, by implication, does s/he lose the benefits of that choice by telling another person outside that triangle of SARC, VA and HCP? What if s/he has reported the assault to a friend who then takes the victim to the military hospital? May the victim still invoke the restricted reporting option? Do restricted reporting limitations commence only when the victim elects the option, regardless of prior disclosures? Arguably, a victim cannot knowingly waive a right of which s/he was unaware. Will the mandated intensive training under the regulations create a presumption that the victim knows of the options? See, DoDI 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006, Encl 3., E3.2 requiring periodic mandatory education in SAPR.

The asserted trade-off for the restricted/confidential reporting system is the opportunity to provide more sensitive treatment of sexual assault victims by victims’ advocates vs. the law enforcement advantage that could be gained from immediate reporting of a sexual assault. It is hoped that more victims of sexual assault will come forward for treatment and report assaults. But a close examination of the numerous limitations and exceptions in the sexual assault regulation shows that reporting victims may still be exposed to the risks of retaliation, prosecution and breaches of confidence as before the changes in policy.

Bridget Wilson is an attorney in private practice with Rosenstein, Wilson & Dean, PLC, in San Diego, CA. Military law is one of her areas of practice. She is a veteran of the US Army Reserve.

MILITARY LAW SEMINARS

The MLTF can provide speakers and resources for day-long or half-day seminars on these issues: an overview of military law, with emphasis on discharges, handling AWOL cases, and dissent, or habeas corpus petitions in conscientious objection cases. Both sessions can be geared for law students and counselors as well as attorneys.



Outsourcing Illegal Wars: A Brief Introduction to Private Military Contractors

**BY MONTSE FERRER,
CORNELL LAW SCHOOL**

Private military contractors (PMCs) are found everywhere doing almost everything. Their work is operationally and geographically diverse – you can find a military contractor in Colombia transporting weapons and one in Iraq building an all-girls school. The U.S. and many other countries are increasingly hiring private military firms (PMFs) to support their military operations. In fact, while the ratio of U.S. soldiers to military contractors in the first Gulf War was one to a hundred,ⁱ the current ratio in Iraq is one to ten.ⁱⁱ Increasingly, these military contractors are being hired to perform core military functions including military training, intelligence gathering and, at times, support functions that are very close to combat.ⁱⁱⁱ Their high level of responsibility, however, must be juxtaposed with their low level of accountability. Private military contractors, as of today, operate in an international legal void – at least with respect to de facto regulation.

“Peace Dividend” Spawned Growth of Mercenary Firms

With the end of the Cold War, the superpowers sought to realize the “peace dividend” and thus significantly reduced the size of their armies.^{iv} As Singer explains in his latest book, *Corporate Warriors: The Rise of the Privatized Military Industry*, state militaries now employ about seven million fewer soldiers than they did in 1989.^v The 1990s also saw a massive increase in global levels of conflict, due to “the power vacuum that is typical

of transition periods in world affairs”^{vi} and to the lack of superpower stability previously imposed by the U.S. and U.S.S.R. The ultimate effect was the “deluge of ex-soldiers onto the open market because of downsizing and state disappearance,” creating an oversupply of dislocated military skilled labor.^{vii}

The PMFs stepped into this market. As Colonel Tim Spicer explains, “[t]he end of the Cold War has allowed conflicts long suppressed or manipulated by the superpowers to re-emerge. At the same time, most armies have gone smaller and live footage on CNN of United States soldiers being killed in Somalia has had staggering effects on the willingness of governments to commit to foreign conflicts. We [the PMFs] fill the gap.”^{viii} A sharp increase in the number of military personnel, the lack of superpower economic and military support, decline in local military support (especially in Africa) and a recent trend toward general privatization in different areas of society have paved the way for the growth of private military firms.

Private military firms fall under one of three categories: military provider, consultant or support firm.^{ix} Military provider firms are as close as it gets to private mercenaries as they engage in actual fighting, either as line units or specialists and or direct command and control of field units.^x PMFs such as Executive Outcomes, Sandline, SCI, and NFD are military provider firms and were involved in operations in Angola, Sierra Leone, Indonesia, and Papua New Guinea. Military consult-

ing firms provide advisory and training services and their contractors cannot engage in direct combat activities.^{xi} Examples of private consultant firms are Levadan, Vinnell, and MPRI. Finally, military support firms provide supplementary military services such as aid and assistance, including logistics, technical support, supply and transportation.

The Putative Benefits of Hiring Mercenaries

Professor Steven Schooner points out that there are significant advantages in hiring PMCs:

“You don’t have to have a tremendous number of troops stationed at installations all over North America waiting for the next big military action. So if we decide to invade Iraq, we can go out and hire contractors, very, very quickly at a rate we’d never be able to recruit otherwise ... if you only have to move the troops, and you have contractors moving the equipment or contractors taking care of the food and the water and the other essential services, you can move your troops more quickly and, more importantly, be ready to fight.”^{xii}

Professor Schooner’s comment supports the claim made by proponents of private military contracting that hiring PMFs, unlike sustaining standing armies, is the cost-efficient solution for a country like the U.S., which is involved in armed conflicts at unexpected times. Using PMCs reduces the cost of overhead expenses because civilians do not require the extensive support structure that soldiers do, or so the argument goes. But even if private military contracting is not as efficient as its proponents claim, Professor Schooner still maintains that “[s]ometimes the government pays more money for greater flexibility or greater capacity or better services that could be provided more quickly.”^{xiii} Employing PMFs allows the



US armed forces to focus on its “core competency,” which is fighting wars.^{xiv} In other words, PMFs are said to allow for efficiency, flexibility, and ultimately, easier solutions to complicated problems. What is the price of these putative benefits?

PMFs Owe Fealty to No One – Except the Bottom Line

“Private military firms are only subject to the laws of the market.”^{xv} Although this statement is not necessarily true (see below, under Regulations section), the perception – and to an extent, the reality – is that private military firms operate fundamentally as private actors in search of economic gains within the free market. One must only compare the public good to the private firm’s good – rarely do they coincide.

For example, ignoring human rights obligations may at times be in the private military firm’s corporate interest. As private actors, PMFs owe allegiance to no one; they may well serve a faction on one week and the opposing faction the following week. Although fear of tainting their public image and corporate responsibilities may limit the actions of PMFs, it is not clear to what extent they do. Nonetheless, most of the criticism directed to the PMFs focuses not on their objectives but rather on the lack of regulation of their actions.

Into the Unregulated Abyss

“Military provider firms do use violence, but their general goal is not violence for its own sake, but rather to achieve the task for which they were hired.”^{xvi} The question becomes whether this “violence” is permitted under international (or domestic) law and, if so, how it is regulated. Although some scholars and human rights activists have suggested criminalizing private military contractors altogether (categorizing them as mercenaries), others suggest that it is

highly unlikely, and states find doing so undesirable.

What is clear is that international law is lagging behind. While mercenaries are involved in almost every international conflict, there is not one international convention or treaty that directly protects and regulates them. While a PMC can at times be considered a combatant and thus be subject to international humanitarian norms, most contractors are immune from such regulation based on the contracts signed between the host countries and the PMCs.^{xvii}

Most of the regulation currently in place can be found within domestic legal systems. In the U.S., for example, there is a series of legal avenues available to claimants, but they have rarely been used to impose liability on private military firms or their employees. The Military Extraterritorial Jurisdiction Act (MEJA), extends federal criminal jurisdiction to individuals employed by the U.S. military abroad.^{xviii} Also providing possible jurisdiction are the War Crimes Act of 1996^{xix} and the federal torture statute.^{xx}

Where victims can claim that a violation of the law of nations has occurred, they may seek redress under the federal Alien Tort Statute (ATS).^{xxi} Several civil and criminal remedies exist for addressing the problem of detainee abuse by US civilians in war zones, but solutions such as the ATS and the War Crimes Act ultimately render their application to most cases very problematic.^{xxii}

Private Industry Left to “Self-Regulate”

Although the lack of authoritative law on the subject is evident, there are “soft-law” or accountability mechanisms that attempt to impose human rights obligations on the conduct of private military corporations. There is self-regulation of the private

industry, found predominantly in corporate responsibility Codes of Conduct. A notable example is that of the International Peace Operations Associations (IPOA). The IPOA is a trade association whose mission is “to promote high operational and ethical standards of firms active in the Peace and Stability Industry [and] to engage in a constructive dialogue with policymakers about the growing and positive contribution of these firms to the enhancement of international peace, development, and human security.” An increasing number of U.S. private military corporations, including MPRI and DynCorp, are becoming members of the IPOA. Integral to being part of this organization is adherence to the IPOA Code of Conduct, which represents a constructive effort towards better regulating private sector operations in conflict and post-conflict environments.

Even with these areas of hard and soft law, there is a significant void in terms of actual regulation of PMFs. This is evidenced by the fact that a strikingly small number of claims have been brought successfully against private military contractors. The State Department, Congress, and different United Nations agencies have voiced their determination in creating legal avenues for regulation. This will not be enough—not if we want to assure that PMCs respect fundamental rights of the human person.

Montse Ferrer is a law school student at Cornell Law School, researching the laws of war, including issues related to terrorism, military contractors and detainee treatment. She has worked in Colombia as an observer for the disarmament process of paramilitaries.

[See next page for endnotes]

**ENDNOTES**

- i. See George Cahlink, Army of Contractors, Gov't Executive, Feb. 1, 2002, at 43, <http://www.govexec.com/features/0202/0202s5.htm>.
- ii. See Peter W. Singer, War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law, 42 Colum. J. Transnat'l L. 521 (2004).
- iii. See Rebecca Rafferty Vernon, Battlefield Contractors: Facing the Tough Issues, 33 Pub. Cont. L.J. 369, 371-72 (2004).
- iv. See Michael N. Schmitt, Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees, 5 Chi. J. Int'l L. 511, 517 (2005).
- v. Peter W. Singer, Corporate Warriors: The Rise of the Privatized Military Industry 53 (2003).
- vi. Id. at 52.
- vii. Id. at 53.
- viii. Colonel Tim Spicer, quoted in Andrew Gilligan, Inside Lt. Col. Spicer's New Model Army, Sunday Telegraph, Nov. 22, 1998.
- ix. See Singer, *supra* note 5, at 91.
- x. See id. at 92.
- xi. See id. at 95.
- xii. Interview by Frontline with Steven Schooner, Law Professor, George Washington School of Law and Former Administrator, Office of Federal Procurement Policy (May 19, 2005), <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/schooner.html> (last visited Nov. 5, 2007).
- xiii. Interview by Frontline with Steven Schooner, *supra* note 12.
- xiv. Singer, *supra* note 5, at 98.
- xv. Id.
- xvi. Id. at 217.
- xvii. This is particularly true of U.S. PMFs in Iraq. Pursuant to Order 17 of the Transitional Administrative Law approved in 2004, the U.S. and Iraqi governments granted a large degree of immunity to private military contractors.
- xviii. Military Extraterritorial Jurisdiction Act, 10 U.S.C. § 3261 (2000).
- xix. 18 U.S.C. § 2441 (2004).
- xx. 18 U.S.C. § 2340(A) (2000).
- xxi. The Alien Tort Statute, 28 U.S.C. § 1350 (2000), provides that "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."
- xxii. See generally Ryan P. Logan, The Detainee Treatment Act of 2005: Embodying U.S. Values to Eliminate Detainee Abuse by Civilian Contractors and Bounty Hunters in Afghanistan and Iraq, 39 Vand. J. Transnat'l L. 1605, 1620 (2006).

On Watch advertising sponsorship spots now available!**Advertising space is limited, so sign up now to get your ad in the next available issue.**

On Watch, the journal of the NLG Military Law Task Force, is published about 8 times a year. Each issue is sent to over 200 MLTF members and *On Watch* subscribers, by email (in PDF format) or by regular mail in printed form. At a later point, each issue is also available on the NLGMLTF.org website for public downloading.

The Editorial Board of *On Watch*, which approves all ads for each issue, encourages MLTF members and supporters to buy these spots.

Ad costs (Please ✓ your choices)

- \$10 text-only listing of your name/firm in issue as a sponsor
- \$25 biz card sized ad
- \$50 quarter page
- \$90 half page
- \$175 full page
- I would like my name listed as a sponsor of the MLTF.

The MLTF reserves the right to refuse to publish any submission.

Payment can be made through PayPal on the MLTF website, www.nlgmltf.org, or by sending a check made out to the MLTF at 730 N. First Street, San Jose, CA 95112.

For more information or to purchase an ad, contact the *On Watch* Editorial Board at info@nlgmltf.org.



2008 GI Rights Network Conference

BY KATHLEEN GILBERD - MLTF Co-CHAIR

Military counselors from around the country met in San Diego from April 10 to 13 for a national conference of the GI Rights Network (GIRN). The meeting brought together about sixty counselors from sixteen member organizations, four counseling groups in the process of formation, and fraternal organizations such as Iraq Veterans Against the War and the military resistance support group Courage to Resist.

GIRN, an alliance of over twenty local and national groups, maintains the national GI Rights Hotline -- now 877-447-4487 -- and provides information and counseling about discharges, servicemembers' rights, military grievance procedures and similar issues. MLTF was one of several national organizations (including the Central Committee for Conscientious Objectors (CCCO), the Center on Conscience and War, the American Friends Service Committee and others) who formed the Network and established the toll-free hotline in the 1990's. Since then, it has grown from a loose group of lay counselors to a nation-wide network handling 40,000 calls and inquiries each year.

The conference was the first national meeting since 2006, when the Network moved away from administrative support and coordination provided by CCCO and began to develop independent structure and leadership involving all of the member groups. The San Diego conference provided an opportunity to consolidate that work and move to-



Left: MLTF member Kathy Gilberd and AMIE counselor Jackie Thomason (foreground) spoke at a workshop on sexual assault and sexual harassment cases.

Below left: Navy resister and counselor Pablo Paredes, MLTF's James Branum and VVAW staff member Ray Parish

Below right: MLTF member Peter Goldberger assisted in discussion of by-laws and gave several presentations on conscientious objection.

wards the formation of an independent non-profit organization in the coming months. Discussion meetings and two plenary sessions considered proposed bylaws, including a formal leadership and decision-making structure and membership criteria.

The traditionally boring matter of by-laws was enlivened by serious debate about the criteria for membership (Must groups take hotline calls to belong to the Network, or may groups doing other forms of counseling join? How will minimum standards of counseling be developed and monitored?). Final decisions were not made at the conference, as several member groups were unable to attend, and the Network's consensus decision-making requires their votes as well. But participants hammered

out additions and changes to the by-laws which are now referred to an expanded by-laws committee before a final round of discussion and voting. (MLTF attorneys Jeffrey Segal, Peter Goldberger and JE McNeil, in her capacity as director of CCW, assisted with legal aspects of the by-laws.)

Three new groups were admitted as associate members while they continue counselor training with experienced counselors from other member groups--GI Rights centers in El Paso, Texas, Albuquerque, New Mexico,





and Oklahoma City, Oklahoma, are now a part of the Network. In addition, the conference set up new standing committees on diversity and on women's concerns, as well as a committee on emotional support for counselors and a committee to evaluate the division of hotline calls, which are routed to member groups by area code.

The Network has not yet developed guidelines for the assignment of area codes, and the committee will consider possible criteria, including geography, hours of availability, specific areas of expertise and quality of counseling, among other things. The membership and workload of the Network's quality of care committee grew significantly during the conference. It doubled in size and took on more responsibility for developing counselor training and mentorship programs, monitoring problems in the quality of counseling and proposing minimum standards of counseling for the network.

Much of the conference was devoted to training--continuing education workshops for counselors on a wide range of issues. These included three back-to-back workshops on conscientious objection, two on medical discharges and retirement, two others on AWOL and UA policies (including recent practice changes in the Army and Marine Corps), as well as workshops on reserve and National Guard issues, veterans' rights, working with emotionally distressed clients and family members, researching regulations on line and other topics. CD recordings and training materials from most of the workshops will be available within the next two months. (For information on these, contact Kathleen Gilberd at 619-463-2369 or kmg@kathleengilberd.com)

Photos by Rena Guay of Oklahoma GI Rights Hotline

(Continued from page 1) **Transitions, continued**

Kathy Gilberd is a legal worker in San Diego, California, a founder of the MLTF and past chair, as well as a long-time member of the MLTF steering committee. She works in the areas of military administrative law, including discharge upgrading and other discharge review.

James Branum is a solo practice attorney, concentrating on the areas of Army discharges and court-martial defense, as well as civilian criminal defense in Oklahoma. He also serves as the supervising attorney of the Oklahoma GI Rights Hotline and is the Minister of Peace and Justice at Joy Menonite Church in Oklahoma City. He lives near Lawton/Ft. Sill, Oklahoma.

During this interim period, we plan to deepen the work of the MLTF, including:

- Our website - Located at www.NLGMLTF.org, the MLTF website features an online military law library, training materials, and special information for military service members and their families.
- Trainings - The MLTF conducts training seminars for lawyers and military counselors across the country.
- Support for the GI rights and GI resistance movements – The Task Force provides legal support to Iraq Veterans Against the War (including the recent Winter Soldier Investigation), the GI Rights Network, and other organizations committed to peace and justice.
- Litigation – Recent cases include a challenge to the military “stop loss” program and a Freedom of Information Act request for Rules of Engagement and other information on military conduct in Iraq. MLTF members are involved in much of the current litigation of conscientious objection cases.
- Ongoing research - Task Force members continue research to provide the most current and comprehensive information on military law concerns and to support litigation around the rights of military personnel.
- *On Watch* – First published in 1977, the newsletter includes substantive discussion of a range of military law issues, as well as political commentary on military policy.

These are only a few of the areas in which the Task Force and its members work. The organization has a long history and a proud legacy on which to build, and we hope readers will continue to support its work.

for peace and justice,

James Branum &
Kathy Gilberd
- for the MLTF Steering Committee



'Winter Soldier' and the MLTF

BY JEFF LAKE - MLTF STEERING COMMITTEE

On March 13-16, the Iraq Veterans Against the War (IVAW) held an event in Maryland called "Winter Soldier." The event featured current and former U.S. Military personnel who testified about events they witnessed and experienced while in Iraq and Afghanistan.

Planning for the event began months in advance. IVAW reached out to the MLTF for advice concerning the legal rights of, and potential consequences to, those who would be giving testimony at the event. MLTF members worked with IVAW to coordinate the distribution of information to the testifiers.

Michael Siegel of the MLTF coordinated the production and distribution of legal memos concerning various aspects of the potential testimony. These included memos on rights of soldiers, dissemination of classified information, possible exposure to prosecution under the UCMJ or fed-

eral criminal courts, and possible defenses to criminal charges. Numerous MLTF attorneys, law students and others assisted in drafting and editing these memos.

In addition, the MLTF provided counseling to those attending the event. Michael Siegel was the coordinator on site. Each witness who wanted to consult was directed to an attorney. As witnesses registered, they received a packet that included a legal summary memo, with encouragement to read it and encouragement to contact the MLTF for legal support. MLTF co-chair Kathy Gilbert acted as Michael's off-site back-up, to arrange some appointments in advance, handle any over-flow problems by phone, and field emergencies or questions from attorneys. Over a dozen MLTF attorneys volunteered to assist in counseling by telephone during the event.

MLTF attorneys counseled essentially every testifier, as well as others who provided stories for use in a book being compiled by IVAW. In all, over 52 counseling sessions were conducted during the event.

Winter Soldier was an amazing event. The powerful testimony touched on indiscriminate killing of civilians, rape of female soldiers, torture at Guantanamo Bay, and countless actions and statements by military leaders to encourage, without limit, the dehumanization and destruction of the Iraqi and Afghan people. The veteran testifiers were courageous, sharing their stories and seeking to build a movement to end the occupations of Iraq and Afghanistan. The testimony is available online at www.ivaw.org.

The Winter Soldier event is a good example of why the work of the MLTF is needed and how it can assist the movement for resistance to war within the U.S. military. The MLTF will continue to work with IVAW in the future to promote our common agenda to end the Iraq war, to heal the soldiers sent to fight it, and to stop the next one.

Editorial note: *The MLTF was honored to work with the IVAW and the many courageous witnesses who testified, at significant personal risk, and is proud of the quality of support we provided. We will continue to work with IVAW and others to expose the brutality and illegality of US imperial interventions. We hope and trust that our support will give others the strength to oppose them.*

PAID SPONSORSHIP ADVERTISEMENT

GIRightsLawyer.com

The Law Firm of James M. Branum

I focus my practice on assisting US Army soldiers who are seeking discharges or are facing courts-martial. I also assist AWOL soldiers who are turning themselves into the Ft. Sill, Oklahoma PCF (Personnel Control Facility).

Affordable reduced rates for soldiers in need (\$60/hour).

Contact me at:

866-933-ARMY (2769)
girightslawyer@gmail.com

RR 1 Box 525
Fort Cobb, OK 73038

National GI Rights Hotline

NEW! **877.447.4487**

www.girightshotline.org

About the Military Law Task Force

The National Lawyers Guild's Military Law Task Force includes attorneys, legal workers, law students and "barracks lawyers" interested in draft, military and veterans issues. The Task Force publishes *On Watch* as well as a range of legal memoranda and other educational material; maintains a listserv for discussion among its members and a website for members, others in the legal community and the public; sponsors seminars and workshops on military law; and provides support for members on individual cases and projects.

The MLTF defends the rights of servicemembers in the United States and overseas. It supports dissent, anti-war efforts and resistance within the military, offering legal and political assistance to those who challenge oppressive military policies. Like its parent organization, the NLG, it is committed to the precept that human rights are more sacred than property rights.

The Task Force encourages comments, criticism, assistance, subscriptions and membership from Guild members and others interested in military, draft or veterans law. To join, or for more information, please check our website at www.nlgmltf.org or contact the Task Force at:

MLTF, 730 N. First Street, San Jose, CA 95112
(619) 463-2369
info@mltf.info



Military Law Task Force
730 N. First Street
San Jose, CA 95112