



ON WATCH

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Counter-recruitment and School Demilitarization

Past Victories, Recent Developments, Challenges Ahead

BY RICK JAHNKOW

Counter-recruitment and school demilitarization work in the U.S. has gone through several cycles of expansion and contraction during the last few decades. The first expansion was during the early 1980s when it was supported by a small number of national organizations, such as the AFSC, War Resisters League, CCCO and NLG. Most grassroots activities at the time were carried out by chapters of these organizations and a number of independent community peace groups.

Economics drove militarization of youth

Many counter-recruitment organizers in the 1980s came from the Vietnam era anti-draft movement, so it was common for them to include draft counseling information as they also worked to counter the presence of military recruiters in schools. This dual emphasis was encouraged by the return of Selective Service registration in 1980 and the government's various efforts to coerce young men into compliance.

Frequently, organizers saw no distinction between the issues of recruiting and Selective Service registration, which had both positive and negative consequences. Positive in the sense that fear of a possible return to the draft fueled more youth-focused organizing and helped increase awareness of recruiting and militarism in schools. But on the negative side, the frequent focus on Selective Service kept many activists from fully comprehending that economics had become the primary factor driving the militarization of young people, and that draft counseling was not an effective approach to the problem. Another negative consequence was that as concern about conscription diminished in the late 1980s, the overall level of counter-recruitment work also fell considerably.

Fortunately, those groups that did continue to organize deepened their analysis and developed more appropriate and effective organizing approaches. For example, they focused on addressing the "poverty draft" by compiling and distributing literature on alternatives to enlistment. At the same time,

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DADT Dead: Victory after 18-year battle

Struggles Over Back Pay, Spousal Rights Continue

BY JEFF LAKE

It has been quite a roller coaster ride trying to follow developments concerning the military's "Don't Ask, Don't Tell" (DADT) policy over the last several months. I will attempt to summarize the most significant of these developments and analyze what lies ahead as the policy fades away.

On July 22, 2011, the President, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff transmitted to the congressional defense committees a written "certification" stating that they are prepared to im-

plement the repeal of 10 U.S.C. 654, commonly known as "Don't Ask, Don't Tell." By this action, the law was repealed 60 days after July 22. This waiting period was part of a Congressional compromise in order

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they sought to either eliminate recruiters from schools or at least secure equal access to give students alternative information. As the tactics evolved and improved, there were a number of important achievements. For example:

- The principle of equal school access for counter-recruiters was realized in many places, thanks to a combination of effective organizing and a few successful lawsuits decided in the late 1980s.
- Solid research produced high quality tools for grassroots organizing, including a professionally produced slide show that eventually evolved into a powerful educational DVD, "Before You Enlist," which is widely used today.
- In many places, school policies were passed that severely curtailed, or completely banned, recruiter access to students.
- Opportunities for successful cross-community and cross-issue organizing developed that had not been available to the traditional U.S. antiwar movement.

When the U.S. launched military action against Iraq in 1991, a large infu-

sion of new counter-recruitment activists occurred. Once again, many of the individuals were motivated by fear of a returning draft, based on the assumption that the war would last long enough to make conscription necessary (which, of course, it did not). Fortunately, by this time the core of counter-recruitment organizing was embedded with greater awareness of issues like the poverty draft and the broad danger posed by growing militarism in the educational system. This resulted in a more perceptive activist base that could carry on a bit longer when the fear of an impending draft eventually began to fade. This positive cycle of organizing energy held strong until it eventually began to follow a downward curve in the late 1990s.

9/11 brought radical change

Things changed radically, of course, after September 11, 2001. During the following eight years, counter-recruitment and school demilitarization activism steadily increased to an unprecedented intensity, mostly at the local grassroots level. There were national organizing conferences in 2003 and 2004 that drew 150-200 people, and in 2009 a national counter-recruitment and school demilitarization conference in Chicago brought together a crowd of 300

energetic organizers who came from as far away as Hawaii. The conference workshop topics and diverse participants were a compelling demonstration of how recruiting and the militarization of youth formed an intersection for many different issues, communities and generations.

One very important development was the formation in 2004 of the National Network Opposing the Militarization of Youth (NNOMY), which now offers on its Web site (www.nnomy.org) an enormous archive of online organizing and educational resources, as well as a directory of over 140 grassroots groups engaged in counter-recruitment or school demilitarization-related activity.

In the last two years, members of this network have been responsible for major successes like the following:

- In some of the nation's largest school districts and the entire state of Maryland, the military can no longer recruit using data gathered by giving the Armed Services Vocational Aptitude Battery (ASVAB) test in high schools.
- Activists have secured policies that strictly limit recruiting activi-

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ties in the three largest school districts (New York City, L.A. and Chicago) and a number of smaller ones, despite the mandate for recruiter access in No Child Left Behind.

- Though JROTC is almost impossible to remove once it is in a school, recent campaigns have succeeded in weakening it by mobilizing students and parents to protest mandatory JROTC enrollment, in-school rifle ranges, and the lack of school support for other courses critical to student success.

The nnomy.org Web site has information on all of these and other organizing successes.

Diminution of activism in Obama years poses challenges

Unfortunately, just as the antiwar movement has lost energy since Obama's election, so has the movement to oppose the growing influence of militarism on young people. Since 2010, the number of grassroots counter-recruitment groups has begun to shrink, and several key national organizations have either greatly reduced their support for the work (e.g., National AFSC) or completely disbanded (e.g., CCCO). Some of the organizations that remain are now having discussions about how to draw more attention to the issue and reverse the downward trend in activism. In the meantime, they continue to struggle to raise support and make a difference with diminished resources.

Based on past organizing experiences and some of the recent positive accomplishments, I can see two immediate areas in which help from law students and legal professionals could provide a critical boost to counter-recruitment and school demilitarization work:

1. ASVAB testing in high schools, which affects 600,000 students a year, raises a number of legal issues because it focuses on legal minors and is conducted without requiring parental approval or notification. Recruiters use the test to obtain highly personal information that includes a student's race/ethnicity, gender, Social Security number, birth date, contact information, future plans and detailed aptitude profile. So far, prohibitions on using the test for this purpose have been won only through intense struggles in individual school districts and, in one case statewide (in liberal Maryland). One NLG chapter did some preliminary research on relevant laws to positively influence a policy decision in the Los Angeles Unified School District. **Legal work is now needed to explore the possibility of action to affect ASVAB testing nationwide.**
2. JROTC is considered the most effective in-school recruiting tool for the Pentagon. Half a million high school students are enrolled in approximately 3000 schools. Not only does the program indoctrinate and produce a high enlistment rate, it also siphons off local school funds and displaces other classes that can be crucial to student success. Unfortunately, experience has shown that a JROTC unit is almost impossible to remove once it is introduced at a school. When they are removed, it is almost always because student enrollment has fallen below the required minimum of either 100 students or 10% of the student body. U.S. Code mandates this minimum, and a few dozen units are removed because of it each year, but in many cases where under-enrollment exists, including

where there have been organized student boycotts, the schools and JROTC staff take no action. They ignore relevant military regulations, the contract with the school district, and U.S. Code. If there were a way to require compliance with the mandated minimum enrollment level, it could finally make effective organizing possible against this significant presence of militarism in schools. **Legal work is needed to explore this possibility.**

What's at stake

In 2002, an urgent "Dear colleague" letter was circulated to social change and antiwar organizations, progressive media, and liberal foundations. It was signed by representatives of the AFSC, Central Committee for Conscientious Objectors, Center on Conscience and War, Project on Youth and Non-Military Opportunities, and War Resisters League. The letter included background information and began with the following warning:

We are circulating this packet to call your attention to an important issue that could affect everyone who is working for progressive social change in this country. We are extremely concerned that if it is not given more attention, it will have serious long-term consequences for organizations and foundations that are addressing a wide range of social justice and environmental causes.

The issue we are referring to is the growing effort by the U.S. military to affect the political and social consciousness of the country through its influence on young people, especially through its involvement in the educational system.

The rest of the letter pointed out that successful efforts for social change require the public's willingness to engage in critical, democratic

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discourse, yet the growing militarization of young people was moving the country in the opposite direction. It called on groups receiving the packet to help reverse this dangerous trend and listed suggestions for actions.

Today, the need to address the issue of youth militarization is just as compelling, because even though much

has been accomplished with organizing in the last three decades, the issue has not been given the attention it deserves. If the Pentagon continues to expand its involvement in the socialization process and more children are taught the values of militarism when they go to school, there will be much less that we can do in the future to affect the political climate. If we're going to reverse this trend, we

must do so now.

Rick Jahnkow is a researcher and organizer for the Project on Youth and Non-Military Opportunities (Project YANO, www.projectyano.org). Founded in 1984 and based in San Diego County, Project YANO does local organizing and provides resources to the national counter-recruitment and school demilitarization movement.

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to get the bill passed. Thus, DADT technically remained in effect until September 20, 2011.

Last-minute skirmishes preceding certification

The days leading up to the certification were somewhat chaotic. Former Secretary of Defense Gates left at the end of June saying certification was coming soon. However, he did not provide the certification. In early July, the Ninth Circuit Court of Appeals took action. The case *Log Cabin Republicans v. Gates* had been on appeal at the Ninth Circuit since the fall of 2010. At that time, the Ninth Circuit issued a stay of the worldwide injunction against enforcement of DADT. The stay was appealed to the U.S. Supreme Court, which allowed it to continue.

The Plaintiffs continually petitioned the Ninth Circuit to lift its stay. On July 6, 2011, the Ninth Circuit finally agreed with the Plaintiffs and lifted its stay of the injunction. Thus, the military was immediately ordered to stop enforcing "Don't Ask Don't Tell." On July 22, 2011, the day of the certification, the Ninth Circuit issued another Order and partially reversed its July 6 order.

While refusing to reinstate the District Court's complete injunction against DADT, the Ninth Circuit did enjoin the government from "investigating, penalizing, or discharging anyone from the military pursuant to the Don't Ask, Don't Tell policy." Arguments were held on September 1, 2011. Media observers attending the argument reported that the judges seemed to be leaning towards dismissing the lawsuit as moot.

Back pay for those discharged under DADT?

One obvious issue stemming from the litigation is that of the nearly 14,000 servicemembers who were discharged under DADT. Some of

them want to return to the military and make claims for back pay. It is unclear whether this issue will be addressed in the current litigation, or whether there will be other cases brought to directly address it.

After repeal is final, there are still issues concerning the partners and spouses of gay and lesbian servicemembers who are not recognized as partners or spouses by the federal government. In addition, given the longstanding homophobic culture of the military, it is unfortunately predictable that incidents of assault, harassment and discrimination against gay and lesbian servicemembers will continue to occur. Issues concerning the rights of gays and lesbians in the military will be the focus of upcoming struggles in the future as the fight for full equality continues. The MLTF will continue to work with our allies to monitor and combat all forms of injustice within the military.

In the end, the repeal of Don't Ask, Don't Tell, despite all the ups and downs, is a great victory. The MLTF congratulates all those who have worked for nearly 18 years to bring about the end of this cruel and ridiculous policy. In otherwise bleak times, this is most welcome news and history will show that this repeal was really a remarkable advance in the fight for human rights everywhere.

Jeff Lake is an attorney in San Jose, California. He is a member of the MLTF Steering Committee and an On Watch editor.

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Landmark decision by Ninth Circuit favors veteran's rights

BY BECCA VON BEHREN

In a landmark decision, the U.S. Court of Appeals for the Ninth Circuit on May 11, 2011 ruled that veterans have a constitutional right to receive “timely” and “effective” mental health care treatment and to have their Service Connected Death and Disability Compensation claims adjudicated more swiftly at the appeals level. The ruling will help hundreds of thousands of veterans who are currently waiting months to years to receive the mental health care and disability compensation benefits to which they are legally entitled and so desperately need.

The court stated that the VA’s “egregious” delays deprive veterans of their rights under the due process clause of the Fifth Amendment to the U.S. Constitution. The court remanded the case back to the District Court for additional evidentiary hearings to assist in determining what additional procedures or other actions on the part of the VA would remedy the existing due process violations. The case is *Veterans for Common Sense v. Shinseki*, 644 F.3d 845 (2011).

In July 2007 two veteran organizations, Veterans for Common Sense and Veterans United for Truth (collectively, “Veterans” in the Court’s opinion), sued the Department of Veterans Affairs for injunctive and declaratory relief to remedy delays in 1) the Veterans Health Administration’s (VHA) provision of mental health care, and 2) the Veterans Benefits Administration’s (VBA) adjudication of Service Connected Death and Disability Compensation (SCDDC) claims.

Courthouse doors closed to veterans

The District Court ruled in the VA’s favor on grounds conceptually similar to the doctrine of sovereign immunity. The lower court decided that although the plight of Veterans returning home from combat seeking health care from the VA is abysmal at best, it did not have the jurisdiction to hear the challenges because the Veterans Judicial Review Act protects the VA from suit in the federal courts. The opinion also states that a challenge against the VA for delay pursuant to the Administrative Procedure Act was not reviewable in this case.

The Ninth Circuit judges disagreed. Their opinion states that the “VA’s unchecked incompetence has gone on long

enough; no more veterans should be compelled to agonize or perish while the government fails to perform its obligations.” The court further stated that it had hoped Congress and the Executive branches would have come up with solutions to the VA’s “harmful shortcomings” while the case was pending. However, since no executive or congressional action has been taken, the court decided to step in and help our veterans.

The Veterans challenged the VA’s unreasonable delay in providing health care and adjudicating SCDDC claims under both constitutional and statutory grounds, specifically under the Fifth Amendment and the Administrative Procedure Act. The Ninth Circuit decided that the VA is legally required to provide veterans with “timely” and “effective” mental health care and “veterans who return home from war suffering from psychological maladies are entitled by law to disability benefits to sustain themselves and their families.” As a result, the VA’s unreasonable delay in administering care and adjudicating claims without sufficient procedural protections deprives veterans of their constitutional right to due process under the Fifth Amendment. However, the appellate court agreed with the lower court that the Veterans could not challenge the unreasonable delays under the Administrative Procedure Act. Thus, the Court of Appeals remanded the case back to the lower court to hold additional evidentiary hearings and find solutions to address the VA’s unreasonable delays.

This opinion DOES:

- Open the VA to lawsuits pursuant to the Fifth Amendment of the Constitution for due process violations. Prior to this decision, the VA has enjoyed almost total immunity from suit in the federal court system because of the Veterans Judicial Review Act.
- Find that the VA has violated the Veterans’ due process right to sufficient procedures to safeguard against unreasonable delays in the provision of mental health care and effective adjudication of SCDDC claims at the appeals level.
- Bounce the lawsuit back to the lower court with instructions that the lower court hold evidentiary hearings regarding the VA’s delays in the provision of mental health care and the adjudication of SCDDC claims at the appeals level. Because the court did find constitutional violations, the lower court will be in charge of mandating some form of solution. The type and nature of the solutions are still undetermined. Essentially the opinion says, “yes, your constitutional rights are being denied, and solutions are on their way.”

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This opinion does NOT:

- Allow veterans to bring constitutional challenges against the VA related to individual VA decisions. Challenges to individual decisions and experiences of delay are still blocked by the Veterans Judicial Review Act.
- Allow plaintiffs to challenge the VA's failure to act under the APA if the failure to act is based on the VA's failure to implement a broad and sweeping internal policy, or other broad sweeping actions. However, this opinion still leaves the door open to APA suits against the VA for failing to take "specific" and "discrete" actions that are required by law.
- Provide remedies. The Court of Appeals bounced the case back down to the lower court so the latter can conduct additional evidentiary hearings based on the appellate panel's ruling that the VA has violated the Veterans constitutional due process rights by its unnecessary and unreasonable delays in providing mental health care and adjudication of SCDDC claims at the appeals level.
- Find the VA in violation of any laws in relation to its procedures and practices at the initial claim phase at the Regional Office.

The Court's conclusion regarding Veterans Due Process challenge is the following:

"The current delays therefore constitute a deprivation of Veterans' mental health care without due process, in violation of the Fifth Amendment.

"We reverse the district court's judgment to the contrary, and remand for further proceedings. On remand, the district court shall conduct hearings in order to determine what additional procedures or other actions would remedy the existing due process violations in three core areas. The district court shall consider what procedural protections are necessary to ensure that:

- (1) individuals placed on VHA waiting lists for mental health care have the opportunity to appeal the decision in a timely manner and to explain their need for earlier treatment to a qualified individual;*
- (2) individuals determined to be in need of mental health care receive that treatment in a timely manner; and*
- (3) individuals with urgent mental health problems, particularly those at imminent risk of suicide, receive immediate mental health care."*

Some Choice Quotes from the Opinion

"On an average day, eighteen veterans of our nation's armed forces take their own lives. Of those, roughly one quarter are

enrolled with the Department of Veterans Affairs ("VA") health care system. Among all veterans enrolled in the VA system, an additional 1,000 attempt suicide each month. Although the VA is obligated to provide veterans mental health services, many veterans with severe depression or post-traumatic stress disorder ("PTSD") are forced to wait weeks for mental health referrals and are given no opportunity to request or demonstrate their need for expedited care. For those who commit suicide in the interim, care does not come soon enough. Like the cavalry of Alfred, Lord Tennyson's "Charge of the Light Brigade," these veterans may neither "make reply" nor "reason why" to the "blunder" of those responsible for their safety." (p. 1-2; 644 F.3d at 849-50)

"Veterans who return home from war suffering from psychological maladies are entitled by law to disability benefits to sustain themselves and their families as they regain their health. Yet it takes an average of more than four years for a veteran to fully adjudicate a claim for benefits. During that time many claims are mooted by deaths. The delays have worsened in recent years, as the influx of injured troops returning from deployment in Iraq and Afghanistan has placed an unprecedented strain on the VA, and has overwhelmed the system that it employs to provide medical care to veterans and to process their disability benefits claims. For veterans and their families, such delays cause unnecessary grief and privation. And for some veterans, most notably those suffering from combat-derived mental illnesses such as PTSD, these delays may make the difference between life and death." (p. 3; 644 F.3d at 850)

"Absent constitutionally sufficient procedural protections, the promise we make to veterans becomes worthless. When the government harms its veterans by the deprivations at issue here, they are entitled to turn to the courts for relief. Indeed, our Constitution established an independent Judiciary precisely for situations like this, in which a vulnerable group, that is being denied its rights by an unresponsive government, has nowhere else to turn. No more critical example exists than when the government fails to afford its injured or wounded veterans their constitutional rights. Wars, including wars of choice, have many costs. Affording our veterans their constitutional rights is a primary one." (p. 5; 644 F.3d at 851)

"Most veterans enrolled with the VA receive medical care at the VHA's community-based outpatient clinics. These clinics do not provide mental health care services, even though an unprecedented number of newly-discharged veterans have been diagnosed as suffering from mental disorders, in particular PTSD, as a result of military service in Iraq or Afghanistan. Approximately one out of every three soldiers returning from Iraq was seen in a VHA facility for mental health related treatment within a year of his return to the United States. The total number of patients is high; since October 2001, more than 1.6 million military personnel have served in Iraq or Afghanistan,



and as of the end of 2007, over 800,000 veterans of the wars in Iraq and Afghanistan were eligible for VA health care. (644 F.3d at 853)

PTSD is a leading mental health disorder diagnosis for those veterans. According to Dr. Arthur Blank, a psychiatric expert who testified before the district court, this disorder is a “psychological condition that occurs when people are exposed to extreme, life-threatening circumstances, or [when they are in] immediate contact with death and/or gruesomeness, such as [what] occurs in combat, severe vehicular accidents or natural disasters. It produces a complex of psychological symptoms which may endure over time.” Those symptoms include anxiety, persistent nightmares, depression, uncontrollable anger, and difficulties coping with work, family, and social relationships. From 2002 to 2003 there was a 232 percent increase in PTSD diagnoses among veterans born after 1972. A 2008 study by the RAND Institute shows that 18.5 percent of U.S. service members who have returned from Iraq and Afghanistan currently have PTSD, and that 300,000 service members now deployed to Iraq and Afghanistan “currently suffer PTSD or major depression.” Delays in the treatment of PTSD can lead to alcoholism, drug addiction, homelessness, anti-social behavior, or suicide. (644 F.3d at 853)

Veterans in general face a heightened risk of suicide. Studies show that suicide rates among veterans are much higher than among the general population. One such study considered by the district court, the “Katz Suicide Study” of February 2006, found that suicide rates among veterans were approximately 3.2 times higher than among the general population. The au-

thor of that study, a senior physician and administrator at the VHA, also estimated that “[t]here are about 18 suicides per day among American’s 25 million veterans” and that there are four to five suicides per day among veterans currently receiving treatment from the VA. Dr. Katz subsequently noted that the VHA’s “suicide prevention coordinators” had identified approximately 1,000 suicide attempts per month among the veterans treated in VHA medical facilities.” (p. 10-12; 644 F.3d at 853)

“The May 2007 OIG report concluded that there was a widespread absence of effective suicide prevention measures at VHA facilities. The report found that 61.8 percent of VHA facilities had not introduced a suicide prevention strategy to target veterans returning from Iraq and Afghanistan and that 42.7 percent of such facilities had not introduced a program to educate first-contact, non-medical personnel about how to respond to crisis situations involving veterans at risk for suicide. This report also found that 70 percent of VHA facilities had not introduced a system to track veterans who presented risk factors for suicide and 16.4 percent of VHA facilities had not implemented a medical referral system for veterans with risk factors. By 2009, each of the 153 VHA Medical Centers had a suicide prevention officer, charged with overseeing the clinical care of at-risk patients. There were, however, no suicide prevention officers at any of the approximately 800 community-based outpatient clinics, where most veterans receive their medical care. (644 F.3d at 854)

The effect of VHA’s failure to implement a systematic program designed to reduce veterans’ risk of suicide has been magnified

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NEW

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by its failure to adopt measures to ensure that veterans with mental health disorders are swiftly identified and offered treatment. As the district court found, the May 2007 OIG report identified significant delays that prevented veterans from obtaining timely physician referrals for the treatment of depression and PTSD. For example, the report found that where a primary care provider refers a veteran suffering from depression with symptoms of moderate severity, only 40 percent of VA facilities reported a same-day evaluation, whereas 24.5 percent of VA facilities reported a waiting period of two to four weeks, and 4.5 percent of facilities reported a waiting period of four to eight weeks. Similarly, only 33.6 percent of VA facilities reported same-day evaluation for individuals referred with symptoms of PTSD, while 26 percent reported wait times of two to four weeks, and 5.5 percent reported wait times of four to eight weeks. These extensive waiting times can have devastating results for individuals with serious mental illnesses.” (p. 13-15; ; 644 F.3d at 854-55)

Approximately 3.4 million veterans currently receive monetary benefits from the VBA. The district court found that many recipients of service-connected death or disability compensation benefits are totally or primarily dependent upon those benefits for financial support. The application procedures for such benefits are complex, and the district court found that, in light of statistics showing the limited formal education of the majority of recent veterans, many of them may have difficulty applying for the benefits to which they are entitled without substantial third-party assistance. (p.18; 644 F.3d at 856)

Throughout the appeals process, veterans (or their surviving relatives) seeking service-connected death and disability compensation are constrained by various time limits, and a failure to timely file at any point in the process can result in forfeiture of the appeal. In contrast, the VBA is not subject to any statutory or regulatory time limits at any step of the process. (p. 24-25; 644 F.3d at 858-59)

The district court found that, following remand, it takes the VBA an average of 499.1 days to grant or withdraw a service-connected death and disability compensation claim, or to return it once again to the Board. It takes even longer, on average, for PTSD claims to be processed on remand – 563.9 days. Many veterans suffering from serious disabilities, including PTSD, suffer substantial and severe adverse consequences as a result of this lengthy delay. In just the six months between October 2007 and April 2008, at least 1,467 veterans died during the pendency of their appeals. We understand these cases to support the commonsense proposition that an unreasonable delay in the delivery of an entitlement can amount to a deprivation of that entitlement.” (p. 28)

Veterans who are deprived of timely mental health care are

denied the opportunity to rehabilitate in a more timely manner and to avoid sinking deeper into depression and disability. And, of course, for those veterans whose illness causes them to take their own lives in the interim, the deprivation is final. (p. 62; 644 F.3d at 860)

“If there is any justification for the VA’s interest in maintaining the status quo, it has not told us, and we cannot imagine one.” (p.71; 644 F.3d at 877)

Here, the government is not prioritizing the diagnosis and treatment of patients over unnecessary delay. To the contrary, it is embracing delay over effective treatment. (p. 71; 644 F.3d at 877)

The court’s conclusion

The United States Constitution confers upon veterans and their surviving relatives a right to the effective provision of mental health care and to the just and timely adjudication of their claims for health care and service-connected death and disability benefits. Although the terms of the Administrative Procedure Act preclude Veterans from obtaining relief in our court for their statutory claims, their entitlements to the provision of health care and to veterans’ benefits are property interests protected by the Due Process Clause of the Fifth Amendment. The deprivation of those property interests by delaying their provision, without justification and without any procedure to expedite, violates veterans’ constitutional rights. Because neither Congress nor the Executive has corrected the behavior that yields these constitutional violations, the courts must provide the plaintiffs with a remedy. We therefore remand this case to the district court with the instruction that, unless the parties resolve this dispute first, it enter an order consistent with this opinion. (p. 102-103; 644 F.3d at 890)¹

Obama appealed 9th circuit decision to en banc panel

Last month the Obama administration asked for a review before an en banc panel of the Ninth Circuit. Clearly the administration is not happy to have the courts step in on behalf of veterans. The MLTF will continue to monitor this litigation and will report on any new developments in subsequent issues of *On Watch*.

1. One of the Ninth Circuit panelists, noted conservative Judge Alex Kozinski, dissented, offering the judicial restraint viewpoint. He accused the majority of “dramatically overstep[ing] its authority” in deciding the case on constitutional grounds, contending, “Much

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MLTF NEWS & NOTES

On Watch has begun a new “news and notes” column for reports and notes about cases, policy changes, military trends, MLTF members’ activities, and the like. Readers are invited to share information through this column. Items for the next issue should be sent to nlg.mltf@gmail.com by November 16.

COPS NAB LONGTIME ARMY AWOLS – MLTF co-chair James Branum tells us that counselors at the G.I. Rights hotline have reported an unusual increase in the number of long-time Army AWOLs being apprehended by local police. These soldiers were often AWOL for several years (in one case, 10 years) but had not previously been contacted by the Army about their status. Rumor has it that USADIP (the US Army Deserter Information Point at Fort Knox) has put pressure on local AWOL apprehension units to clear their books of old cases, where AWOL soldiers were not properly listed as being “AWOL” and/or been dropped from the rolls. We have no idea whether this trend will continue or not, but it does seem to indicate that there may be an increased need for legal resources in the months ahead.

AVOID FT. POLK, LA – Steve Woolford, a G.I. Rights Network counselor at Quaker House, warns against surrendering clients to Ft. Polk, LA, for transportation to other bases. Rather than give AWOL soldiers

stragglers orders and plane tickets to their home base, the command at Polk is housing them in the local county jail, voluntary surrender notwithstanding, until military escorts can pick them up.

GARDEN PARTY IN THE OFF-ING? Rai Sue Sussman (San Francisco) tells us that she is moving her office. For the time being, colleagues and clients can reach her at rai-sue@gmail.com. Rumor has it that the new office has a garden.

NEW BAMLTP TRAINING MATERIALS – The Bay Area Military Law Panel and MLTF are distributing a new version of the BAMLTP training materials, updated as of May, 2011, and now available on CD. Along with a number of MLTF memos are discharge checklists, sample letters and forms for use in military cases, and important regs. The CD is available for \$30, and the binder plus CD for \$105 plus shipping. For ordering information, contact nlg.mltf@gmail.com.

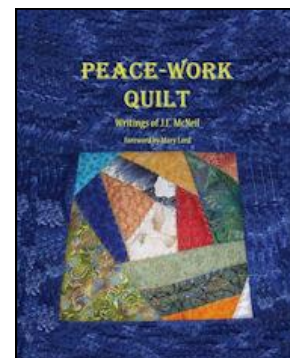
MLTF ASSISTS IN CANADA COURT VICTORY – Congratulations to the MLTF’s Marjorie Cohn and Kathy Gilberd, whose written testimony on discriminatory application of prosecutorial discretion in military resistance cases contributed to a favorable decision in a Federal Court of Canada case. The Court overturned a denial of refugee status for Army resister Chris Vassey.

“SIR, NO SIR” SHOWN – Our own Teresa Panepinto reports that the San Francisco chapter recently showed “Sir, No Sir” as part of its

summer film series. MLTF member Rai Sue Sussman, speaking on behalf of the Bay Area Military Law Panel, and allies from IVAW led a panel discussion on military issues.

CONGRATS – Many congratulations to MLTF members who are being honored at the NLG Convention. Karen Detamore from Philadelphia will receive the Ernie Goodman Award, and Brad Thomson from Chicago will receive the Legal Worker of the Year award. Congrats!

VETERANS RIGHTS TRAINING SEMINAR AVAILABLE ONLINE Teresa Panepinto, with other experts in veterans law, led a six-hour training seminar on veterans rights and discharge review in conjunction with the Public Law Institute. The seminar is available at <http://www.pli.edu/Content.aspx?dsNav=Ny:True,Ro:0,N:4294924479-167&ID=133746>



PEACE-WORK QUILT PUBLISHED – MLTF member J.E. McNeil has published a collection of her es-

says, *Peace-Work Quilt*. Copies of this elegant book can be purchased for \$15 from the [Center on Conscience and War](http://www.CenteronConscienceandWar.org), 1830 Connecticut Ave., NW, Washington, DC 20009.

(Continued from page 8)

as the VA's failure to meet the needs of veterans with PTSD might shock and outrage us, we may not step in and boss it around. Congress erected a big 'keep out' sign for us in the Veterans' Judicial Review Act (VJRA) . . . The exclusive avenue for review of the VA's decisions is to file an appeal with the Board of Veterans' Appeals (BVA), a tribunal within the VA." *Veterans*, 644 F.3d at 891, 905.

Becca von Behren is an attorney at Swords to Plowshares and

provides free legal assistance to veterans seeking VA benefits and military discharge reviews. Becca received her undergraduate degree from Skidmore College in Studio Art and English Literature and her law degree from Columbia University School of Law. Prior to and during law school Becca interned and volunteered at organizations such as the Criminal Justice Law Center in Albany New York, the Health Law Unit at the Legal Aid Society of New York, and the ACLU of Vermont.



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Courage to Resist publishes *About Face: Military Resisters Turn Against War*

A new book by Courage to Resist features the voices from their audio project with exclusive interviews with Noam Chomsky and Daniel Ellsberg discussing the history of GI resistance from the Vietnam War to Bradley Manning and the current WikiLeaks revelations.

How does a young person who volunteers

to serve in the U.S. military become a war-resister who risks ostracism, humiliation, and prison rather than fight? Although it is not well publicized, the long tradition of refusing to fight in unjust wars continues today within the American military.

Resisters describe in their own words the process they went through, from raw recruits to brave refusers. They speak about the brutality and appalling violence of war; the constant dehumanizing of the enemy—and of our own soldiers—that begins in Basic Training; the demands that they ignore their own consciences and simply follow orders. They describe how their ideas about the justification for the current wars changed and how they came to oppose the policies and practices of the U.S. empire, and even war itself. Some of the refusers in this book served one or more tours of duty in Iraq and Afghanistan, and returned with serious problems resulting from Post-Traumatic Stress Disorder. Others heard such disturbing stories of violence from returning vets that they vowed not to go themselves. Still others were mistreated in one way or another and decided they'd had enough. Every one of them had the courage to say a resounding "NO!" The stories in this book provide an intimate, honest look at the personal transformation of each of these young people and at the same time constitute a powerful argument against militarization and endless war.

Also featured are exclusive interviews with Noam Chomsky and Daniel Ellsberg. Chomsky looks at the U.S.-led wars in Iraq and Afghanistan and the potential of GI resistance to play a role in bringing the troops home. Ellsberg relates his own act of resistance in leaking the *Pentagon Papers* in 1971 to the current WikiLeaks revelations of U.S. military secrets.

Courage to Resist organizers will be travelling the United States through next spring using *About Face* as a way to discuss the international effort to save Bradley Manning's life.

What people are saying about *About Face*

"This book documents the resistance of American heroes—resistance to illegal wars, to immoral wars, and to government secrecy, that threaten the very foundation of our democracy. A must-read for every American."

—**Marjorie Cohn**, co-author, *Rules of Disengagement: The Politics and Honor of Military Dissent*

"About Face gives us important insights into the consciences of women and men who volunteer for the military but find they cannot obey orders to fight in illegal wars. These are brave and loyal Americans who are willing to challenge the U.S. government and perhaps go to jail rather than betray their inner voices that say NO to these wars!"

—**Ann Wright**, retired U.S. Army colonel and diplomat who resigned in protest of the invasion of Iraq, author of *DISSENT: Voices of Conscience*

"About Face pulls down the veil of what honorable service in today's U.S. military really means. When new soldiers swear to support and defend the U.S. Constitution by following lawful orders, what are they to do when they are given unlawful orders? About Face provides raw examples of precisely what soldiers are doing who take their oath seriously."

—**Dahr Jamail**, author of *The Will to Resist: Soldiers Who Refuse to Fight in Iraq and Afghanistan*

"During this time of war it is vital that every American take a moment to listen to the first-hand accounts of those who have served on the front lines and those who refuse to fight."

—**Aaron Glantz**, author of *The War Comes Home: Washington's Battle Against America's Veterans*

"It was a privilege to read this book. As a veteran, it was especially meaningful to me because I know some of the participants personally. It certainly opened my eyes and heart to their struggle. I know that it will have the same impact to everyone who reads it. It is especially compelling because it gives a wonderful cross-section of veterans in their struggle with the Iraq and Afghanistan Wars."

—**Dennis Lane**, former executive director, Veterans for Peace

MLTF Convention Events

THURSDAY, 8:30 AM - 12:30 PM

CLE "Using Civil Practice to Represent GIs"

See box below for info and registration.

THURSDAY, 1:00 TO 4:00PM

MLTF Membership meeting:

Note time change from previous announcement

Partial meeting agenda:

- a presentation on perpetual war and its implications for our work, by David Gesspass
- steering committee elections
- priorities and projects for the coming year

After the meeting we will head for the hotel's pub for beer, snacks and informal conversation.

SATURDAY OCT. 15 4:45 - 6:00.

Countering Military Recruitment Workshop:

We will look at legal and activist strategies for counter-recruitment.

Presenters:

- Reber Boulton
- Oskar Castro
- Harold Jordan
- Maria Santelli
- Azadeh Shahshahani

Also check out the MLTF literature table for our new BAMLPL/MLTF training CD, new and updated legal memos, and some serious arts and crafts.



MLTF's NLG Convention CLE

Using Civil Practice to Represent GI's: Civil Litigation Remedies in Discharges, Deployments and Other Cases

Thursday, Oct. 13 ■ 8:30am - 12:30pm

With: Louis Font, Peter Goldberger, James Klimaski and Lynn Miller

Cost: Guild attorneys \$75; other attorneys \$100; law students and legal workers \$25; scholarships available.

For further info, phone MLTF at 619-463-2369 or email to nlg.mltf@gmail.com.

Advance Registration for CLE

Name: _____

Email: _____

- I enclose \$_____ for registration I'll pay registration at the door

Mail with check to: MLTF, 730 N. First St., San Jose, CA 95112

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:

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