



ON WATCH

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Representing Members of the Armed Forces in Federal Court on an Emergency Basis

BY LOUIS FONT

Attorneys, paralegals, and members of the military service should learn to spot those situations in which a federal lawsuit can be filed on an emergency basis on behalf of a member of the military service. Such a lawsuit may result in a federal district court judge granting the emergency relief sought or, if emergency relief is denied by the court, may still result in the client obtaining relief from military commanders while the lawsuit is pending in federal court on the merits. Of course, if emergency relief is denied by the court, it is still possible that the federal court will later grant the relief requested in the underlying federal complaint or petition for writ of habeas corpus.

In effect, a serious, non-frivolous federal complaint or petition is a direct message to the highest levels of the Pentagon, civilian and military. Such a message may communicate to high-ranking persons, through the facts enumerated in the complaint, that the servicemember is entitled to relief, that subordinate commanders have been acting improperly, or that fairness dictates that the servicemember be discharged or granted other relief by the military.

Preparing the Federal Case

Analysis of any particular fact situation should commence with review of *Mindes v. Seaman*, 453 F.2d 197 (5th Cir. 1971). In *Mindes* a panel of judges of the U.S. Court of Appeals for the Fifth Circuit carefully analyzed and reviewed those situations in which a federal court may review military decisions. *Mindes* has been adopted by many of the federal circuits. See, e.g., *Williams v. Wilson*, 762 F.2d 357, 359 (4th Cir. 1985) ("In *Mindes* ... the Fifth Circuit developed an approach that has since become widely accepted by the federal courts for determining whether particular actions of military authorities are properly reviewable by the civilian courts"); *Nieszner v. Mark*, 684 F.2d 562 (8th Cir. 1982 (applying *Mindes*)).¹

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GIRN, MLTF and GI coffeehouses representatives at 2012 GIRN conference. From left: Bill Galvin of Center on Conscience & War and GIRN co-chair; Lori Hurlebaus, director of *Under the Hood* in Killeen TX.; James M. Branum of MLTF; Alex Bacon, director of *Coffee Strong* in Seattle.

Fifth annual GI Rights Network conference shows progress, solidarity

BY RENA GUAY

MLTF had a good showing at the 2012 GI Rights Conference, held from May 31 – June 3 in Fayetteville, Arkansas, with 13 members in attendance. Several workshops at the conference were conducted by MLTF members, or organized with MLTF support. Beyond this strong presence, other outreach efforts included a table set up in the large meeting room/dining hall that featured a new vinyl banner displayed for the first time, the Summer 2012 issue of *On Watch* (hot off the press), an updated training CD, a new MLTF brochure, memos of interest to the GIRN lay counselors, and other literature. There were even craft items offered for sale to help with the MLTF fundraising efforts.

Besides GI Rights Hotline counselors from across the country, other attendees included

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Among the reasons for the federal judiciary to review military decisions are violations by the military of Constitutional dimension and violations by the military of statutes or military regulations. On the other hand, the Mindes Court pointed out that federal courts will not address routine matters of everyday military life. For example, denial of a request for leave is not usually an issue worthy of taking to federal court, both because whether or not leave is granted is usually a relatively insignificant event and because the granting or denial of leave is standardless and is usually wholly within the discretion of the member's immediate commander.

In contrast, a life-and-death situation in which a command shows deliberate indifference to the serious medical needs of a member of the military service is cognizable by the federal courts as a violation of the Fifth Amendment to the Constitution. See *Cushing v. Tetter*, 478 F. Supp. 960 (D. R. I. 1979) (finding for the service member, issuing an injunction barring transfer orders, citing *Mindes* and explaining, "Plaintiff's Fifth Amendment claim ... is quite strong. In the most literal sense, he claims that a return to his former unit would deprive him of life and liberty without due process.")

Illustrative Cases

Types of cases in which it may be possible to file an emergency petition in federal court include the following:

- 1) transfer or deployment cases, that is, a lawsuit challenging transfer orders in federal district court, particularly if the military is violating a statute or regulation and great distances and hardship are concerned;
- 2) "safe return"/transfer cases, or cases in which the servicemember is allegedly in AWOL or deserter status but surrenders to military control at a military base within the

court's jurisdiction, and immediately or soon thereafter files suit to restrain transfer orders to report to another base, and in issuing the transfer orders the military failed to follow regulations or committed violations of Constitutional dimension;

3) recruiter fraud or malpractice cases, in which a servicemember seeks habeas corpus relief (discharge) based upon having been fraudulently enlisted in the armed forces;

4) medical emergency cases, in which strong medical evidence exists that if the federal judge does not intervene the likelihood exists that the servicemember will suffer irreparable harm, such as commit suicide or homicide or his/her medical condition will further deteriorate;

5) hardship cases, in which the member's hardship claims are serious, and the military's review is perfunctory, dilatory or nonexistent;

6) discharge cases, in which the servicemember has strong claims that he or she must be discharged from the military but the military, contrary to statute and/or regulations, refuses to discharge the member from the military service; and

7) punitive transfer order cases, wherein the servicemember contends that transfer orders are issued for punitive reasons, usually involving a reason for retaliation by military authorities and violation of a statute or regulation to effectuate the transfer. This sort of lawsuit should point out to the federal court that nowhere in the UCMJ, Title 10 U.S.C. Sections 801-946, or in the Manual for Courts-Martial is transfer from one military installation to another authorized as punishment.

Exhaustion of Administrative Remedies

Usually, a prerequisite to obtaining relief from a federal court is that the servicemember has exhausted adminis-

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trative remedies. The federal courts want to make certain that the military has had a chance to decide those matters that come before the court, that the record is complete, and that the federal judge therefore knows the military's position. Exhaustion should be accomplished via the military procedures available. One remedy that may be available and utilized if the servicemember is on active duty is Article 138, UCMJ, 10 U.S.C. Sec. 938. However, when exhaustion is not possible because there is no time or insufficient time to exhaust, counsel should be prepared with case law and argument pointing out that exhaustion would be futile or there is insufficient time for exhaustion or there is some other legal reason exhaustion is not required.

Sometimes while administrative remedies are pending within the military, the military nonetheless takes precipitous action, such as issuing orders that the servicemember report to active duty before the military reaches a final decision or requiring that the servicemember be deployed. This may happen, for instance, in hardship cases or conscientious objector cases. The military may issue orders to report with a tight deadline.

It may be the best course under such circumstances to contest the orders, such as by email to the issuing authority, and then file in federal court. The federal complaint and motion for emergency relief should assert that the exhaustion process has commenced but the administrative action has not been ultimately decided by the military, and that the court should nevertheless take action because of the emergency nature of the case. In such a situation it would not be unusual for the court to require the military to make a final administrative decision on an expedited basis, while the case is pending in federal court.

Written Submissions to the Federal Court

A petition for a writ of habeas corpus and for other relief, or a complaint for reliefⁱ, should be accompanied by a memorandum of law pointing out the basis for the court's jurisdiction and showing that the court has the power to intervene and should do so in the particular case. The federal judge and his or her law clerks may never before have encountered a lawsuit by a person who is a member of the armed forces. It is important that the complaint and accompanying filings be as complete, legally sound, and easily understood as possible.

In conscientious objector cases there exists a vast body of case law (more than 900 cases at last count, including Supreme Court precedent) which delineates the circumstances under which federal judicial intervention is appro-

priate. But there is no comparable large body of case law concerning other circumstances that warrant federal district court review of military decision-making. One reason for the lack of reported cases is that many cases are filed and litigated but do not result in a reportable decision. The case may end abruptly by the military cancelling orders or granting some other relief, such as discharging the servicemember. Accordingly, it is fortunate that the *Mindes* specifies bases for judicial review in all categories of cases, not just those pertaining to conscientious objectors.

Writ of Habeas Corpus Procedure

At present, many federal courts require electronic case filing, including electronic filing of the petition or complaint and other initial papers. Local counsel may be required to appear in the case and electronically file the pleadings. As always, the local rules of the court must be consulted. I suggest filing a Petition for Writ of Habeas Corpus and for Other Relief, if the servicemember has sought and is seeking discharge and also has other grounds for relief, such as injunctive relief and/or declaratory relief. The Petition should be accompanied by a Memorandum in Support of the Petition for Writ of Habeas Corpus and for Other Relief. This memorandum does not need to be lengthy but should cite Supreme Court precedent on habeas relief for servicemembers, and other authority for jurisdiction by the federal district courtⁱⁱⁱ. It may be prudent to cite *Mindes v. Seaman* and one or more cases that apply or adopt *Mindes* in the circuit where the case is filed. The Petition should be accompanied by an Emergency Motion for Temporary Restraining Order, and a Memorandum of Law in Support of Emergency Motion for Temporary Restraining Order, if the situation calls for such a motion. The emergency motion for a temporary restraining order and the memorandum of law in support of the motion should be carefully tailored to conform with the legal standard in the circuit for the granting of a temporary restraining order. If time allows, counsel should also file exhibits to the petition which would include the administrative record to date and any binding military regulations that have been violated. The exhibits should allow a federal court to make an informed decision on the motion for a temporary restraining order and on the merits of the case.

After electronic filing, it is a matter of awaiting a decision by the federal court on the motion for an emergency restraining order. The greater the chance of significant, life-changing, irreparable harm, the more likely it is that a federal court will grant the restraining order. If the restraining order is granted, counsel must then prepare for obtaining a preliminary injunction, and additional briefing



on the merits. If the emergency temporary restraining order is denied, the case continues, unless all that has been requested is injunctive relief. If the case continues, the government is required to file an answer or a responsive pleading. One way for the government to avoid having to respond to the petition or the complaint is to grant the servicemember the requested relief. On occasion, this does happen.

Be Prepared to Respond to the Government

When the government files a response (which may be as early as responding to a motion for an emergency restraining order) counsel should be prepared to oppose the likely motion to dismiss filed by the government. That motion will invariably cite *Orloff v. Willoughby*, 345 U.S. 83 (1953) and other Supreme Court precedent to the effect that federal judges should show deference to military decision-making.

The government is particularly fond of quoting a line out of *Orloff* that: “. . . judges are not given the task of running the Army.” *Id.* at page 93. Counsel should be prepared to argue, as early as during a hearing on an emergency restraining order, that *Orloff* is distinguishable. *Orloff* was decided by the federal courts on the merits. Furthermore, *Orloff* decided whether it was proper that a doctor who was drafted into the military be assigned duties that were not commensurate with his skills and training as a doctor. The Supreme Court held that the military

had broad discretion in determining the doctor’s duties and that discharge was not required. The Supreme Court found that Dr. Orloff could cite to no Constitutional provision, statutory authority, or military regulation that was violated by the military in his assignment to duties. As stated by the Third Circuit, “. . . *Orloff* teaches no more than that the exercise of military discretion involving duty assignments will not be reviewed by a court if there has been no statutory or constitutional violation.” *Dillard v. Brown*, 652 F.2d 316, 322 (3rd Cir. 1981). Counsel should be ready to point out that in the case filed there exist Constitutional, statutory, or regulatory provisions which have been violated by the military. Nor did *Orloff’s* duties or orders subject him to irreparable harm. Furthermore, as pointed out in *Mindes*, federal judges are particularly equipped and skilled in deciding Constitutional issues, not the military, and the federal courts are expert at evaluating whether or not statutes and regulations have been violated.

If anyone has any comments or questions about this article, the author can be reached at louisfont@aol.com.

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i. But see, e.g., *Dillard v. Brown*, 652 F.2d 316 (3rd Cir. 1981) (declining to follow the *Mindes* approach, and pointing out that the rights enjoyed by those in the military service do not correspond identically to those enjoyed by civilians, and that each constitutional claim must be evaluated in relation to the specific military justification alleged).

ii. It is often appropriate when bringing a petition for habeas corpus to also ask for other relief as well.
iii. See, e.g., Title 28, U.S. Code Section 2241(c)(1); *Strait v. Laird*, 406 U.S. 341 (1972) (concluding that a reservist called to active duty is “in custody” for habeas purposes).

★★ **JOIN THE MLTF!** ★★

Membership dues: \$25 for one year (with NLG membership)

includes subscription to *On Watch*

On Watch subscription only: \$20 for one year

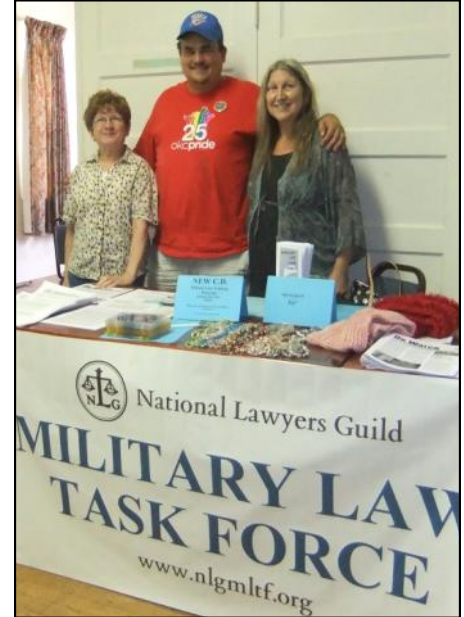
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Left: Kathy Gilbert facilitates workshop on sexual assault in the military, with Rachel Natelson of SWAN joining via Skype.

Right: Rena Guay, James M. Branum and Kathy Gilbert at the MLTF table sporting the new vinyl banner.



Operation Recovery, and an interest in finding ways that the Network groups can work with these projects, or at least put interested servicemembers in touch with them. While GIRN folks maintain their commitment to non-directive counseling, I think there was an increased willingness to explore referrals and perhaps shared cases with the coffeehouses and OR.

Between sales of the MLTF/BAMLP training CD and Kathy's handmade craft items, the table brought in \$200.

Offering the training CD at the conference led to a grant proposal to GIRN from the Center on Conscience and War to purchase about 16 CDs from MLTF for distribution to local counseling groups. "A nice compliment," Kathy noted, "whether or not the proposal is accepted."

An interesting and hopeful side story to the conference is that MLTF member Alison Carter, who previously volunteered with the Alaska GI Rights hotline and now lives in Fayetteville, will be starting law school in the fall.

Rena Guay is Executive Director of the Oklahoma Center for Conscience and Peace Research.



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representatives from two GI coffee-houses — Coffee Strong (affiliated with IVAW/ Operation Recovery) and Under the Hood — the Center for Conscience and War, Courage to Resist/ Bradley Manning Support Network, The Civilian Median Resources Network, and, by Skype, the Service Women's Action Network. The networking this allowed has already proved valuable, as communication and assistance between the groups continues to develop.

MLTF Executive Director Kathy Gilbert gave an assessment of the conference to the Steering Committee shortly following the event:

This was a slightly smaller conference than usual, perhaps because of high air fares to Fayetteville, AR, but close to 40 people attended from 14 GIRN groups [...] Counselors tended to be among the more experienced folks in the network, and the workshops tended to be somewhat more "advanced" than those at previous conferences. There were four CLE sessions, which [MLTF members] James [Branum] and Rena [Guay] recorded for future use on our website – a workshop on sexual assault policy by Rachel Natelson and me, one on AWOL policy by James, and two on CO cases by Deborah Karparkin, all Task Force members.

"[T]he Task Force was very well received, as usual, for our training materials and consultations as well as attorney referrals," Kathy reported in her June director's report.

In an advanced workshop on AWOL issues, James Branum found that the level of knowledge on the intricacies of PCF surrender, mitigation and follow-up were significantly improved among the network's lay counselors. He also noted that "Interest in conscientious objection was pretty high. Deborah's workshop was very well-attended and the discussion on the topic was lively."

Jeff Patterson of Courage to Resist and The Bradley Manning Support Network gave a presentation about the Manning case that was an inspiring reminder about the importance of resistance.

Kathy also reported that new MLTF member Geoff Lobenstine initiated a useful discussion during the brief Task Force meeting at the conference about recruiting attorneys to "work on discharge cases, and looking for other attorney specialties that might fit well with areas of military law."

There is a growing consensus among GIRN members and allies that a closer relationship with the coffeehouses will be beneficial for all parties, something which the coffeehouse representatives expressed support and appreciation for. Their clear message is that they face serious problems with funding and other support and need more resources, fiscal and otherwise. Again from Kathy's report:

There was much enthusiasm at the conference for the coffeehouses and

‘Swords’ Helps Medic Overcome Discharge Injustice



BY KATHERINE DWIGHT

Swords to Plowshares, a nonprofit veterans’ service organization in San Francisco, recently won an upgrade for an Army medic who was booted out of the Army with an Other Than Honorable (OTH) discharge. He should never have received an OTH because his misconduct resulted directly from PTSD stemming from his service in Iraq during the height of the insurgency. The case resolved in an unusual manner that *On Watch* readers may find interesting.

B.D. deployed to Iraq in 2005 when Iraqi civilians and American soldiers were being killed and injured at an alarming rate. B.D. served at the 10th Combat Support hospital, the busiest trauma center during the war, providing medical treatment that greatly exceeded the level of care for which he trained. Described as a “slaughterhouse” by a lieutenant colonel who worked there, the hospital regularly received casualties with full body burns, disfigurement and multiple missing limbs. Often the wounded soldiers were awake when they arrived, pleading for their life, for relief from the pain, or for their legs or arms to be saved.

Medics at the hospital helped soldiers who would not survive call home to say goodbye to loved ones. Frequently, B.D. was ordered to pull the plug on life support for dying soldiers. He then waited for them to die and transported the bodies to the morgue. Through it all, his command praised B.D. for his leadership, his hard work and his ability to perform his duties under conditions so traumatic that other young medics were unable to function.

B.D. began suffering PTSD upon his return

Upon return to the United States, B.D. began to suffer immediately. On the very first night back, his parents took B.D. out for dinner, but he was so notably agitated and shaky that they had to leave the restaurant. Doctors at Fort Carson diagnosed him with PTSD and prescribed an antidepressant, an anti-anxiety medication, and a sleeping aid. During the next couple of months, B.D. attempted to end his life twice by drug overdose, and a urinalysis came up positive for cocaine and marijuana.

B.D. first attempted suicide by overdosing on cocaine. After that failed, he made a second attempt using pre-

scription medications. He ingested numerous pills and left his room in a semiconscious or unconscious state. He managed to break into a privately owned Jeep and lie down in the back seat, facts of which he has no recollection. He was discovered in the back seat of the Jeep and transported to a hospital, then he spent a week in a psychiatric facility.

His military doctors discussed initiating a PEB proceeding but upon return to base, B.D. learned that his command had preferred court-martial charges of “breaking and entering” the Jeep and testing positive for cocaine. Notably, his command at Fort Carson were not the same officers that served with B.D. in Iraq and had not experienced the trauma of war. Two weeks after discharge from the psychiatric hospital, B.D. accepted a Chapter Ten with an Other Than Honorable discharge in lieu of court martial.

After discharge, B.D. continued to suffer from panic attacks, nightmares, flashbacks, as well as headaches from a post-deployment head injury incurred during a car accident. At first, he was turned away without treatment from the VA medical center and only with fierce advocacy from a VA OIF/OEF transition coordinator was he granted humanitarian care for his service-connected conditions. A couple of years after his discharge, B.D. contacted Swords to Plowshares for assistance with obtaining VA disability compensation and a military discharge upgrade. His OTH discharge made him ineligible for VA disability pay.

Process for seeking upgrade

We decided to seek an upgrade first from the Army Discharge Review Board through a paper-only review so that if denied we could get a second review through an in-person hearing. If denied again after the hearing, we could then turn to the Board for Correction of Military Records. The Army Discharge Review Board bases its decisions for upgrade on two major criteria: propriety, i.e. whether there were any irregularities in the discharge procedures, and equity, i.e. whether the discharge was fair and just. We made our case based on equity.

We submitted an application that contained powerful letters from his command at the Baghdad hospital that mov-

ingly described his commitment to all the wounded who were under his care. It was said that he personally put his hands on thousands of American soldiers and saved many lives, and he was recommended as a mentor for younger medics. A lieutenant colonel called B.D. “a true American hero.”

Despite these moving letters, we still had to address his misconduct. While there were just two court-martial charges – the Jeep episode and a positive cocaine test – there were other incidents of misconduct including failing to show up for training and a civilian arrest for reckless driving. Although Fort Carson received media attention for failing to diagnose and treat soldiers with PTSD around this time, B.D.’s Fort Carson doctors believed he had “genuine” PTSD (i.e. not malingering) and treated him for chronic, severe post-traumatic stress. We argued that the severity of his PTSD symptoms had led him to drug use and two suicide attempts and that his OTH was inequitable given the quality of his combat service.

Perhaps most damaging to our case because it occurred prior to deployment, B.D. had admitted to taking an oxycontin pill during AIT. This we argued was a result of youth and poor judgment but it concerned us because we felt the Board might point to that incident as an example of his character flaws. We felt it was unlikely we could obtain an Honorable discharge for him, but hoped for a General Under Honorable Conditions discharge to restore his access to most VA benefits.

Board, violating its own regs, denies application

Fourteen months after we submitted our application we received a denial. The Army Discharge Review Board uses “analysts” to review applications and to make recommendations for disposition of its cases. In B.D.’s case, the analyst recommended an upgrade to General Under Honorable Conditions, characterizing the OTH as overly harsh and inequitable. Despite the recommendation and without explanation (in violation of its own regulations), the Board voted 5 to 0 to deny relief.

B.D. wanted to keep fighting, and we wanted to continue forward by requesting a hearing. Unfortunately, Swords to Plowshares does not fund travel by attorneys to hearings in Washington D.C. so we intended to find B.D. a *pro bono* attorney to take over the case. Then in a stroke of luck, a member of B.D.’s church congregation stepped forward with an offer to pay all expenses for the hearing!

We resubmitted the same legal brief and exhibits and requested a hearing. Two members of B.D.’s Combat

Hospital command were so outraged by the manner of his discharge, they were willing to travel to Washington for the hearing. Shortly before the scheduled hearing, we submitted a supplemental brief arguing that B.D. had been unable to make a voluntary and considered decision in accepting the Chapter Ten discharge in lieu of court martial because he had just been discharged from a psychiatric hospital following a suicide attempt.

Board makes an offer

Then, the day before I was set to fly to Washington for the hearing, we received a flurry of messages from B.D. He had received a call from a representative from the Army Discharge Review Board who said the Board wanted to make an “offer.” I had never heard of such a thing coming from the Board. I called the representative back and was told that the Board was offering an Honorable discharge. I could not believe what I was hearing! In return, they wanted B.D. to forego a change to the Narrative Reason for discharge which reads “In Lieu of Court Martial”. As I had not dared to hope that B.D. would receive an Honorable discharge, I advised him to accept the offer, which he did. B.D. and his family were thrilled!

Nevertheless, the Board’s opinion was strange. It consisted of one short paragraph in which they completely ignored our arguments. Their stated reason for granting the discharge was that the Army introduced a document into B.D.’s discharge process revealing that he had self-referred to the Alcohol and Drug Prevention and Control Program (ASAP). We were unaware from our review of the personnel records that this had occurred and we had not raised the issue in our arguments.

According to the opinion, self-referral for ASAP should not have been provided to command pursuant to the Army’s “limited use policy” set forth in AR 600-85. The policy states that self-referral to ASAP shall not be used in actions related to the characterization of service in administrative proceedings. ¹ Quoting from the opinion: “[u]se of this information mandates award of a fully honorable discharge.” They noted that they still considered his discharge both proper and equitable.

Reason for upgrade invented?

We do not believe, however, that the Board’s stated reason for the upgrade is the true reason, or at least not the only reason. The information underlying the actual court martial charges was not protected by the limited use policy. His command had independent evidence of B.D.’s drug use unconnected to ASAP. Paperwork shows that

Review and Essay

Dark Imprisonment For the Man Who Brought Secrets to Light

BY DANIEL MAYFIELD

Writing about an ongoing trial is always hard, doubly so when done for a publication that only comes out every few months. The problem is that once the article appears it is already old news.

Bradley Manning's case is personal. He is on trial – for his life, some say, while others merely suggest he should die in prison. He has been called the most dangerous spy in American history, but some consider him to be a hero for exactly the reasons the government wishes to lock him up.

Bradley Manning has been in custody now for over 800 days; most of that time has been spent in solitary confinement, stripped naked, and with his human contact kept to a bare (pun intended) minimum.

Chase Madar in his book "*The Passion of Bradley Manning*" gives an overview of Manning's childhood and entry into the military. He is careful – unlike many of Manning's supporters – to always refer to Manning as a "suspected" or "alleged" leaker. This should be contrasted to many of the so-called supporters of Manning who see him as a modern day Daniel Ellsberg. The argument goes like this: "Ellsberg was a hero for exposing the war in Vietnam through the Pentagon Papers and Bradley Manning is doing the same thing." This is an argument that is akin to those who say "go ahead and do it, we are right behind you...."

Ellsberg himself has a photo widely available on the web where he is holding a sign that reads, "I was Bradley Manning." In this discussion, we have to remember that Ellsberg would clearly have been found guilty if his trial had continued. It was only the frantic illegal actions of Richard Nixon that caused the trial to be aborted.

Bradley Manning's defense team is contesting every issue. They are not, for example arguing, the "defense of necessity." They were recently denied the ability to argue that "no harm occurred" as the result of the leaks. The de-

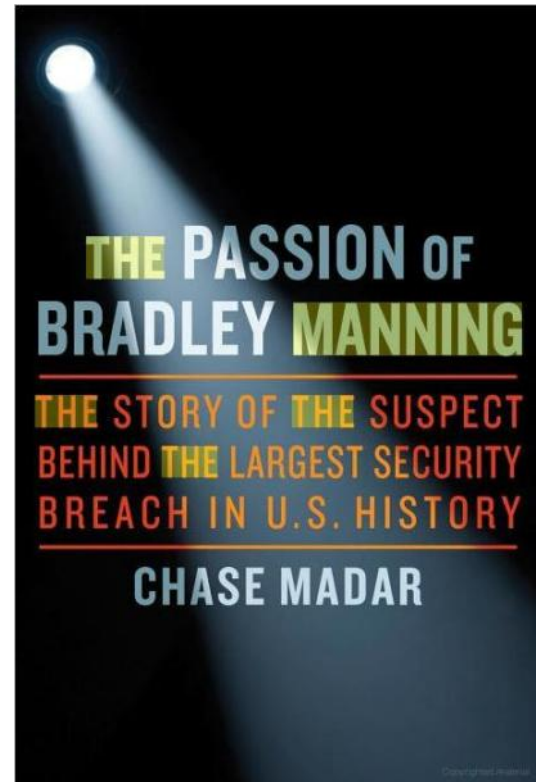
The Passion of Bradley Manning

By Chase Madar

OR Books, 2012

190 pp. \$15

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fense's strongest pre-trial motion (which will impact the trial from start to finish) relates to the well-known harsh conditions during pre-trial confinement. The defense will argue that this confinement – and his separation from all human contact including his lawyers for a short period – is "cruel and unusual punishment" as defined under the Eighth Amendment to the U.S. Constitution.

Madar explores Manning's family history. He suggests that in fact Manning was a patriot; he was driven to enlist by the poverty draft. The military needed his computer skills. He points out what an "outsider" Manning was: Only 5'2" tall, gay, a geek. There were even suggestions that he should have been discharged shortly following basic training.

More importantly, Madar explains the context of the alleged leaks. For example, Madar shows that there are over 90 million documents classified as "secret" every year. The leaks attributed to Manning by the government make up less than 1% of this total. The question that Madar posits in relation to this leak (regardless of who is responsible) is two sided: 1) Has the secrecy surrounding our foreign policy made us safer? and 2) Has the release of this material caused any harm? His answer is that there is too much secrecy and that there is no evidence that any person has been harmed by the release of this material, even if a few have been embarrassed.

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Bradley Manning Support Network calls for actions at Obama 2012 offices nationwide Sept. 6th during DNC

The Bradley Manning Support Network, Afghans For Peace and SF Bay Iraq Veterans Against the War Call for Nationwide Actions at local Obama Campaign Offices September 6 during the Democratic National Convention! Free Bradley Manning!

Since Army PFC Bradley Manning's arrest in May 2010 for allegedly sharing the "Collateral Murder" video and other evidence of war crimes and government corruption with the whistle-blower website WikiLeaks, progressives and human rights activists have been asking, "Why isn't President Obama stepping in to help Bradley?"

After all, it was President Obama who in May 2011 declared with regards to protests in the Middle East, "In the 21st Century, information is power; the truth cannot be hidden; and the legitimacy of governments will ultimately depend on active and informed citizens."

MLTF adds its support for this action.



Iraq War veterans (left to right) Michael Thurman, Scott Olsen, and Joshua Sheppard occupying Obama's campaign office in Oakland in support of Bradley Manning.

Bradley Manning Support Network

Madar concludes that a conviction is probable. In a "Law and Disorder Radio" interview with NLG Executive Direction Heidi Boghosian, he opined that the sentence would be in the neighborhood of 50 years. He pointed out that most of the issues that make Bradley Manning a hero of the left or human rights community will never see the light of day in the courtroom. On the other hand, the issues of paid covert informants, torture, false confessions, and mental stability are relevant in both the guilt and sentencing phases of a court martial and any trial. These issues will be the subject of appeals for years if in fact Bradley Manning is convicted.

WHAT CAN YOU DO NOW: There are two things that anyone can do: One is to write to Bradley Manning. The other is to donate to the defense. Both can be done by simply visiting www.bradleymanning.org.

Daniel Mayfield is an attorney in private practice in San Jose, California. He is co-chair of the NLG MLTF.

(Swords, continued from page 7)
B.D.'s positive cocaine test was unprotected by the limited use policy.

Oddly, the Board did not consider violation of AR 600-85 an impropriety issue; they specifically stated the discharge was still considered proper. And AR 600-85 was never mentioned in the first decision although the same information was available to the Board at that time.

We can only speculate, but it may be that the Board was concerned about two high-level officers, a Colonel and a Lieutenant Colonel, coming to testify at the hearing and wanted to save face by citing a regulation rather than acknowledge that an injustice had occurred.

Although I am relatively new to

discharge upgrade work, I have never heard of the Board making "offers" to veterans. If anyone has experience with offers by any of the Discharge Review or Correction Boards, I would be glad to hear it; I can be contacted at kdwright@stp-sf.org.

For B.D. the reason does not matter. He has now received a VA health care card and his application for disability compensation for PTSD is back on track. But most importantly, he feels that the wrong done to him by the Army has been righted and his pride is restored.

Katherine Dwight is a Senior Staff Attorney at Swords to Plowshares, which offers a range of services to veterans including employment assistance, supportive housing, and legal assistance with VA benefits and discharge upgrades.





75TH
ANNIVERSARY

October 10 -14 Pasadena CA

2012 "LAW FOR THE PEOPLE" CONVENTION

MLTF Convention Events

Check website for updates/changes - nlgmtf.org

THURSDAY, 8:30 AM - 12:30 PM

CLE: **Military Discharge Upgrade & Discharge Review**

See box at right for info and registration.

THURSDAY, 1:30 TO 5:00PM

MLTF Membership Meeting

Partial meeting agenda:

- presentation on military policy & implications for MLTF's work
- 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. 5-??

TIME TBA

WORKSHOP **Radical Perspectives on the Repeal of Don't Ask, Don't Tell**

TIME TBA

WORKSHOP **Pushing Back the War Drive Against Iran: Legal and Political Strategies to Prevent Aggression**

Also check out the MLTF literature table for our new BAML/MLTF training CD, new and updated legal memos, and handmade crafts — all help fund MLTF programs and services.

Hilton Pasadena Hotel
REGISTER ONLINE
MORE INFO: NLG.ORG

MLTF's NLG Convention CLE

Military Discharge Upgrading & Discharge Review

With Teresa Panepinto, Jim Klimaski, Bridgit Wilson and Kathy Gilbert

Thursday, Oct. 11 ▪ 8:30a - 12:30a

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 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

BAMLP plans military law training seminar Sept. 14

NLG lawyers from the Bay Area Military Law Panel will provide a training workshop for law students to assist servicemembers in AWOL information, conscientious objection claims, disability discharges, hardship separation, fraudulent/defective enlistment, and more. Law students can assist GIs by providing accurate and timely information as well as support and advocacy for the decisions they make. The seminar will be held at the American Friends Service Committee offices, 65 9th Street in San Francisco, from 1:30 p.m. to 4:30 p.m. on September 14.

Using resources provided by BAMLP, the GI Rights Network and American Friends Service Committee, the Law Student Military Counseling Project is a Bay Area-based counseling service. The Project provides direct phone counseling and information to GIs and their families who contact the GI Rights Hotline to get information about their enlistment and separation from military service. Law students are trained and supervised by experienced military law lawyers.

Deployments in Afghanistan, Iraq and around the world have sparked an increase in the volume of calls to the GI Rights Network. Service members and their families are in desperate need of assistance. There are not enough counselors to cover the current demand for information.

Military Law Task Force

Social Media Connections

FIND MLTF ON



facebook.com/nlgmltf



[@MilitaryLaw](https://twitter.com/MilitaryLaw)

MLTF launches online store for selling books and other resources

A new section on the MLTF web site (nlgmltf.org) includes materials published by the MLTF, as well as books and resources published by our members (including Kathleen Gilberd, James Branum, Marjorie Cohn and others) and other materials of interest to members.

"This store will enable our members to find valuable resources in one location," said James Branum, MLTF Book Store Coordinator. "Purchases also help to fund the important work of the MLTF, since a percentage of all sales are received by the Task Force through the Powells.com affiliate program. MLTF members are encouraged to not only buy books on military law topics at the store, but on any topic via the Powells Book store search box, since the MLTF earns commissions on all sales completed through our website."

Suggestions for future items to be linked via the MLTF book and resource store should be emailed to Kathy Gilberd or James Branum.

The store can be found online at: <http://nlgmltf.org/store/>

MLTF NEWS & NOTES

BAMLP news – As part of its collaboration with the GI Rights Hotline in San Francisco, the Bay Area Military Law Panel had a summer intern, Charles Gnekow, a law student at UC-Hastings School of Law. Charles, who trained with BAMLP and was a counselor during the spring semester, came in daily to return calls from the hotline. He also put together a very helpful flow chart and counseling guidelines for clients facing involuntary discharges.

VA retroactive compensation information – David Addlestone recommends [this guide](#) to retroactive compensation payments from the VA for Agent Orange claims as a result of the National Veterans Legal Services Program's on-going *Nehmer* case. Previous NVLSP guides were not as complete.

Under the Hood training – MLTF executive director Kathy Gilberd conducted a GI rights training for activists at the GI coffeehouse outside Ft. Hood, Under the Hood. IVAW organizers, GIs and family members discussed issues ranging from redress of grievances and First Amendment rights to non-judicial punishment and involuntary discharges. Thanks to Under the Hood for hosting the event.

BAMLP/MLTF training CD – The Bay Area Military Law Panel and MLTF have assembled a CD that includes MLTF memos, discharge checklists, important regulations and sample letters and forms for use in military cases. The CD is available for \$30. To order, contact nlgmltf@gmail.com.

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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 twitter.com/military_law



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