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MILITARY LAW TASK FORCE

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TABLE OF CONTENTS

Introduction

1. CHECKLISTS FOR DISCHARGE COUNSELING
2. DOD 1332.14
3. SOME 'BASICS' OF MILITARY DISCHARGE UPGRADING
4. COUNSELING MILITARY OBJECTORS DURING WARTIME
5. IMMIGRATION CONSEQUENCES OF RESISTING MILITARY SERVICE

6. IMMIGRANTS AND SELECTIVE SERVICE REGISTRATION

7. STOP LOSS ORDERS

8. DISCHARGED RESERVIST: 'THIS WAR IS WRONG'

9. MILITARY CONTRACT AWARDS

Announcements

People who worked on this issue: Marti Hiken, Kathy Gilberd, David Gespass, Michael Gaffney, and Luke Hiken.

INTRODUCTION

We're back.

After several years of inactivity, the NLG's Military Law Task Force revived itself in the wake of 9/11. With a core of old and new members, the Task Force renewed its work in direct military counseling, informal attorney referrals, development of legal training materials and work with other military counseling and anti-war groups.

This is the first issue of our new on-line version of On Watch. Hard paper copies are available for those who want them, but we hope that on-line publication will increase our readership and simplify production. We plan to publish at least quarterly, although one fanatical editor lobbies for bi-monthly issues. With the next issue, we will try to add elegance and graphics. Readers are encouraged to submit articles on military law and the problems affecting servicemembers and veterans.

In addition to On Watch, the Task Force has created a ListServe for MLTF members, providing a convenient forum for discussion of specific cases, updates on military law and policy, etc. The Task Force has also developed a website, at www.nlg.org/mltf. We are in the process of updating a number of legal memoranda and training materials developed during the 1991 Gulf War and since then.

This is an important time to rebuild and expand the Task Force. As we face an increasingly belligerent administration and the prospect of a prolonged occupation in Iraq, the need for military counseling and advocacy increases

dramatically. Our knowledge of military policy and the realities of life in the military allow us to assist anti-war organizations in educating the public about some of the consequences of war. At the same time, veterans benefits are under attack, and we can expect a new round of veterans of wartime service whose problems are simply ignored by the government.

Special thanks are due to Resist, whose generous grant has enabled us to expand our work, to co-chair Marti Hiken, the principal editor and driving force of this issue of On Watch, and to all the Task Force members who have "jumped in" to help during this critical time.

1. CHECKLISTS FOR DISCHARGE COUNSELING

(Taken from the MLTF Website)

These checklists are designed for people who have recently been trained in military counseling, and can be used as an aid when talking with a soldier or sailor about discharges. They are designed only as general guidelines or reminders; for specific information about the criteria for each discharge, users should refer to CCCO's Helping Out and regulations governing the discharge.

The following are general descriptions of the major discharge categories, which can be used in explaining the discharges to GIs. They are not definitive explanations of the criteria for the discharges, but rather explanations that can help the GI to decide whether or not the discharge is worth exploring. It is important to remember that many soldiers and sailors have received incorrect or incomplete information about discharges from their commands.

Hardship Discharge

A member of the GI's immediate family, or someone who has lived as part of his/her family for five years or more, has a very serious medical, psychiatric or financial problem. They need the GI home to help them, and no other member of the family can or will take GI's place in giving that help. Discharge can be requested if the condition is expected to last a year or more; humanitarian transfer can be requested for shorter-term problems. The problem must be very serious and very well documented. The GI's personal financial problems normally are not grounds for this discharge.

Medical Discharge or Retirement

The GI has a physical or psychiatric condition which, when it is acting up, would interfere with his/her ability to perform military duties. Usually it must be difficult to treat or cure the condition. If the condition arose during or was aggravated by military

service, it may be grounds for medical retirement with a pension or separation with a lump sum payment. Since there are hundreds of medical problems that qualify, the soldier's ailment should be checked against the service's medical retention standards.

Conscientious Objection

Since he/she enlisted, the GI has developed a religious, moral or ethical objection to participating in a war in any form, based on an objection to killing others in a military setting. The objection must be to all wars, but the person need not object to all violence or to killing in self-defense or defense of loved ones (so long as that killing is outside of a military setting). The beliefs must be sincere and deeply held.

Homosexuality

The GI has engaged in, or simply desires or intends to engage in, gay sex, or has married someone of the same sex. The military thinks that hugging or kissing, or any touching intended to gratify sexual desires, constitutes sex. Bisexuality is also a ground for discharge. Admitting to certain sexual activity may be grounds for a bad discharge or even a court-martial, so it is important to limit the information given to the military according to the language of the regulations.

Other Designated Physical and Mental Conditions

The most common reasons for this discharge are psychological problems called personality disorders. A personality disorder must be severe, and must usually interfere with the soldier's ability to handle military life, in order to qualify. Other reasons for discharge include sleepwalking, motion sickness, bedwetting, obesity (after failing a weight control program), excessive height, certain allergies and similar "problems" that would interfere with military duties. These reasons vary slightly from service to service.

Contract Violations

The GI was promised something in writing or in front of a witness by the recruiter, and didn't receive it. The promise must have been part of the reason the GI enlisted. The discharge has to be requested within 30 days after the lie is discovered, or should have been discovered. Or, the recruit and recruiter were both unaware of some condition or problem that would have prevented the enlistment if it had been discovered. Or, the recruiter falsified information about the GI to make him/her appear eligible for enlistment.

Miscellaneous Discharges

The GI may also qualify for discharge if he/she is under 18 and didn't get written parental permission to enlist (if both parents have custody, both must give permission); he/she is not a citizen of this country; he/she has consistent problems in performing military duties, usually including two bad performance evaluations; he/she is having serious trouble

adapting to military life within the first 180 days of active duty; he/she has been recommended for and failed or refused a drug or alcohol rehabilitation program; she is pregnant or has just given birth; he/she has sole custody of a minor child and would therefore would have trouble performing military duties or to being available for worldwide assignment (the parent must normally have sole custody).

Using Questions as a Counseling Technique

Some counselors and attorneys prefer to discuss discharges by asking GIs specific questions about their situation. This can be used instead of, or in addition to, explanations for the grounds for discharge. The questions below also provide a handy checklist for an initial counseling session; at the end of the session, the counselor attorney should have answers to all of these questions.

Hardship Discharges

1. Does some close family member have a serious medical, financial or psychiatric problem?
2. Will the problem last for a year or more?
3. Is the servicemember the only one who can solve the problem or help the person cope with it?
4. Can the problem be well documented?

Medical Discharges or Retirement

1. Does the GI have a medical problem which, if he/she paid proper attention to it, would keep him or her from performing military duties?
2. Did the problem develop, or was it aggravated, while the person was on active duty? (This goes to disability money, rather than qualification for discharge.)
3. Has a civilian or military diagnosed the problem?

Conscientious Objection

1. Does the person believe it would be wrong to participate in any war?
2. Is the belief based on objection to killing another human being?
3. Is the objection based on religious, moral or ethical beliefs?

4. Can the GI say that the beliefs came together or became dominant in his life since enlistment? How recently?

5. Is the belief of great importance to him/her?

Homosexuality

1. Does the GI consider himself/herself homosexual or bisexual?

2. Regardless of this, has the GI engaged in any same-sex sexual activity? (This includes any acts of sexual nature.)

3. Does the GI want or intend to engage in any same-sex sexual activity?

4. Has the GI married or joined in a formal union with someone of the same sex?

5. Warning Question: Would a little command inquiry show the GI was lesbian or gay before the current enlistment, or that he/she falls under the aggravating circumstances in the regulations?

Please Note: Because of their concerns about homophobia, many GIs are unwilling to tell strangers about their sexual orientation. Some counselors precede these questions by a comment that they are opposed to the military's policy about homosexuality, or ask if the GI "could comfortably tell their command that..." they fall into any of these categories.

Other Designated Physical and Mental Conditions

1. Does the GI feel his or her emotions or behavior are really different from what he/she thinks they should be?

2. Does the GI suffer from any emotional distress (such as depression, explosive personality, uncontrollable anger, etc.) that keeps him/her from coping with military life?

3. Does his/her military record (quarterly marks and disciplinary record) reflect the problem?

4. Does the GI suffer from motion sickness, sleepwalking, bedwetting, obesity (even after being placed on a weight control program) or allergies? Or is he/she too tall? (The reasons vary from service to service.)

Contract Violations

1. Was the person promised a substantial benefit by the recruiter that he/she did not receive?

2. Was the benefit one of the reasons the GI enlisted?

3. Was the promise in writing or in front of a witness?
4. How long ago did the GI discover it was a lie?
5. Is there a problem or condition the GI and recruiter didn't know about, which might have prevented the enlistment?
6. Did the recruiter falsify information about the GI to make the enlistment possible (lying about legal problems, forging a high school diploma, etc.)?
7. Can the problem be documented by paper or witnesses?

Other Discharges:

1. Does the GI have a minor child, and will that interfere with his or her ability to perform military duties or be available for worldwide assignment? Does he/she have sole custody?
2. Is the GI currently under 18 years old? And if so, did his/her parent sign the enlistment contract? (Minority Discharge)
3. Is the person a citizen of another country? (Alien Discharge)
4. Does the person have consistent problems in performing his/her duties? He he/she received two "adverse" evaluations (Unsatisfactory Performance Discharge).
5. Has the person been recommended for and failed or refused alcohol rehabilitation or drug rehabilitation? (Alcohol or Drug Rehabilitation Failure Discharge)
6. Is she pregnant? Or has she just given birth to a child? (Pregnancy or Childbirth Discharge)
7. Is the GI the only remaining son or daughter in a family where a parent, sister or brother died (or is permanently 100% disabled) as a result of military service? (Sole Surviving Son/Daughter Discharge)
8. If the GI is within the first 180 days of active duty, is he/she having problems adapting to military life? How serious are the problems? (Entry Level Performance and Conduct Discharge)

Avoiding Potentially Bad Discharges

1. Does the GI have non-judicial punishments or courts-martial, which might lead to a Misconduct Discharge?

2. Does the GI have any civilian convictions (including drunk driving) which could result in Misconduct Discharge?

3. Does the GI have a positive drug test, or is the command aware of any drug use? (Drug Abuse/Misconduct Discharge)

If any of these exist, the client should be warned about the possibility that working on a discharge will encourage the military to consider an alternative or dual basis for discharge in order to give the GI an Other Than Honorable Discharge.

2. Discharges (DoD 1332.14)

Department of Defense Directive 1332.14: Enlisted Administrative Separations

Expiration of Service Obligation E3.A1.1.1

Selected Chances in Service Obligations E3.A1.1.2

Convenience of the Government E3.A1.1.3

-Early Release to Further Education E3.A1.1.3.4.1

-Early Release to Accept Public Office E3.A1.1.3.4.2

-Dependency or Hardship E3.A1.1.2.4.3

-Pregnancy or Childbirth E3.A1.1.3.4.3.2

-Parenthood E3.A1.1.3.4.5

-Conscientious Objection E3.A1.1.3.4.6

-Surviving Family Member E3.A1.1.3.4.7

-Other Designated Physical and Mental Conditions (Honorable, OTH, ELS)
personality disorders

-Additional Grounds E3.A1.1.3.4.9

Disability E3.A1.1.4

Defective Enlistments and Inductions E3.A1.1.5.

-Minority E3.A1.1.5.1

-Erroneous E3.A1.1.5.2

-Defective Enlistment Agreements E3.A1.1.5.3

-Fraudulent Entry into the Military Service E3.A1.1.5.4

-Separation from the Delayed Entry Program E3.A1.1.5.5.1

Entry Level Performance and Conduct E3.A1.1.6

Unsatisfactory Performance DoD 1332.14, E3.A1.1.7; (usually a General under Honorable Conditions)

Homosexual Conduct E3.A1.1.8; (Honorable, General, ELS, OTH)

Drug Abuse Rehabilitation Failure E3.A1.1.9

Alcohol Abuse Rehabilitation Failure E3.A1.1.10

Misconduct E3.A1.1.11 (for those situations where the serviceman is to blame or for drug use (usually OTH or sometimes a General Discharge, rarely an Honorable)
-Civilian Conviction E3.A1.1.11.1.4

Separation in Lieu of Trial by Court-Martial E3.A1.1.12.1

Security (national security) E3.A1.1.13

Unsatisfactory Participation in the Ready Reserve E3.A1.1.14

Secretarial Plenary Authority E3.A1.1.15

Reasons Established by the Military Departments E3.A1.1.16

Weight Control Failure E3.A1.1.17

3. SOME 'BASICS' OF MILITARY DISCHARGE UPGRADING

(This article is written by Tom Turcotte, a San Francisco lawyer, who is a part-time staff attorney at the non-traditional veterans' organization **Swords to Plowshares**. Tom also has a private practice of his own that includes Discharge Review and Correction Board work)

Advocates of active duty military members will deal with people in situations that inevitably result in the receipt of a less than fully Honorable discharge. There is, and has always been a great deal of misinformation regarding the process involved and standards applied in the military's system for reviewing discharges.

A less than fully Honorable Discharge imposes significant limitations on veterans' VA benefits entitlement and employment opportunities.

This article is intended only to provide a very basic overview of the discharge review system and provide some practice pointers for advocates. Nothing is intended to impart specific advice to any individual's situation nor is anything discussed regarding federal court review of Less-Than-Honorable Discharges or correction of military records.

I. The Discharge Review and Correction Boards

There are two separate Boards for each service branch that reviews discharges -- The Discharge Review Board and the Board for Correction of Military/Naval Records.

The Discharge Review Boards consist of five officers, of the rank O-4 or higher. These Boards have jurisdiction over discharges issued within fifteen years of the date of application. The Review Boards cannot review a Bad Conduct or Dishonorable Discharge issued as part of the sentence of a General Court-Martial, but they can review all others including Bad Conduct Discharges issued as part of the sentence of a Special-Court Martial.

The Review Boards are empowered only to “upgrade” the type of discharge and change the reason for discharge. They cannot change a re-enlistment code or otherwise modify the contents of a vet's military records.

Applicants can elect either a personal appearance type of hearing before the Review Boards or a non- personal appearance review that is limited to consideration of available medical and administrative records as well as any materials submitted by the vet.

An applicant can first apply for a non-appearance type of hearing and, if that is not successful, then ask for a personal appearance type of hearing. Statistically, personal appearance type hearings stand a much better of success.

I often advise clients to try the non-appearance mode first, then, if that’s not successful, ask for a personal appearance. This gives the vet “two bites at the apple.” A personal appearance type of hearing must be made within fifteen years from discharge so that deadline has to be considered first and foremost.

The Army and Air Force Review Boards travel regionally to certain locations in the continental states. (Los Angeles and San Francisco are two cities they go to in California.) Often, the Boards will send one officer who is designated as a “Hearing Examiner.” This officer will conduct a videotape of the hearing that will be played back to a full panel of the Board in the Washington, D.C. area for final decision. Sadly, and perhaps illegally, the Navy Discharge Review Board does not travel regionally. Navy and Marine vets can only elect a personal appearance type hearing in Washington, D.C.

In the “personal appearance” type of hearing, a Review Board allows an applicant to be represented by lawyer or non- lawyer counsel. An opening by counsel is generally made, as is direct questions of the applicant by counsel, then followed by questions from the Board members and a closing statement by counsel. Witnesses can also testify at hearings.

Application to the Review Boards are made on DD Form 293. The form asks the veteran to list specific issues in support of an upgrade that the Board will consider and resolve. (NOTE: Any search engine will produce the Review and Correction Boards’ web sites --

just enter Discharge Review Boards. These sites include regulations, application forms that can be downloaded and FAQ's, etc. for each Board and branch of service. Citation to regs are not made here because they are available on the web.

The Boards for Correction of Military/ Naval Records consist of high ranking civilian employees of each branch. These Boards have almost complete power to change, delete, modify or add to the contents of military records. Application to a BCMR requires completion of DD form 149.

The BCMR's can do anything to a vet's records except overturn a court-martial conviction.

They are not required to grant personal appearance hearings though they can but very rarely do. They sit only in Washington D.C.

Unlike the Review Boards, (which operate under a fifteen year limit from the date of discharge that cannot be waived), the Correction Boards operate under a three year limit for application that starts upon the date of "discovery of alleged error or injustice." This date is generally by the Correction Boards to start as of the date of discharge or, in the case of a denied upgrade from a Discharge Review Board, the date of the Review denial decision.

However, the Correction Boards can, and often do waive the three year limit if they determine that it "is in the interest of justice" to do so. They cannot determine whether to waive the three year limit without making a cursory review of the merits of a petition.

Vets often argue that they were never advised of the existence of the Boards, let alone their time limits. This argument cannot hurt but I have never really seen it work either because "ignorance of the law is no excuse" and because since 1975, vets being separated Less-Than-Honorably are required to be given a fact sheet regarding the Review and Correction Boards' powers and application time limits.

It is best to simply argue that the merits of the case warrant waiver of the three-year limit. The application form (DD 149) actually requires explanation as to why the Board should find it in the interests of justice to waive the three year limit if the application is made past three years from the date of discovery of error or injustice.

If medical or legal issues are involved in a Correction Board application, the Air Force will ask for advisories from the SJA or Flight Surgeon. Other branches rarely do this but one can always ask for an advisory provided a request to review and rebut the advisory before a hearing is also made.

Though the Correction Boards cannot overturn a Court-Martial conviction as a matter of law, they can, and sometimes do order that the records be corrected to show that the Convening Authority approved only part of a sentence but not a punitive discharge.

Correction Board decisions are binding on all federal agencies including the Department of Veterans Affairs. This is crucial in General Court-Martial cases because a discharge as part of the sentence of a General Court-Martial is an absolute statutory bar to VA benefits. If a Correction Board orders a change in the Convening Authority's review and changes the reason for discharge from sentence of a GCM to action by the Correction Board -- the discharge no longer is the result of a General Court-Martial which eliminates the bar to VA benefits. (VA benefits are discussed in a little more detail below.)

II. Some Myths about "Bad Paper"

It is absolutely not true that a Less-Than-Honorable Discharge automatically gets upgraded six months after discharge. This myth has been around since World War II and is still being perpetuated by people marginally involved in the discharge process such as personnel specialists and NCO's. Typically, a vet will explain that: "They told me so long as I kept my nose clean the discharge would go to Honorable in six months."

Advocates should make it clear that this just not true!

My theory after nearly thirty years of doing this work is that the "six month myth" is grounded partly in the fact that military regs used to require that administrative records not be forwarded to the Records Center in St Louis until six months after separation. I suspect that this is where the six-month aspect of the myth comes from.

I think the real reason this myth is still being perpetuated is that it deceives young people who are already under great stress believing that they need not use any rights they may have in the discharge process because, "after all- it's gonna' get upgraded anyway".

The FAQ part of the Army Review Boards' website actually includes debunking of the "six month myth." That is how common this mean little bit of misinformation is.

Another myth is that regardless of the reason for discharge or what is in one's disciplinary record, a discharge upgrade will obtain long as an excellent post-discharge history can be documented.

Post service history, no mater how laudatory and well documented is simply not a ground for upgrade. I believe that documenting post- service is a good idea because the Board members may use that evidence to sway them to the applicant's advantage. Also, post-service history can be used to demonstrate that the grounds for discharge were not valid in retrospect in, for example, drug or alcohol cases where the vet can demonstrate recovery that was not offered in service.

A final myth is that only an upgrade of discharge can entitle a vet to VA benefits.

The Department of Veterans Affairs can grant basic benefit eligibility to any veteran discharged with a Less-Than-Honorable Discharge except those who received a Bad Conduct or Dishonorable Discharge as part of the sentence of a General Court-Martial.

Administratively issued Other-Than-Honorable and Bad Conduct Discharges issued as part of the sentence of a Special Court-Martial can be subjected to a VA “Character of Service” determination.

Any VA Regional Office can conduct a review of “the facts and circumstances” surrounding the issuance of a discharge. A vet need only apply for any benefit to “trigger” this determination which is threshold to entitlement to specific VA benefits. The standards used by the VA to make these determinations can be found at 38 C.F.R. Sec. 3.12 et seq.

VA’s regs regarding the considerations applied to a character of service determination are surprisingly straightforward and fair.

Vets with “bad paper” need to know that the discharge does not preclude basic VA entitlement, but that eligibility for specific VA benefits can require other factors such as total time served and “era” of service.

III. Tactics for Advocates

Anyone dealing with someone who may receive “bad paper” from the military is in a position to help document the “facts and circumstances” surrounding the discharge. Documentation can be crucial to both discharge review applications and VA disability claims.

Advocates should always consider their ability to “preserve the evidence.”

Service members facing discharge should always get the home of record address and phone number of people in their unit who have inside knowledge of facts relevant to the discharge but which will not be in the official records.

The ideal situation is to get statements from people prior to the actual discharge but this is not always possible. People often fear retaliation for providing a statement or simply are removed from the soon-to-be veteran.

I advise people to get the address of friends who can give statements of their parent's address. This way, a letter can be forwarded later asking for statements.

JAG officers are usually fairly easy to track down either while they are still in the military or have been discharged. Each branch has a JAG locator service.

I have had surprisingly positive results in getting statements from JAGs appointed to represent people facing discharge. Even if they can’t remember the details of a given case, they will often be glad to put in writing the prejudices of a command or other important inside information about improprieties in certain types of cases at commands they were assigned to.

In that connection, advocates should know that the Review and Correction Boards have no subpoena or summons powers -- even over active duty personnel. Potential witnesses should be assured that there will be no retaliation for giving a sworn statement because the Boards have no power over them, the proceedings of the Boards are covered by the Privacy Act of 1974 and frankly, the Boards probably just don't care about them. (This is not to say they won't consider any support statement because they will and, in fact, I don't believe they see many support statements in the first place.)

Any and all documents even remotely or possibly connected to the facts leading to discharge should be kept as potential evidence. Medical bills for treatment off-base for conditions that should have been treated by the military should obviously be kept, but this is just one of many examples of preserving evidence for a future discharge review or VA character of service determination.

Not infrequently, by the time the relationship between a service member and the military has soured to the point that another than fully Honorable Discharge is inevitable -- the service member just wants out. The last thing s/he is thinking about is preserving evidence and contacts necessary to development of a good application. An advocate can be invaluable in this respect!

Finally, advocates should understand that the discharge upgrade rates among the Boards vary from service to service but remain very low. The rates always go up in personal appearance type hearings but the overall low rate isn't likely due only to restrictive regulations or reactionary Board members.

I firmly believe that the Boards are not accustomed to seeing well documented, organized and persuasive applications made with reference to their regulations and those applicable to discharges. Most of their caseload involves unrepresented applicants or those represented by traditional veterans' organizations that often employ a very route approach based on good citizenship since discharge which is specifically not a ground for upgrade.

Simply filling the form out and showing you've been good since you got your discharge is not going to get it and people need to know that.

Both as a military counselor and lawyer, I've been involved in more than a few bad discharges. I've also been fortunate enough to have been involved in more than a few discharge upgrades and favorable VA character of service determinations.

That experience has taught me that there is no substitute for documentation in this work and that advocates are uniquely positioned to do "damage control" by explaining how discharge review works, debunking myths, and developing evidence.

4. COUNSELING MILITARY OBJECTORS DURING WARTIME

by Kathleen Gilberd, co-chair MLTF

During the Gulf crisis, many of us counseled military Conscientious Objectors (COs) under extremely difficult circumstances. We encountered command responses not seen since the Vietnam War, as well as newly-created obstacles to successful claims. Our experiences provide some valuable lessons for counseling during future military actions. Some of them are common sense counseling approaches which we would use in counseling COs under any circumstances, but which are even more important in the middle of military actions.

Service members need to be aware of all of their options.

During the Gulf crisis, there was a fair amount of discussion of Conscientious Objection and resistance in the press, and some peace groups developed publicity materials which emphasized conscientious objection as the alternative to service in the Gulf. Many soldiers and sailors who came to us stating that they wanted to file conscientious objection claims did so because they had heard or read about COs and did not know any other options were available.

While it is always important to make sure that GIs are aware of all the discharges for which they might qualify, crisis conditions make it even more important that potential COs are given full descriptions of all of their alternatives. In many cases, this will simply reinforce their belief that conscientious objection is the route they should take, but many will find that hardship, medical, homosexuality, or other discharges fit them as well or better.

For active duty personnel, of course, conscientious objection claims should normally not be accompanied by any other discharge claim. For these individuals, it is even more important that all bases for discharge be explored before a CO claim is initiated. This is not the case, however, with recruits seeking separation from the military's Delayed Enlistment Program, under which young people sign up for the military up to a year before going on active duty. Members of the Individual Ready Reserve (IRR) have had some success raising multiple discharge claims.

During the Gulf crisis, many of us found military commands more resistant to CO claims than they had been in the past. GIs filing CO claims during a period of heightened militarism should be forewarned about the biases they will encounter and about the possibility that their commands are likely to be more receptive to other discharge claims. This is particularly true for clients who also have disciplinary problems. Returning AWOLs or UAs should understand the possibility that filing a CO application will make commands more punitive in disciplinary proceedings.

GIs and counselors need to be prepared for shortened preparation time. The crisis situation of the Gulf War created incredible time problems for CO applicants. Most of us are used to spending a minimum of three to four weeks working with COs to ensure that their applications are well-prepared and that letters of support are sufficient. For applicants facing imminent activation or deployment during Operation Desert Shield, the reality was much different. However, it is essential that we urge GIs to spend as much time as possible writing and rewriting their applications before submission. The temptation to turn in a first or second draft of a CO application or to turn in a final draft or letters that have not been reviewed by a counselor must be resisted as much as possible.

The temptation to let COs work from sample applications to speed up the process should be avoided, since it is difficult for anyone to keep from picking up phrases or a writing style that is not their own. This discrepancy is likely to show up in formal interviews when a GI speaks in a manner or using language that is very different from that used in his/her application. It is far safer to suggest that GIs work from outlines of the issues which should be discussed in response to each question on the CO application. Given the time constraints they faced, many GIs were uncomfortable writing and rewriting drafts of their applications. We found it important to spend more time than usual talking with them about the need for well-crafted applications and the fact that this work also pays off in the interviews, since well-prepared applicants have a better sense of how to express their beliefs verbally and are less likely to be caught off-guard by questions or issues they have not considered.

Having said all this, I should add that I recognize that some applicants will be unable to take the time necessary to prepare polished claims. In such cases, counselors may want to suggest that the applicants state in the applications that they were written under time constraints and why. This

may make it easier to explain omissions (but not mistakes!) in the initial claims and to justify additional written submissions.

In addition, though counselors normally like to have all letters of support submitted with the applications, it may be wise to hold a letter-writer or two in reserve, to submit just prior to the Investigating Officer (IO) interviews. Their letters could be used to shore up any weaknesses in the applications that have been discovered after the applications were submitted and any problems in the chaplain's interview. If, for instance, the chaplain found that the client had failed to explain adequately his opposition to noncombatant duty, Uncle Charles's letter might comment on the client's discussions with him about just that point.

There are some useful court cases holding that difficulty in articulating beliefs is not an appropriate reason for denial of a claim. Where clients have not had adequate time to write thorough and thoughtful applications, these cases may be helpful in rebuttal to investigating officer reports which mistake such inarticulateness for lack of depth of belief.

We need to consider and confront the command biases which occur during military interventions.

CO cases processed during and shortly after the Gulf War have demonstrated several common military biases:

- ? a belief that claims are being filed out of cowardice or expediency by applicants who just do not want to risk harm in time of war;
- ? a belief that conscientious objection is the easy way out;
- ? and, a belief that claims are likely to be motivated by policy or political considerations, based in part on officers' biased views of public resisters who have expressed CO beliefs.

We should be prepared to confront these biases in CO applications and letters and prepare clients to deal with them in their interviews.

The tendency to suspect all wartime COs of cowardice or of acting out of expediency based solely on a desire not to die in the war zone is the most significant of these biases. Applicants may be able to address it by showing that their beliefs were beginning to grow before military action began or before they had any inkling the war could affect them. Where possible, they

should mention and document even earlier experiences or actions linked to those initial beliefs. While this is always important, wartime applications may need to make the point more strongly than other claims. It is particularly useful to include these early beliefs in support letters (Last February, Jane wrote to tell me that she was beginning to have questions about X, and that she was praying more often in hopes that she would find the answers to these questions.) COs taking this approach should certainly be prepared to show that there has been substantial development of their beliefs between these early experiences and the time the beliefs finally crystallized.

Some COs may be able to say that their beliefs crystallized before they were confronted by the prospect of participation in a military action, although they should be prepared to explain any delay in filing their applications. The rule of thumb among some counselors is that claims should usually be submitted between two and six months after the beliefs crystallized, although opinions may differ here.

At the same time, we must remember that it is entirely consistent with CO regulations and law for beliefs to develop during or in response to war. COs must make it clear that, even if their beliefs were triggered by their reflection about the war they were asked to fight, their beliefs have come to encompass all wars. It may be helpful for them to write specifically (and in more detail than we would normally suggest) about other foreseeable wars they would oppose, including defensive wars. If they can stomach it, some COs may wish to mention and document their support for the current war prior to development of their CO beliefs.

Given these suspicions of expediency, we must take extra care to review clients' personnel and medical records (and any other information available to the command) for evidence of ulterior motives (such as evidence of medical or family problems or indications that they had other reasons to dislike military life). This information needs to be explained or negated in the application.

The belief that CO is the "easy way out" is closely linked to this first bias. COs may wish to stress the difficulties of being a CO. Presumably they face opprobrium from other soldiers and the civilian community, difficulty in obtaining jobs during a period of great support for the war, and loss of security and military benefits. Some of these things may sound silly out in

the real world, but many military officers believe them. COs may wish to give specific examples of these difficulties: angry responses from a parent or close friend, their realization that they would not be able to go to work for retired master chief Smith's construction firm, etc. COs should also make clear in their applications and support letters that the beliefs did not come easily – that they agonized over their developing beliefs and undertook much soul searching in the process.

The suspicion that COs are really political activists in disguise is less widespread but bears watching. Some COs may wish to distance themselves from politics or activism, although I would not encourage GIs in such an approach. It is more appropriate to ensure that political terms and arguments are minimized in the application. Where the command is aware that the applicant has engaged in political activities or in political discussions with other soldiers, these acts might be mentioned and re-explained in moral or religious terms.

The law certainly permits COs to have political views so long as the religious or moral beliefs are paramount. Where clients are comfortable defining their political activity in religious or moral terms, this may prove the safer approach during wartime, particularly for COs who would be unable to litigate a denial of their claims. Where clients feel strongly that their political beliefs need to be discussed, it may be important to remind commands of that case law.

Counselors and attorneys must be prepared to counter harassment of COs. During the Gulf crisis, we saw a significant increase in harassment of CO applicants. This has most often taken the form of verbal abuse from other soldiers and superiors, but has sometimes involved physical abuse or punitive assignment to unpleasant duties. It is essential that such harassment be challenged for the safety of current and future CO applicants. We should be sure GIs are aware of formal complaint procedures (for redress of grievance), their right to seek Congressional assistance, and the pros and cons of public pressure. Counselors should also consider intervening with commands whose members are abusive to COs, or working directly with Congressional aids to ensure that their inquiries are effective.

Special attention should be given to preparation for and conduct of interviews and hearings.

Interviews and hearings, particularly the Investigating Officer (IO) interview, play a key role in any CO claim. Experience during the Gulf War has shown that biased and often overtly hostile hearing reports can badly damage even the strongest CO claim. In future wars, we must give careful consideration to preparation for the interviews and to the conduct of the hearings themselves.

In addition to general preparation for hearings it is important to discuss questions that may stem from wartime biases against COs. The command biases discussed above are likely to affect the psychiatrists, chaplains, and IOs who conduct these hearings and should be the subject of discussion and practice questions. Counselors may also want to consider attending interviews and hearings. While military regulations do not specifically permit representation, they do not prohibit it. One does not have to be an attorney to participate in this process.

We need to develop counseling techniques for clients being sent to a war zone.

Transfer and activation of CO applicants were important issues in the Gulf War. Simply put, the services are normally free to transfer CO applicants after they have filed CO claims (unless the transfer is done as punishment for the filing of the claim or the command has delayed and obstructed the claim for such a long time that a federal court takes offense). This differed from standard practice during the Vietnam War. Similarly, the services are apparently permitted to activate reservists who have filed CO claims prior to activation.

On occasion, COs and their representatives have been successful in delaying activation or deployment while CO claims are (at least initially) processed. In some cases, short-term medical problems have kept soldiers or sailors at their old duty stations for weeks or months. With clients' pending deployment, it is important to discuss any such medical conditions and ensure that the clients seek treatment. In raising this issue with the military, however, they should be sure not to appear to be manipulative. Similarly, they should be careful not to let the command think the medical problems are the real reason they want a discharge; CO regulations specifically suggest that commands look for ulterior motives or other reasons CO applicants may want to be discharged. Inactive reserves may have other

legitimate problems which permit postponement of activation orders – such as family hardship – and these should also be explored.

Generally, however, GIs and counselors or attorneys should make plans early on for working together over a long distance. This may involve some contingency planning and having the clients sign authorizations for the counselor/attorney to receive information from the military or to act on the clients' behalf. It may mean having the GI contact Congressional representatives long before it proves necessary, to ask for assistance should it be needed and to authorize the counselor or attorney to request assistance on the clients' behalf. It also means covering in advance the issues that are difficult to discuss by long distance, such as Article 138 and other complaint procedures, procedures for non-judicial punishment and NJP appeals, etc.

Where CO applications must be completed in a war zone, or preparation for hearings must be done at that distance, special problems occur. Since mail is routinely screened, counselors, attorneys, and support persons must be sure not to discuss the claim or hearing in a way that appears to suggest ideas or beliefs to clients. Commands are likely to use this against clients if they learn of it, and an allegation that someone else supplied the ideas for a CO can sabotage a claim. It is, of course, safer to tell a client what the procedures and rules are, or to remind them of the criteria for CO discharge in careful terms, but suggestions of words or ideas to use are dangerous

A CO's isolation in a war zone can have real psychological effects. It may be helpful to put the COs in touch with church groups, local peace centers, supportive veterans, or others who can provide moral support through the mail. These supporters should also be warned about the dangers of censored mail and the importance of avoiding suggestions about the substance of CO claims.

Commands are often more cavalier towards COs when they know that legal support is thousands of miles away. During the Gulf crisis, many commands took forever to process CO claims, engaged in illegal retaliation against COs (for example, giving them demeaning assignments purely on the basis of the CO application), and denied COs some of the rights guaranteed them in the CO regulations. Counselors and attorneys often need to communicate directly with the command by mail, pointing out some of the legal remedies available (Article 138 complaints, IG complaints, complaints under the Military Whistleblower Protection Act, congressional intervention, litigation, and the like) if the rules are not followed. Similar correspondence

to military headquarters may also help to place pressure on the local command.

Where commands fail to respond to such warnings, it is helpful if clients and counselors or attorneys have decided in advance about the use of complaints or litigation; these are very difficult decisions to make by mail if proper groundwork hasn't been laid beforehand. Aggressive use of administrative complaints, Congressional intervention, and litigation can be helpful not only to the individual client, but to other CO applicants as well. If the military understands that failure to comply with the rules will result in lots of outside scrutiny, and force them to respond to numerous complaints, they may exercise more caution in handling CO claims.

At the same time, clients should never be encouraged to file complaints, ask for Congressional assistance, or litigate a case unless they have been carefully warned about the possibility of command retaliation. This is a very real problem, and clients need to weigh the likelihood of success against the likelihood that they will be harassed or abused for complaining. The Military Whistleblower Protection Act provides some very limited protection for soldiers who have been the victim of such retaliation, but only if their complaint (or preparation to make a complaint) was addressed to an inspector general (IG) or a Congressperson. Members of Congress, even if they are fairly conservative, may be quite offended if constituents are harassed for talking to them, and may take stronger action as a result.

Special care must be taken with COs who have disciplinary problems. The Gulf crisis gave all of us plenty of experience with the overlap of CO and disciplinary proceedings for COs who had gone AWOL, disobeyed orders, or missed movement as a result of their beliefs. COs with disciplinary problems are treated much more harshly than other soldiers with equivalent or more serious disciplinary problems during a military action. This disparity takes the form of uneven charging (desertion instead of AWOL, for example), a greater likelihood that small offenses will go to courts-martial rather than non-judicial punishment, less sympathy for mitigating information (particularly if it relates to the CO claim itself), and harsher sentences.

Given this, it may be helpful during wartime to warn potential COs that relying on another basis for discharge may lighten their treatment in disciplinary problems. Clients with legitimate family hardships may wish to

pursue that claim instead, since commands are sometimes sympathetic to soldiers who go AWOL to care for an ailing parent, etc. Generally, using CO beliefs to argue against harsh sentencing in disciplinary proceeding proved counterproductive during the Gulf crisis. This is not meant to discourage those applicants who feel it is important to witness to their CO beliefs in this forum, including a court-martial, and who wish to raise their CO claim as a matter of principle. They simply need to know that they are taking a risk of harsh treatment in doing so.

When disciplinary problems coincide with CO claims, it is important to push for dual processing, so that the CO claim is not left in limbo until disciplinary action and punishment are over. The regulations can be read to permit or encourage such dual processing, but it often takes strong complaints to get commands to process the CO claim.

In most instances, of course, CO beliefs are not a defense to charges of AWOL, missing movement, disobedience of orders, or similar offenses. There are occasions, however, when the offense was the result of the CO's refusal to use or carry a weapon, engage in combat, etc., and the CO claim can be raised as a defense. (While "get on that plane" is a legitimate order, "get on that plain with your rifle and gear" may not be if the CO has already stated his or her intention to file a claim.) Similarly, CO applicants who were threatened or physically abused after expressing CO beliefs may have a duress defense if they were in fear of immediate harm and had not received protection from the command after complaining about the problem. In either case, documentation of the situation is critical to the defense.

The Gulf War also taught us that commands and prosecutors may use the content of CO claims in disciplinary proceedings. In at least one case at Camp Lejeune, North Carolina, prosecutors tried to use a CO's explanation of why he couldn't go to the Gulf to fight as evidence that he deserted to avoid hazardous duty. Under normal circumstances, it is useful to include an explanation of any disciplinary problems in CO applications, tying them to the development of CO beliefs where appropriate. During time of war or other military action, such explanations must be made very carefully. Counselors who are not familiar with the legal concepts of desertion and similar offenses may want an attorney to review the part of CO application discussing the offense.

While working to protect COs, we must also be sure to protect counselors and attorneys from military retaliation.

During the Gulf war, there were a few incidents around the country in which the military urged CO applicants to publicly repudiate the suggestions of counselors or advice of attorneys and to say that they had been urged to engage in actions which they would otherwise have avoided. While these incidents were limited, the danger remains that attempts will be made to discredit or bring action against civilian representatives of COs.

It is essential that we obey all the ground rules of good counseling in these cases, rules we may be tempted to bypass when frantic clients with only a few days left before deployment urge us to do so. We should encourage GIs to make their own decisions about any violation of military law (the Uniform Code of Military Justice), choosing one discharge or another, or going public about their beliefs. It is also essential that GIs be told what the possible consequences of those actions are, including the possible maximum punishment for offenses with which they may be charged. For their own protection, counselors, and attorneys should keep careful notes of the things they tell clients.

We need to go on the offensive with the military and the public to establish a sympathetic view of conscientious objectors.

While the media gave us some positive portrayals of COs in the months before the Gulf War, the prevailing attitude among the public and in the military during the war was that COs were cowards or radicals. This represented a considerable shift in attitude. After the experience of the Vietnam War, many people in the United States had come to view COs as honorable people. During peacetime, many military commands had come to think of the discharge as routine, and of COs as naive but nice kids.

Counseling organizations did a good deal of work to explain conscientious objection and to build support for COs during the war. In any future conflict, we will need to do more of this work and to do it in a more concerted way. Ideally, this should be on our agenda well before the next war. Individual counselors and attorneys, regional and national counseling organizations, and peace and anti-militarism organizations can all play a role in this work. We cannot allow this work to slow when the current military crisis is

resolved. Building a long-term strategy to legitimize and honor conscientious objection is an important task for the movement.

Such work must not focus on "traditional" conscientious objection alone. Support for political resisters, including resisters who will never meet CO criteria, must be made a part of that work as well. If we are consistent in promoting the idea that resistance to military aggression is honorable, we will make it more difficult for the military and the administration to isolate objectors to the next war.

This article is excerpted from a larger memo. It is available from the Military Law Task Force for \$2.50.

For More Information, please contact:
Military Law Task Force National Lawyers Guild
1168 Union, Suite 302, San Diego, CA 92101
619-233-1701

5. Immigration Consequences of Resisting Military Service

This memo is for military service members who are concerned about the prospect of being sent to war.

Q. I am a permanent resident currently enlisted in the Armed Forces (or Reserves). Can I be deported if I fail to appear at an appointed place and time of duty?

A. Maybe. This depends on a number of factors: when you were granted legal permanent residence status; whether you are convicted of (not just charged with) an absence offense; and the type of offense for which you are convicted.

If you are convicted of a military crime that involves an intent to avoid required duty and the offense has a potential (maximum) punishment of a year or more, you run the risk of being deported. Under immigration law, this would be considered a "crime of moral turpitude." Your conviction must be for an offense that you committed within five years of your last admission to the US.

If you have been convicted of more than one crime of moral turpitude, you may be deported, regardless of the potential maximum punishment or how long you were in the US before your conviction.

Q. What military offenses are considered "crimes of moral turpitude?"

Not all military crimes make you deportable, only those that are "crimes of moral turpitude." Absence without leave (AWOL) or Unauthorized Absence (UA) should not

be considered a crime of moral turpitude, but an immigration court may find that such crimes as desertion and missing movement are.

Q. Will failing to appear at a designated time and place affect my ability to become a citizen?

A. Maybe. Again, it depends on whether you are convicted and of what kind of crime you are convicted. Any conviction may make it difficult for you to prove that you have the "good moral character" necessary to become a citizen. Remember, this requirement only applies to the five years prior to your application for citizenship.

If a military court convicts you of "desertion during time of war" or "desertion to avoid hazardous duty or shirk important service," however, you will be permanently barred from becoming a citizen. As a result, you will also become "inadmissible."

Q. What does being "inadmissible" mean?

A. Being "inadmissible" means that if you leave the US you cannot enter this country again legally, unless you get special permission (a "waiver"). You cannot get a waiver, however, if you are ineligible to become a citizen. Once you are inadmissible, if you do somehow get back into the US without permission, you can then be deported.

Q. How else can my resistance to participating in the military make me inadmissible?

A. Other forms of military resistance may make you inadmissible. You will be inadmissible if:

- ? You left the country to avoid serving in the military during time of war. This applies only if the main reason you left was to avoid serving;
- ? You are convicted of one military crime considered a crime of moral turpitude;
- ? You admit to a crime considered a "crime of moral turpitude," even if you are not convicted; or
- ? You are convicted of two or more crimes of any kind and you are sentenced to five years or more.

You may be able to get "waivers" for these grounds of inadmissibility, except for the being inadmissible for leaving the country to avoid service.

Please Note:

Harold Jordan asked the following question concerning these two memos. Dan Kesselbrenner of the NLG National Immigration Project response follows Harold's comment. Dan is currently updating these two memos.

[Concerning] the last paragraph of the "Immigration Consequences of Resisting Military Service."

It reads as follows:

Q. What effect will filing for conscientious objector status or requesting another discharge have on my immigration status?

A. None, as long as you are not charged with any court-martial offense. The only possible immigration consequence of filing for conscientious objector status is that you may not be able to get "quick" citizenship. Quick citizenship, ^ which is not the same as automatic citizenship, ^ is a special provision of the immigration law that applies to those who have served in the military during specific times of war designated by the President. Even then, you should be eligible as long as you performed any military service and did not refuse to wear the uniform.

Comment: This notion of "quick citizenship" isn't explained very well. My understanding ... is that "quick citizenship" simply means that a person can apply for full citizenship with a shorter (2- year ?) waiting period instead of the usual 5(?). I seem to remember that Bush proposed changing this to make it more beneficial to certain people who had fought in the military post-Sept. 11, but I don't remember the specifics or whether changes were made at all.

Dan commented:

The [questions and answers articles] were written before the war in Iraq. In July 2002, President Bush signed an executive order making people who fought in the "war on terrorism" eligible for naturalization through active-duty service during periods of military hostilities. See 8 USC 1440. That same law specifies that no one "who was a conscientious objector who performed no military, air or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section." Given that language, I would think that someone who is a conscientious objector would not qualify without striking down part of the statute.

Q. What effect will filing for conscientious objector status or requesting another discharge have on my immigration status?

A. None, as long as you are not charged with any court-martial offense. The only possible immigration consequence of filing for conscientious objector status is that you may not be able to get "quick" citizenship. Quick citizenship – which is not the same as automatic citizenship – is a special provision of the immigration law that applies to those who have served in the military during specific times of war designated by the President. Even then, you should be eligible as long as you performed any military service and did not refuse to wear the uniform.

IMPORTANT NOTE

All of these consequences are only possibilities, not certainties. The best insurance against them happening is to talk to a lawyer or counselor about your situation. If you think you may face court-martial charges or experience other immigration problems because of your resistance to serving in the military, you should tell your legal advocate that you are a recent immigrant and that you fear your status may be in jeopardy.

For more information and advice, contact the
National Immigration Project of the National Lawyers Guild
14 Beacon St., Suite 602 Boston, MA 02108
617-227-9727
nip@nlg.org
www.nlg.org/nip/

6. Immigrants and Selective Service Registration

Q. I received a letter from the government that says I have to register for Selective Service. Does this mean I am being drafted?

A. No. Registering for Selective Service does not mean that the United States government is drafting you for military service. Only volunteers now serve in the United States military. The United States is not drafting anyone at this time. However, the US Congress has the power to restart the draft at any time. The US government requires registration to make it easier for it to organize a draft if the government decides a draft is necessary.

Q. How did the Selective Service get my name?

A. The Selective Service uses records from different public agencies, like the Department of Motor Vehicles (driver's license). It also buys lists of names from companies that sell products to young people. The Selective Service sends mass mailings to large groups of people. The United States did not target you personally.

Q. Do I have to register for Selective Service?

A. The law says that all men living in the United States who are ages 18 through 25 must register, except those who are in valid non-immigrant status (e.g., students, visitors, and people who have been permitted to come to the US for limited periods of time, etc.). The Selective Service interprets this to mean that undocumented men must register. (Check with an immigration attorney if you are uncertain about your status.)

Q. I don't have a Social Security number, but the Selective Service form asks for one. What should I do?

A. It is best not to put down any number if you do not have a valid Social Security number. Using a false Social Security number is a crime (felony) and can carry serious penalties. At this time, the Selective Service is not investigating people who do not give a Social Security number.

Q. I am undocumented. If I register, will the Selective Service turn me over to the INS?

A. The Selective Service cannot tell from the registration form that you are undocumented. They will only know if you tell them. Do not tell the Selective Service that you are undocumented. They have said that if they learn someone is undocumented, they will turn that person over to the INS.

Q. What will happen if I don't register?

A. If you have received a letter from the Selective Service that tells you to register, and you do not report, you will probably get three or four more letters warning you that if you do not register, the government could begin criminal charges against you. If you do not register after receiving those warning letters, then the Selective Service may turn your name over to the Department of Justice for possible prosecution.

Failing to register is a federal crime, with a penalty of up to five years in prison or a \$250,000 fine or both. Since the mid-1980s the US government has not prosecuted anyone for failing to register for the draft. The 20 young men who were prosecuted in the early 1980s were anti-draft activists. Nevertheless, this policy could change and the government could bring criminal charges against other people.

Q. If I have not registered and I am prosecuted, what can I do?

A. If you are under 26 and the US brings charges against you, the government would probably drop the charges if you agree to register. This policy also could change, however.

Q. What if I am over 26 and I am prosecuted?

A. Once you turn 26, you are too old to register, so you will not be able to get the US to drop the charges by simply agreeing to register. If the government were to prosecute you, you could still avoid conviction if you can show that your failure to register was not "knowing and willful." Once you turn 31 years old, the United States can no longer prosecute you.

Q. I am over 26 and I did not register. How can I show that my failure to register was not knowing and willful?

A. Many immigrants are not aware of their obligation to register or do not become aware of this obligation until after they turn 26. The Selective Service has gotten tougher on noncitizens that fail to register. The Selective Service is now more likely to assume that a person that failed to register did so "knowingly and willfully. If you want to show that you did not know you had to register for Selective Service, you may have only your word. If, for example, the Selective Service never sent you a notice or you can show that you were not living at the address where the government sent the notices then your word might be enough. You may also have other good explanations for why your failure to register was not done on purpose.

Q. Are there risks to my immigration status if I do not register?

A. Yes, if you are tried and convicted for not registering. A conviction for failure to register makes you deportable. This means that if you are not a US citizen you risk being forced to leave the US even if you currently have some legal status in the country.

A conviction for failure to register may also make you inadmissible from the United States. This means that if you are a legal permanent resident now, you could have problems when you try to reenter the United States. If you are not a legal permanent resident, you could lose the possibility of obtaining this status in the future, or even the possibility of entering as a non-immigrant (e.g., as a student, visitor, etc.).

A conviction for failure to register may also make you ineligible for citizenship for at least five years.

Q. If I did not register, but I am not convicted, can I still face immigration consequences?

A. You will probably be ineligible to become a United States citizen if you fail to register and cannot show that you were unaware of the registration requirement.

To qualify for US citizenship you need to show you are a person of "good moral character" for the five years before your applying for citizenship. The INS considers a person to lack "good moral character" if he failed to register for Selective Service when he was aware of his obligation to do so. It appears that the INS will only automatically deny you citizenship until you turn 31.

Nevertheless, certain INS examiners or entire INS offices may treat a person's failure to register as a lack of "good moral character" even after the five-year period. However, if the INS denies your citizenship application because you

failed to register, you can challenge the denial by showing that your failure to register was not "knowing and willful." The INS may also use your failure to register to deny an application for legal permanent residence ("green card").

Q. Are there any other risks of not registering?

A. Yes. To obtain certain federal benefits, you must prove you have registered with the Selective Service. These include federal student loans and grants, job training programs, and certain federal jobs. If you are under 26, you can register at any time and can obtain these benefits. If you did not register and you are over 26, you can still obtain these benefits if you can show that your failure to register was not knowing and willful.

Q. If the United States begins a draft, what would happen to me?

A. If the US has a draft and you are registered, you could get a notice to report for induction. The US would issue notices to men who turn 20 the year that the draft begins. If the US wants more people to serve, it will issue notices to individuals who turn 21 that year, and so on until the military calls up men through the age of 25, then would draft 19 year olds and men who are 18 and a half. Anyone who is registered can receive such a notice regardless of his immigration status.

Q. I am undocumented. If the United States begins a draft, and I get a notice, can I be forced to serve in the military?

A. Probably not. Since World War II, the US military's policy has been not to take in undocumented people. The armed forces require that a person be at least a legal permanent resident (i.e., have a "green card") to enlist for service. Even if the United States would not permit you to join the military because of your immigration status, if you receive an induction notice, you must report. It is only after you report that your immigration status is checked.

Q. I am undocumented. If I report for induction will I be turned over to the INS?

A. We do not know. There does not appear to be a policy on this.

Q. If I do not want to serve in the military, can I request an exemption or conscientious objector status now?

A. The government will not allow you (or anyone) to apply for a "deferment" (delaying entry into the military) or an "exemption" (excusing a person from military service) at the point of registration with Selective Service. However, if the US begins a military draft and you receive an induction notice, you may be able to request an exemption, deferment, or conscientious objector (CO) status (a conscientious objector is someone morally opposed to fighting in war). A person

may apply to get out of the draft for other reasons: medical problems, family problems, and others.

You must request an exemption before you report for your induction physical, which could be as little as ten days after the date on the induction notice. If you do not request the exemption at that time, you may lose the right to do so later. Certain exemptions may prevent you from getting a green card or from becoming a citizen. Consult an immigration attorney about this first.

For More Assistance about immigration matters, please contact:
National Immigration Project National Lawyers Guild
14 Beacon Street, Suite 602 Boston, MA 02108
617-227-9727
www.nationalimmigrationproject.org
dan@nationalimmigrationproject.org

7. **STOP LOSS ORDERS** (outdated -- see **Stop Loss** section under Links)

Note: This information is current as of April 2003, but is subject to change at any time. Please look for updated information regularly.

By Teresa Panepinto and Lenora Yarger, Central Committee for Conscientious Objectors

What is a stop-loss?

During a mobilization, the President may “suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces...” (10 USC §12305(a)). Members who reach the end of their enlistment can be involuntarily retained, and transfers to the Individual Ready Reserve, Standby Reserve, and all administrative discharges halted.

ARMY

There are currently three separate stop-loss orders in the Army, and one stop movement order:

1. An Active Component (AC) unit stop loss policy was put into effect on 2/14/03. This applies to all units deployed (or on alert for deployment) to areas that fall under the Central Command, primarily the Persian Gulf region. This is an open-ended order, that may remain in place up until 2004.
2. A Reserve Component (RC) unit stop loss policy was put into effect in November of 2002. This order applies to all reserve units. This begins once a unit has been alerted for mobilization, and lasts until 90 days after the unit has de-mobilized, or until a 12 month period is up, whichever comes later.
3. A selected specialties stop loss policy was put into effect in January of 2002. This order applies only to those MOS' listed in the charts below. There is a 12 month limit

on this order, except for Army Reserve and Army National Guard units that are mobilized (for them, see #2 above).

All three stop-loss orders listed above affect voluntary discharges only. However, there are several exceptions to all three orders; those seeking CO, disability, hardship, homosexual conduct or ODPMC discharges (or anyone seeking an involuntary discharge) will NOT be affected by stop loss.

Under these new policies, soldiers affected by stop loss would generally be allowed to request voluntary separation from the Army (to include retirement), to be effective 12 months from one of the following dates or under the following conditions (whichever applies):

- ✍ Expiration Term of Service (ETS) Separation Date (for enlisted soldiers not retirement eligible).
- ✍ End of Current (ECUR) Service Obligation Date (for officers/WOs not retirement eligible).
- ✍ Retirement Eligible Soldiers - two categories for all soldiers follow:
 - ✍ Retirement Eligibility Date is after stop loss effective date: soldiers can request retirement to be effective 12 months after retirement eligibility date.
 - ✍ Retirement Eligibility Date is on or before stop loss effective date: soldiers can request retirement to be effective 12 months from stop loss effective date.
 - ✍ Enlisted soldiers serving on an indefinite enlistment or Officers not retirement eligible but who have completed their Active Duty Service Obligation (ADSO) and who request separation will be separated 12 months from the date they became subject to stop loss.

MOS Under Stop Loss (From *Army Times*, 3/17/03)

Regular Army (RA)

Army National Guard (NG)

Army Reserves (AR)—Note: The new RC Unit Stop Loss Policy applies to all reserve soldiers, regardless of MOS, who are in mobilized NG and AR units.

Enlisted Soldiers:

<i>Specialty</i>	<i>Component</i>
18B	RA/NG/AR
18C	RA/NG/AR
18D	RA/NG/AR
18E	RA/NG/AR
18F	RA/NG/AR
18Z	RA/NG/AR
37F	RA/AR
38A	AR only
52E	RA/AR
55D	RA/NG/AR
67U	RA/NG/AR
74B	RA/NG/AR

<i>Specialty</i>	<i>Component</i>
92M	RA/NG/AR
95B	RA/NG/AR
95C	RA/NG/AR
95D	RA/NG/AR
96B	RA/NG/AR
96U	RA/AR
97B	RA/NG/AR
97E	RA/NG/AR
97L*	AR/NG
98C	RA/NG/AR
98G***	RA/NG/AR
00Z(CMF18)	RA/NG/AR

*Except for Russian and Spanish linguists.

*** Except for linguists with the following language codes: BY, CA, CM, CX, FR, GM, HE, HU, JA, KP, LC, PL, QB, RU, SC, TA, TH, VN

Branch Officers

<i>Specialty</i>	<i>Component</i>
15C35**	RA/NG/AR
18**	RA/NG/AR
30**	RA/NG/AR
31**	RA/NG/AR
34**	RA/NG/AR
35**	RA/NG/AR
<i>Specialty</i>	<i>Component</i>
38**	AR only
39**	RA/AR
45A**	RA/NG/AR
48G**	RA/AR
51C**	RA/NG/AR
53**	RA/NG/AR

**Officers no longer in these career fields are not affected by stop loss.

Warrant Officers

<i>Specialty</i>	<i>Component</i>
152C	RA/AR
153D	RA/NG/AR
153E	RA/AR
154C	RA/NG/AR
154E	RA/AR
155E	RA/NG/AR
155G	RA/AR
<i>Specialty</i>	<i>Component</i>
180A	RA/NG/AR
311A	RA/NG/AR
350 B	RA/NG/AR
351B	RA/NG/AR
351C	RA/AR
351E	RA/NG/AR
352G	RA/NG/AR

Additional Skill Identifier (warrant officer only)

K4	RA/NG/AR
K5	RA/NG/AR
K6	RA/NG/AR

Stop Movement: This order suspends most permanent change of duty station moves, as well as most temporary duty training assignments. It was implemented in January of 2003 and applies to active component units deployed (or on alert for deployment) to South

Korea and the Persian Gulf and Central Command area only. This order is open-ended, and could last up until 2024.

NAVY

Since August of 2002, all stop-loss restrictions have been lifted. There are currently NO stop loss orders in effect in the Navy.

AIR FORCE

Effective May 2, 2003, a stop-loss affecting 43 officer and 56 enlisted job specialties will be put into place. The policy is being implemented across the active duty, Air Force Ready Reserve and Air National Guard. This stop-loss orders affects voluntary discharges only. However, there are several exceptions to the order; those seeking CO, disability, hardship, homosexual conduct or ODPMC discharges (or anyone seeking an involuntary discharge) will NOT be affected by stop loss. For those who are not exempt from the order, requests for waivers will be dealt with on a case by case basis. For a complete listing of the exceptions to the order, and to download the AF waiver forms, go to:

<http://www.afpc.randolph.af.mil/retsep/stoploss03.htm>

Officer AFSC's (Air Force Specialty Codes) Affected:

11AX	Airlift Pilot
11BX	Bomber Pilot
11EX	Test Pilot
11FX	Fighter Pilot
11GX	Generalist Pilot
11HX	Helicopter Pilot
11KX	Trainer Pilot
11RX	Recce/Surv/Elect Warfare Pilot
11SX	Special Operations Pilot
11TX	Tanker, C-12 Ctp Pilot
12AX	Airlift Navigator
12BX	Bomber Navigator
12EX	Test Navigator
12FX	Fighter Navigator
12GX	Generalist Navigator
12KX	Trainer Navigator
12RX	Recce/Surv/Elect Warfare Navigator
12SX	Special Operations Navigator
12TX	Tanker Navigator
13BX	Air Battle Manager
13DXA	Combat Rescue
13DXB	Special Tactics
13MX	Airfield Operations
14NX	Intelligence
31PX	Security Forces
32EX	Civil Engineer
43EX	Bioenvironmental Engineer
43HX	Public Health
43TX	Biomedical Laboratory

44EX	Emergency Services Physician
44MX	Internist
45AX	Anesthesiologist
45BX	Orthopedic Surgeon
45SX	Surgeon
46FX	Flight Nurse
46MX	Nurse Anesthetist
46NXE	Critical Care Nurse
46SX	Operating Room Nurse
48AX	Aerospace Medicine Specialist
48GX	General Medical Officer
48RX	Residency Trained Flight Surgeon
51JX	Judge Advocate
71SX	Special Investigator

Enlisted AFSCs:

1A0XX	In-Flight Refueling
1A1XX	Flight Engineer
1A2XX	Loadmaster
1A3XX	Airborne Communications & Electronics Systems
1A4XX	Airborne Battle Management
1A5XX	Airborne Mission Systems
1A7XX	Aerial Gunner
1A8XX	Airborne Cryptologic Linguist
1C0X1	Airfield Management
1C1XX	Air Traffic Control
1C2XX	Combat Control
1C3XX	Command Post
1C4XX	Tactical Air Command & Control
1C5XX	Aerospace Control & Warning System
1N0XX	Intelligence Applications
1N1XX	Imagery Analysis
1N200	Signals Intelligence Analysis Manager
X1N2XX	Aircrew Signals Intelligence Production
1N3X4	Far East Cryptologic Linguist
1N3X5	Mid-East Cryptologic Linguist
1N3X6	African Cryptologic Linguist
1N3X7	Turkic Cryptologic Linguist
1N3X8	Polynesian Cryptologic Linguist
1N3X9	Indo-Iranian Cryptologic Linguist
1N4XX	Signals Intelligence Analysis
1N5XX	Electronic Signals Intelligence Exploitation
1n6xx	Electronic System Security Assessment
1S0XX	Safety
1T1XX	Aircrew Life Support
1T2XX	Pararescue
2E2X1	Com, Network, Switching & Crypto Systems
2F0X1	Fuels
2T3X2A	Special Vehicle Maintenance (Fire Trucks)
2T3X2B	Special Vehicle Maintenance (Refueling Vehicles)
3C0X1	Communications - Computer Systems Operations
3C2X1	Communications - Computer Systems Control
3E000	Electrical (Cem)
3E0X2	Electrical Power Production

3E4X1	Utilities Systems
3E4X2	Liquid Fuels Systems Maintenance
3E5X1	Engineering
3E7X1	Fire Protection
3E8X1	Explosive Ordnance Disposal
3E9X1	Readiness
3H0X1	Historian
3N0XX	Public Affairs & Radio/TV Broadcasting
3P0XX	Security Forces
4A1XX	Medical Material
4A2XX	Biomedical Equipment
4B0XX	Bioenvironmental Engineering
4E0XX	Public Health
4H0XX	Cardiopulmonary Laboratory
5J0X1	Paralegal
7S0X1	Special Investigations
8D000	Linguist Debriefers
9L000	Interpreter/Translator

MARINES

A service-wide stop loss, for both active reserve components, goes into effect 1/15/03. The policy affects only those Marines who choose to voluntarily leave at the end of their obligated service (and, those GIs cannot be held for more than 12 months past their end of service date). What that means, then, is that ALL administrative discharges (both voluntary and involuntary) are still being processed.

Upgrade Prepared by Teresa Panepinto and Lenora Yarger

Stop Loss policies for all the services are periodically updated. For future updates, contact Teresa at CCCO, 510-465-1617, teresa@objector.org or Lenore at QuakerHouse, Fayetteville, NC, 919-663-7122, qpr@quaker.org

8. Discharged Reservist: 'This War Is Wrong'

BY MARY BROWN MALOUF
THE SALT LAKE TRIBUNE , February 11, 2003

Former Army Reserve Staff Sgt. Michael Sudbury took a stand Monday morning and declared himself unwilling to go to war for his country.

The Army says no one asked him to.

Although Sudbury had put in for discharge back in December, he did not receive the notice of his discharge until after he had received notice of his unit's mobilization.

In the meantime, he says, "I had decided to say no, as loud and as publicly as I could, and take the consequences."

In a rare case of words speaking louder than actions, Sudbury held a news conference to tell the world that he would not have gone to war anyway.

Sudbury, 27, of Salt Lake City, enlisted in the Army Reserve after he graduated from Hillcrest High School in 1994. "I was filled with the pride and honor in defending my country," he says.

In January 2000, he re-enlisted for another three years. Like many other soldiers, the events of Sept. 11, 2001, filled him with anger and a desire to retaliate.

"Then I started asking myself why anyone would want to do this to the United States?" Sudbury says.

Answering that question led him to a new view of the United States and to the conclusion that there is a rift between the government and the people. He came to believe that "our government has lied and even manipulated events in order to get us to go to war."

Sudbury received notice Feb. 5 that his unit, the 786th Quartermaster, would mobilize Monday.

But he held his discharge papers in hand as he read his statement in front of the Federal Building in Salt Lake City before several TV cameras and a crowd of supporters from People for Peace and Justice of Utah.

Spokesman Claude McKinney, of the U.S. Army 96th Regional Support Command, says, "All is copacetic. Sudbury was honorably discharged before his unit was deployed. For us, this is a non-issue."

According to Sudbury, his contracted service was up Jan. 8. But, he said, "they told me I had to stay in the reserve past my term of service 'because of the current situation.'

"I received the order to mobilize last Wednesday," Sudbury said. "On Friday I heard that the Army had decided to discharge me. Three hours later I got a call revoking the discharge."

That is when Sudbury decided to resist, whatever the consequences, which could have been up to 7 years in military prison for disobeying orders and missing a troop movement.

But on Sunday the revocation was revoked, Sudbury says, and he was discharged.

"I realize that this is a less dramatic story than it would have been if I were standing here having disobeyed orders," he says. "But I want everyone listening to understand that I think this war is wrong. I would have gone to jail rather than fight it."

For more information, contact Sam Diener
Stories Program Coordinator and Web-Weaver
Educators for Social Responsibility
23 Garden St., Cambridge, MA 02138
617-492-1764 xt. 30
<<http://www.esrnational.org>>www.esrnational.org

9. CONTRACT AWARDS -- TAKE A PEEK AT WHERE THE MONEY GOES

It is possible to check on what contracts the Pentagon has awarded on any given day by going to the following website under Defense Link. The contracts are announced at 5:00 p.m. EST.

<http://www.defenselink.mil/news/contracts.html>

For example, on April 21, 2003, the following awards were announced:

United States Department of Defense

Contract

On the web: http://www.defenselink.mil/news/Apr2003/c04212003_ct261-03.html

Media contact: media@defenselink.mil or +1 (703) 697-5131

Public contact: public@defenselink.mil or +1 (703) 428-0711

FOR RELEASE AT No. 261-03

5 p.m. ET April 21, 2003

CONTRACTS

ARMY

Stewart & Stevenson, Sealy, Texas, was awarded on April 17, 2003, a \$95,414,500 firm-fixed-price contract for the family of medium tactical vehicles. Work will be performed in Sealy, Texas, and is expected to be completed by Oct. 28, 2008. Contract funds will not expire at the end of the current fiscal year. There were two bids solicited on Aug. 15, 2002, and two bids were received. The U.S. Army Tank-Automotive and Armaments Command, Warren, Mich., is the contracting activity (DAAE07-03-C-S023).

RIO Construction Corp., San Juan, Puerto Rico, was awarded on April 16, 2003, a \$21,968,000 firm-fixed-price contract for the De

Diego Bridge modification. Work will be performed in San Juan, Puerto Rico, and is expected to be completed by Jan. 2, 2006. Contract funds will not expire at the end of the current fiscal year. There were 75 bids solicited on Dec. 23, 2003, and three bids were received. The U.S. Army Corps of Engineers, Jacksonville, Fla., is the contracting activity (DACW17-03-C-0012).

General Electric Aircraft Engine, Cincinnati, Ohio, was awarded on April 16, 2003, a \$21,659,607 modification to a firm-fixed-price contract for overhaul and repair of the entire T700 family of engines. Work will be performed in Corpus Christi, Texas, and is expected to be completed by Dec. 31, 2003. Contract funds will not expire at the end of the current fiscal year. This was a sole source contract initiated on Aug. 22, 2000. The U.S. Army Aviation and Missile Command, Redstone Arsenal, Ala., is the contracting activity (DAAH23-00-C-0347).

Litton Systems Inc., Orlando, Fla., was awarded on April 17, 2003, a \$9,233,111 modification to a firm-fixed-price contract for 22 lightweight laser detection rangefinders plus spares. Work will be performed in Apopka, Fla., and is expected to be completed by Feb. 28, 2005. Contract funds will not expire at the end of the current fiscal year. This was a sole source contract initiated on March 27, 2003. The U.S. Army Communications-Electronics Command, Fort Monmouth, N.J., is the contracting activity (DAAB07-02-C-J003).

AIR FORCE

The Boeing Co., Long Beach, Calif., is being awarded a \$20,246,241 firm-fixed-price contract modification to provide to 60 aircraft under subject C-17 production contract to incorporate secure enroute communications package - improved. At this time, \$2,877,658 of the funds has been obligated. Further funds will be obligated as individual delivery orders are issued. This work will

be completed December 2007. Solicitation began April 2003. The Aeronautical Systems Center, Wright-Patterson Air Force Base, Ohio, is the contracting activity (F33657-02-C-2001, P00005).

Lockheed Martin Mission Systems, Manassas, Va., is being awarded a \$12,229,344 cost-plus-award-fee, fixed-price contract modification in support of Department of Defense Global Transportation Network (GTN) system. This action is extending the current contract until the replacement system GTN 21 is operational. Extended period is June 1 through Aug. 31, 2005. At this time, \$7,562,163 of the funds has been obligated. Further funds will be obligated as individual delivery orders are issued. This work will be complete November 2003. The Air Mobility Command Contracting Flight, Scott Air Force Base, Ill., is the contracting activity (FF19628-95-C-0029, P00254).

NAVY

Shaw Environmental Inc. (previously known as International Technology Corp.), Concord, Calif., is being awarded \$16,015,826 for Task Order 0106 under firm-fixed-price, cost-plus-award-fee contract for environmental remedial action at the former Naval Station Treasure Island. This task order will be incrementally funded with an initial funding of \$5,186,500. Work will be performed in San Francisco, Calif., and is expected to be completed by October 2004. Contract funds will not expire at the end of the current fiscal year. The basic contract was competitively procured with 182 offers solicited, four proposals received and award made on June 2, 1998. The total basic contract amount is not to exceed \$250,000,000, which includes the base period and six option periods. This task order was procured under the terms and conditions of the existing contract. The Naval Facilities Engineering Command, Southwest Division, San Diego, Calif., is the contracting activity (N62474-98-D-2076).

Northrop Grumman Corp.-Oceanic Naval Systems, Annapolis, Md., is being awarded an \$8,700,746 cost-plus-fixed-fee contract for a performance based logistics contract covering the advanced seal delivery system (ASDS). Two one-year extension periods are negotiable under this order with pricing to be determined at a later date. Work will be performed at Pearl Harbor, Hawaii (60%); Sykesville, Md. (20%); and Annapolis, Md. (20%), and is expected to be completed by April 2005. Contract funds will not expire at the end of the current fiscal year. This contract was not competitively procured. The Naval Inventory Control Point, Mechanicsburg, Pa., is the contracting activity (N00104-99-G-A302).

Armtec Countermeasures Inc., Coachella, Calif., is being awarded a \$7,820,740 firm-fixed-price option contract for 2,633,246 RR 188 chaff cartridges used in a variety of U.S. Navy and U.S. Air Force aircraft. This contract contains options which if exercised, would bring the total cumulative value of this contract to \$72,319,558. Work will be performed at Lillington, N.C., and is expected to be completed by January 2005. Contract funds will not expire at the end of the current fiscal year. This contract was competitively procured via a competitive request for proposal, with two proposals solicited and two offers received. The Naval Inventory Control Point, Mechanicsburg, Pa., is the contracting activity (N00104-02-C-K098).

Announcements

? GI Hotline: 800-394-9544

<p>MLTF Video Available This video of a Military Law Training presented by the MLTF on April 2002 at Boalt School of Law in Berkeley, California includes counseling techniques, discharges, courts-martial, and available websites and resources. Five hours in length.</p>
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**Cost: \$20.00

Order by emailing to Marti Hiken, mlhiken@pacbell.net

? The MLTF seeks a WebMaster. We have information to add to the website and need someone who can work with us to add the materials. Contact Marti at mlhiken@igc.org

ABOUT THE MILITARY LAW TASK FORCE

The NLG 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, produces interim mailings on legal and political issues for Task Force members, sponsors seminars and workshops on draft, military and veterans law, produces educational materials on these issues, and provides support for members on particular cases or projects

The Task Force encourages comments, criticisms, assistance and membership from Guild members and others interested in military, draft or veterans law. If you would like to become a member of the Task Force, or simply want more information about our work, please write the Task force or call us at 619-233-1701.
